11 154

NEW-JERSEY

COURT OF ERRORS AND APPEALS.

John Den, ex dem. Jonathan Elle, *vs.* John B. Young. } In Error to the Supreme Court.

AS YET OF THE TERM OF JULY, in the year of our Lord one thousand eight hundred and fifty-one. Witness HENRY W. GREEN, Esquire, Chief Justice. J. WILSON, Clerk.

NEW-JERSEY, *ss.* John Den puts in his place CYRUS S. LEPORT, his Attorney, to prosecute his Writ of Error against John B. Young, in a plea of trespass and ejectment.

NEW-JERSEY, *ss.* John B. Young puts in his place THEODORE LITTLE, his Attorney, to defend him at the suit of John Den, in the said Writ of Error in the plea aforesaid.

NEW-JERSEY, *ss.* The State of New-Jersey sent to the Judge of the Circuit Court of the County of Morris its Writ close in these words, to wit:

{ L. S. }

THE STATE OF NEW-JERSEY, *ss.* The State of New-Jersey to the Circuit Court of the County of Morris, Greeting:—Because in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Circuit Court, before the Judge thereof, in a certain action wherein John Den on the demise of Jonathan Elle was plaintiff, and John B. Young was defendant, in a plea of trespass and ejectment, manifest error hath intervened, as is said, to the great damage of the said plaintiff therein, as by his complaint we are informed. We being willing that the error, if any there be, should be in due manner corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, that if judgment be thereupon given, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to the Justices of the Supreme Court of Judicature, at Trenton, on the first Tuesday of July next, together with this writ, that the record and proceedings aforesaid being inspect-

ed, we may cause further to be done thereupon what of right and according to the law and custom of the State of New-Jersey ought to be done.

Witness the Hon. Henry W. Green, Chief Justice of our said Supreme Court of Judicature, at Trenton aforesaid, the first Tuesday of April in the year of our Lord one thousand eight hundred and fifty-one.

The record and proceedings of the plaint whereof mention is within made, with all things touching and concerning the same, I certify to the Justices of the Supreme Court in a certain schedule to this writ annexed, as within I am commanded.

{ L. S. }

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court, at Morristown, this thirtieth day of June, A. D. 1851. A. H. STANBURROUGH, *Clerk.*

Hon. Elias B. D. Ogden, Presiding Judge Morris County Circuit Court, of the term of February, in the year of our Lord one thousand eight hundred and fifty.

John Den, on the demise of Jonathan Elle,
vs.
John B. Young.
} In Trespass and Ejectment.

MORRIS COUNTY, *ss.* John Den puts in his place Cyrus S. Leport, his Attorney, against John B. Young, in a plea of trespass and ejectment.

MORRIS COUNTY, *ss.* John B. Young puts in his place Theodore Little, his Attorney, at the suit of John Den in a plea of trespass and ejectment.

MORRIS COUNTY, *ss.* John Den complains of John B. Young, in the custody of the Sheriff of the County of Morris aforesaid, for this, to wit: That whereas Jonathan Elle, on the first day of April, in the year of our Lord one thousand eight hundred and forty-seven, at Morristown, in the County of Morris aforesaid, had demised, set and to farm let to the aforesaid John Den one messuage, one tenement, one barn, one orchard, one garden, one hundred acres of arable land, one hundred acres of meadow land, one hundred acres of woodland, one hundred acres of pasture land, and one hundred acres of other land, with the appurtenances, situate, lying and being in the Township of Roxbury, in the County of Morris aforesaid, now or late in the tenure or occupation of the said John B. Young, to have and to hold the tenements aforesaid, with the appurtenances, to the said John Den and his assigns, from the said first day of April one thousand eight hundred and forty-seven, for and during the full end and term of five years, thence next ensuing, and fully to be completed and ended, by virtue of which said demise the said John Den entered into the tenements aforesaid, with the appurtenances, and was thereof possessed until the said John B. Young afterwards, to wit, on the first day of May in the year of our Lord one thousand eight hundred and forty-seven, with force and arms, &c., entered into the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and removed the said John Den from his said farm, his said term not being yet ended, and kept out and still keeps out the said John Den, so ejected, drove out and removed from his said possession, and then and there did other injuries to the said John Den, against the peace of this State, and to the damage of the said John Den Five Hundred Dollars, and therefore he brings suit, &c. And the said John B. Young, by Theodore Little, his Attorney, comes and defends the force and injury when, &c., and says that he is not guilty of the trespass and ejectment above laid to his charge, in manner and form as the said John Den hath above thereof complained against him, and of this he puts himself upon the country, and the said John Den doth so likewise. There-

