

## Court of Errors and Appeals, in, &c.

*Between*

*RICHARD WADDINGTON,*

*and Appellant,*

*I. O. ACTON, Administrator, &c.,*

*of*

*David Ware, Dec'd,*

*Respondent.*

*On Appeal from  
Final Decree.*

*Brief of  
Respondent.*

In the determination of the questions raised by the pleadings and proofs in this cause, the respondent submits seven points in regular succession which, it is believed, are fully sustained by the law and the facts of the case, and upon which the final decree made by the Chancellor should be affirmed.

### I.

At the time of the conveyance by John Denn and als. of the Ann Hall farm to Joseph and Job Black, March 30, 1826, said grantees recognizing the claim and interest of Martha Hall therein, reserved and retained in their hands out of the purchase money of said conveyance, the sum of \$2,800, to secure themselves in case of their being called on to pay said annuity. 10

## II.

The equitable effect of such reservation and retention of purchase money, was to establish a lien known as the "Vendor's Lien," in favor of said grantors and embracing the property so conveyed.

## III.

The equitable lien for unpaid purchase money was not  
10 waived or discharged by Joseph and Job Black, giving their obligations to the respective grantors of said farm, for the unpaid purchase money thereof.

## IV.

Richard Waddington had actual as well as constructive notice of said reservation of purchase money.

## V.

20 The legal and equitable effect of said notice, was to render said lands liable and bound for the payment of said reserved purchase money, while in Richard Waddington's hands.

## VI.

The bond given March 31, 1837, by Joseph and Job Black to David Ware (husband of Rebecca Ware), represents the share of said reserved purchase money due from Joseph and Job Black, and to be paid to her on the death of Martha  
30 Hall, converted by said David Ware to his possession.

## VII.

The conversion to possession on the part of David Ware as above, of the debt due to his wife, did not in any way impair the equitable lien of the same upon the Black farm.

## I.

The bequest to Martha Hall by the last will and testament of her mother, Ann Hall, (Ex. C. for compl't) viz :

"I give to my daughter, Martha Hall, one hundred and

1788-1837-1838-1839

seventy-five dollars yearly, and every year during her natural life, to be paid out of the profits of my farm," was a charge upon the realty which composed said farm. *Pr Book p 51*

The said bequest was a legacy, and of the kind known as "demonstrative" legacies, and thereby combining the advantages of a specific legacy with those of a general legacy.

III. Pom. Eq., Sec. 1134 and 1135.

II. Eq. Lead. Cases, p. 606 and 654.

Land may be charged with the payment of legacies either 10 by express words or by implication, and if by implication it must be a fair and satisfactory inference that such was the intention of the testator.

Van Winkle vs. Van Houten, 2 Gr. Ch., 172.

Wright vs. Denn, 10 Wheat, 204.

III. Pom. Eq., Sec. 1245.

II. Eq. Lead. Cases, p. 346 and 347.

In the light of a specific legacy, it was an express charge upon the rents and profits of the farm, and an equitable lien upon the corpus or source of income. 20

III. Pom. Eq., Sec. 1244, Note 1, and Sec. 1246, Note 2.

It was also a charge upon said farm by implication.

The intention of a testator to charge debts and legacies upon the real estate devised, may be also implied from the general dispositions of the will—from the mode in which the real and personal are donated.

III. Pom. Eq., Sec. 1247.

II. Eq. Lead. Cases, p. 346 and 347.

It is said in Hill on Trustees, p. 360, that when a testator gives several legacies and then, without creating any express 30 trust for their payment, makes a general residuary disposition of the whole estate blending the realty and personalty together in one fund, the real estate will be charged with the legacies; for in such a case the residue can only mean what remains after satisfying the previous gifts.

II. Eq. Lead. cases, p. 347.

This rule has been adopted by the Supreme Court of the United States. *Ib.*

But has not been accepted in its entire breadth in this State; a series of cases finding the intent to charge legacies upon the real estate given with the personal in one mass by the residuary clause, from facts and circumstances outside of the provisions of the will. From the fact that the legacies are given to children, &c.

III. *Pom. Eq.*, p. 248; note.

10 The cases above referred to are:

*Van Winkle vs. Van Houten*, 2 Gr. Ch., 172.

*Paxton vs. Potts*, *Ib.*, 313.

*White vs. Olden*, 2 Gr. Ch., 343.

*Snyder vs. Warbasse*, 3 Stockton, 463.

*Leigh vs. Savidge*, 1 *McCart.*, 124.

*Dey vs. Dey*, 4 C. E. Gr., 137.

*Corwine vs. Corwine*, 8 C. E. Gr., 363.

*Corwine vs. Corwine*, on appeal, 9 C. E. Gr., 579.

20 Some of the facts relied upon to show an intention by the testator to charge legacies upon his realty and which apply to this case, are:

1. Where the whole of an estate, excepting two or three pecuniary legacies is thus embraced in the residuary clause.

*Van Winkle vs. Van Houten*, 2 Gr. Ch., 172.

*Paxton vs. Potts*, *Ib.*, 313.

2. The fact that the legacy is a provision for a child, one of the heirs and not a legacy purely voluntary:

*Van Winkle, vs. Van Houten*, 2 Gr. Ch., 172.

30 The facts in *this* case, which are relied upon as showing an intention, on the part of Ann Hall, to charge this legacy upon her farm, are:

1. The real and personal property of the testatrix was blended in one mass by the residuary clause of her will, when but two or three pecuniary legacies had been devised,

as follows: "After the payment of all my just debts and funeral expenses, I devise and bequeath all the residue and remainder of my estate, both real and personal to be equally divided between Margaret Denn, William Hall," &c. (Naming seven out of her eight children). Martha Hall, to whom the legacy in question was given, being the remaining child.

Ex. C. for Compl't. *Pr. book p. 51*

2. Martha Hall was a minor child; she was blind and of feeble mind.

Pr. book, p. 39; lines 16-24.

10

3. The will of Ann Hall evinces solicitude in her daughter's behalf, by further providing, "Further it is my will, and I do hereby request my friend, Morris Hall, to take charge and superintendance of my daughter, Martha Hall, and provide a suitable place for her residence.

Ex. C. for Compl't. *Pr. book p. 51*

The intention of Ann Hall was, doubtless, to provide a permanent source of income to her blind and afflicted daughter, and that her farm should be bound for the payment of the same.

20

The lien of such a charge may be enforced, not only against the devisee, but also against his grantees, mortgagees, &c., and against purchasers of the land at an execution sale, and a record of the will and probate is notice to such grantee.

III. Pom. Eq., p. 243; note.

At the time of the conveyance of said farm to Joseph and Job Black, in 1826, (See Ex. H. and Ex. I, on part of complainant), the brothers and sisters of Martha Hall recognized that they could not convey a clear title, and as Martha Hall could not join in the conveyance, permitted their grantees to retain in their own hands \$2,800 of the purchase money of said farm to secure themselves, in case they should ever be called on to pay this annuity to Martha Hall. See Ex. N. for Compl't. *Pr. book p. 57*

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The interest of this sum to be applied to the support and maintenance of Martha Hall. *Ib.*

And was, in fact, so applied.

*Vid.* testimony of Annie B. Ware. *Pr. book*, p. 43; lines 19-30.

Objection has been made to the admission of *Ex. N.* upon the ground "that it is irrelevant to the issue."

On the part of the complainant, it is contended that *Ex. N.* is not produced as evidence tending to prove Richard  
10 Waddington's obligation to pay the bond in question, but to prove:—

(1) certain transactions and the reasons therefor, which transactions occurred so many years ago, that the principals concerned, and in fact every person connected with said transaction, are now deceased.

(2) That this exhibit, having been drafted and executed by Mr. Waddington's attorney, is evidence of knowledge on the part of Mr. Waddington, of the transactions which form the foundation of this action, viz: the will of Ann Hall and its  
20 charge upon her farm in behalf of Martha Hall; the sale of said farm and the reservation of purchase money. This clearly comes under the rule laid down in the case of *Ortley vs. Chadwick*.

"A paper may be competent evidence of a fact stated in it, although invalid as an agreement to bind the party."

1 *Vr.*, 35.

Joseph Black and Job Black gave to their grantors, David Hall, Ann Hall, John Denn, Hannah Hall and Rebecca Ware each, their obligation conditioned for the payment of \$400 on  
30 the day of the death of Martha Hall, with interest thereon, payable annually, &c., and to William Hall, their like bond for \$800. Admitted by Deft's answer. *Pr. book*, p. 27; line 37, &c.

James Hall had conveyed his share of said farm to the husband of his sister Ann, viz: David Hall. See *Ex. G.* for *compt.*

Edward Hall had conveyed the major part of his share of

said farm to his brother, William Hall. See recital in deed from John Denn and als. to Joseph and Job Black, Ex. I for compl't.

It appears that these bonds, or at least the ones in evidence, (J. and K. for compl't.) bore but 6 per cent. interest during a period when money was in demand, and the legal rate of interest 7 per cent.

## II.

There arose, in consequence of the above reservation of purchase money, an equitable lien in favor of the said grantors 10 upon the said farm known as the "Vendor's Lien."

It is a firmly established doctrine of the English Equity, that the grantor of land, who has sold and conveyed and delivered possession to the grantee, retains an equitable lien upon the land for the unpaid purchase money, although he has taken no distinct agreement or separate security for it, and even though the deed recites that the consideration has been fully paid.

III. Pom. Eq., p. 251.

1 Eq. leading cases, 447 and 484.

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4 Kent. com., 145; (orig. Ed).

2 Snugdon on vendors, 879.

This doctrine has been established in this State by a long line of cases, among which are the following :

Crawford vs. Bertholf, Sax., 458.

Vandoren vs. Todd, 2 Gr. Ch., 397.

Brinkerhoff vs. Vansciven, 3 Gr. Ch., 251.

Herbert vs. Scofield, 1 Stock., 492.

Dudley vs. Dickson, 1 McCart., 252.

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Armstrong vs. Ross, 5 C. E. Gr., 109.

Corliss vs. Howland, 11 C. E. Gr., 311.

Ledos vs. Kupfrian, 1 Stew., 162.

Gale's Ex'rs. vs. Morris, 2 Stew., 222.

Ggden vs. Thornton, 3 Stew., 569.

Porter vs. Woodruff, 9 Stew., 174.

Butterfield vs. Okie, 9 Stew., 482.

Graves vs. Coutant, 4 Stew., 763.

In the latter case (an exceedingly strong one) it is held, that "where a man delivers a deed for property and does not get the consideration money, an equitable lien arises at once in his favor (according to my view of it) of exactly the same nature, as far as the Court of Chancery is concerned, as if he had taken a mortgage in writing, sealed and delivered, and it is so held by Chancellor Zabriskie, in *Armstrong vs. Ross*."

10 See also the opinion of this court on page 779. *Ib*.

The lien in this case is specifically mentioned and set out as an encumbrance in the deed from Joseph Black to Richard Waddington, (*Ex. M.* for compl't.), and is therefore of the same nature of the "Grantor's Lien by reservation," and thereby attains greater force and effect, being in the nature of a purchase money mortgage.

III. Pom. Eq., p. 264, Sec. 1255, Sec. 1256, Sec. 1257 and Sec. 1258.

### III.

20 The lien was not waived by taking the bond of the grantees, Joseph Black and Job Black.

"The mere giving of a bond, bill of exchange, promissory note or covenant for the purchase money, or the granting of an annuity, secured by a bond or a covenant, will not be sufficient to discharge the equitable lien, unless it appears that the note, bond, covenant or annuity, was substituted for the consideration money, and was, in fact, the thing bargained for."

1 Eq. Lead. Cases, p. (318) 470 and 464; also 484.

30 III. Pom. Eq., Sec. 1252, p. 258.

4 Kent., p. 146. (orig. Ed.)

This rule has been adopted in this State.

See *Vandoren vs. Todd*, 2 Gr. Ch., 397.

*Brinkerhoff vs. Vansciven*, 3 Gr. Ch., 257.

Dudley vs. Dickson, 1 McCart., 252.

Armstrong vs. Ross, 5 C. E. Gr., 109.

Corlies vs. Howland, 11 C. E. Gr., 311.

These bonds were given "To prevent all misunderstanding which might arise after a lapse of years, relative to the mode or manner of discharging and paying of the said sum of \$2,800 to the parties aforesaid, or to their respective legal representatives upon the decease of the said Martha Hall."

See Ex. N. for compl't. *Pr book p. 57.*

The reason for giving these bonds is apparent upon taking 10 into consideration the charge upon the farm in favor of Martha Hall, the fact that she did not and could not join in the conveyance of same to Joseph and Job Black, and the very uncertain duration of her interest therein, cannot be held to be a waiver of the lien or substitution of security.

The pith of the rule is, there must be proof in the nature of the security accepted, evincing an intention by the vendor to waive the lien.

Corlies vs. Howland, 11 C. E. Gr., 312.

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#### IV.

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~~X~~ The conveyance to Joseph Black, by his brother, Job Black, of his interest in said farm, being the undivided one-half part thereof, could not affect the lien of said grantors, as Joseph Black, being one of the original purchasers, had full notice of the reservation of the purchase money.

And in like manner the conveyance of the said farm by Joseph Black to the defendant, Richard Waddington, did not affect the lien of said grantors, because Richard Waddington had both actual and constructive notice of the facts, which are here relied upon as sufficient to maintain the action for 30 the unpaid purchase money.

(1) The conveyance to Richard Waddington from Joseph Black expressly sets forth, that the said farm is encumbered in title by "one annuity bond given to William Hall, for

"\$800; one to Rebecca Ware, for \$400; one to John Denn, "for \$400; one to Hannah Hall, for \$400, amounting, all together, to two thousand dollars, given by Joseph Black and "Job Black, March 31, 1826, payable, with interest, on the "day of the death of Martha Hall, which still remain in "force."

Ex. M. for compl't. *Pr. book p. 61*

The general doctrine is, that whatever puts a party upon an inquiry amounts in judgment of law to notice, provided 10 the inquiry becomes a duty, as in the case of purchasers and creditors, and would lead to the knowledge of the requisite fact by the exercise of ordinary diligence and understanding.

So notice of a deed is notice of its contents, and notice to an agent is notice to his principal.

4 Kent's Com., 179.

This rule has been established in this State by a number of cases.

A purchaser cannot claim to be a bona fide purchaser without notice when the facts, patent upon the face of his 20 title, and under his immediate observation, are sufficient to put him upon inquiry.

Smith vs. Vreeland, 1 C. E. Gr., 199.

If a purchaser has before him, facts which should put him on inquiry, it is equivalent to notice of the fact in question.

Tantum vs. Green, (E. and A.), 6C. E. Green, 364.

Whatever puts a party upon inquiry, amounts to notice.

Lee vs. Woodward, 2 Gr. Ch., 37.

Smallwood vs. Lewin, 2 McCart., 60.

Hay vs. Bramhall, 4 C. E. Gr., 564.

30 Vredenburg vs. Burnet, et als., 4 Stew., 229.

And cases reported in X Cent. Rep., 561.

(2) The recitals in the deed of Joseph Black to Richard Waddington, and also the recital in deeds of Joseph Black and brother, from the Hall heirs, are very complete and lead

direct to the ownership of said farm by Ann Hall, and its partition between her heirs, one of the last mentioned deeds, except the "Claim of Martha Hall;" the other says, "Excepting thereout all the claim and demand of Martha Hall."

Ex. M. H, and I, for compl't.

The record and probate of Ann Hall's will, was notice to the grantees, &c., of the devisees under same, of the charge in favor of Martha Hall.

3 Pom. Eq., p. 243. Note.

A purchaser is presumed to have knowledge of all the 10 facts disclosed by the deeds under which he claims title.

2 Pom. Eq., p. 65, § 626.

Smith vs. Vreeland, 1 C. E. Gr., 199.

An imperative duty is laid upon him to ascertain *all* the instruments which constitute essential parts of his title, and to inform himself of all they contain

2 Pom. Eq., p. 65, § 626; see also last clause of § 627 and § 628.

Notice of a deed is notice of its contents; and where a purchaser cannot make out a title, but by a deed which leads 20 him to another fact, he will be deemed to have knowledge of the fact.

Smaliwood vs. Lewin, 2 McCart., Co.

Van Doren vs. Robinson and als., 1 C. E. Gr., 257.

(3) The answer of the defendant, admits that he was, at the time of the purchase of said farm from Joseph Black, informed by Joseph Black, that a portion of the purchase money, amounting to \$2,000, would have to remain unpaid until the death of Martha Hall.

See answer Pr. book, p. 33, lines 5-17.

