

## Court of Errors and Appeals.

Between—

SARAH L. STEWART,

Complainant,

and

AUGUSTUS W. CUTLER,

Defendant.

} *Bill for Relief.*

*Vanatta & Demott*, Sols. and of counsel for complainant.

*Theodore Little*, counsel for defendant.

### Bill of Complaint.

[Filed August 2, 1866.]

To the Honorable Abraham O. Zabriskie, Chancellor of the State  
of New Jersey.

Humbly complaining shows unto your Honor, your oratrix, Sarah L. Tuttle, of the township of Hanover, in the county of Morris, and state of New Jersey, that at and before the making of the sales by commissioners hereinafter mentioned, your oratrix was seized of and entitled to one equal undivided one-third part of the six lots or parcels of land and premises 10 hereinafter described.

That John S. Smith claimed some interest and estate in the said lots of land, and thereupon the said John S. Smith made two applications to the Hon. Edward W. Whelpley, Chief Justice of the Supreme Court of the State of New Jersey, to appoint commissioners to divide said lands, all of

which are situate in the township of Hanover, in the said county of Morris. In his application which he first made, he asked for the partition of four lots of land; the first lot containing fourteen acres of land, and is described in a deed from Isaac Cutler to Daniel L. Tuttle, dated April 24th, 1819, and recorded in the Morris county record of deeds, Book H H, pages 429, &c.

The second tract contains seven acres and ninety-two hundredths of an acre, and is described in a deed from Charles  
10 Vail to Daniel L. Tuttle, dated June 7th, 1822, and recorded in the Morris county record of deeds, Book M M, page 317.

The third tract contains eighteen acres, more or less, and is described in a deed from Aaron Kitchell and wife to said Daniel L. Tuttle, dated April 1st, 1828, and recorded in the said record of deeds, in Book W W, pages 59, &c.

The fourth tract contains seven acres and ten hundredths of an acre, more or less, and is described in a deed from Isaac Johnson and wife to Nancy Tuttle, dated November  
20 7th, 1823, and recorded in the record aforesaid, in Book Q Q, page 331.

And such proceedings were had upon the said application, that afterwards, and on or about the 26th day of July, 1861, the said Chief Justice did appoint William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners to divide the said four lots of land into three shares or parts, one of said shares or parts, being seventeen fifty-fourths of said lands, another of said shares or parts being also seventeen fifty-fourths of said lands, and the remaining third part or share being twenty fifty-fourths of said lands.

30 In said Smith's second application, he asked for the partition of two lots of land.

The first lot, containing thirty-eight hundredths of an acre of land, and is the same that Ezekiel Howell and wife conveyed to Nancy Tuttle, by deed dated October 18th, 1811, and recorded in the record aforesaid, in Book V, pages 272, &c.

The second lot, containing half an acre, and is the same conveyed to Nancy Tuttle by Isaac Johnson and wife, by deed dated October 12th, 1814, and recorded in the aforesaid record of deeds, Book B B, pages 409, &c.

40 And such proceedings were had upon this last mentioned

application, that on the fourth day of July, 1862, the said Chief Justice did appoint the said William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners to divide the two last mentioned lots into three equal shares or parts.

And your oratrix further shows, that such proceedings were had upon the said orders of the said Chief Justice, that afterwards the said Chief Justice made an order, bearing date the twentieth day of December, 1862, directing the said four lots first hereinbefore generally described, namely, the 10 lot of fourteen acres, the lot of seven ninety-two one hundredths acres, the lot of eighteen acres, and the lot of seven ten one hundredths acres, to be sold; and by another order, made by the said Chief Justice, bearing date the twentieth day of December, 1862, the said lot of thirty-eight one hundredths of an acre, and the said lot of half an acre, last hereinbefore mentioned, were also ordered to be sold; and upon said orders for sale, such proceedings were afterwards had, that the said commissioners sold the said lands in the said two proceedings mentioned and described, on the twentieth 20 day of March, eighteen hundred and sixty-three, as follows: the lot of fourteen acres to the said John S. Smith, for two hundred and fifty-two dollars; the lot of seven acres and ninety-two hundredths of an acre, to Henry Boughton, for the sum of seven hundred dollars; the lot of eighteen acres to Augustus W. Cutler, for the sum of three hundred and sixty-five dollars; and the lot of seven acres and ten hundredths of an acre of land to the said Augustus W. Cutler, for the sum of eleven hundred and eighty-five dollars; making the aggregate amount of said sales, by virtue of the 30 said first mentioned order of sale, the sum of two thousand five hundred and two dollars.

And that by virtue of the said second order of sale, the said commissioners, on the said twentieth day of March, 1863, sold the two lots in the said last mentioned proceedings mentioned, as follows: the lot of thirty-eight hundredths of an acre, to the said Augustus W. Cutler, for the sum of one hundred and six dollars; and the lot of fifty hundredths of an acre, to the said Augustus W. Cutler, for the sum of twelve hundred dollars; making the aggregate amount of 40

the sales of the two last mentioned lots, the sum of thirteen hundred and six dollars.

And your oratrix further shows unto your Honor, that decrees of distribution were made in both of the said two proceedings, by the Supreme Court of New Jersey, on the seventh day of July, 1863, and that in and by the second one of said orders of distribution, then ordered and directed to be paid to your oratrix, as her net share of the proceeds of the sale of the lands sold by said commissioners in that  
 10 proceeding, the sum of four hundred and five dollars and thirty-six cents; and that the same order or decree of distribution then ordered to be paid to Jane C. Anderson, the wife of John C. Anderson, the like sum of four hundred and five dollars and thirty-six cents, for her share of, in, and to the same lands.

And your oratrix further shows, that in and by the first one of the said orders of distribution, there was directed to be paid to your oratrix the sum of seven hundred and forty-seven dollars and fifty-five cents, as her net share of the sale  
 20 of the lands sold in the proceeding in which the said last mentioned order of distribution was made; and in and by the same order there was directed to be paid to the said Jane C. Anderson, the like sum of seven hundred and forty-seven fifty-five one hundredths dollars, as her net share of the proceeds of the sales of the last mentioned lands, as by reference to the said proceedings in partition, now of record in the Supreme Court of New Jersey, and to which your oratrix prays leave to refer, will more fully and at large appear.

And your oratrix further shows unto your Honor, that all  
 30 the right, title, interest, and estate of the said John C. Anderson and Jane C., his wife, in and to the said lands so sold by the said commissioners, at the time they were so sold by said commissioners, were vested in and belonged to your oratrix, and that the same were conveyed to and vested in your oratrix by two certain deeds of conveyance, both made to your oratrix by the said John C. Anderson and Jane C., his wife, one having no date of month or day, dated in 1863, acknowledged on the sixteenth day of February, eighteen hundred  
 40 and sixty-three, and recorded on the 22d day of June, in the year last aforesaid, in the Morris county record of deeds, Book E 6, page 554. The other one of said deeds is dated

on the sixteenth day of February, 1863, was acknowledged by the said John C. Anderson and Jane C., his wife, on the day last named, and was recorded on the 22d day of June, 1863, in the record of deeds in and for the said county of Morris, in Book E 6, pages 216, &c., as by reference to the said two deeds, or the records thereof, to which your oratrix prays leave to refer, will more fully and at large appear.

And your oratrix further shows, that the said two deeds last mentioned, were made and delivered to your oratrix, on or about the sixteenth day of February, 1863. 10

And your oratrix further shows, that said Augustus W. Cutler purchased the aforesaid lot of eighteen acres for his own use, and that your oratrix has and makes no claim to the same.

And your oratrix further shows, that at the time the said sale was made by the said commissioners, and for a long time before, and for more than a year afterwards, your oratrix was a married woman, and was the wife of one Adolphus Stewart; but that some time in the year 1864, (the date not now being recollected by your oratrix,) by the decree of this honorable 20 court, made in a cause wherein your oratrix was petitioner or complainant, and the said Adolphus Stewart was defendant, your oratrix was divorced from the bond of matrimony which had bound her to and made her the wife of the said Adolphus Stewart, and that since the making of the said last mentioned decree, your oratrix has been and she now is a *feme sole*.

And your oratrix further shows unto your Honor, that for a considerable time prior to the commencement of the aforesaid proceedings for partition, Augustus W. Cutler, esq., of 30 Morristown, had been the legal adviser of your oratrix, and had acted for her in all of her business which was transacted or attended to by an attorney-at-law, and said Cutler was the legal adviser and acted as the attorney of your oratrix in the said proceedings for partition, and your oratrix confided and entrusted the whole of said business, so far as she was concerned, to the care and management of said Cutler.

And your oratrix further shows and charges, that the said Augustus W. Cutler purchased the said lot of seven acres and ten hundredths of an acre of land, the lot of thirty-eight 40

hundredths of an acre of land, and the lot of fifty hundredths of an acre of land, so as aforesaid purchased by him at the sale so as aforesaid made by the said commissioners, for and on account of and for the use and benefit of your oratrix.

And your oratrix further shows, that she has been informed and she believes, and charges it to be true, that at the time when said three last mentioned lots were struck off to the said Augustus W. Cutler, by the said commissioners, he, the said Cutler, declared that he purchased said lots for your  
10 oratrix, and he desired to write the name of your oratrix as the purchaser of said three lots, to the conditions of sale, but the said commissioners refused to permit him to do so, on the ground that your oratrix was a married woman, and could not make or bind herself to the performance of said contracts of purchase, and therefore said Cutler signed his own name to said conditions of sale, as purchaser of said three last mentioned lots.

And your oratrix further shows, that before the said sale took place, the said Cutler was informed and knew that your  
20 oratrix wanted and intended to purchase the said three last mentioned lots, and your oratrix charges that said Cutler attended said sale for the purpose of purchasing said three lots for your oratrix.

And your oratrix further shows, that in the evening of the day of said sale, said Augustus W. Cutler called upon your oratrix, and told your oratrix that he had bought said three last mentioned lots for your oratrix, and asked her what she thought of the purchase, and your oratrix expressed her approval of the purchase; said Cutler then spoke about your  
30 oratrix's being a married woman, and said if she should at once make her application for a divorce, he might get a decree so that the deed for the land could be made to your oratrix, and your oratrix requested him to proceed with the same.

And your oratrix further shows, that the said commissioners made and executed two deeds of conveyance to the said Augustus W. Cutler, for the lands so as aforesaid sold by them and purchased by said Cutler, both bearing date  
40 June the fifteenth, 1863, and both recorded on the fifteenth day of April, 1865, in the record of deeds in and for the said

county of Morris, one in Book P 6, pages 212, &c., and the other in the same book, commencing at page 216.

That the deed recorded commencing at page 212, of the book last named, conveys two of said three lots, viz. the lot of thirty-eight hundredths of an acre, and the lot of half an acre, a particular description of which two lots is as follows: situate in the township of Hanover, beginning at a corner of a lot of land late the property of Eliphalet Orshorn, in the middle of the road leading from Littleton school house to Elias P. Howell's, said corner being in the line of Isaac Johnson's land; thence (1) along the middle of said road, north forty-nine degrees west, five chains and twenty-five links, to a corner in the northern line of the Newark and Mount Pleasant turnpike road; thence (2) down said road and bounded by the same, a southeasterly course, five chains and fifty links, to a corner in the line of the above said Isaac Johnson's land; thence (3) along said Johnson's line, north three degrees and ten minutes east, one chain and fifty links, to the beginning, containing thirty-eight hundredths of an acre, more or less. The other tract is also situate in the same township of Hanover, beginning at a stake and heap of stones for a corner, one chain and thirty-five links from the northeast corner of said Johnson's dwelling-house, on a course of north seventy degrees east, thence (1) north thirty-eight degrees and thirty minutes west, two chains and sixty-five links, by the side of the Newark and Mount Pleasant turnpike road, to a stake and heap of stones; (2) north fifty-one degrees and thirty minutes east, two chains and twenty-five links, to a stake and heap of stones; (3) south thirty-eight degrees and thirty minutes east, one chain and eighty-three links, to a stake and stones in the road leading from Parsippany to Morristown; (4) south thirty-one degrees and fifteen minutes west, two chains and thirty-nine links, along said road to the place of beginning, containing one half of an acre of land, strict measure.

And your oratrix further shows, that the deed, the record of which commences at page 216 of the record book last named, also conveys two lots; one is the said lot of eighteen acres, and the other is the said lot of seven acres and ten hundredths of an acre, which last mentioned lot is described 40

as follows: situate, lying, and being in the township of Hanover, in the county of Morris, and state of New Jersey, beginning at a stake and heap of stones, being the corner No. 2, of an half acre owned by Nancy Tuttle; thence (1) north thirty-nine degrees west, sixteen chains and fifty-nine links; thence (2) north thirty-four degrees east, one chain and forty-two links; thence (3) south fifty-seven degrees east, sixteen chains and eighty-two links; thence (4) south thirty-six degrees west, one chain; thence (5) south forty-  
10 eight degrees east, one chain and forty-four links; thence (6) south thirty one and a half degrees west, three chains and forty-seven links; thence (7) north thirty-eight and a half degrees west, one chain and eighty-three links; thence (8) south fifty-one and a half degrees west, two chains and twenty-five links, to the beginning corner, containing seven acres and ten hundredths of an acre, be the same more or less, as by reference to the said two deeds, so as aforesaid made to said Cutler, or the record thereof, to which your oratrix prays leave to refer, will more fully and at large appear.

20 And your oratrix further shows, that the purchase money of and for the said three lots, so as aforesaid purchased by said Cutler for your oratrix, amounting to the sum of two thousand four hundred and ninety-one dollars, was paid to the said commissioners by said Cutler, as follows:

1st. He delivered to them the receipt and release of your oratrix, or receipts and releases of your oratrix, made by her to the said commissioners, by which your oratrix discharged said commissioners for her own share in her own right of said proceeds of sale, namely, the sum of eleven hundred and  
30 fifty-two dollars and ninety-one cents.

2d. The receipts and releases of John C. Anderson and Jane C. his wife, to said commissioners, for eleven hundred and fifty-two dollars and ninety-one cents, by which they released all their right to said proceeds of sale, which releases said Anderson and wife furnished at the request of and for the benefit of your oratrix, pursuant to the deeds so as aforesaid made by said Anderson and wife to your oratrix, and your oratrix delivered the same to said Cutler.

3d. As your oratrix thinks, a receipt or release, or both,  
40 made by your oratrix to the said commissioners, releasing

your oratrix's right in the money so distributed and decreed to the said Jane C. Anderson.

4th. The sum of one hundred and eighty-six dollars and eighty-two cents in money, which said Cutler furnished and advanced out of his own funds, and which was all the money or property said Cutler furnished to pay for the said three last mentioned lots of land, and that he advanced as a loan and as an accommodation to your oratrix.

And your oratrix further shows, that she received no part of the said eleven hundred and fifty-two dollars and ninety-one cents, so as aforesaid decreed to her by the said orders of distribution, nor any part of the sum of eleven hundred and fifty-two dollars and ninety-one cents, so as aforesaid decreed to the said Jane C. Anderson by the said orders, or decrees of distribution, which belonged to your oratrix as the grantee and assignee of the said Jane C. Anderson, but the whole of both of said sums, amounting to the sum of two thousand three hundred and five dollars and eighty-two cents, were by your oratrix applied to pay the purchase money for the said three lots of land hereinbefore particularly described, and so as aforesaid conveyed to the said Augustus W. Cutler. 20

And your oratrix further shows, that when the said deeds were made to said Cutler, the said commissioners were desirous to finish and close up their business as such commissioners, and as your oratrix was not yet divorced, said deeds were made to said Cutler, upon the understanding that he should hold the three last mentioned lots as a trustee for your oratrix, and until she should be divorced, and that then he should convey the same to your oratrix in fee simple. 30

And your oratrix further shows, that said Cutler asserts and insists, that in the evening of the day on which the said commissioners sold the said lots, he delivered to your oratrix a declaration of trust, in writing, showing that he had purchased the said three lots hereinbefore particularly described, on account of and for the use and benefit of your oratrix, but your oratrix has no recollection of any such paper being left with her on that occasion, nor on any other, nor has your oratrix, so far as she can remember, ever seen said alleged declaration of trust. 40

Since that, namely, since said sale, your oratrix has applied to said Cutler and requested him to make and deliver to her a declaration of trust, in writing, showing that he holds said lots for the use and benefit of your oratrix, but he refuses to do so, on the ground that he had already made and given one to your oratrix.

And your oratrix further shows, that so far as she knows, and as she believes, since the said sale by said commissioners, she has not been indebted to the said Augustus W. Cutler  
10 in any sum or on any account, except for his services in the said partition proceedings, his fees, costs, and services in the said divorce suit, and the sum of one hundred and eighty-six dollars and eighty-two cents, so as aforesaid advanced by him to pay the purchase money of said lots.

And your oratrix further shows, that prior to the first of January, 1866, she had frequently requested said Cutler to make out a bill of his claims and charges against your oratrix, and to let your oratrix know the amount thereof, but he never did so, and put off your oratrix, sometimes on one  
20 excuse and sometimes on another; that some time prior to the fourteenth of February, 1866, moneys to the amount of one hundred and eighty-five dollars, belonging to your oratrix, came into the hands of said Cutler, of which he retains the sum of one hundred and eighty dollars, and gave your oratrix a receipt for the sum last named, bearing date the day and year last aforesaid, in which receipt he says he had received of your oratrix one hundred and eighty dollars "on account of services, &c."

And your oratrix further shows, that the said sum of one  
30 hundred and eighty dollars should be credited upon and deducted from the aforesaid indebtedness of your oratrix to said Cutler.

And your oratrix further shows, that since the payment of the said sum of one hundred and eighty dollars to said Cutler, your oratrix has several times requested said Cutler to give to your oratrix his account of charges against your oratrix, and to let your oratrix know the amount thereof, but he has not done so, but he has put off, evaded, and neglected every one of said requests.

40 And your oratrix further shows, that she has never agreed

or consented that said Cutler should or might keep the title to said three lots of land, or of any of them, away from your oratrix, and hold the same as security for his claims against your oratrix for his professional services, nor has he, as your oratrix submits, any right to do so, but any just, lawful, and reasonable claim of said Cutler in that behalf, your oratrix is ready, willing, and desirous to pay, whenever she can ascertain the amount thereof.

And your oratrix further shows, that since she was divorced as aforesaid, she has very frequently urged and requested the said Augustus W. Cutler to convey the said three lots of land to your oratrix. He has never denied and always admitted that he held said three lots in trust for your oratrix, but he has never conveyed the same to your oratrix, but has evaded and put off doing so on divers false, idle, and frivolous pretexts, the principal one of which has been that Daniel L. Tuttle, the brother of your oratrix, claimed to have some interest in said three lots of land, or in some of them, and he, said Cutler, wished your oratrix to first settle with said Daniel L. Tuttle, and get his consent that he, said Cutler, should convey said lots to your oratrix, but your oratrix charges, that said Daniel L. Tuttle has no right, title, or interest, in or to said three lots of land, or of, in, or to any of them; and that if the said pretended claims of the said Daniel L. Tuttle, or any of them, have any foundation in fact, they are claims upon or against your oratrix personally, and not liens or claims against or upon the said three lots of land, or of any of them; and that there is no legal propriety whatever in said Cutler's making the said pretended claims of said Daniel L. Tuttle a pretext for not conveying said lands to your oratrix.

And your oratrix further shows, that she is ready, able, and willing, and she hereby tenders herself as ready and willing to pay to the said Augustus W. Cutler, whenever he shall convey the said three lots of land to your oratrix, the said sum of one hundred and eighty-six dollars and eighty-two cents, which he so as aforesaid advanced and paid to the said commissioners for the said three lots of land, or so much thereof as remains unpaid, with interest thereon, or on so much thereof as remains unpaid.

And your oratrix further shows, that she has been in the possession and use of the said three lots of land ever since they were so as aforesaid sold by the said commissioners, and the taxes for and on account of said lands have been assessed to and against your oratrix, and paid by her.

And your oratrix well hoped, that the said Augustus W. Cutler would have conveyed the said three lots of land hereinbefore particularly described to your oratrix, as in equity and good conscience he ought to have done; but now so it  
10 is, may it please your Honor, that the said Augustus W. Cutler, combining and confederating with divers other persons at present unknown to your oratrix, but whose names, when discovered, your oratrix prays may be inserted in this her bill of complaint, with apt and proper words to charge them as defendants hereto, to injure and aggrieve your oratrix in the premises, not only refuses and neglects to convey to your oratrix the said three lots of land hereinbefore particularly described, and to render an account to your oratrix in respect to the same, or in any other manner to comply  
20 with such reasonable requests of your oratrix before mentioned, but he, the said Augustus W. Cutler, sometimes pretends and gives out in speeches, that your oratrix did not pay the consideration money for the said three lots of land as hereinbefore stated, and that he, the said Augustus W. Cutler, is not a trustee for your oratrix of said lands, and that he is not equitably bound to convey the same to your oratrix; whereas, your oratrix charges the contrary of all those pretences to be true; all which actings and pretences  
30 of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrix.

In tender consideration whereof, and forasmuch as your oratrix is without adequate remedy in the premises by the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendant and his confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct  
40 answer make to all and every the matters aforesaid, and that

as fully as if the same were here again repeated, and they thereto particularly interrogated, paragraph by paragraph; and that the said Augustus W. Cutler, may be decreed to convey in fee simple absolute, the said three lots of land and premises hereinbefore particularly described to your oratrix, and that he may account with your oratrix as to how much is due to the said Augustus W. Cutler from your oratrix, for and on account of the said sum of one hundred and eighty-six dollars and eighty-two cents, so as aforesaid advanced by said Cutler to pay the balance of the purchase 10 money for the said three lots hereinbefore particularly so described as aforesaid, sold and conveyed by the said commissioners to said Cutler; and that your oratrix may have such other and such further relief in the premises as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix the state's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Augustus W. Cutler, commanding him, on a certain day and under a certain penalty to be therein ex- 20 pressed, personally to be and appear in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree in the premises, as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience; and your oratrix, as in duty bound, will ever pray, &c.

VANATTA & DE MOTT,

*Solicitors.*

JACOB VANATTA,

*of counsel with complainant.*

## Answer.

[Filed October 6, 1866.]

*The answer of Augustus W. Culler, the defendant, to the bill of complaint of Sarah L. Tuttle, complainant.*

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers  
10 and says—that this defendant did become the purchaser of the three tracts of land, being the homestead of Hannah Tuttle, deceased, and particularly referred to in the complainant's bill, under the following circumstances.

This defendant had been the counsel of Hannah Tuttle for several years prior to her death, that she departed this life about the year one thousand eight hundred and sixty, intestate, leaving three children her surviving, heirs-at-law, viz. the complainant, the wife of Adolphus Stewart; Jane C.  
20 Anderson, the wife of John C. Anderson, and Daniel L. Tuttle, and that the said Hannah Tuttle died possessed of considerable estate, both real and personal.

That among her papers at the time of her death were found promissory notes signed by her, and payable to her children, for different amounts; that one of her children, to wit, Daniel L. Tuttle, had become embarrassed prior to the death of his mother; his interest in all the real estate of his mother was subject to the the liens of the judgments recovered against him, and was levied upon and sold by virtue of executions in the hands of the sheriff in the county of Morris,  
30 and one John S. Smith became the purchaser.

