

# Brake vs. See

Following is the record of a suit brought by Leonard Brake and sister, Elizabeth Brake Simon against Nimrod See regarding the disposition of possessions following the death of Leonard's and Elizabeth's father, Michael Brake. Magdeline Brake, Leonard's and Elizabeth's sister and Nimrod See's wife, had passed away prior to Michael's death in 1861, leaving Nimrod See to file claim on Michael's possessions following Michael's death. Leonard and Elizabeth claimed Magedline had already been given her fair share of Michael's estate before his death. The court case was interrupted by the Civil War and lingered for years thereafter.

Perry Brake transcribed the following from original, handwritten court documents file in the Hardy County Court House, Moorefield, West Virginia. Transcription was difficult and for some entries, impossible. Comments by the transcriber are enclosed in brackets, as are dashes or periods indicating illegible segments. All footnotes were added by the transcriber. The Table of Contents below is not part of the original court record and is presented here for the convenience of the reviewer. The transcription is not complete as of this writing (3/5/2004).

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## The Complaint

To the Hon. E. C. Bunker Judge of the Circuit Court of Hardy County: Humbly complaining shew unto your honor your orator Leonard Brake and your oratrix Elizabeth Simon, that their father is Michael Brake in his lifetime was seized and entitled of valuable real estate in the County of Hardy consisting principally of several adjoining tracts lying on the South Fork containing by estimation upwards of six hundred acres, and being so seized and entitled thereof, on this 21<sup>st</sup> Day of January 1861 departed this life intestate leaving your orator and oratrix and five adult grand children the issue of his deceased daughter Magdeline who had intermarried with Nimrod See and died some fifteen years before leaving the said Nimrod and said five children her surviving, to wit, Michael See, George See, Leonard See, John See and Betsy who first intermarried with one Jacob See and he dying she afterwards intermarried with John Cleaver, as his heirs at law; and since the death of the said Michael Brake on of said grand children, to wit, John See, has departed his life unmarried, intestate and without issue, whereupon his father, the said Nimrod See succeeded to any estate to which he may have been entitled.

Your oratrix intermarried with Jacob B. Simon who died some 23 or 24 years ago the said Michael Brake left no widow. The lands of said intestate are designated on the assessors books as 680 acres, 114 acres and 12 acres, the home place on the South Fork; also a tract of 40 acres; there is another parcel of 37 acres which was assigned to the heirs of Michael Brake in the partition of the dower lands of Elizabeth Stump<sup>1</sup>, decd. Your orator Leonard Brake with the consent and by the advice of his father and at his own costs and charges put considerable improvements upon a part of said home lands. The evidences of title, in which said lands are more fully described, are herewith filed as parts of this bill, marked A, B, C & D.<sup>2</sup>

Your orator and oratrix further show unto your honor that their sister Magdeline upon her marriage with the said Nimrod See and afterwards received from their father in his lifetime by way of advancement property of very considerable value; and as they believe a full share of their fathers estate in 1828 or thereabouts their father the said Michael Brake purchased of Jacob See valuable lands on Lost River, containing some [.....] acres and paid six hundred dollars principally in specie therefore, erected a house thereon at his own costs and

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<sup>1</sup> Transcriber's note: Elizabeth Stump was Michael Brake's mother and second wife of Jacob Brake, Sr.

<sup>2</sup> These exhibits have not yet been transcribed.

charges and put the said Nimrod See and his family in possession thereof, and they have had the use and enjoyment of the same ever since though purchased and paid for by the same Michael Brake the title to said property was made directly to the same Nimrod See, the property being intended as the portion of the said Magdeline as shown by the contemporaneous acts of the parties and the often repeated declarations of the intestate about that time and afterwards to that effect. It is further shown that the said Magdeline on her marriage received from her father a large outfit of household and kitchen furniture and other property of considerable value; and that Nimrod See required and received from the said Michael Brake for many years after his marriage a great deal of assistance in the maintenance of himself and family, and it will not be pretended that the property and supplies thus furnished were ever paid for in the lifetime of the said Michael Brake; and before the descendants of this said Magdeline are permitted to come in to the partitions hereinafter asked for, they and the said Nimrod See representing his said deceased son John, should be required to bring into hotchpot the said Lost River lands and all other property or money received by them of [word crossed out] the said Magdeline from the said Michael Brake in his lifetime by way of advancements.

Your orator and your oratrix further show unto your honor that their father died possessed of considerable property personal and owing but very few and inconsiderable debts, so that no part of said real estate will be required for the payment of debts or demands against his estate. [Be it therefore?] claimed and shewn that the real estate of which their father [.....] seized and entitled as aforesaid in susceptible of partitions amongst the parties entitled thereto. In considerations whereas and inasmuch as your orator and your oratrix are [.....] in the premises save by the aid of a court of equity where matters of this nature are properly cognizable. They pray that the said Nimrod See, Michael See, George See, Leonard See and John Cleaver and Betsy Cleaver his wife be made parties defendants to this bill and required to answer the same fully under oath: that said Nimrod See states particularly whether the said Lost River lands were not purchased at the price and paid for by the said Michael Brake as hereinbefore stated; whether his wife Magdeline at the time of their marriage and afterwards received from her father and mother a very considerable outfit of household and kitchen furniture, horses and other valuable property, and whether they, the said Nimrod See and family, did not for many years after said marriage continue to receive from said Michael Brake, grain, money, and provisions by way of advancement and whether these advancements thus received were not their full share of the said Michael Brakes estate; that the said real estate be divided and the proper portions of your orator and oratrix be allotted to them severally excluding the descendants of the said Magdeline and the said Nimrod See from such partition

at events until your orator and oratrix shall receive such portions of said estate as may be equal in value to the said Lost River lands and the other property advanced the said Magdeline and her children by her father in his lifetime; that [..... ..] may issue, and that such other further, full and general relief may be afforded your orator and your oratrix as the nature of their case may require, or as to equity [.... ....] and proper; and your orator and your oratrix will ever pray, etc. The original bill in this case having been mislaid or lost, this is filed as a substitute therefore and as an amended and supplemental bill.

/signed/Jacob for Complainants

## Deposition of Nimrod Thorn<sup>3</sup>

L. Brake *et. al.*  
vs.  
Nimrod See *et. al.*

1<sup>st</sup> Sheet  
1<sup>st</sup> Page

Commissioners Office  
Moorefield July 23, 1868

Depositions of witnesses taken before me, J. W. McDuffey, commissioner in chancery of the Circuit Court of Hardy County in the State of West Virginia at my office in said county pursuant to notice hereto answered to be read as evidence on behalf of Lenard Brake and Elisabeth Simon in a suit now pending before the circuit court of Hardy County in the State of West Virginia on the chancery suit thereof. Wherein Lenard Brake and Elizabeth Simon are complainants and Nimrod See, Michael See, George See, Simon See, John Cleaver & Betsy his wife are defendants on this 27<sup>th</sup> day of July 1868 at the time and place mentioned in said notice Nimrod Thorn as witness on behalf of complainants who being of lawful age and first duly sworn deposes and says.

1<sup>st</sup> quest. by complainants counsel: *State whether or not you were acquainted with Michael Brake if so, how long you knew him.*

1<sup>st</sup> ans: *Yes sir. I was acquainted with him ever since I knew my self. I am about fifty six years old and knew him ever since I could remember anything.*

2d quest by same: *State anything and all you know of any advancements in property or money made by Michael Brake to his daughter Magdeline.*

2d ans: *He sent his black girl after me to come down to his house. He wanted to see me and I went down and when I got there, I asked him what he wanted and he told me how he wanted his business to stand apporioned after his death. He said he had paid Nimrod See his portion he thought in full. Then he told me in what way he had paid it. He told me he had paid six hundred dollars for land for Nimrod See and three hundred dollars for joiners work in his house and that and the interest on the money up to that time ought to be his portion. He had paid it a long time ago but he didn't say how long. What he had left at his death he wanted Lenard Brake and his daughter Betty to have. He said he wanted me to tell this after his death if I was living. That's about what he told me except to do seeking to prove in verbal will.*

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<sup>3</sup> Nimrod Thorn lived on a neighboring farm and had previously lived in the Michael Brake household as a boy.

3d quest by same: *State whether during your acquaintance with Michael Brake you saw him frequently or seldom and whether you were frequently about his mill, or but seldom.*

3d ans: *I was frequently about his mill. I saw him frequently. I lived with him a good many years when I was a boy.*

4<sup>th</sup> quest by same: *State what was the condition of the mill during the period of your acquaintance with Michael Brake, whether in good repair for grinding or the reverse. And who during that time had the control of it and received the benefits or profits of said mill.*

4<sup>th</sup> ans: *When I first knew him it was in tolerable good condition. In the last fifteen or twenty years before he died it was in very bad condition. Mr. Brake him self had the control of it and received the profits as far as I know.*

5<sup>th</sup> quest by same: *State who during that time attended to and did the grinding of the mill.*

5<sup>th</sup> ans: *His black boy was the miller for a good many years. I helped the old gentleman attend my self three or four years.*

6<sup>th</sup> quest by same: *State whether or not Nimrod See got grain at said mill. If so when and the quantity thereof.*

6<sup>th</sup> ans: *I have known him to get grain from there. He got it during the time I was living there. I couldn't tell the quantity.*

#### Cross examination by defendant's counsel

1<sup>st</sup> quest by defts counsel: *How old was Mr. Brake when he died.*

1<sup>st</sup> ans: *I do not know sir.*

2d quest by same: *When did he die.*

2d ans: *I think he died in 1861 or 1862 I am not certain.*

3d quest by same: *In what year and month were you born.*

3d ans: *I was born in the year 1812 June the 28.*

4<sup>th</sup> quest by same: *When did you first go to live with Michael Brake.*

4<sup>th</sup> ans: *I couldn't tell. I was small. Some ten or twelve years old.*