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(4) The defendant below, Richard Waddington, testified as follows: "There was an arrangement made between "Black and me, that a portion of the purchase money should "not be paid on the delivering of the deed. He said that

- “ he had given bonds for part of the money when he bought  
 “ the farm, him and Job, his brother. I think he mentioned  
 “ it to me before I purchased the property. I think he did  
 “ if I am not mistaken. I know he did afterwards. I think  
 “ I had agreed with him as to the purchase before he men-  
 “ tioned it. I gave Joseph Black my bonds for \$2800. That  
 “ was money that he had given, bonds that he and Job had  
 “ given in part payment for the farm.” Upon cross-exami-  
 10 “ nation, he said: “Joseph Black said that he and Job had  
 “ given their bonds for the \$2800, and that he wanted me to  
 “ pay that money. I think he said this money was due at  
 “ the death of Martha Hall, and he could not pay it before,  
 “ and had given bonds to that effect. He said to me, that  
 “ at the death of Martha Hall, the money was due to the  
 “ heirs to whom he had given the seven bonds, he and Job.  
 “ If I heard the names called I could tell them. I remember  
 “ William Hall, Edward Hall, Margaret Denn, (Edward Bil-  
 “ derback’s widow represents her). Rebecca Ware, Hannah  
 “ Orton, David Hall; William Hall and wife had two shares.”  
 20 See also extract from Deed to Richard Waddington from  
 Joseph Black, above recited, on pages 9-10.

This is certainly directly in line of one of the cases made  
 by Pomroy, as illustrating the “existence of actual notice  
 under special conditions of fact,” the illustration being as  
 follows: “Whenever A is dealing concerning certain prop-  
 erty with B, who acts as owner, grantor, vendor or mortga-  
 gor, as the case may be—if A is informed by the grantor or  
 vendor B, that the subject matter is incumbered, or is sub-  
 30 ject to an outstanding lien or equitable claim, or that he him-  
 self has not for any reason a title free and perfect, such in-  
 formation is actual notice; it need not state all the particu-  
 lars nor impart complete knowledge of the conflicting interest,  
 incumbrance or right, it is enough that A is reasonably  
 informed, and has reasonable grounds to believe that the  
 conflicting right exists as a fact.”

2 Pom. Eq., p. 28, § 599.

(5) Ex. N. for complainant is proven to have been drafted

by Edward VanMeter, and executed before him. Edward VanMeter was the attorney of defendant, Richard Waddington, and represented him in executing this release which discloses a complete knowledge on his part of the whole transaction, leading up to and including the execution of said bonds.

(6) The receipt produced by defendant, Richard Waddington, in rebuttal of testimony of George M. Ward, is not a receipt to Richard Waddington for money due and owing to the estate of Joseph Black, deceased, by defendant, Richard Waddington, and so paid by him, as is claimed in defendant's answer, but direct and positive testimony that the defendant was at that time attempting to pay off and discharge the very obligations that he in his answer disclaims any knowledge of.

(7) Richard Waddington did not pay full consideration for said farm.

See answer Pr. book p. 33, begin at line 5.

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V.

A purchaser with notice of the right of another is in equity liable to the same extent and in the same manner as the person from whom he made the purchase.

2 Pom. Eq., p. 14.

A purchaser with notice stands in no better situation than the person from whom he derives his title, and is bound by the same equity, and is presumed consant of the deeds under which he claims.

Den vs. McKnight 6, Hal., 386, and cases therein cited.

"The equitable lien for unpaid purchase money will, as it is laid down in Mackreth vs. Symmons, bind the estate not only in the hands of the purchaser and his heirs, and persons taking from them as volunteers, but also in the hands of

purchasers for valuable consideration, who bought with notice that the purchase money remained unpaid.

1 Eq. Lead. cases, page 477.

III. Pom. Eq., note 1-261, Sec. 1253.

This rule is established in this State. See

Vandoren vs. Todd, 2 Gr. Ch., 397.

Brinkerhoff vs. Vansciven, 3 Gr. Ch., 251.

Armstrong vs. Ross, 5 C. E. Gr., 109.

10 Corliss vs. Howland, 11 C. E. Gr., 311.

## VI.

The share or interest of Rebecca Ware, in and to the balance of purchase money due from Joseph Black and Job Black upon the purchase of the farm, of Ann Hall's heirs, above mentioned, and evinced by the bond Ex. J for compl't., was reduced to the possession of David Ware, by virtue of certain rights which he then under the common law, had.

II. Kent. Com., p. 114, (orig. Ed.).

This right has been asserted from the beginning by John  
20 Denn, husband of Margaret Denn, who was one of the daughters and heirs of Ann Hall, and the bond was made direct to him.

See end of Ex. N for compl't; also deed from Joseph Black to Richard Waddington, Ex. M for compl't.

The proof of this reduction to possession, in the absence of direct testimony—(all of said parties being now dec'd.) is inferential and deduced from the following facts, viz :

(1) It was a right belonging to the husband, applicable to all choses in action.

30 2 Kent, p. 114, (orig. Ed.).

Horner vs. Webster, 4 Vroom, 387.

(2) The brother-in-law of David Ware, John Denn, had exercised his rights in the premises.

(3) The bond in question, is the only one that has ever been known of by the parties in interest.

(4) It bears all the marks of being genuine; was on a blank similar to that of the other bonds; was drawn by the same person who drew the other bonds and conveyances made at that time, and it is in precisely the same terms as the other bonds. Interest was credited on this bond at the same times it was credited on the other bonds, and by the same person, all of which will appear by a comparison of the two bonds in evidence.

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See Ex. J and K for compl't.

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## VII.

The reduction to possession by David Ware, of the debt due his wife, was not an assignment of her interest to him.

If an assignment, it would not thereby lose any of its equities as a grantor's lien.

III. Pom. Eq., p. 263, note 3.

The doctrine is established by the great preponderance of authority, that this lien is not personal to the grantor, but may be transferred; that it passes by an assignment of the note, bond or other evidence of debt given for the purchase price, and may be enforced by the assignee.

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III. Pom. Eq., p. 267, Sec. 1259.

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Richard Waddington, having had notice of the lien of Rebecca Ware and als. upon the farm purchased of Joseph and Job Black, must be held to be bound thereby. The question of his payment in satisfaction of same to George M. Ward, Executor of Joseph Black, cannot have any material bearing on the case, for as stated by the Chancellor in his opinion below:

30

"It is very plain such a payment would not discharge the Ware lien. The executor of Joseph Black had no authority

"to receive payment for the administrator of David Ware.  
 "I need not settle whether such a payment was in fact made,  
 "for if it was, and the money misappropriated by the execu-  
 "tor, the loss must fall upon Mr. Waddington, who selected  
 "the executor to cancel the Ware bond."

Respectfully submitted,

I. O. ACTON,

Respondent.

### Interest

The sum of \$400. decreed to be a lien on Lot #7 should bear interest from the date when the last interest on said bond was due and payable March 25. 1872

The rate of said interest should be 7% from March 25<sup>th</sup> 1872 to July 4<sup>th</sup> 1878. and after that date 6%

Jersey City vs O. Ballaghan

125 N. P. 349

N. J. COURT OF ERRORS AND APPEALS.

Between

RICHARD WADDINGTON,

Appellant,

and

I. OAKFORD ACTON, Admr., &c.,

of David Ware, dec'd,

Respondent.

ON APPEAL FROM

CHANCERY.

10

POINTS OF M. P. GREY, OF COUNSEL FOR  
APPELLANT.

I. There is no charge on the farm, under the will of  
Ann Hall, (1826) of the payment of any *principal sum*.

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The gift to Martha Hall is simply a life annuity to be  
paid out of the profits of the farm; with the death of  
Martha, all charge under Ann Hall's will ceased. See  
bill, page 11.

II. The proofs do not show that the bond made to *David Ware*, (which is the only evidence of any right in *him*) stands in the stead of, or represents in any way, *Rebecca Ware's* right to a share of purchase money. Nor is his claim entitled to a purchase money lien as he was not a vendor.

10 III. The appellant Waddington, in good faith, and without notice of any claim in favor of *David Ware* or his estate, in 1873, paid the full amount he contracted to pay for this farm, including what he had always been told and believed to be *Rebecca Ware's* claim. *David Ware's* representative cannot now require appellant to pay over again a part of this purchase money, on an assertion that *Rebecca Ware's* claim had been exchanged in 1837, for another in favor of *David Ware*, of which exchange, (if made) no notice or warning was ever given to appellant until 1885.

Waddington is a purchaser without notice.

20 3 Pom. Eq., Jur., page 261, note 2 and cases.  
*Jones vs. Smith*, 1 Hare, (English) 43.

IV. If the right of *David Ware's* estate to this purchase money lien of \$400 is held to be established no interest can be allowed from the time of *Martha Hall's* death, in 1872, until the time of the appointment of the respondent as administrator of *David Ware*, on July 6th, 1885, because :

30 1. The appellant, Waddington, made no *contract* to pay either interest or principal. The bond is the contract of the Blacks'.

2. Interest having been paid up to and after the time of the death of *Martha Hall* (1872), the principal came due; and if due to *David Ware's* estate there was then no representative of his estate in existence to whom the money could be paid.

3. It was the duty of the next of kin of David Ware, if they claimed the interest on this money after it was due, to have provided a representative of that estate to whom Waddington could, if he chose, have paid the principal and saved accumulation of interest.

David Ware died in 1839; his administrators appointed 1839. One of them, Samuel Ware, died shortly after his appointment, the other, Rebecca Ware, in 1871. The present administrator of David Ware, the respondent in this case, was appointed July 6th, 1885. So that from 1871 to 1885 there was no person to whom this principal money could have been paid. 10

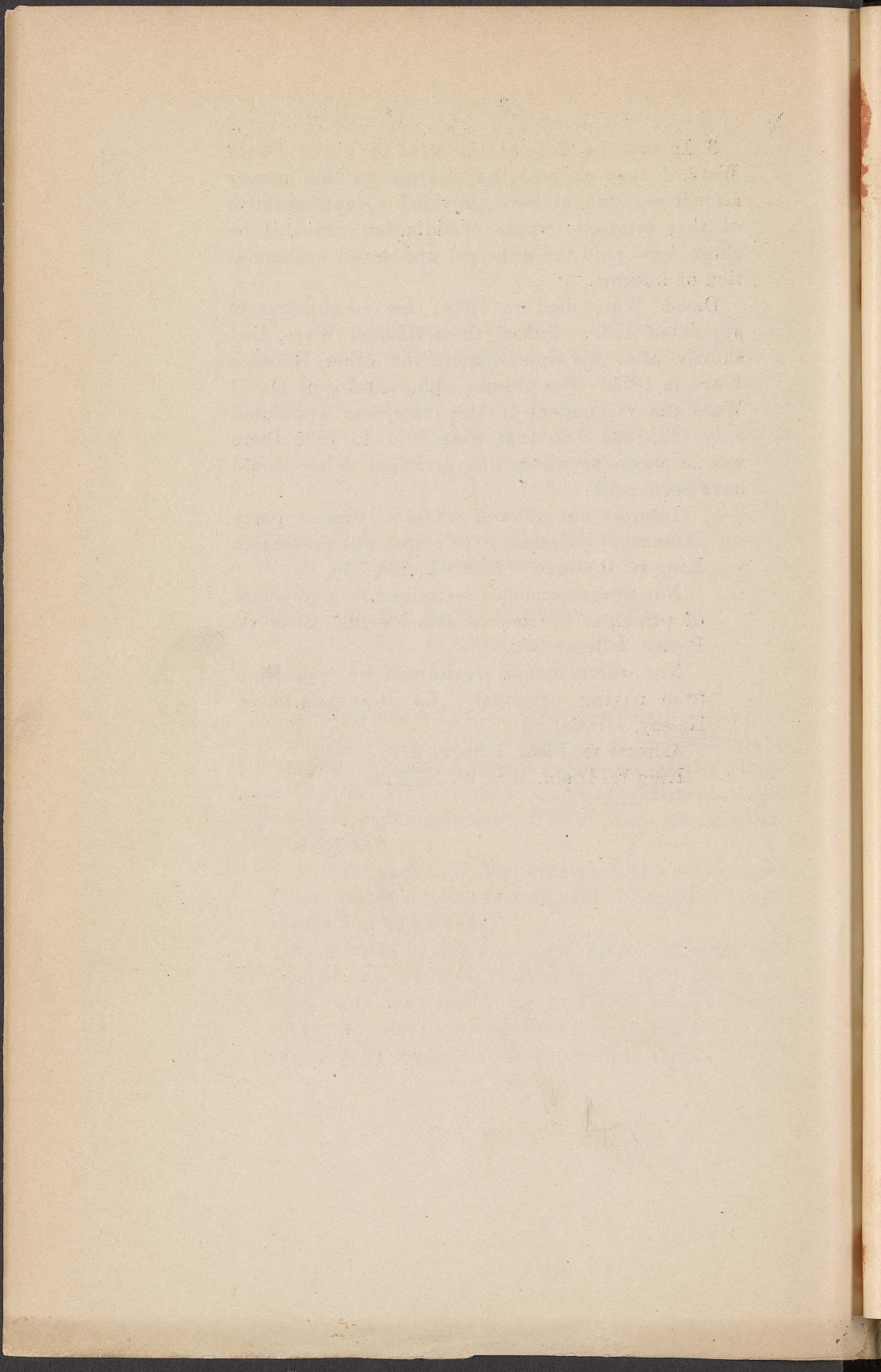
Interest not allowed where by act of party claiming it payment of principal was prevented. King vs. Rodman, 9 C. E. G., 298, 556.

Nor where garnishee restrained from payment of principal by lien of attachment. Blair vs. Porter, 2 Beasl. 270. 20

Nor where obligor restrained by injunction from paying principal. Le Branthwaite vs. Halsey, 4 Halst., 3.

Ashurst vs. Field, 1 Stew., 316.

King vs. Diehl., 9 S. W. R., 422.



COURT OF ERRORS AND APPEALS; IN THE  
LAST RESORT, &c.

*Between*

*RICHARD WADDINGTON,*

*Appellant,*

*On Appeal*

*and*

*from*

*I. OAKFORD ACTON,*

*Final Decree.*

*Adm'r of David Ware, dec'd,*

*Respondent.*

M. P. GREY, of Counsel with Appellant.

J. W. ACTON, of Counsel with Respondent.

PETITION OF APPEAL.

To the Honorable—the Court of Errors and Appeals—in  
the last resort in all causes :

The humble petition of Richard Waddington, the appel-  
lant in the above stated cause, respectfully shows that your  
petitioner finds himself aggrieved by a final decree made in the  
Court of Chancery by his Honor, Alexander T. McGill,  
Chancellor of the State of New Jersey, bearing date on the  
Thirteenth day of November, Eighteen Hundred and Eighty-  
nine, wherein I. O. Acton, administrator, &c., of David Ware,  
deceased, was complainant, and said Richard Waddington 10  
and wife were defendants, in this respect to-wit: that the said  
decree adjudges that said complainant has a lien upon that

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 "done or suffered to be done any act or thing whereby the  
 "premises aforesaid are encumbered in title, saving and ex-  
 "cepting one annuity bond given to William Hall for \$800,  
 "one to Rebecca Ware for \$400, one to John Den for \$400,  
 "one to Hannah Hall for \$400, amounting altogether to  
 "\$2,000, given by Joseph and Job Black, March 31, 1826,  
 "payable, with interest, on the day of the death of Martha  
 "Hall, daughter of Joseph and Ann Hall, and which still  
 "remain in force; but that the same are conveyed to the  
 10 "party of the second part, his heirs and assigns, as freely  
 "and clearly as they were vested in the said party of the first  
 "part, his heirs and assigns.

As to the bonds here mentioned, the defendant, Richard  
 Waddington, testified as follows: "There was an arrange-  
 ment made between Black and me, that a portion of the pur-  
 chase money should not be paid on the delivering of the deed.  
 "He said that he had given bonds for part of the money  
 "when he bought the farm, him and Job, his brother. I  
 "think he mentioned it to me before I purchased the prop-  
 20 "erty. I think he did if I am not mistaken. I know he did  
 "afterwards. I think I had agreed with him as to the pur-  
 "chase before he mentioned it. I gave Joseph Black my  
 "bonds for \$2800. That was money that he had given,  
 "bonds that he and Job had given in part payment for the  
 "farm." Upon cross-examination, he said: "Joseph Black said  
 "that he and Job had given their bonds for the \$2800, and  
 "that he wanted me to pay that money: I think he said this  
 "money was due at the death of Martha Hall, and he could  
 "not pay it before, and had given bonds to that effect. He  
 30 "said to me, that at the death of Martha Hall, the money  
 "was due to the heirs to whom he had given the seven bonds,  
 "he and Job. If I heard the names called I could tell them.  
 "I remember William Hall, Edward Hall, Margaret Den,  
 "(Edward Bilderback's widow represents her), Rebecca Ware,  
 "Hannah Orton, David Hall; William Hall and wife had two  
 "shares."