fore, let a jury thereupon come before the Judge of our Circuit Court, at Morristown, in the said County of Morris, on the third Tuesday of May in the year of our Lord one thousand eight hundred and fifty-one, (until which day the issue aforesaid between the parties aforesaid of the plea aforesaid, was continued from term to term by an award of *venire facias*, in due form of law and *vice comes non misit breve*,) by whom, &c., who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, &c., at which day, before the Judge aforesaid, at Morristown aforesaid, come the parties aforesaid by their attornies aforesaid, and the jurors of that jury being demanded, also come, who to speak the truth concerning the premises above mentioned being elected, tried and sworn, withdrew from the bar here to consider of the verdict to be by them given of and upon the premises; and after they had considered thereof, and agreed among themselves, they returned to the bar here, to give their verdict in this behalf; whereupon, the said John Den, being solemnly called, comes not, nor does he further prosecute his writ against the said John B. Young. Therefore, it is considered, that the said John Den take nothing by his said writ, but that he be in mercy, &c., and that the said John B. Young do go thereof without day, &c. And it is further considered by the Court here, that the said John B. Young do recover against the said John Den fifty-eight dollars and eighty-five cents, for his costs and charges by him about his defence in this behalf laid out and expended, and by the Court here adjudged to the said John B. Young, and with his assent, and that the said John B. Young have execution thereof, &c. Judgment signed the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and fifty-one.

E. B. D. OGDEN, *Judge*.

And afterwards, to wit, in the term of July, in the year of our Lord one thousand eight hundred and fifty-one, before the Supreme Court of Judicature of the State of New-Jersey, comes the aforesaid plaintiff in error by CYRUS S. LEPORT, his Attorney, and says that in the record and proceedings aforesaid, and the giving judgment thereupon against the said plaintiff, there is manifest error in this, to wit:

First. That it appears by the record and proceedings, and by the return of the Judge of the Circuit Court of the County of Morris, that judgment of nonsuit was ordered and adjudged in favor of the defendant below, and against the plaintiff below and the said plaintiff in error, when there was evidence of the said plaintiff's right to recover the said lands, for the recovery of the possession of which the said action was prosecuted, which should have been submitted to the determination of the jury impanneled therein.

Second. There is also error in this, to wit: That it appears by the record and proceedings, and by the said return, that the said lessor of the plaintiff Jonathan Elle, had title to the said lands, to recover the possession of which the said action was prosecuted, sufficient to entitle the said plaintiff to recover the possession of the same, when the said Circuit Court ordered and adjudged that he had not such title.

Third. There is also error in this, to wit: That it appears by the said record and proceedings and the said return, that the said Circuit Court ordered and adjudged that the Will of Rachel Batson, under and by virtue of the provisions of which the lessor of the plaintiff claims title to the lands in question (pro ut the said Will), did not devise the land to the said Jonathan Elle and Hannah Sanders therein named, but that the same created only a mere naked power to sell the same, whereas in fact and in law the said Will did devise the said lands to the said Jonathan and Hannah.

Fourth. That there is error in this, to wit: That it appears by the said record and proceedings, and by the said return, that the said Circuit Court or-

dered and adjudged that the deed of partition in evidence in said cause, and executed by Jonathan Elle and wife and Joseph Sanders and Hannah Sanders his wife, named in the said Will of Rachel Batson (pro ut the said deed of partition) was not in law a good and valid execution of the power of sale, given by the Will of the said Rachel Batson to her executors therein named, when the same was in law a good and valid execution of said power.

Fifth. That the said judgment of the said Circuit Court was erroneous and contrary to law, and ought to be reversed, set aside, and for nothing holden.