That the said heirs-at-law being the holders of said notes of their mother, Hannah Tuttle, presented claims upon the same to the administrators, and exceptions thereto were filed, and evidence and proofs were taken before the Orphans Court; and upon a final adjudication and decision in the Orphans Court of the county of Morris against the claimants,

the heirs-at-law, an appeal was taken to the Prerogative Court of New Jersey, the evidence and proofs were printed and there argued; that this defendant was the proctor of the said claimants, and paid the expenses of the printing, and spent his time and money in the preparation of the causes for argument, and argued the matter in the Prerogative Court, and to which proceedings and the record thereof, the defendant prays leave to refer,

And this defendant further answering says, that prior to the adjudication upon these notes in the Orphans Court, this defendant was informed that Jane C., the wife of John C. Anderson, had sold, assigned, and transferred her interest in the note given to her, to her brother, Daniel L. Tuttle. 10

This defendant further answering says, that during the time when these matters in reference to the estate of Hannah Tuttle were in litigation by the heirs-at-law and the exceptants, to wit, the creditors of Daniel L. Tuttle, the said Sarah L. Tuttle, then the wife of Adolphus Stewart, and Daniel L. Tuttle, lived upon the homestead of the said Hannah Tuttle, being the same three tracts of land particularly referred to 20 in the complainant's bill, and continued so to live and still do live upon the same, and have never accounted to this defendant for the rents, issues, or profits thereof, but have used and enjoyed the same as though it was their property and they had the title of the same.

And this defendant further says, at the time of the sale referred to by the commissoners in the complainant's bill, and when this defendant became the purchaser of the said tracts of land, this defendant attended the said sale, but with no intention of buying in any property for the com- 30 plainant or the heirs-at-law, but while there Daniel L. Tuttle applied to this defendant, and desired him to purchase the said three tracts of land, being the homestead of his mother, for a home for himself and his sister, the complainant; that this defendant absolutely refused, saying that he could not spare the money, and that already the heirs-at-law were indebted to him in a large amount for moneys expended and services rendered; and the said Daniel L. Tuttle then applied to other parties to aid him in securing the purchase, and failing in this, he again applied to this defendant, and in- 40

duced this defendant to purchase the same, upon the understanding that this defendant was to be reimbursed what he should expend in the purchase of the same, and for the amounts that were due to him for services, and money expended in the different suits and controversies in which he had been engaged as proctor, solicitor, and attorney for the said heirs-at-law; and the said Daniel L. Tuttle agreed to procure the receipt of Jane C. Anderson, the wife of John C. Anderson, for her distributive share of the purchase money, 10 stating at the same time that he had purchased her interest in the same real estate, and was equitably entitled to receive the same.

That this defendant did thereupon bid upon the same, and sign the conditions of sale, (and did also buy a lot of eighteen acres as an investment for himself,) and did afterwards pay the commissioners for the amount of his bid, and took and still holds the deed of the same three tracts of land, for the purpose of reimbursing himself for the moneys advanced, and services rendered as aforesaid; and to the proceedings 20 of the commissioners this defendant prays leave to refer.

And that this defendant, upon his return, passed the residence of the complainant, and then met her and the said Daniel L. Tuttle, and told her what he had done and how he had been induced by her brother to do it, and she appeared pleased and satisfied, and gave to this defendant an order upon the commissioners for her distributive share of the proceeds of the real estate, to be applied upon the purchase money of this defendant; and that afterwards the said Jane C. Anderson gave a like order for the same purpose, upon 30 the same commissioners; but what the amount of each order was, this defendant cannot now say, but prays a reference to the papers and records of the said commissioners.

And this defendant further says, that at that time it was spoken of by the said complainant and Daniel L. Tuttle, that he, the said Daniel L. Tuttle, had purchased the interest of Jane C. Anderson in the said real estate, but the title had been made to her, the said complainant, because of the financial difficulties in which he, the said Daniel, was involved.

40 And this defendant further answering says, that at the

request of the said Sarah L. Stewart, he commenced proceedings in the Court of Chancery of New Jersey against her husband for divorce, to which proceedings and the record thereof this defendant prays leave to refer.

And that after the obtaining of the divorce, this defendant was engaged by the complainant in a matter of difficulty with one Abraham Hooley, growing out of a conveyance of certain lands made by her to him, while she was a *feme covert* and undivorced; and the said complainant agreed to execute a new deed, and reassure the same to the said Hooley, for 10 the farther payment of one hundred and eighty dollars, which is the sum of money referred to in the complainant's bill, as received by the defendant, which sum of money was received as payment for the taxed costs in the divorce suit, and on account of other services rendered and moneys expended as her proctor, solicitor, counsel, and attorney, and which sum of money is all the money this defendant has received from the said complainant, and the said complainant suggested that this defendant should retain that amount and credit it upon her account. 20

And this defendant further says, that after he became the purchaser of the said homestead, he exercised no rights of ownership over it, but has permitted the said Daniel L. Tuttle and the complainant to use, occupy, possess, and enjoy it, and has been personally anxious to convey the same (excepting the eighteen acre lot,) to such person as she and her brother might select and choose, offering to take a mortgage for the amount due to him as aforesaid, from them, for services rendered, expenses, money paid in and about the proceedings in the Orphans Court and Prerogative Court, and 30 the consideration money paid for the property; but the complainant insisted that this defendant must convey the property to her, and that she would arrange the rights of her brother, but this defendant was notified by the said Daniel L. Tuttle that he had rights and interest in the same, to wit, the equal undivided one half, and that this defendant should not convey the same to the complainant, but simply her interest, which the complainant refused to accept.

And the defendant further answering says, that he has repeatedly desired the complainant and her brother, Daniel 40

L. Tuttle, to refer the whole matter to some special master of this honorable court, to adjudicate upon the claims and rights of herself and her brother in the same, and also to ascertain the amount due to this defendant, this defendant agreeing to convey the said homestead to the said complainant and to Daniel L. Tuttle, upon receipt of the amount due to him, whenever he could do it with safety to himself and by their authority, but the complainant always refused.

10 And this defendant further answering says, that he is now willing, and has ever been, to convey the said homestead to the said complainant and Daniel L. Tuttle, whenever he can do it with safety to himself, and without involving himself in further litigation, upon receiving the amount due to this defendant from the said complainant and Daniel L. Tuttle.

And this defendant further answering, denies all unlawful combination and confederacy in said bill charged.

20 All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that a decree may be made by this court referring the whole matter to a special master, to ascertain what amount is due to this defendant, and what interest the said complainant has in the said homestead, and what interest the said Daniel L. Tuttle has in the same, so that by a decree of this honorable court, this defendant can, with safety to himself, convey the same property (excepting the eighteen acres) to the parties in interest, and this defendant receive the amount due to him for services rendered, moneys expended, and consideration paid, with interest, with his reasonable costs and charges in this behalf sustained.

30

AUG'S W. CUTLER,

*Solicitor pro se.*

New Jersey, Morris county, ss—Augustus W. Cutler, the above named defendant, being duly sworn, deposes and saith, that the matters and things set forth in the above answer, so far as relates to his own acts, are true, and so far as relates to the acts of others, he believes them to be true.

AUG'S W. CUTLER.

Sworn and subscribed before me, October 2d, 1866.

AUGUSTUS W. BELL, M. C.

### Replication.

[Filed October 19, 1866.]

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever in the said 10 answer contained, material or effectual in the law to be replied unto, confessed and unavoids, traversed or denied, is untrue; all which matters and things the repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by her said bill she has already prayed.

VANATTA & DE MOTT,  
*Solicitors of complainant.*

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### Depositions.

[Filed October 24, 1867.]

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Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Sarah L. Tuttle is complainant, and Augustus W. Cutler is defendant, taken before George W. Forsyth, one of the masters and examiners of the said court, at his office in Morristown, in the presence of Jacob Vanatta, solicitor and of counsel for complainant, and of Augustus W. Bell, solicitor and of counsel for said defendant. Said examination taken the fifth day of November, eighteen hundred and sixty-six.

GEO. W. FORSYTH, *M. C.*

30

*Vancleve Dalrimple*, a witness produced on the part of the said complainant, being duly sworn, on his oath saith—

I was the attorney of John S. Smith in a certain proceeding for partition; it was in the year 1862 or 1863; they were commenced by Smith, who claimed the share of Daniel L. Tuttle, in lands of Hannah Tuttle, deceased; the proceedings were all in the Supreme Court; there were three different cases, two of which in which sales were made, and in one there was a division; I believe I attended the sales made in  
 10 those proceedings; I recollect attending one; I believe both were made the same day, at Parsippany; I have the conditions of the sales made on that occasion. [Witness produced two conditions of sale.] I have no objections to your using them as exhibits in the cause.

Counsel for complainant offered one of the said two conditions of sale in evidence, and I have marked the same *Exhibit No. 1*, on the part of complainant.

The two last agreements of purchase are signed by Mr. Cutler; I saw him sign them; the agreements of purchasers  
 20 are in my handwriting.

Witness being shown the other of said conditions of sale in this cause, which I have marked *Exhibit No. 2*, on the part of complainant, saith—the agreements of purchase appended to these conditions are signed by Mr. Cutler; I believe I saw him sign them; they are in his handwriting.

*Quest.* What, if anything, did Mr. Cutler say at the time of the sale, as to who he was buying for or wanted to buy those lands for?

*Ans.* I don't know as I have any recollection about that,  
 30 except when the fourth lot, described in the conditions of sale, marked *Exhibit No. 1*, in this cause, was bid off by Mr. Cutler, I think, and I drew the acknowledgment of the purchase to be signed, either Daniel L. Tuttle or Mrs. Stewart herself, if I recollect right, commenced writing Mrs. Stewart's name at the bottom of the acknowledgment, and I objected, on the ground that she was a married woman and we might not be able to enforce the contract as against her; it occasioned some little talk, I think, and finally Mr. Cutler said  
 40 he would sign the conditions, and took the pen and signed over that part of Mrs. Stewart's name which had been signed,

and rubbed out his own name, and underneath it the addition "att'y of Sarah L. Stewart." I objected to that form, and Mr. Pitney, who was acting there with me for some clients of his who were interested, and I both objected to this form, and insisted that Mr. Cutler should either sign his own name to the conditions, without any additions whatever, or we would put the property up and sell it again, and he then struck out the addition to which we had objected. His bid was accepted in that way, as by reference to conditions of sale will more fully appear. I haven't a distinct recollection whether 10 Mrs. Stewart was at the sale in person or not. I can't tell whether the property mentioned in *Exhibit No. 1*, was sold before the property mentioned in *Exhibit No. 2*, or not; if I should say anything about it, I should say the property described in *Exhibit No. 2*, was sold first, but it is so vague an impression I think it hardly worth while to pay any attention to it. I prepared the deeds for the commissioners, and they left the matter in my hands to arrange with the purchasers and the persons entitled to the proceeds.

*Quest.* Please state as fully as you can, in what way Mr. 20 Cutler made payment for his purchases?

*Ans.* Well, the deeds were made out for Mr. Cutler and laid some time unaccepted, and as I always understood from Mr. Cutler that he was acting for Mrs. Stewart and Mrs. Anderson in the partition, I urged him to accept his deed, and have the matter settled up with Mrs. Stewart and Mrs. Anderson; and I think I saw Mrs. Stewart once in Mr. Cutler's office, when I was speaking to him about it, and exactly what specific arrangements were made about it I do not know, except that I made a statement, as between the com- 30 missioners and Mrs. Stewart and Mrs. Anderson, and Mr. Cutler procured their releases or discharges, and his deeds were delivered to him, and no money actually passed, except there may have been some small balance one way or the other. He accepted of his deeds in payment, so far as they would go, and he paid to me or I to him some small balance. The releases were for their distributive shares. I have neither the statement nor releases with me.

*Quest.* Is it your recollection, that the whole of Mrs. Stewart's distributive share, and the whole of Mrs. Anderson's 40

distributive share, in those partitions, was appropriated to pay the purchase money due on the purchases made by Mr. Cutler?

*Ans.* Well, if their distributive shares exceeded the amount due for the deeds, it was paid to him, and if it fell short, why of course he paid me. There was one small share paid into court, about which there was some dispute, and that is there yet. Daniel L. Tuttle's share of the proceeds of that sale was claimed by John S. Smith; he got it; he claimed  
10 as a purchaser at sheriff's sale of Daniel L. Tuttle's interest in those lands, and the commissioners adjusted his interest with him. Mr. Cutler, when I delivered the deeds and the settlement was made, delivered me the releases of Mrs. Anderson and Mrs. Stewart.

Cross-examination.

Daniel L. Tuttle attended that sale, I believe; that is my recollection; I have no recollection of seeing Mr. Cutler consult at that sale with Daniel, although I have no doubt  
20 they did, for they were always consulting whenever we met. Mr. Cutler professed to be acting for Mrs. Anderson and Mrs. Stewart in this matter, and said Mr. Little was Daniel's attorney. From looking at the papers, I think the sale was adjourned; I think it was adjourned once, that is my recollection. I have no recollection about the first day, whether Daniel was present or not; I think he was, that is all I can say about it, because I don't think he was ever absent while the business was going on; the sale was between three and  
30 I say Mr. Cutler procured the releases, that I drew them and left them with him to be executed and acknowledged, and he procured it done. I didn't know of my own knowledge for whose interest Mr. Cutler was to hold this property, except what I have stated about that fourth lot.

*Quest.* Who was it who was writing Mrs. Stewart's name, which you have spoken of?

*Ans.* All I can say about it is what I have already said, that it was Mrs. Stewart or Daniel, although I can't say I have any  
40 and probably was Daniel; I have no recollection that Daniel

bid on the property; it may have been Nathaniel Dickerson who commenced to sign Mrs. Stewart's name; he was there and mixed up in it some how, on behalf of the Tuttle, I think; whoever it was commenced to sign, was stopped at once, and the name rubbed out, and not much attention paid to it. I think Nathaniel Dickerson was there professing to be on behalf of Mrs. Stewart; I don't know as he professed to act for Daniel or Mrs. Stewart, except it may have been in attempting to sign her name, and I think he said supposed it would be right for him to do so, or something to that effect. I have no recollection that Nathaniel Dickerson bid upon the property; my impression is Mr. Cutler did; I think the property was struck off on Mr. Cutler's bid, but can't speak with any certainty though. I don't know of Mr. Cutler acting as attorney for Daniel Tuttle in his difficulties; what Mr. Cutler always told me was that he had nothing to do with Daniel, that he was acting for Mrs. Anderson and Mrs. Stewart, and that Mr. Little was Daniel's attorney. There was a long controversy between Daniel and John S. Smith. Daniel was examined on supplementary proceedings on a judgment Smith claimed to hold against him; then Daniel's mother died intestate, Smith levied on Daniel's interest as heir-at-law; then notes were presented against the estate by Mrs. Stewart and Mrs. Anderson, sufficient to absorb the estate, or nearly so; the notes were against Mrs. Tuttle, the mother; proceedings were commenced to sell the land; Smith denied the genuineness of these notes, and there was a long trial in the Orphans Court, in which Smith was successful; an appeal was taken by Mrs. Stewart and Mrs. Anderson to the Prerogative Court, and the decree below affirmed; then these proceedings in partition took place. All I can say is, I understood from Mr. Cutler in all these matters that he was not the counsel, proctor, or attorney of Daniel, but that Mr. Little was looking after his interest, and that he, Mr. Cutler, was looking after the interest of Daniel's sisters.

*Quest.* On what ground was Smith successful on the issue of those notes, and what was the defence set up to them?  
[Objected to.]

*Ans.* Smith alleged the notes were forgeries, and if genuine, 40

were without consideration; I don't know as I can say on what ground either court based its decision. The fourth lot was the last of the lots sold described in *Exhibit No. 1*, but, as I said before, I cannot tell whether the property described in *Exhibit No. 1* or *No. 2*, was sold first. I think the conditions were signed as fast as the lots were struck off; can't say whether the conditions were signed before another lot was put up or not.

V. DALRIMPLE.

10 Sworn and subscribed before me, November 5th, 1866.

GEO. W. FORSYTH, *M. C.*

Counsel for complainant offered in evidence two certified copies of deeds, certified by the clerk of Morris county. The first deed dated \_\_\_\_\_ day of \_\_\_\_\_, 1863, recorded June 22, 1863, Book E 6, of Morris county records of deeds, pages 554, &c., which I have marked *Exhibit No. 3*, on the part of complainant. The second of said deeds, dated February 16th, A. D. 1863, recorded June 23d, 1863, Book E 6, pages 557, &c., which I have marked *Exhibit No. 4*, on the part of com-  
20 plainant. Counsel for defendant objected to the offering of each of said deeds in evidence.

GEO. W. FORSYTH, *M. C.*

November 5th, 1866.

The further examination of witnesses was here adjourned, by consent of the respective counsel, until Saturday, November 10th, at 9 o'clock A. M., at my office.

GEO. W. FORSYTH, *M. C.*

Saturday, November 10th, A. D. 1866, the respective counsel of the parties, complainant and defendant, appeared before  
30 me, at my office, pursuant to adjournment, and I proceeded to the further examination of witnesses, &c., in this cause.

GEO. W. FORSYTH, *M. C.*

The counsel for the complainant offered in evidence a deed from William M. Dixon, Richard V. W. Fairechild, and Silas Tuttle, commissioners, &c., to the defendant, dated

15th June, A. D. 1863, recorded in Morris county record of deeds, Book P 6, pages 212, &c., which I have marked *Exhibit No. 5*, on the part of complainant.

Counsel for complainant also offered in evidence another original deed from William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners, &c., to the defendant, bearing date June 15th, A. D. 1863, recorded in Morris county record of deeds, Book P 6, pages 216, &c., which I have marked *Exhibit No. 6*, on the part of said complainant.

GEO. W. FORSYTH, *M. C.* 10

The further examination of witnesses, &c., in this cause was then adjourned, by the consent of the respective counsel, until Saturday morning, November 17th, inst., at the hour of ten in the forenoon of that day, at my office in Morristown.

GEO. W. FORSYTH, *M. C.*

November 17th, 1866, the counsel for the complainant appeared before me, at my office, pursuant to adjournment, and I proceeded to the further examination of witnesses, &c., on the part of the complainant in the above cause.

GEO. W. FORSYTH, *M. C.* 20

Counsel for complainant produced before me and offered in evidence a copy of the report of commissioners, order of confirmation, and order of distribution, "in the matter of sale of lands late of Hannah Tuttle, deceased," certified under the seal of the Supreme Court of this state, which I have marked *Exhibit No. 7*, on the part of said complainant.

Counsel for complainant further produced and offered in evidence before me, copy of a second report of commissioners, order of confirmation thereof, and order of distribution thereon, "in matter of sale of lands late of Hannah Tuttle, deceased," certified under the seal of the Supreme Court of this state, which I have marked *Exhibit No. 8*, on the part of said complainant.

Counsel for complainant further produced before me the request in writing of the defendant, that the further examination of witnesses, &c., in this cause be adjourned to Tuesday, November 20th, inst., for the taking of evidence on the part

of defendant, and I adjourned the same to the day above named, to the hour of ten in the forenoon, at my office.

GEO. W. FORSYTH, *M. C.*

November 20th, 1866, counsel for complainant appeared before me, at my office, pursuant to adjournment. The defendant and his counsel did not appear.

Counsel for complainant offered in evidence a final decree of the Court of Chancery of New Jersey, certified under the seal of said court, in a suit pending therein, between Sarah  
10 L. Stewart, complainant, and Adolphus Stewart, defendant, which I have marked *Exhibit No. 9*, on part of said complainant.

GEO. W. FORSYTH, *M. C.*

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### Testimony of Geo. W. Forsyth.

[Filed November 20, 1867.]

Examination of witnesses, &c., in the above cause, taken at my office, in Morristown, New Jersey, on Tuesday, the first day of October, A. D. 1867. Mr. J. Vanatta appears for the complainant, Mr. A. W. Bell appears for defend-  
20 ant. Mr. Vanatta admits that notice of this examination was served on him on the 21st September last, but objects to the examination being taken, because the time for taking testimony has expired.

ALFRED MILLS, *M. C.*

*George W. Forsyth*, a witness produced on part of defendant, being duly sworn, on his oath says—

*Quest.* Did you ever have an interview with the complainant and Daniel L. Tuttle in reference to the real estate of their mother, or the property which came through their  
30 mother to the children?

[Objections here made by Mr. Vanatta to testimony of anything that may have been said by the complainant when conferring with the witness, and the conference was with

the witness as an attorney and counsellor-at-law. Mr. Vanatta further objects, because any conversation between the complainant and Daniel on that subject, is irrelevant in this suit.]

*Ans.* I had an interview with the complainant and Daniel L. Tuttle some time, I think, in the latter part of January, 1866; it related to the dwelling-house and some out lots where the complainant and Daniel then lived.

*Quest.* State what occurred?

*Ans.* My recollection is, that Mr. Tuttle called to see me and desired to know if I would be disengaged in the evening 10 of the day on which he called; I informed him that I would, and he said that he and his sister (the complainant) were desirous of coming to a settlement of their difficulties concerning that land, and that he and his sister would come down at such hour in the evening as I might appoint. I think I appointed the hour of eight o'clock; and a little after that hour he and his sister came to my office. They talked over the matter of a just division of the property in my presence, but the difficulty seemed to be that the complainant and Daniel both wanted the same part of the property; 20 Daniel wanted the complainant to take the dwelling-house and the lot that it was situated on, and let him take the out lots, and the complainant pay him the difference in their value or secure it to him; and the complainant wanted Daniel to take the house and pay her the difference in value between that and the out lots. They came to no agreement, and in a short time left my office.

*Quest.* Was anything said in that conversation by the complainant as to the respective interests of the parties in that property which you speak of, and if so, what? [Objected to 30 by Mr. Vanatta.]

*Ans.* I have no distinct recollection as to that; the conversation was conducted upon the idea that they had equal interests in the property.

*Quest.* Was anything said in that conversation as to who was the owner or had paid for the interest of Mrs. Anderson in that property? [Objected to by Mr. Vanatta.]

*Ans.* I don't recollect that.

*Quest.* What expressions were used to show you, as you have stated, that they had an equal interest in that property? 40

*Ans.* I could not be willing to swear to any expressions that were made; it was a long time ago, and I never thought anything would come of it, and didn't burthen my mind with the particulars.

*Quest.* Was anything said in that conversation as to any repairs having been done upon the property? [Objected to by Mr. Vanatta.]

*Ans.* Yes; that was mentioned in that conversation; that there had been repairs put on the dwelling-house to a considerable amount, and that Daniel had paid for those repairs.

*Quest.* Was there any dispute as to that fact between them on that occasion? [Objected to.]

*Ans.* No, sir; there was no dispute between them as to that fact; the only difference seemed to be as to what part each one should take; Daniel objected to taking the dwelling-house because he had no use for it.

*Quest.* Where was this property?

*Ans.* At Littleton, I understood—there or in that neighborhood.

20 Cross-examination by Mr. Vanatta.

*Quest.* Was this interview while you were a partner with Mr. Cutler, or after you ceased to be a partner?

