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COURT OF ERRORS AND APPEALS.

WILLIAM CHILDS AND ELIPHALET C. WILLET, Appellants and Complainants, v. SAMUEL JONES AND MARIA L., HIS WIFE, Appellees and Defendants.	On Appeal from Decree of the Chancellor.

Brief of Alfred Mills, of Counsel with Appellees.

The appellants filed their bill to enforce a claim made by them to the Hedden judgment, and obtained an injunction against the defendant Maria L. Jones, restraining her from collecting the same.

The Chancellor held that the appellants were not entitled to that judgment, and dissolved the injunction.

From this part of the decree the appellants appeal.

Mr. Childs is a cousin of Mr. Jones, and Doctor Willet a brother of Mrs. Jones. They had endorsed notes for Jones.

On the 11th of August, 1879, they advanced for Jones $6772.27, viz., $6000 to National Iron Bank, $772.27

to executor of Cooper, and in and by this advancement took up from the Iron Bank promissory notes on which they were liable. They secured themselves by taking an assignment of a $6000 mortgage on Jones' farm, held by the Iron Bank, and by taking a deed for this farm from the sheriff, at a sale made under decree on the Cooper mortgage. The sheriff's sale was made 18th of August, 1879.

Childs and Willet held, and still hold this farm (except a portion they have sold), to secure themselves and in trust for Jones.

Jones also confessed a judgment to Childs and Willet in the New Jersey Supreme Court, on the 18th of August, 1879, for $6772.27 (page 287), which they held as further security.

The bill is filed to get the Hedden judgment as *further security.*

The bill alleges that Childs and Willet "are informed and believe that he [Jones] had previously executed to them an assignment of the Hedden judgment." Page 3, line 21. That one of them heard a story of this assignment being destroyed just after it was executed, but did nothing, "took no legal advice and attempted no measures" to get it back; that they have heard that the Hedden judgment was assigned to Maria L. Jones, but claim that such assignment was made after the assignment to them, *and without their consent,* and they pray that this assignment to her be held to be "null and void," and that they (Childs and Willet) may he decreed to be the assignees of the Hedden judgment.

The answer makes full denial.

The allegations in the bill are vague and indirect.

They are completely met and disposed of by the deed

and the oral testimony of Dr. Willet, one of the complainants.

Not only was the Hedden judgment not assigned to the complainants, but it was assigned to Maria L. Jones, and Dr. Willet himself was the conduit of title and made the assignment to her. See *Exhibit A*, page 302, and Dr. Willet's testimony relative to this exhibit.

Exhibit A shows that the Hedden judgment was, on the 12th of August, 1879, assigned to Willet for the purpose of being assigned by him to Maria L. Jones, and that on the 17th of November, 1879, Willet did execute the assignment to her.

That this assignment was executed by him, Willet admits. Page 61.

He did it deliberately, for he says he erased and rewrote his first name, because he had at first made a mistake, by leaving out one of the letters of his first name. Page 66.

He had read the assignment before he signed it. Page 81.

He is an intelligent man, a physician by profession. Page 55. He had agreed on the 11th or 12th August, 1879, that the Hedden judgment should be assigned to him for the purpose of re-assigning it to Mrs. Jones. Page 79. And saw the assignment made to him by Jones on the day it was executed. Page 80, line 25.

It is not pretended that any fraud was practiced on Willet in this matter.

The only explanation that Willet can now offer of his most uncomfortable position is that he had *forgotten* his own act and his own deliberate declaration.

The outcome to which this testimony necessarily brings the complainants is entirely consistent with the facts as detailed in the evidence of Mr. George T. Werts (a witness,) produced by complainants and in that of Mr. Jones. On the 11th or 12th of August, 1879, Jones, Childs and Willet met in Morristown, probably by appointment.

Childs and Willet were endorsers on Jones' paper to the amount of $6000. Willet's testimony, page 60.

Jones was unable at that time to pay, and the mortgage given by Jones to the bank to secure these notes had gone to decree and execution.

Childs and Willet proposed to take up these notes.

The question was how they should be secured.

Jones proposed that an assignment of the Hedden judgment should be made as security, but *not* that such assignment *and* a deed for the farm, should both be made to Willet and Childs.

Mrs. Jones was entitled to the Hedden judgment for advances made to Jones, and if she consented to give up that, she was entitled to be secured by the bank mortgage on the farm.

But Childs and Willet, on consultation, preferred the security afforded by a deed for the farm.

If an assignment of the Hedden judgment was drawn, it was merely tentative.

The proposition that prompted it was never accepted, and the assignment was not delivered.

That judgment never belonged to Childs and Willet.

The very same day Willet accepted an assignment to himself of the Hedden judgment, for the purpose (as he declares in *Exhibit A*) of passing it over to Mrs. Jones.

And he did so pass it over to Mrs. Jones in good faith.

The three parties, Jones, Childs and Willet, were in Mr. Werts' offices. He had three adjoining rooms. These parties were sometimes in one room and sometimes in another. Werts, page 21. They employed Mr. Werts, not for counsel as to what plan or scheme should be adopted. He drew up such papers as were from time to time proposed. They hesitated about their plan. Werts says "they adopted two or three plans."

Mr. Werts naturally got out of patience, and insisted that they should agree upon some plan, so that he could draw their papers intelligently.

Again, in their bill the complainants charge that the assignment to Mrs. Jones was without consideration.

When testimony in the cause was being taken before the master, the defendants offered to show the *actual* consideration.

(*Exhibit A* shows there was a good consideration.) This was strenuously objected to by the complainants, and the master sustainedt heir objection and excluded the testimony. (See page 88, and pages 85 and 86.)

Lastly. It is plainf rom the testimony, that this claim to the Hedden judgment, by complainants is, so far as this case is concerned, purely an *afterthought.*

It was suggested by the entry in Mr. Werts' account book.

Mr. Werts states that shortly before the bill was filed (page 23, line 10) Mr. Childs (one of the complainants) called on him and made inquiries and had a conversation.

Childs was inquiring for "a paper or an agreement, wherein was stated the full particulars of the arrangement between him and Willet and Jones." Werts looked, but could find no such paper.

Then he found the bond and warrant on which judgment had been confessed in August, 1879, by Jones to complainants, and asked Childs "if that wasn't the paper he wanted, and whether any judgment had ever been entered on it; he couldn't say whether there had or not."

Mr. Werts then turned to his docket and found the entry relating to the entering up of the Jones judgment.

Then Mr. Werts referred to "his account book to see whether this would throw any light on it, and seeing a charge here of an assignment of a judgment, we talked, and he [Childs], said he thought that referred to a matter of George Hedden's, that *he had an idea* that it would appear in this paper he was looking for, what it was, if it could be found." I quote from Mr. Werts' testimony.

Exhibit No. 4 on part of complainants shows what the

charge in the account book referred to is. It is a charge against Samuel Jones dated August 12th, 1879, for "Drawing ass't judg't to Willet and Child $2, and services in matter of sales of property $5, $7.00." This charge suggested to Childs the Hedden judgment. This is the only inference that can be drawn from Mr. Werts' testimony of his interview with Mr. Childs.

Mr. Childs heard this testimony and the next day came on the stand, and had his attention called to it, and attempted no explanation or qualification.

See Childs' testimony, page 48, line 14. It does not appear that the Hedden judgment was mentioned during the conversation, or thought of, until the discovery of this item in Mr. Werts' account book.

N. J. COURT OF ERRORS AND APPEALS.

WILLIAM CHILDS AND ELIPHALET C. WILLET,
Appl'ts,
vs.
SAMUEL JONES, ET ALS.,
Applees.
} *On Bill, &c.*

BRIEF OF S. H. LITTLE FOR THE APPELLANTS.

The complainants are both related to the defendant Jones; Childs is Jones' cousin, Willet is his brother-in-law, p. 26. Childs is a farmer residing in Bernards Township, Somerset County. Willet is a physician residing at German Valley, in Morris County. The defendant Jones lives at Morristown and formerly kept a grocery and liquor store there. In 1879, at the time of the transactions upon which this suit is founded, Jones held title to a farm of about 70 acres, located on the road from Morristown to Mendham, that was advertised for sale in a foreclosure suit—p. 275—wherein Nathan A. Cooper was complainant, and said Samuel Jones and wife, Daniel D. Craig, The National Iron Bank of Morristown, and others, were defendants.

The decree for the complainant was .	$3,464.92
besides costs of suit, taxed at . .	127.24
There was also a decree for Daniel D. Craig of	6,874.10
as Cashier of the National Iron Bank of Morristown.	
The total amount to be raised, with interest from March 4, 1879, was . .	$10,466.26

The premises were first advertised to be sold on June 2d, 1879—p. 279—but the sale had been adjourned from time to time till Monday, Aug 4, 1879.

The decree for the National Iron Bank was founded upon a mortgage given by Jones to it to secure certain notes which the Bank had discounted for him, upon which he had procured at least $6,000—p. 285.

Jones claimed to be worth $75,000—to hold title to a brick store in Morristown; to own property at Annandale; and to hold a judgment against one George Hedden for $6,129.48. But he was in financial distress. In this emergency he appealed to the complainants for pecuniary assistance.

Childs says—p. 26:

"I think it was on Saturday, as I was untieing my horse to go home he wished me to come to Morristown—I won't be positive what day—one day the next week, whether it was Tuesday or Wednesday; wanted me to meet Dr. Willet, whatever day it was, and it would do me good; I told him I'd do so; he didn't name any particular business, that I recollect of, only he wished me to meet him; I met the Doctor the next week; there he wished us to buy this farm, and to secure us he wished us to take these notes on the bank, and to secure us for so doing; the amount of the notes was six thousand dollars; we were to buy the farm at Sheriff's sale, under foreclosure sale; we were to take the title in our own names; I don't think there was anything said at the time about our having absolute control of the property.

"Q. Did he state how you were to be secured?

"A. He did, sir; he told me that he would give a judgment on his drug store, the brick store next the United States hotel; we were to be amply secured by a judgment on it; that was what I understood by it, and also the Annandale property in Hunterdon County, which there wasn't a scratch on it, the Hedden judgment for six thousand dollars or upwards.

"Q. What did he say about the Hedden judgment?

"A. He would make an assignment of it to Willet and Childs."

Willet corroborates Childs. See page 56.

Childs was a little offish; he says—p. 27, line 25:

"I also told him I wasn't doing this kind of business, should-

ering another person's burdens, but as a friend, if I was put to no expense, that I would accommodate him, or something to that purpose; he said I shouldn't be to any expense."

The payment of $6,000 by complainants to the National Iron Bank, and the payment by complainants of $772.27, interest and costs, on account of the Cooper decree on Aug. 11. 1879, p. 11, answer; the purchase of the farm by complainants Aug. 18, 1879, for $3,008,-20, at Sheriff's sale; the confession by said Jones to them of a judgment for $6,772.27, p. 3—is admitted by the defendants.

To raise the money advanced by them, complainants borrowed $6,000 of the bank, p. 28, line 37; p. 67. Jones was careful that no obstacle should cause complainants to hesitate. He made arrangements with the bank for the loan to complainants, p. 74, line 12.

In regard to the Hedden judgment the complainants allege that pursuant to the agreement an assignment of it to them was actually drawn and executed by the defendant, Jones, but that it was subsequently fraudulently destroyed by his son, p. 4.

The defendant, Jones, denies that such an assignment was ever executed or drawn, p. 12; or that there was ever any agreement or understanding that he should assign said judgment to complainants, p. 11, line 36.

The Chancellor in his opinion says:

"The proof does not sustain the allegations of the bill in regard to the assignment of the Hedden judgment to the complainments," p. 311, line 19.

And from that part of his decree wherein it is

"Ordered and decreed that the complainants are not entitled to the relief prayed for by them in their bill of complaint in regard to said judgment obtained by said Samuel Jones against said George Hedden in the New Jersey Supreme Court, and that the injunction heretofore issued in this cause be and the same is dissolved,"

The complainants have appealed to this Court.

1st. An assignment of the Hedden judgment to the complainants was drawn by Mr. Geo. T. Werts and executed by the defendant, Samuel Jones.

Aug. 11th, 1879, the Complainants paid for said Jones the sum of $6,772.27, p. 285.

Childs says—p. 29—in reply to—

"Q. On the eleventh day of August, 1879, what was the understanding and agreement between you and Jones in regard to the Hedden judgment?

"A. It was to be made over to us, or assigned to us."

Willet says, page 56, in reply to—

"Q. What arrangement was made between you and Childs and Jones as to the security to be given by Jones for these pecuniary advances?

"A. He was to assign a judgment against Hedden for about six thousand dollars, I think, I don't recollect the exact amount, and was to give us a claim on some property at Lebanon, in Hunterdon County; I think it was a small farm; that is about all. The Hedden judgment was to be assigned to me and Childs, and the farm the same."

The complainants did not vary from these statements.

The Chancellor in his opinion, p. 311, says:

"It is true, both the complainants testify that it was part of the agreement that that judgment should be assigned to them, and Mr. Werts, the lawyer, says that he thinks he drew an assignment accordingly, but he has no recollection of it apart from a charge upon his fee book against Jones under date of August 12, 1879, for drawing an assignment of a judgment from him to the complainants."

I think the Chancellor is clearly wrong in his statement of Mr. Werts' testimony, and in his estimate of its weight.

Mr. Werts, as a member of this bar, is well known for his shrewdness and ability; though called by the complainants as their first and one of their main witnesses, his testimony must be read and scrutinized as that of a hostile witness. He is the regular attorney of the defendant Jones—p. 16, 17, also p. 18, line 14.

As his solicitor he filed the answer in this cause. An answer, I regret to say, that is disingenuous, and that contains several material statements of facts that are admitted by the defendant Jones in his testimony to be false.

Paragraph 3 of the bill, p. 2. states that it was agreed between complainants and Jones that complainants should buy the farm at Sheriff's sale, and that to secure them the repayment of their total outlay they should have in addition to the farm a judgment to be confessed by Jones, and an assignment of the Hedden judgment.

In paragraph 3 of the answer, p. 11, line 36, Jones asserts—

" but that it was never agreed or understood that said judgment against said Hedden should be assigned to them, nor was any agreement, written or otherwise, ever entered into, prepared or signed, wherein or whereby it was agreed in whole or in part as stated in said paragraph three, nor has said Jones now any such agreement in his custody nor has he ever had."

Jones being cross-examined, p. 83, said in reply to—

" Q. Did you ever say to any one that there was a written agreement between you and Willet and Childs relating to this farm ?

" A. I did.

" Q. Was that statement true or false?

" A. It was true.

" Q. Where is the agreement ?

" A. I don't know; I can't find it; I know I looked for it considerable, but I can't find it; Mr. Werts drew the agreement; it was drawn sometime after the farm was sold; I couldn't tell you the day.

" Q You had the agreement when you made the statement, hadn't you ? The agreement wasn't lost when you made the statement, was it ?

"A. I don't remember seeing the agreement since it was signed; I then took it home and laid it away and have looked for it since and can't find it; * "

In paragraph 4 of the answer, p. 12, Jones says—

" but said defendant Samuel Jones denies that he ever executed

an assignment to said complainants of said Hedden judgment, nor does he recollect or believe that any such assignment thereof was ever drawn by said Werts or any one else."

After the complainants had proved that a written assignment of the Hedden judgment to the complainants had been executed by Jones, Jones adroitly attempts to break the force of this testimony—p. 74—on his examination in chief, in reply to--

"Q. Do you know whether an assignment of the Hedden judgment was drawn to Willet and Childs?

"A. I think there was an assignment drawn; it was never delivered to them; they wouldn't accept it under that arrangement."

In his answer Jones had insisted that no such assignment had ever been drawn; he felt compelled *by the testimony of his own solicitor, Mr. Werts*, to change this position; so he admitted that it had been drawn, but insisted that it had never been delivered. He admits that he had attempted by material false statements in his answer to impose upon the Court.

But the Chancellor says, p. 311, line 25, that Mr. Werts has no recollection of the assignment of the Hedden judgment apart from the charge in his fee book against Jones under date of August 12, 1879.

This is the charge referred to--p. 273, Ex. 4:

"1879, Aug. 12. Samuel Jones, Dr.
Drawing assg't judg't to Willett and Child $2, and services in matter of sale of property, $5, - - $7.00"

Upon his direct examination by complainants Werts says, p. 18, in reply to—

"Q. Do you recollect having drawn an assignment of that Hedden judgment from Jones to Willet and Childs in August, eighteen hundred and seventy-nine?

"A. I find on my book, under date of August twelfth, eighteen hundred and seventy-nine, a charge against Samuel Jones for drawing assignment of judgment to Willet and Childs, two dollars, which I think refers to an assignment of the Hedden judgment."

If the entry in Werts' fee book and the answer above

stated was all the testimony adduced as to this assignment, I should hardly have ventured to have appealed from the conclusion of the Chancellor that "the proof does not sustain the allegations of the bill in regard to the assignment of the Hedden judgment to the complainants." Mr. Werts was not a swift witness for the complainants. He did not volunteer any statements in their behalf apart from the charge in his fee book; but by taking hold of that end link we have drawn out from Werts' memory the whole chain of facts.

Page 18.

"Q. What is your recollection, Mr. Werts, aside from the entry in your book; just state fully?

"A. I have no recollection as to how I came to draw it, or by whose direction or under what arrangement it was drawn, but I think it was drawn and executed by Mr. Jones and witnessed by myself; it was drawn by me and witnessed by me; it is my impression it was a blank form of assignment of judgment filled up by me; then my impression is that after it was drawn it was lying on my office table in such a way that it attracted the attention of young Mr. Jones, and he asked me what that was, or what it was for, and what his father meant by the execution of such a paper, and that I replied that I knew nothing about his intentions respecting the paper; that subsequently I discovered, whether that day or some other day I can't now tell, that the lower right-hand corner of the paper whereon was written the name of Mr. Jones (Samuel Jones the elder) had been torn from the assignment, and at sometime, whether at the time I discovered it or some other day, I can't tell, I had a talk with the Joneses, father and son, but whether they were together or not I can't recollect, from which I gathered the impression that the name had been torn from the assignment by young Mr. Jones; that is all I know about the assignment; I suppose finding the assignment was no good I chucked it in the waste basket."

It is very significant that Werts bases his inference as to the worthlessness of this assignment not upon a different agreement of the parties, but simply upon its spoliation.

This narration bears all the marks of an exact statement. Facts observed and known and impressed up-

on the memory are carefully distinguished, on the one hand, from the matters about which there is a failure of recollection, and, on the other hand, from mere inferences. Is it probable that the defendant's solicitor, a man characterized by such clearness of thought and precision of language as Mr. Werts is, would make a statement under oath so damaging to the interests of his client, unless it was fully warranted by the facts?

If he had felt that his client was attempting to do a great wrong to the complainants, which he had determined to prevent by a disclosure of the truth, would it have been necessary to have stated these facts with greater clearness?

Mr. Werts has a distinct recollection of seeing that assignment, upon a printed form, executed by Jones; and then afterwards of having seen the same assignment with the lower right-hand corner, whereon was written the name of Samuel Jones, the elder, torn off. From other facts, he states that he inferred that it had been mutilated by Samuel Jones, the younger.

Samuel Jones, the younger, was in Morristown during the taking of the defendant's testimony. His home is in Morristown. But he was not called as a witness to deny that he had mutilated that assignment; nor is his absence in any way accounted for.

Mr. Werts was the first witness sworn in this cause, and upon his cross-examination by the counsel for the defendants he says—page 23, line 6:

"* I never heard from Mr. Childs or Dr. Willet either, so far as my recollection goes, until at or about the time the bill in this suit was filed, of any claim to this Hedden judgment.*"

This is a qualified denial; he has *no recollection* of having heard of *a claim* by the complainants to the Hedden judgment. Had this denial been unqualified; had he positively asserted that *he had not heard of a claim* by the complainants to the Hedden judgment till about the time of the filing of their bill, the statement of William Childs, as to what took place at an in-

terview he had with Werts in September, 1879, would not have been contradicted.

Childs' testimony was given after Werts's ; on page 29, he says, after detailing the agreement for the assignment—

"Q. Did you learn anything subsequently in regard to such assignment having been made and destroyed?

"A. I think about in September that it was destroyed ; I think it was in September, I met Mr. Werts one morning, I said I suppose those papers are all right. He said no, that the assignment of the Hedden mortgage, I mean the Hedden judgment, the name had been torn off. I don't think there was much more said about the thing at that time."

This testimony has nowhere been denied by Mr. Werts.

Willet too, had heard of the destruction of the assignment, p. 56, line 36.

But the Chancellor says, p. 313, line 33 :

"It is very significant that he (Werts) never heard from either of the complainants, so far as he can remember, of any claim to the Hedden judgment until shortly before the bill in this suit was filed, and it was not filed till August 19th, 1884."

I think the Chancellor has misapprehended the evidence. He speaks as though the Complainants had admitted that they had no right to the Hedden judgment.

In his interview with Werts in September, 1879, Childs did not make a claim to the Hedden judgment. There was no occasion for such a claim ; his right to the judgment was admitted by Werts. Childs remarked—

"I suppose those papers are all right?"

And Werts replied—

"No ; that the assignment of the Hedden judgment, the name had been torn off."

There is no pretence by Werts of any other communication to the Complainants of the fact of the destruction of that assignment.

Why had he not immediately informed them and advised them how to repair the wrong?

Had not Childs reason to have his suspicions

aroused? The destruction of the paper is admitted to be wrongful. Was there reason for much to be said by Childs? He was confounded.

Werts nowhere pretends that he had been satisfied in any way that the destruction of that assignment was proper and right; nor does he pretend that any attempt was made by Jones to convince him that such destruction was in accord with the agreement of the parties. His evidence shows that he knew that such destruction was fraudulent.

Viewed in the light of that evidence the truth of the account of the September interview as given by Childs is seen to be highly probable.

On the other hand, *Jones swears that it was not agreed* that he should assign the judgment to the complainants. Of his testimony I remark:

1. He swears that if Mrs. Jones consented, he had proposed to assign the Hedden judgment to complainants upon certain terms, which he states, p. 74. Under the circumstances, the necessity for prompt action, it is highly improbable that he made the proposition he swears to. There is no evidence that Mrs. Jones ever gave any consent to the arrangement, or was ever consulted; but *Jones admits that the assignment was drawn, tendered to the complainants, and refused by them.*

2. He has impeached his own credibility by admitting an attempt to impose upon the Court by material false statement in his answer, as to the written agreement, as to the actual execution of an assignment of the judgment to complainants.

3. He is directly contradicted by both complainants. They both swear that it was agreed that the Hedden judgment should be assigned to them.

4. His pretense that the assignment though execu-

cuted, as sworn to by Werts, was not delivered, is without foundation. Werts in this transaction was acting for all parties, p. 21. The assignment was executed and left in his custody for the complainants just as the papers in the confessed judgment were, p. 273; Ex. 3, p. 283. That assignment was surreptitiously destroyed; not by Jones, but by his son. If the assignment was not in Werts's custody for the benefit of the complainants, why did not Jones himself demand that it be returned to him and then openly destroy it?

I submit that it is conclusively established by the evidence, that, pursuant to the agreement, Jones executed and delivered to the complainants an assignment of the Hedden judgment as part of the security for the repayment of the money advanced by them for his benefit.

2nd. The title to this Hedden judgment so vested in the complainants has never been divested.

The defendants have offered in evidence an assignment of this same judgment from Dr. Willet to Mrs. Jones, dated November 17, 1879, which recites that Jones, by *an assignment to Willet, dated August* 12, 1879, had assigned the judgment to Willet for the purpose of having it assigned to Mrs. Jones.

Willet admits the genuineness of this paper, but has no recollection whatever as to its execution; nor of any assignment to him alone; nor of any agreement with Jones for such an assignment in order to vest the title in Mrs. Jones; p. 66.

Jones says; p. 81, line 20—

"I offered no inducement at all to Willet to assign that judgment; I paid him nothing at all to assign it; he didn't ask for anything; I made no statement at all to Willet at the time he assigned that judgment, except that I had promised to assign it to Mrs. Jones at the time she signed the mortgage. I mean the six thousand dollar mortgage to the bank on the farm."

In passing it may be noted that the bank mortgage was executed June 5, 1877, p. 274.

Childs says: page 29, line 39—

"Q. Was there any agreement made by you with Jones that such assignment should be yielded up by you, or destroyed?

"A. Positively, no, sir; not on my part."

And Willet has no recollection of any agreement to assign it to Mrs. Jones, and says, page 66, line 35—

"Q. How can you account for this assignment?

"A. I can't account for it.

"Q. Do you think that assignment was for or against your interest and the interest of Mr. Childs?

"A. Well, it was against my interest as much as it was against Mr. Childs."

I remark—

1. No agreement by Childs to assign this judgment having been made, nor any assignment executed by him having been produced, his interest in the judgment as acquired by the assignment from Jones to Childs and Willet is wholly unaffected. *Freeman on Judg'ts*, Sec. 429.

(2.) Willet stands in the position of a bona fide purchaser for value, and ought to be protected, so far as can be done without infringing upon the rights of others.

(a.) No assignment from Jones to Willet, dated August 12, 1879, has been produced, but the defendants insist that Willet, by the recital in his assignment to Mrs. Jones, is estopped from denying that an assignment of the Hedden judgment of that date was made to him. Def'ts Ex. A, p. 303.

The defendants deny that the complainants ever acquired any interest in the Hedden judgment by an assignment to them both by Jones. They are, therefore, precluded by such denial, and also by the recital in Willet's assignment to Mrs. Jones, from pretending that Mrs. Jones acquired such interest in the Hedden judgment as Willet had obtained by the assignment to himself and Childs.

If an assignment of the Hedden judgment was made

by Jones to Willet, August 12, 1879, then it is evident that Jones made two assignments of the same judgment about that date—one to Willet and Childs; one to Willet alone.

It is important to determine which was prior in time.

In his opinion—page 310, line 16—the Chancellor says, speaking of the date of the assignment to the complainants as stated by them:

"They allege that the assignment of the Hedden judgment by Jones to them was drawn and signed on the twelfth of August, 1879 *."

In paragraph 4 of the bill of complaint, page 3, line 21, after stating transactions taking place on the 18th of August, 1879, it is alleged

"and had previously also, as your orators are informed and believe, executed an assignment to them of said Hedden judgment."

And on page 4, line 15, speaking of statements made by Werts at the September interview between Childs and him it is alleged, with reference to the time of a visit of complainants to Werts' office,

"that subsequently, either the same or the next day after your orators had been at his office in the month of August aforesaid," &c.,

Werts had discovered the mutilation of the assignment.

I find no other allegations in the bill fixing the time of the execution of this assignment. On the argument the point was distinctly made that the assignment was executed August 11th, 1879. The only explanation of the Chancellor's statement that I can give is, that he means that the complainants insist that it had been previously executed and was in existence as a valid assignment on the 12th.

On page 313, line 19, the Chancellor says that Jones swears that the assignment to the complainants was drawn by Werts on the 12th. But reference to Jones' testimony, page 79, line 12, shows that he quite failed to fix that date; he says:

"* I couldn't tell you what day that was, it was the tenth or eleventh of August, somewhere along there."

And on page 74, line 21 *et seq.*, he admits that the assignment was drawn and was tendered to complainants upon certain terms; it will appear that this admission shows the assignment was in existence on the 11th of Aug.

(b.) *The assignment from Jones to the complainants was prior in time; it was drawn, executed and delivered on the eleventh day of August*, 1879.

(1.) The complainants were engaged in this Jones business pretty nearly all of Aug 11—page 60, line 19. Papers were drawn by Werts and executed on that day—page 60, line 8; page 61, line 11. But of all the exhibits produced, the only one dated Aug. 11th, 1879 is the assignment of the bank mortgage, and inspection will show that was drawn by James C. Youngblood.

(2) Aug. 11, 1879, was the adjourn day of the foreclosure sale—page 280, line 30—which the complainants attended and procured to be adjourned till Aug. 18—p. 56, line 18. The 11th was the date of the first conference of the complainants and defendant—p. 28, line 4; and they did not meet again till the 18th, when they purchased the farm at Sheriff's sale and had the judgment confessed to them. P. 30, line 4.

(3.) Aug. 11th the complainants paid for Jones $6,772.27; of which sum they paid $6,000 to the National Iron Bank—p. 285, line 25; and the same day the Bank assigned its mortgage and decree to them—p. 274, line Ex. 6.

Both complainants thought the farm insufficient security for the money they were asked to advance—p 57, line 31; page 51, line 20. Yet it appears that on Aug. 11th they paid $6,772.27 for Jones, and if this Hedden judgment was not assigned to them on that day, all the security they received was a second lien upon the farm. Is it probable that they would have borrowed this money from the bank and loaned it to Jones upon such insufficient security?

(4.) Jones admits that this assignment was executed and tendered to the complainants upon a certain arrangement proposed by him—page 74, line 35. That

arrangement contemplated the payment of the debt to the bank of $6,000—page 74, line 27; this assignment is admitted to have been executed before the bank's debt had been paid by the complainants; therefore it was executed not later than the 11th day of August, 1879.

(5.) The entry in Werts' fee book—page 273, Ex. 4—does not tend to disprove our position, though the assignment charged for, under date of Aug. 12, is the one in question. The item following it under the same date, "services in matter of sale of property, $5," Werts admits, page 19, line 32, is a charge for attending the sale of the Jones farm on the 11th of August. There are two services charged for under date of August 12th; the inference is that the item first charged under that date is for a service not later than the item last charged for under the same date; hence that the assignment charged for was drawn August 11th, 1879.

It has not been shown that the complainants have done anything to divest themselves of their right to the Hedden judgment.

It appears then that Jones did in fact assign the Hedden judgment to the Complainants on August 11, 1879, as *security* for their advances for him; and that on the 12th of August, 1879, Jones—if his testimony is true—assigned the same judgment to Willet, who subsequently assigned the interest which he had acquired by this latter assignment, to Mrs. Jones.

In the light of all the evidence this arrangement can be accounted for.

There remained in Jones, after his assignment of it to the Complainants as security, an equitable right to the Hedden judgment.

The assignment of August 12, 1879, not having been produced, it is to be presumed that it recited that Jones thereby intended to assign his equitable interest in the judgment; such presumption is strengthened by the care with which, in Willet's assignment of No-

vember 17 to Mrs. Jones, it is stated that the interest he intended to transfer was that which he had acquired by the assignment to him of the 12th. Such presumption will account for the readiness of Willet, p. 81, line 20, to execute the assignment to Mrs. Jones. She swears that she had received both the assignment of the 12th of August, and the one of the 17th of November; and therefore she was informed of their contents. *But she nowhere swears that she understood she had thereby acquired the absolute and entire interest in that Hedden judgment.*

Jones swears that the farm was worth, p. 76,	$10,000
The Hedden judgment was for - -	6,129
The total security he gave Complainants was	16,129
They advanced for him (approximately)	10,466
The value of his equity was therefore -	$5,663

in his estimation, and he desired, evidently, to protect this from his creditors. There was occasion for him to do so.

Ross & Breese had commenced suit against Jones prior to August 12, 1879; they recovered a judgment against him Sept. 12, 1879, p. 5, par. 6 of the bill.

Upon supplemental proceedings, p. 301, Feb. 3, 1880, he swears that the Hedden judgment had been assigned to Mrs. Jones more than four months previous.

I submit that the Complainants are entitled to the Hedden judgment, and that the Chancellor's decree should be reversed in this respect.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Complt's,
and
SAMUEL JONES, ET ALS.,
Deft's.
} *Bill for relief.*

S. H. LITTLE, Sol'r.

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey.

Humbly complaining, shows unto your Honor your Orators, William Childs, a farmer of the Township of Bernards, in the County of Somerset and State of New Jersey, and Eliphalet C. Willet, a physician of the Township of Washington, in the County of Morris and State aforesaid.

1. That in the year eighteen hundred and seventy-nine, one Samuel Jones of Morristown, in the County of Morris, being financially embarrassed, applied to your orators, who are connections of his, for pecuniary assistance, promising to give them ample security for all the money which they should advance to him.

2. That relying upon the representations and promises of said Samuel Jones, then made to them, your

orators on the eleventh day of August, eighteen hundred and seventy-nine, advanced and paid for the use and benefit of said Jones the sum of six thousand seven hundred and seven-two dollars and twenty-seven cents; six thousand dollars of said sum your orators paid to the National Iron Bank of Morristown, and at the same time took from Daniel D. Craig, the Cashier of said bank, an assignment of a mortgage which said Jones had given to said cashier to secure the payment of said sum of six thousand dollars owed by him to said bank; the balance of seven hundred and seventy-two dollars and twenty-seven cents, your orators paid to David W. Dellicker, Esquire, one of the executors of Nathan A. Cooper, deceased, who in his lifetime had obtained a final decree in this honorable Court against said Samuel Jones in a foreclosure suit against said Jones; the whole amount due upon said decree at the date of said payment by your orators being the sum of three thousand seven hundred and seventy-two dollars and twenty-seven cents: that the said mortgage assigned to your orators by said Craig, and the final decree held by the executors of said Nathan A. Cooper, deceased, were liens upon the same premises, being a small farm owned by said Jones, located in said Township of Morris, on the road leading from Morristown to Mendham.

3. That it was agreed, between your orators and said Jones, that, at the sale of said farm under said Cooper decree, your orators should purchase it and take a deed in their own names from the Sheriff, and that to secure them the payment of said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents, and the additional sum which they should pay to secure the title to said farm, that they should hold said farm; that said Jones would confess a judgment to them for the sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents, and would also assign to them a certain judgment which he had recovered on the sixteenth day of

December, eighteen hundred and seventy-six, in the Supreme Court of this State, and which he then held, against one George Hedden, for the sum of six thousand one hundred and twenty-nine dollars and forty-eight cents, damages and costs; and that he would fully protect them against any loss or damages by reason of their loan to him and the arrangement agreed upon; and that an agreement in writing embodying all or part of the agreement above stated, was prepared and signed, and is now, your orators believe, in the custody of said Jones.

4. That afterwards, on the eighteenth day of August, eighteen hundred and seventy-nine, your orators purchased said farm at sheriff's sale for the sum of three thousand and eight dollars and twenty cents, and took title in their own names; that on the same day said Samuel Jones confessed a judgment to them in New Jersey Supreme Court for said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents debt, and four dollars costs; and had previously also, as your orators are informed and believe, executed an assignment to them of said Hedden judgment. That the bond and warrant for said confessed judgment, and said assignment of judgment, were drawn by Mr. George T. Werts, who acted as attorney for all the parties. That the day said papers were drawn and executed there was considerable negotiation between all the parties resulting in more or less confusion; and that your orators, being anxious to get home, after the method of securing said loan had been fully agreed upon and said attorney had received the instructions necessary for the preparation of papers to carry out said agreement, left and went home before all the papers had been drawn and executed. That on the nineteenth day of August, eighteen hundred and seventy-nine, said Werts transmitted the papers in said confessed judgment, together with a fi. fa. thereon directed to the Sheriff of Morris and another fi. fa. thereon directed to the Sheriff of the County of Hunterdon,

to the Clerk of New Jersey Supreme Court for record. That said Clerk entered said judgment and after recording said executions returned the same to the said Werts, who subsequently, on the twenty-first day of the same month, delivered one of said fi. fas. to the Sheriff of Morris County, and on the twenty-third day of the said month mailed the other fi. fa. to the Sheriff of Hunterdon County. That some weeks afterwards, your orator, said William Childs, being in Morristown, met said Werts on the street and said something to him about said assignment of said Hedden judgment; that said Werts then informed your orator that he had drawn said assignment of said Hedden judgment from said Jones to your orators; and that said Jones had executed it; that subsequently, either the same or the next day after your orators had been at his office in the month of August aforesaid, he, said Werts, had discovered while said Jones and his son, Samuel W. Jones, a man about thirty-two years of age, were in his office, that the name of said Jones had been torn from said assignment, and that upon expressing his surprise and demanding to know how it happened, either said Jones or his said son stated that the son had done it. That your orator, said Childs, expressed great surprise and felt very indignant. That he subsequently saw said Willet and informed him of the destruction of said assignment, and that he, too, was greatly surprised, and they both agreed that it was a most rascally piece of business. That though your orators felt that they had been deceived by said Jones and cheated out of said Hedden judgment and that the destruction of said assignment was a gross fraud on them, yet they took no legal advice and attempted no measures to enforce the full performance of their said agreement with said Jones, hoping that the property they had secured control of would be sufficient to satisfy their claim.

5. But your orators show that though said Jones had represented to them that he owned real estate in

the County of Hunterdon which was to be secured to your orators by the execution issued into that County upon their said judgment, they afterwards learned that his title to said property was defective and that nothing could be made out of it for them. That the Sheriff of Morris County on the fourth day of November, eighteen hundred and seventy-nine, returned the said execution, which had been issued to him upon your orators' said judgment, wholly unsatisfied, and that your orators have never realized anything upon said judgment. That upon a survey of said farm purchased by them at sheriff's sale, made in the year eighteen hundred and eighty-one, your orators found that it contained nearly fifteen acres less land than said Jones had represented to your orators it contained. That said Jones has failed to pay interest upon the money advanced to him by your orators, as he promised to do; and that they have found the holding of the title of said farm, which has been almost wholly unproductive, a heavy burden, they being compelled to pay the taxes and insurance charges.

6. Your orators further show that they have been informed and believe that Edwin Ross, George H. Ross and Stephen Breese, partners, recovered a judgment against said Samuel Jones in Morris Circuit Court on the twelfth day of September, eighteen hundred and seventy-nine, for the sum of four hundred and thirty dollars and three cents damages and costs; that they subsequently issued an execution thereon which was returned unsatisfied; that they then took such proceedings, that, on the first day of October in the same year, they obtained an order from the Honorable Vancleve Dalrymple, a Supreme Court Justice, for an examination of said Jones upon supplemental proceedings; that afterwards, in the year eighteen hundred and eighty-three, a second order for a like examination was granted to said plaintiffs by the Honorable David A. Depue, a Justice of the Supreme Court of this State, who after an examination of the

evidence taken under said order on the thirtieth day of June, eighteen hundred and eighty-four, made an order appointing one Philander B. Pierson of Morristown, in the County of Morris aforesaid, "receiver of "the property and things in action of the said defend- "ant, Samuel Jones, belonging or due to, or held in "trust for him, on the twelfth day of September in the "year of our Lord one thousand eight hundred and "seventy-nine, being the day of issuing the original "execution in this cause, or at any time afterwards, "and particularly of the sum of four hundred and "fifty dollars and sixty-four cents in the hands of "Augustus W. Bell, administrator de bonis non of "Benjamin F. Sherwood, deceased, being the distrib- "ution share of the said Samuel Jones in the estate of "said deceased, which was decreed to be paid to him "by the Orphans Court of the County of Morris, on "the settlement of the accounts of the said Augustus "W. Bell, administrator as aforesaid; and of a cer- "tain judgment recovered by the said Samuel Jones, "in the Circuit Court of the County of Morris, or the "Supreme Court of the State of New Jersey, in or "about the month of December, eighteen hundred and "seventy-six, for the sum of six thousand one hun- "dred and twenty-nine dollars or thereabouts, with "authority to possess, receive, and if need be in his "own name, as such receiver, to sue for such property "and things in action;" by virtue whereof said Edwin Ross, George H. Ross and Stephen Breese, judgment creditors as aforesaid, and Philander B. Pierson, receiver as aforesaid, claim some interest in said Hedden judgment.

7. And your orators further show that they are informed and believe, that said Samuel Jones claims to have assigned said Hedden judgment, and an unliquidated claim against Mr. Henry C. Pitney for five thousand dollars or thereabouts, to his wife, Maria L. Jones, prior to the recovery of said judgment by said Ross & Breese, to secure to his said wife part payment

of an indebtedness which he had long owed to her. But your orators charge that said pretended assignment to said Maria L. Jones was made after the date of said assignment of said judgment by said Jones to your orators, without the knowledge or consent of your orators, and is fraudulent, and was made without any consideration and for the purpose of hindering, delaying and defrauding creditors, particularly your orators. And your orators charge and insist that they alone are entitled to control said Hedden judgment, and to enforce the same and collect the money due thereon and apply the same to pay the indebtedness from said Jones to them.

8. And your orators admit that they sold a portion of the said farm to one Charles G. Foster for the sum of four thousand five hundred and twenty dollars; and that the Proprietors of the Morris Aqueduct took a portion thereof, by condemnation, for which they paid your orators the sum of one hundred and forty dollars; and that your orators have received some small sums of money for pasture and from the sale of some corn; and your orators are ready and willing to account, as this honorable Court shall direct, for all the money received by them from the property of said Jones, and to surrender, reconvey and deliver to said Jones, or such person as this honorable Court shall declare to be entitled to it, all the property of said Jones now controlled by them, upon payment of the money due to them.

9. Your orators show that there is now due and owing to them from said Samuel Jones more than six thousand dollars, and that they have frequently and in a friendly manner applied to said Jones to pay their said debt, but he has wholly failed and refused so to do.

In consideration whereof, and forasmuch as your orators are remediless in the premises at the common

law and cannot have adequate relief, except by the aid of this honorable Court; to the end therefore that the said Samuel Jones and Maria L. his wife, Edwin Ross, George H. Ross and Stephen Breese, and Philander B. Pierson, receiver as aforesaid, defendants hereto, may full, true and perfect answer make, but not under oath, to all and singular the premises, according to the best of their knowledge, information, remembrance and belief; and particularly that said Jones may set out fully and accurately any written agreement entered into between him and your orators relating to their aforesaid loan to him or the purchase by them of said farm, and may also fully state the date, method, consideration, the items making up such consideration, with the date of each item, and all the circumstances connected with his pretended assignment of said Hedden judgment, and said claim against said Henry C. Pitney, to his wife said Maria L. Jones.

And that said pretended assignment to said Maria L. Jones shall be deemed to be null and void; and that your orators may be decreed to be the assignees of said Hedden judgment and entitled to collect the same and apply the proceeds thereof in payment of the debt of said Jones to them; or that said Maria L. Jones shall be decreed to be a trustee of said judgment for the benefit of your orators, and shall be required to collect the same, and out of the proceeds thereof to pay said debt due to your orators; and that an account may be taken to ascertain all the money received by your orators on account of their debt, and all the money expended by them for said Jones, and the balance now due to them; and that your orators may have such other and further relief in the premises as the nature of the case shall require and shall be agreeable to equity and good conscience; and that a receiver may be appointed of said Hedden judgment and said claim of said Jones against said Henry C. Pitney, with such powers as may be necessary. May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out

of and under the seal of this honorable Court to be directed to the said Samuel Jones, Maria L. Jones, and Philander B. Pierson, receiver as aforesaid, restraining said Samuel Jones and Maria L. Jones from collecting or receiving any money upon said judgment or said claim against said Henry C. Pitney; and restraining said Philander B. Pierson, receiver as aforesaid, from disposing of any money that he may receive or collect upon said Hedden judgment or said claim against said Pitney, until the further order of this Court; but also the State's writ of subpœna, issuing out of and under the seal of this honorable Court, to be directed to the said defendants, Samuel Jones, Maria L. Jones, Edwin Ross, George H. Ross and Stephen Breese, and Philander B. Pierson, receiver, &c., commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orators as in duty bound shall ever pray, &c.

S. H. LITTLE,
Solicitor for and Counsel for Complainants.

WILLIAM CHILDS,
ELIPHALET C. WILLET,
Complainants.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Compl'ts,
and
SAMUEL JONES, ET. UX. ET. ALS,
Deft's.
} *Answer.*

GEO. T. WERTS, Sol'r.

Filed Oct. 29, 1884.

The joint and several answer of Samuel Jones and Maria L. Jones, two of the defendants to the bill of complaint of William Childs and Eliphalet C. Willet, complainants.

These defendants in answer to said bill of complaint, or unto so much and such parts thereof as they are advised is necessary or material for them to make answer unto, say:

1. As to paragraph one of said bill, they admit the financial embarrassment of said Samuel Jones in the year 1879, but say that it is not true that said Samuel Jones "applied" to said complainants "for pecuniary assistance" nor that he promised to give them ample security for all the money which they should advance to him.

2. As to paragraph two of said bill, these defend-

ants say they admit the payment by the said complainants to the National Iron Bank on or about the eleventh day of August, 1879, of the said sum of six thousand dollars, and that the cashier of said bank thereupon assigned to said complainants the mortgage in said several paragraph mentioned—and they say, that said bank or said cashier held said mortgage as collateral security to four several promissory notes made or endorsed by said defendant, Samuel Jones, and held by said bank as follows: One note for fifteen hundred dollars made by said Samuel Jones and endorsed by George Hedden; one note of said Samuel Jones for $1500, endorsed by said complainant, William Childs; one note of said Samuel Jones for the sum of $1500, endorsed by said complainant, Eliphalet C. Willet; one note for $1500 made by one William McCarty, endorsed by said Samuel Jones and discounted by said bank for said McCarty. Which said four notes passed to the possession of said complainants and are still held by them. These defendants also admit the payment by said complainants on or about the 11th day of August, 1879, of the said sum of $772.27 on account of said decree, which was founded on a mortgage for $3,000 given by said defendants to said Nathan A. Cooper, and said sum of $772.27 was the amount of interest and costs due thereon over and above the amount of said mortgage which was the first and prior lien on the premises therein described.

3. In answer to paragraph three of said bill these defendants say that it was understood that said complainant should bid off said farm at the foreclosure sale thereof and take the deed therefor in their own names, and that said defendant, Samuel Jones, should confess a judgment to them for $6,772.27 or thereabouts, but that it was never agreed or understood that said judgment against said Hedden should be assigned to them, nor any agreement, written or otherwise, ever entered into, prepared or signed wherein or whereby it was agreed in whole or in part as stated in said para-

graph three, nor has said Jones now any such agreement in his custody nor has he ever had.

4. In answer to paragraph four these defendants say, they admit the purchase by said complainants of said farm at or about the time and for or about the price therein stated, and the confession of said judgment for said sum of $6,772 27, but said defendant, Samuel Jones, denies that he ever executed an assignment to said complainants of said Hedden judgment, nor does he recollect or believe that any such assignment thereof was ever drawn by said Werts or any one else. Nor do these defendants know what took place between said Werts and Childs, and they deny the statement thereof as stated in said paragraph three to be true, and leave the complainants to make such proof thereof as they may be able; and said defendant Samuel Jones further denies that he ever tore his name from any assignment of said Hedden judgment to said complainants, or either of them, or knew that it was done, or caused or procured it to be done, but he saith that on the 12th day of August, 1879, he did execute an assignment of and did assign said Hedden judgment to said complainant, Eliphalet C. Willet, for the purpose of enabling him to reassign it to Maria L. Jones, wife of said defendant, Samuel Jones, and sister of said complainant, Eliphalet C. Willet, and that by deed of assignment, bearing date November seventeenth, 1879, said Willet did assign said judgment to said Maria L. Jones in consideration of one dollar, and that said last mentioned assignment it was recited and set out that "whereas the said Samuel Jones being largely indebted "unto his said wife, did agree as security therefor, to as- "sign to his said wife the judgment hereinafter men- "tioned, and for that purpose did by his deed of assign- "ment, dated August twelfth, 1879, assign the said "judgment to me. Now, therefore," &c., and as in an ordinary assignment assigned and transferring said Hedden judgment of said Maria L. Jones, to which two

assignments said defendants pray leave to refer as occasion may require.

5. As to paragraph five of said bill said defendant, Samuel Jones, denies the statement contained that said farm contained fifteen acres less than he represented it contained, and saith that he made no such misrepresentations whatever.

6. To paragraph 6 of said bill these defendants are advised it is unnecessary for them to make answer.

7. In answer paragraph seven said defendants say that said Hedden judgment was actually and bona fide assigned by said Samuel Jones to said complainant, Eliphalet C. Willet, and by said Willet to said Maria L. Jones as hereinbefore stated, and that said claim against H. C. Pitney was likewise in or about the month of August, 1879, actually and bona fide assigned to the said Maria L. Jones, and said defendants further deny that said assignments to said Maria L. Jones ~~not~~ were fraudulent or made to defeat or defraud creditors or the complainants.

8. As to the statements contained in paragraph eight of said bill that said complainants have sold a portion of said farm for $4,520, these defendants say that said sum of $4,520, was much less than the land so sold should have been sold for; that said land was fairly and honestly worth between two and three times that sum of money; and that as between said def't, Samuel Jones, and said complainants, the said complainants had no right to make sale thereof without the consent first obtained of said Samuel Jones, which consent was not obtained, but ~~not~~ actually withheld, and that in any accounting between said complainants and said Samuel Jones, said complainants shall be charged with such ~~farm~~ as said land by them sold was fairly and actually worth and not merely with the sum actually ~~recovered.~~ received

9. In answer to paragraph nine of said bill said Samuel Jones denies that he is indebted to said complainants in any such sum as $6,000, and insists that on a fair and full accounting between him and said complainants, estimating said land sold by said complainants at its actual worth, said complainants will be found considerably indebted to him.

And the said defendants, without further or other answer, pray to be hence dismissed with their reasonable costs and charges.

GEORGE T. WERTS,
Sol. of Deft's.
SAMUEL JONES,
MARIA L. JONES.

A true copy,
G. S. DURYEE, *Cl'k.*

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CHILDS AND ELIPHALET C. WILLET, *Compl'ts,* and SAMUEL JONES, ET. ALS., *Deft's.*	*On Bill, &c.*

SIR :—Take notice that the depositions of Witnesses will be taken in this cause, on behalf of the Complainants, at the office of and before George W. Forsyth, Esquire, one of the Masters and Examiners in the Court of Chancery, in Morristown, New Jersey, on the nineteenth day of December, instant, at ten o'clock in the forenoon.

Yours Resp'y,
S. H. LITTLE,
Sol. of Compl'ts.

Dated Dec. 8, 1884.

To George T. Werts, Esq., Sol'r. of Samuel Jones and Maria Jones, Def'ts.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET.
Compl'ts,
and
SAMUEL JONES, ET. ALS.,
Defendants
} *On Bill, &c.*

Examination of witnesses, &c., in the above stated cause, taken before the undersigned, one of the Masters and Examiners of the Court of Chancery of New Jersey, at his office in Morristown, in the County of Morris, on Friday, the nineteenth day of December, in the year of our Lord one thousand eight hundred and eighty-four, in the presence of Stephen H. Little, Esquire, Solicitor and of Counsel for the said complainants, and of George T. Werts, Esquire, Solicitor of and Alfred Mills, Esquire, of Counsel for the defendants, Samuel Jones and Maria L. Jones his wife, said examination being taken under and pursuant to the notice annexed hereto.

GEO. W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

GEO. T. WERTS, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I reside at Morristown, New Jersey, and am by occupation at attorney at law. I have been practicing here fourteen or fifteen years; I know the parties to

this suit; I have transacted legal business for the defendant Samuel Jones; I have been in the habit of acting as his attorney more or less ever since I have been an attorney at law; he is not in the habit of paying me for each piece of work I perform for him or each service I render; I keep a sort of a fee book and make occasional charges; there are a good many charges on the book against Mr. Jones, but undoubtedly there was a good deal done for him that is not charged; it has been overlooked, or neglected, or thought not worth while to charge; the paper you show me is in my hand-writing excepting the signatures and the attestation of it "Samuel W. Jones." I know the signature of Samuel Jones, the defendant; the signature to this paper is his.

Counsel for complainants offered the said paper in evidence, and I have marked the same Exhibit No. 1 on the part of said complainants.

Witness continuing says:

I recollect transacting some business for the complainants at or about the date of the bond and warrant marked Exhibit 1.

Q Will you state all that you did in that transaction?

A. My recollection of what I did is very indistinct, and were it not for some charges occurring on my books I don't think I would be able to state what I did And except as appears there I don't know as I can state what I did.

Paper shown witness he says:

I believe this is a copy from my docket relating to the confessed judgment in this case, except that it is added up there.

Witness added up the amount and says:

Now it is a copy.

Counsel for complainants offered the said paper in

evidence, and I have marked the same Exhibit No. 2 on the part of complainants.

Witness continuing says:

I know George Hedden; I knew in August, eighteen hundred and seventy-nine, at the time of the transaction between these parties, that Jones held a judgment recovered in the New Jersey Supreme Court against George Hedden, for over six thousand dollars; the judgment was recovered December sixteenth, eighteen hundred and seventy-six, for six thousand one hundred and twenty-nine dollars and forty-eight cents, damages and costs; a memorandum of that judgment is entered in my docket; I have always been the attorney of Hedden and Jones, and I suppose I acted for both of them in that case.

Q. Do you recollect having drawn an assignment of that Hedden judgment from Jones to Willet and Childs in August, eighteen hundred and seventy-nine?

A. I find on my book, under date of August twelfth, eighteen hundred and seventy-nine, a charge against Samuel Jones for drawing assignment of judgment to Willet and Childs, two dollars, which I think refers to an assignment of the Hedden judgment.

Q. What is your recollection, Mr. Werts, aside from the entry in your book; just state fully?

A. I have no recollection as to how I came to draw it, or by whose direction or under what arrangement it was drawn, but I think it was drawn and executed by Mr. Jones and witnessed by myself; it was drawn by me and witnessed by me; it is my impression it was a blank form of an assignment of judgment filled up by me; then my impression is that after it was drawn it was lying on my office table in such a way that it attracted the attention of young Mr. Jones, and he asked what that was, or what it was for, and what his father meant by the execution of such a paper, and that I replied that I knew nothing about his intentions respecting the paper; that subsequently I discovered, whether that day or some other day, I can't now tell,

that the lower right hand corner of the paper whereon was written the name of Mr. Jones (Samuel Jones the elder) had been torn from the assignment, and at some time, whether at the time I discovered it or some other day, I can't tell, I had a talk with the Joneses, father and son, but whether they were together or not I can't recollect, from which I gathered the impression that the name had been torn from the assignment by young Mr. Jones; that is all I know about the assignment; I suppose finding the assignment was no good I chucked it in the waste-basket.

Q. Do you recollect an occasion when both the Joneses, father and son, were together in your office, and you demanded to know of them how that assignment became mutilated?

A. I don't recollect any such conversation when they were both present, though possibly it may have occurred; I can't say that my impression that young Mr. Jones had torn the assignment was received from a conversation had with both of the Joneses together, or from conversations had with them separately.

Q. Do you recollect a remark made by young Sam Jones in regard to the mutilation of that assignment which was emphasized by an oath, and if so, state it?

A. I do not recollect any such expression.

Q. Have you stated fully your recollection in regard to the discovery of the mutilation of that assignment, what you said to the Joneses or either of them, and what either of them said to you?

A. I think I have; the facts of the matter had almost entirely passed from my mind until imperfectly recalled by conversation relating to this case; I haven't the least recollection of the sale of the Jones farm to Willet and Childs; I see by my book I have a charge for attending the sale, under date of August twelfth, eighteen hundred and seventy-nine, a charge rendering services in matter of sale of property, five dollars, and under date of August eighteenth, eighteen hundred and seventy-nine, "attending sale at Sheriff's office, drawing and entering judgment by confession, &c., twen-

"ty dollars," all in one lump; if it wasn't for these charges I couldn't recollect that I had attended any sale, and I don't know what they refer to, the charges that appear there.

Q. It was some time after the discovery of the mutilation of the assignment of the Hedden judgment before you saw Mr. Childs and reported the matter to him, was it not?

A. I can't recollect that I ever reported it to him; I knew that Ross & Breese had a judgment against Samuel Jones, but when it was recovered I do not know; I did not recover it.

