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New Jersey Court of Errors and Appeals.

Between—

EUGENE C. POMEROY, *et al.*,
Appellants,
and

JOSEPHINE POMEROY, *et al.*,
Respondents.

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On Appeal.

BRIEF FOR RESPONDENTS.

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This is a plain, simple suit for the partition of lands in this State. The land is to be divided into three equal shares, one share to go to the appellants, one share to the respondent Josephine Pomeroy and one share to the respondent Julia Pomeroy Newell. There is no dispute as to the title, as to the number of shares, as to what part of the whole each is to receive, or as to the persons entitled to take their respective shares. There is no appeal because of any dispute on these subjects. No reason exists or ever has existed why this partition suit should not have been brought to a speedy conclusion, yet the bill was filed October 11, 1890, more than six years ago, and these respondents who have desired to hold their property in severalty have all this time been prevented from so doing and from using and improving it as they desire.

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What benefit can accrue to the *infant* appellant by this policy of delay, it is impossible to conceive. He is entitled to one-third of this real estate, no more is

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claimed, no less is sought to be given to him; and the constant effort has been to set off in severalty his undisputed, one-third which his guardian has persistently resisted.

This appeal is from a final decree of the Chancellor confirming a report of commissioners in partition, which decree bears date, September 14, 1896. (Page 168, l. 26 amended petition of appeal.) It is not an
 10 appeal from the decree of the Chancellor advised by Vice Chancellor Green, bearing date May 20, 1895, decreeing partition and appointing commissioners, which decree is found at Page 50 of the case.

I.

The first ground of appeal is stated on Pages 170 and 171, to be because the Court denied "the petition
 20 "of the said infant defendant Eugene Cowles Pomeroy "to stay all proceedings in this cause until the final "determination of the suit in the Circuit Court of the "United States for the District of New Jersey which "is mentioned in said petition and in answer of said "defendants for that the prior partition of the lands in "controversy is prohibited by the agreement between "said deceased and said Josephine and said Julia which "is also mentioned in said petition and said answer."

An examination of the reasons filed by the appel-
 30 lants for suppressing the report of the commissioners, which reasons appear beginning on Page 81, does not disclose that this ground of appeal was in any way urged upon the consideration of the Chancellor.

The agreement referred to in the first ground of appeal is set out at length in the answer beginning at bottom of Page 17, and on Pages 18, 19, 20, 21, and is dealt with by Vice Chancellor Green fully in his conclusions beginning at Page 43, l. 32, and on Pages 44, 45, 46, 47, 48, 49 and 50. He decides "there is
 40 "nothing in the agreement which in law, equity or

“morals would interfere with these parties instituting
 “and proceeding with this suit to have partition of the
 real estate” (Page 50 l. 1 to 5); and he also says (Page
 49 l. 20). “It would seem that a partition of the real
 “estate would be carrying the terms of the agreement
 “into effect.” The decree for partition formed upon
 this opinion is not appealed from. However, an ex-
 amination of the agreement will fully justify the Vice
 Chancellor’s conclusions. The agreement specifically
 provides (Page 20, l. 20) “that the real estate of George 10
 Pomeroy, deceased, and of Edward Pomeroy, deceased,
 wherever situated and by whomsoever of the parties
 hereto held, shall be conveyed by good and sufficient
 deeds of conveyance by each of the parties hereto, an
 undivided third part to Julia P. Morrison” (now
 Newell) “an undivided third part to Josephine Pom-
 eroy and an undivided third part to George P. Pomeroy”
 (to whose rights admittedly the Respondents succeed)
 “so that said last named parties shall hold the entire 20
 title to said real estate as tenants in common.”

The undoubted right of a tenant in common is to have partition.

In *Bentley v. Long Dock Co.*, 1 McCarter 480, unan-
 imously affirmed without any opinion in 2 McCarter
 501, Chancellor Green says, at Page 489:

“Partition is a matter of right and by the
 ancient practice, both at law and in 30
 equity, the partition was made, how-
 ever prejudicial it might be to the
 interests of the parties.”

It was to remedy this evil that the statute was
 passed authorizing sales when the commissioners re-
 ported that partition could not be made without great
 prejudice.

In *Hay v. Estell*, 3 C. E. Green 252, Chancellor
 Zabriskie says: 40

“A tenant in common has a right to partition in Chancery if he shows a title to a share.”

10 There is nothing whatever in the agreement abridging that right or limiting it in any way. There is a provision as to the personal property, Page 20, l. 13, that if it cannot be divided in kind, then there may be a sale and the proceeds divided. We deny specifically that in the agreement “the prior” (that is prior to the determination of the suit in the U. S. Court) “partition of the lands in controversy is prohibited by the agreement between said deceased” (i. e. George P. Pomeroy) “and the said Josephine and the said Julia.”

20 The United States Court also held the same thing when it dissolved the injunction; see memorandum of Judge Green cited at length by Vice Chancellor Green, page 45.

The pendency of the suit in the United States Court for an accounting under the agreement is no bar to the partition suit in the Court of Chancery of New Jersey, nor any reason why that suit should be delayed until the suit in the United States Court is determined. The suit in the United States Court cannot partition this land, nor can this suit produce an accounting under the agreement.

30 *Fulton v. Golden*, 10 C. E. Green 353.

Fulton filed a bill for account against Golden and Golden pleaded the pendency of an action of account by himself against Fulton in Pennsylvania, and the Chancellor says:

40 “The pendency of a suit at law, if brought by Fulton, the complainant against Golden, for the identical object and purpose with which this suit is instituted would constitute no bar to this

action. Nor would the fact that such suit is pending in a court in another State make any difference."

In *Way v. Bragan*, 1 C. E. Green 213, Chancellor Green says:

"A plea of another suit depending for the same cause in bar of a suit in equity can only be of a suit depending in the same or some other court of equity. 10
The former suit must not only be for the same cause, but the effect must be the same. The remedy must be co-extensive and equally beneficial to the complainant."

Foster's Federal Practice 194. "The pendency of another suit in a court of another of the United States or a foreign country is not a bar to a suit for the 20 same relief in a Circuit Court of the United States. Nor it seems, is the pendency of a similar suit in a court held within the same State where the Federal Court is held."

II.

The second ground of reversal is that the Court erred "in decreeing a partition of the lands in controversy in this suit without charging upon the lands 30
allotted to said Josephine and upon the lands allotted to said Julia their indebtedness to said Eugene under said agreement the amount whereof is to be determined in said suit in the said Court of the United States; for that the interest of said Josephine and the interest of said Julia in the lands which were sought to be partitioned in this suit is subject to an equitable lien under said agreement to secure the payment of said indebtedness which said lien is wholly overlooked and ignored in said decree." 40

There is nothing in the agreement, nor one word of testimony throughout the whole case showing any indebtedness from either Josephine or Julia to Eugene; in fact the ground of reversal itself states that this "is to be determined." There is an allegation that the Master to whom the matter was referred has reported some indebtedness, but exceptions have been filed to his report and no hearing has yet been had upon those exceptions.

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There is nothing in the agreement itself from which it can even be inferred that any indebtedness found to be due from one to another is to be a charge upon the individual shares of the real estate, certainly nothing to indicate that any indebtedness of Julia and Josephine is to be a charge, for the agreement specifically states that Edward, now represented by the appellants was indebted to Julia and Josephine. At page 18, l. 30, is this in the agreement:

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"AND, WHEREAS, It is agreed by the parties hereto that "the said Edward Pomeroy at the time of his death "was indebted unto the said Julia P. Morrison (now "Newell), Josephine Pomeroy and George P. Pomeroy, "or some one or more of them in a sum or sums the "amount of which is unknown to the parties hereto;" and the agreement which is for a settlement between Julia, Josephine and George P., provides as to the personal property, that it shall be equally distributed in kind, and if that cannot be, that so much as necessary be sold and the proceeds distributed. And as to the real estate, that it be held by the three as tenants in common. Page 20. This is an estate with a large amount of personal and real estate, and no difficulty exists in so adjusting the personalty as to carry out the agreement.

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If any judgment or decree exists against either Julia or Josephine, which is a lien upon lands belonging to them as tenants in common, it becomes by force of the

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statute a lien upon their separate lands after partition. (*Gen. St. of N. J.*, page 2,430, sec. 36.)

If there is any equitable lien by reason of this agreement, against the shares of Josephine or Julia as tenants in common, it will remain against the separate shares of Josephine and Julia when partition is made, and is no ground for defeating or delaying partition.

Speer v. Speer, 1 McCarter 240.

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“A partition will not affect any rights legal or equitable which the creditor may have.”

III.

The third ground of reversal is that the report of the Commissioners in partition “is clearly shown *by the objections* and by the evidence and *by the suggestions* made in support thereof to be manifestly unequal, 20 unjust and oppressive to said defendants.”

What may be shown by the “objections” and by the “suggestions” is of no consequence; nor will the Court go into a consideration of the evidence to any extent.

The Chancellor appointed as Commissioners, William L. Dayton, now one of the judges of this Court; Philander B. Pierson, a counselor at Law of Morristown, residing near the most of this property, and Frank Fuller, a large property owner residing at Madison, in close proximity to the larger part of the property. They examined witnesses, received statements from the guardian of the infant appellant; they inspected the property (Page 109) (Page 121) and then made up their report. Objections were made to the report. The Chancellor heard the objections and directed that the Commissioners should be examined as to the methods pursued by them in reaching their conclusions. Each Commissioner was examined; the testimony of Judge 30 40

Dayton is on Page 100 to 112; that of Mr. Fuller, page 88 to 99; that of Mr. Pierson, Page 112 to 122. The Chancellor then had another hearing and considered the testimony of the Commissioners as well as the testimony taken by the Commissioners, and in his memorandum (Page 153 l 3) says:

10 "After a careful review of the testimony taken by the Commissioners and the testimony of the Commissioners themselves as to the manner in which they performed their duty, it does not appear to me that either in making the several parcels or in the allotment of one of those parcels to the infant, they have erred prejudicially to the infant. Unless they have clearly so erred, the motion to suppress their report should not prevail."

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In *Bentley v. Long Dock Co.*, 1 McCarter 489, the Chancellor says:

30 "If the Commissioners had proceeded to make partition their action would have been conclusive as to the expediency and propriety of that course of action and equally conclusive upon the mode of making the partition unless an error is clearly shown."

The Commissioners even adopted and acted upon the ideas of Chandler, the guardian of the infant appellant, as submitted by him to the Commissioners in Exhibit C 2, referred to in the examination of the Commissioners Page 121, l. 21, also l. 34. His suggestion was that the homestead should not be allotted to the infant, and the Commissioners allotted it to Mrs. Newall; also that the lands allotted to the sisters should be contiguous and not surrounding that of the infant, and the

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Commissioners adopted the idea. In the shares suggested by Chandler to the Commissioners he included all the Bayonne lands in the infant's share and although the commissioners in their report so allotted them yet he makes as one of the objections to confirming their report (Page 83, l. 30) the fact that they did not divide up the Bayonne lands but gave them all to the infant as he had asked them to do.

IV.

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The fourth ground for reversal (page 171) is because the Commissioners did "not make any proper charge or allowance for the *furniture* in the Pomeroy Homestead described in the proceedings, which furniture has been so affixed to said Homestead and made a part thereof by the acts of the parties that it must go therewith in case of any partition or sale thereof, as plainly appears from the evidence; and notwithstanding the failure of said Commissioners to 20
"make any proper provision for the loss of one of the houses on the said premises allotted to said infant which was destroyed by fire before filing of said report as plainly appears from the evidence; and notwithstanding the omission of said Commissioners to make any proper exhibit of the unpaid taxes standing against the property sought to be partitioned, nor any provision for the liquidation of said taxes."

a. As to the *furniture*.

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A complete answer to this objection is that the Commissioners did not partition the furniture or consider it in their division, because they were not directed by their commission so to do. The matter of this furniture nowhere appears in the bill, answer, evidence before the Chancellor, decree for partition, commission, evidence before the Commissioners or in the evidence of the Commissioners themselves, except to ask them whether they considered the furniture. 40

Its first appearance in this case was in some suggestions by Chandler, the guardian *ad litem* of the infant defendant, submitted to the commission. One of the suggestions marked Exhibit C 1, dated Chicago, December 10, 1895, and introduced at the examination in which the Commissioners themselves testified (Page 108 l. 10) refers to this furniture as follows:

10 “Postscript IV. It should be noticed and taken into
 “consideration in some way that in the U. S. Circuit
 “Court of New Jersey the Master has reported that
 “the furniture in the Madison Homestead is to go with
 “the house. As neither party has excepted to that
 “portion of the report it is practically confirmed and
 “only waits a decree. By *consent of all parties, however*
 “*a different order might be obtained.* As it now stands,
 “the furniture is part of the homestead and its value
 “more or less should be taken into account.”

20 In another set of suggestions by Chandler, sub-
 mitted to the Commissioners, marked Exhibit C 2, in-
 troduced at the same examination where the Commis-
 sioners testified (Page 121 l. 21) and giving a specific
 plan of division, he refers again to the furniture as
 follows: “There should no doubt be some changes in
 “these Schedules on account of of the furniture going
 “with the house and not as yet taken into considera-
 “tion. The value (say not to exceed \$6,000 the
 30 “assessed value has been for years \$3,000 or about
 “one-half of the real value) could be added to the value
 “of the improvements in Schedule A, but the land
 “could be reduced in quantity on either side, the whole
 “valuation of Schedule A being increased one-third
 “the amount of the value of the furniture” and then
 he attempts to show how the other shares could be
 equalized.

It next appears in the objection to the report of the
 Commissioners, page 82, l. 34. “2. That in a certain
 40 “suit in equity in the Circuit Court of the United

“States for the District of New Jersey provision has
 “been made that the furniture in the household man-
 “sion involved in this case would remain in and go with
 “the same in case of any disposition thereof by parti-
 “tion or sale; but in the partition made by said Com-
 “missioners the said homestead has been awarded to
 “said Julia without any regard to said furniture, or any
 “charge against her for, or on account of the value
 “thereof, although the same has been assessed as of
 “the value of five thousand dollars (\$5,000.”) 10

No evidence of any sort to support this objection was ever introduced anywhere. At the last hearing before the Chancellor he states in a letter to Mr. Guild, page 122, that counsel handed him three or four printed documents, among which was a copy of Master's report and exceptions to it in the United States Circuit Court for New Jersey, and that on page 17 of that report appeared this paragraph:

“And the Master further reports that the
 household furniture and fixtures at
 and in the homestead at Madison, do
 remain there in use and go with the
 same in case of partition or sale, *un-*
less on special application hereafter the
Court shall otherwise direct as to the
whole or any part thereof, or the par-
 ties shall otherwise arrange by agree-
 ment.” 20

The Chancellor further states that it did not appear that the exceptions had been disposed of, or the report confirmed, or the suggestions with respect to the furniture adopted by the Court, and as a fact that is still the situation.

Therefore to set aside the report of the Commission-
 ers in this case and to require all these proceedings to
 be amended so as to bring in this furniture, and then
 have the Commissioners reconvene and readjust their 30

allotments when these appellants can obtain any relief to which they may be entitled with respect to this furniture, there being reserved to them as stated in terms, in this report of the Master the right to make "special application" to the Court for that purpose, would be a great hardship, injustice and expense to these respondents.

10 The matter of the furniture can be much more readily settled in the accounting suit than in the partition suit. It really belongs in the accounting suit.

b. As to loss by fire.

20 One of the houses allotted to the appellants was somewhat damaged by fire about the time the Commissioners filed their report. There is no evidence as to the date of the fire. Mr. Fuller says (Page 94 l. 17). "I hardly think I heard of it until after the report was filed; that I cannot say." Judge Dayton says (Page 103 l. 8). "I learned after the report had been signed that a fire had occurred and the Commissioners have not changed their report in consequence." Mr. Pierson says (Page 116 l. 12) that the report had been signed and "I did not know when the fire occurred but that the report had been already filed."

30 The damage to the house, Fuller says Page 94 l. 29 he understood was \$700 or \$800, and Pierson says Page 116 l. 19, he understood it was about \$1,000. The property was insured; the insurance company admitted its liability and adjusted the loss and the insurance money which amply covers the loss goes to the party to whose share that house was allotted.

40 Mr. Fuller says, page 94, 1, 22: "Mr. Moller told me at the station the other day it was adjusted and the insurance allowed, and I said, 'Who has got it?' and he said the insurance company was waiting for a legal draft upon it; he said it covered the damage entirely and a little more."

Mr. Pierson says, page 116, 1, 23: "I understand the loss was adjusted. I was told objection was made at first because the house had not been occupied; in fact I went to New York to see the insurance people about it, they had adjusted it, or agreed to on presentation of proper proofs."

The appellants upon receipt of this insurance have the full share allotted to them.

c. As to the taxes.

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The Chancellor in his memorandum of decision (Page 153, 1, 12) says some tax liens were not taken into consideration, and directed the payments of two-thirds of them by the appellants, before the report of the Commissioners would be confirmed. These were paid and upon being satisfied that his directions had been complied with he confirmed the report.

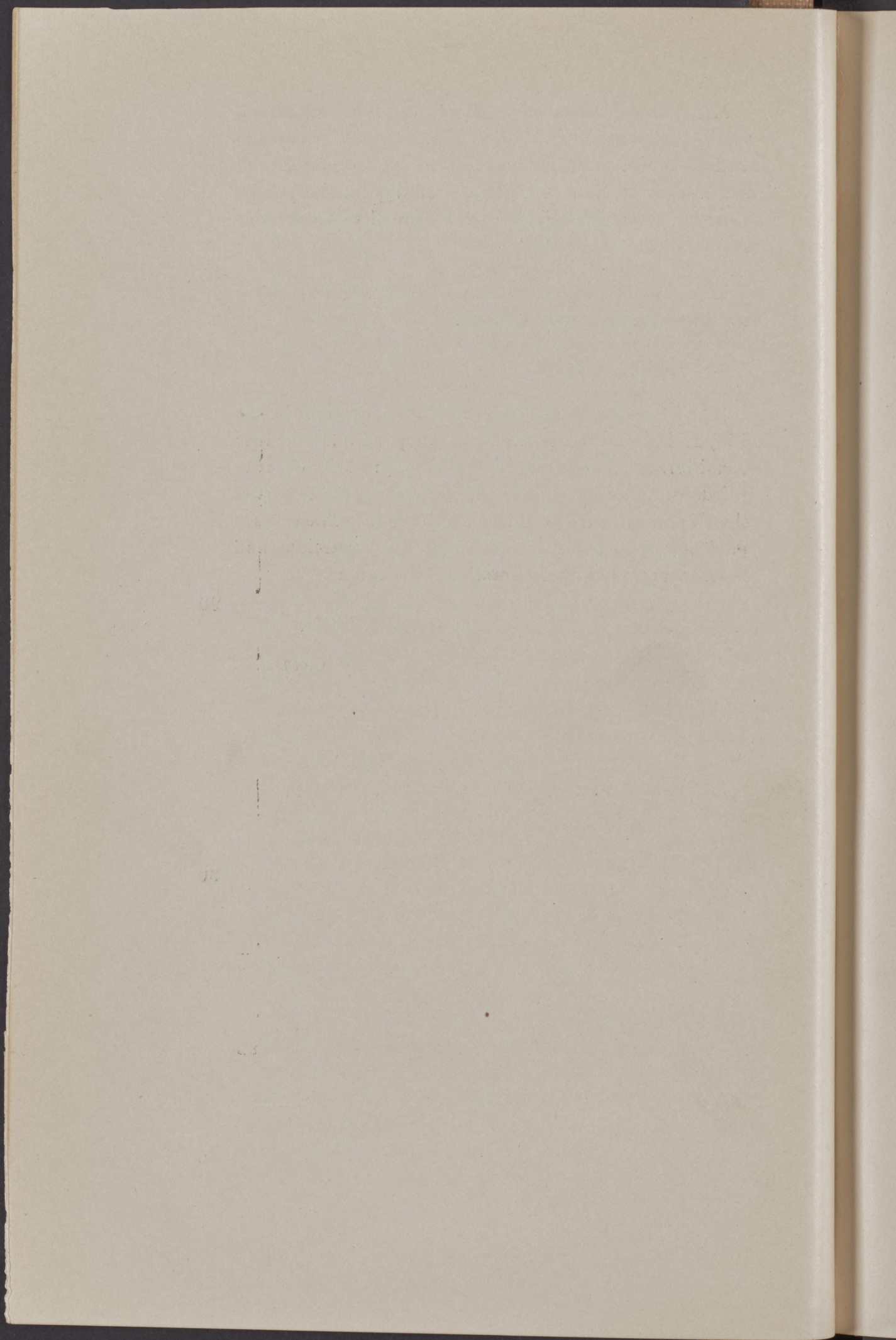
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A. Q. GARRETSON,

Of Counsel.

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STATE OF NEW JERSEY, } ss.

IN THE
COURT OF ERRORS AND APPEALS

OF THE MARCH TERM, A. D. 1897.

BETWEEN EUGENE C. POMEROY, MAR-
THA E. BUCKINGHAM, ANNA S.
CHANDLER, ROSE A. SELFRIDGE,
FORMERLY ROSE A. BUCKINGHAM, MARY
E. VAN AULEN AND FRANK R.
CHANDLER,

Appellants,
and

JOSEPHINE POMEROY, JULIA POME-
ROY NEWELL, FORMERLY JULIA
POMEROY MORRISON, AND GEORGE B.
NEWELL, HER HUSBAND,

Respondents.

Appeal from

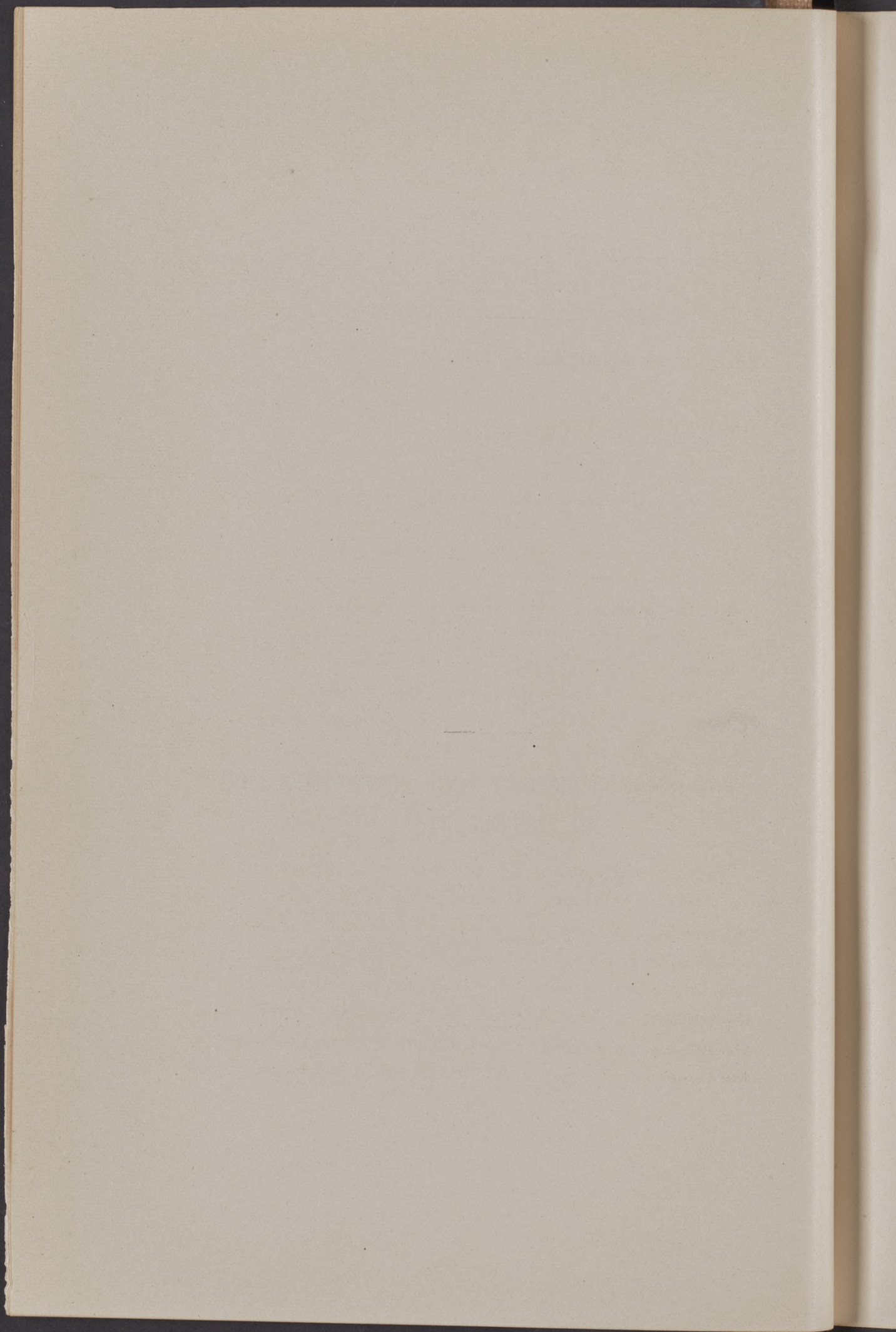
Partition in Chancery.

POINTS OF ARGUMENT AND AUTHORITIES FOR
APPELLANTS.

By C. C. BONNEY AND GUILD & LUM,

Solicitors and Counsel.

CHICAGO:
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1897.



In the New Jersey Court of Errors and Appeals.

EUGENE C. POMEROY ET AL. }
v. } Appeal from Parti-
JOSEPHINE POMEROY ET AL. } tion in Chancery.

APPELLANTS' POINTS AND AUTHORITIES.

MAY IT PLEASE THE COURT :

1. The principal party in interest in this appeal is Eugene C. Pomeroy, an infant of tender years. Because of his infancy he is entitled to the protection of the court at every stage of the controversy. He can lose nothing by default. No presumption or intendment is to be made against him. The proceedings of the Court of Chancery can not be sustained against him, unless it clearly appears from the whole record that all his rights and interests in the subject-matter of the suit have been well and fully protected.

No burden of pleading, of proof, or of argument can be imposed on the infant. All the burdens of the case from its beginning to its close rest on the complainant who seeks to interfere with the infant's estate. It is not necessary for the infant to show, beyond controversy, that he will be injured if the proceedings of the court below shall be upheld; it is enough for his success on this appeal if the complainant in the Court of Chancery, shall fail to make it clear from the

record than an affirmance of the Chancellor's decree can not result in any diminution of, or injury to the infant's estate. The infant claims that the partition decree is seriously unequal, unjust and oppressive as to him; insists that the appellees can not demonstrate the contrary from the record, and that therefore the decree of the Chancellor should be reversed.

In all suits brought against infants, says Chief Justice Marshall, whom the law supposes to be incapable of understanding and managing their own affairs, the duty of watching over their interests devolves, in a considerable degree, upon the court.

Bank of The United States v. Ritchie, 8 Peters, 144.
Cooper Equity Pleadings, 28, and authorities cited.

In equity, nothing can be admitted against an infant, but everything must be proved.

Every essential particular must be proved against infant defendants, whether they answer by guardian *ad litem* or not.

In equity proceedings against infants, full proof is necessary, *which must appear on the record*.

The record must furnish the evidence to sustain a decree against an infant.

Hill's Chancery Practice, 602, and cases cited.

Wherever a suit is instituted in the court of chancery, relative to the person or property of an infant, although he is not under any general guardian appointed by the court, he is treated as a ward of the court, and as being under its special cognizance and protection.

And when once the court of chancery has directly or indirectly assumed authority over the person or property of an infant, as its ward, it acts throughout with all the anxious care and vigilance of a parent; and it allows neither the guard-

ian nor any other person to do any act injurious to the rights or interests of the infant.

Story's Equity Juris. Sec., 1352, 1353.

It is therefore the duty of this high tribunal, anxiously and dilligently to inquire into the merits of the present appeal, and to reverse the Chancellor's decree, not only in case any material injury to the infant shall be manifest, but quite as readily if the record shall fail to show that no such injury can result to the infant, under the decree.

The ordinary presumption in favor of the validity and regularity of the proceedings in the court below, is met and overcome by the counter presumption against them in favor of the infant. The result is, that whereas, in the case of an appellant not under any disability, the proceedings must stand, unless he can clearly demonstrate their illegality; it is otherwise in case of an appeal by an infant, and he will succeed unless his adversary can affirmatively show the legality and justice of the judgment or decree.

2. Where a verdict has been found by a jury in an action at common law, there is a presumption that all the facts necessary to sustain it were established by the evidence; but in a suit in equity, there is no such presumption. The evidence must appear in the record; and if on examination it be found insufficient to sustain the decree, a reversal will be ordered. The court will not presume that any other proof was made than what appears in the record. This is especially true in reference to decrees against minors. Where a minor is a defendant to a bill, a decree can be rendered against him only on full proof.

Ward v. Owens, 12 Ill. 283.

Waugh v. Robbins, 33 Ill. 182.

An appeal from a final decree brings before the Appellate Court all interlocutory decrees involving the merits, as well as the Master's report, *together with the evidence upon which they are founded.*

Decker et al. v. Buckman et al., 1 Stewart, 614, and cases cited.

Clair v. Terhune, 8 Stewart, 338-339.

This point is made with reference to the special grounds of appeal stated in the petition of appellants, and is not intended to refer to anything which may have been omitted from the printed case through mistake, or pursuant to any agreement or understanding with counsel for appellees. If any accidental omission of a material matter should be discovered, it should be supplied without unnecessary delay or expense. Should the plats or maps or other exhibits used before the commissioners or before the chancellor, become material to the determination of this appeal, we understand that the originals are to be produced at the request of the court, or the counsel for either party.

The substance of the present objection is that matters not sufficiently proved in the course of the proceedings in the court below, can not be aided in this court, *as against the infant*, by any presumption in their behalf; but that the only proper way in which to supply such a defect is to reverse the decree and remand the cause for further proceedings.

This point will be enlarged in discussing the questions raised in relation to the homestead furniture and fixtures, the destruction of one of the cottages by fire, and the unpaid taxes; and in commenting on the Chancellor's opinion in the case.

3. The decree of partition should be reversed, and all further proceedings stayed until the court shall otherwise order and direct, for the reasons set forth in the infant's pe-

tion, which is contained in the Printed Case, on pages 31 to 35.

This point depends upon the proper construction and application of the agreement in writing set forth in the answer contained in the Printed Case, on pages 17 to 21; and is supported by the facts disclosed in the Master's Report, which is contained in the Printed Case, on pages 125 to 151.

This objection is in no degree impaired by the general right of tenants in common to a partition. The question is, not whether the complainant had a technical right to a partition, but it is whether at the time and under the circumstances set forth in the pleadings and established by the evidence, the complainant was entitled to the aid of the court of equity for the enforcement of her claims.

The court of equity knows nothing of the enforcement of merely technical rights. If this court acts at all, it is for some equitable reason, under equitable circumstances, and upon equitable conditions. Among the general rules which it rigorously applies is this, that "he who seeks equity must do equity." This rule applies to the whole subject-matter of the controversy, which, in this case, is the estate of the late George Pomeroy, deceased.

Under this rule, a complainant can not separate from the general subject-matter, a particular part of it, and obtain the aid of the court in relation to that part, if in respect to some other portion of the same subject-matter he is doing injustice to the defendant in the case. For it is another maxim of the court of equity, that it "delights to do justice, and not by halves." That "if it take jurisdiction for one purpose, it will take it for all, in order to see that complete justice is done between the parties." The agreement between the surviving children of George Pomeroy, to which reference has been

made, relates to the whole of his estate, and to its equitable division among those children.

This agreement embraces all the land which is in controversy in the present partition suit, as well as the personal estate of the ancestor. Under this agreement the complainant below is not entitled to the aid of the court of chancery to obtain her share of the real estate, while doing injustice to the infant defendant in respect to the personal property. Both are parts of one subject-matter, and it would be a mere common law technicality to separate them, and deal with them independently of each other, for the purpose of avoiding the rules of equity.

The Master's Report, above mentioned, shows that the accounting for which the agreement provides has not been completed, but is still in progress in the Circuit Court of the United States for the District of New Jersey; and that under the agreement an indebtedness exists from the Pomeroy sisters to the appellant, Eugene C. Pomeroy, the infant son of their deceased brother, George P. Pomeroy.

Printed Case, 142.

We therefore insist that under these circumstances the Pomeroy sisters are not entitled to the aid of the court of equity to obtain a partition of the real estate; but that the real estate should be regarded as temporarily tied up, and the common right of partition suspended by the agreement, and the circumstances disclosed in the evidence.

In *Barrell v. Barrell*, Chancellor Runyan says :

The complainant insists that the considerations presented by the answer, can not properly influence or affect the action of the court, seeing that no question is made as to the legal title of the complainant to the share which he claims to own in the real estate, of which he seeks partition. *But when partition is sought in this court, it will only be accorded*

on equitable terms, when it seems to the court just that such equitable terms should be imposed. Doughaday v. Crowell, 3 Stockt. 201. Haines v. Haines, 4 Md. Ch. R. 133.

The court can not be successfully called upon to work injustice. The fact that the complainant might obtain partition at law, or that he is entirely at liberty to sell his undivided interest in the real estate in question, will not induce this court to grant him the unqualified partition he seeks, if it appear that it would be unjust to do so. *He has come into this court for equity, he must, therefore, do equity.*

Barrell v. Barrell, 10 C. E. Green, 176-177.

4. In denying the infant's petition to postpone proceedings in the partition suit, Vice-Chancellor Green, Printed Case, 47, says :

“ If the amount due from one tenant in common to the other is a claim, or lien upon such daughter's share in the real estate, the decree of the court can, and in fact, always does transfer, so to speak, the lien from the undivided share to the share of the party as set off.”

But although this is stated as one of the reasons for denying the infant's petition, no corresponding provision is made in the decree finally entered by the Chancellor. The decree is a blank on this subject. We contend that the Court of Chancery was bound by its former action in the case to insert in the final decree confirming the partition, a distinct charge upon the lands allotted to each of the Pomeroy sisters, of whatever indebtedness should finally be found due from them, respectively, to the infant appellant; and we insist that for the total omission to make this provision the decree in question should be reversed.

We think it will hardly be disputed that under the agreement an Equitable Lien exists on all the property to which the agreement relates, to secure the payment of any indebtedness

which may be established by the accounting for which the agreement provides; and we contend that it is highly inequitable to deprive the infant defendant of the security which this lien would afford, by ignoring it and setting off to the Pomeroy sisters their respective shares of the real estate, as though free from this incumbrance. It is certainly as much the duty of the court to protect this right of the infant, as it can be to enforce any claim of the complainant.

In passing, we will observe that if we should agree with the Vice-Chancellor that the rule which binds the complainant to do equity as a condition of receiving aid in equity, applies only to the acts of the party with reference to the subject-matter of the suit, and that it does not apply to what has been done, or what has not been done, by the party, with reference to some outside matter, we nevertheless insist that he seriously errs in limiting its application to half the subject-matter of the present controversy; thus enabling the complainant to work a serious injury to the interests of the infant defendant in the other half of the estate.

5. The decree should be reversed for the failure of the court below to take any action in relation to the Homestead furniture and fixtures. The examination of the commissioners of partition, under the chancellor's order, pending the hearing before him, clearly shows that this matter was the subject of a great deal of talk and discussion before the commissioners (Printed Case, 89); that the matter of the furniture was considered (Ib. 90); that a copy of the Master's Report in the case pending in the Circuit Court of the United States was produced and furnished to the Chancellor in this case (Ib. 102); that the substance of the agreement between the parties was that the furniture should remain in and go with the Homestead in case of any disposition thereof by partition.

or sale (Ib. 107;) that the Commissioners thought they had nothing to do with the furniture, as it was not mentioned in their commission, and they did not call for any evidence in relation to it, nor examine it personally when they visited the Homestead (Ib. 114, 115).

We insist that under the circumstances stated, it was clearly the duty of the Commissioners, on their own motion, to ascertain all the material facts in relation to the furniture, its value, etc., and to charge the fair value thereof to the party to whom the Homestead was allotted. Whatever might be the difficulties of the case in action at common law, we think that there is no question that in equity it was perfectly competent for the parties to provide that the furniture and fixtures of the Homestead should go with the same in case of a partition or sale. The practical effect of the agreement in evidence, and the action of the Commissioners in their report, and the Chancellor's confirmatory decree, is to make a donation to the complainant of the Homestead furniture and fixtures, valued at not less than \$5,000. We think this is an injustice which the Court of Chancery ought not to have permitted, and which this court will not uphold.

6. The decree of the court below should be reversed because the facts in relation to the destruction by fire of one of the dwelling houses allotted to the infant appellant are not sufficiently disclosed; and because it does not appear from the evidence that any adjustment of the loss thereby occasioned was made; and this court will not presume that the infant appellant has not thereby been injured.

The Commissioners learned of the destruction of the dwelling house by fire, after the report had been signed (Printed Case, 103). One of the Commissioners went to New York to see the insurance people about the loss, and understood that

they had adjusted it, or had agreed to do so, upon the presentation of proper proofs (Ibid. 116). But there is no evidence in the case showing the amount of the loss, nor the amount of the insurance, nor in whose favor the policies were taken, nor any other facts from which the court below could judicially know, or this court upon appeal, can determine, that at the date when the decree confirming the report of the partition was entered, the share of the estate allotted to the infant was not impaired through the loss by fire.

7. The decree should also be reversed for the failure of the complainant to clear up the matter of the unpaid taxes on the lands involved.

It was understood and agreed, during the hearing before the Chancellor, that the matter of the unpaid taxes and assessments should be cleared up and properly provided for when the final decree should be entered in the case (Printed Case, 118, 153). The final decree contains no provision on this subject, nor is there any evidence in the record to show that, as a matter of fact, the lands allotted to the infant defendant are subject to no more than his proper share of the taxes and assessments.

But it may be contended by counsel for appellees that this is not a very serious or important matter, and that it therefore should be overlooked by the court on this appeal. To this we reply that the real gist of the present contention is that there is a marked injustice and inequality in the partition decreed; and that to procure its reversal it is right and proper to insist upon even a technical objection, as a means of securing justice to the infant appellant. Technicalities were invented for such purposes, and should be approved when they serve the right.

8. The report of the master in the suit in equity between the parties, in the Circuit Court of the United States for the District Court of New Jersey, is properly in evidence, and constitutes a part of the record in the case, notwithstanding the Chancellor's claim to the contrary, in his letter to Mr. Guild. (Printed Case, 123.)

That report was introduced in evidence upon the hearing before him *without objection*. It was treated throughout the hearing like any other document which had been properly introduced. *If objection had then and there been made to the authenticity of that report, or to the time and manner of its introduction, such objection might have been met and overcome. But no such objection was made; and not having been made when the report was presented, the right to make it was forever gone.*

The right to introduce documentary evidence at a hearing in equity is believed to be well-nigh universal in modern practice.

In his "Memorandum of Decision," (Printed Case, 152) the Chancellor claims that the action of the United States court, in reference to the Homestead furniture and fixtures, had not properly been introduced into the pleadings or proofs in the present case, and that therefore he could not consider the statements contained in the report of the master in that court.

But while we deny the validity of this claim, and insist, as above, that the report was properly in evidence for all purposes of the case, we further contend that *if the Chancellor's position had been well taken, as a matter of fact, it would have been his clear duty, under the established practice in courts of equity, to order that the cause stand over, with directions to supply the defects in some appropriate manner.*

The court of equity does not turn its suitors from its doors

because through some accident, inadvertence or mistake, something has been omitted which is essential to the administration of that complete justice in which the court delights; but wherever there has been, in good faith, an endeavor to pursue a substantial right in an equitable manner, the court will aid the attempt on equitable terms.

Where an insufficiency of proof is due to the inadvertence of counsel, a cause may be ordered to stand over, after final hearing, for the purpose of supplying the additional proof needed.

Sharp v. Wyckoff, 12 Stewart, 95.

With the utmost respect, we must say that what is said in the examination of the Commissioners, and in the Memorandum of Decision, in relation to the adjustment of the loss through the destruction of the building by fire, is mere hearsay, and does not constitute any basis for judicial action.