*Ans.* It was some six months after I had ceased to be a partner of Mr. Cutler?

*Quest.* Was it before or after this suit was commenced?

*Ans.* I can't say, as I don't know when this suit was commenced.

*Quest.* Had the complainant had any consultation about that business with you prior to that time?

30 *Ans.* I don't think she had had any conversation with me about that business; when I was in with Mr. Cutler, both the complainant and Daniel were in the office frequently, and generally inquired for and consulted with Mr. Cutler.

*Quest.* Mr. Cutler was acting as her attorney at that time, was he not?

*Ans.* I understood that he transacted the legal business of both of them.

*Quest.* Did you hear her at any time asking Mr. Cutler for a conveyance of that property at Littleton?

*Ans.* I don't remember of ever hearing her ask him ; both her and Daniel's consultations were always strictly private with Mr. Cutler; I don't think I ever heard anything that was said between them.

*Quest.* Were you acting as the attorney of Daniel after you left Mr. Cutler's office ?

*Ans.* I don't think I could properly be said to have been acting as his attorney.

*Quest.* Did Daniel ever show you any title papers of any kind that he had for that property ? 10

*Ans.* I don't remember that he ever did.

*Quest.* At the time he and his sister were at the office, were there any title papers produced or brought there by either of them ?

*Ans.* I don't remember of seeing any title papers that evening ; in fact, I don't remember of seeing any papers of any kind that either of them had.

*Quest.* Then Daniel had no account on that occasion, I suppose, of money that he claimed to have paid ?

*Ans.* I don't remember of seeing any. 20

*Quest.* About how long did they remain at the office ?

*Ans.* I think they remained about an hour—it may not have been so long—was not longer.

Re-examination by Mr. Bell.

*Quest.* Had Daniel consulted you about that business before this occasion ?

*Ans.* I have no recollection of his consulting me about that business before.

*Quest.* Who paid you for your services that night ?

*Ans.* Daniel paid me. 30

Second cross-examination by Mr. Vanatta.

*Quest.* What was Daniel's object in having his sister come there with him, as you understood him when he applied to you to meet him in the evening ?

*Ans.* I understood from Daniel that day that there was some difficulty between him and his sister about the division of that property, and he wanted to meet me at my office with his sister in the evening, to see if they couldn't come to some

arrangement and division of it; when I say that I had not consulted with Daniel before, or rather, that Daniel had not consulted with me before about that business, I mean that he had not consulted with me before that day, when he told me what his business was.

*Quest.* Did you understand him to want you to assist him in making a bargain with his sister, or was your assistance wanted to advise her as to what she had better do? [Objected to by Mr. Bell.]

10 *Ans.* Well, I don't think he wanted me to do either the one or the other—and I am sure I did not act any more for the one than I did for the other.

*Quest.* When Daniel called on you first that day, or when he called on you in the evening with his sister, did he acquaint you with the fact that he hadn't a shred of title to any part of that property?

*Ans.* I don't think that he said anything of that kind to me.

20 *Quest.* Then you acted in the matter under the impression that he had title to half, or some part of the property, did you not?

*Ans.* That was the presumption that I had, that he had the title to half of that property.

#### Second re-examination.

*Quest.* What do you mean by saying he had title to one-half?

30 *Ans.* I think it very likely, and that is my impression now, that I understood from them that Mr. Cutler had the title to the property. They both seemed to be uneasy over the situation of the property in Mr. Cutler's hands, and wanted to come to some adjustment of it between themselves, so as to get it out of his hands; if my impressions are right, I regarded Daniel as having either a legal or equitable title to half of it, according to my recollection of what took place before me.

*Quest.* You did not act as her counsel on that occasion, did you, Mr. Forsyth?

*Ans.* I didn't consider myself as acting as the counsel, strictly speaking, of either one of them.

Third cross-examination by Mr. Vanatta.

*Quest.* Did you not understand from them that night, or had you not previously understood from Daniel or Mr. Cutler, that she had been told by Daniel and Cutler both, that Cutler wouldn't make a deed to her unless she would consent that Daniel should have a part of the land?

*Ans.* I don't recollect of being told so by Mr. Cutler or by Daniel either, or by Miss Tuttle.

*Quest.* Did they not consult you that night about getting the property out of Cutler's hands. 10

*Ans.* No, sir; I don't think they, either of them, consulted me about getting the property out of Mr. Cutler's hands.

*Quest.* That was talked about there that evening, was it not?

*Ans.* I think that was talked about; what was said about it I don't recollect at the present time.

*Quest.* You understood that they were at your office because you were a lawyer, did you not?

*Ans.* That was my understanding of it.

GEO. W. FORSYTH. 20

Sworn to and subscribed, this 1st day of October, 1867, before me.

ALFRED MILLS, *M. C.*

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### Depositions.

[Filed October 24, 1867.]

Examination of witnesses in the above stated case, taken before Samuel S. Halsey, one of the masters and examiners in the Court of Chancery of New Jersey, at his office, in Morristown, New Jersey, on Saturday, the twelfth day of January, A. D. 1867, at two o'clock P. M., made in the presence 30 of Jacob Vanatta, solicitor of Sarah L. Tuttle, the complainant, and of Augustus W. Bell, esq., solicitor of the defendant, taken by consent.

*John C. Anderson*, a witness called and sworn on the part

of the defendant, deposes and says—I reside at Caldwell, New Jersey; I married a daughter of Hannah Tuttle, late of Littleton, and sister of Daniel L. Tuttle.

*Quest.* When were you married?

*Ans.* In December, eighteen hundred and fifty-two.

*Quest.* Did you and your wife ever sell her interest in the real estate of her mother, and if so, when and to whom?  
[Objected to.]

*Ans.* We did, as near as I can tell, about five years ago,  
10 to Daniel L. Tuttle, her brother.

*Quest.* Where were the conveyances made? [Objected to by Mr. Vanatta.]

*Ans.* At my residence at Caldwell.

*Quest.* To whom were the deeds made as grantee? [Objected to.]

*Ans.* To Mrs. Sarah L. Stewart, I believe her name is.

*Quest.* How many deeds were there?

*Ans.* That I can't tell.

Two *Exhibits*, marked *No. 4*, shown witness—counsel asked,  
20 did you and your wife make any other deeds of her interest in her mother's estate, than the deeds of which these purport to be a certified copy? [Objected to by Mr. Vanatta.]

*Ans.* I can't answer that question without knowing what these deeds convey.

*Quest.* The description of the land described in these certified exhibits having been read to the witness, counsel asked—Are those the deeds which you and your wife made?

*Ans.* That is the property that we deeded away.

*Quest.* How came the deeds to be made to Mrs. Sarah L.  
30 Stewart, as grantee? [Objected to by Mr. Vanatta.]

*Ans.* At Daniel's request.

*Quest.* Who paid the consideration money for those conveyances, and was it paid? [Objected to by Mr. Vanatta.]

*Ans.* Daniel; it was paid; the money that was paid was paid by him.

*Quest.* Was or not Mrs. Stewart present when he requested you to make the deeds to her? [Objected to by Mr. Vanatta.]

*Ans.* I think she was.

*Quest.* Was anything said by Daniel at the time, and in

Mrs. Stewart's presence, as to what would be done with those deeds? [Objected to by Mr. Vanatta.]

*Ans.* Whether it was in Mrs. Stewart's presence, that I can't say; there was something said; he said that he would take deeds in her name; that at some future time he would probably want the deeds altered; that the deeds would not be put on record now, as he wanted them different before they were; that is the substance of what he said.

*Quest.* What is your recollection as to her, Mrs. Stewart's, being present at that time? [Objected to.] 10

*Ans.* My impression is she was present.

*Quest.* Did Mrs. Stewart in the transaction of the sale of that property by your wife, claim that Daniel was buying the property for her in any way, shape, or manner, or for her benefit? [Objected to as leading, and in other respects improper and incompetent, by Mr. Vanatta.]

*Ans.* She did not.

*Quest.* Was Daniel in any business at that time?

*Ans.* He was.

*Quest.* What was it? 20

*Ans.* He buys and sells stock; he raises stock, and was he in the boating business; I am not positive about that time, but I think he was.

*Quest.* Did you at any time during the negotiation of your wife's interest, understand from Mrs. Stewart for whom Daniel was buying that interest? [Objected to by Mr. Vanatta.]

*Ans.* I don't know that I did from her.

*Quest.* Did you from any one? [Objected to.]

*Ans.* I understood it from Daniel and from my wife. 30

*Quest.* For whom was it bought? [Objected to.]

*Ans.* For Daniel.

*Quest.* Was any part of the consideration money of that purchase secured by mortgage, and if so how much?

*Ans.* It was; nine hundred dollars.

*Quest.* By whom was it given?

*Ans.* I can't bring it to my mind.

*Quest.* Who executed the mortgage to you or your wife?

*Ans.* Sarah L. Stewart.

*Quest.* How much money was paid at the time the deeds were given, and by whom? [Objected to.]

*Ans.* It has gone out of my mind how much money was paid; there was money enough paid to make up the amount with the mortgage, but I can't tell what the amount was.

*Quest.* What was the whole consideration money? [Objected to.]

*Ans.* Two thousand dollars.

*Quest.* Did you or your wife afterwards receive any money on that mortgage—before you assigned it, I mean. [Objected to.]

*Ans.* I can't recollect of any.

*Quest.* Did you not receive three hundred dollars on that mortgage? [Objected to.]

*Ans.* I received three hundred dollars after the mortgage was given, as near as I can recollect.

*Quest.* From whom? [Objected to by Mr. Vanatta.]

*Ans.* From Daniel.

*Quest.* What became of that bond and mortgage?

20 *Ans.* I passed it to Caleb D. Harrison.

*Quest.* Was or not that three hundred dollars paid before you passed it to Harrison?

*Ans.* I can't recollect of making the mortgage any less by any money that was paid on it.

*Quest.* If three hundred dollars was paid upon the bond and mortgage before you passed it away, did not that make it three hundred dollars less? [Objected to.]

30 *Ans.* That is a question that anybody can answer. You asked me if three hundred dollars was paid on the bond and mortgage, would not that lessen it? any one could answer that. I will answer that question in another way, if you want me to; if there was three hundred dollars paid on that mortgage, the mortgage would show it, if it is in existence.

*Quest.* What did the mortgage amount to when it was assigned to Mr. Harrison?

*Ans.* Nine hundred dollars; all that I recollect about the mortgage is, that I got nine hundred dollars for it, and I did not sell it at a discount.

40 *Quest.* Did Mrs. Stewart ever pay you anything on that mortgage, or offer to pay you anything on it? [Objected to by Mr. Vanatta.]

*Ans.* She did not.

*Quest.* Who was to attend to the payment and liquidation of that mortgage? [Objected to by Mr. Vanatta.]

*Ans.* I don't know positively.

*Quest.* What do you mean by that? [Objected to.]

*Ans.* I mean that I did not enquire as to what would become of the mortgage, and I don't know as I was told.

*Quest.* Do you know what became of that mortgage after it was assigned to Mr. Harrison?

*Ans.* It was taken up by Daniel Tuttle, and another mortgage given in the place of it, and the interest on the old mortgage paid.

*Quest.* By whom was that interest paid? [Objected to.]

*Ans.* By Daniel, I understood.

*Quest.* Were these the only deeds that were given by you and your wife? [Objected to.]

*Ans.* I think not.

*Quest.* What other deeds were given, if any? [Objected to by Mr. Vanatta.]

*Ans.* There was a deed given for a lot we called the school house lot, containing about five acres.

*Quest.* Were those the only deeds then, the three?

*Ans.* They are all I think of or know of.

*Quest.* What interest was it that your wife had in her mother's estate?

*Ans.* One third.

*Quest.* How many children had she living when she died?

*Ans.* Three.

*Quest.* Are they still living?

*Ans.* They are.

*Quest.* Did Mrs. Hannah Tuttle die without a will?

*Ans.* She did.

30

Cross-examined by Mr. Vanatta.

*Quest.* At the time you made those deeds to Mrs. Stewart, where did Mrs. Stewart live? and where did you live then?

*Ans.* She lived on the homestead at Littleton; I lived at Caldwell, and the distance between the two places is twelve miles, as near as you can get at it.

*Quest.* Where did Daniel L. Tuttle then live?

*Ans.* He lived in the same house that Mrs. Stewart did.

*Quest.* Did they live together, that is, eat at the same table?

*Ans.* They did.

*Quest.* How long before making these deeds had they lived there at the homestead together? [Objected to by Mr. Bell.]

*Ans.* She had lived there longer than he had; I should have answered that question by saying they have lived together there since Hannah Tuttle's death; she died in June, 1859.

*Quest.* Did Mrs. Stewart's husband live with her after her  
10 mother's death?

*Ans.* Not to my knowledge.

*Quest.* While Daniel and Mrs. Stewart were living together at the homestead, who attended to Mrs. Stewart's business?

*Ans.* I don't know what business she would have to have attended to; she was in no business.

*Quest.* Were she and Daniel on friendly terms at that time?

*Ans.* They were, as far as I know.

*Quest.* Was the bargain for the sale, by you and your wife,  
20 of your wife's interest in this land, made at the same time these deeds were made, or some time before?

*Ans.* I think the bargain was made at the time the deeds were made.

*Quest.* Where was the bargain made?

*Ans.* At Caldwell.

*Quest.* At what place in Caldwell?

*Ans.* At my residence.

*Quest.* Was Mrs. Stewart there at the time?

*Ans.* I think she was.

*Quest.* Was the bargain reduced to writing in any other  
30 paper than the deeds and the bond and mortgage—I mean was there any preliminary written agreement preceding the deeds themselves?

*Ans.* None.

*Quest.* Why did not you and your wife make the deeds for those lands to Daniel L. Tuttle, instead of making them to Sarah L. Stewart?

*Ans.* Because he or they requested them to be made to her.

*Quest.* If Daniel bought the property for his own use, why  
40 did he not have the deed made to himself?

Counsel for defendant here requested the master to state to the witness that he must not answer except as to what was said by the parties, Daniel or Mrs. Stewart.

To this instruction counsel for complainant objects.

The master declines to give this instruction.

*Ans.* He said he was not ready to have the deed made to himself then, but would at some future time, probably.

*Quest.* What was the reason or reasons that he was not then ready to have the deed made to himself?

Counsel for defendant here requested the master to instruct the witness that he must not answer as to his own judgment, but only as to reasons given by Daniel, if any were given. 10

[Counsel for complainant here objected to Mr. Bell's taking this method of instructing his witness.]

The master declined to give any instructions.

*Ans.* He did not give any reasons.

*Quest.* Do you mean to testify that you don't know why Daniel L. Tuttle requested those deeds to be made to Mrs. Stewart, instead of himself? [Objected to until the witness 20 has stated that there were reasons given.]

*Ans.* I do not mean to say that.

*Quest.* Please state then why he did request them made to her? [Objected to by Mr. Bell.]

*Ans.* On account of creditors.

*Quest.* On account of whose creditors?

*Ans.* The creditors of Daniel L. Tuttle.

*Quest.* Can you name any of those creditors, and if you can, please do so?

*Ans.* John S. Smith, Loop & Allen, Ferris & Co.—that is 30 all I know.

*Quest.* Did any of those creditors then have any judgment or judgments against Daniel, and if so, which of them? [Objected to.]

*Ans.* All of them.

*Quest.* Please give us the best idea you can as to the aggregate amount of those judgments at that time? [Objected to.]

*Ans.* From \$3000 to \$3500.

*Quest.* Had or not John S. Smith shortly before that, by 40

virtue of the judgment which he held against Daniel, sold Daniel's interest in his mother's real estate, and bought it himself? [Objected to by Mr. Bell.]

*Ans.* He had.

*Quest.* That sale had not fully satisfied Smith's judgment, had it? [Objected to by Mr. Bell.]

*Ans.* It had not.

*Quest.* Smith had been pursuing Daniel with his judgment and execution pretty constantly and sharply, had he not?

10 [Objected to.]

*Ans.* I think he had.

[The whole of this testimony objected to by Mr. Bell, on the ground that it is no part of the direct examination.]

*Quest.* When Mrs. Stewart gave you the mortgage of which you have spoken, did she not also give you a bond in connection with that mortgage?

*Ans.* She did.

*Quest.* Did Daniel L. Tuttle sign either the bond or the mortgage?

20 *Ans.* He did not.

*Quest.* Was not the consideration you or Mrs. Anderson were to have for those lands, truly stated in the deeds?

*Ans.* I don't remember.

*Quest.* Can you give any reason why the consideration was not truly stated in the deed, if it was not so done?

*Ans.* I cannot.

*Quest.* How much money did you or Mrs. Anderson receive on that sale, at or before you delivered the deeds?

*Ans.* My impression is, eleven hundred dollars.

30 *Quest.* In what and how was it paid, and when was it paid?

*Ans.* It was paid in bank bills, at my house; I am not positive but that there was three hundred of it paid in this town.

*Quest.* Was that before or after the other money was paid—that is, that which was paid here?

*Ans.* It was after.

*Quest.* When was the bond and mortgage executed and delivered, which was given to Mr. Harrison—I mean the one which was made directly to Mr. Harrison?

40 *Ans.* I don't know anything about it.

*Quest.* You have stated that a new bond and mortgage had been given to Mr. Harrison—upon what knowledge did you make that statement?

*Ans.* I first asked him, at the request of Daniel, if he would take a new mortgage to release lands which they wanted to sell, which the mortgage covered; he said he would; he afterwards told me that he had exchanged mortgages with him.

*Quest.* Do you mean to say that Mr. Harrison told you that Daniel had made a mortgage to him? 10

*Ans.* I mean to say that Daniel had made the exchange.

*Quest.* Exchange of what?

*Ans.* Of mortgages.

*Quest.* What mortgages—by whom executed?

*Ans.* I can't answer it from my own knowledge; I supposed it to be Mrs. Stewart's mortgage.

*Quest.* Do you say that you made another deed of a five acre lot, was that before or after you made these deeds?

*Ans.* I think it was at the same time.

*Quest.* To whom was that deed made? 20

*Ans.* To Daniel L. Tuttle.

*Quest.* Why was that not made to Mrs. Stewart, like the other deeds?

*Ans.* I will make a correction—the deed was first made to Mrs. Stewart and afterwards to Daniel L. Tuttle.

*Quest.* How long afterwards was it made to Daniel L. Tuttle?

*Ans.* I can't tell.

*Quest.* Tell as nearly as you can?

*Ans.* I should guess sometime within a year. 30

*Quest.* Who made it—that is, who signed it?

*Ans.* I don't know who made the deed; the deed was signed by me and my wife.

*Quest.* Do you know what has become of that deed—and if so, state it?

*Ans.* I have never seen any of them since they were executed.

*Quest.* Question repeated.

*Ans.* I do not.

*Quest.* Did the price of \$2000 include that lot also? 40

*Ans.* It did.

*Quest.* On what road, if any, does that lot bound?

*Ans.* On the road running from Littleton to Parsippany.

*Quest.* Does any part of it adjoin the turnpike—I mean by that, the road that runs from east to west, in front of the Tuttle homestead?

*Ans.* It does not—there is an old road not used, that runs on one side of it.

*Quest.* Did you make a separate deed to Mrs. Stewart for 10 that lot?

*Ans.* I think we did.

*Quest.* What was done with that deed, if anything, when you made the deed to Daniel for the same lot?

*Ans.* It is the same deed.

*Quest.* Explain what you mean by that—how you transformed the deed you made to Mrs. Stewart into the one you made to Daniel L. Tuttle?

*Ans.* The same deed, after being altered, was acknowledged the second time—I have an indistinct recollection of 20 the circumstance.

*Quest.* Where was that deed from the time you first acknowledged it until the time you altered it by putting Daniel's name in and acknowledged it a second time?

*Ans.* I have no knowledge of it.

*Quest.* Was it in your possession or your wife's possession during that time?

*Ans.* It was not in my possession, and it was not in my wife's possession, to my knowledge.

*Quest.* Where was that alteration in the deed made, at 30 what place?

*Ans.* At my house.

*Quest.* Who were present at the time?

*Ans.* John McChesney and his son, Daniel L. Tuttle, my wife, and myself.

*Quest.* Was Mrs. Stewart there?

*Ans.* I don't know that she was.

*Quest.* What reason did Daniel give for wanting that alteration made? [Objected to as no part of the direct examination, and irrelevant.]

40 *Ans.* I don't recollect that he gave any.

*Quest.* What induced you to make the alteration? [Objected to.]

*Ans.* A request to do so.

*Quest.* Request from whom?

*Ans.* Daniel.

*Quest.* Did he give you no reason or explanation why he wanted it done? [Objected to.]

*Ans.* I don't think he did; there was no need of any reason being given, because the understanding with Daniel and Mrs. Stewart both, in the first place, was that the deeds were 10 to be altered at any time we were called upon to make them.

Re-direct examination by Mr. Bell.

*Quest.* At the time you made these deeds to Mrs. Stewart, at the request of Daniel, as you have stated, were not the commissioners appointed by the court to divide those lands, about to sell the same at public sale?

*Ans.* They were.

*Quest.* Do you mean to say that Daniel L. Tuttle told you that the reason he wanted the deeds made to Mrs. Stewart was on account of his creditors—or was that a piece of your 20 own imagination? [Objected to.]

*Ans.* I did not say that he told me anything about it, but from my own knowledge of his affairs I was satisfied that that was the reason.

*Quest.* Is that what you mean, then, when you say that that was the reason why the deeds were made to Mrs. Stewart? [Objected to on the ground that a party defendant cannot dispute his own answer.]

*Ans.* That is what I mean.

*Quest.* At the time Daniel paid you the consideration 30 money you speak of, was Mrs. Stewart in a situation, or had she the means of raising that amount of money? [Objected to.]

*Ans.* I should think she was not situated at that time to raise that amount of money.

*Quest.* Was she the possessor or owner of any real or personal property, up to the time of the making of these deeds, except the real estate which fell to her through her mother?

*Ans.* I don't know of any other.

*Quest.* After the commissioners sold the lands, and they

were purchased by Mr. Cutler, the defendant, were there any improvements made upon the property? [Objected to by Mr. Vanatta.]

*Ans.* There were.

*Quest.* What were they, and by whom were they done? [Objected to by Mr. Vanatta.]

*Ans.* There was a pale or picket fence around the garden, with ornamented posts, and built of the best materials; I should guess there were two hundred yards of this; there  
10 was a piazza built in front of the homestead—it must be forty feet in length and from seven to nine in width; there had been a new front door, with everything new about it—jams and casings, windows and window sashes, about it; I think there had been some improvement about the barns, horse stalls, &c.; I don't know anything about the floors to the barn; there had been painting; I don't know of anything else that was painted except the fence and piazza.

*Quest.* Who did and paid for these improvements? [Objected to.]

20 *Ans.* Daniel.

*Quest.* Who paid the commissioners' fees on your wife's share of the division of that estate? [Objected to.]

*Ans.* Daniel.

*Quest.* Why did he pay it? [Objected to by Mr. Vanatta.]

*Ans.* That was included in the bargain when we sold out to him.

*Quest.* Is Daniel still living on the homestead?

*Ans.* He is.

