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- 1833.

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1833.

IN THE

MATTER OF PROVING

THE

LAST WILL AND TESTAMENT

OF THE LATE

ROBERT STEWART, Esq.



New-York, January, 1844.

TO THE PUBLIC.

I HAVE been forced, in a manner known to the reader, to a publication of the record of the Surrogate's Court, in the matter of the Will of my late uncle, Robert Stewart, and feel it due to myself and family, in connexion with it, to make the following brief and plain statement of facts. Strictly private as these facts are, I do not feel at liberty to withhold them, in the position of defence which I have been compelled to take.

The Lispenard estate, though large, was in 1806, at the death of my grandfather, Mr. Lispenard, senior, to a great extent unimproved and unproductive, consisting chiefly of meadows and marshes, which, like much other property of a similar character in the same vicinity, were made available as building lots by filling in and the opening of streets, only at an expense ruinous, as is well known, to many of the original holders. Nothing but the talent for business, unwearied vigilance, and skilful management of my father, Alexander L. Stewart, aided by the experience and large monied resources of his brother, Robert Stewart, saved him in making his portion of the Lispenard estate saleable, from the bankruptcy which befel other proprietors in that section of the city. As it was, he did not escape perplexing embarrassments for many years.

At a later period, these embarrassments were greatly increased by advances made to J. W. Webb to establish and sustain the Morning Courier — advances which not only absorbed all Mr. Stewart's own ready funds, but required loans by him on

interest from others, and which effectually prevented him, after the year 1830, from devoting his resources to the improvement of his own estate, and from making investments open to him, under circumstances that would, in his opinion, as often expressed, have insured affluence to his children.

From these and other causes, such was the condition of my father's estate, at the time of his death, in 1838, that had his Will called for the settlement of his affairs, and the distribution of his property among his children, it would have yielded a very small dividend to each. Moreover, the just claims of his brother, Robert Stewart, for advances made thirty years ago, would have covered the whole. From these two facts may be learned, at once, the propriety and the necessity (a propriety and necessity in which those of the children of Alexander L. Stewart, who knew the condition of the property, ever cheerfully acquiesced) of leaving his estate as he did by a POWER IN TRUST, to the management and at the disposal of his brother. My father well knew, that this was the surest, if not the only means of providing for his children an ultimate competence; and he knew, too, better than any other could, from an' association of brotherhood which was without the separation of a day for near forty years, that his brother had no other object in life but the interest of those children.

At the time of my uncle Robert Stewart's death, in June last, the estate was in a worse condition even, than at the decease of my father. The reasons for keeping it together, till freed from its embarrassments, existed even in a greater degree: and hence it is, and hence only, that I, contrary to my wishes, have been left his sole devisee.

I have alluded to advances made by my father to J. Watson Webb. Not only do the books of the estate show what those advances are, but their whole history, in time and circumstances, with constant assurances and demonstrations of speedy repay-

ment, is in my possession, in statement after statement, and letter upon letter, in the hand writing of that individual himself. To show that there can be no mistake in the nature of these advances, or in the just claim of my father for their return, I will — without entering into a detail of the successive commutations with creditors, assignments, &c., of the *Courier & Enquirer*, which this series of papers exhibits — give one or two extracts only from his own letters, in reference to them.

In a long communication, dated Sept. 1st, 1831, addressed to Alexander L. Stewart, and urging, on various grounds, a commutation of the debt due by him, J. W. Webb thus writes :

“ The *Courier & Enquirer* is at this moment in debt upwards of \$50,000. My half is \$25,000. Now let us suppose that we* pay the interest upon our debt, and realize annually \$14,000 of profits : of this sum \$7,000 is mine. I must live out of it, and will have but \$4,000 annually to apply to the reduction of my part of the debt. At the expiration of six years the debt would be paid ; but how would I stand then with the world ? Why merely adding simple interest to the amount of your debt against me, I will owe upwards of \$50,000 ! † * * * * I now propose as follows : that you shall compromise the whole of your claim for \$15,000 ; that all mortgages, papers, &c., now existing shall be cancelled, and a new mortgage for \$15,000 executed, conditioned that I shall pay \$750 and interest on the whole sum on the 28th day of April next, and \$750 and interest on the whole sum unpaid, on every 20th of October and April following.”

A deduction was accorded by my father ; and constitutes the \$17,000 specified in the first Will of my uncle Robert Stewart, as the sum to be deducted from the portion of my sister Helen,

* Mr. Noah was co-proprietor at the time.

† The magnitude of the debt may be easily estimated if six years of simple interest would swell it to upwards of \$50,000.

which Will will be found on an after page, in the proceedings of the Surrogate's Court. This \$17,000 was a dead loss sustained by my father in compromising with J. W. Webb, and is entirely distinct from demands existing at the time of making that Will, secured by bond and mortgage, and responsible sureties.

On March 17th, 1835, J. W. Webb, in a letter to an agent of Mr. Stewart, after stating the failure of certain efforts to raise money, continues thus: "In consequence of this disappointment, I have called on Tylee, and he has consented to take \$14,000 for his claim, which under the assignment is \$15,000, and interest from May 1st, 1832, equal to \$18,000. Mr. Stewart's is \$25,000, and interest from 8th December, 1832, to 8th March, 1835, 2 years and 3 months, equal to \$29,000.

"Now I will give A. L. S. and D. T. a mortgage on everything for \$43,000 in full, payable in seven equal semi-annual instalments of \$5,000 each, and one of \$8,000, commencing on the 1st of July, 1836, and terminating on the 1st of January, 1840, with interest at 7 per cent., on the 1st of January and July in each year, Tylee to receive a half of all payments till his debt shall be paid. I will then, with Mrs. Webb's* property, and the aid of two friends, buy off — and —, and pay — and —. By this arrangement, Mr. Stewart will be paid within five years, and will commence getting his interest imme-

* NOTE.— This reference to the property of Mrs. Webb, calls for a passing remark. In a calumniating and libellous publication against myself and family, by J. W. Webb, in the Courier and Enquirer of July 26, 1843, he thought proper to avow himself the willing agent of what he would represent and have believed to be, a fraud by my father upon my mother, by securing from her through the instrumentality of J. W. Webb, a large amount of real property, comparatively without consideration. While he is candid enough to state that this property was unimproved, and consequently unproductive, he is careful to

diately. * * * * I beg you to lay this letter before father at once."

Thus, at the end of four years, it is seen, that in place of the payment of the \$15,000 due, after the deduction of 1831, \$29,000 is exhibited, as the debt, to Mr. Stewart. Of this sum, Webb & Averill of Troy, paid in 1840, as sureties of J. W. Webb, some \$14,000 in *western lands*; while the balance, \$15,963 20, was transferred in 1841 to J. W. Webb's *schedule of bankruptcy*.

These losses of Mr. Stewart, by compromise and bankruptcy, amount together to more than \$30,000 — a greater sum than his estate, under the best management, is likely to divide to each of his other children; and sufficiently accounts for the efforts of J. W. Webb to invalidate the Will of my uncle.

Now, the justice and equity of making these acknowledged losses a debt due by J. W. Webb to the estate of Mr. Stewart, as advances on his wife's portion of her father's property, rests simply and exclusively upon the question of the PROPRIETORSHIP of the MORNING COURIER, from December, 1827, to May, 1829, during which period the advances by which they occurred, were chiefly made. This question J. W. Webb thought proper to bring forward in his paper, on the 17th inst., in a manner invidious to the memory and honor of my father, and to his well-merited reputation for integrity and uprightness; a

withhold the fact that the city property which was in return settled exclusively on my mother, yielded her a handsome separate and uncontrolled income, which was disposed of at pleasure during her life, as mere *pin-money*, and descended at death to her children. The property of Mrs. Webb, alluded to above, was thus derived. It constituted one-sixth only of the whole, and was sold years ago, by her husband, for \$7,000 — so that my mother received at least \$42,000, the full value of the unimproved property exchanged by her. In truth, the whole transaction was to both my father and mother one of perfect honor and reciprocity of interest.

reputation which I shall protect at all hazards. From the mass of disconnected and detractive matter, obtruded on that date upon the public, the only points bearing upon the question here at issue, clearly asserted and boldly upheld are the following: 1st, that J. W. Webb was only the NOMINAL legal PROPRIETOR of the MORNING COURIER within the dates specified, while Alexander L. Stewart was the real and bonâ-fide owner, and J. W. Webb, a mere agent, *settling up the affairs of the paper at a weekly salary*; 2d, that he, J. W. Webb, only *appeared* to be a borrower of money, while the advances were in truth *on account* of Alexander L. Stewart himself; and 3d, that the monies *expended and sunk* in sustaining the said newspaper, amounting in the course of sixteen months to between *twenty and thirty thousand dollars* were *expended and sunk* by Mr. Stewart himself. This, it is said, and seemingly certified to, Mr. Stewart had admitted.

These three points are exhibited in a plausible, and, as the asserter of them evidently would have believed, unanswerable manner. We will show how far this is the case.

I might, were it necessary, rehearse the contract of the purchase of the Morning Courier, by J. W. Webb, from my father, who held it by an assignment under a judgment for debt, for the consideration of \$6,850. The original is in my possession, in his own hand, signed and executed on the 17th of December, 1827, and bearing upon its face and in its entire spirit, every possible feature, of as genuine, bonâ-fide, and irresistibly binding a contract as can be drawn. Passing this by, however, I shall remain perfectly satisfied, as I doubt not will be the reader, with my own position in the case, and the justice I do to the memory of my father, by the following brief passages from an ANSWER in CHANCERY filed under AFFIDAVIT by J. W. Webb, as defendant in a case pending before that Court, April 6th, in the year 1830, wherein he thus solemnly declares:

1st. " And this *defendant* further answering says, and *charges the truth to be* that the said *Alexander L. Stewart* never was a proprietor of, nor ever had any proprietary interest whatever, in the said newspaper establishment called the *Morning Courier*, either before or after this defendant purchased the same !"

2d. " And this *defendant* further answering says, that he continued to conduct and regulate the said *Morning Courier* upon his own account, devoting his whole time and attention thereto, and exercising upon all occasions an *entire control* over its columns and concerns until the month of May, 1829, when the same was united to the said *New-York Enquirer* !"

3d. " And this *defendant* further answering says, that he, J. W. Webb, in sustaining the said newspaper for about sixteen months, had expended and sunk between twenty and thirty thousand dollars !"

J. W. Webb says, "*figures cannot lie* !" I would ask, can oaths in *Chancery* ? And which is to be believed, the bold assertions, plausible conclusions from false premises, and ingenious mystifications of his publication of the 17th inst., or these *answers under affidavit* which completely falsify the whole of them ?

As to the assertion that my father abandoned his legal claims against J. W. Webb in 1829, at a time when the advances by him amounted to near \$50,000, or at any after period, and then demanded and obtained a renewal of them on discovering that the union of the *Courier* with the *Enquirer* was likely to become a profitable concern, it is utterly untrue. Never for one moment was this the case, as I can prove, not only from the books and records in my possession, but by the testimony of at least half a dozen living witnesses. There were times both before and after the junction of those papers, when my father, from endless disappointments in the return of monies which he had been persuaded to advance from month to month, on the most

delusive and deceptive demonstrations of immediate and permanent benefits of the most important kind to J. W. Webb and his family, did fully determine to "*blow up*" the concern, as it has been expressed, by levying an execution upon it and all its appurtenances, to save what he could from the wreck, and "pocket a loss," for which there was no remedy. It was under this determination that the conversation with Mr. Tylee adduced took place; a determination which my father was afterwards led once again to forego only by the most urgent appeals, founded on representations of the penury to which his daughter and her children would be reduced, accompanied by another of J. W. Webb's convincing demonstrations, that by sparing the establishment and extending a little further aid, he would soon be in possession of all his advances, and see his son-in-law and family in independence.

J. W. Webb asserts that, after the 25th of May, 1829, "he never received or borrowed *one solitary dollar* from the estate;" and also, that Mr. Stewart constantly made one per cent. in all his monied transactions with him, by discounting his notes at seven per cent., while "he himself always borrowed money at six per cent." If by "*one solitary dollar*" is meant one dollar by itself alone, unaccompanied by others, this may be true; but, it is also true that my father's books show that, within the year after May, 1829, he received hundreds and thousands of dollars in company with one another, not only in the payment of J. W. Webb's notes in bank, but in cash on his due bills duly entered with name and date. The testimony of my father's books, however, is rejected by him — so I will again look to his own records. A note of only five lines, addressed "to A. L. or Robert Stewart," on Oct. 23d, 1829, five months after the above date, in effect contradicts at once both the above assertions. It begins and ends abruptly thus:

"To-morrow being Saturday, we will require \$500 this morning.

“ Mr. Coster is prepared to let you have \$10,000 on the 10th of Nov. at seven per cent., payable at any time you feel disposed to do so. Yours, J. W. WEBB.”

The \$10,000 were gladly taken from Mr. Coster, and retained, for years, at seven per cent., and is one only of many permanent loans, at the same interest, which my father was compelled to make on his account.