The complainant produced a bond from Joseph Black and  
 Job Black to Hannah A. Hall, dated March 31, 1826, in the

penal sum of \$800, conditioned for the payment of \$400 on the day of the death of Martha Hall, daughter of Joseph Hall and Ann Hall, with interest for the same payable every 25th day of March thereafter, which had been paid by Richard Waddington, and also a bond from Joseph Black and Job Black to David Ware, dated March 31, 1837, in the penal sum of \$800, conditioned for the payment of \$400 on the day of the death of Martha Hall, daughter of Joseph Hall and Ann Hall, with interest payable on the 25th of March annually. These bonds are drawn upon the same printed blanks and 10 evidently by the same hand. The scrivener, who is dead, appears to have been the subscribing witness to both bonds.

It is proved that both of the Blacks are dead, and that all their grantors have died. David Ware, the husband of Rebecca Hall, died in 1839. The bond to him went into the possession of his wife, and she held it until her death, in 1871. Her daughter held it until after the death of Martha Hall, in 1872, and subsequently it came to the hands of the complainant. No bond to Rebecca Ware has been found. After the death of David Ware, and possibly before that 20 time, Martha Hall was in the custody of Rebecca Ware, and after Mrs. Ware's death, her daughter cared for Martha until Martha's death. Martha's annuity, or the interest on the bonds, was annually paid to Rebecca Ware as long as she lived. Whenever this interest was paid after 1839, Mrs. Ware would receipt for \$24 of it upon the above mentioned bond to David Ware. Until 1856 the Blacks appear, by the receipts endorsed upon this bond, to have paid the interest, and after that the defendant, Richard Waddington, appears to have paid it. The body of nearly every receipt 30 after that time is in Waddington's handwriting. After 1840 the receipts are, with one or two exceptions, signed by Mrs. Ware, with her own name, Rebecca Ware. Richard Waddington testifies that after the death of Martha Hall, he paid George M. Ward, acting executor of Joseph Black's will, using his language, "the last money that I owed on the Joseph Black bonds. It was stated to me that that would pay the shares of Rebecca Ware, Hannah's and the Bilderback or Margaret Den bond." And he produced a receipt

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 dated May 12th, 1873, signed by the executor, Ward, for \$1200, which was stated in the receipt to be the amount of three bonds of \$400 each, given by Job and Joseph Black to Rebecca Ware, Margaret Den and Hannah Hall—"their shares, which was reserved for the benefit of Martha Hall during her life." The executor, Ward, denied that he was ever paid for Rebecca Ware, and witnesses were produced to show that his reputation for truth was bad.

The bill seeks to have the amount due on the David Ware  
 10 bond declared to be a vendor's lien upon the Ann Hall farm, now the property of the defendant, Richard Waddington, and paid thereout.

It is well established in this court that where land is conveyed and the purchase money for it is not paid, and no distinct security for the payment of that money is taken in its stead, a constructive trust arises, and the vendee is considered as the trustee of the land for the vendor until the purchase money is paid. The vendor thus obtains an equitable  
 20 lien upon the land for the purchase money which is good against the vendee and his heirs and all persons taking from them as volunteers, and also against purchasers from them for value with notice that the purchase money is unpaid, and is unenforceable only against purchasers for value in good faith without such notice. Crawford vs. Bertholf, Sax., 469; Vandoren vs. Todd, 2 Gr., Chy. 397; Brinkerhoff vs. Vansciven, 3 Gr., Chy. 251; Herbert vs. Scofield, 1 stock, 492; Dudley vs. Dickson, 1 McC., 252; Armstrong vs. Ross, 5 C. E. G., 109; Corliss vs. Howland, 11 C. E. G., 312; Ledos vs. Kupfrair, 1 Stew., 161; Ogden vs. Thornton, 3 Stew.,  
 30 569; Graves vs. Coutant, 4 Stew., 763, 779; Porter vs. Woodruff, 9 Stew., 174; Butterfield vs. Oakey, 9 Stew., 482. As has been indicated, that of which a bona fide purchaser for value must have notice to bind him to the lien, is the indebtedness of his vendor for the purchase money or a portion of it. Brinkerhoff vs. Vansciven, Armstrong vs. Ross, Graves vs. Coutant, *supra*. Taking of some penal undertaking from the vendee to pay the purchase money, such as his bond, note or covenant, unless it appears that it was

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intended to be substituted for the purchase money, or to be the thing in fact bargained for, will not destroy the lien. Such instruments will be considered as intended only to countervail the receipt for the purchase money, which may be contained in the deed, or to define the time and manner in which the payment is to be made, unless there be an express agreement between the parties to waive the equitable lien; but the lien will be considered as waived whenever any distinct and independent security is taken, such as a mortgage on the land, or pledge of things, or personal responsibility of third 10 persons and the like. I Lead. cas. in Eq., 483. "The pith of the rule," said Vice-Chancellor Van Fleet; in Corlies vs. Howland, above cited, "is, there must be proof in the nature of the security accepted, evincing an intention by the vendor to waive the lien." As to the duration of the lien, Justice Scudder, in writing the opinion of the Court of Errors and Appeals, in Graves vs. Coutant, above cited, said: "If this lien exists by the operation of a constructive trust, then I think it must be concurrent with it, and attach at the time the vendor obtains his right in the property, and 20 it will continue so long as the trust remains, or, as some of the cases say, so long as an action can be maintained for its collection."

If it be assumed for the purpose of the application of these principles that the bond in question represents the bond to Rebecca Ware for the purchase money, the lien claim will clearly obtain. Purchase money undisputably remained unpaid, and the Rebecca Ware bond was clearly taken merely to fix the fact that money was due, (thus countervailing the receipt contained in the deed) and to define a time of pay-30 ment. When the defendant, Richard Waddington, purchased the farm, he had ample notice of all that was necessary to the preservation of the equity of Black's vendor in the land. The bond became payable in 1872, and within fifteen years thereafter this suit, was brought upon it. I understand that if the case thus stood there would be no dispute as to the validity of the claim. Similarly situated bonds were paid by Waddington without question. The disputed point is whether the bond now sought to be enforced represents the purchase

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 money for which the lien is claimed. All the parties to the bond are dead. Rebecca Ware is dead, and the scrivener, who drew the bond, is also dead. The Blacks are dead. It is now impossible, by direct testimony of witnesses, to prove the transaction in which the bond was produced, yet I think that established circumstances irresistibly fix its exact status. By the law as it existed in this State in 1837, the husband acquired an interest in all choses in action which came to his wife during coverture, and he might perfect such interest into  
 10 complete title for his own use, by any act which would reduce such property into his possession. He could sue for and recover or release and assign the debts due to his wife, and when such debts were recovered and brought into his possession, it was evidence of a conversion of the same to his own purposes, and the moneys thus became, as a general thing, absolutely his own. Webster vs. Horner, 4 Vr., 387; 2 Kent's Com., 136.

It seems to be impossible under the circumstances established here by the proofs to escape the conviction that the  
 20 bond of Rebecca Ware was reduced by her husband, David, to his possession, and that in process of such reduction the bond here questioned was taken from Joseph and Job Black in the place of Rebecca's bond. A moment's consideration of some of the leading circumstances from which I draw this conclusion will manifest their strength. The bond of Rebecca Ware has disappeared. The bond of David Ware was drawn by the scrivener who wrote the bond of the wife, upon a like printed form and for the same amount. It contains the peculiar condition that it shall be payable at the  
 30 death of Martha Hall, and corresponds in date so far as the day and month (March 31) are concerned, and in the time of the payment of interest, and in the rate of interest to be paid. It short, it is a copy of the bond of Rebecca Ware, except in the name of the obligee and the year in the date. Added to this is the recognition of the bond by the Blacks, Waddington and Rebecca Ware, from its date in 1837, until Martha Hall died in 1872, as the representative of the purchase money debt. It is true, the conveyance to Waddington in 1849, after the date of the David Ware bond, speaks of the

existence of a bond to Rebecca Ware, but no such bond appeared. The fact that then David Ware had been dead for ten years, and that after that time, Rebecca Ware had receipted in her own name, for the interest upon this very bond, shows that in all probability the bond intended in the deed referred to is the bond now questioned. From 1826 to 1837 the bond had been Rebecca's, then her husband reduced it to his possession and made it his property. He died two years later, in 1839, and after that Rebecca had actual custody of his bond and receipted on it in her own name. After she had so receipted for ten years Joseph Black conveyed to Waddington, and he then, naturally, had come to think of the bond as Rebecca's, and hence he so called it in his deed. The deed just mentioned speaks of a bond of John Denn. He was the husband of Margaret Hall, one of the vendors of the Blacks, and a sister of Rebecca Ware. Evidently Denn, after the fashion of David Ware, had reduced his wife's bond to his possession. A vendor's lien is not destroyed by assignment. 1 Lead Cas., 289. Much less should it be destroyed by being reduced to possession by a husband. He succeeds to it by virtue of a legal right to substitute himself for his wife in the ownership of it. The taking of a new bond simply made evidence of the exercise of this legal right. It could make little difference to Mr. Waddington whether the bond was owned by Rebecca or by David Ware. In either event he had \$400 to pay, for he had ample notice and knowledge that that amount of purchase money remained unpaid. Acting upon this knowledge, he protected himself by withholding from Joseph Black a portion of the purchase money that he had agreed to pay Black. Such arrangement between the subsequent purchasers did not discharge the original vendor's lien. For a time Waddington paid interest to Joseph Black, and Joseph Black paid interest to Rebecca Ware, but this roundabout procedure was soon abandoned, and Waddington paid directly to Rebecca Ware. Finally a payment was made to Black's executor expressly to settle three of the Hall bonds, and among them the Rebecca Ware bond. It is very plain that such a payment would not discharge the Ware lien. The executor of Joseph Black had no

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authority to receive payment for the administrator of David Ware. I need not settle whether such a payment was in fact made, for if it was, and the money was misappropriated by the executor, the loss must fall upon Mr. Waddington, who selected the executor as his agent to cancel the Ware bond.

When Rebecca Ware joined in the deed to the Blacks, all that she conveyed was the plot numbered one, which had been set off to her in the partition of her mother's farm. Hence the lien now sought to be established, must be confined to that plot.

I will decree that the complainant has a lien upon the plot numbered one for \$400, with interest from March 25, 1872, and will order the plot to be sold to raise and pay that amount, together with the complainant's costs.

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IN CHANCERY OF NEW JERSEY.

*Between*

|   |   |                         |
|---|---|-------------------------|
| <i>I. Oakford Acton, Administrator, &amp;c.,<br/>of David Ware, deceased,</i> | } |                         |
| <i>and</i>  | } | <i>Complt.,</i>         |
| <i>Richard Waddington, and Mary Ann,<br/>his Wife,</i>                        | } | <i>On Bill, &amp;c.</i> |
|   | } | <i>Deft's.</i>          |

To his Honor Theodore Runyon, Chancellor of New Jersey. Humbly complaining showeth unto your Honor, your orator, I. Oakford Acton, of the city and county of Salem, State of New Jersey, administrator of all and singular the goods and chattles, rights and credits which were of David Ware, deceased, late of the county of Salem, shows unto your Honor, that one Ann Hall, widow of Joseph Hall, deceased, late of the township of Elsinboro, county of Salem and State of New Jersey, was in her life time seized of an estate in fee simple in and to a certain farm and premises, situate in said township, county and State, hereinafter more particularly described and set forth. And your orator further shows, that being so seized, the said Ann Hall did depart this life in the month of January, in the year of our Lord, one thousand eight hundred and twenty, having first made and published her last will and testament, in which among other things she did devise as follows: "I give to my daughter, Martha Hall, "one hundred and seventy-five dollars yearly and every year "during her natural life, to be paid out of the profits of my "farm," also "after the payment of all my just debts and "funeral expenses, I devise and bequeath all the residue "and remainder of my estate, both real and personal, to be "equally divided between Margaret Denn, William Hall, Re-

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 "becca Ware, Ann Hall, Edward Hall, James Hall and Hannah Hall, share and share alike. Further, it is my will and I do hereby request my friend, Morris Hall, to take charge and superintendence of my daughter, Martha Hall, and provide a suitable place for her residence." Which said last will and testament was duly proven, on the twenty-sixth day of January, Anno Domini one thousand eight hundred and twenty, and forthwith recorded in the office of the Surrogate of the county of Salem, in Book B of Wills, folio 399, &c., to which said record, or a duly certified copy of the same, your orator begs leave to refer, if necessary so to do. And your orator further shows unto your Honor, that the above named Margaret Denn, William Hall, Rebecca Ware, Ann Hall, Edward Hall, James Hall and Hannah Hall, were the children of the said Joseph and Ann Hall, and that one John Denn, was the husband of the said Margaret Denn, the said David Ware, was the husband of the said Rebecca Ware, and that one David Hall, was the husband of the said Ann Hall (junior), and that the said daughter Martha Hall mentioned in said will, was at that time a minor under the age of twenty-one years and of unsound mind, besides being further afflicted in being blind.

And your orator further shows unto your Honor, that on or about the fifth day of March, Anno Domini, one thousand eight hundred and twenty-one, pursuant to an order of the Orphan's Court of the said county of Salem, made at the December term thereof, 1820, Robert G. Johnson, William Waddington and Aaron Waddington, commissioners duly appointed by said order did make partition of the said farm of the said Ann Hall, deceased, between the owners thereof apportioning the same as follows: To Rebecca Ware, lot numbered one, containing sixteen acres. To Ann Hall, lot numbered two, containing one acre, three roods and thirty-five perches. To William Hall, lot numbered three, containing sixteen acres and 3 roods. To James Hall, two lots each numbered four, one of which contains seven acres, the other containing 8 acres, 1 rood and twenty-six perches. To Edward Hall, two lots each numbered five, one containing 2 acres and 16 perches, the other containing eleven acres and

eighteen perches. To Hannah Hall, lot numbered six, containing eleven acres and twenty-two perches and to Margaret Denn 2 lots each numbered four, one of which contains ten acres and thirty-seven perches, the other containing eleven acres and twenty-two perches, which said partition was duly approved by the said Orphan's Court, and recorded in the Office of the Surrogate of Salem county, in Book D of Divisions, folio 49, &c., a copy of the map accompanying said division, being annexed to this bill and forming a part thereof. But your orator charges that the said farm was thus partitioned with the full knowledge of the charge made thereon by the said last will and testament of Ann Hall, deceased, in favor of the said Martha Hall, and if a valid partition at all, each and every part of said farm was still subject to the charge imposed thereon under the said last will and testament of the said Ann Hall, deceased.

And your orator further shows unto your Honor, that on or about the ninth day of March, Anno Domini, one thousand eight hundred and twenty-one, the said Edward Hall, son of said Joseph and Ann Hall, did upon the consideration of forty-five dollars or some other sum to him paid, convey unto the said John Denn, husband of said Margaret Denn, one of the certain lots of land, which formed a portion of the said farm of Ann Hall, and set off to him the said Edward Hall, in the above mentioned division, as lot number five, containing two acres and sixteen perches, which said deed was duly acknowledged on the twenty eighth day of March in said year, before one Isaac Smart, a duly authorized commissioner for taking the acknowledgement of deeds, and recorded on the thirtieth day of said month in the Clerk's Office of the county of Salem, in book Y of deeds, folio 295, &c.

But your orator charges that the said conveyance of said lot of land was made subsequent to the charge thereon under the said last will and testament of Ann Hall, deceased, and with full notice thereof, and therefore is subject to the lien of said charge under said last will and testament.

And your orator further shows unto your Honor, that on or about the nineteenth day of September, Anno Domini, one

thousand eight hundred and twenty-two, the said James Hall, son of the said Joseph and Ann Hall, did upon consideration of the sum of four hundred dollars, or some other sum, convey unto the said David Hall—husband of said Ann Hall (junior), the two certain lots of land which formed a portion of the said farm of Ann Hall, deceased, and which were set off to the said James Hall, in the division above mentioned, each being therein numbered four, containing respectively seven acres, and eight acres and 1 rood and 26 perches (together with two small lots not comprised in said farm of Ann Hall) which said deed was on the same day last aforesaid, duly acknowledged before the said Isaac Smart, a duly authorized commissioner for taking the acknowledgment of deeds, and on the 7th day of October, in said year, duly recorded in the Clerk's Office of the county of Salem, in Book A A of Deeds, folio 214, &c.

But your orator charges that the said conveyance of the two said lots of land was made subsequent to the charge thereon, under the said last will and testament of Ann Hall, deceased, and with full notice thereof and is therefore subject to the lien of said charge under said last will and testament.

And your orator further shows unto your Honor, that your orator is informed and believes that previous to the 30th day of March, in the year of our Lord one thousand eight hundred and twenty-six, the said Edward Hall, did convey unto his brother the said William Hall, the remaining lot set off to him in the said partition of the said farm of his mother the said Ann Hall, which said conveyance your orator believes has never been recorded, and your orator admits that the said Edward Hall, had full power and authority to convey the same, subject however to the said charge thereon, under the said last will and testament of Ann Hall, deceased.