*Quest.* Who has the possession of the land then? [Objected to by Mr. Vanatta.]

*Ans.* As far as my knowledge goes, he and Mrs. Stewart both have.

*Quest.* What part of the possession does she have? [Objected to.]

*Ans.* She has possession of the part that commissioners set off to her—I look at it that she has possession then the same as he has—they possess it together.

*Quest.* You know of the boundaries of the land purchased by Augustus W. Cutler, the defendant, at the commissioners'  
40 sale, generally, do you not? [Objected to by Mr. Vanatta.]

*Ans.* I do.

*Quest.* Who is in possession of those lands? [Objected to.]

*Ans.* They both live in the same house.

*Quest.* Who tills the land?

*Ans.* Daniel.

*Quest.* Are those the lands which you say they are both in possession of?

*Ans.* That is the land that I speak of as their both being in possession of; what the commissioners set off to her, I take it she has without any partnership work about it. 10

*Quest.* What do you mean when you say they are both in possession of these lands? [Objected to.]

*Ans.* I mean that the house and lot that they now occupy, purchased by Mr. Cutler, is property that they both have an interest in—her share coming from her mother, and his share coming from us. [This answer objected to by Mr. Vanatta.]

*Quest.* What disposition do you make of the third share in that property?

*Ans.* John S. Smith took the third share. 20

*Quest.* Who paid you the \$300 in Morristown, as you have stated?

*Ans.* Daniel.

*Quest.* Do you know where he got it? [Objected to.]

*Ans.* He told me at the time he got it for liquor that he sold.

Second cross-examination by Mr. Vanatta.

*Quest.* How do you know that Daniel paid your wife's share of the commissioner's fees?

*Ans.* I know it because he told me so.

*Quest.* How do you know that he paid for the improvements which you have said were put upon the place? 30

*Ans.* I know it by hearing him and Mrs. Stewart both say so.

*Quest.* Were you subpoenaed to attend here as a witness—and if so, by whom?

*Ans.* I was; by Daniel L. Tuttle.

*Quest.* When?

*Ans.* Last Saturday, a week ago to-day.

*Quest.* Did he pay your witness fees?

*Ans.* He did; I am acquainted with the handwriting of Augustus W. Cutler; I have seen him write several times.

Paper writing, purporting to be a receipt, dated February 14, 1866, for one hundred and eighty dollars, being shown witness, witness says, this paper was signed by Mr. Cutler, and is in his handwriting; this paper I have marked *Exhibit A* on the part of the complainant. Witness shown another paper, purporting to be a receipt, dated September 16, 1863, for \$60, which I have marked *Exhibit B* on part of complainant, witness says, this paper is in Mr. Cutler's handwriting, and is signed by him.

Witness being sworn another paper, purporting to be a receipt given by Mr. Cutler, dated October 15, 1863, for \$40, which I have marked *Exhibit C* on the part of complainant, witness says, this is in the handwriting of Mr. Cutler, signature and all.

Witness being shown another receipt, purporting to have been given by Mr. Cutler, dated November 13, 1863, for \$60, which I have marked *Exhibit D* on the part of complainant, witness says, this is in Mr. Cutler's handwriting, signature and all. [Counsel for defendant objected to the admission of the above receipts.]

Direct examination resumed by Mr. Bell.

*Quest.* Where has Mrs. Stewart been staying for the last week or two?

*Ans.* She has been at my home since last Sunday.

*Quest.* Did you bring her here to day?

*Ans.* I did.

*Quest.* Is she in the habit of visiting your family?

30 *Ans.* She is.

*Quest.* You have stated in your amended answer that the deeds were to be altered at any time you were called upon to do so—called upon by whom do you mean? [Objected to.]

*Ans.* I mean by Daniel L. Tuttle.

Third cross-examination by Mr. Vanatta.

*Quest.* You have stated that at the time you made those deeds to Mrs. Stewart, Daniel L. Tuttle was engaged in the

business of raising and buying and selling stock; in whose name did he carry on that business, his own or some one else? [Objected to.]

*Ans.* That I don't know; what business he done with me he did in his own name.

*Quest.* Did he not profess at that time to be doing business as the agent of his sister, Mrs. Stewart, and buy and sell in her name? [Objected to.]

*Ans.* I believe he done some of that kind of business.

Re-direct examination by Mr. Bell.

10

*Quest.* Do you know of your own knowledge of his doing that business that you speak of in any other name than his own?

*Ans.* I don't know of it by seeing it.

*Quest.* How do you know it?

*Ans.* I don't know as I can answer that question; I don't know how I know it; I know it by suspicion, more than any other way.

*Quest.* Did you suspect its being so because he was in debt?

20

*Ans.* Yes, that is my reason.

*Quest.* He did not tell you so, did he?

*Ans.* I don't recollect he ever did.

JOHN C. ANDERSON.

Sworn and subscribed this 12th day of January, A. D. 1867, before me.

SAMUEL S. HALSEY, *M. C.*

Saturday morning, March 16, 1867, examination of witnesses in the above stated case continued, at my office, in Morristown, N. J., in the presence of Augustus W. Bell and Jacob Vanatta, esqs.

*Mrs. Jane C. Anderson*, a witness called and sworn on the part of Augustus W. Cutler, being duly sworn, deposes and says—I am the wife of John C. Anderson, and daughter of the late Hannah Tuttle, of Littleton.

Counsel for defendant offered in evidence two deed, one

from John C. Anderson and wife to Sarah L. Stewart, and the other from John C. Anderson and wife to Sarah L. Stewart, dated February 16, 1863, which I have marked respectively *Exhibits No. 1 and 2*, on the part of defendant. These deeds are both acknowledged February 16, 1863, and both recorded in Morris county, record of deeds in Book E C, on pages 554 &c, and the other, 557, &c.

*Quest.* Do you recollect making those deeds?

*Ans.* I do.

10 *Quest.* Did you have any conversation? [Question waived.]

*Quest.* Do those deeds contain a conveyance of your interest in your mother's property?

*Ans.* They do.

*Quest.* Prior to the making of those conveyances, did you have any conversation with your sister, Mrs. Stewart, when your brother Daniel was not present, as to why you were to make the conveyances to her? [Question objected to by Mr. Vanatta.]

*Ans.* I did.

20 *Quest.* Who purchased of you the interest which you then conveyed? [Objected to.]

*Ans.* Daniel.

*Quest.* Who paid you for that interest? [Objected to.]

*Ans.* Daniel paid me or my husband—I think my husband received the money.

*Quest.* Did Mrs. Stewart ever pay you anything for that interest?

*Ans.* She did not.

30 *Quest.* With whom did you negotiate the sale of that interest? [Objected to.]

*Ans.* Daniel.

*Quest.* In the conversation that you had with her, as you say, before these deeds were made, and when Daniel was not present, was anything said by her, and if so, what, as to whom you were to convey those rights? [Objected to.]

*Ans.* There was; I don't recollect the exact language that was used—his financial affairs were in such a state that she would hold the deeds.

*Quest.* Hold the deeds how? [Objected to.]

40 *Ans.* Hold the deeds for him until his business was settled.

*Quest.* Was anything said as to who paid for your interest, whether she ever paid anything or pretended to? [Objected to.]

*Ans.* There was nothing said by her about paying for my interest.

Question repeated.

Witness says: Do you mean to ask me whether she said anything to me about paying anything?

*Quest.* My question is repeated. I want an answer to that question? 10

*Ans.* She never did.

*Quest.* Was anything said in that conversation as to any other deeds to be given by you when called for, if necessary; and if so, what?

*Ans.* I think there was nothing said about it in my conversation with her, that I recollect.

*Quest.* Was there afterwards? [Objected to.]

*Ans.* The time the first deeds were given, Daniel requested that at any time he should want new deeds given that we should grant them. 20

[Counsel for defendant here stated that that was no answer to his question.]

*Quest.* Did she ever pretend to you, after those deeds were delivered, and before this suit commenced between her and Daniel, that she was the owner of or entitled to the interest which you had conveyed by those deeds to her? [Objected to.]

*Ans.* She did not.

*Quest.* To whom did she say it belonged, if she was not the owner thereof? [Objected to as leading.]

*Ans.* I don't know as the matter was ever talked of as to 30 who was the owner.

*Quest.* Was it not talked of as to who was the owner of this interest which you had conveyed to her by these deeds—as to who was the real owner, I mean? [Objected to as leading and incompetent.]

*Ans.* It was understood by herself and myself when the property was going—I don't recollect any conversation we had as to whose it was.

*Quest.* Have you often visited the property since this conveyance by you? 40

*Ans.* I have.

*Quest.* Have there been any repairs or improvements upon the property since you sold it? [Objected to.]

*Ans.* There has.

*Quest.* Did you ever hear her say who made those repairs, at whose expense they were done, and how much they amounted to? [Objected to.]

*Ans.* Daniel made the repairs—I think I never heard how much they amounted to.

10 *Quest.* Do you know about what they would amount to; give an estimate as nearly as you can?

*Ans.* I could not tell.

*Quest.* Did you ever have any conversation with her as to why she would not let Daniel have this interest in the property?

*Ans.* She was waiting to see how the suit would go.

*Quest.* Anything else?

*Ans.* She said she had possession of it and the advantage of him, and if he had it in his hands he would take the ad-  
20 vantage of her.

*Quest.* Anything else?

*Ans.* She said she needed it for herself and family?

*Quest.* What did you say to her with reference to that? [Objected to.]

*Ans.* I told her it was wrong to withhold Daniel's rights on that account.

*Quest.* What did she say to that?

*Ans.* She thought she was right in doing so; I don't recollect the exact words she used.

30 *Quest.* Who has been in possession of that property since you sold? [Objected to.]

*Ans.* Daniel, herself, and children have occupied one part of it.

Cross-examined by Mr. Vanatta.

*Quest.* When these deeds were given, was there any mortgage given for a part of the purchase money, and if so, who signed it; in other words, who made it?

*Ans.* When one of the deeds was made and signed, Daniel paid for the property that was set off by the commissioners

to me; there was a mortgage given; I don't recollect whether there were two deeds or three; my sister, Mrs. Stewart, made the mortgage.

*Quest.* Do you remember whether it was made to you or to your husband?

*Ans.* I think it was to both.

*Quest.* Do you remember the amount of it?

*Ans.* Twelve hundred dollars, I think.

*Quest.* Was not that mortgage given on the same day that you acknowledged these two deeds?

10

*Ans.* I don't recollect.

Counsel for complainant offered in evidence a bond and mortgage, dated February 16th, 1863, given by Sarah L. Stewart to John C. Anderson, which bond and mortgage I have marked respectively *Exhibits E* and *F*. The mortgage is made to John C. Anderson, and the bond to John C. Anderson and Jane C. Anderson; mortgage recorded in Book H 2 of mortgages for Morris county, folios 44, 45, and 46. These papers being shown witness, counsel asked—

*Quest.* Is that the bond and mortgage which you refer to?

20

*Ans.* I think it is.

*Quest.* At the time you made these two deeds, and for some time before that, was Daniel engaged in any business, and if so, what was he doing? [Objected to as no part of the examination in chief.]

*Ans.* He was; he was boating, and had one or two boats on the canal; and he was buying and selling stock.

*Quest.* In whose name did he carry on that business? [Objected to by Mr. Bell.]

*Ans.* I do not know.

30

*Quest.* Don't you know that he bought and sold and carried on business in the name of your sister, Mrs. Stewart? [Objected to.]

*Ans.* I do not know.

*Quest.* Did she ever give you a note or your husband a note for two hundred and twenty dollars, or about that amount, and if so, what was that note given for? [Objected to.]

*Ans.* She may have done so, but I don't recollect.

*Quest.* On the day you acknowledged these deeds and delivered them, did she not give you a note, or you and your

40

husband together, or to your husband, for about two hundred and twenty dollars?

*Ans.* I don't recollect it.

Being shown a receipt, dated May 25th, 1863, purporting to be signed by Jane C. Anderson and John C. Anderson, which I have marked *Exhibit G* on the part of complainant, counsel asked—

*Quest.* Was that signed by you?

*Ans.* It was signed by me and my husband also.

10 *Quest.* Do you know in whose handwriting the body of that receipt is, and if so, whose?

*Ans.* I do not know.

*Quest.* Did you make Daniel a deed for what is called the school house lot, and if so, when did you make it?

*Ans.* I did not.

*Quest.* Did you make a deed to your sister for that lot, and if so, when did you make it?

*Ans.* I was under the impression that it was in her name, but I don't recollect of looking to see whether it was in her  
20 name or Daniel's.

*Quest.* Was there anything paid when that deed was delivered, and if so, how much?

*Ans.* I think the whole amount was paid.

*Quest.* How much was that?

*Ans.* I think between five hundred and six hundred dollars.

Re-direct examination by Mr. Bell.

The bond and mortgage, *Exhibits E* and *F*, being shown witness, counsel asked—

30 *Quest.* Is that your and your husband's signature on the bond and mortgage, receipt dated May 25th, 1863, for three hundred dollars?

*Ans.* Yes, sir.

*Quest.* Who paid that money?

*Ans.* Daniel.

*Quest.* When this bond and mortgage was given, as between you and your husband and Mrs. Stewart, who was, in point of fact, to pay it, Daniel or Mrs. Stewart? [Objected to.]

*Ans.* Daniel.

*Quest.* When this bond and mortgage was given, was it

understood between you and Mrs. Stewart as to who should pay it? [Objected to as leading and incompetent.]

Counsel for defendant waived the question.

*Quest.* Was there anything said, and if so, what, when this bond and mortgage was given by Mrs. Stewart, as to who was to pay it? [Objected to.]

*Ans.* Daniel was to pay it.

*Quest.* Look at a description of the different tracts of land mentioned in that mortgage—was not that bond and mortgage given to secure a part of the purchase money for the 10 lands which was deeded to Mrs. Stewart by you besides those lands mentioned in the two deeds shown you; I mean the lands in controversy in this suit, besides those lands; or in other words, was it not given to secure a part of the purchase money on the other lots which you have spoken of as having been conveyed to Mrs. Stewart by you some time before February, 1863? [Objected to as leading.]

*Ans.* It was.

*Quest.* The other lots which you have mentioned as having been conveyed to Mrs. Stewart before February, 1863, for 20 whose benefit were they conveyed to Mrs. Stewart? [Objected to.]

*Ans.* Daniel's.

*Quest.* Did Mrs. Stewart ever pay one dollar on account of this bond and mortgage, or pretend to you that she had ever paid a dollar on account of this bond and mortgage?

*Ans.* She did not.

*Quest.* Was the note mentioned in that receipt, marked Exhibit G, ever paid, and if so, by whom? [Objected to.]

30

*Ans.* By Daniel, I suppose, it was not by her.

*Quest.* When the note of two hundred and twenty dollars mentioned in this receipt was given to you, was it endorsed by any body, and if so, by whom? [Objected to.]

*Ans.* I don't recollect about the note.

*Quest.* Was or not Daniel present when this note was given and you gave this receipt, and did he not endorse that note? [Objected to.]

*Ans.* He may have done so, but I don't recollect.

*Quest.* When the note mentioned in this receipt, dated February 16, 1863, was given, who was the maker of that 40 note? [Objected to.]

*Ans.* I recollect of Daniel's making one or two notes, but I cannot specify them; he had made notes to us, but I cannot recollect the amount, nor when they were given.

*Quest.* At the time Mrs. Stewart's note of two hundred and twenty dollars was given you, as mentioned in this receipt, was there any understanding between you and Mrs. Stewart, and if so, what was it, as to whose note that was to pay when that note should fall due? [Objected to.]

*Ans.* Daniel.

10 *Quest.* Were there any notes given to you or by Daniel, on the 16th of February, 1863, for the payment of this property—do you recollect?

*Ans.* I recollect of two notes; I don't recollect of any more.

*Quest.* Do you recollect whether those notes were made or signed by Daniel, or Mrs. Stewart, or both? [Objected to.]

*Ans.* They were signed by both.

*Quest.* Was there anything said, and if so what, as to who was to pay those notes? [Objected to.]

20 *Ans.* The notes that I had reference to were notes that Daniel gave us in payment of this property; one note from Morris Shelly and the other from a gentleman in Whippany, I don't recollect his name, I think it was Kitchell, or Wilson, whom I have reference to.

*Quest.* Do you mean that he gave you notes which he held against other people in part payment of the purchase money for this property?

*Ans.* Yes, sir, and I intended to have said that he endorsed them instead.

30 *Quest.* Can you, or not, recollect whether or not on the 16th of February, 1863, there were note or notes given to you in payment of the property you conveyed, made by Mrs. Stewart and Daniel, or by either of them, besides these notes you have spoken of?

*Ans.* I think there was, but I can't be positive.

*Quest.* Look at that receipt and say whether you can recollect of it?

*Ans.* I suppose I do, but can't recollect the time; I know then was notes, and suppose this is one of them.

40 *Quest.* Now if any such note was given to you, whose was it to pay? [Objected to.]

*Ans.* Daniel's.

Second cross-examination by Mr. Vanatta.

*Quest.* At the time this bond and mortgage was given, how or in what way did Daniel agree to pay the bond and mortgage?

*Ans.* I did not ask him—I don't know.

*Quest.* Did he sign any agreement in writing promising to pay the bond and mortgage that you know of?

*Ans.* I don't know that he did.

*Quest.* At the time these two deeds which were shown you 10 here to day were delivered, was there any money in bank bills paid to you and your husband on account of the deeds, and if so, how much?

*Ans.* I don't recollect.

Re-direct examination by Mr. Bell.

*Quest.* You have now heard your whole testimony read over to you by the master, will you please tell us more particularly the conversation you say you had with Mrs. Stewart before these two deeds were made, in reference to the conveyance of the property to Daniel in controversy in this suit? 20 [Objected to.]

*Ans.* My answer is that she was holding it—she said she was holding it for his benefit until his business was settled.

*Quest.* What was said about his financial affairs?

*Ans.* His financial affairs were in such a state.

*Quest.* The question is, did she say so?

*Ans.* I don't recollect the conversation we had.

*Quest.* Have you stated the substance of that conversation, as near as you can recollect?

*Ans.* I have.

*Quest.* Whatever money was paid to you for lands, which you say you conveyed to her prior to February, 1863, who paid you those moneys? [Objected to.]

*Ans.* Daniel.

*Quest.* Was this mortgage given upon any other lands than those conveyed as you have stated? [Objected to on the ground that the papers show for themselves.]

*Ans.* I think there were.

Question repeated.

*Ans.* There was no other lands—I did not understand the question at first.

JANE C. ANDERSON.

Sworn and subscribed this 16th day of March, A. D. 1867, before me.

SAMUEL S. HALSEY, M. C.

The cancellation of the mortgage marked *Exhibit E*, as endorsed thereon, is admitted by both counsel to be correct.

Examination of witnesses in the above stated cause ad-  
10 journed, by consent, to Saturday, March 30th, 1867, at my office, at ten o'clock A. M.

Saturday morning, March 30th, 1867, examination of witnesses resumed, pursuant to adjournment, in the presence of Augustus W. Cutler, counsel *pro se*, and in the absence of Mr. Vanatta, with the understanding that all the testimony offered is objected to the same as though Mr. Vanatta were present and made and had his objection entered to each question when asked.

*John O. Burnett*, a witness called and sworn on the part of  
20 the defense, being duly sworn, deposes and says—I reside at Littleton; my business is that of a carpenter.

*Quest.* Did you do any work upon a house occupied by Daniel L. Tuttle and Sarah L. Stewart?

*Ans.* I built a piazza in front of it, on the south side.

*Quest.* When?

*Ans.* Two or three years ago; I commenced in October, 1864, and worked till July, 1865.

*Quest.* Who occupied the house at the time?

*Ans.* Mrs. Stewart and Daniel L. Tuttle; I built a piazza  
30 in front of the house, and I worked upon some picket fence around the house, and I made a large pair of barn doors and hung them on rollers; the doors were about fourteen feet square; and I put in some feed boxes and mangers in the basement of the barn, and I laid a barn floor; I put a part of a new sill under the house, and on the front side, I made

an entirely new door frame, also a new door and side-lights, and finished it all up for them; I made the sash for the side-lights and head-lights over the top of the door; I fitted and hung a door on the inside of the house; I don't know of anything else, except putting in a window sash in the back room.

Paper writing, purporting to be a bill of deponent's for work done at the above mentioned house, which I have marked *Exhibit No. 3* on the part of defendant. Witness says, this is the bill for my work done there at that house 10 and barn; I have been paid for this work by Daniel L. Tuttle; I am acquainted with the signatures of H. O. Marsh and F. A. Day, composing the firm of Day & Marsh. Bills of said firm offered in evidence, which I have marked *Exhibits No's 4, 5, 6, and 7*, respectively, on the part of defendant. Witness says, I am acquainted with the signatures of the members of said firm, and know these to be genuine and signed by them, or one of them, I have no doubt of it; a great deal of the lumber bought, I went with Mr. Tuttle and helped him pick out; Mr. Belknap Gregory worked with me; my father 20 worked there with me too.

*Quest.* The work that was done there, was it necessary to be done, and did it improve the value of the property?

*Ans.* Yes, sir; Mrs. Stewart was there at the time these improvements were being made and made no objections to their being made; at times when I was building the piazza and making the improvements, Mrs. Stewart would come there and say she liked it very much, and was pleased with the improvements; I never heard her say she was pleased, but from her manner I supposed her to be; she made no 30 objections whatever, except that some things she made some suggestions as to her finish of; after it was all done, she expressed herself as better pleased with it as done than if her suggestions had been carried out.

*Quest.* At the time you commenced doing this work, was not the property very much out of repair and going to waste?

*Ans.* Yes, sir.

*Quest.* About what amount was expended upon that property in its repairs?

*Ans.* There was considerable expended; I should think 40

at least eight hundred dollars, it might overrun it, I don't think it would come under it; I would not like to undertake the job for that, or for any less, any how.

*Quest.* Was the material that was used there good or otherwise?

*Ans.* It was of the best; I think the property was benefitted in value to the extent of the amount laid out in the improvements.

Cross-examination by Mr. Vanatta.

10 I have lived at Littleton five years and three months; I have known Daniel Tuttle about the same time.

*Quest.* For the first three years after you moved there, in whose name was Daniel L. Tuttle doing business?

*Ans.* That I could not say, for I had no business with him at that time.

*Quest.* Did you not see or hear in whose name he was carrying on business at that time?

*Ans.* No; I don't know anything about that.

20 Being shown *Exhibit No. 3*, witness says, this paper is in my handwriting.

*Quest.* When did you write it?

*Ans.* Sometime in the first of February, 1867.

*Quest.* At whose request did you make it?

*Ans.* Mr. Daniel Tuttle.

*Quest.* Had you ever made out any bill for that work before that, and if so, to whom?

*Ans.* I made out a bill every week, and it was paid every Saturday night—I made them out to Daniel Tuttle.

*Quest.* Were those bills made out in writing?

30 *Ans.* Sometimes in writing and sometimes on a piece of board, to say how many days I had worked that week, and he paid me; he paid me at the house where I did the work.

*Quest.* Where did you board while you were doing this work?