9. The substance of all our objections is, that the record in this case is insufficient to support the Chancellor's decree. It does not show that justice has been done between the parties. It does not show that the infant appellant will not be injured if the proceedings of the court below shall be upheld. But the record does show the contrary in the particulars above specified. It shows that the complainant has not done equity. It shows that, whatever may be the technical right of partition at law, still, in the view of equity, the suit was prematurely brought. It shows an attempt to deprive the infant of his lien on the lands of the Pomeroy sisters to secure the payment of their indebtedness to him. It shows injustice to the infant in the matter of the Homestead furniture. It leaves the matter of the loss, from the destruction of the dwelling-house, in the dark. It shows unsettled claims for unpaid taxes and assessments. The proceedings are otherwise contrary to law and equity. For these reasons the decree of the Chancellor should be reversed.

10. In conclusion, we will say, that on the hearing before the Chancellor, the appellants, claiming that the share allotted to the complainant was much more valuable than that allotted to the infant, offered to waive all their objections to the partition, upon the condition that the Chancellor would quash the allotment reported, and allot to the infant the share awarded by the Commissioners to the complainant. That proposal was not accepted by the complainant, nor was it acted upon by the Chancellor. It is now renewed in this court, as offering a short and simple method of terminating the present controversy. If it be true that the shares allotted by the Commissioners are equal, no harm could come to the complainant from making the proposed change. If not true, then the Chancellor's decree should be reversed, and the partition reported by the Commissioners be set aside.

Respectfully submitted by

C. C. BONNEY,

GUILD & LUM,

Solicitors for and of Counsel with Appellants.



In Chancery of New Jersey.

Between

JOSEPHINE POMEROY,
Complainant,

and

JULIA POMEROY NEWELL,
formerly
JULIA POMEROY MORRISON, *et als,*
Defendants.

10

*On Bill for
Partition.*

20

Will of George Pomeroy being exhibit C 3 of complainant. (Case page 41.)

I, George Pomeroy, of Madison, in the Township of Chatham, in the County of Morris, and State of New Jersey, make and publish this, my last will :

ITEM FIRST: To my wife, Abba S. Pomeroy, I give and bequeath all my silver plate; I also give to her such of my books, pictures, engravings and works of art, as she may select. 30

I also give to her the right to use and occupy either one or two rooms, as she may desire, in my homestead dwelling house at Madison, during her life, with the privileges specified in the fourth item of this, my will.

So soon as it may conveniently be done after my decease, I authorize and direct my executors, and the survivor of them, to pay and deliver to the New York Life Insurance and Trust Company, 40

located in the City of New York, securities to the amount (at their par value) of fifty thousand dollars (\$50,000), the same to be received and held in trust by the New York Life Insurance and Trust Company for the benefit of my said wife, Abba S., during her natural life, with power to re-invest the principal of the same as it shall be from time to time paid, in other securities; and in trust to receive and collect, from time to time, as it becomes
 10 due, the interest on said securities, and to pay the same when so received to my said wife, Abba S.; and upon the death of my said wife, to divide the said securities and their proceeds equally between my three younger children, Edward, Julia and Josephine.

The bequests to and provisions for my said wife herein made are in lieu of dower,

ITEM SECOND: I authorize and direct my executors and the survivor of them, so soon as conveniently may be after my decease, to pay to the New
 20 York Life Insurance and Trust Company located in the City of New York, securities to the amount (at their par value) of thirty thousand dollars (\$30,000), the same to be received and held in trust by the New York Life Insurance and Trust Company for the benefit of my son, George P. Pomeroy, during his natural life, with power to re-invest the principal of the same as it shall be from time to time paid,
 30 in other securities, and in trust to receive and collect, from time to time, as it becomes due, the interest on said securities, and pay the same when so received to my son, George P. Pomeroy, so long as he shall live, and at his death to pay and divide the securities and the proceeds thereof equally between my three younger children, Edward, Julia and Josephine, and the survivors of them.

ITEM THIRD: The securities which I direct my executors to use for the fulfillment of the directions
 40 given them in the first and second items of this, my

will, may be first mortgage bonds of the Morris and Essex Railroad Company, second mortgage bonds of the Morris and Essex Railroad Company, first mortgage bonds of the Albany and Susquehanna Railroad Company, second mortgage bonds of the Albany and Susquehanna Railroad Company, the first mortgage bonds of any good Railroad Company in New Jersey, New York or any of the New England States, the bonds of the State of New Jersey, New York or any New England State, or bonds of the United States of America, and I direct them in making up the amounts of securities respectively specified in the first and second items, to use securities of one or more of the kinds specified in this item; and I authorize the New York Life Insurance and Trust Company in making their investments, to purchase any securities of the kinds above specified. 10

It is my wish that interest on the amounts above directed to be held in trust for my wife and my son, George P., respectively, shall commence at the time of my death, and I authorize and direct my executors to so adjust the interest account with my wife and the said George P., when said trust funds are respectively set apart, that they shall each receive interest from the time of my death. 20

At the division, by the New York Life Insurance and Trust Company of either trust fund, if either Edward, Julia or Josephine shall have died, leaving issue who shall be then surviving, such issue shall take by way of representation. 30

ITEM FOURTH: I desire that my homestead at Madison, New Jersey, be kept up by my three younger children, viz.: Edward, Julia and Josephine, so long as they can live pleasantly and harmoniously together.

I request and direct that my said wife be one of the family, with the privilege of the table without any expense to her.

That part of the homestead fronting on High street, between Chapman's land and Sampson street, and bounded in the rear by a new street which I am now laying out, running from Prospect street to Sampson street (so that the part of the homestead thus specified will be bounded by High street, by Chapman's line continued to said new street, by said new street and by Sampson street), shall neither be sold, leased nor partitioned without the consent in
 10 writing of my wife, nor without the consent of my three younger children, Edward, Julia or Josephine.

If either one of my children marry, he or she shall not remain in the homestead without the consent of my wife and of all my three younger children.

If my wife or either of my three younger children object, the married child shall have no further right to live at the homestead, and shall withdraw therefrom.

20 Should my wife, the said Abba S., at any time desire to leave my homestead and make her permanent home elsewhere, and surrender her right to the rooms and privileges above provided for her at said homestead, she shall make known such intent in writing to my executors, and upon her carrying out such intent, they, or the survivor of them, are authorized and directed to procure, by the sale of real estate or otherwise, sufficient moneys to procure, when invested, the clear net income of one
 30 thousand dollars per year, and to invest said moneys and pay the said income of one thousand dollars, in semi-annual payments, to my said wife so long as she shall live.

At the death of my said wife the principal of the fund herein provided for her, shall go into and form part of my residuary estate, and be disposed of in accordance with the provisions of the eighth item of this my will.

40 ITEM FIFTH: To my sister, Lucy Clapp, of East

Hampton, Mass., I give and bequeath two thousand dollars.

ITEM SIXTH: To Miss Harriet E. Foote I give the sum of one thousand dollars, if she shall be a member of my family at the time of my decease.

ITEM SEVENTH: I authorize and empower my executors, and the survivor of them, to sell and convey, at either public or private sale, and at such time or times as to them or him may seem best, all my lands and real estate wheresoever situated, and of which I may be seized, or to which I may be entitled at the time of my decease, and to make good and sufficient conveyances of the same. 10

And I direct that no partition of my real estate, and no sale of the same or any part thereof shall be made by those to whom it is in this will devised, until my executors or the survivor of them shall have sold real estate, the proceeds of which shall amount to at least one hundred thousand dollars (\$100,000). 20

And I direct that the proceeds of the first of such sales of real estate by my executors shall be deposited by my executors with the New York Life Insurance and Trust Company, until the amount thus deposited shall reach one hundred thousand dollars, and that the same be held and invested by said company for the benefit of my two daughters, Julia and Josephine, fifty thousand dollars for the benefit of each of them; and that the said moneys shall be held and invested by the said New York Life Insurance and Trust Company, in trust, as follows: 30

1. To collect and receive the interest on fifty thousand dollars thereof and pay the said interest on said fifty thousand dollars thereof whenever received or collected, to the said Julia Pomeroy, during her life.

2. To collect and receive the interest on the other fifty thousand dollars thereof, and pay the 40

same whenever received or collected, to the said Josephine Pomeroy, during her life.

3. At the death of either of my said daughters, to pay the fifty thousand dollars constituting the trust fund which is provided as above for her benefit to her issue, if she leave any surviving her; if she leave no issue surviving her, then to pay said trust fund in equal shares to my said son, Edward, and my other daughter, and the survivor, (if one of
10 them be then dead) the issue of said Edward, and of said other daughter representing their parents, respectively.

ITEM EIGHTH: All the rest and residue of my property and estate, real and personal and mixed, which at the time of my decease I shall own or be in any way entitled to, (including the said home-
stead with the conditions above specified) I give,
20 bequeath and devise to my three younger children, Edward, Julia and Josephine, their heirs and assigns forever, to be equally divided between the said Edward, Julia and Josephine, share and share alike.

Should either the said Edward, Julia or Josephine die before I do, then his or her issue shall represent its parents, and receive the share which would have gone to its parents had he or she survived me.

And should either the said Edward, Julia or Josephine die before I do without leaving issue surviving him or her, then what would have been his or her share shall go to and be equally divided
30 between the survivors of my said three children last named, their heirs and assigns.

ITEM NINTH: In regard to investments of personal property, I authorize my executors to retain those which they may find at the time of my decease, or change those investments and make others from time to time and in such way as to them shall seem most for the interest of my estate.

ITEM TENTH: I appoint my son, Edward Pomeroy
40 of Madison, New Jersey, and Alfred Mills of Morris-

town, New Jersey, the executors of this my last will.

ITEM ELEVENTH: Having full confidence in my said executors and in each of them, I order and direct that no security or bonds be required of them or either of them, on the probate of this will, or the issuing of letters testamentary thereon, or the assumption or execution of the duties of executors or trustees under this will by them or either of them, in any State of the United States of America, 10 any law or custom to the contrary in anywise notwithstanding.

ITEM TWELFTH: I hereby revoke all former wills by me made.

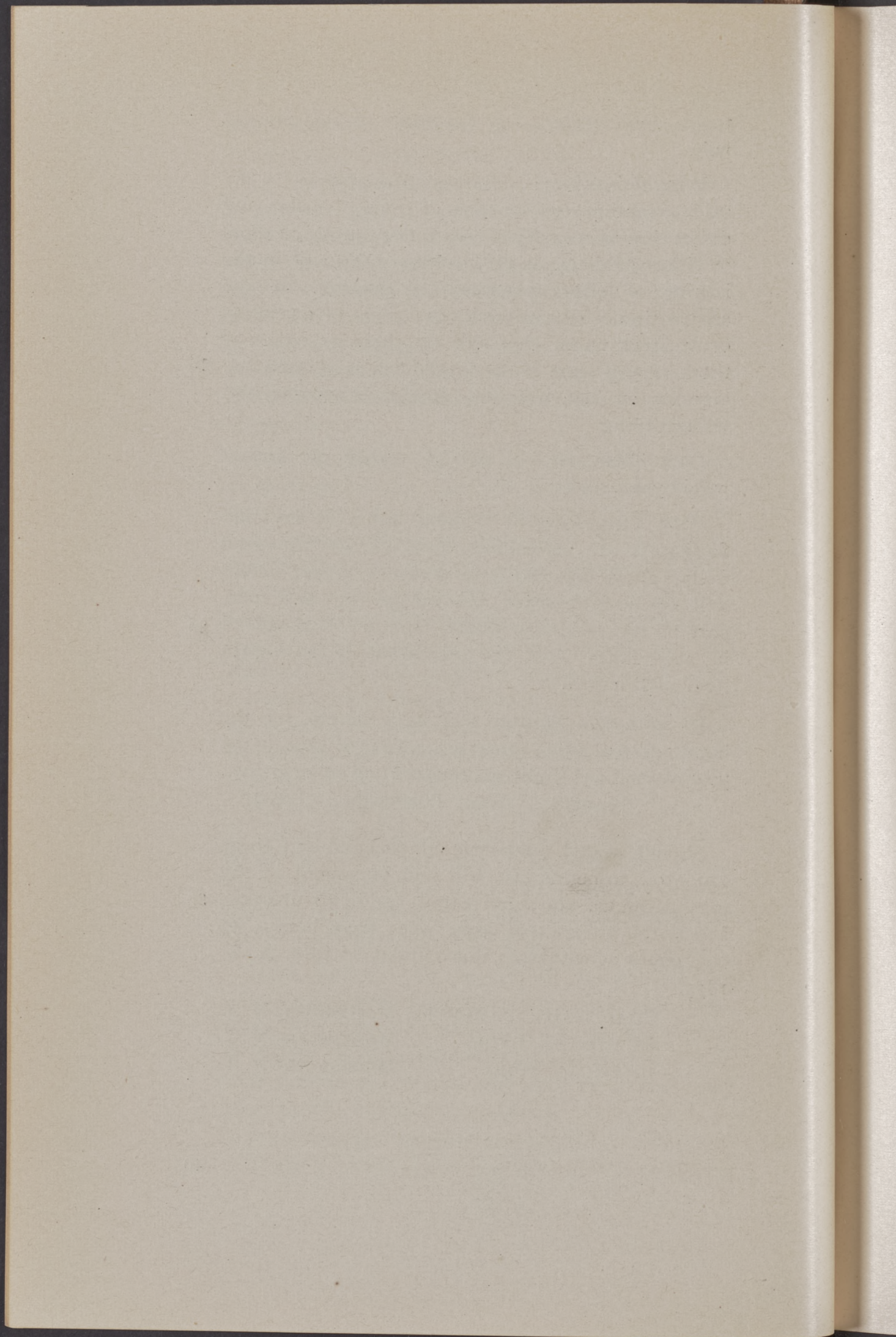
ITEM THIRTEENTH: Should either of my said daughters die before I do, then the fifty thousand dollars above directed to be invested for her benefit will not be so invested, but will go into and form part of my residuary estate, and be disposed of 20 in accordance with the provisions of the eighth item of this will.

IN WITNESS WHEREOF I have hereto set my hand and seal this twenty-second day of July, in the year of our Lord Eighteen hundred and seventy-five.

(Signed) GEO. POMEROY. [SEAL]

Signed, sealed, published and declared by George Pomeroy, to be his last will and testament in the presence of us, who at his request and in his presence 30 and in the presence of each other have hereto set our names as witnesses this 22d day of July, A. D. 1875.

CHARLES H. DALRYMPLE, Morristown, N. J.
EDWARD C. LYON, Morristown, N. J.
JOSEPH B. SOHN, Morristown, N. J.



UNITED STATES OF AMERICA, }
District of New Jersey. } SS.

IN THE
CIRCUIT COURT OF THE UNITED STATES.

FOR SAID DISTRICT.

10

FRANK R. CHANDLER, AS TRUSTEE AND EXECUTOR UNDER THE LAST WILL AND TESTAMENT OF GEORGE P. POMEROY, DECEASED, ORIGINAL COMPLAINANT; AND EUGENE COWLES POMEROY, INFANT SON OF SAID DECEASED, BY CHARLES W. CHASE, HIS GUARDIAN, JOINED AS COMPLAINANT SINCE COMMENCEMENT OF SUIT,

vs.

JOSEPHINE POMEROY AND JULIA POMEROY MORRISON; ALSO ALFRED MILLS, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF GEORGE POMEROY, DECEASED, THIS SUIT HAVING HITHERTO BEEN DISMISSED AS AGAINST WILLIAM FOSTER MORRISON, ONE OF THE ORIGINAL DEFENDANTS.

In equity for specific performance and other relief.

Original Bill Filed

September 4, 1888. 20

Supplemental Bill Filed

January 4, 1891.

PROCEEDINGS UNDER MANDATE FROM THE SUPREME COURT.

DECREE FOR COMPLAINANTS. 30

Being Exhibit D 1. referred to in original state of case, page 41.

January 30, 1894. And now again come the said complainants, by their solicitors herein; and the said defendants having been duly notified of this proceeding, also come by their solicitors, and hereupon the said complainants present to this court and file in this cause the opinion, judgment and mandate of the Supreme Court of the United States, 40

duly given, rendered and issued upon the appeal taken to said court by said complainants; whereby it appears and is made known to this court that the order, judgment and decree of this court made in this cause on or about May 25, A. D., 1891, dismissing the bill and supplemental bill of complaint herein, with costs, has duly been, by the order, judgment and decree of the said Supreme Court, reversed with costs; and whereby it also further
10 appears that the said complainants have recovered, by the consideration and judgment of the said Supreme Court, of and from the said defendants, the sum of six hundred and eighty-three dollars and fifty cents (\$683.50), for their costs in the said Supreme Court, with award of execution therefor, and wherefrom it also further appears that this cause has been, by the said Supreme Court, remanded to this court with instructions to enter a decree for said complainants, and for further proceedings in
20 conformity with the said opinion of the said Supreme Court.

It is therefore now here accordingly ordered, adjudged and decreed by this court as follows, that is to say :

FIRST. That this cause be and the same hereby is reinstated upon the docket of this court for further proceedings in conformity to the aforesaid opinion, judgment and mandate of the said Supreme Court; and that the reversal aforesaid of the former
30 decree of this court be duly entered upon the the records of this court.

SECOND. And forasmuch as the said Supreme Court has held that the agreement in writing which the bill of complaint in this cause was filed to enforce is a valid agreement; and that the said complainants are entitled to the specific performance thereof by and on the part of the defendants who are named therein; and that the said defend-
40 ants should be required to account under said agree-

ment as the same shall be construed by this court in conformity with said opinion of said Supreme Court; and that in making the division of the assets of the estate of the said George Pomeroy and the assets of the estate of the said Edward Pomeroy into three equal parts pursuant to the terms of said agreement interest or income which has accrued on the several trust funds specified in the will of the said George Pomeroy, ought not to be in any wise excluded, but should be respectively taken into 10 account and properly charged for the purposes of such division, but not the principal of said trust funds.

It is, therefore, now here further ordered, adjudged and decreed by this court that the said Josephine Pomeroy and the said Julia Pomeroy Morrison do respectively make and complete, without unnecessary delay, specific performance of all and singular the matters specified in said agreement to be performed by them respectively, and 20 not hitherto done and executed, and particularly the matters and things hereinafter specified in that behalf.

THIRD. And forasmuch as it also appears to this court that the full execution of said agreement may require a sale of certain of the lands to which said agreement relates, and should include a partition of all such lands as may remain unsold; and that the said Eugene Cowles Pomeroy is a proper party 30 complainant to this suit; and that said defendants in their answer objected that no decree touching the respective rights of the parties in the lands involved, could be made without bringing in the said Eugene Cowles Pomeroy as a party to this suit; and whereas, upon that objection the complainant, Frank R. Chandler, caused and procured the joinder of the said Eugene Cowles Pomeroy by Charles W. Chase, his guardian, as a party complainant in this suit; and whereas, the said supple- 40

mental bill was filed as well in his name as in the the name of the said Frank R. Chandler, executor and trustee as aforesaid, and the injunction aforesaid was allowed thereon without objection; but it appears that no order has hitherto been entered upon the records of this said court declaring said Eugene Cowles Pomeroy a party to this cause; it is now therefore, further ordered, adjudged and decreed, that said Eugene Cowles Pomeroy has
 10 become and is a party complainant to this cause, and it is directed that the same do proceed accordingly, in his name as well as in that of the said Frank R. Chandler as such executor and trustee, duly authorized to collect, receive, invest and manage, all and singular, the assets and property belonging to the estate of the said George P. Pomeroy, pursuant to the provisions of his last will and testament

20 FOURTH. It is further ordered, adjudged and decreed by the court that this cause be and the same hereby is referred to William L. Dayton, Esq., one of the masters in chancery of this court, for the following purposes, that is to say, *pro hac vice* :

1. To take evidence and state the account for which the said agreement in writing provides, pursuant to the rules and practice of this court. And it is ordered that the said Josephine Pomeroy and the said Julia Pomeroy Morrison and the said Frank
 30 R. Chandler as executor and trustee of the said George P. Pomeroy, deceased, do attend before said master from time to time as he shall reasonably require for the purposes of such accounting; and that they do respectively produce and exhibit to and before said master all and singular the books of account and papers of which they, or any or either of them have the possession or control, and which may be deemed by said master necessary or proper for said accounting. And it is also ordered
 40 and required that said parties respectively do sub-

mit to be examined from time to time by or before said master, or otherwise and elsewhere, under his direction upon oath, respecting all or any of the matters into which it shall be the duty of said master to inquire for the purpose of such accounting.

2. Said master shall also inquire, take evidence and report what personal property, and personal assets, remainder of the estate of George Pomeroy and of the estate of Edward Pomeroy, to which the provisions of said agreement in writing were intended to apply, now remain for division according to the terms of said agreement; and said master shall file with his report a specific inventory of the same, with the value of each item thereof as nearly as the same can conveniently be ascertained, excluding, however, the principal of said trust funds. 10

3. Said master shall also inquire, take evidence and report all the material facts relating to the conversion by the said Josephine Pomeroy and Julia Pomeroy Morrison, of the said trust fund in favor of the said George P. Pomeroy, including the value of the securities embraced in the same, at the time when such securities were withdrawn by said Josephine and Julia, and converted to their own use as is admitted by them in their answer to the bill of complaint herein; together with the interest which the same were yielding at the time of such conversion; and whether it is now within the power of said Josephine and said Julia to restore, surrender or bring into court the securities aforesaid, or any or either of them, or any part thereof, for such disposition thereof as the court may deem conformable to equity. 20 30

4. And that said master do also report a method and plan for such a division of all the remaining undivided personal assets, estate and property, of the estates specified in the said agreement in writing, as, when carried into effect under the direction of the court, would give to the said Frank R. 40

Chandler, as executor and trustee under the last will and testament of said George P. Pomeroy, for the primary use and benefit of the said Eugene Cowles Pomeroy, one equal third part of the two estates described in the agreement in writing, which the bill of complaint in this cause was filed to enforce, including the interest or income which shall have fallen due on all the trust funds specified in the last will and testament of the said George Pomeroy, such
10 division to be equalized by the account with interest, for which said agreement provides, according to the true intent and meaning thereof, but not including the principal of said trust fund.

5. And in case said master shall find in the course of the proceedings to be taken by and before him, that there is any material matter or thing, which by reason of any act of the parties, or any or either of them; or, by reason of a change of the circumstances of the case, can not now be specifically
20 performed, then, and in that case, said master shall inquire, take evidence and report what compensation can and ought to be made by the party who can not make full and complete performance, for such part or parts of said agreement as he or she can not now execute and perform.

FIFTH. It is also ordered, adjudged and decreed by this court, that the papers heretofore filed in this cause by the said Alfred Mills, one of the de-
30 fendants, may, unless otherwise specially required by order of this court, stand as and for his answer to the bill and supplemental bill of complaint herein, and that the suggestions of the complainants against the motion of said Alfred Mills that the bill of complaint herein be dismissed as to him, may stand, unless otherwise specially required by order of this court, as and for the replication of said complainants, to the answer aforesaid; to the end
40 that all unnecessary pleadings and expense herein may be avoided. And it is further ordered that

said Alfred Mills do, on notice from either of the parties to said accounting, attend before said master and give testimony as may be reasonably required of him; and that he do also produce and exhibit any books or papers which may be in his possession or control, and which said master may deem necessary to the purposes of said accounting; and that he do also make and render any report, account or statement respecting the premises, which said master may deem necessary or expedient for 10 the proper disposition of this cause.

SIXTH. It is further ordered, adjudged and decreed by the court, that the said complainants do have and recover of and from the said Josephine Pomeroy and the said Julia Pomeroy Morrison the costs paid by said Frank R. Chandler for the transcript filed in said Supreme Court upon said appeal; and that execution do issue therefor; and that execution do also issue for the costs recovered by said complainants in said Supreme Court, as stated 20 in the mandate aforesaid; and such executions shall not be delayed for or on account of the proceedings to be had before said master as aforesaid. Costs in this cause to be adjusted and taxed on final decree.

SEVENTH. All other questions, if any, which may properly be raised under the opinion, judgment and mandate of the said Supreme Court are reserved until the further order of this court, to be made as occasion may require.

(Signed) EDW. T. GREEN, 30
J.

Filed Jan. 30, 1894.

A true copy.

(Signed) S. D. OLIPHANT,
Clerk.

[SEAL]

UNITED STATES CIRCUIT COURT,
District of New Jersey.

FRANK R. CHANDLER, as Trustee, &c., et al.,

v.

JOSEPHINE POMEROY, et al.

I, S. D. Oliphant, Clerk of the Circuit Court of
the United States, for the District of New Jersey,
10 do hereby certify that the Injunction issued January
fourteenth, eighteen hundred and ninety-one, in the
above stated case, is still in force.

In testimony whereof I hereunto set my hand and
affix the seal of said court at Trenton this twenty-
seventh day of February, A. D. eighteen hundred
and ninety-four.

[SEAL]

(Signed) S. D. OLIPHANT,

Clerk.

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In Chancery of New Jersey

Between

JOSEPHINE POMEROY,
Complainant.

and

JULIA POMEROY MORRISON, and WIL-
LIAM FOSTER MORRISON, her hus-
band, MARTHA E. BUCKINGHAM,
ANNA S. CHANDLER, ROSE A.
BUCKINGHAM, MARY E. VANAULEN
and FRANK R. CHANDLER,

Defendants.

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*On Bill for
Partition.*

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The bill alleges that George Pomeroy, father of the above named complainant died on or about the twenty-fourth day of June, eighteen hundred and eighty. That before his death he made his last will and testament, bearing date July twenty-second, eighteen hundred and seventy-five ; that said will was duly proved in the Surrogate's office, of the County of Morris, on the tenth day of July, eighteen hundred and eighty, by Alfred Mills, and Edward Pomeroy, the executors named therein, to whom letters testamentary were issued by the Surrogate. A copy of the said will of said George Pomeroy is set forth in said bill. The said bill further alleges that said Edward Pomeroy, one of the executors of said will, was the son of said George Pomeroy and one of his legatees and devisees mentioned in said last will, and that said Edward Pomeroy, departed this life on the sixth day of March, eighteen hundred and eighty-seven.

That at the time of his death there were surviving the said George Pomeroy, his wife Abba S., and his four children, two sons and two daughters, George P. Pomeroy and Edward Pomeroy, Julia Pomeroy Morrison, and complainant. That said Abba S. Pomeroy, the widow of said George Pomeroy, departed this life on or about the twelfth day of February, eighteen hundred and eighty-three.

That before his death the said Edward Pomeroy made his last will and testament, bearing date the twenty-third day of October, eighteen hundred and eighty-six; that said will was admitted to probate by the Surrogate of the County of Morris, on the second day of May, eighteen hundred and eighty-seven. That by said will he made his brother, the said George P. Pomeroy, sole executor thereof, but that said George P. Pomeroy renounced the executorship of said will, and one Frank R. Chandler, by and with the consent of the said Josephine Pomeroy and Julia Pomeroy Morrison, was appointed administrator *de bonis non cum testamento annexo*, of the estate of said Edward Pomeroy, and letters testamentary were issued to him by the Surrogate of the County of Morris, on the second day of May, eighteen hundred and eighty-seven; that said Frank R. Chandler accepted the said administration and entered upon the execution of the duties thereof.

The said bill sets forth a copy of the will of said Edward Pomeroy, which is as follows:

I, Edward Pomeroy, of Madison in the Township of Chatham, in the County of Morris and State of New Jersey, declare this to be my last Will and Testament.

First Item.—I give and bequeath to my cousin or cousins, the children of my last uncle, Herman Pomeroy of Batavia, in the State of New York, who shall be living at the time of my death, the sum of five thousand dollars to be divided between

them share and share alike. And should none of my said cousins survive me, then I give and bequeath this sum to my brother George P. Pomeroy.

Second Item.—I give and bequeath to Thomas Manham of Madison aforesaid, the sum of one thousand dollars, if he shall be in my employ at the time of my decease.

Third Item.—I give and bequeath to Patrick Mangam of Madison aforesaid, the sum of five hundred dollars, if he shall be in my employ at the time of my decease. 10

Fourth Item.—I give and bequeath and devise all the rest residue and remainder of my real property, and all the rest, residue and remainder of my personal property, of what nature or kind soever (including my undivided interest in real estate devised to me by my father) to my brother, George P. Pomeroy, his heirs and assigns forever. Should my said brother not survive me, then his issue shall represent its parent and receive all the interest of my said brother under this, my Will. 20

Fifth Item.—I hereby appoint my said brother, George P. Pomeroy the sole executor of this, my Will, hereby revoking all former Wills by me made.

IN WITNESS WHEREOF, I, Edward Pomeroy, have to this my last Will and Testament, consisting of one sheet of paper, subscribed my name and set my seal, this twenty-third day of October, in the year one thousand eight hundred and eighty-six. 30

EDWARD POMEROY.

Subscribed by the testator in the presence of each of us, and at the same time declared by him to us to be his last Will and Testament and thereupon we, at the 40

request of the testator and in his presence and in the presence of each other, sign our names hereto as witnesses, this twenty-third day of October, in the year eighteen hundred and eighty-six, at New York City.

CHARLES K. MEIGS, residence, 22 East 81st Street,
New York.

10 C. E. M. HODGE, residence, 43 West 35th Street,
New York.

GEORGE R. GAY, residence, 552 Herkimer Street,
Brooklyn, N. Y.

EDWARD M. ATKINSON, residence, 129 Adelphi
Street, Brooklyn, N. Y.

That said Edward Pomeroy left no widow or child or children, and no issue of any child or
20 children, surviving him and that the said Julia and Josephine are the only next of kin and right heirs at law of said Edward Pomeroy.

That said George P. Pomeroy departed this life on the twelfth day of November, eighteen hundred and eighty-seven.

That the wife of said George P. Pomeroy died in his life time and that at the time of his death he was unmarried. That there survived said George P. Pomeroy his son Eugene C. his only child and
30 his sole heir-at-law who was an infant and under the age of fourteen years.

That complainant has been informed that said George P. Pomeroy in his life time made a last will and testament and also a codicil thereto, and that the same has been probated by some Surrogate or court of Probate in the State of Illinois, and that the letters testamentary thereon have been issued to one Frank R. Chandler as the sole executor thereof, and that said Frank R. Chandler hath
40 assumed the burden of the execution of said will

and codicil, but that the same if ever made hath never been probated in the State of New Jersey.

That complainant does not admit that said George P. Pomeroy ever made any such will or codicil, or either of them nor that the same or either of them if made are legal and valid under the laws of the State of New Jersey.

The said George Pomeroy at the time of his death was seized and possessed of certain real estate in the Counties of Morris and Hudson, New Jersey, besides other realty in other States of the United States. 10

That said George Pomeroy by his said Will authorized and directed his executors to sell so much of his real estate as might be necessary to raise a certain fund; that said Alfred Mills, as surviving executor has sold real estate of which said George Pomeroy died seized to the amount of one hundred thousand dollars.

That said Alfred Mills as such executor has executed the said will, and settled said estate, and that there exists now no obstacle to a final partition or division of that part of the real estate of which said George Pomeroy died seized, which may now remain unsold. 20

That said Edward Pomeroy, by his last will, after bequeathing certain legacies by the fourth item of his will, gave, devised and bequeathed the residue of his real and personal property, including his undivided interest in the real estate devised to him by his father, George Pomeroy, to his brother, George P. Pomeroy, his heirs and assigns for ever. 30

That George P. Pomeroy survived his brother Edward and became vested with and entitled to all the estate of the said Edward in and to the real estate of which the said George Pomeroy, the father, died seized.

The said bill sets forth a description of the unsold land and premises of which the said George 40

Pomeroy died seized, in the Counties of Morris and Hudson, in the State of New Jersey.

That complainant and her sister Julia are each the tenants in fee of the one equal undivided third part of said lands and premises; that the said Eugene C. Pomeroy, the only child and heir-at-law of George P. Pomeroy, is entitled to the other one-third part of said land and premises.

The said bill prays for a partition or division
10 of said land and premises among the several owners thereof, in the usual form. It further prays for answer by the said Frank R. Chandler, and other persons therein named.

(The said Julia Pomeroy Morrison having subsequently to the filing of said bill obtained divorce from her husband, and having married George B. Newell, by amendments for that purpose made, the proceedings were subsequently continued under the name of Julia Pomeroy Newell and George B.
20 Newell, who filed their answer to said bill for partition, consenting to the partition sought.) The other defendants above named as appellants filed the following answer:

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under said Will; impleaded with Julia Pomeroy Morrison, now Julia Pomeroy Newell, by intermarriage with George B. Newell, to the bill of complaint and amendments thereto of Josephine Pomeroy, in the Court of Chancery, of the State of New Jersey, for a partition of certain lands described in said bill.

10 These respondents, respectively, by their
solicitors and counsel herein; protesting that the
said complainant hath not, in and by her said bill
of complaint, made or stated such a cause as doth
or ought to entitle her to any such discovery or re-
lief as is therein sought and prayed for, and saving
all the exceptions and objections that might be had
or taken to the manifold errors and insufficiencies
in said bill of complaint contained, and particularly
the objection that this Honorable Court ought not
20 to proceed upon the said bill of complaint, during
the pendency of the suit in equity in the Circuit
Court of the United States for the district of New
Jersey, which is hereinafter set forth, and praying
the same benefits and advantages thereof, respect-
ively, as might have been had under demurrer
or plea to said bill, together with the right to re-
quire the said complainant at any time hereafter
during the pendency of this cause, to make all or
any amendments of said bill which occasion may
30 require; and praying leave without prejudice, at
any convenient time, to make all needful amend-
ments, if any, of this answer to said bill, these re-
spondents, for answer thereto, or so much or such
parts thereof as these respondents are advised that
it is expedient or necessary for them to make
answer unto, say, and each for himself severally
says:

I.

That the said Eugene C. Pomeroy, who is an
40 infant of tender years, having been born on or

about May 27th, A. D. 1881, and who resides in the City of Cleveland and State of Ohio, as is mentioned in said bill, hath a lawful guardian of his person, duly appointed at the place of his said domicile, who ought, for the purposes of this suit; to have been joined with said infant as a party defendant thereto: that the name of said guardian is Charles W. Chase; that he was appointed such guardian by the Probate Court of Cuyahago County, State of Ohio, on or about November 3d, A. D. 1888, and that said guardian 10 and said infant both then resided, and still reside, in the City of Cleveland, aforesaid.

Nevertheless, to avoid all unnecessary delay and expense, and to bring the rights and interests of said infant in the premises before the Court, for its proper protection thereof, the said Frank R. Chandler, who is the executor and trustee of the estate of said infant, under the last will and testament of his father, the late George P. Pomeroy, deceased, hath taken it upon himself, as he properly may do, to act in this cause as the next friend 20 of said infant, and to answer for him accordingly until such time as said guardian shall be brought in and made a party hereto, in case the Court shall deem it necessary or expedient so to require. And for as much as the rights and interests of said infant in the matters and things set forth in said bill are prior and paramount to the rights and interests of these other respondents, aforesaid therein, they respectfully submit to this Honorable Court that, 30 in all the proceedings which may be had and taken in this cause, the rights and interests of said infant ought to have preference in protection and enforcement.

II.

And these respondents, further answering, say that since the filing of said bill of complaint, the said Rose A. Buckingham hath intermarried at the city of Chicago, in the County of Cook and 40

State of Illinois, with Harry Gordon Selfridge, who is now her husband, and that from that event she has been and is now known and called by the name of Rose Buckingham Selfridge, and she prays that she may be so designated in the subsequent proceedings in this cause.

III.

And these respondents, further answering, as aforesaid, say that the said George P. Pomeroy, son of the said George Pomeroy, mentioned in said bill of complaint, departed this life at the city of Chicago, in the County of Cook and State of Illinois, of the United States of America, on or about November 12, A. D., 1887. That the said George P. Pomeroy left him surviving, his son, Eugene C. Pomeroy, who was his only child and sole heir at law. That said George P. Pomeroy was unmarried at the time of his death, his wife Helen having departed this life on or about April 29, A. D., 1884.

And these respondents, further answering, say that the said George P. Pomeroy left his last will and testament, with a codicil annexed thereto, duly executed, declared and witnessed, which said will and codicil, with the attestation thereof, respectively, are in substance as follows, that is to say:

WILL OF GEORGE P. POMEROY.

Know all persons that I, George P. Pomeroy, now residing temporarily in Paris, France, do hereby make and publish this, my last Will and Testament, and hereby revoke, cancel and annul the trust agreements executed by me to Edwin Cowles, L. Prentiss and Frank R. Chandler, and bearing date March 6, 1883; and to Mrs. Elizabeth Cowles and Almira F. Chase, and bearing date October 6, 1884. And to the effect aforesaid I do hereby order and dispose as follows, that is to say:

First.—I direct that all my just debts and funeral expenses shall be paid out of my estate at my decease.

Second.—I hereby give, devise and bequeath to my beloved son, Eugene C. Pomeroy, all of my estate and property of every description, real and personal, and wherever the same may be situate, to vest in him at my decease, but not to be paid over or delivered to him until he shall have attained his majority, and until that time be held and managed by my executors, as hereinafter named. 10

Third.—In case of the death of my son, Eugene C. Pomeroy, before attaining the age of twenty-one years, and without leaving issue surviving him, then and in that event I give, devise and bequeath to my aunt, Mrs. Martha E. Buckingham, and her daughters, Mrs. Anna S. Chandler and Rose A. Buckingham, and to the survivor of them, all of my estate and property of every kind remaining at that time. 20

Fourth.—I hereby constitute and appoint Martha E. Buckingham, of Chicago, Ill., if she be living at my decease, the executrix of this, my last will and testament, and if the said Martha E. Buckingham should not be living at my decease, or in case of her death, after entering upon the duties of such executorship, then I constitute and appoint my cousin, Mrs. Anna S. Chandler, of Chicago, Ill., the sole executrix of this, my last Will and Testament, and if the said Anna S. Chandler should not be living at my decease, or in case of her death after having succeeded the executrix, Martha E. Buckingham, in the duties of said executrixship, then do I constitute and appoint my cousin, Rose A. Buckingham, of Chicago, Ill., the executrix or executor of this my last Will and Testament. 30

And I do hereby direct that all of the estate 40

and property herein bequeathed to my son, Eugene C. Pomeroy, shall be held and managed during his minority by my executrix herein above named, and shall be kept safely invested in United States, State or municipal bonds, or in mortgages upon unincumbered real estate, worth (exclusive of buildings) at least one-third more than the amount loaned thereon. And the income from my estate to be used and applied to the support
 10 and education of my said son, until he attain the age of twenty-one years, when the whole of the estate, both principal and accrued and unexpended interest, shall be paid over to him. And I hereby empower and authorize my executrix, in case she shall deem it necessary at any time, to use a part of the principal of my estate for the support and education of my said son, and the remainder in such case, together with all accrued and unexpended interest to be paid over
 20 to him at his majority, as aforesaid. And in case of the death of my said son before attaining his majority and without issue surviving him, said estate or such remainder thereof to be by said executrix paid over to said Martha E. Buckingham, Rose A. Buckingham and Anna S. Chandler or the survivor of them, Mary E. Van Aulen and F. R. Chandler.

In witness whereof I hereunto set my hand and seal, at Paris, France, this
 30 twenty-fourth day of February, A. D. 1887, in the presence of Alchartum Swensen and Eva E. Taylor as witnesses thereof. (Signed)

[Seal.]

GEORGE P. POMEROY.

Signed, sealed and published as his last Will and Testament by the said George P. Pomeroy, in our presence and by us,
 40 at his request in his presence, and in the

presence of each other subscribed as witnesses thereto, this twenty-fourth day of February, A. D. 1886.

(Signed)

ALCHARTUM SWENSEN, of Christiana, Norway. Eva E. Taylor, of Deddington, England.