J. W. Webb complains, and would have it believed to be true that a debt of J. B. Skillman, the original proprietor of the Morning Courier, of a large amount,* forms a part of my father's alleged dues from him. This is untrue, and predicated only on the false ground of Alexander L. Stewart's proprietorship of the Morning Courier. The *Answer in Chancery*, before quoted from, recites the whole of this matter. In Dec. 1827, J. B. Skillman owed my father \$9,371, to save which he was about to sell at sheriff's sale the Morning Courier, with all its properties. Instead of doing so, however, at the earnest persuasion of J. W. Webb, my father sold to him the assignment held by him of that establishment with its appurtenances, the *good will* included, as before stated, for \$6,850 — thus abandoning \$2,521, the balance of J. B. Skillman's debt.

The properties of the Morning Courier at the time, aside from the good will, are thus exhibited by J. W. Webb, in his own hand writing, in a statement given to my father while the negotiation was pending :

Due the paper (Morning Courier) in the country,		
\$2,700, say good,	- - - - -	\$2,000
Due the paper in the city, \$8,500, say good,	-	7,000
Press, types, &c.,	- - - - -	2,000
		<hr/>
		\$11,000

* His brother, in the following record of the Court, speaks of it as \$20,000 !

Thus it is seen that he received, at the purchase, property of the establishment estimated in his own exhibit at \$11,000 good, for a debit of \$6,850, transferred on my father's books from J. B. Skillman's account to his own.*

J. W. Webb complains, in his article of the 17th inst., that the alleged claims against him are the accumulations of compound interest. If he means by this term an exaction of interest which the laws of the State do not sanction, I reply that the office of my father and my uncle is the last place in the city in the business transactions of which, an infringement of law or failure in the honor of gentlemen, will be found. If he means accumulations arising necessarily from a neglect to meet his obligations when due, and constant changes in his position of debtor, proposed and urged by himself in a substitution of the documents by which he was bound, and the shifting of his securities, who has he to blame but himself, and why did he not prevent such forms and amounts of interest by cancelling his debt? My father was paying interest to others for the very money drawn from him by J. W. Webb, and why should it be thought ungenerous or a reproach in him, to expect and charge interest so long as his advances remain unpaid?

And why were not those advances returned? Had not J. W. Webb the means? Let his mode of life during the whole period of his indebtedness give the answer. He was in the receipt at the time, from the Courier & Enquirer, of the avowed income of some \$20,000 above all expenses, and was living daily in a style unsurpassed by any gentleman of the city. In the winter, at his own magnificent dwelling in Carroll-place, or, with a large family of children and servants, in the finest suites of rooms at the City Hotel or the Astor House; and in the summer at a beautiful country-seat, his own purchase, surrounded

* See contract of purchase by J. W. Webb, Appendix, Letter F.

by all the appointments and appliances of wealth and luxury, including a well-filled cellar of the most choice and expensive wines, gardens and grounds of great extent and beauty, adorned by a conservatory of splendid exotics, while his barns, with stables for a breed of race-horses, were in like extravagance. Such were some of the lavish expenditures for years of the debtor, who would have it believed that he has been hardly dealt with by having just interest charged on the loans of a creditor, who with his own family was living, the year round, in a plain and old-fashioned residence in Hudson-street, in a quietude and comparative simplicity which, however much that of choice, was nevertheless in a great measure the result of necessity, from the absorption of his floating resources in the devouring whirlpool of the Morning Courier, and which is known often to have given rise to invidious remark, in the circles of society in which himself and family moved.

I will state one additional fact only. To this, however, I would invite the special attention of the reader, in connexion with the principal point in the opposing testimony produced by J. W. Webb in the subjoined record. Previous to the illness of my uncle Robert Stewart, the estate was indebted to me \$53,000, and for which I had very little or no security. When it appeared probable that my uncle might not long survive, I became exceedingly anxious, from considerations disconnected with any selfish interest, to have this debt secured to me, and strongly urged the necessity of it upon him myself, and begged my sister, Mrs. Charles Stewart, her husband, and my uncle's counsel, Gen. Sandford, to go to him and earnestly persuade him to this. This they did; but to all importunity on the subject he replied, that he could not, in honor to other creditors, secure me; and that if anybody was to lose by the estate, it must be one of his own blood. This continued to be resolutely his determination, till it was proposed to effect the object by a pur-

chase on my part of the real property of the estate, in which my debt should be received as a first payment, and my bonds and mortgages taken for the balance of the purchase money, for the security and payment of the remaining creditors.

To this plan he at once acquiesced; became anxious for its execution; and was impatient till it was accomplished. It is to this transaction, related in detail by me to the brothers of J. W. Webb, in the conversations referred to in their testimony — in which the Will of my uncle was also a topic, — and to this only that all the importunity with my uncle of myself, my sister, and her husband, and his counsel, as stated by me to them, had reference, or was true. In applying it to the changing of my uncle's will, in place of thus securing my debt, they have made a mistake, by confounding in their recollections one part of my conversation with another, which, however much to be regretted, is not to be pronounced impossible in an interview of hours upon a single subject.

This importunity for the security of my debt, is the only importunity ever exercised by me with my uncle, either by myself, or through the influence of others. His Will of 1838 is in my own hand writing; in copying it for his signature my uncle told me the reason for the deduction of the \$17,000 from Mrs. Webb's share; and that although my father had been obliged to relinquish his legal claims to that sum in compromising with her husband, he had ever considered it due in equity to his estate; and it had ever been my father's determination as it was his, to deduct it from the wife's share. With the making of his last Will, I had nothing to do. It is contrary to my wishes, as I have ever asserted, and again assert, and at a sacrifice both of health and pleasure, that the estate in its embarrassments was left in my hands. In receiving the Will from my uncle, which I did only from what I conceived, and what he knew, to be an imperative necessity in the

case, I gave no pledge or promise as to the final disposal of the property, nor did he ever exact such pledge or promise, or ever give me any instructions, or express any wishes, in reference to it, either before or after the time of its execution. My uncle, however, well knew, from the very best of proofs, what I have ever declared, and now again avow, that in reference to this whole matter, I have, and ever have had, but one object at heart, and one purpose to fulfil — which is, to secure, to the utmost of my ability, the best interest of my sisters and their families; and not less that of my sister Helen L. Webb and her children, than of the rest.

LISPENARD STEWART.

HUDSON-STREET, NEW-YORK, }
January 24, 1844. }

The first part of the paper discusses the general principles of the theory of the firm, and the second part discusses the specific application of these principles to the case of the firm.

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The Theory of the Firm

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SURROGATE'S COURT.

IN the matter of proving the }
last Will and Testament of } SURROGATE'S OFFICE,
ROBERT STEWART, deceased. } *September 11, 1843.*

CHARLES W. SANDFORD, a witness produced, sworn and examined in support of the will, being duly sworn, deposes and saith, I am by profession a counsellor at law, and reside in the city of New-York. I was intimately acquainted with the testator, Robert Stewart, for about twenty-eight years. The will being shown to him, he says he was present, and saw Robert Stewart sign the said will, and declare that it was his last will and testament. The will is dated and was executed on the third day of May, eighteen hundred and forty-three: the subscription to the will was made by the testator in my presence, and after signing it he published and declared it to be his last will and testament. Mr. Stewart then requested Mr. Gerring and myself to subscribe the same as witnesses, which we did in the presence of the testator: I saw Mr. Gerring subscribe as a witness. The testator, at the time of the execution of this will, was, as I have understood and believe, upward of eighty years of age. I believe that the testator was, at that time, of sound mind and memory, and in all respects competent to make a will.

C. W. SANDFORD.

Sworn before me this 11th day of September, 1843.

DAVID B. OGDEN.

The case was then adjourned upon motion of Col. Webb, on account of the absence of Mr. Hall, his counsel.

Monday, September 18th, 1843. The witness being cross-examined, says: the will is in my hand writing. Mr. Stewart died, I think, the latter end of June—I think on the 26th day of that month. I drew the will the night before it is dated, at my office—there was nobody present when I drew the will—

I received the instructions for the drawing of the will from the testator — I received these instructions about a week before I drew the will — I saw Mr. Stewart once after he gave me the instructions and before the will was drawn — I think this was about two days before the will was drawn — I do not remember that any body was present at the last mentioned interview. When I received the instructions for the will, nobody was present but the testator and myself.

Question. Did he assign any reason for making the will in its present form ?

Answer. He did.

Q. What were the reasons he assigned ?

A. He assigned several reasons. We had at several previous interviews at different times, talked of altering or redrawing his will ; and I had advised with him as to the best mode of disposing of his estate, and had recommended a different course from the one contained in this will. At the interview in which I received the instructions, he told me that he had made up his mind to leave the whole estate to Lispenard, and he expressed to me his reasons for so doing : that his estate was not worth dividing as I had proposed ; that it should be kept together, and thus be better able to sustain the litigation then pending, and that Lispenard had shown himself so good a brother that he was satisfied that it was more to the interest of his sisters to have them under the care of Lispenard, than to have the property wound up and sacrificed when the share which each would get would soon be squandered or wasted. By the shares which each would get, I mean the shares which each would get in the way I had proposed. I discussed the matter with him at this time, and left him, he asking me to make a draft of such will as he wished to have drawn, which I promised to do in a day or two.

I had another matter at this time in charge for him, and after a day or two he sent word that he wanted to see me on this other subject. I went to see him, and he spoke to me again about the will. At this interview I asked him if he still wished to have it drawn in the way he had mentioned, I having some hope that he had changed his mind. He still persisted in his

directions, and I again promised to draw the will as directed. I was, however, very busy during the succeeding two or three days, and did not draw the will until I received another message from him, requesting me to see him on the afternoon of the second of May. I had not then drawn the will, and I sent him word that I could not see him that afternoon, but that I would call upon him at about eight o'clock the next morning. I drew the will that evening; and the will now offered for probate is the original draft made by me. The next morning I took it up and read it to him; and after it was read, finding that he approved of it, I proposed to engross it, and have it executed the next day. He said, however, that it was clear enough, and he would execute it as it was. He proposed to send to his neighbor Dr. Hunter, as a witness to the will. I suggested that he might as well execute it before one of his own clerks. Mr. Gerring was then sent for, and the will was executed.

Q. Are these all the conversations you had with Mr. Stewart, and all the instructions given and reasons assigned by him, for the making the will as it now is?

A. No. We had several conversations on the subject of making his will, but Mr. Stewart had never given me any directions to prepare a will until the conversation above mentioned.

Q. What passed in those several conversations; when and where were they held; and in whose presence?

A. These conversations took place sometimes at my residence, where Mr. Stewart was in the habit of frequently calling for several years almost weekly, and sometimes daily. And I have also occasionally conversed with him on this subject at his own office. But Mr. Stewart never spoke to me upon the subject of his will, nor I to him, in the presence of any third person, until the time the will was executed. These conversations were so numerous, and so intermingled with other subjects, that it would be almost impossible to detail them.

Q. How far back, in point of time, did the conversations concerning the making of this will reach?

A. Mr. Stewart had conversed with me I think for two years about redrawing his will. I had drawn a former will for him.

Q. When did you draw that former will ?

A. I do not recollect the date ; but it was very soon after the death of Alexander L. Stewart that this former will was executed.

Q. In whose presence ?

A. I do not recollect. I do not remember whether I was present or not when it was executed. I think Alexander L. Stewart died in 1838, on the 29th of March.

Q. Was that former will in existence when the present will was executed ?

A. I presume it was ; but I have not seen it for several years.

Q. Do you know where it now is ?

A. I do not.

Q. Have you heard Mr. Lispenard Stewart say where it was since the death of the testator ?

A. I have not.

Q. What was the general character of the former will of which you have spoken ?

A. That will (with the exception of a provision for the widow, similar to the one in the present will) divided the property, after the payment of debts, equally among the children of his brother Alexander. This was the general scope of the will, but not having seen it for several years, I cannot be more particular about it.

Q. Did Mr. Robert Stewart never give you any other reasons for his radical change in his will than those you have already stated ?

A. Mr. Robert Stewart and myself had previously discussed the subject of an entire change in his will, before the directions were given, and before I was aware of his intention to devise his estate to Lispenard Stewart. Among other reasons spoken of or discussed between Mr. Stewart and myself, for changing his will, was the fact, that several of the devisees in that will were important witnesses in the suits pending, in relation to the will of Alice Lispenard ; and I had proposed to Mr. Stewart a mode of altering his will, and retaining those witnesses, without materially changing his original intention.

Q. Were there any other reasons assigned by him ?

A. So many other things were said, at different times, in

relation to a change of his will, that I cannot undertake to state any other reasons given by him at this time : those which I have given were the principal reasons.

Q. Did you suggest to him that the devisees referred to were important, and might become incompetent witnesses relative to the will of Alice Lisperard, or did he make the suggestion to you ?

A. I do not think the suggestion was made by either of us. Mr. Stewart was as fully aware of it as I was ; but the mode of obviating the difficulty was a subject of discussion between us.