Q. Do you recollect of supplemental proceedings against Jones under that judgment?

A. Yes; at two different times. But when it was I can't recollect without examining the papers I have here relating to the matter. I appeared as the attorney for Jones on those examinations; I think the examination was taken one time by Mr. Edmund Halsey and the other by Mr. Forsyth.

Q. In connection with this Ross & Breese suit, or the proceedings under it, do you recollect of either of the Joneses saying anything to you about restoring or re-executing the assignment of the Hedden judgment?

A. No.

Paper being shown witness, he says:

This paper, excepting the memorandum in the margin, is in my handwriting; the signature is mine.

Counsel for complainants offered the said paper writing in evidence, and I have marked the same Exhibit No. 3 on the part of the complainants.

Witness being cross-examined by Mr. Alfred Mills, Counsel for said defendants, further saith:

Q. Then the charge, August 18th, 1879, "attending "sales at Sheriff's office and drawing and entering "judgment, and by confession, &c., $20," which you find in your account book, and which you have referred to in your principal examination as made to Samuel

Jones, was not paid by Mr. Jones to you, but was paid on the twelfth of August, eighteen hundred and eighty-four, by William Childs, one of the complainants. Is that so ?

A. Yes, sir; it was paid by Mr. Little for him, by Stephen H. Little, his Solicitor; the two dollar charge for drawing the assignment found on the same page has not been paid to me by Mr. Childs or anybody else; nor has the five dollar charge found on the same page, which I have referred to in my principal examination, been paid to me; I was not acquainted with the business arrangements between Jones and Childs and Willet at the time I drew the papers I have referred to excepting so far as I was directed to draw the papers; I think Childs and Willet and Jones were in my office together; they had at the time they were there a great deal of consultation between themselves outside of my offices altogether, and also in one of my offices, but always I think in an office apart from myself; I had three connecting rooms at that time, and after their consultations they would come in and give directions as to what they wanted done, and probably before I had complied with their directions they would have further consultation and announce that some other scheme or plan had been adopted, until finally I told Mr. Jones, and I don't know but Messrs. Willet and Childs, I think probably they were all there, that if they wanted me to draw the papers intelligibly, and so that they could be comprehended by others, that they should tell me just what they wanted to accomplish, and then I could advise them as to what papers they wanted, and draw them; I don't think I ever got any very definite directions or understanding from them; they appeared to change their plans while there; I think they adopted two or three different plans; I infer I drew some papers on the twelfth from this charge, otherwise I can't say; I know I was writing more or less for them that day, but what the papers were I can't say, excepting that I find that charge on the book; I have no recollection outside of that charge on the book, and

the other circumstances I have detailed on my direct examination, that I ever drew an assignment of the Hedden judgment from Jones to Childs and Willet; if the assignment had been drawn it would have been properly charged against Jones whether it had been used or not; I have nothing else to connect the mutilated paper of which I have spoken and that assignment except that charge on the book.

Q. Then can you state with positiveness and certainty that the paper which you have in your direct examination said was mutilated was the assignment of the Hedden judgment?

A. I can't state it any more positively than I have already in my direct testimony.

Q. Have you any reason for thinking it was the assignment of the Hedden judgment except the charge referred to on your book?

A. So far as the charge on the book is concerned it doesn't say what judgment it was; I inferred it to be the Hedden judgment.

Q. Then do you know that the paper which was mutilated was the assignment of any judgment?

A. Well, I drew an assignment of a judgment from Mr. Jones to Willet and Childs, I take it, from this charge; I think it was the assignment of the Hedden judgment that was torn; I can't answer with absolute certainty how long it was after its execution that the paper I have spoken of was mutilated; I think it was on or about August twelfth when it was drawn, because I don't think it would have been lying on my desk any length of time after it was drawn, where it could be seen. And furthermore, on the eighteenth of August, eighteen hundred and seventy-nine, the parties were all at my office and there don't appear to have been anything said about it then so far as I can recollect, and if mutilated it was certainly done long before March thirteenth, eighteen hundred and eighty, on which day I find a charge on my book against Jones, Willet and Childs, "attendance at view and before commissioners, fifteen dollars;" those were

condemnation proceedings taken by the Morris Aqueduct Company to condemn some lands of Jones's which Willet and Childs had bid in, I suppose, on the eighteenth of August preceding, for which I had already made my charge; I attended before that commission with Mr. Jones, Willet and Childs, and I never heard from Mr. Childs or Dr. Willet either, so far as my recollection goes, until at or about the time the bill in this suit was filed, of any claim to this Hedden judgment; shortly before the bill was filed in this cause Mr. Childs called to see me at my office.

Q. State what was said by Mr. Childs on opening and during that interview?

A. He came in and asked if I remembered doing some business between him and Dr. Willet and Sam Jones some four or five years before; I told him I recollected doing some business between them, but that I had about entirely forgotten the details and particulars of it; he wanted to know if I didn't have in my possession a paper or an agreement wherein was stated the full particulars of the arrangement between him and Willet and Jones; I told him I had an indistinct recollection that some papers were drawn, and that it would perhaps have been proper that such an one should have been drawn, and that I would look and see what I had; I then got out all the papers I had belonging to Mr. Jones, but found no such paper as he described or asked about, and told him finally that I didn't believe there had been any such paper drawn, and if there had been that I didn't recollect it and had nothing there to show for it, but while going through the papers I found the original bond and warrant of attorney, produced here this morning, and I having entirely forgotten that any judgment had been entered on it, and I showed it to Mr. Childs and asked him if that wasn't the paper he wanted, and whether any judgment had ever been entered on it; he couldn't say whether there had or not; I then turned to my docket and found the memorandum of the judgment as put in here this morning; then I turned to this account book to see

whether this would throw any further light on it, and seeing a charge here of assignment of a judgment we talked and he said he thought that that referred to a matter of George Hedden's, that he had an idea that it would appear in this paper he was looking for what it was, if it could be found; then I told him that it appeared that even the costs of entering that judgment had not been paid, which was done for the benefit of himself and Dr. Willet, and he said that between him and Jones, Jones should pay them, but as between himself and me he would pay them shortly if Jones didn't, and he did pay me according to the receipt produced here this morning; and I told him then that he was entitled to the bond and warrant of attorney, and he either took it away with him, or Mr. Little called and got it shortly after.

Witness being again examined by Counsel for complainants, says:

I filed the answer for the defendants in this case; I have a fire proof vault in my office in which I keep my papers; I infer that the transaction between the complainants and Jones of which I have spoken took place at my office the twelfth of August, from a a reference to the charge in my book; I do not know how many times those parties together, but they were there several times; I do not recollect the first time they were there together at my office; I should say they were together at my office on the eighteenth day of August, 1879, for it was on that day the judgment by confession was entered, and it needed Mr. Childs and Mr. Willet's affidavit; I have not at any time found any memoranda showing the terms of this entire transaction or any part of it.

Re-cross examination.

My office now is in the Iron Bank Building, and in 1879 was in Bell's building, a different place where I had three adjoining rooms.

Mr. Werts here presented a copy of the several charges testified to by him in his examination aforesaid, taken from his fee book, which the Counsel of the respective parties consent may be offered in evidence and accepted in lieu of the book of Mr. Werts relating to those charges. I have marked the said copy Exhibit No. 4 on the part of complainants.

GEORGE T. WERTS.

Sworn and subscribed before me December 19, 1884.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

Counsel for complainant here demanded of the solicitor of the defendants, Samuel Jones and Maria L. his wife, that those defendants produce any written agreement, signed or unsigned, or any memorandum of an agreement between the complainants and said defendants, relating to the purchase of the Jones farm by the complainants, or the payment of the debt due Daniel D. Craig, or to the manner in which they should be secured for money advanced for such purposes.

The Solicitor for the defendants, Samuel Jones and Maria L. his wife, replied to such demand that he had no such agreement or memorandum in his possession, and don't know of the existence of any such memorandum or agreement.

GEO. W. FORSYTH,
Master, &c.

WILLIAM CHILDS, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I live in Bernards township, Somerset county, New Jersey; I have lived there thirty-nine or forty years; I am sixty years old; I am a farmer by occupation.

Witness in correcting a statement says: I will have lived in Bernards township forty-two years next March, if my memory serves me right.

Witness, continuing his evidence, says: I am one of the complainants in this suit; my mother and Mr. Jones's mother, I have always understood, were sisters; Eliphalet C. Willet, my co-complainant, is not a relative of mine; he is a brother to Mr. Jones's wife, and a brother-in-law to Mr. Jones, I suppose; Mr. Willet resides at German Valley, Morris county, I believe—the last time I saw him he was there, at least; he is a physician by occupation; I suppose Samuel Jones lives here in Morristown; I don't know what his occupation is now; I don't know that he is pursuing any occupation; I suppose formerly he was a merchant of some kind; he formerly had a grocery store here in Morristown, and I understood he had a store of some kind in New York; I don't know whether he had any grocery store attached to it; the store in New York was a liquor store; I think I was in the office once; I guess there was liquor attached to the one here in town; I suppose the main business of Samuel Jones while he was in business here in Morristown was selling liquor and groceries.

Q. In the year 1879 did Samuel Jones apply to you for any pecuniary assistance?

A. I think it was on Saturday, as I was untieing my horse to go home he wished me to come to Morristown—I wont be positive what day, one day the next week, whether it was Tuesday or Wednesday—wanted me to meet Dr. Willet, whatever day it was, and it would do me good; I told him I'd do so; he didn't name any particular business, that I recollect of, only he wished me to meet him; I met the Doctor the next week; there he wished us to buy this farm, and to secure us he wished us to take these notes on the bank, and to secure us for so doing; the amount of the notes was six thousand dollars; we were to buy the farm at Sheriff's sale, under foreclosure sale; we were to take the title in our own names; I don't think there was anything said at the time about our having absolute control of the property.

Q. Did he state how you were to be secured?

A. He did, sir; he told me that he would give a judgment on his drug store, the brick store next the United States hotel; we were to be amply secured by a judgment on it; that was what I understood by it, and also the Annandale property in Hunterdon county, which there wasn't a scratch on it, the Hedden judgment for six thousand dollars or upwards.

Q. What did he say about the Hedden judgment?

A. He would make an assignment of it to Willet and Childs.

Q. What did he say in regard to his wealth, his property?

A. At one time he told me he considered himself worth seventy or seventy-five thousand dollars after all his debts were paid.

Counsel for defendants, Jones and wife, objected to the answer as irrelevant and not responsive to the question.

At one of these times he had a paper in his pocket showing that he was worth seventy or seventy-five thousand dollars.

Q. What times do you refer to?

A. About the time this transaction was going on, I think; I told him I couldn't tell anything at all about that paper, I took his own word for it; I also told him I wasn't doing this kind of business, shouldering other persons' burdens, but as a friend, if I was put to no expense, that I would accommodate him, or something to that purpose; he said I shouldn't be to any expense.

Q. Well, what did you and the doctor after these representations were made, do?

Objected to by Mr. Mills as leading.

Objection overruled.

Mr. Mills then objected to the question as implying what the witness has not stated, in that it does not appear that the representations spoken of by witness were made at the time Mr. Childs and Dr. Willet were at Morristown.

Objection overruled.

A. We took up the notes in the bank, I believe, and gave our own notes; I did, at least, expecting to pay the discount on them.

Q. How many meetings had you and Doctor Willet together with Jones before the eleventh day of August, eighteen hundred and seventy-nine?

A. I don't recollect of none, sir; that was our first meeting on this business.

Q. Was the eleventh day of August the first day that you three met after the Saturday when Jones first spoke to you about this matter?

A. It is, I think; I am quite positive; I have no recollection of any meeting before that.

Q. Did Jones, on that eleventh day of August, make these representations about his wealth of which you have spoken?

A. Yes, sir; I think he did.

Q. Were they made to you and Doctor Willet?

A. I wont be positive, but I think they was to us both.

Q. Did you rely upon the representations which Jones made?

A. I did.

Paper writing being shown witness, purporting to be a mortgage from Samuel Jones and Maria L. Jones his wife to Daniel D. Craig, Cashier, dated the fifth day June, 1877, acknowledged the same day before Francis Child, Master, &c., and recorded in Morris County Clerk's office, on June 15, 1877, in Book I 3, page 465, is asked:

Q. Did you procure from Mr. Craig, as cashier, the assignment of that mortgage as part of this transaction with Jones?

A. I think we did, sir.

Q. How much did you pay the cashier for that mortgage?

A. I think I gave my note for three thousand dollars, if I understand it right, and Doctor Willet three thousand; Doctor Willet endorsed my note and I en-

dorsed his note; my note has been paid by myself; I think Dr. Willet's is also paid.

Counsel for complainants offered the same mortgage in evidence, and I have marked the same Exhibit No. 5 on the part of complainants.

Counsel for complainants also offered in evidence an assignment of the above referred to mortgage, marked Exhibit No. 5, made by Daniel D. Craig, Cashier, to William Childs and Eliphalet C. Willet, bearing date August 11th, A. D. 1879, acknowledged the same day before James C. Youngblood, Master in Chancery, and not recorded, which I have marked Exhibit No. 6 on the part of complainants.

Q. On the eleventh day of August, 1879, what was the understanding and agreement between you and Jones in regard to the Hedden judgment?

A. It was to be made over to us, or assigned to us.

Q. Did you believe such an assignment had been made?

Objected to because his belief is not material here; the fact is what is to be inquired into.

Objection sustained.

Q. Did you learn anything subsequently in regard to such assignment having been made and destroyed?

A. I think about in September that it was destroyed; I think it was in September, I met Mr. Werts one morning, I said I suppose those papers are all right. He said no, that the assignment of the Hedden mortgage, I mean the Hedden judgment, the name had been torn off. I don't think there was much more said about the thing at that time.

Q. Was that the first time that you learned of the destruction of that assignment of the Hedden judgment?

A. It was.

Q. Was there any agreement made by you with

New Jersey State Library

Jones that such assignment should be yielded up by you, or destroyed?

A. Positively, no, sir; not on my part.

Q. When next after the eleventh of August did you come to Morristown and meet Dr. Willet?

A. I think it was the day the property was sold, the eighteenth or nineteenth of August.

Deed from William H. McDavit, Sheriff, to Eliphalet C. Willet and William Childs, dated August 18th, 1879, proved and acknowledged, August 22d, 1879, before George Walker Jenkins, Master, &c., recorded in Morris County Clerk's office January 9, 1880, Book G 10 of Deeds, pages 290, &c., was offered in evidence by counsel for complainants, and I have marked the same Exhibit No. 7 on the part of complainants.

Q. What premises, Mr. Child, are described in that deed?

A. The Jones farm, owned by Samuel Jones the defendant. Doctor Willet and myself paid the consideration named in this deed; we paid three thousand and eight dollars and twenty cents, the consideration named in this deed.

Counsel for complainants offered in evidence the record of a judgment in the New Jersey Supreme Court in favor of Eliphalet C. Willet and William Childs against the defendant Samuel Jones, entered on bond and warrant August 19, 1879, for six thousand seven hundred and seventy-two dollars and twenty-seven cents debt, and four dollars costs of suit, which I have marked Exhibit No. 8 on the part of the complainants.

Q. Have you and Doctor Willet held control of that property, the Jones farm, since the sheriff's sale?

A. Since we found that Mr. Jones was not going to do as we agreed we have taken possession of it.

Q. When did you find that?

A. I don't know that I can answer that question until I refer to some dates; I think it was eighteen months before we received any benefit from it.

Q. What was the agreement between you and Willet and Jones in regard to any expenses that might arise from this transaction?

A. I understood that Mr. Jones was to pay all the expenses, was the way I understood it.

Q. Was it understood and agreed that you held that farm purchased at sheriff's sale subject to Jones's wishes and directions?

Objected to by Mr. Mills on the ground that the question is leading, and should be what is the agreement on which you held the farm.

Objection sustained.

Q. Did Jones pay the taxes on that property or did you and Willet pay the taxes on that property for the year 1880?

A. It runs in my mind that as we bought it in August Mr. Jones paid the tax for that year, 1879; I have no recollection of the payment of the taxes for 1880, but here is a bill receipted and I suppose we paid it.

Counsel for complainants offered in evidence a tax bill for 1880, receipted, which I have marked Exhibit No. 9 on the part of complainants

At this point the examination was adjourned to tomorrow, Saturday morning, at ten o'clock.

GEO. W. FORSYTH,
Master, &c.

Saturday, Dec. 29, 1884, the Counsel of the respective parties appeared before me pursuant to adjournment, and the examination of the witness, William Childs, was continued.

GEO. W. FORSYTH,
Master, &c.

Q. Mr. Childs, how was it as to the year 1881 as regards the payment of the taxes?

A. There was a debt in the bank, and there must have been a deduction, there was a deduction from the tax.

Q. Do you mean that the debt offset the tax?

A. Yes, sir; that is the way I understood it.

Q. How was it for the year eighteen hundred and eighty-two, perhaps this memorandum will refresh your recollection?

Witness, after examining the paper handed him by his Counsel, answers:

A. We paid it; the amount was twenty-one dollars and twenty cents.

Counsel for complainants offered in evidence the paper shown witness, being a tax bill for the year 1882, which I have marked Exhibit No. 10 on the part of complainants.

Q. How was it for the year 1883, Mr. Childs?

A. We paid it; the amount was nineteen dollars and sixty cents.

Counsel for complainants offered in evidence a tax bill for the year 1883, which I have marked Exhibit No. 11 on the part of complainants.

Q. In what proportions did you and Doctor Willet advance the money to pay the taxes in the years 1880, 1882 and 1883?

A. Each one half.

Q. How was it for the year 1884, Mr. Childs?

A. I paid that myself; the amount is eighteen dollars and eighty cents.

Counsel for complainants offered in evidence a tax bill for the year 1884, which I have marked Exhibit No. 12 on the part of the complainants.

Q. Did you and Doctor Willet procure the buildings on this Jones farm to be insured, and if so, at what cost and for how long?

A. We did.

Q. At what cost, Mr. Childs?

A. Well, I don't understand this exactly; we paid it in equal proportions to Mr. Bonsall.

Counsel for complainants offered in evidence a paper writing purporting to be a receipt given by James M. Bonsall, Secretary of the Morris County Mutual Insurance Company, for eleven dollars and seventy cents premium on policy in Morris Mutual for three years insurance Jones farm on Mendham road, receipt bearing date, April 9, 1880, which I have marked Exhibit No. 13 on the part of the complainants.

Q. A portion of that premium was returned by Mr. Bonsall, was it not?

A. Yes, sir; if I understand this it is five dollars and eighty-five cents.

Q. Did you and Doctor Willet pay the sheriff for the deed and his execution fees for this Jones farm?

A. We did, sir; the amount was thirteen dollars and fifty-five cents.

Counsel for complainants offered in evidence a receipt from William H. McDavit, Sheriff, for thirteen dollars and fifty-five cents, bearing date January 9th, 1880, which I have marked Exhibit No. 14 on the part of the complainants.

Q. Did you and Doctor Willet execute a mortgage on this Jones farm to Theodore Little as trustee?

A. We did; I think it was in eighteen hundred and eighty; it runs in my mind that it was about the ninth of April, eighteen hundred and eighty; it may have been a day or two before that; the expense we were put to in having that bond and mortgage drawn and recorded, was, the way I understand the memorandum just shown me by you, five dollars and seventy-five cents.

Q. On or about April 26, 1881, did you and Doctor

Willet pay a surveyor for services in regard to this Jones farm, and if so, how much?

A. We did pay him, but it is out of my mind just now how much.

Q. Did you pay any money for a chain and lock for this Jones farm, and if so, how much?

A. I did; three dollars I think; there were two locks and two chains. (After examining a paper shown him by his Counsel to refresh his recollection, witness says): I don't see anything here, but I think it was three dollars and a quarter I paid; I paid it out of my own pocket. (After again examining the paper shown witness by Counsel he says): The chain was three dollars; the purchase was in December, I think, eighteen hundred and eighty-one or eighteen hundred and eighty-two; it was, I think, in December, eighteen hundred and eighty-two; this chain and lock was bought for the protection of the Jones farm; I paid a lawyer about the same time for advice in regard to the Jones property; I paid two dollars.

Q. Mr. Childs, what was the agreement between you and Willet and Jones in regard to this purchase and the loan of money which you made to him?

A. The agreement was that Mr. Jones, that we should carry this property for Mr. Jones for a short time, till he could turn himself; I didn't understand it that we was to pay all these expenses and these monies which we have had to do; we have had to pay all these expenses contrary to the way I understood it.

Q. Why did you purchase the farm at sheriff's sale?

A. It was at his request.

Q. Why did you take a deed in your own names?

A. So that we could have absolute control of the property; I understood it so, in case he didn't do as he agreed.

Q. How soon after the purchase did you take possession of the premises?

A. I don't know what you would call, but I an-

swered that question yesterday ; I think it was in somewhere about eighteen months.

Q. Did the proprietors of the Morris Aqueduct take some portion of this farm by condemnation ?

A. They did ; they paid for what they took one hundred and forty dollars. Doctor Willet and myself received the money ; it was March the twelfth, eighteen hundred and eighty.

Q. Did you sell a portion of this Jones farm to Charles G. Foster, and if so, when, and for how much ?

A. We did ; for one hundred and sixty dollars an acre.

Q. Does this paper which you hold in your hand contain a statement of the amount received and of the commissions paid ?

A. I think it does ; Theodore Ayers was the agent through whom the sale was made.

Counsel for complainants offered in evidence the paper last shown witness, which I have marked Exhibit No. 15 on the part of complainants.

Q. Who received the net proceeds of the sale to Foster ?

A. I forget whether it was paid over to me or Doctor Willet ; I think it was paid to Doctor Willet ; part of it was paid to Theodore Little to take off the mortgage to him.

Q. Did this money, the net proceeds of the sale, go to Jones, or did it go to you and Willet ?

A. It went to Willet and myself, in the proportion of one-half to each.

Witness being shown paper writings pinned together is asked—

Q. In the month of May, eighteen hundred and eighty-one, did you and Willet receive any money from the sale of grain from this Jones farm, and if so, how much, and in what proportions ?

A. We did, sir ; it is figured up here on the back

of the weigh bill, fifty-three dollars and ninety-nine cents; that was the whole amount received from the grain I think; each of us received one-half. The middle paper here is a duplicate deposit ticket for Willet's half of the proceeds of this grain, deposited by me to his credit in the Iron Bank. The letter shown me was sent to Dr. Willet by my direction.

Counsel for complainant offered in evidence a weigh bill, duplicate deposit ticket and letter, all pinned together and referred to in the witness's last answer, to which offer the Counsel for defendants objected on the ground that they are irrelevant and incompetent.

Objection overruled. Appeal.

GEO. W. FORSYTH,
Examiner.

December 20, 1883.

I have marked said weigh bill, duplicate deposit ticket and letter, Exhibit No 16 on the part of complainants.

Q. Did you and Willet receive from a Mr. Guerin payment for pasturage on this Jones farm, and if so, at what time, how much, and in what proportions was the money divided between you?

A. We did; I think since I have looked at this letter that John Guerin rented it in eighteen hundred and eighty-two for fifty dollars; it runs in my mind, I think, Bige Guerin in eighteen hundred and eighty-one for fifty dollars; each of us had half of the money; I may be mistaken, it may have been John Guerin in eighteen hundred and eighty-one instead of Bige; I cannot recollect the dates when this pasturage money was paid; I might have received the money from Mr. Guerin a few days before this letter was dated.

Counsel for complainants offered the said letter in evidence, to which offer the Counsel for defendants

objected on the ground that said letter is irrelevant and incompetent.

Objection overruled. Appeal.

GEO. W. FORSYTH,
Examiner.

December 20, 1884.

I have marked the said letter Exhibit No. 17 on the part of complainants.

Q. Did you rent pasturage on this Jones farm to Charles G. Foster?

A. I did; in eighteen hundred and eighty-three, first, for seventy-five dollars, and he was to repair the fences; the money was received and divided, half to me and half to Willet; in February, eighteen hundred and eighty-three, he sent a check for thirty-seven dollars and fifty cents, half the payment; I sent the half of it to Dr. Willet; the other payment I have no account of, but I think it was paid in the winter, probably December or January, I can't tell the date exactly, it has got out of my mind, a check for thirty-seven dollars and fifty cents, I sent the half of it to Doctor Willet; the pasturage is rented this season to Mr. Foster for seventy-five dollars and repairing the fences; he has paid no part of it—I will correct myself there—he may have paid it to Doctor Willet, I don't know that he did so at all.

Q. Did Jones once pay the discount on one of the notes on which you and Willet raised money at the Iron Bank for the purposes of this transaction, and if so, when, and how much?

A. Not on Willet's and mine; there was a three hundred and odd dollars, seventy or eighty dollars, I forget just what the amount was; he gave me six dollars; the discount on the note was five dollars and ninety-nine cents if I recollect right; I think the note is the one for three hundred and eighty-six dollars, dated May nineteenth, eighteen hundred and eighty, just shown me; it was endorsed by Luther Childs, my son.

Q. Have you received from Samuel Jones or on his account in any way any other sums of money than you have stated in the settlement of this transaction ?

A. I have not.

Q. Is there any other matter relating to your claim against Jones in this suit which you wish to state, and if so, state it, and particularly I will call your attention to any statements made to you by Jones in regard to the quantity of land in the Jones farm ?

A. I asked Mr. Jones about the quantity of land on the north side of the Mendham road ; he said that there was forty-three acres he believed ; not knowing, supposing it might be correct, fearing, we made our calculations on forty acres, but when we came to survey it there was only twenty-eight and a fraction over ; it made a great deal of difference to us in our calculations ; we received two thousand dollars less from Foster than we had expected, by reason of the deficiency ; I think it is Mr Jones's own fault ; we sold the land to Foster for so much by the acre ; the tract we sold to him was on what I call the north side.

Q. Was it the tract Jones said contained forty-three acres ?

A. Yes, sir.

Q. Is there anything else you wish to state ?

A. Yes ; we wouldn't have sold it for that price if we had known there was only twenty-eight acres.

Q. Did you sell the land for the best price you could get for it ?

A. I think we did, sir ; Mr. Jones said that Mr. Foster wanted to buy it, wanted it.

Q. Did you think that the land was worth more or less than the price you sold it for ?

A. I thought we sold it for a fair price for farming purposes, land laying in that state, with the buildings in the condition they were, on it.

Witness being cross-examined by Mr. Mills, of Counsel with the defendants, Jones and wife, says :

Q. When you spoke to Mr. Jones as to the amount of land belonging to the farm on the north side of the road, it was at the time you were talking of selling that land to Foster, was it not?

A. Yes, sir; that was in the winter of eighteen hundred and eighty, I think. Witness correcting himself says: it was in the winter of eighteen hundred and eighty-one; I had in my hands at that time the sheriff's deed and the Craig mortgage, both describing the property; I had a survey of the land made after the bargain for the sale of the land to Foster had been made.

Q. Then you made the sale to Mr. Foster at so much per acre without having a survey made or any estimate of the amount of land except your own, Doctor Willet's and Mr. Jones's, did you?

A. We made the sale upon Mr. Jones's, what he told us; we made our estimate on that, of forty or forty-three acres; we felt quite confident at the time we made our estimation that it wouldn't come short of forty acres.

Q You had seen this farm frequently and been on it before these negotiations with Foster, had you not?

A. I had rode a past it; I don't know that I had ever had my foot on that side of the road until the morning we went to survey it; I have no remembrance of being on that side; I might have been up to the aqueduct on the south side.

Q. The land on the north side of the road stretches along the road a considerable distance and can be seen from the road, can it not?

A. Yes, sir.

Q. You are a farmer and are in the habit of buying, selling and judging of lands, are you not?

A. I have bought lands and I have sold lands.

Q. When you asked Mr. Jones the quantity of this land, did he not tell you that Hughes the surveyor could tell you because he had a map of it, and did he not refer you to him and also bring Hughes's map to Ayers's office for you?

A. I don't remember, sir ; I don't remember of any such circumstance whatever.

Q. Do you mean to say that you would not have sold the land on the north side of the road to Foster if you had known that it contained only a little over twenty-eight acres, for one hundred and sixty dollars an acre ?

A. I think not, for the reason I received a letter wanting to know the price of the land on the north side of the road, and the whole of it in bulk on both sides ; we made our calculations on the whole amount and also on the north side of the road ; if Mr. Foster had bought the whole of it, it would pretty near or quite relieved us of our burden.

Q. Did the fact that land immediately adjoining this had been bought by Mr. Foster a short time previously for two hundred and fifty dollars an acre, have any effect on you and Mr. Willet in making up your minds to sell this for one hundred and sixty dollars an acre ?

A. I don't think it had in the light that you want to get out of it at all ; I think we sold that land for all it was worth even if it did lie along Mr. Foster's property ; Mr. Foster's property is improved property with fine buildings on it, expensive buildings ; I also understand there is a vein of iron ore running through it ; the property we sold to Mr. Foster was not what I consider improved property.

Q. This land which you sold to Foster lay between the Revere property owned by Foster and the public road, did it not ?

A. Yes, sir.

Q. You had heard that he paid two hundred and fifty dollars per acre for the Revere property, had you not ?

A. I had heard he had bought it ; as for any stated price I am not positive about.

Q. Did not Mr. Samuel Jones tell you before you made this sale, that Foster had paid two hundred and fifty dollars an acre for the Revere property, and three

hundred dollars an acre for the Griffin property, adjoining this?

A. I think if I remember right that he didn't own the Griffin property when he bought this, the Jones property; it might be that he had said something to me about the Griffin property; there has been a great deal of talk in the matter; I can't give all the details of the conversation, of so much conversation all at one time and in so short a time.

Q. You knew at the time you were negotiating with Foster that he had bought or agreed to buy the Griffin farm at three hundred dollars an acre, did you not?

A. I did not know that to be the case sir; I think that after or about the time it was surveyed that Mr. Foster's hired man talked about Mr. Foster's buying it; that he would like to buy this Gribben property; it was very cold when we were surveying there, and I paid very little attention to it, for I had other matters to attend to without talking; I have no recollection of his telling me what Mr. Foster was going to pay for it, though he might; I do not think I asked him; I think he said that Mr. Foster would buy the property if he could buy it right.

Q. Were you not interested in the question as to what property adjoining this property brought?

Objected to on the ground that it implies that witness had knowledge of the sale of adjoining property, which has not been shown, and the question is therefore misleading.

Objection overruled.

A. I suppose I was.

Q. This conversation with Foster's man was before you made the conveyance to Foster, was it not?

A. It was about the time we were surveying it, I think; I think the deed, after it was surveyed, was made out to Mr. Foster some days afterwards; I think the agreement was made before the survey; I think the agreement was in writing, but I won't be positive about that whether it was verbal, but it runs in my mind that Willet and myself did sign an agreement in

Theodore Ayers's office, or else told Mr. Foster personally that he could have it; I recollect that Mr. Foster came there once with the money; when I say personally I mean verbally.

Q. Did Mr. Jones oppose the sale of this land at a hundred and sixty dollars an acre?

A. I think at that time Mr. Jones came in and said he would fetch a person or some one who would give us seven thousand dollars for it in two or three hours time; I think Mr. Ayers said fetch on your man, we will wait; I told him we would wait till seven o'clock if he would bring on his man; the reason that I said so, I felt confident in my own mind that he couldn't do it; Mr. Foster, if I recollect right, didn't pay the money down that day, he didn't get his deed.

Q. What hour of the day was it you told Mr. Jones you would give him until seven o'clock to produce a purchaser?

A. I think it was in the forenoon, probably eleven o'clock, probably a little later.

Q. Did you wait until seven o'clock that day before you sold to Foster, or agreed to sell to him?

A. I think that the agreement with Mr. Foster had been already made; the reason I used that expression was, I felt confident that he wouldn't do it, I never heard of his doing it.

Q. Then if a purchaser at seven thousand dollars for the land you sold to Foster had been produced at seven o'clock that day, would you have sold the land to him, instead of selling it Foster at one hundred and sixty dollars an acre?

A. I didn't think that he could do it, or I wouldn't have made the proposition.

Q. Did not Jones oppose the sale to Foster at a hundred and sixty dollars an acre before you made any agreement with Foster, and tell you that the price was too low and that the land would bring more?

A Not before we made an agreement that I recollect at all, sir; but he said that Mr. Foster, he understood, wanted to buy it, and said that we could sell to

him if we could get a good price for it; that is my recollection in that matter of the conversation as near as I can remember.

Q. When Jones told you you could sell the land if you got a good price, was no amount, as to price, spoken of?

A. I don't remember, sir, as there was; that was the time he meant, and so did we, that we were going to sell the whole of it, or in other words that he wanted to buy the whole of it.

Q. Did not Jones tell you that Foster had paid two hundred and fifty dollars an acre for the Revere property, and had agreed to pay three hundred dollars an acre for the Gribben property?

A. I don't recollect of no such conversation.

Q. Did any one else tell you so before you conveyed the land to Foster?

A. I don't recollect of any two hundred and fifty dollars being named at that time.

Q. Did Theodore Ayers tell you?

A. I won't be positive of it, sir; I don't remember; I do remember, after the sale, of Mr. Jones saying that Doctor Willet and myself were either fools or knaves for giving his property away—(I told him probably we were both, fools and knaves both, in his estimation)—that there was property lying right aside of it that sold for three hundred dollars an acre; that was after the sale sometime, and this other was before the sale.

Q. Then Mr. Jones did protest against the sale, did he, after it was made? Tell us when that protest was made, where, and before whom?

A. It was near, or in the drug store near the United States Hotel in Morristown; it runs in my mind it was in the street; it was some time after the sale; I can't tell you when; it might have been two months after; I didn't wait to get in any conversation with him at all; I can't answer the question as to who was present, for I don't remember.

Q. Was this the first protest he made to you against that Foster sale?

A. The first that I recollect now.

Q. Did he make no protest against it on the day when, as you said, Jones said he could bring a man who would give seven thousand dollars for what you were selling to Foster?

A. He wheeled out of the room, and as he went out he said, if you will give my property away I can't help it; that had slipped my mind; he appeared to be very indignant and went out.

Q. Then before that remark he had made objection to the sale you were making to Foster, hadn't he?

A. I think all the remark he made before that was that he would fetch somebody there that would give seven thousand dollars, to the best of my recollection.

Q. And when he was indignant, as you say, he was indignant because you were selling the land to Foster at what he thought too low a price, wasn't he?

A. I can't tell, but I suppose that was what he was indignant about.

Q. Before the day you have just spoken of, had you consulted Jones as to price?

A. I don't remember myself just now, or whether the Doctor did; I don't remember of either one consulting him.

Q. Would it not have been natural for you to consult him about the price for which you should sell, after you had consulted him whether you could sell the farm, and he had told you you could sell if you got a good price?

(Objected to by Mr. Little on the ground that it nowhere appears that the witness had consulted Jones as to whether he had authority to sell. The question is founded on a false assumption and is misleading and improper.)

Objection sustained.

Q. You had a conversation with Mr. Jones about the farm before you sold to Foster, and he remarked that you could sell if you got a good price, or could get a good price for it; did you consult him as to price before you made the sale to Mr. Foster?

A. I don't remember of consulting him ; we thought we did get a good price for it, taking all things into consideration, until after it was surveyed ; I think I stated once before there we based our calculations on forty acres or forty-three acres ; I said if there was less acres we would put on more price on account of the amount of money we were calculating to raise ; we was to make three calculations, I think : the land on the north side of the road, the price of the land on the south side of the road, and what we would take for the whole in bulk.

Q. Then when you found by the survey that there were less than forty acres on the north side of the road, why did you not put on more price as you have just said you meant to do?

A. Because the bargain was already made.

Q. Then you think you made a bad bargain, do you?

A. We got all for the land that we asked, as much as I would want to give for it myself in the condition it was.

Q. Did you not say after the sale to Daniel D. Craig or to others that you had sold too soon, and hadn't got enough, or words to that effect?

A. I don't recollect any such conversation.

Q. After I had just commenced a question you said something in continuation of your last answer, what was that?

A. I was going to say that I might have said that if I had known there was only twenty-eight acres I would have put on more dollars to the acre.

Q. When you are selling the land of another by the acre, was it not your duty to find how much land there was before you closed your bargain?

Objected to because the question demands of witness an answer as to a conclusion of law.

Objection sustained.

Q. When you were selling the land of another by the acre, why did you not have it surveyed before you

closed the bargain—do you not think it was your duty to have done so?

Objected to on two grounds,—first, because the legal title to the property appears to be in complainants; the question does not call for a statement of the nature of the trust, but implies that a certain peculiar trust existed which has not been proved. Second objection is because he is asking the witness as to his opinion on a legal conclusion.

Objection overruled as to the first clause of the question, and sustained as to the part which asks the witness's opinion as to what it was his duty to have done.

The first clause of the last question having been read over to the witness—

A We did have it surveyed before the deed was given; if I sell a farm or a piece of land by the acre I should have it surveyed after the bargain was made.

Q. In the aqueduct proceedings which took place in eighteen hundred and eighty, did you consult Mr. Jones, and did he attend the hearing before the commissioners with you and employ a lawyer to act in the matter?

A. I don't know anything about his employing a lawyer at all, excepting through Mr. Werts' affidavit; I had no thoughts of employing a lawyer; I think I asked him one day what he thought that land ought to be worth up there; I think he said we ought to have four or five hundred dollars an acre; him or his son said so.

Q. How long were the negotiations of the sale to Foster going on?

A. Probably a month, probably longer; I live six miles and a half from Morristown; I don't remember how often I was in Morristown during the progress of the negotiations; I can remember one time, it was a very rainy day; I was here probably twice, maybe three times; I did not at that time that I remember consult any one as to the price I should get; this sale was made through Theodore Ayers, a real estate agent;

I thought I was minding my own business, so I did not consult any one.

Q. Did Doctor Willet meet you here on that business?

A. The day we gave the deed to Mr. Foster he was here; I think the time Mr. Jones came in the office and said he would find a man who would give seven thousand dollars, that Dr. Willet was here and in Theodore Ayers's office.

Q. At the time you and Doctor Willet took up the four notes for six thousand dollars at the bank in August, 1879, and paid six thousand dollars to the bank, you got from the bank both the notes and the mortgage security which the bank held, did you not?

A. Doctor Willet, I think got them; I think they were handed to Doctor Willet.

Q. Did Doctor Willet take them for both you and him and has he the notes still so far as you know?

A. I think some of the notes are here; in Mr. Stephen Little's possession; the first day Doctor Willet took the mortgage and his notes; I mean his own notes that he was responsible for; at any rate, I suppose he did.

Q. And what became of the others?

Objected to because the notes are not described, and the question is indefinite.

Objection overruled.

A I think I left my part of the notes there at the bank as they were canceled, to keep them together for the present.

Q. Were they canceled at the bank on the day you and Doctor Willet paid six thousand dollars to the bank and had the mortgage assigned to you?

Objected to as calling for a legal conclusion, it appearing by the assignment of the mortgage that the bank had recovered a decree on it, which decree being founded on the notes secured by the mortgage the notes were canceled when the decree was obtained, they merged in the decree.

Objection overruled.

A. I suppose they was.

Q. Why do you suppose they were?

A. When we gave our own notes they paid those notes and I supposed it was the bank's duty to cancel them.

Q. Whether those notes were made by Mr. Jones or endorsed by him only?

A. There was one note for fifteen hundred dollars that was endorsed by me before this.

Q. Was Doctor Willet endorser on either of those notes that you then took up?

A. I think that he was endorser on one fifteen hundred dollar note.

Q. Were you here in the Master's office yesterday at the time Mr. George T. Werts gave in his testimony as a witness in this cause, and did you here what he said, and have you been in attendance here at this examination since it commenced yesterday morning?

A. I have; I mean I have been in attendance since this examination commenced, and I heard Mr. Werts testimony.

Re-direct Examination.

Q. How much land did the Aqueduct Company take in their condemnation proceedings for which they paid you and Willet one hundred and forty dollars?

A. I understood it to be ninety-nine hundredths of an acre; there was some large timber on that land, I think I counted fifteen trees; the company took them; some of the trees were quite large.

Q. You said that you thought you had sold the land to Foster for a good price supposing it contained about forty acres, but that if you had known it contained but twenty-eight acres you would have asked more dollars for it per acre; what do you mean by good price in that answer? did you mean the highest actual market value of the land, or a price sufficient to repay the money you and Willet had advanced to Jones?

Objected to as a leading question asked of complain-

ant's own witness and in its frame work suggesting an answer.

Objection sustained, as to the last clause of the question—overruled as to the first clause of the question.

A. I meant that we sold the land for all that it was worth if it was forty acres. We put the price on the forty acres or forty-three acres because it was the most valuable part, so that we could make as much money out of it as we could, so that if he took both sides, that is if he took both sides, at the price we offered it to him it would help us out of our trouble. But as there was only twenty-eight acres in that side and he took only that side of the road, it did not help us entirely out; by that means I had to mortgage my own property; by means of Mr. Jones representing the forty or forty-three acres; I would have tried to have pushed through without mortgaging my property.

(This answer objected to by Counsel for defendants Jones and wife, as irresponsive and irrelevant.)

Q. Did you sacrifice that property when you sold it?

Objected to by Mr Mills as calling for an opinion from the witness.

Objection sustained.

Q. What buildings were on the twenty-eight acres you sold to Foster, and in what condition were they?

A. There was an old barn, a house, I mean a dwelling house, the roof was off of the barn, blown off or all smashed in shortly after we bought the property, I don't know how long; the house, I never was in inside of it; from the looks outside it looked very shabby, very rickety; I considered them very poor, in a manner worthless. It appears to me there was a corn crib, an old patched up thing; there was no fencing much on it, very little, that is what you may call fence; I didn't consider the land at all in first class condition. The upper part of the lot was very rough, very stony, so stony that I don't see how anybody could plow it; the lower part was very wet, some bogs on it, unfit for cultivation. It needed ditching; there

was no timber on the twenty-eight acres, excepting along the fence; I don't know but what there were some evergreens about the house and perhaps here and there an apple tree. I don't know of any fruit on the place except the apple trees, excepting that there might have been a few cherry trees along the road.

At this point the hour for adjournment having arrived, the further examination of witnesses in this cause was adjourned to Monday next, December 22nd, instant, at ten o'clock in the forenoon.

GEO. W. FORSYTH,
Master, &c.

Monday morning, December 22, 1884, the respective parties met at my office pursuant to adjournment, and the examination of the witness William Childs was continued.

GEO. W. FORSYTH,
Master, &c.

Q. After Foster bought this property of you, what did he do with the buildings which were on it?

Objected to because it isn't pertinent to the issue and because if it is intended to fix Mr. Foster's valuation of the buildings, Mr. Foster should be produced. The valuation of the buildings cannot be fixed inferentially in that way.

Objection overruled.

A. He tore them down, I suppose.

Q. How long have you known this Jones farm?

A. I have known it this thirty or forty years; I should suppose it was in the neighborhood of two miles from the public square in Morristown; it might not be so much as that; it is located on the road leading from Morristown to Mendham; the greater part of the portion of the farm sold to Foster is visible from this road I have mentioned; this Jones farm has so far as I know, always been used for farming purposes; the land which surrounds this Jones farm is used for farming.

Q. Have you frequently passed by or been in full view of this tract sold to Foster during the thirty or forty years you say you have been acquainted with this Jones farm?

A. Quite often, sir; I have observed the crops on this part sold to Foster; I don't think I ever saw very heavy crops on it.

Q. From the character of the land and the quality of the crops you have seen on it, what would you consider the part sold to Foster worth per acre for farming purposes?

Objected to on the ground that it is immaterial in this case what the land was worth for farming purposes, and that it is not the correct way of getting at the value of the land, and that the witness has not disclosed sufficient acquaintance with the land and the crops produced to entitle him to give an opinion as to its value for farming purposes.

Objection overruled.

A. I wouldn't give more than fifty dollars per acre for it for farming purposes.

Q. At the time of the sale to Foster or prior thereto had there been any new dwellings erected near this Jones farm, to your knowledge?

A. I don't know of any; I don't remember of seeing any as I passed the road that called my attention; I do not know of any demand for building sites in that direction.

Q. On the road from Morristown to Mendham was there any increase in the number of dwellings of the better class?

A. I must say I don't know how to answer that question, for I don't know what time you meant; you don't say.

Q. I mean at or prior to your sale to Foster?

A. There has been an increase of buildings for the last forty years on the road from Mendham to Morristown.

Q. Name, if you can, on the road from Morristown to Mendham, or anywhere within a radius of a mile

from this place, I mean the Jones place, any dwelling of the better class that has been erected within the past ten years, or twenty years?

A. I don't know of any to my knowledge; I always thought the growth of Morristown had been in a different direction, towards Madison.

Q. From the location of this twenty-eight acres with reference to Foster's place, did you suppose that any one would be likely to pay more for it than he would?

Objected to because it is based on the ground entirely of supposition, and requiring an answer that is mere matter of inference to be used as argument.

Objection sustained.

Q. Were any of the notes secured by the six thousand dollar mortgage, which was held by the Iron Bank and assigned to you, made or endorsed by Jones for your benefit?

A. There was not.

Q. You spoke on Saturday of counting fifteen trees on this acre taken by the Aqueduct Company; what kinds of trees were those?

A. They were white oak; those were not all the trees that were on that acre; there was other timber on that acre of land besides these white oaks; I didn't count any of those, I only counted the white oaks and don't know that I counted all the white oaks.

Recross examination by Mr. Werts, the Solicitor of the defendants, Jones and wife.

I moved to where I now live near Bernardsville in eighteen hundred and forty-two, if remember right; I couldn't tell you how often since eighteen hundred and forty-two I have passed this Jones farm, but quite often going to Morristown and going to Chester; sometimes once or twice a week carting produce from the Chester farm at certain seasons of the year; I would cart from the Chester farm mostly in the winter; oftentimes I would come up from the farm near the Ridge to Morristown and do business here and then go up to

the Chester farm in the summer time; I do not own the Chester farm now; I deeded it to my son sometime about eighteen hundred and seventy-eight; I think he had lived on it a year or two before eighteen hundred and seventy-eight; I couldn't tell you how often I have passed the Jones farm the last ten years; I think it would average once a year and oftener; I should think it would average twice a year that I have been past the Jones farm along the road; I can't tell you whether or not it would average more than twice a year during that time; to the best of my recollection it will.

Q. Did you say on your direct examination that you had never stepped foot on this land sold to Foster?

A. I have no remembrance of ever having been on it before the morning we went to survey it, probably you may call it that land; I have tied my horse to the post on that side of the road when going over to the aqueduct.

Q. When you made your survey were you on this land you sold to Foster?

A. Yes, sir; I was on the north side where the buildings stood; since the sale I have been on it several times; the survey was made after the sale to Foster; we sold by the acre.

Q. Then when you sold to Foster such knowledge as you had of this land was derived from such examination as you could make from passing along the road?

A. Yes, sir.

Q. You don't pretend to be acquainted with the value of land in the neighborhood of Morristown, do you?

A. Just in the vicinity of Morristown, within a half a mile, I am not, but land near the Jones farm I have understood to have been sold for a great deal less than we sold this for; I understood the Guerin farm was sold for less; the Mahlon Guerin farm; I don't know whether it was sold at Sheriff's sale or at private sale; neither do I remember the price; I think it was sold after Mahlon Guerin's death.

Q. Do you know where Mr. Kountze has built beyond the Jones place, on the Mendham road?

A. I have seen the building, near the old school house.

Q. Was he purchasing and building or preparing to build at the time you sold to Foster?

A. I don't remember; it runs in my mind that it was a year after that I heard that he was a building.

Q. Don't you recollect that before he began building and before you sold to Foster, that Mr. Kountze was buying land on the Mendham road beyond the Jones place, and paying for it per acre largely in excess of what you sold to Foster for?

A. I don't know what he paid, and when I heard of it, it was since we sold to Mr. Foster.

Q. Did not the location of the Jones land with reference to Mr. Foster's land, make it very desirable that Mr. Foster should own it?

A. I suppose Mr. Foster bought it because he wanted it; I don't know what other idea he had for the land.

Q. Question repeated?

A. If he wanted to increase his acres, it laying right beside him, it would be natural to suppose he would want to buy it.

Q. Do you think he would want it for no other purpose than to increase the number of his acres alone?

A. I don't know what he bought it for, any more than what he stated; I suppose he bought it for farming purposes, at any rate I understood it so.

Q. Didn't the tract you sold Foster lie in front of his house and between it and the public road?

A. It did.

Witness being again examined by Counsel for complainants, says:

We employed Theodore Ayers as our agent to effect the sale of the Jones farm; I should judge he lived in Morristown twenty-five or thirty years, probably long-

er; I should judge he is a man in the neighborhood on sixty years of age; he has been engaged in the real estate business eight or ten years to my knowledge.

Q. Did he advise you to make this sale to Foster?

Odjected to as a conversation between witness and a party out of court.

Objection sustained.

Q. Did Mr. Ayers advise with you about the sale of this property?

Objected to for the same reason above.

Objection sustained.

WILLIAM CHILDS.

Sworn to before me December 19th, A. D., 1884, and subscribed before me December 22nd, A. D., 1884.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

By consent of parties the further examination of witnesses in this cause was here adjourned to Tuesday, December 30th, at ten o'clock in the forenoon, before me at my office in Morristown.

GEO. W. FORSYTH,
Master in Chancery, &c.

Tuesday, December 30th, 1884, the Counsel of the respective parties appeared before me pursuant to adjournment, and the examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c.

ELIPHALET C. WILLET, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I live in German Valley, Morris County, New Jersey; I am sixty-six years of age; I am a physician by

occupation ; I have a farm also that I see to ; I have been practicing forty-three years last March ; I live in a farming neighborhood ; I am related to Mrs. Jones ; she is a sister of mine ; Jones made application to me and Childs for pecuniary assistance in eighteen hundred and seventy-nine.

Q. Just state your recollection of that application slowly, so that the Master can take it down?

A. Well, he stated that he wanted me to help him financially, that Dan. Craig was going to foreclose a mortgage of six thousand dollars, and he said Mr. Childs would go in with me, and we took up the mortgage of six thousand dollars, and after that there was a mortgage of three thousand dollars of Cooper's, of Nathan A. Cooper's—I think that was ; they foreclosed that mortgage of three thousand and sold the farm ; and I think this was the eleventh of August, eighteen hundred and seventy-nine ; we had it adjourned one week by paying the interest and costs, which amounted to seven hundred and seventy-two dollars and twenty-six cents, I think ; it was sold the eighteenth of August for three thousand and eight dollars and twenty cents ; that is about all.

Q. What arrangement was made between you and Childs and Jones as to the security to be given by Jones for these pecuniary advances?

A. He was to assign a judgment against Hedden for about six thousand dollars I think, I don't recollect the exact amount, and was to give us a claim on some property at Lebanon, in Hunterdon County ; I think it was a small farm, that is about all ; the Hedden judgment was to be assigned to me and Childs, and the farm the same.

Q. Did you ever hear anything about the destruction of the assignment of the Hedden judgment?

A I heard it was assigned and the name torn off ; that destruction of the assignment was not according to the agreement ; I have no recollection of the Hedden judgment having been assigned to me alone ; I have no recollection of an agreement to reassign the Hedden judg-

ment to Mrs. Jones; I asked Mr. Jones about it, he said it was so; I told him I had no recollection of it, and wanted to see the papers; he said he couldn't find them; two different times I asked him; that is all; we, Mr. Childs and me, paid off the notes secured by the six thousand dollar mortgage held by Dan. Craig.

Q. Whose duty was it to pay those notes first—who was primarily liable?

A. When the notes were given I understood that Mr. Jones was to pay them.

Q. I mean the fifteen hundred dollar notes that were secured by the six thousand dollar mortgage that was held by the Iron Bank, or by Craig as Cashier?

A. Well, they was our notes, of course; we had to pay them and done so.

Q. Was you or Jones primarily liable, on the note endorsed by you?

A. Well, I don't understand how you mean; we just went to work and gave our notes for three thousand dollars apiece; Jones's name was not on them at all.

Q. Did you endorse the fifteen hundred dollar note described in the answer of the defendants, Jones', merely as an accommodation to him, or were you indebted to him in that amount?

A. Just as an accommodation.

Q. What was the agreement or understanding between you and Childs and Jones as to the farm—the Jones farm?

A. Well, we bought the farm at Sheriff's sale and we was to have this mortgage, these things to secure us; we didn't think the farm was worth the amount we had to pay, and I don't know that there was any particular agreement about it; we wanted to make our money out of the farm.

Q. What was the understanding with Jones in regard to the sale of the farm by you and Childs?

A. Well, I don't know that there was any particular understanding about it, no contract made; he could

have the farm if he paid us the money we paid for it.

Q. What was the agreement about Jones's consent to a sale?

A. I don't know that there was any agreement about that at all.

Q. What representation did Jones make about the number of acres on the north side of the road?

A. He represented forty-three acres; there were twenty-eight acres there; the improvements on this Jones farm were an old barn and a house—an old house; the condition of the land as to cultivation was miserably poor; in quality it was a gravelly soil, very much run down; most of it was high, the majority of it, and very stony; the low ground was wet; the fences were in rather a dilapidated condition; I can't tell how long I have known the property, it is over forty years; I can't tell you how often I have passed by it in the forty years, probably two hundred times; I have passed by it more frequently of late years than I have formerly; I have observed the crops on it; once in a while they would have an average crop, but I never saw a good crop on it; there is timber on it; there is none on the north side; there is some little fruit on the north side, not much; there are some few trees; I don't know how many fruit trees there are on the north side; there are some apple and cherry trees, and a few old pear trees, I believe; there is no regular orchard, the trees are scattering; the land which surrounds this Jones farm, what is used, is used for farming, it is farm land.

Q. What was this tract sold to Foster worth per acre, for farming purposes?

A. Not over fifty dollars.

Q. Did you at one time contemplate cutting it up into small lots?

A. Yes, sir; I was going to cut it up in lots of one hundred by one hundred and fifty feet; one hundred feet front by one hundred and fifty feet deep; I understood Foster was informed of that; I didn't know whether or not I would have a ready market for those

building lots ; I thought I would put them up at auction and try it ; I know of a little settlement this side of Foster's place called "Guinea" ; the people who live there are principally colored ; the houses at Guinea are small houses, some of them cabins ; they are improving to what they were ; they are not so bad as they used to be ; the Guinea neighborhood is about half a mile from Foster's place, scant half a mile.

Q. What is the situation of the twenty-eight acres sold to Foster with reference to Foster's place and the road ?

A. It lays between Foster's place and the road—gives him access to the road the whole length of the farm with the twenty-eight acres.

Q. Did you know of any use, or sale of the twenty-eight acres, more advantageous than the sale to Foster ?

A. No, sir.

Q. Do you know whether this Jones farm had been offered for sale by Jones before it was purchased by you and Childs ?

A. I don't know that it was.

Exhibit No. 8 being shown witness, he says :

No part of the judgment which Jones confessed to me has been paid to me and Childs ; no interest on it has been paid ; the purchase money which we paid for the farm at sheriff's sale was three thousand and eight dollars and twenty cents, I think ; the taxes for the years 1880, 1882, 1883 and 1884 have never been repaid to me by Jones ; I think the amount paid for surveying this property sold to Foster was ten dollars.

Q. On April tenth, 1880, did you receive from Dellicker and Cooper any money on account of error in the decree, and if so how much ?

A. We paid them three thousand dollars and they paid us back sixty-six dollars and sixty-five cents ; they made an error.

Witness being cross-examined by Mr. Mills of counsel with the defendants, Jones and wife, further says :

Q. Did you meet Mr. Childs and Mr Jones here on the eleventh of August 1879, and make arrangements with them here as to what amount of money was to be advanced to Jones, and how secured?