5<sup>th</sup> quest by same: *Were you there when Nimrod See married his daughter. If so when was that.*

5<sup>th</sup> ans: *I was not there when he married her. I was there when he was courten of her.*

6<sup>th</sup> quest by same: *Was your conversation with the old gentleman before or after the death of his wife. Where was it. Name the precise place and who was present.*

6<sup>th</sup> ans: *It was before her death. It was in his own house in his and her presence. There was no other person present to my recollection.*

7<sup>th</sup> quest by same: *Could not Michael Brake read and write. And could you.*

7<sup>th</sup> ans: *He told me he could not write or read writing. I could read print, and read writing little and could write a little. But not very much.*

8<sup>th</sup> quest by same: *Are you not in the habit of making your mark to notes given by you and not signing your name.*

8<sup>th</sup> ans: *I am. Because I am a poor scribe I'm ashamed to write my name.*

9<sup>th</sup> quest by same: *Have you ever witnessed a will, deed, agreement, or any written contract. If so, for whom.*

9<sup>th</sup> ans: *Yes. I have witnessed a contract notes. I can't say for whom. I never witnessed a deed or will.*

10<sup>th</sup> quest by same: *Where did you live. On whose land. How near to Michael Brake at the time of that conversation.*

10<sup>th</sup> ans: *I lived on Geo. Pifers lands within about two miles of Mr. Brakes.*

11<sup>th</sup> quest by same: *When and to whom did you first mention this conversation. Was it before of after the gentlemans: death.*

11<sup>th</sup> ans: *It was before his death about two years. Between two and three as well as I can recollect, that he told me this. I did not tell anyone until after he died. I told it to Lenard Brake. He was the first one I told. It was not very long after the old mans: : death that I told him. I don't think it was a year. I know it wasn't.*

12<sup>th</sup> quest by same: *Did you tell him before the war commenced or while it was going on. Or after its close.*

12 ans: *The war had commenced as well as I recollect. About the commencement.*

13<sup>th</sup> quest by same: *What land did Michael Brake own at the time of his death.*

13<sup>th</sup> ans: *Well he owned the land that he lived on. This is a considerable boundary. I don't know how may tracts there is.*

14<sup>th</sup> quest by same: *What were they worth.*

14<sup>th</sup> ans: *I do not know sir.*

15<sup>th</sup> quest by same: *How many Negroes had Michael Brake at the time of this talks with you. And what were they worth.*

15<sup>th</sup> ans: *He had three as well as I recollect. I don't know what they were worth.*

16<sup>th</sup> quest by same: *Give their names, sexes and ages and whether there was any increase up to the time of his death, or decrease.*

16<sup>th</sup> ans: *Isaac was the boys name. He was about fifty at his death as well as I recollect. A girl her name was Nancy. I suppose she was about forth five or fifty as near as I can tell you. There was an other girl. She was not grown at his death. She was probably 12 or 15 years. There is a small boy and I suppose he was born before the old man died.*

17<sup>th</sup> quest by same: *Do you know or did you hear the old man speak of any debts due to him as notes held by him. Or money on hand at that time. If so for what amount and on whom.*



17<sup>th</sup> ans: I did not. He didn't tell me that he owed any body or that any body owed him. He said what he had at his death that he wanted Betty and Lenard to have.

18<sup>th</sup> quest by same: He said nothing at that time what his old wife was to have if she out lived him, did he.

18<sup>th</sup> ans: He did. He said he wanted Lenard and Betty to take care of her.

19<sup>th</sup> quest by same: In repeating his conversation with you, why did you omit that part of it.

19<sup>th</sup> ans: I didn't think of it at first.

20<sup>th</sup> quest by same: What did he say he had given Betty or had done for her.

20<sup>th</sup> ans: He didn't tell me that he had give her any thing.

21<sup>st</sup> quest by same: Did not Lenard Brake for a number of years live on his Father's land and derive his support therefrom.

21<sup>st</sup> ans: He lived there a good many years. They worked together him and the old gentleman and the black man. I suppose he did get his support there. [They lived together, worked together and divided the crops.] This latter was suggested by Mr. Brake, the part in brackets.

McDuffey, council

22<sup>nd</sup> quest by same: Were there not a saw mill on the old main property which Lenard carried on for his own benefit. Sawing large quantities of poplar lumber for bedsteads and cabinets [.....]. Also a blacksmith shop and tools which he did the same. And a distillery. And had he any other means: that you know of for the raising and education of his family and their support. Except as was derived from these from these services and his Fathers land. If so what other means.

22<sup>nd</sup> ans: There was a saw mill there. I never knowed it any body elses but his Fathers saw mill. They hauled logs there together and him and his Father divided the planks. Old man Brake had a blacksmith shop. The old mans: black boy was the smith generally. The old gentleman got the proceeds from it. I heard the old man say that Lenard and him owned the still together. That they had bought it. I don't know any other means.

23<sup>rd</sup> quest by same: How old were you when you quit living with the old man.

23<sup>rd</sup> ans: I couldn't say when I quit living with him. I worked for him more or less for all my life. The first time I went there I lived there some two or three years. More than that I suppose. Then I quit and hired at other places. And then would go back and work for him again and in this way until I was eighteen years old.

24<sup>th</sup> quest by same: Did not Nimrod See help to carry on the mill and gear, and was it not then that he got his share of the tall grain.

24<sup>th</sup> ans: Not to my known. If hid did I don't know it.

25<sup>th</sup> quest by same: In what year or years do you know that he got grain from the mill, and did he carry it away on horse back or in a wagon. Do you know that he did not bring grain to the mill to have ground and only take away the flour of the same. Or do you know of his ever taking away grain unground. If so in what quantity and how and how often.

25<sup>th</sup> ans: I couldn't tell the years it was while I was living there. I ground some for him my self. I knowed him to fetch grain there on his own and have it ground too. I don't know that he ever took away and grain unground. He generally to it away on horse back.

26<sup>th</sup> quest by same: Can you now say after the lapse of thirty five or forth years that the grist obtained by him from the old man were not paid for or settled by him.

26<sup>th</sup> ans: I do not know whether they were or not. I don't know.

#### Examination in chief resumed

1<sup>st</sup> quest by complainants counsel: Where did Nimrod See reside after he was married. How far from Michael Brakes.

1<sup>st</sup> ans: He lived on Lost River some twelve or thirteen miles off.

2<sup>nd</sup> quest by same: State whether or not during the time he was getting grain at Mr. Brakes there were other mills in his neighborhood. Nearer than that of Mr. Brake.

2<sup>nd</sup> ans: Yes sir. There were nearer mills.

3<sup>rd</sup> quest by same: Who furnished the horses and implements and contributed the labor in raising the crops. Which you have said were divided between Lenard and his Father.

3<sup>rd</sup> ans: Lenard and the black boy generally done the work. The old man was not able to work to much. Lenard furnished most of the horses. They furnished the horses together. I don't know which furnished most. I think Lenard furnished the plows and tools generally.

4<sup>th</sup> quest by same: State whether or not the sons of Lenard did any part of such labor. If so, which

Objection to

4<sup>th</sup> ans: They did. They helped to farm and made a good many of the tools.

Cross examination resumed

1<sup>st</sup> quest by defts counsel: What kind of work did Lenards boys do on the farm forty years ago.

1<sup>st</sup> ans: The wasn't born then I don't think.

2<sup>nd</sup> quest by same: Had not Lenard lived on the same farm since his Fathers death and farmed it as had did before.

2<sup>nd</sup> ans: He has lived on it, but I don't know what he farmed.

And further this deponent saith not.

Nimrod Thorn [his mark]

1 days attendance 14 miles

Travel & return

The further taking is adjourned over until tomorrow morning to meet in my office on 8 o'clock a.m.

McDuffey, counsel

## Deposition of Isaac Kent<sup>4</sup>

July 28, 1868

At the time and place apportioned as aforesaid by said adjournment came Isaac Kent an other witness on behalf of complainants being of lawful age and first duly sworn deposes and says.

1<sup>st</sup> quest by complainants counsel: State whether or not you were acquainted with Michael Brake. If so how long and opportunities at knowing him.

1<sup>st</sup> ans: I was acquainted with him. He bought me when I was about 12 years old. I lived with him until he died. I came there before his daughter Magdeline was married. I don't know how old I am. I suppose between forty and fifty years.

2<sup>nd</sup> quest by same: State whether or not you know Nimrod See. If so how long you have known him. And your opportunities of becoming acquainted with him.

2<sup>nd</sup> ans: Yes sir I know him. I have known him between twenty five years. In the first place he came to Mr. Brakes a courting. That was the first I ever knew him when he came there. I worked for Mr. See afterwards at his home in hay harvest. I went there several times to make hay after he was married and he came backwards and forwards to Mr. Brakes.

3<sup>rd</sup> quest by same: What kind of work did you do whilst you lived with Mr. Michael Brake. And what kind of work did he do during that time.

3<sup>rd</sup> ans: I some times worked on the farm and some times attended the grist mill. And some times attended the saw mill. Very often times the old gentleman was not doing very much of any thing. The most that he did do when I wasn't in the mill, he attended it him self.

4<sup>th</sup> quest by same: State what was the condition or state of repair of the grist mill whilst you attended to it.

4<sup>th</sup> ans: At that time it was in tolerable like repair.

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<sup>4</sup> Isaac Kent was a slave belonging to Michael Brake.

5<sup>th</sup> quest by same: What was its condition in the latter part of Michael Brakes life time.

5<sup>th</sup> ans: It wasn't so good. Just before he died one of the remers or top stone busted.

6<sup>th</sup> quest by same: State if you know whether or not Nimrod See got grain, meal or flour from Michael Brake after his marriage. If so how often and the quantity and whether he paid for the same.

#### Exception to

6<sup>th</sup> ans: I know of his getting flour there and meal too but I don't know the quantity. I don't know whether he paid for it or not. I don't know how often he got.

