

No 4448 Equity

was so given to them, and to each of them by the said Eli Horner, and was so received by the said Newton H. Horner, Ann Maria White, with the consent of her said husband William Ross White, Harriet Barr, with the consent of her said husband Smith Barr, and Sarah J. McAlhenny with the consent of her said husband Robert McAlhenny, in consideration of said agreement and contract, and which contract, and agreement was never cancelled, or annulled by any of said parties but was intended by the said Eli Horner, at the time of his death, to be faithfully carried out and since the death of the said Robert McAlhenny has been affirmed by the said Sarah J. McAlhenny.

This defendant further answering charges, and represents that at the time the said five thousand and dollars, above mentioned, was given, or paid, and received, as above set forth, the said Eli Horner was making a distribution of his estate, and property, among his children, and that said five thousand dollars, in money, or property, given, as aforesaid, and received, as aforesaid, was received, with full knowledge of the fact that it was intended, as their full share of the estate of the said Eli Horner, and that the remainder of his estate, was intended by the said Eli Horner for these defendants, in conjunction with his widow Louisa.

This defendant further answering charges, and represents that the said Newton H. Horner, Ann Maria White, Harriet Barr, and Sarah J. McAlhenny, on or about the time above mentioned executed a paper writing, under their hands, and seals releasing, all interest, as heirs and distributees in the estate of which the said Eli Horner, might die seized, and possessed, of in consideration of the payment to them, and each of them by the said Eli Horner of the said sum of five thousand dollars which paper writing through inadvertence, and mistake the said William Ross White, Smith Barr, and Robert McAlhenny the husbands of the said Ann Maria White, Harriet Barr & Sarah J. McAlhenny failed to execute in conjunction with their said wives, although they were willing to execute it, and that said paper writing was executed in the State of Pennsylvania.

This defendant further answering charges, and represents that the said sum of five thousand dollars paid to each of the persons above named is, in reality the full proportion or share of each of them and is, as much, as each of them would get of the real, and personal estate of which the said Eli Horner, died seized, and possessed of, counting the said sum of five thousand dollars, received by each of them as part of his estate, and treating them as simple advances, and that it was so understood by each and all of said parties, at the time the said sum of five thousand dollars was paid to each of the recipients, and that it was intended by all of said parties, at the time, that the balance of the estate of which the said Eli Horner, died seized and possessed of unless otherwise provided by his last will, and testament, should devolve on these defendants and to that end the contract, and agreement, above set forth was entered into by and between the parties thereto.

And this defendant is advised, and so charges that because of the matters and things aforesaid the said Newton H. Horner and Caroline Horner his wife, William Ross White, and Ann Maria White his wife, Smith Barr and Harriet Barr, his wife, and Sarah J. McAlhenny have no further interest in the real estate mentioned in said Bill of Complaint, and that it would be inequitable and unjust for this Honorable Court to pass a decree for the sale of said real estate upon the prayer of the Complainants mentioned in said Bill of Complaint.

This defendant further answering denies that said real estate, cannot be divided amongst those who are entitled to the same without loss and injury, and that it would be to the interest and advantage of said parties to have the same sold, under the decree of this Honorable Court, but the defendant, charges that said real estate can be divided