

## N. J. Court of Errors and Appeals.

MARY E. MARYOTT, AND CHARLES

F. MARYOTT, *Appellants,*

AND

JAMES J. SWAINE AND JOE W.

SWAINE, *Respondents.*

{  
On Appeal  
from Chancery.

### STATE OF THE CASE.

The bill of complaint filed March 29, 1872, sets forth

1. Bond, 29 February, 1870, Charles F. Maryott to respondents conditioned for payment of \$3,600 on January 29th, 1872, and interest at 7 per cent. from date.

2. Mortgage of same date by appellants to respondents, securing the same on lands in Rockaway, Morris Co., to wit: 14 acres described in A 7 of Deeds, p. 121; 24 acres; 5½ acres; also 11 acres, and 36 acres, conveyed by M 6, 243, being the same described in a deed from R. H. Cary and wife, to Charles F. Maryott, by deed dated August 3, 1867, recorded in Book C 7, 168.

3. Acknowledgment and record of Mortgage S 2, p. 12, February 3, 1870.

4, 5, 6, 7. Judgments vs. Charles F. Maryott.

8. Conveyance April 9, 1870, Charles F. Maryott and wife to Sarah Swaine, wife of William Swaine, of 3 acres.

9. That on the 7th day of December, 1871, James Vanderveer, Sheriff of Morris County, conveyed said premises except the 3 acres to Leroy S. Gove.

10. January 4, 1872, deed Leroy S. Gove to Jeremiah Eighmie, for 1-3 of above.

11. January 8, 1872, deed Gove to Mary E. Maryott, 2-3 of above.

12. January 8, 1872, deed Appellants to Jeremiah Eighmie, of 1-3 of above.

13. January 9, 1872, mortgage Appellants to Eighmie, of above 2-3.

Prayer for foreclosure and sale.

The appellants by their answer sworn to June 5th, 1876, answering say: that they believe it to be true that the deeds were 30 executed and judgments recovered as mentioned in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth paragraphs in said complainants' bill, but they are not specially advised as to said matters and the allegations

of the complainant thereof, and leave the complainant to make such proof thereof as they shall think material and necessary.

And these defendants further answering say for answer to the said bill, that the lands comprised in the mortgage therein mentioned consist of about eighty-six acres in Roxbury, Morris County, valuable because of containing certain mines of iron ore as well as for farming purposes, and there are likewise upon the said property a farm house, barn and other improvements and that the value of said property altogether may be fairly stated at from fifteen to  
10 twenty thousand dollars.

And they further say that at the time of making the mortgage aforesaid the said premises belonged to the said Charles F. Maryott, but that by certain sales and conveyances since made and set forth in said bill of complaint two undivided parts thereof became vested in your orator, Mary E. Maryott. This defendant's deed for said premises being dated the ninth day of January, one thousand eight hundred and seventy-two.

And these defendants further answering say, that the origin, history and consideration of said mortgage were as follows: that  
20 the said premises comprised therein were at the date thereof subject to a mortgage for about three thousand dollars given by said Charles F. Maryott and held or said to be held by Samuel Brown and which mortgage had been foreclosed in this Court; that this defendant the said Charles F. Maryott at the same time held deeds or agreements for and was owner of various tracts of land making altogether about two hundred and seventy acres including said eighty-six acres situate in Morris County, New Jersey, which tracts or some of them were of great value as containing deposits of minerals.

30 And these defendants further answering say, that the said Charles F. Maryott desiring to carry on the business of mining ore on said tracts, one William Swaine, father of said complainants, became desirous to unite with him in said business as partner, and he being desirous likewise to buy, control or invest for his sons James J. and Joe W. Swaine, the title in and of the two hundred and seventy acres, the following agreements in writing were made between the parties:

First, an agreement between the said Charles F. Maryott and the said William Swaine by which said William Swaine became  
40 co-partner in the business of mining for said iron ore and in selling and disposing of the same, which agreement is now in the possession of said defendants and ready to be produced and proved.

Second, an agreement between Charles F. Maryott, signed by the said William Swaine for James J. Swaine, and by Joe W. Swaine, substantially of the tenor and effect following, that is to say: "Articles of agreement made this twenty-ninth day of January, 1870, between Charles F. Maryott of the county of Morris and state of New Jersey of the first part, and James J. and Joe W. Swaine of the second part, of the city and county of  
50 New York, as follows: Charles F. Maryott agrees to sell to James

J. and Joe W. Swaine one half of about two hundred and seventy (270) acres more or less, viz: one from John Willes to Charles F. Maryott of about  $21\frac{7}{100}$  acres recorded 25th September, 1866, in Morris county record of deeds 25th of September, 1866, in book V 6 of deeds, pages 422, &c., and one from A. R. Riggs and wife to Charles F. Maryott of 57 acres, October, 1865, and one from Ralph H. Cary and wife to Charles F. Maryott, rec. 11th Oct., 1866, in Book W 6 of deeds, pages 632, &c., and one from Ralph H. Cary and wife to Charles F. Maryott, recorded 8th of August, 1867, in book C 7 of deeds, pages 168, &c., making four deeds 10  
in all—270 acres more or less. Charles F. Maryott agrees to sell one half of all the above land and premises for seventeen thousand nine hundred (17,900) dollars in the following manner; James J. and Joe W. Swaine agree to advance to Charles F. Maryott thirty-six hundred (3,600) dollars immediately to pay off a decree for foreclosure sale on the place where C. F. Maryott now resides. The above sum, thirty-six hundred (3,600) dollars, is to be secured by mortgage on the aforesaid eighty-six acres to be paid two years from date at seven per cent. interest, and five per cent. is to be allowed by C. F. Maryott to James J. and Joe W. Swaine for their contingent expenses, the balance of fourteen thousand three hundred (14,300) dollars to be paid at the option of James J. and Joe W. Swaine within one year from date. When James J. and Joe W. Swaine pay C. F. Maryott fourteen thousand three hundred (14,300) dollars and satisfy the above thirty-six hundred (3,600) dollars mortgage, making seventeen thousand nine hundred (17,900) dollars from date, then Charles F. Maryott for the above sum agrees to convey to said James J. and Joe W. Swaine one-half of all the above land and premises of the 270 acres more or less by such deeds as Maryott now holds. In witness whereof 30  
the said Charles F. Maryott of the one part and James J. Swaine and Joe W. Swaine of the other part, the said James J. Swaine by William Swaine, his attorney for that purpose, have hereunto set their hands and seals this 29th day of January, A. D. 1870."

Signed, sealed and delivered } CHARLES F. MARYOTT, [L.S.]  
in the presence of } JAMES J. SWAINE, by  
William Swaine, Att'y, [L.S.]  
JOE W. SWAINE. [L.S.]

And these defendants further answering say, that the first two 40  
agreements herein mentioned were made about the twenty-ninth day of January, one thousand eight hundred and seventy, at which time said William Swaine executed the same, and entered into the partnership upon the property, and at that time he represented that his son James J. Swaine was in South America, but his son Joe W. Swaine did not come with him any part of the time, and was not upon the property aforesaid; and the said mortgage was made pursuant to the terms of said second agreement. And these defendants say that all through the business, the giving of said mortgage, the execution of said agreements, and other agreements 50

of which several were executed which had no direct relation to this matter, they never dealt with either of said sons, except through said William Swaine. But the said dealings were had with William Swaine, sometimes in his own name, and sometimes in the names of his said sons. And these defendants believe therefore, that the said William Swaine was the real principal in all the said transactions.

And these defendants further answering say, that while so engaged in business, an agreement in writing was made between the  
 10 said Charles F. Maryott and Sarah Swaine by William Swaine, her Attorney, by which agreement the said Charles F. Maryott agreed to sell and convey to Sarah Swaine, three acres of the Cary property, part of the said eighty-six acres; the object being to provide a place for the erection of tenement buildings for the use of workmen at the mines, by the terms of which agreement Sarah Swaine was to pay fifty dollars on signing the contract, one hundred dollars on delivery of the deed, and discharge the mortgage on said three acres to James J. and Joe W. Swaine, or take it  
 20 subject to said mortgage, or pay whatever they required to release the same from their mortgage; such agreement not to invalidate said mortgage of James J. and Joe W. Swaine; and accordingly on the ninth day of April, one thousand eight hundred and seventy, three acres were by said Maryott conveyed to said Sarah Swaine by deed containing an agreement that she should pay James J. and Joe W. Swaine, whatever sum they required to discharge said contract.

And these defendants further answering say, that very shortly after making of said first two agreements, deeds were prepared in order to convey to said James J. and Joe W. Swaine, one undi-  
 30 vided half of said two hundred and seventy acres of land, and notice thereof given to said William and Joe W. Swaine, and they were requested to fulfil and perform their contract aforesaid, by accepting said deed, and paying said seventeen thousand nine hundred dollars in manner aforesaid, which for a long time they, or the said William Swaine acting for both parties, professed themselves willing and anxious to do, but finally alleging that they could not get the money from the said Sarah Swaine, or otherwise, they having pretended that the same failed so to do; and about the same time the business of the partnership working said lands began to  
 40 languish for want of said money; and the said William Swaine, pretending that as soon as his son arrived from South America, he would have the money to carry on the partnership and consummate the same; and these defendants being greatly dissatisfied with the delay, and it having become impossible to carry on the partnership without the consummation of the said contract, thereupon a third contract was drawn up and duly executed by the parties thereto, substantially as follows, that is to say, about the first of April, 1870, agreement between C. F. Maryott of the first part, and James J. and Joe Swaine and Sarah Swaine, parties of  
 50 the second part, agree to pay the contract of January 29, 1870,

between C. F. Maryott of the first part, and James J. and Joe W. Swaine to C. F. Maryott, by the return of the said \$3,600 mortgage cancelled of record as set forth in said agreement, and also to return to C. F. Maryott, a note made the 14th day of February, 1870, for \$400, 184 days or six months by C. F. Maryott, paid and satisfied, dated the twelfth of February, 1870, and indorsed by William Swaine, and said to have been discounted by 11th Ward National Bank in the City of New York, namely, \$385.89. Also, to pay C. F. Maryott, \$3,914.11 cash, with interest as per said agreement as aforesaid set forth, to be paid within twenty days 10 after the arrival of James J. Swaine from South America. Also, to give C. F. Maryott a written notice within ten days after such arrival of James J. Swaine from South America as aforesaid, if he, William Swaine, Attorney for aforesaid Swaine, intends to carry out said agreement. If no notice is given in writing within the ten days after such arrival by J. J. Swaine from South America, then it is agreed by and between the said parties aforesaid, the above agreement shall be carried into effect within the twenty days as above set forth, or forfeit said mortgage, note land as by said agreement January 29th, 1870, and everything pertaining 20 thereto; which said last agreement was signed and sealed by the parties thereto; but the same has been lost, and these defendants are unable to produce the same.

And these defendants further answering say, that the said Jas. J. Swaine returned from South America about the day of May, one thousand eight hundred and seventy; but that the said William, Joe W., and James J. Swaine, nevertheless entirely failed to carry out the said agreements as therein provided, or to pay the said sum of money, or to accept the deed for said lands, but on the contrary thereof becoming dissatisfied with the 30 said agreement and lands, the said partnership between the said Charles F. Maryott and William Swaine came to an end, and they utterly refused to have anything more to do with said property, lands or agreement and entirely withdrew therefrom, although these defendants were there and tendered themselves willing to perform and carry out the same

And these defendants further answering say and charge that by the said failure so to do, the said complainants and the said William Swaine gave up entirely to these defendants all benefit and advantage of their said contract or of said mortgage, and forfeited 40 said mortgage by their conduct in neglecting and refusing to comply with the terms of their said contract. And that this defendant Mary E. Maryott, has against them a right to hold her interest in said eighty-six acres, free and discharged from all of said mortgage.

And these defendants further answering say and charge that the price of the three acres conveyed to said Sarah Swaine, was fixed at so small an amount, not with the understanding that the mortgage then existing, and under which this bill is brought, should remain in full force upon the whole eighty-six acres, but with 50

the expectation of all parties that the contract for the purchase of the two hundred and seventy acres would be carried out; it was therefore agreed that the said Charles F. Maryott should be released as to said land from his said contract of conveyance to said James J. and Joe W. Swaine, and that he should not be bound by the warranty in his deed as to the mortgage as an incumbrance.

And the said defendants insist that the contract in said deed either requires the said Sarah Swaine to adopt the contract of purchase in this matter, and was made really for her own benefit  
10 or her husband, so far as the discharge of said mortgage entirely or to answer for part of said mortgage, a portion of the value of said three acres as part with that of the rest of the eighty-six acres.

And these defendants further answering say and charge that said James J. and Joe W. Swaine had and have no right to exact payment of said mortgage, but that on the contrary the amount thereof is to be taken and understood as part payment of the said seventeen thousand nine hundred dollars agreed by them to be given for the one-half interest in the said two hundred and seventy  
20 acres, and that the same is forfeited by their conduct in refusing to comply with their said contract.

And these defendants insist: first, that by reason of the agreement herein set forth at length, and the conduct of said James J. and Joe W. Swaine, they have no right to demand the amount of said mortgage.

Second, That at any rate, they having entirely failed to fulfil their said contract, they have no equitable right to demand payment upon said mortgage.

Third, That said Sarah Swaine ought either to pay said mort-  
30 gage, or at least a deduction should be made therefrom by reason of the release of said three acres.

And these defendants deny all unlawful combinations or conspiracy, &c.

### TESTIMONY

On the trial before the Vice-Chancellor, June 6th, 1876.

40 The complainants offered the bond and mortgage, and rested.

It being agreed that previous testimony on rule to show cause be read where relevant, defendants' counsel read.

**Joseph J. Corwin**, a witness produced, being sworn, says: I live in Roxbury township, Morris Co., N. J.; I am a dealer and speculator—was a butcher about 18 years. I have met William Swaine several times at McCainsville, and also at Maryott's place—also at the station. I have had conversation with Swaine in re-  
50 lation to his business with Maryott.

[Objected to by Mr. Romaine.]

I had a team to draw some lumber from Mr. Van Doren's for these parties to what is now called the Swaine house, then building or to be built on the land of Maryott. That is the first time I ever met Mr. Swaine. I afterward called at the Swaine house and met Mr. Swaine there to see about selling some meat. This was a short time after the first I saw him. The time I saw him at the house, I inquired about furnishing their men with meat. That was my business. He told me that they hadn't many men then. They expected in a short time to have quite a number as soon as they got a place to put them. They were going to build some 10 more houses over by the mine. If I would sell my meat as reasonable as they could get it in New York, they would buy of me. Then I asked him who was going to be paymaster—him or Mr. Maryott. He said that Mr. Maryott would pay the bills up there. If he didn't, he would, as he furnished the capital. He told me he had had several such questions asked him since he had been up there by the neighbors. He wanted to know if Mr. Maryott wasn't good. I said he might be, but he hadn't that kind of a name—of being responsible. I told him there would be no more difficulty in dealing with him, than with any one else, if he had 20 everything in proper shape. He said they had an article of agreement between them, making everything satisfactory or something like that. I don't remember exactly the words, and whoever failed to comply with the agreement would forfeit their rights. He had also been to Morristown to examine the record.

[This conversation objected to by Mr. Romaine.]

I have a memorandum, that will fit the time, at home.

Mr. Swaine said they were going to build some houses over by the mine.

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*Cross-Examined by Mr. Romaine :*

I buy and sell cattle, and some real estate. I have known Maryott ten or twelve years. He has not resided all that time where he does now. He was a single man at that time. He has made that his headquarters. I was employed by Mr. Maryott and Swaine, but Mr. Van Doren spoke to me about it in their presence, and asked if I had a team. Mr. Van Doren had a lumber yard at McCainsville. This was in the month of April, 1870. I can't tell the day. Mr. Maryott paid me to draw the lumber. They asked me if they couldn't have a team to draw the lumber 40 up. I had never seen Mr. Swaine before. Mr. Clark is a gentleman who had charge of the Swaine house that was built there. A team driver of mine, Amos Hay Cook, carted this lumber. He lives at Hibernia, this side of Rockaway. I wanted to sell meat up there, and I wanted to see who was to pay for it. I had seen Mr. Clark, and he referred me to Mr. Swaine. I saw Mr. Swaine. I received in hay and stock a book account of Mr. Maryott's. I got some money of Mr. Maryott, but not especially on account of Mr. Swaine. I got pay on account general, My team was carting ore. That was my business.

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Q. You never received anything from Mr. Maryott, except for work done?

A. That is all. I never received any money from Maryott on account of a judgment. I am ready to. I paid out money on a judgment obtained against Mr. Maryott by Mr. Swaine—instead of receiving any. I think I paid the money to the county clerk. I forget whether it was McCarty, or not. The judgment was against me. I think I wouldn't have paid it, if I didn't have to. I think I indorsed an appeal bond for Mr. Maryott, and I had  
10 to pay it. I think it was some such way as that. I don't recollect any one else on the appeal bond. I recollect paying the money more distinctly than anything else. The judgment, I suppose, must have been against Maryott and myself together, as I was on the bond. I think Mr. Swaine was a party to the original suit. I couldn't say.

[All this examination objected to as not proper cross-examination, by counsel for Maryott.]