And your orator further shows unto your Honor, that on or about the thirtieth day of March, in the year of our Lord one thousand eight hundred and twenty-six, the said David Hall and Ann Hall, his wife, did by Morris Hall, their duly constituted and appointed attorney-in-fact, convey unto Joseph Black and Job Black, upon consideration of the sum

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of one thousand seven hundred and fourteen dollars and twenty-eight cents or some other sum paid or secured to be paid to them, the three several lots of land owned by them and which formed a portion of the farm of the said Ann Hall, deceased, the same being lot numbered two, containing 1 acre, 3 roods and 35 perches, set off to the said Ann Hall in the above mentioned division. And the two lots each numbered four, set off to the said James Hall, and by the said James Hall, conveyed to said David Hall September 19th, Anno Domini one thousand eight hundred and twenty-two, the same being heretofore mentioned and more particularly set forth (together with four other small lots of land not comprised in the said farm of the said Ann Hall, deceased,) which said deed was duly acknowledged before Alphonso L. Eakin, Esq., one of the Masters of this Court, on the same day, and on the first day of April in said year recorded in Salem County Clerk's Office, in Book F F of Deeds, folio one hundred and ninety, &c. And your orator further shows unto your Honor, that on the day of the date last aforesaid to wit: the 30th day of March, Anno Domini one thousand eight hundred and twenty-six, the said John Denn and Margaret his wife, William Hall and Hannah his wife, David Ware and Rebecca his wife, and Hannah A. Hall, did by their certain indenture, convey unto the said Joseph Black and Job Black, the said farm late of their mother the said Ann Hall, deceased, excepting thereout the shares of Ann Hall and James Hall, (together with other lands not comprised in said farm,) which said farm is described in said deed as follows: "Beginning at a corner of lands of Aaron "Waddington at the edge of Middle Neck Creek, and bounding on said Waddington's land south nineteen and one half degrees, east 29 ch. and 64 l. to a stump, thence still along "said Waddington's land, south one and one half degrees west "and 11 ch. and 70 l. to a road, thence along Thomas Waddington's land, s.  $1\frac{1}{2}$  deg., w. 31 ch. 29 l. to a corner of "land late Joseph Hall, thence along said land, n.  $87\frac{1}{4}$  deg., "w. 10 ch. and 4 links to a corner, thence s. 9 deg., w. 2 ch. "and 24 l. to a corner, thence n. 88 deg., w. 3 ch. and 86 l. "to a corner, thence n. 2 deg., e. 7 ch. and 90 l. to a corner,

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 "thence n.  $20\frac{1}{2}$  deg., w. 4 ch. 37 l. to a corner, thence s.  $85\frac{1}{2}$   
 "deg., e. 86 links to a corner, thence n.  $42\frac{1}{2}$  deg., e. 5 ch. and  
 "40 l. to a corner, thence n.  $15\frac{1}{4}$  deg., w. 7 ch. and 77 l. to a  
 "corner, thence n. 31 deg., w. 2 ch. and 50 l. to a corner,  
 "thence n. 12 deg., w. 2 ch. 30 l. to a corner, thence s. 74  
 "deg., w. 7 ch. along the road to a bridge, thence n. 14 deg.,  
 "e. 7 ch. bounding on Morris Hall's line to a corner, thence  
 "s. 68 deg., e. 1 ch. 80 l. to a corner, thence n.  $29\frac{3}{4}$  deg., e. 11  
 "ch. and 70 l. to a corner, thence n.  $26\frac{1}{2}$  deg., w. 3 ch. 76 l.  
 "to a corner, thence n. 58 deg., w. 2 ch. and 75 l. to the  
 "creek running through the meadow, thence bounding on the  
 "creek, the natural courses thereof, to the beginning corner.  
 "Containing about one hundred and twelve acres, two roods  
 "and twenty-three perches more or less." Which said deed  
 your orator shows was duly acknowledged on the same day  
 by the said John Denn and Margaret Denn, his wife, and  
 William Hall and Hannah his wife, and by the said David  
 Ware and Rebecca his wife, and the said Hannah A. Hall, on  
 the 31st day of March, in the year of our Lord one thousand  
 eight hundred and twenty-six, before Alphonso L. Eakin, one  
 of the Masters of this Court, and was recorded April 1, 1826,  
 in the Clerk's Office of Salem county, in Book E E of Deeds,  
 folio 162, &c.

And your orator further shows unto your Honor, that the  
 grantors in the two last above mentioned deeds, clearly recog-  
 nize the right and interest of Martha Hall, as charged upon  
 said farm according to the said last will and testament of her  
 mother the said Ann Hall.

And your orator further shows unto your Honor, that for  
 divers reasons, at present unknown to your orator, the above  
 named grantors, William Hall, Rebecca Ware, John Denn,  
 Hannah A. Hall, David Hall and Ann Hall, did at the time of  
 the said conveyance of the said farm of Ann Hall, deceased,  
 to the said Joseph Black and Job Black, as above set forth,  
 agree, that there should be reserved from their respective  
 shares of the purchase money of the said farm, so sold by  
 them as aforesaid, to the said Joseph Black and Job Black,  
 the sum of two thousand eight hundred dollars, the same  
 representing seven shares or portions of four hundred dollars

each, the interest of which should be applied to the support and maintainance of their said blind and afflicted sister, Martha Hall, as long as she might live, and to secure the payment of the said sum of \$2,800 to the said grantors, the said Joseph Black and Job Black did make and execute unto each of the said William Hall, Rebecca Ware, John Denn, Hannah A. Hall, David Hall and Ann Hall, their certain obligation under their hands and seals, dated March 31st, Anno Domini one thousand eight hundred and twenty-six, in the penal sum of \$800, conditioned for the payment of \$400, on the day of the death of Martha Hall, daughter of Joseph and Ann Hall, with interest payable on the 25th day of March annually, without any fraud or further delay, then the said obligation to be void or else to remain in full force and virtue. The said bond as above given to the said William Hall being for \$800, representing two of said shares of said purchase money so as above reserved. And your orator further shows unto your Honor, that on or about the 31st day of March, one thousand eight hundred and thirty-seven, the said David Ware, exercising a right which under the law he then had, (and which had likewise been previously exercised by the said John Denn) did reduce to his possession the said debt, so as aforesaid secured to his wife the said Rebecca Ware by the said obligation given to her by the said Joseph Black and Job Black, and that thereupon the said Joseph Black and Job Black did issue to the said David Ware their certain obligation as follows: "Know all men by these presents, that we Joseph Black and "Job Black, of Elsinborough, in the county of Salem, New "Jersey, are held and firmly bound unto David Ware, of "Lower Penn's Neck, in said county and State, in the sum of "eight hundred dollars, lawful money, to be paid unto the "said David Ware, his certain attorney, executors, adminis- "trators or assigns, to which payment well and truly be made, "we bind ourselves our and each of our heirs, executors and "administrators, jointly and severally firmly by these presents, "sealed with our seals & dated the thirty-first day of March, "Anno Domini one thousand eight hundred and thirty-seven "(1837). The condition of this obligation is such, that if the "above bounden Joseph Black and Job Black, their heirs,

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paid by Joseph and Job Black, during the term that they owned said farm, and by the said Joseph Black and Richard Waddington respectively, while they owned said farm, the three last payments being made by Richard Waddington, March twenty fifth, one thousand eight hundred and seventy, April first, one thousand eight hundred and seventy-one and September thirteenth, one thousand eight hundred and seventy-two.

And your orator further shows that the said David Ware did depart this life intestate, in the year of our Lord one thousand eight hundred and thirty-nine, that the said Rebecca Ware did depart this life, on or about the 25th day of December, Anno Domini one thousand eight hundred and seventy-one, and that the said Job Black did depart this life, Anno Domini one thousand eight hundred and forty-seven, and that the said Martha Hall did survive all of her brothers and sisters.

And your orator further shows that the said Joseph Black, did depart this life on or about the twenty fifth day of March, Anno Domini one thousand eight hundred and sixty-three, having first duly made and executed his last will and testament, which was duly proven and recorded according to law, that the executors of the said last will and testament of said Joseph Black, were George M. Ward, of the city of Salem, and one Edward Black. And that your orator is informed and believes that the said Richard Waddington, did make and execute to the said executors of Joseph Black, deceased, his certain obligation under his hand and seal, the condition of which said obligation, was that he the said Richard Waddington, should indemnify and save harmless the said Joseph Black, his heirs, executors, &c., from the said annuity bonds above mentioned, given by said Joseph Black and Job Black, and payable on the day of the death of said Martha Hall.

And your orator further shows unto your Honor, that after the death of the said Martha Hall, and about the middle of the month of May, in the year of our Lord one thousand eight hundred and seventy-three, the said Richard Waddington, did pay to the said George M. Ward, acting executor of

the said Joseph Black, deceased, for the legal representatives of the said Hannah A. Orton, (formerly Hannah A. Hall), the sum of four hundred dollars principal, and twenty-seven dollars accrued interest thereon, the same being the amount of principal and interest of the bond, so given as aforesaid to Hannah A. Hall, by the said Joseph Black and Job Black. And your orator further shows unto your Honor, that in like manner, the bond so given as aforesaid, by the said Joseph Black and Job Black, to the said John Denn, was duly paid and satisfied by the said Richard Waddington, and in like manner, the said bonds so as aforesaid, given by the said Joseph Black and Job Black to the said David Hall and Ann Hall, his wife, were duly paid and satisfied by the said Richard Waddington. And your orator further shows unto your Honor, that the said Richard Waddington, has also paid and satisfied the said bond, as given as aforesaid by the said Joseph Black and Job Black, to the said William Hall, for eight hundred dollars, the same having been paid to one Clement H. Sinnickson, Esq., attorney for the heirs of the said William Hall. But your orator expressly charges, that the bond so given as aforesaid, to the said David Ware, husband of the said Rebecca Ware, has not been paid either in whole or part, by the said Joseph Black or Job Black, nor by the said Richard Waddington, nor by any one for him, them or either of them, and that there is due upon the said bond, the whole amount of principal thereof, (the same being \$400) together with interest thereon, from the 25th day of March, Anno Domini one thousand eight hundred and seventy-two.

And your orator expressly charges, that the said farm above described, and which belonged to the said Ann Hall, deceased, could not be conveyed to any one free and clear of the said charge and encumbrance thereon, in favor of the said Martha Hall as aforesaid, without the aid and intervention of this honorable court, and that the aid of this honorable court has never been invoked in the premises. And your orator further shows, that he has been advised and insists that the said bond given by Joseph Black and Job Black, to the said David Ware, and which represents a portion of the purchase money for said farm, left in the hands of the

said grantees the said Joseph Black and Job Black, to secure them against the claim of the said Martha Hall, under the will of her mother the said Ann Hall, should in equity be held to be equivalent to a purchase money lien upon the said farm and all parts thereof, and prior to the said conveyance to the said Joseph Black and Job Black, and all persons claiming by, from, or under them or either of them.

And your orator further shows unto your Honor, that he has often and in a friendly way applied to the said Richard Waddington, to pay the said bond so given as aforesaid to the said David Ware, with the interest due thereon, and your orator well hoped that he the said Richard Waddington would have complied with such reasonable request, as in equity and in good conscience he ought to have done, but which he absolutely refuses to do, and he at times pretends that the said farm which was formerly Ann Hall's, was sold to said Joseph Black and Job Black, free and clear of the charge thereon in favor of the said Martha Hall, under the said last will and testament of the said Ann Hall, deceased, and that no such bonds as your orator has described, were ever given by the said Joseph Black and Job Black, and that if said bonds were given they were paid by the said Joseph Black and Job Black or either of them, and that he the said Richard Waddington, did not purchase the said farm subject in whole or in part for the payment of the said bonds or any of them, and that he, the said Richard Waddington, never paid the interest of said bonds to said Rebecca Ware, nor to any one for her, and that he the said Richard Waddington, did not agree to indemnify the said Joseph Black, or his heirs, executors, or him them or any of them against the payment of said bonds, and that after the death of the said Martha Hall, that he the said Richard Waddington, never paid the said bonds or any of them, and at times the said Richard Waddington, also pretends that he the said Richard Waddington, has paid all of the said bonds, among which he has paid the bond so held by your orator. Whereas your orator charges the contrary thereof to be the truth and that the said Richard Waddington, purchased the said farm from the said Joseph Black, with the full knowledge of the charge thereon, under the said last will

and testament of the said Ann Hall, deceased, and with the full knowledge of the reservation of a portion of the said purchase money by the said Joseph Black and Job Black, and the issue of the said bonds therefore all hereinbefore mentioned and set forth, and that the said Richard Waddington, purchased the said farm from Joseph Black, with the knowledge that the said farm was encumbered with certain of said bonds, among which was the bond of your orator, that the said Richard Waddington, paid the interest annually upon the said bond of your orator together with the interest upon the other said bonds, and that after the said bonds became due, they were paid by said Richard Waddington to their respective obligees or their legal representatives, with the exception of the bond so given as aforesaid to the said David Ware, which said bond your orator expressly charges has never been paid to said David Ware, or to his legal representatives, or any of them or to the said Rebecca Ware, or to her legal representatives, or any of them, and that there is still due upon said bond the whole amount of principal beside interest from March 25th, one thousand eight hundred and seventy-two.

All of which actings and pretenses of the said defendant Richard Waddington, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are properly cognizable and relievable.

To the end therefore that the said Richard Waddington and Mary Ann his wife, may upon their several and respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid. And that the said bond so given to the said David Ware as aforesaid, may be decreed to be a lien upon the said farm that once belonged to the said Ann Hall, deceased, and that the said Richard Waddington may be decreed to pay unto your orator by a short day to be appointed by this

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honorable court, the amount found due unto your orator upon said bond together with your orator's costs and charges in this behalf expended; and that on failure thereof the said farm and premises that belonged to said Ann Hall, (Sr.), or a sufficient portion thereof may be sold to pay unto your orator, the money so due and owing to him as aforesaid, and his costs and charges. And that your orator may have such further or other relief in the premises as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator, the State's writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Richard Waddington and Mary A. his wife, commanding them and each of them by a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises and to stand to and abide by and perform such order and decree therein, as your Honor shall seem meet and shall be agreeable to equity and good conscience, and your orator in duty bound will ever pray, &c.

W. T. HILLIARD,

Solicitor for and of Counsel with Complainant.

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## Answer of Richard Waddington and ux.

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The joint and several answer of Richard Waddington and Sarah B., his wife, to the bill of complaint of I. Oakford Acton, administrator of all, &c., the goods, &c., which were of David Ware, deceased.

These defendants now and at all times hereafter saving and reserving to themselves all, and all manner of advantage of exception to the many errors and insufficiencies in the complainant's aforementioned bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised, are necessary and material for 10 them to make answer unto, they make answer and say :

That they have been informed and believe and admit to be true that one Ann Hall, widow of Joseph Hall, was, in her lifetime, seized of an estate in fee simple in the farm in Elsinboro township, Salem county, New Jersey, referred to in the said bill of complaint.

And these defendants, further answering, say that they have no knowledge, information or belief as to the time of the death of said Ann Hall, except so far that she died many years before these defendants had any interest in said farm, 20 nor have these defendants, or either of them, any knowledge or information or belief as to the terms of her will, except that the yearly sum of One Hundred and Sixty-eight Dollars was, for many years, paid to and for the use of Martha Hall, daughter of said Ann, by Joseph Black and Job Black, afterwards by Joseph Black, and afterwards at the request of said Joseph Black, and for him by this defendant, Richard Waddington, and these defendants leave the said complainant to make such proof of the said last will, and of the terms thereof, as he may be advised is necessary : 30

And these defendants, further answering, admit that said Ann Hall and Joseph Hall had children, Margaret Denn,

(wife of John Denn), William Hall, Rebecca Ware, Ann Hall, (wife of David Hall), Edward Hall, James Hall and Hannah A. Hall, and that David Ware, named in said bill, was the husband of said Rebecca Ware, and that Martha Hall, daughter of said Ann Hall, mentioned in said last will, was blind, but whether or not the said Martha was of unsound mind at the time she was mentioned in said will, and was under the age of twenty-one years, these defendants have no knowledge, information or belief, and leave the complainants to make such proof thereof as they may be advised is necessary in the premises :

And these defendants, further answering, say that they admit that, at or about the date named in said bill, there was a division made of said farm in the manner in said bill set forth of the particulars, of which these defendants have no other knowledge, information, or belief than is given by the records in said bill referred to, as these defendants had no interest in said farm until more than twenty-eight years after the said matters took place, but these defendants, and each of them, deny that said farm, or any part thereof, was subject to any charge imposed thereon by the last will of said Ann Hall, and that said farm was partitioned with knowledge of such charge :

And these defendants, further answering say, that as to the several conveyances set forth in said bill of complaint, and the terms thereof and the manner of making, acknowledging and recording the same, (namely, the several deeds in said bill alleged to have been made by Edward Hall to John Denn, on or about March 9th, Eighteen Hundred and Twenty one, and by James Hall to David Hall, on or about the Nineteenth day of September, in the year Eighteen Hundred and Twenty-two), these defendants, and each of them, have no knowledge, information or belief, except such as is given by the records in said bill referred to, and these defendants deny that said conveyances, or either of them, was subject to any lien or charge under the said last will of said Ann Hall, or that said conveyances, or either of them was, or were, made with notice of any such change :

And these defendants further say, they have no knowl-

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edge, information or belief as to the conveyance in said bill alleged to have been made by Edward Hall to Willism Hall, and that they deny that if any such conveyance was made, that such conveyance was made subject to any charge under the last will of said Ann Hall as set forth in said bill:

And these defendants, further answering, say that they had been informed that Morris Hall, as attorney for some of Ann Hall's children, or their grantees, had executed a deed or deeds to Joseph Black and Job Black, conveying some portions of the aforementioned Elsinboro farm, but as to when 10 or how made, or for what consideration or specifically what said deed conveyed, these defendants, except so far as the records referred to give notice, have neither information, knowledge or belief:

And these defendants, further answering, say that they have been informed of the general fact that John Denn and Margaret, his wife, David Ware and Rebecca, his wife, and other parties named in said bill of complaint, had conveyed their interests in said Elsinboro farm to Joseph and Job Black, but as to when said deeds were made, and specifically 20 what was thereby conveyed, and for what consideration, and what was excepted therefrom, these defendants, except so far as the records referred to give notice, have neither knowledge, information or belief.