I, George P. Pomeroy, being of sound disposing mind and memory, do make, publish, declare and acknowledge this codicil to my last Will and Testament, made and published by me in Paris, France, on the 24th day of February, A. D. 1887, in the presence of Alchartum Swensen and Eva Taylor, which Will I hereby ratify and confirm in all respects, except as the same shall be hereby changed. 10

It is my wish and intention, by my Will above mentioned, to revoke any and all former Wills by me made. 20

It is my will and desire that all of my estate and property of every description, real and personal, shall pass, upon my death, to the following named persons, in the order and in the manner following:

First.—To my beloved son, Eugene C. Pomeroy, for his sole use, as provided in my said last Will, and in the event of his death before attaining the age of twenty-one, and without leaving issue surviving him, then, 30

Second.—To my aunt, Martha E. Buckingham, and her daughters, Mrs. Anna S. Chandler and Rose A. Buckingham, and the survivor or survivors of them, for their sole use in equal parts, and in the event of the death of all of the above mentioned devisees, then, 30

Third.—To Mary E. VanAulen and Frank R. Chandler and the survivor of them. 40

As regards the investments of money belonging to my estate, it is my desire to so change the former provisions of my Will as to allow a wider latitude in such investments, so that fifty per cent. (50) margin of security shall be sufficient to warrant such investments.

It is my request that this codicil be attached to my said last Will as a part thereof, and that said Will and Testament shall be probated and executed
10 in the City of Chicago, County of Cook and State of Illinois.

It is my request that my executrix or executor, mentioned in my said Will, be not required to give other than their personal bond.

IN TESTIMONY WHEREOF, I hereunto set
[SEAL.] my hand and seal, this ninth day of
July, A. D., 1887.

20 (Signed) GEORGE P. POMEROY.

Signed, sealed, published and acknowledged by the said George P. Pomeroy, as a codicil to his last Will and Testament, in our presence, and we in his presence and in the presence of each other, have, at his request, hereunto subscribed our names as witnesses, July 9, 1887.

30 (Signed) HENRY T. CHASE, 5740 Rosalie Court,
Hyde Park, Ill.

WILLIAM H. ROSE, 57 Northland Avenue,
Chicago, Ill.

HOWARD HARE, 49 Pine Street, Chicago,
Ill.

And these respondents, further answering, say, that the said will and codicil were afterwards, to wit: on or about December 1, A. D., 1887, duly
40 proved in the Probate Court of Cook County, sitting

in said Chicago, and were thereupon admitted to record in said Court; and that the said Frank R. Chandler was thereupon, then and there, appointed to be the sole executor of said will and codicil, the other persons named therein as executors having refused to act, and having renounced their right so to do; whereupon said Frank R. Chandler accepted such appointment and entered upon the execution of said Will and Codicil, as such executor, and has ever since remained and still continues therein; all 10 of which said proceedings were and are fully within the jurisdiction of said Probate Court of Cook County, and in conformity to law.

And these respondents, further answering, say that afterwards, to wit, on or about December 27, A. D., 1887, the said Frank R. Chandler, as such executor, caused the said will and codicil of the said George P. Pomeroy to be duly proved and recorded in the County of Morris, in the State of New Jersey, and made an instrument of title to the 20 property of the said George P. Pomeroy, in said State, pursuant to the laws thereof. And the said Frank R. Chandler stands ready, subject to his objections aforesaid, to produce and exhibit to this Honorable Court, as occasion may require, a duly certified copy of said will and codicil of the said George P. Pomeroy, with the letters testamentary issued to him thereon, and the record of his appointment to be such executor, and to file the same in this cause whenever thereto required. 30

And these respondents, further answering, say that on or about June 16, A. D., 1888, the said Josephine Pomeroy and the said Julia Pomeroy Morrison, now Julia Pomeroy Newell, caused to be filed in the Circuit Court of the State of Illinois, within and for the County of Cook, in said State, a certain bill in Chancery, in the name of Eugene C. Pomeroy, suing by John Maynard Harlan, as his next friend, against the said Frank R. Chandler, individually, and as executor of the last Will and 40

Testament of George P. Pomeroy, deceased; Martha E. Buckingham, Anna S. Chandler, Rose A. Buckingham, now Rose Buckingham Selfridge, Mary E. Van Aulen, Edwin Cowles, L. Prentiss, Elizabeth Cowles, Almira C. Chase, Josephine Pomeroy, Julia Pomeroy Morrison, now Julia Pomeroy Newell, and William F. Morrison, as the husband of said Julia. Said Charles W. Chase, as guardian of said infant Eugene C. Pomeroy, was
 10 afterwards joined as a party defendant in said bill, which was filed to set aside and declare null and void the aforesaid will and codicil of the said George P. Pomeroy.

And these respondents, further answering, say that it appeared in the course of said cause that the said John Maynard Harlan was one of the counsel employed by said Josephine and Julia for the purpose of contesting said will and having the same set aside and declared null and void; and there-
 20 upon said Court permitted the prosecution of said cause, in the name of said infant, for the purpose of trying and determining the validity of said will and codicil for the benefit of all persons interested therein. And these respondents further say that such proceedings were thereupon had in said cause; that afterwards, to wit, on or about January 5, A. D., 1892, a jury, duly impaneled in said cause according to law, returned its verdict in substance and effect that the writing purporting to be the last
 30 will and testament of George P. Pomeroy, deceased, and consisting of an original will purporting to have been executed at Paris, France, on February 24, A. D., 1887, together with a codicil attached thereto, and purporting to have been executed at Chicago, Illinois, on July 9, A. D., 1887, was and is the last will and testament of the said George P. Pomeroy, and that the said George P. Pomeroy at the time of the execution of said will and codicil was of sound and disposing mind and

memory, and capable of disposing of his property and estate by will, under the laws of said State.

And these respondents further say that thereupon it was ordered, adjudged and decreed by said Court that the verdict aforesaid, determining the issue in favor of the validity of said will of the said George P. Pomeroy, be duly entered of record in said cause, and that the writing aforesaid be and thereby was established as the last will and testament of the said George P. Pomeroy, duly executed pursuant to law, which said last will and testament are deposited in the probate Court of Cook County, aforesaid. A copy of said decree, reciting said verdict and marked "Exhibit A, with Answer" is annexed to this answer and made part hereof. 10

Said decree has never been in any manner vacated, set aside, or reversed, but remains in full force.

And these respondents, further answering, say that after the death of the said Edward Pomeroy, on or about March 6, 1887, as mentioned in said Bill of complaint, and after the said George P. Pomeroy had succeeded to all the rights and interests which said Edward had theretofore held in and to the estate of the said George Pomeroy, his father, in substance as set forth in said Bill, a certain agreement in writing for the settlement of a controversy which had arisen between the said Edward and the said Josephine and Julia, was made by and between them, and said George P. Pomeroy, the husband of said Julia, joining therein; which said agreement in writing was dated on or about April 13, A. D., 1887, and relates to the lands mentioned in said Bill, and is in substance as follows, that is to say: 20 30

THIS AGREEMENT, made this 13th day of April, A.D., 1887, between Julia P. Morrison and William Foster Morrison, her husband, Josephine Pomeroy and George P. Pomeroy, WITNESSETH: 40

THAT WHEREAS, the said Julia P. Morrison, Josephine Pomeroy and George P. Pomeroy are the only living children and heirs at law of George Pomeroy, deceased.

AND WHEREAS, the said George Pomeroy at the time of his death left him surviving the said parties hereto, and also Edward Pomeroy, his son, who were then his only heirs at law.

10 AND WHEREAS, the said Edward Pomeroy has since died, leaving no widow nor child, nor descendent of a child, and leaving as his only heirs at law, the said Julia P. Morrison and Josephine Pomeroy, his sisters and George P. Pomeroy, his brother.

AND WHEREAS, the said George Pomeroy, deceased, at the time of his death was seized of property both real and personal, and made various bequests by will, which has been duly probated,

20 AND WHEREAS, the said parties hereto have agreed that the said children and heirs at law, have received from the estate of their father, various sums which are at present not accurately known to the parties hereto,

30 AND WHEREAS, the said Edward Pomeroy died testate, seized of property, the nature and amount of which is unknown to the parties hereto, and that he also bequeathed and devised his said property to the said George P. Pomeroy, except the sum of six thousand five hundred dollars (\$6,500) as will appear from his last will and testament.

AND WHEREAS, it is agreed by the parties hereto that the said Edward Pomeroy, at the time of his death, was indebted unto the said Julia P. Morrison, Josephine Pomeroy and George P. Pomeroy, or some one or more of them in a sum or sums; the amount of which is unknown to the parties hereto,

40 AND WHEREAS, it is desired by the parties hereto to settle the estate of George Pomeroy, deceased, and the estate of the said Edward Pomeroy,

deceased, without litigation, and to adjust the claims of the parties hereto against the estate of the said Edward Pomeroy, and to suppress and terminate all suits pending against said Edward Pomeroy at the time of his death, brought by the parties hereto or either of them.

AND WHEREAS, it is desired by the parties hereto to vacate the provisions of the will of the said George Pomeroy, deceased, and of said Edward Pomeroy, deceased, in so far as the same may be done by the parties hereunto, if it is necessary, in 10
order that the surviving children and heirs of the said George Pomeroy may be equally charged with and equally share in the estates of both said George Pomeroy and Edward Pomeroy, deceased,

AND WHEREAS, it is desired to get a settlement of the estates of said George Pomeroy and said Edward Pomeroy, and establish the interest of each of the parties hereto in the said estates, and to determine the value of the share of each of said heirs.

AND WHEREAS, it is desired by all the parties 20
hereto to settle, amicably, by this agreement, all the aforesaid matters.

Now, Therefore, in consideration of the premises and other covenants and agreements herein set forth, it is covenanted and agreed, by each of the parties hereto, that the remainder of the estate of George Pomeroy, deceased, shall be equally divided between his said three children living and heirs at law, as of the date of his death, and in order to 30
arrive at the interest each should be entitled to at the date of these articles of agreement, it is agreed that each of the said children shall be charged with the amount in value that he or she may have received from the estate last aforesaid, together with interest on such sum at the rate of six per cent. per annum, payable annually, from the date of the receipt thereof to the date of these articles, and that the said will of George Pomeroy, deceased shall be 40

disregarded so far as the same may be done by the parties hereto to correspond with the provisions of this agreement.

It is further covenanted and agreed by the parties hereto that the estate of Edward Pomeroy, deceased, shall be divided and distributed equally between his said heirs at law, share and share alike, after the payment of his just debts and sundry legacies of six thousand five hundred dollars (\$6,500),
 10 aforesaid, and that his said will shall be disregarded in so far as it conflicts with the terms of this agreement.

It is further covenanted and agreed by the parties hereto that in case it is found that the personal property of said George Pomeroy, or of said Edward Pomeroy, can not be equally distributed in kind, then so much of the same as may be necessary shall be sold and the proceeds thereof divided equally between the parties, as herein provided.

20 It is further covenanted and agreed that the real estate of the said George Pomeroy, deceased, and of Edward Pomeroy, deceased, wherever situated and by whomsoever of the parties hereto held, shall be conveyed by good and sufficient deeds of conveyance by each of the parties hereto, an undivided third part to Julia P. Morrison, an undivided third part to Josephine Pomeroy, and an undivided third part to George P. Pomeroy, so that said last named parties shall hold
 30 the entire title to said real estate as tenants in common, and that if the title to said real estate, or any portion thereof, is held by any other party, that the same shall be considered as belonging to the parties hereto in the proportion stated, and that it shall be so conveyed.

It is further covenanted and agreed that in the division of the said estate the proceeds or revenue to be derived from the trust fund for the benefit of George P. Pomeroy, Julia Pomeroy Morrison and
 40 Josephine Pomeroy, created by the will of George

Pomeroy, deceased, shall be treated as a joint fund and divided equally between the said last three parties, and so far as it lies in our power, we, the parties hereto covenant and agree that the said trust fund shall be considered and be the joint fund of the said last three parties.

This agreement shall be binding upon the parties hereto, and their heirs, executors, administrators and assigns.

In witness whereof we have hereunto set our hands and seals to this instrument, in triplicate, the day and year first, first aforesaid. 10

(Signed) GEORGE P. POMEROY,
[SEAL] JULIA POMEROY MORRISON,
JOSEPHINE POMEROY,
WM. FOSTER MORRISON.

Signed, sealed and delivered in the presence of
EDMUND D. HALSEY.

*State of New Jersey, }
Morris County, } ss.* 20

Be it remembered that on this second day of May, A. D., eighteen hundred and eighty-seven, before me Edmund D. Halsey, a Master in Chancery of New Jersey, personally appeared George P. Pomeroy, Julia Pomeroy Morrison and William Foster Morrison, her husband, who I am satisfied are the grantors in the above deed named, and I having first made known to them the contents thereof, they severally acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed, and the said Julia P. Morrison being by me examined separate and apart from her husband, further acknowledged that she executed the same freely and voluntarily and without any fear, threats or compulsion of or from her husband. 30

(Signed) EDMUND D. HALSEY,

Master. 40

And these respondents, further answering, say that after the death of the said George P. Pomeroy, as aforesaid, and the appointment of the said Frank R. Chandler as executor and trustee under his last will and testament, as aforesaid, the said Josephine and Julia refused to perform and carry into full effect the provisions of the said agreement in writing; and thereupon said Frank R. Chandler filed his bill of complaint in equity, in the Circuit Court
10 of the United States for the district of New Jersey, to enforce the specific performance of said agreement in writing; and that the said Eugene Cowles Pomeroy, infant son of said deceased, by Charles W. Chase, his guardian, was afterwards joined as a party complainant in said bill, which was brought against the said Josephine Pomeroy and Julia Pomeroy Morrison, now Julia Pomeroy Newell; also against Alfred Mills, as executor of the last will and testament of George Pomeroy, deceased. Said
20 Bill was originally filed also against William Foster Morrison, as the husband of said Julia, but was subsequently dismissed by agreement as to him, because he was regarded as an unnecessary party.

And these respondents further say that such proceedings were had in said last named suit, and that on or about June 1, A. D., 1891, said bill of complaint was dismissed by said Circuit Court for want of equity; and that thereupon said complainants prayed, obtained and prosecuted an appeal
30 from said decree of said Circuit Court to the Supreme Court of the United States; and that in said last named court such proceedings were afterwards had that on or about February 29, A. D., 1892, a decision was rendered in and by the said Supreme Court, reversing the aforesaid decision of said Circuit Court, and holding that the said agreement in writing is valid and ought to be specifically enforced, and remanding the cause for further proceedings in the said Circuit Court in conformity to the

opinion and judgment of the said Supreme Court in that behalf.

And these respondents, further answering, say that afterwards, to wit, on or about January 30, A. D., 1894, such proceedings were had under the mandate of the said Supreme Court in said cause, that a decree for the specific performance of said agreement was duly entered of record in said cause, and that the same was, by such decree, referred to a Master in Chancery of said Court to take and state 10
an account of and concerning the matters in controversy between the parties.

And these respondents, further answering, say that the proceedings under said mandate, and the order and decree entered in pursuance thereof, are still pending and undetermined before said Master and said Circuit Court. And these respondents respectfully submit to this Honorable Court that no proceedings ought to be had or taken for a partition of the said real estate under the said Bill of com- 20
plaint, so as aforesaid filed by said Josephine Pomeroy, until after the determination of the proceedings of said Circuit Court of the United States; forasmuch as it may be necessary or expedient in the course of said cause for the said Circuit Court of the United States to take action in relation to the same lands to secure a partition of which the bill of said Josephine was filed in this court.

And these respondents, further answering, say, for the information of this Honorable Court, and to 30
avoid the appearance of withholding any thing which ought to be brought to the knowledge of the Court, that on or about January 4, A. D., 1891, a supplemental bill was filed in the cause aforesaid, in the said Circuit Court of the United States, setting forth the bringing by the said Josephine Pomeroy of the bill to which this answer is filed; and also the commencement of a like suit in the State of New York, for a partition of certain lands located therein, whereof the said George Pomeroy died 40

seized; and a certain other like suit in the State of Missouri for a partition of certain other lands located therein whereof the said George Pomeroy died seized; and in and by which said supplemental Bill said complainants sought to enjoin the said Josephine and the said Julia from prosecuting the said partition suits, or either of them, until the further order of the said Circuit Court to the contrary; which said injunction was duly allowed by
 10 the said Circuit Court, and continued in force therein until after the entry of said order and decree thereof, of January 30, A. D., 1894, and was observed and obeyed by said Josephine and Julia, accordingly. But afterwards, to-wit, on or about March 28, A. D., 1894, on motion of their counsel, an order was entered by said United States Circuit Court dissolving said injunction, thereby leaving said Josephine and Julia free to prosecute the suits aforesaid, but not otherwise affecting the same.
 20 And these respondents respectfully submit to this Honorable Court that notwithstanding said dissolution of said injunction, proceedings in this cause ought to be stayed, as aforesaid, for the reasons above set forth.

And these respondents, further answering, say, that they admit in substance, as set forth in said bill of complaint; the death of the said George Pomeroy; and his last will and testament and the probate thereof; and the death of his said widow;
 30 and the death of the said Edward, and his last will and the probate and execution thereof; and that he left no widow nor child, nor issue thereof; and that said Alfred Mills, as surviving executor of said George Pomeroy has sold lands of said testator and completed the trust funds for the said Josephine and Julia, which are specified in the will of said George; but these respondents insist that the said Alfred Mills ought not to be discharged from the said executorship, nor from said suit in said United
 40 States Circuit Court, until after the termination

thereof, forasmuch as further action may be required of him in that behalf.

And these respondents, further answering, say that they deny it is or ever was at all necessary or expedient that the said Will of the said George P. Pomeroy should be anywise proved or admitted to probate in the State of New Jersey, or otherwise exhibited or recorded therein, except as has already been done by said Frank R. Chandler for the purpose of making the same an instrument of title under the laws of New Jersey, as aforesaid; forasmuch as said Chandler, as executor and trustee under said will is fully authorized and empowered, as well by the laws of the State of New Jersey as by the Constitution and laws of the United States, to execute and carry into full effect, in the State of New Jersey, and the other States of the American Union, all the provisions of said will under the probate thereof, so as aforesaid had, in said State of Illinois.

20

And these respondents, further answering, say they do not know, and therefore cannot state, whether the lands and real estate whereof the said George Pomeroy died seized, and which remain unsold by the said Alfred Mills, as his executor as aforesaid, are truly and correctly described in said Josephine's said bill of complaint; nor do they know whether the several tracts and parcels of land, as described therein, do or do not constitute the whole of the remaining estate of the said George Pomeroy, deceased; wherefore, in case this Honorable Court shall proceed to the partition sought in and by said bill, these respondents pray that it may be duly ascertained and made to appear by the proper inquiry and proof that all the remaining estate of the said George Pomeroy has been brought before the Court before any final action thereon; and that said complainant may also be required to produce and exhibit to the Court such abstracts or other evidence of title as would be necessary or expedi-

40

ent for the protection of the interests of said infant, in case certain of said lands should be set apart and conveyed to him, and he should afterwards have occasion to deal with, sell or convey the same.

And these respondents further say, in answer to the charge of said Josephine, that she has paid out large sums of money for taxes, repairs, insurance, maintenance and other expenses in and about the land described in said bill, and is entitled to an
10 accounting for the same, and for reimbursement for money advanced for the common benefit of the several tenants in common, over and above one-third thereof; that they deny that said Josephine is entitled to any such accounting in this suit; for that the said Circuit Court of the United States hath full, complete and prior jurisdiction over that matter, and must necessarily deal with and decide the same in the accounting so as aforesaid being
20 had under a decree of that Court. Wherefore these respondents pray that this Court will take no action in that behalf, but will require the said Josephine to present her said claim to said United States Court for whatever proceedings may be needed thereon.

And these respondents further answering say that to avoid all unnecessary repetition and expense, having specifically answered all and singular such matters contained in said bill, as they are advised
30 it is necessary or expedient for them to make particular answer unto; and having denied or demanded proof of all such matters as seem to them to require such denial or demand, these respondents now generally admit all such further or other matters in said bill contained, if any, as are consistent with the matters and things set up or admitted by them; and deny all such other matters, if any, in said bill contained, as are inconsistent with the positions taken and the claims made by

them herein; and now having fully answered, these respondents pray to be hence dismissed, with their reasonable costs, in this behalf sustained, etc.

FRANK R. CHANDLER,

Next friend of

EUGENE C. POMEROY.

C. C. BONNEY and GUILD & LUM,

Solicitors and Counsel for said Defendants.

10

Exhibit A with Answer.

United States of America.

State of Illinois, }
Cook County. } *ss.*

PLEAS, before the Honorable M. F. Tuley, one 20
of the Judges of the Circuit Court of Cook County,
at a term, thereof begun and held in Chicago, in
said County and State, on the third Monday (being
the twenty-first day) of December, in the year of
our Lord one thousand eight hundred and ninety-
one, and of the independence of the United States,
the one hundred and sixteenth.

PRESENT, Honorable F. M. Tuley, one of the
Judges of the Circuit Court of Cook County, State
of Illinois. 30

JOEL M. LONGNECKER,

States Attorney.

JAMES H. GILBERT, *Sheriff.*

Attest: HENRY BEST, *Clerk.*

Be it remembered that at the term aforesaid, to
wit: on the fifth day of January, A. D., 1892, the
following among other proceedings were had and
entered of record in said Court to wit: 40

EUGENE C. POMEROY, an infant, by
JOHN MAYNARD HARLAN, as his
next friend.

vs.

10 FRANK R. CHANDLER, individually,
and as executor of the last Will
and Testament of George P. Pom-
eroy, deceased; MARTHA E. BUCK-
INGHAM, ANNA S. CHANDLER,
ROSE A. BUCKINGHAM, MARY E.
VAN AULEN, EDWIN COWLES, L.
PRENTISS, ELIZABETH COWLES,
ALMIRA C. CHASE, JOSEPHINE
20 POMEROY, JULIA POMEROY MOR-
RISON, WILLIAM F. MORRISON and
CHARLES W. CHASE, guardian of
Eugene Cowles Pomeroy.

*Bill to
set aside Will
filed June 16,
1888.*

*Gen.
No.
67,062,283.*

Final Decree.

And now on this fifth day of January, A. D.,
1892, came the said Eugene Cowles Pomeroy, by
30 his next friend, and the other parties aforesaid, by
their respective solicitors and counsel also came;
and thereupon, an issue at law having been duly
made up whether the writing produced and
described in the pleadings in this cause be the will
of George P. Pomeroy, the testator, or not; it was
thereupon ordered by the Court that said issue be
forthwith submitted to trial by a jury, pursuant to
the statute in such case made and provided.

And thereupon, under the direction of the
40 Court in that behalf, came a jury of twelve good

and lawful men, to wit: Charles J. Bartlett, Charles Green, Roswell W. Weld, Edward H. Lewelling, H. B. McGuire, John H. Schultz, Morris Haffenberg, Anthony F. Wicks, Charles Forsberg, John J. Kassner, Alden Roberts, John D. Campbell, and said jurors respectively were then and there duly impaneled and sworn to try the issue aforesaid, and such trial was thereupon accordingly had in all things as the law requires; and the jury aforesaid, having heard and considered the evidence submitted to them upon such trial, upon their oaths aforesaid, returned their verdict, in and by which verdict said jury found: "We, the jury, find that the writing produced on the trial of this cause, as the last will and testament of George P. Pomeroy, deceased, and consisting of an original will purporting to have been executed at Paris, France, on February 24, A. D., 1887, together with a codicil attached thereto, and purporting to have been executed at Chicago, Illinois, on July 9th, A.D., 1887, was and is the last will and testament of the said George P. Pomeroy, and that the said George P. Pomeroy, at the time of the execution of the said Will and Codicil was of sound and disposing mind and memory and capable of disposing of his property and estate by will under the laws of this State.

And thereupon it was ordered, adjudged, and decreed by the Court, that the verdict aforesaid, in favor of the validity of said will of the said George P. Pomeroy, be duly entered of record in this cause; and that the writing so produced as aforesaid, be and hereby is established as the last will and testament of the said George P. Pomeroy, duly executed pursuant to law, which said last will and testament are deposited in the Probate Court of Cook County, aforesaid.

And foreasmuch as it appears to the Court that it was right and proper that the validity of said writing should be tried and determined in manner aforesaid, to the end that the rights and interests

dependent thereon might be duly established according to law; and because it also appears to the Court that the respective parties to this suit have discharged the costs incurred by them, respectively, during the progress of this suit, it is ordered that no costs be taxed in favor of either party, and that the respective parties do go hence without day, etc.

10 *State of Illionois* }
 Cook County } *ss.*

I, HENRY BEST, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain decree made and entered of record in said Court, on the 5th day of January, A.D., 1892, in a certain cause lately pending in said Court, on the chancery side thereof,
 20 between Eugene C. Pomeroy, by John Maynard Harlan, his next friend, complainant, and Frank R. Chandler, extr., et al., defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, in said County, this 15th day of January, 1892.

State of }
New Jersey, } *ss.*

In the Court of Chancery.

JOSEPHINE POMEROY. <i>Complainant.</i>	}	10
<i>vs.</i>		
JULIA POMEROY MORRISON, now JULIA POMEROY NEWELL, MARTHA E. BUCKINGHAM, ANNA S. CHAND- LER, ROSE A. BUCKINGHAM, now ROSE A. SELFRIDGE, MARY E. VAN AULIN, FRANK R. CHANDLER, and EUGENE C. POMEROY, <i>Defendants.</i>	} <i>For</i> <i>Partition.</i>	20

The petition of the infant defendant Eugene C. Pomeroy for the protection of his interests in the above entitled cause.

To His Honor, the Chancellor of New Jersey :

This petitioner, who is an infant of tender years, as is set forth in the answer heretofore filed to the bill of complaint in this cause, by said defendant, Frank R. Chandler, as his next friend in this suit, and who has also been duly appointed the guardian *ad litem* herein of this partition; now again comes by the said Frank R. Chandler, as his next friend herein, and respectfully represents to the Court that as he is advised and believes there are certain other matters, in addition to those which are in said answer contained, which ought to be

brought to the knowledge and attention of the Court, and which are hereinafter set forth, to the end that the rights and interests of this petitioner, in and to the subject matter of this suit, may have adequate protection and enforcement at the hands of this Honorable Court, as equity and good conscience may require.

And this petitioner further respectfully represents that among the matters aforesaid which, though briefly mentioned in said answer, are not set forth nor exhibited therein, but which ought to be brought more fully to the knowledge and attention of this Court, as this petitioner is advised, for the purpose aforesaid, are the bill of complaint and supplemental bill in the cause which was brought and is still pending in the Circuit Court of the United States for the District of New Jersey, as as is stated in said answer, together with the interlocutory decree for an accounting and other relief which has been entered therein, and is now in course of execution under the direction of said Court. And accordingly this petitioner brings with this petition and exhibits to this Court, for such use thereof as the Court may deem expedient, a copy of said bill, supplemental bill, and interlocutory decree, by which this Honorable Court may be more fully informed of and concerning the circumstances and conditions, the scope and the purpose of said suit, and the relation thereof to the above entitled suit, and the interests involved in the same.

And this petitioner further respectfully represents to this Court that, among the matters aforesaid, which, though briefly mentioned in said answer, are not fully set forth therein, but which this petitioner is advised ought now to be brought more fully to the attention of this Court, is the suit brought by the said Julia Pomeroy Newell in the Supreme Court of the State of New York, for Queens County, in said State, for a partition of certain lands located in said County, and whereof the said

George Pomeroy died seized; also the suit brought by said Julia Pomeroy Morrison, now Julia Pomeroy Newell, and said Josephine Pomeroy and another, in the Circuit Court for the City of St. Louis, in the State of Missouri, for a partition of certain lands located in said State, and whereof the said George Pomeroy died seized. And accordingly, this petitioner now brings and exhibits with this petition a copy of the complaint filed in said suit, so brought in the State of New York, and a copy 10 of the petition filed in said suit, so brought in the State of Missouri, for such use thereof as this Court may deem expedient and conformable to equity.

And hereupon this petitioner respectfully submits to this Honorable Court that it is manifest from an inspection of the papers aforesaid that the lands whereof a partition is sought in the above entitled suit, are so involved in said suit, in the said Circuit Court of the United States, that no partition thereof ought to be had until after the 20 full execution of said interlocutory decree, but that any suit or proceeding brought for such partition should be postponed until the execution of such decree shall have been completed.

And because, as is set forth in said answer, the said Circuit Court of the United States hath not anywise definitely or finally determined that it will not proceed in that suit to a partition of the lands and real estate whereof the said George Pomeroy died seized; but said Court, by the dissolution of 30 the injunction mentioned in said answer hath only left the complainant in the above entitled cause at liberty to proceed in the same as this Court may deem conformable to law and equity; now therefore, this petitioner further respectfully suggests to this Court that without regard to other questions relating thereto, all proceedings in this cause for a partition of the lands of the said George Pomeroy which are located in the State of New Jersey, ought to be stayed until the said Circuit Court of the 40

United States shall definitely and finally have decided whether it will itself proceed to cause such partition to be made.

And this petitioner also respectfully submits to this court that in case it should finally be determined that this Court can and will proceed to cause a partition to be made of the lands described in the Bill of complaint in the above entitled cause; then, and in that case, this court having jurisdiction of
10 the parties in interest and of the lands of the domicile of the said George Pomeroy, deceased, should as a condition precedent to any such partition, inquire, consider, and determine whether the best interests of the parties, and particularly of this petitioner as a ward of this Court, would be best promoted by separate suits for partition in the several States mentioned without relation to each other; or whether such interests would be better protected and advanced by requiring that the
20 plaintiff in said suit in the State of New York, and the petitioners in the said suit in the State of Missouri, do cause the same to be made ancillary and subordinate to the above entitled cause, to such an extent and in such a manner as to enable the court to make, in substance and effect, one partition of all the lands whereof the said George Pomeroy died seized, and which now remain subject to partition; *provided*, that any proceeding which may be deemed necessary or expedient to be had in said State
30 of New York, or in said State of Missouri, may, nevertheless, be taken under the direction of this Honorable Court.

And this petitioner further respectfully represents that before directing or proceeding to any partition of the lands aforesaid, or any or either of them, or any part thereof, this Honorable Court ought to require that a full and complete inventory, duly verified, of all the lands and real estate whereof the said George Pomeroy died seized, and which
40 now remain unsold under his last will and testa-

ment, be made and filed in the above entitled suit to the end that it may clearly appear that the proposed partition will embrace all of said lands.

Wherefore, and because this petitioner, being an infant of tender years, is entitled to the especial aid and protection of this Honorable Court in relation to all his rights and interests which are in any wise involved in the matters aforesaid, he prays that your Honor will duly inquire into and consider all and singular the matters aforesaid; and will thereupon make all such orders and decrees in relation thereto as the nature of the case may require. 10

And this petitioner especially prays that an order may forthwith be entered in this cause staying all proceedings therein until this Court shall otherwise order and direct.

And this petitioner also prays that he may have upon this petition, all such further or other relief as the nature of the case may require and equity and good conscience approve, etc. 20

(Signed) EUGENE COWLES POMEROY,
Infant Petitioner,
 by FRANK R. CHANDLER,
His Next Friend.

(Signed) C. C. BONNEY, & GUILD & LUM,
Solicitors and Counsel, Etc.

30

40

Verification of the Foregoing Petition.

10 *The United States of America,* }
 Northern District of Illinois, } ss.
 City of Chicago,

Frank R. Chandler, of said city, being first
 duly sworn, upon his oath says that he has read
 the foregoing petition, by him subscribed for and
 in the name of the said Eugene Cowles Pomeroy,
 in whose behalf the same has been prepared, and
 that he knows the contents thereof. And this affi-
 20 ant further says that he is well informed of and
 concerning all and singular the matters and things
 in said petition set forth, and in part has personal
 knowledge thereof; and that from such informa-
 tion and knowledge he believes the matters and
 things aforesaid to be truly stated therein, and
 said petition to be true. And this affiant further
 says that as he verily believes the best interests of
 said infant require that the prayer of said petition
 be allowed. And further this affiant says not.

Witness my hand and seal at Chicago
 30 [SEAL] aforesaid this seventh day of November,
 1894.

(Signed)

W. H. ROSE,
Notary Public.

The bill of complaint in equity referred to in the foregoing answer as having been filed by Frank R. Chandler, in the Circuit Court of the United States for the District of New Jersey, to enforce the specific performance of said agreement, is entitled as follows:

United States of America, }
District of New Jersey, } *ss.*

10

In the Circuit Court of the United States for said District.

FRANK R. CHANDLER, as Trustee
and Executor under the last Will
and Testament of GEORGE P.
POMEROY, deceased,

vs.

JOSEPHINE POMEROY, JULIA POMEROY MORRISON and WILLIAM FOSTER MORRISON; also ALFRED MILLS, as executor of the last Will and Testament of GEORGE POMEROY, deceased,

In Equity.
Bill for
Specific Per- 20
formance and
other relief.

“and was filed in the office of the Clerk of Chancery, November 16, 1894.”

30

The supplemental Bill and interlutory decree and copy of complaint in the suit in the Supreme Court of the State of New York, for Queens County, and copy of petition in suit brought in the Circuit Court of the City of St. Louis, in the State of Missouri, for partition of lands in said States, were filed as exhibits in the clerk's office of the Court of Chancery on the 16th day of November, 1894.

40

In Chancery of New Jersey.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">JOSEPHINE POMEROY,</p> <p style="text-align: center;"><i>Complainant.</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JULIA POMEROY NEWELL, formerly JULIA POMEROY MORRISON, <i>et al.</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="font-size: 4em;">}</p> <p style="text-align: center;"><i>On Bill for Partition Order of Reference.</i></p>
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It is on this tenth day of September, A. D.,
 20 eighteen hundred and ninety-four, on motion of
 John R. Emery, solicitor of the complainant
 ordered that the above stated cause be referred to
 Vice-Chancellor Hon. Robert S. Green, Esq., to
 hear the same for the Chancellor, and to report
 thereon to him and to advise what order or decree
 should be made therein.

ALEX. T. MCGILL,
Chancellor.

30 At a hearing in the cause before his Honor
 Robert S. Green, Vice-Chancellor, January 10,
 1895, Josephine Pomeroy testified as follows:

Josephine Pomeroy, being duly sworn accord-
 ing to law, on her oath saith:

Examined by MR. EMERY.

Q. You are a daughter of George Pomeroy,
 formerly living in Madison?

A. I am.

40 *Q.* What time did he die?

A. June 24, 1880.

Q. At the time of his death what family did he leave surviving him?

A. Two sons, two daughters and a wife.

Q. His wife's name was what?

A. Abba S. Pomeroy.

Q. She survived him how long?

A. About two years.

Q. She died then about 1882.

A. She died in February 1883.

10

Q. What were the names of the daughters?

A. Julia Pomeroy, and Josephine Pomeroy.

Q. And the name of the sons?

A. George P. Pomeroy and Edward Pomeroy.

Q. Your brother Edward died subsequently, at about what time?

A. March 6, 1887.

Q. Where was he living when he died?

A. In New York.

Q. Your father owned at the time of his death a large amount of land in and about Madison, New Jersey, didn't he? 20

A. Yes, sir.

Q. Some of it has been sold since his death?

A. Yes, sir, some.

Q. About how much remains?

A. I imagine about 150 acres.

Q. Of that 150 acres how much is comprised in what was known by him as the homestead?

A. About 60 acres.

30

Q. That is, the homestead includes a park surrounded by a stone wall?

A. On one side.

Q. The lines of the park would be indicated by that?

A. Yes, sir.

Q. And that, I understand, is about 60 acres.

A. Yes, sir.

Q. Are there some other buildings belonging to the estate, houses and lots beside the home- 40

stead property?

A. Yes, sir, a few buildings.

Q. How many?

A. Three cottages and other small cottages, besides the gardener's house.

Q. Three cottages on lots on one of the Madison streets?

A. Yes, sir.

Q. And the bulk of the property is unimproved?

10 *A.* Yes, sir, the bulk of the property is unimproved.

Q. He also owned property in Hudson County at the time of his death, in Bayonne, Hudson County?

A. Yes, sir.

Q. And some in the Township of Kearney?

A. Yes, sir.

Q. Was Edward Pomeroy married at the time of his death?

A. He never was married.

20 *Q.* Your brother George also died subsequently to your brother Edward?

A. He died about six months later.

Q. And what family did your brother George leave?

A. He left one son.

Q. Was his wife living?

A. No sir, his wife was dead.

Q. And the son's name?

A. Eugene Cowles Pomeroy.

30 *Q.* What about his age?

A. About thirteen.

Q. Your sister, Miss Julia Pomeroy, was not married at the time of your father's death?

A. No sir.

Q. She was subsequently married?

A. Yes sir.

Q. Who did she marry?

A. William Foster Morrison.

Q. And she subsequently married again?

A. She married Mr. Newell.

Q. Has she any children ?

A. No sir.

Q. George Baldwin Newell is the name of her present husband ?

A. Yes sir.

Q. Mrs. Morrison obtained a divorce from her husband, did she not ?

A. Yes, sir.

Mr. John R. Emory for complainant offered in 10
evidence the deeds of the property owned by
George Pomeroy in Madison, Morris County, New
Jersey, and also deeds of property in Hudson
County, also wills of George Pomeroy, Edward
Pomeroy, and George P. Pomeroy, marked respect-
ively " Exhibits C 3, C 4, C 5 ; also the agreement
made April 13, 1887, between Julia P. Morrison,
and William Foster Morrison, her husband, Jose-
phine Pomeroy, and George P. Pomeroy, marked
Exhibits C 6, also memorandum of decision filed 20
March 27th, 1894, and also the decree or order dis-
solving the injunction filed April 3, 1894, after the
suit ; also the map showing the property now owned
in Bayonne, Hudson County, New Jersey, marked
Exhibit C 8, and also a map of the survey of prop-
erty now owned in Morris County, showing the
property owned by George Pomeroy's estate, of
which a partition is sought to be had, and marked
Exhibit C. 9.

Mr. Bonney for the defendant offered in evi- 30
dence, the decree of the Circuit Court of the United
States for the district of New Jersey, in the case of
Frank R. Chandler, *et als*, *vs.* Josephine Pomeroy,
et als, entered under date of January 30, 1894, and
marked Exhibit D 1.

JOSEPHINE POMEROY, <div style="text-align: center; padding: 5px 0 5px 40px;"><i>vs.</i></div> FRANK R. CHANDLER, <i>et al.</i>	}	<i>V. C. Green's Conclusions.</i>
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This bill is filed to partition the real estate of which George Pomeroy died seized.

Mr. Pomeroy died in the year 1880, owning
 10 very large tracts of land in Morris, Union and Hudson Counties, including a Homestead at Madison inclosed by a park with a stone wall around it, called "The Homestead Lot or Tract."

His family and heirs at law consisted of his wife and his four children, George P., Edward, Julia and Josephine.

His will was duly probated in Morris County, and letters testamentary issued to Edward Pomeroy and Alfred Mills who were appointed in the wili as
 20 his executors. The provisions of the will were substantially (a) The executors were authorized to deliver to the New York Life Insurance and Trust Company securities to the amount of \$50,000, to be held in trust for the benefit of his wife during her life, and upon her death, to divide the securities and proceeds equally among his children Edward, Julia and Josephine. (His widow died February, 1883).

(b) Securities to the amount of \$30,000 were
 30 directed to be deposited with the same company, to be held in trust for the benefit of his son George P. during his life, and at his death such securities and the proceeds thereof were also to be divided among the said children, Edward, Julia and Josephine.

(c) The testator directed that no partition or sale of his real estate should be made until his executors should have sold real estate to the amount of at least \$100,000, and directed the proceeds of
 40 the first of such sales to be deposited with the same

company until the amounts should reach that sum, which was to be held and invested for the benefit of his daughters Julia and Josephine, with instructions to collect and pay to each of them the interest on \$50,000 with certain directions in the case of the death of either of them.

(d) The residue of the estate, aside from some immaterial legacies, was devised to his three younger children, Edward, Julia and Josephine in equal parts. It was provided that the homestead 10 at Madison, New Jersey, should be kept up by the three younger children as long as they and the widow could live harmoniously, etc.

The son George P. Pomeroy was living in Europe. Edward Pomeroy took upon himself the main management of the estate and the sale of the real estate, to procure the trust funds of \$100,000 for the daughters, and of \$30,000 for George P. Pomeroy.

Disputes arose between Edward Pomeroy and 20 sisters some time about 1884, the sisters claiming that he had not paid over to them their proper share of the estate, and they commenced suit in New York against him, pending which suit he died, leaving a will by which he gave all his property of every kind and nature, real as well as personal, to his brother George P. Pomeroy.