I don't know who the parties were to the original judgment.

[Objected to by counsel for Maryott.]

20 I do not know against whom this judgment was obtained. I have the papers all here.

[Objected to by counsel for Maryott.]

Mr. Maryott never paid me any money on a judgment.

[Objected to by counsel for Maryott.]

*Re-examined in chief:*

I had an open account with Maryott before and since this time, with mutual dealings, but not much money passing; a couple of dollars or so at a time for meat as he would buy it. The account  
30 amounts to several hundred dollars. Can't tell the exact amount. The credit side of his account consists of hay and stock I have had of him. I don't know how this account stands. It is an open account. I know I am ahead, but don't know how much. That judgment went into that account, and since the time I received that money I have received hay from him many times. Most of that account is since the judgment was paid. The balance due on the account is not far from two hundred dollars. The whole account amounts to about three times this amount. I can't tell exactly.

40 I have had three times the amount of hay to pay the judgment since then. The judgment was only a small one; less than a hundred dollars.

And being again cross-examined, witness says: I had reference to the judgment between Mr. Swaine and Mr. Maryott, which I had to pay to the clerk. I got a receipt from the clerk at home.

Sworn and subscribed before me, this

19th day of February, A. D., } JOSEPH J. CORWIN.  
1875, at Jersey City, N. J. }

JOHN A. BLAIR,

*Master in Chancery of New Jersey.*

**W. A. Stephens**, a witness produced, being sworn, says : Live in township of Randolph, Morris Co., N. J. Am a carpenter and builder. Have been about 20 years. I furnished some lumber to Mr. Swaine's house in April, 1870. Know the house. My bill for the work and lumber was a little over \$100 William Swaine paid me. I think that house could not be put up for between \$800 and \$900. I furnished the 1½ inch pine stuff. I put up the building. The mason work cost between \$80 and \$90. There was a dispute. I am accustomed to judge of the value of houses. 10

[Counsel for Swaine objected to all the testimony in relation to house.]

I had a conversation with Swaine about building some other houses. He said he was going to put up three double houses at the mines, as soon as I got through with the one I was at. They were for mining purposes.

[Objected to by counsel for Swaine.]

He said he was in partnership with Maryott. That was about all he ever said about his relations with Maryott in partnership and building. 20

[All this testimony objected to by counsel for Swaine.]

And being cross-examined, witness says :

Sworn and subscribed before me the }  
19th day of February, A.D. 1875, } W. A. STEPHENS.  
at Jersey City.

J. A. BLAIR,

*Master in Chancery of New Jersey.*

**John W. Betts**, a witness produced on the part of the defend 30  
ants, being duly sworn, says : I reside at Morristown, New Jersey.  
Am a lawyer by profession. I have had an acquaintance with  
Charles F. Maryott, at least since early part of year 1870. I  
conducted a law suit for him before Justice Bird, of Morristown ;  
defended the suit. My impression is, it was a suit on a promissory  
note. Don't recollect to whose order it was drawn. I remember  
the plaintiffs in the suit. Mr. Swaine was plaintiff. There were  
two Swaines, Joseph and William. I don't remember which was  
plaintiff in that suit. I think I know Isaac Bird's handwriting.  
[Shown paper], says : I think that is his handwriting. The in- 40  
dorsement according to the note, I should say, these were papers  
used in that suit. I have no distinct recollection of using those  
papers, but I have a distinct recollection of using an agreement,  
that is not here. It was an agreement. I only speak from my  
recollection. It was between the parties, or I could not have used  
it. My impression is that I introduced a paper or agreement by  
which it appeared that the plaintiff to the suit then being tried,  
was indebted to the defendant in a large sum of money, and that  
this agreement was offered as an offset on the part of the defend-  
ant. I distinctly recollect in the agreement, that the money there- 50

in named, was to be paid in a certain time, or, perhaps immediately after the return of some one from South America. I do not certainly know what became of the paper. I think it was left with the Justice with the other papers. I thought I recollected the figure 36 in the agreement, but I thought it was 36,000. It might have been 3,600. The papers used before the Justice is Exhibit P. 2, and Exhibit P. 4. I have drawn several deeds for the Mr. Maryott, or had them drawn in my office. I have no memorandum showing the date.

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*And being cross-examined* by Mr. Taylor, for Mr. Romaine, says:

I said I couldn't say how long I had known Maryott, at least since 1870. I think the suit before Justice Bird was commenced in July, 1870. My impression is, it was on a promissory note. I don't recollect the amount. I can't say from my recollection, whether it was more or less than \$50. I don't know William from Joseph Swaine. Judgment was given for the plaintiff in that suit. As I stated, my impression is, that it was brought in to show that  
 20 the plaintiff was indebted to the defendant in a large sum of money. I have no papers of the suit. I don't know whether execution followed the judgment. I don't know further than that I sent a letter to Mr. Maryott to come down and put in an appeal bond. I don't know whether he appealed, or not. I looked at my docket before I came down, but I didn't know what I was to be examined about particularly. I had not seen counsel. I did not take any memorandum of the case. I merely looked at it to identify the note. I never put the amount in my Justice's docket, but just a memorandum of the case, and when tried. I have no distinct  
 30 recollection of the particular papers. My judgment that these papers were used in that suit, arises from nothing but the indorsement on them. I can't answer, I don't recollect whether these papers were put in my possession by my client before the suit for the purpose of being used on the trial. I can't answer whether I examined any papers before the trial. I do not identify these papers as having been shown to me by Mr. Maryott. I have had no inspection of these papers since this suit began until to-day.

Q. What impresses it upon your mind that there was another paper produced in that suit, and which paper you have spoken of,  
 40 and that it was of the character you say?

A. The peculiarity of one of the conditions of that agreement: there was a condition in that agreement making the payment of the money conditional upon the return of some one from South America, and it impressed me at the time as being a very peculiar condition, for that the party might never return from South America. That circumstance I remember very clearly. I don't remember whether I examined the paper carefully, or not, but I do remember that struck me forcible at the time. I don't remember whether the paper was loose, or attached to other papers. I have no  
 50 distinct evidence of it being put in evidence. I don't recollect seeing

it since. I have done some business for Mr. Maryott on several occasions. I was never employed in this suit of Swaine vs. Maryott. I have had no conversation about it whatever.

*Re-examined in chief:*

My impression is that this paper was the foundation of our defence in that Justice's suit.

Q. Wasn't the offset in that suit a board bill. [Question objected to by counsel for complainants.]

A. I have some recollection of Maryott's speaking to me about 10 a board bill for Swaine or the men or somebody, but whether it was the offset in that suit I don't know. I recollect the paper being in my hands from the peculiarity of the condition.

*Re-cross-examined:*

So far as I can remember it was an ordinary suit on a promissory note before a justice of the peace. I connect the agreement with the suit because I read it in Squire Bird's office. I think I read the agreement. My impression is that that was the first time I read it. My attention might possibly have been called to it in my 20 office and no doubt was before I went to try the suit, but I have no recollection of it.

I don't recollect whether the paper had been in my possession before the trial. My impression is that it was written on a sheet of foolscap paper. I can't state positively, an ordinary sheet of foolscap paper. I mean to say that I have no recollection of the paper being in my hands at all before I saw it at Squire Bird's office at the trial, neither before or since.

Sworn and subscribed before me this

16th day of April, A.D. 1875.

JOHN A. BLAIR,

*Master and Examiner in Chancery of N. J.*

JOHN W. BETTS. 30

**Abraham C. Van Doren**, a witness produced, being sworn says:

I live in Washington, Warren county, N. J. In the Spring of 1870 I lived at McCainsville, Morris county, N. J. and was engaged in the lumber business. I dealt with the two gentlemen William Swaine and Maryott. They came to my place of business to buy lumber for building purposes and left an order there for lumber to 40 be delivered. I didn't recollect how much had been taken up. When Mr. Swaine called upon me, he requested what lumber he got to be charged to him individually, and what Mr. Maryott got should be charged to him individually. I did so and the next day or shortly, anyhow Mr. Maryott called and I stated to him what Mr. Swaine told me. He seemed to be somewhat indignant at the request and took an article of agreement from his pocket and I read it. It purported to be made by Maryott and by William Swaine as attorney for his two sons and his wife; that is the way it read and was signed— [Objected to by complainant.] 50

The provisions were, he was to pay so many thousand dollars in so many days after his son returned from South America, and after he returned he was to notify him in so many days whether he would pay the amount of money, and if not paid in the number of days he was to forfeit all his right, title and amount he had paid in the agreement.

[This testimony objected to by counsel for complainants.]

That is the substance of the agreement as near as I can recollect. I remarked to Mr. Maryott that I thought it was safe enough  
10 to sell them what lumber they wanted on those grounds. My memory is distinct on this matter. Mr. Swaine and I afterwards had a conversation about this contract, then I went on selling lumber to them because I saw the contract. I think this was in April because I left shortly after that.

*And being cross examined,* says :

I was 30 years old last December. I was born and raised at Washington. Lived at McCainsville from June, 1868, to Spring  
20 of 1870. In the lumber business during the whole time. I never knew Maryott until that Spring when I sold him lumber. I knew him by sight before. I never had any transactions with him before this lumber transaction when he and Swaine came to me. I had not known William Swaine before. I can't tell positively how much lumber I sold them, between two and three hundred dollars worth. It was all delivered. I think I didn't deliver it, Mr. Swaine delivered a part of it.

The lumber was delivered to use in a dwelling house. I believe the house was built. I saw it raised, it was near Mr. Maryott's residence. I don't know whether there is any other house than  
30 this one and the one where Maryott lives on his farm. I don't know where his farm extends. I don't know how many acres in his farm. I think I can throw a stone from the house where Maryott lives to this house. The house was raised at that time, they went right on at it. Swaine and Maryott were at my place in the Spring of 1870, when they got the lumber. The lumber was delivered right away. I don't know how much of this lumber I delivered before Swaine called on me alone. I delivered lumber after I saw Mr. Swaine the second time, only it was charged to the individuals and not to the firm. The lumber was paid for ;  
40 Mr. Swaine paid for his and Maryott paid for his. I made out a separate bill to each one. Swaine was not present when Maryott showed me the agreement. I can't tell what proportion of the bill was paid by each. I think Mr. Swaine's bill was about two hundred and twenty-five or thirty dollar ; he has the bill no doubt. I think Maryott's was less than one hundred dollars.

Sworn and subscribed before me this

25th day of April, 1875.

JOHN A. BLAIR,

*Master in Chancery of New Jersey.*

A. C. VAN DOREN.



whether the Justice has left them there. It is his custom to file all papers relating to appeals or criminal cases sent to him by Justices of the peace. I found the appeal papers on file in the case of Swaine against Maryott.

Sworn and subscribed before me, this }  
13th day of May, 1875. }

E. A. QEAUYLE.

EDMUND D. HALSEY, *Master in Chancery of New Jersey.*

10

**Isaac Bird**, a witness called and sworn on the part of the defendants, deposes and says :

I am a Justice of the peace, residing in Morristown, New Jersey, before whom a case of Swaine against Maryott was tried some four years ago. I have been requested to search in my office for a paper contract between Swaine and Maryott. I have made that search. I have looked in every likely place where a paper of that kind could be, if it had not been sent up to the Court. I have not been able to find it.

20 Witness adds of his own accord If any such paper had been left with me, I would have sent it up to the Court when I sent it up to the Appeal Court.

[Objected to by Mr. Romaine.]

*Cross-Examined :*

I was first appointed Justice of the peace in 1837. I have held the office at intervals since. I knew I was to search for an agreement, but what the agreement or its purport was, I do not know. I will say moreover, that I do not think it was offered in evidence, 30 for if it had been, I should have made a record of it.

There were three papers offered in evidence in that suit. I think I have seen these three papers to-day. They are the same papers which are tied together, and marked Exhibit P. 2, in this case. My docket says that three papers were offered in evidence on that occasion, and are marked 1, 2, and 3. I always send up all papers which are filed.

[This testimony objected to, as not being a proper cross-examination.]

40 I have no recollection of seeing the agreement referred to.

*Re-direct :*

I have no recollection of any of these papers, except what my docket says of them; and the marks upon them. I think the case was not tried by a jury. I took some time to decide upon it; either one or two weeks.

[This testimony objected to by Mr. Romaine, as not being in rebuttal of the cross-examination.]

*Re-cross-examination :*

50 My docket shows a true state of the case as tried before me.

[Objected to by Mr. Parker as not being a re-cross examination.]  
There was a judgment for the plaintiff who was William Swaine.

Sworn and subscribed before me the }  
13th day of May, 1875. }

ISAAC BIRD.

EDMUND D. HALSEY, }

*Master in Chancery of New Jersey.*

Defendants' counsel then called

10

**Mary E. Maryott**, sworn :

Q. Your name? A. Mary Elizabeth Maryott.

Q. Are you the wife of Charles F. Maryott? A. I am.

Q. Where do you live? A. In Roxbury township.

Q. Morris Co.? A. Yes, sir.

Q. Near what station? A. Near Drakesville station.

Q. On a farm? A. On a farm.

Q. And have you any property except that farm? A. Yes, sir.

Q. Did you have property also in that farm? A. Myself personally.

20

Q. Yes? A. I have no other property except that in the farm personally.

Q. How long have you been the wife of Charles F. Maryott?  
A. 11 years.

Q. Do you know this gentleman here? A. Yes, sir.

Q. What's his name? A. Mr. William Swaine.

Q. Do you know him? A. Yes.

Q. When did you first see him? A. In 1870, I think it was, the first time I saw him.

Q. Well, how did you happen to see him then? A. He came 30  
to our house.

Q. And stayed how long? A. I could not be positive how long he stayed the first time he came.

Q. Was he there several times or how? A. A number of times; through several months.

Q. At the beginning or end of the year? A. In January, I think it was.

Q. And so on after January up to when? A. Sometime in May.

Q. Were his sons ever there? A. One of them was.

40

Q. Which one? A. Mr. James Swaine.

Q. When did he come? A. Sometime in May.

Q. Can you tell about the time? A. I think from the 18th to the 20th.

Q. Did you have a memorandum of it? A. I had a memorandum I kept of the board.

Q. You had a board book? A. Yes.

Q. Have you got it now? A. I have not it with me; no, sir.

Q. Do you remember his building a house on part of the premises up there? A. Yes, sir.

50

Q. Have you seen any contracts made between Mr. Swaine and Mr. Maryott? A. There were several contracts.

Q. Did you see them? A. I saw them all at the time.

Q. Did you see any of them drawn? A. I saw a number drawn and agreements too, of different kinds.

Q. Who drew them? A. Sometimes one drew one and sometimes the other.

Q. Did you ever see a contract at the time—I am speaking of the time about when it was made—between your husband and the Swaines for the purchase of a half interest in the property? A. I did; I could not say positively where that was drawn though.

Q. Do you remember that first contract? A. Yes, sir.

Q. What was it for? A. For the purchase of half of the property, altogether.

Q. Half of all the property? A. Yes, sir.

Q. What do you call that? A. It took in nearly 300 acres altogether.

Q. For how much? A. \$17,000 I think it was, or something like that.

20 Q. That was the proposal.

Q. How long was that to extend? A. Only one year.

Q. Do you remember any other agreement they ever had about the property? A. Yes, sir; there was another agreement made after that time.

Q. Do you remember that agreement; did you see it at the time? A. Yes, sir; I saw it at the time.

Q. What was the sense of that agreement? A. That they should notify Mr. Maryott in a certain length of time after his son returned.

30 Q. Notify him of what? A. Whether they would purchase one-half of the property or not.

Q. And suppose they did not notify him? A. Then they were to forfeit all they had paid; they were to notify him if there was an opportunity in a certain number of days.

Q. Are you sure about having seen that agreement? A. Yes, sir; because at the time I saw it I thought it was an agreement I would not make myself; that was impressed on my mind at that time.

40 Q. Did you read these papers that were drawn or this particular agreement? A. Yes, sir; I read them all. I don't think they had any agreement in that partnership that I did not read at some time or another.

Q. Do you remember them all? A. No, sir; I could not begin to; there were too many.

Q. Do you remember anything about the preparation of a deed for this property to the Swaines? A. There was a deed prepared to give them for the half if they asked for it.

Q. Do you remember such a deed? A. Yes, sir; but it was not executed, I don't think. It was in blank form, ready to be

50 used if necessary.

Q. Do you remember how the partnership and the relations with the Swaines came to an end? A. Mr. Maryott served them with a notice, dissolving the partnership.

Q. That is true, but at the same time, did not Mr. Swaine say anything about it? A. I could not say now.

Q. What were their relations when they broke it,—friendly, or not? A. Rather not.

Q. Not friendly? A. No, sir; Mr. Swaine could not raise the money to carry it on, and of course both became displeased. Mr. Maryott did not like it. 10

Q. Well, and Mr. Swaine? A. I don't suppose that he—(interrupted).

Q. What did he say about it? A. I don't remember his saying anything about that.

Q. You know his visits up there, at any rate, ceased? A. Yes.

Q. And then, I suppose, you heard of law suits and trouble between them, and things of that kind? A. Yes, sir.

Q. I shall have to ask a little more, especially about these 3 agreements. Do you remember whether or not,—or, do you remember ever seeing that paper as it is? [showing the witness, 20 paper marked P. 4]. A. I think I have seen it.