*Ans.* I boarded at the house where Daniel L. Tuttle lived with his sister, Mrs. Stewart; Mrs. Stewart kept the house; she was all the woman I ever saw there to do any work or keep house; I did not pay her for my board while I worked there; the understanding was that I was to have so much a

day and boarded; I don't know who paid the board; this work was done on the house that Mrs. Stewart lived in.

*Quest.* How did you come to put this last item on bill *Exhibit No. 3*, (item) July 11, received in cash \$188.00?

*Ans.* I put it on because I took this from my book, and I just counted up how much money I had received, and I put it on, at that time; that was the last money I received, and I counted up what all my work would come to, and I put it down so.

*Quest.* Being shown *Exhibit No. 4* on part of defendant— 10  
when did you first see that bill?

*Ans.* This forenoon.

*Quest.* Was the top torn off of it when you first saw it?

*Ans.* I think it was; I think it looks now just as it did then.

*Quest.* Being shown *Exhibit No. 5*—when did you first see that bill?

*Ans.* This forenoon.

*Quest.* Being shown *Exhibits 6 and 7*—did you ever see either of them before to-day? 20

*Ans.* Not that I know of, before this forenoon?

Re-direct by Mr. Cutler.

*Quest.* Do you know whether Daniel lived with Mrs. Stewart, or Mrs. Stewart with Daniel, or whether they both lived together?

*Ans.* That is more than I can say, any more than that they both eat at the same table, and I eat with them.

JOHN O. BURNETT.

Sworn and subscribed, this 30th day of April, A. D. 1867,  
before me. 30

SAMUEL S. HALSEY, M. C.

*Bellnap Gregory*, of said county, being duly sworn deposes and says—I live at Malapardis; I am a carpenter and wheel-right—I worked a little with Mr. Burnett on this place of Mr. Tuttle's or Mrs. Stewart; he took my job just before I quit.

*Quest.* What amount did you do there?

*Ans.* Perhaps thirty days—thirty or forty days—my wages

were fourteen and fifteen shilling a day, and boarded—my whole bill came to about fifty dollars; I think I have been paid about all; Mr. Tuttle paid me all, with the exception of one payment of seven or eight dollars, which Mrs. Stewart paid me; Mr. Tuttle had handed the money to her to pay me in his absence; I saw Mrs. Stewart there while I was doing the work; she was the mistress of the house and kept it, and I boarded at her table; she appeared to be pleased with the improvements, and made no objections; she was anxious, 10 at times, to have us hurry on with the work; she was particularly anxious about the fence, in particular, to have it done; I am acquainted with the signature of Jacob Crane; he did the tinning.

This bill, marked by me *Exhibit No. 8* on the part of defendant, offered in evidence on part of defendant, witness says—this is the signature of Jacob Crane.

Look at these three bills, marked by me *Exhibits 9, 10, and 11*, on part defendant, viz. Ward, Huntington & Dunham, Randall & Swaine, and that of G. D. Griffith, counsel asks 20 —was you with Mr. Tuttle when he selected the lumber mentioned in these bills?

*Ans.* I was, and these same materials were used in the building of the house and making the improvements—I think I saw him, Daniel, pay one of these bills—that of Randall & Swain.

*Quest.* What amount was expended in making those improvements, in labor and materials?

*Ans.* I should not think it could be done less than eight hundred dollars.

30 *Quest.* Could those improvements be done at the present time for eight hundred dollars?

*Ans.* It could not be done for any less.

*Quest.* Has not the property been improved in value by reason of these improvements?

*Ans.* It certainly has.

Cross-examination by Mr. Vanatta.

*Quest.* How do you know that Daniel left the money with Mrs. Stewart, which she paid you?

*Ans.* As near as I can tell, I think I had given an intima-

tion a day or two before that I wanted the money on a certain night, and she handed me the money—I think that was the way of it.

*Quest.* Did you see Daniel hand her that money?

*Ans.* No, sir.

*Quest.* Did she tell you that Daniel had given it to her?

*Ans.* I am not positive, but I so understood it.

Question repeated.

*Ans.* No, I think not.

*Quest.* Being shown *Exhibits* 8, 9, 10, 11—did you ever see 10 any of those bills before to-day—and if so, when did you see them or any of them?

*Ans.* I was with him when he bought and ordered all these articles; I drove the team down and back; some goods we brought home with us, and I think all he brought home he paid for; I think one lot of goods he paid for, the biggest part of them, and we took them away, the balance were sent here to the railroad, and they were settled for afterwards.

Question repeated.

*Ans.* I can't say that I ever did before to-day.

20

*Quest.* Being shown *Exhibit No. 9*—did you see the money named in that receipt paid to Jacob Crane?

*Ans.* No, sir.

*Quest.* How long did you live at Littleton, or near there?

*Ans.* I lived about eighteen years and a half within a half a mile of the old family Tuttle house.

*Quest.* In 1864, and for that on back five years, was Daniel L. Tuttle doing any business—and if so, what?

*Ans.* Some few seasons he was on the canal, doing business for himself, I believe.

30

*Quest.* In whose name was the business done that was done on the farm in 1860, '61, '62, '63?

*Ans.* I don't remember the dates, but in his mother's lifetime my bills were made out in her name; at her decease, during Daniel's absence, I then handed in my accounts, and my bills were made out in Mrs. Stewart's name—for my mechanical work and repairing account.

*Quest.* When was that?

*Ans.* I can't remember the dates, but it was after his mother's death—on his return from the canal and outside 40

business, (he was absent sometimes out canaling, &c.); he seemed to assume the control of the business, and he paid me himself.

*Quest.* Did you not make out the bills to Mrs. Stewart by Daniel's order?

*Ans.* No, sir.

Being shown paper writing, being a receipted bill, dated April 10, 1862, which I have marked *Exhibit H* on the part of complainant—

10 *Quest.* Is that your handwriting?

*Ans.* Yes, sir.

*Quest.* Did you not make that out in that way by Daniel's request?

*Ans.* No, sir; this was while I was keeping account with Mrs. Stewart, but Daniel brought me the job and ordered the work, and I have occasionally, when a customer sent a job to me, I would specify in the bill who brought it to me—and I think Daniel paid me this bill himself; I think he paid me one or two bills that I charged to Mrs. Stewart.

20 *Quest.* Being shown two other receipts, one dated July 15th, 1860, and the other dated November 1st, 1860, marked by me *Exhibits I* and *J* on part of complainant, respectively—Were these bills signed by you?

*Ans.* Yes, sir.

*Quest.* Who gave you the money for those two bills?

*Ans.* I think Mrs. Stewart paid me one bill, and Daniel, I think, made me all the other payments.

*Quest.* When were you paid for your work done at the house, and where?

30 *Ans.* Many times during the work, and on the premises.

*Quest.* Did you make out bills for that work?

*Ans.* No, sir; I did not give receipts for it; I do not know where Daniel L. Tuttle got the money which he paid to me.

*Quest.* Where were the articles used which you repaired, and for the repair of which you gave these three receipts?

*Ans.* For the farm and family's use—for this homestead.

*Quest.* Do you know whether Daniel bought any property of Mary S. Wright or Henry Edwards, such as oxen, wagons, bee-hives, bedsteads, and property of that description? [Ob-

40 jected to.]

*Ans.* I know it by information from both parties; I saw Daniel remove it and take the property into his possession after the purchase.

*Quest.* Did he get any bill of it?

*Ans.* I don't know—I can't say; I never saw nor heard of it.

*Quest.* Did you ever see Henry Edwards write?

*Ans.* No, sir; but I have received letters from him.

Being shown bill and receipt, dated January 15th, 1863, which I have marked *Exhibit K* on the part of complainant— 10

*Quest.* Please say whether that is signed by Henry Edwards or not, from your knowledge of his handwriting?

*Ans.* I should think it was.

*Quest.* Is Mary Wright dead or alive?

*Ans.* I don't know.

*Quest.* Is Henry Edwards living in the neighborhood of Littleton, and if not, how long has he been away from there?

*Ans.* He owned and occupied a farm near Littleton, in the neighborhood of three or four years; I think he has been gone about three years. 20

*Quest.* (*Exhibit K*, shown witness.) Do you know the handwriting in which that bill is made out, and if so, whose is it?

*Ans.* I should think it was Daniel L. Tuttle's handwriting.

*Quest.* Have you seen Daniel write pretty often?

*Ans.* I have, but it is some years since though.

*Quest.* Was it such property as is mentioned in that bill, that you saw Daniel moving away from Mr. Edwards'?

Counsel for defendant objects to the admission of all evidence in reference to bills of Mrs. Stewart, and the answers thereto, as irrelevant, and not a proper matter of cross-examination. 30

*Ans.* Yes, sir; I recognize some of the articles, oxen and wagon, lot of hay and grind-stone.

*Quest.* Was the property sold at vendue at Mr. Edwards'?

*Ans.* I think not, but at private sale.

Re-direct examination by Mr. Cutler.

*Quest.* You say you received some seven or eight dollars from Mrs. Stewart for work done at the house, and you think Daniel left it with her for you, did or not Daniel tell you

before he went away, that he would leave some money for you with Mrs. Stewart? [Objected to.]

*Ans.* I am under the impression that that was the understanding between us.

*Quest.* Were you not with Daniel when he purchased this bill of Randall & Swaine?

*Ans.* Yes, sir; I am not positive, but I think I saw him hand in the money.

*Quest.* Did you ever make out any bills to Mrs. Stewart  
10 for carpenter work, or was it simply for repairing wagons?

*Ans.* I think all my jobbing and repairing was for Mrs. Stewart, and the carpenter work was for Mr. Tuttle—I boarded at the house when I worked there.

*Quest.* Do you know whether Daniel lived with Mrs. Stewart, or Mrs. Stewart with Daniel, or whether they lived together?

*Ans.* I believe that Daniel was the provider—did the trading, groceries, and provisions.

BELKNAP GREGORY.

20 Sworn and subscribed before me, this 30th day of March, A. D. 1867.

SAMUEL S. HALSEY, M. C.

Saturday morning, June 22d, A. D. 1867, examination of witnesses in the above stated case continued, before me, at my office, by consent.

*Augustus W. Cutler*, a witness called and sworn on his own behalf, deposes and says—I am a practicing attorney of the Supreme Court of New Jersey.

*Quest.* Did you, as a lawyer, attend to any business for  
30 Mrs. Sarah L. Tuttle, and if so, state under what circumstances, and what you did?

*Ans.* I became the proctor of Mrs. Stewart in the Orphans Court of this county, to collect two notes held by her against the estate of her mother, Hannah, amounting to seven thousand dollars, which resulted in an appeal being taken to the Prerogative Court, a copy of which proceedings I hold in my hand.

This printed book, marked by me *Exhibit No. 12* on the part of defendant, and containing said proceedings, was here offered in evidence; subsequently I obtained a divorce for her in the Court of Chancery. [Mr. Vanatta objected to the introduction of this book in evidence.]

*Quest.* What were your expenses against her in the prosecution of those several suits? [Objected to by Mr. Vanatta.]

*Ans.* I had been the administrator of William D. Tuttle, whose real estate had been sold to pay debts—Hannah Tuttle being the purchaser; and upon the settlement of that estate 10 there was due me the sum of one hundred and sixty-eight dollars and seventy-seven cents; and for other matters at the time of her death she was indebted to me in the sum of four hundred and fifty-three dollars and ninety-nine cents, including the one hundred and sixty-eight dollars seventy-seven cents; upon which was a credit of two hundred and eighteen dollars and fifty cents—the receipts of a note handed me by her for collection—leaving a balance due me at that time of two hundred and thirty-five dollars and forty-nine cents, as appears by this statement. (Paper writing contain- 20 ing the above statement offered in evidence on the part of defendant, and marked by me *Exhibit No. 13* on the part of defendant.) And in the matters of the Orphans Court, this paper, marked by me *Exhibit No. 13*, shows the costs and expenses in the Orphans Court.

*Quest.* What balance, if any, is there due to you from the complainant for services rendered? [Question waived.]

*Quest.* How do the accounts now stand, as between you and the complainant, for the services you state you have rendered? [Objected to by Mr. Vanatta.] 30

*Ans.* The whole amount of the account, including the interest, amounts to thirteen hundred and eighty-seven dollars and seventy-two cents; and upon which is credited, as paid by Mrs. Stewart, seventy-nine dollars and fifty-nine cents, and as paid by Daniel L. Tuttle, five hundred and thirty-one dollars; the credit of seventy-nine dollars and fifty-six cents, as paid by Mrs. Stewart, was received by me from Mr. Vaneleve Dalrymple, and after deducting the costs of the divorce, as by this statement, *Exhibit —*, there is

left the sum of seventy-nine dollars and fifty-six cents to be credited on this account.

*Quest.* Is that amount due you now from her?

*Ans.* It is, or from the lands that I hold.

*Quest.* Do you hold the lands in controversy in this suit as security for that money? [Objected to.]

*Ans.* Yes.

*Quest.* What interest has she in the lands involved in this suit? [Objected to by Mr. Vanatta.]

10 *Ans.* I always supposed she had the one half interest.

*Quest.* Did you ever get any information from her as to what her real interest was in those lands? [Objected to.]

*Ans.* Yes.

*Quest.* What did she say upon that subject? [Objected to by Mr. Vanatta, on the ground that if she did say anything it was a privileged communication.]

*Ans.* The first that I knew of it was on the day that I bought the property; before buying the property at the commissioners' sale, Daniel L. Tuttle, being present at the sale,  
20 desired me to purchase it for them; I first refused, but subsequently, upon his telling me that he had purchased of Mrs. Anderson, his sister, her interest in the land, and that it would not require much moneyed payment, and that before the money was necessary to be paid they would put me in funds, and upon that I consented to purchase and to hold the lands until I was paid; and that on my return from the sale I stopped at Mrs. Stewart's, and in her presence and Daniel's, the matter was talked over, when I told them that  
30 it was necessary that the deeds of Mrs. Anderson should be put upon record, and Daniel got them and gave them to me to put upon record, which I did.

*Quest.* For whom, and at whose request, did you make the purchase at the commissioners' sale you have spoken of? [Objected to by Mr. Vanatta.]

*Ans.* I made it at the request of Daniel, and for his and Mrs. Stewart's benefit.

*Quest.* Was she present at the sale?

*Ans.* She was not.

*Quest.* Had she requested you before that to take any in-  
40 terest in the sale, or to purchase the property for her?

*Ans.* She had not requested me.

*Quest.* How came you to attend that sale?

*Ans.* I don't recollect, but my impression is that Daniel wanted me to go to that sale—but I know I went there without any intention of buying this property.

*Quest.* Was anything said by Mrs. Tuttle on your return as you have stated, and in that conversation, as to who was the real owner of the interest of Jane C. Anderson, conveyed by those deeds that you speak of? [Objected to by Mr. Vanatta.]

10

*Ans.* That it was Daniel's.

*Quest.* Who said it belonged to Daniel?

*Ans.* Mrs. Stewart and Daniel.

*Quest.* Are those the deeds? [*Exhibits No. 1 and No. 2* shown witness.]

*Ans.* I believe they are.

*Quest.* Was any arrangement made in that interview as to paying for that property, if so, what was it? [Objected to by Mr. Vanatta.]

*Ans.* Mrs. Stewart signed a paper authorizing the commissioners to credit the amount that would be due to her upon my purchase, and I also drew a paper of like import for Mr. and Mrs. Anderson to sign, which I gave to Daniel to have signed, and which was signed afterwards and returned to me.

*Quest.* How much interest did the paper which she signed represent? [Objected to by Mr. Vanatta.]

*Ans.* I don't recollect—but I presume (the paper was given to the commissioner) it was for whatever her amount was, which would be one third.

30

*Quest.* Had she, up to that interview, ever had possession of those deeds? [Objected to.]

*Ans.* I don't know; Daniel got them.

*Quest.* Where did he get them from?

*Ans.* That I don't know.

*Quest.* Did he receive them from her? [Objected to.]

*Ans.* I think not.

*Quest.* Did you have them put on record, and at whose request? [Objected to.]

*Ans.* I did; I don't know as there was any request about

40

it; I said it was necessary for them to go upon record, and they were handed me for that purpose.

*Quest.* Were you acting, in receiving that conversation, in any respect as her counsel?

*Ans.* I was acting, as I took it, for Mrs. Stewart and Daniel.

*Quest.* In any subsequent conversation had with her up to the time she wanted you to make a conveyance of the property purchased by you at that sale to her, did you ever hear her  
10 state as to who was the real owner of Jane C. Anderson's interest? [Objected to.]

*Ans.* In all our interviews I never heard her insist that she was the sole owner, but on the contrary, that Daniel owned Mrs. Anderson's interest.

*Quest.* Did she ever call upon you and request a conveyance of that property to her?

*Ans.* She did.

*Quest.* What was said?

*Ans.* I told her that I could not convey to her without  
20 Daniel's authority, but I told her that I would convey to any person whom she and Daniel would authorize me to convey to after the payment of what was due me.

*Quest.* What did she say?

*Ans.* She said she thought she ought to have it and she would make it right with Daniel; I gave Daniel notice of this request and he refused to allow me to convey to Mrs. Stewart.

*Quest.* Was anything said in that conversation as to her telling you before that she was not the owner of the interest  
30 which was owned by Jane C. Anderson? [Objected to.]

*Ans.* I don't remember; there has been a great many interviews, and I know when she first asked me for the deed, I was very much surprised that she laid claim to the whole of the property.

*Quest.* Did she make any objection to the claim which you said you had upon the lands before making the conveyance? [Objected to.]

*Ans.* No.

*Quest.* Were the buildings on the property insured after  
40 your purchase?

*Ans.* They were.

*Quest.* By whom, and who paid the premium?

*Ans.* Daniel got them insured and brought the policy to me.

*Quest.* Did you afterwards receive any money to carry out that purchase, and if so, from whom and how much?

*Ans.* In the month of November, 1863, I received sixty dollars, and also the same amount, I think, in September of that year; one of those payments, I think, was made by Mrs. Stewart, and for which I gave her a receipt; I think she said 10 that Daniel had come home from the canal and left this money with her to pay me, and would pay me more in a short time, which he paid afterwards; the last payment was sixty dollars.

*Exhibits D and B*, on part of complainant, shown witness. Mr. Bell asks—are those the two receipts you speak of? [Objected to.]

*Ans.* Yes; one of these was paid by Mrs. Stewart, and the other by Daniel, as I have stated.

*Exhibit A*, on part of complainant, shown witness, counsel 20 asks—what has that receipt reference to? [Objected to.]

*Ans.* This receipt is for the money paid by Mr. Dalrymple to me, of which I have spoken, and was money paid to Mr. Dalrymple by Mr. Hooley, for a reconveyance and assurance of lands bought by Mr. Hooley of Mrs. Stewart, prior to her divorce, and was a portion of the lands assigned to Mrs. Anderson; and at the time of this payment, Daniel consented—both were present, Daniel and Mrs. Stewart—that Mrs. Stewart might have the benefit of the payment, provided it was paid over for my benefit or on my bill. 30

*Exhibit C* shown witness.

*Quest.* What has that receipt reference to? [Objected to.]

*Ans.* That is money that I have received on my account, and which I have credited to Daniel; I have no recollection of Mrs. Stewart ever paying me any money, excepting the sixty dollars I have mentioned, and the money received of Mr. Dalrymple, and which he paid me.

*Quest.* From whom, then, did you receive this money mentioned in *Exhibit C*?

*Ans.* I presume from Daniel. 40

*Quest.* Are those receipts all mentioned in this account which you have here?

*Ans.* Yes; all those, and more too.

*Quest.* Why were those receipts given in the name of Mrs. Stewart? [Objected to.]

*Ans.* Daniel at that time was involved, and the parties, Daniel and Mrs. Stewart, did not want anything to appear that Daniel had any interest.

*Quest.* Did you ever hear Mrs. Stewart say, before she  
10 asked you to convey this property wholly to her, as to why the deeds from Anderson and wife was made to her, instead of being made to Daniel? [Objected to.]

*Ans.* In order that it might be held for Daniel's benefit.

*Quest.* State what she said upon that subject, and when first? [Objected to.]

*Ans.* The first that I heard anything about this, was the day that I bought; I can't repeat the conversation.

*Quest.* Give us the substance? [Objected to.]

*Ans.* That Daniel had bought Mrs. Anderson's share, and  
20 that she was holding it for his benefit.

*Quest.* How is it that Daniel's interest in that property amounted to one half, and Mrs. Stewart's one half? [Objected to.]

*Ans.* Mrs. Anderson was entitled to one third of the proceeds of sale, and Mrs. Stewart was entitled to one third, and Mr. Smith was entitled to one third; this property I purchased, and Mrs. Anderson's interest, and Mrs. Stewart's interest, went towards its payment, and they became equally interested in the property I bought.

*Quest.* What did you buy in which they became equally  
30 interested? [Objected to.]

*Ans.* The property referred to in the bill of complaint; there was a wood lot that I bought at that sale, but that I bought for my own benefit.

*Quest.* How did John S. Smith get his pay for his one third interest in the lands that you bought?

*Ans.* I suppose from the commissioners; there was other property sold that day by them—other property which belonged to the estate of Hannah Tuttle—John S. Smith became  
40 a purchaser; Henry Boughton was a purchaser, and I was a

purchaser. This statement, marked *Exhibit* —, contains a statement furnished me by Mr. Dalrymple, counsel of the commissioners, of all the sales made that day.

*Quest.* Did the lands belonging to the estate, outside of the lands in controversy in this suit, produce enough to pay Mr. Smith? [Objected to.]

*Ans.* I don't know; I never figured up the statement.

*Quest.* Do you know where those orders are, signed by Mrs. Anderson and Mrs. Stewart, and handed you on the day of the sale? 10

*Ans.* I presume I gave them to the commissioners.

*Quest.* Did the property that you bought, mentioned in the complainant's bill, sell for what it was worth? [Objected to.]

*Ans.* It was sold to the highest bidder.

*Quest.* Have there been any repairs made upon that property since you held the title?

*Ans.* There have.

*Quest.* By whom? [Objected to, unless it is sought to be proved that Mr. Cutler has been making repairs there.]

*Ans.* By the occupants of the property—Mrs. Stewart and 20 Daniel Tuttle occupied the property.

*Quest.* To what amount? [Objected to.]

*Ans.* I don't know; I can only say that the property has been very much improved.

*Quest.* Did you or not ever hear Mrs. Stewart say as to who made those improvements? [Objected to as irrelevant.]

*Ans.* Yes; she said that Daniel was making them.

*Quest.* Are you and have you ever been willing to make a conveyance of one half of that interest to Mrs. Stewart?

*Ans.* Always. 30

Cross-examination by Mr. Vanatta.

*Quest.* Has Mr. A. W. Bell been acting as counsel for the defence in this cause, and if so, for how long? [Objected to by Mr. Bell as no part of the principal examination.]

*Ans.* Mr. Bell has represented the defence with my concurrence in order to protect the interest of Daniel L. Tuttle, I think from the day of the first examination.

*Quest.* Has Mr. Bell been retained by you, or was he retained by Daniel L. Tuttle? [Objected to on same ground.]

*Ans.* Retained by Daniel L. Tuttle, I presume.

*Quest.* Has his compensation proceeded from you, or do you expect it to proceed from you, or his compensation to be made by Daniel L. Tuttle? [Objected to on same ground.]