But these defendants deny that the grantors in the two deeds last aforementioned, in any manner recognized any right and interest of Martha Hall, as charged upon the said farm by the will of Ann Hall, or otherwise, howsoever.

And these defendants deny that William Hall, Rebecca Ware and the other persons named in said bill did, at the 30 time of said conveyances to said Joseph and Job Black, agree that there should be reserved from their respective shares of the purchase money of the said farm so sold by them, the sum of Two Thousand Eight Hundred Dollars, representing seven shares of Four Hundred Dollars each, the interest of which should be applied to support of said Martha Hall as long as she might live, and say that they had heard the general fact that certain bonds had been given by said Joseph and Job Black to each of the said Hall children, amounting

to Twenty-Eight Hundred Dollars in all, being conditioned for the payment of Four Hundred Dollars each, with interest as set forth in said bill of complaint, and that the bond given to William Hall was conditioned for the payment of Eight Hundred Dollars, but whether or not the said moneys were purchase moneys of said farm, these defendants had no knowledge, information or belief, and these defendants, further answering, say that the aforementioned conveyances to the said Joseph Black and Job Black do not, nor does any of  
 10 them in any way, show or state, nor do the said bonds or any of them, show or state that said bonds, or any of them, were given to secure the purchase money of the said farm, or of any portion thereof.

And these defendants, and each of them, deny that at the time named in the said bill, or at any other time, the said David Ware did reduce into his possession the debt referred to in said bill as secured to his wife, Rebecca Ware, by the obligation given to her by said Joseph and Job Black, and they further deny that said David Ware, in any way or man-  
 20 ner, became entitled to the said debt, so, as aforesaid, owing from said Joseph and Job Black to said Rebecca Ware, or to the obligation above referred to, which was evidence of said debt, and they deny that the said Joseph and Job Black, issued or delivered to said David Ware, either the same or any such or like obligation, as that whereof a copy is pretended to be set out in said bill of complaint, purporting to bear date on the Thirty-first day of March, Eighteen Hundred and Thirty-seven, and to have been made by said Joseph Black and Job Black to said David Ware, and further deny  
 30 that any such bond, in any way or manner, represents the bond given as above named, to said Rebecca Ware, wife of said David Ware, and further answering, say that these defendants, and each of them, never had any knowledge, information or belief in any way, touching or concerning any such reduction of the said debt, or bond, owing by said Joseph and Job Black to said Rebecca Ware into the possession of said David Ware, by said David, until so informed by the allegation of the same (if such allegation be true, which these defendants deny) by and in the said bill of complaint,

and that these defendants never had any knowledge, information or belief touching or concerning the issue, or making by said Joseph and Job Black of any such bond to David Ware, as in said bill is referred to, or of any similar bond or of any bond to said David Ware, or that anyone claimed or pretended that David Ware had reduced the said bond, owing to his wife, by said Joseph Black and Job Black, into his (said David's) possession, and had received from said Joseph and Job Black any bond or obligation of the purport, or of like purport, or of any such intent as that set forth in said 10 bill of complaint.

And these defendants, further answering, say that they had information of the general fact that Job Black had conveyed his undivided half part of the said Elsinboro farm to his said brother, Joseph Black, but had no information, knowledge or belief regarding the consideration, or other incidents of said conveyance, except so far as the record referred to may have given notice of the same, but they deny that the said conveyance by Job Black to his brother, Joseph Black, was made with knowledge of any charge on said farm, 10 under the will of Ann Hall, and of any agreement and reservation of Two Thousand Eight Hundred Dollars of the purchase money by the heirs of said Ann Hall, on sale of said farm to said Joseph and Job Black, and of any issue of bonds therefor, as set forth in said bill, and further deny that there was any such like charge under said will, or any such or agreement or reservation of purchase money, or any such issue of bonds for said purchase money, as is set forth in said bill of complaint, and further deny that said conveyance by said Job Black to Joseph Black was subject to 30 any equities whatsoever under any such charge or reservation, as set forth in said bill of complaint.

And these defendants, further answering, admit that on the Twenty-third day of March, Eighteen Hundred and Forty-nine, the said Job Black, conveyed to this defendant, Richard Waddington, the said Elsinboro farm and other lands, and that said deed was acknowledged and recorded as set forth in said bill of complaint, and also that this defendant, Richard Waddington, entered into possession of

said farm, and still holds the same as set forth in said bill of complaint.

And these defendants, further answering, say that they deny that this defendant, Richard Waddington, had full knowledge or any knowledge of any charge on said farm under the said will of Ann Hall, deceased, or of any reservation of purchase money at the time of the conveyance by the heirs of Ann Hall, deceased, to Joseph and Job Black, as set forth in said bill, and further deny that said Richard  
10 Waddington had full knowledge, or any knowledge, that said farm so conveyed to him, was conveyed as encumbered by one annuity bond given to William Hall for Eight Hundred Dollars, one to Rebecca Ware for Four Hundred Dollars, one to John Denn for Four Hundred Dollars, one to Hannah Hall for Four Hundred Dollars, amounting altogether to Two Thousand Dollars, given by Joseph and Job Black, on or about the Thirty-first day of March, Eighteen Hundred and Twenty-six, payable with interest on the day of the death of  
20 Martha Hall, daughter of Joseph and Ann Hall, and which still remains in force as set forth in said bill of complaint. And they further deny that there was any such charge on said farm or any such reservation of said purchase money, or that said farm was encumbered by the said bonds, as set forth in said bill of complaint.

And these defendants, further answering, say that they admit that the interest of the said annuity bonds were duly paid as set forth in said bill of complaint by said Joseph Black and Job Black, and by said Joseph Black, and further say that they admit that this defendant, Richard Wadding-  
30 ton, did deliver certain interest moneys, (the amount whereof these defendants, and each of them, cannot presently date for want of knowledge thereof), yet these defendants deny that any such payments were made by said Richard Waddington for himself, and declare and aver that all and every of them were made for and in behalf and at the request of the aforementioned Joseph Black and his legal representatives.

And these defendants, further answering, say that they admit that said David Ware departed this life at the time named in said bill of complaint, but these defendants deny

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that said David died intestate, and aver that as these defendants are informed and charge to be true, the said David left, at the time of his death, his last will and testament duly made and published and unrevoked. And these defendants further admit, that said Rebecca Ware survived her said husband, and has departed this life, but at what precise date, these defendants are not informed, except by said bill of complaint; and they admit, also, that said Job Black died at or about the time named in said bill, but they are not informed as to the precise date of the death of Martha Hall, 10 nor whether she survived all of her brothers and sisters, and as to these matters, pray that the complainant may make such proof thereof as may be necessary in the premises.

And these defendants further answering say that they admit that the said Joseph Black died about the time named in said bill, having first duly made and published his last will, and that he appointed George M. Ward and Edward Black, and the survivor of them, executors thereof, and these defendants further say that said George M. Ward and Edward Black duly proved the said will and undertook the execution 20 of the same, but these defendants and each of them deny that this defendant, Richard Waddington, did make and execute to the executors of said Black a bond, conditioned that said Waddington should indemnify and save harmless the heirs and executors of said Black, from the annuity bonds thereto mentioned in said bill of complaint (except as hereinafter set forth as to the bonds of Ann Hall and James Hall), given by said Joseph and Job Black, and payable on the death of said Martha Hall, and further expressly deny that said Waddington gave any such bond indemnifying from the annuity bonds 30 in said bill before named, given by said Joseph Black and Job Black to said Rebecca Ware and afterwards to said David Ware as is alleged in said bill of complaint, and said defendants, and especially said Richard Waddington, answer, aver and declare that they and he never heard or knew of the existence or making of such bond (if any such there ever was or is) alleged to have been given as named in said bill, to David Ware by said Joseph and Job Black, until these defendants and said Richard Waddington were informed since said bill

was filed, that it was therein claimed such a bond had been given.

And these defendants further answering say that they admit that said Richard Waddington has paid the sum of eight hundred dollars to Clement H. Sinnickson, Esq., attorney for the heirs of William Hall, the amount of the bond due from said Joseph Black and Job Black to said heirs, but these defendants and each of them aver and say that said payment was made at the request of the legal representatives of said  
10 Joseph Black, and for them and in their behalf.

And these defendants further answering say that they deny that there was or is any such bond given to said David Ware as is in said bill alleged, and that any sum of principal or interest is due thereon, and aver the truth to be that all the moneys, principal and interest which the said Joseph and Job Black, or one of them, owed upon the said several bonds given by them to the said children of Ann have been fully paid and satisfied. That for many years the interest on the said bond given to Rebecca Ware was paid by said Joseph  
20 Black and Job Black, that these payments were made yearly, as these defendante are informed and charge to be true, and were made not upon any bond held by David Ware, but upon the bond originally given by said Joseph and Job Black to Rebecca Ware, that as these defendants are informed and believe the said interest moneys were paid on said Rebecca Ware's bond up to eighteen hundred and forty-nine, by said Joseph and Job Black, or one of them, and after that time for a number of years by said Joseph Black. After this defendant, Richard Waddington, had owned said farm a number  
30 of years, this defendant, Richard Waddington, at the request of said Joseph Black, and in his behalf, paid said interest on said Rebecca Ware's bond, and after said Joseph Black's death, at the request of his executors, George M. Ward and Edward Black, or one of them, and in their behalf and stead, this defendant continued to pay said interest.

And these defendants further answering, deny that the said supposed bond given to David Ware (if any such there be) represents any part of the purchase money of the said farm, and further deny that the said supposed bond or any

moneys supposed to be secured thereby should be considered in any way a purchase money lien on said farm or on any part thereof, or as against the said Joseph and Job Black, or either of them, or against these defendants or either of them.

And these defendants, further answering, say that they are informed, and believe and charge it to be true, that at the time when this defendant, Richard Waddington, bought said Elsinboro farm in eighteen hundred and forty-nine, this said defendant, Richard Waddington, was informed by said Black, that a portion of the purchase money which this defendant had agreed to pay to said Black for said farm, amounting to the sum of two thousand dollars, would have to remain unpaid until the death of Martha Hall. That this defendant Richard Waddington thereupon gave this defendant's bond to said Black, conditioned to pay interest annually on said sum to said Black and the principal to him on the death of said Martha Hall. That for some six or eight years afterward, this defendant paid said interest to said Black, and that about the year eighteen hundred and fifty-six, at said Black's request and for his convenience and in his behalf, this defendant, Richard Waddington, paid the interest aforementioned to Rebecca Ware, to whom, with other children of Ann Hall, said Black stated he had theretofore been paying a yearly interest amounting to the same sum, and after the death of said Black, his executors, George M. Ward and Edward Black, or one of them, made the same request, and in compliance therewith and in behalf of said Joseph Black, in his lifetime, and of his executor aforementioned after his death, this defendant paid said interest to said Rebecca Ware for herself, and other Hall children, for the support of said Martha Hall. 30 That about the year eighteen hundred and sixty, the said Black paid to this defendant eight hundred dollars, stating that said sum was the principal of moneys payable to Ann and James Hall, on which said Joseph had been theretofore paying the interest for the benefit of said Martha Hall, and at said Black's request this defendant accepted the said money and gave said Black an indemnity bond, that this defendant would save said Black or his legal representatives harmless from any claims of said Martha for interest, or James



IN CHANCERY OF NEW JERSEY.

BETWEEN

I. OAKFORD ACTON,

Administrator, &c., of

DAVID WARE, Dec'd,

Compl't.

AND

RICHARD WADDINGTON,

et ux.

Deft's.

On Bill for Relief.

Testimony on Part  
of Complainant.

SIR:—

Please take notice that testimony will be taken on behalf of the Complainant in the above-named cause, on Monday, the twenty-third day of November, A. D., 1885, at ten o'clock in the forenoon of that day, before Morris H. Stratton, Esq., one of the Masters and Examiners of this Court, at his office in the city of Salem, New Jersey.

Your obt. servant,

W. T. HILLIARD,

Sol'r of Compl't.

Dated Nov. 12, 1885.

To M. P. GREY, Esq.

Sol'r of Deft's.

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IN CHANCERY OF NEW JERSEY

I hereby acknowledge service of the within notice, this  
12th day of November, A. D., 1885.

M. P. GREY,  
*Sol'r for Deft's.*

I have this date that testimony will be taken on  
behalf of the complainant in the above named cause, on  
Monday, the twenty-third day of November, A. D., 1885, at  
ten o'clock in the forenoon of that day, before Judge H.  
Stanford, one of the Justices and Examiners of this  
Court, at his office in the city of Newark, New Jersey.

W. T. HILLIARD,  
*Sol'r of Complain't.*

Dated Nov. 12, 1885.  
To M. P. Grey, Esq.,  
City of Newark.

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Testimony taken before Morris H. Stratton, one of the Masters and Examiners of said Court, on notice acknowledged &c., at his office, in Salem, N. J., on Monday, November 23, A. D., 1885.

Present, W. T. Hilliard, Sol'r of Complainant, and M. P. Grey, Sol'r of Defendants.

Complainant's Solicitor offered in evidence notice of taking of this testimony and acknowledgment of service, which I marked exhibit A for Complainant.

And then letters of Administration of the Complainant, I. 10  
Oakford Acton, which I have marked exhibit B for Complainants.

And next certified copy of the Will of Ann Hall, deceased, which I have marked exhibit C for Complainant. Will dated December 2, 1819, recorded in Book B of Wills, page 399, in Surrogate's Office of Salem county.

Complainant's Solicitor then offered in evidence the original Book B of letters of Guardianship, under 21 years, of the Salem County Surrogate's Office, containing, on page 12, copy of Guardianship Bond of Martha Hall's guardian, Wil- 20  
liam Hall, for the purpose of showing that said Martha Hall was, at the date of said Bond, a lunatic infant above the age of 14 years. Bond dated June 11, 1821, which I have marked exhibit D for Complainant.

He also offered certified copy of the partition and maps of the division of the farm of Ann Hall, dated the 5th day of March, 1821, recorded in Book D of Divisions, page 49, Salem County Surrogate's Office, which certified copy I have marked exhibit E for Complainant.

He next offered in evidence certified copy of Deed of 30  
Edward Hall to John Denn, dated the 9th day of March, A. D., 1821, recorded in Salem County Clerk's Office, in Book Y of Deeds, folio 295, which certified copy I have marked exhibit F on part of Complainant.

Complainant's Solicitor then offered in evidence certified copy of a deed from James Hall to David Hall, deceased, dated September 19, 1822, and recorded in Salem County Clerk's Office, Book A A of Deeds, page 214, which certified copy I have marked exhibit G on part of Complainant.

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The receipts endorsed on exhibit J for the years 1861, 1862, 1863, 1864. Shown witness, she is asked :

“Do you know the signatures of those four receipts?” She answers, “yes; they are the signatures of my mother, Rebecca Ware.”

Receipts endorsed on exhibit J for 1850, 1851 shown witness. She is asked : “Do you know the signatures to those two receipts, and, if so, whose are they?” She answers “yes : they are the signatures of my mother, Rebecca Ware.”

10 Receipts endorsed on exhibit J for September, 18, 1872, shown witness. She is asked : “Whose signature is that?” She answers : “It is mine.”