7<sup>th</sup> quest by same: Who had the control and received the profits of the grist mill of which you have spoken whilst you lived with Michael Brake.

7<sup>th</sup> ans: Well the old gentleman pretty much in that way

#### Cross examination by defendants counsel

1<sup>st</sup> quest by defts counsel: Did not Nimrod See with Lenard Brake and Jacob Simon raise a crop of corn on the old mans: land on the shares. And didn't he take his share of that corn home in corn and meal part ground and part unground.

1<sup>st</sup> ans: I don't recollect any thing about. If he did I don't recollect any thing of it.

2<sup>nd</sup> quest by same: Don't you recollect that you helped them by the direction of old Mr. Brake to farm a piece in corn up next Dashers land and that you caught Mary Ann Ratliffs chickens and cut their toes off to prevent their scratching up the corn.

2<sup>nd</sup> ans: I can't recollect to save my life. I don't recollect of ever seeing a chicken in that field in my life.

3<sup>rd</sup> quest by same: Did not Nimrod See often make shoes for old man Brake and his family.

3<sup>rd</sup> ans: If he did it is more than I know of. He never made any for me. I don't know if he made any for the balance of the family or not.

4<sup>th</sup> quest by same: Did not Nimrod see himself and his sons and his black girl often do work on the farm for Michael Brake, cutting corns, helping in harvest, making hay, planting corn, hauling manure, threshing and making fence.

4<sup>th</sup> ans: There was one of his sons that lived there that he partly raised. It is very likely that he helped to do these things. I recollect of his black girl being there, but I don't recollect of her helping to make fence or any thing of the kind. I don't recollect of her doing any kind of work. Mr. See would come over some times and do notions that way. All the boys when they came over would stay there a while and do little notions. I don't know that Lenard ever did do much.

5<sup>th</sup> quest by same: Don't you know that Nimrod See often furnished to old man with beef. As much as a half a beef at a time some times. And can you say that what little flour and meal See got was not in return for said beef.

5<sup>th</sup> ans: I don't recollect. He might often fetched it there without my knowing it.

6<sup>th</sup> quest by same: Don't you recollect Mr. See helping old Mr. Brake and you up the mountain through a deep snow with half of a beef killed at his house and that you and Mr. Brake were taking home.

6<sup>th</sup> ans: No sir I don't recollect any thing about it.

7<sup>th</sup> quest by same: Don't you recollect that Lenard Brake lived on the old mans: land and got his support from it ever since you lived there.

7<sup>th</sup> ans: Yes sir I recollect of his living on the land. Of course he got his support from the land he tended.

8<sup>th</sup> quest by same: Had he any other means: of making a living except from the old mans: land, grist mill, saw mill, blacksmith shop and still during all the times you lived there. If he had tell us fully and plainly what they were.

8<sup>th</sup> ans: Well sir, he never made his living off of the mill. Neither did he off the blacksmith shop. And as for the still he bought the still and paid for it. They got the still up and stilled the apples together and divided the liquor. And after Michael Brake got married, young Michael Brake and his Grand pap took

possession of the orchard and had the liquor between them. Then Lenard Brake was thrown out in the out skirts in the fields to get apples and took in apples from other people. For the balance he got off the land of course for his support. The saw mill was kept up pretty much between him and the old man. He had not other means: in particular as I know of.

9<sup>th</sup> quest by same: How do you know that he paid for the still. Is it not because Lenard told you so.

9<sup>th</sup> ans: If I am mistaken I was there when Mr. Bishop sent his son there for the money.

10<sup>th</sup> quest by same: Has not Lenard lived at the same place and farmed the same land since his Fathers death as he did before.

10<sup>th</sup> ans: Yes sir he lives at that same place that he did. Some of the fields he farms now that he did then and some he farms that he didn't at that time.

11<sup>th</sup> quest by same: Was not old Mr. Brake close thrifty, saving, industrious man and had he not a small and not expensive family.

11<sup>th</sup> ans: He was a smart industrious man. I didn't consider his family small. He raised one of Mr. Sees girls. She lived there until she was nearly old enough to marry. His family was not expensive. He bought more for children out that way than he did for his family.

12<sup>th</sup> quest by same: Were not the services of Mr. Sees daughter worth more than her support.

12<sup>th</sup> ans: Well I don't know. His granny pretty well dressed her. She thought a great deal of the girl. She just done house work and some times in the garden and sewed some. She didn't make a practice of milking.

13<sup>th</sup> quest by same: Did you ever hear Lenard say how old his Father was when he died. Or did you hear the old man say how old he was shortly before his death.

13<sup>th</sup> ans: No sir, I never did.

14<sup>th</sup> quest by same: Did you ever hear the old man say either to Lenard or any one else at any time that he had done more for Lenard than for both of his other

children together. And complain that he had not treated him right in their business matters. And was cross and inattentive in not doing for him and his Mother in their old days.

14<sup>th</sup> ans: No sir I never heard him say that word. I never did. I never heard him complain that way. I never heard him say myself that Lenard had not given them proper attention.

15<sup>th</sup> quest by same: Was there not a good deal of tall grain on hand at the old mans: death. And was it not used by Lenard. If not what became of it.

15<sup>th</sup> ans: I think there was about two or three bushels of corn. I don't think there was any wheat. There was no buckwheat there at the time. I don't recollect of any rye being there at all. They didn't get much rye at that time.

16<sup>th</sup> quest by same: Where have you lived since the old mans: death and where are you now living.

16<sup>th</sup> ans: I lived with Mr. Stump about seven months. Mr. Jim [Tim?] Stump. I lived then with Mr. Mike Brake on Parsons place well on to two years. I lived at Mr. Hamer [?] Mangolds about a year. I live at the William Bergdolls now when I am at home. About a year.

17<sup>th</sup> quest by same: When did the old man die.

17<sup>th</sup> ans: I don't know my self.

18<sup>th</sup> quest by same: The old man has been dead about seven years and a half and you have accounted for about four and a half years of that time since his death. What were your doing, or where were you living, or don't you know. And if you can't recollect any better for the last seven years, how can you pretend to recollect what happened for the last forty years of matters you had no personal interest.

18<sup>th</sup> ans: I forgot part of my time. I was not hired out for a year after he was dead I think. Then after my time was up I came home and I don't recollect how long it was before I came to Mr. Brakes.

19<sup>th</sup> quest by same: How often has Lenard talked to you or you to Lenard about your evidence. And what did he say about it last Sunday and yesterday.



19<sup>th</sup> ans: There wasn't any thing said about it last Sunday but he told me yesterday he wanted me to state what I know and no more. There was never any thing passed between us except that at any time.

Examination in chief resumed

1<sup>st</sup> quest by plffs [plaintiffs?] counsel: State if you know whether or not Betty the daughter of Nimrod See received out fits towards house keeping when married. If so of what did they consist, and who furnished the same.

Objected to because of its going into an examination in chief after the same being considered and the witness handed over for cross examination & it concluded.

1<sup>st</sup> ans: I can't tell you so much about that . She didn't get married at home.

2<sup>nd</sup> quest by same: State whether or not any part of the time from the death of Michael Brake up to the present in which you have been called upon to account for your whereabouts was spent over at Nimrod Sees on Lost River. If so what part of your time and what were you doing there.

Objected to

2<sup>nd</sup> ans: I was over there at the beginning of the war, but I don't know whether it was before the old mans: death or afterwards. I can't recollect. I don't just recollect how long I was there. I was working in the shop when I was there working on a plane.

And further this deponent saith not.

Isaac Kent [his mark]

Attendance 2 days & 14 miles travel & return

The complainants decline to proceed farther with the examination on their part in consequence of the absence of Isaac C. Miller, he having been duly summoned

and they desiring to examine him prior to the examination of George S. Brake, Absolom Dove [?] and George B. Simon, they being present. And defendant insists on going on with the examination now of those witnesses but they refuse to do so. And the defendants give notice that they will object to the examination of these three witnesses at any future time. They the defendants having come here at considerable inconvenience.

The further taking on the part of complainants [at their insistence] is adjourned until the 5<sup>th</sup> day of August to meet at my office at nine o'clock a.m.

McDuffey counsel

G. B. Simon claims & certificate given  
2 days attendance & 17 miles travel and return the same.

The defendants protest against the witnesses who are here and not examined have their costs taxed as to the defendants.

McDuffey counsel

Absolem Dove [?] 2 days &  
18 miles traveled and return the same.

## Deposition of Elizabeth Brake Simon<sup>5</sup>

L. Brake *et. al.*

vs.

Nimrod See and others

Commissioners Office

July 28, 1868

The defendants introduce Mrs. Elizabeth Simon a witness on their behalf to be used as evidence in the above mentioned cause being first duly sworn deposes and says.

1<sup>st</sup> quest by defendants counsel: How many children had your Father Michael Brake who as then children survived him. What were their names, which the oldest, the next, and the youngest. Which first married, the next and last. Did the daughters after marriage remain at or remove from their Fathers. And when were they respectively married as far as you can recollect.

1<sup>st</sup> ans: He had three children. Two out lived him and died before him leaving children. Their names were Lenard, Madeline and Elizabeth. Lenard was the oldest and Madeline next, and Elizabeth the youngest. Lenard married first and Madeline next & Elizabeth last. The daughters removed from their Fathers. I can't recollect when they were married

2<sup>nd</sup> quest by same: How old do you suppose Lenard was when he was married, and on whose lands has he lived since his marriage.

Excepted to.

2<sup>nd</sup> ans: I am unable to tell when Lenard was married. He has lived on his Fathers land every since he was married.

3<sup>rd</sup> quest by same: Do you know or did you ever hear your Father speak of what he had done for Lenard by way of starting, aiding or advancing him in life, either in money or property. If so, state all you know about it and all you may have heard your Father say about the larger benefits conferred or greater aid given or advanced to him than to both his daughters.