Q. Were these discussions held before the trial in the Superior Court, involving the question as to the competency of Alice Lisperard to make a will, or afterwards ?

A. Both before and afterwards.

Q. How long before ?

A. My impression is that our first conversation on the subject was two or three years before that trial ; possibly not so long before.

Q. You have said that you advised with Mr. Stewart as to the best mode of disposing of his estate. Did he ever ask your advice as to the best mode of disposing of it, or did you make the suggestion voluntarily ?

A. I mean to say, that while understanding, as I supposed I did, the general intent of Mr. Stewart, I suggested a mode of effecting that intent, and still prevent the rejection of the testimony of such of the children of Alexander Stewart as were important witnesses in the controversy in relation to the property of Alice Lisperard.

Q. What was that intent to which you refer ?

A. At that time I supposed his intention was to dispose of his property substantially for the benefit of the family of Alexander L. Stewart.

Q. Was the will now before the Court Robert Stewart's mode of carrying out that intent, as expressed by him to you ?

A. Mr. Robert Stewart said nothing about that intent at the time I received his instructions for the present will, except so far as it was expressed in what he said about Lisperard's sisters, which I have before detailed.

Q. What was the mode suggested by you ?

A. I had suggested to Mr. Stewart, a long time before receiving instructions for the present will, that instead of devising his estate directly to the children of Alexander L. Stewart, he should invest the share which he proposed to give to each of the children of Alexander for the benefit of their children, by which the parent would receive the income as guardians for the children, but would not have such an interest in the estate as to exclude them from being witnesses.

Q. Did Mr. Stewart tell you or suggest that the present will was intended to accomplish the same object, or anything to that effect ?

A. He did not. This suggestion of mine had been made a long time previous ; and I supposed, until the morning when I received instructions for the present will, that it would be the basis of a new will, and I spoke of it again on receiving the instructions. Mr. Stewart answered me very decidedly, that the estate was not worth dividing. I said, O yes, Mr. Stewart, it is well worth dividing ; it would give them at least twenty thousand dollars for each share. His answer was, if it had to be wound up to make such a division, (meaning a division in six trusts as I had proposed,) it would not give half that sum to each share ; it is better to keep the estate together, and it will be better able to go through its difficulties, (referring to the lawsuits and other difficulties.) I was then endeavoring to raise money for him.

Q. What did the estate consist of ?

A. At that time the estate consisted of three leasehold lots, with buildings on them, and thirty-two lots in fee, on some of which are buildings owned by Mr. Stewart, and some of them were under lease to tenants who owned the buildings on them. Mr. Stewart had also some personal property in the way of debts due to him, some wild land in the southern part of the State, not of much value, and a mill site and some land in Ohio ; but he owed a large amount of debts, and part of his property in this city was mortgaged.

Q. How much did the debts due to him amount to, including bonds and mortgages ?

A. I do not know.

Q. Were you ever present when a conversation or conversations was held by Mr. Stewart with any third person in relation to the making of this will?

A. I have no recollection of ever having been present at any such conversation.

Q. Do you know of any such conversation having taken place?

A. I do not.

Q. Did Lispenard Stewart ever tell you that he had had such conversation with the testator.

A. Mr. Lispenard Stewart informed me since this will was executed, that he was not aware until he was called in to receive the will on the morning it was executed, that his uncle intended to make him the sole legatee and devisee. I never heard Lispenard Stewart say that he had conversed with his uncle about this will. I have never heard Lispenard say anything about the making this will more than I have stated as having taken place after the will was executed.

Q. Did you ever hear Robert Stewart the testator say, that he had conversed with Lispenard Stewart on the subject of this will?

A. I did not.

Q. Did Robert Stewart state to you, or give you to understand that Lispenard Stewart was to hold the estate as well for the benefit of his sisters as for himself.

A. No.

Q. Have you never so stated to the children of Alexander Stewart?

A. No. I may have stated what Mr. Stewart said when he instructed me to draw the will in relation to Lispenard's sisters, as I have already stated in this examination; and nothing beyond it as having been said by Robert Stewart the testator, and I may have stated what I supposed or presumed were reasons with Mr. Stewart, for making the will in its present shape.

Q. Have you not told Col. Webb, in the presence of Lispenard Stewart and his sisters, that the reason which Robert Stewart had for making his will in its present form was, to

remove the incompetency of such as might be witnesses in the matter of Alice Lispenard, or words to that effect?

A. I have no doubt that I stated this as one of the reasons which induced Robert Stewart to make the will.

Q. Has not Lispenard Stewart stated the same thing to the same persons in your presence, and professed his readiness to put the trust in favor of his sisters upon paper, if it would not thereby disqualify the witnesses in the case before referred to?

A. The only conversation at which I was present, and to which the two last questions apply, was on the occasion of reading the present will two or three evenings after the death of Robert Stewart. I attended at that meeting and read the will at the request of Lispenard Stewart, and made such explanations of the motives of Mr. Robert Stewart as I thought most likely to take off the edge of the disappointment which was felt by most of the persons present when the contents of the will were ascertained on that occasion. My impression is that Lispenard Stewart concurred in the explanation made by me as to the motives of the testator, and I understood him to say further that he had no desire or anxiety to appropriate this estate to his own use; and if he could with propriety get rid of it consistently with what he deemed the interest of the family, he should do so. This is the substance of what I understood him to say; I cannot remember the words.

Q. Did not Lispenard Stewart state on the occasion last referred to that the testator had put the property in his hands in trust, and that he intended to fulfil the trust accordingly?

A. I never heard him make any such statement or anything to the same effect.

Q. Did he not say that he considered himself as the trustee of his sisters, and avow his determination to hold the estate for their benefit; and when asked by Col. Webb whether such being his intention, he was willing to put the property in trust, he did not reply that he was, if by so doing he would not disqualify the witness referred to; and did he not thereupon appeal to you to know if it could be done, and did you not say to the persons present that you could not advise Lispenard to such a course, because it would disqualify the witnesses?

A. The simple answer would be no; but as that might leave some uncertainty as to that part of the answer referred to, it may be proper for me to state more explicitly that I did not hear Lispenard Stewart say anything about his being a trustee or holding the property in trust, or any words to that effect, but he repeatedly expressed the idea that he intended to apply the residue of the estate, after settling its affairs, to the benefit of his sisters, and on one occasion, that evening, when he made that statement, he was asked, and I think by Col. Webb, whether he would place the estate in trust for that purpose, or would execute a declaration of trust, or some other instrument to secure such a disposition of the property; and I think I was appealed to to recommend such a course, and on such appeal, I think I said I could not advise Lispenard to execute such a paper; that it would incapacitate the witnesses; the discussion at this time had become very confused and angry, and several persons talking at a time; and I cannot tell by whom the appeal was made to me.

(Mr. Hall and Mr. Jordan appear and contest the will in behalf of Col. Webb, and his wife Helen.*)

(Adjourned to Thursday on motion of Mr. Hall.) *Thursday, September 21, 1843.*

The cross examination of Mr. Sandford continued.

The record of the will of Alexander L. Stewart deceased, proved 23d April, 1838, was given in evidence by the counsel of Col. Webb and wife,* who are opposing the proof of the present will. It is admitted that no inventory of the estate of Alexander L. Stewart was filed in the Surrogate's office. Mr. Hall also gives in evidence a deed from Lispenard Stewart, trustee, party of the first part, Robert Stewart, party of the second part, and Charles Tudor Stewart, party of the third part, dated on the 1st of June, 1843. Recorded in Lib. 437, page 357; also a deed from Charles Tudor Stewart to Lispenard, dated on the 2d day of June, 1843, recorded in Lib. 437, page 355.

The cross examination of Mr. Sandford continued; he being asked whether he has any knowledge of the two deeds just mentioned.

* See Mrs. Webb's Petition to the Court against this use of her name, Appendix, Letter B.

A. Yes sir. They were drafted by me and were executed in my presence, and were acknowledged before me as a commissioner. They were executed on the 17th day of June last, and were acknowledged at the same time. They were drawn between the 1st of June and the 17th of that month. They were drawn by the direction of Robert Stewart and of Lispenard Stewart. I cannot say who first suggested having these deeds drawn, but the transaction occurred in this way. Alexander L. Stewart and Robert Stewart, had been for several years indebted to Lispenard Stewart, to a large amount for monies lent by him to assist them in their business. In the spring of 1843, this debt amounted to over fifty thousand dollars, and in consequence of the difficulties and embarrassments of the estate, Lispenard Stewart had become very uneasy about this money; he applied to his uncle Robert Stewart to secure the debt in some way, and I had several interviews with Robert Stewart on the subject. Lispenard wanted his uncle to give him mortgages, which he was reluctant to do, as it would prevent his raising monies then pressingy wanted for other purposes, and finally in the course of conversation between us and Robert Stewart, the suggestion was made that Robert Stewart should sell Lispenard real estate sufficient to pay the debt. Several subsequent conversations took place between me and Lispenard, and between me and Robert Stewart, which finally resulted in an agreement made about the first of June last, that Lispenard should become the purchaser of all the real estate in this city, in which Robert Stewart was interested, subject to the encumbrances then upon it, and that he should execute mortgages to his uncle for the balance of the purchase money over his own debt, and the prior incumbrances, to be divided into such sums and upon such lots as Robert Stewart should find most convenient to negotiate, to raise funds to meet his engagements. Bonds and mortgages were accordingly drawn and executed by Lispenard to his uncle Robert, amounting in the aggregate to fifty-seven thousand dollars, under an understanding that these mortgages should be redrawn and altered in amounts and in the lots covered by them, as should be afterwards required by Robert Stewart, so as to enable him the more conveniently to negotiate them. The mortgages were never recorded, but now remain in my

possession unrecorded. The bonds are also in my possession, and until the will is proved, I did not think it proper to deliver them to Lispenard Stewart, as I considered myself as holding them for the estate of Robert Stewart. Mr. Robert Stewart was not present when the bonds and mortgages were executed. They were executed at my office. They were executed some days after the deeds were executed, which was on the 17th June. I had conversed with Robert Stewart on the day the deeds were executed as respects the division of the amount and of the property to be put in each of the several mortgages. I exhibited to him a memorandum which I had made, dividing the sum and property, to be put into the different mortgages. He did not precisely approve of this division, but said I might either have the mortgages made out as contained in my memorandum, under the understanding that they might be afterwards altered, or it might be left until he designated the amounts and property to be mentioned in each mortgage. I had the mortgages drawn, however, according to my memorandum, and they were executed accordingly. I think there are four or five separate mortgages, and as many bonds. The mortgages were regularly acknowledged before me as commissioner. The bonds and mortgages bear the same date as the deed to Lispenard Stewart, but the acknowledgments on the mortgages will show the day they were executed. I never told Robert Stewart that the bonds and mortgages had been executed, and were in my possession.

Q. What was the condition of Robert Stewart's health at the time these bonds and mortgages were executed?

A. Robert Stewart had been confined to his office and the adjoining house, occupied by the family of Alexander Stewart, for nearly three months prior to his death, in consequence of an injury to one of his feet. This resulted in a running sore, which kept reducing him until some time in the beginning of the month of June, when I understood that the sore was getting better, and that the general debility arising from it, was somewhat lessened. I have at present no distinct recollection of having seen him after the 17th June, although I may possibly have seen him once or twice after that day. On that 17th June

he appeared to be quite feeble, and very much reduced, from his long confinement; but he thought he was getting better, as he said; but he appeared very much emaciated: for some days after this I understood he was still getting better. I so understood from his clerks, and members of his family, until the day when the mortgages were executed, when Lispenard Stewart came to my office and said that his uncle was much worse, and that if anything was to be done, it ought to be done immediately. I said I did not know of anything except that I thought he should execute those mortgages, which he accordingly did, and Robert Stewart died on that day, or on the following day. Robert Stewart had for many years kept a bed in his office, but whether he died in that room or not, I cannot say. I always found him in the office after his illness, and never during his sickness saw him in any other place. When the will of Robert Stewart was executed, it was delivered to Lispenard Stewart, and it was in his possession on the 17th June, as I presume.

Q. What portion of the real estate of Robert Stewart, embraced in the will, is described in the deed already spoken of?

A. The deeds were intended to convey all the real estate which Robert Stewart was interested in, in the city of New-York. The description of the property contained in the deeds covers all the real estate in which Robert Stewart was interested in the city of New-York, as far as I know, except an interest in a water grant lying opposite to some of the property on West-street, described in the deed which was part of the property devised by the will of Alexander Stewart.

Q. Who fixed the valuation upon the property conveyed to Lispenard Stewart.

A. A list of the property so conveyed, with an estimate of its value, was made by Mr. Gerring, the head clerk in Mr. Stewart's office, and submitted to me. I made my suggestions on the same paper in pencil, and took it to Mr. Robert Stewart and submitted it to him, and he concurred in my estimation.

Q. Had not Robert Stewart, within six months prior to his death, conveyed or caused to be conveyed, directly or indirectly, to Lispenard Stewart, other real estate than that described in the deeds?

