Answer of Benj. D. Brabson and Thomas C. Brabson, to Bill of Complaint of Rogert H. Hodsden and his wife Mary Hodsden, and John S. McNutt and his wife Elizabeth McNutt, filed 14 Octo. 1859

To the Honorable Seth J.W. Lucky, Chancellor sitting in Chancery at Sevierville, Tennessee.

These respondents saving and reserving every right of Exceptions to complainants said Bill of complaint, for answer thereto, say, that the complainants Mary and Elizabeth are daughters of John Brabson deceased, who departed this life in November 1848, having first made and published a last Will and testament which was proven and recorded as alledged.- A copy of said last Will and testament is hereto offered as a part of this answer, marked A.

The compainant John S. McNutt having declined to act as Executor of said Will, these respondants qualified and assured the duties imposed on them, and in this character they have paid over to the several legatees the specific legacies respectively due them in accordance with the provisions of said Will.

For several years previous to his death, the said John Brabson was interested in a merchantile business carried on the town of Maryville for a while under the firm name and style of "John Brabson & Co." and for the residue of the time under the name and style of "Brabson & Toole." In both of these firms the respondant Benj. D. Brabson was a partner and was familiar with the business, and to facilitate the administration of said Estate, these respondants agreed to divide the labor between themselves- the respondant Benj. D. assuming the entire management and controll of the business pertaining to said merchantile jirms, and the respondant Thomas C. Brabson took upon himself the administration of the balance of their testators Estate, and in pursuance of this agreement they have kept seperate accounts, and have made separate and distinct settlements with the clerk of the county court- and will here make an exposition of the accounts so respectively kept by them.

The respondant Benj. D. Brabson assuming as to that part of the business committed to his management says, that part of the firm of "John Brabson & Co." was composed of the respondant, the said John Brabson and R.J. Davis and so continued from its formation in 1830, up to about the year 1841, when the said R.J. Davis withdrew therefrom. The business was then continued under the same name for about one year by this respondant and his testator, when James M. Toole was admitted as a partner and the name of the firm was changed to that of "Brabson & Toole," and so continued till its final disolution which took place about the first of January 1848. Their firm has done a large business, and at the death of the said John Brabson a large amount of debts was owing to said firms and heavy liabilities existed against them. To the adjustment of all the unsettled business of these firms, this respondant devoted himself with all the energy that his health would then permit of. No settlement or division of profits had ever been made between respondant and his testator of the co-partnership transactions. This respondant found himself as surviving partner and Executor of a deceased partner occupying a delicate position; and he was unwilling to assume the responsibility of adjusting the accounts growing out of this complicated relation. To relieve respondant of this responsibility and to avoid the necessity of a suit in chancery, which would have been indispensible, all the parties in interest agreed to submit the same to the arbitrament and award of Milton Shields and R.J. Davis, and in pursuance of said agreement, first suggested by the complainant Robert H. Hodsden, and emphatically and deliberately assented to by him and the said John S. McNutt, the arbitrators named convened on the 2nd of June 1851 and continued their

labors from day to day till the 12th day of August following, when their award was concluded and received the united assent of said complainants; they had all the Books and papers of said firms before them necessary to a full and fair settlement; all of these papers were open to complainants inspection, and many, if not all of them were examined by them, the written record of the arbitrators conclusions and decissions with the reason of said decisions preserved in writing and verified by the signatures of the said complainants, as shown by a Book in this respondants possession, and which he will produce whenever required for inspection or examination by this Honorable Court , was examined and approved; and assented to by them, and this respondant avers to the best of his belief, that the same is fair and just in all its parts, and that the same is conclusive upon all the parties interested therein- At all events after said settlement and award this respondant regarding it as conclusive ever since acted upon it as such; and upon the demand of the said Robert H. Hoasden, in September 1851 thsi respondant paid him the full amount of his share as found to be due to him from this firm, and the same was received and receipted for by him and his wife Mary,which receipt respondant has and will be able to produce on the taking of the account in this cause if the same shall become necessary.

Since the filing of complainants Bill in this case, in pursuance of an agreement previously existing, to wit, about the 15th of Nov.1858 this respondant came to a settlement with complainants John S & Elizabeth McNutt and paid them the full amount due them from said firm, for which he took a receipt which he will produce if the same become neessary in the further investigation of this case.

Availing himself of the power vested by the 28th Item of said will and in conformity with what he understood to be the wish of his testator, this respondant has not yet finally closed up the business of said firm, and he has not yet paid to the other legatees all that will be due to them from this source, but he avers that he ; action in the premises has been satisfactory to all of his co-respondants, to whom alone he holds himself responsible with whom he is willing to account. But he denies the right of complainants to interfere in their behalf and call for the re-opening of the settlement, or the payment of any amount that may be due to them, or any one or more of them,- and inasmuch as complainants have been paid every thing due them in this respect; the same ascertained by impartial arbitraters and assented to and acted upon by them, with a full knowledge of all the facts of the case in detail, respondant denies their reight to reopen said matters, and he prays, for a decree of this Honorable Court confirming the same and all payments made and every act done under and in pursuance thereof.