Q. You think you have seen it? A. Yes, sir.

Q. You won't identify that as an especial paper? A. No, sir.

Q. The paper that referred to the return of the son, James J. Swaine, from South America, do you remember how it was executed? A. Well, when his son came back, he was to furnish the funds.

Q. Do you know what I mean by being executed?—was it signed—that agreement? A. I could not say positively about that. 30

Q. Well, you spoke of it as an agreement. A. [After a pause]. I think they were all signed—all the agreements—by Mr. Swaine, as Attorney for his son.

Q. Not by the son himself? A. No; and for his wife.

Q. When you say you don't know then, you mean you don't know whether they were signed by the parties themselves? A. Yes, sir.

Q. Was it signed by somebody for them? A. They were always signed by Mr. Swaine.

Q. This particular agreement was signed by him? A. They 40 were all signed by him: every agreement that I know of.

It is agreed here, that the date of James J. Swaine's return from South America, was about the 20th to the 25th of May.

*Cross-examined* by Mr. Romaine:

Q. Who owned this property at the time this agreement was made? A. Mr. Maryott.

Q. When was the deed for the conveyance of that property drawn? A. I don't recollect the date now. 50

Q. Was it signed? A. The deed?

Q. Yes. A. Yes, sir; I believe so.

Q. Where was it signed? A. It was signed up there somewhere.

Q. At your house? A. No, sir; I believe not.

Q. Was it signed before any officer? A. Yes, sir; I have forgotten the exact spot—the exact place where it was signed.

Q. Was it acknowledged? A. Yes, sir.

Q. By you and your husband? A. Yes, sir; I believe so.

10 Q. Who drew it? A. I don't recollect now who drew it.

Q. Do you know if Mr.                      drew it? A. I don't recollect who drew it; I know there was a deed drawn, but I don't recollect who drew it.

Q. To whom was that deed made? A. You mean for these three acres?

Q. I mean the deed for the half interest. A. Well, I don't know what you have reference to now.

Q. I have reference to the deed for the half interest in that property. A. Oh, you mean the blank deed that was drawn, do  
20 you, for the half of the property?

Q. I mean the deed which you drew for the undivided half of the property, or, that was drawn. A. Well, sir, I did not understand you to allude to that deed at all.

*By Mr. Parker :*

Q. You were not speaking of that deed? A. No, sir; I was entirely misled by the questions he was asking.

Q. What deed were you thinking about? A. The deed for the  
3 acres I thought he had reference to.

30

*Further Cross-Examined :*

Q. Now then, the deed for the half interest in the property, when was that drawn? A. I don't know when it was drawn; but I know it was drawn, and we had it in our possession.

Q. Was that deed executed? A. I don't think it was. I know it was ready to be executed for the half interest in the whole property.

Q. Who signed that deed? A. I think I signed it; it was never given to them though, but it was in our possession.

40 Q. Where did you sign it? A. That, I could not say, now.

Q. Do you know who drew the deed? A. No, sir; I do not; I could not tell you anything about that; it was understood that we had it ready, but I could not say positively that it was executed, or that I signed it; but there was a deed prepared to be executed, if necessary.

Q. When was the first agreement drawn between your husband and Mr Swaine? A. In January, I think, 1870.

Q. How long was Mr. Swaine up there at that time? A. He was at our house a number of times; every week.

50 Q. Well, before he went back I mean, at that one visit? A. I

could not say. He might have remained all night, or he might have come up in the morning train, and returned at night. I really don't recollect.

Q. Was that agreement perfected before he went away? A. That, I don't remember. I did not impress it upon my mind at all.

Q. What was the nature of that agreement? A. The first agreement?

Q. Yes A. That they were to purchase one-half of the whole property, if they saw fit, within a year. They were to have the 10 privilege of purchasing it.

Q. When was the next agreement drawn? A. I could not say positively. I don't know.

Q. About how long after? A. I don't know; it might have been within a week, or,—well, I could not say; a month perhaps. I don't know when it was drawn.

Q. What was the nature of that agreement? A. (A pause)

*By the Vice-Chancellor :*

Q. Do you remember the nature of it? A. No, sir; I don't, 20 because there were so many agreements of different kinds, that I could not tell; I have got them confused in my mind.

*Further cross examined :*

Q. Can you tell how many agreements were drawn from January to May? A. You mean for the purchase of the property?

Q. I mean all the agreements between the parties. A. All?

Q. I mean all. A. Oh, it would be impossible; they were drawn every few days or some alteration made in the copartnership.

Q. When a new agreement was drawn what became of the prior 30 agreement? A. I don't know what they did with it, whether it was preserved or destroyed.

Q. When was the partnership between Mr. Maryott and Mr. Swaine dissolved? A. I think it must have been sometime in May, but I could not say.

Q. Do you know how it was dissolved? A. Mr. Maryott served a notice of it. I recollect seeing the notice that he served; I think it was after he left our house, that was in May, but I could not be positive, but it was after he had boarded at our house and after he went to his own house. 40

Q. Do you remember of having conveyed three acres to Mrs. Swaine? A. I do.

Q. When was that done? A. It must have been in March or April; I should think in February. I am not certain when it was, but it was a month or two before May; I think it must have been in March, along about the first of March I should think, or the middle of March.

Q. There was an agreement made for the conveyance of that property, was not there? A. I don't remember now whether there was or not. 50

Q. You say you don't know whether there was an agreement or not? A. No, sir; I don't remember whether there was any agreement or not; but there was an understanding as to what it was for.

Q. Well, there was a verbal agreement. A. Well, there may have been a written agreement; I would not say whether there was or not, but there was a verbal understanding, I know.

Q. What was that understanding? A. That the lots should be sold to erect houses upon for the mutual benefit of both parties,  
10 and it was sold for a very moderate sum, so that they might both be benefited by it. The land was sold for \$50 an acre and we would not have sold it at that price only because each was to be benefited by it; double tenement houses were to be put up there to be used in the mining purpose.

Q. Do you remember signing the deed? A. Yes, sir.

Q. Don't you remember who drew it? A. No, sir; I remember signing it.

Q. When was the deed delivered? A. I think the deed was given to Mr. Swaine, to take home for his family to look at,—his  
20 sons, if I remember right, and he was to return that deed; but I don't remember his returning it. I know he promised to pay the money, and we expected it. I recollect it very well. I had to go away to have the deed acknowledged, and when I returned, he was to give us the money, and we were to give the deed to him; but he did not give us the money. He asked that he might take the deed, so that he might show it to his family, which Mr. Maryott objected to. However, he was to return the deed, but whether he did return it, or not, I don't recollect anything about now.

30 Q. Did he pay any money on account of that deed? A. He did not.

Q. At any time? A. Not that I know of.

Q. Did you make an effort to recover this deed from him after he took it,—or, do you know of any effort having been made? A. I could not say now. I know that they had an agreement between them, and it was their business; it did not concern me particularly at that time; I don't remember now.

Q. How long was that deed drawn before the agreement for the conveyance to Mr. Swaine;—that is, for the undivided half of  
40 the whole property? A. How long?

Q. Yes. How long was this deed for the 3 acres drawn, before the agreement for the conveyance of the half undivided interest in that farm? A. The undivided interest? Why, that was before this deed was made; the agreement about the undivided interest was made a long time before this deed was made. I say a long time—it was several weeks. They went into mining operations, and found they could not get board for the men in the vicinity, so they agreed to erect houses, and we sold these 3 acres of land for him to erect the houses on, for the mutual benefit of both parties; and  
50 that of course, was after the first agreement.

Q. When did they go into partnership, and enter into mining operations? A. Soon after the first agreement was made; I could not state the number of days.

Q. Did not you see Mr. Swaine pay \$100 on account of the 3 acres? A. No, sir; I did not; never to my knowledge did he give Mr. Maryott any money on account of that mortgage at all.

Q. On account of the deed, I said. A. Yes, sir.

Q. Are you positive of that? A. Well, I did not see him, and I don't know that he did; but it was not to my knowledge, and I cannot say anything further than my own knowledge. 10

Q. At the time the deed for the undivided interest was executed or signed, or drawn—was there not two deeds drawn for the same property? A. Not that I know of.

Q. Did you accommodate any of these boarders, Mrs. Maryott? A. Did who?

Q. Did you at your house accommodate any of these boarders? A. I accommodated one that Mr Swaine brought there; he boarded at our house for a number of weeks.

Q. When were you married, Mrs. Maryott, to Mr. Maryott? A. Eleven years ago last Fall—twelve years ago last Fall. 20

Q. That's all.

Defendants' counsel called

**Charles F. Maryott**, sworn:

By R. W. Parker, Esq.

Q. Where do you live? A. Roxbury township, Morris county, New Jersey.

Q. How long have you lived there, sir? A. I think between eleven and twelve years. 30

Q. Before that where did you live? A. I lived in New York city.

Q. What was your occupation? A. Builder, and also in Newark.

Q. When you moved to Roxbury, what did you do there? A. Purchased some property.

Q. Property of various parties? A. Several parcels.

Q. How much did you expend altogether; I don't mean altogether, but how much did you take out with you? A. I paid out there something over \$20,000.

Q. Cash do you mean? A. Yes, sir. 40

Q. The profits of your business? A. Yes, sir.

Q. Do you know Mr. William Swaine? A. I do, sir.

Q. Where did you first see him? A. I first saw him in New York city.

Q. Where? A. I think it was 111 Broadway.

Q. Did you have a conversation with him there? A. I did.

Q. Upon what subject, sir? A. Well, on several subjects; the first was in reference to some property that he was thinking of purchasing in New York.

Q. Never mind about that—did you have any conversation in 50

reference to this particular land up here? A. After some conversation with him, I think we retired to a saloon and got some refreshments; and my memory is now, that I met him after that by appointment.

Q. Well, did you have any conversation about this place up here? A. I think we did.

Q. Yes, sir; and what was that conversation? do you remember it? A. I do not recollect all of it, but the substance was, that he told me that he had some money, I think it was about \$40,000, 10 that he wanted to invest in something that would pay. Then I informed him of my property, and I think he promised to go with me and look at it. We did go and look at the property, and after talking it over and examining all the property, we entered into an agreement. He drew out the agreement in pencil, and I drew out an agreement. He wanted his adopted, and I took his agreement in pencil as near as I can recollect, and wrote the first agreement that we had, from that.

Q. Just state what *this* is [handing witness Exhibit P. 5]. A. That is the agreement that I copied our first agreement from.

20 Q. Whose hand writing is that in? A. The hand writing of William Swaine.

Q. Is that the first thing he wrote upon that subject? A. Yes, sir; and Joe W. Swaine's signature is in it.

[Mr. Parker read said Exhibit.]

Q. And that is the first agreement and was drawn up by Swaine? A. Yes.

Q. At about the date of the same, the 27th of January? A. Yes, sir; the 27th of January.

Q. Now what is this; in whose hand writing is this [handing 30 witness Exhibit P 3]? A. That is my hand writing, sir.

Q. Is the end of it in your hand writing? A. Well, it is signed by me.

Q. Is that in your hand writing, sir? A. No, sir; it is witnessed by Charles E. Schofield. It is signed by us two and witnessed by Charles E. Schofield.

[Mr. Parker read said Exhibit 3.]

By the witness:—Well, there is a mistake, I think, in that; that is the co-partnership agreement and the other is a copy of the contract. This is the co-partnership agreement.

40 Q. I know it has nothing to do with the other. A. The pencil one was the contract or agreement for the land.

Q. Yes, sir; I know that; now what is this paper? A. That is the contract drawn by me from the copy of William Swaine.

Q. That is the one drawn that you spoke of? [Exhibit p. 4]. A. Yes, sir.

Q. Did these two leaves originally make one sheet? A. Yes, sir.

Q. I see a part of this is also in the handwriting of Mr. Schofield. A. Well, Mr. Schofield witnessed it at the same time; the 50 agreement of partnership

Q. Why, it is not witnessed at all. A. Oh! [a pause].

Q. Was Joe W. Swaine present with you before Schofield? A. No, sir; we did not sign that paper before Mr Schofield, I don't think. I don't remember that we did.

Q. The end I see, is in his handwriting. A. Yes, sir; I think these signatures were signed at my house, and I think that I went home with Mr. Swaine, and Joe W. Swaine signed that at his house.

[Mr. Parker offered said Exhibit in evidence].

Q. Did you see Joe W. Swaine put his signature there? A. I 10 did. I saw him sign it.

Q. You were present when he signed it? A. I was; he also put his name on that other one yonder, and I see it is erased since.

Q. Please answer my question. There is enough in this case without going into anything outside of what I ask you about. A. Yes, sir.

Q. Now these papers Mr. Maryott, that have been spoken of here before, Exhibits P 2, 3, and 4, which have already been read in the presence of the Vice-Chancellor—where did you get these papers from—or, were these papers actually signed by Maryott 20 and Swaine? A. They were.

Q. I see *this* one is signed in the presence of P. T. Fair. Do you remember that signature? A. I do.

Q. And when it was done? A. Yes, sir; I remember it was done in Mr. Fair's office in New York City.

Q. The giving of this mortgage, was it, or not contemporaneous or nearly so, with the making of this agreement? A. It was; beyond question.

Q. It was made nearly at the same time as you made the agree- 30 ment? A. The mortgage was after the agreement was made.

Q. Was it, or not the mortgage that was mentioned in the particular agreement here? the one for \$3,600? A. It was.

Q. Do you remember any of these papers? I find here a deed from Carey to Maryott, another from Carey to Maryott, and another from Wills, and some searches, &c.; did they have anything to do with this transaction at this time? A. They were the deeds of the property that I was to convey one-half of to him.

Q. Did Swaine see them, or not? A. He did, and I drew memor- 40 andums from those deeds; his memorandum was drawn from the deeds in the first place, sir.

*By Mr. Parker*:—I offer in evidence the following:

Deed from King to Charles F. Maryott. V 6, page 36.

Deed from Samson and wife to Maryott. W 6, page 57.

Deed from Wills to Maryott. V 6, page 422.

Deed from Carey to Maryott. C 7, page 168.

Deed from Carey to Maryott. W 6, page 532.

Three searches marked respectively Exhibits X, Y and Z.

[Complainant objects. Admitted.]

Q. This money received on the bond and mortgage, what was 50

that for? A. For the purpose of paying off the decree of foreclosure.

Q. On this property? A. Yes, sir; on this very property.

Q. Who paid the sheriff? A. I paid the sheriff.

Q. At Morristown? A. At Morristown, and took his receipt.

Q. That is, you paid him the whole amount due on the decree.

A. Yes, sir.

Q. Was all that money got from this source? A. No, sir.

Q. But you went up with this money and that assisted in paying off the decree? A. I paid what money I got of him.

Q. And some more out of your own pocket? A. Yes, sir; out of my own pocket and took a receipt.

Q. After drawing the partnership papers did you go into active partnership with William Swaine? A. I did.

Q. The signature of Joe Swaine was put in that paper; was anything else done with him? A. That's all; he did not seem to have anything to say about it, and I never thought he did.

Q. Your dealings were entirely with William Swaine? A. Yes, sir; and no other one.

20 Q. How came he to sign for James J. Swaine; did he say?

A. He did not say any more than that he would rather put it in their name; that the money all belonged to him, but he would rather make it that way.

Q. Then you say you went to mining. How did you go to mining; just detail? A. We went to work and made a statement of tools and things that I had to put in. Mr. Swaine looked over the amount and I made a bill of sale to Maryott & Swaine of these things. I think they amounted to twelve hundred and some odd dollars. I furnished that. William Swaine was to put in a

30 certain amount of money, and I went on and paid out several hundred dollars. I think Mr. Swaine paid somewhere about \$80 and then he could not raise any money nor anything, or he did not raise any money, or he could not seem to get any. Then he wanted me to draw a separate contract, that the person advancing the money should have, I think, as near as I can recollect, some

27 per cent. for his services. We applied to several to get money; two or three offered to let him have it if I would sign this agreement with him, and one man asked me what I wanted to do, what

40 I wanted with a partner if I had got to give security for the money. Then I got very much dissatisfied with him. He could not raise the money and could not pay it, and the men that were employed ran after me to pay them, and I took meat out of my own barrel and fish, &c., and paid them off and then I stopped for

I found he could not raise any money. He seemed to be very anxious to go on with the partnership and said that his son would return in a few days from South America. I thought it was best to submit it to writing and so I told him I was very much dissatisfied about it, and then he agreed to it and did submit it to writing, and we drew then the third agreement which is lost. The terms

50 of that agreement was—[interrupted.]

Q. Never mind ; have you any memorandum of that agreement?

A. I have.

Q. You say it is lost. Was that agreement executed? A. It was.

Q. By whom? A. By Wm. Swaine, Attorney for James J., Joe W., and Sarah Swaine.

Q. What do you mean by executed? A. It was signed.

Q. Was it sealed? A. I think it was sealed ; that is my impression, that it was.

Q. Did you keep that agreement? A. I kept the agreement 10 until along some time after we dissolved partnership ; I think in June or July.