Richard Waddington paid me the money covered by that receipt of September 18, 1872, at my home in Delaware City.

He paid me at that time one hundred and sixty-eight dollars, of which this receipt represents twenty-four dollars. I had the other bonds in my possession at the time, and signed receipts on the bonds and in his receipt-book for the whole \$168.00.

20 My aunt Martha died before the next payment became due. This was the last receipt of interest on the bond.

Q. What were the names of the parties to whom the other bonds securing this income to Martha Hall were drawn?

Question objected to on the ground that contents of written instrument cannot be proved in this mode.

Objection overruled.

Appeal.

M. H. STRATTON.

April 15, 1886.

30 Ans. The names of the other parties were: John Denn, William Hall, Edward Hall, James Hall, Ann Hall, Hannah Orton.

Hannah Orton's name before marriage was Hannah Hall.

Q. What was the principal sum of each of these bonds?

Objected to for reason last above given.

Objection overruled.

Appeal.

M. H. STRATTON.

April 15, 1886.

Ans. Four hundred dollars each.

Q. What has become of these bonds now?

Ans. They were all paid except the one now here. I don't know this personally. I have heard that they were paid.

Answer objected to as hearsay.

Objection sustained.

No appeal.

M. H. STRATTON,  
Examiner.

10

After the death of Martha Hall, this bond, exhibit J, was the only one in my possession. It went from my possession to that of William Ware, my brother.

Exhibit J is the only bond representing my mother's share that I ever saw.

The principal of this obligation has never been paid to me nor to anyone for me.

My aunt Martha paid board to my mother and to myself. 20  
It was paid by means of this one hundred and sixty-eight dollars a year.

I was born in eighteen hundred and twelve. I do not remember when this bond was given.

Cross examined by Mr. Grey.

All the signatures on exhibit J, purporting to be those of Rebecca Ware, are Rebecca Ware's signatures.

Q. You have said in your examination in chief: "I had all the other bonds at the time Waddington paid me the money named in the receipt dated September 18, 1872." Is 30  
that correct?

I had no bonds but this one, exhibit J. My statement was a mistake. I never had in my possession these other bonds. Each one of the heirs held their own bonds. I never saw the bonds of the other heirs.

Mr. Grey, for the Defendant, here moves that the testimony of this witness above given as to the contents of bonds, which she now says she never saw, be stricken out.

Motion granted.

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No objection.

M. H. STRATTON,  
Examiner.

Sworn and subscribed before }  
me, this fifteenth day of } ANNIE B. WARE.  
April, A. D., 1886. }

M. H. STRATTON,  
M. C. C.

10 Amelia M. Ware, witness, produced on part of the Complainant, being duly sworn, says :

I am the widow of William H. Ware. He was the brother of the last witness. My husband was executor of the last will of Rebecca Ware, the mother of the last witness. I know the bond, exhibit J, produced in this case. I have seen it before. It was among my husband's papers at the time of his decease.

It was in the Fidelity Safe Deposit until I sent it to Mr. Acton, the Complainant in this suit.

20 Sworn and subscribed before }  
me, this April 15, A. D., } AMELIA M. WARE.  
1886. }

M. H. STRATTON,  
M. C. C.

Further taking of testimony resumed at my office, pursuant to agreement between Complainant and the Solicitor of Defendant, on the 23d of October, A. D., 1886, in presence of the Complainant.

M. H. STRATTON,

30 Master and Examiner in Chancery of New Jersey.

George R. Morrison, witness, produced on part of complainant, being duly sworn, deposes, and says :

I am surrogate of the county of Salem. I know that letters of administration have been granted upon the estate of David Ware. The records of my office show that such letters were granted on the ninth day of December, A. D., 1839, to Rebecca Ware and Samuel Ware. Letters of administration have since been granted by me, to I. Oakford Acton, on the same estate.

Sworn and subscribed before me, }  
this October 23, 1886. } GEO. R. MORRISON.

M. H. STRATTON,

M and Ex. C. C.

Alfred Bilderback, a witness, produced on the part of complainant, being duly sworn, deposes, and says :

I reside in the city of Salem, New Jersey. My mother's maiden name was Margaret H. Denn. Her father's name was John Denn. My mother's mother was a daughter of 10  
Joseph and Ann Hall, of Elsinborough township, in Salem county. My grandfather, John Denn, had, in his lifetime, a certain bond for four hundred dollars, on which Richard Waddington, the defendant in this suit, used to pay interest. I am as positive as I can be of anything that I did not, myself see, that that bond was given by Joseph and Job Black, and was one of a series of seven of which the others were held by my granduncles and aunts. Richard Waddington has talked with me about these bonds, and has told me that they were made by Joseph and Job Black. 20

After the death of Martha Hall these bonds became due and payable. My mother wrote to Richard Waddington and requested payment of the bond held by her. She received no answer to the letter, and I drove her out to see Mr. Waddington, and was present and took part in the conversation between them. Mr. Waddington at first refused to pay the bonds. After some conversation, he said that he would pay them if they were all brought to him at one time; but, finally, he again refused to pay at all. I asked him if he had not been paying interest on the bonds; he said he had. I asked 30  
him if he had not bought the farm subject to the payment of these bonds, and for twenty-eight hundred dollars less than it would otherwise have cost him? and he said that that was true, but that he did not believe the bonds could be collected. I then asked him if he did not consider it an honest debt? and he said he did. I then used these words: "Then, Mr. Waddington, you won't pay an honest debt unless you are forced to?" He answered me that he would not. I particularly remember this, for I never heard any man—before

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or since—say this. This was the end of our conversation. I told him that we would collect the money if we could, and we left.

I know that my mother gave the bond held by her to George Ward for collection, and that Richard Waddington afterwards paid it.

Sworn and subscribed before } ALFRED BILDERBACK.  
me, this October 23, 1886.

M. H. STRATTON,

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M. and Ex. C. C.

I Oakford Acton, witness on part of complainant, being duly sworn, deposes, and says:

I am the complainant in this suit and administrator of David Ware, deceased. Before I took out letters of administration on the estate of said David Ware, I satisfied myself, by diligent inquiry, that the former administrators of David Ware, appointed December seventh, A. D., 1839, Rebecca Ware and Samuel Ware, were both deceased; that Samuel  
20 Ware died a few years after the date of his appointment, and that Rebecca Ware died about one year before the death of Martha Hall, namely, December 25, A. D., 1872.

The bond which is the basis of this suit was in my hands for collection before I took out said letters of administration, and I notified Richard Waddington, the defendant, of that fact and requested him to pay the same, but received no answer to such request.

The bond was placed in my hands for collection by heirs of David Ware, deceased. I am an Attorney and Counselor-  
30 at-law and Solicitor in Chancery of New Jersey.

Sworn and subscribed before } I. OAKFORD ACTON.  
me, this October 23, A. D., }  
1886.

M. H. STRATTON,

M. and Ex. C. C. of N. J.

Alfred Bilderback, witness, heretofore sworn in this cause, is produced for cross-examination at my office by consent, February 5, A. D., 1887, in presence of complainant, and of M. P. Grey, counsel for defendants.

The series of bonds referred to in my examination was given by Joseph and Job Black. The Martha Hall referred to was unable to take care of herself; was weak-minded.

The conversation I had with Mr. Waddington was with reference to the payment of the Joseph Black and Job Black bond, which my mother held. The bond that we asked him to pay was the bond given by Joseph and Job Black—one of the series—and it was this bond of Joseph and Job Black that Mr. Waddington refused to pay.

The George Ward to whom my mother gave the bond for 10 collection was executor for Joseph Black, one of the obligors in the bond.

I don't know personally that Mr. Waddington paid this bond. I know that we got the money. We got the money from George Ward.

Sworn and subscribed before }  
me, this February 5, A. } ALFRED BILDERBACK.  
D., 1887.

M. H. STRATTON,

M. C. C.

20

Complainant here offers in evidence certified copy of abstract of a mortgage from Richard Waddington to Joseph Black, dated March 23, A. D., 1849, (2) certified copy of an account of Edward Black and George M. Ward, being their first and final account as executors of Joseph Black, deceased, filed in the office of the Surrogate of Salem county, and allowed at the April Term, A. D., 1864, and (3) certified copy of an inventory of goods, &c., of Joseph Black, deceased, which I have marked respectively exhibits O, P and Q for complainant.

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And Complainant thereupon announced that his testimony was closed February 5, A. D., 1887.

M. H. STRATTON,

Master and Examiner in Chancery of New Jersey.

The following is a list of the witnesses sworn and affirmed in the above examination, with reference to the pages on which their examination respectively commences:

| Names of witnesses.           | Beginning on page. |
|-------------------------------|--------------------|
| Benjamin F. Wood,             | 4                  |
| Jacob M. Lippincott,          | 6                  |
| Annie B. Ware,                | 6                  |
| Amelia M. Ware,               | 10                 |
| George R. Morrison,           | 10                 |
| Alfred Bilderback,            | 11                 |
| I. Oakford Acton,             | 12                 |
| Alfred Bilderback, (recalled) | 12                 |

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# EXHIBITS.

## *EXHIBIT C FOR COMPLAINANT.*

I, Ann Hall, (widow), of the township of Elsinborough, in the county of Salem and State of New Jersey, being of sound and disposing mind and memory, do make this, my last will and testament, in manner and form following, to-wit :

I give and bequeath to my four younger children, Edward, James, Hannah and Martha Hall, one good bed, bedstead and bedding, each and every of them.

I give to my daughter, Hannah Hall, one suit of curtains, the new carpet, all the draper linen, and a new mahogany bureau, to be paid for out of my estate. I give to my daughter, Martha Hall, one hundred and seventy-five dollars yearly, and every year during her natural life, to be paid out of the profits of my farm. I likewise give to my daughter, Hannah Hall, fifty dollars yearly, and every year until she arrives to the age of twenty-five years, to be paid out of the profits of the farm as aforesaid.

I give and bequeath to Esther Sanders, the bed, bedstead and bedding that she now uses to lie on.

After the payment of all my just debts and funeral expenses, I devise and bequeath all the residue and remainder of my estate, both real and personal, to be equally divided between Margaret Denn, William Hall, Rebecca Ware, Ann Hall, Edward Hall, James Hall and Hannah Hall, share and share alike.

Further it is my will, and I hereby request my friend, Morris Hall, to take the charge and superintendence of my daughter, Martha Hall, and provide a suitable place for her residence.

Lastly : I nominate and appoint Edward Hall and David Hall the executors of this, my last will and testament, hereby revoking all other wills by me made or intended to be made.

In witness whereof, I have hereto set my hand and seal, the second day of December, in the year of our Lord, one thousand eight hundred and nineteen.

Signed, sealed, pronounced and declared by the aforesaid Ann Hall, to be her last will and testament, in presence of  
SAMUEL HALL,  
ANTHONY KEASBY,  
ARTEMESIA KEASBY.

ANN HALL.



10

*State of New Jersey, Salem County, ss.:*

I, George R. Morrison, Surrogate of the County of Salem, do hereby certify the foregoing writing to be a true copy of the last will and testament of Ann Hall, as taken from and compared with the record thereof, in Salem County Surrogate's Office, in Book B of Wills, folio 399, &c.

20



In testimony whereof, I have hereto set my hand and seal of office, this nineteenth day of November, A. D., eighteen hundred and eighty-five. GEORGE R. MORRISON, Surrogate.

## EXHIBIT J FOR COMPLAINANT.

Being the following bond and receipts endorsed thereon, is printed for ready reference :

KNOW ALL MEN BY THESE PRESENTS : That we, Joseph Black and Job Black, of Elsinborough, in the county of Salem, New Jersey, are held and firmly bound unto David Ware, of Lower Penn's Neck, in said county and State, in the sum of eight hundred dollars, to be paid to the said David Ware, his certain attorney, executor, administrators and assigns. To which payment well and truly to be made, we bind ourselves, 10 our and each of our heirs, executors and administrators, jointly or severally, firmly by these presents, sealed with our seals, and dated the thirty-first day of March, in the year of our Lord, one thousand eight hundred and—————1837.

The condition of this obligation is such : That, if the above bounden Joseph Black and Job Black, their heirs, executors, administrators, or any of them, shall and do well and true, pay or cause to be paid unto the above-named David Ware, his certain attorney, executors, administrators or assigns, the just and full sum o- four hundred dollars on 20 the day of the death of Martha Hall, daughter of Joseph Hall and Ann Hall, with interest, payable on the 25th day of March, annually, without fraud or further delay, then the above obligation to be void or else to remain in full force and virtue.

|  |   |                        |    |
|--|---|------------------------|----|
| Sealed and delivered in<br>presence of | } | JOSEPH BLACK. { SEAL } | 30 |
| ALPHONSO L. EAKIN.                     | } | JOB BLACK. { SEAL }    |    |

Received March 25th, 1838, of Joseph and Job Black, twenty-four dollars, in bing in full for last year's interest on the within bond, by me; ~~Rebecca Ware~~, for David Ware.

REBECCA WARE.

Received March the 25th, 1839, of Joseph and Job Black, twenty-four dollars, it being in full for one year's interest on the within bond, by me. DAVID WARE.

Received February 28th, 1840, of Joseph and Job Black, the interest on the within bond for one year, it being twenty-four dollars. SAR-H H. WARE, for ~~REBECCA~~

REBECCA WARE.

Administratrix of David Ware, deceased.

10 Received March 5th, 1841, of Joseph and Job Black, the interest—the within bond for one year—full for one year. \$24.00. REBECCA.

Received March 5th, 1842, of Joseph and Job Black, the interest on the within bond, for one year, in full. \$24.00. REBECCA WARE.

20 Received March 25th, 1843, of Joseph and Job Black, the interest on the within bond in full. \$24.00. REBECCA WARE.

Received March 25th, 1844, of Joseph and Job Black, the interest on the within bond in full for one year. \$24.00.

JOHN HALL,

For Rebe— Ware.

30 Received March 25th, 1850, of Joseph Black, the interest on the within bond, in full up to the above date. \$24.00. REBECCA WARE.

Received March 25th, 1851, of Joseph Black, the interest on the within bond, in full for one year. \$24.00. REBECCA WARE.

Received March 25th, 1852, of Joseph Black, the interest on the within bond, in full for one year. \$24.00. REBECCA WARE.

Received March 25th, 1853, of Joseph Black, twenty-four dollars, interest in full on this bond. \$24.00. REBECCA WARE.

Received March 25th, 1854, of Joseph Black, twenty-four dollars, interest in full for this year.  
\$24.00. REBECCA WARE.

Received March 25, 1855, of Joseph Black, twenty four dollars, it being the interest in full for one year on this bond.  
\$24. REBECCA WARE.

Received March 24, 1856, of Richard Waddington, for 10 Joseph Black, twenty-four dollars, it being the interest in full on this bond for one year.  
REBECCA WARE.

Rec'd March 31st, 1857, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year.  
REBECCA WARE.

Rec'd March 30, 1858, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year. 20  
\$24.00. REBECCA WARE.

Rec'd April 5th, 1859, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on th— bond for one year.  
\$24.00. REBECCA WARE.

Rec'd April 4th, 1860, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year. 30  
\$24. REBECCA WARE.

Received 4th mo. 6th, 1861, from Richard Waddington, for Joseph Black, twenty-four dollars, interest on the within up to the 25th of March, 1861.  
REBECCA WARE.

Rec'd April 1st, 1862, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year.  
REBECCA WARE.

5-6  
 Rec'd March 23, 1863, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year.

\$24. REBECCA WARE.

Rec'd April 4th, 1864, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year.

REBECCA WARE.

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Rec'd March 29th, 1865, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond.

REBECCA WARE.

Rec'd March 28th, 1866, from the hands of Richard Waddington, for Joseph Black, twenty-four dollars, interest on this bond for one year.

\$24. REBECCA WARE.

20 Rec'd March 28th, 1867, of Richard Waddington, twenty-four dollars, interest on this bond for one year.

\$24. REBECCA WARE.

Rec'd April 4, 1868, of Richard Waddington, twenty-four dollars, interest on this in full for one year.

\$24. REBECCA WARE.

Rec'd April 12, 1869, of Richard Waddington, twenty-four dollars, interest on this bond in full for one year

30 \$24. REBECCA WARE.

Rec'd March 25th, 1870, of Richard Waddington, twenty-four dollars, interest on this bond in full for one year.

\$24. REBECCA WARE.

Rec'd April 1st, 1871, of Richard Waddington, twenty-four dollars, interest on this bond in full for one year.

\$24. REBECCA WARE.

Rec'd September 13th, 1872, of Richard Waddington, twenty-four dollars, interest on this bond in full for one year.

\$24. ANNIE B. WARE.