*Ans.* From Tuttle, I suppose.

*Quest.* Who has attended before the master in the taking of this testimony—before the master previous to this occasion, you or Mr. Bell?

*Ans.* I have always been present—Mr. Bell has been present also, excepting on one day.

*Quest.* Were you present at the examination of Jane C. Anderson, and of her husband, or at the examination of Belknap Gregory, or Mr. Barnet?

*Ans.* I was, but not at Mrs. Anderson's examination.

*Quest.* Did you remain at any of the examinations, of the witnesses sworn on the part of the defence longer than a few minutes, or did you in any way participate in any of them except this morning?

*Ans.* I participated in the examination of all the witnesses with the exception of John C. Anderson and Mrs. Anderson.

*Quest.* Who selected and procured the attendance of the witnesses who have been sworn on the part of the defence, excepting yourself?

*Ans.* I issued subpoenas, I think, for every witness, I gave the subpoenas to Tuttle, and told him to have them served.

*Quest.* Who proposed the making of witnesses the persons who have been sworn on the part of the defence—what I mean is, whether they are witnesses that you picked out, or whether they are witnesses selected by Daniel L. Tuttle?

*Ans.* The witnesses, except so far as regards Mr. and Mrs. Anderson and myself, Tuttle selected and desired to have examined.

*Quest.* Who served the subpoenas and paid the witnesses fees?

*Ans.* Mr. Tuttle I suppose; I gave him the subpoenas.

*Quest.* What is the agreement or understanding between you and Daniel L. Tuttle as to your costs and expenses about this suit—I mean what aid and comfort is Daniel to render in that behalf?

*Ans.* There was never a word passed between us about it.

*Quest.* Do you expect Daniel to pay the costs and expenses on your part in the defence of this suit?

*Ans.* I expect the Chancellor will order it paid out of the property which I hold.

*Quest.* What I want to know is as to your expectation in the event of the Chancellor's not making such an order?

*Ans.* I never have had any other expectation.

*Quest.* How long have you been the attorney of Daniel L. Tuttle?

10

*Ans.* If by that you mean his special attorney, I can't say that I ever was.

*Quest.* Do you mean that you never, at any time, acted as the attorney of Daniel L. Tuttle?

*Ans.* No, I do not mean that, for I have acted as his attorney.

*Quest.* In what matters and when?

*Ans.* I think in no way except in matters resulting from his brother's, mother's and sister's estate.

*Quest.* Were you his attorney on the day of the sale of the 20 lands in question by the commissioners?

*Ans.* I represented that day the heirs of the estate.

Question repeated.

*Ans.* I represented the heirs of the estate, I had been concerned for them in their claims, and in the division, and went there with reference to it.

*Quest.* Who do you mean by the heirs?

*Ans.* Mrs. Anderson and Mrs. Stewart.

*Quest.* Why did not Daniel L. Tuttle, on the day of that sale, purchase the property himself?

30

*Ans.* He had too many creditors.

*Quest.* How do you know that that is the reason?

*Ans.* I don't know that he said so, but I suppose so.

*Quest.* Had he not for two or three years prior to that time, been acting in the business he did as the agent of, and in the name of his sister, Sarah L. Stewart?

*Ans.* I don't know.

*Quest.* I whose name did he do the business that he transacted during the period of time?

*Ans.* I don't know.

40

*Quest.* Have you the deeds that you received from the commissioners?

*Ans.* Yes.

*Quest.* Have you got them here?

*Ans.* No.

*Quest.* What was the amount which you bid for the land which you bought for your own use?

*Ans.* I think it was three hundred and sixty-five dollars; the deeds will show.

*Quest.* And you paid for that land by giving the commis-  
10 sioners releases for Mrs. Stewart's share of the proceeds of the whole sale, and for Mrs. Anderson's share of the proceeds of the whole sale, did you not?

*Ans.* Yes; as far as it went.

*Quest.* And they paid all you bought, not including your wood lot, within one hundred and thirty dollars and thirty-eight cents?

*Ans.* I think I made it one hundred and eighty-five dollars and eighteen cents; I may be in error, but that is the way I make it.

*Quest.* How many deeds did you receive for the land you bought on that occasion?

20 *Ans.* Two, I think.

Examination adjourned till four o'clock P. M.

Saturday afternoon, four o'clock P. M., examination of witnesses continued.

Cross-examination of Mr. Cutler continued.

*Quest.* You speak of charges against the complainant for services in the Orphans Court, did you ever make out any  
30 bill for those services, and if so, when?

*Ans.* I did; I think sometime last year.

*Quest.* Before or after the commencement of this suit?

*Ans.* After, I think; I don't remember whether it was after the answer was filed or not.

Witness being shown paper writing which I have marked  
*Exhibit No.*, —, on part of complainant, witness says—that is the account.

*Quest.* Did you ever render her any account of those matters prior to that?

*Ans.* No; not an extended account.

*Quest.* Is that account a copy from your book of account?

*Ans.* In part, and in part from my docket; there are two items in this account marked *E E*, one a charge of Dellicker, surrogate, and one of Phillips & Boswell; these items I did not know the exact amount of at the time this bill was rendered, and hence they are marked *E E*.

*Quest.* Have you any vouchers for the disbursements mentioned in this bill, and if so, where are they?

*Ans.* I had vouchers for Dellicker, surrogate, and for the printers, Phillips & Boswell, but when I made out that bill I could not find those two two vouchers, and I guessed at that amount, and marked it *E E*, in that way.

*Quest.* Did Daniel L. Tuttle ever make any payments to you on account of any part of this bill, and if so, how many, and the time and amount of each bill?

*Ans.* Daniel L. Tuttle gave me first a note of Mills Bailey of one hundred and sixteen dollars, which was paid by Bailey; 20 he paid me a cash payment of fifty dollars—the date is not down; another cash payment of fifty dollars—the date of that is not down; then I credited him with a bill of thirty-five dollars, for the cutting and carting for a crop of wheat and rye on Mr. Hill's place; then in September, 1863, I received sixty dollars as before stated; in October, forty dollars; and in November, sixty dollars, which are all the payments I have credited, with the exception of the one hundred and eighty dollar payment.

*Quest.* In making up these credits, how did you get at 30 them, did you take them from any book, or how?

*Ans.* Part of these payments were credited on a paper kept among the papers belonging to the estate of Hannah Tuttle, and which I showed to Daniel Tuttle, and which he afterwards returned to me with one original payment which he had charged, and which I had no memoranda of.

*Quest.* Why have not these payments got dates to them on the account?

*Ans.* I don't know; I had not the dates to fix to them.

*Quest.* Where is that paper you speak of as having the payments on it?

*Ans.* I think it is among Mrs. Hannah Tuttle's papers.

*Quest.* Will you produce it?

*Ans.* Yes.

*Quest.* Did you give Daniel receipts whenever he made you payments?

*Ans.* My impression is that I was in the habit of giving receipts whenever I received any money.

10 *Quest.* Did you ever receive any money from John C. Anderson, or Jane, his wife, on account of the litigation in the Orphans Court?

*Ans.* I have no recollection of ever receiving any.

*Quest.* On what account did Daniel L. Tuttle make you those payments?

*Ans.* On account of this law suit which I refer to in the Orphans Court.

*Quest.* In what way was he interested in that law suit?

20 *Ans.* During the time this suit was pending, I learned from the parties that Daniel had bought out the interest of Mrs. Anderson in the note that she had against the estate.

*Quest.* Were not those notes, and the proceedings to sell Hannah Tuttle's land to pay those notes, a device of Daniel L. Tuttle's to prevent his creditors getting the share of his mother's lands which would descend to him, and was not the whole thing conceived and carried on for that purpose?

*Ans.* Not to my knowledge.

*Quest.* Can you say it was not?

*Ans.* I know of no device or plan.

30 *Quest.* If Daniel had owed no debts when his mother died do you believe any one would ever see, or heard of these notes? [Objected to on the grounds of irrelevancy, privileged communications, and no part of the direct examination.]

*Ans.* Mrs. Stewart handed me those notes against the estate; I then supposed, and always supposed, that they were Mrs. Tuttle's notes. [Counsel for complainant objects to the answer as not responsive to the question.]

Question repeated. [Objected to on the same ground by Mr. Bell.]

40 *Ans.* I do.

*Quest.* Did not Daniel L. Tuttle have more of the direction and control of those proceedings in the Orphans Court than any other person? [Objected to by Mr. Bell.]

*Ans.* I don't think he exhibited any more interest than was exhibited by the others, although he did more work.

*Quest.* When did you become the administrator of William D. Tuttle?

*Ans.* I should think in 1855; I speak from recollection.

*Quest.* When did Hannah Tuttle die?

*Ans.* She must have died in 1859.

10

*Quest.* Was her estate solvent at the time of her death?

*Ans.* The estate proved to be solvent.

*Quest.* Was she esteemed able to pay her debts in her lifetime?

*Ans.* Yes.

*Quest.* In whose name were those policies of insurance issued that you spoke of in your principal examination?

*Ans.* I think in mine.

*Quest.* For how long a time had Daniel L. Tuttle and his sister Sarah lived on the same property, and in the same house?

*Ans.* They were both living there at the time of the death of Mrs. Tuttle—how long they lived there before that I don't know.

*Quest.* Have they lived there together ever since her death?

*Ans.* Yes.

*Quest.* Since they have lived there together has their business been considerably intermingled?

*Ans.* I don't know.

*Quest.* Do you know whether any settlement has ever been made between Daniel and the complainant, as to the matters that may have arisen between them during the last seven or eight years?

*Ans.* I do not.

*Quest.* If a just and fair settlement were had of all matters of dealing had between them during the last nine years, can you tell in whose favor the balance would be, or what the balance would be?

*Ans.* I can't tell anything about it, for I know nothing of their affairs or their arrangements.

40

*Quest.* Can you then say that the equities as between them require her to give half of this property to Daniel, or any other part of it?

*Ans.* Yes, for Daniel always claimed that he had bought and paid for Anderson's interest, and was unwilling that I should make a deed to Mrs. Stewart for any other than the undivided half.

*Quest.* Did you not know that that allegation was false, and that Daniel knew better when he said so?

10 *Ans.* No.

*Quest.* Did you not know that for all the purchase money of the land conveyed to Mrs. Stewart, she gave a bond and mortgage to Mr. and Mrs. Anderson when she got the deeds, and that a bond and mortgage for that very debt encumbers her property to day? [Objected to by Mr. Bell.]

*Ans.* I did not know of that until an interview of Mrs. Stewart and Daniel in reference to my conveying these properties.

20 *Quest.* Do you know a lot which was set off to Mrs. Anderson in the division of her mother's estate near the school house, called the school-house lot?

*Ans.* I do.

*Quest.* About how many acres are in that?

*Ans.* I don't know—I should think seven or eight acres—but I don't know.

*Quest.* What is that lot worth?

*Ans.* That I don't know.

*Quest.* Was that lot conveyed to Mrs. Stewart by Mr. and Anderson?

30 *Ans.* I always supposed it was until very recently; during one of these examinations I learned that that was conveyed to Daniel.

*Quest.* From whom did you learn that?

*Ans.* I think Daniel mentioned it on the day of the first examination, and I immediately told Mr. Vanatta of it, on the same day, I think.

*Quest.* Have you ever seen the deed to Daniel of that lot?

*Ans.* I have no recollection of having seen it; I don't know whether it is recorded or not.

*Quest.* That school-house lot was not sold by the commissioners, was it?

*Ans.* No; that was drawn for.

*Quest.* Were there any of the lots in Mrs. Anderson's share, I mean in her share of what was set off to her in the division, more valuable than that school house lot, acre for acre?

*Ans.* I don't know enough of the value of properties around there to form an opinion.

*Quest.* Before the present suit was commenced, did not 10 Daniel L. Tuttle say to you, and insist upon it, that he had fully paid up your costs and charges for the suit in the Orphans and Prerogative Courts?

*Ans.* Not that I ever heard of.

Re-direct examination by Mr. Bell.

*Quest.* What constitutes the family of Mrs. Stewart?

*Ans.* I think she has two or three children; I should think her oldest child was fourteen, and the youngest about eight; I think she has two children.

*Quest.* Had she any means at the death of her mother, 20 except the property she received from the estate of her mother?

*Ans.* I think not—I never heard of any; Daniel L. Tuttle is a bachelor, and was never married.

*Quest.* Before this controversy arose between Daniel and Mrs. Stewart, and in their attempted settlement and division of this property at your office, did not Mr. Tuttle insist that he had expended enough in the improvements of that property to pay this mortgage given by Mrs. Stewart? [Objected to by Mr. Vanatta as irrelevant and leading.] 30

Question waived by Mr. Bell.

*Quest.* What, if anything, was said by Daniel and Mrs. Stewart in reference to the mortgage she had given, and the improvements made upon the homestead? [Objected to by Mr. Vanatta.]

*Ans.* I understood that this mortgage from Mrs. Stewart covered the property that Daniel had bought of Mrs. Anderson, and it seems to me it was being foreclosed at the time, and Daniel offered to indemnify her against that bond,

mortgage, and all costs and expenses; and if the mortgage was held good, that he would pay it.

*Quest.* What was done with that mortgage—what was that mortgage you now speak of given for?

*Ans.* It was given for the balance of the purchase money of Mrs. Anderson's share.

*Quest.* Is that the same mortgage you spoke of in your cross-examination?

*Ans.* I never heard of but one mortgage.

10 *Quest.* Did this mortgage cover any other property than the property purchased from Mrs. Anderson? [Objected to.]

*Ans.* I never saw the mortgage, but I understood from Mrs. Stewart and Daniel that it only covered that property.

*Quest.* Is that the mortgage that you speak of that Daniel offered to indemnify her against?

*Ans.* Yes, sir.

*Quest.* Did she not set up to that mortgage that it was not good, because made by her when she was a *feme covert*? [Objected to.]

20 *Ans.* I don't know what her defence was.

*Quest.* In any conversations between Mrs. Stewart and Daniel, as to any improvements made upon the place, was anything said as to who made them, and who paid for them? [Objected to.]

*Ans.* A great many interviews were had by Daniel and Mrs. Stewart on account of appointments made by me in which these matters were all discussed, and the improvements; Mrs. Stewart's objections appeared to be as regards the amount that Daniel claimed for the improvements, in-  
30 sisting that they had cost too much.

*Quest.* Do you recollect about the amount that Daniel claimed for these improvements in her presence? [Objected to.]

*Ans.* It seems to me that it was some where in the neighborhood of twelve hundred dollars.

*Quest.* Did Mrs. Stewart, in any of these conversations, ever insist or claim that she had paid for any part of these improvements? [Objected to as irrelevant and leading.]

*Quest.* Or what did she say upon that subject? [Objected to.]

40 *Ans.* Mrs. Stewart made no claim to any payment for

these improvements, but insisted that she had boarded the men that did the work, and been housekeeper.

*Quest.* What was her language used by her as to boarding the men? [Objected to.]

*Ans.* I can't use her language; my impression was that she had done all the work about the house necessary in boarding the men.

*Quest.* Do you mean, then, to convey the idea that she did all the work and furnished and supplied the table, or that she intended to convey that idea? [Objected to.] 10

*Ans.* That she did not furnish the table, but she did all the housework.

*Quest.* Do you know, from Daniel or Mrs. Stewart, how much was agreed to be paid to Mrs. Anderson for her share of the land from her mother's estate? [Objected to.]

*Ans.* I don't know.

*Quest.* How can you then say that the mortgage was given for all the purchase money agreed to be paid?

*Ans.* I did not so answer; as I said, a mortgage was given for the balance of the purchase money. 20

*Quest.* At the commissioners sale, who signed the conditions of sale when the property was bid off by you?

*Ans.* I did.

*Quest.* How did you first sign them.

*Ans.* I don't recollect.

*Quest.* Was Mrs. Stewart at the commissioners sale, or at any of the adjourned days of that sale?

*Ans.* She was not.

*Quest.* What is the value of this property in dispute now?

*Ans.* I don't know; I should think from six to eight thousand dollars; eight thousand dollars, I should say.

*Quest.* Is Daniel a hard working and industrious man? [Objected to.]

*Ans.* Yes.

*Quest.* You have answered that you acted as the attorney of Daniel in the estate of his mother, brother, and sister, what sister do you mean?

*Ans.* After the death of William, he had a sister Nancy who died, it was with reference to matters that arose out of the estates of William and Nancy that I acted for him. 40

*Quest.* In the prosecution of those notes in the Orphans Court, who acted for Daniel as his lawyer?

*Ans.* Mr. Little.

AUG'S W. CUTLER.

Sworn and subscribed this 22d day of June, A. D. 1867, before me.

SAMUEL S. HALSEY, M. C.

### Opinion.

The complainant charges that the defendant attended, as  
 10 her attorney and agent, a partition sale of lands, of which she was a tenant in common, and purchased three lots for her. That he purchased the three lots for her at the sale for two thousand four hundred and ninety-one dollars, and took a deed in his own name, but paid for them by giving to the commissioners receipts and discharges for the sums due to her for her own share, and that of her sister, Jane C. Anderson, whose share she had purchased, pending the partition proceedings. The amount due for these two shares out of  
 20 the net proceeds of sale, was two thousand three hundred and five dollars and eighty-two cents; the residue, one hundred and eighty-five dollars and eighteen cents, was advanced by the defendant as a loan to her. She alleges that the property, being bought for her, and paid for by her money, is held in trust for her, and prays that the defendant may be required to convey it to her.

The defendant, in his answer, denies that he attended the sale as her agent or attorney, or that she requested him to purchase for her. He admits that at the sale her brother, Daniel L. Tuttle, requested him to purchase these lots for  
 30 him and the complainant, jointly, and that he purchased them in compliance with that request for the benefit of both; he admits that the property was paid for by the receipts of the complainant and Jane C. Anderson, for the amount stated in the bill, and that he advanced the residue as a loan. He states that the lands conveyed to the complainant by her

sister, were conveyed to and held by her, in trust for her brother Daniel, and that the receipt for that share, which was given to the commissioners, was payment of so much or one-half the consideration, by the money of Daniel, and he sets up that Daniel claims and insists that he is entitled to have one-half conveyed to him, and offers to convey to the complainant and Daniel L. Tuttle, as tenants in common, upon being repaid the sum paid by him, with interest, and some other moneys due from them to him.

If the defendant purchased these lots at the request of the complainant and paid for them with her money, he holds in trust for her; if he purchased for her and her brother, and paid with moneys belonging to both, he holds in trust for both; and if he purchased at Daniel's request for both, and paid for them with complainant's money, he holds in trust for her. 10

The statute of fraud makes void any express trust not declared by writing, but permits all trusts arising by implication of law or resulting trusts. No parol agreement of the defendant to buy or hold in trust for either would create a trust. But if the property was paid for with the money of either, a trust would arise by operation of law. The real question in the case is, whether the share of Jane C. Anderson belonged to the complainant, in her own right, or she held it in trust for her brother Daniel. The contest is not between the complainant and the defendant, who claims no interest in the property beyond his lien for advances, but with the utmost propriety of conduct in his situation, puts his defence on the ground that Daniel claims one-half the property as purchased with money that belonged to him; a fact which the defendant understood at the time of the purchase by him, and still believes to be true. 20 30

Daniel L. Tuttle ought to have been a party to this suit, but the objection was not made by demurrer or in the answer, nor yet at the opening of the argument, and then, at the latest, the objection must be made if raised by the defendant. The court may, if convinced that the rights of the parties cannot be settled without that course, order the cause to stand over that other parties may be brought in. In the view I take of this case, the rights of the parties as between 40

themselves, can be settled in the case as it is. If that view is wrong, and Daniel not being a party to the suit, and not bound by it, brings suit against either and recovers, the consequence is due to the omission of such party to have him made a party to this suit.

John C. Anderson and Jane his wife, on the sixteenth of February, 1863, pending the proceedings in partition, conveyed one third, the share of Jane C. Anderson, in the whole of the property of which partition was sought, being seven  
10 or eight lots, to the complainant. The price mentioned in the deeds was one thousand four hundred and forty dollars. Daniel L. Tuttle claims that this price was paid by him. If it was, then complainant held in trust for him. But for this purpose it is necessary that the payment by him should have been at the conveyance, or that he should have become bound or secured to the grantor the purchase money. Any payments afterwards made of or upon it, or any expenses on the property afterwards cannot create a resulting trust.

The evidence to prove the payment of the consideration  
20 by Daniel, is that of John C. Anderson and his wife, Jane. They should know. Each of them appears to swear to it, but in such manner as to show that they have no recollection of where, when, or how it was paid, or in fact if any was paid at all on these lots by Daniel at the time of the conveyance.

On the contrary, it satisfactorily appears from the evidence that at the time of the conveyance of this share by Jane C. Anderson to the complainant, she gave to Mrs. Anderson and her husband her bond for twelve hundred dollars, secured  
30 by a mortgage upon her own third of the property conveyed, and of the third conveyed by Mrs. Anderson, and also gave her note for two hundred and twenty dollars, which was afterwards paid. The mortgage, too, was afterwards assigned by the Andersons to a Mr. Harrison, and was satisfied and cancelled. By whom the note and mortgage were paid does not clearly appear, and is of no consequence here. If they had been paid by Daniel it would not support a resulting trust. It then satisfactorily appears that the whole consideration of this conveyance, except twenty dollars, was secured  
40 by the personal obligations of the complainant, and not paid

or secured by Daniel L. Tuttle. And if twenty dollars of the consideration had been shown to have been paid by him, it would not suffice to raise a trust for him. The evidence of both the Andersons is given with great inaccuracy and confusion. They are evidently anxious to recollect and disclose every thing which they suppose will aid Daniel, and mix up what they believe and have heard with regard to the matter, with what they know, and depose to the whole in one mass. And the defendant has failed to make them distinguish what they know, from what they merely believe. The result is 10 that no reliance can be placed on any part of their testimony to show that the consideration, or any part of it, was paid by Daniel at the delivery of the deeds.

I am of opinion that the complainant is entitled to have these lots conveyed to her upon paying to the defendant the amount advanced by him at the purchase, as a loan, with the interest thereon from that time.

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### Decree.

[Filed February 5, 1868.]

This cause having come on for hearing at the last Term 20 of this court, in the presence of Jacob Vanatta, of counsel with the complainant, and of Theodore Little, of counsel with the defendant, and the pleadings, depositions, and exhibits in the cause, on both sides, having been then read, and the arguments of the respective counsel having been then heard, and the Chancellor having taken until this Term to consider thereof, and now, on this fifth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, it appearing to the Chancellor that the defendant has and holds, as a trustee for the complainant, and in trust for the use of the 30 complainant, the three lots of land and premises described in the complainant's bill of complaint, as follows: the first lot, situate in the township of Hanover, beginning at a corner of a lot of land late the property of Eliphalet Orshorn, in the middle of the road leading from Littleton school-house to Elias P.

Howell's said corner, being in the line of Isaac Johnson's land, thence (1) along the middle of said road north forty-nine degrees west, five chains and twenty-five links, to a corner in the northern line of the Newark and Mount Pleasant turnpike road; thence (2) down said road and bounded by the same a southeasterly course five chains and fifty links, to a corner in the line of the above said Isaac Johnson's land; thence (3) along said Johnson's line north three degrees and ten minutes east, one chain and fifty links, to the  
 10 beginning, containing thirty-eight hundredths of an acre, more or less.