Q. What did you do then? A. I took it to Morristown, where he had brought suit on a little due bill that I gave him.

Q. Well, don't go into the subject of the suit. I don't care for that just now. We will get at that afterwards, perhaps What did you do with that agreement? A. I left it with Squire Bird, with some two or three other papers.

Q. How came you to leave it with the Squire, and when? A. 20 After the suit, I left my papers with him.

Q. Was this particular paper offered in evidence in the suit? A. I don't think it was offered in evidence, but I left it with the other papers for him to look at, to show that Mr Swaine had not fulfilled his contract with me, and that there was a considerable amount of money due from him to me.

Q. And did your counsel see it? A. He did ; Mr. Betts saw it ; Mr. Jno. W. Betts.

Q. You say you left those papers there ; when did you see them again? What happened next? A. The next was, I called on Mr. Bird for those papers, and he informed me that he had stuck 30 them all together, and filed them in the County clerk's office.

Q. Well, sir? A. I went to the county clerk's office and I found the bundle, but there seemed to be one agreement gone from it ; that I could not find.

Q. That agreement you have spoken of, you mean? A. Yes, sir.

Q. Did you get the other agreements that day or not? A. I don't think I got them that day. I called several times for those agreements and the clerk that was in the office refused to let me have any papers until the county clerk was present, and I think 40 they were there several months.

Q. And then you got those papers that are here now? A. Yes, sir.

Q. Just as they are now? A. Yes, sir.

Q. Have you searched carefully among or in those papers for that agreement? A. I have.

Q. Have you looked hard for it everywhere you can think of? A. Yes, sir ; everywhere they could be ; where any other paper are deposited. I distinctly remember leaving it with the Squire and that's the last I remember of ever seeing it. I have a mem- 50 orandum that I drew that agreement from in pencil mark.

Q. In your search you found the memorandum? A. I found the memorandum but not the agreement.

Q. Is this the memorandum? A. Yes, sir.

Q. I don't think I will ask you to read that, is it a truthful statement of the agreement made at the time? A. That is a copy of the agreement.

Q. Do you keep memorandums of all your agreements anyhow? A. I do, sir.

Q. What was this thing gotten up for? Can you tell? I mean  
10 your memorandum or your draft. A. It was gotten up to read to Mr. Swaine, to see whether he would approve of that or not, and if he approved of it, I was willing to extend the time to him, and if he did not, I thought I would cancel our agreement.

[Mr. Parker read said memorandum.]

Q. You have scratched this a little since then; you have put marks across this—this last part here. A. Well, the bottom I don't remember about.

Q. You don't remember about that at all? A. No, sir.

Q. When you stated in your petition the contents of that agree-  
20 ment, had you found this little paper, or not? A. I think when I first stated it, I had not found it. When I stated it to you, Mr. Parker, I had not found it, but subsequently I found this paper.

Q. This little paper containing the memorandum? A. Yes, sir.

Q. And that is the paper from which you made your agreement, with the exact contents of that agreement? A. Yes, sir.

[Mr. Parker then read from the petition about the contents of the third agreement].

Q. Now, sir, just go on about that agreement. You have stated that you got dissatisfied, and drew up this agreement. Now  
30 state what else took place. A. I found that William Swaine had not the funds that he had represented he had, and it embarrassed me considerably, and I felt dissatisfied with his agreement, and wanted to have something definite about it. Then I suggested that to him. I thought if he was willing to do that, I would extend the time further, and if he was not, I would serve him with immediate notice of the discontinuance of our partnership. He seemed to be willing to sign it; he seemed to be willing to do most anything; he told some parties he could make—[interrupted].

[Objected to].

40 Q. You cannot give that, unless you heard him say so. A. I did.

Q. Heard him say so to other parties? A. To one other party.

Q. What did you hear him say? A. I heard him say that he could make—that he could make to carry out his contract with me,—he could make \$20,000, or, I think he said more than \$200,000, by carrying out his agreement, and if he did not get it, he would forfeit all he had.

50 Q. What next took place, sir? A. We drew several contracts; I don't know how many; perhaps there were 15 or 20 in all executed in the same way, and some were not.

Q. Upon what subject, sir. I see here is one for raising money to carry on the business. A. Yes; that one was drawn by Mr. Swaine.

Q. Is it in his hand writing? A. Yes, sir; I signed it merely to gratify him

Q. Then you were in straits for the want of money and it was essential there should be money raised to carry on the business? A. Yes, sir; we had no means to carry on the business; we had to stop.

Q. And then this paper was signed? A. Yes, sir. 10

Q. What next occurred? A. Mr. Swaine's son did arrive from South America and after he did come he stayed there several days at our house. I think he was there some five days; four or five days. He wanted to make a new arrangement with me, and that was that I should put everything into his hands, and if I was willing to do that and to pay him about 27 per cent. to manage the affair upon the whole amount of the purchase, sales, labor and everything else, then he was willing to take hold of it, and I said no; I was only willing to carry out our contract. Then we had an appointment for a meeting in New York city, I think at 33 20 Park Row. We met there, and he also said that he had no money, but he was about to make a sale of a boat or something where he thought he would get about \$10,000, and as near as I can recollect, said if I would give him charge of the whole thing and put everything in his hands, then he would go on and try and do the best he could, but unless I would do that, he would have nothing further to do with it.

Q. Well, sir? A. I then notified Mr. Swaine that the deed was ready for half of the property according to our agreement, and I think that I also notified his son. I think I told James J. Swaine 30 and he said that—[pause] I don't think I ever saw Mr. James J. Swaine after that to have any conversation after that interview in New York city.

Q. You said he said something about it and then you stopped; did you mean to say that or not? A. I told him the deed was ready, and I was ready to carry out the contract. I think his reply was, he said that he would see and would make up his mind as to what he would do.

Q. You say you don't think you saw him again; now what happened with Mr. William Swaine; did you see him afterwards? 40 A. Yes, sir; I talked with him.

Q. Did he still continue up at the place? A. He was up to my place and I notified him that the deed was ready. I think I showed him the deed and I read it over to him and told him it was all ready to acknowledge, I think; that is my impression.

Q. What further took place about the partnership? A. I think I waited several days, perhaps a month, for him to fulfil his agreement, and I found he did not do it. nor could not, so I served him with a notice of the discontinuance of the partnership entered into by Maryott & Swaine. 50

Q. He was then at your place. A. He was then at my place.

Q. When did he leave your place? A. Well, he left it several days afterwards.

Q. And when he left, did he say anything about whether he would have anything to do with the contract for the land? A. He did.

Q. What did he say? A. He said he "would not have the money if it was a hill of gold," after he could not raise the money, "if it was worth millions, no, not if it was a hill of gold, he would not have anything to do with it." That was after I had waited, I think some thirty days. He said nothing further about the mortgage or money, or anything until he brought suit.

Q. Was anything at all said about the mortgage or the money, until the suit was brought? A. Nothing further.

Q. When was that? A. Something more than 2 years afterwards, I think.

Q. There was no interest paid on that, was there? A. No, sir; and none claimed, that ever I knew of.

Q. You say you were ready to make that conveyance; had you the power then to make that conveyance? A. I had, sir; I had the deeds of all the parties in my own hands, except one, and that I had a contract for, with a receipt for the full payment for the property, for the deed.

Q. Was there any difficulty at that time at all about the title? A. No, sir; the title was all clear and clean, and there was nothing in the way, only for him to step up and take the deed, and pay the money.

Q. I want to ask you about this deed for the 3 acres to Sarah Swaine, but perhaps I had better close up this branch of the case before I come to that. From whom did the money actually come that was paid to you on this mortgage? A. From Wm. Swaine.

Q. Where did you say he got it—of his sons, or not? A. Well, he told. First, he said, it was his money, and afterwards he said it was his sons' money, and at the time I got it, he said it belonged to him, and he had some \$40,000; these were bonds, and he took those bonds and sold them to Fisk and Hatch, and obtained their check in New York, as near as I can remember.

Q. Who did it come from? A. From Wm Swaine, to me.

Q. The mortgage was made in pursuance of the contract? A. Yes, sir; in pursuance of the contract of partnership, the agreement, and also the subsequent contract.

Q. Now, about the deed to Sarah Swaine; is that your signature, and that of your wife? A. Well, I should think it was, and the contract seems to be in my handwriting; the contract is in my handwriting. Yes, sir.

*By Mr. Romaine :*

Q. What do you mean by contract?

*By Mr. Parker :* He means the deed.

*Further direct :*

Q. You mean this particular paper, don't you? A. Yes, sir.

Q. This deed was given to Mr. Swaine; when it was given to him was it given to him absolutely? A. It was given to him for the purpose of showing his wife and family.

Q. On receipt? A. On receipt, to be returned.

Q. When you testified before, did you remember the payment of this consideration of \$150? A. I did not, sir.

Q. Do you remember it now? A. I do not.

Q. You were shown some receipts for moneys and you did not remember those receipts? A. No, sir; I have no memory of giving any such receipts or ever receiving one cent.

Q. You had a good many transactions about the partnership? A. I did, sir.

Q. For sometime? A. Yes, sir.

Q. And you don't claim to be able to explain the fact of these receipts, do you? A. I do not; no, sir.

Q. They look genuine, only you don't remember giving them?

A. No, sir; I have no memory of giving any receipts or receiving any money. I don't remember that I ever did.

Q. This deed was part of the transaction about the partnership? A. Yes, sir.

By Mr. Parker: I will read from the deed one clause in it. "This deed of conveyance is not to invalidate the contract or mortgage of above date," &c.

Q. I find here another paper with the signature of William Swaine; it is an agreement or contract for mining. A. Yes, sir.

By Mr. Parker: I wish to offer certain accounts between William Swaine and Charles F. Maryott at the termination of the partnership, for the purpose of proving that William Swaine was then indebted to Charles F. Maryott, and to claim that the same ought to be offsetted on the mortgage; and I would state that consider there is evidence before the Court that William Swaine was really the principal in the whole transaction.

[Objected to. Overruled.]

Q. (Handing witness a paper,) Is that the sheriff's receipt for the money? A. Yes, sir; that's it.

Q. Is that the original paper, sir? (handing witness a paper.)

A. That's the original account that Mr Swaine claimed that I put in the partnership, and that he put in, I think, \$111.

Q. Here I see is a bill for about the same thing. A. And that I put in \$1,240 and that he put that in.

Q. Is this (referring to another paper) the notice that you spoke of or a copy of it? A. Yes, sir.

Q. Served on him at the time of its date, or afterwards? A. A copy of that was served, I think, about a month afterwards.

Q. Is that (referring to another paper) the note mentioned in that agreement? A. That's the notice of the note mentioned in the agreement.

Q. Notice of payment? A. Yes, sir; notice of payment; of the day when it was due; I received it from some one.

## RECESS.

*Cross Examined by Mr. Romaine :*

Q. You say you first met William Swaine at 111 Broadway?  
10 A. I think I did.

Q. What took you there? A. My feet took me there.

Q. I mean what business. A. I have been in the habit of going in there for 20 years to attend sales.

Q. What time was that? A. I think it was sometime in February, either the last of February or January; my impression is, it was sometime in February.

Q. 1870? A. 1869—No! hold on; I think it was in December, 1869, was the first time I ever saw him; I think it was the December previous to January. That is what I meant to say in  
20 the first place.

Q. How did the conversation commence, and what was said?  
A. My recollection is, that we had a bill of some property that was advertised looking over it, and he turned to me and asked me what I thought of the property?

Q. Where was that property located? A. In New York City somewhere, but I can't say now.

Q. He commenced the conversation, did he? A. I asked him what he was looking after to buy, and he said some property.

Q. From there, where did you go? A. I think we went to a  
30 saloon, and got a lunch right in the corner of a little street back.

Q. And from there, where? A. I think we went up Broadway a little ways, and parted, and I think I went home.

Q. Did you go with him to 117 East Broadway? A. Did who?

Q. Did you go with Mr. Swaine to 117 East Broadway, Mr. Swaine's house? A. I don't think I did.

Q. How long after that, was it before you again saw him? A. I don't remember.

Q. Well, about? A. It might have been a week.

Q. How long was it before the making of that mortgage? A.  
40 I should think it was somewhere in the neighborhood of 4 weeks;  
3 or 4 weeks.

Q. Before making the mortgage? A. Yes, sir.

Q. How often did you see him before the making of the mortgage? A. My memory is that I saw him four or five times.

Q. Where? A. In different places in New York.

Q. On all occasions in New York? A. Oh, no.

Q. When did he first come to your house? A. I think it was about two weeks before the making of the contract; it might have been a week. Some little time before we made the contract and  
50 the mortgage.

Q. What was his business at your house? A. To look at that property where the mortgage was on.

Q. This visit to your house grew out of a conversation that you had had with him in New York? A. Yes, sir.

Q. Where did you conclude the agreement as to the making of the mortgage? A. I don't recollect now.

Q. Was the mortgage the first agreement that was made? A. I think not. I think the contract was the first agreement.

Q. What contract? A. The contract in pencil that Mr. Swaine wrote off. 10

Q. This contract? (holding up a paper.) A. If you will hand it to me I will tell you. (Same handed to witness.) You know I can't see so far as where you were standing, although I am not near sighted. That is the date of it, 27th day of January. I think we had several interviews before this was made.

Q. And how long was this made before the making of that mortgage? A. My impression is, it was about a week.

Q. Had you drawn any contract or written any agreement before that time? A. I think I did write one of the same date as that, and we dated the mortgage, if I recollect right, back two or 20 three days; it might have been 4 from the time it was made.

Q. Was this the only contract of this kind made? A. No, sir.

Q. Well, was this intended to be carried out, and was it written out afterwards, or was this not in this contract? A. That was the beginning as I understood it, of the first contract.

Q. *This*? A. Yes, sir.

Q. Prior to the making of the mortgage? A. Yes, sir.

Q. Had you had any negotiations with him as to the borrowing of \$3,600, before the making of that contract? A. No, sir; no more than talked it over, and told him it was resting on the place, 30 and [interrupted].

Q. No; I mean the money represented in that mortgage. A. Let me understand your question.

Q. Was this contract made before you agreed to borrow the \$3,600 from him on that mortgage? A. I think not until after we had agreed. That is part of the substance of our agreement; that is the conclusion we came to. He drew it out one way, and I the other.

Q. Between the making of this agreement and the making of the mortgage, did you have any interviews? A. I think we had. 40

Q. What was the nature of those interviews? A. Well, he came to my house and stayed all night, and looked over the property, and then we drew out the agreement, and I think that was drawn in my house.

Q. This agreement? A. The one that I have just looked at, I think it was, and afterwards it was taken to New York. When it was taken there, Joe W. Swaine put his name on it.

Q. Were you not in New York, when he put his name on it? A. I think I was.

Q. And *this* is in Mr. Swaine's handwriting? A. Yes, sir. 50

Q. Where did he get the memorandum of deeds referred to in this contract? A. He got them from my deeds, and we also looked them over again at his house.

Q. When was that interview at his house? A. I think it was sometime after this contract was drawn; I think it was the following evening after that was drawn; I think I went down with him after we had made our examination; I went down with him to his house, and I stayed with him over night, and then I think I returned home, and went down again, and he went with me to my  
10 house on the 29th of January; that is my recollection.

Q. Where did you meet him on the day the mortgage was made? A. I don't think I met him at all on the day the mortgage was made.

Q. Did not you see him at all? A. I don't think I did; I think the mortgage was drawn from the agreements and I called and got the mortgage at Mr. Schofield's office some two or three days afterwards; it might have been four, but it was dated back to the 29th. I could tell from the memorandum I have here. I think it was the 4th of January—the 4th of February, I mean, that the  
20 mortgage was made; that is my recollection now.

Q. When did you get the money on the mortgage? A. The 29th day of January, 1870, about between half past two and three o'clock in the afternoon, in the Fourth National Bank of the city of New York.

Q. You got the money before the mortgage was made? A. I did.

Q. After the mortgage was made and the money received on it, when did you again see Mr. Swaine? A. I don't think I saw him until after I put it on record.

30 Q. How long was that after? A. Perhaps two or three days.

Q. When did you next see him, and where? A. I think he came to my house.

Q. Was that within a week after the date of the mortgage? A. Well, it was several days, it might not have been more than one day; I don't remember distinctly the time. I have some memorandum which would tell.

Q. Why did you get the mortgage to him recorded? A. Because it was the request of his. He promised to pay for the recording of it and never did.

40 Q. When did you make the next agreement? A. I think we made the agreement the first time I saw him.

Q. After the mortgage was made, when did you make the next one? A. I think we made one every week and sometimes every other day.

Q. Were any of those agreements signed? A. No, sir; they were not.

Q. How many of them were signed? A. My recollection is now that there were five or six signed.

Q. Were all those agreements considered as being in force?

A. All that we signed I considered they were, and I suppose he did; he so expressed himself.

Q. Then there was no agreement completed to take the place of another agreement that had been completed?

[Objected to for the reason that if the question relates to the written agreements they will speak for themselves and therefore the question is improper.]

Q. What time was this third agreement that is spoken of made?

A. I think about the 1st of April, 1870. 10

Q. Dated about the first of April, is that the time it was written or only intended to take effect about that time? A. Well, it was made, I think, at the time that it was written and agreed upon.