This respondant further answering, says that the office containing the records of the county court of Sevier County were burnt as alledged, by which he understands that the records of theseveral settlements made by him as Executor of said John Brabson with the county Court Clerk of said county have been destroyed, but Respondant has preserved copies of each settlement so made which are contained in a Book of his own. And this Book he is willing to produce to this Honorable Court at amy time when required so to do; tho as it is private property and necessary to protect him from unfounded claims which may by posibility be hereafter prefered, he is unwilling to part with his possession thereof except for the purpose herein indicated to enable the Court to see

that the accounts have been fairly kept and to administer justice in this cause. These settlements, copies of which have been preserved, in connection with the record kept by the arbitrators as herein before stated, will together Exhibit a full statement of this repondants action as Executor, and constitute the whole evidence in his possession, showing the same, and he refers to the same as an answer to complainants bill asking for a discovery in this respect.- Respondant T.C. Brabson here for himself states that the total amount of available assets that came into his hands with the interest thereon, up to the first day of January 1858, was forty five thousand, three hundred and sixty six dollars and one cent, exclusive of the commissions of Respondants and exclusive of the leather in the tan yard in an unfinished state.- at the time of the testators death. Of this sum up to the time just mentioned, he had disbursed, in the payment of debts against the Estate and in payments to legatees the sum of thirty Eight thousand four hundred and twenty Dollars and thirty two cents. To the latter sum is to be added the commissions of Respondant on the first named sum above, amounting to about twenty two hundred and sixty Eight dollars and thirty cents. Since the 1st of January 1858, Respondant has paid out of said assets one hundred and forty Eight dollars & Eighty Eight cents to R.H. & Mary Hodsden, and twenty three dollars and twelve cents to Penelope C. Haynes charging R.H. and Mary Hodsden with the said sum above stated paid to them since the 1st January 1858, it will require nine hundred and fifty six dollars and seventy four cents to Equalize the several heirs. After thus Equalizing the several heirs, there will still remain in the hands of Respondant thirty five hundred & fifty one dollars and sixty nine cents with the interest thereon from the said 1st of January 1858, with interest on the said sum necessary to Equalize the heirs. The several sum above given are believed to be nearly correct, though a careful calculation may show a Slight difference in the assets. It is believed that all the debts against the Estate have been paid; at least Respondant is now aware of any others.

As before stated, the sum of $45366.01 does not include the leather in an unfinished state in the tan yard at the time of the death of the testator, which was to be finished and to be divided in the manner prescribed by the said Will. The said leather was finished as directed by the testator, and when finished amounted to thesum of $3913.63, the one half of which was to belong to the six heirs, and the other half to Respondant T.C. Brabson & his co-Executor amounting to $1956.81½. Respondant states that he has paid over to said heirs in leather the sum of $1966.97; the prorate of each one is $326.13½. William and Lucy Scruggs have received in leather $328.72, Penelope C. Brabson (now Haynes has received $330.16; John S. McNutt and Elizabeth $333.49; R.H. Hodsden & Mary Hodsdenm $323.65; Milton Shields & P.J. his wife $323.62, Reese B. Brabson $327.33. It will thus be seen that some of the heirs have received a few dollars more than their share, while two of them have received a few dollars less than their share, and in the aggregate they have received about ten dollars more than one half of the said leather. All of which facts Respondant hopes to be able to conclusively show before the final hearing of this cause. Respondant believes that he has made a fair and Equitable division of said leather, according to the directions of said Will, with the exception of the trifling differences in the amounts received by the several heirs, as above shown. The care and responsibility of amaking this division was thrown on this Respondant, for which he has as yet charged and received no compensation; and he will therefore ask on taking the account in this cause he may be allowed his commissions for the same, or such compensation as the Court may think it

right & proper.

Respondant T.C. Brabson states as his co-Executor has done, that his original Inventory and all his settlements and vouchers were destroyed by fire in the year 1856, but he had taken the precaution to preserve in a Book for his own use and protection, copies of all his e settlements, which Book shall be produced from time to time, as this Honorable court may desire, but as said Book is private property, he is unwilling to surrender the entire control of the same; being willing however, to allow it to be freely inspected the complainants all all the other heirs at all times, and that the same shall be used in taking the account which may be neessary in this cause. Respondant herewith files a Book marked Exhibit B. containing a copy of the Inventory of the assets which came into his hands under the arrangement made for the settlement of the between this Respondant and his co-Executor which he will verify at any time by the production of the certified copy, contained in his said private Book.

Respondant T C Brabson admits that by his last settlement with the Clerk of the county court of Sevier County, in January 1858, he showed that theme were in his hands funds amounting to about the sum charged by complainants; but his was subject to be reduced to the extent of his commission on said sum, and the further sum herein before stated necessary to Equalize the several heirs, and such furhher as this court may allow for superintending the division of said leather.