Wherefore the said plaintiff in error, by CYRUS S. LEPORT, his Attorney, prays that for the errors above assigned, and for divers other errors apparent in and upon the record and proceedings aforesaid and in the return of the said Circuit Court, that the said judgment of the said Circuit Court may be reversed, and that the said plaintiff may be restored to all things which he has lost on account of the same. And hereupon the said John B. Young, by THEODORE LITTLE, his Attorney, comes here into Court and says that there is no error, either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the said Supreme Court of Judicature may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c. But because our said Supreme Court now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, until the first Tuesday of November, eighteen hundred and fifty-two, to hear the judgment of the said Court thereupon; at which day, before the said Court at Trenton, come the parties aforesaid by their attornies aforesaid, whereupon all and singular the premises being seen and by the Court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said John Den above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it appears to our said Court now here that there is no error, either in the record and proceedings aforesaid, or in the giving the judgment aforesaid. Therefore it is considered that the judgment aforesaid, in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes and matters above for error assigned in anywise notwithstanding. And it is further considered that the said John B. Young do recover against the said John Den as well his costs and charges aforesaid, as also dollars and cents for his damages, double costs and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said Writ of Error, by our said Supreme Court now here adjudged to the said John B. Young, and with his assent, according to the form of the statue in such case made and provided; and that the said John have execution thereof, &c. Judgment signed this twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-two.

HENRY W. GREEN.

I, WILLIAM M. FORCE, Clerk of the Supreme Court of the State of New-Jersey, do hereby certify that the foregoing is a true copy from the record of the judgment and proceedings in the above stated cause, now remaining in my office.

In Testimony Whereof, I have hereto set my hand, and the seal of said Court, at Trenton, this fifth day of March A. D. eighteen hundred and fifty-three.

{ L. S. }

WM. M. FORCE, *Clerk.*

IN THE COURT OF ERRORS & APPEALS IN THE LAST RESORT.

John Den, ex dem. Jonathan Elle, *vs.* John B. Young.	In Error, to the Justices of the Supreme Court. Assignment of Errors.

Afterwards, to wit, on the second Tuesday of March, eighteen hundred and fifty-three, in the said term of March, before the aforesaid Court of Errors and Appeals, comes the said plaintiff, by CYRUS S. LEPORT, Attorney, and says that in the record and proceedings aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit:

First. That it appears by the record and proceedings aforesaid, and by the return of the said Supreme Court, that the judgment of nonsuit ordered and adjudged against the said plaintiff in error, who was also the plaintiff below, was contrary to law.

Second. There is also manifest error in this: That it appears by the said record and proceedings, and by the said return, that there was evidence of the plaintiff's right to recover in the said Circuit Court, that ought by law to have been submitted to the determination of the jury.

Third. There is also manifest error in this: That it appears by the record and proceedings aforesaid, and by the said return, that the said Court adjudged and determined that the said plaintiff's lessor had no title to the land, for the recovery of the possession of which the said action was prosecuted, when by law he had a good and sufficient title to the same.

Fourth. There is also manifest error in this: That it appears by the record and proceedings and the said return, that the said Court adjudged and determined that the last Will and Testament, under which the lessor of the said plaintiff claimed title to the said lands in question, gave to the said lessor, and to one Joseph Sanders therein named, a mere naked power to sell the same, when by law the said Will contained a good and legal devise of the said lands to the said lessor of the plaintiff.

Fifth. That there is manifest error in this: That it appears by the record and proceedings and return aforesaid, that the said Court adjudged and determined that the said last Will and Testament, under which the said lessor of the plaintiff claimed title to the said land in question, contained no legal devise of the same to him.

Sixth. There is also manifest error in this: That it appears by the record and proceedings and return aforesaid, that the said Court adjudged and determined that the last Will and Testament and Deed of Partition, under which the lessor of the plaintiff claimed title to the lands in question, gave him no title to the same.

Seventh. There is also manifest error in this: That it appears by the record and proceedings and the said return, that the said Court adjudged and determined that the said Deed of Partition, executed by the said Jonathan Elle and his wife and Joseph Sanders and Hannah his wife, gave the lessor of the plaintiff no title to the lands in question, when by law the same gave him a legal title to the same.

Eighth. There is also manifest error in this: That by the record and proceedings and return aforesaid it appears, that the judgment of nonsuit rendered against the said plaintiff in the Circuit Court of the County of Morris, should have been reversed and set aside.

And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annuled, and altogether held for nothing, and that he may be restored to all things which he hath lost by virtue of the said judgment.

C. S. LEPORT, *Att'y. of Pltff. in Error.*

NEW-JERSEY, *ss.* John Den, on the demise of Jonathan Elle, puts in his place Cyrus S. Leport, his Attorney, to prosecute a Writ of Error from the judgment of the Supreme Court of New-Jersey, rendered against said John Den in favor of said John B. Young, in a plea of trespass and ejectment.