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<sup>5</sup> Elizabeth Brake Simon was Leonard Brake's sister, and a co-complainant. Why it says here she was introduced as the defendants' witness is not known.

3<sup>rd</sup> ans: I don't know of my own knowledge. He said they all got more than I got. I didn't hear him say what Lenard got. He said they all got more than I got. I suppose that includes them both. They didn't say what they got.

4<sup>th</sup> quest by same: When you got your outfit, did the old man then or after say any thing to you about charging you with it at any time or in any way. If so what did he say. Or did he give you the articles to help you on in starting life.

4<sup>th</sup> ans: He never said any thing about charging me with it. He never said I would have to account for it. He give it to me. He didn't say what for.

5<sup>th</sup> quest by same: Did you learn from your Father whether or not he had treated his other children in that respect as well or better than he had you. And did he ever say any thing to you of having made charges against them for such aid or they should account therefore in any way.

Excepted to by Lenard Brake

5<sup>th</sup> ans: He said he had treated the Sees better than he had me. He never said to me that he ever made charges against either of them and he never said they were to be accountable or that I was to be accountable for what he did for any of us.

6<sup>th</sup> quest by same: State whether or not your Father was disposed to help all his children in starting in life as far as he could at the time.

6<sup>th</sup> ans: Certainly. Of course he was.

7<sup>th</sup> quest by same: State how far after they were all married the children were in the habit of being neighborly as far as exchange of supplies, helping in work, etc. with the old people. Tell all about it.

7<sup>th</sup> ans: They were in the habit of sending supplies to one another. I have no idea as to the amount.

8<sup>th</sup> quest by same: Did you ever hear the old man say how many horses, cows or other stock he give Lenard. If so what did he say.

8<sup>th</sup> ans: No sir, I didn't.

9<sup>th</sup> quest by same: Had Lenard any means of supporting his family and making money than by the use of his Fathers property and his own idustry in management of his business as he gathered property around him from these sources.

9<sup>th</sup> ans: He had other means, such as making bedsteads and coffins and the like. I don't know of any other. I don't remember.

10<sup>th</sup> quest by same: Do you know any thing about Nimrod See farming the field next to Dashers with Lenard and Jacob B. Simon one year in corn.

10<sup>th</sup> ans: I don't recollect it.

11<sup>th</sup> quest by same: State what they give you. What the old man give you when you left home.

11<sup>th</sup> ans: He give me a house, one cow, a bed and bedding, a saddle, a wheel, a common bureau, five dollars in gold. That is all that I can now recollect of. Mr. Ogden has a list of all that I can remember.

12<sup>th</sup> quest by same: Was your Father in the habit of talking about his business to strangers and telling them what he had done for his children or what he was going to do for them. Or was he closed mouthed about his own affairs.

12<sup>th</sup> ans: I have never heard him say what he was going to do.

13<sup>th</sup> quest by same: Had your Father great confidence in Nim Thorn as one of his best and most reliable friends so that he would select him as one of his particular friends and confidant that he would select him to tell him what he wouldn't tell others.

Objected to

13<sup>th</sup> ans: I don't know.

Cross examination by complainants counsel

1<sup>st</sup> quest by defts counsel: State what was the content of your Fathers education, particularly whether he could read or write.

1<sup>st</sup> ans: No sir, he couldn't.

2<sup>nd</sup> quest by same: State who paid for the lands on Lost River on which Nimrod See resides conveyed by Jacob See.

2<sup>nd</sup> ans: My Father. I head him say that he did. I think Nimrod See furnished a horse towards it.

And further this deponent saith not.

Elizabeth Simon [her mark]

The further taking is adjourned until the 5<sup>th</sup> day of August 1868 to meet at my office between sun rise and sun set.

McDuffey counsel

## Deposition of Daniel A. Sites<sup>6</sup>

August 5, 1868

Met pursuant to adjournment at the time & place mentioned in the aforesaid adjournment there came Daniel A. Sites an other witness on behalf of complainants being of lawfull age and first being duly sworn deposes and says

1<sup>st</sup> quest by same: State your age and place of residence.

1<sup>st</sup> ans: I am thirty one years old. I reside on the South Fork in the same house that old Mr. Brake used to occupy.

2<sup>nd</sup> quest by same: State whether or not you were acquainted with Michael Brake. If so how long you knew him and your opportunities of becoming acquainted with him.

2<sup>nd</sup> ans: I was acquainted with him. I knew him about fifteen years before his death. My first opportunity of becoming acquainted with him was at different times that he used to visit my Fathers house. I went to his mill frequently. I also frequently went to his house when my Father sent me there at different times. My Father resided about four miles from Mr. Brakes.

3<sup>rd</sup> quest by same: State if you know know who the control of and attended tothe mill of Michael Brake in his life time and received the benefits or profits arising therefrom.

3<sup>rd</sup> ans: I am not able to tell you exactly who had the control of the mill, but all ways when I went to this mill, either the old man Brake or his black boy or Michael Brake the son of Lenard who at that time was a living with the old man Brake all ways doing my grinding and every body else that was at mill at the same time that I was. As to the proceeds, who got that, I am not able to tell.

4<sup>th</sup> quest by same: Who has had the control and done the grinding at said millsince the death of Michael Brake.

4<sup>th</sup> ans: So far as I know Lenard Brake had the control with some exceptions. When my self would come over and a while do my own grinding. At other times I

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<sup>6</sup> Daniel Sites was Leonard Brake's son-in-law, having married his daughter, Margaret.

knew the Mr. See to come to the mill and do their own grinding a very few times particularly Mister See and I think he ground a few grists for other people. I also heard Nimrod See laugh and say that on one occasion he ground his own grist and rather spoiled it.

5<sup>th</sup> quest by same: State if you know whether Nimrod See or any of his children got fruit from the lands of Michael Brake after his death. If so which of them and the quantity.

5<sup>th</sup> ans: I knew Michael See and George See at one time to get some grist off of the lands since the death of old Mr. Brake but how much I can't exactly tell.

6<sup>th</sup> quest by same: State if you know what has been the condition of the fencing on Michael Brakes land since his death.

Objected to.

6<sup>th</sup> ans: There was a good deal of fencing burned in the time of the war on his lands by the soldiers. Also some washed off by high waters.

7<sup>th</sup> quest by same: State who repaired or replaced the fencing thus destroyed by the soldiers or washed out by the waters.

7<sup>th</sup> ans: Lenard Brake built and replaced the fencing that was burned around the fields that he holds in possession. And I my self for Mrs. Simons made a good many new rails and rebuilt the fencing that she holds in possession. I also rebuilt a good deal of fencing that was taken away by high water.

8<sup>th</sup> quest by same: State what was the condition of the grist mill after Mr. Brakes death.

8<sup>th</sup> ans: It wasn't a very good one tho it done right smart of grinding the first years fter his death. It has been rather on a decline ever since. At one time there was a portion of the trunking fell down. I suppose fifty or sixty feet of it. It may be more. It would get out of repair at different times in side.

9<sup>th</sup> quest by same: State whether or not said mill was repaired. If so, who did the repairing.

9<sup>th</sup> ans: It was repaired in a measure by Lenard Brake. Some times my self would



help him for Mrs. Simons, but Lenard all ways done the most.

Cross examination by defendants counsel

1<sup>st</sup> quest by defts counsel: Were not the repairs of which you have spoken made to secure the immediate use and benefit of the property in possession of Lenard Brake and your Mother-in-law Mrs. Simon parties to this suit.

1<sup>st</sup> ans: I suppose the repairing that Mr. Brake done were for his own benefit and use. As for what I helped by the consent of Mrs. Simon were just because I some times ground once and a while ground a grist for our selves. Mrs. Simons and my self such as a grist of corn or rye for horse feed. Mr. Brake held the occupation of the lands he fenced since it was done. So did I my self by the consent of Mrs. Simon hold possession of what I enclosed. A portion of what I enclosed was principally in the commons since the death of Michael Brake so far as I know until the spring of 1869 when I enclosed it and had the use of it ever since. Mr. Brake also enclosed one field that was entirely in the commons about two or three years ago, I am positive, and held the use of it since.

2<sup>nd</sup> quest by same: Have you ever seen shown any changes for arrangements to any of his children made by Michael Brake as of his instance in his life time. If so by whom, in whose hand writing, what amounts and the items thereof. Whether in a book or upon loose scraps of paper. What the date thereof, and what the appearance of the book or paper and writing, whether new and recent, or old.

2<sup>nd</sup> ans: I haven't to my recollection.

3<sup>rd</sup> quest by same: Upon whose land has Lenard Brake lived ever since you knew him. How long has that been, what chance did his Father give him to get along in life. And what other means: of support and making money had he, and did he employ, disconnected with, and distinct, from those furnished by his Father.

3<sup>rd</sup> ans: He lived on his Fathers lands. I am not exactly able to tell the time. Fifteen years I suppose. I can't tell what chance his Father gave him. I can't know what other means: he had.

4<sup>th</sup> quest by same: What is the value of the lands of which Michael Brake did seized including in the estimate the water power for mills or other machinery.

4<sup>th</sup> ans: I wouldn't be able to tell that, sir. The lands and only a common quality tho the water powers are very good and would be worth something in the hands of a capitalist.

5<sup>th</sup> quest by same: Did you ever hear Michael Brake say any thing about what he had done for Lenard.

5<sup>th</sup> ans: No sir, I did not.

1 days attendance  
14 miles travel & return same.

Daniel A. Sites

## Deposition of Isaac C. Miller<sup>7</sup>

Then came Isaac C. Miller an other witness of lawful age and being first duly sworn deposes and says.

1<sup>st</sup> quest by complainants counsel: State your age and place of residence.

1<sup>st</sup> ans: I am over sixty four years of age and live on Lost River.