Q. Was that agreement executed? A. It was.

Q. I mean by executed,—acknowledged. A. Yes, sir; it was acknowledged by William Swaine, as Attorney for the other parties.

Q. Before what officer was the acknowledgment taken? A. William Swaine, as Attorney; he appeared to be the officer there. 20

Q. You don't understand my question. Was it acknowledged before a Master in Chancery, or a Commissioner of Deeds? A. Neither one, I think.

Q. Then it was not acknowledged? A. No, sir; there was not a formal acknowledgment. He acknowledged in writing when he signed it, as I understand it.

Q. This agreement is signed by you and William Swaine. A. No, sir; it was signed by William Swaine for James J. Swaine, Joe W. Swaine, and Sarah Swaine, by William Swaine, as Attorney for the said Swaines, and not by me. 30

Q. Was it sealed? A. I think it was; my impression is, it was sealed.

Q. Was the signing of it witnessed? A. I don't think it was; I don't remember that it was witnessed.

Q. Was any certificate of acknowledgment written on it? A. No, sir; I never knew of it.

Q. What did you do with that agreement then? A. I kept that agreement until the following June or July, when I deposited it with Squire Bird, at Morristown; and that is the last I ever saw of it, or remember seeing it. 40

Q. Did you give a copy of the agreement to Mr. Swaine? A. I don't think he ever had a copy of that.

Q. Where was that signed? A. It was signed at my house.

Q. Who were present? A. I cannot say now that there was anyone present, except my family. It was done between us; all of the family were round.

Q. Of how many does your family consist—or did it at that time?

A. It consisted of my wife and 3 children at that time, now four.

Q. And yourself? A. How?

Q. And yourself? A. Myself, wife, and 3 children. 50

Q. Was that agreement offered in evidence before Squire Bird?

A. My impression is, it was not; but it was left with other papers for him to look at, to see that there was a large balance due me, instead of to Mr. Swaine.

Q. Did you not testify on your former examination that it had been offered in evidence before him? A. I don't remember that I did.

Q. If you did so testify, were you correct? A. I don't remember that I did so testify; I think if I do so testify, that it was a  
10 mistake.

Q. How long after that did you call upon him to ascertain where the papers were? A. After what?

Q. How long after you left the papers with him did you call on him to find out what he had done with them? A. On him?

Q. On Squire Bird. A. I think it was about a week; some few days. He took some time for his decision, I don't remember what that was, and when I called for his decision I also called for my papers, and he said then that he had filed them with the county clerk. I think his expression was that he had pasted them to-  
20 gether and filed them in the county clerk's office.

Q. Did he say why he filed them in the county clerk's office? A. I don't remember that he did now; I don't know but what he said to that he thought—[interrupted.]

Q. Who did you hear Mr. Swaine tell that if he could get the money to carry out his agreement, he could make over \$200,000? A. Some man in New York; I did not know his name.

Q. Were you served with a notice of dissolution of partnership? A. I was.

Q. When? A. Somewhere about the 20th of June.

Q. On the 20th of June? A. Yes, sir; dated back I think to  
30 May, sometime in May.

Q. Who served it? A. I think I did.

Q. I asked you if you were served with a notice? A. Oh! I understood you to ask me if there was a copy served.

Q. Were you served with a copy? A. Never.

Q. You say you served one about the 20th of June? A. I think it was about the 20th of June when I served Mr. Swaine with a notice of the discontinuance of our partnership.

Q. Dated in May? A. Dated back to sometime near the 20th  
40 of May.

Q. Why did you date it so long before it was served? A. Well, I drew it up at that time, in May, and kept it; I thought perhaps he would raise the money and come on with it; and so I waited to give him further time; I thought if he could raise the money I would not serve it; if he could go on with his contract, I would give him all the chances and opportunities that he could have to carry it out.

Q. When did you next see him after the 20th of June, or after you served it? A. I think I saw him most every day.  
50

Q. After the 20th of June? A. I think I did for some little time, there at the Swaine house on the three acres referred to.

Q. This deed for the three acres, it is all in your hand writing, that is, the written part of the deed. A. I think it is, sir; except the signature to the acknowledgment. I think it is all in my hand writing except the names.

Q. When was this delivered to Mr. Swaine? A. It was lent to Mr. Swaine somewhere about the 10th of April, I think; somewhere round about the 10th.

Q. When did you first ascertain he was not going to return it? 10  
A. I think it was within—[interrupted.]

[Objected to. Admitted.]

Q. To stenographer: Will you read the question, please?

The stenographer read: "When did you first ascertain  
"he was not going to return it?"

A. Well, I did not suppose he was; I supposed he would pay the money in a short time or return the deed, and I thought the contract—[interrupted.]

20

*By the Vice Chancellor:*

Q. The question put to you, sir, is simply when did you ascertain he did not intend to return the deed. A. I don't recollect, sir.

*Further cross examined:*

Q. Did you take any steps to prevent the recording of the deed?  
A. I don't think I did; I don't remember that I did.

Q. You have stated that you never received any money for the deed. A. Yes, sir.

Q. Did you ever receive any? A. I never did to my recollection. 30

Q. You signed that last receipt on that paper, did you not? A. I don't remember signing it, sir.

Q. Did you sign the agreement? A. I think I signed the agreement, but the receipt I don't recollect.

Q. Who made the diagram—did you not? A. I did not; I should think it was some of the Swaines that made it, by the looks of it.

Q. Are not these your signatures to these two receipts? A. I 40  
have no recollection of these signatures, sir.

*By the Vice-Chancellor:*

Q. That is not the question put to you. The question is, are they your signatures? A. (After a pause), I don't know them, sir; I have no recollection of them.

*Further Cross-Examination:*

Q. Then you never wrote them? A. I have no recollection of writing them. They look nearly like my signature. 50

Q. Don't they look exactly like your signature? A. Not to me they don't, sir.

Q. Is not that last receipt in your handwriting as well as the second, sir? A. I should say not.

Q. Will you swear positively it is not in your handwriting? A. I should think it was not; I have no recollection of writing it.

Q. Will you swear positively that it is not? A. I will not swear positively.

Q. When was it that Mr. Swaine told you that he would not  
10 have anything to do with the property, if it was a hill of gold, as you have stated in your direct examination? A. I think it was about the 25th of May, or sometime not far from the 20th of May.

Q. Did not he say he would not have anything to do with it, if it was a hill of gold, as long as you had anything to do with it? A. I don't recollect hearing any such language as that.

Q. Or, that he would not have anything to do with it, while you were there? A. I never heard any such language as that, sir, that I remember of.

Q. You have shown half a dozen deeds comprising about 270  
20 acres; was that property in such a position during 1871, that you could convey a good title to it? A. 1870, it was.

Q. 1870, I mean. A. Yes, sir.

Q. During the whole year? A. It was, until some time after Mr. Swaine left; I don't remember what time afterward.

Q. Were there any incumbrances on that property? A. Very little.

Q. About how much? I don't remember.

Q. Were there not several judgments on record against you?  
A. There were several that stood on record, that were satisfied,  
30 and had been paid, but had not been erased from the record.

Q. Had they been paid at that time? A. I can't remember without reference to them.

Q. Did not David Pierson hold a judgment against you for \$2,200? A. Well, that would need a good deal of explanation.

Q. Was there not a judgment on record at that time, for that amount? A. I don't think there was.

Q. Did not Theodore Young hold a judgment against you? A. None, but what had been paid.

Q. Do you remember of making a conveyance to a man named  
40 Dunn, of part of this property? A. I do not.

Q. Or to a man named Wheeler? A. There was a little part of the Mountain Pond lot—one-third that was conveyed to William A. Whelan, and I had two-thirds, so I could give him a deed for one-half out of the two-thirds.

Q. When was that conveyance made? A. I don't remember; the papers will show themselves; that is, if you have them.

Q. This Mountain Pond lot was part of the premises comprised in these deeds for 270 acres. A. A small portion of it.

Q. Well, it was embraced in the 270 acres. A. I think it was;  
50 part of it.

*Further direct. By Mr. Parker :*

Q. Part of the Mountain Pond lot? A. Yes, sir.

Q. You do not remember receiving these sums of money and you have no recollection about that? [Referring to receipt.] A. No, sir.

Q. Now, leaving out of the question your recollection on that subject, does or not the handwriting look like yours?

A. It does imitate mine.

Q. I didn't say anything about imitation? A. Well, it does look something like mine—it looks most like mine. 10

Q. Your reason for doubting it is only because of your recollection, not on account of the handwriting, is it? A. It is on account of the handwriting and of my recollection both.

*By Mr. Romaine :*

Q. Is there any doubt about it being in your handwriting? A. I think it is all doubt about it.

*Further re-direct :*

Q. What was your idea of the value of those three acres that were conveyed? A. Well, I would not have been 20 willing to sell it to him absolutely—[interrupted.]

*By the Vice-Chancellor :*

Q. That is not the question, sir; what was its market value? A. I should think it would have been more than \$300 an acre.

Q. For what purposes—on account of farming or as containing minerals? A. As both; for farming land I would not have considered it less than \$300 an acre. I was offered for 80 acres of it for farming purposes, and reserve the mineral right, \$12,000. 30

*Further cross :*

Q. Those two or three lines are in your handwriting, are they not? A. I would not swear that they were.

*By the Vice-Chancellor :*

Q. This paper, which purports to be the substance of the lost agreement, I want to know whether that is the first draft of the lost agreement, or a copy of it that you have made from memory since? A. It is the draft of the first agreement.

Q. Well, the original draft? A. Yes, sir; the original draft that we drew the agreement from.

Q. Well, tell me how it happened that you commenced your agreement by these words: "Agreement about the 1st of April, 1870?" A. Well, when I commenced it it was not in my mind what day of the month it was, and in drawing an agreement of that kind I always abreviate it as long as I understand it, and then copy the agreement from that.

10 Q. If you did not know the date why did you not leave it blank and fill it in when you ascertained? A. Well, I can't say about it; it was an oversight or something of that kind.

*Further re-direct :*

Q. You say you found this after the petition? A. Yes, sir.

Q. Where did you find it? A. In some old papers filed away in a desk up stairs that I have had some two or three years before; I was looking up some other papers.

20 Q. Looking up papers in the case? A. Yes, sir; and some other matters in New York, when I came across that, and then I took it down to you, Mr. Parker.

*By the Vice-Chancellor :*

Q. There are other memoranda on that paper; were they made at the same time that the agreement was drawn? A. I think not.

Q. Well, before or after? A. I think that I caught up a piece of paper and saw there was a vacancy and—[interrupted.]

30 Q. My question to you is, Was that other writing put there before or after the agreement was drawn—or don't you know? A. I can't remember whether it was or not.

Defendant rests.

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Complainant's counsel calls :

WILLIAM SWAIN sworn, examined by Mr. Romaine :

Q. Where do you live? A. No. 55 South Seventh street, Williamsburgh.

Q. During the year 1870, where did you live? A. 177 East Broadway, New York.

Q. You know the complainant in this suit? A. Yes, sir.

40 Q. Do you know James F. Maryott? A. Yes, sir.

Q. And his wife? A. Yes, sir.

Q. How long have you known them? A. Since the 27th day of January, 1870; Charles F. Maryott.

Q. How long have you known his wife? A. Charles F. Maryott's wife about one day afterwards.

Q. Where did you first meet him? A. 111 Broadway, New York.

Q. When? A. It was on the 27th day of January.

Q. 1870? A. 1870.

Q. What day of the week? A. I am not positive; it would be Friday or Thursday, I think; there was one day intervened betwixt; I am under the impression that the 29th day of January was on Monday; if your Honor will let me explain; Mr. Maryott showed me a paper containing an advertisement of his property that was for sale under foreclosure of a mortgage, and represented to me that he was in the hands of sharpers who were going to take his property from him unjustly, and that was the day; that is, if Monday was the 29th, that would be Friday when I saw this advertisement. 10

Q. Did you have any conversation with him that day? A. Yes, sir. 20

Q. Just state it? A. I was looking at the bill of sale of the property and he came to me and said, "was I making an investment?" I said I was, provided it went cheap enough; well, he showed me this advertisement then, and told me he had got a piece of property there, and if I had the money to spare he could make me perfectly safe if I would advance money enough to pay off the mortgage, because he was in the hands of men who wanted to cheat him; I said if he would hold on until after the sale came off, I would see, because if this property went at a certain price I was going to buy it, but if it did not, why I couldn't touch it; it went too high; so after the sale he went with me, or rather we went and took lunch, and then he went with me to my house to talk with me in the presence of my wife and myself; my son Joe then was home, and my oldest son James was gone to sea, and he sent me money to invest for him; and Mr. Maryott represented to me and my wife, that he was in the hands of sharpers and that it was a good piece of property, and a perfectly safe investment to advance that amount of money on it, and finally my wife and son both agreed that as soon as it could be made safe we should do it; they simply agreed on the impulse of the moment; there was no time for delay, he said; I then went on to see this property in the afternoon, and came back the following 30 40

morning in the early train; I then went to lawyer Pomeroy; I agreed to let him have the money, and then went to Mr. Pomeroy, at the corner of John and \_\_\_\_\_ streets, and he said there was no time to be lost, and if I wished to be a friend to this man and save the property, there was no time to lose, to do the business without investigating.

Then Mr. Maryott said Charles Schofield, of Jersey City, knows all about my property, and for that reason Mr. Pomeroy said I will give you a letter of introduction to Mr. Schofield and you can go there if you want to be a friend to him, and you can let Mr. Schofield be the attorney for both parties. Then I went to Mr. Schofield and employed him as my attorney as long as he knew Maryott, for the whole transaction, and I paid the money down in Schofield's office; he passed it over to Maryott and took a receipt for it in full, and he drew the bond and mortgage and I paid Mr. Schofield for the transaction. There was not one bit taken off the full amount at that time. I had money enough, and, in fact, it was a friendly act. I said to Mr. Schofield in this way: "This is money that my sons sent for me to invest for them, and I employ you as their attorney to protect them, and it must be drawn so as to protect their interest and what is right." And Mr. Schofield counted the money and passed it over to Mr. Maryott and made out the bond and mortgage and then gave the mortgage to Mr. Maryott to put on record; and when he wrote out the receipt he said in this language: "Now, Mr. Maryott, this money is only to be used for this transaction; this must pay off that mortgage, or otherwise the money must be given up into Mr. Swain's hands." And he said, "Now, if you don't do that, remember it is a State's Prison offence," or something to that effect. Then Mr. Maryott took away the mortgage himself and got his wife to acknowledge it, and he acknowledged it before Mr. Schofield at the time, and then he took it away and afterwards put it on record, and it was sent by mail to my house.

Q. Had you been to Maryott's house at that time? A. Yes, sir, I had been there; I went in the afternoon and came back in the early morning train.

40 Q. When did you go to his house? A. I think it was the 27th or 28th; I think it was the afternoon of the 27th or 28th, but I am not positive.

Q. How long after you met him in New York? A. I never saw him in my life before the 27th.

Q. How long after, I said? A. Oh, it was the following day.

Q. Are you positive as to the day of the month when you met him? A. I am positive that it was on Friday, that is, providing that the property was sold on the 29th—if the 29th was on Monday I am positive it was the Friday before that.

Q. The Friday before the last Monday in January? A. Yes, sir.

Q. What took you to Maryott's place? A. He represented what property he had, and he really touched my sympathy, and wife's, too, with his story.

Q. And you went for the purpose of ascertaining that the security he offered was good? A. Well, I went there, of course, to ascertain as far as I could; but it appears to me that there was considerable snow on the ground, and so I had no way of ascertaining. I did not speak to a living person out there, except his own wife and family; and he told what I should term a very plausible story, and I thought it was fair, and had no disposition to disbelieve them.

Q. When did you next see him after that? A. On the 29th is the day he got the money, and I saw him a day or two after that; he then came to my house and represented that, as I had been so kind as to let him have this money, that he would like me to go into partnership with him in the mining business—or, rather, that my son should. I said, oh, no; my son is too young for that. Well, said he, would not I go in with him. I said I had no objection to going in, so as to find out the truth of his story. He represented about the quantity of property he had, and then that paper in pencil was drawn up. After he had drawn up his deeds I imagined there was something wrong, and he wanted to inveigle me into something rather different; so I then drew up that pencil statement, stating that I was to have one year to investigate his statements; and I found they were true. We were fully able to pay that amount after investigating the value of the property. Well, I continued in partnership with him until May. On the fourth day of March is where I had great cause to disbelieve him. I had been backward and forward but a very short time to see him, and on the fourth day of March he drew up a bill of goods which he had, as a chattel mortgage, for me to advance \$1,200 on it; and when I had put on the name a man stepped up to me and said, Are you acquainted with that man? I said not very much—[interrupted].

[Objected to.]

*By Witness*—Well, that was the first of my doubting the man. I then went to Morristown and investigated as to his reputation there, and I found that there was not a man in Morristown—[interrupted].

[Objected to.]

Q. What agreement did you make with Mr. Maryott? A. There was no agreement made with him further than that pencil paper that I showed there in that form; but they never were carried out. There was not any agreement fully carried out, nor properly signed and filled up. There were certain papers, which he wanted. Yes, there was the partnership agreement. Now *there*, this was dated back. It was after the 29th when Maryott brought his papers to the  
10 house.