George P. Pomeroy, who had been cut of from the residuary estate of his father by his father's will, was thus, by the will of his brother Edward, 30 put in Edward's place.

In 1887 an agreement was entered into with reference to the estate between George Pomeroy and his two sisters Julia and Josephine.

George P. Pomeroy died November, 1887, leaving all his property in the first instance to his son Eugene C. Pomeroy, an infant, who is made a party to this suit, the estate being limited over to other persons who are also made party. Mrs. George P. Pomeroy died before her husband. 40

The sisters Josephine and Julia, subsequently claimed that the agreement referred to had been signed by them under a misapprehension, and in fraud, and declined to carry it out, and Frank R. Chandler, who had been appointed administrator *de bonis non* of Edward Pomeroy's estate, and who was also the executor of George P. Pomeroy's estate, filed a bill in the United States Circuit Court for the District of New Jersey, to enforce
10 that agreement. Julia Pomeroy having after her father's death married William Foster Morrison, the defendants to the suit were Josephine Pomeroy, Julia P Morrison and William F. Morrison. While that suit was pending, Miss Josephine Pomeroy filed her bill in this Court for the partition of the real estate in New Jersey of which her father died seized, and as I understand, similar actions were commenced in the Courts of New York and Mis-
20 sissippi, in which states her father had died seized of real estate. After the partition bill was filed in this suit, pending the suit by Chandler to set aside the agreement, Judge Bradley granted therein a temporary injunction or stay, of these partition suits pending the argument in that Court. The cause was subsequently tried before Judge Bradley, who set the agreement aside. The case then went by appeal to the Supreme Court of the United States and the decree of Judge Bradley was reversed and the agreement held to be a valid agreement. 143
30 U. S. Rep. 318. After the injunction had been granted by Judge Bradley Mr. Chandler appeared in the New Jersey suit with a plea setting up the proceedings in the United States Court, and also that the injunction had been granted therein. That plea remained without hearing or decision until after the decision of the United States Supreme Court sending back the original suit to the Circuit Court. On the cause being remitted to the Circuit Court, by the Supreme Court of the United
40 States to enforce the agreement, the case came on

for hearing before Judge Green and a decree was entered in compliance with the decision of the Supreme Court. The matter was referred to William L. Dayton, Esq. as a Master to take and state the account of the transactions between the parties, and the Master has since that time gone on with the accounting, which it was represented on the argument, was practically completed. After the remission of the cause to the Circuit Court, Counsel of Miss Pomeroy moved to dissolve the
10
injunction restraining her from proceeding with the partition suits in the New Jersey, New York and Illinois Courts. On this motion Judge Green filed this memorandum :

“ On motion to dissolve injunction restraining prosecution of suits for parties, etc.

MEMORANDUM.

When Mr. Justice Bradley allowed an injunction to go against the defendants, restraining them
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from prosecuting certain suits for the partition of real estate, in which the complainants and defendants were interested as tenants in common, and which were pending in the Courts of New Jersey, New York and Missouri, he stated, in effect, that such injunction was to be temporary, only: and was intended rather to prevent an embarrassment which might arise from a conflict of jurisdiction during the pending litigation, seeking the specific performance of the agreement, which has now been
30
upheld by the Supreme Court, as a good and valid agreement. He expressly stated that in enjoining those partition proceedings at that time, it was not the intention of the Court to permit the suit then under consideration by him, to be converted into a suit for the partition of the lands in question. To these remarks of the learned Justice I only add that I am unable to understand how lands situate in New York and Missouri can be legally partitioned by a Court which has no jurisdiction over them. 40

The parties complainant and defendant are, it is admitted, tenants in common of large estates, situate in these different States. Some of these tenants in common desire a partition of these lands in accordance with law. This is an undoubted right of a tenant in common. And no reason has been presented to the Court of sufficient weight to cause any interference with such right, now, the object of the injunction, granted by Mr. Justice Bradley, has been fully attained. It was avowedly to be temporary only in its duration. It ought not longer to be held over the heads of the defendants, barring them from asserting and enforcing their clear rights. No good purpose could be thereby accomplished; and the causes which warranted its original issue no longer exists.

The motion to dissolve is granted." And an order was entered April 3d, 1894, in accordance therewith, dissolving the injunction.

Julia P. Morrison, having been divorced from her husband, William Foster Morrison, was subsequently married to George P. Newell, who was made a party to the suit; and the plea heretofore mentioned filed by Mr. Chandler was withdrawn.

Mr. Chandler was then appointed guardian for the infant defendant and filed an answer, substantially, after admitting the undisputed facts of the case, setting out the will of George Pomeroy and also of Edward Pomeroy: and also setting out the agreement executed between the two sisters and their brother, and the proceedings in the Circuit Court of the United States and the suggestion that this suit in partition of New Jersey property ought to be stayed because of the pendency of the suit in the United States Court. The case was then set down for hearing on bill and answer.

There is practically no dispute between the parties as to the facts of the case, viz: that there is real estate in this State, as well as in New York and Missouri, of which they are tenants in common.

Counsel for the guardian of the infant however, now applies to the Court on behalf of the infant to have the proceedings in this case further stayed. (1) On the ground that it is for the interests of all the parties, and especially of the infant, that all of the real estate in the three States should be partitioned in one proceeding. What that proceeding was to be, what Court had jurisdiction to that extent, or how it was to be effectively accomplished was not very clearly developed. The Supreme 10 Court of the the United States in the case of Chandler v. Pomeroy, 143 U. S. Rep. 318, expressly avoided the expression of an opinion whether in that suit the Court might proceed to a partition of the real estate. And on remitting it to the Circuit Court, Judge Green remarked that he was unable to understand how land situated in New York and Missouri could be legally partitioned by a Court which had no jurisdiction over them.

It would appear to be the right of one tenant 20 in common, in the absence of any restrictions upon the title, to have partition of the real estate, and this right should not be denied or postponed in enjoyment simply because the interests of some one or more of the other tenants in common might be advanced or improved by delay. The only suggestion made by counsel upon this point, which is entitled to consideration as a reason, was that the accounting before the Master had not proceeded to a report and it was not known as yet how the in- 30 debtedness between the parties would stand. But as suggested on the argument, this furnishes no obstacle to the Court proceeding in partition, for if the amount due from one tenant in common to the other is a claim, or lien upon such daughter's share in the real estate, the decree of the Court can, and in fact always does, transfer, so to speak, the lien from the undivided share to the share of the party as set off.

The next ground urged for the postponement 40

is, that by a fair construction of the agreement, made between George P. Pomeroy and his sisters, the real estate is not to be partitioned until a settlement of the accounts between them.

Confessedly the agreement does not expressly contain any such provision, nor does it seem to me that it is open to that construction on a fair reading of it.

It is dated April 13th, 1887—after reciting in
 10 substance that Edward at the time of his death was indebted to Julia, Josephine and George P., or some one or more of them, to an unknown amount; that the parties desire to settle the estate of their father and their brother Edward without litigation, and to adjust the claims of the parties against Edward's estate, suppressing and terminating the suits brought against him and pending when he died, and that they desired to vacate the provisions of their father's will in order to be equally charged with, and equally to share, in the estates of both George Pome-
 20 roy and Edward Pomeroy, and to settle said estates and determine the value of the shares of each of said heirs, they agreed in substance as follows: (1) The remainder of the estate of George Pomeroy, the father, was to be equally divided among the three living children—Julia, Josephine and George P. (2) This division to be made as of the date of the death of the father. (3) To arrive at the interest to which each should be entitled at the date of the agreement, each was to be charged with the
 30 amount he or she had received, with six per cent. interest from the date of the receipt to the date of the document payable annually. (4) The estate of Edward was to be divided and distributed equally between George P. and his two sisters, after payment of his just debts and the specific legacies of \$6,500. (5) In case it should be found that the personal property of said George or said Edward could not be equally distributed in kind, then so
 40 much as might be necessary be sold and the pro-

ceeds divided. (6) The real estate of said George and of said Edward wherever situated and by whomsoever held, to be conveyed by good and sufficient deeds, so that each of the three parties should hold an undivided third thereof as a tenant in common with the others. (7) In the division of the said estate, the proceeds or revenue to be derived from the trust funds for the benefit of George P., Julia and Josephine, created by the will of their father to be treated as a general fund 10 and divided equally between them, and, so far as it lay in their power the parties agreed that the said funds should be considered and be the general fund of the parties.

The partition of this real estate cannot in any way interfere with the carrying out of this agreement, unless it might be that the indebtedness of one to the other should be a charge upon that other's undivided interest which can and will be protected as before suggested. It would seem that 20 a partition of the real estate between these tenants in common would be carrying the terms of the agreement into effect, rather than interposing any obstacle thereto.

The other ground urged by the counsel is, that this Court should not proceed to partition this estate, in obedience to the rule that he who seeks equity must do equity, and that it will be inequitable to permit two sisters to have partition of their real estate until all the terms of the agree- 30 ment shall have been carried into effect by the report of the Master and a compliance with the decree of the Court thereon.

As was very forcible and clearly stated by the opposing counsel, this rule applies only to acts of the party with reference to the subject matter of the suit, and that it does not apply to what has been done, or what has not been done by the party with reference to some outside matter, but independent of that position, I see no merit whatever 40

in the objection. As stated before, there is nothing in the agreement which, in law, equity or morals, would interfere with these parties, instituting and proceeding with this suit, to have partition of the real estate.

In my judgment no good ground has been shown why the complainant and her sister should be further delayed in their proceedings to have their respective shares of their real estate in New Jersey set off to them. And the testimony having
10 been taken which clearly establishes that these lands are now held by these parties as tenants in common, I will advise the usual decree for the appointment of commissioners.

In Chancery of New Jersey

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JOSEPHINE POMEROY,
Complainant,
and

JULIA POMEROY NEWELL, formerly
Julia Pomeroy Morrison, and
GEO. B. NEWELL, her husband,
and EUGENE C. POMEROY, MARTHA
30 E. BUCKINGHAM, ANNA S. CHAN-
DLER, ROSE A. SELFRIDGE, former-
ly Rose A. Buckingham, MARY E.
VAN AULEN and FRANK R. CHAN-
DLER.

*On Bill for
Partition.*

*Decree for
Partition and
Order
appointing
Commission-
ers.*

This cause being opened to the Court by
Vredenburgh & Garretson of Counsel with the
complainant and C. C. Bonney and Messrs. Guild
& Lum, appearing for Frank R. Chandler, executor
40 and trustee under the last will and testament of

George P. Pomeroy, deceased, and next friend of Eugene C. Pomeroy, an infant, Martha E. Buckingham, Anna S. Chandler, Mary E. Van Aulen and Rose A. Buckingham, now Rose Buckingham Selfridge, defendants, and Maximillian T. Rosenberg appearing for Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and George B. Newell, two of the defendants, and the said Julia Pomeroy Newell and George B. Newell, both appearing and consenting to this decree, as appears by their 10 consent, entered at the end of this decree, and it appearing by said Bill that there are a large number of parcels of land to be partitioned among the parties in interest according to their respective shares or sold, and that said Bill among other things prays that a fair partition and division of the premises in said Bill described may be made among the several owners thereof according to their respective estates or interests therein, and in pursuance of the course and practice of this Honorable 20 Court if the same be practicable and consistent with the rights of all the parties in interest and according to their several and respective estates, rights and interests therein, and in case such partition and division in fact of said premises cannot be made without great prejudice to the owners of said premises, then that the said lands and premises and every part and parcel thereof may be sold and the proceeds of such sale, after deducting the necessary and proper costs, charges and expenses, may 30 be divided among the several parties in interest according to their several and respective estates, rights, titles, and interest therein:—

And it further appearing that on the eleventh day of November, 1890, said Bill was amended by inserting therein at the end of clause numbered 30 so as to make a new clause to be numbered thirty-one, a new clause setting forth that the defendant Julia Pomeroy Morrison consented that a partition might be made of that part of the real estate of 40

which the said George Pomeroy died seized, and which is described in item fourth of the will of said George Pomeroy, and to a partition of all the real estate within this State of which the said George Pomeroy died seized.

And it further appearing that appearances to said Bill were entered on the second day of February, 1891, by Charles C. Bonney, and Guild & Lum for Anna S. Chandler, Martha E. Buckingham, Frank R. Chandler, executor, Rose Buckingham
10 Selfridge, and Mary E. Van Aulen,

And it further appearing that a plea to said Bill was filed on the twentieth day of February, 1891, by Frank R. Chandler, executor and trustee under the will of George P. Pomeroy, deceased, Martha E. Buckingham, Anna S. Chandler, Mary E. VanAulen and Rose B. Selfridge.

And it further appearing that on the twenty-ninth day of June, 1891, certain amendments to the
20 said Bill of complaint were filed, and that by an order of this Court, dated on the twenty-first day of May, 1894, said plea above stated was overruled and said amendments last mentioned were ordered to be withdrawn and stricken out.

And it further appearing that on the nineteenth day of May, 1894, said Bill was further amended by setting up that on or about the thirtieth day of September, 1891, by a decree bearing that date the Supreme Court of Rhode Island, sitting in Newport
30 in said State, did annul and dissolve the marriage relation between the defendants, Julia Pomeroy Morrison and William F. Morrison, and did make a decree divorcing them and gave said Julia Pomeroy Morrison the right to assume her maiden name, to wit, Julia Pomeroy, which she at once did, and setting forth that no children had ever been born to the said Julia Pomeroy Morrison and William F. Morrison, and that after the said decree of divorce the said William F. Morrison had no estate or in-
40 terest of any kind whatever in this suit, and that

since his intermarriage with said Julia Pomeroy the said George B. Newell claims some interest in said land and setting forth that said complainant has paid out a large sum for taxes, repairs, insurance, maintenance and other expenses in and about the said property, *and that she is entitled to an accounting for the same and a reimbursement* from the defendants the other tenants in common of the amount she has paid over and above her one-third share thereof, and that she has paid out for such expenses more than one-third share, and in addition to the prayer for relief already made, prays that an accounting may be had of the sums paid by the complainant for taxes, insurance, repairs, and other expenses on said property, and that she may be declared entitled to receive from the defendants, or some of them, the amount she has so paid over and above her one-third share thereof, and praying that a subpoena to appear and answer may issue to the said George Baldwin Newell.

And it further appearing that on the sixth day of July, 1894, the joint and several answer of Frank R. Chandler, executor and trustee under the last will and testament of George P. Pomeroy, deceased, and of Eugene C. Pomeroy, the sole primary devisee of the said George P. Pomeroy under said will, being an infant under the age of fourteen years, who appears and answers by the said Frank R. Chandler, as his next friend, and Martha E. Buckingham, Anna S. Chandler, Mary E. VanAulen, and Rose A. Buckingham, now Rose Buckingham Selfridge, by intermarriage with Harry Gordon Selfridge, contingent devisees under said will was filed to said bill of complaint.

And it further appearing that by an order filed on the 31st day of August, 1894. Frank R. Chandler was duly appointed guardian *ad litem* of the infant defendant Eugene C. Pomeroy, and it further appearing that on the 16th day of November, 1894, a petition of Eugene C. Pomeroy, an

infant defendant in this cause, by Frank R. Chandler, his next friend, was filed, and that, by an order of this Court bearing date on the day of 1895, the relief prayed for in said petition was denied.

And said cause having been referred to Vice-Chancellor Green to hear and determine the same, and advise the Chancellor what order and decree should be made therein, and the cause being regularly set down to be heard on the tenth day of
10 January, 1895, by the said Vice-Chancellor, and the said Vice-Chancellor having then heard and considered the pleadings, evidence and proofs in said cause, and the arguments of counsel, and having filed his conclusions in said cause on the 22d day of January, 1895, and it satisfactorily appearing that the premises in the bill of complaint mentioned, excepting, however, from the fourteenth tract described in said bill so much thereof as was conveyed by Alfred Mills, executor of George Pomeroy, deceased, to Helen L. Garrabrant, by deed
20 dated April seventh, eighteen hundred and eighty-eight, and recorded in the Clerk's office of the County of Morris, in Liber K 12 of Deeds for said County, page 398, and which had been conveyed previous to the filing of said bill.

And excepting, however, from the said fifteenth tract described in said bill, so much thereof as was conveyed by three separate deeds, one made by Alfred Mills, executor of George Pomeroy, deceased,
30 to Jane C. Coursen, dated June twenty-second, eighteen hundred and eighty-seven and recorded in the Clerk's office of the County of Morris, in Liber C, 12 of Deeds for said County, page 260; One made by Alfred Mills, executor of George Pomeroy, deceased, to James A. Webb, dated May seventh, eighteen hundred and eighty-eight, and recorded in the Clerk's office of the County of Morris, in Liber M, 12 of Deeds for said County, page 63, and one made by Alfred Mills, executor of George

Pomeroy, deceased, to Horace M. Sweetland and James H. McGraw, dated October thirty-first, eighteen hundred and eighty-nine and recorded in the Clerk's office of the County of Morris, in Liber M, 12 of Deeds for said County, page 335, and which had been conveyed previous to the filing of said bill, are so situated that a partition or division thereof can be made among the parties interested therein without great prejudice to the owners thereof, and that the rights and interests of the said 10 parties in the said premises are hereinafter declared and set forth.

It is thereupon on this twentieth day of May, eighteen hundred and ninety-five, by his Honor Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does by virtue of the power and authority of this Court, hereby order, adjudge and decree that the parties Josephine Pomeroy, complainant and Julia Pomeroy Newell, formerly 20 Julia Pomeroy Morrison, Eugene C. Pomeroy, Martha C. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary A. Van Aulen and Frank R. Chandler, the defendants in this suit are seized of and entitled to the lands and premises in the bill of complaint described, excepting however, from the fourteenth tract described in said bill so much thereof as was conveyed by Alfred Mills, executor of George Pomeroy, deceased, to Helen L. Garrabrant, by 30 deed dated April seventh, eighteen hundred and eighty-eight and recorded in the Clerk's office of the county of Morris, in Liber K 12 of Deeds for said county, page 398, and which had been conveyed previous to the filing of said bill.

And excepting, however, from the said fifteenth tract described in said bill, so much thereof as was conveyed by three separate deeds, one made by Alfred Mills, Executor of George Pomeroy, deceased to Jane C. Coursen, dated June twenty- 40

second, eighteen hundred and eighty seven, and recorded in the Clerk's office of the county of Morris, in Liber C 12 of Deeds for said county, page 260: one made by Alfred Mills, Executor of George Pomeroy, deceased, to James A. Webb, dated May seven, eighteen hundred and eighty eight, and recorded in the Clerk's office of the county of Morris, in Liber, M. 12 of Deeds for said county, page 630 and one made by Alfred Mills,
 10 Executor of George Pomeroy, deceased, to Horace M. Sweetland, and James H. McGraw, dated October thirty first, eighteen hundred and eighty nine and recorded in the Clerk's office of the county of Morris, in Liber M 12 of Deeds for said county, page 335, and which had been conveyed previous to the filing of said bill and their respective rights and interests therein are hereby adjudged and decreed to be as follows, to wit: the complainant, Josephine Pomeroy is seized in fee of and entitled
 20 to the one undivided third part of the said premises; the defendant Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, is seized in fee of and entitled to the one undivided third part of the said premises, and the defendants Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen, and Frank R. Chandler, are together seized in fee of and entitled to the one
 30 undivided third part of the said premises in the manner set out in the last will and testament and the codicil thereto of George P. Pomeroy, deceased.

And it is further ordered and adjudged and decreed that partition be made of the said lands and premises among the said parties complainant and defendants according to their respective rights and interests therein, as the same have been hereby adjudged and declared by this Court, and that William L. Dayton, of the County of Mercer, Frank Fuller and Philander B. Pierson, both of the
 40 County of Morris, in the State of New Jersey, be

and they are hereby appointed commissioners for the purpose of making such partition, and that a commission do issue out of and under the seal of this Court for that purpose, to be directed to the said commissioners commanding them to divide the said lands and premises into three equal parts or shares, each equal in value to the other, quantity and quality being relatively considered, and that they allot one of the parts or shares unto the said complainant, Josephine Pomeroy, and that 10 they allot one of the said parts or shares to the defendant, Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and that they allot one of the said parts or shares to the said defendants, Eugene C. Pomeroy, Martha S. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler, to hold as in the said last will and testament and codicil thereto of George P. Pomeroy, deceased, to be held and enjoyed by the said parties 20 respectively, in severalty, according to their respective rights and interests therein as adjudged and declared by this decree, and that they designate the parts or shares so allotted to each of the said parties and the boundaries thereof by sufficient descriptions and monuments.

And it is further ordered, adjudged and decreed that in case partition of said premises cannot be made with perfect equality among the said parties, according to their respective rights and 30 interests, unless compensation be made by one or more of said parties to the other or others of them, for and to secure equality of partition, then, and in that case, the said commissioners may ascertain and report to this Court the proper compensation which ought to be made for equality of partition, and by whom of the parties the same should be paid, and to whom the same ought to be allowed; and that the said commissioners be authorized to employ a surveyor, and cause all necessary maps 40

and surveys to be made, and that all the parties in the cause do produce and leave with the said commissioners, for such time as said commissioners shall deem reasonable, all deeds, writings, surveys and maps in their possession or control, relating to the said premises, and that the said commissioners examine witnesses concerning the matters entrusted to them as they shall think fit.

10 And it is further ordered, adjudged and decreed that each share or part of said premises when allotted as aforesaid, shall be charged with a ratable proportion of the costs charges and expenses of this suit.

ALEX. T. MCGILL,
Chancellor.

20 We, JULIA POMEROY NEWEL, and GEORGE B. NEWELL, two of the defendants in the above entitled cause do hereby consent to the making of the foregoing decree.

Dated April 30, 1895.

JULIA POMEROY NEWELL,
GEORGE B. NEWELL.

Witness present.

30 O. E. BRETT,
GEORGE W. FLAACK, JR.

State of New Jersey, }
County of Hudson, } *ss.*

40 GEORGE W. FLAACK, JR., being duly sworn on his oath says, that he saw the within named Julia Pomeroy Newell and George B. Newell, sign and deliver the foregoing consent, as their voluntary act and deed, and deponent, at the same

time signed the same as subscribing witness.

Sworn and subscribed to, }
 this 20th day of May, } G. W. FLAACK, JR.
 1895. }

THOS. F. BEDLE,
Master in Chancery of New Jersey.

COMMISSION.

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New Jersey, ss.

The State of New Jersey to WILLIAM L. DAYTON, of the County of Mercer, and FRANK FULLER, of the County of Morris, and PHILANDER B. PIERSON, of the County of Morris.

WHEREAS, on the twentieth day of May, eighteen hundred and ninety-five, by a certain decree made in the Court of Chancery of New Jersey, before the Chancellor, at Trenton, in a certain cause therein depending wherein Josephine Pomeroy is complainant, and Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and George B. Newell, her husband, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen, and Frank R. Chandler, are defendants, it was ordered, adjudged and decreed that a partition be made of certain lands and premises in the Bill of complaint in the said cause particularly set forth and described, that is to say, the following described lands and premises, situate, lying and being in the Township of Chatham, in the County of Morris and State of New Jersey. (Description omitted).

Into three equal parts or shares, each equal in value to the other, quantity and quality being relatively considered, and that for that purpose a Commission should issue out of and under the seal of our said Court directed to the said William L.

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Dayton, of the County of Mercer, Frank Fuller and Philander B. Pierson, of the County of Morris, as Commissioners, commanding them to make such partition or division as aforesaid, and that they should allot one of said parts or shares to the complainant, Josephine Pomeroy, and allot one of said parts or shares to the defendant, Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and allot one of said parts or shares to the defendant Eugene
10 C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham. Mary E. Van Aulen, and Frank R. Chandler, to hold as in the said last will and testament, and codicil thereto of George Pomeroy, deceased, to be held and enjoyed by the said parties, respectively in severalty, according to their respective rights and interests therein adjudged and declared by said decree.

Therefore know ye, that we have pursuant to
20 the said decree, fully authorized and empowered you, William L. Dayton, Frank Fuller and Philander B. Pierson, to go to, enter upon, walk over and survey the said tracts of land and premises, and the same to separate, divide and allot according to the decree aforesaid, and for the better making of such partition and allotment we do hereby give unto you full power and authority to examine, separately and apart, upon their oaths or affirmations, upon interrogatories or otherwise as you shall think fit, such
30 witnesses as shall be produced to you by the said parties or any of them, and we do hereby command you that you do at certain, proper, and convenient days and hours to be appointed by you for that purpose, go to, enter upon, walk over and survey the said tracts of land, and cause the said witnesses to come before you and examine each of them apart upon interrogatories to be exhibited before you by the said parties or any of them or otherwise as you shall think fit upon their respective oaths or affir-
40 mations, first taken before you, and to reduce such

examinations to writing, together with the questions asked by you, other than the interrogatories aforesaid, and that you separate and divide the said tracts of land into three equal parts, each equal in value to the other quantity and quality being relatively considered, and do allot one of said parts unto the complainant Josephine Pomeroy, and allot one of said parts to the defendant Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and allot one of said parts or shares to the defendants 10 Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose. A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler, to hold as in the said last will and testament and codicil thereto, of George P. Pomeroy, deceased, to be held and enjoyed by the said parties respectively in severalty according to their respective rights and interests therein as adjudged and declared by the said decree, and that you designate the parts so allotted to each of the said parties and 20 the boundaries thereof by sufficient descriptions and monuments, and employ a surveyor and cause all necessary maps and surveys to be made, and cause all the parties in the said cause to produce and leave with you for such time as you may think reasonable all deeds, maps or surveys relating to the said premises in their possession or control; and in case such partition as aforesaid in said premises cannot be made with perfect equality among the said parties according to their respective rights 30 and interests therein unless compensation be made by one or more of them to the other or others of them for equality of partition, then that you do ascertain and report the proper compensation which should be made to secure an equality in the partition and by whom of the said parties the same should be paid, and to whom of them the same ought to be allowed, and when you shall have so done, you are to certify and return into our Court of Chancery at Trenton, without delay, your acts 40

and proceedings in the premises, by your certificate, together with the said interrogatories, questions and examinations, distinctly and plainly written, and the maps made by you, under your seals, together with this writ.

WITNESS Alexander T. McGill, Esquire,
our Chancellor at Trenton, the 20th day
of May, eighteen hundred and ninety-
five.

10 VREDENBURGH & GARRETSON,

Solicitors.

ALLAN McDERMOTT,

Clerk.

In Chancery of New Jersey

20 *Between*

JOSEFINE POMEROY,
Complainant,
and

JULIA POMEROY NEWELL, formerly
Julia Pomeroy Morrison and GEO.
B. NEWELL, her husband, EUGENE
C. POMEROY, MARTHA E. BUCK-
INGHAM, ANNA S. CHANDLER,
ROSE A. SELFRIDGE, formerly
30 Rose A. Buckingham, MARY E.
VAN AULEN, and FRANK R. CHAN-
DLER,
Defendants.

*Report
of
Commission-
ers.*

*To His Honor Alexander T. McGill, Chancellor of the
State of New Jersey :*

In pursuance of a certain commission, issued out of and under the seal of the Court of
40 Chancery of the State of New Jersey, bearing

date the twentieth day of May, eighteen hundred and ninety-five, in the above stated cause, and amended by an order of the Court, bearing date the fourteenth day of October, eighteen hundred and ninety-five, appointing us the subscribers, commissioners to separate, divide and allot certain tracts of land and premises in the said Commission, as amended, particularly set forth and described into three equal parts, each equal in value to the other, quantity and quality being relatively considered, and allot one of said parts unto the complainant, Josephine Pomeroy, and allot one of said parts to the defendant, Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and to allot one of said parts or shares to the defendants, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler, to hold as in the said last will and testament and codicil thereto of said George Pomeroy, deceased, to be held and enjoyed by the said parties respectively in severalty according to their respective rights and interests therein as adjudged and declared by the decree in said cause; and to designate the parts so allotted to each of the said parties and the boundaries thereof, by sufficient descriptions and monuments.

We do hereby report to the said Court that having taken upon us the burden of the said commission and appointment, and having been duly sworn according to law, we did, after due notice to the said parties, enter upon, walk over and survey the said tracts of land, and did separate and divide the same into equal shares (with the owelty herein-after mentioned), and did make division thereof by metes and bounds having regard to the relative quantity and quality of the land in each share, and that for the better understanding of the shape and situation of said premises, and of the manner in which said partition has been made by us, we have

caused to be made maps thereof, which are hereto annexed and form part of this report, and have marked the several shares delineated on said maps by numbers as follows:

“Tract number one,” containing thirty-six and sixty-six one hundredths acres; “Tract number two A,” containing seventy-four and twenty-six one hundredths acres; “Tract number two B,” containing twenty and eleven one-hundredths acres; “Tract number two C,” containing one and twenty-
 10 eight one-hundredths acres; “Tract number three,” containing forty-three and twenty-two one-hundredths acres, “meadow land” in Passaic Township on a map entitled, “Commissioner’s Map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., Surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, Surveyor.”

And as tracts “number three A,” “number
 20 three B,” “Tract number three C,” “Tract number three D,” “Tract number three E,” “Tract number three F,” upon a map entitled “Commissioner’s Map of the division of the real estate of George Pomeroy, deceased, Bayonne, N. J., surveyed December, 1895, scale one inch to fifty feet, Smith & Weston, surveyors.”

And we did allot one share of the said tracts, being the share marked “Tract number one,” containing thirty-six and sixty-six one hundredths
 30 acres, upon said “Commissioner’s Map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor, to the defendant, Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, which said share is bounded and described as follows, to wit:

Beginning at a stake in the middle of High street, about twenty-five feet westerly from the
 40 westerly entrance to the mansion house formerly of

George Pomeroy, deceased, said stake being also twenty-five feet from the face of the stone wall on the northerly side line of High street; thence (1) along the centre line of High street, south forty-four degrees east seven hundred and seventy-three and fifty one-hundredths feet to a turn in said road; thence (2) south forty-eight degrees east still along the centre line of High street fifty feet; thence (3) still along the same south fifty-six degrees forty-five minutes, east fifty feet; thence (4) 10 still along the same south sixty-three degrees forty-five minutes east fifty feet; thence (5) still along the same south sixty-seven degrees forty minutes east one hundred and forty feet; thence (6) still along the same south sixty-eight degrees forty-five minutes east one hundred and fifteen feet; thence (7) still along the same south seventy-one degrees east two hundred and fifty feet; thence (8) still along the same south seventy-six degrees fifteen minutes east one hundred and fifty feet; 20 thence (9) still along the same south eighty-five degrees forty-five minutes east three hundred and seventeen feet to the intersection of the centre line of the road known as Samson avenue; thence (10) along the centre line of Samson avenue north thirty-three degrees fifteen minutes East five hundred and thirty-five and fifty-one hundredths feet to the centre line of Pomeroy avenue; thence (11) along the centre line of Pomeroy avenue, north forty-nine degrees west two hundred feet; thence 30 (12) still along the same north forty-seven degrees west two hundred feet; thence (13) still along the same north forty-four degrees west two hundred feet; thence (14) still along the same north forty-two degrees west two hundred feet; thence (15) still along the same north forty-one degrees fifteen minutes west eight hundred and fourteen feet to a stake; thence (16) south forty-six degrees thirty minutes west one thousand and seventy-seven feet

to the center of High street, the point or place of beginning.

Containing thirty-six and sixty-six one-hundredths acres, and being tract number one, as the same is more particularly shown on the map attached to this report, entitled "Commissioner's Map of the division of the real estate of George Pomeroy, deceased, surveyed December, 1895, by Roswell M. Hancock, surveyor."

10 And we did allot to the complainant, Josephine Pomeroy, one share of said tracts of land, being the share marked "Tract number two A," containing seventy-four and twenty-six one-hundredths acres. And "Tract number two B," containing twenty and eleven one-hundredths acres, and "Tract number two C," containing one and twenty-eight one-hundredths acres, upon said "Commissioner's Map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 20 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," which said share is bounded and described as follows, to wit:

FIRST TRACT.

Beginning at a stake in the centre of High street, at the most northerly corner of lands of Marmaduke J. Tilden, said point being distant fifty-five feet from a stone monument set in the 30 line dividing the land of Tilden from the lands of the estate of George Pomeroy, deceased; thence (1) along the middle of High street north forty-three degrees thirty minutes west three hundred and fifty-eight feet to the corner of lands of James A. Webb, in said street; thence (2) still along the middle line of High street, north forty-four degrees west one thousand nine hundred and fifteen feet to the corner of lands now of Helen Garrabrant; thence (3) along the line of lands of said 40 Garrabrant south forty-two degrees west one

hundred and seventy-two feet to the corner of the same; thence (4) still along the said Garrabrant's line north forty-four degrees west fifty feet to the line of lands of one Martin Corbett; thence (5) along the same south forty-two degrees west four hundred and twenty-two feet; thence (6) south forty-six degrees forty-five minutes west four hundred and sixty-three and thirty-two hundredths feet; thence (7) north forty-seven degrees west 10
 five hundred and sixty-nine feet to a stake in the middle of the Green Village road; thence (8) along the same south eighteen degrees forty-five minutes west four hundred and ten feet; thence (9) still along the same south sixteen degrees west six hundred and forty-three feet; thence (10) still along the same south twenty-six degrees thirty minutes west four hundred and sixty-four feet to the middle of Garfield avenue; thence (11) along the middle of Garfield avenue, south seventy-six degrees west four hundred and 20
 fifteen feet; thence (12) still along the same south seventy-nine degrees five minutes east seventy-five feet to the corner of lands of Mrs. Williams; thence (13) north twenty-two degrees thirty minutes east four hundred and ninety-eight feet to another corner of said Williams' lot; thence (14) still along the same south sixty-seven degrees east one hundred and ninety-eight feet to the corner in the line of lands of H. J. Sturges; thence (15) along the same north twenty-two degrees forty minutes east 30
 forty-three feet to a stake, a corner of said Sturges land; thence (16) along said line of said Sturges and others south seventy-seven degrees thirty minutes east one thousand two hundred and thirteen feet to a stake in the line of property owned by the borough of Madison, said point being also the corner of lands of Michael Frenz; thence (17) along line of the borough property north fifteen minutes east four hundred and eighty-nine feet to an oak tree, the corner of the said borough 40

property; thence (18) still along the same north seventy-nine degrees east one hundred and eight and ninety-six hundredths feet to another corner of said borough property; thence (19) still along the same south five degrees fifteen minutes east nine hundred and fifty-four feet to another corner of said borough property; thence (20) still along the same south eighty degrees fifteen minutes east five hundred and five and fifty-one hundredths feet to a stake another corner of said borough property; thence (21) still along the same south five degrees fifteen minutes east two hundred and twenty-four feet to another corner of said borough property in the northerly side line of Garfield avenue; thence (22) along the said side line of Garfield avenue south eighty-eight degrees fifteen minutes east fifty and thirty hundredths feet to the most southerly corner of lands of the said Marmaduke J. Tilden; thence (23) along the line of said Tilden's land north five degrees fifteen minutes west two hundred and seventy feet to a corner of the same; thence (24) still along the line of lands of said Tilden north forty-two degrees fifteen minutes east seven hundred and eighteen feet to a stake in the middle of High street, the point or place of beginning.

NOTE.

This last line passes over a stone monument located fifteen feet from the beginning of the course, and also over another stone monument located fifty-five feet from the end of the course.

Containing seventy-four and twenty-six one hundredths acres, and being "Tract number two A," as designated upon the Commissioners' map before referred to.

SECOND TRACT.

Beginning at a stake in the middle of High

street at the most southerly corner of lands of James A. Webb; thence (1) along the line of land of said Webb north forty-six degrees east five hundred and sixty-five feet to a corner in the same; thence (2) still along the same north sixty-one degrees thirty minutes east ninety-one feet to a corner on the northerly side of Webb avenue, as shown on said map; thence (3) along the northerly side line of Webb avenue north thirty-six degrees west five hundred feet to the corner of lands now 10 of J. H. McGraw; thence (4) along said McGraw's land north fifty-four degrees fifteen minutes east two hundred feet to a corner in the line of lands of J. Coursen; thence (5) along Coursen's line south thirty-seven degrees forty-five minutes east one hundred feet to his corner; thence (6) still along Coursen's line north fifty-four degrees fifteen minutes west two hundred and forty-one feet to his corner in the middle of Pomeroy avenue; thence (7) along the middle of Pomeroy avenue south thirty-seven 20 degrees forty-five minutes east four hundred and fifty-seven feet; thence (8) still along the same south forty-one degrees fifteen minutes east five hundred and twenty-two feet to the corner of "Tract number one" on map before referred to; thence (9) along line of "Tract number one," south forty-six degrees thirty minutes west one thousand and seventy-seven feet to a stake in the middle of High street, another corner of said "Tract number one;" thence (10) along the middle of High street 30 North forty-three degrees thirty minutes west six hundred and sixty feet to the aforesaid corner of lands of James A. Webb, the point or place of beginning.

Containing as described twenty and eleven one-hundredths acres.

Being the tract designated as "Tract No. 2 B" on Commissioners' Map before referred to.

THIRD TRACT.

Beginning at the intersection of the easterly side line of Prospect street with the southerly side line of Belmont avenue; thence running (1) along the side line of Prospect street south fifty-four degrees west two hundred and fifty-three and sixty one-hundredths feet; thence (2) south thirty-eight degrees twenty minutes east two hundred and twenty-four feet; thence (3) north fifty-four degrees
 10 fifteen minutes east two hundred and fifty feet to a point in the south side line of Belmont avenue, aforesaid; thence (4) north thirty-seven degrees forty-five minutes west two hundred and twenty-five feet to the point or place of beginning.

Containing one and twenty-eight one-hundredths acres.

Being designated as "Tract No. 2 C" on the Commissioners' Map hereinbefore referred to.

20 And we did allot to the defendants, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler, to hold as in the said last will and testament and codicil thereto of George Pomeroy, deceased, one share of said tracts of land, being the share marked "Tract No. three," containing forty-three and twenty-two one-hundredths acres, and Tract marked "Meadow Land" in Passaic Township, upon
 30 said Commissioners' Map of the Division of the real estate of George Pomeroy, deceased, Madison, New Jersey; Surveyed Dec., 1895; Scale one inch to two hundred feet; Roswell M. Hancock, Surveyor;" and also "Tract No. three A," "Tract No. three B," "Tract No. three C," Tract No. three D," "Tract No. three E" and "Tract No. three F," upon Commissioners' Map of the division of the real estate of George Pomeroy, deceased, Bayonne, New Jersey, Surveyed Dec., 1895, scale one inch to
 40 fifty feet; Smith & Weston, Surveyors, which said

“Tract No. three” is bounded and described as follows:—

Beginning at a stake in the middle of Pomeroy avenue in the easterly side line of Prospect street; thence (1) along the middle of Pomeroy avenue south thirty-seven degrees forty-five minutes east eight hundred and seven feet; thence (2) still along the same south forty-one degrees fifteen minutes east one thousand three hundred and thirty-six feet; thence (3) still along the same south forty-two de- 10
grees east two hundred feet; thence (4) still along the same south forty-four degrees east two hundred feet; thence (5) still along the same south forty-seven degrees east two hundred feet; thence (6) still along the same south forty-nine degrees east two hundred feet to a corner in the middle of Samson avenue; thence (7) along the middle of Samson avenue north thirty-three degrees fifteen minutes east two hundred and forty feet to a corner of lands of E. N. Samson; thence (8) along said Samson’s 20
line north forty-six degrees thirty minutes west seven hundred and twenty-four feet to his corner; thence (9) still along his line north forty-eight degrees thirty minutes east two hundred and thirty-three feet; thence (10) still along his line north forty-seven degrees thirty-five minutes east three hundred and sixty-four and ninety-eight one-hundredths feet; thence (11) still along his line north forty-seven degrees thirty minutes east five hundred and two and twenty-hundredths feet to Samson’s 30
corner in the line of lands of the Morris and Essex Railroad; thence (12) along the line of said railroad north thirty-eight degrees thirty minutes west five hundred and twenty-eight feet to a corner; thence (13) crossing said railroad north forty-four degrees twenty minutes east one hundred and thirty-two feet to a point in the southerly line of the King’s road; thence (14) westerly along the said side of King’s road sixteen and one-half feet; thence (14½) parallel with the thirteenth course hereof and six- 40

teen and one-half feet distant therefrom, south
 forty-four degrees twenty minutes west one hun-
 dred and thirty-two feet; thence (15) along the line
 of lands of said railroad north thirty-five degrees
 thirty minutes west four hundred and ninety-four
 and ninety-six one-hundredths feet to a corner;
 thence (16) south fifty-four degrees forty-five min-
 utes west one hundred and sixty-five feet; thence
 (18) north thirty-five degrees thirty minutes west
 10 fifty-five feet; thence (19) north sixty degrees east
 ninety-nine feet; thence (20) north twenty-nine de-
 grees thirty minutes west one hundred and eight
 and thirty one-hundredths feet; thence (21) south
 fifty-eight degrees thirty minutes west six hundred
 and twenty-three and seventy one-hundredths feet;
 thence (22) south thirty-seven degrees thirty min-
 utes east thirty-three and seventy-two one-hundred-
 ths feet; thence (23) south fifty-seven degrees west
 two hundred and fifty feet to a point in the norther-
 20 ly side line of Belmont ave; thence (24) along the
 same south thirty-seven degrees forty-five minutes
 east sixty feet; thence (25) south fifty-eight degrees
 thirty minutes west three hundred and four feet;
 thence (26) north thirty-eight degrees twenty min-
 utes west five hundred and ninety and seventy one-
 hundredths feet to a point in the easterly side line
 of Prospect street aforesaid; thence (27) along the
 easterly side line of Prospect street south fifty-four
 degrees west one hundred and ninety-three and sixty
 30 one-hundredths feet to the middle of Pomeroy
 avenue to the point or place of beginning.