In reference to the mode in which interest has been computed, Respondant T C Brabson states that in his settlement he charged himself with interest on all the debts reported in his inventory up to the time of his first settlement, and in all subsequent settlements he charged himself with interest on all the balance of principal remaining in his hands at each settlement. Upon all doubtful, bad, or desperate and unreported debts, Respondant, when he succeeded in collecting them, charged himself with interest on the sum so collected up to the time he received it, and then interest on the whole sum to the time of his first settlement after he made the collection, and afterwares with interest on the principal. In all his wettlements it was the custom of the Clerk and himself to exhaustt the e interest in his hands, if received, in aquaring up such payments as he ha d made on account of the Estate, and leave the principal still standing against him. In this way it will be seen on an inspection of said settlements, that for a long time he was chargeable with about the same sum as principal although in the mean time he had made considerable payments. By this mode of doing business on an exact and accurate collection it will be found that Respondant has been charged with more than simple interest on the principal in his hands. Thus upon the last settlement, Respondant is charged with $5517.57- as being in his hands, when at the rate of six per centum he would only be chargable with $5024.68- making a difference against Respondant of $92- 87- and since complainants seek to overhaul the settlements, if any Errors should be detected against them, they will surely be willing to correct Errors made against Respondant.

These respondants further answering say, that there are now in the possession of their mother Elizabeth Brabson 33 negro slaves exclusive of Molly who by their testator's will is entitled to be emmansipated at the death of Respondants' mother to be divided under the 27th clause of said Will. By this clause in order to Equilize his children, the Respondants' testator directs, as the

Honorable Court will perceive by reference thereto, that respondant Thomas C. Brabson shall have one of said "negro slaves of his own choice" and after this choice is made he "directs that there shall be set a part by Respondants" seven lots of negros placing two in each lot and the said lots to be as near of equal value as may be," and when they shall be so divided his children named in said clause, te wit, Reese B. Brabson, Mary Hodsden, Elizsbeth McNutt, Priscilla Shields, Lucy Scruggs, Penelope Haynes and your Respondantx Thomas C. Brabson shall each be entitled to one lot respectively to be determined between them by drawing, and the difference in value of said lots is to be made up in money" to be furnished by these Respondants so as to Equlize the value thereof. Then the balance of said slaves, which would now be 18 in number, are to be divided into Eight equal lots "so as not to be better than what what will be half of each of the above seven lots" to be divided by drawing as in the first instance between the parites to this bill as complainants have in said Bill alledged; but the said lots are to be "made of equal value" by money to be furnished by these Respondants.

By the rapid incresse of the negros perhaps much beyond the expectations of the said testator at the time of amking the same, this equalization of value cannot be effected, as these Respondants believe with a less sum than the balance now in the hands of the Respondant Thomas C. which he has retained under the counsel and advise of the late Judge Hunds for that purpose and the proceed of the Maryville House & lot devised to the Respondant B.D. Brabson for and during the life of his mother, and after which it is directed to be sold and constituted a part of the residue of said Estate to be by these Respondants distributed and which is not worth over one thousand dollars. And inasmuch as the children of the testator, in the event any one or more of them, shall die before this fianl division shall be made will under said Will succeed to the legcies so given to their mother respectively, they have been advised and insist that the money necessary to equalize the lots, will belong to them in the same manner and to the same extent that they are vested with itle to the negros, and that to meet this contingency and carry out the intention of their testator, it is necessary that they should retain the fund aforesaid for this purpose. Indded they do not believe the amount retained as aforesaid is sufficient for this purpose.

This surplus remaining in the hands of the Respondant Thos. C. has been in no way used by him for his own individual purpose, as he here expressly avers; on the contrary it has been kept at interest and well secured; he has retained it by the consent of his co-Executor and under the advise of able counsel and in good faith for the purpose aforesaid. The propriety of his conduct in this particular he submits to this Honorable Court, with an expression of a willingness to conform to the judgment of the Court, asking only to be so advised and directed as to protect these Respondants against any possibility of loss for the want of means to fulfil the requsitions of the Will under which they are acting, on a final division and settlement of the said Estate.

The negro woman Molly is now about 48 years old and frequently in bad health. By the Will aforesaid she is to be provided for, in case she is not emansipated in the manner therein stated, by Respondants as Executors thereof, and they apprehend that she may become a charge on said Estate, and they insist that they shall be indemnified against this contingentx liability, before

they are divisted of the means necessary to carry out this division. And now since the administration of this Estate is before the Court, Respondants ask, that all their acts be confirmed so far as they have discharged the trust confided in them, and that they be advised and directed in the completion: and having answered Complainants Bill as fully as they are advised it is material for them to answer, pray to be dismissed &c.

Temple & Baxter, Soliciters for Defts-

Certified before R.M. Creswell, J.P., Sevier County, 3 Dec. 1858.

True copy in my Office, R. Lanning C & M., 14 Oct. 1859.