A true copy.

NEW-JERSEY COURT OF ERRORS AND APPEALS IN THE LAST RESORT.

John B. Young,
adsm.
John Den, ex dem. Jonathan Elle, } Joinder in Error.

And hereupon the said John B. Young, by Theodore Little, his Attorney, comes and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays the Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

THEO. LITTLE, *Att'y. for Def't. in Error.*

NEW-JERSEY, *ss.* John B. Young puts in his place Theodore Little, his Attorney, to defend him against the suit of John Den, ex demise of Jonathan Elle, on a Writ of Error to the Supreme Court.

MORRIS CIRCUIT COURT.

John Den, ex dem. Jonathan Elle,
vs.
John B. Young.
} In Trespass and Ejectment for lands in Roxbury.

This cause came on, to be heard and tried upon the pleadings and issue therein, pro ut the same, at the term of May, A. D. 1851, before the Honorable Elias B. D. Ogden, a Judge of the above Court, and before a Jury duly empanneled and sworn to hear and determine the same; and thereupon the said plaintiff, upon the confession being made by the defendant of lease, entry, ouster and possession of the premises in question, agreeably to the terms of the said consent rules, called

Caleb H. Valentine, who being duly sworn, testified that he was acquainted with Amos Grandin in his life-time; that he had been dead about 30 years; that he knew one Matthias Harris; that some time in 1829 had occasion to examine the title papers of the lands held by Mr. Grandin in his life time; he found them in the custody of Mr. Wm. Stephens, who was related to the family; that among those title papers he saw a lease which purported to be a lease between the said Amos Grandin and Matthias Harris; it was for the premises then held by the said Harris; Harris died about 25 years ago, and I think was dead at the time I saw the lease; I think John Wiley was then in possession of greater part of the premises; I have surveyed these premises; I am brother to Arthur Valentine; he now lives in Pennsylvania; I am acquainted with his hand-writing; (shown three leases;) his name to those three papers is his writing; was acquainted with the writing of John Sharp, the subscribing witness to these; his signature to two of these papers as witness is his, the other does not look so much like his; do not know Rachel Batson.

Plaintiff also offered and read in evidence the last Will and Testament of Amos Grandin, deceased; also the last Will and Testament of Rachel Batson, deceased, (pro ut the said Wills); also a Deed of Partition between Jonathan Elle and wife and Joseph Sanders and Hannah his wife, for the premises in question, (pro ut the same); also three Leases between Rachel Batson and Arthur Valentine for the same premises for the years 1833, 1834 and 1835, having first duly proved the same (pro ut said leases.) Plaintiff also called

William S. Cary, who was sworn, and testified that he had surveyed the Harris tract; that John B. Young occupied the south-east part of it; his house was upon it, south of the road from Budd's Pond to Waterloo; Archer Stephens' land lays on the west of this disputed tract; (shown a map;) this is the map I made of my survey; all I know is that Young lives within the bounds of this survey.

William Stephens, a witness called upon part of the plaintiff, being sworn, says:—I live in Roxbury, near these lands; knew Amos Grandin, deceased; knew also Matthias Harris in his life time, and the tract of land he lived upon, called the Harris tract; knew it 40 years; Harris occupied it in the life time of Grandin; Grandin died in 1817; Harris occupied it a few years after Grandin's death; it was next occupied by John Wiley, after him by Arthur Valentine; I was administrator to Philip Grandin's estate, and by that means came into possession of the title papers to lands of Amos Grandin in his life time; among these papers was a lease from Amos Grandin to Matthias Harris, for this Harris tract; I know it was for that tract, for I read it; I let John Darling have it about eleven

years ago; about ten years ago he went to the State of Illinois, and died there; I have never seen the lease since I let Darling have it, and do not know what became of it.

Being cross-examined, says:—Rachel Batson was a sister's daughter of Amos Grandin; she lived in Roxbury; she never was married; Jonathan Elle, the lessor of the plaintiff, and Hannah Sanders, wife of Joseph Sanders, are her illegitimate children; John Darling wanted the lease to find out something about the title of the Harris tract.