Containing forty-three and twenty-two one hundredths acres.

Being the tract designated as "Tract No. Three" on the Commissioner's Map hereinbefore referred to.

And which said tract marked "Meadow Land" in Passaic Township is bounded and described as follows:—

40 Beginning at a small elm tree standing on the

east side of Pine Brook at the west end of a tract of land formerly belonging to Jedidiah Frost, deceased, which is called "The Turkey Pasture;" thence (1) south forty-two degrees east seventeen chains to a black oak tree standing on the bank of the Loantica; thence (2) down the Brook north eighty-nine degrees west two chains; thence (3) north sixty-one degrees west two chains twenty-six links; thence (4) south eighty-six degrees west two chains; thence (5) south sixty-eight degrees west 10 two chains sixty-two links; thence (6) north eighty-eight degrees west one chain, thence (7) north twenty-six degrees east eighty links to a corner of land late Baldwin's woods; from thence (8) in said woods line north eighteen degrees west twelve chains to a post for a corner; thence (9) east one chain and twenty-five links to the place of beginning. Containing five acres and three-fourths of an acre and twenty-eight perches of land, be the same more or less. 20

And which said "Tract No. Three A" is bounded and described as follows:—

All that certain tract or parcel of land situate lying and being in the City of Bayonne in the County of Hudson and State of New Jersey. Beginning at a point in the northerly side of West Thirty-sixth street distant twenty-six feet and ninety-three one-hundredths of a foot westerly from the northwesterly corner of Avenue C and West Thirty-sixth street, and running thence north forty-seven de- 30 grees and forty minutes west along the north side of West Thirty-sixth street three hundred and nine feet and thirty-six one-hundredths of a foot to the center line of what was formerly known as the Bergen Point Plank Road; thence north eighteen degrees and forty minutes east along the centre line of what was formerly known as Bergen Point Plank Road ninety-five feet and seventy-four one-hundredths of a foot; thence south thirty-three degrees thirty-one minutes east three hundred and 40

fifty-eight feet and sixty-eight one-hundredths of a foot to the place of beginning.

And which said "Tract No. Three B" is bounded and described as follows:—

All that certain tract or parcel of land situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey. Beginning at a point in the southerly side of West Thirty-sixth street distant two hundred and fifty
10 feet westerly from the southwesterly corner of Avenue C and West Thirty-sixth street; running thence north forty-seven degrees and forty minutes west along the southerly side of West Thirty-sixth street, sixty feet to the center line of what was formerly known as Bergen Point Plank Road, thence south eighteen degrees twelve minutes west, along the centre line of what was formerly known as Bergen Point Plank Road, eighty feet and
20 forty-one one-hundredths of a foot; thence south forty-seven degrees, forty minutes east parallel with the southerly line of West Thirty-sixth street; twenty-seven feet and twelve one-hundredths of a foot; thence north forty-two degrees and twenty minutes east parallel with the westerly line of Avenue C, seventy-three feet and thirty-nine one-hundredths of a foot to the place of beginning.

And which said "Track No. 3 C" is bounded and described as follows:—

All that certain tract or parcel of land situate,
30 lying and being in the City of Bayonne in the County of Hudson, and State of New Jersey. Beginning at a point formed by the intersection of the westerly line of Avenue C with the southerly line of West Thirty-sixth street, and running thence north forty-seven degrees and forty minutes west along the southerly line of West Thirty-sixth street, one hundred feet; thence south forty-two degrees twenty minutes west, parallel with the westerly line of Avenue C, fifty feet; thence south forty-seven
40 degrees forty minutes east parallel with the

southerly line of West Thirty-sixth street, one hundred feet to the westerly line of Avenue C; thence north forty-two degrees twenty minutes east along the westerly line of Avenue C, fifty feet to the place of beginning.

And which said "Tract number three D," is bounded and described as follows:—

All that certain tract or parcel of land situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey. 10
Beginning at a point in the southerly side of West Thirty-sixth street, distant one hundred feet easterly from the easterly line of Avenue C, and running thence south forty-seven degrees forty minutes east along the southerly line of West Thirty-sixth street eleven feet and eight one-hundredths of a foot; thence south thirty-three degrees and twenty-five minutes east two hundred and ninety-eight feet and nine one-hundredths of a foot; 20
thence south forty-two degrees twenty minutes west parallel with the easterly line of Avenue C, twenty-six feet and sixty-one one-hundredths of a foot; thence north forty-seven degrees forty minutes west parallel with the southerly line of West Thirty-sixth street, three hundred feet; thence north forty-two degrees twenty minutes east parallel with the easterly line of Avenue C, one hundred feet to the place of beginning.

And which said "Tract number three E" is bounded and described as follows: 30

All that certain tract or parcel of land and premises situate, lying and being in the city of Bayonne, in the County of Hudson and State of New Jersey. Beginning at a point in the northerly side of West Thirty-fifth street, distant four hundred and twenty-five feet easterly from the easterly line of Avenue C, running thence south forty-seven degrees and forty minutes east along the northerly line of West Thirty-fifth street twenty-five feet; 40
thence north forty-two degrees twenty minutes

east parallel with the easterly line of Avenue C, one hundred and thirteen and ninety-one one-hundredths of a foot; thence north thirty-three degrees twenty-five minutes west, twenty-five feet and seventy-nine one-hundredths of a foot; thence south forty-two degrees twenty minutes west, parallel with the easterly line of Avenue C one hundred and twenty feet and twenty-six one-hundredths of a foot to the place of beginning.

10 And which said "Tract number three F" is bounded and described as follows:

All that tract or parcel of land and premises situate, lying and being in the city of Bayonne, in the County of Hudson and State of New Jersey; beginning at a point in the northerly side of West Thirty-fifth street, distant five hundred and twenty-five feet easterly from the easterly line of Avenue C, running thence south forty-seven degrees forty minutes east along the northerly line of West
20 Thirty-fifth street twenty-one feet; thence north sixty-two degrees thirty-two minutes east eighty-seven feet and twenty-three one-hundredths of a foot; thence north thirty-three degrees twenty-five minutes west, fifty-two feet and seventy-five one-hundredths of a foot; thence south forty-two degrees twenty minutes west parallel with the easterly line of Avenue C ninety-four feet and eight-six hundredths of a foot to the place of beginning.

To be held and enjoyed by the said respective parties in severalty, according to their respective rights and interests therein, as adjudged and declared by the decree in the cause. And we do further report that in making the said partition, as the same could not otherwise be made equal among the said parties, and for the purpose of equalizing the same we did ascertain the compensation which ought to be made in consequence of the difference in the value of certain of the afore-said shares, and do allot and direct the same to be
40 paid as follows; that is to say, that the said defend-

ant, Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, to whom the share marked "Tract number one," containing thirty-six and sixty-six one-hundredths acres on said map was allotted, ought to pay the sum of two thousand five hundred and ten dollars to equalize the said partition, and we do allot and direct that the said sum of two thousand five hundred and ten dollars be paid accordingly by the said defendant Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, to the owners of the share allotted to the said defendants Eugene C. Pomeroy, Martha E. Buckingham, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler. 10

And we do further report that we ascertained that the interest of Josephine Pomeroy, complainant, and Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, defendants in the following tracts of land in said commission described, had been conveyed away before the appointment of said commissioners, and we therefore have not partitioned the same, said tracts of land are described as follows:— 20

The first tract situate, lying and being in the borough of Madison, in the County of Morris and State of New Jersey, being a part of a farm bought by Samuel L. Tuttle of William Brittin, on the hill southwest of the village of Madison. Beginning on the southwesterly side of Hillside avenue, a street leading from the Green Village road to Prospect street at a point four hundred and ninety-five feet and six inches from the corner of the Green Village road and Hillside avenue; thence (1) south 30
fifty-one degrees west two hundred and eighty-three feet and six inches to the northeasterly side of Crown Hill avenue; thence (2) along the northeasterly side of Crown Hill avenue south thirty-seven degrees thirty minutes east one hundred and seventy-three feet four inches; thence (3) north
fifty-one degrees east two hundred and eighty-three feet six inches to the southwesterly side of 40

Hillside avenue; thence (4) along the southwesterly side of Hillside avenue, north thirty-seven degrees thirty minutes west one hundred and seventy-three feet four inches to the place of beginning.

Containing according to the survey of Messrs. J. W. Hancock and Son, one acre and twelve hundredths of an acre more or less. Being same premises conveyed to George Pomeroy by Samuel L. Tuttle and wife, by deed dated July twelve, one
 10 thousand eight hundred and sixty-two, and recorded in Book D, 6 of Deeds for Morris County, pages 142, etc.

Also all that tract or parcel of land situate lying and being in the borough of Madison, in the County of Morris and State of New Jersey, described as follows:—Being formerly part of Crown Hill avenue, a street now closed by commissioners duly appointed in the winter of one thousand eight hundred and sixty-seven to one thousand eight
 20 hundred and sixty-eight, bounded and described as follows:—

Beginning on the northeasterly line of said Crown Hill avenue at a point on the westerly corner of a lot sold to the aforesaid party of the second part, by Rev. Samuel L. Tuttle, in one thousand eight hundred and sixty-two; thence southwesterly thirty feet to the centre line of said Crown Hill avenue, thence southeasterly along said centre line one hundred and seventy-three feet and four
 30 inches; thence northeasterly thirty feet to the line of the aforesaid party of the second part; thence northwesterly along said line one hundred and seventy-three feet and four inches to the point or place of beginning. The same being one-half of the said Crown Hill avenue line opposite to the lot heretofore conveyed to the said party of the second part, be the said dimensions more or less. Being same premises conveyed to George Pomeroy by William P. Tuttle and others by Deed dated
 40 September seventh, one thousand eight hundred

and sixty-eight, and recorded in Book I, 7 of Deeds for Morris County, pages 364, etc.

And we do further report that we have annexed to this, our return, the interrogatories propounded to and examinations of the witnesses produced before us by the said parties.

And we do further report that the schedule hereunto annexed contains a statement of the items of the various expenses attending the execution of the said commission. 10

IN WITNESS WHEREOF we have hereunto set our hands and seals this seventh day of January, one thousand eight hundred and ninety-six.

[L.S.]

WILLIAM L. DAYTON,
FRANK FULLER,
PHILANDER B. PIERSON,

20

30

40

In Chancery of New Jersey.

10	<p><i>Between</i> JOSEPHINE POMEROY, <i>Complainant,</i> <i>and</i> JULIA P. NEWELL, <i>et al,</i> <i>Defendants.</i></p>	<p><i>Rule Nisi to Confirm Report.</i></p>
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20 Upon reading and filing a report made in this cause by William L. Dayton, Frank Fuller and Philander B. Pierson, commissioners appointed in this cause, bearing date on the seventh day of January, eighteen hundred and ninety-six, it is ordered that the said report and all the matters and things therein contained do stand in all things confirmed, according to the tenor and true meaning thereof, unless the parties interested therein shall, within eight days after service upon them of a copy of this rule, show good cause to the contrary.

30 Entered on motion on behalf of Vredenburgh & Garretson, Solicitors of the Complainant.

Dated February 18, 1896.

By the Court,

ALLAN McDERMOTT,

A true copy,

Clerk.

ALLAN McDERMOTT,

Clerk.

State of }
New Jersey, } ss.

In the Court of Chancery.

<p style="text-align: center;">JOSEPHINE POMEROY. <i>Complainant.</i></p> <p style="text-align: center;">vs.</p> <p>JULIA POMEROY MORRISON, now JULIA POMEROY NEWELL and GEORGE B. NEWELL, her husband, MARTHA E. BUCKINGHAM, ANNA S. CHANDLER, ROSE A. BUCKING- HAM, now ROSE A. SELFRIDGE, MARY E. VAN AULEN, FRANK R. CHANDLER, and EUGENE COWLES POMEROY, <i>Defendants.</i></p>	<p>10</p> <p><i>For Partition.</i></p> <p><i>Answer.</i></p> <p>20</p>
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ON RULE TO SHOW CAUSE WHY THE
REPORT OF THE COMMISSIONERS
OF PARTITION SHOULD NOT
BE CONFIRMED. 30

To the Honorable, The Chancellor of New Jersey:—

The report of the Commissioners of Partition in this cause having been filed herein, on February eighteenth, one thousand eight hundred and ninety-six, and the Court having thereupon ordered that said report and all the matters and things therein contained do stand in all things confirmed, accord- 40

ing to the tenor and true meaning thereof, unless the parties interested therein shall, within eight days after the service of a copy of this rule, show good cause to the contrary; and said rule having been subsequently served upon the counsel for the undersigned defendants, said defendants do now, within the time allowed by the Court therefor, show cause why the said report should not be confirmed, but should be referred back to said Commissioners for their further action and report touching the matters and things therein contained, that is to say:—

1. The said Eugene Cowles Pomeroy, by the said Frank R. Chandler, as his next friend and guardian *ad litem*, duly appointed herein, and the said Frank R. Chandler, as the trustee and executor of the estate of the said Eugene Cowles Pomeroy, under the will of his father, the late George P. Pomeroy, deceased, now come, and for answer to said rule say that said report and the matters and things therein contained ought not, nor ought any of the same to be confirmed for that the said report doth not set forth and show upon its face sufficient facts from which the Court can judicially see and determine that the proposed partition will be fair, just and equal to said Eugene.

2. The testimony of all the witnesses examined in the case shows that the homestead, land and buildings were largely undervalued, and that by reason of such undervaluation, the said Julia Pomeroy Newell has had allotted to her much more than one equal one-third in value of the said estate.

3. That in a certain suit in equity, in the Circuit Court of the United States for the District of New Jersey, provision has been made that the furniture in the homestead mansion involved in this case, should remain in and go with the same in case of any disposition thereof by partition or sale; but in the partition made by said Commis-

sioners, the said homestead has been awarded to said Julia without any regard to said furniture, or any charge against her for or on account of the value thereof, although the same has been assessed as of the value of five thousand dollars (\$5,000).

4. That great injustice has been done to said infant by allotting to him the land of said estate along Pomeroy avenue, because the same fronts upon outhouses, gardens, stables, etc., of the property allotted to said Julia in said partition; whereas it would have been easy to allot said Pomeroy avenue property to said Julia, and give to said infant an equivalent value in some better protected portion of said estate. 10

5. That said partition is also unequal and unjust to said infant in this: that it allots to him a large quantity of undesirable land adjoining the railroad which runs through said estate; and for that it also overvalues the property so allotted to him. 20

6. That said partition is also unequal and unjust to said infant in this: that it undervalues the property south of High street, and belonging to said estate, and awards the whole of the same as so undervalued, to the other parties to the partition. 20

7. That since the making of said report, and before the filing of the same, a dwelling-house upon one of the parcels allotted to said infant has been seriously damaged by fire, but no account has been taken of the loss thereby suffered, or any attempt made to adjust and equalize the same. 30

8. That said report doth not set forth that the various parcels allotted in said partition are free and clear from all taxes and assessments thereon; nor, on the other hand, does it set forth and show to what particular portion of such taxes and assessments the respective parcels are now subject; and that without such showing it cannot be seen nor determined whether said partition is fair and equal or unjust and oppressive. 40

9. That the provision in said report for the payment by the said Julia Pomeroy Newell of the sum of two thousand five hundred and ten dollars (\$2,510), for the excess in value of the property allotted to her in said partition is illegal and unjust in this, to wit: that the said sum is awarded jointly to the said defendants, Eugene C. Pomeroy, Martha E. Buckingham, Rose A. Selfridge, Mary E. VanAulen and Frank R. Chandler, without regard
 10 to their respective rights and interests in that behalf; whereas any such sum should be made payable directly to the said Frank R. Chandler, as the proper legal representative of the interests and estate of the said Eugene C. Pomeroy, under the will of his father, the late George P. Pomeroy, deceased, And, furthermore, the said sum of two thousand, five hundred and ten dollars (\$2,510), is largely inadequate and insufficient to equalize the proposed partition, and should be more than doubled to effect
 20 such equality.

10. That said report is also uncertain and insufficient in this: that said Commissioners have not set forth nor stated their appraisal of the value of the several tracts of land embraced in said partition, and their failure so to do withholds, both from the parties and the court, one of the most important means of determining the justice or injustice of said report.

30 11. That said report is also unequal and unjust to said infant in this: that it awards to him the entire property at Bayonne, in this State, notwithstanding the fact that the same is entirely susceptible of division among the several parties to said partition.

12. That said report is also in many other respects manifestly irregular, insufficient, unequal, and contrary to law and the practice of the court, and these defendants pray leave to assign and argue upon the hearing of the matters aforesaid, all

such further or other objections as they may be advised to specify in that behalf, etc.

Wherefore these defendants pray that the rule aforesaid, to show cause as aforesaid, may be wholly vacated, set aside and annulled, and that the said report of said Commissioners may thereupon be recommitted to them for such further action and report as will remove the objections aforesaid respectively, and show to the Court that the partition which may then be recommended by said Commissioners would be fair, equal and just to said infant, etc. 10

And these defendants further pray that upon such recommittal of said report to said Commissioners, they may have leave to produce such further evidence and arguments as their interests may seem to require, etc.

EUGENE COWLES POMEROY,

By FRANK R. CHANDLER,

His next friend and guardian ad litem. 20

FRANK R. CHANDLER,

Executor and Trustee under the last will of George P. Pomeroy, deceased.

C. C. BONNEY, and

GUILD & LUM,

Solicitors and Counsel for said defendants.

30

State of Illinois,)
County of Cook,) ss.
City of Chicago.)

Frank R. Chandler, of said City, County and State, being first duly sworn, upon his oath, says that he is the same Frank R. Chandler described in the foregoing answer to rule to show cause by him 40

subscribed; and that he has read the same and knows the contents thereof; and that the matters and things therein set forth and alleged are true as he verily believes, and further he says not.

WITNESS my hand and official seal at Chicago, this fifth day of March, A. D., one thousand eight hundred and ninety-six.

JAMES C. SIMM, JR.,

Notary Public.

10 [SEAL.]

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In Chancery of New Jersey.

<p><i>Between</i></p> <p style="text-align: center;">JOSEPHINE POMEROY,</p> <p style="text-align: right;"><i>Complainant.</i></p> <p style="text-align: center;"><i>and</i></p> <p>JULIA POMEROY NEWELL, <i>et al.</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	}	10
	}	<i>On Bill, Etc.</i>

20

The Commissioners appointed by the Court in the above entitled cause to make partition of the premises described in the bill of complaint as amended, having executed the commission directed to them for that purpose and having filed their report in this Court on the eighteenth day of February, eighteen hundred and ninety-six, and the defendant Eugene C. Pomeroy by Frank R. Chandler his next friend and guardian *ad litem*, having moved to suppress said report of said commissioners, and the Court having considered the same; and the matter of non-paid taxes urged at the hearing having been adjusted: 30

It is on this eleventh day of September, eighteen hundred and ninety-six, ordered by the Chancellor that the said motion to suppress said report be and the same is hereby denied.

ALEX T. MCGILL,

Chancellor. 40

In Chancery of New Jersey.

10 *Between*

JOSEPHINE POMEROY,

Complainant.

and

JULIA POMEROY NEWELL, *et als.*

Defendants.

*On Bill for
Partition.*

20

Examination of the Commissioners of partition in the above cause, pursuant to order made by the Chancellor on a hearing thereof held on Monday, April 20th, 1896, before William G. E. See, Master and Examiner in Chancery of New Jersey, on Thursday, the twenty-third day of April, 1895, at eleven o'clock in the forenoon, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, in the presence of Mr. Guild and Mr. Bonney for the defendant, Frank R. Chandler, guardian *ad litem* of Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Buckingham now Rose A. Selfridge, and Mary E. VanAulen, and Mr. Garretson appearing for complainant, Josephine Pomeroy.

It is agreed that the testimony be taken stenographically and the signatures of the witnesses waived.

FRANK FULLER, one of the Commissioners,
40 being duly sworn according to law on his oath says:

Examined by MR. BONNEY :

Q. Please state your full name, residence, occupation and whether you are one of the Commissioners in this case?

A. Frank Fuller, residence Madison, New Jersey, occupation physician, and I am one of the Commissioners of partition in this case.

Q. Certain objections have been made to the report of your Commission in respect of which you are now to be examined; these objections are made on behalf of the infant, Eugene C. Pomeroy, and the substance of them is that the allotment to the infant Eugene is less in value than the allotment to the Pomeroy sisters, Julia and Josephine. Among these objections is one that, according to the proceedings had in the case pending in the United States Circuit Court for the District of New Jersey, in which Mr. Chandler and the infant are complainants and the Pomeroy sisters and others are defendants, provision had been made before the making of your report under which the furniture in the homestead mansion involved in the case must remain in and go with the homestead mansion, in case of any disposition thereof by partition or sale, but that in the partition made by the said Commissioners the homestead has been awarded to said Julia without regard to said furniture, or any charge against her for or on account of the value thereof, although the same has been assessed as of the value of \$5,000; I will now ask you whether in valuing the homestead you did or did not value as a part of it the furniture which it contained?

A. That is the one question you could ask me that I cannot answer; it was the subject of a great deal of talk and discussion as I remember it, perhaps my brother commissioners can correct this, I am subject to correction; you understand I am

rather a sick man and I can't remember very much about it.

Q. You have no distinct recollection whether the furniture was or was not valued as a part of the homestead?

A. I recollect this much, that there was some talk about a family adjustment, an adjustment between the parties in regard to the furniture, that is my remembrance, but I hope my brother commis-
10 sioners have better ability of recollecting the little furniture item than I have.

Q. State whether you remember that Chandler on one occasion appeared before you prior to the making of your report, and called your attention, in a written communication dated December 10th, 1895, to the fact that the furniture, under the provision to which I have referred, must go with the homestead as a part of it?

A. I remember his appearance, and I remem-
20 ber that the furniture was up, that is to say, the matter of the furniture was considered, but my recollection as to what was done is very dim.

Q. Please state whether you remember the appearance of Mr. Chandler before you and a proposal on his part to be examined as a witness in regard to the value of the property?

A. No, sir; his appearance before us I distinctly remember, perhaps more than once.

Q. You do not remember that he offered him-
30 self as a witness in regard to the values of the property?

A. No, sir.

Mr. Chandler also objects that great injustice has been done to the infant by allotting to him the land along Pomeroy avenue because the same fronts upon outhouses, gardens, stables, etc., of the prop-
erty allotted to said Julia, whereas it would have been better to allot to said Julia said Pomeroy
avenue property, and to give said infant an equiva-
40 lent value in some better protected portion of the

estate; I will now ask you what you can say in relation to the objection that it is unjust to the infant to allot him this land fronting on the stables, outhouses and hothouses?

A. There are no such buildings and outhouses; I have lived there nineteen summers, traveled over Pomeroy avenue as often as once a week and I have never seen any; the frontage of which you speak is a very beautiful frontage with a southern exposure, southern outlook, and it is a location on which I should be very glad to have a residence myself, there is nothing there to object to, it is a very beautiful situation; I am speaking of the land allotted to Eugene, Tract number three, there is no better situation in Morris County than that land there; it is perfect for house lots or dwelling purposes. 10

Q. In your judgment there is no objection to it on account of the proximity of the stables, etc.?

A. No sir. The buildings amount to practically nothing; if I owned the property I should be very glad to have them taken away for lumber; when you speak of the gardens, there could be no handsomer spot than that, sometimes it is used for agricultural purposes, sometimes for mowing purposes; it has a frontage on both sides of Pomeroy avenue. 20

Q. It is also objected that the partition is unequal and unjust to the infant in allotting to him a large part of land adjoining the railroad which runs through the estate; what have you to say in regard to the objection that the railroad property so-called is not only of small value now as compared with the higher lands belonging to the estate, but that it has no prospect of future advancement to any considerable extent? 30

A. I would say there is no such land as land of very little value now.

Q. What is the value of this land along the railroad? 40

A. I think the evidence will show that, I cannot recall it now; I will give the sum of money for it for which it was allotted to the infant; \$60,250 is the value given to each share, I would give exactly that for each portion and no more.

10 Throughout this examination reference is made to a copy of the Commissioners' map, the original of which is filed with their report.

Q. Please state the value of the several tracts allotted to Julia and making up the total of \$60,250 of which you have spoken?

A. We considered that share No. 1, the homestead, should go to Mrs. Newell, valued at \$75,000; we took from that 15 30-100 acres on the west side of the territory involved in what is called the homestead tract, which we valued at \$12,240; then we charged her with the payment of \$2,510, that
20 makes the rebate \$14,750, leaving \$60,250 the value of her share.

Q. Give the value of the share of Josephine?

A. Share No. 2, land south of High street, \$34,800, land west of homestead 15 30-100 acres, \$12,240; land south of Pomeroy avenue adjoining Coursen, with house, \$10,000; corner of Prospect street and Belmont avenue, 245 feet on Prospect street, \$3,210, making \$60,250.

30 Q. Give a like answer as to the allotment to Eugene?

A. Share No. 3, Bayonne property, \$4,800; land on the railroad with tenant house, \$14,000; land North Pomeroy avenue, 100 feet and house, \$5,000; land north of Pomeroy avenue, 225 feet and vacant house, \$2,250; other land north of Pomeroy avenue, 75 feet and house, \$4,500; land north of Pomeroy avenue, \$25,000; land in Passaic Township, \$300; corner of Prospect street and
40 Pomeroy avenue, about 170 x 225 feet, \$1,890;

payment from share of Julia to this infant, which I mentioned before, \$2,510, making the amount of \$60,250.

Q. What will you say to the claim made by Chandler, that the future prospects of the higher ground allotted to Julia and Josephine are more secure than the prospect of future advancement in the land allotted to Eugene?

A. I should not think that so, were I a property owner there I would take the railroad 10 property acre for acre in exchange for the other.

Q. You do not think there is a prospect of a very large advance in the property allotted to Josephine and Julia above the prospect of advancement in value of that allotted to Eugene?

A. No, sir.

Q. What do you say to the objection that the Bayonne property should have been divided between the three parties instead of being all allotted to one? 20

A. I think that would be an act of folly on the part of the Commissioners; it is a property which seemed to me should go together to one person, to the care of one person; I think this property is valued in this allotment low, I would myself give \$5,000 for it, which would be \$200 in advance of the valuation placed on it.

Q. I will say, Dr. Fuller, that the object of this examination is the elucidation of the facts that will enable the Chancellor to pass upon the ques- 30 tion of the confirmation of your report, and if there occurs to you anything outside of the line of my questions which you think will be relevant please state it?

A. I will be very glad to advance it.

Q. You may further state whether the Bayonne property is susceptible of division into three equal portions?

A. I should not know how to do it; I guess in a few days perhaps I could divide it some way. 40

Q. No effort was made to make such a division?

A. We hardly thought we would be called upon to divide it; I think you will see for yourself it would be difficult to divide it into three parts equally, in our minds it should go together; it was talked of, of course, how we could divide it.

Q. It is also objected that after the making of your report and before the the same had been
10 filed, a dwelling house upon one of the parcels allotted to the infant had been nearly destroyed by fire, but no account was taken of the loss thereby sustained or any attempt made to adjust the valuation of the same; please state whether you were aware of the loss, and if so, why you did not make any effort to adjust it?

A. I hardly think I heard of it until after the report was filed, that I cannot say; I was informed some time that there was a fire, and the other day
20 I was informed that the insurance company contested or was inclined to contest the payment of the insurance; Mr. Moller told me at the station the other day it was adjusted and the insurance allowed, and I said, who has got it, and he said the insurance company waiting for a legal draft upon it; he said it covered the damage entirely and a little more.

Q. Do you know the amount the insurance company allowed?

A. I did not ask him but I understood it was
30 \$700 or \$800 the damage was assessed at, and he said it would completely cover the damage and something more.

Q. What do you say to the objection that the scheme of division adopted by the Commissioners was radically wrong in being upon an acre basis instead of being upon a lot basis with the future street projections through the property?

A. Every consideration was given to the possibilities of future improvements, all conceivable
40 streets were considered.

Q. Do you mean to say that in making your partition by the acre the future division of the property into lots upon the streets which would in future extend through the property was considered?

A. I do.

Q. Why did you not make a map showing the actual as well as the made streets upon which the lots would front?

A. That was entirely out of the line of our 10 duties as Commissioners.

Q. You considered all those questions but you did not make a map showing the extension of the streets?

A. Yes, we were not employed as surveyors or lot makers.

Q. If you deemed it necessary you could have had such a map made?

A. Yes, I think we had considerable power in the matter. 20

Q. What do you say to the objection that the future value of the property allotted to Josephine and Julia is practically well assured by the situation of the tracts and the surroundings, whereas that allotted to Eugene, by virtue of its situation and surroundings is less and is liable to decline in value?

A. That is not true in my judgment, I am inclined to believe that the property allotted to the infant will appreciate in value more rapidly than 30 the other.

Q. It is also objected that the property in tract No. 2a fronting on High street is worth fully one-quarter more than the land on the northerly side of Pomeroy avenue marked No. 3, and that you have not made a proper allowance for this higher value of tract No. 2?

A. I cannot say anything about the particular lot at present because I have not the projected streets, and as you have suggested a map would be 40

desirable to me in answering that question, but I do not think the objection is well taken, I don't think the objection is good.

Q. I will ask you another question on this point, whether in case of extending the streets through this acre property to divide it into ordinary building lots, the situation of the ground allotted to Julia and Josephine is not such as to bring in higher prices than could be obtained for the
10 ground not so high which has been allotted to Eugene?

A. It could not be sold.

Q. Why not?

A. Simply because there is no demand for it, no market for such property; if the two plots were divided by streets, the railroad property, which is the easiest way for me to speak of it, and the property you speak of, the railroad property would sell for more; the property on the hill
20 would be bought for residences, and probably have to be sold in large plots, the lower property would be sold in lots and in such subdivisions that an acre would bring a great deal of money.

Q. What as to the number of purchasers likely to be found for the lots allotted to Eugene?

A. The number would depend upon the increase of the population and its diffusion. The population of Madison is increased, and will increase if such land as the land along the railroad is
30 thrown in the market, the population would increase to build houses costing from \$2,000 to \$5,000 or \$6,000. The property south of High street may sometimes, perhaps not in your lifetime or mine, bring money; it is a question if in twenty years the property south of High street allotted to the sisters, acre for acre divided into lots, if thrown upon the market, would bring as much money as the railroad property would bring this very year, because there is demand for that property, and no

demand at all for the other; I, unfortunately, own one hundred or two hundred acres of both kinds.

Q. You mean to say the purchasers for the lots along the railroad will increase so much proportionately?

A. Yes sir, very much, ten to one in my judgment.

Cross Examination by MR. GARRETSON:

Q. In getting at the value of the share allotted to Mrs. Newell you give as the figure \$75,000, as I understand it, that included the 36 66-100 acres allotted to Mrs. Newell and 15 30-100 acres of what is marked as the 20 11-100 acres allotted to Josephine Pomeroy, is that correct? 10

A. I think it is, yes sir.

Q. And that is what is known in these proceedings as the homestead?

A. Yes sir.

Q. How did you arrive at that value of \$75,000? 20

A. I can hardly tell you, it was the subject of so much discussion and so many meetings I can hardly tell you in my present condition of mind.

Q. You finally concluded, however, that was a fair value for that property?

A. Yes sir, that was fair, equitable and just to all.

Q. Are you able to say now how much of that valuation was in land and how much in buildings? 30

I can't remember; I wish I could elucidate the question which is so dim with me of the furniture, but I cannot. I have data I took at the time and I merely had the typewriter make a copy to refresh my memory. I am sorry I cannot go fully into this matter of the furniture, that worries me somewhat.

Q. Did you understand that there was any- 40

thing in your commission directing you to divide the furniture?

A. I did not, I cannot now remember that there was.

Q. There was nothing in your commission directing you to divide furniture?

A. That was the conclusion we reached.

Q. Mr. Chandler appeared before you, didn't he?

A. Yes sir, he was certainly there once, but
10 I can't tell you whether he was a witness or not.

Q. He submitted various statements to you, estimates of value?

A. Yes sir.

Q. I show you a paper, is that one of them?

A. I don't know, it looks natural.

Q. You recollect he was there and submitted statements to you?

A. Yes sir, and he did a great deal of talking,
20 very excellent talking too.

By MR. BONNEY :

You may, if you wish, give the Master the memorandum with which you have refreshed your memory to be copied in connection with your testimony?

A. Yes sir, I will.

Paper referred to is offered in evidence
30 and marked Exhibit "Fuller."

EXHIBIT FULLER.

MEMO. DIVISION POMEROY ESTATE.

Share No. 1 to Mrs. Newell.

Homestead,	\$75,000 00	
Less 15 30-100 acres on west side, . . . \$12,240 00		
Less Owelty, . . . 2,510 00	14,750 00	
	<hr/>	\$60,250 00 10

Share No. 2 to Miss Pomeroy.

Land south of High street, . . .	\$34,800 00	
“ West of Homestead 15 . . .		
30-100 acres,	12,240 00	
“ South of Pomeroy avenue adjoining Coursen, with house,	3,210 00	
“ Cor. Prospect street and Belmont avenue, 245 ft. on Prospect street,	10,000 00	20
	<hr/>	\$60,250 00

Share No. 3 to Infant.

Bayonne property,	\$4,800 00	
Land on R.R. with tenant house,	14,000 00	
“ North Pomeroy avenue 100 ft. and house,	5,000 00	30
“ North Pomeroy avenue 225 ft., vacant,	2,250 00	
“ North Pomeroy avenue 75 ft. and house,	4,500 00	
“ North Pomeroy avenue,	25,000 00	
“ In Passaic Township,	300 00	
“ Cor. Prospect street and Pomeroy avenue, about 170x225 ft.,	1,890 00	
Owelty from Share No. 1,	2,510 00	
	<hr/>	\$60,250 00 40

WILLIAM L. DAYTON, one of the commissioners, being duly sworn according to law, on his oath says:

By MR. BONNEY:

Q. You have been present, Mr. Dayton, during the morning and have heard the examination of Commissioner Fuller in this case?

10 A. I have.

Q. I will therefore omit some of the preliminary questions which might otherwise be proper or necessary; it is objected on behalf of the infant by Mr. Chandler, that in the allotment of the homestead mansion to Julia in the partition made by your commission of the Pomeroy estate, no account was taken of the furniture valued at \$5,000, which under a provision made in the case pending in the United States Circuit Court for the District
20 of New Jersey, in which you were Special Master, is to go with the real estate, and as I understand constitutes part of it; please state what account, if any, you did make of the furniture in the partition!

A. I can't say positively that we took that item distinctly as a separate item of account. The fact of the agreement that the furniture was to go to the party to whom in the partition proceedings the homestead might be allotted, was known to me because I had acted as master in the case, and the
30 fact, I think, had been stated to the other Commissioners, but I am not aware that this agreement was brought otherwise to the knowledge of the Commissioners, and I do not think that the Commissioners in their calculations estimated the value of the furniture; in fact, I am not sure that there was any evidence before me or the Commissioners of partition as to what the value of the furniture was.

Q. Let me ask you to refresh your recollection by reference to a communication addressed to
40

your commission dated December 10, 1895, by Mr. Chandler, in the postscript to which he calls attention to the fact that the furnitnre was to go with the house in case of a partition, and ask you if you cannot now remember that Mr. Chandler did bring the matter involved to the attention of the commissioners in that manner?

A. It is possible, but I don't recollect it. I can only say that I knew of that consent myself, and I am quite well satisfied that the fact of that consent was spoken of by the commissioners; but I do not think the commissioners estimated the value of the furniture for the purpose of taking it into consideration; whatever effect the consent may have had upon their minds individually I cannot say. 10

Q. Let me ask you whether under the circumstances to which we have now referred, as a matter of equality and justice this furniture should not be taken into account and the proper charge made for its value against the party to whom the homestead is allotted? 20

Objected to.

A. If you asked me whether the commissioners of partition ought to have taken it into account I think I would answer no.

Q. And why not?

A. Because the commissioners of partition were only directed to partition the real estate, and had no power or authority to take into consideration the furniture. 30

Q. But is it not true that under the agreement of the parties and the action of the federal court the furniture became and was made a part of the real estate for the purposes of partition, the phrase being that it should be so considered in case of a partition or sale?

Objected to.

A. I would not say it did become real estate in that sense, nor would I think even under such a consent in another suit it properly became real estate so that the Commissioners were required to consider it.

Q. To make this a little more explicit for the Chancellor, I will call your attention to the fact that the phrase used is that the furniture in the homestead shall remain in and go with the same in
 10 case of any disposition thereof by partition or sale; this is the language used in your report, a copy of which has been produced and furnished to the Chancellor in this case; I now ask you whether when this provision was brought to the attention of your commission you were not bound to take the furniture and its valuation into account in making your partition ?

Objected to.

20 A. So far as my recollection goes this provision was not brought to the attention of the Commissioners except in the manner you have just indicated, that is, in the postscript to the notice served upon us by Mr. Chandler.

Q. You remember, as I understand you, that the subject was talked about so that the Commissioners knew of it ?

A. As a matter of fact I knew it, the subject was mentioned and spoken of, but just how far it
 30 was talked about I do not recollect, whether it was so far talked about as that the Commissioners were fully informed as to the exact language of the agreement, I cannot answer; it was, I think, understood by the parties that the furniture was to be taken by the person to whom the homestead might be allotted, but I do not think that so far as my recollection goes, that matter was taken into consideration by the commission in estimating the value of the homestead property, I suppose that is
 40 what you want to know.

Q. It is also objected by Mr. Chandler that after the making of your report and before the filing of the same, one of the dwelling houses allotted to the infant was damaged by fire and that no estimate of that loss was made before the report was filed; please make any explanation in regard to this matter that you are able to.

A. As far as I am informed that is the fact; I learned after the report had been signed that a fire had occurred, and it is also a fact that the Commissioners' have not changed their report in consequence. 10

Q. It is also objected that injustice was done to the infant in allotting to him the whole of the Bayonne estate, and not dividing that portion of the whole property among the three parties; please make any explanation of this matter that you are able to?

A. I think it was the judgment of the commission that the property had better be allotted to some one person rather than be divided up, that one could better take care of it and handle it, and that that was the best disposition of the whole estate that could be made, to allot that Bayonne property in one allotment to one person. 20

Q. As I understand no effort was made by the commission to divide the Bayonne part of the estate into three parcels for different parties interested?

A. No sir, no effort that crystallized into action, whatever we may have thought about; the judgment of the commission was that it had better go as a whole to some one party; we did not put on paper any calculation or make any effort to divide it. 30

Q. You thought it better to allot it to one party and therefore made no special effort to make any division among the several parties?