A. I do not recollect of any such conveyance.

Q. Has any such conveyance ever been made by Robert Stewart to Lispenard, since the death of Alexander Stewart?

A. Yes. Robert Stewart agreed to take some land and a mill seat in Ohio, in discharge of a liability or claim held by him, against Webb & Averill of Troy, and by his direction the deed for this property in Ohio was made to Lispenard Stewart.

Q. Do you recollect any other conveyance?

A. I do not recollect of any other excepting a deed that was executed to Lispenard Stewart of a house and lot in Watts-street, which was the subject of the recent trial in the Superior Court, between the heirs of Theophilact Lispenard and Mr. Robert Stewart.

Q. What was the value of the property in Ohio that has been mentioned, and of the house and lot in Watts-street?

A. I do not know the value of the property in Ohio. Mr. Robert Stewart supposed it might be worth some six or eight thousand dollars; he took it at a valuation, on the settlement of the claim against Webb & Averill, for about thirteen thousand dollars. The house and lot in Watts-street was worth from three to four thousand dollars.

Q. Were these two properties included in the estimate which you have already spoken of, as being shown by you to Robert Stewart, and as being approved of by him?

A. No.

Q. Did the sum of one hundred and twelve thousand dollars, the consideration mentioned in the deed executed on the 17th day of June, embrace, according to your belief, the whole value of the real estate of Robert Stewart, in the city of New-York?

A. No; that sum was the consideration after deducting the previous mortgages on the property, and an estimated sum to pay the expenses of the pending litigation. The consideration mentioned in the deed, was considered as the net value of the property, after deducting the prior incumbrances and the estimated sum for the expenses of the litigation. Robert Stewart, on the first of June, was indebted to Lispenard Stewart to an amount exceeding fifty-four thousand seven hundred dollars; and this sum, with the fifty-four thousand dollars before spoken of, formed the consideration expressed in the deed.

Q. At what sum were the expenses of the litigation estimated ?

A. I estimated them at ten thousand dollars, but Mr. Robert Stewart altered the amount to seven thousand dollars.

Q. What, in your opinion, is the value of the personal property left by Robert Stewart, at the time of his death ?

A. I have not seen any list of debts or securities belonging to his estate, nor have I examined his books, either before or since his death ; my knowledge on the subject is derived solely from the constant habit of Mr. Robert Stewart of consulting me respecting his affairs for many years past. In this way, I have derived a general knowledge of his estate ; and had, prior to his death, an impression that his whole property, real and personal, prior to the conveyance to Lispenard Stewart, was worth from one hundred and twenty to one hundred and fifty thousand dollars, after payment of his debts. At Mr. Stewart's request, I had drawn for him, a year or two previous to his death, an affidavit, that he was worth no personal property whatever, after the payment of his debts ; of the truth of which affidavit I have no doubt. I continued under the impression which I have above stated, until the conversation about his will, which I have above stated, in which conversation Mr. Stewart estimated his estate so much lower than I did, as to change my opinion materially on the subject. My present impression is, that the personal estate of Robert Stewart, including the bonds and mortgages executed by Lispenard Stewart, was not worth, at the time of his death, over one hundred thousand dollars, after the payment of his debts.

Q. Do you think that in the estimate you made of the real estate of Robert Stewart, you placed it at its real value ?

A. I estimated it at as much as I thought it would bring in the market at that time, and at as much as I would have been willing to have given for it had I been desirous of purchasing it.

Adjourned to Tuesday morning next, 10 o'clock.

Tuesday, September 26, 1843. The further examination of Mr. Sandford suspended by agreement.

Oct. 3. The cross examination of Mr. Sandford.

Q. Was Robert Stewart, at or previous to the execution of

his last will and testament, under any restraint of any nature or kind, to the best of your knowledge?

A. Not in the least, to my knowledge.

Q. For how many years previous to his death had you been in the habit of confidential intercourse with him?

A. I was well acquainted with Robert Stewart about twenty-seven years, and for upwards of twenty years in the habit of confidential intercourse with him.

Q. What was the state of his mind, and his capacity for business during that time?

A. Considerably above mediocrity. Robert Stewart was unquestionably a man of great sagacity, of great reflection, and of much more than ordinary strength of mind.

Q. Was there any perceptible difference in his mental faculties at the time of the execution of his last will, compared with the time of the execution of his will, shortly after the death of Mr. Alexander L. Stewart, or prior thereto?

A. I think his mind and judgment, at the time of the execution of his present will, were as sound as they ever were. From the death of Alexander Stewart until May, 1842, I saw Robert Stewart generally every morning, except Sundays. When I was in town, my residence at that period was in his immediate neighborhood, and he was in the habit of calling on me at an early hour every day in relation to his business. In May, 1842, I removed to Warren-street; and after that his calls upon me were less frequent; but I continued to see him down to his last illness two or three times a week; and from all these opportunities I speak with great confidence as to his mental capacity during this whole period.

Q. Did he at the time of his death, or had he for some time previous thereto, lived with his wife, and upon what terms were they?

A. They had not been on good terms for many years. Mr. Stewart had been for many years under the belief that she entertained feelings hostile to his interest, and was not disposed to do any thing for her more than duty required. He lived principally at his office — took his meals there — and a great part of his time slept there; and going to the house where she re-

sided only for the purpose of preventing her from saying that he had abandoned her. In the first will, which I have spoken of in this examination, he left her only two hundred and fifty dollars a year; and although frequently urged by me to increase considerably the provision intended for her, he refused to make it exceed three hundred dollars, the amount expressed in the present will.

Q. If the claim involved in the controversy relating to the estate of Alice Lispenard, deceased, should ultimately be established, what will be the effect thereof upon the real estate of which Alexander L. Stewart died seized, and upon the title to the thirty-two lots of land, mentioned in your direct examination?

A. If the will of Alice Lispenard and the conveyance made by her, which is in controversy, should be set aside, it will affect one-sixteenth of the whole estate left by Anthony Lispenard. These thirty-two lots form a part of that estate, and the title to these lots would be affected to the extent of one-sixteenth part.

Q. Besides the effect upon the title of these thirty-two lots, would the estate of Robert Stewart be exposed to loss or liability in other respects, if that controversy should be decided in favor of the claimants?

A. It would be exposed to a very serious and probably to a ruinous litigation; partly from covenants of warranty, which would no doubt be put in suit, and partly from proceedings in partition, in which the parties would be so numerous as to cause great expense and probably much litigation.

Q. What was the state of the controversy above referred to, at the time of the execution of the last will and testament of Robert Stewart and at the time of his death?

A. One of the suits in ejectment, brought by the children of Theophilact Lispenard upon one of these lots, had been tried and a verdict rendered for the plaintiffs. Under numerous exceptions taken on the part of the defendant, Robert Stewart, at the time of his death, it had been decided to apply under the statute to vacate the judgment entered upon that verdict, and to have a new trial in the Superior Court.

Q. Was any person, and whom, present, at the time of the

execution of the last will and testament, besides the testator and the subscribing witnesses ?

A. After Mr. Gerring was sent for to come and witness the will, Mr. Stewart sent in for Lispenard Stewart, who came into the room and was present when the will was executed. Immediately after the execution of the will, Mr. Robert Stewart handed it to him, and he was the only person present to the best of my recollection, besides the testator and the subscribing witnesses.

Q. When Mr. Robert Stewart, handed the will to Lispenard Stewart, or at any other time within your knowledge, did the testator declare or intimate that it was subject to, or in any manner connected with, any trust, expressed or implied ?

A. I never heard any thing of the sort.

CHAS. W. SANDFORD.

Sworn before me this 3rd day of October, 1843.

DAVID B. OGDEN.

WILLIAM B. GERRING, a witness, produced, sworn and examined in support of the will, deposes and says: I was acquainted with the deceased, Robert Stewart, from April, 1835, to the time of his death. I was during the whole of that period a clerk in his office — first with Alexander L. Stewart, and after his death, with Robert Stewart. The will being shown to him, he says he was present at its execution. I saw Robert Stewart, execute it; I saw him sign it, and heard him acknowledge it to be his last will and testament. He called me into the office and asked me to witness his will. I subscribed my name as a witness to the will, and I saw Mr. Sandford subscribe his name to it as a witness, in the presence of the testator. I believe Mr. Stewart was eighty-one years old when the will was executed, and of a perfect, sound mind, and was under no restraint, not the slightest, that I ever perceived. On the morning the will was executed, I was sent for to my boarding house. Mr. Price, a clerk in the office, came for me. At the time the will was executed, Mr. Stewart had been confined to the house for two or three weeks; I think in consequence of an injury to one of his feet. He had a sore on one of his feet, which obliged

him to keep his foot upon a chair. I do not know whether the sore was occasioned by an injury or not. He told me, on the morning of the election, in April, when he asked one of us to go up to the polls with him, that he had hurt his foot; with the exception of this sore on his foot, I believe his health was good. During the whole time of his confinement, he continued to transact business down to the day of his death, with the exception of one day. I never knew any change in his capacity to transact business. This was three or four weeks before his death. When I came to the office that day, a cot had been brought into the back office; he was lying on it, and his mind seemed to wander a little. Mrs. Stewart, and I think Mr. Lispe-nard, were in the room, standing by his bedside, and requesting him to take some nourishment, and some wine; he objected to it, as he thought it would keep up the inflammation in his foot; he did, however, that day, take some nourishment and drink some wine, and in the afternoon, he said he felt better. The next day, when I went to the office, I found him sitting in his chair and his mind appeared to be the same as usual. From that time he continued to drink a little wine during the day, and took more nourishing food, and I did not discover that his mind was affected from that time to the day of his death. On the particular day I have mentioned, he was very weak; he had until that day, ate very little, and had discontinued taking wine for sometime before he was confined to the house, and was very much reduced. During all the time I was in the office, both before and after the death of Alexander L. Stewart, he took an active part in the business. My engagement was both with Alexander Stewart and with Robert Stewart; my contract was with Alexander; but I was also to do anything which Robert Stewart requested me to do. Mr. Robert Stewart was always in the office when I went there in the morning, with Mr. Alexander Stewart in the back office; they breakfasted together there. He remained in the office until generally about ten o'clock, and during the time he was in the office, he appeared to take, and did take, as much interest in the business, as Mr. Alexander Stewart. Alexander, when conversing on business with persons in the back office, would always come into the front office and

consult with Robert, in relation to the business, and then return to the back office, to the persons he had been talking with. Alexander, seldom, if ever, did any business without consulting Robert. After Alexander died, Robert took the entire charge, and did so to the day of his death. Mr. Alexander Stewart, during his life, was the acting man in the business; but he hardly ever did any business without first taking the advice and counsel of Robert Stewart. Robert was more in the office than Alexander, who was in bad health, and used to ride and walk out a good deal.

Q. What was the character of the mind of Robert Stewart?

(This question objected to; objection overruled.)

A. His mind was strong. I speak of his mind, generally, with the exception of the day I have mentioned, and I speak from an almost daily intercourse with him, for a period of more than eight years. Robert Stewart died on the 26th of June last; I was present at his death.

WM. B. GERRING.

Sworn before me this 3rd day of October, 1843.

DAVID B. OGDEN.

November 24th, 1843.

TIMOTHY TOOLE, a witness* produced, sworn, and examined by Mr. J. W. Webb, in opposition to the will, at the time of the death of Mr. Robert Stewart. I was employed by him as a servant about the house; I was in the habit of serving him very frequently during his last illness.

Q. Did you receive from any person, and from whom, instructions to conceal his illness from the public?

A. I received no such instructions.

Q. What were your instructions in relation to speaking about Mr. Stewart's illness?

A. I had not any instructions at all.

Q. Were you not told by any of the family that you must not mention Mr. Stewart's illness to any body out of the house?

A. No, I was not.

Q. Did you believe Mr. Stewart to be dangerously ill, until the day before his death?

* In support of J. W. Webb's published slanders — see Appendix, Letter C.

A. I did not believe that he would live very long, but I did not think there was any immediate danger.

Q. Did the family apprise you that he was dangerously ill, or did they lead you to suppose that his life was not in danger?

A. They never apprised me anything about it. I did not know what they may have thought.

Q. Have you ever said that you were led to believe from the family that he was not very sick?

(Question overruled.)

Q. Did any member of the family ever speak to you in relation to the nature of Mr. Stewart's illness, or caution you against speaking of it to persons out of the house?

A. No sir.

TIMOTHY TOOLE.

Sworn before me this 24th November, 1843.

DAVID B. OGDEN.

December 1st, 1843.

WALTER W. WEBB, a witness produced, sworn, and examined by James W. Webb, in opposition to the will deposes and says:

Q. Have you ever had any conversation with Lispenard Stewart, in relation to the will of Robert Stewart deceased, and in relation to the circumstances under which it was procured?