Q. How about that paper; you drew it? A. Yes, sir.

Q. Is it in your handwriting? A. Yes, sir.

Q. Where was it written? A. At my house.

Q. In New York? A. Yes, sir; at my house, at the table, where he was sitting and showing us his deeds and things what he had; my son Joe was there, and Mr. Maryott urged him to show his writing, and asked him to write something, so he wrote his name and erased it at the time; it was not intended that that paper should amount to anything,  
20 and in the night my son gave up his room—(interrupted.)

Q. Was that agreement ever drawn out any more fully than that? A. No, sir; that paper was taken from the waste paper basket in the night.

Q. Was there any agreement made before that was drawn? A. No, sir.

Q. What was the next agreement? A. The partnership agreement; I said that the partnership agreement was drawn up about the time that these papers were, and it was dated back; the first partnership agreement; it was drawn  
30 a day or two after the 29th, but still it was dated back; Mr. Schofield wrote that, or his clerk, who was there in his office.

Q. That is the paper that has been produced here? A. I believe so.

Q. That is the one you refer to? A. Yes, sir; that is it; that was signed in Fair's office sometime after that.

Q. Did you ever do anything under this agreement? A. Yes, sir; we went into business.

Q. Well, state what you did in the partnership business? A. Mr. Maryott had bought a lot of tools, a small amount,  
40 and I furnished some, and I paid the men; I imagined his funds were rather low; then he began about March to represent to me that the parties around there used to steal the tools, and I threatened them to—I said, Mr. Maryott, if that is the case, we might as well give up business, and finally, on the 19th day of May—(interrupted.)

Q. How long did you operate under the agreement? A. Up until the 19th day of May.

Q. And on that day the partnership was dissolved? A. Yes, sir.

Q. In what way? A. Because Mr. Maryott was detected stealing the tools, and then I told him I would not be in partnership with him any longer on any consideration.

Q. Did you serve a notice on him? A. Yes, sir; it was verbal notice and witnessed before Mr. Clark; Mr. Clark said he would tell him right before his face.

Q. Was there any other agreement made? A. Not betwixt Mr. Maryott and myself, only there was an agreement about the mountain pond plot; about those three acres, and that would require some little explanation. 10

Q. Was that agreement (p. 4) entered into between you and Maryott? A. No, sir; these papers are papers that we tore up in our house and threw into the waste basket.

Q. In whose handwriting is *that* part of it? (The attestation clause.) A. I don't know.

Q. Is it signed by you? A. Yes, sir.

Q. And Mr. Maryott? A. Yes, sir.

Q. Why was that made? A. Well, it appears to me that that top piece is in Maryott's writing. 20

Q. Do you remember anything about it? A. I don't consider myself an expert, though.

Q. Well, do you remember anything about the making of this agreement? (Counsel read same.) Did you execute that? A. No, sir; I did not.

Q. How does it happen that your signature is fixed to it? A. That don't belong to this paper, sir; that clause don't belong to this paper. There was an agreement, or, rather, it was never carried out, nor never fully signed, sealed or delivered so as to make it what we term an agreement; that I was to have one year to investigate the truth of his statement, and provided I found it was true, we then had the privilege of taking one-half at that price; but that paper never was carried out, and these papers were taken from our table, torn up and thrown into the paper basket, and were picked out of there in the night. 30

Q. Did you make any other contract for the purchase of that property than the one you referred to? A. No, sir, never. 40

Q. There was an agreement made by Maryott and you, acting for your wife, to convey to her three acres of land? A. Yes, sir.

Q. When was that agreement made? A. It was made some few days before, and the first \$50 was paid. The way that came up was, when I was away Maryott went to my

house and represented to my wife and daughter that he had  
—[interrupted.]

[Objected to.]

Q. There was a deed made under that agreement? A. Yes, sir; it was made under the agreement that he was to convey to them three acres of the Mountain Pond lot. The deed was delivered under that written contract.

Q. Was the deed delivered to you? A. Yes, sir; in the presence of Mrs. Maryott and Mr. Maryott, at Drakesville.

10 Q. When was it delivered? A. On the 11th day of April, and I took it to Morristown and put it on record that same day.

Q. Look at that paper and the receipts on it, and see if you know them? A. That is Charles F. Maryott's, I am positive, and I am positive that \$100 was paid on the 11th day of April, in the presence of Mrs. Maryott, because a dispute arose in this way: When I wanted a receipt for the money he said, "No, your deed is a receipt;" I said, "But I want a receipt for that money for the delivery of the

20 within-described deed," and I would not accept it in any other way, and that is the way it was, sir.

Q. The agreement was given to you before the deed was made? A. Yes, sir.

Q. What was the understanding about the payment of a portion of this mortgage by the three acres? A. Whatever my son should require to release the three acres—

[Interrupted.]

[Objected to as being in the contract.]

Q. That agreement is signed by you? A. Yes, sir.

30 Q. Is that in Maryott's hand-writing? A. Yes, sir.

Q. Are the receipts in his hand-writing? A. Yes, sir; I saw him write it.

Q. And sign it? A. Yes, sir.

Q. After the 19th of May, did you have any further negotiations with Mr. Maryott? A. No, sir; or, I say no; there was a division of the tools made; I was going to take some tools, and he wrote out a list of the tools and we were to divide, and then he kept the whole of them; he kept my half, saying he would send them down to me, and then keep-

40 ing the whole of them.

Q. You ceased the partnership on that day? A. Yes, sir.

Q. And had nothing further to do with the place? A. Yes, sir; there is that paper which he shows; he urged me to take a cup of tea at his house, and he says, is there any thing you will write? and by that means got me to write that paper, so as to show him—

[Interrupted.]

*By the Vice Chancellor:*

Q. What paper are you referring to? A. That we, the undersigned—

Q. Well, produce the paper.  
(Not produced.)

*Further direct:*

Q. Were you in a condition to carry on your agreement under the partnership agreement? A. Yes, sir.

Q. This \$3600 you invested was money belonging to your sons? A. Yes, sir; it belonged to my two sons. 10

Q. How far could you use that money for them? A. To make an investment for them, so as to make it to the best of my ability. He sent money to me from South America.

Q. How much money did you have to invest for them? A. \$1000 in gold from my oldest son, James J. Swain. At one time he sent on \$1000, and at another time \$500 or \$900, and I should think I would have in my possession altogether in the neighborhood of—

(Interrupted.)

Q. At the time the loan was made, I mean? A. Oh, 20 about \$6,000.

Q. Of theirs? A. Of theirs; yes, sir.

Q. You have heard the testimony in relation to the agreement said to have been lost? A. Yes, sir.

Q. Did you ever sign such an agreement?—I will read it to you. (Counsel did so.) A. There is not one word of truth in it, from the beginning to the end of it.

Q. Did you ever see or hear of any such agreement? A. I never either saw or heard of it; it never was proposed to me, or any such thing like it; it is as false as it could possibly be. 30

Q. Were you present at the trial before 'Squire Bird, at Morristown, in July? A. Yes, sir.

Q. Was a paper of that kind produced before him? A. There was not, and I never heard it mentioned before.

Q. Or anything purporting to be of that effect, or was anything of that kind produced before him? A. No, sir.

*Cross-examined. By R. Wayne Parker, Esq.:*

Q. Where were you born? A. In England.

Q. How long have you been in this country? A. About 40 thirty-five years.

Q. Where have you lived? A. New York.

Q. All the while? A. Pretty near.

Q. What is your occupation now? A. My occupation now is merely as a retired gentleman.

Q. Retired what? A. You may say "retired."

Q. You own real estate in your own name? A. Yes, sir.

Q. Where? A. In both New York and Williamsburgh.

Q. In your own name? A. Yes, sir.

Q. You have acted as agent for your sons and your wife?  
A. In certain things.

10 Q. You signed this contract, I see, for your wife, for the purchase of the three acres? A. Yes, sir.

Q. Have you been examined in this matter before? A. Yes, sir.

Q. Down below? Yes, sir.

Q. Did you, in your examination below, say you met Mr. Maryott on the Saturday previous to the 29th of January, 1870? A. Well, I was not positive, as I told you, to one day.

Q. Did you say that you had never seen him before? A. Yes, sir; and I never did until I saw him at 111 Broadway.

20 Q. Did you say you never agreed to purchase any portion of the property he owned? A. Yes, sir.

Q. Do you say that still? A. Yes, sir.

Q. Did you say that the partnership came to an end on the 19th or 20th day of May, 1870, and it was dissolved by mutual consent? A. Yes, sir.

Q. Did you say that you told Mr. Maryott that you would not accept the deed for that property if it was a hill of gold? A. If he was interested in it; and I would not now.

30 Q. You told him so? A. I told him so at the time.

Q. When the partnership broke up? A. Yes, sir.

Q. Then there was something between you as to the purchase of the land? A. Oh, no; he wanted me to contribute, and I made answer that I would not be in with him if it was a hill of gold, if he was interested in it; that I would not be in partnership with him, as I had lost all confidence in him.

Q. Did you testify on the same trial that you never proposed an allowance of five per cent. on the loan—that you were positive you never did? A. I did not, it was Mr.

40 Maryott.

Q. You testified that you never proposed such a thing? A. Yes, sir; I did not.

Q. Did you testify that you did not draft the agreement, —the partnership agreement—between you and Maryott, and you were sure of that? A. Yes, sir; Mr. Schofield did that.

Q. You have testified you did not? A. Yes, sir.

Q. And that no other agreement was signed by you about that time but that one agreement—did you not testify that?  
A. Yes, sir; there was no other.

Q. Were you not asked this: "You say you never signed any agreement of the tenor of the one copied in the petition;" and did not you answer, "Not to my knowledge, I will not be positive," in that case? A. That is my signature there.

Q. You had not then seen it; did you not say then that you would not be positive whether you signed one of that tenor? A. I will be positive that I have not signed one of the tenor of that paper as it is; I think I have signed some paper, but not of the tenor of that. 10

Q. Did you not testify that you would not be positive whether you had signed a paper of the tenor of that paper or not? A. I might do.

Q. Well, *did* you not testify that you never wrote a paper of that kind—that you were positive of that? A. Yes, sir.

Q. Perfectly so? A. I am. 20

Q. Do you not now admit that you did draft exhibit 5?  
A. That pencil one I did draft, but that I should not consider as a binding contract.

Q. Did you not testify that you never drafted that agreement or any such agreement? A. I think I did—I don't know.

Q. Is that your handwriting (showing witness a paper)?  
A. No, sir; it is not.

Q. The signature? A. Yes, sir; that is.

Q. That is the partnership agreement dated the 27th day of January—was not that signed about the same time as the other partnership agreement? A. No, sir. 30

Q. Was it signed previously? A. No, sir; afterwards.

Q. It was? A. I think so; this is the one, is it not? I think this is the one that Mr. Schofield drew the partnership agreement from.

Q. Yes, sir; but was not that signed? A. Well, that was after the 29th.

Q. Was not that signed on the 29th? A. I don't think it was signed on the 29th; I think it was signed a day or two after. 40

Q. It is not a fact that that was drawn up as the first agreement, and signed on the 29th, and then Mr. Schofield drew a longer one, which was afterwards signed? A. This was signed after the 29th.

Q. After the 29th? A. Yes, sir.

Q. Was it not drafted as early as the 27th? A. No, sir; there was nothing of the kind drafted on the 27th.

Q. Nothing drafted on the 27th? A. No, sir.

Q. Nothing of any kind? A. No, sir; that was the first day of Maryott and myself meeting.

Q. And nothing was drafted on the 27th at all? A. Not that I am aware of.

Q. Is not that dated the 27th? (Exhibit P 5.) A. It is; but I say it was dated back.

10 Q. Do you know what "attestation clause" means? A. Yes, sir.

Q. Well, was not this attestation clause in Mr. Schofield's handwriting, dated the 29th day of January, 1870: "In witness whereof the said," &c. (Counsel read.) This is the one in your handwriting? A. Yes; but that was torn up afterwards, as of no account.

Q. Was not that written on the same day as this one, which says: "In witness whereof the said Charles F. Mary-

20 ott and William Swain set their hands and seals," &c.? A. I could not dispute at all but what it was.

Q. When you were at Schofield's office your son, Joe Swain, was not with you? A. No, sir.

Q. At any time? A. No, sir.

Q. What do you mean to say about this paper—that these two papers were never attached to each other? A. Well, part of them were; but they have been torn up, as of no consequence.

30 Q. How do you know they have been torn up, as of no consequence? A. I know it.

Q. Did you see it? A. Yes, sir.

Q. Where? A. In my house.

Q. It was torn up as of no consequence? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Who tore it? A. I really can't remember.

Q. Did you not sign a great many papers? A. No, sir; not many.

Q. Can you explain of your own knowledge how Maryott came by it? A. There was no other way for him to get it.

40 Q. I am asking about your knowledge. Did you see it delivered to him after it was torn up in your house? A. No, sir; it was not delivered to him.

Q. Did you in your examination below, state "Exhibit P 4 and 5 were papers that Maryott wrote, and it was torn up and of no account, and we never agreed to it? I can't tell in whose handwriting the attestation clause is; I think

"it is the notary's; the top piece is a paper that Maryott brought; there was another part inserted in with it in which I was to have one year, and it was to be at my option after investigating it, whether I would take half of the 270 acres and pay that amount, but it was in no wise to invalidate the mortgage given to secure the \$3,600;" did you not state that? A. Well, let me see Exhibit P 4.

Q. There it is; did you testify that below? A. Yes, sir.

Q. That there was another paper inserted in that containing such a clause? A. Yes, sir. 10

Q. Was not the deed given to you on a receipt given by you to Maryott for it at one time? A. Yes, sir.

Q. The Sarah Swain deed? A. Yes, sir.

*Re-direct by Mr. Romaine:*

Q. Had you any authority or power to invest money for your son in that way? A. Oh, no; no, sir; and I never had any authority of that kind to do a thing of that kind; I was simply empowered to invest the money that was sent to me.

Counsel offered in evidence deed from Charles F. Maryott and wife to Sarah Swain. 20

V. F. 151, &c. Exhibit 3.

Adjourned until Wednesday, June 7, 1876.

Wednesday, June 7, 1876.

Complainant's counsel called—

JOE W. SWAIN sworn, by Mr. Romaine:

Q. Where do you live? A. 55 South Second street, Williamsburgh.

Q. You live with your father? A. No, sir.

Q. Where did you live in 1870? A. 177 East Broadway. 30

Q. You lived with your father there? A. Yes.

Q. William Swain is your father? A. Yes, sir.

Q. Do you know Charles F. Maryott? A. I do.

Q. How long have you known him? A. Since the last part of January, 1870.

Q. How did you become acquainted with him? A. My father brought him to the house.

Q. Did you have any conversation with him there? A. We had; he stayed there; it was in the evening, I believe, and he stayed there to supper; he was there in the afternoon and evening, and after supper he told us a story about being imposed upon by somebody who was going to 40

sell him out of his house and home; and he showed us the advertisement, or a paper purporting to be an advertisement, whereby they were going to sell him out of his house; were going to sell his property under a foreclosure sale; and upon his representations and out of sympathy, we agreed to loan him the money to take up this mortgage if he would secure us by bond and mortgage.

Q. Do you know how much money was loaned him? *A.* \$3,600.

10 Q. Whose money was that? *A.* My brother's and my own.

Q. What is your brother's name? *A.* James J. Swain.

Q. Where was he at that time? *A.* In South America, or down that way; I could not say where, exactly.

Q. What is his business? *A.* At that time?

Q. Yes, and now? *A.* At that time he was captain of a steam boat; at this time he is down at Norfolk, Va.

Q. Living there? *A.* Yes, sir; that is his residence; yes, sir.

20 Q. What time in January was it Maryott was at your house? *A.* I am not positive; it was the last part of January, but I don't know the day.

Q. Was there any agreement made between your father and you and Maryott, in relation to the property? *A.* What do you mean by agreement? he agreed to give us a bond and mortgage to secure the money that we loaned him.

Q. And did he give you a bond and mortgage? *A.* Yes, sir.

30 Q. Will you look at that agreement, p. 5, and say in whose handwriting that is? *A.* I believe that is in my father's.

Q. Whose handwriting is on the back of it, at the foot of it; the name "Joe W. Swain?" *A.* That's my writing.

40 Q. When did you write that? *A.* In the evening; one of the evenings that Mr. Maryott was to our house; that was not the first time he came there, it was afterwards; he came there several times, and during one of those times, or every time he came, he asked me to write *this* and see how it would sound, and to write *that* and see how it would sound, and to write *that* and the *other*, and *this*, I suppose, has been written in one of those times.

Q. Do you know anything about the writing of that agreement, or why you put your name on it? *A.* I had a pen and ink and was simply scribbling, and I wrote my name down and scratched it out; I wrote on it at three or four different places here, and scratched the writing out.

Q. What did you do with the paper, after you scratched your name out? A. I simply tore them up, the most of them, and threw them on one side as of no account; worth nothing.

Q. Did you read over this paper before writing your name on it? A. No, sir.

Q. Did you know what it contained? A. I did not.

Q. Then the signing of it was not a consent on your part of the condition in it? A. No, sir.

Q. Is that your signature? A. I believe that is.

Q. Where was that signed (Exhibit P 4,) do you remember? A. I do not, sir; it must have been signed at our home, I do not remember seeing Mr. Maryott any where else, that is except once.

