

No. 4448 Equity

These defendants further answering, charge, and represent unto your Honor that sometime or about the year 1870 whilst the said Eli Horner yet resided in the State of Tennessee, in Adams County, the said Eli Horner at said County, and State, advanced to the said Complainants Shenton H. Horner, Ann Maria White, Harriet Barr and Sarah J. McShenny, and to each of them the sum of Five thousand dollars (\$5000), in money and real and personal property which he then had, upon the distinct ^{agreement} understanding, promises, and contract made by and between the said Eli Horner, the said Shenton H. Horner, Ann Maria White and William Ross White her husband, Harriet Barr and Smith Barr her husband Sarah J. McShenny and Robert McShenny her husband, and each of them that the said Five thousand Dollars (\$5000) so advanced was to be their full proportion of his estate, as he then or distribute when he died, unless the said Eli Horner provided otherwise by his last will and testament, and that said sum of Five thousand dollars (\$5000) was so given to them and to each of them by the said Eli Horner and was so received by the said Shenton H. Horner, Ann Maria White Harriet Barr, and Sarah J. McShenny with the consent of the above named husbands in consideration of said agreement, undertaking, promises and contract, and that said Complainants should make no further claim upon his estate unless he so provided for them by last will and testament; and which contract was never changed by said parties

These defendants further answering, charge that the said Shenton H. Horner, Ann Maria White, Harriet Barr, and Sarah J. McShenny, or about the time above mentioned executed a paper writing under their hands and seals releasing all their interest as husbands and distributees in the estate of which the said Eli Horner might die 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 (\$5000), which paper writing through inadvertence and mistake the said William Ross White, Smith Barr, and Robert McShenny the husbands of the said Ann Maria White Harriet Barr and Sarah J. McShenny failed to execute in conjunction with their said wives, and which paper writing was executed in the State of Tennessee.

These defendants further answering charge that the said sum of Five thousand Dollars (\$5000) paid to each of the parties above named was in reality their full proportion or interest and was 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 if the said Five thousand dollars, as paid to each of them is treated by this Honorable Court as a simple advancement and as not precluding them from bringing this suit; and that it was so understood by each and all of said parties at the time it was paid to the above named recipients and that it was intended that the balance of the estate of which the said Eli Horner died seized, and possessed of unless it was otherwise provided by his last will and testament should devolve on these defendants and to that end the said Eli Horner, recognizing, at the time the claims these defendants had on him as his children) the contract and agreement above set forth was entered into by and between the parties thereto

And these defendants are advised, and so charge that because of these matters aforesaid, the said Shenton 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. McShenny have no further interest in the real estate mentioned in said Bill of Complaint, and that it would be inequitable

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