A. In the month of July last, walking with Lispenard Stewart from his house to Warren-street, to the office, as I understood, of Gen. Sandford, he told me that Mr. Stewart was induced to change his will for the purpose of making Mrs. Stewart a witness; and I said I supposed to make my brother a witness too. He said no, he did not want my brother, that he had done more hurt than good before.* He said that it was some time before Mr. Stewart could be convinced of the necessity of changing his will, and when he was convinced of it, he became impatient until it was done. He said he intended to give the property to his sisters. I told him if that was the case, he had better do it at once. That if he meant to give my brother's wife anything, he could now settle it at once, and it might be secured to her, whereas if the will was set aside and

* Henry L. Webb, next witness, testifies the exact reverse, as said by Lispenard Stewart.

any misfortune should happen to my brother, his wife might lose the whole benefit of the property. He said my brother had had his portion of the estate. I then gave him to understand that I had been informed, that the sum of twenty thousand dollars, charged against my brother or his wife, was an original debt against Mr. Skillman,* somehow on account of a newspaper called the Courier, and that Mrs. Webb ought not to be charged with it. Mr. Lispenard Stewart told me that he had taken advice from an eminent lawyer other than Mr. Sandford, and that he was advised to pursue the course he had taken ; and that he should continue to do so notwithstanding anything that my brother could or intended to do. He also said that he could do with his own property as he pleased, and that he intended himself to leave his sister Helen, my brother's wife, ten thousand dollars.

Q. Did he say anything to you, and what, as to the manner in which Mr. Stewart first received the proposition to change his will ?

A. I think that he said to me that we persuaded him to change his will ; that at first he was unwilling to do it, and that he did not consent to do it until we convinced him that it was necessary in order to enable us to avail ourselves of the testimony of Mrs. Stewart.

Q. Did he state in what case it was necessary to secure the testimony of Mrs. Stewart ?

A. It was in those suits depending brought by the heirs of Alice Lispenard, deceased.

(The Witness being cross examined by Gen. Sandford, the counsel supporting the will.)

Q. What relation are you to James Watson Webb ?

A. I am his brother.

Q. Are you in his employment, or receiving a salary, income, or support from him ?

A. My brother James owes me twenty-six thousand five hundred dollars. I hold his bond guaranteed by good personal security. I am in no way interested in the matter now in controversy, and I appear here with great reluctance. I receive the

* J. W. Webb assumed \$6,850 of such debt, and received, in return, the paper and all its properties.

interest on my bond from him, if this can be called income. I am not in his employment.

Q. How soon after this conversation with Lispenard Stewart did you detail it to your brother James?

A. I do not know that ever I detailed it to him. I will explain the circumstances. I had mentioned it at Troy, but the first time I detailed it to my brother James was when I first came down as a witness in this case.

Q. Did you not go to Mr. Stewart's at the time of the conversation you have mentioned, or at any other time, by request of your brother James?

A. No.

Q. Nor upon his intimation?

A. At the time I had this conversation with Lispenard Stewart, I do not know that my brother knew I was going there; but subsequently, at the time I was here as a witness, I told my brother I was going there to see Mary and the family. He told me he had made a proposition to Mr. Stewart through Gen. Sandford, and he wished me to tell Mr. Stewart what the proposition was, lest he might not get it in time before the examination before the Surrogate. When I went to Mr. Stewart's I did not see Mr. Lispenard Stewart; I saw Mr. Charles Stewart and his wife.

Q. Did you, on the day of the conversation you have first stated, go to Mr. Stewart's at the suggestion of your brother Henry L. Webb?

A. No; nor on the suggestion of any other person.

Q. Did Mr. Stewart, in that conversation, speak of the large amount of money which was due to him from his uncle Robert Stewart?

A. I had heard of it before, and I knew that Robert Stewart was indebted to his nephew Lispenard, and I think Lispenard spoke of it in this conversation.

Q. Did Lispenard speak of his anxiety to secure the payment of this debt?

A. I think not.

Q. Did he speak about the execution of a deed by Robert Stewart?

A. I think not.

Q. Was any person in company with you and Lispenard during the walk and conversation?

A. No, sir.

Q. At what time of day or evening was it that you left Mr. Stewart's house that day?

A. I think it was in the forenoon.

Q. What members of Mr. Stewart's family were present when you left the house?

A. Mrs. Charles Stewart and Eliza Stewart were present, I know. Mary may have been there, I cannot be sure.

Q. Did Mr. Stewart in that conversation say that he knew anything of the present will before the day of its execution?

A. He did not say that he knew anything about it.

Q. Did Mr. Stewart in that conversation speak of his own knowledge as to the motives or intentions of Robert Stewart, or on information which he had derived from others?

A. I inferred that he spoke from his own knowledge.

Q. Did Mr. Stewart in that conversation say that he had ever conversed with Robert Stewart in relation to his will?

A. No; not in so many words.

Q. Did he say in any words that he had ever conversed with his uncle about his will?

A. I inferred that he had, from his using the word "*we*," as I had before stated.

Q. What were the words used by him?

A. As I have stated before, I cannot remember the very words. He said, "We persuaded or convinced him that it was necessary to change the will for the purpose of availing ourselves of the testimony of Mrs. Stewart."

Q. Did he say, "*we persuaded or convinced him*," or did he say, "*he was persuaded or convinced*?"

A. I think he used the word "*we*."

Q. Is not your memory, as you have experienced this morning, in endeavoring to recall to it facts and circumstances, very uncertain and confused, or is it a strong and tenacious one?

A. My impressions are strong, and I think I have detailed all the facts. My memory is certainly not so confused and uncer-

tain as not to enable me to detail the circumstances which I have done. My memory is of ordinary tenacity.

Q. When speaking of Mr. Skillman's interest in the debt contracted for the Courier newspaper, did you speak of it as twelve thousand or twenty thousand dollars?

A. I spoke of it as a debt of twenty thousand dollars.

(The Witness being again examined on direct examination.)

Q. Have you any doubt in your mind whether Mr. Lispenard Stewart, in the conversation referred to, used the word "we," alluding to the persons who persuaded Mr. Robert Stewart to change his will?

A. I have no doubt upon that point.

(The witness being again cross examined.)

Q. Why then, in your previous examination, both direct and cross, did you speak of its being your impression, and that you thought he used the word "we," instead of testifying positively?

A. My impression is so strong that I cannot doubt it.

Q. Is your memory so accurate that you can repeat words used in conversation after the lapse of several months?

A. I can repeat the substance.

WALTER W. WEBB.

Sworn before me this 1st December, 1843.

DAVID B. OGDEN.

Deposition of witnesses produced, sworn, and examined, the thirteenth day of December, in the year eighteen hundred and forty-three, at New-Orleans, under and by virtue of a commission issued by and under the official seal of the Surrogate of the County of New-York, in a certain matter of the last will and testament of Robert Stewart, deceased, pending before the Surrogate of the County of New-York, as follows, viz:

HENRY L. WEBB, of the city of New-Orleans, merchant, aged forty-eight years and upwards, being duly and publicly sworn, pursuant to the directions contained or annexed to said above commission, and examined on the part of James Watson Webb, doth depose and say as follows, viz:

To the first interrogatory he answers and says, that his name is Henry L. Webb — that his age is forty-eight years — his resi-

dence is in New-Orleans — his profession is a commission merchant.

To the second interrogatory he answers and says, that he did know the late Robert Stewart of New-York in his lifetime, and that he is acquainted with Mr. Lispenard Stewart, the nephew of the deceased ; that he knew him in New-York, and has been acquainted with him since the fall of 1833.

To the third interrogatory he answers and says, that the said Lispenard Stewart did converse with him on the subject of making and executing the supposed last will and testament of Robert Stewart, deceased, at his house in Hudson-street, in the city of New-York, on the twenty-first day of July last past, in the evening.

To the fourth interrogatory he answers and says, that on the evening of the 21st day of July last, he called at the house where the Stewart family reside, in Hudson-street, in the city of New-York, to see Mrs. Mary J. Webb, the wife of his brother Stephen H. Webb, he having learned during the day that she was to leave the city the next morning for Troy ; that he had heard of a difficulty between his brother, James Watson Webb, and Lispenard Stewart, and should not have visited the house had it not been to have seen said Mrs. Webb, whom he had not seen for fifteen years. Soon after he was in the house, Mr. Lispenard Stewart, or one of his sisters, began to converse with him about the family quarrel, when he requested them to desist, telling them he knew a difficulty existed between them and his brother, James Watson Webb, but that he could not interfere or interest himself in the matter ; adding, that he had only come to see his sister Mary, as he understood she was to leave the city next morning, and not to interfere in their family difficulties : that Mr. Lispenard Stewart and his sisters unanimously, he thinks, begged he would hear his (Lispenard's) statement ; *and to induce him to do so, told him that he (Lispenard Stewart) had received that day a communication from James Watson Webb, threatening that unless he complied with his demands, as contained in that letter,* he would publish in the Courier & En-*

* The letter, referred to by the witness, *was not in existence* at the time of this pretended conversation about it. It was not written *till the next day*, and its demands are predicated on the very report of this interview. See the letter, p. 47.

quirer of the next morning a statement of the whole business and difficulties. He also stated to the witness, as a further inducement to listen to his story, that J. Watson Webb had given him no time to consult with his friends; and as a farther reason, that the witness could possibly act as a peace-maker, and having influence with his brother J. Watson Webb, could prevail on him to *suspend the contemplated publication until Lispenard Stewart's counsel could return from the country*; adding, that not only his counsel, but also his brothers-in-law, were absent, and that he had none to consult with or advise him; and that he did not think it was right to force him to decide with so little advice. On reflection, and under these circumstances, and thus urged, the witness agreed to hear his statement; and he began by saying, that J. Watson Webb had accused him of inducing his uncle Robert to alter his will for the purpose of *cheating* his sisters out of the estate. He stated that his own income was more than twenty thousand dollars per annum, which the witness knew he did not spend; that his children were provided for, and that he could have no inducement to defraud his sisters; that the witness probably knew that for years they had had difficulty with his, Lispenard Stewart's, father's estate, (meaning Alexander L. Stewart;) and for the better securing his property to his children, he, the said Alexander L. Stewart, had made his brother Robert the sole heir to his estate; a few days after the death of his said father Alexander, his uncle, Robert Stewart, made a will, in which he gave all his estate, both real and personal, to him, Lispenard Stewart, and his sisters, to be shared equally; that this will remained unaltered until a short period before Robert Stewart's death: that James Watson Webb, and his sister Sarah Stewart, were the principal witnesses in the late law-suit which is now going to the Court of Errors; and being anxious to have their testimony, he found, on consultation with his counsel, that their testimony could not be admitted whilst they remained as heirs to the estate, which they were as the will then stood, as it made them interested parties: that he then went, *with his counsel and sisters, to his uncle Robert,** and told him that unless he altered his will and

* See deposition of Mrs. and Miss Stewart on this point, p. 50.

gave him (Lispenard Stewart) all the estate, the testimony of J. Watson Webb, and his sister Sarah Stewart, could not be admitted in the above law-suit: that his uncle Robert appeared thunderstruck and alarmed at this information, and agreed to alter his will. He (Lispenard Stewart) pledging himself to carry out the wishes and intentions of his father and his uncle Robert Stewart, and that he would hold the estate in trust for the joint benefit of his sisters; and that his uncle Robert appeared anxious until the new will was completed; that the present will was then made in his, Lispenard Stewart's, favor; and that he intended honestly and to the best of his ability to settle the estate, and ho'd it in trust for the benefit of all his sisters; that he did not intend to take one dollar of that estate for himself; that the estate at that time owed him fifty thousand dollars, and that he had in his will given to each of his sisters ten thousand dollars, comprising or being the amount of this debt. After the conversation as detailed above, the witness visited his brother James Watson Webb, at his office, it being then about 10 P. M., and did so at the request of Lispenard Stewart, "to know if he would suspend the publication."* *The brother of the witness told him that in his letter to Mr. Lispenard Stewart he had made a proposal that would settle all difficulties, and which was to settle on his wife, Mrs. Helen L. Webb, fifty thousand dollars, or one-sixth of the estate; she to have the income of it during her life, and at her death, the property to go to her children. The witness then returned to Lispenard Stewart and reported what his brother had said; † and Mr. Stewart then asked the witness to suggest what was the best course for him to pursue. The witness then suggested that Mr. Stewart should make a just and correct estimate of the real intrinsic value of the estate, and deduct any debts it might owe, and see how much each one's share would be, and after deducting from the share of Mrs. Helen L. Webb the debt which he (Lispenard Stewart) had informed the witness, J. Watson Webb, owed, to*

* See deposition before referred to, p. 50.