The second lot is also situate in the said township of Hanover, beginning at a stake and heap of stones for a corner, one chain and thirty-five links from the northeast corner of said Johnson's dwelling-house, on a course of north seventy degrees east; thence (1) north thirty-eight degrees and thirty minutes west, two chains and sixty-five links by the side of the Newark and Mount Pleasant turnpike road, to a stake and heap of stones; (2) north fifty-one degrees  
 20 and thirty minutes east, two chains and twenty-five links, to a stake and heap of stones; (3) south thirty-eight degrees and thirty minutes east, one chain and eighty-three links, to a stake and stones in the road leading from Parsippany to Morristown; (4) south thirty-one degrees and fifteen minutes west, two chains and thirty-nine links along said road to the place of beginning, containing one half an acre of land, strict measure.

The third lot is situate in the said township of Hanover, in the county of Morris, beginning at a stake and heap of stones,  
 30 being corner No. 2, of an half acre owned by Nancy Tuttle; thence (1) north thirty-nine degrees west, sixteen chains and fifty-nine links; thence (2) north thirty-four degrees east, one chain and forty-two links; thence (3) south fifty-seven degrees east, sixteen chains and eighty-two links; thence (4) south thirty-six degrees west, one chain; thence (5) south forty-eight degrees east, one chain and forty-four links; thence (6) south thirty-one and a half degrees west, three chains and forty-seven links; thence (7) north thirty-eight and a half degrees west, one chain and eighty-three links;  
 40 thence (8) south fifty-one and a half degrees west, two chains

and twenty-five links, to the beginning corner, containing seven acres and ten hundredths of an acre, be the same more or less.

And that the complainant is entitled to relief prayed for in her bill of complaint.

It is ordered, adjudged, and decreed, by Abraham O. Zabriskie, Chancellor of the state of New Jersey, and the said Chancellor, by virtue of the power and authority of this court, doth order, adjudge, and decree, that it be referred to Alfred Mills, esquire, one of the special masters of this court, 10 to ascertain and report how much, if anything, is due for principal and interest from the complainant to the defendant, on the sum of one hundred and eighty-five dollars and eighteen cents, advanced by the defendant to the commissioners, who sold and conveyed the said three lots of land and premises to the said defendant, in part payment of the said three lots of land, when the said three lots of land were conveyed to the said defendant by the said commissioners.

And it is further ordered, adjudged, and decreed, that upon payment by the complainant to the defendant of the 20 amount which shall be found due to him on account of the said sum of one hundred and eighty-five dollars and eighteen cents, the said defendant shall make, execute, and acknowledge in due form of law, and deliver to the complainant a good and sufficient deed of conveyance of the said three lots of land and premises, conveying them to the complainant in fee simple, and as fully as the same were conveyed to the said defendant by the commissioners who conveyed the same to the defendant.

And it is further ordered, adjudged, and decreed, that the 30 defendant do pay to the complainant her costs in this case to be taxed.

A. O. ZABRISKIE, C.

### Notice of Appeal.

[Filed February 14, 1868.]

The defendant hereby appeals from so much of the decree in this cause as decrees that the defendant holds the lands and premises described in the complainant's bill, as trustee for the complainant. And from so much thereof as orders and directs a reference to Alfred Mills, esq., one of the special masters of the Court of Chancery, to ascertain and report how much, if anything, is due for principal and interest, from the complainant to the defendant, on the sum of one hundred and eighty-five dollars and eighteen cents, advanced by the defendant to the commissioners who sold and conveyed the said three lots of land and premises to the defendant, in part payment of the said three lots of land, when the same were conveyed to the said defendant by the said commissioners. And also from so much of said decree as decrees that upon the payment by the complainant to the defendant of the amount which shall be found due to him on account of the said sum of one hundred and eighty-five dollars and eighteen cents, the said defendant shall make, execute, and acknowledge in due form of law, and deliver to the complainant a good and sufficient deed of conveyance of the said three lots of land and premises, conveying them to the complainant in fee simple, and as fully as the same were conveyed to said defendant by the said commissioners. And from so much of said decree as directs that the defendant do pay to the complainant her costs to be taxed to the Court of Appeals in the last resort in all causes of law:

30

A. W. CUTLER,  
*Solicitor, pro se.*

THEO. LITTLE,  
*Of counsel.*

Dated February 14th, 1868.

I conceive there is good cause of appeal in the above stated cause.

THEO. LITTLE,  
*Of counsel with defendant.*

## Petition of Appeal.

Between

Augustus W. Cutler,  
appellant,

and

Sarah L. Stewart,  
appellee.} *On bill, &c.*

[Filed March 12, 1868.]

*To the Honorable Court of Appeals in the last resort in all  
causes of law.* 10

The humble petition of Augustus W. Cutler, the appellant in the above stated cause, respectfully shows: that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the fifth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, wherein the said Sarah L. Stewart was complainant, and the said Augustus W. Cutler was defendant, in these respects, to wit, that the said decree adjudges that the said Augustus W. Cutler has and holds, as trustee for 20 the said Sarah L. Stewart, the lauds and premises described in her bill of complaint, and also in said interlocutory decree, and that the said Sarah L. Stewart is entitled to the relief prayed for in her bill of complaint, and in that by said decree it was referred to a master of said Court of Chancery to ascertain and report how much, if anything, is due to this appellant from the appellee, for principal and interest "on the sum of one hundred and eighty-five dollars and eighteen cents, 30 advanced by the appellant to the commissioners who sold and conveyed" said lands premises to the appellant; and because, by said decree it is further ordered and decreed that, upon payment by the said appellee to the appellant of the

amount which should be found due to him on said reference, the appellant should make, execute, acknowledge, in due form of law, and deliver to the said appellee a good and sufficient deed of conveyance of the said lands and premises, in fee simple, and as fully as the same were conveyed to the appellant by the said commissioners; and because by said decree it is further ordered that the appellant pay to the appellee her costs in said cause to be taxed.

Your petitioner therefore prays that the said decree may  
 10 be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

A. W. CUTLER,  
*Solicitor pro se.*

THEO. LITTLE,  
*Of counsel with appellant.*

## Answer.

[Filed May 27, 1868.]

The respondent, Sarah L. Tuttle, not confessing or acknowledging all or any of the matters to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto says—that she believes it to be true that such decree as is complained of by the appellant was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when 10 the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity and justice, and she therefore humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

VANATTA & DEMOTT,  
*Solicitors of respondent, and*

JACOB VANATTA,  
*Of counsel.*

M

[NOTE.—The following testimony was received by the printer too late to be inserted in its proper place.]

Deposition on part of Complainant.

[Filed May 26, 1868.]

Examination of witnesses, &c., on the part of the complainant, taken by me, at my office, in Morristown, N. J., on Tuesday, the tenth day of September, eighteen hundred and sixty-seven. A. E. Canfield, esq., appearing for the complainant, and the defendant appearing in person. This  
 10 examination was taken before me, by the consent of the solicitor of the complainant, and the said defendant.

JAS. C. YOUNGBLOOD, *M. C.*

*George H. Looker*, a witness produced on the part of the said complainant, being duly sworn, deposeth and saith—I am forty-three years of age, and live at Littleton, Hanover township; I know Daniel L. Tuttle—have known him since 1840; I live about seventy-five yards from him—have lived there since eighteen hundred and fifty.

*Quest.* Do you know in whose name Mr. Tuttle was doing  
 20 business in, about the years 1863, 1862, and 1861? [Objected to by Mr. Cutler, unless witness speaks from his own personal knowledge.]

*Ans.* I don't recollect how long it is since his mother died; he did business in her name before she died, and in his sister's name since her death; I don't know in what year his mother died.

*Quest.* Did he do business in his sister's name immediately upon the death of his mother, and from that time on?

*Ans.* I believe he did till this last year, or within six  
 30 months; he has not within the last six months; he does business now in his own name; his sister, of whom we have spoken, was married to Adolphus Stewart; she has since been divorced, and calls herself Sarah Louisa Tuttle.

Cross-examination of witness by Mr. Cutler.

*Quest.* In what business has Daniel been engaged since the death of his mother?

*Ans.* He has been farming, I believe, part of the time, and trading and buying and selling horses and cattle; believe I know of his boating; think its part of one summer; I am under the impression he has been boating only one summer, it may have been two; don't know whether he was boating in his sister's name; I suppose he used her horses, from what I have heard him say; have heard him say that the horses 10 and things belonged to her, that he didn't own anything; if he traded or bought, it was done for her; I believe there were judgments against Daniel.

*Quest.* Did you believe the property was the property of Daniel or the property of Sarah?

*Ans.* I had my thoughts about it; the judgments were against him, and I didn't know whether the property was hers or his.

*Quest.* You say you had an individual opinion—what was that individual opinion in reference to the ownership of that 20 property? [Objected to by Mr. Canfield, on the ground that its an improper cross-examination.]

*Ans.* I thought probably it belonged to Daniel.

*Quest.* Have you not said to different ones that it was Daniel's property?

*Ans.* I have no recollection of saying so to any one, still I might.

*Quest.* If you had been asked the question, would you not have said it was Daniel's property?

*Ans.* I don't think I should without I disputed his word; 30 I then had no reason to dispute his word, and he had told me confidentially that he didn't own anything.

*Quest.* If you had said that the property was Daniel's, would you not have expressed your private individual opinion?

*Ans.* Probably I should.

*Quest.* Mrs. Stewart and her family were living with her mother at the time of her death, were they not?

*Ans.* I believe they were.

*Quest.* Had she, at the time of her mother's death, to your 40 knowledge, any means with which to purchase stock?

*Ans.* I couldn't tell whether she had or not—can't answer; I understood that she had money; I understood it from Daniel; he came to my house with paper money, which he said was his sister's, and which he wished to exchange for gold, that she wanted to keep it; I exchanged with him; this was before her mother's death; whether she had kept it or spent it I don't know.

*Quest.* Has not Mrs. Stewart told you that the stock of which you have spoken was Daniel's?

10 *Ans.* No, sir—I think not; she now says it's Daniel's, she don't claim it.

*Quest.* Is not some of this stock now, some of the same stock which he had when you say he was doing business for his sister.

*Ans.* I think he's got a colt that was; that's the only thing I recollect now.

*Quest.* Is not some cattle, plows, and other farming utensils?

*Ans.* I don't know; I think there is a steer there.

20 *Quest.* At the time of the exchange of this money, was his sister Eliza alive?

*Ans.* I don't know; he had other sisters; he didn't say which sister wanted to exchange.

Re-direct examination by Mr. Canfield.

*Quest.* Which sister did you suppose wanted to make the exchange of money.

*Ans.* At the time I didn't know, there were two living there; after the death of one I heard she hadn't left any money, and I then supposed it was Sarah's; Daniel wanted  
30 to buy a lot of land of me for his sister Sarah; he said she'd rather have the land than to have the money lying idle.

G. H. LOOKER.

Sworn to and subscribed before me, this 10th day of September, A. D. 1867.

JAS. C. YOUNGBLOOD, M. C.

## Exhibits for Appellant.

## EXHIBIT No. 3.

Mr. Daniel L. Tuttle,	Dr.
To J. O. Burnett.	
1864. From Oct. 10 to Dec. 20, To 29½ days' carpenter work, at \$1.75 per day, and boarded,	\$51.63
“ “ Dec. 28 to March 22, 1865, To 67 days' carpenter work, at \$1.50 per day, and boarded,	100.50 10
1865. From April 3 to July 11, To 20½ days' carpenter work, at \$1.75 per day, and boarded,	35.87
	<hr/>
	\$188.00
Cr. July 11, Received in cash, \$188.00.	188.00
	<hr/>

## EXHIBIT No. 4.

Bought of F. A. Day.	
Oct. 29. 315 feet — — 6½c.,	\$20.48
“ “ 42 feet hem. — 3c.,	1.26 20
“ “ 192 feet “ 3x4, 3c.,	5.76
	<hr/>
	\$27.50
Received payment,	
F. A. Day.	

## EXHIBIT No. 5.

Received, Morristown, June 27th, 1865, of Daniel L. Tuttle, twenty-one  $\frac{60}{100}$  dollars in full to date.  
\$21.60. Day & Marsh.

## EXHIBIT No. 6.

Mr. Daniel L. Tuttle,

To H. O. Marsh.

1864.	464 feet 1 pine, 5c.,	\$23.20
"	210 feet hem. bds., 2 $\frac{3}{4}$ c.,	5.77
		<hr/>
		\$28.97

Received payment, Oct., 20th, 1864,

H. O. Marsh.

## EXHIBIT No. 7.

10

Daniel L. Tuttle,

Bought of Day &amp; Marsh.

1865.	Nov. 108 feet 1 $\frac{1}{2}$ pine, 7c.,	\$7.56
"	" 12 feet 1 $\frac{1}{4}$ plk, 6c.,	9.00
		<hr/>
		\$16.56
Jan. 27,	52 feet 1 $\frac{1}{2}$ pine, 7c.,	3.64
		<hr/>
		\$20.20

Received payment, Feb. 22d, 1865,

Day &amp; Marsh.

## EXHIBIT No. 8.

Newark, Nov. 26th, 1864.

20

Mr. Daniel Tuttle,

Bought of Ward, Huntington, and Dunham.

56 feet No. 231 moulding,	5 $\frac{25}{100}$	\$2.94
50 " 102 "	1 $\frac{88}{100}$	94
125 " 29 "	1 $\frac{13}{100}$	1.41
		<hr/>
		\$5.29

Paid.

Ward, Huntington, and Dunham.

S. C. H.

## EXHIBIT No. 9.

Morristown, November 27th.

Daniel Tuttle,

To Jacob Crane.

To 329 feet tin roof, at 18c.,	\$59.22
Received payment,	

Jacob Crane.

## EXHIBIT No. 10.

Mr. D. L. Tuttle,

Bought of D. G. Griffiths,

Dr. 10

20 brackets, at 20c.,	\$4.00
128 " " 3c.,	3.84
	<hr/>
	\$7.84

October 24th, 1864.

Received payment,

D. G. Griffiths,

Parkhurst.

## EXHIBIT No. 11.

Newark, N. J., October 24th, 1864.

Mr. E. L. Tuttle,

Bought of Randall &amp; Swain.

20

75 worked narrow boards, 29c.,	\$21.75
415 feet worked narrow plank, 6c.,	24.90
	<hr/>
	\$46.65

Discount,

93

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\$45.72

[STAMP.]

Received payment,

Randall &amp; Swain.

## EXHIBIT No. 13.

## No. 3. Statement. Amount of sales.

	1st lot. Aug. W. Cutler,	\$106.00	
	2d lot. " "	1200.00	
		<u>          </u>	\$1306.00
	Deduct costs,		89.92
			<u>          </u>
			\$1216.08
	$\frac{1}{3}$ to Mrs. Stewart,	\$405.36	
	$\frac{1}{3}$ to Mrs. Anderson,	405.36	
10	$\frac{1}{3}$ to John S. Smith,	405.36	
		<u>          </u>	1216.08
			<u>          </u>
	A. W. Cutler, Dr., to his purchase, as above stated,	\$1306.00	
	Deed and stamp,	5.50	
	Interest on note to 15th June, 1863,	3.90	
		<u>          </u>	\$1315.40
	Mrs. Stuart's share is	\$405.36	
	Mrs. Anderson's,	405.36	
		<u>          </u>	810.72
			<u>          </u>
			\$504.68
20	Interest on this balance, say three months,		7.56
			<u>          </u>
			\$512.24
			<u>          </u>
	September 16th, 1863. Received sixty dollars,		\$60.00

## No. 2. Statement, &amp;c. Amount of sales.

	1st lot. John S. Smith,	\$252.00	
	2d " Henry Boughton,	700.00	
	3d " Aug. W. Cutler,	365.00	
	4th " " "	1185.00	
		<u>          </u>	\$2502.00
	Deduct costs,		127.37
			<u>          </u>
30			\$2374.63

$\frac{17}{54}$ thereof to Mrs. Stuart,	\$747.55
$\frac{17}{54}$ thereof to Mrs. Anderson,	747.55
$\frac{17}{54}$ thereof to John S. Smith,	747.55
$\frac{3}{54}$ thereof to be paid into court,	131.91
	<hr/>
	\$2374.56

A. W. Cutler, Dr., to his purchasers, as above stated,	\$1550.00
Deed and stamp,	5.50
Interest on his note to 15th June, 1863,	4.65
	<hr/>
	\$1560.15 10
Mrs. Stewart's share,	\$747.55
Mrs. Anderson's share,	747.55
	<hr/>
	1495.10
	<hr/>
	\$65.05
Interest on this, from 15th June to 15th Sept., 1863,	97
	<hr/>
	\$66.02

Heirs of Hannah Tuttle.	
To amount due from estate of Hannah Tuttle,	\$301.09
To services and argument in case in Orphans Court,	100.00 20
Drawing petition of appeal and answers in two appeals in Prerogative Court,	50.00
Paid surrogate's bill of expenses and fees,	40.00
" expenses to Trenton, in reference to printing cases,	20.00
" copy for printers,	20.00
" printers, Boswell & Phillips,	175.00
" costs clerk Prerogative Court,	37.37
Expenses and argument in Prerogative Court,	50.00
Matter of division of lands in Supreme Court,	20.00 30
Attending sale at Parsippany,	10.00
Paid consideration money of sale,	185.18
Paid deed, stamps, and recording,	28.08



Sarah L. Stewart.

Received from V. Dalrymple,	\$180.00	
Less fee, Hooley matter,	15.00	
	<u>          </u>	\$165.00
Costs in divorce,	\$62.97	
Interest,	7.44	
	<u>          </u>	
	\$70.44	
Counsel fee,	15.00	
	<u>          </u>	85.44
		<u>          </u>
		\$79.56 10

Daniel L. Tuttle.

Note, Mills Bailey,	\$116.00	
Cash,	50.00	
1863. Oct. " "	40.00	
" " "	50.00	
" Sept. "	60.00	
" " "	40.00	
" Nov. "	60.00	
Taking care of grain,	35.00	
	<u>          </u>	
	\$451.00	20
Interest,	80.00	
	<u>          </u>	\$531.00

## Exhibits on part of Appellee.

## EXHIBIT No. 3.

John C. Anderson and Jane C. his wife, to Sarah L. Tuttle. Warranty deed of conveyance, dated \_\_\_\_\_ day of \_\_\_\_\_, in the year 1863. Acknowledged 16th February, 1863; recorded June 22, 1863. Consideration \$1000. Convey all of these tracts therein described.

10 *1st lot*, being a tract described in a deed from Isaac Canfield to Daniel L. Tuttle, dated April 24, 1819, containing fourteen acres of land, strict measure.

*2d lot*, is described in a deed from Charles Vail to Daniel L. Tuttle, dated 7th June, 1822, containing  $7\frac{92}{100}$  acres, strict measure.

*3d lot*, is described in a deed from Aaron Kitchell and wife to Daniel L. Tuttle, dated 1st July, 1828, containing  $18\frac{50}{100}$  acres, excepting what had been conveyed to the Morris and Essex Railroad Company.

*4th lot*, was formerly the property of Leander Howell, containing 10 acres, more or less.

20 *5th lot*, is in Rockaway township, and formerly belonged to William Winters, lying and being near Horse Pond, containing twelve acres.

## EXHIBIT No. 4.

John C. Anderson and Jane his wife, to Sarah L. Stewart. Warranty deed dated 16th February, 1863. Acknowledged same day. Recorded June 23d, 1863. Consideration \$440. Conveys, in fee, one equal undivided third part of the three tracts first therein described, and the whole of the two last mentioned and described tracts, or parcels of land and pre-  
30 mises, and all said tracts situate, lying and being in the township of Hanover, in the county of Morris.

*1st lot*, is described in a deed from Isaac Johnson and wife

to Nancy Tuttle, dated November 7th, A. D. 1823, containing  $7 \frac{10}{100}$  acres, more or less.

2d lot, adjoins lands now, or late of Eliphalet Osborne and Isaac Johnson, and the Newark and Mount Pleasant turnpike road, containing thirty-eight hundredths of an acre.

3d lot, adjoins the Newark and Mount Pleasant turnpike road, and the road leading from Parsippany to Morristown and contains half an acre, more or less.

4th lot, contains  $14 \frac{66}{100}$  acres, and is described in a deed from George P. McCollough and wife, to Hannah Tuttle, 10 dated 31st February, 1837.

5th lot, containing  $2 \frac{24}{100}$  acres.

“The fourth and fifth tracts above described were lately set off by the commissioners of the estate of Hannah Tuttle, deceased, to Jane C. Anderson.”

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EXHIBIT No. 7.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1863.

In matter of sale of lands, late of Hannah Tuttle, deceased.  
Report of Commissioners.

*To the Supreme Court of Judicature of the State of New Jersey.* 20

Report of the sale of lands and real estate, made by William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, commissioners, appointed by the Honorable Edward W. Whelpley, Chief Justice of the Supreme Court, to divide certain lands and real estate, late of Hannah Tuttle, deceased, situate in the township of Hanover, in the county of Morris, and by an order of said Chief Justice, made on the twentieth day of December last past, we, the said commissioners, ordered to sell said land at public auction to the highest bidder, according to law, we having therefore made our report to the said Chief Justice, that the said lands were so circumstanced that a partition thereof could not be made without great prejudice to the owners of the same, and it also appearing by satisfactory proof to said Chief Justice, that

the said tracts or lots of land could not be partitioned among the owners and proprietors, without great prejudice to their interests, we, the said commissioners, having given notice that the sale of said lands would be made at the hotel of John Class, in said township of Hanover, on the seventh day of March instant, at three o'clock in the afternoon of the same day, according to the provision of an act entitled an act to regulate sales of real estate, made under a public statute, on the directions of a court, that is to say, by public  
10 advertisements, signed by ourselves, and set up at five and more public places in the said county of Morris, one whereof was in the township where said lands are situated, setting forth the time and place of such sale, at least two months before the time appointed for selling the same, and did likewise cause the same to be published in the True Democratic Banner, one of the newspapers printed and published in this state, circulating in the neighborhood of said lands, at least four weeks, successively, once a week, next preceding the time appointed for selling the same; and at the time and  
20 place so appointed for selling the same, between the hours of twelve and five in the afternoon of the same day, we did publicly adjourn the said sale to the twentieth day of March, instant, at two o'clock in the afternoon of the same day, at the hotel of John Class aforesaid, and at the time and place to which the said sale stood adjourned as aforesaid, to wit: at the hotel of John Class, in the said township of Hanover, on the twentieth day of March, in the year eighteen hundred and sixty-three, at the hour of two in the afternoon of the same day, we did proceed to sell the said lands and real estate at  
30 public auction, to the highest bidder, as follows :

The first lot adjoins lands now or late of Eliphalet Osborn and Isaac Johnson, and the Newark and Mount Pleasant turnpike road, containing thirty-eight hundredths of an acre, and is the same Ezekiel Howell and wife conveyed to Nancy Tuttle, by deed, dated October 18, 1811, and recorded in the Morris county record of deeds, in Book V, page 272, &c., to Augustus W. Cutler, for the sum of one hundred and six dollars, he being the highest bidder therefor.