*EXHIBIT N FOR COMPLAINANT.*

*To whom these presents may come:* Whereas, Ann Hall, widow of Joseph Hall, deceased, by her last will and testament, did charge her farm in Elsinboro, Salem county, New Jersey, owned at this time by Richard Waddington, and on which he now resides, with a yearly encumbrance for the support of her daughter, Martha Hall, who was blind for and during her life; and did devise in the same will unto her seven children, Margaret, William, Rebecca, Ann, Edward, James and Hannah, her estate in fee, subject to the aforesaid encumbrance and other incidental expenses, payment of debts, &c.; and whereas, the above-named heirs and children of the said Ann Hall, deceased, did sell and convey unto Job Black and Joseph Black the above described farm, and did agree that there should be reserved out of their respective shares of the purchase money thereof altogether the sum of twenty-eight hundred dollars, the interest whereof should be applied to the support and maintenance of their said blind sister, Martha, during her life, agreeably to the will of their mother, Ann Hall, aforesaid, deceased; reference being had to said will to be found recorded in Salem Surrogate's Office, in Book B of Wills, folio 399, the same will more fully and at large appear; and whereas, in order to prevent all misunderstanding which might arise after a lapse of years relative to the mode or manner of discharging and paying off the said sum of twenty-eight hundred dollars to the parties aforesaid or their respective legal representatives upon the decease of the said Martha Hall, the said Job Black and Joseph Black did sign, seal and deliver unto each of the aforesaid parties a bond of four hundred dollars, (seven bonds in all), the interest thereon to be applied and paid over yearly by the said Job and Joseph Black, their heirs, executors, administrators or assigns, to the support of the said Martha Hall during her life, and at her decease the principal to be paid as aforesaid, together with the interest which had not been appropriated, and also the interest which might accrue after her decease until paid; and whereas, Job Black did afterwards sell to his brother, Joseph Black, his undivided interest

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in the above described farm subject to the encumbrance aforesaid charged thereon ; and whereas, the said Joseph Black did afterwards sell and convey unto Richard Waddington aforesaid, the same said described farm, subject also to the charge and incumbrance aforesaid ; and whêreas, the said Martha Hall hath lately departed this life, and one of the aforesaid described bonds, that which was given to Margaret Denn, wife of John Denn, senior, (the said Margaret and John Denn having died previous to the said Martha Hall), being now  
10 presented for payment by the children and heirs at law of the said Margaret Denn, deceased ; and whereas, the said Richard Waddington, present holder of the farm aforesaid, in compliance with his agreement to indemnify the estate of Joseph Black, deceased, has paid in to George M. Ward, acting executor thereof, the amount of said bond being four hundred dollars principal and twenty-seven dollars interest, and which said moneys have been paid over by him, the said George M. Ward, executor to the parties hereinafter named, who represents the said Margaret Denn, and who also represents the  
20 share of her son, John Denn, his said share of said monies being included ; the said John Denn having been absent from this State for many years, and it is not known whether he is living or not ; now we, Margaret Bilderback, Elizabeth B. Woodnutt, Anna Denn, children and heirs at law in part of Margaret Denn, dec'd, who was one of the devisees named in the last will of the aforesaid Ann Hall, dec'd. William Warner, guardian of Margaret R. Warner, a minor, only child of the said William Warner and Rebecca H. Warner, his wife, (dec'd), the said Rebecca being a sister of the said Elizabeth B., Margaret  
30 and Anna, and also a daughter of the said Margaret Denn, dec'd, do all hereby acknowledge to have received of George M. Ward, acting executor of the estate of Joseph Black, dec'd, the said sum of four hundred dollars principal and twenty-seven dollars interest (unappropriated and accrued thereon) in full discharge of the one of the bonds aforesaid recited, one-seventh of the whole sum originally reserved upon the sale of the farm aforesaid, and in full of all claims or charges that our said mother, Margaret Denn, ever had in her life time, or that we, her children and representatives have

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now, or may have against the farm now held by Richard Waddington, and on which he now resides, situate in Elsinboro, or the persons aforesaid, Job Black, Joseph Black, his heirs, executors, administrators, or against the said Richard Waddington of and in any sum of money or other matter or thing whatsoever in the one above recited bond contained, mentioned and expressed, so that neither we, the parties aforesaid, (nor our brother, John Denn, now supposed to be deceased and without leaving issue, we having received his share), our executors, administrators, or any of us at any time hereafter, shall or will ask, claim or demand any money further whatever, principal or interest or other thing in any manner whatsoever by reason or means of the said bond or any covenants therein contained, but thereof and therefrom and from all actions, suits and demands which we aforesaid, our heirs, executors, administrators, or any other party coming forward to represent our brother, John Denn, may have concerning the same, shall, from this time henceforth be utterly excluded and forever debarred by these presents.

In testimony whereof, we have set our hands and seals hereunto, dated this ninth day of June, in the year of our Lord, eighteen hundred and seventy-three.

And I, James M. Woodnutt, husband of the above-named Elizabeth Woodnutt, do ratify and confirm the doings and proceedings of my said wife, signified by signing and sealing my name hereto.

N. B.—The bond for Margaret Denn was given to her husband, John Denn.

|   |   |  |    |
|---|---|--|----|
| Signed, sealed and delivered<br>in my presence. | { | ELIZABETH B. WOODNUTT,<br>JAMES M. WOODNUTT,<br>WILLIAM WARNER,<br>Guardian, &c.,<br>ANNIE H. DENN,<br>MARGARET H. BILDERBACK. | 30 |
| EDWARD VAN METER.                               |   |  |    |

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*EXHIBIT M FOR COMPLAINANT.*

Being a deed from Joseph Black to Richard Waddington, is printed in part for more ready reference.

This indenture, made this twenty-third day of March, in the year of our Lord, one thousand eight hundred and forty-nine, between Joseph Black, of the township of Elsinborough, in the county of Salem, and State of New Jersey, party of the first part, and Richard Waddington, of the township, county and State aforesaid, party of the second part: Witnesseth, that the said party of the first part, for and in  
10 consideration of the sum of thirteen thousand and three hundred dollars, lawful money, \* \* \* \* hath granted, bargained, sold, &c., unto the said party of the second part, his heirs and assigns, the three following described tracts or parcels of land, all of which are situate in the said township of Elsinborough, in the county and State aforesaid, and bounded as follows, to-wit:

No. 1 \* \* \* Containing 8 acres of land, more or less. Conveyed by William J. Shinn, assignee, &c., to Joseph and Job Black.

20 No. 2 \* \* \* Containing about 112 acres, 2 roods, 23 poles, more or less.

No. 3 \* \* \* Containing 37 acres, 1 rood and ten perches, more or less.

Which two last described tracts of land comprised all that plantation and tract of land whereon the said Joseph Black now resides and were formerly the real estate of Joseph Hall, and Ann, his wife, and the chains of title of the same may be found in a certain deed for said tracts of land, made by John Denn and wife, David Ware and wife, William Hall and wife,  
30 and Hannah A. Hall, to the said Joseph Black and his brother, Job Black, (now deceased), and dated the thirtieth day of March, A. D., 1826, together with all and singular the buildings, improvements, &c.

\* \* \* \* \*

And the said Joseph Black, party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant, grant and agree to and with the said party of the

second part, his heirs and assigns, that he hath not done, or suffered to be done, any act or thing whereby the premises aforesaid are encumbered in title, saving and excepting one annuity bond given to William Hall for eight hundred dollars; one to Rebecca Ware for four hundred dollars; one to John Denn for four hundred dollars; one to Hannah Hall for four hundred dollars, amounting altogether to two thousand dollars, given by Joseph and Job Black, March 31, 1826, payable with interest on the day of the death of Martha Hall, daughter of Joseph and Ann Hall, and which still remain in 10 force; but that the same are conveyed to the party of the second part, his heirs and assigns, as freely and clearly as they were vested in the said party of the first part, his heirs and assigns.



IN CHANCERY OF NEW JERSEY.

*Between*

*I. OAKFORD ACTON,*

*Adm'r of David Ware, dec'd,*

*Compl't.*

*On Bill, &c.*

*AND*

*RICHARD WADDINGTON,*

*et ux.,*

*Def't's.*

Testimony taken by consent on behalf of the defendants in the above action, by Morris H. Stratton, one of the Masters and Examiners in Chancery in said State, at his office, in Salem, on Saturday, the second day of July, A. D., 1887, at eleven o'clock in the forenoon, in presence of the complainant and of Mr. M. P. Grey, Esq., Solicitor of the defendants.

Richard Waddington, a witness produced on part of defendants, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed, says :

I reside in Salem; I am one of the defendants in this suit; I am the owner of the farm, in Elsinboro, which has been referred to in the pleadings in this suit; I bought this farm of Joseph Black in the year 1847 or 1848; I don't know what I

paid him for the farm, I bought other lands with it; I paid thirteen thousand three hundred dollars for what I bought.

Q. In purchasing from Mr. Black what was the arrangement made by you with him for the payment of the purchase money?

A. I don't really remember all of it.

10 There was an arrangement made between Black and me that a portion of the purchase money should not be paid on the delivery of the deed. He said that he had given bonds for part of the money when he bought the farm, him and Job, his brother; I think he mentioned it to me before I purchased the property; I think he did, if I am not mistaken; I know he did afterwards; I think I had agreed with him as to the purchase before he mentioned it.

20 I gave Joseph Black my bonds for twenty-eight hundred dollars, that was money that he had given, bonds that he and Job had given in part payment for the farm; Job was Joseph's brother; there were two bonds given for this twenty-eight hundred dollars, one two thousand, the other eight hundred dollars.

I paid the interest on these bonds to Joseph Black for about nine or ten years; after that time I paid it to the heirs, I suppose, of Ann Hall; I paid it to these heirs at the request and suggestion of Joseph Black, and for him; I paid this interest to Becky Ware, Rebecca Ware; she is the person to whom Joseph Black told me to pay it.

30 After Joseph Black's death I paid the interest to Rebecca Ware at the suggestion and request of the executor of Joseph Black; I never knew David Ware, the husband of Rebecca Ware; he died about nine or ten years before I bought the farm; I never knew that David Ware had or claimed to have any bond from Joseph Black or Job Black.

Q. Did you ever know that David Ware, husband of Rebecca Ware, had reduced to his possession a bond of Joseph and Job Black to his wife, Rebecca Ware?

A. No, I did not.

Objected to on account of vagueness.

Objection overruled, as the question is founded on an allegation in the bill.

Appeal.

M. H. STRATTON,

July 2, 1887.

Examiner.

I never heard or knew anything about David Ware's holding the bond of Joseph and Job Black, on which this suit is founded, until this suit was brought. In making payments of interest for Joseph Black I understood that it was paid to Rebecca Ware for the use and maintenance of Martha Hall. I never understood, nor was I ever informed, that the principal of Rebecca Ware's bond was to be paid to David Ware or to his estate. When this bond was spoken of in my hearing it was always spoken of as Rebecca Ware's. Joseph Black was the only one that ever spoke about it that I remember. They might have spoken about it—the holders of the bond. Nobody, neither Joseph Black nor the holders of the bond, ever told me that the bond was payable to David Ware or to his estate. I paid the interest to Rebecca Ware until her death, at the request of Joseph Black or his representatives, and after Rebecca Ware's death to Anna B. Ware, Rebecca's daughter. I never agreed with either Rebecca Ware or David Ware, or David Ware's representatives, that I was under any obligation to them to pay them anything. I never had no dealing with them on my own account. I didn't know them all. The interest payments that I made were on the death of Joseph and Job Black.

When Joseph Black died his executors were George M. Ward and Edward Black, a nephew of his.

I never gave Joseph Black any other bond than the ones I have referred to—one for two thousand and one for eight hundred dollars.

When I came to pay these bonds I paid to George M. Ward, the acting executor here of Joseph Black, twelve hundred dollars and some interest—a little over twelve hundred. This was on the two thousand dollar bond. The twelve hundred that I paid to him was all lumped together at one time.

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That was the residue, the last of the money that I owed on the Joseph Black bonds. It was stated to me that that would pay the shares of Rebecca Ware, Hannah's, and the Bilderback, or Margaret Denn bond. I then paid the principal and interest, every dollar of it, that was owing on my debt to Joseph Black for the purchase money of the farm; I don't think I paid it all to George Ward. That was the final settlement of the money that I owed anybody for anything on account of the transaction with Joseph Black.

10 This was about thirteen or fourteen years ago.

If recovery is had against me in this suit, I will be obliged to that extent to pay in addition to the purchase money I agreed with the Blacks to pay.

CROSS-EXAMINATION.

///

I was seventy-five years old on the twenty-third day of last October; I have lived in this county ever since I was born; this Elsinboro farm of mine is the one formerly known as the Joseph and Ann Hall farm; the purchase money was paid in money as near as I can remember.

Q. Then your former statement was incorrect was it?

20 A. What was that?

Witness' testimony read to him. He says:

I didn't pay for it all then; I didn't understand your question. I don't actually remember how much of the purchase money I paid in cash at the time; I paid some in cash then, and some afterwards, but I went in debt for most of the farm.

Q. Was the amount paid in cash—the difference between the whole price and the twenty-eight hundred dollars referred to as secured by bonds?

30 A. I didn't pay this difference down in cash when I bought the farm; I don't remember how much I went in debt to the Blacks; I gave a mortgage to Joseph Black; I think about eight thousand; I won't speak positively about it; Joseph Black said that he and Job had given their bonds for the twenty-eight hundred dollars, and that he wanted me to pay that money; I think he said that this money was due at

the death of Martha Hall, and he couldn't pay it before, and had given bonds to that effect; he stated to me that at the death of Martha Hall the money was due to the heirs, to whom he had given the seven bonds, he and Job; if I heard the names called I could tell them; I remember William Hall, Edward Hall, Margaret Denn, (Edward Bilderback's widow represents her), Rebecca Ware, Hannah Orton, David Hall, William Hall and wife had two shares. I don't know, but I think these are not children of Joseph and Ann Hall, former owners of the farm; I didn't know Martha Hall. 10

Q. Then the consideration that you paid for this farm included the payment by you of these several debts owing by Joseph and Job Black to the Hall children, did it not?

Objected to because it is not made plain to witness by above question whether or not he is asked as to whether he had a personal obligation to pay to the Hall children.

Objection withdrawn on amendment of question, (by inserting the words "by you.")

"I owed the money to Joseph Black, and agreed with him to pay it." 20

A. It did. I began to pay interest on these bonds about nine or ten years after I bought the farm for Joseph Black; I paid the interest to the holders of the bonds. No, I am wrong; I paid it to Rebecca Ware; I didn't see all the bonds in Rebecca Ware's possession when I paid the interest; I took her word for it; I took her receipt in a book and sometimes on loose paper; Rebecca Ware sometimes came to Salem to collect the interest on these bonds; she would sometimes send me word that she was over here; I have seen some of these bonds, not all. 30

Q. Have you ever written interest receipts on such of the bonds as you have seen?

Objected to as to any bonds except the one in controversy, and named in the bill as belonging to complainant.

Question admitted. Objection overruled. Appeal.

M. H. STRATTON, Examiner.

July 2, 1887.

A. Some of them.

Exhibit K, on part of complainant, (bond given by Joseph and Job Black to Hannah Hall) shown witness. He is asked:

Q. Did you write the receipts for interest on this bond, from April 1, 1862, to September, 1872, inclusive?

Objected to as irrelevant, nothing to do with this case.

Objection overruled.

Appeal.

M. H. STRATTON, Examiner.

10 July 2, 1887.

A. I did, on the sheet annexed to the bond.

(Note: It appears that these receipts are on a sheet of paper annexed to the bond.

M. H. STRATTON,

Ex. C. C.)

Exhibit J, the bond in controversy, shown witness. He is asked:

Q. Did you write the receipts of interest on this bond and on the paper annexed thereto, dated March 31, 1857, March 30, 1858, April 5, 1859, April 4, 1860, April 1, 1862, and  
20 thence to September 18, 1872, inclusive, excepting the receipt of April 4, 1864.

A. Them's my handwriting; as to the receipts on the paper annexed to Exhibit K and on Exhibit J, I wrote the body of the receipts named and not the signatures. While I owned this farm and before the death of Martha Hall, I paid tax on the farm; I claimed deduction for debts; the twenty-eight hundred dollars was included in the deduction for debts;  
30 there was nothing said about it; I was appointed Trustee for two shares for Bill Hall, for eight hundred dollars; I never paid any tax for Martha Hall; I never paid any tax for Ann Hall's heirs.

Q. You said in your direct examination that you paid twelve hundred dollars and over to George M. Ward, executor, on the two thousand dollar bond; to whom and when did you pay the rest?

A. I don't recollect when I paid it; it was after the death of Martha Hall, pretty shortly after, within a few days after; I paid eight hundred dollars to Bill Hall, four hundred

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to Ed. Hall, or their representatives; I don't remember the names of the others to whom I paid; there was one other bond; there were seven bonds given by Joseph and Job Black, so he told me. I think it was George Ward who made the first application for payment of the bonds when Martha Hall was gone; I did not refuse to pay them; I did not pay them then; don't remember who next made application to me for payment.

