No. 4748 Equity

The Complainants filed with the Commissioner as Evidence "Exhibits Nos 1, 2, 3 & 4" which are herewith returned by the said Commissioner

John Witherow, a witness of lawful age, produced upon the part of the Complainants being duly sworn, and examined to Interrogatories filed with the Commissioner by the Complainants and herewith returned, deposes and says, to the

1st Interrogatory. — Are you acquainted with the parties to this suit, and, if so, which of them, and state how long you have known them and each of them?

Ans. — I have known them all for some years.

2d Int. — Were you acquainted with a certain Eli Horner, formerly a resident of Frederick County? If so, is he dead or alive? If dead, when and where did he die, and did he die testate or intestate?

Ans. — Yes, he is dead. He died near Emmittsburg, Frederick County, Md. in November 1878, intestate, as I am informed.

3 Int. — Did the said Eli Horner leave a widow and children him surviving, and, if so, state their names, ages and present places of residence, and, if any are married, state to whom?

Testimony of Jn Witherow

Ans. — He left a widow, named Sophia, residing in Frederick County, Md., and the following children, namely, Ann Maria, wife of William R. White, adult, and residing in Adams County, Penna, Harriett wife of Smith Barr, adult, and residing in Adams County, Penna, Sarah J. McSherry, widow of Robert McSherry, adult, and residing in Adams County, Penna, and Newton M. Horner, adult, and married to Catharine Waybright, and residing in Adams County, Penna. These are the children of Eli Horner by his second wife. He left no children by his first wife Louisa, wife of John Agnew. I dont know her age exactly, resides in Frederick County, Maryland; Lucinda, an infant under the age of twenty one years and residing in Frederick County, Maryland, and Mary Horner, infant under the age of twenty one years & residing in Frederick County, Md.

4th Int. — Are you acquainted with the lands whereof the said Eli Horner died seized and possessed? If you look at the papers now shown you marked "Exhibits Nos. 1, 2 & 3". State if said property therein fully described?

Ans. — I am. I look at "Exhibits Nos 1, 2 & 3" now here shown me. It is.

5th Int. — Can or not, the said lands, mentioned and described in the Exhibits shown you, be divided equally among the children of said Eli Horner, deceased, without loss and injury? If no, state fully your reasons for the opinion you entertain on this subject?

Ans. — They cannot be divided without loss and injury. The reasons would be, that there's two houses on one portion, and only one barn, and, on the other only one set of buildings. The lands of a various qualities, some very good and some very poor. For these reasons, I dont think there could be any equal division.

6th Int. — Would it, or not, be to the advantage of all the parties interested in, as well, as adults, that the real estate in these proceedings mentioned be sold, and the proceeds divided among the parties interested, according to their several interests? If yes, state the reasons you entertain on this subject?

Ans. — I believe it would. Its under rent now, I think, and not producing well; and the farms are getting worse every year; and, I believe they will get worse unless sold.

7th Int. Waived as to this deponent.