A. Yes, sir; I had quite a good deal of talk with them at that time; I don't recollect whether or not I and Mr. Childs and Mr. Jones were in Mr. Werts' office that day; I rather think Werts drew the papers that were signed that day, but I won't be positive; his office at that time was, I think, in the upper part of the old bank building.

Q. Mr. Werts was acting for you and Childs and Jones in the matter, was he not?

A. I think he was acting for Jones.

Q. That is because it was Jones's business you were acting on that day?

A. Yes, sir; it was the day they were to sell under the Cooper mortgage, the eleventh of August; we were engaged in this business that day pretty nearly all day, that is attending the sale and all; we paid the costs and interest that day, and it was adjourned until the eighteenth and then the sale took place.

Q. Did you take up the six thousand dollars of notes from the Iron Bank and take an assignment of the mortgage which the Bank or its Cashier held?

A. Yes sir; I was endorser on two of those notes; there were four notes of fifteen hundred dollars each; I was on two and Mr. Childs two, so we were endorsers for two notes apiece.

Q. If you took an assignment of the Hedden judgment that day for any particular purpose, you used it for that purpose, didn't you?

A, We would.

Q. Have you any recollection now, of what purpose you did use it for?

A. We never had it to use.

Q. How came you to ask Mr. Jones if you had agreed to re-assign it to Mrs. Jones?

A. Why he had told that I had done it, that was the reason I asked him.

Q. You say that you have no recollection of that?

A. No, sir.

Q. If you had taken it for the purpose of assigning it to Mrs. Jones and had assigned it to her, you would not claim the judgment for yourself and Childs now, would you?

A. No, sir.

Q. Can't you recollect any of the papers that were drawn on the eleventh of August 1879, when you were here?

A. No, I don't; I know there were some papers drawn; in Mr. Werts' office in the third story of the old bank building, I think it was.

Paper dated November 17th, 1879, purporting to be from Eliphalet C. Willet to Maria L. Jones, wife of Samuel Jones, being shown witness, he is asked:

Q. Is that signature opposite the seal in your handwriting?

A. Yes.

Counsel for defendants, Samuel Jones and wife, offered the said paper in evidence, and I have marked the same Exhibit A, on the part of said defendants.

Q. Do you know the handwriting of the body of the instrument?

A. No, I don't.

Q. Were you here in Morristown on the eighteenth of August 1879, at the time the sale was made of the farm by the sheriff?

A. Yes; I do not recollect whether I was in Mr. Werts' office on that day or not.

Q. Do you recollect whether you made an affidavit, in the matter of a judgment against Samuel Jones, on that day?

A. No, I don't; there was one made, but I can't tell when it was; I think I did not consult Jones before we made the sale to Foster; he had nothing to do with the property was the reason why I didn't consult him.

Q. Didn't Jones attend at the time the lands were taken by the Aqueduct Company and Commissioners valued it; wasn't you and Mr. Childs both taken to the land by Mr. Jones?

A. He was there; I don't know as he took us there; I don't recollect about that; he was there.

Q. Didn't he take you there in a carriage?

A. I don't know; I don't recollect; I know he was there, but I don't know whether it was he took us or whether it was Mr. Childs' carriage; Jones employed a lawyer to attend to the matter before the Commissioners; I didn't employ any lawyer.

Q. Why did Jones employ one if he didn't have anything to do with it?

A I don't know unless he was mad at Pitney.

Q. And is that the only reason why Jones employed a lawyer?

Objected to because it is impossible for the witness to tell why Jones employed a lawyer; it calls for an opinion not for a fact.

Objection overruled.

A. I don't know of any other.

Q. Didn't he have any interest in that farm at that time?

A. I don't know that he had; I should think not.

Q. And it made no difference to Jones what the farm sold for, did it?

A. I don't know that it did.

Q When did Jones tell you there were forty-three acres on the north side of the road?

A. I don't know; well, let me see; it was before we sold to Foster he told us that; we went and asked him; it was the same spring we sold to Foster; I don't know exactly how long it was before we sold to Foster, I don't recollect; I don't recollect whether Mr. Childs was with me when I asked Jones or not; I am rather inclined to think he was; I think he was.

Q. Why did you go and ask Jones?

A. We wanted to know how much land there was there.

Q. That was the only reason, was it?

A. Well, we wanted to make a calculation to get out.

Q. All you cared for was to get out?

A. We wanted to get our money back if we could; that is natural for any one.

Q. You had seen this a great many times, why couldn't you judge of it as well as Jones?

A. I supposed he had had the land run out and knew all about it.

Q. Did you meet Mr. Jones and Mr. Childs at Ayers' office before the sale to Foster, and did Jones there object to the sale?

A. He did; he objected that it wasn't enough.

Q. Did he say more could be got for the property?

A. I think he came in there and said more could be got; but I don't recollect the amount; by two o'clock that he would bring a man there; we told him we would give him till five, but he brought no man; we waited there till five o'clock that day; we were in Ayers' office two or three hours and left him to receive it if the man come, you know.

Q. Was that day the first that you told Jones what you proposed to sell to Foster for?

A. I don't recollect whether it was or not; I think not; I think he knowed before.

Q. Did Jones produce a map there of the farm?

A. There was a map there; he took it away, I think.

Q. Who produced the map as you understood it, and how long was it at Ayers' office?

A. Ayers had it in his office there; I saw it there before I made the sale to Foster; I don't know who made the map or who the surveyor was; I don't know anything about that; I don't know how often I was in Ayers' office during the progress of the sale to Foster; three or four times, I presume.

Q. You knew that Foster had paid two hundred and fifty dollars an acre for the Revere place, just adjoining this, did you not?

A. No, sir; I didn't know what he paid for it.

Q. When you found that he wanted to buy this Jones land, did you make no inquiry as to what he had paid for the farm he was living on?

A. I don't think I did.

Q. Are you sure that at the time of your sale to Foster that you did not know that Foster had paid two hundred and fifty dollars an acre for the Revere farm on which he lived?

A. I knowed that he had paid a big price, but the buildings were worth more than he paid for the land; cost more; I understood the buildings cost twenty thousand dollars; I don't know what the dwelling house cost; I don't know that it was contracted to be built for six thousand dollars; I don't know whether it cost more than six thousand dollars; J. F. Voorhees told me at the time it was building that it was going to cost twenty thousand dollars, that is what he told me; that is my author; that is the buildings, you understand; I don't know how many acres there were in the Revere farm that Foster bought, nor what he paid for the whole.

Q. His front on the road was very narrow before he made this purchase of you and Childs, was it not?

A. I don't know anything about it; I understood he only had a point that struck the road; I don't know the Gribben tract of about eleven acres adjoining this land I sold to Foster.

Q. Do you know there is a tract of about eleven acres adjoining this point where Foster came out as you have stated, and the road that runs across to the Sussex Turnpike?

A. Why don't you ask me about land lying in the west, that I don't know anything about? I don't know anything about that land at all.

Q. Didn't you hear at or about the time of your sale to Foster that he paid three hundred dollars an acre for several acres of land adjoining that which you sold to Foster?

Objected to. First, because the Gribben sale was

subsequent to the sale made by complainants to Foster. Second, because in point of fact the Gribben tract was sold for about two hundred dollars per acre. The whole question is misleading and objectionable on that ground and irrelevant.

Objection overruled.

A. I don't know anything of the kind.

Q. Were you not told by Jones at the time you made the sale to Foster that you could get two hundred and fifty dollars an acre for it?

A. I have been told by Jones that the land was worth two hundred and fifty dollars an acre, and when the Commissioners took it for the Aqueduct Company they gave one hundred and forty dollars an acre for it and there was good timber on it too; I have been told by Jones a good many things, else I would not have been in this scrape.

Q. You were also told by Jones that Revere had offered him three hundred dollars an acre for the land you sold to Foster, were you not?

A. I don't know whether he did or not; I can't recollect that; I should have thought if he had been offered that price he would have sold it; the land the Aqueduct Company got was on the other side of the road from that we sold to Foster.

Q. Which had the greater market value, the land on the side where Foster bought or the land on the other side of the road?

A. I shouldn't think there was much difference; you were speaking of three hundred dollars an acre; there are farms in my neighborhood that from 1865 to 1868 they asked ten thousand dollars for, that could be bought for half that now; lands were up in the time of the war.

Q. What is the relative value of the land you sold to Foster and land on the same side of the road adjoining the Revere farm and nearer to Morristown?

A. I don't know anything about that, but that land we sold Foster wasn't worth a dollar over fifty dollars an acre for farming purposes.

Q. Which was worth the most, the land you sold or the land in the immediate neighborhood that has just been referred to?

A. I don't know anything about the land in the immediate neighborhood.

Re-direct Examination by Mr. Little, Counsel of complainants.

Q. Have you any recollection at all of that assignment (Defendants' Exhibit A)?

A. No, I haven't.

Q. Just see what name has been erased there?

A. It is my name, except the "a" is left out in Eliphalet.

Q. Have you any recollection of having made that erasure?

A. No, sir; I have no recollection about that, no how.

Q. Did you write the name that has been erased?

A. It looks like it; it is so scratched I can't see it good; I think I have done the whole of it.

Q Do you recollect of any reason leading you to execute that paper?

A. No, sir; I can't call it to mind; it is strange.

Q. Have you any recollection of ever having seen the assignment, dated the twelfth day of August, of the Hedden judgment, to you alone?

A. No, sir.

Q. Have you any recollection of any arrangement with Jones or his wife, by which the Hedden judgment should be assigned to you, and you should assign it over to Maria L. Jones?

A. No, sir.

Q. How can you account for this assignment?

A. I can't account for it.

Q. Do you think that assignment was for or against your interest and the interest of Mr. Childs?

A. Well, it was against my interest as much as it was against Mr. Childs's.

Q. How was the money raised to pay the debt of Jones to the Iron Bank and to pay the purchase money for the farm?

A. It was raised by giving notes to the bank; Mr. Childs and myself gave the notes; Jones agreed to pay the discount on those notes, but didn't do it; we had to do it.

Witness being shown a paper writing is asked:

Q. Is that one of the notes that was secured by the mortgage held by the Iron Bank?

A. No, this was before that; this is in seventy-eight.

Counsel for Complainants offered in evidence three promissory notes, each signed by Samuel Jones, each endorsed by the witness, Eliphalet C. Willet, and each for the payment of fifteen hundred dollars: one bearing date October 8th, 1878, payable three months after date; one bearing date January 11th, 1879, payable four months after date; and one dated May 13th, 1879, payable four months after date,—which I have marked respectively Exhibits Nos. 18, 19 and 20 on the part of complainants.

ELIPHALET C. WILLET.

Sworn and subscribed before me
December 30th, A. D., 1884.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

The allegations of paragraph six of the bill are admitted by the Counsel of defendants, Jones and wife.

Counsel for defendants also stipulate that the Counsel for complainants may offer in evidence, subject to all legal objections, a map of the portion of the Jones farm sold to Foster, of the Revere farm, and of the Gribben tract, the same as if he had not rested his case.

GEO. W. FORSYTH,
Master, &c.

Counsel for complainants here announced that he rested his case.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Compl'ts,
and
SAMUEL JONES, ET. AL.S.,
Deft's.

10

Examination of witnesses, &c., on behalf of the defendants, Samuel Jones and Maria L. Jones his wife, taken in the above stated cause, before the undersigned, one of the Masters and Examiners of the Court of Chancery of New Jersey, at my office in Morristown, on Friday, the ninth day of January, in the year of our Lord one thousand eight hundred and eighty-five, in the presence of George T. Werts, Esquire, Solicitor of, and Alfred Mills, Esquire, of Counsel for the defendants, Samuel Jones and wife, and of Stephen H. Little Esquire, Solicitor and of Counsel for the complainants, said examination being taken pursuant to arrangement between the respective Counsel.

GEO. W. FORSYTH,
Master, &c., in Chancery.

GEORGE T. WERTS, a witness produced on the part of the defendants, Samuel Jones and Maria L. his wife, being duly sworn, on his oath saith:

Exhibit A on the part of the defendants being shown witness, he is asked:

Q. In whose handwriting is that paper, and when was it drawn?

A. It is in my handwriting, excepting the signature; I am uncertain when it was drawn, but think it was drawn on or about the twelfth of August, eighteen hundred and seventy-nine; I have read the paper since I have been sitting here.

Q. It refers to an assignment dated the twelfth of August, 1879, from Samuel Jones to Eliphalet C. Willet? Who drew the last named paper?

A. I think I did; the last named assignment was in my handwriting to the best of my recollection; I can't say when I last saw the last mentioned assignment, but I think inside of a year, at or about the time the last supplemental proceedings were pending against Mr. Jones on the judgment recovered against him by Ross & Breese. At that time I think Mrs. Jones came in my office and had with her in an envelope among other papers the assignment referred to, dated August twelfth, eighteen hundred and seventy-nine, and also this paper, Exhibit A, on the part of the defendants.

Q. Did you examine the papers at that time?

A. I think I examined them sufficiently to discover that the two papers taken together were intended to assign the Hedden judgment to Mrs. Jones; I do not know where the assignment of August twelfth, eighteen hundred and seventy-nine, now is; I have looked for it—made thorough search for it wherever there was any possibility of finding it; I did not find it; I could not find it; I should think the assignment of August twelfth, eighteen hundred and seventy-nine, was drawn on or about that day.

Witness being cross-examined by Counsel for complainants, further saith:

I have no recollection that the assignment from Jones to Willet was executed in my presence; I do

not recollect who was the witness to that assignment; I don't know that there was any; I don't think that assignment was on a printed form; I think it was written in full on a sheet of legal cap; when I saw it I think Jones had signed it; I think I have no doubt on that point; I recollect of seeing that assignment after it was executed by Jones, during the last supplemental proceedings against Mr. Jones on the Ross & Breese judgment; by reference to the papers I can tell just how long those proceedings were pending; I think Mr. Forsyth took the testimony in that case; I don't recollect that I had seen those assignments from the time I had drawn them until then; I was, I think, I know I was the Attorney for Mr. Jones on the prior examination in supplemental proceedings; I don't recollect whether his ownership of the Hedden judgment was raised in the first supplemental proceedings or not; you can tell that by reading the testimony. At the time the assignment to Willet was shown me I think the assignment from Willet was along with it; I don't think the assignment marked Exhibit A was executed in my presence; when I first saw it, it had both those signatures on it; I remember that; I think the upper one was erased when I first saw it; Mrs. Jones presented it to me; I don't know whether I then inquired why this paper had been signed twice; I did subsequently make such inquiry of Mr. Jones; I think Mrs. Jones was alone when she first showed the paper to me; it was shown me in my office; I think it was in the forenoon of the day on which an examination was to take place in the supplemental proceedings.

Q. Did she produce those papers there by arrangement with you or at your instance?

A. I think Jones told me that Mrs. Jones held the Hedden judgment by assignment, and then I told him, that in case any effort was made, in the supplemental proceedings, to get control of the Hedden judgment, by the plaintiff in execution, to send Mrs. Jones to me with the assignments; I can't say why this paper, Ex-

hibit A, was dated November seventeenth, except as I gather from what I suppose were the facts of the case at the time.

Q. Why didn't you offer those assignments in evidence in those supplemental proceedings?

A. The first supplemental proceedings, I think, took such shape that if they, these two assignments, were in existence then, that I don't think their production was called for or required; those proceedings, were substantially abandoned by the plaintiff; no application for the appointment of a receiver, on the testimony, was ever made by the plaintiff; and in the second supplemental proceedings according to my present recollection, the whole inquiry was directed to the getting posssession of a debt due Jones, from the estate of B. F. Sherwood, deceased.

Q. Have you a positive recollection that that assignment, Exhibit A, was not drawn either on or subsequent to its date?

A. Well, I have already stated that I don't recollect the actual work of drawing it, but I am positive that I did not antedate either one of them; further I would say I think Exhibit A was actually drafted on or about the twelfth of August, eighteen hundred and seventy-nine, leaving blanks in the first two lines to insert the dates when it should subsequently be executed, and that subsequently I filled in those blanks myself with the words "seventeenth" and "November"; I can't say why I inserted the words "seventeenth" and "November" except that I think the assignment of August twelfth, eighteen hundred and seventy-nine, by Jones to Willet, was executed on that day, and that Willet was not at hand to execute Exhibit A at the same time; and I think that Exhibit A must have remained in my possession probably until November seventeenth, and then learning that Willet was at hand to execute it, I inserted the words "seventeenth" and "November," and that after I had so inserted those dates, it was signed by Willet somewhere, not in my

presence; that may make the execution of it afterwards; I don't know anything about that.

Q. Have you a positive recollection that the assignment from Jones to Willet was executed on or before the twelfth day of August, eighteen hundred and seventy-nine?

A. I have no recollection of its execution at all.

Q. Are you positive that it was an executed document on or before the twelfth of August, eighteen hundred and seventy-nine?

A. No.

GEORGE T. WERTS.

Sworn and subscribed before me,
January 9th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

SAMUEL JONES, a witness produced on the part of the said defendants, being duly sworn, on his oath saith:

I am one of the defendants in this suit, and live at Morristown, New Jersey, where I have resided since eighteen hundred and fifty, or about that time.

Q. Did you confer with Mr. Childs and Doctor Willet, in August, eighteen hundred and seventy-nine, in regard to liabilities made by you, on which they were surety, and in regard to your property, and if so, state what was said, and what was done?

A. Well, Childs was on a note of fifteen hundred dollars, and Willet was on a note of fifteen hundred dollars, as endorsers for me; I was endorser on Billy McCarty's note for fifteen hundred dollars, and the bank held my note for fifteen hundred dollars, and the bank held a mortgage on my farm up here, for six thousand dollars; General Cooper held a first mortgage on the farm for three thousand; Cooper foreclosed on his mortgage, and these notes of Willet's and Childs's and the rest I have named were put in

under that foreclosure; about the time it was to be sold, or somewhere near that time, Mr. Childs and Willet were here, and I don't know whether Childs was present or not, but Doctor Willet said the best thing we could do was to bid the property up; that was in the bank, in the corner where Craig has his desk; I don't know whether Childs was present there or not, and I told him that the best thing they could do was to bid the farm off under the Cooper mortgage, and hold it until we could sell it, at a fair price, and not to sell it without my consent; I told him that I had a friend that offered to do that for me, and they said they would do the same thing, providing the bank would take their notes for what was due the bank; I went and seen Mr. Craig and he said he would do it; I also stated to them that the farm was worth a great deal more money than they became liable for.

Q. Was anything said about assigning to them, as security, the Hedden judgment, and was an assignment drawn for that purpose?

A. There was some talk about the Hedden judgment, and I stated to them that I had promised to assign the Hedden judgment to Mrs. Jones, when she signed the mortgage to the bank; that if Mrs. Jones would consent to it, although I had promised to assign it to her, they could have that judgment by her consent, by paying off the six thousand dollars to the bank, and pay the balance of it over to her; then they hold a lien on the farm for the amount of Cooper's claim, and whenever it was sold the proceeds of the farm, over and above that claim, were to go to Mrs. Jones; that proposal was not accepted.

Q. Do you know whether an assignment of the Hedden judgment was drawn to Willet and Childs?

A. I think there was an assignment drawn; it was never delivered to them; they wouldn't accept it under that arrangement.

Q. Was the Hedden judgment at that time assigned to anybody, and if so to whom?

A. It was assigned to Doctor Willet; Mr Werts

drew the assignment; it was executed the same day he drew it.

Exhibit A being shown witness.

Q. Was it or not executed prior to the execution of this assignment?

A. Yes, sir.

Q. When and where was the assignment, Exhibit A, executed?

A. In Mr. Werts' office; I think it was the same day, November the seventeenth, or about that time; Mr. Werts drew the paper that I assigned to Willet, and was to draw this afterwards; Willet couldn't stay, he had to go home; he did draw it, and Willet was to sign it when he came down, which he did; the paper was up in Mr. Werts' office in a drawer and he said whenever Willet was in town to bring him in there and let him sign it; I don't think Mr. Werts was at home; I don't remember who was in the office at the time it was signed; Doctor Willet and me went up there together; after the paper was signed, I took it and gave it to Mrs. Jones; the assignment from me to Willet was also given to her; I gave my assignment to Doctor Willet and Willet's assignment to Mrs. Jones, to Mrs. Jones the same day Doctor Willet signed his assignment to Mrs. Jones; I requested Mrs. Jones to deliver the assignments to Mr. Werts at the time of the last supplementary proceedings; he sent word to her by me to bring them up; I saw both the assignments at that time; I do not know where the assignment from me to Willet now is; that assignment was in Mr. Werts' handwriting; I last saw it when Mrs. Jones handed them to Mr. Werts; I have requested that a search be made for it.

Q. On the day that the notes for six thousand dollars, at the bank, were taken up by Willet and Childs, how long were they here, and at what place or places did you confer with them?

A. I conferred with them at Mr. Werts' office, and in the bank; they were here all day pretty much; I

think I was in Mr. Werts' office with them a couple of hours; there was considerable talking done.

Q. Did you agree to let them have the farm, and if so upon what terms?

A. They was to hold it as collateral security; they was to pay the Cooper claim of three thousand dollars, and the bank six thousand.

Q. What agreement, if any, was made by them as to how they should sell the farm?

A. They was to hold it and not to sell it, or any part of it, without my consent; I confessed a judgment to them at the same time.

Q. In the agreement that was then actually made, was the Hedden judgment assigned to them in whole or in part, or did they have any interest in it?

A. None whatever; in the year eighteen hundred and eighty, proceedings were taken by the Aqueduct Company to condemn land for a reservoir; they took on the left hand side of the road as you go up to Mendham some land adjoining Mr. Tuttle, up to the edge of the woods; they took about an acre I suppose; I employed an Attorney to attend for me at those proceedings; I employed Mr. Werts; I attended at the meeting of the Commissioners and at the time of their appointment with my Attorney; Doctor Willet and Mr. Childs were there; I got a team from Mr. Dan. McKee to take Mr. Werts, Mr. Childs, Mr. Willet and myself up to the ground the day the Commissioners examined it, and paid McKee for it; they attended before the Judge, in Newark, at the time of the appointment of the Commissioners; they went down with me and Mr. Werts.

Q. What was the value of that portion of the land which lay on the north side of the road, in the spring of 1881, in your judgment?

A. I think it was worth ten thousand dollars.

Q. Just give the basis for your judgment—what you ground it on, your reasons for it?

A. It laid close to Morristown, and it all fronted along the road, and was a good quality of land, in a

nice location for building purposes, and good water on it; it was a little outside of the corporate limits; I had received offers for that land prior to that time; I was offered three hundred dollars an acre for it and refused it; I was offered that by Mr. Revere, General Revere, I think it was along in seventy-six or seventy-seven; I had several talks with him, and at the time that they sold it, or about the time, there was a man came to me and asked me if I was willing the land on the right hand side of the road should be sold for seven thousand and five hundred dollars, and I told him no, it wasn't enough. At the time the farm was purchased by Willet and Childs I talked with them in regard to the value of the farm; I told them the land on the right hand side of the road was worth more money than they were liable for; the land on the right hand side of the road is worth more than the land on the left hand side of it; by the land on the right hand side of the road I mean the land laying on the north side of the road; I did not consent to the sale of the land on the north side of the road made by Willet and Childs to Foster in the spring of eighteen hundred and eighty-one; I objected to it; the reason I objected was because it was no price for it; I made my objections to Mr. Willet and Childs, in Mr. Ayers's office, when they were about making an agreement, and I went in there and made my objections; I heard it in the street somewheres that they were about making an agreement; I don't recollect now from whom I heard it; my impression is I heard it from Sheriff Freeman, that he told me he had heard so; Sheriff Pierson A. Freeman went with me into Ayers' office when I went in to see Willet and Childs.

Q. Tell what took place there—what passed there?

A. I objected to their selling it for any such price as I understood they were getting; I didn't think they had any right to give it away, or sell it for any such price; then some of them, or one of them, or Mr. Ayers, asked me how many acres there were on the right hand side of the road; I told them I could soon

find out, and I went to Mr. Hughes' office and got the map, and he figured up the number of acres on the right hand side of the road, and my recollection is he made it a little less than twenty-nine; I brought the map up and left it with Mr. Ayers; prior to that conversation neither Mr. Childs nor Doctor Willet had consulted with me about that sale to Foster; I think I told them previous to that that Mr. Foster had been trying to buy the land of me before they had anything to do with it, through Mr. Betts; I told them that about Mr. Foster a long time before this conversation in Mr. Ayers' office.

Witness being cross-examined by Counsel of complainants, further saith:

I think George Hedden was the endorser on my fifteen hundred dollar note held by the Iron Bank; McCarty got the benefit of the discount of the McCarty note; I do not think I got any portion of it; I don't know that there was anybody present when I first proposed an arrangement with Willet and Childs; Mr. Craig might have been, but I don't know as he was; I couldn't tell you whether the farm was sold the day the arrangement was proposed; I could tell you if I was to the house; I told Doctor Willet of my promise to assign the Hedden judgment to Mrs. Jones; I told him that on the day it was talked about; it was before the eleventh day of August, eighteen hundred and seventy-nine; I think I told Mr. Childs of that promise to assign the Hedden judgment to Mrs. Jones; I know I told Doctor Willet, but do not know whether Mr. Childs was present or not, but I think he was; I think that statement was made at Mr. Werts' office; it might have been made in the Bank, but I think it was in Mr. Werts' office; I couldn't tell you how long it was before the eleventh of August; the arrangement I proposed to which Mrs. Jones' assent was necessary was made to Dr. Willet; Mr. Childs was by part of the time, too; I don't remember just the date; this

talk was before the eleventh of August; I don't think Childs said anything about that proposition to which Mrs. Jones' assent was necessary; Doctor Willet was willing to take it; Doctor Willet and Childs and myself went into the bank to see Dan. Craig, and one of them, I don't whether it was Mr. Childs or Doctor Willet, asked Dan. Craig how much the bank had on the property, and my recollection is that he told them that about three thousand dollars would cover it, and then they declined to take it; they declined to take the Hedden judgment under the arrangement which I have previously stated; I couldn't tell you what day that was, it was the tenth or eleventh of August, somewhere along there.

Q. When was the arrangement made with Doctor Willet about the Hedden judgment?

A. It was somewhere about the eleventh or twelfth of August, seventy-nine.

Q. What was that arrangement?

A. The arrangement was that I had promised to assign it to Mrs. Jones, and did so.

Q. Did so when?

A. I think I assigned it to Doctor Willet on August eleventh or twelfth, and he assigned it over to Mrs. Jones in November.

Q. On the eleventh or twelfth day of August, 1879, was there a definite arrangement with Doctor Willet that you should assign him the Hedden judgment for the purpose of his assigning it to your wife?

A. Yes, sir; I couldn't tell you on which day that arrangement was made; I think it was made on the eleventh or twelfth, the twelfth I guess; I think it was made up in Werts' office, or over to the drug store then kept by Sammy and Rosevear; it was one or the other; the arrangement was made in the afternoon if my recollection serves me right; it was certainly after dinner; it would be after dinner if it was afternoon; I don't know where the Doctor dined that day; he dined at my house often, but I couldn't tell you whether he did it that day or not; I think the Doctor

went home the same afternoon or evening that this arrangement was made with him, though I won't be positive about it; he generally went home every night; I don't remember whether or not he was here the day after this arrangement was made; I don't know that there was anybody present when this arrangement was made; I don't know whether Mr. Childs was here on the day the arrangement was made; he might have been and he might not; I can't say; I don't remember whether or not I saw Mr. Childs here the day that arrangement was made; I might have seen him and I might not; I don't remember.

Q. Was that assignment to Willet alone, made and executed the same day the arrangement was made with him?

A. Yes.

Q. I mean the arrangement that he should re-assign it to Mrs. Jones?

A. Yes; it was all agreed upon at the same time. I think it was executed in the afternoon; after it was executed I gave it to Mrs. Jones

Q. The same afternoon?

A. In the evening.

Q. Was it executed before Doctor Willet left town that day?

A. Yes; I showed it to Doctor Willet. He was in Mr. Werts' office I think when I showed it to him; I presume he read it, he took it and looked at it.

Q. What did he say?

A. He said all right; I can't tell you what time in the afternoon that was; it was in the afternoon, towards night; I don't know how the Doctor went home that day; I don't remember; I don't remember now whether it was a bright, clear day, or not; I don't remember whether or not it rained when I went from Werts' office to Rosevear's, and when I went to dinner; I don't know whether Childs was there or not when that assignment was shown to the Doctor.

Q. Where was Exhibit A, this assignment from Willet, signed?

A. It was signed up in Mr. Werts' office ; I think it was signed the day it is dated, November seventeenth ; I think Mr. Werts put the date in ; I think the date was left blank ; I don't remember whether the date was put in before I saw Willet on that day, or not ; I didn't know Willet was to be in town that day ; when I signed the other paper he said Werts could draw it up and he would sign it when he came ; I don't remember where I met Willet ; it was around town here ; I might have met him over in the drug store, he used to go there ; I suppose I asked him to go to Werts' office the day he signed that paper, was the reason he went there ; his signature was not witnessed, because Mr. Werts told me it wouldn't make any difference ; I don't know whether the Doctor was or not in a hurry that day ; I don't remember ; we both sat down in Werts' office and he read the paper over ; I found that paper in a drawer ; Mr. Werts told me where he had left it and where I would find it ; I don't know that there was anything else in the drawer ; I offered no inducement at all to Willet to assign that judgment ; I paid him nothing at all to assign it ; he didn't ask for anything ; I made no statement at all to Willet at the time he assigned that judgment, except that I had promised to assign it to Mrs. Jones at the time she signed the mortgage ; I mean the six thousand dollar mortgage to the bank on the farm.

Q. Who was to bear all the expenses of this arrangement, by which Willet and Childs were to assist you ?

A. I suppose I was to pay it ; I don't think there was anything said about my paying the discount on the notes they gave to the bank to take up the mortgage ; I paid the interest and protest fees on the notes in the bank up to the time when they took them.

Q. Who was to pay the taxes on the farm ?

A. They was to pay everything.

Q. Was you sworn as a witness at the time the Aqueduct Company took ninety-nine hundredths of an acre of land in 1880 ?

A. I don't remember whether I was or not.

Q. What statements did you make as to the value of the land taken by them at that time?

A. I don't remember now, excepting if I said anything I said it was worth a good deal more than the Commissioners awarded.

Q. Was it worth three hundred dollars?

A. I think it was worth two.

Q. Any more than two?

A. Well, I think it was worth two hundred dollars; more than that to them; I don't know what the timber on it was worth; I couldn't tell you about how much it was worth.

Q. What was the value of the property taken by the Aqueduct Company in the year 1873?

A. I think it was worth six thousand dollars.

Q. What was the award of the Commissioners?

Objected to, because the property taken by the Aqueduct Company in 1873, has nothing to do with this case.

Objection overruled.

A. Twelve hundred dollars.

Q. Have you at any time placed this farm in Theodore Ayers' hands for sale?

A. No, sir; I don't remember that I did; I don't know on what valuation my farm was taxed in eighteen hundred and seventy-six; Mr. Revere is dead.

Q. Who offered you seventy-five hundred dollars for this tract on the north side of the road?

A. It was offered through a real estate agent; he told me the name of the principal, but I don't remember it now; I think he told me the name; that offer was made in the year eighty-one; it was made in the month of February or March; I think it was in March; I couldn't tell you the day of the month; the agent was J. A. Drake; I have received income from this farm; I can't tell you the greatest annual income I have received; I never kept any account of it; I bought it in fifty-nine or sixty, I don't know which; it was one or the other; it might have been in fifty-

eight, but I don't recollect; it was one of those three years; I can't tell my income from it for any year.

Q. Can you tell whether you got enough out of it to pay the taxes, and the interest on the mortgage?

A. I can't tell what I got out of it for I never kept any account of it; I know I put lime on it for three years.

Q. Did you ever say to any one that there was a written agreement between you and Willet and Childs relating to this farm?

A. I did.

Q Was that statement true or false?

A. It was true.

Q. Where is the agreement?

A. I don't know; I can't find it; I know I have looked for it considerable, but I can't find it; Mr. Werts drew the agreement; it was drawn some time after the farm was sold; I couldn't tell you the day.

Q. You had the agreement when you made the statement, hadn't you? The agreement wasn't lost when you made the statement, was it?

A. I don't remember seeing the agreement since it was signed; I then took it home and laid it away and have looked for it since and can't find it; I couldn't tell you the day I took the Hughes map to Ayers' office; Willet and Childs were there and I heard they were selling the property and I went in there and Sheriff Freeman went with me; I think it was in the month of March, eighty one; it was a map of that farm up there, and a map of the springs; Mr. Hughes figured as to the quantity of land on the north side of the road; he did that that same day before I brought it up; he did it in his office; I don't remember who I handed the map to; they were in Mr. Ayers' office; I handed them the map and said Mr. Hughes had figured up the quantity of acres that there was on the north side of the road.

Q. Who did you tell that Foster had tried to buy the farm of you through Betts?

A. I told Willet and Childs, and might have told some others for what I know ; I don't remember.

Q. Why were not these assignments from you to Willet of the Hedden judgment and from Willet to your wife, offered in evidence before Halsey upon your examination on supplemental proceedings in 1880 ?

Objected to, because it appears by the testimony of Mr. Werts, introduced by the complainants, who acted as Mr. Jones' attorney in those proceedings, that these assignments were not material to the issues that were developed in those proceedings ; and the complainants having shown that fact by Mr. Jones' attorney, the question now asked is incompetent and improper.

Objection sustained.

Q. Did you not swear before Halsey on that examination, that the Churchfield judgment had been assigned to Mrs Jones, in eighteen hundred and seventy-seven or eighteen hundred and seventy-eight ?

Objected to, because it has nothing to do with this case when the Churchfield judgment was assigned.

Objection sustained.

Q. Who holds title to the Court street property ?

A. Doctor Willet.

Q. When did he acquire it ?

Objection is made to further testimony as to the relations of Doctor Willet and Jones to property other than that involved in this cause.

Objection sustained.

Witness being further examined in chief, says :

The land taken by the Aqueduct Company in 1873, was on the south side of the Mendham road ; in seventy-three there was one acre taken by the company, for which the award was twelve hundred dollars, and on which there were springs which the Aqueduct Company wanted.

Q. You say that Willet and Childs were to pay the taxes on the farm ; to whom were those taxes to be charged, and by whom were they ultimately to be paid ?

A. I suppose they were to come out of the property, when the property was sold.

Q. Prior to the assignment of the Hedden judgment to Mrs. Jones, had she signed other mortgages with you prior to the mortgage for six thousand dollars given to the Iron Bank or advanced moneys for you? and if so, were those signatures or advancements in any way connected with this assignment to her of the Hedden judgment?

Objected to as leading, irrelevant and incompetent. The witness on both his direct and cross-examination limited and specified the consideration for which this assignment was made.

Objection sustained.

Q. Why was the Hedden judgment assigned to Mrs. Jones?

Objected to on the ground that the witness has stated on his direct examination, in answer to a similar question, and also stated on his cross-examination the reason for that assignment, and the purpose of this question is to evade the ruling of the Master, and by a suggestion to the witness made in the previous question to lead him to give a different answer from what he has already given.

Objection sustained.

Q. You stated that you told Doctor Willet that you had agreed to have this judgment assigned to Mrs. Jones; did you state to him why you had made such agreement?

Objected to on the same grounds as interposed to last question.

Objection sustained.

Q. In the conversation referred to by you which you had with Doctor Willet, was anything said as to the reason why you had agreed to assign the Hedden judgment to Mrs. Jones?

Objected to on the same grounds as interposed to last question, and objection sustained.

Q. This assignment, Exhibit A, signed by Doctor Willet, has this statement, "Whereas the said Sam-

"uel Jones, being largely indebted to his said wife, "did agree as security therefor to assign to his said "wife the judgment hereinafter mentioned." What was the indebtedness there referred to?

Objected to on the same grounds.

Objection sustained.

Mr. Mills here stated that the question was asked as well for the benefit of Mrs. Jones as the other defendants.

Objection still sustained.

Re-cross Examination.

Q. What else besides the one acre of ground was included in the property taken by the Aqueduct Company in 1873?

A. Well, I suppose the springs; some of the springs —not all of them; they took part of them.

Q. Did they acquire the right to take and divert a small brook?

A. Yes, that ran across my place; I think it came from Guerin's.

Q. To take the water of four springs?

A. I don't remember the number of springs.

Q. Did they acquire the right to lay down and repair a water pipe across your property on the south side of the road?

A. No, sir; I have no recollection of that; they laid a pipe up the brook that runs up to the reservoir.

Q. And took that right at that time?

A. That I don't know; if you have got it there you know more about it than I do; I know they condemned the acre of land.

Q. They acquired a right to build a filter and gate house on your property, didn't they? Counsel showing witness a printed pamphlet.

A. Yes, I guess that is right; they took nine hundred and ninety-three thousandths of an acre of land for a reservoir.

Q. And the right to lay down and repair a drain below the dam of their reservoir?

A. Yes, that says so.

Q. And for these rights the award of twelve hundred dollars was made, was it not?

A. Yes.

SAMUEL JONES.

Sworn and subscribed before me,
January 9th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

At this stage of the examination, the further examination of witnesses was adjourned till to-morrow, Saturday morning, at half-past nine o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Saturday morning, January 10th, 1885, the parties and their counsel appeared before me pursuant to adjournment, and the further examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c., in Chancery.

MARIA L. JONES, a witness produced on the part of the defendants, being duly sworn, on her oath saith:

I am the wife of Samuel Jones, and one of the defendants in this suit.

Exhibit A, on the part of the defendants, being shown witness, she is asked to re-examine it and see if she recognizes it.

After examining the paper, she says:

Yes, this is the paper; I first saw this paper in August or September, eighteen hundred and seventy-nine; it is signed by Eliphalet C. Willet; he is my brother; I am acquainted with his handwriting.

Q. This paper is dated the seventeenth of November 1879. When, with reference to its date, did you first see it?

A. Some time that fall; I can't tell exactly what date; very soon after; I think it was after it was signed.

Q. This refers to an assignment from Mr. Jones to Mr. Willet dated August 12th, 1879; do you know of that paper?

A. Yes, sir; that paper was with this one in an envelope; I brought them up to your (Mr. Forsyth's) office, and handed them to Mr. Werts; he looked them over and took one out and handed me this one, and said you keep that, and he put the other in his his pocket; I kept this; I don't know where the other one is; I haven't seen it since I brought it up that morning; I have made inquiry for it; I do not know where it is; I think it was last spring, some time in last February or March, that I took these papers to Mr. Werts in Mr. Forsyth's office; these two papers, Exhibit A and the other one I have been speaking of, have been in my possession since the fall of eighteen hundred and seventy-nine; they were delivered to me at that time by Mr. Jones.

Q. What was the consideration for the assignment to you through Doctor Willet of the Hedden judgment?

Objected to.

Objection sustained.

Q. Was there or not a good and valid consideration for this assignment?

Objected to as incompetent and irrelevant.

Objection sustained.

Witness being cross-examined by counsel for complainants, further saith:

Q. What was the condition of this paper, Exhibit A, at the time you saw it in August or September, 1879?

A. Just the same as it is now; it was read over and the other one was with it, and that other was read over too; both of them were read over; I was in the

library, at home, in our own house, when they were read over; I think it was in the evening; I couldn't say the exact time; I don't recollect what kind of a day it was, whether it was pleasant or stormy; it was pleasant in our house; I did not read the paper myself; my husband read it to me; I then put it in my bureau drawer; it wasn't locked up, either; the Doctor's name was then on the paper, just as it is now; the upper name was scratched out just as it is there; I think he misspelt his name, left a letter out or something; I am quite sure about the time; it was early fall or late summer in eighteen hundred and seventy-nine.

Q. How do you fix the time so—was it because it wasn't necessary to have fires in the evenings?

A. I don't remember; I know it was warm; I don't know whether we had a fire or not; our house is generally warm and we have fires early; I know it was in the fall; I never spoke to Doctor Willet about these papers.

Q. Did Mr. Jones inform you in October, 1879, that he had been served with an order requiring him to appear and be examined in regard to his property?

A. I don't really know whether he did or not; I didn't give these two assignments to Werts till last spring, and I had them since the fall of seventy-nine; Werts returned this paper, Exhibit A, to me; the other one he did not; I never returned this paper, Exhibit A, to Werts again at any time; I never saw Mr. Werts more than once about those papers.

Q. How did it happen that you took the papers to him?

A. Mr. Werts wanted them; I am certain the place I delivered them to Mr. Werts was at Mr. Forsyth's office, when he had his office above the Mansion House; he never returned that one assignment to me.

M. L. JONES.

Sworn and subscribed before me
January 10th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

J. HENRY JOHNSON, a witness produced on the part of the Complainants, being duly sworn, on his oath saith:

I reside in Morristown, New Jersey, and have been engaged in real estate and insurance about thirteen or fourteen years; I have resided in Morristown and its vicinity all my life pretty much, which is more than half a century; I have been in the habit of buying and selling real estate in Morristown and its vicinity for myself and others; I have had good opportunities to become acquainted with real estate in Morristown and its vicinity; I am acquainted with the Jones farm just outside the limits of Morristown, a portion of which has been bought by Mr. Foster; I have known it for perhaps ten years past, when Revere owned the adjoining property; I have been on it and examined it.

Q. What, in your opinion, was the value of that portion of this farm that lies on the north side of the road, in the spring of 1881?

A. Its value as a building site, being on the main road and having a fine view, would be three hundred dollars an acre.

Q. Please state the qualities of the land and its location, which, in your opinion, gave it this value?

A. It is very high, dry, and commands an extensive view in three directions; it has a large street front; it has water on it which can be used, springs; it adjoins very valuable property—it is the key to it; property a mile beyond this has been sold, in large amounts, for two hundred dollars an acre, within two years; it is very accessible to the centre of the town, no farther than about the same distance as Sneeden's corner, where Washington avenue and Madison avenue are connected by a cross cut of the Railroad.

Q. Does the fact that it is just outside of the corporate limits have any effect upon its value?

A. Yes; perhaps it might be both ways; it has not city privileges, but it is free from city taxes.

Q. You fix the value in eighty-one at three hundred

dollars an acre. Is it worth more or less than that now?

Objected to because irrelevant and incompetent and immaterial.

Objection sustained

Q. Was property of that kind in the spring of eighteen hundred and eighty-one in demand and advancing in price?

Objected to because the question should be confined to land in the neighborhood in which this property is located.

Objection sustained.

Q. Was property of that kind and in that neighborhood and situate near Morristown as that was, growing in demand and increasing in marketable value in the spring of eighty-one?

A. I can't say that it was.

Q. Was there then a demand for that kind of property?

A. Yes; always is. It was all in one body then, not separated; I applied to Mr. Jones to get the sale of that portion; I can't say when; it was at different times; it was at the time Mr. Jones owned it in his own name as I understood it; it was before the sale to Foster.

Witness being cross-examined by Counsel for complainants, further saith:

I have never been over the Mahlon Guerin farm; I know it by passing it; I should think there were a number of fine building sites there; as to view they are quite equal to any on the Jones place; I should think they were quite as high and as dry; I don't know whether or not there is fine water on the Guerin place; I know the property fronts on the main road; I don't know the other boundaries; I have been under a misapprehension, and had the Josephus Guerin place in mind instead of the Mahlon Guerin farm; I now say I am acquainted with the Mahlon Guerin farm and

have been all over it; the building sites on the Mahlon Guerin are very numerous; they are fine sites, the best in the country; those sites lie very much higher than the Jones tract; the view from them reaches over a much greater extent of country; there is fine water on the place and abundance of it; that property fronts on two public roads for a long distance; it is two miles from Morristown depot; the Jones farm I should think was a mile and a quarter or a mile and a half from the same depot.

Q. Are you not mistaken about the Jones farm being nearer the Morristown depot than the Mahlon Guerin farm?

A. I think it is a little nearer; I can't tell exactly without measuring it.

Q. Do you know at what price this Mahlon Guerin farm was sold for by the sheriff?

A. No, only by rumor.

Q. Now, isn't there a small negro settlement at the bend in the road leading from Morristown to Mendham between Morristown and the Jones farm?

A. I shouldn't call it a negro settlement; a few, there is but one family that I know of; I never heard it know as Guinea, or spoken of as such before; I do not know how many small houses there are there inhabited by colored people; I know of but one; one or two of those houses are of a very dilapidated and forlorn style; most of them are respectable houses for people of moderate means, by that I mean people who own their own places many of them—John Minogue, Martin Minogue, Quimby's; Axtell, he is a little nearer town.

Q. Isn't this portion of the road of which you are speaking removed from that portion of the road where the negro houses are?

A. The only house that I know of that was occupied by negroes ever is situated, say five hundred feet to the west of the houses I have spoken of, of Martin Minogue's, who is farthest that way.

Q. Twenty years prior to eighty-one do you know

of any dwelling house of the better class erected on the road from Morristown to Mendham within two miles of this Jones farm ?

A. I should think the Revere place was built about twenty years ago ; you may call the Gillam house, on the Gillam farm, of the better class ; it is a good house but don't compare with Revere's, and Kountze's, and also on the other road, on Sussex avenue ; the Gillam house is not on that road from Morristown to Mendham ; this side of the Jones farm very many houses of the better class have been built within the town limits ; B. C. Guerin's house is in town, about three hundred feet from the Court House ; the Gillam house I have spoken of is on the cross road from Mendham avenue to Western avenue, on the same cross road on which the Mahlon Guerin farm fronts ; it is opposite the Mahlon Guerin farm ; this man Gillam built the house and I believe keeps summer boarders ; I am not sure ; Morristown is growing both towards Mendham and towards Madison, but mainly towards Madison.

Q. Prior to the spring of eighty-one, was the growth of Morristown most towards Mendham or towards Madison ?

A. Towards Madison.

Q. In the growth of Morristown was not the demand for building sites of the better class almost wholly towards Madison ?

Q. If I answer that question strictly as the words mean I should say no ; the question does not confine me to the Mendham turnpike ; on Sherman's and on Lord's hill there are very fine mansions of the better class.

Q Comparing the demand for building sites towards Madison and towards Mendham, how was it ?

A. Before eighty-one the demand was of a different character towards Mendham from the demand towards Madison ; the parties desiring sites on the Mendham road were looking for elevated sites, but the greater number were looking for sites on Madison avenue.

Q. With reference to the spring of eighty-one, when did Kountze buy?

A. I think it was in eighty-one or eighty-two, that he bought a part of his property.

Re-direct Examination.

Q. Can you say how many dwellings have been put up between the corporate limits and this Jones farm, within the past ten years?

A Not more than one that I know of.

Q. Within the last twenty years?

Question waived.

Q. The Mahlon Guerin farm, on what road does that front?

A. It fronts on two roads; where the house stands fronts on Western avenue formerly called Jockey Hollow; the approach to it is a gradual ascent on Western avenue; it is much steeper than the Mendham road.

Q. The Josephus Guerin place that you have described, what did that sell for an acre?

Objected to as incompetent, immaterial and irrelevant.

Objection sustained.

JOHN HENRY JOHNSON.

Sworn and subscribed before me, January 10th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JAMES P. SULLIVAN, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I reside in Morristown, New Jersey, and have lived in Morristown or its vicinity, it will be twenty-two years the thirty-first of next March; part of the time I lived on the Revere farm which was afterwards purchased by Mr. Foster; I lived there two years and one

month in the capacity of farmer; I have lived in Morristown itself it will be twenty years the second day of next May.

Q. What offices have you held here?

A. First, it was three years in succession in the town committee; second, elected for two years as alderman for the town of Morristown; next was elected as recorder of Morristown for two years, served one; next was elected as mayor of the town of Morristown and served two years, and went out of office last June; I own real estate in Morristown; I have bought and sold real estate in Morristown; I have had opportunities of becoming acquainted with the values of real estate in Morristown and its vicinity; I am engaged now in the retail grocery trade in Market street, Morristown; I own the store house in which I carry on my business; I have been on this Jones property on the north side of the Mendham road very often; I was on it prior to eighteen hundred and eighty-one, frequently.

Q. What, in your opinion, was the value of that portion of the Jones farm, lying on the north side of the Mendham road, in the spring of eighteen hundred and eighty-one?

A. I should say it was cheap at three hundred dollars an acre; its close proximity to the town of Morristown, a large frontage on the Mendham road, fine elevated piece of ground for building, and plenty of good water are the basis for my opinion, and I might state further it was the key to the farm that lay in the rear of it.

Q. What has been the character of the growth of Morristown in that direction for the last ten or fifteen years as compared to that on Madison avenue?

A. In my judgment it has been very largely in favor of Madison avenue. First as regards the character of the people, on Madison avenue they are wealthy gentlemen; the character of the houses have been much more expensive, much more valuable, being large places and costly houses; in regard to numbers I think the number has been in favor of Mendham ave-

nue; the houses on Madison avenue are all within the corporate limits, with the exception of one, and that has been very recently built; the larger portion of the houses which have been built on the Mendham road are a good class of houses, but not expensive houses; they are comfortable and respectable houses; the buildings beyond the corporate limits on the Mendham road are a class of houses which have been put up by laboring men; I think if I mistake not there are five of those in number in close proximity to the city quarry and beyond the corporate limits; their value I presume would not exceed twenty-five hundred dollars each for those houses.

Q. How in your judgment could this Jones farm have been best disposed of, by selling it in a lump or cutting it up into building lots?

A. My opinion is it could have been best disposed of in a lump for a gentleman's private residence.

Q. You have spoken of the improvements on Madison avenue and the character of the places there; what was the relative value of land on Madison avenue in eighty-one, to that in the neighborhood of the Jones property?

A. I should say it was nearly double.

Witness being cross-examined by counsel for complainants, further saith:

Q. During the spring of eighty-one, or within twenty years prior thereto, do you know of the erection of any dwelling, of the better class, on the road from Morristown to Mendham, outside of the corporate limits, within two miles of this Jones property?

A. I do not.

Q. Do you know of any building site during that period, within those limits, sold for anything like three hundred dollars an acre?

A. No, sir.

Q. Were not the kind of houses, on the Mendham road, between the Jones property and the corporate

limits, a positive detriment to the sale of the Jones property for building sites?

A. In my judgment they were.

Q. Hadn't there been a negro settlement, this side of the Jones farm, known as Guinea?

A. Yes, sir; less now than some years ago; there is but one negro family there now and some years ago there were six or eight; in eighty-one there were not more than one or two negro families there; there were not in that immediate vicinity several Irish families; there were two such families there then.

Q. And was not one of those families a drunken family, and did they not live in a miserable hovel?

A. The husband of one of those families was a drunken worthless fellow; it was pretty much of a hovel they lived in.

Q. Was not the road from Morristown, known as Madison avenue, and continuing towards Madison, outside the corporate limits in eighteen hundred and eighty-one, a fine, smooth, well kept road way, and a much frequented and fashionable drive?

A. Yes, sir, it was; there was a fine sidewalk along that avenue nearly to the corporate limits; water and gas was furnished to the dwellers along there.

Q. Now, in eighteen hundred and eighty-one, the road from Morristown to Mendham, as far as the Jones farm, was very rough and stony, wasn't it?

A. Yes, sir; and there used to be kind of a deep muddy slough hole all along from the foot of the hill in front of the Jones farm; it was not at that time a fashionable drive; gas was not furnished to the dwellers along there.

Q. Was not that twenty-eight acres, sold to Foster, in a very rough condition at that time?

A. No, sir, it was not in a very rough condition; the fences were poor; the buildings were poor; the land was in a good state of cultivation with the exception of a small place in the point as you approach the Jones property; the city stone breaker was, in

eighty-one, about two hundred yards this side of Guinea on the road to Mendham.

JAMES P. SULLIVAN.

Sworn and subscribed before me,
January 10th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

CHARLES F. AXTELL, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am an attorney at law and live in Morristown, just inside of the corporation line, on the Mendham road; I have lived in Morristown and Morris township about forty years; at least I was born where I now live, forty years ago nearly; I think my present residence is about a mile from the old Wilson, late Jones farm; it is about a mile, probably a little short of that, to the east corner of the property; I lived at one time when I was a boy or young man nearer the Jones farm than I now do; I lived just the other side of it, probably a quarter of a mile the other side of it; I am a freeholder in Morristown; I am somewhat acquainted with the value of lands in and about Morristown and in its vicinity; I have been on this Jones farm on the north side of the road; I have been on it quite often; I have hunted over it quite often and been over it across lots quite a number of times; when I was a boy I have been on it berrying, and since then I have hunted over it quite often; I am acquainted with its location, and its general characteristics.

Q. What was that portion of the Jones farm on the north of the Mendham road worth per acre, in or about the year eighteen hundred and eighty-one?

Objected to on the ground that the witness has not shown knowledge sufficient to give expression of his opinion of the value of this property as an expert.

Objection overruled.

A. Well, in my judgment from the general character of the land and ground and the location of it, I should think it was worth three hundred dollars an acre at the least, because there is a living stream of water running through the meadow; I know the meadow was always considered a good meadow when I lived in that vicinity, and the land lies well, and I know that up on the hill there is a very beautiful building site, perhaps as fine as there is in Morris County; at least it is to my eye.

Witness being cross-examined by counsel for complainants, further saith:

I have not conversed lately with anybody in particular about the value of this Jones farm, except I spoke to Mr. Johnson; J. Henry Johnson, the real estate agent; he spoke with me about it to-day; however he didn't ask me about the value of it; he asked me if the neighborhood about my place or above my place had been called by the name of Guinea or Guinea Hollow; Mr. Jones asked me the other day, some day this week, if I knew the situation of the property and I told him I did, and the value of it; I thought the value of the property, judging the way property had been selling on that side of the road, that it ought to be worth at least three hundred and fifty dollars an acre; I think that is what I told Mr. Jones.

Q. What property had you reference to?

A. The tract sold nearer town to Mr. Egbert; that was sold last year; also the Leek property which is beyond Mr. Egbert; that was sold also last year, in the early part of eighty-four; it was bought by Mr. Reed, but was not nearly so valuable nor desirable a property as this; there is no stone quarry on it; the Egbert property is unimproved.

Q. When you had three hundred and fifty dollars in your mind, was it the present value of this Jones property?

A. No, sir; it was the value of it in eighteen hun-

dred and eighty-one; it has been considered a good farm; I valued it at three hundred and three hundred fifty dollars an acre, principally for building sites, and it would make a nice little plot for a gentleman to live upon; I don't think the meadow on the north side of the road was in eighteen hundred and eighty-one worth three hundred and fifty dollars an acre for a building site; that wouldn't of itself make a good building site; I think there must be four or five acres of low meadow, along the road, in that portion; that meadow wasn't boggy and wet in eighty-one, not to my knowledge; I should think that meadow was worth three hundred dollars an acre in eighty-one, taking it with the rest.

Q. For what purpose?

A. If a man wanted to live on it, as I said before, for a convenient building plot of twenty-five or thirty acres, I should think it was worth that amount of money take it all together; I don't know anything about it as to how much of that stream the Aqueduct Company have a right to take, except they haven't the right to take it all.

Q. Do you know that?

A. I don't know what the law is about it, but I know they haven't taken it all; I don't know whether there was fall enough from any of the springs on the Foster side to ram the water up to the top of the hill; I know that just in the rear of the old house, or between the old house and the brook, there was a most excellent spring of water; I know that spring was located between the house and that brook, and there was sufficient fall to carry the water of the spring into that brook; how much fall there was I don't know; I am familiar with the Revere farm; I don't know how much Foster paid per acre for that farm.