Q. State the circumstances connected with the payment of the William Hall bond? 10

A. I paid that to Clem. Sinnickson, I believe; no, Edward Vanmeter paid that bond, I think; he was my attorney; Clement Sinnickson was attorney of William Hall; I believe, if I remember right, the twelve hundred dollars I paid to George Ward finished my payments; I paid that to him at his request; I have not got the bonds that I gave to Joseph Black; I don't know where they are; I have looked for them a little; I have not found them; I looked for these bonds but could not find them.

Re-examined by Mr. Grey. 20

I have been a farmer all my life until within eight years; since that time I have lived in town; George Ward, who has been referred to, was the executor of Joseph Black; Joseph Black died before Martha Hall two or three years; these payments on the bonds detailed above were all requested by George Ward, after the death of Joseph Black and of Martha Hall. I agreed with Joseph Black to pay the money that I owed him on account of the purchase money of the farm; I never agreed with Joseph Black to pay that money, or any part of it, on account of the money owed by Joseph and Job Black to the Hall children; if my testimony, on cross-examination, makes me appear to have stated that I agreed to pay this money to the Hall children, it is a mistake; I never agreed to pay it to the Hall children; I am still the owner of this farm; other lands have been added to it as it is presently used. 30

Exhibit J shown witness, the bond on which this suit is brought. He is asked :

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Q. Did you ever read that bond so as to see that it was payable to David Ware?

A. No, I didn't.

Q. Did you ever know that it was payable to David Ware?

A. Never.

Q. To whom did you understand, when you paid the interest money receipted on this bond and accompanying papers, and the principal money paid to Ward, twelve hundred and odd dollars, detailed above, that this bond, Exhibit J, was payable?

A. I always thought it was payable to Rebecca Ware.

Affirmed and subscribed before me, this July 2d, A. D., 1887. } RICHARD WADDINGTON.

M. H. STRATTON,

M. and Ex. C. C. in N. J.

Recalled and questioned by Mr. Acton, in presence of Mr. Grey.

Q. When and by whom were you first called on to pay this bond, as the bond belonging to David Ware's estate.

A. Nobody never done it except Mr. Acton, the complainant, at the beginning of this suit.

Affirmed and subscribed before me, this second day of July, A. D., 1887. } RICHARD WADDINGTON.

M. H. STRATTON,

M. and Ex. in C. C. in N. J.

# IN CHANCERY OF NEW JERSEY.

*Between*

*I. OAKFORD ACTON,*

*Adm'r of David Ware, dec'd,*

*Compl't.*

*On Bill, &c.*

*AND*

*RICHARD WADDINGTON,*

*et ux.,*

*Deft's.*

Testimony in rebuttal taken by consent on behalf of the complainant in the above action, by Morris H. Stratton, one of the Masters and Examiners in Chancery in said State, at his office, in Salem, on Saturday, August 27, A. D., 1887, at ten o'clock in the forenoon, in presence of Wm. T. Hilliard, Solicitor of Complainant, and of M. P. Grey, Solicitor of the Defendant, at which time George M. Ward, witness produced on behalf of complainant, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed, says :

10

I live in Salem, New Jersey; I have lived in the county since 1831: I was acquainted with Joseph Black, formerly resident of this county, the same Joseph Black that formerly owned the farm that Richard Waddington now owns, in the township of Elsinboro; I was one of the three executors to his will; I know Richard Waddington, now the owner of the Joseph Black farm. The other executors of Joseph Black resided out of this county, one of them in the

city of New York, one of them in Monmouth county. I was the acting executor of that will, the one that did the business in the settlement of the estate; I was aware of the existence of certain bonds given by Joseph and Job Black to the heirs of Joseph and Ann Hall; I never, either personally or as an executor of Joseph Black, asked Richard Waddington to pay the interest on said bonds; he paid it without being asked to the different parties.

Q. Was one of those bonds given to David or Rebecca  
10 Ware?

A. To Rebecca Ware alone, I think; her maiden name was Hall.

Q. Did Richard Waddington ever pay the principal of that bond to thee?

A. No.

Q. Did he ever pay to thee the principal of a bond given by Joseph and Job Black to David Ware?

A. No.

#### CROSS-EXAMINED.

I remember having some dealings with Richard Waddington  
20 with reference to the bonds of Joseph and Job Black to the heirs of the Halls; that was done through Edward Vanmeter; Edward Vanmeter was a counsellor-at-law in Salem, then living, since dead.

In the dealings I had with Richard Waddington he never, either directly or indirectly, paid me one dollar; no one for him ever paid me any money with reference to the Black-Hall bonds; I have received money on account of these Black-Hall bonds that have been referred to; I never received payment of the bond of Rebecca Ware that has been referred  
30 to; I never received payment of the bond of David Ware that has been referred to; I never received payment of the share of Rebecca Ware as one of the heirs of Joseph and Ann Hall, either in whole or in part, from Richard Waddington or from anybody else, whether as executor of Joseph Black; nor in any other capacity.

I was somewhat familiar with the Hall heirs; I knew

Rebecca very well; I knew David in his lifetime—saw him die; I was acquainted with the relations of Joseph and Job Black to the Hall heirs. Up to the time of the death of Rebecca Ware I never knew that David Ware had a bond from Joseph and Job Black; I don't remember when I first found out that David Ware had a bond; I never understood, up to this day, that David Ware had such a bond.

Q. You supposed and believed that Rebecca's share was due and secured to her and not to David, did you not?

A. That was my impression. I am very sure that neither 10  
Richard Waddington, nor anyone for him, ever paid to me, in any capacity, the share of Rebecca Ware, as I understood it; I never received from Richard Waddington, or from anyone for him, money in which was included, as a part, the share of Rebecca Ware.

Q. Do you desire to make any explanation of your testimony?

A. I have no desire.

Subscribed and affirmed before me this August 27, 1887. } GEORGE M. WARD.

M. H. STRATTON, M. and Ex. C. C.

20

Complainant's Solicitor then offered in evidence order of limitation of creditors of Joseph Black, deceased, dated April 4, A. D., 1863, with proof of publication of the same, which I have marked Exhibit R for complainant. And further taking of testimony was adjourned to a time to be agreed on.

M. H. STRATTON, M. C. C.

Taking of testimony resumed at the same place, in presence of complainant and of M. P. Grey, Solicitor of defendant, on the first day of October, A. D., 1887, at which time A. H. Slape, witness produced on behalf of complainant, being duly sworn, says: 30

I am a practicing attorney in this State, residing in Salem; have been practicing law in Salem since eighteen hundred and sixty-one; I had once a bond in my hands for collection, given by Joseph and Job Black; this was a good while ago; I can't say how long.

eighty-one dollars and thirty-three cents; I received the same amount for Emeline Ridgway, another heir, and I think I received the same amount for William Hall, the third heir; I can't be certain as to the last, for I can't find my receipt of payment to him as I can of the other two.

Sworn and subscribed before me, }  
this October 1, A. D., 1887. } C. H. SINNICKSON.

M. H. STRATTON.

It is agreed, without proof, that Exhibit J for complainant is the bond that Mr. Slape had in his hands for collection, above referred to, and complainant announced that his testimony in rebuttal was closed.

M. H. STRATTON, M. C. C.

Testimony taken by complainant to sustain on his part testimony impeached and contradicted by defendant. Taken by consent before the same Master and Examiner at the same place, on the eighteenth day of February, A. D., 1888, in presence of complainant and of M. P. Grey, Solicitor of Defendant.

20 George M. Ward, a witness produced on part of complainant, who had been previously sworn in this suit, deposed and said:

I said in my previous testimony in this case that Richard Waddington had not paid me any of these bonds. I still say that that is true. None of the original bonds came into my hands. Edward Vanmeter paid those bonds.

Q. Did Edward Vanmeter also represent the executors of Joseph Black in those transactions?

A. Yes, he did.

30 Paper shown witness dated May 15, 1873, he is asked: Is that the receipt given by Edward Vanmeter to you as executor for Joseph Black for payment for services rendered, which paper I have marked Exhibit T for complainants?

Witness answers: It is.

There was a refunding bond left with Vanmeter, given by Richard Waddington to the estate of Joseph Black. Waddington told me that he never got it.

Q. Did you, after the close of your previous testimony, make the statement in presence of Mr. Grey and the Master,

of your belief that Waddington had paid the bond in suit in this case to Mr. Vanmeter?

A. I did not see him pay it, but I believed it. I said so at that time.

Sworn and subscribed before me, } GEORGE M. WARD.  
this February 18, A. D., 1888.

M. H. STRATTON,

M. and Ex. C. C.

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of your hotel that Washington had said the door to suit in  
this case so the Vannaters  
A. I did not see him pay it, but I believed it. I said so  
at that time.

Sworn and subscribed before me,  
this February 18, A.D. 1888.  
GEO. M. WARD,  
M. H. SHERMAN,  
M. and L. D. C.

Faint, illegible text, likely bleed-through from the reverse side of the page.

On the 1st day of October, A. D., 1887, at the close of complainant's testimony in rebuttal, at the same place, before the same Master, in presence of complainant, Defendant's solicitor offered in evidence letter and envelope of I. O. Acton, attorney for Ware heirs, to defendant, Richard Waddington, which I have marked Exhibit No. 1 for defendants. Also letter of William H. Ware to same defendant, dated April 27, 1876, which I have marked Exhibit No. 2 for defendants. Also letter of Samuel N. Ware to same defendant, dated May 20, 1881, which I have marked Exhibit No. 3 for defendants. 10

It is agreed, without proof, that the letters, Exhibits 1, 2 and 3 for defendants, are genuine, and that the signers of Nos. 2 and 3, William H. and Samuel N. Ware, are children of David and Rebecca Ware, and further taking of testimony was suspended.

October 1, 1887.

M. H. STRATTON, M. C. C.

On the 15th day of October, A. D., 1887, taking of testimony on part of defendant was resumed, by consent, at the same place before the same Master, in presence of complainant, by M. P. Grey, Solicitor of Defendant, when 20

BENJAMIN F. WOOD, witness produced on part of defendant, being duly sworn, says:

I knew Edward Vanmeter; was acquainted with his handwriting; I know George M. Ward; am acquainted with his handwriting and signature.

Paper shown witness, dated May 12, A. D., 1873, marked Exhibit No. 4 for defendant, and he is asked: In whose handwriting is the body of that instrument? He says: It is Edward Vanmeter's. The signature appended to it is George M. Ward's. 30

(Paper offered in evidence and marked Exhibit No. 4 for defendant).

I know George M. Ward; I have known him forty years and over; he has lived in this town over forty years, I think; he has been a prominent business man in the town during that time; I have been Mayor of this city; I am now Justice

of the Peace; I have been Justice of the Peace twenty years next May; I know the reputation of George M. Ward in this city as respects truth and veracity; the reputation of George M. Ward, in this city, as respects truth and veracity, is very bad; that is his general reputation in the community at large.

Sworn and subscribed before }  
me, this 15th day of October, } BENJAMIN F. WOOD.  
A. D., 1887.

M. H. STRATTON,

10

M. and Ex. C. C.

WILLIAM A. CASPER, witness produced on part of the defendant, being duly sworn, says:

My business is that of a farmer and auctioneer, partly one, partly the other; I have been engaged in the business of auctioneer about thirty-five years; during most of that period I have done the leading business as auctioneer; have done more of it than all the rest put together; I have been Sheriff of this county; was Sheriff for three years; I know George M. Ward; I have known him all my life pretty near;  
20 I am sixty years old; I am acquainted with his reputation as respects truth and veracity; his reputation as respects truth and veracity is bad; by "bad" I mean that I think he is one of the most notorious liars in the county of Salem in a business way; that is his reputation, that he is one of the most notorious liars in the county.

CROSS-EXAMINED.

I have never had any personal difficulties with Mr. Ward; he has never done any thing to me for which I bear malice to him; he has lied to me in a business way; I forgive him for  
30 what he has done; Mr. Ward failed some time back; made an assignment; I did not lose anything by it; any thing worth counting; I did lose my fees for two or three sales that I cried for him; I am not the attorney or manager of the real estate of Mrs. Robinson of this city; I have leased her farms for her in the past; when she wanted any advice in business matters and asked me about it, I would tell her

what I knew; before his failure, George M. Ward had charge of her affairs; I think he had.

Sworn and subscribed before  
me, this 15th day of October, } WILLIAM A. CASPER.  
A. D., 1887.

M. H. STRATTON,

M. and Ex. C. C.

By consent examination resumed November 5th, A. D., 1887; at the same place, in presence of M. P. Grey, the solicitor of the defendants; and of the complainant, by the 10 same master and examiner, when

EBENEZER DUNN, witness, produced on part of defendant, being duly sworn, says:

I live in the city of Salem; I have lived here forty some years; I am a grain and coal merchant; I have been in business here most of the time named; I have been mayor of this town; I know George M. Ward; I have known him for thirty or forty years; he is a well-known business man of this town and has been for some years; I am acquainted with his general reputation as regards truth and veracity in this community; his general reputation as regards truth and veracity is bad; I have no personal feeling against Mr. Ward; have had no personal differences with him; we are on the most friendly terms, individually; I have lived near neighbors, just across the street from him, for some twenty years. 20

Sworn and subscribed before  
me, this 5th day of November, } EBENEZER DUNN.  
A. D., 1887.

M. H. STRATTON.

M. and Ex. C. C.

30

It is admitted that the body of the receipt, exhibit No. 4 for defendant, is in the handwriting of Edward VanMeter, and that the signature thereto is the handwriting of George M. Ward, without further proofs.

I. O. ACTON, Adm'r., &c.

M. P. Grey for defendant, Richard Waddington, produced the letter of A. H. Slape to said Waddington which is referred to in above testimony of said Slape, dated May 5th, 1874, which I have marked exhibit No. 5 for said defendant, Richard Waddington, the genuiness of which letter is admitted by complainant without proof.

I. O. ACTON, Adm'r., &c.

10 On the eighteenth day of February, A. D., 1888, to which time the further taking of testimony had been postponed by consent, Mr. M. P. Grey announced, in the presence of complainant, that his testimony in this suit was closed.

M. H. STRATTON.

M. and Ex. C. C.

Feb. 18, 1888.

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*EXHIBIT No. 4 FOR DEFENDANT.*

Copy of George M. Ward's Receipt.

00 Rec'd May 12, 1873, of Richd Waddington, Twelve Hundred Dollars, three-sevenths part being the amount of three bonds of four hundred dollars each, given by Job Black and Joseph Black to Rebecca Ware, Margaret Denn and Hannah Hall—their shares which was reserved for the benefit of Martha Hall during her life; at her decease the principal to be paid to Rebecca, Margaret and Hannah or their respective legal representatives—a full release and discharge to be given by to-morrow, May 13, '73—as the acting executor of Joseph Black, dec'd. Also, the accrued interest, Eighty-one Dollars.

GEO. M. WARD,  
Ex. of J. Black, dec'd.

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## FINAL DECREE.

This cause, coming on to be heard at the May term of the Court of Chancery, 1888, held at the State House in the City of Trenton, in the presence of W. T. Hilliard, of counsel with the complainant, and M. P. Grey, of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint, as far 10 as the portion of the farm owned by said defendant, Richard Waddington, which belonged to Rebecca Ware, wife of said David Ware, in her lifetime, is concerned, the same being known as Lot No. 1, in division of the farm of Ann Hall, recorded in Book D of Divisions, page 49, Salem County Surrogate's Office, containing sixteen acres more or less.

It is on this thirteenth day of November, A. D. Eighteen Hundred and Eighty-nine, by Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this court, doth hereby order, adjudge and 20 decree, that the complainant has a lien upon that portion of the farm of said Richard Waddington, numbered one in said division hereinabove recited, for the amount of unpaid purchase money therefor as evinced by the bond given March 31st, 1837, by Joseph and Job Black to said David Ware, the same being the sum of Four Hundred (\$400) Dollars, together with interest thereon from March 28th, Eighteen Hundred and Seventy-two, (1872) together with the taxed costs of this suit. 30

And it is further ordered, adjudged and decreed, that the said defendant, Richard Waddington, pay to said complainant the amount so as aforesaid due upon said bond, together

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with his costs to be taxed, within twenty days after the service upon him of a certified copy of this decree and of the taxed bill of costs in this cause, and that in default thereof, the said complainant shall have execution therefor according to the practice of this court, to be directed to the Sheriff of Salem County, commanding him to make sale of the plot of sixteen acres aforesaid, to raise and pay the sum aforesaid to the complainant, with interest thereon and the costs aforesaid. And in case more money should be raised by such sale  
10 than is sufficient to make such payments, that the balance be paid to the defendant, Richard Waddington.

ALEX. T. MCGILL, C.

A True Copy,  
ALLAN McDERMOTT, Clerk.