2<sup>nd</sup> quest by same: State whether or not you are acquainted with Nimrod See. If so how long and your opportunities of becoming acquainted with him.

2<sup>nd</sup> ans: Yes sir. I am. Have been ever since we were school boys or ever since I was ten years old I have been acquainted with him. My first acquaintance was in going to school. I frequently see him in passing to mill and at his Fathers. Never had much business to transact with him. I collected some taxes of him when I was sheriff.

3<sup>rd</sup> quest by same: State what have been the pecuniary [?] circumstances since you have known him.

3<sup>rd</sup> ans: I know for many years after he was married he owned but little property. He has been in but moderate circumstances. For the last few years he has had some five or six head of horses and as many cows, and a good many hogs and sheep. I see them as I am passing frequently.

4<sup>th</sup> quest by same: State whether or not you were acquainted with Michael Brake. If so, how long.

4<sup>th</sup> ans: I was, since 1827 I believe. I saw him frequently at Mr. Sees.

5<sup>th</sup> quest by same: State if you know whether Michael Brake in his life time made arrangements or not to his daughter the wife of Nimrod See in money or property. If so state the nature thereof.

Objection to

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<sup>7</sup> Isaac Miller was a neighbor and friend of Nimrod See.

5<sup>th</sup> ans: To my own knowledge I can't say that I saw any thing of the kind transacted.

6<sup>th</sup> quest by same: State if you know who did the joiners or carpenters work in building the house, or the new part of the house in which Nimrod See lives.

6<sup>th</sup> ans: Mr. Procter done the joiners work. The new part of the building. I passed there when he was at work at it. I don't know the year.

#### Cross examined by defts counsel

1<sup>st</sup> question by defts counsel: Did not Nimrod Sees Father at the time of his death own lands slaves and other property: was he not well to do in the world. And did he not will his land to his two sons, Nimrod and Jacob and did not Nimrod also have an interest in the slaves and the proceeds of the other property.

1<sup>st</sup> ans: He divided his lands among all his sons. He staked it off in his life time. But whether it was conveyed or not, I do not know. And they were to pay Margaret I thing seven hundred dollars. There was seven sons. The old man owned a farm and had considerable tracts and was tolerable well to do. I think Nimrod hired a little black girl some way.

2<sup>nd</sup> quest by same: Was the house that Procter worked at of which you speak built before the old man died or after wards.

2<sup>nd</sup> ans: I am not able to say.

3<sup>rd</sup> quest by same: Was it not a log house and were not the logs obtained from their own land.

3<sup>rd</sup> ans: It was a log house. I don't' know where the logs came from.

4<sup>th</sup> quest by same: Did you know a man named William Rader. If so what business did he follow.

4<sup>th</sup> ans: I didn't know him to me recollection. I have no recollection of such a man that worked on that house or at any other time.

5<sup>th</sup> quest by same: During your acquaintance with Nimrod See was he not all ways in the habit of meeting his engagements and paying his debts without being sued or having his property sold under execution.

5<sup>th</sup> ans: As far as I know he was. I don't know that he ever was sued or that he ever had property sold under execution.

And further this supenant saith not.

1 days attendance

I. C. Miller

21 miles travel & return same.

The further taking is adjourned until to morrow morning to meet at my office at 8 o'clock a.m.

McDuffey counsel

## Deposition of George S. Brake<sup>8</sup>

August 6, 1868

At the time and place appointed as aforesaid by the last adjournment came George S. Brake an other witness on the part of complainants being of lawful age and first duly sworn deposes and says.

1<sup>st</sup> quest by complainants counsel: State whether or not you are acquainted with Nimrod See. If so how long you have known him.

1<sup>st</sup> ans: I am acquainted with him. I have been acquainted with him ever since I could recollect any thing pretty much. Some twenty five years at least.

2<sup>nd</sup> quest by same: State whether or not you were acquainted with Michael Brake if so how long you knew him.

2<sup>nd</sup> ans: Yes sir, I am acquainted with him. He was my Grand Father and I knew him ever since I know any body and I am now forty two years old.

3<sup>rd</sup> quest by same: State if you know whether or not Michael Brake in his life time made arrangements in property or money to his daughter Magdeline who married Nimrod See. If so state the nature and amount thereof.

3<sup>rd</sup> ans: I have heard him say that he bought the place that Nimrod See resides on. I don't recollect as I ever heard him say what was paid for it.

4<sup>th</sup> quest by same: State whether or not Nimrod See has made any admissions in your presence in regard to the purchase of the Jacob See land and paying for the same or in regard to the building of his house and paying for the same. If so, say when and where it was, who were present at the time and state all he said.

4<sup>th</sup> ans: I was at Nimrod Sees house in March 1862. We got to talking about the estate of my Grand Fathers and he said that my Father, Lenard Brake had been throwing up to him about building of his house and the land and he told me that Grand Father had paid for the land and the building of the house. But that he had paid him back the money for the building of the house but that he never had paid him any thing back which he had paid on the land for he had bought it for his

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<sup>8</sup> George Brake was Leonard Brake's son.

daughter, that is Nimrod's wife. And he intended for his children to have it. I don't recollect that any one was present. There may have been some of the family present there. I don't recollect.

#### Exception to

5<sup>th</sup> quest by same: State if you know what was the extent of your Grand Father Brake's education.

5<sup>th</sup> ans: He hadn't no learning. He could neither write or read, or read writing.

#### Cross examination by defts counsel

1<sup>st</sup> quest by defts counsel: Under what contract and upon what terms did you Father live on the lands of Michael Brake ever since you can recollect.

1<sup>st</sup> ans: Well I don't know as there ever was any contract between Grand Father and my Father. We used to all farm to gether. Worked to gether, and divided the grain after it was raised. If there was any work done on the place we generally worked to gether. Such as making fence and the like.

2<sup>nd</sup> quest by same: What was the size of your Father's family while his children were all with him, and were they not all raised, supported, and educated when he was living on his Fathers land and what was the size of the old mans: : family at the same time and were any of them educated within your memory.

2<sup>nd</sup> ans: He raised five children. There was eight – three of them died when not over a year old. We were all raised there and educated, what little education we had. There was neither one of us went to school over eighteen months put it all to gether. There was seven in my Father's family including my Father & Mother. There was six in my Grand Father's family. There was one of them educated or went tot school any way. There was three blacks, and was a daughter of Nimrod See that Grand Father raised, and Grand Father and Grand Mother.

3<sup>rd</sup> quest by same: Did not your Father in addition to the support and education of his family whilst living on his Father's land and in addition to the out fit he give his children when they were married amass money to purchase lands near [----].

3<sup>rd</sup> ans: He bought some land. I think he paid about two hundred dollars for the interest he bought as well as I recollect. He didn't do a great deal for me. I didn't

get over seventy five dollars. The others, the girls got a house a piece and about two beds and some other property, house property. My brother got nary [----] house. I think he got a bed or two. Two of my sisters got a cow a piece. None of us got more than my cousin got from Grand Mother or Grand Father that they raised.

The defendant excepted to so much of this answer as refers to what his cousin got as not being responsive to the question or connective with the case and only indicating the feeling of the witness on behalf of his Father.

4<sup>th</sup> quest by same: Did you never hear your Grand Father say the he had given your Father a better chance and done a great deal more for him than he ever did for your Aunt Bett. And don't you know that that was the case.

4<sup>th</sup> ans: I never did to my recollection her him make that remark. My Father lived there on the place, but other ways he done no more for him that for the rest. For if any of them went to him for any thing and he had it, they got it.

5<sup>th</sup> quest by same: Don't you know that your Grand Father couldn't have paid for the place when Nimrod See lived but for only part of it as he holds part of it under the will of his Father, not having been bought or [----].

5<sup>th</sup> ans: I don't know any thing about the will.

6<sup>th</sup> quest by same: Do you know any thing or have you heard from your Father or Grand Father or Elizabeth Simon or Nimrod See about Nimrods furnishing a house to Jacob in part payment for said land.

6<sup>th</sup> ans: I did not.

7<sup>th</sup> quest by same: Were not you Grand Father and Grand Mother managing, industrious, saving people, and was not the old man a good hand to care for his business and money matters.

7<sup>th</sup> ans: They were saving. And the old man was a good hand to take care of his money matters. But it was always pretty much as the old woman said.

[What is apparently a redirect examination follows]



1<sup>st</sup> quest by complainants counsel: State in what manner your Grand Father manifested his care of money matters. And whether or not he kept accounts of his dealings with persons.

1<sup>st</sup> ans: The old lady always had the care of his money and when there was any money paid out, she always done it. He never kept any accounts with any body. He kept no book.

Objection – the question and answer to so far as the re-examination of the witness in chief and further this deponent saith not.

Attendance 4 days

George S. Brake

Travel 12 miles & return same.

The further taking is adjourned until the 11<sup>th</sup> day of August 1868 to meet at my office between the hours of sun rise and sun set.

McDuffey counsel

State of West Virginia Hardy County to wit. J. McDuffey commissioner of the circuit court of Hardy County certify the foregoing depositions of Nimrod Thorn, George S. Brake & others. Witnesses were duly taken by me at the time & place mentioned in the notice and thereafter at the time and place specified in the said adjournments. Given under my hand this 10<sup>th</sup> day of September 1868.

McDuffey counsel

August the 5<sup>th</sup> 1868

Met pursuant to adjournment at the time & place mentioned in the adjournment and no witnesses appearing. The further taking is adjourned over until tomorrow to meet at my office between the hours of sun rise and sun set.

## Testimony of George See<sup>9</sup>

August the 6<sup>th</sup> 1868

Pursuant to the last adjournment met at my office at the time stated said adjournment there came George See of lawful age who being first duly sworn deposes and says.

1<sup>st</sup> quest by defts counsel: State anything you may know as to the payment of any part of the purchase money either by property as money for lands sold by your brother Jacob to your brother Nimrod in 1828.