† Witne here again testifies to a conversation about a letter *not in existence* at the time, but written and sent to Lispenard Stewart the next day. The letter is altogether based on the pretended statements of Mr. Stewart at this only interview between him and the witness. See the letter, p. 47.

give an obligation to secure to the said Mrs. Helen L. Webb the amount that would then be remaining, in the mode proposed by the brother of the witness; — that the said Lispenard Stewart appeared pleased and satisfied with this plan, and the witness thought, would make the arrangement, but his sister, Mrs. Sarah Stewart, objected, and told him to do nothing in a hurry, and by no means to put anything in writing, as J. Watson Webb would take advantage of it; and to do nothing without consulting his counsel; — that this appeared to determine him to do as she recommended; — *that both Mr. Stewart and his sisters appeared worried at the threatened publication, and requested witness to use his influence with his brother to suspend it; and he authorised witness to say to his brother that if he would suspend the publication, he would communicate with him after the arrival of his counsel,** after he had seen and consulted with him. Witness thinks it was Gen. Sandford he said he wished to see and consult with. The witness promised to use his influence with his brother to suspend the publication, and went again to his brother's office, who did agree to suspend the publication until Mr. Stewart could see Gen. Sandford; *and then returned to Mr. Stewart's house, in Hudson-street, to communicate his success to the family, as they had requested him to do, it being then near midnight.**

To the fifth interrogatory he answers and says, that he did make a memorandum of the conversation with Lispenard Stewart, referred to in his answer to the fourth interrogatory; — *that on the morning after the said conversation, he was relating it to his sister-in-law, Mrs. Helen L. Webb, the wife of J. Watson Webb, when the latter entered the room, and after listening to what the witness was repeating to Mrs. Webb, he asked the witness if he had any objection to put in writing what had taken place in the conversation with Mr. Lispenard Stewart the preceding evening;†* and the witness replied that he was willing to do so, and commenced writing in the room, and when he had partly finished, his brother requested him to be very particular,

* See the deposition of Mrs. Stewart and sister.

† Compare this account of the time and circumstances of making the memorandum with that of J. W. Webb's letter, p. 47.

and give the very words of Mr. Stewart, or as near as possible ; — that he stopped writing and went down to the office of the Courier and Enquirer, where his brother went into his private office, and the witness remained in the outer room, where he completed the memorandum, the original of which he now produces, in the exact state as it was then prepared, and is annexed hereto, marked A, dated New-York, 22d July, 1843, signed by the witness. He also says that the additional memorandums on the same paper, the one signed by Jane H. Averill, Walter W. Webb, and C. L. Webb, and the other signed by H. Averill, were added thereto at the time and place they respectively bear date ; that after writing and signing the said memorandum, he showed it to his brother, J. Watson Webb, who took a copy of it, and returned him the original.

To the sixth interrogatory he answers in the negative.

To the first cross interrogatory he answers and says, that he is the brother of James Watson Webb.

To the second cross interrogatory he answers and says, that he called at the house of Lispenard Stewart at his own instance only, and not at the request or instance of any other person ; and that his motive and inducement for calling was to see Mrs. Mary L. Webb, as mentioned in his answer to the fourth direct interrogatory ; — that he called without the previous knowledge of his brother, James Watson Webb ; — that he never pretended to Lispenard Stewart that he was ignorant that difficulties existed between him and his family, with his brother, J. Watson Webb, but that he was ignorant of the particulars of said difficulties until related to him (as already detailed) by said Lispenard Stewart ; — that he only knew generally and from the public notoriety of the fact, that Robert Stewart had disinherited his nieces, as their father, Alexander L. Stewart, had previously done ; — that his visit at the north, after a protracted absence of some years, to see his friends and for the general benefit of his health, which he stated at the time of the interview to Lispenard Stewart, telling him at the same time he did not wish to interfere or take any part in the family difficulties, and that it was only at the *earnest request of said Lispenard Stewart that he consented to listen to his details and conversation on the subject*, at the time of visiting his house on the 21st July, 1843.

To the third cross interrogatory he answers and says, *that he made no proposal to Lispenard Stewart to pay, or to offer or to authorise him to offer, J. Watson Webb any sum of money or other compensation, except as detailed in his answer to the fourth direct interrogatory,** and that was done merely as a suggestion in reply to a request of Lispenard Stewart, that the witness should suggest to him what he thought was the best course to pursue.

To the fourth cross interrogatory he answers and says, that in his interview with Lispenard Stewart the latter was about to make some proposition, and the witness took out his pencil to make a memorandum of it, in order to avoid mistake or misunderstanding, as Mr. Stewart had requested him to be very particular in anything he said to James Watson Webb as coming from said Stewart;—that he does not recollect whether he wrote down anything at the time, but if he did, it must have been only a few words, as Mrs. Sarah Stewart at once objected to putting anything on paper;—that he had no intention at the time, nor did he write down any of the conversation with Lispenard Stewart in his presence or during the interview, nor has he subsequently written or made any memorandum of said interview or conversation with said Lispenard Stewart other than as referred to and detailed in his answer to the fifth direct interrogatory.

To the fifth cross interrogatory he answers and says, that James Watson Webb did not assist in writing, altering, or dictating, the memorandum referred to in his answer to the fifth direct interrogatory, otherwise than merely requesting him to put down the exact words of Lispenard Stewart, as near as he could recollect them. J. Watson Webb and his wife were present, when the witness commenced writing the said memorandum at the house of said J. W. Webb; but he is not certain if any one was present when he completed writing the memorandum at the office of the Courier and Enquirer; though Mr. Daniels, or Mr. Morrell, might have come in whilst he was writing; but that he had no intercourse or communication with any one on the subject of said memorandum, further than as already declared by him.

* See depositions of Mrs. and Miss Stewart, above referred to, p. 50.

To the sixth cross interrogatory he answers and says, that Mrs. Mary J. Webb, Mrs. Sarah Stewart, and Miss Stewart, all sisters of Lisenard Stewart, were present at the conversation alluded to; that the interview and conversation took place at the house of said Lisenard Stewart, in Hudson-street, in the city of New-York, on the 21st day of July, 1843, and that it continued from about 7 P. M. till near or quite midnight, including the time spent in visiting his brother at his office, at the request of Lisenard Stewart.

To the seventh cross interrogatory he answers and says, that he saw his brother J. Watson Webb, in the course of the day in which he had the conversation with Lisenard Stewart; but when or how long before he went to the house of said Stewart, he is unable to recollect; but *thinks* it was "*probably*" at dinner time the conversation was repeated to J. Webb, at the time and manner as detailed in his answer to the fourth and fifth direct interrogatories.

HENRY L. WEBB.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at New-Orleans, this 13th day of December, 1843.

WM. L. HODGE, }
 JAMES M. WRAY, } *Commissioners.*
 L. C. DUNCAN, }

Letter of J. W. Webb, referred to in the preceding testimony.

New-York, July 22, 1843.

TO MR. LISPENARD STEWART:

SIR — My brother, Henry L. Webb, called upon me *last evening, and related the conversation which he had held with you in regard to the document which you call the last will of Mr. Robert Stewart. I immediately requested him to reduce to writing your explanation of the mode in which that document was procured, which of course he did.**

* Compare this account of the time of making the memorandum with that given by Henry L. Webb in the preceding testimony.

I enclose you a copy ; and if you will take it to your " three lawyers " for inspection, they will, if they are not *both knaves and fools*, tell you at once, that it will be idle in you *now*, to attempt to sustain your will if I oppose it. His testimony alone, finally and conclusively disposes of the whole controversy.

I now propose to withdraw all opposition to the so called will being admitted to probate, *on condition that you will at once settle upon Helen the sum of fifty thousand dollars, or the one-sixth part of the estate* — she to have the income of it during her lifetime, and at her death the whole sum to be divided among her children. In the event of her dying before her youngest child shall reach the age of *twenty-one* years, I to receive the income until that period, and then the principal to be divided as above. I to name the trustee, whose duty it shall be to invest the trust money in such securities as we may *jointly* direct in writing, or as the survivor may direct, in like manner.

If you think my testimony of value in the Lispenard will case, it is *your* interest to make the settlement without reference to the estate, as I could then swear, that I had no interest directly or *indirectly* in the estate, at the same time I would be *directly* in the recovery by the plaintiff, against whom I would be testifying. This would render my testimony *all important*. You have the assent in writing of all the other heirs, to your will going to probate ; and as by this act they abandoned me, I, in my turn, abandon them to your " tender mercies." Thus the withdrawal of my opposition, settles the whole question, and the will goes to probate, unless, indeed, I am forced to publish our correspondence on Tuesday, when the knowledge of the *conditions* upon which the will was made, will equally enable your uncle Robert's widow, or any other person, to break it.

In conclusion, be advised *even* by me. For once in your life, act promptly and from *your own judgment* and convictions of what is proper. A member of the bar told me yesterday, that about the time of the last trial, your uncle Robert called on him and gave him \$100, and told him that he wanted to get rid of *Sandford*, who had received from him at different times, on ac-

count of the Alice Lispenard will alone, *more than eight thousand* dollars!* Comment is unnecessary.

You have now to decide, and that too, promptly, whether you will force me to make the publication on Tuesday, and then in addition, to have the will rejected by the Surrogate, or whether, complying with my terms, and using the documents signed by the other heirs, you will at once enter into the quiet and peaceable possession of the estate, preserving my testimony, such as it is, as to the capacity of Alice Lispenard to make a will. I care not *how* you decide, but again warn you not to delay.

Your ob't serv't,

J. WATSON WEBB.

[After the incontestible proof, which a comparison of Henry L. Webb's testimony and his brother's letter presents, that in two separate instances he swears to the details of conversations on the subject matter of a letter not in existence at the time, and which letter itself, not written till the next day, predicates its bold and large demands on one of those very pretended conversations, is it uncharitable to say, that so gross an inaccuracy of memory, with such evidence of a lively imagination, throws a doubt over the correctness of all to which he does testify? We think not. He saw Lispenard Stewart but the one evening, (this the 21st of July,) and had no other interview with him, yet swears that Lispenard Stewart then told him that he had received a letter from J. W. Webb, and states its contents, which letter, as is fully proved, was not in existence till the day after, the 22d, and the demands in its contents never heard of till then! Is it not possible — nay, is it not probable, that such a witness might, and in this case did, apply in his recollections of a conversation of two or three hours, what was said, and is true, of a Deed to secure a debt, to what it is known never could have been said, or if by any possibility it could, was utterly untrue in reference to the Will, and to all the parties named in connexion with it.

One word here in regard to this letter of J. W. Webb. We

* J. W. Webb well knew that this was untrue, and that the whole expense of the litigation through all the courts, including the fees of all the counsel employed therein, as well as the costs of court, only amounted to this sum.

see in it the price at which he estimates his testimony in the LISPENARD WILL CASE: whatever others may think of it, he values it at \$50,000! While he here proclaims his own testimony ALL-IMPORTANT, we would call to mind the baseness of using the columns of his own newspaper on the 27th of July, 1843, as he did, to pass an invidious judgment upon that of another witness in the same case, and that witness an inobtrusive and unoffending relative, justly appreciated by every one who knows her, in all ranks of society; yet thus subjected, in the publicity of a print at his control, to his epithets of reproach. To give weight to that invidious judgment, he puts it in the mouth of one of the most eminent and honorable of the members of the bar, from whom he asserts that he received it. The name of that gentleman, furnished to me, is concealed, (as is much of the scurrility of the abusive manuscript sent with it,) under *asterisks*, in the columns of his newspaper; and that with good reason, for that gentleman, his own counsel — PRESCOTT HALL, Esq. — utterly denies the truth of it, did so to J. W. Webb, in the hearing of others, in the Surrogate's Court, and I doubt not will do so again, in any and every place in which it may be asserted.]

BEFORE THE SURROGATE OF NEW-YORK.

IN the matter of the Probate
of the last Will and Tes-
tament of ROBERT STEW-
ART, deceased. }

City and County of New-York, ss.: Sarah Stewart, of the city of New-York, wife of Charles S. Stewart, and Eliza Stewart, of the same city, gentlewomen, sisters of Lispenard Stewart, of the same city, being duly sworn, do severally depose and say,

That they have heard read the deposition of Henry L. Webb, as taken in the above Cause, under a commission to New-Orleans, and that the statements made therein, as well as in the paper signed by said Webb, and annexed to the said deposition, are, in every material matter, wholly and entirely untrue.

That these deponents were present during the whole conversation between said Henry L. Webb and said Lispenard Stewart, at the time referred to in his deposition, and both took part in said conversation, and they severally depose and say, that said Lispenard Stewart did not, in such conversation, make any statements whatsoever to said Webb, or in his presence, of having urged his uncle, or held out any inducements or promises to his uncle, to change his will, or anything to that effect.

And these deponents further say, that it is untrue that these deponents, with or without said Lispenard Stewart, ever went to said Robert Stewart, to induce him to alter his will — and if any statement to that effect had been made in their hearing, they would have corrected it.

And these deponents further say, that during said conversation, the said Lispenard Stewart did speak of his uncle owing to him a large amount of money, for which he had little or no security, and that he had urged him to secure it, and had induced his sister, Mrs. Stewart, and his brother-in-law, Mr. Charles Stewart, and his counsel, Mr. Sandford, to urge him to secure said debt, which was the only statement made by said Lispenard Stewart on that occasion, in respect to any influence used by him with his uncle, and which statement so made by said Lispenard Stewart is true.