CHARLES F. AXTELL.

Sworn and subscribed before me
January 10th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by me, on the request of the defendants, to Tuesday morning next, January 13th inst., at ten o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Tuesday morning, January 13th, 1885, the Solicitors of the respective parties convened before me pursuant to adjournment, and the further examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c., in Chancery.

JOHN MCGOWAN, a witness produced on the part of the said defendants, being duly sworn, on his oath saith:

I have lived in Morris Township, Morris County, New Jersey, ever since I was a boy seven years old, with the exception of a few years; I am seventy-three years old, passed; in that time I have lived inside and outside the corporate limits, (with the exception of four years I lived at the Asylum, and nine years last past which I have lived where I now do on the Mendham road,) I have lived in Morristown; at the Asylum I had general charge of everything outside under General Porter—Fitz John Porter, who was the Superintendent; I now live on the Mendham road, about a mile and a quarter beyond the Jones farm; I live on a farm there which I own; I know that portion of the Jones farm which lies on the north side of the Mendham road, next the Revere place; I know that; I've seen it often enough; I think I am acquainted with the value of land in that locality.

Q. In your opinion, what was that portion of the Jones farm which lies on the north side of the Mendham road worth in or about the year 1881?

A. Well, it was worth all of three hundred dollars an acre, if not more; there was a valuable building

site on the upper end of it; there is a splendid location there for a house.

Witness being cross-examined by Counsel for complainants, further says:

I have a farm of thirty-one acres on the Mendham road; there is a house and barn on it; when I bought it the buildings were not very good; I enlarged the house, put another story on it and enlarged it; the outbuildings consist of a barn and wagon house; there is a corn crib in one end of the wagon house; there is a stream of water runs through the back end of the place, through one corner it; I paid four thousand dollars for that farm; it is a little beyond Kountze's place; it adjoins his place, on the west side of it; I insured my buildings right after my purchase for I think two thousand dollars, maybe a little over that; it may be over two thousand dollars, I can't tell how much it is now; I don't know how much Foster paid for the Revere farm, only from hearsay; I don't know what it cost him per acre; I know of land on the Mendham road that sold for three hundred dollars an acre; the Mills place sold for eleven thousand dollars; there are fifty-two acres of that, and that is more than three hundred dollars an acre a good deal; that was a property sold to Kountze; it had a new dwelling house on it, which hadn't been built but a short time; I don't think the house cost more than three thousand dollars; I only judge from the style of the house; it is a very plain house; I won't swear it didn't cost four thousand dollars; I think it could have been built though for three thousand; there was quite a good deal of fruit on it, not a great deal; there was some fruit on it; he had some grapes, quite a good many grape vines, they were not very far advanced; they were all dug up afterwards; there were some pears there and some apples, not a great many pears or apples; I don't think it was used as a fruit farm; there was plenty of spring water on the place; there was a spring on the place;

the view from that place is a very handsome one; there is no better view than there is on the Jones place; it is just as good a one; this property was bought by Kountze in eighty-one, I think, maybe in eighty-two; it was bought in the fall; I think it was in October that the purchase was closed up; I had charge of the farm at the Asylum; they didn't pretend to farm it very much; they didn't keep an expert gardener there at that time; they kept an old sinecure there at the last to fix up the garden.

Q Just state the full extent of your duties at the Asylum?

A. I had general charge of all the property there; the place, under the orders of General Porter, who was the superintendent, and the commissioners; I had nothing to do with the buildings; the building was put out by contract; I hired all the men to work there for the State, and paid them up to within the last last year I was there.

Re-direct examination.

To get to the Mills farm it is located a mile from the Jones place; it is a mile further from town than the extreme upper end of the Jones place.

JOHN McGOWAN.

Sworn and subscribed before me
January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

LEWIS W. WALTON, a witness produced on the part of the said defendants, being duly sworn, on his oath saith:

I live in Morris Township, Morris County, New Jersey; I live on Sussex Avenue, about a mile and a quarter out of town, and own a farm there; I am Chairman of the Township Committee of Morris Town-

ship; I know the location of that portion of the Jones farm lying on the north of the Mendham road; I am acquainted with the value of land in Morristown and its vicinity.

Q. What in your opinion was that portion of the Jones farm on the north of the Mendham road worth per acre, in or about the year eighteen hundred and eighty-one?

A. I should think it worth in the neighborhood of three hundred dollars an acre.

Witness being cross-examined by Counsel for complainants, further saith:

I keep summer boarders at my farm; I live in what is considered a healthy region; I have an extended and pleasant view from my place; I have excellent water on the place and plenty of it; I have plenty of fruit on the place of all kinds; I insured my buildings immediately after my purchase for six thousand dollars, that is, the furniture and the buildings; I don't think there was over five thousand dollars on the buildings; I paid ten thousand dollars for the place; I have I think fifty-five and seven eighths acres in my place; I bought the place in eighteen hundred and seventy-nine; I came from New York to Morristown in February, seventy-nine; I was in the sewing machine business in New York; I never operated a farm before I came here; I owned real estate in New York before that; I never owned any country property before.

Q. How do you happen to fix the value of this Jones property at three hundred dollars per acre?

A. I based my judgment on a piece of ground I had to buy from John Huff right on the corner of the road leading from Mendham avenue to Sussex avenue; there was two acres and a half of it, and I paid twelve hundred dollars for it; this lot was about three hundred yards from my house; John Huff is a colored man; he lived there, kept his horses and wagon there; that was purchased, I think, in eighty-one; John's

business at that time was cleaning cesspools and privies, doing hauling and so on; he kept his apparatus and wagons for cleaning right there on that place; that was not in full view of my house; his barn where he kept his wagons was right at the foot of the hill where you couldn't see them at all; it was on the road leading from Sussex avenue to Mendham turnpike; I passed his place to get to my place in going from the railroad station; it was about three hundred yards from my house as nearly as I can judge.

Q. Why did you say you was compelled to pay so much for it?

A. I wasn't compelled to buy it; I bought it because I wanted the property, and it was worth more to me than anybody else lying right in the corner there.

Q. Didn't you buy that property, in part, for fear that your summer boarders would regard it as a nuisance to have a colored man whose business it was to clean privies and cesspools living so close to your place and keeping his carts and wagons and apparatus there for cleaning the cesspools and carrying away the filth?

A. No, sir; I didn't. I wasn't keeping boarders at that time, and didn't expect to keep boarders at the time I bought that piece of property from John Huff.

Q. Didn't you buy it in order to prevent such a nuisance to yourself?

A. No, sir; I always found John Huff a clever man. I had no objection to his living there; there were buildings on that place; they were worth nothing excepting for the old stuff in them; I don't think they were worth ten dollars; I tore the old buildings down; there was some fruit on it; there were about a dozen apple trees and three or four pear trees on it; there were two or three old black cherry trees; they didn't amount to anything; they were no good; I can't say that plot was desirable for a building lot; it lay right on a knoll, it was too near the road for a building site;

it was only about six hundred feet deep and six hundred feet on the street.

Q. What other reason have you for valueing this Jones property at three hundred dollars an acre?

A. On account of its being nicely situated and laying on Mendham avenue as it does, and there is a very nice building site there, and then there being a couple of nice springs of water at the foot of the hill, and then it seems like the key to that property fronting the road there; I do not know of any land situated similarly to the Jones property that sold in eighty-one for the price I have named; I do not know what Foster paid for the Revere farm only from hearsay; I had heard before I testified as to what valuation had been put on this property by others; I heard it right here in this office; I refer to the testimony of John McGowan, and I have heard other parties, too, but not in this office.

LEWIS W. WALTON.

Sworn and subscribed before me January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

WILLIAM R. MCKAY, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I have lived in Morristown, New Jersey, since fifty-five; I have bought property in Morristown and Morris township, but have never sold any; my business is the livery business; I am one of the town committee of Morris township; I am treasurer of the township; I have been member of the Common Council of Morristown on two different occasions, four years altogether; I know the Jones farm, lying on the Mendham road; I think I am acquainted with the value of land in Morristown and its vicinity; I am in the board of Trustees of the Evergreen Cemetery and we bought

some property on the road running down through Collinsville to the Whippany road.

Q. In your opinion, what was that portion of the Jones farm, lying on the north side of the Mendham road, worth per acre, in the year eighteen hundred and eighty-one?

A. Well, I should think it was worth about three hundred dollars.

Witness being cross-examined by counsel for complainants, further saith:

Q In the year eighty-one, do you know of any property situate similar to this Jones tract that brought any such sum per acre?

A. Not in eighty-one; I have since; this property we bought over here, the Fleury property, we paid three hundred dollars an acre for that; the Jones property is located to the northwest of Morristown; the Fleury property is located on the nearly east side of Morristown; it lays on the road leading through Collinsville to the Whippany road; I think it also strikes the Horse Hill road, a little of it does; it adjoins property of the Cemetery Company; it was bought for the purposes of a burying ground; I should think it was close to a mile from Morristown; it may be short a mile; I forget how many acres there were; I think there was about twelve acres; the whole price was I think thirty-six hundred dollars; it was three hundred dollars an acre we gave for it, whether there was twelve acres or a little less or a little over; it was bought about two years ago, I think; it may have been a little longer ago; I do not know the price Foster paid for the Revere farm, or the price per acre he paid for it.

Q. Do you know of any land on the road from Morristown to Mendham that about the year eighty-one was sold for three hundred dollars an acre?

A. No, sir.

W. R. McKAY.

Sworn and subscribed before me,
January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

SILAS H. ARNOLD, a witness produced on the part of of said defendants, being duly sworn, on his oath saith:

I have always lived in Morris township, and as I was born in eighteen hundred and twelve, it will make it nearly seventy-three years; I own a farm in Morris township; no other property; I was formerly a chosen freeholder of this township; I know the Jones farm on the Mendham road; I am not very much acquainted with the value of land in Morristown and its vicinity.

Q. What in your opinion, was the value in eighteen hundred and eighty-one, of that portion of the Jones farm lying on the north side of the Mendham road, per acre?

A. Well, I should think that it was worth three hundred dollars; I was never concerned in any way in the proposed sale of any part of that Jones farm.

Witness being cross-examined by counsel for complainants, further saith:

I do not know what Foster paid per acre for the Revere farm; I should think the water from the springs on the part sold to Foster could be thrown up on top of the hill by means of a ram; that is my impression; I should judge so from the location of the springs; I think there are two springs.

Q. Have you investigated their location with reference to the question whether the water can be thrown up the hill or not?

A. I have not, sir; I do not know of any land on the Mendham road in the vicinity of this Jones tract, that about the year eighteen hundred and eighty-one, was sold for three hundred dollars per acre.

Q. About the year eighty-one, what was the highest price that any land was sold for per acre on the Mendham road?

A. Mr. Kountze bought the Mills place, that was the highest; there was forty-nine acres, I think; I won't swear there were not fifty-seven acres; it was my impression there was forty-nine acres; I only have it from word of mouth, I don't know; that was used as a fruit farm; there was some fruit on it; how much fruit I don't know; I hadn't been over the Mills property in eighty-one; I went by it; until this last summer I hadn't been on the Mills place for five or six years; I was not on the place after Mills built his new house, until last summer; I don't think the view from the Mills farm is any more extensive than from the Jones place; the view from the Mills farm doesn't cover more territory than the view from the Jones place; I am satisfied of that; I do not know what price per acre Kountze paid for the Cook property; I don't know how many acres there were there, nor the price he paid for it; I do not know what price Kountze paid for the Charley Guerin place; he paid four thousand five hundred dollars for the Charley Leek place; I don't know how many acres there were in that place; I don't know how much he paid an acre for that place; Leek's property was sold about three years, ago and the Mills property, the Guerin property I guess was sold since.

SILAS H. ARNOLD.

Sworn and subscribed before me }
January 13th, A. D., 1885. }

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

ISAAC G. ARNOLD, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown, New Jersey; I have lived in

Morristown and Morris township all my life, with the exception of three years I was in New York; I have lived in Morristown and Morris township forty-five years; I am a butcher; I have held official positions in Morristown as follows: Common Council twice; I know the Jones farm on the Mendham road; I know that portion of it lying on the north side of the Mendham road; I have bought and sold land in Morris township, and rented land there; I am acquainted to a great extent with the values of land lying in Morristown and its vicinity.

Q. That portion of the Jones farm, lying on the north of the Mendham road, in your opinion was worth how much per acre in the year 1881?

A. I should think it was worth three hundred and fifty dollars.

Q. You may, if you please, state the grounds for that opinion?

A. It lays front to the road, most all of it; there is a very handsome building site on it, and property in that vicinity was worth that much anywheres, either side of it; it was well watered, has got one or two or three springs on it; I don't remember which; I know I saw the water on it; and it lays south so that the sun strikes it pretty much all of it, which makes it very desirable; I might say it lays on the south side of a knoll; there is a hill there and it lays on the south side of it; I don't know as I can think of anything else just at present.

Witness being cross-examined by counsel for complainants, further saith:

I first heard of the sale of this land by Willet and Childs to Foster to-day; I had heard of the sale of the land, but didn't know it was by these men; I never heard the price paid by Foster for this land; I don't know when I first said this land was worth three hundred and fifty dollars an acre; I always thought it was worth that; I tried to buy that place once; I

don't know of any land on the Mendham road in the vicinity of this place that was sold for three hundred dollars an acre in the year eighteen hundred and eighty-one; I do not know how much per acre Foster paid for the Revere farm; if I knew it I don't remember it; I have been on the Revere farm lots of times; there is a good view from it, but not so much of an one as there is from the other part; there is a fine grove of forest trees on the Revere farm; there are numerous good buildings on it; the land is in a fair state of cultivation; there is a fine stream of water running through it; the proper place to put a house on this Jones tract would be right on the top of the knoll; if I were going to build I should put a house there; I have not put my valuation on this property as a building site.

Q. For what purposes have you put a valuation of three hundred and fifty dollars an acre, on this Jones tract, of twenty-eight acres?

A. Well, I don't know as I understand that question exactly; not to give it a proper answer; this land has always been used for farming purposes; the land around it is used for farming purposes.

Q Is this land worth three hundred and fifty dollars an acre for farming purposes?

A. Well, yes, in that vicinity; three hundred and fifty dollars will earn annually at the legal rate, twenty-one dollars; I do not think for every acre in that tract a farmer can clear twenty-one dollars per annum; I can't tell you how high the spring water on that place can be thrown with a ram; I think it could be thrown high enough to supply a house at the summit of the hill; I am satisfied of that, if the ram is large enough; there has always been a good drive way from the Revere house down to the turnpike; there has been no difficulty of access to either the mansion house or to the farm house on the Revere place, to my knowledge; I should think five or six acres of the twenty-eight acres on the north side of the road was what you might call low land; there is some

back of where the house used to stand that slopes towards the east; it all slopes towards the east; I should judge the course of the ridge was pretty nearly north and south.

Q. Along the top of the ridge, and on the westerly slope, there is not more than four or five acres of land, is there?

A. Yes, I should think there are eight or ten acres; I mean on the north side of the road.

Re-direct examination.

I tried to buy this place; I should think it must have been eighteen years ago; Charles Scofield owned it then.

ISAAC G. ARNOLD.

Sworn and subscribed before me
January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

SILAS D. CORY, a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I have lived in and about Morristown seventy-four years; I was born here, or out on the old homestead where Higgins lives; I am not in any business now; I was formerly a master builder; I have owned and bought and sold property in Morristown; I have bought considerable and sold considerable, more than a dozen lots I guess; yes, more than twenty; I was never assessor of the township; I was assessor of the city within the corporate limits; I have been a member of the Common Council of Morristown also; I was County Collector also for five years.

Q. Are you acquainted with the value of lands in and about Morristown and its vicinity?

A. Yes, sir; I suppose I am. I know what is called the Jones farm lying on the Mendham road.

Q. Take that portion of it that lies to the north, what in your opinion was that worth per acre in or about the year 1881?

A I think at that time it was worth three hundred dollars an acre.

Q. On what do you found that judgment?

A. It was a very nice piece of ground, good piece of ground, very handsomely located for building purposes; I considered it a very valuable piece of ground for building purposes; I think as fine a building site as there is anywhere on the Mendham road is on that knoll.

Witness being cross-examined by Counsel for complainants, further saith:

I have been very rheumatic and am yet; I have been quite an invalid for some years; I have suffered for some years, maybe five or six; I don't get down in town very often; I walked over to the Court House and back again on Saturday; I have been in town nearly every week I guess; I think I heard of the purchase of this twenty-eight acres by Foster about the time he bought it; I don't know how long ago it is; I don't think Jones told me of it; I don't remember who told me of it; I recollect of riding up to the place with Mr. Jones and I think Mr. Childs and Doctor Willet I guess, I am not sure all four were with me or not; that was about the time the Aqueduct was taking, wanting the ground up there; it was the time they took land for the reservoir; I don't know that I ever knew how much they took; I don't think I swore as to the value of that piece; I have no recollection of it; I don't think I did; I think likely I stated my opinion as to the value of that acre.

Q. Don't you recollect stating, in the presence of Childs, or Willet, or Jones, how much that acre of land, which the Aqueduct Company was applying to take, was worth?

A. My recollection is that some one asked me what the value of that land was, and I answered that for pasture, being as near town as it was, it was worth a hundred dollars an acre, take it altogether without the wood on it; I don't think that I mentioned the one acre in particular; I don't know that I knew where it was; I don't think it was staked off at that time, but am not certain; I don't think I heard the price per acre paid by Foster for the twenty-eight acres till to-day; I don't know but that at the time I heard what it all amounted to, but I am not sure about that; Mr. Jones told me to-day what it was sold for; he told me at my house; he asked me to come over here, and came to my house for that purpose I suppose.

Q. What did he say he wished of you?

A. He said he wished me to say what I thought that land on the north side of the road was worth at the time we were up there. I don't think he stated to me what valuation other witnesses had put on it; no other person stated to me what valuation other witnesses had put on it in this case.

Q. Do you know of any land on this Mendham road that was sold in 1881 for three hundred dollars per acre?

A. I saw it stated in the paper that Mr. Mills sold his place to Mr. Kountze for, I think it was three hundred, or over that; I always heard him called Mahlon Mills; his father's name was Mahlon Mills; he sold it to Mr. Kountze; I don't know what his first name is.

Q. Do not the Nehemiah Mills place or farm, the Josephus Guerin farm, the Cook farm, the Charley Leek farm and the Charley Guerin farm adjoin?

A. I don't think Josephus Guerin owned any land on that side of the road; yes, the Cook farm, the Josephus Guerin farm and the Mills farm adjoin, but I don't know where the Charley Guerin farm is; I should think those farms were between two and three miles distant from the Morristown depot; I don't know anything about the price per acre paid for the Mills place excepting from that newspaper item I spoke of; I

don't know how much Foster paid per acre for the Revere place ; I don't know how much the Mahlon Guerin farm brought per acre ; I don't remember how much per acre Foster paid for the Gribben property ; I remember seeing it in the paper, but do not recollect how much it was ; I do not know when Foster bought the Gribben place ; it adjoins his property on the east ; I do not know how much Fred. Burnham paid for property on the south side of the road from Morristown to Mendham, near Mills pond ; I was a master builder.

Q. What point, with reference to the elevation of this twenty-eight acres, is the proper location for a house ?

A. About half way between the Revere house and the road you turn off to go down to Cary's ; I am not positive I should locate it there on the top of the ridge unless I should go and see it again ; I should try and locate it so that the water would run from the house in both directions, so that the water would run east and west from the house ; I don't know of any source for water supply for domestic uses on this twenty-eight acres excepting some springs near the old house (I don't know whether it is torn down or not) where the brook ran across it ; I do not know how much of the water of that brook running through that twenty-eight acres the Morris Aqueduct Company has a right to divert ; I do not know whether the water from the springs I have spoken of can be thrown by a ram to the point I have designated as a proper location for a house ; I value this land at three hundred dollars per acre for building purposes ; I fix that as an average price per acre for the whole tract, at least that ; I can't tell you when the Revere house was built ; I can tell about the time ; it was prior to eighteen hundred and sixty ; it must have been built about twenty-five years ; I don't think it was more than that.

Q. Starting from the corporation limits, on the road from Morristown to Mendham, within a distance of

three miles, how many houses of the better class can you name?

A. Kountze's is one and Revere's is one; by Revere's I mean the present Foster house; I can't think of any others at present; Mr. Mills who sold to Kountze has built a good house; Mr. Sayre has a good house; so has Sheriff Anderson; this house of Mills is right near Theodore Sayre's house, right up in the woods; it is a very pretty house, and a very pretty place; he had it filled with boarders this summer; I think his house cost in the neighborhood of four thousand dollars; Mr. Mills is a farmer and keeps a summer boarding house for boarders; I don't know how much he paid an acre for the land on which this house is; part of the Theodore Sayre house is, at least, forty years old; it is nothing more than a good, plain comfortable farm house; it is a good sized house; Mr. Sayre is a practical plain farmer; he doesn't run a fancy stock farm that I know of; Sheriff Anderson's house is a good, substantial, plain farm house; that house was built, I should think, at least, twenty years ago; the sheriff is a plain, practical farmer; he is a good farmer.

Q. And Kountze's is the only elegant place on the Mendham road, isn't it?

A. Well, it is the most elegant I know of anywhere about here.

Re-direct Examination.

Q. You have spoken about somebody wanting to buy four or five acres of this land; when was that, and who was it?

A. A gentleman by the name of Hart; I don't remember his first name; he boarded at Jonathan Smith's next door to Mr. Arnold's, with his family; he told me he would like to own that land of Mr. Jones on that side of the road, that he would like to buy it if he could; he asked me if I could find out how much he could buy it for, and I asked Mr. Jones; he

wouldn't set any price on any portion of it up there; he was a New York merchant, that boarded with Mr. Smith some five or six summers, I don't know but ten; Mr. Arnold here knew him; he didn't authorize me to make any offer, he wanted me to see what he could get it for.

Mr. Little here objected to the testimony being given by witness, because it is incompetent, irrelevant and immaterial.

Objection sustained.

Q. Did Mr. Hart go to look at the land?

Objected to as incompetent and irrelevant. The question at issue is how much this land is worth.

Objection sustained.

Q. How long ago was it that Mr. Hart had this talk with you?

A. It was either four or five years ago last summer, maybe it was six years; I don't think it was longer than that; he said he was desirous of purchasing it.

Q. Why did he desire to purchase it?

Objected to, because it calls for a mere opinion, and not for a fact.

Objection sustained.

Q. Did Mr. Hart go to look at it with a view of purchasing it?

Objected to as incompetent, immaterial and irrelevant.

Objection sustained.

Q. Did Mr. Hart authorize you to make any offer after he went to look at it?

Objected to on the same ground.

Objection sustained.

Q. Do you know what Mr. Hart was willing to pay for that land on the north side of the road?

Objected to on the same ground.

Objection sustained.

SILAS D. CORY.

Sworn and subscribed before me,
January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

FREDERICK B. BETTS, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morris township, but not in Morristown; I live adjoining Mr. Foster; I bought the place in sixty; up to eighteen hundred and seventy I lived there in summer, and went down in winter; since seventy I have lived there all the time; I know this Jones farm; my business now is a broker in real estate and bonds; I have done nothing in real estate for two years; I combine the two, real estate and bonds; it would be better to say securities; I think I am familiar with the values of land in and about Morristown, to a certain extent.

Q. What do you think that portion of the Jones farm on the north of the Mendham road was worth per acre in the year 1881?

A. That is the best part of it; the very best part of it; I know what I would be willing to have given for it, but I don't suppose that would be a proper answer; I think that land was worth in eighteen hundred and eighty-one all that it is worth now; I don't think it has depreciated any; that land was worth in eighteen hundred and eighty-one from three hundred and fifty to four hundred dollars an acre; it would bring more than that now, I think; I never attempted to purchase this land for Mr. Foster, and he never authorized me to attempt to purchase it; I never made an offer for it or any portion of it.

Q. Give the grounds for your belief, if you please, that it was worth from three hundred and fifty to four hundred dollars per acre in 1881, and would have brought it then, and would bring it now?

A. When General Revere was alive he talked to me about it and wanted it, and from what he said at that time, as near as my memory now serves me, he was willing to give two hundred and fifty dollars an acre. Its value has increased in my judgment every year

from that day to this, on account of the large frontage together with the building site

Q. What elements or considerations enter in to make up the value of three hundred and fifty or four hundred dollars an acre ?

A. In the first place there is the very large frontage on the turnpike, on the road ; in the second, what I conceive to be very valuable building sites ; in the third, pure good water. That is about all I think in answer to that question.

Q. How about the view, the prospect from it ?

A. I think the view there is very fine, as fine as any around town, and it enhances the value from the fact that it is so near town.

Witness being cross-examined by counsel for complainants, further saith :

I have a place adjoining the Foster place, with a very fine prospect to the north, south, east and west, and with fine views in each direction ; the view from the Foster property is the same or very nearly the same as from my place ; the buildings on the Foster property are good, and you may say numerous in one sense ; there is a fine grove of forest trees about the house, Foster's house ; the water from the springs on the Jones tract flows through Foster's place ; the same stream flows through the Gribben property ; by the Foster property I understand you to mean the Revere farm ; the view from Foster's place and mine is quite equal to that on the Jones tract of twenty-eight acres ; this twenty-eight acres had very poor buildings on it at the time it was sold to Foster ; I didn't notice particularly the condition of the fence ; I can't answer definitely about the trees ; I know they are not the same as they are back of Mr. Foster's house ; I can't give the year Foster bought the Revere farm, my impression is about six years ago, but without looking in my diary at home I can't give you the year, in other words, I don't remember ; I do not know how much

he paid for it per acre ; I don't remember the year he bought the Gribben property ; he bought it since he bought the other ; I think it was about three years ago ; I do not know how much he paid an acre for it ; the top of the ridge is the best site for dwelling houses on this Jones tract ; I do not know how much of the water of the brook flowing through that place the Morris Aqueduct has a right to take ; I do not know how many sources of water there are on this twenty-eight acres.

Q. Do you know whether there are any springs on the Jones farm on the north side of the road ?

A. I have never examined, but I have no doubt there are springs there.

Q. If there are springs there, do you know whether the water can be carried by a ram or rams to the point which you have designated as the proper site for dwellings or a dwelling ?

A. Mr. Foster told me he was using a ram and had plenty of water there for ram purposes, and I supposed he was going to carry it to his own house ; he told me he was going to take it to his own house, he wanted it for his own purposes up there, for his present dwelling ; I do not know the location of the Nehemiah M. Mills place, or the Mahlon Mills place ; I do not know whether it has been sold or was sold in eighty-one ; I do not know the location of the John Cook place, nor whether that was sold about the time Foster bought this twenty-eight acres.

Q. How about the Charles Leek farm ?

A. I don't know him and don't know the farm ; I don't know Charles Guerin or the Charles Guerin farm.

Q. Do you know of any land on the Mendham road in the neighborhood of the Jones farm, that about the year eighty-one was sold for three hundred dollars an acre ?

A. No ; I know the property just outside the corporation limits on the south side of the Mendham road now owned by Fred. Burnham ; I do not know how

mnch Burnham paid per acre for that; I know the Daniel T. Leek property bought by John H. Reed on the Mendham road; I don't know how much was paid an acre for that only as I have been told; I was told he paid seventeen hundred dollars for it, but I don't know how many acres of it there are.

Re-direct examination.

I know where the Kountze place is; I was told he bought a farm from a man by the name of Mills and two other farms, but I don't know the names of the men from whom he bought; I know generally where the land is; Mr. Kountze has been buying up there, but I don't know the names of his grantors.

F. B. BETTS.

Sworn and subscribed before me,
January 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The hour for adjournment having arrived, the further examination of witnesses in this cause was here adjourned till Thursday morning next, January 15th inst., at ten o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Thursday morning, January 15th, A. D., 1885, the Counsel of the respective parties appeared before me pursuant to adjournment. The Counsel for the defendants, Samuel Jones and wife, represented to me that said Samuel Jones was unable to attend on account of sickness, and requested an adjournment of the examination. I thereupon adjourned the further examination of witnesses on the part of said defendants, to Monday morning, January 19th instant, at ten o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Jan'y 19, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment. The Solicitor of the defendants, Samuel Jones and wife, stated that Said Samuel Jones was confined to his house by sickness and requested a further adjournment of this examination. I thereupon, on the application of the Solicitor of the defendants, Samuel Jones and wife, adjourned the further examination of witnesses in this cause to Monday, January 26th inst., at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

January 26, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment. The Solicitor of the defendants, Samuel Jones and wife, asked for a further adjournment on account of the continued illness of said Samuel Jones, whereupon and with the consent of the Solicitor of the complainants, I adjourned the further examination of witnesses on the part of the said defendants to Friday, the thirteenth day of February next, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Friday, February 13th, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment. The Solicitor of the defendants, Jones and wife, requested a further adjournment of this examination, which request not being opposed by the Solicitor of the complainants, I adjourned the further examination of witness on the part of the defendants, Jones and wife, to Friday, the twentieth day of February instant, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Friday, February 20, 1885, the Solicitor of the com-

plainants, and the Counsel of the defendants, Samuel Jones and wife, appeared before me pursuant to adjournment, and the examination of witnesses in this cause on behalf of the defendants was proceeded with.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

GEORGE W. TUTTLE, a witness produced on the part of the defendants, being duly sworn, on his oath saith :

I am fifty-four or five years of age, and a farmer living in Morris Township, Morris County, New Jersey. The Jones farm adjoins my farm about a stone's thrown from my house ; it is the south side of the Jones farm that so joins my place ; the part of the Jones farm lying on the north side of the Mendham road is the most valuable part of that farm ; that lying on the north side of the Mendham road adjoins the Revere place, now the Foster place, now owned by Mr. Foster ; I have been on that property frequently and am well acquainted with it ; I have lived in the neighborhood where I now do ever since eighteen hundred and thirty three ; I own the farm where I live ; I have not owned other lands in Morris Township ; my father lived where I now do.

Q. What, in your opinion, was the value of that part of the Jones farm which lies on the north side of the Mendham road in the spring of the year 1881 ?

A. Well, I should judge it was worth three hundred dollars an acre ; if it had been mine I don't know as I should have wanted to have took that for it.

Q. State, if you please, some of the reasons which you have for making up your estimate ?

A. Well, it was well watered ; there was a fine stream of water running through it, and fine spring water on it ; there was a beautiful building site on the hill ; I consider it as fine as Mr. Kountze's, if not better, and much nearer Morristown than his'n ; it is only a few minutes drive from the depot and very desirable for

any gentleman doing business in New York ; the land was naturally good ; you was always sure of a crop of most any kind ; that is about all.

Q. How was it situate with reference to the Foster or Revere farm ?

A. It run up pretty close to the new house on the Revere farm on one side ; this land lay between the Revere farm and the Mendham road

Witness being cross-examined by counsel for complainants, further saith :

That water that crosses there is pure water ; I don't know why it shouldn't be pure, it is spring water and nothing to defile it excepting in times of freshets ; after it leaves Mr. Foster's farm it isn't as pure I suppose.

Q. How much do you suppose the spring water on the property and the stream that crosses it adds to the value of the property ?

A. Well, some people would apprise the value more than others, of course ; I can't say how much, but I should value it pretty highly on my part ; I wouldn't give much for a place without water.

Q. What would this property on the north side of the road be worth per acre without any of the spring water or stream water of which you have spoken being on it ?

A. It would be worth two hundred and fifty dollars an acre any how ; I understand there is water sufficient from the springs on the north side of the road to supply houses on the ridge ; I should think the part of the Jones farm lying on the north side of the Mendham road was worth double per acre the part lying on the south side of the Mendham road ; I have never owned any land, excepting the farm I now live on and a house and lot ; no other farm land ; that house and lot is down near Axtell's stone quarry where Guerin, Jack Guerin lives ; I don't own it now ; the Mahlon Guerin farm adjoins mine ; the Aqueduct Company,

the Morristown Aqueduct Company owns that now, I believe ; the part of the Jones farm lying on the north side of the Mendham road is smoother and easier to work than most of the Guerin farm ; both are pretty good lands, but the Guerin farm most of it is pretty rough and hard to work.

GEORGE W. TUTTLE.

Sworn and subscribed before me }
February 20th, A. D., 1885. }

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

EUGENE TROXELL, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith :

I have resided in Morristown since eighteen hundred and sixty-nine, and have been in business here ; I have been in the general grocery and provision business, and also in the clothing business ; I have been a member of the common council ; I own real estate here, and have bought and sold real estate ; I have some idea generally of the value of real estate in and around Morristown ; I was never assessor, but was county collector one time ; before I resided in Morristown I resided in Mendham and was in the habit of coming from there to Morristown very often, passing the Jones farm ; I am acquainted with the Samuel Jones farm which was spoken of by the last witness, and have known it since eighteen hundred and sixty-seven.

Q. What, in your opinion, was the value of the portion of the Jones farm that lies north of the Mendham road, in the spring of 1881, and give the basis of your valuation ?

A. Well, I should say it was worth easily three hundred and fifty dollars an acre ; the nearness to the railroad depot in the first place, the water facilities, the location of the land, and being some very fine building sites on to it, that is all

Witness being cross-examined by counsel for complainants, further saith:

I own a farm on the Basking Ridge road; it has a good brick dwelling house on it; the body of the house was there when I purchased it; I think I spent something over three thousand dollars on the house; there is a very beautiful and extended view from my house towards the southwest; the land I may say is naturally rich; there is plenty of very fine spring water on it; it fronts somewhat on the road from Morristown to Baskingridge; it does not front on a cross road or touch a cross road anywhere; I should say it was nearly two miles from the Morristown railway station; the road leading to it is a good ordinary road; there is a fraction less than ninety acres of land in the farm; I paid for it fifty-five hundred and fifty dollars, I believe; I bought it five years ago, about eighteen hundred and seventy-nine; the house is insured for four thousand dollars; less see, I can't say whether there is four thousand on the house alone or four thousand on the house and barn; there is thirty-five hundred or four thousand dollars on the house.

Q. What water facilities do you understand there are on this Jones farm lying north of the Mendham road?

A. I always knew there was a good stream on to it; and always understood there were springs on to it; my understanding is that there is abundance of water on it.

Q. What proportion in value of the three hundred and fifty dollars per acre which you put on the land is the water.

A. I should say one hundred and fifty dollars an acre; the valuation I put on the water is on the supposition that there is sufficient to supply houses built on the ridge.

Q. Is this valuation of the Jones tract, which you have made, determined in part by the price, at which other lands on the Mendham road have been sold?

A. Not altogether, no, sir; I do not know of any lands on the Mendham road that have been sold for anywhere near the price which I have put upon this Jones property; the stream on the Jones tract of which I have spoken takes its rise on the south side of the Mendham road, I believe.

Re-direct Examination by counsel for defendants, Jones and wife:

The farm which I have spoken of as my own was purchased by me at public sale.

Q. What was the condition of the property at the time of its purchase in respect to its state of cultivation, the fences and improvements?

A. It was in a very bad condition; its frontage on the public road is about five hundred feet; the land runs due south and is one field in width; it is a long and narrow strip.

Re-cross Examination by counsel of complainants:

The total cost of the improvements made by me on that property since its purchase wouldn't vary much from four thousand dollars; it would go over that rather than under it; I have offered it for sale since its purchase and the making of these improvements; I have offered it very low; I think the lowest price is ten thousand dollars; I don't recollect saying to you in Ross's office not very long ago that I would sell it for nine thousand dollars; I might have said in this way if I could dispose of all my property I might put the farm in at that price; I might have said it in that way; it is mortgaged; I have a mortgage on it.

Q. What is the equity above the value of the mortgage?

Objected to by counsel for defendants. Question waived by counsel for complainants.

Q. What is the amount of the mortgage?

Objected to by counsel for defendants, and to the

line of examination now being pursued as irrelevant to the issue and an inquiry into the private business of the witness.

Objection as to the particular question sustained.

Q. Mr. Troxell, would you have refused nine thousand dollars cash for that property in the year eighty-one or about that time?

Objected to for the same reasons as before.

Objection overruled.

A. I would not have taken nine thousand dollars in eighty-one, and it was not in the market in eighty-one.

Re-direct examination.

This farm of mine is by the road distant from the Jones farm I should say fully three miles and a half.

Re-cross Examination.

My farm lays on the road from Morristown to Baskingridge; I should say that road started from the Morristown Green and ran southwesterly; it is a continuation of what is known as Market street; I should not say that the course of Market street was at a right angle with Washington street; I should say that Market street bears more to the south, and is a greater angle than a right angle; the road from Morristown to Mendham is a continuation of Washington street; the general course is northwest until you come to the turn; the nearest route from the Jones place to my place may be by the Tuttle road coming out on the Kemble or Baskingridge road by Mills Bailey's, but not being familiar with that road I can't say that it would be nearer than coming to Market street, and going down that street; the latter, would, I should say, be the nearest, because it is the best road.

EUGENE TROXELL.

Sworn and subscribed before me
February 20th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

ELIAS C. ROY, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am sixty-one years of age, and a farmer, and have been a farmer all my life; I know the Samuel Jones farm which has been spoken of here; I have known that farm since eighteen hundred and forty-one; I have owned land in the vicinity of the Jones farm and about three quarters of a mile from it across lots and a mile and a quarter around the road; I am acquainted with the Revere farm now owned by Foster; I have known that the same length of time; my farm did not adjoin that; there is one farm between; Mr. Betts's farm lies between; I was somewhat acquainted with the value of lands laying in the vicinity of the Jones farm in the spring of eighteen hundred and eighty-one; I know the portion of the Jones farm that was purchased by Foster; I should think that land purchased by Foster was fully worth three hundred and fifty dollars per acre in the spring of eighteen hundred and eighty-one.

Witness being cross-examined by counsel for complainants, further saith:

I have sold my farm; I sold it to Lewis Walton; it was six years ago last December; I sold it for ten thousand dollars; I do not know of any lands on the Mendham road in the vicinity of the Jones farm that sold for three hundred and fifty dollars an acre in eighteen hundred and eighty-one; I don't know of any lands that were sold there at that time; I base my estimate on the handsome building sites on the property and the water; the water I refer to is the springs on the farm and the stream that crosses the road and runs through it; I suppose that water to be abundant for the supply of houses on the ridge; I should think I would value the water at one hundred or one hundred and twenty-five dollars per acre of the three hundred and fifty dollars per acre at which I have valued the

property ; I don't recollect what price per acre Foster paid for the Revere place ; I knew at the time, but I don't recollect what he did pay for it ; I have been told that he paid three thousand dollars for the Gribben property, but don't know of my own knowledge ; I don't know what he paid per acre for the Gribben property ; I don't know how many acres there are ; I do not know how much the Mahlon Guerin farm brought per acre when it was sold ; I should think the part of the Jones property on the north side of the road was worth per acre double that on the south side of the road.

Q. Why is it worth double ?

A. Because it is smoother and there are fine building sites on it ; I don't think there are any building sites on the other property.

Q. Then you value that on the north side of the road for building sites, and that on the south side of the road for farming purposes ?

A. Yes ; I don't think there are any building sites on the part on that side of the road ; I don't recollect who told me the Gribben property brought three thousand dollars ; Jones didn't tell me ; I won't say positive that it brought that amount, but it is my impression it brought that.

ELIAS C. ROY.

Sworn and subscribed before me,
February 20th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

AUGUSTUS W. CUTLER, a witness produced on the part of the defendants, being duly sworn, on his oath saith :

I am a resident of Morristown, and have been all my life, and am and for many years past have been an owner of real estate in Morris township and Morris County ; I am acquainted with land in and around Morristown ; I have bought and sold real estate in and

around Morristown; I have bought more frequently than I have sold, but I have sold at different times; I have had occasion and opportunity to become acquainted with the value of real estate; I am a counsellor-at-law of this State, and practicing law at Morristown; I am acquainted with the Samuel Jones farm adjoining the Revere place on the Mendham road; I have known that all my life; I have frequently seen it; I should say that that portion of the Jones farm which lies on the north side of the Mendham road, (the part that had the buildings on,) was worth from three to four hundred dollars per acre in the spring of eighteen hundred and eighty-one.

Witness being cross-examined by Counsel for complainants, further saith:

Q. What is the ground of your opinion, Mr. Cutler?

A. It is very eligible property for building purposes, fronting upon the public road the whole of it, a fine stream of water running through it, no waste land about it, and desirable as a residence.

Q. What proportion per acre of the valuation consists in the water?

A. That is very difficult to determine. For a country residence without a natural supply of water, it would not be as desirable; its water advantages would add largely to its value.

Q. Your opinion is based upon the supposition that there is an abundant supply of pure water for the use of houses on the ridge, is it not?

A. No, because I have not examined the water with reference to the fall, whether there is sufficient fall to supply houses on the ridge with water; it is based on the supposition that there is an abundant supply of water on that property at all seasons of the year for all purposes for the use of that property; my valuation is not based upon actual sales of land located on the Mendham road; I don't know of any land on that

road that has been sold for any such price per acre as I have valued this property at.

Re-direct examination by Counsel of defendants.

Q. On what do you base the valuation you have given?

A. On its nearness to Morristown, its frontage, its desirability as a residence, and its water facilities.

Q. Does or not the rate of sales of other property enter into the valuation which you have given to this?

A. Yes.

Re-cross examination.

I do not know how much this tract contains on the north side of the road.

Q. You formerly owned a tract within the corporate limits, bounded on the east by Speedwell avenue, on the north by Cutler street, and on the west by Sussex avenue, did you not?

A. I did; it contained about nine acres; that was mortgaged to Doctor Bozeman; it was sold at master's sale for I think about nine thousand dollars; I think that was in seventy-eight or seventy-nine.

Q. An avenue might be run through this tract from Speedwell avenue to Sussex avenue, located in such a way that building lots might front on it facing towards the north, other building lots front on it facing towards the south or south-east, and then desirable building lots be laid out along Speedwell avenue, Cutler street and Sussex avenue besides, could there not?

A. That is a very peculiar lot, requiring, excepting upon Speedwell avenue, a great deal of filling; the eligible building lots on that tract are on Speedwell avenue; that lot was sold at a forced sale for about nine thousand dollars; the purchaser held it less than two years and sold it for fifteen thousand dollars; that lot is all within the corporate limits of the town, but it hasn't got any of the conveniences of the city to it;

that lot is distant from the Morristown railroad station, by the usually traveled road, I should think from three-quarters of a mile to a mile ; the road from the public park to this lot is substantially level, there are no hills ; it is a good road ; there are no nuisances in the neighborhood of it.

AUG. W. CUTLER,

Sworn and subscribed before me }
February 20th, A. D., 1885. }

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

The further examination of witnesses was here adjourned on the request of the defendant, to Tuesday, the twenty-fourth day of February instant, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Tuesday, Feb'y 24, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment. The Solicitor of the defendants, Jones and wife, requested an adjournment of the examination of witnesses in this cause, and assigned reasonable cause for his request. Thereupon with the consent of the Solicitor of the complainants, I adjourned the further examination of witnesses in this cause to Friday, February 27th instant, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Friday, February 27th, 1885, the parties appeared before me pursuant to adjournment, when at the request of the defendant, Samuel Jones, and with the consent of the complainant's Counsel, I adjourned the further examination of witnesses in this cause to Sat urday, March fourteenth, 1885, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

Saturday, March 14, 1885, the parties appeared before me pursuant to adjournment. Being unwell, and the parties consenting thereto, I adjourned the further examination of witnesses in this matter to Thursday next, March 19th inst., at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Thursday, March 19th, A. D., 1885, at the request of the Counsel of the respective parties, complainants and defendants, I adjourned the further examination of witnesses in this cause to Friday, the twenty-seventh day of March instant, at the hour of ten in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Friday morning, March 27, 1885, the Counsel of the respective parties appeared before me pursuant to adjournment, and the examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THOMAS HUGHES, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith:

I am a civil engineer and surveyor; I reside in Morristown, New Jersey; I have resided here eighteen or twenty years last past, practicing my profession here all that time; I have been a civil engineer and surveyor about forty-eight years; I am acquainted with the country around Morristown; I am in the habit of going around the country about Morristown continually on professional business; about eight or ten miles around Morristown; I have surveyed most all the property around Morristown one time and another; I am well acquainted with the Samuel Jones farm ad-

joining the General Revere farm on the Mendham road; I have surveyed that farm; I have made a map of it; this is it; I made the survey in August, eighteen hundred and seventy-two; I made an actual survey on the ground and a very accurate survey; the scale of this map is seventy feet to an inch; the map is a correct outline of the farm and it correctly shows the location of the buildings, streams and springs on it from actual surveys; as you go from Morristown the farm commences with the line of General Revere's farm as shown on the map; the distance along the right hand side of the road as shown along the Mendham road from General Revere's line just spoken of is seventeen hundred and fifty-two feet, or nearly so, to the forks of the road at the point where the road runs from the Mendham road to Water street; Water street is, I believe, the name of it, of some little village down there; the front on the Water street road is three hundred and seventy-five feet, making a total frontage of this portion of the Jones tract on the road of two thousand one hundred and twenty-seven feet; the comparative or relative heights of several points are marked on that map and those heights are shown by the red figures, and the difference between those will give the heights; the difference between any of those two red figures will give the difference of the heights of the points at which they are placed; I have springs of which the height is marked on the map; there is a spring just beyond the culvert near the farm house on this tract, on the left of the Mendham road, about sixty or seventy feet from the road, at which the red figures are, one hundred and seventy-two and one-tenth; following up the stream, and on the left of the stream about a hundred feet, is another spring, at which there are red figures denoting the height to be one hundred and eighty-five and one-tenth feet.

Pointing to the map the witness says:

This place marked on the map, "The acre lot proposed to be taken by the Aqueduct Co.," is the lot which has been taken for and is now occupied by the

reservoir; following up the stream and about fifty feet above the southerly end of the acre just named, and about a hundred and fifty feet westerly above the said point, is another spring, marked in red figures, two hundred and twenty one; now, on the Tuttle road, about forty feet to the left of it, or easterly of it, and about a hundred feet this side or northerly of the watering trough on said road, is another spring, marked as the height in red figures, two hundred and ninety-two feet; said watering trough is in the road and on the right hand side of it, and is supplied by a spring, and is marked in red figures as the height, three hundred and ten and two-tenths feet; and about a hundred feet further south on the road is another spring, the height of which is not given on the map; I cannot give it; I haven't the minutes of it; it is nearly the same height as the watering trough; proceeding still southerly from the last named spring along the same road a distance of about fifty feet is another spring easterly of said road about fifty feet, the height of which, as marked in red figures, is three hundred and two and six-tenths feet; there are no other springs on the tract on the left hand side of the Mendham road that are not marked that I know of; no considerable spring; but on the tract on the right hand side of the Mendham road, and in the rear of the sites of the barns and outbuildings is a very fine spring, which is marked in black ink in a black circle and the word "spring" is in black letters; the roads are laid down on the map quite accurately; General Revere is now dead; I have heard that a Mr. Foster now owns the lands marked General Revere on the map; the portion of the Jones farm which lies on the right of the Mendham road is owned now by the same Mr. Foster.

Counsel for defendants offered the said map in evidence, and I have marked the same Exhibit B on the part of the defendants.

Witness continuing is asked—

Q. What, in your opinion, was that land on the right side of the Mendham road, now owned by Foster, worth in the spring of eighteen hundred and eighty-one?

(Objected to as incompetent, because the witness has not showed knowledge of the value of real estate sufficient to warrant him in expressing an opinion.)

Objection sustained.

Q. Are you familiar with the sales of real estate which have been made around Morristown for the last fifteen or twenty years?

A. I have a general knowledge of them.

Q. Are you acquainted with the values of real estate in and around Morristown?

A. I am in a general way, comparing one with another; I have been acquainted in that way with the values of real estate for the last ten or fifteen years.

Q. Does or does not the practice of your profession bring to your knowledge the sales of real estate that are and for years past have been made in and around Morristown?

A. Naturally it does.

Q. What in your opinion was that land on the right side of the Mendham road now owned by Foster worth in the spring of eighteen hundred and eighty-one? I mean that part of the Jones farm now owned by Foster?

A. Well, I should say it would be worth or was worth at that time at least three hundred dollars an acre at the very least, as land was then selling around here.

Witness being cross-examined by counsel for complainants, further saith:

Q. In eighteen hundred and eighty-one what was the land owned by Jones on the south side of the Mendham road worth per acre?

A. That part of the land on the south side of the Mendham road lying westerly of the Tuttle road would

be worth nearly three hundred dollars per acre, perhaps not so much; the part lying easterly of the Tuttle road and southerly of the Mendham road I would say was worth from two hundred to two hundred and fifty dollars an acre; that is, regarding it as a separate tract, but in connection with the rest of the land it would be worth more, because the springs on it would be valuable for the other part for building sites, for supplying water to houses that might be built on it; I fix the valuations now with reference to the year eighteen hundred and eighty-one, and the land is worth more now than it was then for it is rising rapidly around here; I don't know precisely when Foster bought the Revere farm, but I believe it was in eighteen hundred and eighty-one, but I am not sure; I do not know of my own knowledge how much he paid an acre for it; I have heard; I do not know in what year Foster bought the Gribben farm; I know on what road the Gribben farm is; I do not know how much per acre Foster paid for the Gribben farm; I know the Luse property on the Mendham road bought by Mr. Egbert; I don't know positively what year Mr. Egbert bought it, but I think he bought it about two years ago, about eighteen hundred and eighty-three or eighteen hundred and eighty-four; I don't know how much per acre he paid for it; this map, Exhibit B, was made in eighteen hundred and seventy-two, in August and September eighteen hundred and seventy-two, and those levels were taken in eighteen hundred and seventy-two, also those elevations; the whole thing was done in the fall of eighteen hundred and seventy-two; these elevations marked in red on the map were placed on the map at that time in 1872; these elevations were calculated from the east parapet of Jones' bridge over the Mendham road from the northeast corner of the flag stone over the archway; that point is called one hundred and seventy-one and four tenths feet; all the other heights are given relative to that.

Q. What does one hundred and seventy-one and four tenths mean?

A. It means feet; it means one hundred and seventy-one and four tenths feet; it is one hundred and seventy-one and four tenths feet with reference to my mind, and what I assume it to be; I might have called it one hundred or five hundred or a thousand, but I didn't; engineers have to assume something as the starting point always; and I assumed that as one hundred and seventy-one and four tenths feet for a certain reason; the reason was this—that was the height of that point, in taking levels some years previous for the Morris Aqueduct Company; I don't remember now with reference to what point that was the height, nor does it matter at all; I commenced to make this survey Friday, August second, eighteen hundred and seventy-two.

Q. Do you recollect whether there was water flowing from the spring then marked one hundred and seventy-two and one tenth?

A. There was water flowing from it, and from all other springs which are marked there as springs there was water flowing; this map correctly represents the location of the streams and springs delineated on it.

THOS. HUGHES.

Sworn and subscribed before me,
March 27th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

JOHN H. REID, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith:

I reside in the township of Morris, and have lived here I think it was nineteen years the first of the present month of March; I own real estate here; I first purchased real estate here some six months before I came here; I purchased a farm on the outskirts of Morristown; it contained one hundred and nine acres; it ran from Sussex avenue to the Mendham

road pretty near, and joined Foster's on the rear part; Revere, General Revere, formerly owned the land which Foster now owns which I speak of; in the course of the nineteen or twenty years I have been here I have been around the country around Morristown.

Q. Are you acquainted with the value of real estate around Morristown and heard of sales and purchases as they have been made?

A. I don't know hardly how to answer that, only as I see the papers and know personally.

Q. Do you know of the sales of real estate being made in and around Morristown from time to time?

A. Yes, sir; I have made sale myself of land; I have made a purchase of land.

Q. Before you purchased the farm where you now live, did you sell the farm that you had previously purchased?

A. Yes, sir; I have heard the value of real estate in and about Morristown talked about and discussed, more or less, for the entire length of time since I have lived here; I take a Morristown newspaper; I can't say I have kept up with the sales of real estate as they have been made from time to time; I have bought and sold on my own judgment.

Q. Formed your opinion of sales that have been made from time to time?

(Objected to as leading)

Question waived by counsel.

Q. How far do you live from the post office on Morristown Green?

A. I don't think it is more than three quarters of a mile.

Q. Are you acquainted with the Samuel Jones farm on the Mendham road?

A. Well, I have seen it, know the location, and have passed it by the road a good many times; I live possibly a quarter of a mile from the Jones farm at the present time; I don't think it is any more than that;

I have known that farm for about nineteen years; it was close by; I could look right down on it.

Q. That portion of it that lies on the north side of the Mendham road and was bought by Foster, what in your opinion was that worth per acre in the spring of the year eighteen hundred and eighty-one, the time that Foster bought it?

A. Well, I don't know that there was much difference in the value of it between that time and now; if it had been my property I should have wanted in the neighborhood of four hundred dollars for it.

Witness being cross-examined by counsel for complainants, further saith:

I base my opinion upon what I ask for my own and what I heard of other property being sold for; I refer to other property right along side of me, a place has been sold; I couldn't tell you when that place was sold; I think it was ten or twelve years ago; I allude to Mr. Eddy's farm, the one he sold a portion of this spring; he sold to Amasa Leonard; that sale was made ten or twelve years ago; it came back in Eddy's hands and he sold it again; I don't recollect his name; he is an artist; he moved up there a week or two ago; McCord, I think, his name is; Eddy got the farm back from Leonard by foreclosure of a mortgage; that was a mortgage Leonard gave for part of the purchase money at the time he bought of Eddy; that property is located on the road from Morristown to Mount Freedom; that road is a continuation of what is known as Sussex avenue; that property has numerous buildings on it; it has a pretty good quantity of fruit of different kinds on it; there is now abundance of good spring water on it, but there was not at that time of the sale to Leonard; the spring water is not on the part that was sold to McCord, and I don't know whether he has a right to it or not; the buildings on Eddy's property are situate on a high knoll with a very extended view towards the north and west; it is

what I would call improved property, but some of it is pretty poorly improved, a portion of it is.

Q. Will you state under oath the value of the improvements on this property, including the buildings, the fruit and other improvements?

(Objected to as having nothing to do with the issue in this cause.)

Objection overruled.

A. McCord only bought three or four acres where the house and improvements are, I so understand.

Q. Question repeated?

Objection renewed.

Objection overruled.

A. Well, five thousand dollars.

Q. Are you aware of the fact that the buildings on that property are insured for eight thousand dollars?

A. I am not, but I will say if the buildings were mine, I wouldn't consider them worth two thousand dollars; but I don't care to have that put down.

Q. Will you state under oath what the land sold by Eddy to McCord brought per acre clear of the improvements, buildings and fruit?

A. I couldn't answer that at all, for I only had the newspaper report for it.

Q. There are no buildings or fruit on this Jones property, are there, Mr. Reid?

A. There are some few old apple trees, that is all I know of.

Q. Will you state what was the value of the improvements, the buildings and the fruit on this Jones property, in the year eighteen hundred and eighty-one?

A. I couldn't do it.

Q. What proportion of this value of four hundred dollars per acre which you place on this Jones property consists of the water on it?

A. Of course it wouldn't be worth more than three quarters as much if there was no water on it; I base my valuation on the supposition that there is abundance of water on it.

Q. You base your valuation on the supposition that the purchaser will have the right and benefit of abundance of water in the brook that runs through the land as shown on the map, do you not?

A. Yes, sir.

JOHN H. REID.