A. I can say that.

Q. Please state what action, if any, the com- 40

mission took to ascertain the amount of the taxes and assessments which were liens on the different parts of the property, did you have any examination made for that purpose?

A. My recollection is that it was stated by Mr. Newell that all the taxes were paid with the exception of certain taxes which it was agreed between Mr. Chandler or Judge Guild, his counsel, and Mr. Newell, they would pay.

10 Q. You understood then that the premises were practically free and clear of taxes, and that there would be no inequality in the partition on that account?

A. Certainly. Mr. Newell stated that he had heard there were some unpaid taxes, but would relieve the commission of the consideration of those unpaid taxes, coming to the understanding then at that time that they would be paid proportionately, two-thirds by the sisters and one-third by the
20 infant; that, I understood, was the agreement made by the parties; the unpaid taxes spoken of referred to taxes upon land in Chatham Township; we understood that all the other taxes were paid.

Q. I will now ask you whether you have any memorandum of the values of the different parcels embraced in the three allotments of your partition?

A. I have a lead pencil memorandum, it is the same as that offered by Dr. Fuller.

Q. Does it agree in every particular, same
30 parcels and same valuation?

A. Yes sir, I compared it as he testified from his, it is the same as his.

Q. What do you say to Mr. Chandler's objection that injustice was done to the infant in awarding him the lower lands, so-called, along the railroad in place of the ground allotted to Julia and Josephine?

A. I can only say I don't think it is an injustice; I thought then and think now it was a fair
40 and proper division.

Q. Please state whether in estimating the value of the different tracts of land by the acre you did or did not take into consideration the probable extensions of streets through those acre tracts?

A. In the first place I am unwilling to admit that we valued the land by the acre.

Q. Please state how you did value it?

A. By the tract I should say rather than by the acre, having consideration to the testimony given by the witnesses, sometimes I think they 10 valued it by the acre and sometimes they gave valuations of what it would be worth per foot frontage; taking the testimony of the witnesses into consideration, we valued the tracts I should say rather than as a whole; in further answering your question, I would say we took into consideration the probable future value of the property by having the same opened as streets or otherwise.

Q. Please state whether you remember Mr. Chandler's appearance before your Commission in 20 person?

A. Yes, sir.

Q. Do you remember that he offered himself as witness to testify in regard to the values, and that for some reason you were not able to hear him?

A. I do not remember, I would say on the contrary, to the best of my recollection, he did not offer himself as a witness; I feel quite sure that if he had offered himself as a witness we would have heard him. Being reminded that after the 30 testimony closed he wished to offer some evidence personally, and the Commission declined to reopen the testimony, but gave him permission to make a statement in writing to them of what he considered the values, I would say that probably that is so, but I cannot be too positive about it.

Q. State whether you recollect the communication Mr. Chandler submitted to you in which he gives values of certain parts of the property?

A. I recollect that he did give a statement 40

and valuations, I cannot recall the valuations themselves.

Q. Can you recall whether you considered them in making up your partition?

A. I recollect reading them and thinking of them.

Q. Mr. Chandler has made an exhibit referring to the evidence and giving valuations of certain tracts of the property allotted to the infant as
10 testified by the witnesses Baker, Cook and Cross, and purporting to show that those valuations are \$13,223 less than the corresponding valuations of the allotments to Julia and Josephine; please make any explanation in this matter that you may be able to?

A. I can only say that our valuations and our division and allotment was made after a personal inspection of the property, consultations with each other, listening to these witnesses, forming our own
20 best judgment as to the probable future values of these various tracts, and in the allotments which we made we used our best judgment, we thought that each one of these allotments was equal in value to the other.

Cross-Examination by MR. GARRETSON:

Q. This furniture that has been spoken of, was there anything in your commission directing
30 you to partition any furniture?

A. Not that I am aware of.

Q. Did you ever hear of a partition suit in Chancery to partition personal property?

A. Just at this moment I can't recall that I have, but I don't deny that the Chancellor has the power.

Q. Was anything stated by you in your report, or was any value fixed upon this furniture by anybody anywhere in any of the proceedings in
40 this partition suit?

A. So far as I remember there was not.

Q. Was any evidence produced to you of its value?

A. So far as I can recollect, no.

Q. This report which you as Master made, as I understand it, simply reported that it was agreed between the parties that whoever got the mansion house allotted to them in the partition should take the furniture?

A. I cannot speak too confidently about the 10 exact language of that agreement, in general terms, speaking without the report before me, I should say the agreement was that the furniture should remain in and go with the homestead in case of any disposition thereof by partition or sale.

Q. Was that agreement in writing?

A. I think it was taken down before me as Master by the typewriter.

Q. Do you know where it is?

A. I suppose it is on file in the Clerk's office 20 of the United States Circuit Court.

Q. That was a separate thing from your report?

A. It was evidence taken upon which my report as Master in that case was founded, but it was entirely a separate proceeding from this partition proceeding and in a separate Court.

Q. As I understand, no value was spoken of in this partition proceeding?

A. In neither case, so far as I remember, was 30 the furniture valued specifically.

Q. Was there anything in this agreement other than that whoever had the mansion assigned to them in partition, if a partition took place, should buy this furniture?

A. I would not like to construe the agreement.

Q. As I understand you there was no evidence produced, either oral or documentary, with regard to this furniture?

A. None so far as I know, before the com- 40

mission, except the post script contained in the statement submitted by Mr. Chandler.

Q. That is contained in his statement to the commission dated Chicago, December 10, 1895?

A. Yes sir.

Q. I show you a paper, is that one of the copies that were submitted to the Commissioners by Mr. Chandler?

10 A. Yes, I believe it to be a copy.

Paper offered in evidence and marked Exhibit C, 1.

Q. You and the other Commissioners examined this land in person and went over it carefully?

A. We went to see it, drove along the road and looked at it.

Q. You examined all the witnesses that were
20 produced before you?

A. Yes sir.

Q. As to the valuation of the land?

A. Yes sir.

Q. And from a consideration of all these sources of information the commission reached the conclusion as to the values which has been stated?

A. Yes sir.

Q. I show you a statement dated Madison,
30 December 13th, 1895, directed to the Commissioners of partition by Mr. Chandler, and ask you whether you had that before you also?

A. I know Mr. Chandler sent two or three communications to the Commissioners.

Q. I call your attention to the fact that that contains a scheme of division?

A. He sent one containing a scheme of division.

Q. As far as you know is that a copy of it?

A. I cannot remember enough about it to be
40 able to swear whether it is or not.

Q. You examined all the information communicated to you by either of the parties or persons interested in this partition?

A. Yes, sir.

Q. How did you reach the valuation of the share Number 1 to Mrs. Newell, stated at \$75,000?

A. By consulting together, considering the evidence and personal inspection.

Q. Then you deducted from that 15 30-100 acres of the woodland?

10

A. Yes, sir.

Q. That seems to be at the rate of \$800 an acre, how did you reach that?

A. From the testimony before us and our own judgment.

Q. Then you charged her with \$2,500.10 in cash to be paid to the share allotted to the infant?

A. Yes, sir; that was to equalize it.

Q. That made her share \$60,250 worth?

A. Yes sir.

20

Q. Did you in the same way arrive at the valuation of each piece that appears in this memorandum of Dr. Fuller, marked Exhibit Fuller?

A. Yes sir.

Q. The valuation of the homestead at \$75,000, how did you divide that as to buildings and land, or didn't you divide it?

A. I can only say that there was some little difficulty in our minds as to the proper method of arriving at the valuations; I cannot state positively as to just exactly what values were given by each one of us to the land and by each one to the buildings, but after a great deal of consultation and discussion and advising with each other we agreed that the value of the land and buildings together was, as we have stated, \$75,000.

30

Q. In one of the questions that was asked you it was spoken of that these lands allotted to the infant along the railroad were low lands, is that true in any respect that they are low lands?

40

A. It is not true that they are low lands, simply lower than the higher land where the homestead stands and south of High Street.

Q. The top of the hill is near High Street and it slopes down to the railroad?

A. Yes sir.

Q. And this so-called low land begins part way down the slope?

A. Yes sir.

10 Q. There is no low land in the sense of its being meadow land or marsh land in that property at all?

A. No sir, not that I know of.

Q. Did you in making up your valuations consider the evidence that was given by Cook, Baker and Cross as to the prospective value of this land that was allotted to the infant as well as you considered the others?

A. Yes sir, certainly.

20 Q. Considerable testimony on that subject was offered as to that particular lot?

A. Yes sir, as to the probable future value of that land subsequently allotted to the infant and here spoken of several times as the railroad tract.

Q. And as to its immediate availability?

A. As to its immediate availability and also as to its probable future value under the influence of improvements, opening of streets.

30

By MR. GUILD:

Q. The matter that you considered that was before you as a Master referred to you from the United States Circuit Court was a matter of accounting was it not?

A. Yes sir.

40 Q. The furniture that has been spoken of, to whom did you understand that belonged at the time the reference was before you?

A. To the estate of George Pomeroy, deceased.

Q. And it was the property belonging to the estate of George Pomeroy, deceased, that was being considered by you, and an account being made?

A. Yes sir, and that belonging to Edward Pomeroy also.

Q. Edward's estate was also being accounted for before you? 10

A. Yes sir.

Q. Will you be kind enough to answer whether in your accounting you took into consideration this furniture at all?

A. Only by reporting that before me as Master it was agreed that that furniture should go to the person to whom the homestead was apportioned, that was all the account I made of it.

Q. Why did you not take it into your account as you took in the property belonging to the estate 20 of Edward and his father George?

A. To the best of my recollection it was because the parties there, as a matter of convenience more than anything, said it was unnecessary for us to go into a full detailed examination as to the value of this property, that they would agree that the furniture belonging to George Pomeroy's estate as a whole should go to or be taken by the person to whom the homestead is allotted, therefore I made no further report on the subject. No evidence 30 was produced before me, as I remember, as to the furniture or as to its value at that time.

Q. So far as you know everything else relating to the personal estate of George and Edward Pomeroy was submitted to you by the parties interested and reported on by you excepting the furniture?

A. Yes, as to the bulk of the estate, as to everything in general, all was reported upon except

the furniture, perhaps some other small exceptions I can't remember.

Q. Is it not true that the parties interested in that suit exhibited a great deal of tenacity in claiming all that they thought they were entitled to, even in details?

A. Yes, that is true.

Q. So far as you know was not everything else submitted to you by the parties that related to the personal estate of Edward and George Pomeroy, except the matter of the furniture that we are now
10 talking about?

A. As far as I now remember, I think it was.

Q. As I understand, the reason why the matter of the furniture was not considered by you and reported on by you was because of the expressed understanding between the parties before you at the time?

A. Undoubtly that was the reason.

20

By MR. BONNEY:

Q. Do you now recall anything further which may be material to the interests of the parties in this controversy, if so, state the same?

A. I cannot at this moment think of anything.

30

PHILANDER B. PIERSON, one of the Commissioners, being duly sworn according to law on his oath says:

By MR. BONNEY:

Q. Please state your full name, residence and occupation, and whether you are one of the Commissioners in this case?

A. Philander B. Pierson, residence Morristown, New Jersey, occupation lawyer, and I am one of the Commissioners of partition in this mat-
40 ter.

Q. Have you been present during the morning and heard the testimony of Mr. Fuller and Mr. Dayton?

A. I heard the testimony of Mr. Dayton, and most of Mr. Fuller's; I came in after you began Dr. Fuller's examination.

Q. You understand then that the nature of your examination is certain objections made by Mr. Chandler, on behalf of the infant, to the report made by the Commissioners upon a motion to confirm the same before the Chancellor? 10

A. Yes, sir.

Q. Please state whether or not you took into account in making your partition the value of the furniture and personal property of the estate?

A. I don't think we did in dollars and cents, as I remember it, the first I heard of the furniture was either the last time we met in Judge Guild's office, or the time before the last, and then it was simply when we received that communication from Chandler in which it was referred to. 20

Q. Can you say why you did not inquire as to the value of the furniture and take it into account in valuing the homestead?

A. No evidence was offered before us of the value of the furniture; I did not suppose we had anything to do with it, it was not mentioned in the commission.

Q. If you had understood that the furniture had become, in view of the agreement and the action of the federal court, part of the real estate would you have inquired into its value and taken it into account? 30

A. We would have were we ordered to, I suppose.

Q. You are not clear as to whether it was embraced in the order?

A. It was not mentioned in the commission.

Q. So that, as I understand you, if the partition as reported by you should be confirmed, the 40

effect would be that Julia would have the furniture in the homestead in addition to what you really intended to allot to her?

A. I don't know about that.

Q. How otherwise could it be under the circumstances as stated to you?

Objected to.

10 A. That might be the effect of their agreement, I don't know, that did not appear before us in any way as a commission; Judge Dayton knew all about it I imagine, we did not.

Q. You remember that Chandler when he appeared before you and gave you his communication of December 10th, 1895, called attention to it and asked that it be taken into account?

20 A. We talked that over after that, and my impression is we thought we had nothing to do with it as commissioners; it was not mentioned in the commission, and we did all that the commission ordered us to do.

Q. The reason why you did not take into account the value of the furniture and estimate it was because you did not understand your commission embraced it?

A. No evidence was produced by any one as to the value of it.

Q. Did you call for any evidence in relation to that subject?

30 A. No, sir.

Q. When you visited the homestead did you examine the furniture personally?

A. No, sir. We visited the homestead on Decoration Day, luncheon was served us there, and I think we only went in the dining-room and parlor and one room upstairs.

Q. Did you make any estimate of the value of the furniture?

40 A. It was not called to our attention at all, I knew nothing of it then.

Q. It is claimed that this furniture cost some \$8,000 or \$10,000, and that the assessed value was much less than the actual value, its assessed value is \$5,000; I will ask you whether Mr. Cook, the assessor, produced before you any papers showing the assessed value of the personal property and furniture?

A. My recollection is that he did not, he testified as to the assessed valuation of each piece of property, I do not remember anything about the 10 personal property.

Q. I understand that the substantial and chief reason why you did not deal with the furniture in the homestead was because you did not understand your commission embraced it?

A. Yes sir; no evidence was produced before us at all as to the value.

Q. You required no such evidence, and did not visit the property with the view of fixing your own valuation on it? 20

A. No sir; not on the furniture.

Q. What inquiry did you and Commissioner Fuller make of Mr. Dayton when the statement was made by Chandler before you that it had been arranged in the case with Judge Dayton the Special Master, that the furniture should go with the homestead in case of a partition or sale; did you inquire of Mr. Dayton for the facts and circumstances?

A. Mr. Dayton made some statement about it; the trouble with the commission all the time 30 was what to do with the homestead, there was more value in the homestead than in any other part of the property; Mr. Chandler announced before us that he thought under the circumstances that the homestead should not go to the infant who was a boy and did not want it. In fixing our estimate we may have known of this furniture, I do not remember about that, but we concluded that the one who got the homestead was getting the worst.

Q. As to the furniture, you made no inspection and made no valuation so that you were really never in a position to deal with its value as a part of the property you were to partition ?

A. No sir.

Q. Please make any explanation you may think proper in regard to Chandler's objection that after your report was signed but while it was still in your control, before it had been filed, one of the
10 cottages allotted to the infant was destroyed by fire and the commission took no steps to adjust that loss ?

A. The report was signed by us and was left with Judge Garretson, ready as we understood to file then, all that was needed were some little bills of expenses, some that I got for the Judge and some Judge Dayton furnished him; I did not know, when the fire occurred, but that the report had been already filed; I think the fire was in February; the house was not destroyed, it was only
20 damaged about \$1,000 as I understood.

Q. Personally you know nothing about the loss or whether it has been adjusted?

A. I understand the loss was adjusted; I was told objection was made at first because the house had not been occupied; in fact I went to New York to see the insurance people about it, they had adjusted it or agreed to upon presentation of proper proofs.

Q. What is your recollection of the statement
30 made before the Commission in regard to the taxes and assessments upon the property?

A. My understanding was that the taxes had all been paid; I think Mr. Newell stated that excepting that one piece in Chatham Township which Mr. Newell explained had been overlooked; they changed the lines between the borough and township, and he said that had been overlooked. The matter was brought up at one of our meetings and Judge Guild was to write to Chandler about it;
40 Mr. Newell stated they were ready to pay their

two-thirds if Chandler would pay his one-third. At the next meeting Judge Guild stated that Chandler had agreed to pay his part and it was adjusted right there in the office. As to the Bayonne property one of the witnesses swore that there would be some slight assessment for cross-walks or something like that, some improvements were being made.

Q. What was said in regard to the discharge of the liability for those improvements ? 10

A. Nothing, except that whoever got the land had to pay for that, they were in contemplation then, they were small amounts.

Q. What do you say to the objection that the whole of the Bayonne property was allotted to the infant instead of a division of that part of the estate among the three parties to the partition ?

A. We thought that the property could be managed better by one person, we did not make any attempt to divide the several lots; Chandler 20 had asked in one of his suggestions that that be awarded as a whole so that we awarded it that way; we had no idea that there was any objection at all against any of the property.

Q. Because as I understand you it was stated before you by Mr. Newell that the property was free and clear excepting this single lot ?

A. Yes, and that was paid right there, so that we had nothing to do with the taxes at all.

Q. Suppose it should turn out that there 30 were other unpaid taxes and assessments upon the property allotted to the infant, what recourse would he have for the two-thirds which the sisters should have paid ?

A. I think the ladies are bound to pay two-thirds, he was liable for one third.

Q. Your idea is then that notwithstanding the statement made on which you relied that the property was free and clear, if it should turn out that there are unpaid taxes and assessments, the 40

parties would be liable for the same in the proportion of their ownership before the partition ?

A. Yes, sir.

10 Judge Garretson states that he understands that that would be so, and all the parties are willing and liable to pay their shares of these taxes, and that if either party don't pay, the Chancellor can decree that their share thereof shall be a lien on the share of the property assigned them.

Q. With the understanding then that any unpaid taxes and assessments which may be found against the property will be properly provided for when the final decree shall be entered in this case, I will pursue this subject no further. I will ask you what you have to say in regard to Mr. Chandler's objection that the future of the property assigned to Julia and Josephine is well assured, that 20 it will advance rapidly in value and eventually bring in higher prices, while the property allotted to the infant is such that the advance will be very small in comparison with that to be expected in the case of the other property ?

A. All the evidence before us was the other way ; as I remember it the railroad property, as it is called, was thought to be the one most easily sold, and the one for which there would be the greatest 30 demand if divided up into building lots and roads cut through.

Q. Is the population of Madison and the surrounding country such as to furnish purchasers for a large amount of property as that allotted to the infant ?

A. The population of Madison is, I think, some four or five thousand people, perhaps not quite so many. There are many wealthy people living there who require the services of various people, and they want small houses. The evidence 40

was that there were few of those to be had. I think the testimony of Mr. Baker and Mr. Cook shows that there would be great demand for those lots if they were opened.

Q. Please state whether in making your valuations of the large tracts you took into consideration the extensions of the streets through those tracts and the change of the property from acre ground to village lots?

A. As I remember it, the evidence was all by 10
the foot, excepting possibly Mr. Cross. They all agreed that the homestead property the land was worth \$50,000, the difference was in the buildings; Mr. Cook thought the buildings were worth not over \$20,000, Mr. Baker put it at \$35,000 or \$36,000, Mr. Cross was somewhere in that neighborhood; in fixing the valuation of the homestead my recollection is that we valued the land at \$50,000 and the buildings at \$25,000, we thought that was a fair average; then the evidence was that the part 20
west of the homestead was worth about \$800 an acre, and that could be cut off from the homestead with less damage, that was equivalent to the part on the east of the homestead and was tillable land.

Q. Of the three allotments which you made which do you think will increase in value during the next ten years?

A. I think the railroad property will. I don't know whether the homestead could be sold to-day, I doubt if it could be for the amount we put on it. 30
The other piece south of High street is sort of a thicket, it is hardly tillable, some little part of it is tillable, and could only be sold I should think in large plots, there are several pond-holes there, water standing.

Q. Is that in the property allotted to Josephine?

A. Yes it is a good way from the station up there, and I should think it could only be sold, if sold at all, in plots of from ten to twenty acres.

Q. That property you think could not be divided into ordinary or village lots and sold to use?

A. I don't think it could be sold at all in that way.

Cross-Examination by MR. GARRETSON:

10 Q. Did you understand that as Commissioners you had anything to do with the furniture in this case?

A. No sir.

Q. Have you a memorandum of the valuations that all the Commissioners put upon this property which they partitioned?

A. I have one in pencil. It is the same as Dr. Fuller produced.

Q. You all agreed as to those valuations?

A. Yes sir.

20 Q. There is one piece I want to ask you about, if you have it in mind, and that is the property fronting on the north side of Pomeroy avenue, extending from Samson's lane west; you have put on that a valuation of \$25,000; Mr. Cook's testimony was that it was worth \$25,000, Mr. Baker said it was not worth over \$21,000, he worked on the idea that there were twenty-one hundred feet; was Baker's estimate of the number of feet correct?

A. I don't think it was, he left out some.

30 Q. There are more than twenty-one hundred feet from Samson's lane to the plot on which the last house towards the east stands?

A. Yes, sir.

Q. About twenty-three hundred feet?

A. I don't remember the figures, but in giving their testimony they began over here at Prospect street and took off the value of so many feet vacant, so many more with a house, and so many more vacant and so many more with a house and then
40 the balance.

Q. So in looking it over you came to the conclusion that it was worth what Cook had put upon it rather than what Baker put upon it?

A. Yes, sir, we took Cook's figures generally.

Q. Did Mr. Chandler submit to you any statement?

A. I think we had two or three communications from Mr. Chandler. We adjourned two or three times I think, and tried to accommodate Mr. Chandler. 10

Q. There has been offered in evidence here a communication from Mr. Chandler, dated Chicago, December 10, 1895, is that one of those you refer to?

A. Yes, sir.

Q. I show you one dated Madison, December 13, 1895, was that before you?

A. I think it was; I made an interlineation on this paper, Chandler left out one of the plots and I interlined it in lead pencil. 20

Paper offered in evidence and marked Exhibit C, 2.

Q. In making up your valuations, I understand you considered all the evidence, this statement that Chandler submitted, your observations of the property itself, and from the consideration of all these things you made up the valuations that you have given here? 30

A. Yes, sir.

Q. How were the shares allotted, by the lot or not?

A. No, sir, not by the lot; Mr. Chandler stated that he did not care for the homestead, he did not think it would be to the interest of the infant to have the homestead allotted to him; he was a boy and it would be some years before he was of age. 40

Q. That is contained in these statements, is it not?

A. I don't remember that, he made that statement before us.

Q. Therefore you were controlled somewhat by that statement in allotting it as you did?

A. Yes, sir.

Q. How did you come to allot the homestead to Mrs. Newell?

10 A. Mrs. Newell and Miss Pomeroy were friendly, and there seemed to be some antagonism between the two ladies and the infant. We thought it would be better for their properties to be together and the infant to be entirely separate.

Q. Does that account for your allotting this 15 30-100 acres of the homestead to Miss Pomeroy?

A. Yes, sir, that is the reason, to keep the whole tract together and they could manage it, sell it or do what they pleased with it.

20 Q. That antagonism is also referred to in one of these statements of Chandler's is it not?

A. I think it is.

COURT OF CHANCERY OF NEW JERSEY,
CHANCELLOR'S CHAMBERS,

30 POMEROY
vs.
MORRISON, now Newell, }

JERSEY CITY, February 10, 1897.

WILLIAM B. GUILD, Esq.,

Dear Sir:—I remember that at the argument for the motion to suppress the Commissioners' report in this matter, when Mr. Bonney came to be heard, he handed me three or four printed documents,
40 among which was a copy of a Master's report and

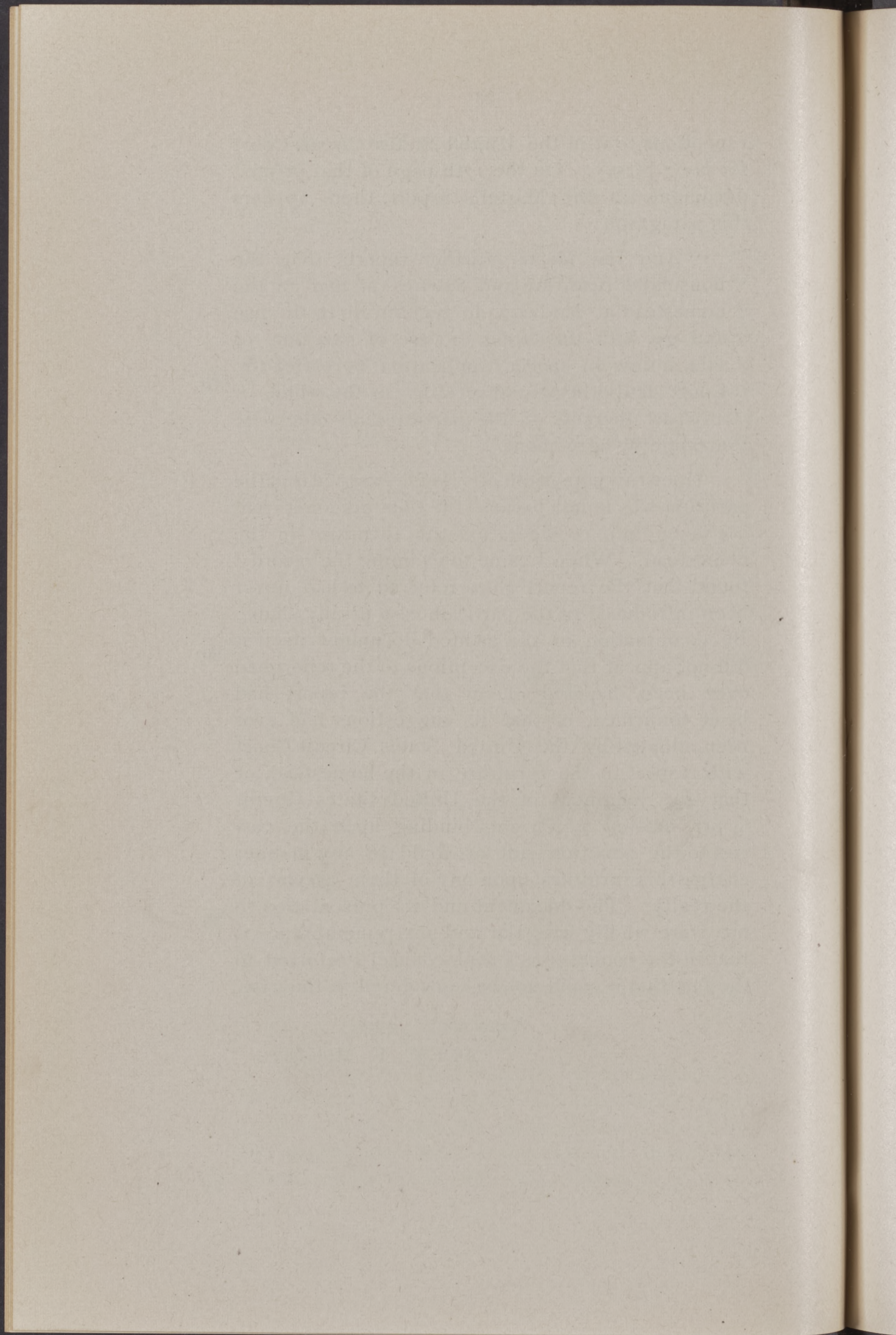
exceptions to it in the United States Circuit Court for New Jersey. On the 17th page of that printed document, in the Master's report, there appears this paragraph:

“ And the Master further reports that the
 “ household furniture and fixtures at and in the
 “ homestead at Madison do remain there in use
 “ and go with the same, in case of partition or
 “ sale, unless on special application hereafter the
 “ Court shall otherwise direct, as to the whole or
 “ any part thereof, or the parties shall otherwise
 “ arrange by agreement.”

Upon this paragraph Mr. Bonney argued that the partition was unfair because the Commissioners had not taken into consideration the furniture in the homestead. When I came to examine the record I found that the report thus referred to had never been introduced in the partition case in any shape. By examination of the printed document itself it did not appear that the exceptions to the report had ever been disposed of, or that the report had been confirmed, or that its suggestions had ever been adopted by the United States Circuit Court with respect to the furniture in the homestead, or that any judgment of the United States Circuit Court existed which was binding upon the parties to the partition suit or could in any manner charge this furniture upon any of them as part of the realty. The document and its presentation to me were wholly irregular and my remembrance is that in the conclusions I sent counsel I referred to the fact that it could not be considered in the case.

Very truly yours,

ALEX. T. MCGILL.



In the Circuit Court of the United States in the Third Circuit
for the District of New Jersey.

Between FRANK R. CHANDLER, as Trustee and
Executor under the last will and testament
of George P. Pomeroy, deceased, original
complainant, and EUGENE COWLES POMEROY,
infant son of said deceased, by CHARLES W.
CHASE, his guardian, joined as complainant
since commencement of suit,

Complainants,

and

JOSEPHINE POMEROY and JULIA POMEROY
NEWELL; also ALFRED MILLS, as Executor
of the last will and testament of George
Pomeroy, deceased, this suit having hither-
to been dismissed as against WILLIAM
FOSTER MORRISON, one of the original
defendants,

Defendants.

In Equity.

For Specific per-
formance and
other relief.

Master's Report.

(Filed June 18th, 1895.)

To the Honorable, the Judges of the Circuit Court of the United
States in the Third Circuit in and for the District of New
Jersey :

In pursuance of a decree of this Honorable Court, made in the
above stated cause, on the thirtieth day of January, in the year
of our Lord eighteen hundred and ninety-four, whereby it was
referred to the undersigned as a Master *pro hac vice* of this
Court—

1. To take evidence and state the account provided for in
the agreement, specific performance of which is decreed.

2. To inquire, take evidence and report what personal
property and personal assets remained of the estate of George
Pomeroy, and of the estate of Edward Pomeroy, to which the
provisions of said agreement in writing were intended to apply,
now remain for division according to the terms of said agree-
ment; with a specific inventory of the same and value of each
item, as nearly as can conveniently be ascertained, excluding,
however, the principal of the trust funds named in said agree-
ment.

3. To inquire, to take evidence and report all material facts
relating to the conversion by said Josephine Pomeroy and Julia
Pomeroy Newell (formerly Julia Pomeroy Morrison), of the
trust fund in favor of George P. Pomeroy, including the value

of the securities embraced in the same at that time with the interest they were then yielding, and whether it is now within the power of said Josephine and Julia to restore and bring into Court said securities, or any part thereof, for such disposition thereof as the Court may deem conformable to equity.

4. To report a method and plan for such a division of all the remaining undivided personal assets, estate and property of the estates specified in said agreement, as would give to said Frank R. Chandler, as executor and trustee under the last will of George P. Pomeroy, for the use of Eugene Cowles Pomeroy, one equal one-third part of the two estates described in said agreement, including interest or income which shall have fallen due on all the trust funds specified in the last will and testament of George Pomeroy, such division to be equalized by the account with interest, for which said agreement provides, but not including the principal of said trust fund.

5. To report what compensation, if any, can and ought to be made by the party who, by reason of any act of their own or any change of circumstances cannot now specifically perform any part of said agreement.

I, WILLIAM L. DAYTON, Master as aforesaid, do respectfully report as follows:

That upon due notice, the counsel of the respective parties attended upon me and produced their witnesses and other evidence, and the testimony of the witnesses I caused to be taken and do return with this my report, and said parties by their counsel have been fully heard by me, and I do further report—

1. That I have taken evidence and do state the account for which said agreement in writing provides, as follows:

The remainder of the estate of George Pomeroy, the father, was to be equally divided among his three living children, Julia, Josephine and George P. This division to be made as of the date of the death of the father. Each to be charged with six per cent. interest upon the amount he or she had received, from date of receipt to May 1, 1887, payable annually; all sums accruing between the 1st and 15th of any month, to be called to the first of that month, and between the 15th and 30th, to the first of the following month.

SCHEDULE A, I.

What Josephine Pomeroy received from the estate of George Pomeroy.

1881.			Principal	Interest
Feb.	19	Cash paid bill of Litter.....	\$35 00	
"	19	" " " " Sequin.....	31 50	\$66 50
April	11.	Cash paid bill of Pa k Ave. Hotel to date.....	120 00	5 40

			Principal.	Interest
May 2.	Cash bill paid of Dr. Raymond....	\$22 00	\$22 00	\$0 88
" 27.	Cash paid Oelrich.....	130 00		
" 28.	" " 519½ francs.....	100 00		
" 10.	" " Park Ave. Hotel to Apr.			
	30.....	80 00	310 00	10 85
Oct. 28.	Cash paid bill of Dr. Minor.....	5 00	5 00	05
	Total charge and interest to January 1. 1882.....		\$523 50	\$20 94
	One year's interest on above totals to January 1, 1883.....			32 67
1882.				
Jan. 18.	Cash Xmas to Edward Pomeroy..		7 50	41
Oct. 11.	Cash steamer expenses to Madison,	6 65		
" 22.	" personal use.....	10 00		
" 24.	" " "	15 00	31 65	31
	Total charge and int. to January 1. 1883.		\$562 65	\$54 33
	One year's int. on above totals to January 1, 1884.....			37 02
1883.				
Jan. 3.	Cash for personal use.....	50 00		
" 24	" paid bill of B. Mason, music..	33 40		
" 29.	" bill for trunk.....	17 00	100 40	2 57
Feb. 20.	Cash bill of Bronson (dentist)....	28 00	28 00	1 40
April 9.	Cash bill of Tiffany.....	200 00	200 00	9 00
June 5.	" " " Mme. Snedden, (hat)..	25 00	25 00	87
Oct. 24.	Trip to Richfield, &c....	90 86		
" 24.	Cash bill of Dr. Uebelacher.....	38 00		
Nov. 1.	" " " Tiffany.....	200 00	329 86	2 29
Dec. 15.	Cash paid bill of Prof. Dury.....	37 00	37 00	18
" 25.	" " " " Steinway.....	3 80		
" 30.	" " " " Prof. Dury.....	11 00	14 80	
	Total chg. & int. to Jan. 1, '84		\$1,296 71	\$108 66
	1 yrs. int. on above totals to Jan. 1, 1885.....			84 32
1884.				
Jan 6.	Cash to Dr. Minor.....	33 00		
" 6.	" " Dr. Yale.....	41 50	74 50	4 47
" 26.	" " Prof Dury.....	18 00		
Feb. 2.	" for personal use.....	2 00		
" 14.	" to Dr. Salisbury	10 00		
" 16.	" for personal use.....	3 75		
" 18.	" " " "	1 88	33 75	1 86
" 21.	Cash paid bill of Worth.....	435 00		
" 23.	Cash to Prof. Dury.....	24 00		
Mar. 10.	" to Overin and Hastings	3 00		
" 11.	" for personal use.....	6 25		
" 14.	" " " "	6 38	474 63	23 73
" 24.	" to Tiffany.....	19 81		
" 29.	" to Prof. Dury.....	30 00		
" 31.	" for personal use.....	17 00		

			Principal.	Interest
Nov. 1.	Int. Maryland Coal Co., \$5,000 7's, 3½.....	\$175 00		
" 15.	Divd. U. S. Express Co., at 1.....	33 00	\$208 00	\$2 08
Dec. 1.	Int. Lehigh & Wilkesbarre, \$6,000 7's at 1¾.....	105 00	105 00	
	Total chg. & int. to Jan. 1, 1886...		\$8,408 03	\$793 24
	1 yrs. int. on above totals to January 1, 1887.....			550 06
1886.				
Jan. 1.	Divd. Flint & Pere Marquette, 66 shrs. at 2.....	132 00		7 92
Feb. 17.	Divd. U. S. Express Co., 33 shares at 1.....	33 00		1 81
Mch. 1.	Int. Am. Coal Co., \$2,100 6's at 3..	63 00		
" "	Int. Lehigh & Wilkesbarre, \$6,000 7's at 1¾.....	105 00		
" 10.	Divd. Am. Coal Co., 1,000 shrs. at 2	550 00	718 00	35 90
May 13.	Proceeds, Canton Stock, 33 shrs at 1	839 75		
" 15.	Divd U. S. Express Co., 33 shrs. at 1.....	33 00		
" 11.	Cash, per receipt.....	78 07		
" 1.	Int. Maryland Coal Co, \$5,000 7's 3½.....	175 00	2,125 82	85 03
June 1.	Int. Lehigh & Wilkesbarre, \$6,000 7's at 1¾.....	105 00	105 00	3 67
July 1.	Rent, Terry & Scott, St. Louis....	103 65		
" "	Divd Flint & Pere Marquette, 66 shares at 2½.....	165 00	268 65	8 06
Aug. 10.	Divd. Manhattan Bk. Co., at 3½ ..	148 75		
" 15.	U S. Express Co., 33 shrs. at 1. ..	33 00	181 75	4 54
Sept. 1.	Int. Am. Coal Co., \$2,100, 6's at 3..	63 00		
" "	Int. Lehigh & Wilkesbarre, 6,000 7's at 1¾.....	105 00		
" 4	Cash, as per her receipt.....	216 85	384 85	7 70
Oct. 26.	Rents Terry & Scott.....	59 97		
Nov. 1.	Int. Maryland Coal Co., \$5,000 7's at 3½.....	175 00		
" 15.	Divd. U. S. Express Co., 33 shares at 1.....	33 00	267 97	2 08
	Int Lehigh & Wilkesbarre, \$6,000 7's at 1¾.....		105 00	52
	Total chg & int. to Jan 1, 1887....		\$12,555 07	\$1,500 00
	1 year's interest on above totals to Jan 1, 1888.....			843 30
1887.				
Jan. 1	Rent Terry & Scott, St. Louis....	121 49		
" "	Divd. Flint & Pere Marquette 2½.	165 00	286 49	17 19
Feb. 14	Rent Terry & Scott, St. Louis....	101 02		
Feb. 15.	Divd. U. S. Express Co , 33 shares at 1.....	33 00		
Feb. 10.	Manhattan Bk. Co., 85 shares at 3½	148 75	282 77	10 05
Mar. 1.	Int. Am. Coal Co., \$2,000 6's at 3..	63 00		
" "	Int Lehigh & Wilkesbarre, \$6 000 7's.....	105 00		

MASTER'S REPORT.

		Principal.	Interest
Jan. 10.	Divd. Am. Coal Co., 1,100 shrs. at 2	\$550 00	\$718 00
May 1.	Mercantile Trust Co., Cert., Erie 7's	390 45	\$35 90
" 1.	Mercantile Trust Co., Cert., Erie 7's	286 21	
" 1.	Mercantile Trust Co., Cert., Erie 7's	34 21	710 87
		<hr/>	<hr/>
	Total chg. & int. to Jan. 1, 1888,	\$14,553 21	\$2,431 32
	One year's int. on above totals to Jan 1, 1889,		1,019 07
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1889 ...	\$14,553 21	\$3,450 39
	1 yr.'s interest on above totals to Jan. 1, 1890..		1.080 22
		<hr/>	<hr/>
	Total charge and interest to Jan 1, 1890 ...	\$14,553 21	\$4,530 61
	1 yr.'s interest on above totals to Jan. 1. 1891..		1,145 03
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1891 ...	\$14 553 21	\$5,675 64
	1 yr.'s interest on above totals to Jan. 1, 1892..		1 213 73
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1892....	\$14,553 21	\$6,889 37
	1 yr.'s interest on above totals to Jan. 1, 1893..		1,286 55
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1893....	\$14,553 21	\$8,175 92
	1 yr.'s interest on above totals to Jan. 1. 1894..		1 363 74
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1894....	\$14,553 21	\$9,539 66
	1 yr.'s interest on above totals to Jan. 1, 1895..		1,445 57
		<hr/>	<hr/>
	Total charge and interest to Jan. 1, 1895....	\$14,553 21	\$10,985 23
		<hr/>	<hr/>
	Total.....	\$25,538 44	
	Allowance of \$75 per month for remittances during sixteen months in Europe, \$1,300; average interest to Jan. 1, 1882 (8 months), \$52—\$1,352.		
	Add interest on this amount, with annual rests from Jan. 1, 1882, to Jan. 1, 1895.		
	Total.....	2,829 97	
		<hr/>	<hr/>
	Josephine Pomeroy is charged with the above total, including principal and interest....		\$28,368 41

SCHEDULE A, II.