And these deponents further say, that it is utterly untrue that said Lispenard Stewart, or these deponents, requested said Henry L. Webb to hear their statements respecting the difficulties with J. Watson Webb, or that he requested them to desist from speaking about them; but on the contrary, he professed to be ignorant of the difficulties in the family, and stated that he would like to understand what could be done to settle the differences; that he came as a friend, was in no way interested except to make peace; he was a friend to both sides, and wished something could be done; he thought he could keep Watson from publishing, and wished Lispenard to make some proposal. He suggested several propositions for said Lispenard to make, and finally said, he wished him to offer him \$5000, or some other sum: and repeatedly urged him to make some proposal, or to authorize him to make some proposal. To which said Lispenard

Stewart invariably replied, that he would have nothing to do with him — the said J. Watson Webb — and would give him nothing, and that he might publish what he liked.

And these deponents further say, that it is also entirely false that said Lispenard Stewart either urged or wished said Henry L. Webb to go to said J. Watson Webb for any purpose ; but on the contrary, persisted constantly in saying, that he would offer him nothing, would give him nothing, and would have nothing to do with him, and would not give him a single cent. And these deponents also say, that it is untrue that they knew, or were informed by said Henry L. Webb, that he was going from their house to see said J. Watson Webb ; that after being at their residence some time, he said he had an appointment with a gentleman at the American Hotel, but he would return, as he expected to meet his brother, Walter Webb, at deponents' house that evening : that when he was about leaving, he was expressly told by said Lispenard, that he did not wish him to see his brother Watson as from him ; and said Henry declared he would not : that he was gone some time, and when he returned, these deponents suspected, from his conversation, he had in the meantime seen J. Watson Webb, and upon said Lispenard Stewart charging him with having, in his absence, been to see J. W. Webb, he admitted he had seen him. Walter Webb did not call that evening, and about ten o'clock, or soon after, said Henry L. Webb went away, and did not return again that evening, as is untruly stated in said deposition.

And these deponents also say, that it is untrue, that said Henry L. Webb, on his return to their house, repeated to them or said Lispenard Stewart, any such proposal from said J. Watson Webb, as is stated in said deposition ; but on the contrary, concealed having seen him until charged with having done so by said Lispenard Stewart ; and the proposal of settling \$50,000 on Mrs. Helen Webb, as coming from J. Watson Webb, was never heard of by these deponents, nor as they believe by said Lispenard Stewart, until it was communicated by said J. Watson Webb the next day in a letter to said Lispenard Stewart, containing a copy of said Henry L. Webb's statement of that evening's conversation ; and threatening to oppose the will

on said statement of Henry L. Webb, unless Lispenard Stewart would settle \$50,000 on his wife.

That it is also untrue, that said Lispenard Stewart asked said Henry L. Webb to propose any plan of settlement, or expressed himself pleased with any plan proposed by said Webb, and that so far from requesting him to urge his brother to suspend his publication on any proposition from him, (said Lispenard,) these deponents and said Lispenard Stewart were utterly surprised by an assertion next day in the *Courier & Enquirer*, that such publication was suspended at his request, said assertion, and every thing in that respect contained in said deposition, being absolutely and unqualifiedly false.

SARAH A. STEWART,
ELIZA BARCLAY STEWART.

Sworn, this 2d January, 1844, before

F. R. TILLOU, *Alderman, &c.*

The following is the memorandum of Henry L. Webb, referred to in his testimony and the letter of J. W. Webb, of July 22, 1843 :

“Mr. Lispenard Stewart last evening said to me, I wish to explain to you how I am situated in regard to the estate of my deceased father, Alexander L. Stewart, and my deceased uncle, Robert Stewart, and what induced uncle Robert to alter his will and make me his heir. My father, for the purpose of better securing his property to his children, made uncle Robert his sole heir. Uncle Robert, in a few days after the death of my father, made a will, in which he gave all his estate, both real and personal, to myself and sisters, to be shared equally. This will remained unaltered until a short period before his death. James Watson Webb and sister Sarah Stewart were our principal witnesses in the late law suit which is now going to the Court of Errors. Being desirous of having their testimony, after consulting my counsel and my sisters, I found they could not be admitted as witnesses if they remained heirs of the estate, (which they were as the will then was,) being interested. I then, with my counsel and sisters, went to uncle Robert and told him, that unless he altered his will and gave the estate to me, that the

testimony of Watson and Sarah could not be admitted. He was thunderstruck and greatly alarmed, and immediately consented, and appeared very anxious until the new will was completed, I pledging myself to him that I would carry out the wishes and intentions of him and my father, and hold it in trust for the joint benefit of my sisters. Uncle Robert then made the present will in my favor; and I intend honestly, and to the best of my ability, to settle the estate and hold it in trust for the joint benefit of all my sisters.

“HENRY L. WEBB.”

[The following endorsement and signatures, which had been entered upon the above memorandum of Henry L. Webb, was at once pronounced inadmissible by the Court, and not allowed to go upon the record. It was, of course, impracticable for the devisee to introduce the rebutting testimony which he could have exhibited. It forms no part of the record of the Court, but J. W. Webb having published it as such, in the *Courier and Enquirer*, it is here also laid before the reader. Could the publisher of this pamphlet persuade himself to make known the circumstances in which that endorsement was made, the disguise of purpose in the interview on which it is predicated, the secrecy with which the signatures were affixed, and the outrage thus perpetrated upon the rights of hospitality and the sanctity of private life, the reader would turn from it with incredulity if not contempt. It is sufficient to say, that Mrs. Mary Webb never knew or suspected at the time the existence of such a memorandum, or the giving of such endorsements.

As to the subject matter it involves, Mrs. Webb being now in a distant State, it is not possible, without an undesirable delay in the appearance of this publication, to secure by affidavit her recollections of the original conversations between her brother Lispenard and Henry L. Webb, or those of her interview with the latter in Troy. This much, however, is certain and true, that during the evening of Henry L. Webb's visit in Hudson-street, on the 21st of July last, Mrs. Webb being herself much occupied, and to leave town next morning, was absent from the parlor at different times, and heard detached parts only of

the conversation; and that she repeatedly afterwards stated to various members of her family, that on many points in which Henry L. Webb had said that her brother Lisenard had said so and so, she had corrected him and told him that it was not true. Moreover, in a brief and hasty letter from Troy a day or two after her arrival, and after a notice in the *Courier and Enquirer* announcing the postponement of a threatened article at the request of Lisenard Stewart, she thus writes: "I mentioned to them all here my disapproval of Watson's course in attacking you all in the paper, and that the statement in the *Courier* of Lisenard's wishing Watson to put off the publication, was not true;"—thus, incidentally but positively contradicting, with her sister Mrs. Charles Stewart, and Miss Stewart, one part of Henry L. Webb's memorandum and testimony. Having thus her explicit denial in writing to a part of the memorandum which Henry L. Webb and the endorsers say she confirmed, the publisher is slow to believe that either from inadvertence or want of recollection, she understandingly gave her assent to the correctness of the memorandum on the record.]

Troy, July 26th, 1842.

We, the undersigned, were present and heard Mrs. Mary J. Webb say, that she was present and heard Mr. Lisenard Stewart relate to Henry L. Webb, the conversation detailed in the foregoing writing, signed by the said Henry L. Webb.

JANE H. AVERELL,
WALTER W. WEBB,
C. L. WEBB.

July 26th, 1843.

I was present this morning when Mr. H. L. Webb called the attention of Mrs. Mary Webb to the conversation had between said Henry and Mr. Lisenard Stewart. He detailed said conversation substantially as is within written, and Mrs. Webb assented to its correctness.

H. AVERELL.

New-Orleans, Dec. 13th, 1843.

This is the paper referred to in my answer to the fifth direct interrogatory.

HENRY L. WEBB.

WILL OF 1838.

IN the name God, amen : I, ROBERT STEWART, of the City of New-York, being of sound mind and memory, but considering the uncertainty of life, do make and publish this my last Will and Testament in manner following, hereby revoking all former Wills by me made.

I will and devise to my nephew, Lispenard Stewart, my executor hereinafter named, all my estate, whether real, personal, or mixed, whatsoever and wheresoever, and whether in possession, reversion, or remainder, one-sixth part thereof to be for his own use and benefit ; one-sixth part thereof in trust for the use of his sister, Helen L. Webb, (wife of James W. Webb,) *less seventeen thousand dollars, to be added in equal proportions to the other five-sixth parts*; one-sixth thereof in trust for the use of his sister, Mary J. Webb, (wife of Stephen H. Webb;) one-sixth part thereof in trust for the use of his sister, Sarah A. Stewart, (wife of Charles S. Stewart;) one-sixth part thereof in trust for the use of his sister, Eliza B. Stewart; and one-sixth part thereof in trust for the use of his sister, Matilda W. Stewart, and to the exclusion of any interference or control on the part of any husband, which they or any of them have or may have, or liability for their debts. The income from the said five-sixth parts, together with such portions of the principal thereof as to the said Lispenard Stewart may seem necessary, (deducting as aforesaid from the share of the said Helen L. Webb,) to be applied to the use of the said several parties, at such times and in such sums as he, the said Lispenard Stewart, may determine. And in case of the death of any of his sisters hereinbefore named, leaving lawful issue, I direct that the share of such sister, or any balance thereof remaining, be equally divided amongst her children : and if any of them die without issue, I further direct that their share, or any balance remaining, be equally divided amongst her surviving sisters, and the said

Lispenard Stewart, or the children of any of them which may be deceased, per stipes and not per capita.

I will and bequeath to my wife, Sarah A. Stewart, during her natural life and widowhood, two hundred and fifty dollars per annum, to be paid to her by my said executor quarter yearly, from my decease. But in the event of her raising any questions, or commencing any suit in regard to any other pretended rights, then and in such case I direct my said executor to stop the payments to have been otherwise made to her under the provision aforesaid.

And I hereby request and direct my friend, Richard Riker, of the city of New-York, Esquire, or, in the event of his decease, my friend, Abraham T. Hunter, of the said city, physician, the trustees named in the last will and testament of my deceased brother, Alexander L. Stewart, to execute and fulfil the trusts therein named, upon the order and appointment of the said Lispenard Stewart, my said executor, in the same manner to all intents and purposes, as if such order had been made by me in my lifetime.

And I hereby appoint the said Lispenard Stewart my sole executor, to see the intention of this my last Will and Testament faithfully done and executed, with full power and authority to grant, bargain, sell, mortgage, and convey the whole or any part of my estate which he may deem necessary for the purposes of this my Will, and with further power to my said executor to appoint by his last will and testament, such trustee or trustees as he may elect, to execute and fulfil whatever trusts may remain unexecuted under this my Will.

[L. s.] ROBERT STEWART.

Signed, sealed, published, and declared by the said Robert Stewart as and for his last Will and Testament, in the presence of us who, at his request, in his presence, and in presence of each other, have subscribed our names as witnesses, this twentieth day of April, 1838, (thirty-eight.)

JOHN R. MURRAY, No. 30 Laight-street, N. Y.

WM. H. HOBART, No. 67 Prince-street, N. Y.

(Endorsed) ROBERT STEWART'S Will, April 20th, 1838.

DECISION OF THE SURROGATE.

In the matter of proving the
last Will and Testament of }
Robert Stewart, deceased. } *Surrogate's Office, Jan. 4, 1844.*

After a careful examination of the evidence, I am of opinion that this Will must be admitted to probate upon producing the usual proof of its custody.

DAVID B. OGDEN.

A P P E N D I X .

ALL the heirs at law of Mr. Robert Stewart, except J. W. Webb, gave a unanimous verbal approval of his Will, on the evening of the 27th of June last, the day after his death, and unitedly expressed to Lisenard Stewart their wish for its immediate probate. It was afterwards determined to give this approval in writing. Before the following paper was drawn, however, Mr. and Mrs. Le Roy had gone to the country for the summer, and their written approval was sent by letter. On their return to town for the winter, they annexed their signatures, with those of the rest, to the document here given.

A.

WE, whose names are hereunto subscribed, being heirs at law and next of kin of Robert Stewart, deceased, having investigated the situation of his estate, and being perfectly satisfied that his Will, bearing date the third day of May, 1843, was the result of his unbiassed judgment; and that the condition of his estate has been fairly exhibited to us, do concur in the opinion that the said Will should be admitted to probate without any opposition, and will not ourselves oppose it.

NEW-YORK, JULY 13, 1843.

HELEN L. WEBB,
S. H. WEBB,
MARY J. WEBB,
C. S. STEWART,
SARAH A. STEWART,
ELIZA BARCLAY STEWART,
H. C. LE ROY,
MATILDA STEWART LE ROY.

NOTE B — page 25.

BEFORE THE SURROGATE OF NEW-YORK.

IN the matter of proving the }
last Will and Testament of }
ROBERT STEWART, dec'd. }

To David B. Ogden, Esq., Surrogate of the County of New-York:

The petition of Helen L. Webb, wife of James Watson Webb, of the city of New-York, respectfully sheweth —

That she is one of the heirs at law of Robert Stewart, late of said city, gen-

tleman, whose will is now before the Surrogate for probate. That she has been informed and believes that an appearance has been entered in her name, and counsel appeared on her behalf, in opposition to the probate of said will. That such appearance has been made, and such opposition is contrary to her wishes and intention, and that she has not authorised any person to appear for her as probate or solicitor, and that she is not willing that said will shall be opposed in her name.