Sworn and subscribed before me March 27th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

ISAAC N. WHITEHEAD, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am a son of Sylvester R. Whitehead, and a nephew of the late Ira C. Whitehead; I live in Morris township, and was born and have always lived here; I live on part of the old Whitehead homestead, not in the old house though; I have known the Samuel Jones farm set out on this map; I have known it ever since I was a school boy, and traveled back and forth to town to school fifty years; during all that time I have been in the habit of passing it frequently; I am the owner of real estate, and have been about forty years; I have bought property in Morristown and its vicinity; I have not sold; I am in a measure acquainted with the value of real estate in and about Morristown; I am better acquainted with the value of lands outside of Morristown than inside of the city; I am a farmer by occupation; my own residence is about a mile and a half beyond the Jones farm; that farm is about half way between the city and my farm; I own about a hundred acres more or less; I think I am taxed for about one hundred and thirty acres; it is made up of different lots; I know the portion of the Jones farm containing about twenty-eight acres which Foster bought.

Q. What in your opinion, was the value of that por-

tion of the farm, in the spring of eighteen hundred and eighty-one, when Foster bought?

A. If I had had a farm situate the way Foster's is situate, I would have been glad to have got it for two hundred and fifty dollars an acre at least; there is another value to it, in my estimation, aside from that for building purposes; there is a valuable site there for a gentleman's residence, one of the finest in this section of the country anywheres; if I had owned the property I should have wanted to have got eight thousand dollars for it.

Q. State, if you please, the qualities that in your opinion, made it worth that amount?

A. There is a dwelling site on the top of the hill that has been admired by everybody since I can remember, and there is a spring of water part of the way down the hill, that I presume would supply the water that would be needed there; I am not positive about that, but that has always been my impression; that adds greatly to the value of it for that purpose; the property is very accessible from Morristown; it is on the main thoroughfare to Mendham and Washington Valley.

Witness being cross-examined by counsel for complainants, further saith:

If I was in Foster's place I would give two hundred and fifty dollars an acre for that little lot, because he is about two-thirds hemmed in; people that are situate like Foster don't like to have a lot like that between them and the road; they like to bind on the road; they might get bad neighbors or something of that kind; I would be largely influenced certainly, by a desire to protect myself from a nuisance; that would be one great thing, but it adds largely to the value of his property independent of that.

Q. Then if you had had the twenty-eight acres to sell Foster would have been the first man you would have sought as a purchaser naturally, would he not?

A. Yes; if Foster had had the same feeling I have on such things he would have been very careful that there didn't anybody else get it; I should expect that Foster situate as he is would pay a greater price for it than any one else; it is my impression that the spring of which I have spoken on the twenty-eight acres, furnishes abundance of water in the dry summer weather; my impression is that the water is there and that there is sufficient fall to force the water up on the hill; if there is not it will diminish the value of the land there for building very materially; I raise on my farm for sale corn, oats, potatoes, hay, wheat.

Q. If you are asked the market value of hay, how do you determine it?

Q. Why, I come to town and inquire the price; my notion of the market value of hay would be what it sells for in the market.

Q. I ask you to state the market value of this property in eighteen hundred and eighty-one?

A I can't tell you; I don't know.

Re-direct examination.

Q. If that property was worth eight thousand dollars for a building site, would or would not it have been cheap to Mr. Foster to get it at that price?

Objected to because it is based upon an assumption of fact that isn't true, to my recollection.

Objection sustained.

Q. Have you given your opinion of the value of this property to the best of your judgment?

A. In the same way I have given it here to-day, I think I have once.

Q. And that opinion remains the same as it was when you gave it, does it?

A. It does.

ISAAC N. WHITEHEAD.

Sworn and subscribed before me,
March 27th, 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

EUGENE S. BURKE, a witness produced on the part of said defendants, being duly sworn, on his oath saith :

I live in Morristown and have lived here or in the immediate vicinity all my life, a period of about thirty three years ; I am in the coal business at present ; I have been associated with J. Henry Johnson in the real estate business ; my office now is adjoining him ; in my business I have had occasion to know about sales of real estate in and about Morristown since February, eighteen hundred and eighty-one ; I am acquainted with the Samuel Jones farm on the Mendham road since Charley Scofield lived there twenty years ago ; I used to go up there when I was a boy ; I have been on it quite frequently ; my opinion is that the part of the farm on the right hand side of the road which was purchased by Foster in the spring of eighteen hundred and eighty-one was then worth three hundred and fifty dollars an acre.

Witness being cross-examined by Counsel for complainants, further saith :

I live in Morristown, on Madison avenue, about a quarter of a mile outside of the city limits on the Cobb estate ; I live with my father ; his name is Thomas W. Burke ; he has lived there since forty-six or forty-seven ; it is part of the estate of the late George T. Cobb ; I think, Mr. Alfred Mills is one of the executors and trustees of that estate.

Q. When did you form your opinion as to the value of this Jones farm ?

A. I have often looked at the property and thought of its value as a building site, but never fixed a direct value on it until within the last two or three weeks.

Q. What led you to fix the value within the last two or three weeks ?

A. Why this law suit.

Q. How was this law suit called to your attention ?

A. I was called here as a witness.

Q. Had you formed an opinion of its valuation before you was called here as a witness?

A. Not definitely; I had not expressed any definite valuation; I do not know what Foster paid for the Revere farm per acre; I do not know what he paid for the Gribben farm per acre.

Q. How do you fix this valuation of three hundred and fifty dollars per acre as of eighteen hundred and eighty-one?

A. By its desirable location as a dwelling site, and the sales of other real estate.

Q. What other real estate?

A. The Kountze property; property on the Cobb estate, and other property about Morristown.

Q. Well, what other property?

A. The Sneeden property for one; the Kountze property I have spoken of is located about a mile or a mile and a half beyond this property on the Mendham road; I think Kountze bought that property about that time.

Q. Well, about what time, about eighty-one?

A. Well, I won't be sure about that; he paid about two hundred dollars an acre for it; I don't know how many farms he bought; that is what I have been told he paid for it; there were farm houses and barns on the property he paid two hundred dollars an acre for; I do not know what their value was; there was a good stream of water running through the property he bought; there was abundance of water.

Q. Will you swear that deducting the value of the improvements on this property which Kountze bought of which you have spoken, he actually paid a hundred dollars an acre for the land?

A. To the best of my knowledge, I think he did.

Q. You have sworn that you do not know the value of the improvements on this Kountze property, have you not?

A. The actual value.

Q. That is what I am speaking of?

A. If you want me to swear to the actual value of every stick and building on it, that will be an impossible thing to do.

Q. You are called upon to state the value of the Jones farm in 1881; what was the value of the improvements on that farm in 1881?

A. The improvements, the buildings didn't amount to much.

Q. Can you tell how much the twenty-eight acres would have been worth in 1881, with the improvements off?

A. I don't think the improvements were worth more than say fifty dollars per acre; that would leave the naked land worth three hundred dollars per acre, in my judgment.

Q. You base your estimate upon the price of two hundred dollars per acre paid by Kountze as you are informed for improved property, now if the improvements on the Kountze property were worth one hundred dollars to the acre, do you mean to say that the Jones land was worth three times as much as the Kountze land?

Objected to.

Objection overruled.

A. Its value was enhanced by its desirable location.

Q. Was the Jones land in eighty-one, stripped of all improvements, worth three times as much per acre, as the Kountze land, stripped of all improvements?

A. For a building site I would prefer it.

Q. Question repeated?

A. Well, in my judgment it was; it was worth just what I say; that is my estimate of it; I have been on the Kountze property; it has a very extended view towards the north and west and east; it has about the same elevation as the Jones property; it has a fine stream of pure spring water flowing through it in abundance; the soil is in all respects as well adapted for agriculture as the Jones property; it has a very extensive frontage on the Mendham road; there is

some good timber on it; there are no nuisances about it that I know of.

Q. Leaving out of question the difference in distance, is it not as accessible from the Morris & Essex Essex Railroad Station, as the Jones property?

A. Well, you have to go down one hill and climb up another to get there that you do not have to to get to the Jones property; its location, its long front along the Mendham road is what leads me to think the Jones property is worth per acre three times as much as the Kountze property; also its nearness to Morristown and the springs on it increases its value.

Q. Is the brook that runs through this Jones property an element of value?

A. I refer to the springs; the brook furnishes a good supply of water, and I should consider it an element of value; the springs I refer to are springs on the property; I don't know just how many there are there; I don't know the value of the brook; it is a value to have the spring water running on the land, I should think; I don't know how much the property would be worth less per acre if the brook was diverted; the sales of the Cobb property and of the Sneeden property of which I have spoken, those properties are down Madison avenue.

Re-direct examination.

The portions of the Sneeden and Cobb properties which have been sold are about the same distance from the centre of the town as the Jones property which I have been speaking of; a portion of the Cobb estate was sold for six hundred dollars per acre, that is prior to that time; the Sneeden property was bought at about the same figure, as I remember it; the water from the springs on the Jones farm flows down through the property into the brook; the brook starts on the south side of the road and flows through the land on the north side of it.

Re-cross examination.

The Cobb property of which I have spoken was sold ten years I should think before this property; I think that was sold in seventy-one; that is the property the Sneeden house stands on; the Sneeden property of which I have spoken was sold early in eighty-threee, I think.

EUG. S. BURKE.

Sworn and subscribed before me
March 27, 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

LOTT PRUDEN, a witness produced on the part of said defendants, being duly sworn, on his oath, saith:

I live in Morris Township, about a mile and a quarter from the centre of the town; I have lived here always, excepting four or five years, when I was learning a trade; my trade was a wheelwright; I own a little real estate; I have not bought and sold much; I am Collector of Morris Township; I have been Collector for three years; I have read accounts of sales of real estate made in and about Morristown; I have never kept any record of them; I know the Samuel Jones farm; I have always known it; I have known it quite a good many years; I don't know how long; I have seen it quite frequently this last six or seven years; I know the part on the right side of the road as you go up that was sold to Foster in the spring of eighteen hundred and eighty-one; I should think that property on that side of the road at that time was worth three hundred and fifty or four hundred dollars an acre.

Witness being cross-examined by Counsel for complainants, further saith:

I know the brick yard down on the Basking Ridge road ; I don't know what the market value of brick is to-day ; I don't know what the market value of brick was in eighty-one ; I don't deal in brick ; I would ascertain the market value of brick by inquiring of the proprietor, the person who makes them.

Q. Do you mean by ascertaining what they would sell for in the market.

A. Why of course if I wanted to buy brick I would inquire what they would be worth in the market.

Q. Isn't the market value of everything fixed by what it sells for in the market?

A. Well, I couldn't say whether it is or not ; the value would be fixed on anything that was sold whether it brought the market value or not.

Q. At what valuation does the law require lands to be taxed?

Objected to as a question of law not to be ascertained in this way.

Objection sustained.

Q. At what valuation has this Jones farm been taxed?

Objected to as not a matter within his knowledge.

Objection sustained.

Q. How do you fix the valuation on this twenty-eight acres at three hundred and fifty or four hundred dollars an acre?

A. Well, by the location and the way the property sells around the town.

Q. What other property have you the sale of in your mind?

A. Well, I don't know as I have any just at present.

Q. Do you know of any property on the Mendham road that sold for three hundred dollars an acre in or about the year eighteen hundred and eighty-one?

A. I don't know of the price that any land sold for ; I don't know what price Mr. Foster gave for that.

Q. Do you know at what proportion of its value real estate is taxed in Morris Township?

Objected to as irrelevent, immaterial and outside the knowledge of the witness. If the fact can be proved it must be proved in some other way.

Objection sustained.

LOTT PRUDEN.

Sworn and subscribed before me
March 27th, A. D., 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

WILLIAM C. CASKEY, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith :

I live in Morristown ; came to live here in forty-nine and will have lived here thirty-six years next fall ; I have been engaged in business here the greater part of the time in the mercantile trade ; I have been engaged in the milling and coal business with the grocery trade ; my store is on the north-east end of the park ; it is the north corner ; I have bought and sold real estate some ; I am acquainted with sales of real estate as they have been made from time to time in different parts of the town and its vicinity ; I know the Samuel Jones farm which has been spoken of here ; I have seen it very often.

Q. The portion on the right side of the road that was sold to Mr. Foster in eighty-one ; what, in your opinion, was that portion worth at that time ?

A. Well, I should think it was worth from three hundred and fifty to four hundred dollars per acre

Witness being cross-examined further saith :

Q. Upon what is your opinion based ?

A. The location, the desirability of the property, other sales around town near by ; I haven't any particular sale in my mind ; it was from reading accounts of sales in newspapers ; I don't know that I could give the price of any one piece of property now, excepting

twenty acres we bought of Joseph Lovell in eighteen hundred and seventy-one, outside of the corporation; I know about that.

Q. When did you form your opinion?

A. It has been growing gradually, since way back as far as the time of the Aqueduct trouble.

Q. Had you anything at all definite in your mind as the basis for your opinion at the time you formed it?

A. Well, I think I must have had or I shouldn't have formed it; as I said I rested my opinion on the location and desirability of the property for a building site, and its nearness to town.

Q. Who were associated with you in business when you were in business?

A. Jesse Smith in the first place, and my brother, E. T. Caskey, after that; my brother and I as a firm failed; that failure was, I think, in seventy-eight.

Q. What dividend did you pay your creditors?

Objected to as immaterial, irrelevant and improper.

Objection sustained.

Re-direct Examination.

Q. You say you were led to make a valuation of this land, or your attention was called to the value of this land as far back as the Aqueduct troubles. Do you or not refer to the time that land was taken on the Jones farm on the left side of the Mendham road for the purposes of a reservoir?

A. That is the time I refer to; yes, sir.

Q. You have spoken of having purchased twenty acres outside the corporate limits of Morristown. For what purpose was that land purchased and disposed of?

(Objected to as immaterial, irrelevant and incompetent.)

Objection sustained.

Re-cross Examination.

Q. Do you know that the Aqueduct Company condemned property of Jones, part of this farm at two different times?

A. I don't know that I do; I only know there was a law suit about it; I don't know any further about it than that.

Q. The Aqueduct trouble you refer to was when Mr. Vanatta acted for Jones in 1872 at the time they took the springs, was it not?

A. It don't seem to me to have been so long ago as that as 1872; I don't remember whether Mr. Vanatta acted or not; it don't seem to me have been so long.

Q. Do you refer to a time when the Aqueduct Company condemned part of this property after the foreclosure sale and purchase of this property by Willet and Childs in 1879?

A. I don't know anything about the foreclosure and purchase by Willet and Childs; I haven't anything in my mind about that.

Q. Were the condemnation proceedings you had in mind subsequent to August, 1879?

A. I should think that was about the time; I was not a Commissioner to appraise the value; I was not a witness; I had nothing to do with it.

W. C. CASKEY.

Sworn and subscribed before me
March 27, 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent of respective Counsel to Friday, April third next, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

April 3, 1885, pursuant to a provisional agreement made betwern the respective parties when the last adjournment was made the further examination of wit-

nesses in this cause was to-day adjourned until to-morrow morning, April 4th, at ten o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

April 4, 1885, the parties and their Counsel appeared before me pursuant to adjournment, and the examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

SHERWOOD S. ATNO, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith:

I reside at Morristown, New Jersey, and have resided here since thirty-three; came here when a small boy; before I came here I resided in Sussex County, New Jersey; I have been in business here between thirty and forty years; I brought up a family here; I have been a member of the Common Council; I have bought and sold real estate in and near Morristown; I have had an opportunity of ascertaining from time to time about sales of real estate made in and around Morristown.

Q. Are you acquainted with the Samuel Jones farm located on the Mendham road, near the Revere or Foster place, and if so, how long have you known it?

A. I have known it a good many years; I think I knew it at the time Mr. Wilson, Sheriff Wilson, owned it; that was probably for forty or fifty years.

Q. The portion on the right hand side of the road as you go to Mendham, which Foster purchased in the spring of 1881, what in your opinion was that land worth at that time.

Objected to by Counsel for complainants, because it should be what was the market value of the property at that time.

Objection sustained.

Q. What was that land worth at that time?

Question objected to by Counsel for complainants on the same grounds above stated.

Objection overruled.

A. I should judge it worth three hundred, probably three hundred and twenty-five or three hundred and fifty dollars per acre.

Witness being cross-examined by Counsel for complainants, further saith :

I live here in town now ; I am in the tannery building at present ; I am selling leather ; I am dealing in shoe leather and findings ; I am not dealing on my own account ; my family has helped me along some in business ; I am under the style of agent ; I have been doing business under the style of agent since eighteen hundred and seventy eight ; I was in the tanning and currying business prior to eighteen hundred and seventy-eight on my own account ; I failed in that business, my real estate, yes, everything was sold out by the Sheriff ; I have not heard any one speak of the value of this Jones property lately ; I never heard much about it ; I don't think I have heard any one say how much it was worth per acre lately ; I think it was worth as much per acre in eighteen hundred and seventy-two as in eighty-one ; I always regarded it as a very handsome building property, easy of access to town.

Q. What was it worth in 1879?

A. I don't know as there was any much difference in its value then ; the property hadn't changed ; it was a valuable property always.

Q. It has always been worth about that same figure, hasn't it?

A. Yes, sir ; about three hundred dollars per acre ; I remember about the time Jones bought it.

Q. About 1858?

A. Yes, I think that is about the time he bought it ; Charley Scofield owned it.

Q. The Jones property which lays on the south side of the Mendham road is worth about the same, is it not?

A. No, I don't think it is; it ain't so nice an exposure; that is worth probably a hundred or a hundred and fifty dollars per acre.

Q. What is the reason that leads you to think this property on the north side of the road worth three hundred and fifty dollars per acre?

A. Well, it lays pretty for building purposes; there is very little broken ground to it; the stream runs through the lower part of it there.

Q. Do you know of other property on the Mendham road that was sold about the year 1881?

A. No, sir, not much.

Q. For what purposes has this property been always used?

A. It has been held, I guess, on speculation; it has been used for farming.

Q. Do you know what demand for building lots there was on the Mendham road about the year 1881?

A. Well, there wasn't much.

Q. What property have you bought and sold in Morristown?

A. That property on Early street where I used to live; the tannery property on Atno avenue, and the property in Bridge street I owned; that is pretty much all the real estate.

Q. What ones of these three tracts were sold by the sheriff, if any?

A. The Early street property and the tannery property were sold by the sheriff, I think it was in the year eighteen hundred and eighty; I sold the Bridge street property in eighteen hundred and seventy.

Witness now states that he desires to make an explanation in regard to an answer given by him in his cross-examination that the part of the Jones tract lying on the north side of the Mendham road has always been worth three hundred dollars per acre; and says

that for a number of years back it has been worth three hundred dollars per acre.

Counsel for complainants here resumed his cross examination.

Q. You think for speculative purposes it has been worth three hundred dollars per acre?

A. Yes; I don't think it is worth that for farming.

Q. And you fix this value per acre because you understood it was bought and held for speculative purposes, do you?

A. No; I consider it worth that on my own judgment.

Q. How long prior to 1881, was that tract worth three hundred dollars per acre?

A. Probably fifteen years, or twenty years.

Q. What made it worth three hundred dollars per acre twenty years ago?

A. I base my judgment on sales of other lands similarly situated, situated a similar distance from town; I refer to lands in Collinsville, lands in Ridgedale and lands up Jockey Hollow; Collinsville is about a mile, a mile and a quarter, or a mile and a half from Morristown post office, northeasterly from Morristown; Ridgedale avenue is nearly east from the Morristown post office; it extends a good way, probably a mile and a half; the entrance is pretty close to the Morristown Railroad station; Ridgedale, I think, extends to the Douglas property; Ridgedale avenue starts from Morris street, on which the railroad station is located, and runs northeasterly; Jockey Hollow starts from Washington street just along side the Court House property and runs southwest.

Re-direct examination.

Q. And which is the most accessible and desirable location, the property on the Jockey Hollow just referred to or the Jones property just referred to.

A. I don't think there is much difference in them;

they are separated by a broken ridge ; there is a good deal of up and down to Western avenue, and there are objections to the other route to the Jones place.

Q. In your cross examination you used the words "for speculative purposes," what do you mean by those words in that connection?

A. I think there has been a tendency to get a rush to these different points for building purposes.

Re-cross Examination.

Q. In what respect is the property on Jockey Hollow similar to the Jones property?

A. It is rolling, up hill and down.

S. S. ATNO.

Sworn and subscribed before me,
April 4th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

CHARLES E. NOBLE, a witness produced on the part of said defendants, being duly sworn, on his oath saith :

I reside in Morristown, and have resided here for about ten years ; before I came here I was engaged as a civil engineer ; I was connected with the Morris and Essex road off and on for twenty years ; I have been connected as civil engineer with other railroads ; I am at present President of the Proprietors of East Jersey ; I am at present a member of the Common Council of Morristown ; I hold the position of Alderman ; I am the owner of real estate in and around Morristown ; I have bought several pieces of real estate in Morristown ; I am a director of the First National Bank ; I am in the habit of meeting the business men of Morristown from day to day, and of hearing through them and other sources of sales of real estate which have been made from time to time in and around Morristown ; I am acquainted with the Samuel Jones farm

adjoining the Revere or Foster place; I have seen it often.

Q. The land lying on the right side of the Mendham road as you go from Morristown, which was sold to Foster in 1881, what was it worth at that time?

A. I should suppose it was worth as much then as it is now, and I should judge that property situate as that is would have a relative value as other properties have been selling, somewhere in the vicinity of three hundred dollars an acre.

Witness being cross-examined by Counsel for complainants, further saith:

Q. Was that property worth as much to Foster as any one else?

A. I should think it was worth more to him unless some one desired to occupy it specially for its beautiful location for building purposes; if the property had been put in my hands for sale, I think I should have sought him as a purchaser.

Q. The property located on the different streets in Morristown is not equally saleable, is it?

A. The property in Morristown is saleable from the fancy of the purchaser in whatever direction.

Q. That fancy has led purchasers to pay much larger prices for property on Madison avenue than for property on Speedwell avenue, hasn't it?

A. I think so.

Q. Property has been more saleable at high prices on the Madison road than on the Mendham road, hasn't it?

A. Yes, sir, within the city limits.

Q. There is a greater demand for property on the road to Madison than on the road to Mendham, isn't there?

A. Yes, sir.

Q. Are you aware that the Hoyt place of three hundred and upwards acres has just been sold for twenty-five thousand dollars?

A. Yes, sir.

Q. Do you know anything about the mansion house on that place, and if so, just state what?

Objected to as immaterial.

Objection overruled.

A. I have seen it in passing the road in front of it; I should judge it was an extensive and expensive stone house, now out of repair; that property has a large amount of valuable timber on it.

Q. Have you heard, and if so, state what the estimate put upon the value of that timber?

A. I think I have heard one party say it is worth eight or ten thousand dollars; I don't remember of hearing but one statement about it; that property is abundantly watered by Primrose brook.

Q. And that is a stream which the Proprietors of the Morris Aqueduct have thought suitable to supply Morristown, isn't it?

A. I don't know what the proprietors have thought; I have heard it suggested that they might.

Q. Do you know what the present value of the buildings on those premises is?

A. I couldn't determine what value there is to them, as it would depend on the fancy of the purchaser or the person who wished to occupy it; this Hoyt property is on two roads, one leading to Baskingridge and the other leading through it to Mendham.

Q. What is the value of this Hoyt property?

A. I should think its full value would be that for the timber and farming purposes.

Q. Hasn't it been used as an elegant place of residence?

A. Not since I came to Morristown, but it has the appearance of having been so used.

Q. What is the value of this Hoyt property, your answer was a little indefinite before?

A. I shouldn't think it was worth more than three or four thousand dollars above what was paid for it.

Q. How do you fix in your mind the value of this Hoyt property?

A. The location of it and sales that come to my notice along that road.

Q. What was this Hoyt property worth in 1881?

A. I shouldn't think there was much difference between that and the present time; it was worth about the same in eighteen hundred and eighty-one as now.

Q. What is the value of the property owned by Eugene Troxell on the Baskingridge road?

Objected to as immaterial.

Objection overruled.

A. Including the house he has put upon it and the improvements he has made it ought to be worth three hundred dollars per acre, two hundred and seventy-five or three hundred assuming there are the number of acres there I think there are; I assume there are about a hundred acres there.

Q. How do you fix the value of that property, Mr. Noble?

A. Mostly from the value of the buildings the quality of the soil and its proximity to the town.

Q. In your judgment does the price at which property is sold have any effect in determing the value of adjoining property or property in the immediate vicinity?

A. No, I think it does not in this town or in this vicinity.

Q. How do you fix the market value of any piece of property, or of property in general?

A. From its location, the general character of the property in itself, and the probable selection of such property by those who come to Morristown to purchase.

Q. Then the demand for that kind of property, and property in that location, would fix the value of a certain piece, would it not?

A. The value of property in Morristown is fixed by the probabilities of it being selected by some one who wishes to purchase.

Q. As I understand you then, the real estate market in Morristown is not sufficiently active to enable a man

to fix the value from a certain known demand or values already paid?

A. Yes, sir.

Q. Then the value of any piece of property must be substantially determined by the price it brings at a fair sale?

A. I don't understand it so.

Q. Then how do you determine the value of any piece of property?

A. In Morristown property is purchased by parties wishing a location in a special place or a peculiar location in itself, and for such, fancy prices are frequently paid by them and would not be paid for by others not having that fancy.

Q. What is the prudent course then for a man to take who has property which he has determined to sell?

A. To try to find a person who would fancy that particular property if he wished to get the highest price.

Q. Would it then not be wise for such a holder of property to employ an experienced real estate agent?

A. I should think it would be proper for him to do so.

Q. And if the holder of the property was not an experienced dealer in real estate ought he not to be largely governed by the advice of a reputable real estate agent?

Objected to as irrelevant.

Objection sustained.

Q. What influence ought the opinion of a reputable agent have on the sale of property in Morristown?

A. I should judge that from their large dealings in lands their influence would amount to more than other persons.

Q. You mean that their opinion would have a greater influence—ought to have?

A. Yes.

Q. You fix the value of this property in 1881 at three hundred dollars an acre, I think?

A. Yes, about that.

Q. What would it be worth in 1879?

A. From seventy-six to seventy-nine there was a great depression in real estate and few purchases were made, therefore if it were a forced sale it would bring probably less.

Q. Why do you say if it was a forced sale it would bring probably less?

A. I mean to say there was so little demand for lands that if a person was determined to sell, and would sell, he would have to take a much lower price than after eighty to get a purchaser at all.

Q What was it worth in 1872?

A. I was not familiar with the values of land about Morristown at that time; I came to Morristown in seventy-four I believe.

Q. On the road from Morristown to Mendham from 1874 to the fall of 1881 what sales of land do you know of having been made?

A. I don't just now recall any.

Q. What residences of the better class do you know of having been erected on that road within the last twenty years?

A Unless the General's, General Revere's, was erected within that time there was none, excepting the one Mr. Egbert is now putting up that I recollect of; there is the Kountze property further up.

Q. In the spring of 1881 what indication was there of any demand by a purchaser of this Jones property?

A. Not specifically for the Jones property, but from eighty along to eighty-four people were looking out for property to purchase all about the town.

Q. Where were the roads located on which you were engineer?

A. In this County and Sussex County, and Illinois and Texas, and Warren County, and all the counties from New York to Easton.

Q. Where had you been engaged before you came to Morristown in 1874?

A. For five years in Texas.

Re-direct examination.

Q In what township is the Hoyt place and about how far from Morristown ?

A. I don't know where the line divides ; it is about four and a half or five miles from Morristown.

Q. Do you know the shape of the Troxell place, whether it has a long front on the Basking Ridge road or a narrow front on that road, making a narrow strip extending down into the low land ?

A. It has a narrow front and runs back a long distance, and in the rear there is low ground.

Q. The estimate of value per acre which you have placed on the Troxell property, to what does that apply ?

A. To the fine condition of the buildings and the peculiar character of the land for pasturage and milk, and its proximity to Morristown, which gives it a value over other lands ; its value apart from its buildings is in its farm lands and that value is in its proximity to Morristown and consequently to market.

Q. If the rear of the land were separated from the front portion, what in your opinion would the rear land be worth ?

(Objected to as, irrelevant immaterial and incompetent.)

Question waived.

Q. What is the land of the Troxell farm lying next the Basking Ridge road worth per acre ?

Objected to on the same grounds.

Objection sustained.

Q. What is the Troxell farm worth ?

A. Well, I should think fifteen or twenty thousand dollars, as Mr. Troxell has drained it thoroughly and made a good farm of it.

Q. How do you make out that valuation ?

A. Well, I judged there is about a hundred acres in the farm, and the buildings I judge are worth from three to four thousand dollars, and I thought the lands in their present condition are worth about a hundred

and fifty dollars an acre as farming land ; those buildings on the hundred acres would be worth from thirty to forty dollars an acre, that would bring it from one hundred and seventy-five to one hundred and eighty dollars an acre ; instead of saying the farm was worth from two hundred and seventy-five to three hundred dollars an acre, I should have said it was worth from one hundred and seventy-five to two hundred dollars an acre.

Q. How do the Troxell lands compare in character and location with that portion of the Jones farm of which we have been speaking ?

A. I should think they were fully as valuable for agricultural purposes as the Jones ; they are not located as well for value.

Q. Not located as well in what respects, or for what purposes ?

A. For building and occupancy as a villa, and for dwelling houses.

Q. You have been cross examined as to the value of lands on Madison avenue ; what are the selling values per acre of land on Madison avenue or, rather, what were they in 1881 ?

Objected to as immaterial, irrelevant and incompetent.

Objection sustained.

Q. On your cross examination, in answer to this question to wit : "Property has been more saleable at "high prices on the Madison road than on the Mend-"ham road, hasn't it," you responded, "Yes, sir, "within the city limits." What are the high prices to which you then referred ?

Objected to.

Objection sustained

Q. In the same cross examination, there is a greater demand for property on the road to Madison than on the road to Mendham, isn't there, you answered, Yes, sir. How much greater is that demand.

Objected to as incompent, irrelevant and immaterial.

Objection sustained.

Q. How much more saleable has the property on the Madison road been than the property on the Mendham road?

Objected to on the same grounds.

Objection sustained.

Witness being again cross examined says:

Q. Have you conversed with any body since adjournment about this Troxell property?

A. Yes, sir; I conversed with Mr. Mills, with no one else.

Q. What did Mr. Mills say to you as to the valuation they put on that property?

A. He asked me what I called the property worth, and I told him fifteen or twenty thousand dollars; then he reminded me that I had testified that it was worth two hundred and seventy-five or three hundred dollars an acre, and I told him I didn't mean that, that I meant to say it was worth one hundred and seventy-five or two hundred, and told him how I figured it up in my own mind, that was all; that was all that was said between us about this subject; there was nothing said about the value of the buildings on the property, only as I said to Mr. Mills I had formed my estimate from the value of the lands and the buildings and he said I had testified in such a way as to make it more than that, and I simply made the calculation again and found I had made the valuation a hundred dollars an acre too much; he said nothing to me about the valuation Troxell put on it.

Q. What do you say now that that land is worth per acre, just as it stands with the improvements?

A. Just what I intended to say then, from a hundred and seventy-five to two hundred dollars per acre.

Q. Well, which is it, one hundred and seventy-five or two hundred dollars per acre?

A. Well that is as near as I can come; it is between those points, along there; that is my opinion.

Q. You said, I think, that the Troxell land as a build-

ing site was not so desirable as this Jones property; isn't that altogether a question of fancy?

A. I don't know as I said that, but I will say that, and it would depend altogether upon the kind of building that would be erected.

CHAS. E. NOBLE.

Sworn and subscribed before me
April 4th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

WILLIAM D. JOHNSON, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown; I have been away, off and on; I have lived here permanently thirteen years; I am in the ice business at present, and I am associated with my father in the real estate and insurance, I suppose; my father is named J. Henry Johnson; I have been in the real estate business in Morristown thirteen years; I own real estate here, I bought it on my own account; I never sold any; I have built on my real estate three houses; I know the Samuel Jones farm on the Mendham road; I have frequently seen it.

Q. Do you know the portion that lies on the right hand side of the Mendham road that was sold to Foster in 1881?

A. I don't know the line; I know the location of it and the plot.

Q. What was that worth per acre at that time?

A. From two hundred and fifty to three hundred and fifty dollars per acre?

Witness being cross-examined further saith:

I am thirty-five years old.

Q. When did you first fix in your own mind the value per acre of this plot?

A. About five minutes ago, I should think, or three minutes ago.

Q. What led you to fix it then?

A. By thinking of comparative values.

Q. How long did you turn the matter over in your mind before you came to a conclusion?

A. I have been thinking over it more or less ever since the service of the subpœna; I have forgotten the date of that, but I think it was ten days or two weeks ago.

Q. Did you first reach a determination as to the value per acre after you came into this room this afternoon?

A. I reached a determination as to the value I'd swear to.

Q. Was any suggestion made to you which led you to reach the value you would swear to?

A. No, sir.

Q. Has any one suggested to you at any time other prices of land with which to compare this Jones property?

A. I had a conversation with father about it two weeks ago, about; no one was by excepting him; I have not conversed with anybody else on the subject.

Q Did your father tell you what value he swore to?

A. I asked him.

Q. Question repeated?

A. He did.

Q. And what was that value which he stated?

A. As I remember it was three hundred dollars

Q. And what value do you fix on it in 1881?

A. Between two fifty and three fifty.

Q. Why do you leave room for a sliding scale of a hundred dollars?

A. All real estate has a sliding scale value according to the demand; I should say that the value of real estate was somewhat fixed by the demand; I should say that the price at which adjoining property had been sold would have somewhat of an effect upon the question of value.

Q. State what other factors enter into the value of real estate?

A. Location, surroundings, accessibility, I guess that is all I can think of at present.

Q. Can you determine the market value of real estate from location, surroundings and accessibility, if there is no demand?

A. Approximately.

Q. State how you would do that?

A. I would think over in my mind what other property sold for within the surroundings and what other people valued their property at.

Q. Would these be the only factors you would use in making that calculation?

A. No.

Q. I want all the factors?

A. I would consider how far it was from the centre of the town; I would consider who were the neighbors and what the neighborhood was; the nature of the soil and its location, and every other facility which I would think it would have, such as water, slope of land, &c.

Q. What other prices did you consider in fixing the price of this Jones property?

A. The price that had been given by Mr. Kountze; the price Mr. Burnham valued his land at, and the price of acres in other parts of the town.

Q. When did you learn the value which Mr. Burnham puts on his land?

A. Three or four years ago in a conversation with him.

Q. Well, which was it, three or four?

A. I couldn't say; I think I have had conversations with him in regard to his land three or four times a year; once or twice a year at least; that land is located about half a mile this side of the Jones property on the Mendham road; I do not think he has always put one price on his land.

Q. What variations has he had in price?

Objected to as immaterial.

Objection sustained.

Q. Did you have in your mind the valuation which he first put on or the valuation which he last put on

when you fixed the valuation of this Jones property ?

A. I can't say whether it was the first value or the last value ; it was the idea he gave me of the value of his land.

Q. What purchases of Kountze do you allude to ?

A. I heard particularly what the Guerin farm sold for or was said to have sold for ; that was said to have sold for two hundred dollars an acre ; I heard of other purchases of his ; I understood that he gave for the rest of the land there about the same price.

Q. Just compare the land purchased by Kountze with this Jones property, so as to show the relative price per acre of the properties ?

A. The nearness to the town would make the lands in my estimation worth about a hundred dollars more an acre, and the surroundings you might say.

Q. Is that your full answer ?

A. These were the main points that would influence my valuation ; I believe this Jones property is naked land without improvements ; there was an old house and barn on it then, was there not ? those buildings were not worth much in eighteen hundred and eighty-one ; they were not worth more than a hundred dollars to remove.

Q. Do you know what the improvements on the Kountze property were worth in 1881 ?

A. The improvements wouldn't detract from or add to the value of the land per acre much, that is to remove them.

Q. The question is what were they worth, not what they were worth to remove, but what they were worth where they were on the Kountze property ?

A. I should say the Josephus Guerin house was worth say two thousand dollars to stay there, and the Cook building a thousand or fifteen hundred ; I don't know so much about the value of the other buildings ; I think Kountze bought the Josephus Guerin property a year and a half ago, possibly two years ; the value of the other buildings on the Josephus Guerin farm were not much ; the barn or outbuildings were

not worth much; I never went all through that Josephus Guerin house.

Q. How thorough an examination did you make?

A. Nothing more than seeing inside the first room, I think, it was; I saw Mr. Guerin there one day; I understood there was about eighty acres in this Josephus Guerin farm, but I don't know; sixty or eighty.

Re-direct examination.

Q. Did the buildings on the Kountze property add to the value of that property as a site for a gentleman's residence, and if so, to what extent; was that addition small or large?

A. It was small.

WM. D. JOHNSON.

Sworn and subscribed before me,
April 4th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent the of Counsel of the respective parties till Tuesday morning next, April 7th, 1885, at eleven o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

April 7, 1885, the Counsel for the respective parties convened before me pursuant to adjournment, and the examination of witnesses in this cause was proceeded with.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

AMZA PIERSON, a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I was born July twenty-ninth, in eighteen hundred

and twenty-two, and I was born on the Pierson homestead, two miles from the junction of the Jockey Hollow road with the Washington turnpike, by the corner of the Court house yard ; I live there and own that ; that is south of the Tuttle road that runs across to the Jones farm ; my house is from twelve to fifteen rods from the place where that Tuttle road comes out into the Jockey Hollow ; I have always lived where I now do, excepting three years, when I was ten years of age, that I went to live with my brother-in-law over beyond Sheriff Anderson's ; I lived with my sister over there ; I have bought and sold real estate ; my post office is here in Morristown, and I do my trading here, get my groceries at Mr. Leek's ; I am here in Morristown quite often ; I know the Samuel Jones farm on the Mendham road, just above Morristown ; they call it a mile from my place to the Jones farm ; the guide board on the Jockey Hollow road calls it a mile, and that on the Mendham road a mile and a quarter ; it is a mile or a mile and a quarter ; they call it a mile ; I have often seen the Jones farm ; I have been all over it, not very lately ; I used to rabbit hunt over it ; I have often seen it.

Q. What was the part of the farm lying on the right hand side of the Mendham road which Foster bought in 1881, then worth per acre.

Objected to as incompetent on the ground that witness has not shown a capacity to express an opinion.

Objection overruled.

A. In eighty-one, well, I should think it was worth from three hundred and fifty to four hundred dollars an acre.

Witness being cross-examined by Counsel of complainants, further saith :

I know the Mahlon Guerin farm which adjoins the Jockey Hollow road and the Tuttle road.

Q. Well, what was that worth an acre in 1881 ?

A. Well, part of it was worth more than this is of

Foster's, it is now, and part of it is not worth so much; I can't tell how much of it was worth more than this of Foster's, but to make a rough guess at it I should say about half the farm, about fifty acres of it, I should judge.

Q. Well, what value per acre would you put on the balance of the farm?

A. Well, it is hard to tell, because it is rough, swampy, stumpy, roots and all such stuff; I don't know as I could tell what valuation to put on it; some people would pay more for it than others on account of pasture and the like of that, and it is hard to tell what it would bring, what it would be worth; it would be worth more than fifty dollars per acre; it is worth from fifty to a hundred, something in the neighborhood of that; I don't know but what seventy-five dollars per acre would be a fair value for it, in my judgment; it is low, swampy, stumpy; I can't tell you exactly how many acres are in the Mahlon Guerin farm; it appears to me there are about a hundred; there are about a hundred, I think; that farm is worth more to-day than it was in eighteen hundred and eighty-one

Q. How much more is the fifty acres of the Guerin farm you have mentioned worth per acre than the Foster part of the Jones farm?

A. It is owing to who wants to buy it; some would give more for the one than they would for the other.

Q. You said that fifty acres of the Guerin farm was worth more per acre than the portion of the Jones farm bought by Foster. How much more per acre is it worth?

A. Well, I can't tell you, but it is worth more I think, in fact I know it is for building purposes.

Q. It is worth a hundred dollars an acre more, isn't it?

A. I don't think it is.

Q. Well, how much?

A. Well, maybe worth fifty, I don't know, people differs; I am a farmer; I am the owner of about eighty

acres of land; I should think I had about fifty acres under cultivation; I have always been a farmer; I have never done anything else but farm; I have bought and sold farming land; I have bought three different pieces; I can't tell you just what those pieces did cost me per acre; I think one tract cost me about fifty dollars per acre, if I am not mistaken, and one tract was sprouts and stumps, and I think I paid about thirty for that; I can't remember what the other cost me; I think I gave a hundred and seventy-five dollars for most three acres, I gave that for it altogether; I have sold two lots at different times; I got sixty dollars an acre for one, and I forget whether it was fifty or sixty I got for the other; it makes no difference anyhow; one part of this valuable portion of the Guerin farm has buildings on it and one hain't; in eighteen hundred and eighty-one the buildings were, part of them, very old, dilapidated, miserable things.

AMZA PIERSON.

Sworn and subscribed before me,
April 7th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

WILLIAM HOBBS, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I reside in Morristown, and have resided here it will be thirty years next July; I have owned and sold real estate here; I have lived near the Samuel Jones farm; I lived on part of the Mooney estate which joins General Revere's, used to be one farm; I owned that place where I lived; the place contained one hundred and fourteen and some hundredths acres; I have been on the Samuel Jones farm; I have been pretty much all over it a good many times; I know the part that was sold to Foster in the year eighteen hundred and eighty-one; it is on the right hand side of the Mendham road as you go up from Morristown; I should judge

that that land was worth then, in eighteen hundred and eighty-one, from three hundred to three hundred and fifty dollars per acre.

Witness being cross-examined by Counsel for complainants, further saith :

Q. What was the Revere farm worth per acre in 1881 ?

A. Well, that I can't tell you any more than what it sold for, that was somewhere in the neighborhood of two hundred dollars per acre, as I have understood ; I sold the hundred and fourteen acres for six thousand dollars ; land wasn't worth as much at that time as it was in eighty-one, though ; I had a house on my place no barn ; the building was poor at that ; my place wasn't insured at all while I had it ; I had a farm of sixty-five acres in Spring Valley, besides the farm I have spoken of ; I don't own it now, I have sold it ; that was sold for ten thousand dollars ; there were buildings on it ; old-fashioned building though, except the carriage house ; I have owned also where I live at present on Washington street, (Mendham avenue), that is the extent of the land I have owned ; Spring Valley lies southeast from Morristown ; you go down by the fair ground ; the house and lot I own in Washington street cost me four thousand dollars.

Re-direct examination.

Q. Did your farm which lay next the Revere farm of which you have spoken lay nearer to or farther away from Morristown than the Jones farm ?

A. Farther away ; it pretty much adjoined, but was way over the hill, it was quite a distance to go around the road ; I sold that twenty years ago the fourteenth of last March ; that must have been in eighteen hundred and sixty five.

Q. What was that worth in eighty-one ?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

WM. HOBBS.

Sworn and subscribed before me
April 7th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THOMAS B. PIERSON, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I reside in Morristown, and have lived here about thirty years; I am in business here, and have been in business for myself about five years; before that I was in business with Day, Searing & Co. about eight years; my business is plumbing, tinning and furnace ware; my business stand is corner of South and De-Hart streets; I have never bought or sold any real estate in Morristown; I will take that back; I have bought and sold on High street; I am in the habit of hearing of the sales of real estate in Morristown that are made from time to time, and of the saels of real estate that are made in the vicinity of Morristown; my business is a pretty good sized business; I am brought in contact with many people; I am in the habit of taking contracts for the plumbing and heating in houses being built; I am acquainted with the Samuel Jones farm near Morristown, on the Mendham road, adjoining the Revere property; it would bother me to tell how often I have seen it; sometimes three or four times a day, sometimes once a week, sometimes not that; I have seen it frequently; I passed it every day for a year and more.

Q. That part of the farm lying on the right of the Mendham road as you go from Morristown, which was sold to Foster in 1881, what was that then worth per acre.

A. You mean the whole of it running from the gate

to the top of the hill, joining Mr. Fox?

Q. Yes?

A. I don't know as I am a very good judge of land, but I should think the way land has sold up around Mr. Kountze's, it ought to be worth three hundred and fifty to four hundred dollars an acre, that is to take it on an average; some of it I shouldn't think to be worth as much as that.

Witness being cross-examined by counsel for complainants, further saith:

By land sold around Kountze's, I mean simply and solely land that Kountze bought.

Q. Do you know the Eugene Troxell farm on the Baskingridge road?

A. Yes, sir, I have seen it; I have seen it frequently.

Q. What was that worth in eighty-one?

Objected to as irrelevant.

Objection overruled.

A. Well, it is all low ground there; was the house repaired then?

Q. What is it worth to-day?

Objected to as that is no test.

Objection overruled.

A. Well, I should say it was worth two hundred and twenty-five dollars an acre.

Q. Is it worth more or less to-day than it was in eighty-one, supposing the buildings were then in their present state?

A. I should say it was worth more to-day.

Q. How much more per acre?

A. Well, I should say in the neighborhood of twenty per cent.

Q. How do you determine the value of this Troxell property?

A. From the demand there is for real estate, and the way other property sells.

Q. How do yo ascertain what the demand is?

A. By peoples inquiring and the offers they make

for property and the prices that people ask for their property.

Q How far does the price which is asked for property fix the value of property?

A. The price asked generally is not the price they take; they generally give, they come generally within ten or fifteen per cent. of the asking prices, according to whether the man wants it, also what he wants it for.

Q. Is property now in Morristown generally worth twenty per cent. more than in eighty-one?

A. I don't know as it is on an average; some property is worth more than twenty per cent., and some not so much.

Q. What was the Revere farm worth per acre in eighty-one?

A. Well, I should say about three hundred dollars an acre, may be a little more than that; I think it brought nearly that.

Q. Has the price at which it was sold any thing to do about fixing its value in eighty-one?

A. Well, I would naturally suppose a man wouldn't pay more than it was worth; I should think he would think he was giving about its value.

Q. As then improved, was this Revere farm worth more or less per acre, than the Jones tract of which you have spoken, was worth in eighty one?

A. Well, I should say it was worth a little less.

Q. What are the elements of value in this Jones tract?

A. The building site.

Q. Is that your complete answer?

A. Well, yes; what I mean by that is that up on the hill there, there is a valuable piece of ground for building purposes; you don't find anything prettier or any prettier view than there is there.

Q. Do you know how the prospect from the Jones tract compares with the prospect from the Revere farm?

A. It is a pleasanter view; you can see to the west from it when you can't from the Revere farm without

going out of the house back up into the woods; it is higher ground and there is more breeze on the hill and better drainage.

Q. Does not the same ridge which extends through this Jones property extend through the Revere farm?

A. It does; not so high though and very stony; I happened to be there last summer and know all about it.

Q. How much less in elevation is the highest point on the ridge on the Revere farm than the highest point of the ridge in that part of the Jones farm lying north of the road to Mendham that was sold to Foster?

A. I think it was about fifteen feet; I levelled it to put in a reservoir.

Q. What was the value of the buildings on the Foster property in 1881; the buildings and improvements?

A. I don't know as I could tell you very near; I suppose in the neighborhood of eight or nine thousand dollars.

Q. Unimproved, what was the Revere farm worth per acre in eighty-one?

A. I supposed I gave that to you before; that was my supposition; I didn't count the buildings in when you asked me the question; you asked me what the farm was worth.

Q. What was the Revere farm as then improved worth per acre in 1881?

A. Well, I should say about three hundred and fifty dollars; you include the buildings on it.

Q Yes?

A. Well, I should suppose it was worth four hundred dollars an acre.

Q. In determining the value of a piece of property, how far are you influenced by the price which adjoining property brings?

A. Well, if the ground lays the same, and the locality is the same, facing the street the same, I should say that one ought to be worth as much as the other.

Q. In determining the value of a piece of property,

the price at which similar property immediately adjacent sells has much greater weight than the price which similar property brings which is some distance removed, hasn't it?

A. Yes, sir; I think so.

Re-direct examination.

I do not know the number of acres in the Revere farm or the Troxell farm.

Q. When you speak of the value of those farms per acre, where does the land lie which you refer to, with reference to the buildings on the farms?

Objected to.

Objection overruled.

Question waived.

Q. Over how many acres of the Revere farm have you been?

A. It would be a hard matter for me to answer that question; I have been over it and across it; I have never been all over it; I have been through the woods there and around the lots by the barn; I may have been over fifteen acres of it, may be more; that was around the house, the meadow in front of the house, the field to the east of the house, and also the hill on the Jones property; I have never been on any of the Troxell property, excepting by the house and back of the house there; the house is about two hundred or two hundred and fifty feet, probably three hundred feet from the Baskingridge road; I do not know how far back the Troxell property extends.

THOS. B. PIERSON.

Sworn and subscribed before me
April 7th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JACOB O. ARNOLD, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown; I have lived within the corporate limits since seventy-two; I have lived in Morris township all my life, excepting seven years, from fifty-six to sixty-three; I am a butcher; I have a market in Morristown; I deal with a good many people; we have bought some real estate and sold some; I am in the habit of hearing of the sales of real estate as they are made from time to time in and around Morristown; I am acquainted with the Samuel Jones farm just above Morristown; I have been in the habit of seeing it most every day, that is in going up and down from the slaughter house to the market, which will be twenty-two years next June; before that I was a boy at home and was up and down to town, probably once or twice a month passing this farm; I know the land on the right hand side that was sold to Foster in eighteen hundred and eighty-one; I should think that that land was then worth four hundred dollars per acre.

Witness being cross-examined by counsel for complainants, further saith:

My brother, Isaac G. Arnold, and my father, Silas H. Arnold, are now in business with me; I don't know whether or not they have both testified in this cause; I understood my brother to say he was subpœnæd here, that is all I know; I was sitting here during the latter part of the testimony given by Thomas B. Pierson; if I remember right the value he put on the Revere farm, unimproved, was three hundred dollars per acre; I pass the Revere farm as frequently as I do the Jones farm.

Q. With its improvements in 1881, what was it then worth per acre? The Revere farm?

A. Three hundred and fifty dollars.

Q. Do you mean to say, that as improved in 1881, the Revere farm was worth more or less per acre than the Jones farm? I mean that portion of the Jones farm of which we have spoken which was sold to Foster?

A. I should say that the Revere farm was worth less, take it as a farm.

Q. Do you mean with its buildings the Revere farm was worth less per acre than the twenty-eight acres of the Jones farm sold to Foster ?

A. I do.

Q. What was that part of the Jones farm on the south side of the road to Mendham and east of the Tuttle road worth per acre in eighty-one ?

A. I don't know as I know the full extent of that place ; does it take in the Aqueduct ; that on the east of the Tuttle road there.

Q. Of course not, the Aqueduct is on the lands of the Aqueduct Company.

A. A hundred dollars an acre.

Q. What are the grounds for your opinion of the value of the twenty-eight acres of the Jones farm sold to Foster ?

A. Because it took out the harvest of the farm, the best portion of the farm, what I would call the Porter house, to get down to butcher's phrase.

Q. Would the price at which adjacent land was sold determine in any degree the value of land, in your judgment ?

A. Yes, sir.

Q. How far would that determine the value ?

A. Everybody has a pride, if one man gets a good price, another thinks his land worth as much, and in my opinion that is what makes the value.

Q. How would you compare the value of improved property with the value of unimproved property of a similar kind ?

A. According to the location in which it laid and about the expense it cost to improve it ; I do not know what Foster paid per acre for the Revere farm ; I do not know what he paid per acre for the Gribben property ; all I know is what he paid in bulk for each property ; what I took from the paper.

Q. Except the sales to Kountze, do you know of the sale of any other property, on the Mendham road, in

the vicinity of the Jones farm, about the spring of eighty-one for building sites?

A. I don't remember of any.

Q. What real estate have you bought and sold, Mr. Arnold?

A. We bought the property corner of Ann and Court streets.

Q. Who do you mean by we?

A. My brother and I.

Q. What brother, Isaac?

A. Yes.

Q. What else?

A. The property in Market street of the Ayers estate.

Q. What else?

A. And sold one house and lot in Ann street.

Q. How much did you pay for the Ann street property?

A. Five thousand and five hundred dollars, that is the Ann and Court street property, understand me.

Q. How much did you sell the Ann and Court street property for?

A. We didn't sell all the property; we sold the rear end of the Ann and Court street property for twenty-five hundred dollars.

Q. How much did you pay for the Market street property?

A. Three thousand five hundred dollars.

Q. When did you first fix in your mind the value per acre of this Jones tract?

A. I couldn't tell; I've always had it in mind as a valuable piece of land, that one lot there that Foster bought, ever since I can remember.

Q. How long has it been worth three hundred and fifty dollars an acre?

A. Twenty years.

Q. There has been no change much in the value of property out there within twenty years, has there?

A. Oh, yes, sir; it keeps improving all the time.

Sworn and subscribed before me
April 7th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

IRA W. CORY, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live at Morristown, and have nearly ever since I was born, with the exception of being in the army, and four years I lived in Trenton after the war; I was in the late civil war; at the close of the war I was of the rank of captain; I went in as a private; I left the army, I think, June twelfth, sixty-five, I was discharged; I am now Deputy Sheriff of the County of Morris, and have been, not continuously though, for about seven years; I am a man of family; my wife owns real estate here; I live on that real estate with my wife; I am acquainted with the sales of real estate made from time to time in and around Morristown; I have charge of the Sheriff's office here; I attend to all the Sheriff's sales of real estate here; I mingle with business men in and around Morristown; I acquainted with the Samuel Jones farm; I have known it as long as I can remember anything; I have seen it every few days driving past there; I have been on it; I have been on the left hand side of the road a good many times picking blackberries, and on the right hand side shooting quail, but not very lately; I can't say how often.

Q. The portion on the right hand side of the road that was sold to Foster in eighty-one, what was that worth per acre at that time?

A. Well, from three hundred to three hundred and fifty dollars.

Witness being cross-examined by counsel for complainants, further saith:

Q. Have you ever expressed any other valuation for that tract?

A. No, sir, I never have, excepting for farming purposes; I did once about some portion of the land on the other side of the road, that was condemned by the Aqueduct Company, and I think I testified that for farming purposes it was worth a hundred and fifty dollars an acre, taking the whole farm; that includes the swamp and all, taking the left hand side of the road.

Q. When did you first fix in your own mind the value per acre which you have just stated?

A. I fixed it now when I answered the question when Mr. Mills asked me.

Q. What enables you to fix now its value in eighty-one?

A. Judging it from property which has been sold in the neighborhood and the price it bought.

Q. What property do you refer to?

A. Well, the recent sale of the Luse property; that was sold in the year eighty-four; that is on the Mendham turnpike and runs down to Mills street; it fronts on both; I think a small portion of it is in the corporate limits; I am certain it is; part of it is in the corporate limits, I know.

Q. What other property have you in mind?

A. Well, there is the property the Caskeys bought on Western avenue; I can't say in what year they bought.

Q. What other property had you in mind in fixing the value of this property?

A. The Guerin property.

Q. The Mahlon Guerin?

A. No, sir, the Josephus Guerin, bought by Mr. Kountze, in the year eighty-four, I believe.

Q. Well, what other property?

A. I don't remember of any recent transactions.

Q. I am referring to property which enabled you to fix the value of this Jones tract in eighty-one?

A. I might mention some property there that brought a big price.

Q. Has demand for real estate by purchasers anything to do with fixing values?

A. It doesn't establish the value any more than a party who wishes a certain site is willing to pay for it.

Q. How do you determine the value of this Jones property in eighty-one, except by referring to the recent sales which you have stated?