John Sanders, a witness on the part of the plaintiff, being sworn, says:—I know the Harris tract, and have known it 27 years; lived neighbor to Valentine when he lived upon it; Valentine occupied it first under John Wiley, and next under Rachel Batson; Rachel Batson frequently cut timber upon it since I have known it; I cut staves for her upon shares there, within a few rods of John B. Young's house; I cut on the same side of the road his house then stood; his house has been moved over the other side of the road; the same field where Young's house now stands, Valentine cultivated; I worked on that field for him; there is no timber of any consequence on that side of the road; there was only only one field on that side, of 4 or 5 acres; Arthur Valentine said at the time he was occupying under Rachel Batson; John Wiley is dead.

Being cross-examined, he says:—There was some dispute about some of these lands, and it was settled by Arthur Valentine's coming under lease to Rachel Batson; he rented the whole Harris tract; I mean there was but one cleared field on the side of the road where Young's house now is; I do not know how much of the tract there is on that side of the road where Young's house now stands; the land cultivated by Valentine on that side of the road, was just back of Young's house; this house was up when I was there 5 or 6 years ago; the field where Young's house now stands has always been known as a part of the Harris tract; the house was put up six or seven years ago; ten or eleven years ago I moved from this place to Stanhope; the house was not then up; this land in dispute adjoins Archer Stephens, Samuel C. Smith, and Luther Ball.

Benjamin Pool being sworn, says:—I live at Drakestown, Roxbury township, and have lived there about fifty years; I have known the Harris tract all this time; Harris first occupied it, then John Wiley, then Arthur Valentine; I know the place where John B. Young's house now stands; Arthur Valentine put that place out to me, and I put it in with Buckwheat; there was six or seven acres cultivated then on the side where the house is; this was fourteen or fifteen years ago, since I cultivated on shares; Matthias Harris told me he had lived there forty years, and paid six pounds a year rent to Amos Grandin; John B. Young built a house on the side of the road where I sowed with Buckwheat, about six years ago.

Being cross-examined, says:—That field was cultivated by Benjamin Coleman since I cultivated; he said he had it under John B. Young; this was four or five years ago, and since the house was built.

Luther Ball, a witness on part of the Plaintiff, being sworn, says:—I live in Roxbury, Morris County, near the residence of John B. Young, four or five hundred yards from him; have lived there five or six years; I live south of this land in dispute; I carried the chain when Cary surveyed it; I had seen the tract surveyed two or three times before; John B. Young has occupied where he now does seven or eight years; there may be four or five acres in the field on that side of the road; Young claims on the other side of the road, where he had a garden; I worked on this place for Mr. Elle; I worked for him on the side of the road where the old house stood; I worked on the other side for Arthur Valentine; after him, Rachel Batson occupied it by her son-in-law, Joseph Sanders;

I have heard John B. Young say he occupied under Arthur Valentine, and that Valentine was under Aunt Rachel Batson; this was said by him at my house; my wife was by at the time; this was said about the time they throwed Arthur Valentine out.

Being cross-examined, he says:—John B. Young and I have had a little dispute; we do not speak; I have no interest in this controversy; have not said to Jacob W. Lake that Eile was to convey to me a part of the land if successful in this suit; John B. Young lived on the opposite side of the road from where he now does, when I first knew him, which was some sixteen years ago.

Julia A. Ball, a witness on part of the Plaintiff, being sworn, says:—I am wife of Luther Ball; know John B. Young; have known him for 20 or 25 years; Young was familiar at our house until within three or four years; I heard Young say, in a conversation at our house, that he had given up all his possession of this property to Arthur Valentine; Valentine was then present; I am thirty-one 23d June next; Young was then living on the other side of the road from where he now lives; Valentine lived on the place where Joseph Sanders now lives; my attention was called to this conversation by Mr. Valentine; they came to our house, and had no other business.

Being cross-examined, says:—Young gave up the land where he then lived; Young said he and his son were going to rent a place somewhere else, and afterwards said they went off for that purpose, but did not get any; Young said he gave it up because Rachel Batson made a noise about it, and that he would not be plagued any longer by her.

It was admitted that Rachel Batson was never married, and that the said Jonathan Eile and Hannah Sanders were her illegitimate children.

The Plaintiff here rested his cause. And thereupon the Defendant, by his counsel, moved the Court that the said Plaintiff be called, and that Judgment of nonsuit be rendered against him upon the ground that the said Plaintiff had failed to make any title in the said Jonathan Eile, the lessor under the Will of the said Rachel Batson, under whom he claimed, sufficient to maintain this action. And the Court, after argument, ordered the said Plaintiff to be called, and for the reason above mentioned, and ordered Judgment of nonsuit in favor of the Defendant, and against the said Plaintiff; to which opinion and order of the said Court, the said Plaintiff, by his counsel, excepted, and prayed the said Court that his exceptions might be sealed, and it is sealed accordingly.