1<sup>st</sup> ans: In the first payment there was a horse beast that Nimrod paid. I think the horse was valued at seventy or seventy five dollars. I don't recollect any thing about other payments.

2<sup>nd</sup> quest by same: What was the price of the land.

2<sup>nd</sup> ans: Six hundred dollars.

3<sup>rd</sup> quest by same: Had Nimrod See any lands before that purchase. If so how did he get them and how did they compare in value with those purchases of Jacob.

3<sup>rd</sup> ans: My Father willed him a parcel of land adjoining me. I don't think there was much difference. They were all laid and pretty much alike.

4<sup>th</sup> quest by same: How long before this purchase had your Father died and your brother been in possession of the lands willed him. I mean Nimrod.

4<sup>th</sup> ans: I can't tell exactly the time. My Father died in May 1828 I think. Nimrod got possession shortly after his death and before his purchase.

5<sup>th</sup> quest by same: What other property besides land had Nimrod at that time. Whether in slaves, stock or other property.

5<sup>th</sup> ans: Well, Father left him a black girl and he had horses and cattle.

6<sup>th</sup> quest by same: When Nimrod built his house was it frame or a log house.

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<sup>9</sup> George See was Nimrod See's brother.

6<sup>th</sup> ans: It was a log house.

7<sup>th</sup> quest by same: From whose lands did he get the logs to build it and to make the plank to use therein.

7<sup>th</sup> ans: Of that I am not positive but judge he got them off of the land purchased of Jacob See as part of them any how. As for the saw timber I judge he got that off the land that was willed to him. There was good saw timber on that land.

8<sup>th</sup> quest by same: Examine the paper shown you marked exhibit OO and state in whose hand writing this signature George See thereon is, and if you can in whose hand writing said paper is, whether the same was executed in your presence, whether you know William Rader who purported to have executed said paper. If so what was his trade or employment, and what connection if any he had with the building the said house for Nimrod See. And what other markman if any helped him thereat.

8<sup>th</sup> ans: I wrote the whole of it except the mark. It was executed in my presence. I knew William Rader very well who worked at the house. Old Mr. Procter helped him. Rader was a soninlaw of Procters and him and Procter done the work of the house. The joiners mark.

9<sup>th</sup> quest by same: Examine the paper now shown you marked WD & PP [?] and state in whose hand writing the signature thereto "Richard Procter" is.

9<sup>th</sup> ans: I don't know whether it is in my hand writing or not. I don't recollect anything at all about that. I am acquainted with Procter's signature.

10<sup>th</sup> quest by same: Is Procter living or dead.

10<sup>th</sup> ans: Well I can't say.

11<sup>th</sup> quest by same: How long have you known Lenard Brake and on whose land has he lived ever since you know him and what were his visible means of support and making money.

11<sup>th</sup> ans: I have known him from an early youth. I don't suppose he's ever lived off the lands he now lives on. He lived on the lands of Michael Brakes before his

death. He worked at several things farming for one thing. He had no trade that he followed.

#### Cross examination by complainants counsel

1<sup>st</sup> question by complainants counsel: You have stated that Nimrod paid seventy five dollars on the land purchased of your brother and that the price thereof was six hundred dollars. Who paid the residual of the purchase money.

1<sup>st</sup> ans: I don't know that. If it is proper I can state what I heard Nimrod say.

2<sup>nd</sup> quest by same: State what Nimrod said about it.

2<sup>nd</sup> ans: I heard him say that he had paid it to uncle Brake after selling a lot of cattle. I heard him say that he paid him some borrowed money. As to the amount I don't recollect.

3<sup>rd</sup> quest by same: When was it you heard Nimrod say this.

3<sup>rd</sup> ans: Will I can't state that, but it was some time after this land was bought.

4<sup>th</sup> quest by same: When was Nimrod married.

4<sup>th</sup> ans: I can't tell that. I don't know what year he was married in.

5<sup>th</sup> quest by same: When was Nimrod's house built.

5<sup>th</sup> ans: I must have been in 1832.

6<sup>th</sup> quest by same: If the body of the paper PP was in your hand writing would you not know it.

6<sup>th</sup> ans: I can't say that is my hand write. It might be possible that I wrote that but I can't say.

7<sup>th</sup> quest by same: Did Nimrod some times require and receive assistance from Michael Brake in the support and maintenance of his family.

7<sup>th</sup> ans: I think not. He might have got some things that I don't recollect of.

Examination in chief resumed

1<sup>st</sup> quest by defts counsel: Was not Nimrod See always in a situation to support his family and pay his debts and have you every known his property taken under execution for debt or that he was sued.

1<sup>st</sup> ans: He would raise enough or buy enough to support his family. He always paid his debts as well as the most of us. I don't recollect that his property was ever taken under execution for debt. I judge he has been sued. I think he give some lands once that he was sued on. But that didn't injure him.

And further this deponent saith not.

George See

1 days attendance &  
20 miles travel & same to return

## Testimony of James P. Stump<sup>10</sup>

Then came James P. Stump an other witness on the part of the defendants who being of lawful age deposes and says.

1<sup>st</sup> quest by defts counsel: How near do you live to Lenard Brake. How long have you have you done so and how long have you known him and Michael Brake

1<sup>st</sup> ans: I live two miles for Lenard Brake. I think last spring will be thirty five years since I moved to the county. I have lived at the same place ever since. I might have lived there three or four years before I knew much about them.

2<sup>nd</sup> quest by same: Upon whose land did Lenard live since you have known him, and what other visible means of support for himself and family than the use of such lands had he.

2<sup>nd</sup> ans: He lived upon Michael Brakes lands. He followed farming. Some times he attended the saw mill. Some times he had a still, and stilled some fruit and I believe he stilled some times some grain and made whiskey.

3<sup>rd</sup> quest by same: What in your opinion would be a fair annual charge by Michael Brake for the use of his property by Lenard and the privileges granted him by his Father as dealing between strangers.

3<sup>rd</sup> ans: I suppose about sixty five dollars a year as an average.

4<sup>th</sup> quest by same: Which had the larger family, Lenard or Michael Brake.

4<sup>th</sup> ans: I think Lenards was a little the largest.

5<sup>th</sup> quest by same: Has not Lenard in addition to supporting his family and educating his children and giving them an outfit upon their marriage made money from the sources you have named so as to purchase lands, or did he get the money from other sources, if so, what.

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<sup>10</sup> James Stump was Nimrod See's neighbor.

5<sup>th</sup> ans: I don't know that he give them any out fit. I don't know any thing about that. I don't know how he made his money, by farming, I suppose. He purchased a piece of land.

6<sup>th</sup> quest by same: Do you know any thing of Lenard having money out at interest. If so when and what amount.

6<sup>th</sup> ans: I once bought three head of cattle from him and that was on interest for several years. There was some other little matters in with it. That is all that I know of. The amount of interest and principal was a little over two hundred dollars. It was I think about a year ago or some where about that.

7<sup>th</sup> quest by same: What was the value of Michael Brakes lands including water power for mills or machinery.

7<sup>th</sup> ans: I suppose about four thousand dollars in payments is about what it would be worth one third down.

8<sup>th</sup> quest by same: Did you ever hear Michael Brake speak of what he had done for Lenard absolutely or as compared with what he had done for his other children, or complaining about what Lenard got or made out of him. If so, what did he say.

8<sup>th</sup> ans: I never heard him say any thing about doing any thing for Lenard. I have heard him complain that he couldn't make any money and Lenard could. That he had the taxes to pay.

#### Cross examination by complainants counsel

1<sup>st</sup> quest by defts counsel: Where did Michael Brake reside whilst Lenard had the use and occupation of his land of which you have spoken. How far from Lenard.

1<sup>st</sup> ans: He lived I suppose not over two hundred yards off. He lived on the same farm in his own house.

2<sup>nd</sup> quest by same: Did you see and converse with Michael Brake frequently in that time.

2<sup>nd</sup> ans: No sir not very often. I would some times see him when I would go to the mill. Some times I went up there on Sundays occasionally.

3<sup>rd</sup> quest by same: Do you know upon what terms or under standing Lenard had the use of the old mans land.

3<sup>rd</sup> ans: No sir I do not.

4<sup>th</sup> quest by same: Do you know that Lenard compensated the old man for the use of the land by rendering to him shares of the crop raised, and by personal services rendered by himself and hands.

4<sup>th</sup> ans: No sir I don't know any thing about that. I have seen them mowing together and husking corn together, but have they arranged their affairs I don't know any thing about.

5<sup>th</sup> quest by same: Do you know what part of the old mans lands Lenard had the use of. How many acres, what fields or particular quantity.

5<sup>th</sup> ans: He farmed the upper end in the latter part of the old mans life time. I don't know the particular names of the fields, and since the old mans death he has farmed some of the lower end.

6<sup>th</sup> quest by same: Was Lenard an industrious or a lazy man, managing, saving and thrifty, or the reverse.

6<sup>th</sup> ans: He was industrious as the general run of people. He was a good manager, as good as the common run of people.

7<sup>th</sup> quest by same: Do you mean that Lenard Brakes family was larger than his Fathers during the whole of the time of which you have been speaking or only a part of the time.

7<sup>th</sup> ans: When the family was all together it was the largest. I reckon in the latter part of his life it may be that the old mans was a little the largest. Some of Lenards married & went off.

8<sup>th</sup> quest by same: Do you know what real estate Michael Brake owned in 1828, if so can you say what it was worth then.

8<sup>th</sup> ans: He owned the farm he resided on I suppose. I don't know what it was worth at that time. It is too far back.



9<sup>th</sup> quest by same: Were lands in that neighborhood higher or lower in price when you first came to the country than at present.

9<sup>th</sup> ans: They were lower then than they are now.

10<sup>th</sup> quest by same: Do you recollect when it was Michael Brake complained that he could not make money and Lenard could.