A. Because it is an eligible site, a very good location and, I judge, a valuable property.

Q. How long prior to eighty-one did it have the value which you have fixed?

A. I should say the property had been worth that for three years before, or longer.

Q. What was the Mahlon Guerin farm worth per acre in the year eighty-one?

A. I am not acquainted with the property.

Q. What was the Revere farm worth per acre in eighty-one?

A. Well, you mean for farming purposes?

Q. I mean what its value was in eighty-one?

A. From three hundred to three hundred and fifty dollars an acre.

Q. What was it worth in eighty-one unimproved, in the same condition the Jones property was?

A. Well, perhaps, fifty dollars an acre less; I don't know how many acres there are, nor how much the buildings cost; it is only an estimate; I know the Eugene Troxell property on the Baskingridge road.

Q. What is that worth as it stands to-day, per acre?

A. I do not know; I am not familiar with the property there; I know the place, and that is pretty much all I know about it.

Q. What was it worth in eighty-one, per acre?

A. I couldn't give you any estimate about it; it is something I couldn't tell you anything about.

Q. Was such property worth more or less in eighty-one than to-day?

A. I should think less in eighty-one as a rule.

Q. Why less?

A. I think the value of real estate has increased; it has held its own certainly.

IRA W. CORY.

Sworn and subscribed before me,
April 7th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent of the Counsel of the respective parties, to Monday, April 13th, 1885, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Monday, April 13, 1885, the counsel of the respective parties appeared before me, pursuant to adjournment, and the examination of witnesses in this cause was continued.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THOMAS FOX, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith:

I run a farm up there adjoining this; I run a farm adjoining the Samuel Jones farm on the Mendham road; I own the farm; my deed calls for forty-seven and some hundredths acres, and I suppose if it was run now they would make fifty acres of it, probably; I guess I moved up there in eighteen hundred and thirty-two or three; I have lived there always since that time; my post office is in Morristown, and I do my trading mostly here in Morristown; my farm is on the Mendham road, a little farther from Morristown than the Jones farm although it joins up to his; I pass the Jones farm in coming to and from Morristown; I have been on it hundreds of times.

Q. The part on the north side of the Mendham road that was sold to Foster in 1881, what was that then worth an acre?

A. I should judge it was worth three hundred at all events, if not more; it was worth more than that according to what they wanted it for; if they should cut it up in building lots, I should think it was worth more than that, and I should think it would bring that for farming purposes.

Witness being cross-examined by counsel for complainants, further saith:

Q. What did Mr. Jones tell you he thought it worth per acre?

A. Oh, he thought it worth five hundred, I think he said he had been offered that.

Q. What did he ask you to swear it was worth per acre?

Objected to as improper, and implying a request of the witness, which does not exist.

Objection sustained.

Q. What do you think that farm or portion sold to Foster would bring at a fair private sale in the spring of eighty-one?

A. I think it probable that it would fetch three hundred per acre?

Q. What makes you think so?

A. Well, I think so from what I have heard others say they could get for theirs, land no better than that.

Q. Have you any other reason for thinking so?

A. No, I don't know as I have, only as I have heard others value the land at.

Q. What other persons have you heard value this land?

A. Well, I don't know as I have heard any one in particular set any price on it; I have heard some say it was worth three and four hundred dollars, but whether they would give it or not I don't know.

Q. When did you hear these persons value this land?

A. Well, it is some time ago.

Q. How long ago?

A. Well, I should think it was probably four or five years; it has been improved a good deal since then.

Q. How do you fix the time as four or five years ago?

A. Well, I should say it was that if my memory serves me, but my memory is getting pretty poor.

Q. What would make this land worth three hundred dollars an acre for farming purposes?

A. Well, it is owing to the situation a good deal; it all lays to the morning sun pretty near; I know men who would give as much again for land laying to the morning sun for raising early vegetables.

Q. Have you any other reason for thinking it worth three hundred dollars an acre for farming purposes?

A. No, not for farming purposes.

Re-direct Examination.

Q. What is the quality of that land as compared with the adjoining land?

A. It is a great deal better than any land that joins it; naturally it is.

Q. Is it or not good farming land?

A. Oh! it is.

Q. Has it any other value than that for farming purposes, and if so what is that value;

Objected to as not in rebuttal and therefore incompetent.

Objection sustained.

Re-cross Examination.

Q. The whole of this twenty-eight acres is better than the land that joins it, isn't it?

A. No; I don't think it is; I think I have some that joins it that I wouldn't give one acre for an acre and a half of that.

Q. What is your land worth an acre?

A. I have some adjoining it I wouldn't take three hundred to-day for it; I could have got that I suppose; Charley Mulford wanted it.

Q. What do you mean when you say that this twenty-eight acres is better than the land that joins it?

A. Well, I judge from the crops I have seen on it; I have noticed the crops ever since I've been up there, and I judge from the crops that it is better than that that joins it.

Q. Better than what land which joins it?

A. Better than that of General Revere that joins it.

Q. How much of this twenty-eight acres is better than the Revere land that joins it?

A. Well, I should think that there is more than half of it.

Q. Which half?

A. Well, I think the lower half is not worth as much as the upper, on account of the expense in ditching.

Q. Isn't the Revere place on the same ridge?

A. Yes; on the same ridge.

Q. What makes the Jones property better?

A. Well, it is naturally better, a great deal better.

Q. What do you raise on your farm?

A. Corn, wheat, oats, potatoes and such like.

Q. How much of it will earn you every year eighteen dollars per acre above your labor?

A. Well, I think the most that I till; a good deal of it is wood land and I don't realize anything from it excepting for firewood.

Q. How do you ascertain how much you get per acre annually from your tilled land?

A. I judge according to the quantity of stuff that I raise and what it fetches.

Q. Do you deduct the costs?

A. No, sir, I don't, because it costs a good deal for lime and labor.

Second direct examination.

Q. You have just said you have seen three crops a year on this land; three crops of what?

A. Why, rye would be one, and buckwheat, and I think they raised a crop of early potatoes first, but it was only part of the ground; it would only be the part adjoining me and adjoining the road.

Second cross examination.

Q. In the same connection you said there had been tenant after tenant, and they had run the land to death, didn't you?

A. Yes, sir; they tried to.

THOMAS FOX.

Sworn and subscribed before me
April 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

GEORGE V. MUCHMORE, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown, and am in business here; I am at present in the boot and shoe business and have been in that business here about two years; before that I was with my father as salesman in the lumber yard and in the coal yard; I am thirty-one years of age; my store is on South street; it is the second door from the Park; I was born and brought up here; I am acquainted with real estate in and around Morristown, some portions of it.

Q. Have you or not heard of the sales of real estate in and around Morristown for the last few years as they took place.?

Objected to as incompetent and immaterial.

Objection overruled.

A. Yes, sir.

Q. Have you had charge of and sold real estate?

A. Yes, sir.

Q. Have you bought, or built, or both?

A. Yes, sir; I have bought and built, that is what I mean by that; I have bought and built for my wife.

Q. Are you acquainted with this Samuel Jones farm on the Mendham road, and if so, how long have you known it?

A. Yes, sir, for a number of years; I have been on it, possibly a dozen times.

Q. The part that was sold to Foster in 1881, lying on the right of the road as you go from Morristown, what was that worth then per acre?

A. I should judge three hundred and fifty dollars.

Witness being cross-examined by Counsel for complainants, further saith:

Q. What was its market value in 1881?

A. Three hundred and fifty dollars per acre.

Q. What do you mean by market value per acre?

A. What it would bring if there was a buyer for it.

Q. Were there buyers for that kind of land in that locality in eighty-one, so that there was a known market?

A. In pretty close proximity to it.

Q. How close?

A. I should judge probably ten minutes walk.

Q. I mean in distance not in time?

A. I should judge a quarter of a mile.

Q. What property do you allude to?

A. I allude to the property known as the Luse property.

Q. When was that sold?

A. About a year ago; that had timber on it; a quarter of it was young timber; that property fronted on Mills street and Mendham avenue; a portion of it is within the corporate limits of Morristown; I have had charge of that real estate, which I alluded to, and real estate on South street in Morristown, and have interceded for other parties in buying and selling; I have sold the Luse property, and other real estate in an in-

direct way; I have bought this property on South street, known as the Marsh & Craig lot; I have bought no other property that I think of now; this South street property is very near the centre of the town and was bought by the foot.

Q. When did you first fix the valuation per acre upon this Jones tract?

A. About eighteen eighty.

Q. What led you to fix it then?

A. From parties that was looking at my property, which they thought was too rough and expensive for them to buy, and I took them up the Jockey Hollow road to a piece of property that my father owned and wanted to sell, but that being too rough we drove on the Mendham road to properties owned by Mr. Fox, Mr. Tuttle and others; I alluded to this piece of property as being a sightly place, and in close proximity to the Revere place, which I thought would make it valuable, and could be bought, that I believed could be bought for the figures I have mentioned.

Q. What price did you put on it per acre then?

A. I told him in a general way that I thought it could be purchased from three to four hundred per acre, according to situation.

Q. What led you to fix that price per acre then?

A. From the situation and the closeness of the town.

Q. Any other reason?

A. No, sir; when I alluded to my property, I meant the Luse property of which I have spoken; that property (the Luse property) was then in the market for sale.

Q. How long prior to that had it been in the market for sale?

A. I don't recollect now; I think that since the death of Mr. Luse, in fact before that, that the property has been in the market; in fact, from the fact of what my wife had told me; I think Mr. Luse died in the year eighteen hundred and seventy-four, I may be mistaken, though; possibly it was later than that.

GEO. V. MUCHMORE.

Sworn and subscribed before me }
April 13th, A. D., 1885. }

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

WILLIAM H. ANDERSON, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live on the road between Morristown and Mendham; I am farming there; my farm contains two hundred and forty acres altogether; I bought that farm in eighteen hundred and thirty-nine; I didn't buy it all just then; I have bought the balance of it since; I moved there in thirty-nine and have lived there ever since, excepting three or four years I lived in town here; I bought all of it in thirty-nine, excepting about twenty acres I have bought since; the three or four years I was in Morristown I held the office of Sheriff of Morris County; I held that office three years; I moved from my farm to Mendham in fifty-five, in the spring; I moved to Morristown in the fall of fifty-five, and went back on the farm in sixty; when I was Sheriff I lived in the Court House in Morristown; I attended to the active duties of my office; I have not purchased and sold real estate much, only what I have got there; I have sold two or three little corners out of that; when I was Sheriff I sold real estate of other people; I know the Samuel Jones farm adjoining the Revere place; I have seen it frequently; I have seen it every time I go by there most; I pass it on my way to and from Morristown.

Q. The part lying on the right hand side of the road as you go from Morristown which was bought by Foster in 1881, what was that then worth per acre?

A. I always thought it was a very desirable lot up there, about as much so as any along the road I should think.

Q. The question is what it was worth per acre?

New Jersey State Library

A. Do you have reference to farming, or building, or what?

Q. For any purpose?

A. I should think it was worth a hundred and fifty dollars for farming, but I should think it was worth twice that for building sites, maybe more.

Q. What is the character and situation of that land?

A. I think it lies the nicest lot for building between Morristown and Mendham, on the road.

Q. What is the quality and lay of the land?

A. The quality of the land is good; the lay of it couldn't be much better; there is a very sightly place off of the hill there.

Witness being cross-examined further saith:

Q. In what year did you sell those lots you spoke of?

A. Oh, I sold two little lots; they were only two little corners to straighten lines; I sold one lot two years ago, of eight or nine acres, to Mr. Mills.

Q. How do you get at the value of land for farming purposes?

A. I have known that land ever since Sheriff Wilson owned it; it then raised good crops; about as good as any piece of land along that road; I used to think that piece of land about as good as any along that road; Wilson owned it in thirty-nine; he sold it after that to somebody; I don't know who it was.

Q. How do you get at the value of land for farming purposes—I don't refer to the Jones farm?

A. Well, we have to get at it the way it lays, and the quality of the land, and what land is a bringing about generally.

Q. What crops do you raise on your farm?

A. We generally raise corn and oats and wheat and potatoes and grass.

Q. What was the value of corn in eighty-one, per bushel?

A. I don't know as I could tell you ; I couldn't say ; it was worth more then than it is now.

Q. Why can't you tell its value in eighty-one ?

A. I could if I was home ; I guess I got a dollar a bushel for mine that spring ; I got that one spring and I guess it was about that time.

Q. Do you fix the value of corn by what it sells for in the market ?

A. That is all the way you have got to fix it ; but that was the season the crop was cut off the year before ; it went up quite some ; I guess it was only seventy-five cents before that.

Q. How would you fix the value of land for farming purposes in 1881, would it not be fixed by the price that farming land was then sold for ?

A. I suppose it would.

Q. How, then, do you fix the value of this Jones tract in 1881 ?

A. Well, it is according to the lay of it, the quality of the land, it nearness to market and so on, and the size of the lot.

Q. Have you any other reason for fixing its value ?

A. I guess not ; I don't know of any.

Q. When did you first determine that it was worth three hundred and fifty dollars an acre ?

A. I don't know when ; I have often looked at that lot when I went back and forth and wondered that somebody hadn't picked it up to build on it.

Q. In what years were you Sheriff.

A. I was elected in fifty-five and served three years.

W. H. ANDERSON.

Sworn and subscribed before me,
April 13th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent of the Counsel of the respective parties, to Thursday morning, April 16th

inst, at half past nine o'clock, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

April 16, 1885, the respective parties appeared before me, pursuant to adjournment, and the examination of witnesses in this cause was continued.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JOHN MCVAY, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown; have lived here ever since I was sixteen years old; that will make thirty three, four or thirty-six years I have lived here; the fact is I have lived around here near Morristown all my life; I am in business here; my business is tin smith and plumbing here in Morristown; I have been in business here for myself about twelve years; before that I was working for Ichabod Searing; I am well acquainted with Morristown and its surroundings; I have bought and sold real estate here. and I now own real estate here; I am acquainted with the Samuel Jones farm on the Mendham road; I have been more or less acquainted with it for between twenty-five and thirty years; I have been on it; well, I haven't been exactly on it a great many times, but I have been through it when I have been working for General Revere, and have taken notice of the part on the right hand side when I have been riding by.

Q. That part which is on the right hand side of the road as you go from Morristown, and which was sold to Foster in 1881, what was that then worth per acre?

A. Well, I should judge from the location of it, it ought to, I should think, be worth three hundred and fifty, I should judge, and from that to four hundred.

Q. Do you mean dollars, you don't say so?

A. Oh, yes; I don't mean cents.

Witness being cross examined further saith:

Q. How long prior to eighty-one was it worth that sum per acre?

A. I don't know how far back of course; I don't know much about the value of property before that; no, not before that taking the situation of it, and the way property sold about that time; that property ought to have been worth three hundred to three hundred and fifty, I should think, taking the location of it.

Q. How long prior to eighty one was it worth from three hundred to three hundred and fifty per acre?

A That is before eighty one, you mean?

Q. That is prior?

A. I should think for several years; I bought some property on that street, on that road; I bought property on that road, I should judge, about twenty years ago; the way I paid for mine, I should think this Jones property was worth three hundred dollars an acre when I bought; I bought a building lot on a knoll, on rising ground; it was outside the present corporate limits; it was fronting on the Mendham road; I forget exactly the number of feet front the lot had; I should judge it was seventy or seventy-five feet front; it is so long since I owned it now, and it might have been a hundred feet; I didn't buy it by the foot; I bought it by the lump, so much for the lot, if I remember accurately about it.

Q. This Jones property was worth about the same in eighty-one as it was at the time you bought, was it?

A. Well, I should judge it was worth a little more in eighty-one than it was when I bought.

Q. How much more?

A. Well, I should judge it ought to have been worth from fifty to a hundred dollars an acre more than it was when I first bought on that street, on that road.

Q. When you say it was worth so much per acre, what do you mean?

A. Well, what do you mean, what time, I don't know what time you have reference to?

Q. Any time?

A. Well, I should think the time I bought there, and up to the year eighty-one, I should think that it ought to be worth three hundred and fifty dollars at the least, in eighty-one, if that is what you want by your question? I should judge that was its market value.

Q. What is market value of anything?

A. Well, that depends on circumstances; it depends on location, because some land is worth a good deal more than others taking the observation of land on that street where it has been sold; and what time I have been acquainted with property up on that street and the time I bought and what I paid for it; and what property has been sold on that street there, for instance you take that Gribben property at the time it was sold, that was sold for three thousand dollars, I think, if I remember right; I can't tell what year that was sold; I remember hearing of it when Mr. Foster bought it, but of course I didn't place it to memory; I declare I forget how many acres it contained, although I have looked at it for years, but I couldn't say positively how many acres there was; I am a merchant; I deal in stoves; I buy stoves.

Q. What fixes the value of a stove?

A. The price of iron and labor.

Q. Does the market price of stoves have any thing to do with it?

A. Does the market price of stoves have any thing to do with what?

Q. Does the market price of stoves have any thing to do in fixing the value of stoves?

A. It does.

Q. What has it to do with it?

A. The rise and fall of iron.

Q. If the market price of a certain kind of stoves is five dollars, what is the value of a stove of that kind?

A. Well, that will average about twenty-five to thirty per cent.

Q. What will average twenty-five to thirty per cent.?

A. Why on the valuation of the stove, of course; if a stove is purchased for five dollars you want to know what it is sold for, that is what you are at, isn't it?

Q. Have building lots any market value, if there are no buyers?

A. I presume they have a value.

Q. Question repeated?

A. Well, I should judge they had.

Q. How do you fix that market value?

A. Well, I don't know exactly how you want me to get at that, of course, there are different ways; if I owned a building lot and it was in a certain location and I paid so much for it and it was in a certain location, I would look at it in this way, and I paid a thousand dollars for it and a certain location, I should fix a price say, for instance, fifteen hundred dollars.

Q. Why would you fix fifteen hundred dollars?

A. Because I would think it was worth it.

Q. If you had just bought it for a thousand dollars, what would make it worth fifteen hundred?

A. Well, I would think because I had got a bargain in the lot.

Q. Would you have any other reason for fixing that value?

A. Well, by seeing other property adjoining me that was held at a higher value.

Q. What do you suppose fixed the value of the lot at a thousand dollars when you bought it?

A. Because they wanted to sell it.

Q. Then the fifteen hundred dollars would be fixed by you as its value, because you was not anxious to sell it?

A. Well, not altogether that; I spoke a little before I thought when I said that; it would be because I thought the property was worth it.

Q. How would you then fix its value?

A. I'd fix its value, for one thing, on account of the location of it and the surrounding property, and what it was selling for.

Q. Has the price at which a lot is sold anything to do in fixing the value of a similar adjacent lot?

A. I should think it had.

Q. What effect would such sale have upon an adjacent lot?

A. What, in selling it at the price I was talking about? I shouldn't think it would have any.

Q. Has the fact that there are purchasers for certain kinds of lots anything to do in fixing the value of those lots?

A. It decidedly has.

Q. What?

A. If certain classes of people should purchase adjoining property.

Q. Would such demand tend to make its value greater or less?

A. Well, it would make it less.

JOHN McVAY.

Sworn and subscribed before me
April 16th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THOMAS B. FLAGLER, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am a practicing physician at Morristown and have been for thirty-five years; I am pretty thoroughly acquainted with Morristown and its vicinity; I am in active practice now; I own real estate in Morristown and its vicinity; I have bought and sold real estate; I am acquainted with the Samuel Jones farm lying on the Mendham road just above Morristown; it was the Daniel Wilson property once; I have known it ever since I have lived here; I have seen it frequently; I have been on it; I have been in the habit of going on

the Revere place adjoining it; I was the family physician of General Revere.

Q. That part of the farm which lies on the right of the road and which was sold to Foster in 1881, what was that then worth per acre?

A. Well, sir, I should think it was worth three hundred dollars per acre; that is, where the house was standing, next to General Revere's land on the right hand as you go up.

Q. You mean that part of the farm which lies on the right hand side of the road as you go from Morristown to Mendham?

A. Yes, sir; that is what I said in my answer; where the house and barn was, and that is on the right hand side.

Witness being cross examined further saith:

General Revere was a man of means; his wife had more means than he had; they were people of taste and refinement; they had things in very nice shape about them; the buildings on his place were quite numerous, there was a barn and houses.

Q. What do you suppose the buildings on the Revere place were worth in 1881?

A. I don't know what the new house cost; the other buildings were old, and worth, in my estimation, three thousand dollars; I don't mean the new building; sometimes cost has something to do in fixing value; I know the Hoyt place, known as Mount Kemble, on the Basking Ridge road.

Q. Well, what is that place worth?

A. I don't know how many acres there are in it; I know the place; I should suppose the property was worth thirty thousand dollars to a man that wanted it.

Q. How would the owner of such a place who had it for sale determine its value?

A. That may depend upon just the situation it was in at the time he may have built it, and the time when he wanted to sell it, and the situation he might be in at the time he did sell it, or wanted to sell it.

Q. Would its value be determined by there being buyers for that kind of property?

A. Certainly; to a great extent.

Q. How is the market value of property ascertained?

A. By its location, and the neighborhood and accessibility to a town or railroads, and probably the amount of timber there may be on it and the buildings.

Q. Could a person determine the value of any piece of property if he was familiar with all those features, without knowing whether there were buyers for that kind of property?

A. You would have an idea what it was worth, whether there were buyers or not, you know; sometimes there is property may lay in such a position and location as to be desirable property and there not be buyers at that time.

Q. But the value which would be fixed without regard to buyers, would not be the market value, would it?

A. Not necessarily.

Q. How would you ascertain the market value of a piece of property?

A. That would depend upon the location entirely to me; there are conditions on which men sell property for less than it is worth and for more than it is worth, but property is supposed to be worth what it brings.

Q. How long prior to eighty-one was this Jones farm worth three hundred dollars per acre?

A. That part of it on the right hand side of the road?

Q. Yes?

A. Well, it was worth it ten years before that.

Q What then made it worth three hundred dollars per acre?

A. As a building site and its location.

Q. No other reason?

A. Water privileges, and being a desirable piece of

property; I never knew it was for sale; I advised General Revere to buy it fifteen years before that and he said he couldn't get it.

Re-direct Examination.

Q. At what price did you advise General Revere to buy it?

Objected to as incompetent, immaterial, and irrelevant.

Objection sustained.

THOS. B. FLAGLER.

Sworn and subscribed before me
April 16th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JACOB S. CAREY, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am a farmer, living a matter of two miles from Morristown; I live a matter of half a mile from the Samuel Jones farm; I pass it in going to and from Morristown; I am acquainted with the farm and have been ever since I can remember, ever since I can remember any farm; I don't know how long, a matter of forty years, I should judge; I have been on it; I don't know what you call frequently; I have been on it every year for the past thirty years; I may say, yes, I have been on it frequently; I worked it two or three years; I don't know whether it was two or three; I have bought and sold real estate in the vicinity of Morristown.

Q. That part of the farm lying on the right of the road as you go from Morristown which was sold to Foster in 1881, what was that then worth per acre?

A. You mean at the time of the sale; I should suppose it was worth somewhere from three to five hundred dollars per acre.

Witness being cross-examined by counsel for complainants, further saith :

Q. What real estate have you bought about Morristown ?

A. I bought two tracts ; the first was what was known as the Peter Freeman property ; the next was known as the Doctor Condit, later as the Lambert property ; these tracts are located on the Mendham road ; they are not strictly speaking farming lands ; the Freeman tract was almost wholly wood land ; my impression is that Mr. Burnham, Frederick Burnham, owns those tracts now, but I cannot say positive ; I sold them within a year perhaps, or six months of each other ; I can't tell exactly about that.

Q. At private sale ?

A. Yes, sir, I did ; there were mortgages on the property and they were foreclosing and the Sheriff had a levy ; the Sheriff did not sell under his levy.

Q. How much did you realize above the amount due upon the mortgages ?

Objected to as immaterial.

Objection sustained.

Q. In what year were these tracts sold ?

A. My impression is it was about sixty-eight ; it might have been as early as sixty-seven ; I can't say now about that.

Q. Were you then unable to pay your debts ?

Objected to as immaterial.

Objection sustained.

Q. How long prior to eighty-one was this Jones tract worth from three to five hundred dollars an acre ?

A. I don't know as it was at all.

Q. When did it become worth from three to five hundred dollars an acre ?

A. When property was selling right around it at certain figures, figures that they brought at that time.

Q. What was it worth before it was worth from three to five hundred dollars an acre ?

A. Whatever it will bring in market.

Q. Didn't its market price fix its value in eighty-one?

A. Perhaps and perhaps not.

Q. What properties do you allude to as aiding you to fix the value of this tract in eighty-one?

A. The sale of the Revere property, and the offer for the Gribben property adjoining.

Q. Any other properties?

A. Not at that date that I have any recollection of.

Q. When you say this property was worth from three to five hundred dollars per acre in eighty-one, do you mean that that was its market value?

A. I considered the property as comparative, the value comparative with the property that was bought around there.

Q Has the existence of buyers anything to do with fixing the market value of property?

A. In my opinion, yes.

Q. Do you know of buyers for that kind of property in eighty-one?

A. Mr. Foster bought previous to eighty-one. I think.

Q. The property was worth more to Foster than any one else, wasn't it?

A. Yes, sir, it was the way he was situated.

Q. You would naturally expect him to pay the highest price it would bring, wouldn't you?

A. I should suppose he would be willing to pay somewheres near what it was offered for years and years before.

Q. Since the offer to which you allude had not both the Jones tract and the Revere farm changed owners?

A. Yes, sir, with regard to the Revere property; the Jones property I don't know anything about.

Q. Who did you understand to be the owner of the Jones property at the time that offer was made?

A. Samuel Jones I supposed was at that time; that is my supposition of the case.

Re-direct examination.

Q. In your opinion, could or could not the price which you have named for that part of the Jones farm lying on the right hand side of the Mendham road been realized for it in the spring of eighteen hundred and eighty-one, if proper exertion had been exercised by the seller?

Objected to as pure matter of opinion, and incompetent.

Objection sustained.

JACOB S. CAREY.

Sworn and subscribed before me,
April 16th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

LEWIS H. FREEMAN, a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I live about three miles and a half or four miles from Morristown; I have lived where I do forty or fifty years; my business is farming, generally; I have kept store in the meantime; I am the owner of real estate; I have not bought and sold real estate to any amount; I have bought real estate; I have been a real estate owner thirty years; I am in the habit of being in the City of Morristown; I am here frequently; I am well acquainted with Morristown and its vicinity; I have known the Samuel Jones farm on the Mendham road a number of years; I have passed it a number of times and been on it once or twice.

Q. That part of this farm which lies on the right of the road as you go from Morristown which was sold to Foster in 1881, what was that then worth per acre?

A. You mean at that time, or now?

Q. In eighty-one?

A. Well, I should have to answer that question in this way: The way lands are selling around town, and outside of town, and the way it is situated, I should say it was worth three hundred dollars an acre

or over ; about three hundred and twenty-five dollars an acre is what I should say it was worth.

Witness being cross-examined by Counsel for complainants, further saith :

I live right on the suburbs of the village of Whippany ; that village is east from Morristown ; I never bought or sold land for building sites in or about Morristown for myself.

Q. How would you fix the value upon any land for farming purposes ?

A. I should fix it by seeing what I could get off of it to pay, is the way I should fix it ; see what it is worth for farming purposes.

Q. How much net per acre can be produced per annum from ordinary farming lands hereabouts ?

A. I will answer that question in this way : I have thirty acres that paid me per annum at the rate of two hundred and fifty dollars per acre ; I refused eight thousand dollars for it, for the thirty acres.

Q. Do you call that ordinary farming land ?

A. That was, yes.

Q. Do ordinary farming lands hereabouts produce at that rate ?

A. They do if they are kept up in order.

Q. What did that thirty acres produce to you net, per annum ?

A. Well, I have figured it up and I know it came to between fifteen and twenty dollars an acre after taking out the work, after taking the work off of it.

Q. To ascertain the net amount annually produced by an acre of land, do you deduct the costs of all labor and all the material put on the land ?

A. If you want to find out the net profits, you do.

Q. Did you deduct the cost of labor and of all materials when you ascertained that this thirty acres produced to you per annum between fifteen and twenty dollars.

A. I took that all out ; I met with that same degree

of success two or three years ; the crop was grass each year and apples.

Q. What proportion of the fifteen or twenty dollars per acre was raised from the apple crop ?

A. Well, say from seventy-five to a hundred dollars ; I don't recollect exactly.

Q. What proportion of the net profits per acre was realized from the apple crop ?

A. I couldn't say exactly ; I might have got from seventy-five to a hundred dollars worth of apples off of it, off of the whole lot.

Q. What was this tract sold to Foster worth for farming purposes, per acre ?

A. You mean just this Scofield farm you are talking about ?

Q. I mean the Jones tract.

A. You didn't say so ; it might be worth a hundred or a hundred and twenty-five dollars an acre, or fifty, anywheres along there ; that is for farming purposes.

Q. In your testimony, in Mr. Mills' examination, you valued it for what ?

A. I valued it for what I thought it would bring in the market ; for what, if I owned it myself, I would want for it, and what I think I could get for it ; that is what I valued it for in the first place.

Q. How long prior to eighty one was it worth three hundred or three hundred and fifty dollars an acre ?

A. I should have thought it would have brought that amount of money at any time within seven or eight years back now.

Q. Was it worth that in seventy-nine ?

A. I wouldn't have taken any less than that if I could have held the property.

Q. How would you fix its value in the year 1879 as between three hundred and three hundred and fifty dollars an acre ?

A. How would I fix it in that year between the two, is the question asked me.

The question being again read to the witness he answers :

A. I should think if I owned that property it was worth that at any time within seven or eight years back; not for farming purposes, remember, but for building purposes for to sell.

Q. Can you state a reason for that opinion?

A. Why of course I can.

Q. State your reason?

A. My reason is this: I am a talking now just as if I owned that property myself; the way property is selling around the suburbs of town I think it is worth the money, that is one reason; another reason is it lays right along the main road; another reason is it has got a nice spring on to it and water; and another reason is there is a nice eligible place there for a building site; and another reason is the water on the lower part of that lot could be rammed up on top of that hill; and another reason is that it is within a reasonable distance from town.

Q. Will you state what sales of property taking place about the year 1879 you have in mind?

A. I don't have any just now.

Q. Have you any sales in mind from which you have determined the value of this lot?

A. Yes.

Q. State them?

A. Here is this Luse farm which has been sold within a year or two; I have that in mind, that is one of them; there is that Kountze place; those are the only two I think of.

Q. Do you know what Kountze paid per acre for his land?

A. I know what I saw in the paper and I have heard outside; I don't know what improvements were on that property Kountze bought.

Q. Do you suppose there is abundance of water in the spring on this Jones property to furnish a supply of water for the use of a ram in hot weather?

A. I should suppose there was, there is quite a little stream on there; I didn't refer to the stream which

crosses the road when I spoke; down under the trees there are springs and water.

Q. Do you know whether there is fall enough to throw that water upon the hill?

A. I don't know for certain, but I suppose there is.

Witness here said he didn't mean to say he saw in the paper what Kountze paid for his property; that he supposed the question related to the Luse property, and that he did see in the paper what that property sold for.

L. H. FREEMAN.

Sworn and subscribed before me
April 16th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JOHN S. STIGER, a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I am a practicing physician residing in Mendham in Morris County, and have been engaged in such practice in Morris County, thirty-five years; I have lived in Morristown about a year, I think; I have been in the habit of being frequently at Morristown for thirty-five years; I am the owner of real estate; I inherited real estate and have bought and sold more or less for twenty-five years; I am acquainted with the Samuel Jones farm, formerly the Charley Scofield place, lying on the road between Morristown and Mendham; I have known that for thirty years; I have been on it, but not often; I have been in the old house there; I had a patient there; I pass and repass it every time I go to and from Morristown.

Q. The part of this farm which lies on the right hand side of the road as you go from Morristown and which was sold to Foster in 1881, what was that then worth an acre?

A. I don't know what it was really worth; I should value it at about three hundred dollars.

Witness being cross-examined, further saith:

I resided in Morristown in eighteen hundred and sixty-one; I came here in eighteen hundred and fifty-nine, and I remained here till sixty-one.

Q. Did you ever buy or sell building sites in or about Morristown?

A. Yes; I bought the Josephus Guerin farm for Mr. Kountze; I bought that in eighteen hundred and eighty-three, I think it was.

Q. How long before 1881 would you value this Jones tract at three hundred dollars per acre?

A. Probably two or three years.

Q. In 1878 why was it worth three hundred dollars per acre?

A. Because outside capitalists were directing their attention to lands in and about Morristown.

Q. Are you sufficiently acquainted with the real estate market as it was in 1878 to fix the market value of this tract as it was then at three hundred dollars per acre?

A. I don't know how to answer that; my impression is that it was worth that; that it was valued at that at that time; that is my impression.

Q. What fixed that valuation then?

A. General Revere had bought a farm on that side of the town, and Betts had bought there, and others were talking about locating there, and it gave me an impression it was worth that.

Q. Do you know in what year General Revere bought his farm?

A. No, I do not; I think it was twenty or more more years ago; I do not know when Betts bought his place, but I think about the same time Revere bought his place or a little before; my recollection is not distinct.

Q. The same reasons which fixed its value in seventy-eight fixed its value in eighty-one, did they not?

A. No, I think not.

Q. What fixed its value in eighty-one?

A. Desirable locations on the east side of the city had appreciated in value and attention was more generally directed to that on this side, I think.

Q. What instances can you state of this fact?

A. I know that since that Mr. Kountze has bought where he is, and Mr. Morris offered a large sum for Kittatinny hill, I think, they call it; it is either twelve or sixteen thousand, I don't know which; I do not know how many acres there were in that Kittatinny hill which were to be bought; the offer was made in the year eighteen hundred and eighty-three, in the summer of eighty-three.

Q. Have you any other reason for fixing the value of this property as you did in eighty-one?

A. The beauty of its location; its nearness to the city of Morristown.

Q. What was it worth for farming purposes?

A. Some persons could make it worth any where from a hundred to a hundred and fifty dollars an acre, I should judge.

Q. I mean for those farming purposes for which it was used in 1881?

Objected to as immaterial.

Objection sustained.

Q. For what kind of farming purposes do you think the land was worth a hundred or a hundred and fifty dollars an acre in 1881?

A. Mixed farming; raising grain, fruits, and vegetables.

Q. To what part of the town do you refer by the east side?

A. I refer more particularly to Madison avenue, Maple avenue and and avenues in that vicinity.

Q. To what part of the town do you refer as the "west side?"

A. That located on the Washington turnpike and adjacent thereto.

Re-direct examination.

Q. Where is Kittatinny you have spoken of with reference to the Jones farm?

A. It is south of the turnpike nearly opposite this place, the Jones farm; by the turnpike I mean the Mendham road.

Second cross examination.

Q. By whom is it owned?

A. By George Tuttle

JNO. S. STIGER.

Sworn and subscribed before me,
April 16th, 1885.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

CHARLES H. MULFORD, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown, and have lived here about forty years, and have been in business on my own hook since eighteen hundred and fifty, thirty-four years; I am now engaged in the clothing business here; I own real estate here in Morristown, and have since eighteen hundred and fifty-one; I own the store in which I do business, and the house in which I live; I have bought and sold real estate in Morristown; I have bought two parcels and sold, in fact three; I know the Samuel Jones farm on the Mendham road near Morristown; I have known it more than thirty years; I may have been across it; I have been by it very frequently since eighteen hundred and fifty.

Q. That part of the Jones farm which lies on the north side of the road as you go from Morristown and which was sold to Foster in 1881, what was that then worth per acre?

A. Well, I make my estimate from my general knowledge, not from any particular sales, and place

the value of that lot at from nine to ten thousand in eighteen hundred and eighty-one.

Q. State, if you please, the elements which go to make up this value?

A. The important element is the value of the western end for building purposes; that is the main.

Witness being cross-examined by counsel for complainants, further saith:

I haven't an idea that there was much variation in the value of that lot from eighteen hundred and seventy-eight to eighteen hundred and eighty-one?

Q. What determined its value in 1878?

A. Well, the same in eighteen seventy-eight as in eighteen eighty-one or eighteen eighty-five in my estimation.

C. H. MULFORD.

Sworn and subscribed before me
April 16th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent of the respective Counsel to Thursday, April 23d, A. D., 1885, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

April 23d, A. D., 1885, the respective Solicitors of the parties in this cause appeared before me pursuant to adjournment, and at the request of the defendant, and with the consent of the complainants' counsel, the further examination of witnesses in this cause was adjourned to Wednesday, April 29, 1885, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Wednesday morning, April 29, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment. The defendants' Solicitor requested a further adjournment of the examination in this cause, and thereupon with the consent of the Solicitor for the complainants, I adjourned the further examination of witnesses on behalf of the defendants in this cause, to Friday, the eighth day of May next, at the hour of ten in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

May 8, 1885, the Solicitor of the complainants and the defendant, Samuel Jones, appeared before me pursuant to adjournment. Mr. Werts, the Solicitor of Jones and wife, being engaged in Court, the defendant, Samuel Jones, requested an adjournment, and thereupon with the consent of the Solicitor of the complainants, I adjourned the further examination of witnesses in this cause to Friday, May 15th, instant, at ten o'clock in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

May 15, 1885, the Solicitors of the parties complainants and defendants appeared before me pursuant to adjournment. By consent of the respective Solicitors the further examination of witnesses in this cause was adjourned to Friday, May 29th, A. D., 1885, at ten o'clock in the forenoon, at my office in Morristown: And it was stipulated and agreed by the Solicitor of the defendants, Samuel Jones and Maria L. Jones, with the Solicitor of the complainants, that on the 29th day of May the testimony of witnesses on behalf of said defendants should be proceeded with and taken without any further adjournment, and that the testimony of said defendants should be finished and closed on the thirtieth day of May, A. D., 1885.

GEO. W. FORSYTH,
Master, &c.

Friday morning, May 29, 1885, the Solicitors of the respective parties came before me pursuant to adjournment, and the examination of witnesses in this cause was continued.

GEO. W. FORSYTH,
Master, &c.

JOEL W. MUCHMORE, a witness produced on the part of the defendants, Samuel Jones and wife, being duly sworn, on his oath saith :

I was seventy years old last April ; I have lived in Morristown since the year eighteen hundred and forty ; the first I lived here I followed the carpenter's business, but the last eighteen years I have been in the lumber business ; I had a lumber yard at the depot ; I am a real estate owner in Morristown, and have bought and sold real estate here ; I think I am acquainted with the value of lands in Morristown and its vicinity ; I have bought and sold quite some property and think I have an idea of the worth of it ; I know what was called the Jones farm lying on the Mendham road ; I know where it is and have known it a good many years.

Q. That portion of that farm lying to the north or right hand of the Mendham road, as you go to Mendham, was worth how much per acre in or about the year 1881 ?

A. Well, I don't know ; well, I should think at that time it might have been worth probably in my estimation three hundred dollars an acre.

Witness being cross-examined by the Solicitor for the complainants, further saith :

I wouldn't say it was worth as much in 1879.

Q. Well, how much was it worth in 1879 ? I repeat the question previously put. I mean per acre, of course ?

A. That was two years later, the time you first, from the first date, in eighteen hundred and eighty-one.

Q. How much was that same tract worth per acre in the spring of 1879?

A. Well, I should put it at two hundred and eighty or ninety dollars.

Q. How much was it worth per acre in the spring of 1877?

A. Well, I would put it at two hundred and seventy-five dollars.

Q. Do you mean to say that at a fair private sale in 1877 that tract would have brought two hundred and seventy-five dollars per acre?

A. That is my judgment, sir.

Q. What makes you think so?

A. From the experience I have had in property, selling and buying.

Q. State what experience you have had in buying?

A. Well, I bought a farm and the prices I paid and what I sold it for, the rise in value of it, is what I base my opinion on.

Q. When did you buy that farm?

A. I bought it, as near as I can recollect, about twenty-eight years ago; I am not certain about the date, but it is as near as I can call to mind; there were no buildings on that farm; it was improved land and farming land; it was located on the corner of the street that runs to the Convent, the lower Convent, and it run down on that street to about where the new Convent is built, to about what we call Punch Bowl, that portion of the farm; it was on the east side of Morristown and towards Madison; that was only a portion of it on that side of the road; the balance, about thirty acres, lay on the other side of the road.

Q. How many acres were there in that farm?

A. Well, I've got to understand this myself, or you have got to understand it; I haven't given you only a portion of the farm yet.

Q. Did that farm lay altogether?

A. No, sir.

Q. How many acres were there in that farm?

A. As near as I can tell there was not far from forty-five acres, from forty to fifty acres somewhere, without the deeds.

Q. How much did it cost you per acre?

A. Some of it one price and some another; if you want to figure it up you can do so; I can't get at that; I bought that farm of different parties; I bought the first portion of it of John Johnson at thirty dollars an acre; my impression is there were thirteen acres, but I am not positive of the number of acres; I bought the next tract of Alexander Robertson; as near as I can tell now there were fourteen acres; I paid sixty dollars an acre for it; I bought the next tract of Mr. Beach; as near as I can recollect in regard to that I think there were fourteen acres; I bought that for thirty dollars per acre; I bought the next tract of Ashbel Bruen; that was the last lot I bought; I think there were six acres of it; I bought that for twenty dollars per acre; I do not own any part of that farm now; I say none of it; I guess I own about a half an acre of muck land that I didn't sell; I didn't sell it all to one party; I sold the first to George T. Cobb; I sold him the thirteen acres and the six acres; I sold it to him for twenty-five hundred dollars, but I built a house on it; I should think, I aint positive about these dates, but I should think it wasn't far from twenty-five years ago that I sold it; I next sold the Alexander Robertson tract and the Beach tract, a year after I sold the other; I sold that to Dederick Kellers for twenty-eight hundred dollars; there were no improvements on it; I am the father of George V. Muchmore who is a merchant in Morristown; his wife has an interest in the Luse estate; I have known of this Jones tract for some thirty years.

Q. What reason have you for fixing its value in 1881 at three hundred dollars per acre.

A. From the price of property through the town and outside of town; I mean by "from the price of property," what property was selling for in eighteen hun-

dred and eighty-one; I have real estate property in mind, farming land, and building land; I don't know of any particular farm that I have in mind; I could state one particular building lot I have in mind; the building lot on Madison avenue and South street, the corner; right in town I should say; that is towards Madison; South street is the principal street of the town; Madison avenue is the finest avenue we have.

Q. Had you any other lot in mind which aided you in fixing the value of this Jones tract in 1881 at three hundred dollars an acre?

A. I have no particular lot.

JOEL W. MUCHMORE.

Sworn and subscribed before me
May 29, 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

FRANK F. SANDERS, a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I am a physician resident in Morristown; I have lived in Morristown since the year eighteen hundred and seventy; prior to that my residence was with my father on the Mendham road, about four miles from Morristown, on the road to Mendham; my father was a farmer and owned a farm there; the farm contained about five hundred acres; I bought one property in Morristown; I am acquainted with the value of lands in Morristown and its vicinity; I know what was called the Jones farm situate between Morristown and Mendham.

Q. What was that portion of that farm lying to the north of the Mendham road worth per acre in the year 1881?

A. I should say about three hundred dollars.

Witness being cross-examined by the Solicitor for the complainants, further saith:

I bought a property on Ridgedale avenue in Morristown ; I bought it and paid for it.

Q. How long prior to 1881 was this Jones tract worth three hundred dollars per acre ?

A. I should say from eighteen hundred and seventy ; it was worth about a hundred dollars per acre for farming purposes.

Q. Do you know the tract lying south of the Mendham road and east of the road leading to George Tuttle's ?

A I am not well acquainted with it.

Q What is that part of the Jones farm south of the Mendham road worth per acre, or rather, what was it worth in 1881 ?

A. How far does the Jones tract run from the Mendham road south ?

Q. I don't know.

A. Well, my answer would be for what use it is put.

Q. With reference to what use did you fix the value of that part of the Jones tract lying north of the Mendham road at three hundred dollars per acre in 1870 ?

A. From the gradual rise of real estate in Morristown and its vicinity.

Q. Question repeated.

A. I don't quite grasp the question, the meaning of it, "for what use."

Q. How do you fix the value of real estate ?

A. For what it sells for.

Q. How did you fix the value of this property for the year 1870 ?

A. By the sale of property generally throughout the country ; I mean generally in the vicinity of New York and Morristown, taking that radius.

FRANK F. SANDERS, M. D.

Sworn and subscribed before me,
May 29, 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

GEORGE A. ABER, a witness produced on the part

of the defendants, being duly sworn, on his oath saith:

I now live in Morris Township, about three hundred feet from the corporation limits; I formerly lived within the corporation limits; I have lived in Morristown and its immediate vicinity forty years; my business now is real estate and auctioneer; that has been my business about twenty-eight years; all that time in and about Morristown; I own property in Morris Township, and within the corporation of Morristown; as agent I have negotiated the sales of property, of a good many properties; I am acquainted with the value of lands in Morristown and its vicinity; I know what we call the Jones farm lying on the Mendham road; I have, as agent, negotiated the sale of lands in its neighborhood and adjoining it.

Q. What was that portion of the Jones farm lying on the north of the Mendham road worth per acre in the 1881?

A. Three hundred dollars.

Q. State, if you please, how that value of three hundred dollars per acre was made up?

A. I made it up from the general value of other property which I have sold, and the way it sells.

Witness being cross-examined by the complainants' Solicitor further saith:

I haven't been constable but one year in twenty years; prior to that I was constable for ten years; in addition to the other branches of my business I work an apparatus for cleaning cesspools and privies; I have cried the most of the auction sale of goods hereabouts for the past twenty-eight years.

Q. In the spring of eighty-one what was that portion of the Jones farm worth per acre which lays south of the Mendham road and west of the road to Tuttle's?

A. Now, in that, Mr. Little, do you include both sides of the road that runs to Tuttle's?

Q. Question repeated.

A. Well, that cuts it in two pieces on the other side. Is that what you mean—do you mean all on the other side of the Mendham road?

Q. Does not the road from the Mendham road to Tuttle's run a south-easterly course?

A. Rather a south-westerly course I should think, a little west of south.

Q. Does not that road run through a part of the Jones farm?

A. Yes, sir.

Q. One part of this Jones farm that lays south of the Mendham road is on the east side of the Tuttle road, isn't it?

A. Yes.

Q. And one part is on the west side of the Tuttle road, isn't it?

A. Yes, that is right exactly.

Q. In the spring of eighty-one what was that portion of the Jones farm south of the Mendham road and west of the Tuttle road worth per acre?

A. It was worth about a hundred and fifty dollars.

Q. With reference to what use was it worth a hundred and fifty dollars per acre?

A. For a residence, a place to live.

Q. How long prior to eighty-one was it worth that sum per acre?

A. The last six or seven years.

Q. And how long prior to eighty-one was the piece sold to Foster worth three hundred dollars per acre?

A. For seven or eight years prior to that.

Q. Then I understand you, Mr. Aber, that in 1874, the piece west of the Tuttle road was worth a hundred and fifty dollars per acre, and the piece sold to Foster was worth three hundred dollars per acre?

A. Yes, sir.

Q. Why was the latter piece worth twice as much as the former?

A. The locality and the land itself.

Q. In what respect was the Foster piece better than the other piece?

A. The Foster piece lies all on one side of the road, has a large frontage, land and trees and everything in generally good state of cultivation, water, springs of water and so forth; the other side lays up on a rather steep side hill, running up into the rocks and stones, called Piccatinny mountain, and no water and no trees, and also divided by a road running around by the Mills place.

Q. Has not that road been so laid out that the whole of this tract west of the Tuttle road is south of it? I mean the road to the Mills place?

A. I think it runs across the Jones tract.

Q. What made the piece sold to Foster worth three hundred dollars per acre in 1874?

A. It was worth it because it would bring it.

Q. What makes you think it would bring it?

A. I thought it would bring it the way other property was sold in the neighborhood, and had been selling, and the way I sold property in the neighborhood of it.

Q. What property have you in mind?

A. I sold the Johnny Gribben property right next to it, nearly joining it.

Q. When was that sold?

A. I sold that twice; I sold it the first time somewhere about seventy-four, I can't exactly remember, and had a payment made on it and couldn't make the title; one of the heirs died in the meantime and I couldn't make the title, so I refunded the money; there is a house on that Gribben property; it is a very small one and of no account.

Q. By what other sales of property do you fix the value of this Jones tract at three hundred dollars an acre in 1874?

A. The way I sold property in general; I sold William Sayre's farm soon after that, in seventy-five, I think it was, or rather it was Theodore Sayre's farm; I sold that to Cornelius Lane; it lay beyond this Jones

farm; as near as I can remember there were a hundred and ten or a hundred and twenty acres in the Sayre farm; I don't exactly remember the number of acres; I know what I got for it though; I got eighteen thousand dollars; there were buildings on that farm; it was sold to be used as a farm; I think there was a mortgage given for ten thousand dollars of the purchase money?

Q. How much of the consideration was cash?

A. I don't know.

Q. The mortgage that was given at that sale was subsequently foreclosed, wasn't it?

A. No, sir, it was not.

Q. Who occupies that farm now?

A. Theodore Sayre, as owner; he acquired title by buying it; he bought it of Mr. Lane; I think he gave him eighteen thousand dollars, I don't know exact; I don't know how much cash he paid him.

Q. Do you know how the eighteen thousand dollars was paid?

A. It was paid in cash, a mortgage and a house and lot; the mortgage was the original purchase money mortgage given by Mr. Lane to Mr. Sayre, which was canceled; the house and lot was the same house and lot Lane had given Sayre for part of the consideration; I don't know whether the amount of cash paid to Lane was the same; I didn't do the business; they did it themselves.

Q. With reference to what other sales do you fix this valuation for 1874?

A. I can't think of any particularly, only the general sales of property at that time.

Q. You at one time owned a country place on the road from Morristown to Walnut Grove, didn't you?

A. Yes, sir; I do not own it now; Jacob S. Aber acquired title to that from me; I deeded it to him; he held a mortgage on it.

Q. And you conveyed it to him because you couldn't stand the burden of the interest?

A. No, his interest was paid ; I didn't owe him any interest.

Q. Was it because you couldn't pay the principal of the mortgages ?

A. It was because he wouldn't let me pay it, he wanted the property.

Q. How much was the part of the Jones farm east of the Tuttle road and south of the Mendham road worth per acre in the spring of eighty-one ?

A. Two hundred dollars ; I fix that valuation from other sales and valuations of land ; it was worth two hundred dollars per acre for farming.

Q. Would it produce annually, net, the interest of two hundred dollars per acre ?

A. It would if it was tilled properly ; the fences were in moderate condition.

Q. What would be raised on it to produce the interest of two hundred dollars per acre ?

A. Raise anything you like on it.

Q. How do you fix that valuation, two hundred dollars per acre, in that ?

A. The general character of the land and location ; that stream adds considerably to that tract ; it adds fifty dollars an acre to its value ; the tract sold to Foster was worth two hundred dollars per acre for farming purposes in the spring of eighty-one.

Q. What proportion of that valuation per acre consists in the stream flowing through that tract ?

A. Twenty-five dollars an acre, leaving out the springs on that tract.

Q. In reckoning the value of farm land with reference to a purchase, does it make any difference whether the land is fenced or unfenced ?

A. Yes, sir.

Q. Doesn't it require a great deal more fencing to enclose a long and narrow strip than would be required to enclose the same number of acres if the land lay in the form of a square ?

A. It is according to where it lays ; according to how much road you have got.

Q. The question is to the amount of fencing, not who has to build it?

A. It wouldn't take any more.

Q. Wasn't the fencing on this Jones tract in a very poor condition?

A. In a moderate condition only.

Q. What do you mean by moderate?

A. I mean in a moderate condition, as a good many farmers do have it.

Q. With reference to what use do you fix the valuation of the portion of the Jones tract sold to Foster in eighty-one at three hundred dollars per acre?

A. For building plots or residence.

Q. And you fixed its valuation in 1874 with reference to the same use, didn't you?

A. Yes, sir.

Witness being re-examined by the Solicitor for defendants, further saith:

This Gribben place of which I have spoken fronts on the Mendham road; I should think it fronted on that road for five or six hundred feet.

Q. How did that compare in value with the Jones tract on the north of the road?

A. The Jones tract on the north of the road was worth nearly as much again as the other.

Q. When was your last sale of the Gribben tract?

A. About seventy-eight, I think; we sold it I think for thirty-two hundred dollars; it was either three thousand or thirty-two hundred dollars; there were fifteen acres including the road running from the Manning property to Betts' farm.

Q. How many acres was comprised in the roads?

Objected to as immaterial.

Objection sustained.

Q. Was there a larger or less extent of road bounding the Jones property than there was bounding the Gribben property?

Objected to as incompetent.

Objection sustained.

Q. When was the first sale of the Gribben farm?

A. As near as I can remember that was in eighteen hundred and seventy; that was thirty-two hundred dollars.

Q. In the last sale of the Gribben farm which comprised fifteen acres, you say?

Question waived.

Q. How far beyond the Jones tract towards Mendham is the Sayre farm of which you have spoken?

A. A mile and a half.

Re-cross Examination.

The Gribben property was purchased in eighteen hundred and seventy by Lewis D. Bunn as a place to live and farm.

2d Direct Examination.

Lewis D. Bunn was an undertaker in Morristown; the buildings on that tract at that time were not of any account and hadn't been for a good many years.

G. A. ABER.

Sworn and subscribed before me
May 29th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

MELVIN S. CONDIT, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I am the County Clerk of Morris County and have been for the past seven years, and during all that time have had charge of that office here in Morristown; I am acquainted with the sales of land made in Morristown and its neighborhood during that time; I am somewhat acquainted with the value of lands in Morristown and its vicinity, as indicated by the sales;

am somewhat acquainted with what is called the Jones farm on the Mendham road ; I know its location with reference to the town of Morristown ; I was one of the Commissioners appointed on the application of the Morris Aqueduct to condemn about an acre of the Jones farm on the south side of the road.

Q. Taking that portion of the Jones farm which lies to the north of the Mendham road, what was that worth per acre in the year 1881 ?

A. My recollection is that at the time the Commissioners were on that property in eighteen hundred and eighty, if I remember aright, that part of the farm was considered the most valuable ; my recollection is that our judgment at that time was, that taking that part on the north side of the road as a whole, it was then worth from two hundred and fifty to three hundred dollars per acre ; my recollection is that that was the value agreed on by the Commissioners in fixing the value of the part that was condemned by them ; that is as I recollect it now.

Witness being cross-examined by the complainants' Solicitor, further saith :

Q. What was that part north of the Mendham road worth in eighty for farming purposes ?

A. In my opinion and in my judgment from my experience land in Morris County is not worth more than one hundred dollars per acre, unless under peculiarly favorable circumstances, for farming purposes.

Q. For what use was the valuation of three hundred dollars per acre made ?

A. For no particular use ; basing our calculation upon the sale of good land in the vicinity and within the same distance of the park at Morristown.

Q. Can you state what sales your attention was called to ?

A. I cannot now ; I know there were some sales quoted, but I have no recollection now what they were.

Q. Was your opinion formed from your personal

knowledge of sales which had taken place, or from statements made to you by others about the time of that Commission?

A. My recollection is that our attention was called to some sale, I don't recall what one, but our opinion was formed chiefly from the evidence before us in that matter; I will simply say that the owners of the land, Messrs. Willet and Childs, were in attendance at that time.

Q. What in your opinion was the value in 1880 of that part of the Jones tract south of the Mendham road and west of the Tuttle road?

A. We did not view it in that reference; our estimate was made on the value of the whole property, or the property as a whole; in other words we endeavored to estimate what the whole property would be worth together.