The second lot adjoins the Newark and Mount Pleasant  
40 turnpike road, and the road leading from Parsippany to

Morristown, and contains half an acre, more or less, and is the same conveyed to Nancy Tuttle by Isaac Johnson and wife, by deed dated October 12th, 1814, and recorded in the aforesaid record of deeds, in Book B B, page 409, &c., to the said Augustus W. Cutler, for the sum of twelve hundred dollars, he being the highest bidder therefor.

Of all which we do respectfully make this our report.

WILLIAM M. DIXON,

SILAS TUTTLE,

RICHARD V. W. FAIRCHILD,

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Dated March 24th, 1863.

*Commissioners.*

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NEW JERSEY SUPREME COURT.

In the matter of sale of lands late of Hannah Tuttle, deceased, by William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, commissioners. Report confirmed, and order for conveyance.

It appearing to the court that the Chief Justice of this court did, on the fourth day of July last, appoint the above named William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, commissioners, to divide the lands in the said order of appointment described, as follows, to wit: all those two lots of land and premises hereinafter more particularly described, situate, lying, and being in the township of Hanover, in the county of Morris, and state of New Jersey, to wit:

The first lot adjoins land now or late of Eliphalet Osborn and Isaac Johnson, and the Newark and Mount Pleasant turnpike road, containing thirty-eight hundredths of an acre, and is the same that Ezekiel Howell and wife conveyed to Nancy Tuttle, by deed dated October 18th, A. D. 1811, and recorded in the Morris county record of deeds, in Book V, pages 272, &c.

The second lot adjoins the Newark and Mount Pleasant turnpike road, and the road leading from Parsippany to Morristown, and contains half an acre, more or less, and is the same conveyed to Nancy Tuttle by Isaac Johnson and wife, by deed dated October 12th, A. D. 1814, and recorded

in the aforesaid record of deeds, in Book B B, page 409, &c., being the same lots or parcels of land whereof the said Nancy Tuttle died seized, into three equal shares or parts. Application having been duly made for that purpose to the said Chief Justice by John S. Smith, who claimed an equal undivided one-third part of said lands and premises. The said order of appointment further reciting and stating, that on the twenty-seventh day of May then last past, the said Chief Justice did sign a notice that he had nominated the

10 commissioners above named to divide the said lots or parcels of land into three equal parts or shares, and that unless proper objections were stated to him, at his office in Morristown, in the county of Morris, on the fourth day of July then next, the said commissioners would then be appointed to make partition of the said lands, pursuant to an act entitled "an act for the more easy partition of lands held by coparceners, joint tenants, and tenants in common," and did order the same to be inserted in the True Democratic Banner, a public newspaper printed and published at Morristown, in the county of Morris, for four weeks successively,

20 at least once in each week, between the date of said notice and the fourth day of July, eighteen hundred and sixty-two; and that it appeared by affidavit that the said notice had been advertised pursuant to the said order; and that no objections were made to the said persons nominated; and it further appearing to this court that the said Chief Justice did afterwards, to wit: on the twentieth day of December last past, make an order, under his hand, that the said commissioners should sell the said lots or tracts of land at public

30 auction, to the highest bidder, according to law, which last mentioned order duly stated and recited that it appeared by the report of the said commissioners, that the said tracts or lots of land were so circumstanced that a partition thereof could not be made without great prejudice to the owners of the same, and that it also appeared by satisfactory proof, that the said tracts or lots of land could not be partitioned among the owners and proprietors without great prejudice to their interests, as by the said last mentioned order, reference being thereunto had, will more fully appear; and it now appearing

40 to the court by the report of the said commissioners, that

having notice of the time and place of the sale by public advertisements signed by themselves, and set up at five and more public places in the county of Morris, one whereof was in the said township of Hanover, where the said real estate is situate, at least two months next before the time appointed for selling the same, to be published in the True Democratic Banner, a newspaper printed and published at Morristown, in this state, and circulated in the neighborhood of said real estate, at least four weeks successively, once a week, next preceding the time appointed for selling 10 the same, and at the time and place so appointed for selling the same, to wit: at the hotel of John Class, in the said township of Hanover, on the seventh day of March last past, between the hours of twelve and five in the afternoon of the same day, they, the said commissioners, did publicly adjourn the said sale to the twentieth day of March then instant, at two o'clock in the afternoon of the same day, at the hotel of John Class aforesaid, and at the time and place to which the said sale stood adjourned, as aforesaid, to wit: at the hotel of John Class, in the said township of Hanover, on 20 the twentieth day of March, in the year eighteen hundred and sixty-three, at the hour of two in the afternoon of the same day, did proceed to sell the said lands and real estate to the highest bidder, as follows: The first lot above described to Augustus W. Cutler, for the sum of one hundred and six dollars. The second lot above described to the said Augustus W. Cutler, for the sum of twelve hundred dollars, and no objection being made to the sale, and the same being approved—it is ordered, that the said sale be confirmed as 30 valid and effectual in law, that the said report of sale be recorded, and the said commissioners are directed to execute good and sufficient conveyance in the law to the said purchaser for the said tracts or lots of land so sold as aforesaid.

On motion of

V. DALRIMPLE,  
*Attorney, &c.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the report of commissioners, and of the order of

said court confirming the same, made and entered in the case above stated, as the same remains of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Trenton, [L. s.] this ninth day of November, A. D. eighteen hundred and sixty-six (1866.)

CHAS. P. SMITH, *Clerk.*

NEW JERSEY SUPREME COURT.

JULY 7th, 1863.

- 10 In the matter of sale of lands, late of Hannah Tuttle, deceased, by William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners. Order to pay proceeds.

It appearing that the net amount of moneys arising from the sale of lands lately made by William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners, and approved by the court, after deducting the necessary costs and charges as heretofore taxed by the court, and the sum of four dollars and seventy-one cents for the cost of this order, is the sum of twelve hundred and sixteen dollars and eight  
20 cents. It is now ordered that one-third thereof be paid to John S. Smith, another third thereof be paid personally to Sarah Louisa Stewart, wife of Adolphus Stewart, and the remaining third thereof to be paid personally to Jane Caroline Anderson, wife of John C. Anderson.

On motion of

V. DALRYMPLE,  
*Attorney, &c.*

I consent to the within order.

- 30 *Attorney for Sarah L. Stewart and J. Caroline Anderson.*  
AUG'ST. W. CUTLER,

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify the foregoing to be a true copy of the order of distribution, as the same remains affixed in my office.

In testimony thereof I have hereunto subscribed my name, and affixed the seal of said court, at Trenton, [L. S.] this twelfth day of November, A. D. eighteen hundred and sixty-six.

CHAS. P. SMITH, *Clerk.*

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EXHIBIT No. 8.

In matter of sale of lands, late of Hannah Tuttle, deceased.  
Report of Commissioners.

*To the Supreme Court of Judicature of the State of New Jersey.*

Report of the sale of lands and real estate, made by 10  
William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, commissioners appointed by the Honorable Edward W. Whelpley, Chief Justice of the said Supreme Court, to divide certain lands and real estate, late of Hannah Tuttle, deceased, situate in the township of Hanover, in the county of Morris, and by an order of said Chief Justice, made on the twentieth day of December last past, we, the said commissioners, were ordered to sell said lands at public auction to the highest bidder, according to law. We having theretofore made our report to the said Chief Justice, that the said lands were so circum- 20  
stanced that a partition thereof could not be made without great prejudice to the owners of the same, and it also appearing by satisfactory proof to said Chief Justice, that the said tract or lots or tracts of land could not be partitioned among the owners and proprietors without great prejudice to their interests. We, the said commissioners, having given notice that the sale of the said lands would be made at the hotel of John Class, in the said township of Hanover, on the seventh day of March, instant, at three o'clock in the afternoon of the same day, according to the provisions of an act entitled "An 30  
act to regulate sales of real estates made under a public statute or the direction of a court;" that is to say, by public advertisement, signed by ourselves, and set up at five and more public places in the said county of Morris, one whereof was in the township where said lands are situate, setting forth the time and place of such sale at least two months

next before the time appointed for selling the same, and did likewise cause the same to be published in "The True Democratic Banner," one of the newspapers printed and published in this state and circulated in the neighborhood of said lands, at least four weeks, successively, once a week, next preceding the time appointed for selling the same, and at the time and place so appointed for selling the same, between the hours of twelve and five in the afternoon of the same day, we did publicly adjourn said sale to the nineteenth  
 10 day of March, instant, at two o'clock in the afternoon of the same day, at the hotel of John Class aforesaid; and at the time and place to which the said sale stood adjourned, as aforesaid, to wit, at the hotel of John Class, in the said township of Hanover, on the twentieth day of March, in the year eighteen hundred and sixty-three, at the hour of two in the afternoon of the same day, we did proceed to sell the said lands and real estate at public auction to the highest bidder, as follows:

*The first lot*, being the same described in a deed from Isaac  
 20 Cutler to Daniel L. Tuttle, dated April 24, A. D. 1819, and recorded in the Morris county record of deeds, in book II II, pages 429, &c., and adjoins lands now or formerly of Nancy Tuttle, the turnpike road leading from Whippany to Mount Pleasant, lands now or late of Ebenezer Stiles, Daniel Phoenix, and the heirs of Joseph Lewis, deceased, containing fourteen acres of land, strict measure, to John S. Smith, for the sum of two hundred and fifty-two dollars, he being the highest bidder therefor.

*The second tract*, being the same described in a deed from  
 30 Charles Vail to Daniel L. Tuttle, dated June 7th, A. D. 1822, recorded in said record of deeds, in book M M, page 317, &c., and begins at a stake in the road, near the late residence of Hannah Vail, deceased, and adjoins lands now or formerly of the heirs of Ebenezer Johnson, deceased, and Henry Vail, and contains seven acres and twenty-two hundredths of an acre, more or less, to Henry Boughton, for the sum of seven hundred dollars, he being the highest bidder therefor.

*The third tract*, which is described in a deed from Aaron  
 40 Kitchell and wife to said Daniel L. Tuttle, dated the first day of April, A. D. 1828, and recorded in said record of

deeds, in book W W, page 59, &c., and adjoins lands now or formerly of John Sawyer and Ezekiel Howell and the Old Forge Pond, and contains eighteen acres, be the same more or less, to Augustus W. Cutler, for the sum of three hundred and sixty-five dollars, he being the highest bidder therefor.

*The fourth lot*, being the same described in a deed from Isaac Johnson and wife to Nancy Tuttle, dated November 7th, 1823, and is recorded in said record of deeds, in book Q Q, page 331, &c., and adjoins lands now or formerly of Nancy Tuttle, and contains seven acres and ten hundredths of an acre, be the same more or less, to the said Augustus W. Cutler, for the sum of eleven hundred and eighty-five dollars, he being the highest bidder therefor. Of all which we do respectfully make this our report.

Dated March 24th, 1863.

WILLIAM M. DIXON,  
 SILAS TUTTLE,  
 RICHARD V. W. FAIRCHILD,  
*Commissioners.* 20

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NEW JERSEY SUPREME COURT.

In the matter of the sale of lands late of Hannah Tuttle, deceased, by William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, commissioners. Report confirmed and order for conveyance.

It appearing to the court that the Chief Justice of this court did, on the twenty-sixth day of July, in the year eighteen hundred and sixty-one, appoint the above named William M. Dixon, Silas Tuttle, and Richard V. W. Fairchild, to divide the land and premises in the said order of appointment described, as follows, to wit, all those tracts of lands and premises hereinafter more particularly described, situate, lying, and being in the township of Hanover, in the county of Morris, and state of New Jersey. 30

The first lot is described in a deed from Isaac Cutler to Daniel L. Tuttle, dated April 24th, A. D. 1819, and recorded

in the Morris county record of deeds, in Book H H, page 429, &c., and adjoins lands now or formerly of Nancy Tuttle, the turnpike road leading from Whippany to Mount Pleasant, lands now or late of Ebenezer Stiles, Daniel Phoenix, and the heirs of Joseph Lewis, deceased, containing fourteen acres of land, be the same more or less.

The second tract is described in a deed from Charles Vail to Daniel L. Tuttle, dated June 7th, A. D. 1822, recorded in said record of deeds, in book M M, pages 317, &c., and  
10 begins at a stake in the road near the late residence of Hannah Vail, deceased, and adjoins lands now or formerly of the heirs of Ebenezer Johnson, deceased, and Henry Vail, and contains seven acres and ninety-two hundredths of an acre, more or less.

The third tract is described in a deed from Aaron Kitchell and wife to said Daniel L. Tuttle, dated the first day of April, A. D. 1828, and recorded in said record of deeds, in book W W, pages 59, &c., and adjoins lands now or formerly of Sarrigus and Ezekiel Howell, and the Old Forge pond,  
20 and contains eighteen acres, be the same more or less.

The fourth tract is described in a deed from Isaac Johnson and wife to Nancy Tuttle, dated November 7th, A. D. 1823, and is recorded in said record of deeds, in book Q Q, pages 331, &c., and adjoins lands now or formerly of Nancy Tuttle, and contains seven and ten hundredths of an acre, be the same more or less. In which lots or tracts of land Hannah Tuttle, deceased, was seized at the time of her death of an undivided interest, application having been duly made for that purpose to the said Chief Justice by John S. Smith,  
30 who claimed an undivided twenty fifty-fourths of said lands and premises; the said order of appointment further reciting and stating that on the twenty-fourth day of June, in the year eighteen hundred and sixty-one, the said Chief Justice did sign a notice that he had nominated William M. Dixon, Silas B. Condict, and Richard V. W. Fairchild, commissioners to divide the said tracts or lots of land into three shares or parts; one of said shares or parts being seventeen fifty-fourths, and another of said shares or parts being also seventeen fifty-fourths of said land, and the remaining third  
40 part or share being twenty fifty-fourths of said lands, and

that unless proper objections were stated to him, at his office in Morristown, in the county of Morris, on the twenty-sixth day of July then next, the said William M. Dixon, Silas B. Condict, and Richard V. W. Fairchild, would then be appointed commissioners to make partition of said lands, pursuant to an act entitled "an act for the more easy partition of lands held by co-parceners, joint tenants, and tenants in common," and did order the said notice to be inserted in the True Democratic Banner, a public newspaper, printed and published at Morristown, in the county of Morris, for four 10 weeks successively, once in each week, between the date of said notice and the date of said order of appointment, and at the day and place so appointed, it appeared that the said notice had been advertised pursuant to the said order, and no objections being made to William M. Dixon, and Richard V. W. Fairchild, two of the persons nominated commissioners, and objections being made to the said Silas B. Condict, and it appearing that said objections were well founded, the said Silas Tuttle was appointed commissioner in the room of the said Silas B. Condict, removed, and the said 20 William M. Dixon and Richard V. W. Fairchild were also appointed commissioners to divide the said lands into three shares or parts. One of said shares or parts being seventeen fifty-fourths of said lands, another of said shares or parts being also seventeen fifty-fourths of said lands, and the remaining third part or share being twenty fifty-fourths of said lands. And it further appearing to this court that the said Chief Justice did afterwards, to wit, on the twentieth day of December last past, make an order under his hand that the 30 commissioners should sell the said lots or tracts of land at public auction to the highest bidder according to law; which last mentioned order duly recited and stated that it appeared, by the report of the said commissioners, that the said tracts or lots of land were so circumstanced that a partition thereof could not be made without great prejudice to the owners of the same, and that it also appeared by satisfactory proof, that the said tracts or lots of land could not be partitioned among the owners and proprietors without great prejudice to their interests, as by the said last mentioned order, reference being thereunto had, will more fully appear. And it now appear- 40

ing to the court, by the report of the said commissioners, that having given notice of the time and place of the sale by public advertisements, signed by themselves and set up at five and more public places in the said county of Morris, one whereof was in the said township of Hanover, where the said real estate is situate, at least two months next before the time appointed for selling the same, and did likewise cause the same to be published in the True Democratic Banner, a newspaper printed and published at Morristown, in this state, and circulated in the neighborhood of said real estate, at least four weeks next preceding the time appointed for selling the same, and at the time and place so appointed for selling the same, to wit, at the hotel of John Class, in the said township of Hanover, on the seventh day of March last past, between the hours of twelve and five in the afternoon of the same day, they, said commissioners, did publicly adjourn the said sale to the twentieth day of March, then instant, at two o'clock in the afternoon of the same day, at the hotel of John Class aforesaid, and at the time and place to which the said sale stood adjourned as aforesaid, to wit, at the hotel of John Class, in the said township of Hanover, on the twentieth day of March, in the year eighteen hundred and sixty-three, at the hour of two in the afternoon of the same day, did proceed to sell the said lands to the highest bidders, as follows, to wit:

The first lot above described, to John S. Smith, for the sum of two hundred and fifty-two dollars. The second lot above described, to Henry Boughton, for the sum of seven hundred dollars. The third tract above described, to Augustus W. Cutler, for the sum of three hundred and sixty-five dollars. The fourth lot above described, to the said Augustus W. Cutler, for the sum of eleven hundred and eighty-five dollars; and no objection being made to the said sale, and the same being approved, it is ordered that the said sale be confirmed as valid and effectual in law; that the said report of sale be recorded, and the commissioners are directed to execute good and sufficient conveyances in the law to the said purchasers respectively for the said tracts or lots of land so sold as aforesaid.

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On motion for

V. DALRIMPLE, *Attorney.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the report of commissioners, and of the order of said court confirming the same, made and entered in the case above stated, as the same remains of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Trenton, this [L. s.] ninth day of November, A. D. eighteen hundred and sixty-six (1866).

CH. P. SMITH, *Clerk.* 10

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NEW JERSEY SUPREME COURT.

July 7, 1863.

In the matter of sale of lands late of Hannah Tuttle, deceased, by William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners. Order to pay proceeds.

It appearing that the net amount of moneys arising from the sale of lands lately made by William M. Dixon, Richard V. W. Fairchild, and Silas Tuttle, commissioners, and approved by the court, after deducting the necessary costs and charges as heretofore taxed by the court, and the sum of 20 four dollars and seventy-one cents for the costs of this order, is the sum of twenty-three hundred and twenty-four  $\frac{63}{100}$  dollars.

It is now ordered, that seventeen fifty-fourths thereof be paid to John S. Smith; that seventeen fifty-fourths thereof be paid personally to Sarah Louisa Stewart, wife of Adolphus Stewart; that seventeen fifty-fourths thereof be paid personally to Jane Caroline Anderson, wife of John C. Anderson; and that the remaining three fifty-fourths thereof be paid into this court, subject to the further order of the court.

On motion of

V. DALRIMPLE, *Attorney.* 30

I consent to the within order.

AUG. W. CUTLER,

*Attorney for Sarah L. Stewart and J. Caroline Anderson.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the order of distribution in the foregoing cause, as the same remains affiled in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at Trenton, this [L. s.] twelfth day of November, A. D. eighteen hundred and sixty-six.

CHAS. P. SMITH, *Clerk.*

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## EXHIBIT No. 9.

IN CHANCERY OF NEW JERSEY.

Between Sarah L. Stewart, complainant, and Adolphus Stewart, defendant.

Final decree divorcing the complainant from the defendant, dated June 11th, 1864.

## EXHIBIT A.

Received of Sarah Louisa Stewart, February 24, 1866, one hundred and eighty dollars, on account of services, &c. (Being the balance of one hundred and eighty-five dollars 20 paid me by V. Dalrimple, in compromise of a suit in Chancery between Abraham Hooley, complainant, and Sarah L. Stewart, defendant. The other five dollars was handed to Mrs. Stewart by her brother Daniel.

\$180.00

AUG'S W. CUTLER.

## EXHIBIT B.

Received of Mr. A. S. Stewart, September 16, 1863, sixty dollars, on account.

\$60

AUG'S W. CUTLER.

## EXHIBIT C.

40 Received of Mrs. Sarah Louisa Stewart, Oct. 15, 1863, forty dollars on account.

\$40

AUG'S W. CUTLER.

EXHIBIT D.

Received of Sarah Louisa Stewart, Nov. 13, 1863, sixty dollars, on account of money on sale of real estate of Hannah Tuttle.

\$60

AUG'S W. CUTLER.

EXHIBIT E.

Sarah L. Stewart to John C. Anderson.

Mortgage dated February 16, 1863. Acknowledged same day. Recorded 27th February, 1863; given to secure the payment of \$1200, in two years from date, interest seven 10 per cent., conveys the following lots, which are described in the mortgage as in the foregoing deeds, viz.

1st lot contains 14 acres.

2d " " 7  $\frac{92}{100}$  "

3d " " 18  $\frac{50}{100}$  "

4th lot contains 10 acres, more or less, and formerly belonged to Leander Howell.

5th " " 12 " the Winters lot.

6th " " 5  $\frac{60}{100}$  " more or less.

7th " " the McCulloch lot. 20

8th " " 2  $\frac{24}{100}$  "

EXHIBIT F.

Is a bond made by Sarah L. Stewart to John C. Anderson, and Jane C. Anderson, dated 16th February, 1863, to secure \$1200 in two years, with interest, and is the same bond secured by the last mentioned mortgage.

EXHIBIT G.

"Received of Sarah L. Stewart, two hundred and twenty dollars, in payment of a certain note, dated February 16th, 1863, now due and in the possession of Jonathan Provost. 30 May 25th 1863."

JANE C. ANDERSON.

JOHN C. ANDERSON.

## EXHIBIT H.

Littleton, N. J., April 10th, 1862.

Mrs. S. L. Stewart in account with B. Gregory, per order  
of D. L. Tuttle.

Dr. To half rim ft wheel and one spoke,	\$0.75
“ “ repair seat,	1.00
	—
	\$1.75

Received payment in full April 10.  
Belknap Gregory.

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## EXHIBIT I.

Littleton, N. J., May, 1860.

Mrs. S. L. Stewart, Dr., in account.

To bottom bucket,	\$0.15
To set of whippetrees,	1.00
	—
	\$1.15

Received, July 15, 1860, payment in full,  
B. Gregory.

## EXHIBIT J.

Littleton, N. J., Nov., 1st, 1860.

20 Mrs. S. L. Stewart, in account.

Dr. To two spring bars,	\$1.25
15th. Received payment,	
B. Gregory.	

## EXHIBIT K.

Littleton, Jan. 12, 1863.

Miss S. L. Stewart,

Bought of Mary S. Wright.

One yoke of oxen,	\$70.00
One wagon and box,	25.00
30 Three cows,	75.00

One lot of hay,	10.00
Two bee-hives,	5.00
One churn,	3.00
One bedstead,	2.50
Stone bolt,	2.00
Harrow, cultivator, plough and table, ox chains, spade, and shovel, &c.,	10.00
Three barrels,	2.25
Ice cream freezer and nails,	1.25
Stove,	1.00 10
Lot of tape, and stick, and brush hook, and grind stone, flails, hoes, and pick, cutting box, ——— machines, and crow bars, and nails, paints, rakes, chains,	10.00
	<hr/>
	\$217.00

January 15, 1863,

Received payment,

Mary S. Wright,

Per Henry Edwards.