What JOSEPHINE POMEROY received as income from her fund of \$50,000 derived from the estate of George Pomeroy, and paid her by the New York Life and Trust Co, with interest annually thereon. Said income stated from July 1st, 1887, to which date there had been an equal division between said Josephine, Julia and George P. Pomeroy.

		Income.	Interest
1888.			
Jan. 1.	Cash Income.....	\$150 00	
	Int., 12 mo's to Jan. 1, '89.....		\$9 00
July 1.	Cash Income.....	158 00	
	Int., 6 mo's to Jan 1, '89.....		4 74
		<hr/>	<hr/>
	Total charge and interest to Jan 1, '89..	\$308 00	\$13 74
	1 yr.'s interest on above totals to Jan. 1, '90		19 30

			Income.	Interest
1889.				
Jan.	1.	Cash Income.....	\$220 00	
		Int., 12 mo's to Jan. 1, '90.		\$12 20
July	1.	Cash Income.....	400 00	
		Int., 6 mos.....		12 00
		Total charge and int. to Jan. 1, '90... ..	<u>\$928 00</u>	<u>\$71 98</u>
		1 yrs. Int. on above totals to Jan. 1, '91...		60 00
1890.				
Jan.	1.	Cash Income.....	475 00	
		Int., 12 mos. to Jan. 1, '91		28 50
July	1.	Cash Income	650 00	
		Int. 6 mos.....		19 50
		Total charge and Int. to Jan. 1, '91.....	<u>\$2,053 00</u>	<u>\$179 98</u>
		1 yrs. Int. on above totals to Jan. 1, '92....		133 98
1891.				
Jan.	1.	Cash Income.....	815 00	
		Int., 12 mos. to Jan. 1, '92.....		\$48 90
July	1.	Cash Income	1 000 00	
		Int 6 mos.....		30 00
		Total charge and Int. to Jan. 1, '92.....	<u>\$3,868 00</u>	<u>\$392 86</u>
		1 yrs. Int. on above totals to Jan. 1, '93...		255 65
1892.				
Jan.	1.	Cash Income.....	700 00	
		Int. 12 mos. to Jan. 1, '93.....		42 00
July	1.	Cash Income	1,145 00	
		Int. 6 mos.....		34 35
		Total charge and Int. to Jan 1, '93.....	<u>\$5,713 00</u>	<u>\$724 86</u>
		1 yrs Int. on above totals to Jan. 1, '94 ..		386 27
1893.				
Jan.	1.	Cash Income.....	965 00	
		Int. 12 mos to Jan. 1, '94.....		57 90
July	1.	Cash Income.....	950 00	
		Interest 6 mos.....		28 50
		Total charge and Int. to Jan. 1, '94.....	<u>\$7,628 00</u>	<u>\$1,197 53</u>
		1 yrs. Int. on above totals to Jan. 1, '95...		529 53
1894.				
Jan.	1.	Cash Income.....	980 00	
		Int. 12 mos to Jan. 1, '95.....		58 80
July	1.	Cash Income.....	1,080 00	
		Int. 6 mos.....		32 40
		Total charge and Int. to Jan. 1, '95.....	<u>\$9,688 00</u>	<u>\$1,818 26</u>
		One third above Charge and Int. due Estate of George P. Pomeroy from said Josephine Pomeroy.....	<u>\$3,835 42</u>	

SCHEDULE B, I.

What Julia Pomeroy (Newell) received from the estate of George Pomeroy.

		Principle.	Interest.
1881.			
Jan.	29.	Cash for personal use.....	\$25 00 \$25 00 \$1 38
Feb.	19.	Cash paid bill of M. Sequin.....	31 50
"	19.	" " " Miss Stebbins..	62 50
Mar.	7.	" " " Agatha, 1 mo. 7 d. (1/2).....	5 33 98 33 4 92
Apr.	11.	Cash paid bill Park Ave. Hotel..	108 00
"	15.	" " " Dr Baldwin.....	26 00 134 50 36 18
"	22.	" " " Sequin.....	30 80
"	27.	" " " Oelrichs.....	130 00
"	28.	Cash paid.....	100 00
May	2.	Cash paid bill Dr. Raymond....	5 00
"	10.	Park Ave. Hotel bill to Apr. 30..	66 50 332 30 13 29
Oct.	28.	Cash paid bill of Dr. Minor.....	5 00 5 00 07
Dec.	31.	Cash Xmas to mother.....	15 00 15 00
Total charge and Int. to Jan. 1, '82..		\$610 13	\$55 84
1 yrs. Int. on above totals to Jan. 1, '83....			39 96
1882.			
Jan.	18.	Cash Xmas to Edward Pomeroy	7 50 7 50 41
Oct.	11.	Steamer expenses to Madison...	6 65 6 65 10
Oct.	22.	Cash for personal use.....	10 00
"	24.	" " " ".....	15 00
Nov.	5.	" " " ".....	20 00 45 00 45
Dec.	2.	" " " ".....	20 00 20 00 10
Total charge and Int. to Jan. 1, '83..		\$689 28	\$96 86
1 yrs. Int. on above tota's to Jan. 1, '83			47 17
1883.			
Jan.	29.	Cash paid Tiffany.....	200 00 200 00 11 00
Apr.	5.	" " Worth.....	419 28 419 28 18 87
June	5.	" " Mme. Snedden.....	30 00 30 00 1 05
July	12.	Cash paid Tiffany.	200 00 200 00 6 00
Nov.	16.	" for personal use.....	10 00
"	1.	Paid bill C. Donovan of 1881....	200 00
"	5.	" " W. Sturges for dress...	100 00
"	13.	" " C Donovan.....	200 00
"	2.	" " Ferguson livery.....	3 00 513 00 5 12
Dec.	15.	" " Prof. Dury.....	18 00 09
"	19.	" " personal use... ..	10 00
"	30.	" " Prof. Dury.....	6 00 16 00
Total charge and Int. to Jan. 1, '84...		\$2085 56	\$186 16
1 yrs. Int. on totals to Jan. 1, '85....			136 30
1884.			
Jan.	2.	Cash paid bill Tiffany.....	200 00
"	5.	" " " Dr. Minor.....	15 00
"	"	" " " Dr. Yale.....	6 50 221 50 13 29
"	17.	" " " C. Donovan.....	225 00
"	26.	" " " Prof. Dury	8 00

			Principal.	Interest
Feby.	3.	Cash for personal use.....	\$2 00	
"	5.	Cash bill of Overin & Hastings....	7 00	\$242 00
"	18.	" for personal use.. ..	1 87	\$13 31
"	23.	" bill of Prof. Dury.....	12 00	
Mch.	4.	" " " Slater	20 25	
"	10.	" " " Ferguson.....	2 87	36 99
"	26.	" for personal use.	15 00	1 85
"	29.	" bill Prof. Dury.....	15 00	
"	10.	" " Overin & Has.ings....	5 00	
"	31.	" for personal use.....	17 00	
"	14.	" " " "	2 50	
"	11.	" " " "	6 25	
"	14.	" " " "	3 87	
"	21.	" " " "	1 25	
Apr.	1.	" " " "	14 00	
"	12.	" " " "	1 45	81 32
"	17.	" bill of Arnold Constable....	24 00	3 66
"	21.	" for personal use.....	5 00	
May	5.	" bill Dr. Minor.. ..	105 00	
"	7.	" " Lazuick.....	150 00	
"	"	" " Prof. Dury... ..	12 60	
"	"	" $\frac{1}{3}$ E. Pomeroy to Newport... ..	9 60	
"	15.	" bill of Leggat.....	1 50	
"	"	" " " Dr. Goodwillie.....	9 00	316 70
June	6.	" for personal use.....	4 90	12 67
"	7.	" " " "	7 75	43
July	1.	" for sundries.....	6 47	
"	3.	" George Blackwell	1 75	
"	7.	" as per receipt.....	278 60	285 82
"	28.	" " " "	1,872 75	8 60
Aug.	5.	" " " "	544 17	2 416 93
Aug.	28.	Cash as per receipt.....	236 67	60 42
Sept.	1.	" " " "	297 33	534 00
Oct.	6.	" " " "	63 22	10 68
"	8.	" " " "	75 46	143 68
Nov.	1.	" " " "	198 33	2 15
"	7.	" " " "	9 20	207 53
Dec.	3.	" " " "	116 67	2 07
			116 67	58

Total charge & int. to Jan. 1, '85. \$6,702 34 \$452 20
 1 yrs. int. on totals to Jan. 1, '86. 429 27

1885.

Feby.	3.	Cash as per receipt.....	\$516 67	516 67	28 42
Apr.	20.	" " " "	223 12	223 12	8 91
July	15.	" " " "	335 55	333 55	10 00
Oct.	1.	" " " "	121 00	121 00	1 81
Nov.	7.	" " " "	115 49	115 49	1 15
Feby.	15.	Divd. U. S. Express Co., 33 shares at 1.....	33 00	33 00	1 81
July	1.	Divd. Flint & Pere Marquette, Pfd.	32 00	32 00	96
Aug.	10.	Divd. Manha tan Bk. Co., at $3\frac{1}{2}$	148 75		
"	15.	" U. S. Express Co., at 1.....	33 00	181 75	4 54
Sept.	1	Int Am Coal Co., \$2.100 6's at 3..	63 00		
"	"	Lehigh & Wilkesbarre. 6,000 7's at $1\frac{3}{4}$	105 00	168 00	3 36

			Principal.	Interest
Nov. 1.	Int. Maryland Coal Co., \$5,000 7's at 3½.....	\$175 00		
" 15.	Divd. U. S. Express Co., at 1.....	33 00	\$208 00	\$2 08
1885.				
Dec. 1.	Int. Lehigh & Wilkesbarre, \$6 000 7's.....		105 00	52
Total charge & Int. to Jan. 1, '86.			\$8,739 92	\$944 83
1 yrs. Int. on above totals to Jan. 1, 1887.....				587 08
1886.				
Jan. 1.	Divd. Flint & Pere Marquette, 66 shares.....		100 00	6 00
Feb. 15.	Divd. U. S. Express Co, 33 shares.	33 00	33 00	1 81
Mch. 1.	Int. American Coal Co., \$2,100 6's..	63 00		
" "	Lehigh & Wilkesbarre \$6,400 7's...	105 50		
" 10.	Divd. Am. Coal Co., 1,100 shares..	550 00	718 00	35 90
May 13.	Proceeds Canton Co., 33 shares....	1,839 75		
" 11.	Cash as per receipt less \$148.75....	78 07		
" 15.	Divd. U. S. Express Co., \$5,000 7's.	175 00	2,092 82	83 69
June 1.	Int. Lehigh & Wilkesbarre \$6,000 7's.....		105 00	3 67
July 1.	Rent Terry & Scott, St. Louis.....	103 65		
" "	Divd. Flint & Pere Marquette, 66 shares.....	165 00	268 65	5 06
Aug. 10.	Divd. Manhattan Bk. Co.....	148 75		
" 15.	" U. S. Express Co, 33 shares,	33 00	181 75	4 54
Sept. 1	Int. Am. Coal Co., \$2,100 6 s at....	363 00		
" 1.	Int. Lehigh & Wilkesbarre \$6,000 7's at 1¾.....	105 00		
" 4.	Cash as per receipt.....	216 85	384 85	7 70
Oct. 26.	Rents Terry & Scott.....	59 97		
Nov. 1.	Int. Maryland Coal Co. \$5,000 7's..	175 00		
" 15.	Divd. U. S Express Co, 33 shares	33 00	467 97	2 51
Dec. 1.	Int. Lehigh & Wilkesbarre \$6,000 7's	105 00		52
Total charge & Int to Jan. 1, '87,			12,891 96	1 683 31
1 yrs. Int. on above totals to Jan. 1. '88,				874 52
1887.				
Jan. 1.	Rent Terry & Scott, St. Louis....	121 49		
" "	Divd. Flint & Pere Marquette. 66 shares at 2½.....	165 00	286 49	17 19
Feb. 14.	Rent Terry & Scott. St. Louis ...	101 03		
" 15	Divd. U. S. Express Co., 33 shares at 1.....	33 00		
Nov. 10	Divd. Manhattan Bk. Co 85 shares at 3½.....	148 75	282 78	15 55
Mar. 1.	Int A. M. Coal Co., \$2,100 6's at 3.	63 00		
" "	Int. Lehigh & Wilkesbarre \$6,000 7's	105 00		
" 10	Divd. Am. Coal Co., 1,1000 shrs. 2	550 00	718 00	35 90
May 17.	Mercantile Trust Co. Cert. Erie 7's	390 45		
" "	Mercantile Trust Co. Cert. Erie, 7's	274 85		
" "	Mercantile Trust Co. Cert. Erie, 7's	34 21	699 58	24 88
Total charge & Int to Jan. 1, '88.....			\$14,878 81	\$2 651 35
1 yrs. Int. on above totals to Jan. 1, '89.....				1,451 81

	Principle.	Interest
Total charge and Int. to Jan. 1, '89.....	\$14,878 81	\$3,703 16
1 yrs. Int. on above totals to Jan. 1, '90.....		1,114 92
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Total charge and Int. to Jan. 1, '90.....	\$14,878 81	\$4,818 08
1 yrs. Int. on above to Jan. 1, '91.....		1,181 81
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Total charge and Int. to Jan. 1, '91.....	\$14,878 81	\$5,999 89
1 yrs. Int. on above to Jan. 1, '92.....		1,252 72
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Total charge and Int. to Jan 1, '92.....	\$14 878 81	\$7 252 61
1 yrs. Int. on above to Jan 1, '93.....		1,327 89
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Total charge and Int. to Jan. 1, '93.....	\$14,878 81	\$8,580 50
1 yrs. Int. on above to Jan. 1, '94.....		1 407 56
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Total charge and Int. to Jan. 1, '94.....	\$14,878 81	\$9,998 06
1 yrs Int. on above to Jan. 1, '95.....		1 492 01
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Total charge and Int. to Jan 1, '95.....	\$14,878 81	\$11,480 07
		\$26 358 88
Allowance of \$75 per month for remittances during sixteen months in Europ-, \$1300. Average interest to Jan. 1, '82 (8 months) \$52, \$1352.		
Add interest on this amount with annual rests from Jan. 1, '82, to Jan. 1, 1895. Total.....		\$2,829 97
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Julia Pomeroy is charged with a grand total, including principal and interest.....		\$29,188 85

SCHEDULE B, II.

What JULIA POMEROY received as income from her fund of \$50,000 derived from the estate of George Pomeroy, and paid her by the New York Life and Trust Co., with interest annually thereon. Said income stated from July 1st, 1887, at which date there had been an equal division between said Josephine, Julia and George P. Pomeroy.

	Income.	Interest
1888.		
Jan. 1. Cash income.....	\$150 00	
Int., 12 mos., to Jan. 1, '89.....		9 00
July 1. Cash income.....	158 00	
Int., 6 mos., to Jan. 1, '89.....		4 74
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Total charge and Int. to Jan. 1, '89....	\$308 00	\$13 74
1 yrs. Int. on above totals to Jan. 1, '90 ...		19 30
1889.		
Jan. 1. Cash Income..	220 00	
Int. 12 mos, to Jan. 1, '90.....		13 20
July 1, Cash Income	400 00	
Int., 6 mos.....		12 00
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Total charge and Int. to Jan. 1, '90....	\$928 00	\$71 98
1 yrs. Int on above totals to Jan. 1, '91....		60 00

		Income.	Interest
Jan.	1.	Cash Income.....	\$475 00
		Int. 12 mos., to Jan 1, '91.....	\$28 50
July	1.	Cash income.....	650 00
		Int. 6 mos.....	19 50
		Total charge and Int. to Jan. 1, '91....	\$2,053 00
		1 yrs, Int. on above totals to Jan. 1, '92....	133 98
1891.			
Jan.	1.	Cash income.....	815 00
		Int. 12 mos. to Jan. 1, '92.....	48 90
July	1.	Cash income.....	1,000 00
		Int. 6 mos.....	30 00
		Total charge and Int. to Jan. 1, '92....	\$3,868 00
		1 yrs. Int. on above totals to Jan. 1, '93....	255 65
1892.			
Jan.	1.	Cash income.....	700 00
		Int. 12 mos. to Jan. 1, '93.....	42 00
July	1.	Cash income.....	1,145 00
		Int., 6 mos.....	34 35
		Total charge and Int. to Jan. 1, '93....	\$5,713 00
		1 yrs. Int. on above totals to Jan. 1, '94....	386 27
1893.			
Jan.	1.	Cash income.....	965 00
		Int., 12 mos. to Jan. 1, '94.....	57 90
July	1.	Cash income.....	950 00
		Int., 6 mos.....	28 50
		Total charge and Int. to Jan. 1, '94....	\$7,628 00
		1 yrs. Int. on above totals to Jan. 1, '95....	529 53
1894.			
Jan.	1.	Cash income.....	980 00
		Int. 12 mos. to Jan. 1, '95.....	58 80
July	1.	Cash income.....	1,080 00
		Int. 6 mos.....	32 40
		Total charge and Int. to Jan. 1, '95....	\$9,688 00
		1 yrs. Int. on above totals to Jan. 1, '95....	1 197 53
		One-third above charge and Int. due estate of Geo. P. Pomeroy from said Julia Pomeroy....	\$3,835 42

SCHEDULE C.

What GEORGE P. POMEROY received from the estate of George Pomeroy:

		Principal.	Interest.
1881.			
Jan.	1.	Income of N. Y. Life & Trust Co. \$30,000 Fund.....	\$940 00
		Int., 12 mos. to Jan. 1, '82.....	\$56 40
July	1.	Do.....	1,023 75
		Int. 6 mos. to Jan. 1, '82.....	30 72
		Total charge and Int. to Jan 1, '82....	\$1,963 75
		1 yrs. Int. on above totals to Jan. 1, '83 ...	123 05

		Principal.	Interest
1882.			
Jan.	1.	Do.....	\$1,023 75
		Int. 12 mos. to Jan. 1, '83.....	\$61 43
July	1.	Do.....	1,023 75
		Int. 6 mos.....	30 72
		Total charge and Int. to Jan. 1, '83.....	\$4 011 25
		1 yrs. Int. on above totals to Jan. 1, '84....	258 81
1883.			
Jan.	1.	Do.....	1,023 75
		Int. 12 mos. to Jan. 1, '84.....	61 43
July	1.	Do.....	1,023 75
		Int. 6 mos.....	30 72
		Total charge and Int. to Jan. 1 '84....	\$6,058 75
		1 yrs. Int. on above totals to Jan. 1, '85....	\$653 28
			402 72
1884.			
Jan.	1.	Do.....	1,023 75
		Int. 12 mos. to Jan. 1, '85.....	61 43
July	1.	Do.....	1,023 75
		Int. 6 mos.....	30 72
		Total charge and Int. to Jan. 1, '85	\$8,106 25
		1 yrs. Int. on above totals to Jan. 1, '86....	\$555 26
1885.			
Jan.	1.	Income N.Y. Life & Trust Co. \$30,000 Fund	1,023 75
		Int. 12 mos. to Jan. 1, '86.....	61 43
July	1.	Do.....	1 023 75
		Int. 6 mos.....	30 72
		Total charge and Int. to Jan. 1, '86....	\$10,153 75
		1 yrs. Int on above totals to Jan. 1, '87....	\$1,795 56
			716 96
1886.			
Jan.	1.	Do.....	1,023 75
		Int. 12 mos to Jan 1, '87.....	61 43
July	1.	Do... ..	1 023 75
		Int. 6 mos.....	30 72
		Total charge and Int. to Jan. 1, '87.....	\$12,201 25
		1 yrs. Int on above totals to Jan. 1, '88....	\$2 604 67
			888 36
1887.			
Jan	1.	Do.....	\$1,023 75
		Int. 12 mos. to Jan. 1, 88.....	61 43
May	1.	Do.....	682 50
		Int. 6 mos	20 48
		Total charge and Int. to Jan. 1, '88.....	\$13,907 50
		1 yrs. Int. on above totals to Jan. '89.....	\$3,574 94
			1,048 95
		Total charge and Int. to Jan 1, '89.....	\$13 907 50
		1 yrs. Int on above totals to Jan. 1, '90	\$4,623 89
			1,111 88
		Total charge and Int Jan. 1, '90.....	\$13,907 50
		1 yrs. Int. on above totals to Jan. 1 '91	\$5,735 77
			1 178 60
		Total charge and Int. to Jan. 1, '91	\$13,907 50
		1 yrs Int. on above totals to Jan 1, '92....	\$6,914 37
			1,249 31
		Total charge and Int to Jan. 1, '92.....	\$13 907 50
			\$8,163 68

III.—*Miscellaneous.*

May 14, 1887—Collected by each, net proceeds Yacht Triton sold	\$5 888 86
July 1, 1887—Collected by each for life insurance from the N. Y. Consolidated Stock and Petroleum Exchange.....	2,666 66
Total.....	<u>\$3,255 52</u>

Summary of Schedule D.

I.....	\$142,051 11
II.....	21,386 84
III.....	3 255 52
Total	<u>\$166,693 47</u>
Total for the Three Heirs.....	500,070 41

SCHEDULE E, I.

What credits JOSEPHINE POMEROY should be allowed in the settlement of this account with the estate of George P. Pomeroy:

	Principal.	Interest.
1886.		
Nov. 13. Cash for Astoria Taxes, 1/2.....	\$277 86	
Int. 2 mos. to Jan. 1, '87.....		\$2 78
Total credit and Int. to Jan. 1, '87.....	<u>\$277 86</u>	<u>\$2 78</u>
1 yrs. Int on above totals to Jan. 1, '88.....		16 84
1887.		
Mch. 14. Cash for Madison Taxes, 1/2.....	222 56	
Int. 10 mos. to Jan. 1, '88.....		11 13
Total credit and Int. to Jan. 1, '88.....	<u>\$504 42</u>	<u>\$30 75</u>
1 yrs Int. on above totals to Jan. 1, '89....		31 87
1888.		
Nov. 20. Cash for Kearny Taxes, 1/2.....	30 22	
Dec. 11. " " Madison Taxes, 1/2.....	157 79	
Dec. 14. " " Bayonne Taxes, 1/2.....	13 67	
	<u>201 68</u>	
Int. 1 mo. to Jan. 1, '89.....		1 01
Total credit and Int. to Jan. 1, '89	<u>\$702 10</u>	<u>\$63 63</u>
1 yrs Int on above totals to Jan. 1, '90...		45 94
Total credit and Int to Jan. 1, '90.....	<u>\$702 10</u>	<u>\$109 57</u>
1 yrs. Int. on above totals to Jan. 1, '91...		48 70
1890		
Dec. 20. Cash for Madison Taxes, 1/2.....	247 91	
Total credit and Int. to Jan 1, '91....	<u>\$950 01</u>	<u>\$158 27</u>
1 yrs. Int. on above totals to Jan. 1, '92...		66 59
1891.		
Nov. 25. Cash for Passaic Taxes 1/2.....	1 49	
Int. 1 mo. to Jan 1, '92		07
Total credit and Int. to Jan. 1, '92.....	<u>\$951 50</u>	<u>\$224 84</u>
1 yrs. Int. on above totals to Jan. 1, '93....		70 58

		Principal.	Interest
1892.			
Mch. 31.	Cash for Madison Taxes, ½.....	\$275 89	
	Int. 9 mos. to Jan. 1, '93.....		\$12 42
	Total credit and Int. to Jan. 1, '93.....	\$1,277 39	\$307 84
	1 yrs. Int. on above totals, to Jan. 1, '94..		92 11
1893.			
Jan. 12.	Cash for Madison Taxes. ½... ..	264 40	
	Int. 12 mos., to Jan. 1, '94		14 86
Dec. 27.	Cash for Madison Taxes, ½.....	288 75	
	Total credit and Int. to Jan. 1, '94.....	\$1,780 54	\$415 81
	1 yrs. Int. on above totals, to Jan. 1, '95....		131 78
1894.			
Sept. 15.	Cash for Madison Homestead, ½.....	158 53	
	Int. 4 mos. to Jan. 1, '95.....		3 17
	Total credit and Int. to Jan. 1, '95.....	\$1,939 07	\$550 76
	Balance on Rathbun's account.....	33 33	3 25
	Int. from Nov 15, '92, to Jan 1, '95.....	58 60	9 17
	Do. with Int. from Apr. 1, 1892. 2 yrs 9 mos.....	\$2,031 00	\$563 18
Josephine Pomeroy	is credited with a grand total, in- cluding principal and interest.....		\$2,594 18

II.

What credits JULIA POMEROY should be allowed in the settle-
ment of this account with the estate of George P. Pomeroy:

Same as I, ante, making total credit and interest	
Jan. 1, 1895.....	\$2 594 18

III.

What additional credits JOSEPHINE POMEROY and JULIA POMEROY
should be allowed in the settlement of this account with
the estate of George P. Pomeroy:

		Principal.	Interest
1888			
Jan. 16.	Cash Sundries.....	\$397 14	
	Int 11 mos. to Jan. 1, '89.....		\$21 84
Aug. 20.	Cash, Jackson Note.....	1,111 10	
	Int, 4 mos....		22 22
Oct. 5.	Cash, Jackson Note.....	247 34	
	Int. 3 mos.....		3 71
Oct. 15	Cash.....	268 89	
	Int. 3 mos.....		4 03
Nov. 20.	Cash, Ins Scrip.....	5 47	
	Int 1 mo ...		03
	Total credit and Int. to Jan. 1 '89.....	\$2,029 94	\$51 83
	One yrs. Int on above totals to Jan. 1, '90		124 90

	Principal.	Interest
1889		
May 31. Cash Jackson Note.....	\$1,364 36	
Int., 7 mos , to Jan. 1. '90		\$47 75
	<hr/>	<hr/>
Total credit and int. to Jan 1, '90.....	\$3,394 30	\$224 48
1 y's. int. on above totals to Jan. 1 '91.....		217 13
1890.		
July 26 Cash, as per statement.....	225 22	
Int., 5 mos , to Jan 1, '91		5 62
	<hr/>	<hr/>
Total credit and int. to Jan. 1, '91.	\$3,619 52	\$447 23
1 yrs. int. on above totals to Jan. 1 '92.....		244 00
	<hr/>	<hr/>
Total credit and int to Jan. 1, '92.....	\$3,619 52	\$691 23
1 yrs. int. on above totals to Jan. 1, '93.....		258 64
	<hr/>	<hr/>
Total credit and int to Jan. 1, '93.	\$3 619 52	\$949 87
1 yrs. int. on above totals to Jan. 1, '94		274 16
	<hr/>	<hr/>
Total credit and int. to Jan 1, '94.....	\$3,619 52	\$1 224 03
1 yrs. int. on above totals to Jan. 1, '95 . .		290 61
	<hr/>	<hr/>
Total credit and int. to Jan. 1, '95	\$3,619 52	\$1 514 64
	<hr/>	<hr/>
Grand total.....	\$5 134 16	
Josephine Pomeroy is credited one-half, or.....	2,567 08	
Julia Pomeroy is credited one-half, or	2,567 08	

And the Master further reports that the household furniture and fixtures at and in the homestead at Madison do remain there in use and go with the same, in case of partition or sale, unless on special application hereafter the Court shall otherwise direct, as to the whole or any part thereof, or the parties shall otherwise arrange by agreement.

And the Master further reports that the \$1,000 Second Income Mortgage Gold Bond, Baltimore & Ohio Southwestern R. R. secured by Third Mortgage (original account, p. 35, item 12), be forwarded to New York and sold for the account of the parties interested, with instructions to remit one-third of the net proceeds to Josephine Pomeroy, one-third to Julia Pomeroy Newell, and one-third to Frank R. Chandler, executor and trustee estate of George P. Pomeroy.

And the Master further reports that, as required by the decree aforesaid, he has taken evidence concerning the material facts relating to the conversion by the said Josephine Pomeroy and Julia Pomeroy Morrison (Newell) of the said trust fund in favor of the said George P. Pomeroy, including the value of the securities embraced in the same, and find that after the death of George P. Pomeroy, and on or about the 20th day of April, 1888, the New York Life Insurance and Trust Company, trustees of the trust fund for the benefit of George P. Pomeroy, paid the securities of which that fund had consisted, equally between the said Julia and Josephine, to wit, three

\$5,000 bonds of the New York Central Railroad to each sister. This payment was made in accordance with the provisions of the will of George Pomeroy and with the knowledge and consent of Frank R. Chandler, executor of George P. Pomeroy's estate—who furnished the necessary affidavits to enable the said Julia and Josephine to draw out the said securities from the said Trust Company.

The bonds so received by each sister were quoted April 20th, 1888, on the New York Stock market at 133½.

These bonds yielded seven per cent. interest on their par value.

It is not within the power of the sisters to restore, surrender or bring into Court the said securities or any part thereof for the reason that the defendants sold the bonds in the year 1888.

PLAN OF EQUALIZATION AND SETTLEMENT OF THE ACCOUNT.

Josephine Pomeroy is charged—

Schedule A I	\$28,368 41	
“ A II.....	11 506 26	
		————— \$39,874 67

Josephine credited—

Schedule E I	\$2,594 18	
“ E III	2,667 08	
		————— \$5,161 29
		\$34,713 41

Julia Pomeroy Newell is charged—

Schedule B I	\$29,188 85	
“ B II	11,506 26	
		————— \$40,695 11

Julia credit—

Schedule E II	\$2,594 18	
“ E III	2,567 08	
		————— \$5,161 26
		\$35,533 85

Estate of George P. Pomeroy charged—

Schedule C.....	\$26,287 13	\$26 287 13
Whole amount of father's estate charge- able against Josephine, Julia and estate of George P. P.....		96,534 39
An equal one-third is \$32,178 13.		

To Equalize—

Josephine should pay to the Estate of George P Pomeroy...	\$2 535 28
Julia should pay to the Estate of George P. Pomeroy.....	3,355 72
Said Estate has received.....	26 287 13
	—————
Equalizing total (1/3).....	\$32,178 14

And the Master further reports that the following assets and securities, unsalable and worthless, with perhaps, the excep-

tion of The Torch Lake Mining Co. shares, now in the hands of the Master, be divided into three lots, as follows:

A.

Note W. S. Dennis,	
Oct. 7, 1886. 6%	\$200 00
41 Shares The Chicago & Grand Trunk Railway Co.....	_____
Dated March 11, 1881.	
100 Shares Hukill Gold & Silver Mining Co., \$5.00 each.	_____
Issued Jan 9 and 16 1880	
100 Shares Little Chief Mining Co., \$50.00 each.....	_____
Issued Oct. 1884 and 1885.	
3.500 Shares Fee Simple Petroleum Co., \$2.00 each.....	_____
Dated April 11, 1865	
100 Shares Quartz Hill Gold Mining Co. \$25 00 each.....	_____
Dated Dec. 14 1869.	
29 Shares Mariposa Land & Mining Co. (Preferred).....	_____
Dated April 6, 1876, April 2, 1881.	
333 Shares Torch Lake Mining Co., \$25.00 each.....	_____
Dated April 7, 1865.	

B.

Note O. W. Child,	
Feb. 3, 1871, no interest	\$1,112 18
End May 24, 1883, Rec'd \$50.00.....	_____
Fractional Scrip of the Common Stock of the Chicago & Grand	
Trunk Railway Co	11 00
100 Shares Hukill Gold & Silver Mining Co., \$5 00 each,.....	_____
Issued Jan. 9 and 16, 1880.	
100 Shares Little Chief Mining Co., \$50.00 each.....	_____
Issued Oct., 1884 and 1885.	
3.900 Shares Fee Simple Petroleum Co., \$2.00 each.....	_____
Dated April 11, 1865.	
100 Shares Quartz Hill Gold Mining Co., \$25.00 each.....	_____
Dated Dec. 14, 1869.	
100 Shares Mariposa Land & Mining Co. (Preferred).....	_____
Dated April 6 1876, April 2, 1881.	
333 Shares Torch Lake Mining C., \$25 00 each.....	_____
Dated April 7, 1865.	

C.

Note Chas. M Huson, St Louis, Mo.,	
Dated Nov. 1 1879 7%.....	\$1,023 29
50 Shares Central Arizona Mining Co.....	_____
Issued Jan. 20, 1880.	
100 Shares American Hand-Sewing Machine Co., \$10.00 each....	_____
Issued Sept. 24, 1884	
50 Shares Convex Weaving Co.....	_____
Dated Dec. 18, 1866.	
100 Shares Bald Mountain Mining Co., \$10.00 each.....	_____
Dated March 31, 1880.	
100 Shares American Trust Co., of New Jersey.....	_____
Dated July 9, 1872.	
500 Shares Garland Petroleum Oil Co., \$5 00 each.....	_____
Dated July 18, 1865.	

1,100 Shares Prescott Petroleum Co., \$3.00 each.....	_____
Dated March 18, 1865.	
100 Shares Sterling Silver Mining Co., of Nevada, \$50.00 each...	_____
Dated June 28 1865.	
10 Shares Astoria & Hunter's Point R. R. Co	_____
Dated Oct. 12, 1868.	
\$31.25-100 Shares Mariposa Land & Mining Co. (Fractional Scrip). preferred stock.....	_____
80 Shares Mariposa Land and Mining Co. (Common).....	_____
Dated April 6, 1876 April 2, 1881.	
334 Shares Torch Lake Mining Co., \$25.00 each.	_____
And the Master allots Lot C to Josephine Pomeroy; Lot B to Julia Pomeroy Newell; Lot A to Frank R. Chandler, executor and trustee, estate George P. Pomeroy, as he deems conformable to equity.	

All of which is respectfully submitted.

WILLIAM L. DAYTON,

June 18th, 1895.

Master.

Complainants' Exceptions.

(Filed July 17, 1895.)

UNITED STATES OF AMERICA, }
District of New Jersey. } ss

In the Circuit Court of the United States for said District

FRANK R. CHANDLER, as Trustee and Execu-
tor under the last will and testament of
George P. Pomeroy, deceased, original com-
plainant, and EUGENE COWLES POMEROY,
infant son of said deceased, by CHARLES W.
CHASE, his guardian, joined as complainant
since commencement of suit,

In Equity.
For Specific per-
formance and
other relief.

vs

JOSEPHINE POMEROY and JULIA POMEROY
MORRISON, now JULIA POMEROY NEWELL;
also ALFRED MILLS, as Executor of the last
will and testament of George Pomeroy,
deceased, this suit having been heretofore
been dismissed as against WILLIAM FOSTER
MORRISON, one of the original defendants

Original bill
filed September
4, 1888.
Supplemental
bill filed Janu-
ary 4 1891.

The exceptions taken in behalf of said complainants to the
report of Hon. William L. Dayton, Special Master, to whom
this cause was referred, which report was filed herein on
June 18, 1895.

And now again come the complainants, by the undersigned their solicitors, and having received notice of the filing of the Master's report aforesaid, and having been furnished with a copy thereof, and having examined the same, do respectfully except thereto, as allowed by the rule of the Court for that case made and provided; and for cause of exception, do now set forth and show to the Court here the following matters and things wherein said Master hath not, as these complainants are advised, fully and completely complied with and executed the order of reference to him, that is to say:

First Exception.—For that in stating the account between the parties, said Master hath not charged the said Josephine Pomeroy and the said Julia Pomeroy Newell with the amount in value of the securities which constituted the Trust Fund under the will of the said George Pomeroy, in favor of the said George P. Pomeroy, together with interest thereon from the date at which said securities were withdrawn by the said Josephine and Julia, and appropriated to their own use and benefit, the trust thereof having been extinguished by the death of said George P. Pomeroy, whereby said securities became a part of the undivided assets included in the agreement to be enforced herein.

Second Exception.—For that having reported that said Josephine and Julia had so withdrawn and appropriated to their own use and benefit the securities aforesaid, and that they cannot now restore the same for any order or disposition which the Court might deem conformable to equity: said Master hath not, as is required by the order of reference to him, set forth in his said report what compensation now can and ought to be made by said Josephine and Julia for their aforesaid appropriation to their own use of the securities which constituted the Trust Fund in favor of the said George P. Pomeroy as aforesaid; whereas said Master ought also to have reported that said Josephine and Julia should be required to make just compensation by the payment to said complainants of the one equal third part of the amount in value of the securities so as aforesaid appropriated by them, with interest thereon from the date of such appropriation, amounting on January 1st, 1895, to \$19,377.32, of which one-half should be charged against each of them with the subsequently accruing interest thereon; for otherwise, said Eugene will not receive the one equal third part of said two estates to which he is entitled under the decree of this Court.

Third Exception—For that said Master hath not reported, as required to do by said order of reference, a method and plan

for such a division of all the remaining undivided personal assets, estate and property of the estates specified in the agreement in writing which this suit was brought to enforce, as when carried into effect under the direction of the Court would give to the said Frank R. Chandler, as executor and trustee under the last will and testament of the said George P. Pomeroy, for the primary use and benefit of the said Eugene Cowles Pomeroy, one equal third part of the two estates described in said agreement in writing, including the interest or income which has fallen due on all the trust funds specified in the last will and testament of the said George Pomeroy. Whereas said Master should have reported, in terms, that said complainants are entitled to recover and receive one equal third part of the amount in value of the securities which constituted said Trust Fund in favor of said George P. Pomeroy, at the date when said securities were withdrawn from said trust, together with interest thereon from that date until the date of the decree to be entered herein; and, whereas, said Master should also have reported, in terms, that said complainants are and will be entitled henceforth to recover and receive of and from the said Josephine and Julia, one equal third part of all the interest and income which have accrued or shall accrue upon the trust funds held by the New York Life and Trust Company, for their benefit respectively, from and after July 1st, 1894, when the last account thereof was rendered; until, for good cause hereafter arising, the Court shall, upon the proper application, otherwise order and direct.

Fourth Exception.—For that said Master hath not charged the said Josephine with the sum of \$757.50, received by her November 3d, 1880; and the sum of \$314.50, received by her January 20th, 1881; and the sum of \$715.38, received by her February 28th, 1881, amounting to \$1,787.38, as clearly appears from her receipts for said sums, together with interest thereof, according to the agreement in controversy.

And for that said Master hath not made against said Julia the like charge for \$545.63, received by her October 30th, 1880; and the sum of \$100, received by her November 29th, 1880; and the sum of \$454.00, received by her January 28th, 1881; and the sum of \$740.75 received by her February 28th, 1881, amounting to \$1,840.38, as clearly appears from her receipt therefor, with interest on said sums according to said agreement.

Fifth Exception.—For that said Master hath not charged said Josephine, as of September 1st 1887, with the sum of \$955.09 on account of the so-called "surcharge," in the estate of Edward Pomeroy, with interest thereon, according to the judgment of the Surrogate's Court in that behalf.

And for that said Master hath not charged said Julia with the like sum upon the like account, according to said judgment.

Sixth Exception—For that said Master hath not charged against said Josephine and against said Julia the amount of the several sums of interest received by them respectively, from the securities which constituted the Trust Fund in favor of their mother, the widow of the said George Pomeroy, after the death of said widow; which said securities were purchased by the executors with funds of the estate of George Pomeroy, and which fell back into said estate and became an undivided part thereof upon the death of said widow.

Seventh Exception.—For that said Master hath not charged against said Josephine and against said Julia, the several other sums which are specifically set forth and claimed against them respectively, in and by the re-statement of the account filed herein for said complainants and not allowed by said Master. These complainants deem it not necessary now here to repeat and set forth said sums respectively; but they reserve the right to specify the same in a supplemental schedule, if they shall be so advised; and they stand ready to file such schedule in support of this exception, if they shall be thereto required by the Court.

Eighth Exception.—For that said Master hath not ascertained and reported to the Court what real estate was included within the agreement which this suit was brought to enforce; and how far the same has been disposed of by the executors of the said George Pomeroy or otherwise; and how far the same still remains to be divided, etc. Said complainants respectfully insist that now, or at some future time, this should be done, without regard to the question whether partition of so much of said lands as still remain without disposition, shall be made by or under the direction of this Court, or in the Courts of the several States in which said lands are situated, as is set forth in the Supplemental Bill filed in this cause.