Q. In your opinion, is the tract I referred to last worth more or less per acre than the tract on the north side of the road sold to Foster?

A. In my opinion the tract on the north side of the road is worth more per acre or as a whole, as being better farming land, and far more desirable as a building site.

Q. How much less per acre in your opinion is that tract south of the Mendham road and west of the Tuttle road worth than the Foster tract?

A. For farming purposes not more than half as much, and I should think in the same ratio for building sites unless there may be something about the situation which I am not aware of.

MELVIN S. CONDIT.

Sworn and subscribed before me
May 29th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JOHN W. BABBITT, a witness produced on the part of the said defendants, being duly sworn, on his oath saith:

I have lived in Morristown and Morris township twenty years, I guess, or more; I have been constable of this township for the last six or seven years; I do not know a great deal about sales and tranfers of property in Morristown and its vicinity only what I've heard; I have some knowledge of the value of lands in Morristown and its vicinity, I think; I know the Jones farm on the Mendham road; I lived on that farm eleven years; I left there about six years ago, I think.

Q. How much was that portion of that farm lying north of the Mendham road worth per acre in 1881?

A. Well, I should think it was worth three hundred, three hundred and twenty five or three hundred and fifty dollars, something along there.

Witness being cross-examined by the complainants' Solicitor, further saith:

Q. How long prior to eighty-one was it worth three hundred and fifty dollars per acre?

A. Well, it wasn't long, I don't think; I should think it was worth that in seventy-nine or eighty, along there.

Q. What made it worth three hundred and fifty dollars an acre in seventy-nine?

A. I looked at it as building lots, on that side of the road.

Q You had the same reason for thinking it worth three hundred and fifty dollars an acre in eighteen hundred and eighty-one that you had in eighteen hundred and seventy-nine, hadn't you?

A. Well, about the same; it was getting more valuable.

Q. Now what reason made you think it worth that sum in 1879?

A. Well, I thought it a nice building lot, and a nice place to get water to supply other building lots; a supply of water; I thought there was going to be a nice mine on it; I guess there is, too, if they would

only open it; that was my calculation when I lived there; I didn't think there was a gold mine on it; I thought there might be a good iron mine on it; I worked the place on shares when I lived there; I delivered Jones' share to him; it was divided on the farm; I delivered it to him; he sold it, I suppose, or used it up; I used my share up myself.

Q. What do you suppose was the value of the stuff you raised there each year?

A. I never kept any particular account; I know it made me a good living and I had some besides; I never bought or sold any building lots.

J. W. BABBITT.

Sworn and subscribed before me
May 29th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

There being no other witnesses in attendance, the further examination of witnesses in this cause was here adjourned by consent and agreement of the respective counsel till to-morrow morning at ten o'clock, at my office in Morristown, the examination then to be proceeded with notwithstanding to-morrow is a legal holiday.

GEO. W. FORSYTH,
Master, &c.

Saturday morning, May 30, 1885, the Solicitors of the respective parties appeared before me pursuant to adjournment, and the examination of witnesses in this cause was continued.

GEO. W. FORSYTH,
Master, &c.

THEODORE P. SKELLENGER, a witness produced on the part of the said defendants, being duly sworn, on his oath saith:

I live at the present time in Morristown; I have lived

here since seventy-nine this last time; I was here two years before, twenty-five years ago; before coming to Morristown in seventy-nine I lived at Chester in this County, twelve miles from Morristown; I kept hotel, I think, about fifteen years in Chester; the first two years I was in Morristown I kept the city hotel; since then I haven't been engaged in business, anything in particular; I have owned, and bought and sold real estate in Morris County; I never owned any in Morristown or Morris township; I have rented in Morris township; I am some acquainted with the sales of real estate which have been made in Morristown and vicinity since I came to live here in seventy-nine; I have not paid any particular attention to it, not so much as if I was dealing in it, or as I used to when dealing in it.

Q. Are you acquainted with the value of lands in Morristown and its vicinity?

A. Well, yes, sir, I had ought to be.

Q. Do you know where the Jones farm is on the Mendham road?

A. Yes, sir; that is in Morris township, outside the corporation of Morristown, about a mile and a quarter from the Court House, or the green; the green would come nearer it.

Q. How much was that portion of the Jones farm lying to the north of the Mendham road worth per acre in the year 1881?

A. It would be worth as much as it is now, I should suppose.

Q. How much is that?

A. It would be worth more to some people than it would to others; it would be worth what it would bring.

Q. The question is, what it was worth in 1881 or now, as you say it is just the same?

A. I should suppose it was worth from two hundred and fifty dollars to five or six hundred dollars an acre, as you happened to meet your customer to sell;

for farming purposes it wouldn't be worth as much as it would for building.

Witness being cross-examined further saith :

Q. What was it worth in 1879 per acre ?

A. I don't know as it would change the price ; it would be worth from two to three hundred for farming purposes ; for building purposes, I wouldn't sell it for five hundred in seventy-nine, if I owned it ; I would rather hold it and get more ; I owned the three hotel properties in Chester, one was built new, and the brick hotel and the cross roads hotel ; I owned seventy acres of land right in the village, and I also owned several other buildings ; from three quarters of a mile to three miles from the village I had four good farms.

Q. You lost considerable money in your real estate operations, didn't you ?

A. Not so much in that as I did by other people ; I don't think I lost so much by real estate as I did by people and business other ways ; I don't recollect losing on but one property, and that I built on and didn't get my money back ; while I was in Chester there was a great boom in real estate caused by the discovery of iron ore ; my family is keeping boarding house here in Morristown ; the defendant Samuel Jones, and his wife, boards there with them ; after I left the hotel in the spring here I kept a beer saloon in Morristown for a short time.

Q. How would you determine the value of this land per acre in 1879 ?

A. From what I've heard other property sold for and its location, and for farming purposes, it was worth as much then as it is now, and now as it was then, I guess ; grain and hay are pretty regular in their price.

THEO. P. SKELLENGER.

Sworn and subscribed before me,
May 30, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JAMES N. CORIELL, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live in Morristown, and have lived here a little over thirty years; my business at present is selling goods for New York houses to merchants in the country; I own a small quantity of real estate in Morristown; I am not very particularly acquainted with the various sales of real estate which have been made in Morristown and its vicinity during the past few years; I generally hear of the sales that have been made; I have more or less a general idea of the value of real estate in Morristown and its neighborhood; I can't say I am particularly posted; I know the Jones farm lying both sides of the Mendham road.

Q. How much was that portion of that farm lying to the north of the Mendham road worth per acre in the year 1881?

A. Four hundred dollars an acre.

Witness being cross examined further saith:

Q. What was it worth for farming purposes?

A. That is a difficult question for me to answer; there are various ways of farming land; well, some farmers garden, they raise truck; I will say in a general farming way, being so near town, three hundred dollars an acre.

Q. What difference does its nearness to town make as to its value for farming purposes?

A. One difference is, he has a shorter distance to take his produce to market, another difference is being so near to town he can get his fertilizers easier, doesn't have to cart them so far, and that makes a great difference where a man has to cart a load of lime; I think that tract was worth as much in eighteen hundred and eighty one as it is now.

Q. And worth as much in 1879 as it was in 1881?

A. Yes, I think so.

Q. How do you fix its value for the year 1879 ?

A. I have lived here all the time and knew more or less what was going on in a general way, and according to my recollection the value of that kind of property hasn't changed much in that time.

Q. What means did you use to determine in your own mind its value per acre in the year 1879 ?

A. Just my natural judgment.

Q. With reference to what particular facts did you reach that conclusion ?

A. I can't answer that question any better than I first answered, I don't think.

Q. In the year 1879, what was that portion of the Jones tract south of the Mendham road and west of the Tuttle road worth per acre ?

A. I couldn't tell you.

Q. What was that part south of the Mendham road and east of the Tuttle road worth per acre in 1879 ?

A. I can't tell you that ; I am not posted on the lines of that part of the farm.

J. N. CORIELL.

Sworn and subscribed before me
May 30th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

JOSEPH YORK, a witness produced on the part of said defendants, being duly sworn, on his oath saith :

I live in Morristown, and have lived here twenty or twenty-one years ; my business is hardware, stoves, tin ware and plumbing ; I own a large store fronting on the green, and also other properties in town ; I have bought and sold other properties besides those I now own ; they were all in Morristown ; I am somewhat acquainted with the value of lands in Morristown and close by.

Q. Do you know the Jones farm on the Mendham road ?

A. I know a piece of land that was called the Jones farm.

Q. How much was that portion of that farm lying north of the Mendham road worth per acre in the year 1881?

A. Well, I don't know which is north and which is south.

Q. On the right hand side as you go to Mendham?

A. Well, I would like to ask for what purpose?

Q. To buy generally, to hold for any purpose you please.

A. I don't know anything about land for farming; for building purposes, I should think it was worth three hundred dollars per acre.

Witness being cross examined further says:

I should think it was worth about the same in eighteen hundred and seventy-nine.

Q. How do you fix its value at three hundred dollars per acre for the year 1879?

A. I think property was worth as much then as it is now.

Q. How do you fix its value now at three hundred dollars per acre?

A. There are some portions of it I would like to have at that price, pay that price, and a little more for some portions of it.

Q. How do you fix the value of any real estate?

A. By prices that I have paid myself and prices I have known it to be sold at.

Q. How far does the price at which land is sold determine its value?

A. I can't get that; I can't understand it; do you mean its adaptability for—you might put it in a simple form some way.

Q. Question repeated.

A. Well, I can't understand that.

Q. When you state the value of this part of the Jones tract sold to Foster as three hundred dollars per

acre in the year 1879, do you mean to say that was its market value?

A. Yes, sir.

Q. What do you mean by its market value?

A. That I believe it was worth that.

Q. What led you to believe it was worth that?

A. I only judge of the value of other real estate that was bought and sold.

Q. What sales of real estate do you refer to?

A. Well, there was the Kountze property, and there was another piece of property below that; I don't know what it was now, but I remember reading an account of the sale; I have no other sales in mind, that is outside of the corporation lines.

Q. Did the sale of the Kountze property enable you to fix the value of the Foster tract for the year 1879?

A. Not altogether.

Q. Did it in part?

A. No, sir, I don't think it did.

Q. State fully, what method you pursued and what facts you considered in order to fix the value of this Foster tract for the year 1879?

A. Well, my own judgment and the location of the land for building purposes; I frequently admired it and thought it was a very pretty building site.

JOSEPH YORK.

Sworn and subscribed before me,
May 30th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THEODORE W. PHŒNIX, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I live at Mendham; it is called seven miles from Morristown; I have lived there fifty years; I own real estate in Mendham; I never owned any in Morristown; Mendham is in Mendham township; Mendham and Morris townships join on the Mendham turn-

pike; we call it half way, but the distance from Morristown to the dividing line is a little the farthest, about half a mile farther; I am the Deputy Collector of Internal Revenue for this County, and have been for nine years and upwards; I have passed over the turnpike from Mendham to Morristown and back a great number of times; I am very well acquainted with the land lying between Morristown and Mendham, and with the value of the land also; I have spoken of it a good many times to others; I know what is called the Jones farm lying on both sides of the Mendham road.

Q. How much was that portion of that farm lying to the north of the Mendham road worth per acre in the year 1881?

A. From three hundred to three hundred and fifty dollars an acre.

Q. How is that value made up?

A. Made up by my judgment, and the value of other lands in the vicinity of Morristown and Mendham.

Witness being cross examined further saith:

Q. What in 1881 was that part of the Jones tract south of the Mendham road and west of the Tuttle road worth per acre?

A. I wouldn't have given so much for that as I would for the other, because for building purposes it wasn't so desirable; perhaps two hundred dollars, that is my judgment; I should think it was worth full as much in eighteen hundred and seventy-nine.

Q. And the tract north of the Mendham road sold to Foster was worth as much in 1879 as in 1881, I suppose?

A. I think so; yes, sir.

Q. What was the Foster tract worth for farming purposes in 1879?

A. A hundred dollars an acre; I think it was worth the same in eighty-one.

Q. For the year 1879, how do you fix the value per acre of that portion north of the Mendham road?

A. I fix it, as I said before, by the value of other lands lying near it, about it.

Q. With reference to 1879, how do you fix the value of lands about it?

A. I don't answer the question; there is nothing in it.

Q. How do you fix the value of any lands?

A. I fix it by the price of other property about it.

Q. What do you mean by the price of other property about it?

A. What it sold for; what other property sold for.

Q. How long prior to 1879 was this Jones tract worth from three hundred to three hundred and fifty dollars an acre?

A. I think it would have sold for a good deal more prior to eighteen hundred and seventy-nine, for land was a good deal higher; I paid one hundred and sixty dollars for an acre of land way out in Mendham.

Q. What sales of land enable you to fix the value of the Jones farm for the year 1879?

A. I can't say; I can't answer the question.

Q. What sales of land have you in mind by which you fixed its value at any time that you have testified about?

A. I haven't any particular land; I judge by the location of the property.

THEO. W. PHŒNIX.

Sworn and subscribed before me,
May 30th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THOMAS HUGHES, a witness produced on the part of said defendants, being recalled and again sworn, on the part of said defendants, on his oath saith:

Being shown the map marked Exhibit B, on the part of the defendants, witness saith:

In my previous calculation of that part of the Jones farm lying northerly of the Mendham turnpike or the Mendham road, the calculation was made along the centre line of the Mendham road to the forks of the road leading to Water street, and consequently did not include the triangular piece of land lying westwardly of the said road to Water street and northerly of the Mendham road; that triangular tract contains ninety-nine hundredths of an acre, and this is to be added to the former calculation, to the former quantity rather; by former quantity I mean the quantity specified in my first examination.

Witness being cross examined further saith:

Q. When did you make the first calculation of which you have spoken?

A. I can't state now when I made it, but I presume the date will appear in my former examination; I may say this in answer of the question, if it does not so appear, the calculation was made about a week previous to that examination; I reported the quantity of land which I had ascertained to Mr. Samuel Jones in the first place, and in my first examination I gave the quantity.

THOS. HUGHES.

Sworn and subscribed before me
May 30th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

ABRAM L. CROSS, a witness produced on the part of said defendants, being duly sworn, on his oath saith:

I now live in Morristown, and have lived here twenty-six or twenty-seven years last past; I was formerly a merchant in Morristown; I subsequently in eighteen hundred and seventy became a member of the firm of Ross & Cross, real estate dealers in Newark; that is

my business still; I have owned real estate in Morristown; I have bought and sold real estate in Morristown and throughout Morris County; I have acted as purchasing agent for different railroads in procuring the right of way through Morris County; I think I am acquainted with the value of lands in Morristown and its vicinity; I know what is called the Jones farm lying on the Mendham road; I know the property very well.

Q. How much was that portion of that farm lying north of the Mendham road worth per acre in 1881?

A. Not less than three hundred dollars, and from that to three hundred and fifty.

Witness being cross examined further saith:

Q. What was that part south of the Mendham road and west of the Tuttle road worth in 1881?

A. Well, I shall have to ask you for an explanation of the Tuttle road; let me see the map; (after examining the map witness says): it was worth about the same as that lying north of the road.

Q. And what was that part lying south of the Mendham road and east of the Tuttle road worth in 1881?

A. It is not so valuable; I have never been on the rear of it that I remember of, but judging from the lay of the land from the turnpike road, I think it worth from a hundred and fifty to two hundred dollars per acre.

Q. Would these respective values be greater or less in the year 1879?

A. I think they would be about the same; I am familiar with the late Mahlon Guerin farm on the Jockey Hollow road, but I don't know its boundaries.

Q. In the year 1879 what would you say that was worth per acre?

A. I don't remember enough about it to fix a price; I don't remember what the improvements are.

Q. Exclusive of improvements what would you fix its value at per acre for 1879?

A. For farming purposes one hundred dollars per acre; if it had a long road front and elevated ground suitable for building sites, I would value it more; I don't remember the lay of the ground in front.

Q. How do you fix the value of that part of the Jones farm north of the Mendham road for 1879?

A. By what people have asked for property, and lands have been sold for surrounding Morristown, within that same radius.

Q. Which is the better criterion of value, the asking price or the selling price of land?

A. The selling price under ordinary circumstances; not at forced sale.

Q. How do you fix the market value of real estate?

A. I don't fix it.

Q. What was the market price of that part of the Jones farm lying north of the Mendham road in 1879?

A. I think I could have sold it at the price I have named; I did not know it was in the market for sale.

Q. How can you determine its market price in 1879?

A. Only as compared with other properties similarly situated.

Q. How compared?

A. As to nearness to town, location as to thoroughfares, and adaptability to building purposes.

Q. How do you get at the value of those other properties?

A. In some cases where sales have been made, and at prices held by the owners.

Q. With what property sold did you compare that part of the Jones tract sold to Foster to fix its value for 1879?

A. I had reference to no particular property, but judged of its value as a merchant would of the quality of a piece of goods by comparing it with others.

Q. With what particular property did you compare it to fix its value for 1879?

A. I didn't compare it with any particular property.

ABRAM L. CROSS.

Sworn and subscribed before me
May 30th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The Solicitor of the defendants, Samuel Jones and wife, here announced that the evidence on the part of the defendants was closed with the exception of a certified copy of the deed from the complainants, Childs and Willet, to Foster, which the Solicitor of the defendants reserved the privilege of offering in evidence on behalf of the defendants. The Solicitor of the complainants consented that the said deed should be offered in evidence, and with that exception the defendants' evidence was declared closed.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

At the close of the defendants' testimony the Solicitor of the complainants announced his intention of proceeding to take testimony on behalf of the complainants on Thursday, the eleventh day of June next, and thereupon on the request of the Solicitor of the complainants, and with the consent of the Solicitor of the defendants, Samuel Jones and wife, I adjourned the further examination of witnesses in this cause to Thursday, June 11th, A.D.1885, at ten o'clock in the forenoon, at my office in Morristown, when and where the examination of witnesses produced on behalf of the complainants will be taken.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Compl'ts,
and
SAMUEL JONES AND MARIA L. JONES, HIS WIFE, ET ALS,
Deft's.

Examination of witnesses, on behalf of the complainants, taken before the undersigned, one of the Masters and Examiners of the Court of Chancery of New Jersey, at my office in Morristown, on Thursday the eleventh day of June, A. D., 1885, pursuant to adjournment made on the thirtieth day of May, A. D., 1885, said examination being taken in the presence of Stephen H. Little, the Solicitor of the complainants, and of George T. Werts, the Solicitor of the defendants, Samuel Jones and Maria L. Jones, his wife.

GEO. W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

JULIUS A. DRAKE, a witness produced on the part of said complainants, being duly sworn, on his oath saith :

I am a real estate agent and live in Morristown, and have lived here eight years ; Ihave been in business here thirteen years ; I know the Samuel Jones farm on the Mendham road ; I at one time had an offer from a person of a price for that portion of the farm which lies north of the Mendham road.

Q. Was the offer made so much by the acre, or so much for the tract ?

Objected to on the ground of incompetency, it being merely hearsay evidence. The question being what is the value of the land in the opinion of the witness.

Objection overruled.

A. I represented that there was forty-three acres, and the offer was made for the tract with the understanding that there was forty-three acres of it.

Q. What was the amount of that offer?

A. Seven thousand five hundred dollars; I communicated that offer to Samuel Jones; I couldn't tell in what year that was; I should think it was probably about the year eighteen hundred and eighty-one; it might have been eighty, but I have no record; it is merely a matter of recollection; I do not know the name of the person who made this offer; I have the name down somewhere; he was a stranger; he was here about a week; he stopped at the Mansion House; I have not seen him or heard of him since that time.

Witness being cross-examined further saith:

I communicated this offer to Mr. Jones while the man was in town; Mr. Jones declined it, and said that he wouldn't take less than ten thousand.

Q. The offer was for the piece in a lump, I understand?

A In order to make that clear I should state what occurred, I suppose.

Q. I haven't asked you that and don't want it.

A. I won't give it to you; the offer was for forty-three acres of land lying on that side of the road; this proposed purchaser saw the land; I was there three times with him myself; I pointed out the boundaries of it.

Q. And then did he offer seventy-five hundred dollars for the tract of land which you had showed him?

A. When on the ground he stated that he didn't think there was forty-three acres there; I told him that I was offering it as represented by the owner; he re-

quested me to see the owner again and see if there wasn't some mistake; I did see Mr. Jones; he told me there was forty-three acres and to sell it for that; he would guarantee there was forty three acres; on that representation that there was, and that he would guarantee the forty-three acres, the offer of seventy-five hundred dollars was made; Jones declined to take seventy-five hundred dollars for it; Jones placed the property in my hands.

Q. When, if you recollect?

A. I saw him specially about it after this man came in town; it had been in my hands generally some time before; I did not know that the title to this land was not in Mr. Jones when I had this purchaser there.

Re-direct examination.

Q. Do you recollect when the Aqueduct Company bought the Mahlon Guerin farm, in what year?

A. I think it was in eighteen hundred and eighty, but I could not be positive.

Q. Do you know of the foreclosure of the mortgage on the Jones farm and the sale under it?

A. I think I attended the sale.

Q. Was the offer for this Jones tract made to you prior or subsequent to that sale?

A. It was made subsequent; I think it was; I couldn't swear positively to that, but I think it was.

JULIUS A. DRAKE.

Sworn and subscribed before me, June 11, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

CHARLES G. FOSTER, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I live on the Mendham road; I have lived there about six years, the whole year, and previous to that

I lived there one or two summers ; I am a merchant in New York and Brooklyn ; I have been a merchant in New York and Brooklyn about twenty-two years ; I purchased my farm near Morristown at several times ; as near as I remember I purchased the first portion in the spring of eighteen hundred and eighty-one ; I thought it was in eighteen hundred and eighty, but in speaking to Mr. Ayers this morning he said it was in eighteen hundred and eighty-one ; I purchased that portion of the estate of General Revere ; there was comprised in that purchase the real estate, the live stock, the farming utensils, everything, excepting the crops gathered the year before ; I bought it in the spring ; there were about eighty-eight acres of land in that tract ; it was improved land ; the improvements consisted in buildings, fruit trees and good fences.

Q. Stripping the land of its improvements—

Question waived.

Q. What was the purchase price paid for the Revere property ?

A. Twenty-seven thousand five hundred dollars.

Q. Deducting from the entire purchase money the value of the improvements and of the personal property, what in your opinion did the naked land cost you per acre ?

Objected to because the witness is asked for an expression of his individual opinion as distinguished from general opinion of value.

Objection overruled.

A. Estimating the value of the buildings at something near what I thought they would cost to build and what they were worth to me, I considered the ground cost me from a hundred and fifty to a hundred and seventy dollars an acre ; I never figured it very close.

Q. What tract did you next buy ?

A. The tract belonging to Willet and Childs adjoining my property and laying along the Mendham road.

Q. State, if you please, what proposition was made

to you with reference to a sale of land to you by Willet and Childs?

Objected to as incompetent under the pleadings.

Objection sustained.

Q. At what price did you purchase that tract, parcel of the Jones farm lying on the north side of the road?

Objected to as incompetent under the pleadings, irrelevant, and must involve a conversation between the witness and the parties, and that the deed is the best evidence of the price paid.

Objection overruled.

A. Per acre?

Q. Yes, sir.

A. One hundred and sixty dollars.

Q. How many acres did you understand that tract contained when you made the agreement to purchase it at that rate?

Objected to unless the understanding was derived from the defendant Jones.

Objection overruled.

A. I don't exactly understand that question, what is meant there by what did I understand—what I believed it contained?

Q. What representation in that regard was made to you by Willet and Childs?

Objected to as incompetent under the pleadings and hearsay testimony.

Objection overruled.

Appeal.

Dated June 11th, A. D. 1885.

GEO. W. FORSYTH,

Master and Examiner in Chancery.

A. The gentleman who offered it to me for Willet and Childs represented there was about forty acres of it.

Counsel for defendants moved to strike out the answer, because it doesn't appear who represented Willet and Childs, and because it is hearsay evidence, a

conversation between two parties not parties to the suit in any way.

I declined to strike out the answer.

Q. Who was that gentleman, Mr. Foster?

A. Theodore Ayers.

Witness being shown a paper writing, is asked;

Q. Is that your signature, Mr. Foster?

A. Yes, sir.

Counsel for complainants offered the said paper writing, being an agreement, in evidence, and I have marked the same Exhibit No. 18 on the part of said complainants.

Q. For what purpose do you use the tract bought of Willet and Childs?

Objected to as irrelevant and incompetent.

Objection overruled.

Appeal.

Dated June 11, 1885.

GEO. W. FORSYTH,

Master and Examiner in Chancery of New Jersey.

A. For farming purposes.

Q. For what purpose did you buy it?

Objected to as irrelevant and incompetent, and in no wise fixing the value of the land.

Objection overruled.

Appeal.

Dated June 11, 1885.

GEO. W. FORSYTH,

Master and Examiner in Chancery.

A. For farming purposes.

Q. Had you or not when you purchased it any regard for its value for building sites?

Objected to as irrelevant and incompetent.

Objection overruled.

Appeal.
Dated June 11, 1885.

GEORGE W. FORSYTH,
Master and Examiner.

A. I don't think I gave the question of building site any consideration; that tract was surveyed before it was conveyed to me, and subsequent to the agreement; it was found to contain about twenty-eight and a quarter acres.

Q. In what condition was the land for farming purposes?

A. Poor.

Q. In what condition were the fences?

A. Very bad.

Q. How did the Willet and Childs tract with reference to its condition for farming purposes compare with the Revere farm?

A. Some of the Revere farm wasn't any better, and some of it was considerably better for farming purposes.

Q, Did you buy any other tract of land?

A. Yes; I bought what is known as the Gribben farm; that lies north-east of the Revere farm and adjoins it towards Morristown on the Mendham road; there were about fifteen acres in that tract.

Q. At the time of its purchase what was it worth per acre?

A. I considered it worth a hundred dollars per acre; I paid about two hundred dollars per acre for it; I paid three thousand dollars for the place, and I think there was a little over fifteen acres in it.

Q. What led you to pay so much for it?

A. I had heard it suggested that an ice house and pond was likely to be built there which I considered would damage my property very much.

After the witness had partially answered the question, the defendants' Counsel objected to the question. I declined to entertain the objection because the witness had been permitted to answer in part before

objection was made. When the answer of witness was concluded, Counsel for defendants moved to strike out the answer as incompetent and irrelevant evidence. I declined to strike the answer out.

Q. Was that Gribben property well adapted for an ice pond and an ice house?

Objected to as incompetent, irrelevant and leading.

Objection overruled.

A. I think it could be arranged pretty well for that purpose.

After the witness had answered the question defendants' Solicitor demanded an appeal, which I here enter.

Dated June 11, 1885.

GEO. W. FORSYTH,
Master and Examiner in Chancery.

Q. With reference to the outlook from your dwelling house, where is this Gribben property?

A. It is directly in front of it.

Q. With reference to the value of the tract bought of Willet and Childs, was the price you paid for it high or low?

Objected to as incompetent and as not the proper mode of determining the value of the land.

Objection overruled.

Appeal.

Dated June 11th, A. D. 1885.

GEO. W. FORSYTH,
Master and Examiner in Chancery.

A. Not very high or very low, about a fair price.

Witness being cross-examined by the Solicitor of the defendants, further saith:

Q. Do you know exactly how much money you paid for the Jones tract?

A. I think it was forty-five hundred and twenty dollars; I am not certain.

Q Forty-five hundred and twenty dollars would be the price of twenty-eight and a quarter acres at one hundred and sixty dollars an acre, would it not?

A. Yes, sir

Exhibit B on the part of the defendants being shown witness, he is asked:

Q. Did you obtain from Willet and Childs the triangular piece shown on the map lying north of the road to Mendham, and north of the main road to Mendham, and bounded by that road and the road to Water street and land of Thomas Fox?

Objected to for the reason that on the map there are two roads, one entitled, Old road to Mendham, north of which and bounded by which and lands of Thomas Fox is a triangular piece of land, and there is also on said map a road entitled, Main road to Mendham, north of which and bounded on the west by land of Thomas Fox is a triangular piece of land, and it is uncertain from the question to which piece Counsel refers.

Objection overruled.

Question withdrawn to obviate the seeming tautology of the question.

Q. Did you acquire from Willet and Childs for the forty-five hundred and twenty-five dollars paid them, the triangular piece of land lying north of the main road to Mendham, and bounded by that road, and the road to Water street and lands of Thomas Fox?

Q. That triangular piece was included in the purchase for which I paid forty-five hundred and twenty dollars, not forty-five hundred and twenty-five dollars as you stated; I say there was about fifteen acres in the Gribben farm; some of that fifteen acres was pretty fair land and some of it was very poor; a little of it was very poor and the rest of it was pretty fair; I should say about eleven acres of it was tillable; the rest of it is young woods, small trees; half of two roads was included in that fifteen acres; the roads included probably an acre and a quarter, as much as that, perhaps an acre and a half; I have never figured it; probably there was an acre and a half; probably only an

acre and a quarter though, I should think on further consideraiion ; I paid just three thousand, I think, it was for the Gribben place.

Q. The agent who made the sale said it was thirty-two hundred dollars, may you not be mistaken?

A. I might be; Mr Ayers would know, he purchased the property for me ; Mr. Aber was the agent having charge of the sale for the Gribbens ; I know who made the survey and computation of the twenty-eight and a quarter acres; it was J. Frank Johnson.

Q. Was it Johnson's computation or one made by Thomas Hughes that was inserted in the deed?

A. I think it was Johnson's ; I paid him for making the survey ; I paid him a part of it ; whether I paid the whole expenses of the survey or not, I won't be certain ; I think I only paid him part of it ; I employed him.

Q. Did you employ a surveyor for the purpose of having Willet and Childs make a deed to you?

A. We agreed on a surveyor together.

Re-direct Examination.

Q. In the Willet and Childs tract how much of the public road leading to Mendham and leading to Water street is included? Where does the line run with reference to the public road?

A. The line ran along the middle of the public road to Mendham, and embraced the whole of the Water street road.

Q. With reference to the quantity of land in the highway, how does that portion of the twenty-eight acres within the highway compare with the portion of the Gribben tract in the highway?

A. There is a little more of the twenty-eight and a quarter acres included within the highway than was included in the highway in the deed of the Gribben property, I should think.

CHAS. G. FOSTER.

Sworn and subscribed before me }
June 11, 1885. }

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

THEODORE AYERS, a witness produced on the part of the complainants, being duly sworn, on his oath saith :

I am about sixty years old ; I reside at Spring Valley, and my business is real estate and insurance ; I moved to Spring Valley from Morristown four years ago ; it is in Morris township ; I lived in Morristown about thirty-seven years, and have been in the real estate business here eighteen years ; I know the Jones farm on the Mendham road ; I negotiated the sale of part of it in eighteen hundred and eighty-one for William Childs and Doctor Willet to Charles G. Foster.

Exhibit No. 18, on the part of complainants, being shown witness, he is asked :

Q. Is that the contract for the sale to which you refer ?

A. It is ; it was drawn by me ; that is my signature as a witness to its execution ; I drew the contract and signed it as a witness ; that contract refers to the tract on the north side of the Mendham road ; I represented to Foster that the tract contained about forty acres ; I got that information from the owners, and also from Mr. Jones ; there was no demand for building lots to my knowledge in the year eighteen hundred and eighty one on the Mendham road in the vicinity of this property.

Q. How did the price agreed upon compare with the actual value of the land ?

A. In my estimation it was sold for a good fair price.

Q. To whom in your judgment was that land most valuable ?

Objected to as incompetent and irrelevant. The

question is as to its market value, and not its value to any particular person.

Objection overruled.

A. To Mr. Foster.

Q. Did you endeavor to procure from him the best price you could?

A. I did.

Witness being cross examined further saith:

Mr. Foster had a house already built in which he lived; he didn't need this place for the purposes of a building site.

Q. Mr. Foster swore that he bought it for farming purposes; suppose he had bought it as a building site for himself, or to sell as a building site to others, wouldn't it have been worth more than a hundred and sixty dollars an acre?

Objected to, because the witness has stated that there is no demand for building sites, and Mr. Foster swore he didn't give it consideration for a building site, that he bought it for farming purposes, and there is no foundation for the question.

Objection overruled.

A. I cannot say that it was; I have been trying to sell it for years as a building site.

Q. Then you think that it was worth no more than a hundred and sixty dollars an acre for any use or purpose?

A. I didn't consider it worth any more than that in the dilapidated condition it was in at that time.

Q. Question repeated?

A. It was not in my estimation.

Q. Suppose between forty and fifty witnesses had sworn in this case, some of them real estate agents, doing business in this town, that this land when you sold it to Foster was worth in the neighborhood of three hundred dollars an acre, would that influence your opinion that it was worth no more than a hundred and sixty dollars an acre?

Objected to as misleading, because it don't state the names of the persons alluded to; it don't state the fact that they differed widely in their estimates, and it don't state that none of them were able to give a sufficient reason for their opinions.

Objection overruled.

A. My opinion is based upon my own efforts to find a purchaser for seven years and more, and the opinions of others would have no weight; I have been on the land often; I can't say how often; I have been on it frequently for thirty years past.

THEODORE AYERS.

Sworn and subscribed before me, June 11th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

DANIEL S. VOORHEES, a witness produced on the part of said complainants, being duly sworn, on his oath saith:

I am a resident of Morristown, and Deputy County Clerk.

Witness being shown pages 21, 22, 23, 24, 25 and 26 of a printed pamphlet, is asked:

Q. Did you compare those pages with the record?

A. I did, and as now amended by me they are a true copy from the record.

Counsel for complainants offered the said pages 21, 22, 23, 24, 25 and 26 in evidence, and I have marked the same Exhibit No. 19, on the part of said complainants.

Q. Are these two bundles of papers produced by you from the files in the Morris County Clerk's office?

A. They are.

Q. They are the original files, are they?

A. Yes, sir.

Counsel for complainants offered in evidence the original depositions taken in supplemental proceed-

ings in a case in the Morris Circuit Court, which proceedings are endorsed

MORRIS CIRCUIT COURT.

EDWIN ROSS, ET ALS,
vs.
SAMUEL JONES } *In case.*

Supplemental proceedings filed Feb. 6, 1880.
M. S. CONDIT, Clerk.

Also the original depositions in supplemental proceedings, endorsed

MORRIS CIRCUIT COURT.

EDWIN ROSS,
GEORGE H. ROSS and
STEPHEN BREESE,
vs.
SAMUEL JONES. } *In case.*

On petition and order for discovery.
J. C. YOUNGBLOOD,
Att'y of Pl'ffs.
GEO. T. WERTS,
Att'y of Def't.

Filed July 3, 1884.
M. S. CONDIT, Clerk.

For the purpose of showing that though the ownership of the Hedden judgment was inquired into upon both times that the defendant Samuel Jones was under examination in supplemental proceedings, the first time being the 31st day of January, A. D., 1880, and the second examination being in the month of October, A. D., 1883, the alleged assignment of said Hedden judgment from said Samuel Jones to said Eliphalet C. Willet was not produced and offered in evidence.

Objected to as incompetent and irrelevant under the pleadings and evidence in the case, and because the complainants must designate such parts and portions of said papers as prove or sustain his offer; that it is not competent to offer all the proceedings for that pur-

pose, a large portion of the papers offered having no bearing on the subject at all, and because the evidence is not rebutting, because the said Willet does not deny the making of said assignment.

Objection overruled.

Appeal.

Dated June 11th, A. D., 1885.

GEO. W. FORSYTH,

Master, &c., in Chancery.

I admitted the said papers in evidence, and the same being the original papers on file in a proceeding in the Morris Circuit Court I have omitted to mark the same as Exhibits in this cause.

D. S. VOORHEES.

Sworn and subscribed before me, June 11th, A. D., 1885.

GEO. W. FORSYTH,

Master, &c., in Chancery of New Jersey.

At this stage of the examination, the further examination of witnesses in this cause was adjourned on the request of the Solicitor of the complainants, and with the consent of the Solicitor of the defendants, to Thursday, the eighteenth day of June instant, at the hour of ten in the forenoon, at my office in Morristown.

GEO. W. FORSYTH,

Master and Examiner in Chancery of New Jersey.

The examination of Henry C. Pitney was taken before me at my office in Morristown, on Wednesday the seventeenth day of June, 1885, at eight o'clock in the evening, in the presence of, and with the consent of the Solicitors of the respective parties.

GEO. W. FORSYTH,

Master, &c., in Chancery of New Jersey.

HENRY C. PITNEY, a witness produced on the part

of the complainants, being duly sworn, on his oath saith:

I am fifty-eight years old, by occupation a lawyer, and reside at Morristown, and was born and always lived in Morris County, and bred a farmer; I own in Morristown a house and lot where I live, another one that I rent, and a farm called the Mahlon Guerin farm which I hold in trust for the Aqueduct Company; I own a farm near Mendham in this County, and have owned it since the third day of April, eighteen hundred and sixty-three, the date of my father's death; it is the farm I was born on; I am the President of the Proprietors of the Morris Aqueduct Company; the business of that company is to supply Morristown with water; I am a Director and Stockholder of the National Iron Bank; my connection with the Aqueduct Company keeps me very thoroughly informed of the growth of Morristown and the direction of its growth; I am to some extent familiar with the values of real estate in and about Morristown, but strictly speaking I do not consider myself an expert in the values of real estate in the sense a real estate agent is; the great majority of the expensive dwellings about Morristown are being put up in the direction of Madison; that class costing from eight thousand to fifty thousand dollars; a good many costing from two to six thousand dollars are being put up on the western side of Morristown towards Mendham; a very fine property known as the Luse property near the Mendham road has recently been purchased by Mr. Egbert, and he is putting up a nice house on it; it is about a mile from the green; I know of no demand for building sites on the Mendham road, in or about the year eighteen hundred and eighty-one; I refer to tracts of several acres; I may add here that I have for several years past been confidential friend for the owners of the Luse tract lying near the Mendham road recently purchased by Mr. Egbert, and when that was sold under partition proceedings I think there was a bid on that lot; I think

that was in eighty-three; I have known the whole Jones farm both sides of the road since I was a boy; the portion north of road had on it a dwelling and a barn, both in a dilapidated condition and unfit for use almost; the fences were valueless; the land was in as bad a condition as it well could be, and I don't think it was worth more than fifty dollars an acre for farming purposes in eighteen hundred and eighty one.

Q. Was that tract then valuable for a building site?

A. Yes, in a measure; there is one good building site upon it near the top of the hill, but in my judgment not large enough to be attractive to the kind of a purchaser who would be expected to pay very much more than its value for farming purposes.

Q. What, then, was the best way of disposing of that tract so as to realize the most money for it, and who was the most eligible purchaser?

A. Precisely what was done with it; I answer that way because I happen to be cognizant of the transaction; had I owned the property and held it for sale, and had received an intimation that Mr. Foster wished to buy it, I would have considered him as the only purchaser; I would have exercised my best wits to ascertain his best price, and would have closed at that; in other words I would have got the very best price I could out of him, but would not have missed the sale; I don't think there was the least competition against Mr. Foster, and if he took a fancy to it he could afford to pay more than anybody else; I wish to add that I don't know whether Mr. Foster would have given any more than he did give or not.

Q. Are you or not familiar with hydraulic engineering?

A. I am an amateur hydraulic engineer, commenced practice as an amateur in eighteen hundred and forty-eight when my father set up on his farm, now my farm, almost the first hydraulic ram ever set in motion in Morris County; his neighbors came to see it, and from that time on for many years he was called upon by people, farmers living in those hills, to place hydraulic

rams for them ; I have two going on my farm ; I have paid particular attention to the operation of hydraulic rams in the way mentioned.

Q. Have you at any time, and if so, when, made an examination of the springs on that part of the Jones tract sold to Foster with reference to utilizing their waters by a ram, and if so, state with what result ?

A. My office examined the title to the Jones farm for Mr. Foster when he purchased, and I was Counsel for him in some difficult negotiations attending the purchase of another tract of land, and was brought in frequent contact with Mr. Foster ; shortly after the purchase of the Jones place, he stated to me that he was digging for the purpose of placing a ram to be driven by the waters of a spring on the Jones place ; had had the levels taken which he gave me and requested me if convenient when passing to stop in and look at it and give him my opinion upon it ; I did get out of my carriage one day in the summer time, went into the field, saw the ditch and the stream of water, and looked at it particularly with a view to see whether it was practicable to utilize it to throw water up to his house, and came to the very decided opinion that there was not either fall enough or water enough to make it worth while to incur the expense of putting in the ram and appliances, and so advised Mr. Foster.

Q. In 1879 did the Aqueduct Company buy a farm, if so, what farm ?

A. About that date (I could not put my hand on the deed to-night, you can have it by asking Mr. Howell for it, I think Howell, the engineer, has it) the Aqueduct Company bought the Mahlon Guerin farm containing a little short, I think, of a hundred and twenty five acres ; I do not recollect the consideration ; it was about seven hundred dollars more than the bid mentioned in the Sheriff's deed, which deed was made to Aaron Drake of Mendham, who bid it off for the Aqueduct Company and afterwards conveyed it to me individually on an unexpressed trust for the Aqueduct Company ; a very small portion of that farm lies south

of the Jockey Hollow road impinging in the Sheriff Tappen farm ; that part I conveyed to ex-Governor, ex-Chief Justice Samuel B. Axtell, the owner of the Tappen farm, for just what I paid, which was forty or fifty dollars an acre, I believe, reserving the water rights on it ; another portion, a cultivated field, lying close by George W. Tuttle's house on the cross road, I sold to Tuttle for, I think, fifty dollars an acre or thereabouts, for I think, about four acres ; about thirty-five acres, I think, of the rocky, swampy, uncultivable land, and having no value excepting the water upon it, I conveyed to the Aqueduct Company ; the remainder, about eighty-one or two acres, I should think, being all the farming land, and two of the finest building sites in the county of Morris, without exception, I hold for sale ; a new house has been built on the eighty odd acres at a cost of between two and three thousand dollars, I think ; I speak from memory ; Mr. Pierson can give the amount of the farm ; the barn has been rebuilt substantially, a new cow shed, a great deal of new and expensive fencing, and stones and rocks cleared off, many acres of old dead peach trees pulled up by the roots and piles of money spent generally.

Q. Since this outlay for improvements has this eighty odd acres been offered for sale, and if so, at what price and when ?

A. I think it was the summer we were building the house three years ago and before the eighty acres had been actually surveyed off from the rest, but when the lines had been substantially determined upon we offered it and thought we were likely to sell it for ten thousand dollars ; we have put on improvements since that including a great deal of expensive fertilizers for the land, and for this reason the price is twelve thousand, (one hundred and fifty dollars an acre.)

Q. With reference to its distance from town, its accessibility, the quality of the land and its adaptability for farming purposes, and its attractiveness as a building site, compare the eighty acre tract of the Mahlon

Guerin farm with the twenty-eight acre tract of the Jones farm sold to Foster?

A. As to accessibility, it is about an average of half a mile farther from the railway station than the Jones farm; the elevation of the Guerin farm is so much greater than that of the Jones farm, that of course that makes the road to the Guerin farm more difficult, but it is in the main an incline plane, and by the expenditure of a few hundred dollars can be made so that a horse can trot without breaking his gait almost to the highest point, which I believe is seven hundred and thirty-five feet above the level of the sea; the access, in short, is good; as to the quality of the land, as to the eighty acres, some, about fifteen or twenty, is covered with wood and sprouts; some of the land is as good as the best of the Jones; some is poor and stony; none is wet; upon the whole there is very little difference between the two tracts for farming purposes; that difference I should say was slightly in favor of the Jones tract; as to its attractiveness as a building spot I do not think they can be compared; the Mahlon Guerin farm is vastly superior to the other in that respect; it presents a choice; there is a very beautiful building site just north of the dwelling, and about a hundred and fifty feet I should say, vertical measurement, below the highest point, from which building site you have a view of the Asylum and all the surrounding landscape and of part of Morristown; this might suit the fancy of one class of persons, and it corresponds very well with the building site on the Jones place in the character of the prospect from it, but it is considerably higher than the building site on the Jones place; then besides that, there are two distinct kulms about six or eight hundred feet apart with a gentle depression between them, upon one of which is a grove of forest trees, and from either of which you have the finest view that I know of from any point in Morris County accessible for dwelling purposes; to the east you take in the valleys of the Rockaway and Passaic to Paterson and the mountains on each side,

and on the west you take in the valley of the upper Whippany and the Mendham and Chester hills; these kulms are, I believe, seven hundred and thirty-five feet high; the exact height is laid down on Cook's map.

Q. By what routes is this land accessible from Morristown?

A. By Western avenue, and its continuation, the Jockey Hollow road, which is the road of which I spoke a moment ago; that is one way; the other is by the Mendham road and the cross road leading past George Tuttle's; the former is the better way; the drive out Western avenue, up the Jockey Hollow road, thence by the George Tuttle road, commonly called Piccatinny, to the Mendham road at the Jones farm, thence back by the Mendham road, is a favorite one, on account of the elegant view from the Guerin hill on the Piccatinny road.

Witness being cross examined further saith:

Q. What is the highest price you have ever known to have been offered for the Jones farm or any part of it?

A. I can't at this moment recollect of any offer that I ever knew being made for the Jones farm; I once made a very foolish offer for a part of it, lying south of the Mendham road, together with certain water privileges connected with it; that offer was, I think, six thousand dollars, but as Jones was as big a fool as I was, it wasn't accepted I am happy to say; it was made under very peculiar circumstances.

Q. After that offer was declined was the offer increased?

A. It had already been increased several times, and my recollection is that six thousand was the highest.

Q. Do you know whether or not William L. King ever made an offer for any portion of it exceeding six thousand dollars in amount?

A. I can't answer that question with absolute accur-

acy at this moment; whatever Mr. King did offer to my knowledge was offered in behalf of the Aqueduct Company, as was also the offer I made myself; I am not sure he made any offer or was authorized to do so; at the time in question the Aqueduct Company were about appropriating the stream of water which crossed the tract for its purposes, and by its charter was limited to the taking of one acre of land in any one place for a reservoir, and it particularly desired to get from ten to fifteen acres of almost valueless land from the south end of the Jones farm, which could only be acquired by conventional purchase; I estimated the value of the water at one thousand dollars and the land at five hundred, I think, and under those circumstances I made the offer which I have just mentioned which was declined; the Aqueduct Company then applied to the Legislature for a supplement, authorizing them to take by condemnation a greater quantity of land; Jones appeared and opposed it; Mr. King, and I think Mr. Marsh and myself, attended in Trenton; while there in the lobby somebody on Jones's behalf wished the Company to buy either the whole farm or that part of it south of the Mendham road, and Mr. King according to my recollection was requested to ascertain his price, and I think ascertained it to be ten thousand dollars, but thinking of it here, I cannot recollect that the Company authorized Mr. King to make or that he did make any offer; he was and is a director.

(Counsel for defendants, Jones and wife, objected to the answer as not responsive to his question.)

Q. Do you know of any offer ever made for the land belonging to the Jones farm lying north of the Mendham road?

A. I have no recollection at this moment of any except that which Mr. Foster made when he bought it.

Q. What is the best offer you ever had for your farm on the Mendham road?

Objected to.

Objection sustained.

HENRY C. PITNEY.

Sworn and subscribed before me
June 17th, A. D., 1885.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

Thursday morning, June 18th, A. D., 1885, the Solicitor of the complainants, and the Solicitor of the defendants Samuel Jones and Maria L. Jones, appeared before me pursuant to adjournment made and entered herein on the eleventh day of June, 1885, and the testimony in this cause was continued.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The Solicitor of the defendants Samuel Jones and wife consented that a map, Entitled "Lands of "Charles G. Foster, near Morristown, N. J., December "1884, scale 1 inch 2 chains, drawn from descriptions "in Deeds, Geo. W. Howell, C. E." may be put in evidence and marked as an Exhibit in this cause without proof. Said map was offered in evidence by the Solicitor of the complainants, and I have marked the same Exhibit No. 20, on the part of the complainants.

WILLIAM CHILDS, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I have heard Samuel Jones's testimony in relation to the assignment of the Hedden judgment.

Q. Just state, if any, what was the agreement between you and Jones in relation to the assignment of the Hedden judgment?

Objected to as not rebutting.

Objection overruled.

A. We were to have the Hedden judgment assigned to us to secure us for the moneys we advanced for Mr. Jones; by us I mean Doctor Willet and myself; Mr. Jones was to make the assignment to me and Willet.

Q. Have you heard the testimony of Jones as to the

terms upon which you and Willet held the title to this farm?

A. Yes, sir.

Q. Just state upon what agreement with him you and Willet took the title to that farm?

Objected to as not rebutting.

Objection overruled.

A. We were to have the title of the farm in our own names.

Q. Was there or not an agreement with Jones that you and Willet should hold that farm and not sell it or any part of it without his consent?

A. No, sir.

Witness being cross-examined further saith:

We could sell the farm without Jones' consent and without asking him; I and Willet were the absolute owners of the farm.

Q. Why then do you offer in your bill to account to Jones for the proceeds of its sale?

A. All that I ask from Mr. Jones is the money we expended for him and the interest and trouble; if we sold the farm for more money than we had paid out for Mr. Jones we were willing that Mr. Jones should have it.

Q. If you had sold the farm for more than you had paid out for Jones were you under any obligations to pay him the excess?

A. I don't consider I was.

Q. Do you know how much you did pay out for Jones?

Objected to as having been stated and not a cross examination.

Objection sustained.

Q. You say you are the absolute owner of the farm, Mr. Childs? What did you give Mr. Jones for the farm?

A. The farm was sold at Sheriff's sale, we raised the money for General Cooper's mortgage, this mortgage

in the bank for six thousand; there was costs and expenses of foreclosing and such like; I can't recollect exactly what it all was now; amounting to the neighborhood of between seven hundred and a thousand dollars, besides the Cooper mortgage and the bank mortgage.

Q. About what did all this amount to?

Objected to.

Objection sustained.

Q. You say, Mr. Childs, that you never agreed to sell or not to sell the lands without Jones's consent; is that so?

Objected to as a question impossible to be answered and misleading.

Objection sustained.

Q. Mr. Jones agreed to assign you the Hedden judgment, what were you to give him for that?

Objected to.

Objection overruled.

A. I didn't consider that the moneys that we paid out for him were secure without it.

Q. Well, then, were you to hold the Hedden judgment collaterally or absolutely?

A. It was to be assigned to us, whether you call it absolutely or collaterally, I can't tell.

Q. You know what I mean when I ask you whether you were to hold it collaterally, don't you?

A. I know that we were to hold it to secure us.

WILLIAM CHILDS.

Sworn and subscribed before me
June 18th, A. D., 1885.

GEO. W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

The Solicitor of the complainants here announced and declared the testimony on the part of the complainants in this cause closed.

The Solicitor of the defendants, Samuel Jones and wife, also declared the testimony on behalf of the defendants Jones and wife closed, excepting the copy of

the deed from Childs and Willet to Foster which is to be produced with all convenient speed, and marked as an Exhibit in this cause when produced.

GEO. W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

The Solicitor of the defendants, Samuel Jones and Maria L. Jones, produced before me this 20th day of June, A. D., 1885, a certified copy of a deed made and given by Eliphalet C. Willet and wife and William Childs and wife to Charles G. Foster, bearing date April 12th, 1881, and recorded in Morris County Records of Deeds, Book O 10, pages 173, &c., which I have marked Exhibit No. 3, on the part of said defendants.

GEO. W. FORSYTH,
Master, &c., in Chancery of New Jersey.

The exhibit for the production and offering of which this testimony has been kept open having been produced and offered in evidence, the evidence in this cause is, pursuant to the announcement of the respective Solicitors made on the 18th instant, declared closed.

Dated June 20, 1885.

GEORGE W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

I hereby certify that wherever in the taking of the testimony in this cause I have taken the testimony of a witness by question and answer, instead of the narrative form, I have done so because in my opinion the subject matter of the inquiry or the manner of the witness required that course to be pursued for the correct understanding of the evidence or the disposition of the witness.

GEO. W. FORSYTH,
Master and Examiner in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Compl'ts,
and
SAMUEL JONES AND MARIA L. JONES, HIS WIFE, ET ALS,
Deft's.

EXHIBITS OF COMPLAINANTS.

No. 1.

Bond dated August 18, 1879, in penal sum of $13,544.54, executed by Samuel Jones to Eliphalet C. Willet and William Childs, conditioned for the payment of $6,772.27 on demand: witnessed by Samuel W. Jones. Also warrant, of the same date, attached to the same for the confession of judgment thereon; executed by Samuel Jones: witnessed by Samuel W. Jones.

No. 2.

Copy of Docket of Geo. T. Werts.

ELIPHALET C. WILLET, and WILLIAM CHILDS,
vs.
SAMUEL JONES.
In Debt on B. & W.

1879, Aug. 18.

Prepared Judgment Roll for Debt,	$6,772.27
Costs,	5.05
	$6,777.32

Penalty of Bond, $13,544.24.
1879, Aug. 19, Judg't entered for above.
Int. from Aug. 19, 1879.
1879, Aug. 21, Delivered fi. fa. to Sh'ff of Morris.
" " 23, Mailed fi. fa. to Sh'ff Hunterdon.

No. 3.

MORRISTOWN, Aug. 6, 1884.

WILLIAM CHILDS, *and al*,
To GEO. T. WERTS, *Dr.*

1879.

Aug. 18.	To services, &c., preparing papers Judg't by Confession Childs and Willet vs. Jones and Costs on ent'g. said Judg't	$20.00
Aug. 21.	Fi. fa. to Sh'ff of Morris	1.84
" 23.	" " " " " Hunterdon,	1.84
		$23.68

Received payment Aug. 12th, 1884.
GEO. T. WERTS.

No. 4.

Copy of entries in fee book of Geo. T. Werts.

1879.

Aug. 12.	Samuel Jones, Dr. Drawing assg't judg't to Willet and Child $2, and services in matter of sale of property $5,	$7.00
" 18.	Attending sales at Sh'ffs office,	

drawing and ent'g judg't by Confession, &c. 20.00

1880.

March 13. Jones, Willet & Childs, Dr. Attendance at new and before Commissioners, 15.00

No. 5.

Mortgage dated June 5th, 1877; acknowledged same day; recorded June 15th, 1877, in Morris County Clerk's office, in Book I 3, page 465, &c. of mortgages; given by Samuel Jones and wife to Daniel D. Craig, Cashier of the National Iron Bank of Morristown, for $6,000; embracing two tracts of land in Mor ris Township; the first tract containing 64 83-100 acres and 2d tract containing 6 39 100 acres.

No. 6.

An assignment of the mortgage (Ex. 5,) executed by Daniel D. Craig, Cash'r, to William Childs and Eliphalet C. Willet, dated and acknowledged August 11th, 1879; including "also a certain decree in the Court of Chancery of said State upon said mortgage for $6,874.10, dated March 12th, 1879, in a certain cause wherein Nathan A. Cooper is complainant and Samuel Jones and others are defendants."

No 7.

SHERIFF'S DEED.

WILLIAM H. MCDAVIT, Sheriff of Morris County, to Eliphalet C. Willet and William Childs.

Dated 18th August, 1879.

Received in the Clerk's Office of the County of Morris on the 9 day of Jan., A. D., 1880, at —— o'clock in the ——noon, and Recorded in Book G 10 of Deeds for said County, on pages 290, &c.

MELVIN S. CONDIT, *Clerk.*

Comp'd.