10<sup>th</sup> ans: I don't remember exactly but it was in the latter part of his life. I didn't pay much attention to it. I don't know why he made the remark.

11<sup>th</sup> quest by same: When did Lenard get the fruit which he distilled.

11<sup>th</sup> ans: He gathered some on the farm, some of Sal Shepler, some of Dr. Parran [?], and some of me.

12<sup>th</sup> quest by same: Did you ever know him to make bed steads or coffins.

12<sup>th</sup> ans: Yes sir. He made some bedsteads, done some turning and made some coffins.

13 quest by same: What was the original principal of the debt he had an interest for several years. Was it not sixty two dollars.

13<sup>th</sup> ans: I don't remember what it was. It was standing a good many years.

And further this deponent saith not.

1 days attendance &  
12 miles travel to & return

James P. Stump

## Testimony of George Dasher<sup>11</sup>

[Transcriber's note: different handwriting starting here.]

George H. Dasher a witness introduced by same, being duly sworn, deposes & says.

1<sup>st</sup> quest by defendants counsel: State how near you have lived to Michael & Lenard Brake & how long you have known them?

1<sup>st</sup> answer: I live within about a mile and have lived there about eighteen or nineteen years. And I was raised about six miles off. I have known them some 25 or 30 years.

2<sup>nd</sup> quest by same: Upon whose land did Lenard live since you have known him, & what other visible means of support for himself & family had he, threw the use of said land?

2<sup>nd</sup> answer: He lived on his Fathers lands. He had the use of the saw mill and the grist mill. I think he done his own grinding. He had part in a still. He stilled some apples. He made some whiskey. I frequently see him make coffins. That has been some time back. I haven't seen him make any lately. His Father had a blacksmith shop. He had the use of it to do his own work.

3<sup>rd</sup> quest by same: What in your opinion would be a fair annual charge by Michael Brake for the use by Lenard of his property, including the lands farmed, the house occupied by him & the privileges in the saw mill, grist mill, blacksmith shop, & still, as dealing between strangers?

3<sup>rd</sup> answer: Part of the still belonged to Lenard himself. He had the use of very near half of the bottoms. I would suppose the whole would be worth eighty or ninety dollars a year, excluding the still.

4<sup>th</sup> quest by same: How did the house occupied by Lenard compare with the one the old man occupied in value and comfort?

4<sup>th</sup> ans: I don't suppose there was a great deal of difference. It was not quite as large. There is not a great deal of difference as to the comfort.

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<sup>11</sup> George Dasher was Leonard Brake's cousin and neighbor (Leonard's mother was Elizabeth Dasher).

5<sup>th</sup> quest by same: Do you know of your own knowledge or from what you have heard Lenard say, whether or not he made money from the lowers you have spoken of & whether he made any purchases of land, and had he any other means of making money, than than [sic] you have spoken of, if so, what?

5<sup>th</sup> ans: I heard him say he made some money from the saw mill, from his still and hauling [-----] [---]. And I heard him say he had made constable a while. He frequently would sell some cattle & hogs. He hasn't done any thing for some time at the saw mill. The saw mill has gone down.

6<sup>th</sup> quest by same: What was the [-----] of Michael Brake, as an industrious, saving and managing man?

6<sup>th</sup> ans: So far as I know he was an industrious saving man. He was some time before his death unable to turnout to work but he was was [sic] able to attend to and manage his business.

7<sup>th</sup> quest by same: What business are you engaged in, are you a landowner, and to what extent?

7<sup>th</sup> ans: I am a farmer. I have a grist mill and saw mill too. I am a land holder. I have over twelve thousand acres of land including the mountain land and all. Including the out surveys my home place has in it 1100 acres with about 160 acres of bottom that is tillable land. I suppose there is about the same of upland that is improved.

8<sup>th</sup> quest by same: Do you know James P. Stump, if so, what is his business. Is he a landowner & to what extent, large or small.

8<sup>th</sup> ans: Yes sir I know him. He is a farmer, land owner. Owns a good deal of land. I think has pretty well unto 300 acres of bottom. including his mountain land I suppose he owns some 12 or 13000 acres.

9<sup>th</sup> quest by same: Do you know Nimrod Thorn. If so what does he follow for a living. Is he a land owner, if so to what extent.

9<sup>th</sup> ans: I know him. I can't say what he follows now. I don't know that he ever did follow any thing in particular. I have known him to work at different places of busy times. He was no land holder that I know of.

10<sup>th</sup> quest by same: From his standing and that of Michael Brake, do you think that Michael Brake would have extended to him alone a confidential communication, as to his business matters, & what he had done & wished to do in the distribution of his property among his children?

Objected to

10<sup>th</sup> ans: It is hard to tell what he would do, but from the character of the two men I would hardly think he would.

11<sup>th</sup> quest by same: What do you think Michael Brakes lands were worth, all that he had at the time of his death?

11<sup>th</sup> ans: I would suppose it worth about 5000 dollars, one third down and the other in two payments.

Cross examination by defts counsel

1<sup>st</sup> quest by defts counsel: When did you first know the lands of Michael Brake and what were they worth then.

1<sup>st</sup> ans: I could not tell what they were worth then. I lived some distance off and was small and didn't know the value of land.

2<sup>nd</sup> quest by same: Were they more valuable or less valuable at Michael Brakes death than they were before, when you first knew them.

2<sup>nd</sup> ans: I don't know what they were worth when I first knew them. I suppose they were worth more at his death. Lands had raised. They were higher then than they had been before.

3<sup>rd</sup> quest by same: You say the still belonged to Lenard in part. Was it not his entirely.

3<sup>rd</sup> ans: I heard Lenard say my self that part of the still belonged to him. That is, belonged to him and his Father. That they had bought it of Bishops.

4<sup>th</sup> quest by same: Who built Lenards house.

4<sup>th</sup> ans: Well I can't tell you about that. It was before my recollection.

5<sup>th</sup> quest by same: Do you know under what agreement or understanding Lenard had the use of the old mans land.

5<sup>th</sup> ans:: No sir.

6<sup>th</sup> quest by same: Did you ever hear the old man complain that Lenard did not pay him for the use of his land or any other privileges or advantages he enjoyed.

6<sup>th</sup> ans: I don't know that I ever heard him complain about that. I heard him complain about their not fixing up the fences.

7<sup>th</sup> quest by same: What fences.

7<sup>th</sup> ans: I don't know what fences. He didn't speak of that part that Lenard had in possession or that the old man had in possession specifically.

8<sup>th</sup> quest by same: Has Lenard been an industrious, saving managing man, or the reverse.

8<sup>th</sup> ans: Well he has always been considered industrious as the common run of people as far as I know.

9<sup>th</sup> quest by same: Was not Michael Brake for some years previous to his death afflicted in some way as to preclude his engaging in active manual labor.

9<sup>th</sup> ans: Yes sir he was some time before, but I can't just tell how long.

1 days attendance  
15 miles travel to & return to same

George W. Dasher

## Testimony of John See<sup>12</sup>

John See a witness introduced by same, being duly sworn deposes and says.

1<sup>st</sup> quest by same: Do you know who did the joiner work of the house built by your brother Nimrod See on Lost River. If so, who – and when was it?

1<sup>st</sup> answer: William Rader & I think his name was John Proctor. I can't just recollect when.

2<sup>nd</sup> quest by same: Was Proctor an old or young man, was he related to Nimrod, if so how. Where did he live & is he now living or dead?

2<sup>nd</sup> ans: He was an old man. Rader was his son-in-law so they told me. He lived in Woodstock when I first knew of him. I understand he is dead.

Question 3 by same: Do you know anything about Michael Brake getting any property of Nimrod See. If so what, its value, & and where?

3<sup>rd</sup> ans: I recollect of him getting some cattle of him and some sheep. I don't know their value as price and can't recollect when it was.

4<sup>th</sup> question by same: State whether or not Nimrod See was in the habit each year of selling some stock that he had raised or fattened.

4<sup>th</sup> answer: He generally raised some stock every year and does yet. I expect he sold them. I don't suppose he would raise them and give them away.

1<sup>st</sup> question by complts: What was the size of the house of which you have spoken and of which proctor did the joiners work. How many stories, floors, doors, and windows had it?

1<sup>st</sup> ans: I don't recollect hearing them say what the size was, and I never measured it. It was two stories, three floors. I think there was six doors and 8 windows. The same house he lives in now. The porch was built some time afterwards by Jacob Grider.

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<sup>12</sup> John See was Nimrod See's brother.

And further this deponent saith not.

1 days attendance &  
18<sup>th</sup> miles travel to & return the same

John See

The further taking is adjourned until the 11<sup>th</sup> day of August 1868 to meet at my office between the hours of sun rise and sun set.

McDuffy counsel

Hardy County to wit  
Commissioners Office

## Interrogatory to Elizabeth Brake Simon<sup>13</sup>

August 21, 1868

To Mrs. Elizabeth Simon

The following interrogatory has been filed in my office by Michael B. See to be answered by you in the suit of Lenard Brake et. al. vs. Nimrod See & others referred to me to ascertain advancements if any made by Michael Brake to his children.

Interrogatory

McDuffy counsel

Did not Michael Brake furnish you with money, to pay on a title bond given to George Simon, now dcd. If so, how much and when. Or for any other purposes.

Ans: I don't know of any title bond ever given to George Simon now due, but my husband held a title bond from George Simon now dcd. My father never furnished me with one cent to pay on it. I once borrowed a small sum of my mother which I believe was paid on the title bond from George Simon now dcd. The sum I don't exactly remember but I think ten dollars. I don't recollect how long ago it was, but I paid my mother back her money a short time afterwards. That I recollect very well. My father never give me any any [sic] money for an other purpose to my recollection. Only that five dollar piece that I spoke of in an other question. He also give my sister Magdalene the same sum and brother Leonard saith he give him the same.