ELIAS B. D. OGDEN, *Judge.* [L. S.]

WILL OF RACHEL BATSON.

In the name of God, Amen! I, Rachel Batson, of the Township of Roxbury, in the County of Morris, and State of New-Jersey, considering the uncertainty of this natural life, but of sound and disposing mind and memory, (blessed be God for the same,) do make and publish this my last Will and Testament, in manner and form following, that is to say:

First. I commit my soul to the hands of its Creator, and my body to the earth, to be decently interred at the discretion of my executors.

Secondly. I order that all my just debts and funeral expenses be duly paid and satisfied by my executors out of my personal estate.

Thirdly. I give and devise to my son Jonathan my part of the farm whereon I now live, for the length of time yet to come, according to my father's devise in his last Will heretofore made to me and my son Jonathan, provided that he my son Jonathan pays to John Sharp the interest of three certain bonds and a mortgage for the same length of time, and by supporting Stephen Batson for the same length of time. Said bonds amount to two hundred and seventy dollars.

Fourthly. I give and devise to my son Jonathan and my daughter Hannah Sanders, the farm whereon Joseph Sanders now lives, adjoining lands of Archer Stephens, William Kinney, and others, containing three hundred acres, be the same more or less, to be equally divided between them, and my daughter Hannah to have the one equal half during her life, and at her decease said half to go to her heirs forever; and if my son Jonathan should die without a lawful heir or heirs, his equal and undivided half of said farm to go to my daughter Hannah during her life, and at her decease to her heirs forever.

Fifthly. I also give and devise to my son Jonathan Two Hundred Dollars, to be paid out of my personal estate.

Sixthly. The remainder of my real and personal estate I order my executors to sell, or dispose of as they may think best in their discretion; and divide it equally amongst my two children, namely, Jonathan and Hannah.

Seventhly. I further order and direct, that if any of my children or child or heir or representative, or either of them, do endeavor to frustrate, disannul, break or set aside this, my last Will and Testament, her, his or their devise, gift and share or shares shall be equally divided amongst the peaceable legatees and supporters of this my last Will and Testament.

Eighthly I do hereby constitute, ordain and appoint my sons, Jonathan, and Joseph Sanders, executors of this my last Will and Testament, hereby revoking and forever annulling all other wills and codicils by me heretofore made, and publishing and declaring this to be my true and only Testament and last Will.

In testimony whereof I have hereunto set my hand and affixed my seal this twenty-ninth day of February, in the year of our Lord one thousand eight hundred and thirty-two.

Signed, sealed, published and declared by the said Rachel Batson as and for her last Will and Testament in presence of us, who have hereunto subscribed our names at her request, and in her presence and the presence of each other.

John Sharp,
Stephen Batson,
L. H. Sharp.

RACHEL BATSON. [L. S.]

MORRIS COUNTY, *ss.* John Sharp, one of the witnesses of the annexed Will, being duly sworn, did depose and say that he saw Rachel Batson, the testatrix therein named, sign and seal the same, and heard her pronounce, publish and declare it to be her last Will and Testament, and at the doing thereof the said testatrix was of sound and disposing mind and memory, as far as this deponent knows and as he verily believes, and that Stephen Batson and S. H. Sharp, the other subscribing evidences, were present at the same time, and signed their names as witnesses to said Will together with this deponent in the presence of the said testatrix.

Sworn before me, October 13th, 1845, }
W. N. Wood, *Surrogate.* }

JOHN SHARP.

MORRIS COUNTY, *ss.* Jonathan Elle and Joseph Sanders, the executors in the annexed Will named, being duly sworn, did depose and say that the annexed writing contains the true last Will and Testament of Rachel Batson, the testatrix therein named, so far as they know and as they verily believe, and that they will well and truly perform the same by paying first the debts of the said deceased and then the legacies in said Testament specified, so far as the goods and chattels, rights and credits of said deceased can thereunto extend, and that they will make and exhibit nto the Surrogate's office, of the County of Morris, a true and perfect inventory of all and singular the goods, chattels and credits of said deceased that have or shall come to their knowledge or possession, or to the possession of any other person or persons for their use, and render a just and true account when thereunto lawfully required.