Q. Did you read this paper before signing it? A. I don't know where it was attached now; let me see, if you please.

Q. *This* is the beginning of it, and then it goes over *here* (pointing to said paper, and handing same to witness)?

A. I can't tell from this paper, not all these pieces.

Q. There is a copy you can read that, (handing witness the copy in the answer)? A. (Witness looked at same,) there was no agreement that I remember like that carried out, or signed for that purpose. 20

Q. Do you remember of the writing of this agreement; do you know in whose handwriting it is? A. I am almost positive it is in the handwriting of Charles F. Maryott.

Q. Do you recollect of having seen it before? A. No, sir; I do not, not that; I do not recollect it, no, sir.

Q. Do you know any thing about the property described in the mortgage in this case, the 86 acres—have you ever been on it? A. I have been at Drakesville, and I crossed the property, I suppose; I am not sure where it is, I have been by up there and passed through the property; but as for saying I know where it is, I do not. 30

Q. Do you know any thing about the three acres conveyed to your mother? A. I was on that three acres, yes, sir.

Q. What was that three acres worth?

(Objected to.)

(Over-ruled.)

Q. Will you read that (showing witness that part of the answer purporting to set out the last agreement)? A. (Witness read it,) how far do you want me to read. 40

Q. (Counsel pointed out.) A. (Witness read to the point designated, and then handed the paper back to counsel.)

Q. Have you any knowledge of any agreement like that, or of that kind having been made? A. No, sir.

Q. When did you first know of any such agreement having been in existence? A. I don't remember ever hearing of it until maybe within two or three months past, and then I heard there was an agreement made, or that there was such an agreement.

Q. Did you ever consent or agree to any of the conditions contained in that purported agreement? A. No, sir.

Q. Did you ever authorize your father to invest your money in that way? A. How do you mean?

10 Q. As contained in that paper you have just read? A. No, sir.

Q. When you gave him your share of the money, what instructions did you give him? A. Well, what do you mean—part of the \$3,600?

Q. Yes. A. He had the power to invest it as he pleased, because I thought he had a better knowledge of how to invest money than I had.

*Cross-examination by R. Wayne Parker :*

20 Q. You say you live in the country? A. In Williamsburgh; well, that is the same thing.

Q. How old are you? A. 27 years old.

Q. At that time in January, were you 21 at that time? A. I was; I was 21 years old on the 5th day of January.

Q. Did you pay this money yourself? A. I did not, sir.

Q. Did you see it paid? A. I did not.

Q. Did you have anything to do with this payment to him? A. I did not pay it to him.

Q. Did you see the money at all before it was paid to him? A. I did not.

30 Q. Did you sign any agreement about that time? A. I don't remember that I did.

Q. You put your signature on this paper produced here? A. I think I did, sir.

Q. Did I understand you to say that your signature on these two papers were put on after the money was loaned? A. On the two papers?

Q. Yes? A. I believe so.

Q. Did I understand you to say that was put on (referring to p. 5) after the money was loaned? A. Yes, sir.

40 Q. Are you positive of that? A. Am I positive of that?

Q. Yes? A. I am almost positive, sir.

Q. How do you know of the money being loaned? A. Because Mr. Maryott came to the house, and I have seen receipts for it.

Q. How did you know of it, at the time of the money being loaned? A. Why, Maryott came to the house.

Q. Do you know of it actually being passed over to him? A. Well, my father said so.

Q. You are pretty sure that after that you signed your name to a paper? A. I am pretty sure.

Q. You are pretty sure it was after this you signed your name to a paper? A. I am not positive.

Q. How about this? (p. 4.) A. I don't remember.

Q. Do you know whether it was signed afterwards or before? A. I don't remember. 10

Q. Do you know which of these papers was signed first? A. No, sir; I do not.

Q. Did I understand you to be positive you did not read that paper before you signed it? A. You heard me say so; yes, sir.

Q. Are you positive of that? A. Yes, sir; because if I had, and if it had been an agreement, I would have signed it differently from that.

Q. I did not ask you about that; you said you were positive that was not read before you signed it; are you positive of that? A. Yes, sir. 20

Q. Why? A. Because at that time we had a good many papers, and I scribbled over a good many of them.

Q. How do you know you did not read it? A. Because I did not read any of them.

Q. Are you sure of that? A. At that time, yes.

Q. How is it you are positive at this length of time that you did not read any of the agreements you had in your hands there? A. I wont swear that positively. 30

Q. You wont swear positively that you have not read any? A. No.

Q. You say you have not read this one? A. I don't think so.

Q. And you have not now—you don't know what is in it? A. No, sir.

Q. Well, you said a moment ago you were positive you had never read it? A. I say not with the intention of signing it, except just for scribbling on it.

Q. I understood you to say it was not signed? A. And I say so now; and I say I never read it to sign it with any intention of doing so. I have glanced over it now, and know a few words in it; but I did not know what the contents were when you gave it to me. 40

Q. You say this is in your father's handwriting? A. Let me see it, please.

- Q. You have just said so. A. I said I thought so; and I do think so.
- Q. Did you see him write it? A. I do not know.
- Q. Did he give it to you to read? A. I don't know.
- Q. You spoke just now of Maryott having given it to you. Do you mean to say now that Maryott gave it to you, or, your father did? A. Well, we were all round the table—a large table, like that (pointing); Mr. Maryott sat on one side, and father sat at his accustomed place, and I sat at another.
- 10 Q. Do you know your name is mentioned in some agreement drawn up between the parties? A. I knew there was an agreement for the money, and my name was in that.
- Q. I find here the following in your father's handwriting: "Charles F. Maryott, of Roxbury," &c. (Counsel read.) Do you still say that agreement was drawn up after the mortgage was given, and after the money was loaned? A. I say still that there was an absolute agreement made in regard to that.
- 20 Q. After? A. After.
- Q. After? A. After.
- Q. Although this says to be secured by deed of trust, &c.? A. The mortgage was made out before then; it was done before that.
- Q. Who kept that mortgage? A. I did not.
- Q. Have you seen the mortgage since it was made? A. I am not positive; I think I have; yes, I think I have; I have seen it lately.
- Q. How much money did you ever pay your father? A. I do not know.
- 30 Q. Did you hear from your father of this trial going on down below? A. What do you mean by down below?
- Q. About the perjury case brought by your father? A. Yes, sir; I was there.
- Q. You were not called as a witness, on the part of the prosecution? A. I was not called as a witness.
- Q. And you were not called in the other part of the case? A. No, sir; I have never been called as a witness until this time.
- 40 Q. You saw that trial? A. Yes.
- Q. Were you present at any other examination before that time; any other trial? A. I was not.
- Q. Did you ever have anything to do with the matter before? A. What do you mean, the suit?
- Q. Yes? I never—(interrupted.)
- Q. Did you ever go to see Mr. Romaine? A. Yes, sir.
- Q. Before that time? A. Before what?

Q. Before the perjury trial? *A.* Yes, sir; before the perjury trial.

Q. How long before? *A.* I don't know.

Q. Very lately before, or close before? *A.* No; I went there very close before; within a year.

Q. All your relations, with the whole concern, have been within a year, have not they? *A.* No, sir; I was interested from the first.

Q. But all you have had actively to do with it, with counsel or anybody, has been within a year? *A.* I don't believe I saw Mr. Romaine until within a year. 10

Q. You say your brother James J. is not here now? *A.* No; he is in Norfolk, Va., or about there.

Q. He has been away for some time? *A.* Oh, he has been away for four years.

Q. And before that? *A.* I can't remember.

Q. He has not been home much? *A.* No, sir; why, he has been married four years before that; no, sir; he has not been home much.

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Complainant's counsel re-called—

20

WILLIAM SWAINE, sworn, by Mr. Romaine:

Q. You are acquainted with this mortgaged property?

*A.* Yes, sir.

Q. You have been on it? *A.* Yes, sir.

Q. Are you acquainted with the value of it? *A.* Well, I should consider myself very well posted as to the value of it.

Q. What do you consider the value of the three acres described in the deed to your wife? *A.* I am quite willing to let it go for the amount it cost us. 30

Q. How much of your own money did you expend on that place? *A.* I spent over \$2,000.

Q. Including the cost of the improvement?  
(Objected to.)

*By Witness:* Well, as regards to the value of the land without any improvement on it, I should consider \$50 an acre a very large price—a big price.

*Cross-examined by Mr. Parker:*

Q. What do you know about it? *A.* I have a great deal to do with real estate. 40

Q. You know nothing about this property, except from having been up there? A. I have been up there considerably.

Q. You never bought any property in that neighborhood. A. I know what property was sold for in that neighborhood.

Q. Of your own knowledge? A. No, sir; only by word.

Q. Only what you heard? A. Yes, sir.

Q. While you were up there you were engaged in mining, were you not? A. Yes, sir.

10 Q. What have been your feelings since this thing towards Mr. Maryott? A. My feelings have been at the first commencement as friendly as much as it is possible for men to be one towards another.

Q. I did not ask you that. A. And now my feelings are such that I consider him with the same feelings I would have for a rattlesnake, and that's all; he is not worthy of any more.

Q. Did you make a complaint in order to have him indicted for perjury? A. I did.

20 Q. And you were present and instigated an arrest while on an examination in this matter, did you not? A. Yes, sir.

Q. You attended with a constable? A. Yes, sir; and I am only sorry I cannot do it now, sir.

*Re-direct. By Mr. Romaine :*

Q. What did you attend on that day for, Mr. Swain? A. To give evidence.

Q. This case was then pending? A. Yes, sir.

Q. On the rule to show cause? A. Yes, sir.

30 Q. You did not attend for the purpose of having Mr. Maryott arrested, did you?

[Objected to, as leading.]

Q. On the seventh day of last July?

[Objected to.]

Case closed.

MARYOTT, *Appellant.* }  
AND }  
SWAINE, *Respondent.* }

EXHIBITS FOR COMPLAINANT, SWAINE.

C 1. Is the Bond—set forth.

C 2. Is the Mortgage.

C 3. Release from Jas. J. and Joe W. Swaine to Sarah Swaine, set forth in bill.

C 4. Advertisement of sale, under the old foreclosure.

C 5. Receipt, as follows :

Received, Jersey City, N. J., of James J. Swaine and Joe W. Swaine, by the hands of William Swaine, the sum of Thirty-six Hundred Dollars, being the consideration money of a bond given by me to them, dated this day, payable two years after date, secured by a mortgage on eighty-six acres of land in Roxbury, Morris county, N. J., which money is not to be used until the encumbrance and decree for the sale of said premises now advertised for sale by the Sheriff of the county of Morris is removed, and I agree to place the said mortgage, duly acknowledged, on record immediately.

Dated January 29th, 1870.

\$3,600.      Witness my hand and seal.

CHAS. F. MARYOTT.

*Witness :*

[SEAL]

C. E. SCOFIELD.

New Jersey, }  
 Hudson County, } ss.

On this 29th day of January, A. D. 1870, before me, Charles E. Scofield, Master in Chancery of New Jersey, personally appeared Charles F. Maryott, known to me to be the person who executed the within deed, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses therein expressed.

CHARLES E. SCOFIELD,  
*Master in Chancery.*

C 6. Sheriff's bill, the same as P 9 hereafter.

C 7. Agreement to purchase three acres, set forth in bill, same as P 6.

C 8. Deed, Maryott and wife to Sarah Swaine, for the three acres.

This indenture, made on the ninth day of April, in the year of our Lord one thousand eight hundred and seventy, between Charles F. Maryott and Mary E. his wife, of the township of Roxbury, in the county of Morris, and State of New Jersey, of the first part, and Sarah Swaine, of the city of New York, in the county of New York, and State of New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of one hundred and fifty dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said

party of the second part, and to her heirs and assigns forever, all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Roxbury, in the county of Morris, and State of New Jersey, as follows :

Beginning at three chestnut stumps in the north line of a tract of five and a half acres conveyed to Charles F. Maryott by Ralph H. Carey and wife August 3d, 1867, being a part of the five and a half acre tract mentioned in said deed, recorded August 8th, 1867, in Morris county, in Book C 7 of Deeds for said county, on pages 168, &c. Beginning at three chestnut stumps, as above described, running (1) south and parallel with (three) rocks twenty-four rods to a stake and stone ; (2) thence west and parallel with north line twenty rods to a stake and stones ; (3) thence north and parallel with first line twenty-four rods to stake and stone in north line ; thence (4) east along north line twenty rods to place of beginning, containing three acres, or four hundred and eighty square rods, strict measure.

Sarah Swaine is to pay James J. and Joe W. Swaine whatever sum of money they require to discharge the contract and mortgage on the above three acres between Charles F. Maryott and James J. and Joe W. Swaine, date 29th day of January, (A. D. 1870.) This deed of conveyance is not to invalidate the contract or mortgage of the above date, viz: 29th Jan., 1870, between C. F. Maryott and James J. and Joe W. Swaine, in no way whatever, so that the parties can carry out their contract the same as though this deed did not exist. In other words, the above described three acres, or four hundred and eighty rods, is to be left out of the aforesaid contract and mortgage altogether, without prejudice to all parties concerned.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest,

property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: To have and to hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns forever: and the said Charles F. Maryott doth for himself, his heirs, executors and administrators, covenant and grant to and with the said party of the second part, her heirs and assigns, that he, the said Charles F. Maryott, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any incumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever (except as above described): or excepted. And also, that the said party of the first part now has good right, full power, and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that the said Charles F. Maryott will warrant, secure, and forever defend the said land and premises unto the said Sarah Swaine, her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of incumbrances whatsoever.

In witness whereof, the said party of the first part have

hereunto set their hands and seals the day and year first above written.

CHARLES F. MARYOTT.  
MARY E. MARYOTT.

Signed, sealed and delivered }  
in the presence of }

State of New Jersey, }  
County of Morris. } ss.

Be it remembered, that on this ninth day of April, in the year of Our Lord One Thousand Eight Hundred and Seventy, before me, William McNeely, Commissioner of Deeds for Morris County, personally appeared Charles F. Maryott and Mary E., his wife, who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed :

And the said Mary E. Maryott, being by me privately examined, separate and apart from her husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

WILLIAM McNEELY,  
*Commissioner of Deeds.*

[ENDORSE.]

Warranty Deed. Charles F. Maryott and Wife, to Sarah Swaine. Dated April 9, 1870. Received in the Clerk's Office of the County of Morris, on the 11th day of April, A. D. 1870, and recorded in Book V. 7 of Deeds for said County, on pages 151, &c.

RICHARD SPEER, *Clerk.*

C 9. Letter, as follows :

Office of Charles E. Scofield, Lawyer,  
38 Montgomery St., Jersey City, N. J., Jan. 31, 1870.  
B. C. THAYER, Esq.,

Dear Sir: Maryott raised \$3,600 by bond and mortgage, and I went with him to Morristown on Saturday evening, to try to settle up. We failed to see you before we started, as you had just gone to New Haven.

It requires your order on the Sheriff, James W. Briant, Esq., for the percentage in his hands, before it can be settled. In the meantime, the sale has been *adjourned*, by consent, till next Monday, February 7, 1870.

Maryott was extremely lucky in obtaining the \$3,600. The money was obtained without any bonus, but with the special condition that the Decree and Execution should be entirely cancelled. I hope you will give me an order on the Sheriff at once. If not, I see no way to prevent the sale next Monday.

Yours truly,  
C. E. SCOFIELD.

C 10. Transcript of Justice Bird.

New Jersey, }  
Morris County. }

COURT FOR THE TRIAL OF SMALL CAUSES,

ISAAC BIRD, *Justice*.

WILLIAM SWAIN,

v,

CHARLES F. MARYOTT. }

*In debt, demand \$100.00.*

Summons issued June 29, 1870, returnable the 7th day of July next, at 2 P. M., at my office in Morristown. Summons returned, Debt, \$91 84. served June 30, 1870, on the defendant, by Costs, 3.88.

reading it to him and giving him a copy by  
John M. Moore, ——— \$100.

July 7th, 1870, parties appeared. Plaintiff filed his state of demand, and defendant his offset, and suit was adjourned until the 21st day of July, 1870.

July 21st, 1870, suit was adjourned upon affidavit by the defendant, until the first day of September next. Defendant paid fees of adjournment.

September 1, 1870. Parties appeared and proceeded to trial. Plaintiff was sworn, and also offered Joseph J. Ballentine as a witness, who was sworn for plaintiff, and the note set forth offered in evidence.

*Charles F. Maryott* was sworn for defendant, and three papers in evidence, marked 1, 2 and 3, by me. After hearing the allegations of parties and the evidence, I adjourned suit for two weeks.

September 15th, 1870. I gave judgment for plaintiff for ninety-one dollars and eighty-four cents, debt, with three dollars and eighty-eight cents, costs.

September 26, 1870. Issued Exhibit (Exhibit not given out).

October 1st, 1870. Defendant tendered an Appeal Bond with good and sufficient security, and demanded an appeal. I accepted the Bond and granted the appeal.

October 6th, 1870. Made transcript of proceedings and handed the same with the papers to Court.