Your petitioner therefore prays that she may be authorised to appear by next friend or proctor, independent of her husband, for the purpose of withdrawing any opposition to said will, in her name, or on her behalf, and to protect her rights in the premises.

And your petitioner prays that Major S. H. Webb may be appointed such next friend, to appear and answer for her in the premises, and to protect her rights therein.

And your petitioner will pray, &c.

HELEN L. WEBB.

W. L. CUTTING, Proctor for Petitioner.

City and County of New-York, ss. — Helen L. Webb, the above petitioner, being duly sworn, says, that the facts stated by her in the foregoing petition, as of her own knowledge, are true, and those stated upon the information of others, she believes to be true.

Sworn before me, this 20th day of October, 1843.

DAVID B. OGDEN.

In a pretended report of the proceedings of the Surrogate's Court, on the 26th of October last, published in the *Courier & Enquirer* of the next morning, J. W. Webb takes occasion, among other abusive matter, to utter a wholesale libel upon his brother, Major Stephen H. Webb, and wife, Mary J. Webb, Mr. and Mrs. C. S. Stewart, and Mr. and Mrs. H. C. Le Roy, in which he charges them with being bribed and bought off by Lisenard Stewart to support the Will: charges Lisenard Stewart with having threatened to turn his sister, Mrs. Webb, and her children, into the streets, if her husband, S. H. Webb, opposed the will: charges Mr. and Mrs. C. S. Stewart with having been the *keepers* of Mr. Robert Stewart during his illness, and of preventing all access to him by other members of the family, thus holding him in duress, he being out of his mind; and Mr. Le Roy of having attempted to deprive Mrs. Helen L. Webb and her children of their share in the Stewart estate, &c.

The following affidavits, marked C, D, and E, were made immediately to lay before the court, in a pretended report of the proceedings of which these false and libellous accusations were made.

C.

BEFORE THE SURROGATE.

IN the matter of the Probate of }
 the last Will and Testament }
 of ROBERT STEWART, dec'd. }

City and County of New-York, ss. — Stephen H. Webb and Mary J. Webb, of the city of New-York, being duly sworn, do severally depose and say, that they were not prevented from opposing the probate of the Will of the late Robert Stewart, by, or on account of, any promises or threats of Mr. Lisenard Stewart. That it is entirely untrue that said Lisenard Stewart threatened to turn his sister (one of these deponents) out of doors, for opposing, or if she opposed the probate of said Will, as asserted by James Watson Webb; and that these deponents were never debarred or prevented from visiting the said Robert Stewart during his last illness, or at any other time, by either Mr. and Mrs. Charles Stewart, or any other member of the family; and that the frequency of their visits were in no wise limited, except by his own wishes, to prevent his being disturbed, or to avoid their being confined to a sick room.

S. H. WEBB,
 MARY J. WEBB.

Sworn before me, this 25th day of October, 1843.

F. A. TALLMADGE, Recorder of the City of New-York.

D.

BEFORE THE SURROGATE.

IN the matter of the Probate of }
 the last Will and Testament }
 of ROBERT STEWART, dec'd. }

City and County of New-York, ss. — Charles S. Stewart, of the City of New-York, Chaplain in the U. S. Navy, and Sarah A., his wife, being duly sworn, do severally depose and say, that they were not prevented from opposing the probate of the Will of the late Robert Stewart, by, or on account of, any promises or threats of Mr. Lisenard Stewart. That it is entirely untrue that said Lisenard Stewart ever threatened to turn his sister, Mrs. Mary J. Webb, or her children, out of doors, for her or her husband threatening to oppose said Will, or for any other cause, to their knowledge or belief; and that it is also entirely untrue that the said Robert Stewart was in a state of duress, or under any restraint whatever, at the time of making his said Will, or at any time during his illness; or that these deponents, or either of them, prevented the members of the family, or any of them, from having access to him at any time, or on any occasion; and that all the statements made by James Watson Webb in relation to such duress or restraint, or to the state of mind of the said Robert Stewart, as published in the *Courier and Enquirer* of this day, in a pretended report of proceedings in this cause, are utterly and entirely untrue. And these deponents further say, that the said Robert Stewart continued in the full

possession of his faculties, and attended to business to the morning of the day on which he died.

CHARLES SAMUEL STEWART,
SARAH A. STEWART.

Sworn before me, this 27th day of October, 1843.

CHARLES W. SANDFORD, Commissioner of Deeds, New-York.

E.

BEFORE THE SURROGATE.

IN the matter of the Probate of }
the last Will and Testament }
of ROBERT STEWART, dec'd. }

City and County of New-York, ss. — Herman C. Le Roy and Matilda S. his wife, of the city of New-York, being duly sworn, do severally depose and say, that they were not prevented from opposing the probate of the will of the late Robert Stewart, by, or on account of, any promises or threats of Mr. Lisenard Stewart. That it is entirely untrue that said Lisenard Stewart ever threatened to turn his sister, Mrs. Mary J. Webb, or her children, out of doors, for any cause whatever, to their knowledge or belief; and that it is entirely untrue to these deponents' knowledge and belief, that these deponents, or any of the family, were prevented from visiting Mr. Robert Stewart during his last illness, or at any other time, by Mr. and Mrs. Charles Stewart, or either of them, or any other member of the family; and that all the statements made on this subject by James Watson Webb in relation to such duress or restraint, or the state of mind of said Robert Stewart, as published in the *Courier & Enquirer* of the 27th October last, are utterly untrue, to the best of these deponents' knowledge and belief; as is also the statement that these deponents, or either of them, sought to deprive the wife or children of said James Watson Webb of her share or interest in the estate of said Robert Stewart, or in such portion thereof as the said Lisenard Stewart might be disposed to appropriate to her or their use.

HERMAN C. LE ROY,
MATILDA S. LE ROY.

Sworn before me, this 6th day of November, 1843.

CHARLES W. SANDFORD, Commissioner of Deeds, New-York.

City and County of New-York, ss. — Charles S. Stewart and Sarah A., his wife, being duly sworn, say, that they do not know or believe that the said Herman C. Le Roy, or Matilda, his wife, sought or attempted to deprive the wife or children of James W. Webb of her share or interest in the estate of the said Robert Stewart, or in such portion thereof as the said Lisenard Stewart might be disposed to appropriate to her or their use.

CHARLES SAMUEL STEWART,
SARAH A. STEWART.

Sworn before me, this 6th day of November, 1843.

CHARLES W. SANDFORD, Commissioner of Deeds.

NOTE F—page 12.

The ANSWER IN CHANCERY, filed under AFFIDAVIT, of J. W. Webb, April 6th, 1830, and quoted from in the opening pages of this pamphlet, gives the entire history of the reasons and manner in which he became proprietor of the Morning Courier in December, 1827. After stating that Alexander L. Stewart had made a loan to John B. Skillman, for securing \$9,371 of which, judgment had been confessed by Skillman, and an execution levied by Mr. Stewart on the Morning Courier and its properties, the Answer in Chancery thus proceeds :

“ And this defendant (J. W. Webb) further answering says, that previous to the said abovementioned loan, of which the abovementioned sum of \$9,371 was a part, by the said Alexander L. Stewart to the said John B. Skillman, the said Alexander L. Stewart had advised with this defendant respecting the propriety of making such loan, and this defendant had strongly recommended such loan to be made. And this defendant further says, that after the said abovementioned execution was issued, and in the early part of the said month of December, 1827, and in consequence of the belief which this defendant then honestly entertained, that the said newspaper establishment, if sold by the sheriff under the said execution, would produce but a very small sum of money, and that the said Alexander L. Stewart would thereby lose a great part of the money *which this defendant had advised him to loan to the said John B. Skillman, (the said Skillman having no other property of any value,) he, this defendant, considering himself the innocent but unfortunate adviser of the said loan, concluded to come forward, and to take an assignment of \$6,850 of the said debt due to the said Alexander L. Stewart by the said John B. Skillman, and to secure the repayment of the said sum to the said Alexander L. Stewart, and also to purchase the said newspaper establishment, with the said abovementioned sum.*

And this defendant further answering says, that having come to the determination abovementioned, he, this defendant, with the consent of the said John B. Skillman, on or about the 17th day of December, in the said year 1827, received from the said Alexander L. Stewart an assignment of the above sum of \$6,850, part of the debt aforesaid, and with the same, by an assumption of certain other confidential debts of the said John B. Skillman, that is to say of \$300 to ————, \$300 to ————, and \$250 to ————, all of the said city of New-York, merchants, which this defendant avers he did assume and agree to pay ; he, this defendant, on the 18th day of December, in the said year 1827, *purchased of the said John B. Skillman the said newspaper establishment called the Morning Courier, including its types, presses, materials, and all other property of every kind, and received a bill of sale or conveyance therefor from the said John B. Skillman.”*

CONTRACT

BETWEEN J. W. WEBB AND ALEXANDER STEWART.

This Indenture of two parts, made this eighteenth day of December, A. D. eighteen hundred and twenty-seven, by and between James Watson Webb, of

the city of New-York, of the first part, and Alexander L. Stewart, also of said city, of the second part; witnesseth, that whereas the said party of the second part, hath assigned to the said party of the first part, the right which said party of the second part hath or had to receive from John B. Skillman the sum of six thousand eight hundred and fifty dollars, being part of a debt due to said party of the second part from said Skillman; and said Skillman, in satisfaction and payment to said party of the first part, hath assigned and transferred to said party of the first part the newspaper establishment of the Morning Courier, and also all the debts due and to grow due from subscribers to said Skillman, and from customers for subscriptions, advertisements, or otherwise, as by reference to a certain indenture between said party of the first part and said Skillman will appear. And the said party of the first part hath agreed to pay to said party of the second part the sum of six thousand eight hundred and fifty dollars aforesaid in equal semi-annual instalments of thirty-four hundred and twenty-five dollars each and every half year, beginning the computation thereof from and after the eighteenth day of December, eighteen hundred and twenty-seven, together with lawful interest payable half yearly. Now the said party of the first part, hereby covenants to the said party of the second part, that the said party of the first part, will well and truly pay to said party of the second part the sum of thirty-four hundred and twenty-five dollars on the eighteenth day of June next, and the like sum on the eighteenth day of December next; and also will on the half yearly days of payment abovementioned, pay lawful interest on the whole sum then unpaid to the said party of the second part, and to the end that the said party of the second part shall have opportunity of knowing in what manner said party of the first part conducts the business of the said newspaper establishment which it is understood the said party of the first part intends to conduct, the said party of the first part hereby covenants with the said party of the second part, that he will at all times exhibit and disclose to said party of the second part, the books and accounts of said establishment, without reserve, when thereunto requested, and to the end that the said party of the second part may be secured for the punctual and just payment of the said several sums, and interest at the said several days aforesaid, the said party of the first part hereby covenants with the said party of the second part, that on failure of the said party of the first part to pay either of the said sums of money, or the said interest, on either of the days so as aforesaid fixed for such payments, the said party of the second part, or any person thereto authorised by him, shall have right to enter upon whatever tenements the said party of the first part shall in fact occupy, and then and there possess himself by his own acts, or by his agent, of all the books, accounts, notes and securities, pertaining in any way to such newspaper establishment, which said party of the first part shall have thereon; also shall have right to seize and possess himself by his own act, or by his agent, of all the said books, accounts, notes and securities, pertaining to said establishment, wheresoever else they may be, and thereupon shall have right exclusively to demand, sue for and collect, all and every of the debts and dues to said party of the first part, for and

on account of said establishment; and on public notice in any daily newspaper published in the city of New-York, the right of said party of the first part to demand, receive or collect said debts or dues, shall thereupon cease, and thenceforth be vested in said party of the second part. And the said party of the second part in the event of such seizure and possession of said books, accounts, notes and securities, hereby covenants with said party of the first part to place the same in the hands of some suitable agent or attorney to collect all such debts and dues until the amount collected shall be sufficient to cover all the balance due to him on account of the said several sums and interest as aforesaid, together with all such costs and charges as he the said party of the second part shall have been subjected to in making the arrangement and in making the collections; and thereupon and thereafter, shall re-deliver all said books, accounts, notes, and securities which may be remaining unto the said party of the first part, or such other person or persons as the law shall direct. And the said party of the first part further covenants with the said party of the second part, that upon any such failure of payments as hereinbefore stipulated, he, the said party of the first part, will upon request assign to the said party of the second part the said newspaper establishment, including the good will thereof, the press, types, and every other matter and thing pertaining to said establishment, to be held, used, and disposed of by the said party of the second part for the payment of his said debt in the same manner as above provided in relation to the said debts and dues.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal this eighteenth day of December, one thousand eight hundred and twenty-seven.

JAMES WATSON WEBB, [L. s.]

A. L. STEWART. [L. s.]

Sealed and delivered in presence of

F. J. KINNEY. [L. s.]



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