Sworn before me, October 13th, 1845, }
W. N. Wood, *Surrogate.* }

JONATHAN ELLE,
JOSEPH SANDERS.

{ L. S. }

I, William N. Wood, Surrogate of the County of Morris, do certify the annexed to be a true copy of the last Will and Testament of Rachel Batson, late of the County of Morris, deceased, and that Jonathan Elle and Joseph Sanders, the executoıs therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testatrix agreeably to the said Will.

Witness my hand and seal of Office, the 13th day of October, A. D. 1845.

WILLIAM N. WOOD.

AGREEMENT

BETWEEN JONATHAN ELLE AND JOSEPH SANDERS.

THIS INDENTURE, made the First day of December, in the year of our Lord eighteen hundred and forty-six, between Jonathan Elle and Deborah his wife, and Joseph Sanders and Hannah his wife, all of the township of Roxbury, County of Morris, and State of New-Jersey, witnesseth :—That whereas, Rachel Batson, late of the County of Morris, deceased, in her last will and testament in writing, bearing date on or about the twenty-ninth day of February in the year of our Lord eighteen hundred and thirty-two, (according to the fourth item in said Will,) did make the following devise, (to wit) :—" I give and devise " to my son Jonathan, and my daughter Hannah Sanders, the farm whereon Jo-" seph Sanders now lives, adjoining lands of Archer Stephens, William Kinney " and others, containing three hundred acres, be the same more or less, to be " equally divided between them ; and my daughter Hannah to have the one equal " half during her life, and at her decease said half to go to her heirs forever ; " and if my son Jonathan should die without a lawful heir or heirs, his equal and " undivided half of said farm, to go to my daughter Hannah during her life, and " at her decease to her heirs forever." And whereas the said Testatrix, by the sixth item in the said Will aforesaid makes the following order and devise, (to wit) : " The remainder of my real and personal estate I order my Executors to " sell or dispose of as they may think best in their discretion, and to divide it " equally among my two children, namely—Jonathan and Hannah." And the said Rachel Batson did make and constitute her son Jonathan, and her son-in-law Joseph Sanders, Executors of her said last Will and Testament.—Now know all men by these presents that we, the parties to these presents, by virtue of the power and authority to us given, in and by the said Will aforesaid, have proceeded to make division of the real estate devised in the said Will aforesaid as follows :—It is agreed by and between the parties to these presents, that the said Jonathan, his heirs, executors, do have, hold, occupy, possess, and enjoy according to the true intent and meaning of the said Testatrix aforesaid, the equal one half of the farm mentioned in the fourth item of said Will as set off, and designated by the following metes and bounds—Beginning at a stake in the road leading from James Batson's to Daniel Young's South thirty-three and a half degrees East, distant nine chains and thirty-eight links from said Batson's Corner, and runs (1) along the fence as it now stands North seventy-six degrees East nine chains and thirty-three links ; thence (2) North twenty-two degrees West, nine chains and eighty-five links ; thence (3) still along the fence North sixty-eight degrees East, nine chains and seventy-three links ; thence (4) North twenty-three degrees West, fifty-five links to a stone near a white oak tree ; thence (5) North seventy degrees East, eight chains and fifty links to a black oak tree ; thence (6) North forty-five degrees West, eleven chains to James Batson's corner ; thence (7) along said Batson's line North forty-five degrees West, two chains and seventy-four links to another of said Batson's corners ; thence (8) North thirty-eight degrees East, twenty-one chains to a stake, also corner to Jas. Batson ; thence (9) North eighty-five degrees East, sixteen chains and fifty links to a stake in the outside line ; thence South twenty-two degrees West, four chains and fifty links to a hickory ; thence (11) South twenty degrees West. forty-one chains and eighty-seven links ; thence (12) South twenty two degrees West, thirty chains and eighty-seven links to the aforesaid road ; thence (13) North thirty-three and a half degrees West, twenty six chains and sixty-four links to the place of beginning, containing one hundred and fourteen acres of land, be the same more or less. Also to have, hold, occupy, possess, and enjoy according to the true intent and meaning of the said Testatrix aforesaid, the equal one half of the farm