Wherefore the said complainants respectfully except to said report, and pray in the alternative, either that this Honorable Court will refer the said report back to said Master with the direction that he do add thereto an allowance in favor of said complainants of the several items above specified in these exceptions, and do otherwise proceed as is sought herein; or if the Court shall deem it unnecessary so to refer back said report, that the Court will itself allow to said complainants, in and by the decree to be entered by the Court upon the consideration of said report, the matters and things aforesaid, respectively.

And the said complainants further pray that they may also have, upon the hearing of said report, all such further or other relief as the nature of the case may require and equity and good conscience approve, etc

C. C. BONNEY,
and GUILD & LUM.

Solicitors and Counsel for Complainants.

Defendants' Exceptions.

(Filed August 1, 1895.)

U. S. Circuit Court, District of New Jersey.

FRANK R. CHANDLER, AS EXECUTOR, &C.,	}
<i>against</i>	
JOSEPHINE POMEROY AND JULIA POMEROY	
NEWELL.	

Exceptions of the defendants Josephine Pomeroy and Julia Pomeroy Newell to certain items and findings contained in the report of the Hon. William L. Dayton, Master *pro hac vice* of this Court, which report was duly filed in the office of the clerk of this Court, on the 18th day of June, 1895.

First.—The defendant Josephine Pomeroy excepts to the item charged against her in said report as an amount received by her from the estate of George Pomeroy, her father, found in Schedule A, I of said report, under date of July 7, 1884, for the sum of \$278.60 for the following reasons, to wit: said sum was not received from the estate of George Pomeroy, and the said item was an issue in the litigation between said Josephine and Edward Pomeroy, referred to in the "Agreement" under which this suit is brought, and that said Agreement, by express terms, adjusted the claims of the parties which were at issue in said litigation.

Said defendant further excepts to the item charging her with \$1,872.75 found in Schedule A, I of said report, under date of July 28th, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$544.17, found in Schedule A, I of said report, under date of August 5th, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$236.67, found in Schedule A, I of said report, under date of August 28th, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$279.33, found in Schedule A, I of said report, under date of September 1st, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$68.22, found in Schedule A, I of said report, under date of October 6th, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$75 46, found in Schedule A, I of said report, under date of October 8, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$198.33, found in Schedule A, I of said report, under date of November 1st, 1884, for the like reasons

Said defendant further excepts to the item charging her with \$9.20, found in Schedule A, I of said report, under date of November 7th, 1884, for the like reasons.

Said defendant further excepts to the item charging her with \$116.67, found in Schedule A, I of said report, under date of December 3d, 1884, for the like reasons.

Evidence before the Master, upon which above exceptions are founded, session May 10th, 1894, pp 5, 20, 38, 41, 47, 49, 53, 64, 65, 67, 68, 101, 102.

Second.—The defendant, Julia Pomeroy Newell, excepts to the item charged against her in said report as an amount received by her from the estate of George Pomeroy, her father, found in Schedule B I of said report under date of July 7th, 1884, for the sum \$278.60 for the following reasons, to wit: Said sum was not received from the estate of George Pomeroy, and the said item was an issue in the litigation between said Julia and Edward Pomeroy referred to in the agreement under which this suit is brought, and the said agreement by express terms adjusted the claims of the parties which were at issue in said litigation.

Said defendant Julia further excepts to the item charging her with \$1,872.75 found in Schedule B I of said report, under date of July 28th, 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$544.17 found in Schedule B I of said report, under date of August 5th, 1884, for the like reasons

Said defendant Julia further excepts to the item charging her with \$236.67, found in Schedule B I of said report, under date of August 28th 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$297.33, found in Schedule B I of said report, under date of Sept 1st 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$68.22, found in Schedule B I of said report, under date of October 6th, 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$75.46, found in Schedule B I of said report, under date of October 8th, 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$198.33, found in Schedule B I of said report, under date of Nov. 1st, 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$9.20. found in Schedule B I of said report, under date of Nov. 7th, 1884, for the like reasons.

Said defendant Julia further excepts to the item charging her with \$116.67, found in Schedule B I of said report, under date of Dec. 3d, 1884, for the like reasons.

(Evidence before Master same as evidence under First Exception.)

Third.—The defendants Josephine and Julia each severally excepts to so much of the Master's said report as charges interest on the amounts charged against them from and after May 1st, 1887 (to January 1st, 1895), found in Schedules A I and B I, for the following reasons, to wit:

On or about May 1st, 1887, each of said defendants handed to the complainant the bonds and stocks owned by them, to a large amount being all that they possessed, as intended by said agreement, to be pooled and divided by complainant according to the terms of said agreement, which agreement complainant had drawn up for signature.

And that interest ought to be charged against defendants, or either of them, after the date that they had tendered and made full payment, which was excepted as such by George P. Pomeroy and complainant in his behalf.

(*Evidence*—Printed record, pp. 91-108, and other portions of this record.)

Fourth.—The defendants Josephine and Julia each severally except to so much of the Master's said report as charges them and each of them with the interest which has been paid to them on their trust funds, after the date of the death of their brother, George P. Pomeroy, found in Schedules A II and B II of said report, for the following reasons, to wit: The said agreement covenanted that the interest or income derived on all the three trust funds should be treated as a joint fund of interest, and be equally divided between the three parties. This was done and performed by them. all until the death of George P. Pomeroy, one of the parties. At his death the trust fund for his benefit ceased to exist. There was no further contribution by the heirs of George to this "joint fund" of interest. The heirs of George are not entitled to share in a "joint fund" to which they do not contribute.

The covenant of the agreement made the interest on the trust funds a joint fund, with the object of providing for the

successive death of each of the parties, as none of the parties had power of disposition of their trust fund by will.

(*Evidence*—Printed record, p. 92, compels re-statement of account pp. 6 and 13)

SAMUEL H. GRAY,
and GEORGE BALDWIN NEWELL,
Counsel for Defendants.

10	POMEROY <i>vs.</i> NEWELL.	}	<i>Memorandum of Decision.</i>
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THE CHANCELLOR.

I fail to find anything in the case either in the pleadings or proofs, to justify the claim that the furniture in the homestead is to be regarded, in this proceeding in partition, as part of the homestead real estate, it is clear that the Commissioners were not directed in the commission to take it into consideration, and that they have not taken it in consideration. The defendant, now moving to suppress the Commissioners report, does not point out, and I do not find in the record, any reason why the furniture must be regarded as real estate and a part of the homestead. If there be any adjudication between the parties, which establishes such a *status* for the furniture, and it is properly cognizable in this proceeding, I think it should be introduced through the pleadings. Its suggestion to Commissioners acting under the limited and definite orders of a commission for the purpose of putting them "on inquiry in relation to it," is ineffective and does not afford a ground for quashing the report under the commission.

The admission of counsel that a building on land allotted to the infant has been burned since the Commissioners' report was made is met with the allegation that the property was fully insured, and that the insurance money has been paid or is

secured. In this situation no reason for suppressing the report on this ground exists.

After a careful review of the testimony taken by the Commissioners, and the testimony of the Commissioners themselves as to the manner in which they performed their duty, it does not appear to me that either in making the several parcels in partition or in the allotment of one of those parcels to the infant, they have erred prejudicially to the infant. Unless they have clearly so erred the motion to suppress their report should not prevail. 10

The Commissioners did not take some tax liens upon the infant's Bayonne lands into consideration, and to that extent their allotment to him is unfair. Those taxes amount to about \$300. Two-thirds of those taxes may be paid to the infant by the other parties to the partition, and if such payment be made, as the inequality will be avoided, upon that payment, the report of the Commissioners will be confirmed. 20

The report of the Commissioners was confirmed by the decree of the Chancellor as follows:

“ It is therefore on this fourteenth day of September, eighteen hundred and ninety-six, by His Honor, Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the said report of the said Commissioners, and all the matters and things therein contained, do stand ratified and confirmed.” 30

In Chancery of New Jersey.

10	<i>Between</i> JOSEPHINE POMEROY, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> JULIA POMEROY NEWELL, formerly JULIA POMEROY MORRISON, and GEORGE B. NEWELL, her husband, EUGENE C. POMEROY, MARTHA E. BUCKINGHAM, ANNA S. CHAND- 20 LER, ROSE A. SELFRIDGE, former- ly ROSE A. BUCKINGHAM, MARY E. VAN AULEN and FRANK R. CHANDLER, <div style="text-align: right;"><i>Defendants.</i></div>	} <i>On Bill, etc.</i> <i>Notice of</i> <i>Appeal.</i>
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The defendants, Frank R. Chandler, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, and Mary E. VanAulen, hereby ap-
 30 appeal to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court in the above entitled cause which decrees:

“That the said report of the said Commis-
 sioners and all the matters and things therein con-
 tained, do stand ratified and confirmed, and that
 the said Julia Pomeroy Newell, wife of George B.
 Newell, do have, hold, use, occupy, possess and
 40 enjoy in severalty the herinabove described share

or allotment of said lands, being the share marked 'Tract Number One,' containing thirty-six and sixty-six one-hundredths acres, upon said 'Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor,' allotted and assigned as aforesaid to the said Julia Pomeroy Newell, and that the complainant, Josephine Pomeroy, do have, hold, use, occupy, possess and enjoy 10
in severalty the hereinbefore described share or allotment of the said lands and premises being the share marked 'Tract Number Two A,' containing seventy-four and twenty-six one-hundredths acres and 'Tract Number Two B,' containing twenty and eleven one-hundredths acres, and 'Tract Number 2 C,' containing one and twenty-eight one-hundredths acres, upon said 'Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 20
1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor,' allotted and assigned as aforesaid to the said complainant, Josephine Pomeroy, and that the said defendants, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen and Frank R. Chandler, do have, hold, use, occupy, possess and enjoy in severalty as in the last will and testament, and codicil thereto of George Pomeroy, deceased, the here- 30
inbefore described share or allotment of the said lands and premises, being the share marked 'Tract Number 'Three,' containing forty-three and twenty-two one-hundredths acres, and tract marked 'Meadow Land,' in Passaic township upon the said 'Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor,' and 'Tract Number Three A,' 'Tract No. Three B,' 40

' Tract Number Three C,' ' Tract Number Three D,' ' Tract Number Three E,' ' Tract No. Three F," upon said ' Commissioners' map of the division of the real estate of George Pomeroy, deceased, Bayonne, N. J., surveyed December, 1895, scale one inch to fifty feet, Smith and Weston, surveyors,' and that the said partition so as aforesaid made, stand and be held, confirmed, valid and effectual forever.

10 And it is further ordered, adjudged and decreed that the several parties to this suit, among whom partition has been made, do forthwith mutually release to each other, by deed in fee simple, the parts or parcels hereby allotted, and partitioned to them respectively, and that in executing each of said deeds, all the parties to this suit shall join, except the party to whom such deed shall be executed and his or her wife or husband—

20 And it is further ordered, adjudged and decreed in conformity with the report of said Commissioners, that the share so as aforesaid set off to Julia Pomeroy Newell, is charged with the sum of two thousand five hundred and ten dollars, and that the said sum be by the said Josephine Pomeroy Newell paid into this Court for the benefit of the share allotted to Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Buckingham, now Rose A. Selfridge, and Mary E. Van Aulen, and that until the payment into this Court
30 by the said Josephine Pomeroy Newell of said sum of two thousand five hundred and ten dollars, that the same be and remain a lien upon the share allotted to the said Josephine Pomeroy Newell."
Dated November 16th, 1896.

C. C. BONNEY,
GUILD & LUM,

*Solicitors and of Counsel with Defendants
Eugene C. Pomeroy and Frank R. Chandler,
Eugene C. Pomeroy, Martha E. Bucking-*

ham, Anna S. Chandler, Rose A. Selfridge formerly Rose A. Buckingham, and Mary E. Van Aulen.

I conceive that there is good cause for appeal in the above stated cause—

WM. B. GUILD,

Of Counsel with Defendants Eugene C. Pomeroy and Frank R. Chandler, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, and Mary E. Van Aulen.

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New Jersey
Court of Errors and Appeals.

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Between

JULIA POMEROY NEWELL, formerly
JULIA POMEROY MORRISON and
GEO. B. NEWELL, her husband,
EUGENE C. POMEROY, MARTHA E.
BUCKINGHAM, ANNA S. CHANDLER,
ROSE A. SELFRIDGE, formerly
ROSE A. BUCKINGHAM, MARY E.
VAN AULEN, and FRANK R. CHAN-
DLER,

20

*Appellants.**and*

JOSEPHINE POMEROY,
Respondent.

On Bill.
Petition of
Appeal.

*To the Honorable the Court of Errors and Appeals in
the last resort in all causes:*

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The petition of Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and George B. Newell, her husband, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen, Frank R. Chandler, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Alexander T. McGill, Chancellor of New
40 Jersey, bearing date the fourteenth day of Septem-

ber, eighteen hundred and ninety-six, wherein the said Josephine Pomeroy was complainant, and Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and George B. Newell, her husband, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler were defendants, in this respect, to wit: that the said decree adjudges "that the said report of the said Commissioners, and all the mat- 10
ters and things therein contained, do stand ratified and confirmed, and that the said Julia Pomeroy Newell, wife of George B. Newell, do have, hold, use, occupy, possess and enjoy in severalty, the hereinabove described share or allotment of said lands, being the share marked "Tract Number One," containing thirty-six and sixty-six one-hundredths acres upon said "Commissioners' map of the division of real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, 20
scale one inch to two hundred feet, Roswell M. Hancock, surveyor," allotted and assigned as aforesaid to the said Julia Pomeroy Newell, and that the said complainant, Josephine Pomeroy do have, hold, use, occupy, possess and enjoy in severalty the hereinbefore described share or allotment of the said lands and premises, being the share marked "Tract Number Two A," containing seventy-four and twenty-six one-hundredths acres, and "Tract Number Two B," containing twenty and eleven one- 30
hundredths acres, and "Tract Number Two C," containing one and twenty-eight one-hundredths acres upon said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," allotted and assigned as aforesaid to the said complainant, Josephine Pomeroy, and that the said defendants, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose 40

A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler do have, hold, use, occupy, possess and enjoy in severalty, as in the last will and testament and codicil thereto of George Pomeroy, deceased, the hereinbefore described share or allotment of the said lands and premises, being the shares marked "Tract Number Three," containing forty-three and twenty-two one-hundredths acres, and tract marked "Meadow Land" in Passaic Township upon the said Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," and "Tract Number Three A," "Tract Number Three B," "Tract Number Three C," "Tract Number Three D," "Tract Number Three E," "Tract Number Three F," upon said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Bayonne, N. J., surveyed December, 1895, scale one inch to fifty feet, Smith & Weston, surveyors," and that the said partition so as aforesaid made stand and be held, confirmed, valid and effectual forever.

And it is further ordered, adjudged and decreed that the several parties to this suit, among whom partition has been made, do forthwith mutually release to each other, by deed in fee simple, the parts or parcels hereby allotted and partitioned to them respectively, and that in executing each of said deeds, all the parties to this suit shall join, except the party to whom such deed shall be executed, and his or her wife or husband.

And it is further ordered, adjudged and decreed in conformity with the report of said Commissioners, that the share so as aforesaid set off to Julia Pomeroy Newell, is charged with the sum of two thousand five hundred and ten dollars, and that the said sum be by the said Josephine Pomeroy Newell paid into this Court for the bene-

fit of the share allotted to Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Buckingham, now Rose A. Selfridge, and Mary E. Van Aulen, and that until the payment into this Court by the said Josephine Pomeroy Newell, of said sum of two thousand five hundred and ten dollars, that the sum be and remain a lien upon the share allotted to the said Josephine Pomeroy Newell."

And your petitioners humbly appeal from that 10
part of the decree of the Chancellor, which
decrees as aforesaid upon the following grounds,
to wit:

1. The said Court of Chancery manifestly
erred in denying the petition of the said infant de-
fendant, Eugene Cowles Pomeroy, to stay all pro-
ceedings in this cause until the final determination
of the suit in the Circuit Court of the United States
for the District of New Jersey, which is mentioned
in said petition, and in answer of said defendants 20
for that the prior partition of the lands in contro-
versy is prohibited by the agreement between said
deceased and said Josephine and said Julia, which
is also mentioned in said petition and said answer.

2. And the said Court of Chancery also mani-
festly erred in decreeing a partition of the lands in
controversy in this suit, without charging upon the
lands allotted to said Josephine, and upon the lands
allotted to said Julia, their indebtedness to said
Eugene, under said agreement, the amount where- 30
of is to be determined in said suit in the said Court
of the United States; for that the interest of said
Josephine and the interest of said Julia in the lands
which were sought to be partitioned, in this suit, is
subject to an equitable lien under said agreement,
to secure the payment of said indebtedness which
said lien is wholly overlooked and ignored in said
decree.

3. The said Court of Chancery also manifestly
erred in overruling the objections of said defend- 40

ants, Frank R. Chandler and Eugene Cowles Pomeroy, to the report of the Commissioners of partition in this cause, and in denying the motion of said defendants to suppress said report; for that the same is clearly shown by said objections and by the evidence and by the suggestions made in support thereof, to be manifestly unequal, unjust and oppressive to said defendants.

10 4. The said Court of Chancery also otherwise manifestly erred in taking jurisdiction of the subject matter of this suit, and in proceeding therein notwithstanding the objections made in behalf of said defendants and in sustaining the report of the Commissioners of partition, notwithstanding the failure of said Commissioners to make any proper charges or allowance for the furniture in the Pomeroy homestead, described in the proceedings, which furniture has been so affixed to said homestead, and made a part thereof by the acts of the parties, that
20 it must go therewith in case of any partition or sale thereof, as plainly appears from the evidence and notwithstanding the failure of said Commissioners to make any proper provision for the loss of one of the houses on the said premises, allotted to said infant, which was destroyed by fire before filing of said report, as plainly appears from the evidence, and notwithstanding the omission of said Commissioners, to make any proper exhibit of the unpaid taxes standing against the property, sought
30 to be partitioned nor any provision for the liquidation of said taxes.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

C. C. BONNEY,
GUILD & LUM,

Appellants, Frank R. Chandler, Eugene Cowles Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, and Mary E. VanAulen.

WM. B. GUILD,
Of Counsel with said Appellants.

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New Jersey
Court of Errors and Appeals.

Between

JULIA POMEROY NEWELL, formerly
JULIA POMEROY MORRISON, and
GEORGE B. NEWELL, her husband,
EUGENE C. POMEROY, MARTHA E.
BUCKINGHAM, ANNA S. CHAND-
LER, ROSE A. SELFRIDGE, formerly
ROSE A. BUCKINGHAM, MARY E.
VAN AULEN and FRANK R. CHAN-
DLER,

20

Appellants.

and

JOSEPHINE POMEROY,

30

Respondent.

On Appeal.

Julia Pomeroy Newell and George B. Newell, her husband, who have been made appellants in this matter on appeal from decree of the Court of Chancery confirming partition, etc., do hereby refuse to join in the said appeal, and say that they have not appealed from the said decree but that on the contrary thereof the said decree is agreeable to 40

equity. And they say further that their names have been used as appellants in the petition filed in this Court by the said Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler, without their consent and against their will. And the said Julia Pomeroy Newell and George B. Newell, her husband, do hereby state their desire to be regarded as
10 respondents in this Court in this cause. Dated December 3rd, 1896.

M. T. ROSENBERG,

*Solicitor for Julia Pomeroy Newell and George
B. Newell, her husband.*

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New Jersey Court of Errors and Appeals.

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Between

JULIA POMEROY NEWELL, formerly
JULIA POMEROY MORRISON, and
GEORGE B. NEWELL, her husband,
EUGENE C. POMEROY, MARTHA E.
BUCKINGHAM, ANNA S. CHAND-
LER, ROSE A. SELFRIDGE, former-
ly ROSE A. BUCKINGHAM, MARY
E. VAN AULEN and FRANK R.
CHANDLER,

*On Appeal.**Order.*

20

*Appellants,**And*

JOSEPHINE POMEROY,

Respondent.

Julia Pomeroy Newell and George B. Newell, her husband, who have been joined as appellants in this cause by Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen and Frank R. Chandler, having filed in this Court a statement to the effect that they refuse to join in said appeal, and that their names have been joined in said petition of appeal without their consent, and that the said decree appealed from is agreeable to equity, and that they desire to be regarded as respondents. 30

It is ORDERED that the names of the said Julia Pomeroy Newell and George B. Newell be struck from the said petition of appeal, and they are hereby severed from the said Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen and Frank R. Chandler, in the prosecution of the said appeal, and that they be regarded as respondents in the prosecution of said
 10 appeal together with Josephine Pomeroy, who was the complainant below, and that the said Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen and Frank R. Chandler, have leave to amend and to file an amended petition of appeal in this cause accordingly.

Entered December 7th, 1896.

I consent to the entry of the foregoing order.

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M. T. ROSENBERG,

*Solicitor for Julia Pomeroy Newell, and
 George B. Newell, her husband.*

On motion of

GUILD & LUM,

Solicitors of Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. VanAulen and Frank R. Chandler.

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New Jersey Court of Errors and Appeals.

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Between

EUGENE C. POMEROY, MARTHA E.
BUCKINGHAM, ANNA S. CHANDLER,
ROSE A. SELFRIDGE, formerly
ROSE A. BUCKINGHAM, MARY E.
VAN AULEN and FRANK R. CHAN-
DLER,

*Appellants.**and*

JOSEPHINE POMEROY, JULIA POME-
ROY NEWELL, formerly JULIA
POMEROY MORRISON and GEO. B.
NEWELL, her husband,

*Respondents.**On Bill.**Amended
Petition of
Appeal.*

20

To the Honorable The Court of Errors and Appeals, in the last resort in all causes:

The amended petition of Eugene C. Pomeroy, 30
Martha E. Buckingham, Anna S. Chandler, Rose
A Selfridge, formerly Rose A. Buckingham, Mary
E. Van Aulen and Frank R. Chandler, the Apel-
lants in the above stated cause, respectfully show
that your petitioners on their own behalf and on
behalf of Julia Pomeroy Newell, formerly Julia
Pomeroy Morrison and George B. Newell, her hus-
band, did on the seventeenth day of November,
eighteen hundred and ninety-six, file in this Court,
a petition of appeal from a final decree made in the 40

Court of Chancery of New Jersey, by his Honor, Alexander T. McGill, bearing date the fourteenth day of September, eighteen hundred and ninety-six, in an action wherein your said petitioners and the said Julia Pomeroy Newell, formerly Julia Pomeroy Morrison and George B. Newell, her husband, were Defendants and Josephine Pomeroy was complainant; that the said Julia Pomeroy Newell, formerly Julia Pomeroy Morrison and George B. Newell, her husband, having by writing duly filed in this Court, refused to join in said Appeal and an order having been made and filed in this Court severing the said Julia Pomeroy Newell, formerly Julia Pomeroy Morrison and George B. Newell, her husband, from your Petitioners herein, in the prosecution of the said Appeal and further ordering that the said Julia Pomeroy Newell, formerly Julia Pomeroy Morrison and George B. Newell, her husband, be regarded as respondents and that your Petitioners have leave to file an amended Petition of Appeal.

Now your Petitioners aforesaid by this, their amended appeal respectfully show that your Petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Alexander T. McGill, Chancellor of New Jersey, bearing date the fourteenth day of September, eighteen hundred and ninety-six, wherein the said Josephine Pomeroy was complainant, and Julia Pomeroy Newell, formerly Julia Pomeroy Morrison, and George B. Newell, her husband, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler were defendants in this respect, to wit: that the said decree adjudges "that the said report of the said Commissioners, and all the matters and things therein contained, do stand ratified and confirmed, and that the said Julia Pomeroy Newell, wife of George B. Newell, do have, hold, use, occupy, possess and enjoy in severalty the hereinabove de-

scribed share or allotment of said lands, being the share marked "Tract Number One," containing thirty-six and sixty-six one-hundredths acres upon said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," allotted and assigned as aforesaid to the said Julia Pomeroy Newell, and that the said complainant, Josephine Pomeroy, do have, hold, use, occupy, 10 possess and enjoy in severalty the hereinbefore described share or allotment of the said lands and premises, being the share marked "Tract Number Two A," containing seventy-four and twenty-six one-hundredths acres and "Tract Number Two B," containing twenty and eleven one hundredths acres and "Tract Number Two C," containing one and twenty-eight one-hundredths acres upon said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N 20 J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," allotted and assigned as aforesaid to the said complainant, Josephine Pomeroy, and that the said defendants, Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Selfridge, formerly Rose A. Buckingham, Mary E. Van Aulen and Frank R. Chandler do have, hold, use, occupy, possess and enjoy in severalty, as in the last will and testament and codicil thereto of George Pome- 30 roy, deceased, the hereinbefore described share or allotment of the said lands and premises, being the share marked "Tract Number Three," containing forty-three and twenty-two one-hundredths acres, and tract marked "Meadow Land," in Passaic Township, upon the said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Madison, N. J., surveyed December, 1895, scale one inch to two hundred feet, Roswell M. Hancock, surveyor," and "Tract Number Three 40

A," "Tract Number Three B," "Tract number Three C," "Tract Number Three D," "Tract Number Three E," "Tract Number Three F," upon said "Commissioners' map of the division of the real estate of George Pomeroy, deceased, Bayonne, N. J., surveyed December, 1895, scale one inch to fifty feet, Smith & Weston, surveyors," and that the said partition so as aforesaid made stand and be held, confirmed, valid and effectual forever.

10 And it is further ordered, adjudged and decreed that the several parties to this suit, among whom partition has been made, do forthwith mutually release to each other, by deed in fee simple the parts or parcels hereby allotted, and partitioned to them respectively, and that in executing each of said deeds, all the parties to this suit shall join, except the party to whom such deed shall be executed, and his or her wife or husband.

20 And it is further ordered, adjudged and decreed in conformity with the report of said Commissioners, that the share so as aforesaid set off to Julia Pomeroy Newell, is charged with the sum of two thousand five hundred and ten dollars, and that the said sum be by the said Josephine Pomeroy Newell, paid into this Court for the benefit of the share allotted to Eugene C. Pomeroy, Martha E. Buckingham, Anna S. Chandler, Rose A. Buckingham, now Rose A. Selfridge, and Mary E. Van Aulen, and that until the payment into this Court
30 by the said Josephine Pomeroy Newell, of said sum of two thousand five hundred and ten dollars, that the sum be and remain a lien upon the share allotted to the said Josephine Pomeroy Newell."

And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the following grounds, to wit:

1. That said Court of Chancery manifestly erred in denying the petition of the said infant defendant, Eugene Cowles Pomeroy, to stay all pro-
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ceedings in this cause until the final determination of the suit in the Circuit Court of the United States for the District of New Jersey, which is mentioned in said *petition*, and in *answer* of said defendants for that the prior partition of the lands in controversy is *prohibited by the agreement between* said deceased and said Josephine and said Julia, which is also mentioned in said *petition and said answer*.

2. And the said Court of Chancery also manifestly erred in decreeing a partition of the lands in controversy in this suit, without charging upon the lands allotted to said Josephine, and upon the lands allotted to said Julia, their indebtedness to said Eugene, under said agreement, the amount whereof is to be determined in said suit in the said Court of the United States; for that the interest of said Josephine and the interest of said Julia in the lands which were sought to be partitioned, in this suit, is subject to an equitable lien under said agreement, to secure the payment of said indebtedness which said lien is wholly overlooked and ignored in said decree. 10 20

3. The said Court of Chancery also manifestly erred in over-ruling the objections of said Defendants, Frank R. Chandler and Eugene Cowles Pomeroy, to the report of the Commissioners of partition in this case, and in denying the motion of said Defendants to suppress said report; for that the same is clearly shown by said objections, and by the evidence and by the suggestions made in support thereof to be manifestly unequal, unjust and oppressive to said Defendants. 30

4. The said Court of Chancery also otherwise manifestly erred in taking jurisdiction of the subject matter of this suit, and in proceeding therein, notwithstanding the objections made in behalf of said Defendants and in sustaining the report of the Commissioners of partition, notwithstanding the 40

failure of said Commissioners to make any proper charge or allowance for the furniture in the Pome-roy Homestead, described in the proceedings, which furniture has been so affixed to said Homestead and made a part thereof by the acts of the parties, that it must go therewith in case of any partition or sale thereof, as plainly appears from the evidence; and notwithstanding the failure of said Commissioners to make any proper provision for the loss of one of the houses on the said premises allotted to said in-
 10 fant, which was destroyed by fire before filing of said report, as plainly appears from the evidence; and notwithstanding the omission of said Com-
 missioners to make any proper exhibit of the unpaid taxes standing against the property sought to be partitioned, nor any provision for the liquidation of said taxes.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the partic-
 20 ulars aforesaid, reversed, set aside and for nothing holden. And that your Petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

GUILD & LUM,
 C. C. BONNEY,

*Solicitors and of Counsel with Petitioners and
 Appellants.*

WM. B. GUILD,
Of Counsel with Appellants.

30 The answer of the above-named respondents to the amended petition of appeal of the above-named appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was on the fourteenth day of September, eighteen hundred
 40 and ninety-six, made and entered in the Court of

Chancery, in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

VREDENBURGH & GARRETSON, 10
*Solicitors for and of Counsel with the said
Respondents.*

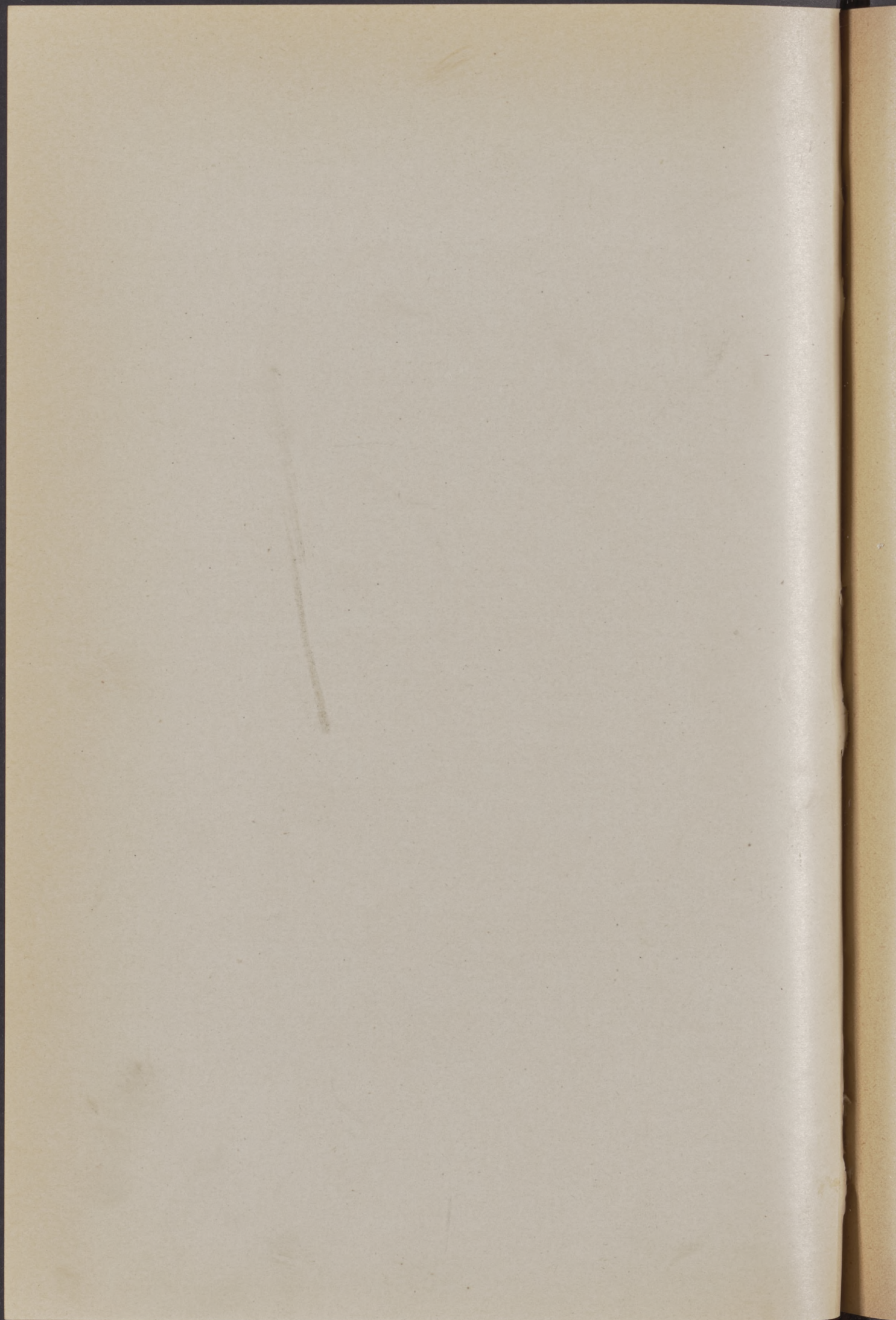
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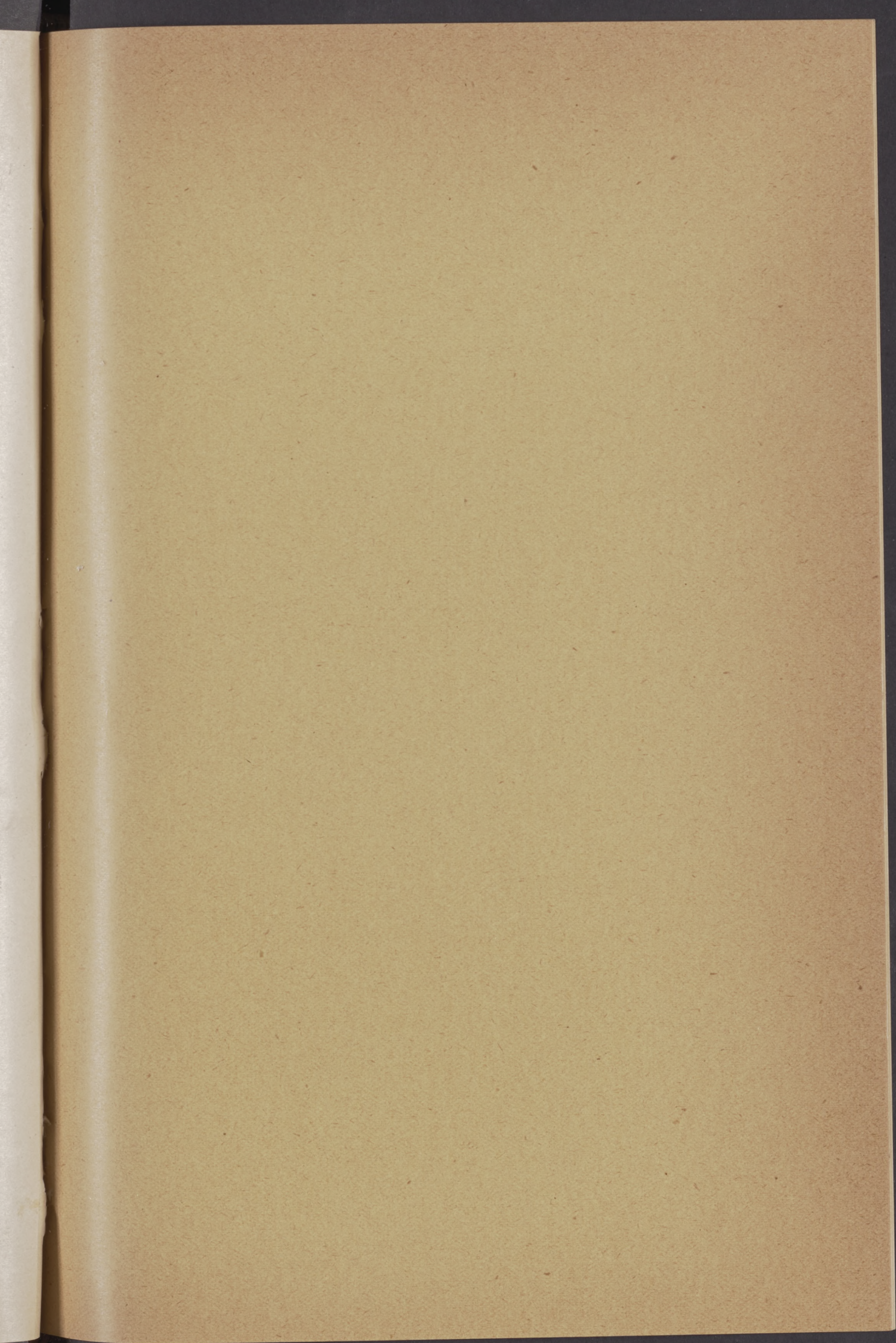
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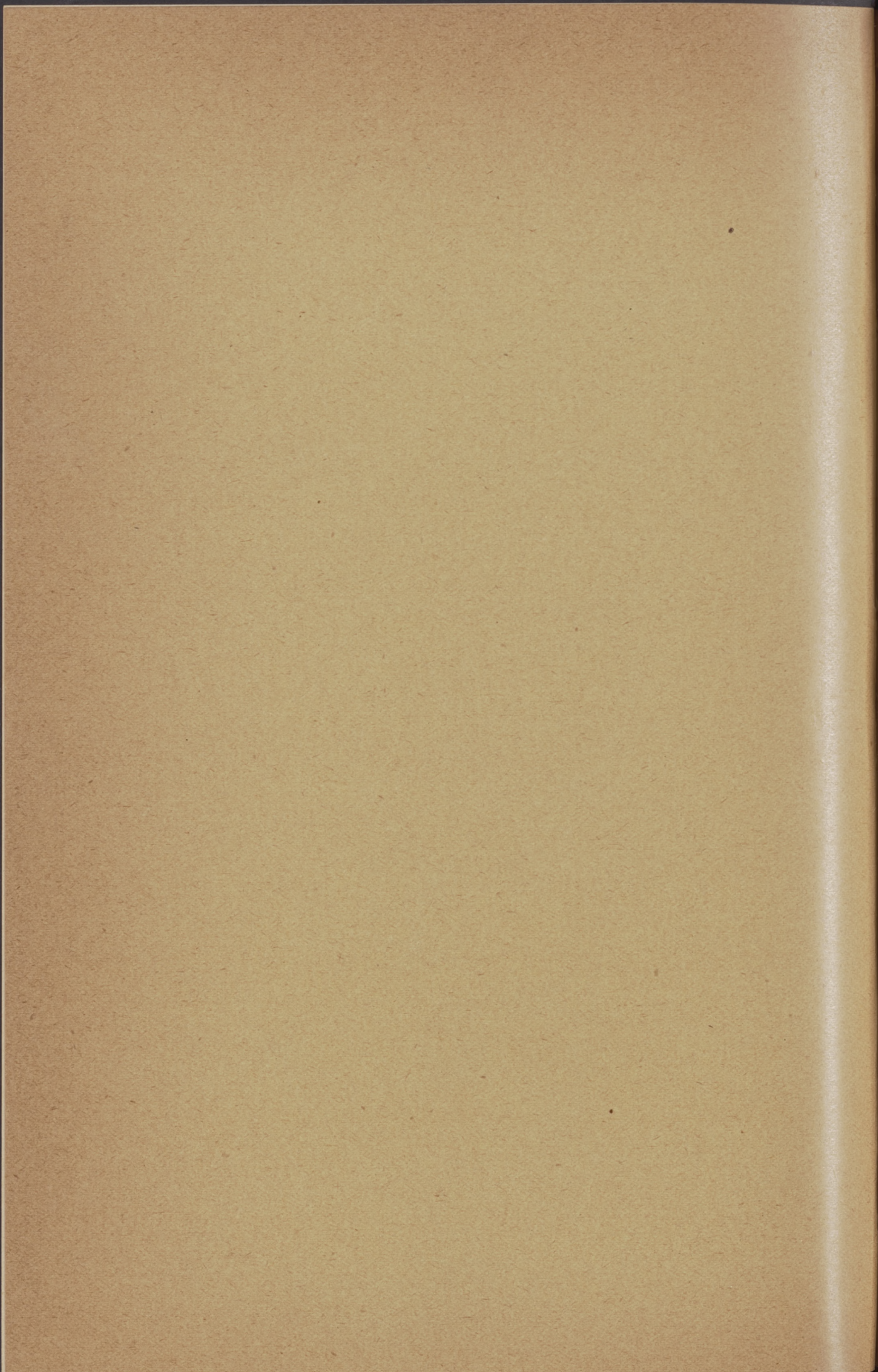
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