Elizabeth Simon her mark

State of West Virginia  
Hardy County to wit

I McDuffey commissioner of the circuit court for Hardy County certify that the foregoing depositions of Elizabeth Simon, George See, James P. Stump & others were duly taken by me at the time and place mentioned in the notice and thereafter at the time & place specified in the said adjournments. Given under my had this 10<sup>th</sup> day of September 1868.

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<sup>13</sup> Follow up testimony by co-complainant.



McDuffey counsel

Costs of defts in taking these depositions

To	George See – witness 1 day	1.00	
	same 40 miles travel	2.00	3.00
“	George H. Dasher 1 day	1.00	
	same 30 miles travel	1.50	2.50
“	John See Sr 1 day	1.00	
	same 36 miles travel	1.80	2.80
“	McDuffey counsel for taking		
	depositions 10 hours at .75	7.50	
“	witnesses 20 of 2 witnesses	.40	
“	[----] costs 20 [-----] certifying		
	attendances of 3 witnesses at .30	1.10	9.00
			<hr/>
			\$17.30

I hereby certify the above bill of costs to be correct.

McDuffey counsel

Above amt of costs sworn to before me this 30<sup>th</sup> day of October 1868.

[-----wood --]

## The Finding

September 1869

Leonard Brake et.al.

vs

Nimrod See et. al

This cause came on to be further heard this day upon the papers formerly read and the report of the commissioner heretofore directed to ascertain the advancements made by Michael Brake to his children and the evidence and papers therewith returned. To which report there is no exception and was argued by counsel, and it appearing to the court that the said Michael Brake in his lifetime made an advancement to his daughter Magdeline See of the sum of \$525.00 and made no advancement to his other children, and it being charged that the lands in the bill mentioned are susceptible of partition. On consideration whereof it is adjudged ordered and decreed that Job W. Hutton, James R. Heiskell, W. C. Vanmeter and Sanford G. Simmons, any three of whom may act after being first duly sworn do so upon the lands descended from the said Michael Brake consisting of the following tracts lying on the South Fork in Hardy County. To wit, one tract of 680 acres, one tract of 114 acres, one tract of 12 acres the Home Place and one tract of 40 acres and one tract of 37 acres and which and ascertain whether a fair and equal partition thereof can be made and if they are of [-----] cause described in the bill [-----] in this cause to assess and fix the value of said lands by separate [-----]s and the total actual value thereof, to which total value thereof they shall adv. the sum of \$525.00, the amount of the advancement made to said Magdeline See which last name [----] constitutes the estate to be divided by them and then divide the sum of said total thus ascertained value into three equal parts and assign to the complainant Leonard Brake land of the value of one third part of said total value and to the complainant Elizabeth Simon land of the value of one third part of said total value and to the defendant Nimrod [“Nimrod” crossed out] Michael See and others heirs of Magdeline See formerly Brake. The [-----] of said land so that their share of land shall be adding thereto the said sum of \$525 be equal to the ascertained value of each of the other shares- [---] 1/3 – of the total value of land & advancements, in other words, they shall assign lands of the value of one third part of said total value after deducting therefrom the said advancement of \$525.00 made to Magdeline See as aforesaid and report their action to the court in order to further proceedings to be had herein. If they find that no partition of

land can fairly & justly be made of said land, they can ascertain whether [-----] of partitions can be [-----] by requiring payment in money to any one of the parties from the others the value of the

Leonard Brake et. al.

vs.

Nimrod See et. al.

Int Decree

Sept Term 1869

Leonard Brake et.al.

vs

Nimrod See et. al

This cause came on to be further heard this day upon the papers formerly read and the report of the commissioner heretofore directed to ascertain the advancements made by Michael Brake to his children and the evidence and papers therewith returned. To which report there is no exception and was argued by counsel, and it appearing to the court that the said Michael Brake in his lifetime made an advancement to his daughter Magdeline See of the sum of \$525.00 and made no advancement to his other children, and it being charged that the lands in the bill mentioned are susceptible of partition. On consideration whereof it is adjudged ordered and decreed that Job W. Hutton, James R. Heiskell, W. C. Vanmeter and Sanford G. Simmons, any three of whom may act after being first duly sworn do so upon the lands descended from the said Michael Brake consisting of the following tracts lying on the South Fork in Hardy County. To wit, one tract of 680 acres, one tract of 114 acres, one tract of 12 acres the Home Place and one tract of 40 acres and one tract of 37 acres and which and ascertain whether a fair and equal partition thereof can be made and if they are of [-----] cause described in the bill [-----] in this cause to assess and fix the value of said lands by separate [-----]s and the total actual value thereof, to which total value thereof they shall adv. the sum of \$525.00, the amount of the advancement made to said Magdeline See which last name [----] constitutes the estate to be divided by them and then divide the sum of said total thus ascertained value into three equal parts and assign to the complainant Leonard Brake land of the value of one third part of said total value and to the complainant Elizabeth Simon land of the value of one third part of said total value and to the defendant Nimrod [~~“Nimrod”~~ crossed out] Michael See and others heirs of Magdeline See formerly Brake. The [-----] of said land so that their share of land shall be adding thereto the said sum of \$525 be equal to the ascertained value of each of the other shares- [---] 1/3 – of the total value of land & advancements, in other words, they shall assign lands of the value of one third part of said total value after deducting therefrom the said advancement of \$525.00 made to Magdeline See as aforesaid and report their action to the court in order to further proceedings to be had herein. If they find that no partition of land can fairly & justly be made of said land, they can ascertain whether [-----] of partitions can be [-----] by requiring payment in money to any one of the parties from the others the value of the

Leonard Brake et. al.

vs.

Nimrod See et. al.

Int Decree

Sept Term 1869

Leonard Brake and Elizabeth  
Simon, complainants

against

Nimrod See, Michael See,  
George See, Beonard See,  
John Cleaver and Betsy his  
wife, defendants

Came on to be further heard this day of September 1871 upon the papers formerly read therein and the report and accompanying plat of Isaac Hutton, Charles A. Heath and Nimrod Judy, with Sandford G. Simmons surveyor of Hardy County, the Commissioners heretofore appointed to make partition of the lands in the Bill and proceedings of this cause mentioned, the four exceptions to said report by the defendants, the affidavits of George P. Neff, Michael S. Stump, George H. Dasher, S. Y. Simmons, James R. Heiskill, [.....] Ketterman, Valentine S. Lee and James P. Stump, filed by the defendants in support of said exceptions, the counter affidavits of Isaac Hutton, Charles S. Heath, Nimrod Judy, S Y. Simmons, Alfred Slasher, George B. Simon, Daniel S. Sites, and John Mongold, Sr. filed by the complainants in support of said report. The Certificate of T. D. Lobb, clerk, and the affidavit of Isaac Hutton showing that said commissioners had been sworn to do their duty under the decree appointing them as such, and was argued by counsel, on consideration whereof the court is of the opining that the partition reported by said commissioners is substantially equal and just, that there was no material disobedience of the order of the court upon the part of the commissioners in the disposition made by them of the old mill site, that said commissioners have not so laid off the site for a mill as to be of little or no value to any one else but Leonard Brake, and that there is sufficient evidence in the cause that said commissioners were sworn to discharge their duty, the said four exceptions are therefore overruled, and it is adjudged, ordered and decreed that said report be confirmed and that Leonard Brake have and hold in severalty Lot No. 1 as laid off and described in said report and the accompanying plat; that Elizabeth Simon have and hold in severalty Lot No. 2 as laid off and described in said report and the accompanying plat, except as is excepted in said report, the family Brake yard, which the said Leonard Brake, Elizabeth Simons and the defendants are to have the provilleege of occupying jointly and severally with free access thereto: that Nimrod See, Michael See, George See, Leonard See and Betsy Cleaver have and hold jointly Lot No. 3 as laid off and described in said report and the accompanying plat, with the right of ingress and egress at any and all times

necessity may require, to the upper part of the lot assigned to them from the Fork Road near the old mill through Lot No. 1: and Leonard Brake is directed immediately to pay to the said Nimrod See, Michael See, George See, Leonard See and Betsy Cleaver the sum of fifty-six dollars and six cents as [.....] of partitions: the Mill Site as laid off and described in said report and the accompanying plat, containing one hundred and ten poles, together with the old Mill house and appurtenances shall be sold on the premises by [Absc..] Sommerville who is hereby appointed a special commissioner for the purpose, at such time as he may appoint, after first giving at least four weeks notice of the time and place of sale in the Moorefield Advertiser and by printed handbills posted at the public places in the neighborhood of said property. Said special commissioner should require one third of the purchase money to be paid in cash and the residue in one two years bearing interest from the day of sale, and take bonds with good security for the deferred installments, and retain the title to said Mill Site until the purchase money therefore shall be paid in full, when he shall convey the same to the purchaser: but before said special commissioner shall receive any money under this decree he shall execute bond with good security in the penalty of \$500.00 conditioned as the law requires and file the same in the papers of this cause: the purchase money to be derived from the sale of said property after defraying the expenses of sale shall be divided as follows, to wit, one third thereof to Leonard Brake, one third thereof to Elizabeth Simon, and the remaining third part thereof to the defendants: the costs of this suit are apportioned and directed to be said in the following manner, to wit, that portion of the costs which accrued under the reference to Commissioner Duffey shall be paid by the defendant; all other costs which have accrued in the case, including an attorney's fee of \$25.00 to the party prevailing, shall be paid, one third part thereof by Leonard Brake, one third part thereof by Elizabeth Simon, and the remaining third part thereof by the defendants: and the clerk of this court is directed to make and certify copies of the aforesaid report and the accompanying plat, together with a copy of this decree to the Recorder of the County for recordation. Leave is given the parties to withdraw the title papers filed in this cause.

Leonard Brake et. al.

vs.

Nimrod See et. al.

Sept Term 1871