whereon Joseph Sanders now lives, situate in the township of Roxbury, County of Morris and State of New-Jersey, known as the Harris farm, being the remainder of the real estate of the said Testatrix, which said one half has been set off and marked by the following metes and bounds (to wit):—Beginning at a chestnut tree by the side of the road leading from Jas. Batson's to Joseph Sander's and runs (1) along said road North seventeen degrees East, eight chains; thence (2) North thirteen degrees West, forty-one chains and seventy-five links to a hickory; thence (3) South fifteen degrees West, sixteen chains and fifty links to a stone heap; thence (4) South sixty degrees West, twenty chains to stones; thence (5) South twelve degrees West, ten chains to a chestnut tree; thence (6) South twenty-nine degrees East, twenty chains to stones; thence (7) North seventy-five degrees East, nineteen chains and forty-two links to the place of beginning, containing ninety-eight and three-fourths acres of land, be the same more or less. It is also further agreed by and between the parties to these presents, that the said Hannah, her heirs, executors, do have, hold, occupy, possess and enjoy, according to the true intent and meaning of the said Testatrix aforesaid, the equal one-half of the farm mentioned in the fourth item of said Will, as set off and designated by the metes and bounds of the two following lots, as follows:—The first of those lots begins at a stake in the first mentioned road being also a corner to Jas. Batson's land, and runs (1) along his line North forty-two and a half degrees East, twenty-seven chains and seventy-five links to stones, corner to said Batson; thence (2) South forty-five degrees East, eleven chains to a black oak tree; thence (3) South seventy degrees West, eight chains and fifty links to a stone near a white oak; thence (4) South twenty-three degrees East, fifty-five links; thence (5) along the fence as it now stands, South sixty-eight degrees West, nine chains and seventy-three links; thence (6) along the fence South twenty-two degrees East, nine chains and eighty-five links; thence (7) still along the fence, South seventy-six degrees West. nine chains and thirty three links to the middle of the aforesaid road; thence (8) North thirty-three and a half degrees West, nine chains and thirty-eight links to the place of beginning, containing twenty six acres, be the same more or less. The second of those lots begins at a stake corner to the said Jonathan and the said Jas. Batson, and runs (1) along Batson's line North sixty-nine degrees West, fifteen chains and fifty-two links to the outside line; thence (2) North forty-two degrees East, fifty-eight chains and five links to a chestnut stump; thence (3) South thirty degrees East, twelve chains and sixty-nine links to stones; thence (4) South twenty-two degrees West, thirty-nine chains to a stake corner to said Jonathan; thence (5) South eighty-five degrees West, sixteen chains and fifty links to the place of beginning, containing ninety-eight acres of land, be the same more or less. Also the said Hannah to have, hold, occupy, possess, and enjoy, according to the true intent and meaning of the said Testatrix aforesaid, the equal one-half of the farm whereon Joseph Sanders now lives, situate in the township of Roxbury, County of Morris and State of New-Jersey, known as the Harris farm, being the remainder of the real estate of the said Testatrix, which said one half is set off and designated by the following metes and bounds:—Beginning at a chestnut tree by the side of the road leading from Jas. Batson to Joseph Sanders, also corner to said Jonathan, and runs (1) North forty-two degrees East, forty-three chains; thence (2) North ten degrees West, twenty-three chains and fifty links to stones near a hickory; thence (3) South seventy-eight degrees West. thirty chains to a hickory; thence (4) South thirteen degrees East, forty-one chains and seventy five links; thence (5) South seventeen degrees West, eight chains to the place of beginning, containing ninety-eight acres of land, be the same more or less.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of
C. S. LEPORT.
23d March, 1848.

JONATHAN ELLE, [L. S.]
DEBORAH ELLE, [L. S.]
JOSEPH D. SAUNDERS, [L. S.]
HANNAH SAUNDERS. [L. S.]

NEW-JERSEY, SUSSEX COUNTY, *ss.* Be it remembered, that on this twenty-third day of March eighteen hundred and forty-eight, personally appeared before me, Cyrus S. Leport, one of the Masters in Chancery New-Jersey, the above named Jonathan Elle and Deborah his wife, Joseph D Sanders and Hannah his wife, who are severally known to me to be the persons in the foregoing deed named. The contents thereof being by me made known to them, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the purposes therein named. And the said Deborah, wife of the said Jonathan Elle, and Hannah, wife of the said Joseph D. Sanders, being by me examined severally, privately, separate and apart from their several husbands, did acknowledge that they signed the same freely, and without fear, threat or compulsion from their said husbands.

C. S. LEPORT, *M. C.*