TO ALL PERSONS To whom these presents shall come or may concern, I, WILLIAM H. MCDAVIT, Sheriff of the County of Morris, in the State of New Jersey, send GREETING :

WHEREAS, a certain writ of *Fieri Facias* was issued out of the Court of Chancery of the State of New Jersey, directed and delivered to me, WILLIAM H. MCDAVIT, then and still being Sheriff of the said County of Morris, and which said writ is in the words or to the effect following, that is to say :

NEW JERSEY, to wit : The State of New Jersey to the Sheriff of the County of Morris, GREETING :

L. S.

WHEREAS, on the Twelfth day of March, in the year of our Lord One Thousand Eight Hundred and Seventy-Nine, by a certain decreee made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein depending, wherein

Nathan A. Cooper is complainant, and Samuel Jones and Maria Louisa, his wife, Daniel D. Craig, the National Iron Bank of Morristown, Morris Reinhart, The First National Bank of Plainfield, Mary H. Luse, Edward Pierson and The First National Bank of Morristown, are defendants.

It was ordered, adjudged and decreed that certain mortgaged premises with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say :

All those tracts or parcels of land and premises here-

inafter particularly described, situate, lying and being in the Township of Morris, in the County of Morris and State of Jersey,

Beginning at a large oak stump corner of lands late Peter Fairchild, dec'd, and from thence running (1) north, eighty degrees west as the compass ran in 1794, twenty-nine chains and seventy links along the line of the said Fairchild's lands and Henry Mooney's to a corner in the road leading from said Mooney's to John Smith's; (2) along the line of lands late Abraham Willis, deceased, south, ten degrees west, ten chains and eighty lengths; (3) south, six chains and forty-eight links; (4) south, fifty-eight degrees east, four chains and seventy-three links to the middle of the old road; (5) along the road north, fifty-six degrees east, five chains and thirteen links; (6) north, sixty-one degrees and thirty minutes east, seven chains and twenty links to the road leading to the Jockey Hollow road; (7) along said road south, forty-five minutes east, eighteen chains and twenty links; (8) south, thirty-two degrees west, ten chains and twelve links to Lewis Tuttle's corner, formerly John McCord's, dec'd; (9) along said Tuttle's line south, sixty-nine degrees east, five chains and twelve links to his corner; (10) north, eighty-six degrees and fifteen minutes east, five chains and twenty-eight links to the line of Phœnix land; (11) along the line of Phœnix's land north, twelve degrees and forty-five minutes eight chains and twenty links; (12) north, thirty-one degrees east, eight chains and twenty links; (13) along Condit's line north, eleven degrees and forty-five minutes east, twenty-one chains and seventy links to the place of beginning, containing sixty-four acres and eighty-three hundredths of an acre of land, be the same more or less, as the same is described in a deed to Charles E. Scofield from William H. Anderson, Sheriff, dated May 19th, 1856, recorded in Book O of Deeds, page 543, &c.

The Second Tract beginning at a heap of stones in the road leading from said Brown's to the Washington Turnpike in a line of Nathaniel Wilson's land; thence

(1) north, eighty-four degrees fifty-four minutes west, nine chains and sixty-three links to a heap of stones; thence (2) north, thirty-eight degrees and forty minutes west, three chains to a heap of stones in the old road leading from David Hedges to Nathaniel Wilson's; thence along said Wilson's line (3) north, sixty degrees east, twelve chains and sixty-one links to a corner of said Wilson's land; thence (4) south, three degrees east, along said Wilson's line nine chains and sixty-six links to the place of beginning, containing six acres and thirty-nine hundredths of an acre of land, more or less, the said second tract being the same that was conveyed to Charles E. Scofield by John Cook, Jr. and wife by deed dated October 2nd, 1857, recorded in Book O 5 of Deeds, page 513, &c. The two above farms being the homestead farm of the said Charles E. Scofield.

Excepting out of the above described property such portion thereof and the rights and privileges in and upon the same now owned by The Proprietors of the Morris Aqueduct by virtue of a certain award made by Albert R. Riggs, John W Hancock and Benjamin M. Felch, Commissioners, bearing date the twenty-third day of August, eighteen hundred and seventy-two, and recorded in Morris County Records of Deeds, Book I 8, pages 229, &c.

Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, property, claim, and demand of the said defendants of, in, to, and out of the same, be sold to pay and satisfy in the first place unto the said complainant the sum of three thousand four hundred and sixty-four dollars and ninety-two cents ($3,464.92) together with lawful interest thereon from the fourth day of March, eighteen hundred and seventy-nine, until the same be paid and satisfied, and also the costs of the said complainant, and in the second place to the defendant,

Daniel D. Craig, as Cashier of The National Iron Bank of Morristown, the sum of six thousand eight hundred and seventy four dollars and ten cents ($6,874.10) together with lawful interest thereon from the fourth day of March, eighteen hundred and seventy-nine, until the same be paid and satisfied, and that, for that purpose, a writ of *fieri facias* should issue, directed to the Sheriff of the County of Morris, commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into the said Court, subject to the further order of the said Court, unless otherwise previously disposed of by order of this Court as by the said decree, remaining as of record in our said Court of Chancery at Trenton, doth and may more fully appear:

And Whereas, The costs of the said complainant have been duly taxed at the sum of one hundred and twenty-seven dollars and twenty-four cents—

Therefore, You are hereby commanded, that you cause to be made of the premises aforesaid by selling the same for the purpose and out of the proceeds thereof you do pay in the first place unto the said complainant's Solicitor the said sum of three thousand four hundred and sixty-four dollars and ninety-two cents ($3,464.92) together with lawful interest thereon from the fourth day of March, eighteen hundred and seventy-nine, and also the sum of one hundred and twenty-seven dollars and twenty-four cents of costs, and that you pay in the second place to the said defendant, Daniel D. Craig, as Cashier of the National Iron Bank of Morristown, the said sum of six thousand eight hundred and seventy-four dollars and ten cents ($6,874.10) with interest thereon, as aforesaid; and in case more money shall be raised by said sale than shall be sufficient to answer such payments, that you have such surplus money before our said Chancellor, in our Court of Chancery aforesaid, at Trenton, on the third Tuesday of May next, to abide the further order of the Court unless otherwise previously disposed of by order of this Court, according to the decree aforesaid.

And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Witness, Theodore Runyon, Esquire, our Chancellor, at Trenton aforesaid, the twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

H. S. LITTLE, *Clerk.*

JACOB VANATTA, *Solicitor.*

As by the record of the said writ of *Fieri Facias* remaining in the office of the Clerk of the said Court of Chancery at Trenton, in Book B 5 of Executions, page 578, &c., will fully appear.

AND WHEREAS, I, the said WILLIAM H. MCDAVIT, as such Sheriff as aforesaid, did, in due form of law, give notice of the sale of the said lots of land and premises, under and by virtue of the said writ of *Fieri Facias*, at Public Vendue, to be held at the United States Hotel, in Morristown, on Monday, the second day of June, in the year of our Lord one thousand eight hundred and seventy-nine, between the hours of twelve and five o'clock in the afternoon, by public advertisements signed by myself, and set up at five public places in the County of Morris, one whereof was in the Township of Morris where the said real estate is situate, of the time and place of such sale, at least two months next before the time so appointed, and did likewise cause the same to be published in "The Jerseyman" and "The True Democratic Banner," two newspapers printed and published in said County of Morris, the former of which in printed and published at Morristown, the county seat of said County of Morris, at least four weeks successively, once a week, next preceding the time appointed for selling the same. At which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the ninth day of June aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale

to Monday, the sixteenth day of June aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the twenty-third day of June aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the thirtieth day of June aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the seventh day of July, A. D., 1879, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the fourteenth day of July aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the twenty-first day of July aforesaid, to take place between the hours aforesaid at the Court House at Morristown, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the twenty-eighth day of July aforesaid, to take place between the hours and at the place last aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the fourth day of August, A. D., 1879, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the eleventh day of August aforesaid, to take place between the hours and at the place aforesaid, at which last mentioned time and place I did openly and publicly adjourn said sale to Monday, the eighteenth day of August aforesaid, to take place between the hours and at the place aforesaid.

At which last mentioned time and place I did accordingly offer and expose the said lots of land and premises above described for sale at Public Vendue, under and by virtue of the said writ of *Fieri Facias*, and

thereupon Eliphalet C. Willet and William Childs did bid for the same the sum of three thousand and eight dollars and twenty cents, and no other person bidding as much, I did then and there, openly and publicly, between the hours of twelve and five o'clock in the afternoon, strike off and sell the said lots of land and premises for the said sum of three thousand and eight dollars and twenty cents, to the said Eliphalet C. Willet and William Childs, they being then and there the highest bidders for the same.

Now, THEREFORE, know ye, that I, the said WILLIAM H. McDAVIT, as such Sheriff as aforesaid, under and by virtue of the said writ of *Fieri Facias*, and in execution of the power and trust in me reposed, and also for, and in consideration of, the said sum of three thousand and eight dollars and twenty cents to me in hand paid by the said Eliphalet C. Willet and William Childs, the receipt whereof I do hereby acknowledge, and therefrom acquit, exhonerate and forever discharge the said Eliphalet C. Willet and William Childs, their executors and administrators, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said Eliphalet C. Willet and William Childs, their heirs and assigns, all and singular the said lots of land and premises, with the appurtenances, privileges and hereditaments thereto belonging, or in any way appertaining.

TO HAVE AND TO HOLD the same unto the said Eliphalet C. Willet and William Childs, their heirs and assigns, to their only proper use, benefit and behoof, forever, in as full, ample and beneficial manner as by virtue of the said writ of *Fieri Facias* I may, can or ought to convey the same.

And I, the said WILLIAM H. McDAVIT, for myself, my heirs, executors and administrators, do hereby covenant, promise and agree to and with the said Eliphalet C. Willet and William Childs, their heirs and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done,

any act, matter or thing whereby the estate hereby intended to be conveyed in and to the said lots of land and premises with the appurtenances, is, may or can be changed, encumbered or defeated in any way whatever.

IN WITNESS WHEREOF, I, the said WILLIAM H. McDAVIT, as such Sheriff as aforesaid, have hereunto set my hand and seal this eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

WILLIAM H. McDAVIT,
Sheriff, &c.

Signed, Sealed and Delivered in presence of }

G. W. JENKINS.

STATE OF NEW JERSEY, }
MORRIS COUNTY, ss. }

I, WILLIAM H. McDAVIT, Sheriff of the County of Morris, do solemnly swear, that the Land or Real Estate described in this deed made by me to Eliphalet C. Willet and William Childs, was by me sold, by virtue of a good and subsisting Execution, as is therein recited; that the money ordered to be made has not been to my knowledge or belief, paid or satisfied; that the time and place of sale of the said Land and Real Estate was by me duly advertised, as required by law; and that the same was cried off and sold to a *bona fide* purchaser, for the best price that could be obtained.

WILLIAM H. McDAVIT.

Sworn before me, one of the Masters of the Court of Chancery of the State of New Jersey, on this twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy-nine, and I, having examined the deed above mentioned, do approve the same, and order it to be recorded, as a good and sufficient conveyance of the Land and Real Estate therein described.

GEO. WALKER JENKINS.
M. C. C.

STATE OF NEW JERSEY, }
MORRIS COUNTY, ss. }

BE IT REMEMBERED, That on the twenty-second day of August, A. D. eighteen hundred and seventy-nine, before me, one of the Masters of the Court of Chancery of the State of New Jersey, personally appeared WILLIAM H. MCDAVIT, Sheriff of the County of Morris, who, I am satisfied, is the grantor mentioned in the foregoing Deed, to whom I first made known the contents thereof, and he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

GEO. WALKER JENKINS,
M. C. C.

No. 8.

NEW JERSEY SUPREME COURT.

ELIPHALET C. WILLET, *and* WILLIAM CHILDS, *vs.* SAMUEL JONES, } *In Debt on Bond and Warrant.*

F. R. ATNO, *Attorney.*

As yet of the June Term A. D., eighteen hundred and seventy-nine.

WITNESS:

MERCER BEASLEY, ESQ.
Chief Justice.

BENJ. F. LEE, *Clerk.*

KNOW ALL MEN BY THESE PRESENTS: That I, Samuel Jones of Morristown, Morris County, New Jersey, am held and firmly bound unto Eliphalet C. Willet of Washington, Morris County, New Jersey, and William Childs of Bernards Township, Somerset County, said State, in the sum of thirteen thousand five hundred and forty-four dollars and fifty-four cents, lawful

money of the United States; to be paid to the said Eliphalet C. Willet and William Childs, their certain attorney, executors, administrators or assigns; to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and each every of them, firmly to these Presents.

Sealed with my seal; dated the eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

The condition of the above obligation is: That if the above bounden Samuel Jones, his heirs, executors or administrators do, and shall well and truly pay or cause to be paid unto the above named Eliphalet C. Willet and William Childs, their certain attorney, executors, administrators or assigns, the sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents on demand, then the above obligation to be void, else to be and remain in full force and virtue.

Signed, Sealed and Delivered in the presence of } [L. S.]

SAM'L W. JONES.

To any attorney-at-law of any Court of Record of the State of New Jersey or elsewhere:

These are to authorize you to appear for me in any of the said Courts in an action of debt, brought or to be brought against me at the suit of Eliphalet C. Willet and William Childs, named in the foregoing bond, their executors, administrators or assigns, and thereupon confess judgment against me as of the last or any subsequent term for the sum mentioned in the said obligation, with costs of suit agreeably to law, hereby releasing all errors, and this shall be your warrant.

In witness whereof I have hereunto set my hand and seal this eighteenth day of August, one thousand eight hundred and seventy-nine.

Signed, Sealed and Delivered in the presence of } [L. S.]

SAM'L W. JONES.

STATE OF NEW JERSEY,
MORRIS COUNTY, ss.

Eliphalet C. Willet and William Childs, the above named plaintiffs, being each duly sworn, do on their several and respective oaths, depose and say, that the true consideration of a certain bond in the penal sum of thirteen thousand five hundred and forty-four dollars and fifty-four cents, made and given by the said Samuel Jones to the said Eliphalet C. Willet and William Childs, dated August eighteenth, eighteen hundred and seventy-nine, payable on demand, a copy whereof is hereto annexed, and on which said bond a judgment is about to be confessed to these deponents by said Samuel Jones for the sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents, is as follows, to-wit, (said judgment being entered by special warrant of attorney, dated the day and year last aforesaid, made and executed by said Samuel Jones, a copy whereof is also hereto annexed.)

Said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents is the amount due and owing from said Samuel Jones to deponents for so much money by said deponents paid, laid out and expended by deponents for said Samuel Jones, on the eleventh day of August, eighteen hundred and seventy-nine, which said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents was by said deponents paid in equal proportions for and at the request of said Samuel Jones on the date last stated; said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents, was made up and paid as follows:

Six thousand dollars thereof was paid to the National Iron Bank of Morristown, New Jersey, to pay off a certain final decree by it obtained against said Samuel Jones in the Court of Chancery of New Jersey for said sum of six thousand dollars, which decree was obtained on a mortgage made and given by said Jones to said Bank; which mortgage was held by said Bank as security for certain notes discounted by

said Bank for said Jones, and on which said notes said Jones had procured from said Bank at least the sum of six thousand dollars.

The balance of said sum so as aforesaid paid by deponents for said Jones, viz: the sum of seven hundred and seventy-two dollars and twenty-seven cents, was that amount of money paid by deponents in equal proportions on said eleventh day of August, 1879, to David W. Dellicker, Esq. one of the Executors of Nathan A. Cooper, deceased, on account of and as part payment of a certain final decree obtained by said Nathan A. Cooper in his lifetime, in the Court of Chancery of this State, against said Samuel Jones, which decree was entered on a mortgage held by said Cooper against said Jones, the whole amount of said decree being the sum of three thousand seven hundred and seventy-two dollars and twenty-seven cents, at the date of said payment by deponents.

And said deponents further say, each on his several and respective oath, that the said sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents, in the proportions aforesaid (*i. e.* one-half thereof to each deponent) is justly and honestly due and owing from said Samuel Jones to deponents, and that said judgment is not confessed to answer any fraudulent intent or purpose or to protect the property of the said Samuel Jones from his other creditors.

E. C. WILLET,
WM. CHILDS.

Severally Sworn and Subscribed before me by the said Eliphalet C. Willet and William Childs, this eighteenth day of August, A. D., 1879.

PHIL. B. PIERSON,
Master in Chancery of N. J.

The defendant's appearance to this action is entered and judgment confessed to the plaintiff for the sum mentioned in the above obligation, by virtue of the

warrant of attorney thereunto annexed, and pursuant to the directions of an act entitled "An Act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments."

Whereupon it is considered that the said Eliphalet C. Willet and William Childs, do recover against the said Samuel Jones, the sum of six thousand seven hundred and seventy-two dollars and twenty-seven cents debt, and four dollars costs of suit.

Judgment signed and ordered entered this eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

SAMUEL S. HALSEY,
Supreme Court Commissioner.

Filed August 19th, 1879.

[Fi Fa. in Debt.]

New Jersey, *ss.:*

The State of New Jersey to our Sheriff of our County of Morris, Greeting:

We Command you That of the goods and chattels of Samuel Jones, def't, in your County, you cause to be made a certain [L. S.] DEBT of six thousand seven hundred and seventy-two dollars and twenty-seven cents, which Eliphalet C. Willet and William Childs, pl'ffs,

Lately in our Supreme Court, at Trenton, before the Justices of our same Court, recovered against said defendant, and also four dollars which in our said Court, before our Justices aforesaid, were adjudged to the said plaintiffs for their costs and charges by them about their suit in this behalf expended, whereof the said defendant is convicted, as appears of record; and if sufficient goods and chattels of the said defendant cannot be found in your County, whereof the debt and damages aforesaid may be made, THEN we further command you that you cause the whole, or the residue, as the case may require, of the said debt, and damages, to be made of the lands, tenements, heredita-

ments and real estate whereof the said defendant was seized on the nineteenth day of August, eighteen hundred and seventy-nine, or at any time afterwards, in whose hands soever the same may be; and that you have those moneys before our Justices aforesaid, at Trenton aforesaid, on the first Tuesday in November next, to render unto the said plaintiffs for their debt and damages aforesaid, and have you then and there this writ.

Witness, Mercer Beasley, Esquire, Chief Justice, at Trenton aforesaid, the nineteenth day of August, A. D., eighteen hundred and seventy-nine.

BENJ. F. LEE, *Clerk.*

F. R. ATNO, *Attorney.*

I return the within writ to Court wholly unsatisfied and unpaid, being unable to find in my County any property either real or personal on which to make levy for debt or costs or any part thereof.

WM. H. McDAVIT,

November 4th, 1879. *Sh'ff.*

NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

ELIPHALET C. WILLET, *and al,* vs. SAMUEL JONES. } *In Debt. Fi. Fa. de bonis et terris.*

Ret'ble Nov. Term, A. D., 1879.

F. R. ATNO, *Att'y.*

Levy Debt,	$6,772.27
Cost,	5.50

Interest thereon from Aug. 18, 1879, $

Besides Sheriff's exe'n fees.

Delivered to me Augt. 23, 1879, at——o'clock,—— M.

WM. H. McDAVIT, *Sheriff.*

Recorded in office of Clerk of Supreme Court, in A 26, of Process, page 119.

BENJ. F. LEE, *Clerk.*

[FI. FA. IN DEBT.]

NEW JERSEY, *ss:*

The State of New Jersey to our Sheriff of our County of Hunterdon, GREETING:

WE COMMAND YOU That of the goods and chattels of Samuel Jones, defendant, in your County, you case to be made a certain [L. S.] DEBT of six thousand seven hundred and seventy-two dollars and twenty-seven cents, which Eliphalet C. Willet and William Childs, plaintiffs,

Lately in our Supreme Court, at Trenton, before the Justices of our same Court, recovered against said defendant, and also four dollars which in our said Court, before our Justices aforesaid, were adjudged to the said plaintiffs for their costs and charges by them about their suit in this behalf expended, whereof the said defendant is convicted, as appears of record; and if sufficient goods and chattels of the said defendant cannot be found in your County, whereof the debt and damages aforesaid may be made, THEN we further command you that you cause the whole, or the residue, as the case may require, of the said debt, and damages, to be made of the lands, tenements, hereditaments and real estate whereof the said defendant was seized on the nineteenth day of August, eighteen hundred and seventy-nine, or at any time afterwards, in whose hands soever the same may be; and that you have those moneys before our Justices aforesaid, at Trenton aforesaid, on the first Tuesday in November next, to render unto the said plaintiffs for their debt and damages aforesaid, and have you then and there this writ.

Witness, Mercer Beasley, Esquire, Chief Justice, at

Trenton aforesaid, the nineteenth day of August, A. D., eighteen hundred and seventy-nine.

BENJ. F. LEE, *Clerk.*

F. R. ATNO, *Attorney.*

NEW JERSEY SUPREME COURT.

HUNTERDON COUNTY.

ELIPHALET C. WILLET, *and al.* *vs.* SAMUEL JONES. } *In Debt. Fi. Fa. de bonis et terris.*

Ret'ble Nov. Term, A. D., 1879.

F. R. ATNO, *Att'y.*

Levy Debt, $

Cost, $

Interest thereon from $

Besides Sheriff's exe'n fees.

Delivered to me 187 at o'clock, M.

Sheriff.

Recorded in office of Clerk of Supreme Court, in A 26, of Process, page 119.

BENJ. F. LEE, *Clerk.*

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment, and executions issued thereon, in the above stated cause, as the same remains of record and on file in my office.

L. S.

In Testimony whereof I have hereto set my hand and the Seal of said Court at Trenton, this seventh day of August, A. D., eighteen hun hundred and eighty-four.

BENJ. F. LEE, *Clk.*

No. 9.

Mr. E. C. Willet and Wm. Childs, or Samuel Jones, your taxes for Morris Township for the year 1880, now due and payable to me, are as follows:

Number of Acres 70.

Valuation of real estate is		$5000
Personal property,		
		$5000
Debts deducted,	$3000	
Amount of Levy,	$2000	
	$5000	

	Dols.	Cts.
Poll Tax,		
County and Township Tax,	6	80
State Tax,	4	00
Road Tax,	2	80
School Tax,	2	00
Dog Tax,		
Rate of assessment 82 cents per $100.		
Total,	$16	40

Paid, L. P. Hannas, Collector.
Dated Dec. 23, 1880.

No. 10.

Folio 178. Part of Jones farm on Mendham road.

Mr. E. C. Willet and William Child, your taxes for Morris Township for the year 1882, now due and payable to me, are as follows:

Number of Acres 30.

Valuation of real estate is		$2,000
Personal property		
Debts deducted,	$	

Amount of Levy,

$2,000

	Dols.	Cts.
Poll Tax,		
State Tax,	7	20
County and Township Tax,	7	20
Road Tax,	4	00
Special School Tax,	2	80
Dog Tax,		
Rate of assessment in the township 92 cts. per $100.		
In the Morristown School District, $1.06 per $100.		
Total,	$21	20

Paid $10.60, Lott Pruden, Collector.
Dated Dec. 19, 1882.

No. 11.

Mr. Willet and Child, Mend road. The valuation of your taxable property and your assessment for taxes in Morris Township, Morris County, New Jersey, for the year 1883, are as follows:

Valuation,	
30 acres, valued at	$2,000
Assessment,	
Poll Tax,	$
State School Tax,	6
County and Township Tax,	8
Road Tax,	2 80
Special School Tax,	2 80
Dog Tax,	
Total,	$19 60

Received $9.80

Paid Dec. 22, 1883.

Lott Pruden, Collector.

No. 12.

Willet and Childs. The valuation of your taxable property, and your assessment for taxes in Morris Township, Morris County, New Jersey, for the year 1884, are as follows:

Valuation,	
Real estate,	$2,000
Personal property,	
Debts deducted,	
Net Valuation,	2,000
Assessment,	
Poll Tax,	
County and Township Tax,	7 20
State School Tax,	5 20
Road Tax,	3 20
Special School Tax,	3 20
Dog Tax,	
	$18 80

Paid Dec. 20, 1884.

Lott Pruden, Collector.

No. 13.

Morristown, April 9, 1880.

Received of Eliphalet C. Willet and Wm. Childs prem. on policy No. 1910, Morris Mutual, for 3 yrs., insurance on Jones farm on Mendham road, $11.70

June 3, '81, Rec'd prem. paid and policy cancelled, 5.85

$5.85

JAS. M. BONSALL,
Sec'y Morris Co. Mutual.

No 14.

MORRISTOWN, N. J., Jan'y 9th, 1880.

Received from Messrs. Childs and Willet thirteen and 55-100 dollars in full for fees and deed (Cooper vs. Jones.)

$13.55. WM. H. McDAVIT, Sh'ff.
ATNO.

No. 15.

MORRISTOWN, April 21, 1881.

WM. CHILDS AND E. C. WILLET,
To THEO. AYERS, *Dr.*

To coms. on sale of property to C. G. Foster.
2½ per cent. on $4,520 is $113.00

Received Payment,
THEODORE AYERS.

Ayers rec'd 400
Less coms. 113
— $287
H. C. Pitney 4,120
$4,407

No. 16.

Weigh bill, May 11, 1881. Duplicate deposit ticket dated June 3, 1881, and Letter dated June 3, 1881. (Childs to Willet.)

No. 17.

Letter dated Jan. 2, 1883, Childs to Willet.

No. 18.

$1,500. MORRISTOWN, N. J., Oct. 8, 1878.

Three months after date I promise to pay to the order of E. C. Willet fifteen hundred dollars at the National Iron Bank of Morristown, N. J., value received.

(End.) SAMUEL JONES.

E. C. WILLET.

Annexed to this note is a certificate of protest, dated Jan'y 11, 1879.

No. 19.

$1,500. MORRISTOWN, N. J., January 11th, 1879.

Four months after date I promise to pay to the order of E. C. Willet, Fifteen Hundred Dollars, at the National Iron Bank, value received.

(End.) SAMUEL JONES.

E. C. WILLET.

No. 20.

MORRISTOWN, May 13th, 1879.

Four months after date I promise to pay to the order of E. C. Willet, at the National Iron Bank, at Morristown, Fifteen Hundred Dollars, value received.

(End.) SAMUEL JONES.

E. C. WILLET.

No 18. (Should be 21.)

AGREEMENT FOR THE SALE OF PROPERTY.

WILLIAM CHILDS and E. C. WILLET, M. D., to CHAS. G. FOSTER.

Dated March 29th, 1881.

Theodore Ayers, Morristown Real Estate Agency.

ARTICLES OF AGREEMENT, made the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and eighty-one, *between* William Childs of Basking Ridge in the County of Somerset and State of New Jersey, and Eliphalet C. Willet, M. D., of German Valley, of the Township of Washington, in the County of Morris and State of New Jersey, of the First Part: *and* Charles G. Foster, of the town of Morristown, in the County of Morris and State of New Jersey, of the Second Part: *Witnesseth*, That the said party of the first part, for and in consideration of the sum of one hundred and sixty dollars per acre, strict measure, an accurate survey of which is to be made by the parties of the first part, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty with full covenants, free from all encumbrance, which said Deed shall convey a perfect title to said premises, on or before the twelfth day of April next ensuing the date hereof, all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Morris, in the County of Morris and State of New Jersey,

Being all that part of the lands and premises belonging to said parties of the first part, lying north of the Public Road leading from Morristown to Mendham, adjoining the Revere farm, and known as part of the Jones property, which said tract or parcel of land is supposed to contain about forty acres.

AND the said Charles G. Foster for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that

he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of one hundred and sixty dollars per acre, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say :

The sum of four hundred dollars to be paid to Theodore Ayers on signing this agreement, and the balance of the purchase money to be paid in cash on the delivery of the Deed hereinbefore mentioned.

AND IT IS FURTHER AGREED by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the twelfth day of April next, ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

AND IT IS FURTHER AGREED by the parties hereto, that the said Deed shall be delivered and received, and the payments made at the office of Theodore Ayers in Morristown, New Jersey, between the hours of ten in the forenoon and three o'clock in the afternoon on the said twelfth day of April next ensuing the date hereof.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of———— which they hereby fix and settle as liquidated damager therefor

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

WILLIAM CHILDS, [L. S.]
ELIPHALET C. WILLET, M. D. [L. S.]
CHAS. G. FOSTER. [L. S.]

Signed, Sealed and Delivered in the presence of
The word "dollars" after the word hundred on the opposite page was interlined before signing.

THEODORE AYERS.

Morristown, March 29, 1881, Received from Charles G. Foster, Four hundred dollars, first payment named in this agreement.

$400.00. THEODORE AYERS.

No. 19 (Should be 22).

Statement and description of the rights and privileges sought to be acquired by the Proprietors of the Morris Aqueduct in the farm and lands of Samuel Jones, situate in the Township of Morris, in the County of Morris, to the westward of the town of Morristown and on both sides of the turnpike road leading from Morristown to Mendham, which lands are described in a deed from Garret DeMott, Sheriff, &c., to the said Samuel Jones, dated May 12th, 1863, recorded in Book F 6, pages 550, &c., of the Morris County Registry of Deeds. First, the perpetual right to take and divert the small brook which runs through said farm at a point at or near an elm tree standing on the edge of the same and distant six hundred and twenty-four feet on a course of north, nine degrees east from a birch tree marked with a blaze and three notches on three sides, and which birch tree stands near said brook in a swamp, and is a corner of lands of said Samuel Jones and of the said the Proprietors of the Morris Aqueduct, late Henry C. Pitney and late Philip Phœnix, and which the tree and point of diversion is distant about eight hundred and ninety-three feet southerly from the turnpike bridge over said brook; out of the above stated right of diversion is to be excepted and reserved to said Samuel Jones and his assigns as the owner of said farm, the right to take and divert and use upon said farm the waters of four certain springs rising near the Jockey Hollow road, in a southerly direction from said point of diversion, two of said springs rising on the lands of said Jones and the other two on the lands of one Tuttle, as shown on the annexed map. Second, the right to lay down and repair, renew and forever maintain a water pipe of six

inches diameter three feet below the surface of the grounds and leading from the said point of diversion of said brook in a northerly direction across said farm to said turnpike road and across the same to the lands of Gen'l Revere, and from thence along the turnpike to Morristown, the course of said pipe commencing at or near *side* elm tree, the point of diversion aforesaid, and running along or near the bed of said brook will be north about six degrees and thirty minutes east until it reaches the turnpike road at the bridge over said brook.

Third, To erect, repair, rebuild and forever maintain on said farm near said elm tree and point of diversion, a covered filter and gate house, made tight to hold water, ten by sixteen feet in size, and connected by water pipes with an open reservoir as hereinafter stated, the location of which also appears on the map hereto annexed.

Fourth, To take and appropriate for a reservoir for water, a lot of land lying on each side of said brook and to the southward of said point of diversion, and described as follows: Beginning at a point one hundred and seventy-five feet and six inches on a course of north, fourteen degrees and twenty minutes east from a white birch tree marked on three sides with a blaze and three notches, the twelfth corner of a tract of land described in a deed of conveyance from Garret DeMott, Sheriff, &c., to Samuel Jones, bearing date May 12th, 1863, and recorded in the Morris County Record of Deeds, in Liber F 6, folio 550, &c.; also a corner of land of the Proprietors of the Morris Aqueduct, late H. C. Pitney, and running from said point (1) north, fifty-five degrees and forty-eight minutes west. fifty-eight feet; thence (2) north, one degree and twenty-one minutes west, two hundred and seventy-eight feet; thence (3) south, eighty-six degrees east, one hundred and eighty-four feet; thence (4) south, eight degrees west, one hundred and thirty-five feet; thence (5) south, twenty-five degrees and thirty-

five minutes west, one hundred and seventy feet; thence (6) south, seventy-five degrees and forty-two minutes west, forty feet to the place of beginning, containing nine hundred and ninety-three thousandths of an acre of land, be the same more or less; also the right to convey the waters of said brook from the said land of the said The Proprietors of the Morris Aqueduct, late H. C. Pitney, by a pipe or covered drain by the shortest course to said reservoir to be shown on said map.

Fifth, The right to lay down, renew, repair and forever maintain, underdrain two feet at least below the surface of the earth through the wet and swampy grounds of said farm which lie to the southward of said point of diversion, including a covered drain in the earth along and just below the face of the dam to be erected on the land to be taken for a reservoir, to catch the leakage thereof and convey the same into said filter as shown on said map.

August 23d, 1872

A. R. Riggs,
John W. Hancock,
Benjamin M. Felch.

No. 20 (Should be 23).

Map of lands of Charles G. Foster, by George W. Howell.

No.

Original depositions taken in Supplemental Proceedings in a cause in the Morris Circuit Court, endorsed: –

Morris Circuit Court.

Edwin Ross, et als,
vs.
Samuel Jones
} *In case.*

Supplemental proceedings filed Feb. 6, 1880.

M. S. CONDIT, Clerk.

Upon examination in these proceedings, taken Feb. 3d, 1880, before Edmund D. Halsey, Sup. Court Com'r, the following testimony was given by Samuel Jones:

"Q. You recovered a judgment against George "Hedden, Dec. 16th, 1876, for $6,129.48, in the Su- "preme Court of this State, did you?

"A. Yes. Mrs. Jones owns that now. It was as- "signed to her more than four months ago. I do not "know how much is due on it. I think nearly the "amount of the judgment, or quite the amount."

Upon examination Feb. 4, 1880, Jones testified as follows:

"Q. Can you give me the date of the assignments of "the Hedden & Churchfield judgments to your wife?

"A. I think the Hedden judgment was assigned in "either July or August, 1879. The Churchfield judg- "ment was assigned before. I looked at those assign- "ments last night. The Churchfield judgment was as- "signed in February, 1878, I think.

"Q. In whose handwriting was the assignment of "the Hedden judgment?

"A. Mr. Werts', I think.

"Q. From whom or to whom was the assignment of "the Hedden judgment made?

"A. It was assigned to Dr. Willet, originally. I "think it was in July or August. About the first of "August, I think. It was assigned by Dr. Willet to "my wife."

Also original depositions in Supplemental Proceedings, indorsed—

MORRIS CIRCUIT COURT.

EDWIN ROSS, GEORGE H. ROSS and STEPHEN BREESE, *vs.* SAMUEL JONES. } *In case.*

On petition and order for discovery.

J. C. YOUNGBLOOD, *Att'y of Pl'ffs.*

GEO. T. WERTS, *Att'y of Def't.*

Filed July 3, 1884. M. S. CONDIT, Clerk.

Upon examination in these proceedings, taken before George W. Forsyth, Sup. Court Commissioner, Oct. 3d, 1883, said Samuel Jones testified as follows:

"Q. Did you ever recover, in the Circuit Court of "Morris County, or in the Supreme Court, a judg- "ment against George Hedden, and if so, when, and "for how much?

"A. I think it was in December, eighteen hundred "and seventy six. I think it was about six thousand "one hundred and twenty-nine dollars and some cents. "I do not own that judgment. It was assigned to Dr. "Willett. He does not still own it. Mrs. Jones owns "it. Dr. Willett assigned it to Mrs. Jones. Dr. Wil- "lett is my brother-in-law, and the brother of my wife, "Mrs. Jones.

"Q. What, if any, consideration did Dr. Willett give "you for the assignment of that judgment to him, and "what, if any, consideration did Mrs. Jones give Dr. "Willett for the assignment of it to her?

"A. I assigned it over to Dr. Willett and he assigned "it to Mrs. Jones. I don't know that any considera- "tion was paid by Dr. Willett to me, or by Mrs. Jones "to Dr. Willett, for the assignment of that judgment. "I assigned it to him to assign to Mrs. Jones.

"Q. When was the assignment made to Mrs. Jones, "so far as you know?

"A. In eighteen hundred and seventy-seven or eigh- "teen hundred and seventy eight, I am not positive "which. It was one or the other."

EXHIBITS OF DEFENDANTS.

A.

Copy.

Assignment of Judgment.

ELIPHALET C. WILLET to MARIA L. JONES.

This Indenture made the seventeenth day of Novem-

ber, eighteen hundred and seventy-nine, between Eliphalet C. Willet, of Washington Township, Morris County, New Jersey, of the first part part, and Maria L. Jones, wife of Samuel Jones of Morristown, in said County and State, of the second part.

Whereas, the said Samuel Jones, being largely indebted unto his said wife, did agree as security therefor, to assign to his said wife the judgment hereinafter mentioned, and for that purpose did by his deed of assignment, dated August twelth, eighteen hundred and seventy-nine, assign the said judgment to me.

Now, therefore, this Indenture witnesseth, that I, the said Eliphalet C. Willet, in consideration of the premises, and of the sum of one dollar to me in hand paid by said Maria L. Jones, have sold and by these presents do assign, transfer and set over unto the said Maria L. Jones and her assigns, the said judgment heretofore by deed of assignment, dated August twelfth, 1879, assigned to me by said Samuel Jones, being a judgment recovered by the said Samuel Jones in the Supreme Court of the State of New Jersey, against one George Hedden, for the sum of six thousand one hundred and twenty-nine dollars and forty-eight cents. damages and costs, besides interest, together with all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereon.

In witness whereof, I have hereunto set my hand and seal the day and year first hereinafter written.

ELIPHALET C. WILLET, [L. S.]

Signed, Sealed and Delivered in presence of

B.

Map of Jones farm, made by Thomas Hughes.

C.

Deed from Childs and Willet to Charles G. Foster.

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OPINION.

OCTOBER TERM, 1885.

WILLIAM CHILDS & AL.,
v.
SAMUEL JONES & ALS.

BILL FOR RELIEF, &C. ON FINAL HEARING ON PLEADINGS AND PROOFS.

MR. S. H. LITTLE, for Complainants.

MR. A. MILLS, for Jones and wife.

THE CHANCELLOR.

This suit is brought to obtain for the complainants the benefit of a judgment recovered in the Supreme Court of this State, December 16th, 1876, by the defendant Samuel Jones against George Hedden, for $6,129.48. The judgment is now held by the defendant Maria L. Jones, wife of Samuel Jones, under an assignment thereof to her, dated November 17th, 1879, made by Dr. Willet, one of the complainants, to whom on the twelfth of August of that year Jones assigned it. It is alleged by Jones and his wife that it was assigned to Willet (who is Mrs. Jones' brother) merely in order that he might assign it to her, and the assignment from him to her so states. The claim which the complainants make to it is based upon an alleged agreement between them and Jones made on or about the eleventh of August, 1879, by which they were to advance and pay for his benefit $6,000, in obtaining the assignment of a mortgage on land (a small farm) in Morris County, given by Jones to the National Iron Bank of Morristown, and $772.27 on account of a decree of foreclosure obtained in this Court by Nathan A. Cooper upon a prior mortgage upon the same property, and

were to buy the mortgaged premises at the sheriff's sale under the foreclosure and take a deed for them in their own names. They allege that it was agreed between them and Jones that in order to secure the repayment to them of the $6,772.27, and the additional sum which they might be required to pay for the property, it was agreed that they should hold the farm and that Jones should confess a judgment to them for the $6,772.27, and assign to them the Hedden judgment as collateral security for the same debt. They paid the $6,772.27 and bought in the property August 18th, 1879, at the sheriff's sale, for $3,008.20, which they paid and took title in their own names. There was repaid to them for error in the decree the sum of $66.65. The judgment against Jones in their favor was confessed on the same day for the $6,772.27 and costs. They allege that the assignment of the Hedden judgment by Jones to them was drawn and signed on the twelfth of August, 1879, and that it was left in the office of the lawyer by whom it was drawn, and who acted in the matter both for the complainants and Jones; and that afterwards Jones' son, being in the lawyer's office and seeing it lying upon a table there, cancelled it without any authority to do so, by tearing off Jones' signature, and they say that then probably the lawyer destroyed it as being of no value. Subsequently the complainants found that Jones' wife claimed to be the owner of the judgment. The complainants obtained no money upon the confessed judgment. A part of the property (a little less than an acre) bought at the sheriff's sale was, with certain water privileges, taken by condemnation by the Proprietors of the Morris Aqueduct in or about 1880, for which the complainants reeeived $140; and in 1881 they sold to Charles G. Foster another part of it for $4,520, out of which they paid $113 to the real estate agent who found the purchaser for his commissions, and there is still a part of the property unsold. They pray an account, and that Mrs. Jones may be held to be trustee of the Hedden judgment for them and may be required to collect the money due upon it

and out of it pay the money due them. The defendants, Jones and wife, have answered. They deny that it was part of the agreement between Jones and the complainants that he should assign the Hedden judgment to them, and allege that the judgment was *bona fide* assigned to Mrs. Jones to secure her for money due her from her husband; and they allege that it was part of the agreement between the complainants and Jones that the complainants should not sell the farm without his consent. They allege, also, that the complainants sold to Foster not only without Jones' consent, but against his wish, and that the property was worth two or three times as much as the price—$4,520—which the complainants obtained for it; and they insist that the complainants should be charged in the account not merely with the amount received, but with the price which they might and ought to have obtained.

The proof does not sustain the allegations of the bill in regard to the assignment of the Hedden judgment to the complainants. It is true, both of the complainants testify that it was part of the agreement that that judgment should be assigned to them, and Mr. Werts, the lawyer, says that he thinks he drew an assignment accordingly, but he has no recollection of it apart from a charge upon his fee book against Jones under date of August 12th, 1879, for drawing an assignment of a judgment from him to the complainants.

On the other hand, Jones swears that it was not agreed that he should assign the judgment to the complainants. He says he told them that he had promised to assign it to his wife when she signed the mortgage to the bank, but that if she would consent, they could have it by paying off the $6,000 to the bank, and paying the balance of the judgment to her, and then holding the farm for the money to be paid upon the Cooper mortgage; the proceeds of the farm, when sold, to go to her, after paying the money due them on account of the Cooper mortgage but he says they declined to accept that proposal. He says there was an assign-

ment of the judgment from him to Dr. Willet drawn and executed that day, and that as Dr. Willet was anxious to go home (he lived in German Valley and the transaction took place at Morristown) and therefore could not stay to execute the assignment to Mrs. Jones at that time, it was agreed that Mr. Werts should draw it, and that it should be left in Mr. Werts' office to be signed, and that he, Jones, should bring Dr. Willet in to execute it at some time when the latter should be in Morristown. He further says that afterwards, on the day of the date of the assignment of Mrs. Jones (November 17th, 1879) he took Dr. Willet into Mr. Werts' office (he says Mr. Werts was not in at the time) and got the assignment and Dr. Willet signed it, and he, Jones, took it with the assignment from Jones to Willet and gave them to Mrs. Jones on the same day. Mrs. Jones testifies that in the fall of 1879 her husband handed both assignments to her, and that she had them in her possession from that time until February or March, 1884, when, at Mr. Werts' request, she brought both of them to him for use, if he should see fit, in connection with supplementary proceedings upon execution against her husband; and that she left them with Mr. Werts, who never returned the assignment from Jones to Willet to her. She is corroborated by Mr. Werts as to bringing them with him and receiving back again only the assignment from Willet to her. There is some corroboration of Jones' testimony on the subject of his proposal to assign the judgment to the complainants, and their refusal to accept it, in the testimony of Mr. Werts that the parties during the negotiations changed their plans. He says that they consulted in one of his three rooms, and that after their consultations they would come into the room in which he sat and give directions as to what they wanted to have done, and that probably before he had complied with their directions they would have further consultation and announce that some other scheme or plan had been adopted, until finally he told Jones, and he says he does not know but that he told the complain-

ants so also (he thinks that probably they were all there) that if they wanted him to draw the paper intelligibly, and so that they could be comprehended by others, they should tell him just what they wanted to accomplish, and then he could advise them as to what papers they wanted and could draw them. He adds that he does not think that he got any very definite directions or understanding from them, that they appeared to change their plans while they were there, and that they adopted two or three different plans. It is alleged in the bill that there was an agreement drawn embodying the stipulations of the parties, and Jones swears that there was such an instrument, that he took it after it was executed, and that he is now unable to find it. Mr. Werts testifies that Childs came to him shortly before the bill was filed and inquired whether he, Werts, had not in his possession a paper or agreement wherein were stated the full particulars of the arrangement. Jones says that an assignment of the Hedden judgment from him to the complainants was drawn by Mr. Werts on the twelfth of August, but that it was not delivered because the complainant would not accept it under the arrangement which he proposed. It is proved that on that day Mr. Werts drew an assignment of that judgment from Jones to Willet, and that it was then executed, and that on the same day, as part of the same transaction, he drew the assignment from Willet to Mrs. Jones, which states that the former assignment was made in order that Willet might make the latter. Mr. Werts says that he cannot say that the paper which Jones' son tore in his office was an assignment from Jones to the complainants. It is a very significant fact that he never heard from either of the complainants, so far as he can remember, of any claim to the Hedden judgment until shortly before the bill in this suit was filed, and it was not filed until August 19th, 1884.

The agreement between the parties as to the farm was, as before stated, that the complainants should buy

the farm at the foreclosure sale and take title to it in their own names to secure them for the purchase money which they should pay therefor. Jones says that they were to hold it until they could sell it for a fair price, and were not to sell it without his consent. Childs says in his principal testimony that he does not think that there was anything said at the time when the agreement was made, about the complainants' having absolute control of the farm, and again he says that the agreement was that the defendant should "carry the property for Jones until he could turn himself," and that they took a deed in their own names so (as he understood it) that they could have absolute control over the property in case Jones should not do as he agreed. In his rebutting testimony he says that there was no agreement that they should hold the farm and not sell it without Jones' consent. He says that they could sell the property without Jones' consent, and without asking him and that they were the absolute owners of the the farm. Dr. Willet says that the complainants were to have the property to secure them; that they did not think the farm was worth what they had to pay; that he does not know that there was any particular agreement about it; that they wanted to make their money out of the farm; that he does not know that there was any particular understanding about the sale of the property; that there was no contract made; that Jones could have the farm if he paid them the money which they paid for it, and that he does not know that there was any agreement whatever about Jones consenting to a sale. The written agreement would have been conclusive evidence of the terms of the arrangement. It went into the custody of Jones as alleged in the bill, and as he admits, and he declares that he is not able to produce it. It cannot be regarded as established by the evidence that there was a stipulation that there should be no sale except with the consent of Jones. But it is proved that the complainants took the title of the farm to secure them for the money paid for the property in buying the bank mortgage and purchasing at

the foreclosure sale. The amount paid for both objects was, after deducting what was repaid, $9,715.82. It appears that they had no possession of the property for a while after the conveyance, and that they took possession when they found that Jones was not going to act according to his agreement with them. In or about 1880 they got $140 by condemnation proceedings for about an acre and the privilege of taking water, &c. They sold to Foster another part in 1881 for $160 an acre, realizing $4,407 (net) from the sale, leaving a large balance still due them and a residue of the property unsold. Jones did not consent to the sale to Foster, but on the contrary protested against it as to the price. The only question to be considered on this part of the case is whether the complainants got a fair price from Foster for the property sold to him. Jones has produced nearly fifty witnesses who testify that that property was worth much more than the price obtained. None of them fix the price at less than $250 an acre and some fix it at from $300 to $400 an acre. These estimates were almost all of them mere opinions of persons not experts, and numerous as are the witnesses, and positive as are their expressions of opinion, they are outweighed by the fact that the price obtained was the best that could be got, and the purchaser one who was most likely to pay a full price for the property because of its relation to property he already owned. The property was sold by an experienced real estate agent in Morristown, who swears that he did not consider it worth more at the time it was sold than the price obtained, and that his opinion is based upon his own efforts to find a purchaser for it, and his knowledge of the property with which he was familiar. He says he has been on it frequently for thirty years. It was not worth more $100 an acre for farming purposes. Any additional value it may have had arose from its availability for a villa site or sites. But it was at the distance of between one and two miles from Morristown on the road to Mendham, and in 1881 there was no demand for it for villa sites. Julius A. Drake, a real es-

tate agent in whose hands Jones placed it for sale, says that about that year he had an offer of $7,500 for it based upon the understanding that it contained (as Jones said it did) forty-three acres; that is, the offer was of about $175 an acre. Jones declined the offer, and asked $10,000 for the property. Drake says the property had been in his hands for some time before that offer was made. Mr. Foster, the purchaser, owned an adjoining farm known as the Revere property. He bought that in 1881. He says he gave $27,500 for it, and that estimating the value of the buildings at somewhat near what he thought they would cost to build them, and what they were worth to him, he considered that the land cost him from $150 to $170 an acre. He next bought the property in question, and afterwards bought another adjoining tract of about 15 acres on the other side called the Gribben farm, for which he paid $200 an acre, but he says he considered it worth only about $100 an acre. He appears to have bought it because it was said that it was likely to be put to a use which would damage his property very much. On the Jones land there were no improvements of any value. Mr. Pitney says it had upon it a dwelling house and a barn, both in a dilapidated condition and almost unfit for use; that the fences were valueless and the land in as bad a condition as it well could be, and that he does not think that it was worth in 1881 more than $50 an acre for farming purposes. He says that the property had a value as a building site, that there was one good building site upon it near the top of the hill, but in his judgment it was not large enough to be attractive to the kind of purchaser who would be expected to pay very much more than its value for farming purposes. In his opinion the best way of disposing of the tract so as to realize the most money for it was that which was taken, to sell to Mr. Foster for the best price that could be got from him. Jones was aware that the the complainants were about to sell to Foster, and while he protested against selling at the price, he did not offer to redeem, nor did he produce anyone who

would give a better price ; neither did he take any step to stop the sale. The complainants acted in good faith and the price obtained appears to have been a fair one. They are not chargeable in the account with anything more for that part of the property than the net price which they obtained.

Filed March 9, 1886.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CHILDS AND ELIPHALET C. WILLET, *Compl'ts*, *and* SAMUEL JONES, ET ALS., *Def'ts.*	*On Bill, &c. Decree.*

This cause coming on to be heard before the Chancellor upon bill, answer and replication and proofs, in the presence of S. H. Little, of counsel with complainants, and Alfred Mills, Esquire, of counsel with the defendants Samuel Jones and Maria L. Jones, and the pleadings and proofs having been read and the arguments of counsel heard and considered, and the Chancellor being of opinion that the complainants are not entitled to the judgment recovered by said Samuel Jones against one George Hedden in the New Jersey Supreme Court, for the sum of six thousand one hundred and twenty-nine dollars and forty-eight cents, claimed to have been assigned to them by said Jones; and that the injunction heretofore issued in this cause should be dissolved; but that the complainants held the title to the lands and premises in said bill of complaint described, and known as the Jones Farm (and now hold title to the unsold remainder thereof), to secure them for the money paid for said premises in buying the bank mortgage and purchasing at the foreclosure sale, and all other money by them properly expended in preserving and protecting said premises, with interest on such expenditures; and that said complainants had the legal right to make sale of said lands without the

consent of said Jones, and that said sale made by said complainants to said Charles G. Foster in eighteen hundred and eighty-one, of a portion of said Jones farm, was made in good faith; and that the same was sold for a full, fair and reasonable price, and the best that could be got therefor, and that said complainants ought not in this suit to be compelled to account for more than the net proceeds by them actually received from said sale to Foster.

It is therefore, on this fourth day of May, eighteen hundred and eighty-six, by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, ordered and decreed that the complainants are not entitled to the relief prayed for by them in their bill of complaint in regard to said judgment obtained by said Samuel Jones against said George Hedden in the New Jersey Supreme Court, and that the injunction heretofore issued in this cause be and the same is dissolved; and that the complainants held the title to the lands and premises in said bill of complaint described and known as the Jones farm (and now hold the title to the unsold remainder thereof), to secure them for the money paid for the said farm in buying the bank mortgage and purchasing at the foreclosure sale, and all other money by them properly expended in preserving and protecting said premises, with interest on such expenditures; and that said complainants had the legal right to make sale of said lands without the consent of said Samuel Jones obtained thereto; and that said sale made by said complainants to said Charles G. Foster, in eighteen hundred and eighty-one, of a portion of said farm, was made in good faith, and that the same was sold for a full, fair and reasonable price and the best that could be got therefor; and that said complainants are not required in this suit to account for more than the net proceeds by them actually received from the said sale to Foster, and that it be referred to George W. Jenkins, Esquire, one of the masters of this Court, to take an account of all the dealings and transactions between the complainants and said defendant

Samuel Jones relating to the matters in said bill of complaint mentioned; and for the better clearing of said account the said parties are to produce before said master, upon oath or affirmation, if required, and leave with him all books and writings in their custody or power relating thereto, and are to be examined upon oath as the said master shall direct, and each of said parties, under the direction and control of said master, shall have liberty to examine before him other witnesses in relation to said account; and said master, in taking said account, may use and consider the evidence heretofore taken and printed in said cause; and in the taking of said account he is to make both parties all just allowances, and is to charge said complainants with the net proceeds of that portion of said Jones farm sold by them as aforesaid, and credit them with all proper expenditures as aforesaid. And is to report what upon such accounting appears to be due from each party to the other, and also the balance which upon the account shall appear to be due from either party to the other. And the said master is to make his report with all convenient speed; and if in taking the said account any special matter shall arise he is at liberty to state the same to the Court.

THEODORE RUNYON, C.

Filed May 4, 1886.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CHILDS AND ELIPHALET C. WILLET, *Complt's*, *and* SAMUEL JONES, ET ALS., *Def'ts.*	*On Bill. Notice of Appeal.*

The Complainants hereby appeal from so much of the Interlocutory Decree made in this Court in the above stated cause, as declares that they are not entitled to the judgment recovered by said Samuel Jones against one George Hedden for the sum of six thousand one hundred and twenty-nine dollars and forty-eight cents, in the pleadings in said cause mentioned, and dissolving the injunction heretofore issued in this cause, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 5, 1886.

S. H. LITTLE,
Sol'r and Counsel for Compl'ts.

I conceive there is good cause for appeal in the above stated cause.

S. H. LITTLE,
Of Counsel.

Filed May 6th, 1886.

10 NEW JERSEY COURT OF ERRORS & APPEALS.

WILLIAM CHILDS AND ELIPHALET C. WILLET, *Appl'ts.* and SAMUEL JONES, ET ALS., *Appellees.*	*On Bill, &c. Petition of Appeal.*

The humble Petition of William Childs and Eliphalet C. Willet, the Appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an interlocutory decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the fourth day of May, A. D., eighteen hundred and eighty-six, in a cause wherein your petitioners were Complainants, and the said Samuel Jones and Maria L., his wife, Edwin Ross, George H. Ross, Stephen Breese and Philander B. Pierson, Receiver, &c., were Defendants, in this respect, to wit: That the said decree adjudges that "the "Complainants are not entitled to the relief prayed "for by them in their bill of Complaint, in regard to "said judgment obtained by said Samuel Jones against "said George Hedden, in the New Jersey Supreme "Court, and that the injunction heretofore issued in "this cause be and the same is dissolved."

And your Petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that said decree should have adjudged your petition-

ers entitled to the relief prayed by them in their said bill of complaint in regard to said judgment, and should have continued the said Injunction heretofore granted in this cause.

Your petitioners therefore pray that the said Decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

Dated May 5, 1886. S. H. LITTLE,

Sol'r and Counsel for Appellants.

Filed May 6, 1886.

NEW JERSEY COURT OF ERRORS & APPEALS.

Between
WILLIAM CHILDS AND ELIPHALET C. WILLET,
Appellants,
and
SAMUEL JONES AND MARIA L. JONES,
Respondents.
} *Answer.*

The answer of the Respondents above named to the petition of appeal of said appellants: These Respondents, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that an interlocutory decree was, on the fourth day of May, 1886, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And these Respondents are advised and believe that the said decree in the respects appealed from by said appellants is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

GEORGE T. WERTS,
Sol. of Respondents.

Filed June 23d, 1886.