I do hereby certify the foregoing to be a true transcript from my docket of the proceedings, had before me in the foregoing action.

SEAL. Given under my hand and seal, this ninth day  
of August, eighteen hundred and seventy-five.

ISAAC BIRD,  
*Justice of the Peace.*

## DEFENDANT'S EXHIBITS.

P 1. Letter from Wm. Swaine to C. F. Maryott.

[Envelope, post marked Richmond, Va.]

Mr. Charles F. Maryott,  
Drakesvill Station,  
On the Morris and Essex Railroad,  
New Jersey.

RICHMOND, VA., February 7th, '70.

Mr. Charles F. Maryott :

Dear Sir:—I begin to think it long since I saw you, and imagine you will think the same, but I have been traveling from place to place ever since I saw you. On my arrival at the steamer's dock at New York, I saw some men, both colored and white, that wanted employment. I gave them your address so that they could find employment if you could make a bargain. They promised to see you. By their conversation I think they would work for \$1.50. On my arrival at Norfolk, I found I could not finish my business without going to Weldon, N. C., so I left for that place on Tuesday morning. On my arrival, the person I wanted was from home; was expected every train; arrived Saturday morning. Finished my business very well and got to Norfolk Saturday evening. There is other business of great importance I want to finish; could not do that without coming here, as it is to find a vessel I want to sell; she will arrive to-night, I am informed. I do not know how long it will take me to finish up that part of the business, so I hope you will do the best you can, and be assured I will come as soon as possible. When at Weldon, I promised six men you would give them employment at \$1.00 per day and find them a house to live in, they find themselves. They are very likely men (colored) to do a great deal of work, but I doubt if they will come. I find

men more willing to go North from here. I have promised to six men steady employment at \$1.00 per day, house and fire-wood found. I think they will come to you perhaps by the steamer to-morrow, but I am afraid I cannot come with them, but I expect you can set them to work to good advantage, as it would be well to make a good beginning at once.

Thinking I have told you all of importance to you, and in hopes you have had no trouble in carrying out the agreement as expected,

I remain, yours, &c., with respects,

WILLIAM SWAINE.

P 2.

Article of Agreement made the twenty-ninth day of January, one thousand eight hundred and seventy.

Between Charles F. Maryott of Roxbury, in the County of Morris and State of New Jersey, of the one part, and William Swaine of 177 East Broadway, in the City of New York, of the other part, as follows :

The said parties above named have agreed to become co-partners in business in mining, and by these presents do agree to be co-partners together, under and by the name or firm of Maryott & Swaine, in the mining for iron and other ores on the land of the said Maryott, in the Township of Roxbury, in the County of Morris and State of New Jersey, and in the selling and disposing of the same, their co-partnership to commence on the first day of February, 1870, and to continue as long as both parties shall agree, and to that end and purpose the said Maryott agrees to allow said Maryott & Swaine the use of all or any part of his said land, free of rent or royalty therefor, to be used and worked in common, between them in the said business of mining, doing no unnecessary damage thereto, to their mutual benefit and advantage.

And it is agreed by and between the parties to these presents, that at all times during the continuance of their co-partnership, they and each of them will give their attendance and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit and advantage, and truly employ and work with their joint stock, and the increase thereof, in the business aforesaid.

And also, that they shall and will at all times during the said co-partnership, bear, pay, and discharge equally between them, all expenses that may be required for the support and management of the said business; and that all gains, profit and increase that shall come, grow or arise from or by means of their said business, shall be divided between them equally, share and share alike and all loss that shall happen to their said joint business by working, bad debts, or otherwise, shall be borne and paid between them equally, share and share alike.

And it is agreed by and between the said parties, that there shall be had and kept at all times during the continuance of their co-partnership, perfect, just and true books of account, wherein each of the said co-partners shall enter and set down as well all money by them or either of them received, paid, laid out and expended in and about the said business, and all other matters and things whatsoever, to the said business and the management thereof in anywise belonging, which said books shall be used in common between the said co-partners, so that either of them may have access thereto, without any interruption or hindrance of the other.

And also, the said co-partners once in every month or oftener if necessary, shall make, yield and render each to the other, a true, just and perfect inventory and account of all payments, receipts, disbursements and all other things by them made, received, disbursed, acted, done or suffered in this said co-partnership and business; and the same

account so made, shall and will clear, adjust, pay, and deliver each to the other at the time, their just share of the advances that may have been made by either.

And the said parties hereby mutually covenant and agree, to and with each other, that during the continuance of the said co-partnership, neither of them shall nor will endorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said co-partners.

And at the end or other sooner determination of their co-partnership, the said co-partners each to the other shall and will make a true, just and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks as well as the gains and increase thereof which shall appear to be remaining, either in material, fixtures, debts or otherwise, shall be divided between them.

And the parties hereby further mutually covenant and agree to and with each other that neither of them will enter into any contract or incur any debt or obligation against the said firm, exceeding the amount of three hundred dollars, without the several signatures in writing to the same of each of the said parties.

In witness whereof, we, the parties hereto have hereunto set our hands and seals the day and year first above written.

CHAS. F. MARYOTT,  
WILLIAM SWAINE.

Signed, sealed and delivered in the presence of

B. C. THAYER.

ROXBURY, MORRIS Co., N. J., May 20, 1870.

We, the undersigned firm or co-partners of Maryott & Swaine, being desirous to raise money to continue to carry on the business of mining for iron ore on the lands now on record in Morristown, in the name of Charles F. Maryott,

do offer the following inducements and securities for all moneys advanced : the legal rate of interest and ten per cent on all the accounts that may arise from such advances in any way. The party so advancing shall have full charge of all stocks, tools, etc., and keep all accounts both of outlay and incomes that may arise from the business ; and render a full and clear account to each of the firm every month, marked monthly statement ; and pay to each party their full share of all profits that may arise from the business, after deducting all legal or just charges and payments that have accrued in the business in any way, and the party so advancing shall have the collecting and paying of all bills, and all his traveling expenses paid for doing the business for the firm. There shall be a full and correct account of all tools and articles belonging to the firm at present rendered to the party advancing the money.

CHAS. F. MARYOTT,  
WILLIAM SWAINE.

DRAKESTOWN, March 26, 1870.

Johnathan McPeak agrees to sell and convey three different tracts or parcels of land, situate in Roxbury, Morris County, N. J., containing seventy-two (72) acres of land, viz: one piece conveyed by Joshua G. Corwin to Jonathan McPeak, recorded February 22d. 1862, in Book B. 6 of Deeds, page 362, etc., containing six (6) acres more or less. And one deed containing fifty-five and nine tenths of acres, more or less recorded, February 19th, 1863, in Morris Co., Record of Deeds in Book C 6 of Deeds, page 56, etc., and one sold 18 Oct., 1867, in Morristown, by the Sheriff, containing ten acres, more or less, containing 71 9-10 acres. For the above land and one cow and one sheep, William Swaine is to pay twenty-five hundred dollars cash, one thousand down on receiving the deed, the balance one

year from date at six (6) per cent. interest, the deed made to Sarah Swaine. Warrantee clear of all encumbrances.

JONATHAN McPEAK,  
WILLIAM SWAINE.

In witness,

CHARLES F. MARYOTT,

P 3.

Agreement made this 27th day of January, A. D. 1870, between Charles F. Maryott, of Roxbury township, Morris county, and State of New Jersey, of the first part, and William Swaine, of city, county and State of New York, of the second part, witnesseth—

That we severally and jointly agree to go into the mining business together, on the lands of Charles F. Maryott, in Roxbury, Morris county, New Jersey; each of the above parties to furnish one-half of all necessary expenses, and to receive one-half of all the net profits equally of the same. It is also agreed by and between the parties to this agreement that neither of the parties shall draw from bank or otherwise not to exceed three hundred dollars, without the consent of the other party to these presents; nor shall make or cause to be made any note or obligation in writing, or endorse any note or instrument in writing, to involve or make liable the above parties, without both of the above parties' signature to the aforesaid instrument, written by each one himself. The party so doing shall forfeit and pay to the party aggrieved twice the whole amount of such obligation or instrument so signed by said party to these presents.

In witness whereof, the said Charles F. Maryott and Wil-

liam Swaine have hereunto set their respective hands and seals this 29th day of January, A. D. 1870.

CHARLES F. MARYOTT.

WILLIAM SWAYNE.

Signed, sealed and delivered )  
in the presence of )

CHARLES E. SCOFIELD,

38 Montgomery street, Jersey City, N. J.

P 4. Is already printed in answer.

P 5. Draft in pencil.

This agreement, made this day, Jan'y 27th, '70, between Charles F. Maryott, of Rocksberry county, N. Y., and James G. Swaine and Joe W. Swaine, of New York city, by William Swaine, agent for James G. Swaine, that is to say, the party of the first part agrees to sell to the party of the second part one-half of the undivided lands now owned by the party of the first part, viz: described by one deed of Ralph H. Cary and wife to Charles F. Maryott, recorded August 7th, 1867, in the Morris County Record of Deeds, and one deed of John Wells to Charles F. Maryott, recorded September 25th, 1866, in Morris County Record of Deeds, and one described by one deed of Ralph H. Cary and wife to Charles F. Maryott, recorded October 11th, 1866, in Morris county, and one described by deed of Albert R. Riggs and wife to Charles F. Maryott, making four deeds, describing the said lands of Charles F. Maryott—total No. of acres, about 271, more or less—which the said party of the first part agrees to sell one-half undivided, with one-half of all lands and premises, on the following conditions, that is to say, thirty-six (3600) hundred dollars to clear up a judgment now in the courts, and to have the privilege to pay the

balance of fourteen thousand three hundred dollars (14,300) any time within one year from date, at the \_\_\_\_\_ of the party of the second part, and in case the party of the second part should pay the above sums, then the party of the first part is to give to the party of the second part a good and clear title of one-half of all the lands, &c., &c., as described above. But should the party of the second part refuse to pay the last said sum of fourteen thousand three hundred dollars (14,300) within one year from date, at his own option, then the party of the first part agrees to pay to the party of the second part the first sum paid by the party of the second part, viz: thirty-six hundred (3600) with interest at the rate of 7 per ct. from \_\_\_\_\_ for the term of two years, and a further sum of five per ct. for his trouble and expense, the 3600 to be secured by deed of trust on the lands of the party of the first part.

P 6. Agreement to sell three acres.

Roxbury, Morris Co., New Jersey, March 31st, 1870.  
C. F. Maryott agrees to sell and convey by Warrantee Deed, three acres of the Carey property, to Sarah Swaine, for fifty dollars per acre, beginning at a corner in C. F. Maryott's north line, in a tract of five and one half acres. Conveyed to C. F. Maryott by R. H. Carey and wife, August 3d, '67, being a part of the five acre tract mentioned in said Deed:

Beginning at three chestnut stumps in the north line of said tract, and running south and parallel with three rocks, 24 rods thence west and parallel with north line, 20 rods thence north and parallel with first line to north line, 24 rods thence east along said north line, 20 rods to beginning: containing three acres or 480 rods.

Sarah Swaine is to pay fifty dollars on signing of said contract; \$100 on delivery of said Deed; Sarah Swaine is also to discharge the mortgage on said three acres to James

J. and Joe W. Swaine, or take it subject thereto, or to pay whatever they require to release the same from their mortgage on said three acres. This agreement is not to invalidate said mortgage of James J. and Joe W. Swaine.

C. F. MARYOTT,  
Sarah Swaine, by  
WILLIAM SWAINE, *Atty.*

P 7 and 8. McCarter & Keen's letter, not offered in main case.

P 9. Sheriff's Bill; duplicate of C 6.

IN CHANCERY OF NEW JERSEY.

LEMUEL BROWN, Complt.,	}	<i>Fi. Fa. &amp;c.</i>
<i>and</i>		
CHARLES F. MARYOTT, Deft.		

Returnable October Term, A. D. 1868.

VANATTA & DEMOTT,

*Sols.*

Decree for complainant,	\$3,186 86
Interest from June 22d, '68, to January 29, 1870,	357 55
Complainant's tax costs,	92 95
Interest from June 22d, '68, to January 29, 1870,	10 45
	<hr/>
	\$3,647 81
Sheriff's extra fees,	139 43
	<hr/>
	\$3,787 24
Making Deed and stamps,	8 00
	<hr/>
	\$3,795 24
Extra fees Re-Advertising, &c.,	84 38
	<hr/>
	\$3,879 62

*Cr.*

January 29, 1870. By cash,	3,530 31
Balance,	\$349 31
Int. from Jan. 29, '70, to Feb. 14, 1870, (16 days)	1 09
	\$350 40

Received payment, by cash,

J. W. BRIANT,

February 14, 1870.

*Sheriff.*

P 10. Scofield's bill.

CHARLES F. MARYOTT,

To C. E. SCOFIELD, Dr.,

1870

January 31,	To drawing Bond and Mortgage,	\$5 00
"	To attending to executing agreement with Messrs. Swaines,	2 00
"	To paid stamps,	4 38
"	To expenses to Morristown,	2 40
"	To going to Morristown,	5 00
		\$18 78

Received payment of the above bill,

C. E. SCOFIELD.

P 12. Notice of dissolution.

To WILLIAM SWAINE,

Dear Sir: Please to take notice that I have elected to terminate the co-partnership existing between us, under the Articles of Agreement executed by us, and bearing date January 29, 1870, and I do hereby terminate the same from and after this date.

Witness my hand and seal the 19th of May, 1870,

CHAS. F. MARYOTT.

## P 13. Swaine's Bill.

NEW YORK, May 16, 1870.

C. F. MARYOTT,

To WILLIAM SWAINE, Dr.

1870.

Feb. 17	To Articles from G. Oakley,	- -	\$15 00
" "	" " " Keyser, Comstock & Co.,	45 47	
" 24	" Transportation by D. L. & W. R. R. Co.	70	
Mar. 2	" Mdse. from W. H. Jenkins,	- -	14 00
" 4	" Transportation by D. L. & W. R. R. Co.	45	
" 4	" Cash borrowed from K. C. & Co.,	50 00	
" 4	" " " " W. S.	- -	5 00
Apr. 6	" Mdse. from Hopkins & Nelson,	- -	28 00
	Bill of Tea, \$1.90 Coffee and Peas \$3.48	5 38	
			<u>\$164 00</u>
	Balance due to W. Swaine,	- - -	\$162 85

Cr.

By C. F. Maryott's Bills,

Bill of hauling and timber			
and nails for house,	-	20 87	
W. Swaine's board bill to May 14, 1870	22 50		
C. M. Clark, slater.	- - - -	8 00	
			<u>51 37</u>
Balance due to William Swaine,	- - -		\$111 48

## P 14. Statement.

ROXBURY, March 4th, '70.

Maryott &amp; Swaine, bo't of Chas. F. Maryott.

'70. Mar. 4th.	Two horses and harness,	Ret'd.	\$300 00
" "	12 tons hay, at \$20, -	Ret'd.	240 00
" "	1 cutting box, at \$8, -	Ret'd.	8 00
" "	1 feed box, - - -	Ret'd.	5 00
" "	One large truck wagon,	Ret'd.	80 00
" "	" small " " -	Ret'd.	60 00
" "	" buggy wagon & harness,	Ret'd.	50 00
" "	" pr. buck sleds. -	Ret'd.	55 00
" "	" seven picks, - - -	- - -	10 50
" "	Three shovels, - - -	- - -	4 50
" "	One windlass and bucket,	- - -	8 00
" "	" bellows and anvil,	- - -	30 00
" "	" sledge hammer, - - -	- - -	3 00
" "	" blacksmith hammer,	- - -	1 00
" "	Two pr. " tongs, - - -	- - -	1 60
" "	Four drills, - - -	- - -	8 00
" "	450 ft. fuse and 12 lbs. powder,		6 00
" "	1 iron bar and 4 large chains,	Ret'd \$12,	13 50
" "	4 trace chains and 1 set double whiffle-		
	trees, - - -	Ret'd.	5 50
" "	1 neck yoke and 2 bail chains,	Ret'd.	3 00
" "	2 axes and handles and 1 cross-cut		
	saw, - - -	Ret'd \$4.	10 00
" "	1 lot of old iron and blacksmith		
	shop, - - -	Ret'd.	33 00
" "	One frame shanty and one frame for		
	shanty, lumber and firewood for		
	shanty, - - -	Red'd.	300 00
" "	2 wheelbarrows, - - -	- - -	5 00
			<hr/>
			\$1,240 60
	Deductions made, - - -	- - -	1,155 50

Credited March 5th, 1870.

Rec'd payment.

P 15.

Articles returned by Maryott &amp; Swaine to C. F. Maryott.

C. F. MARYOTT, *Dr.*

Two horses and gearing,	-	-	\$300 00
12 tons of hay, at \$20.00 per ton,	-	-	240 00
1 cutting box,	-	-	8 00
1 feed box,	-	-	5 00
1 large truck wagon,	-	-	80 00
1 small truck wagon,	-	-	60 00
1 buggy and harness,	-	-	50 00
1 pair bob sleighs,	-	-	55 00
4 hauling chains, 3.00 each,	-	-	12 00
4 trace chains, 50cts. each,	-	-	2 00
1 set double whiffletrees,	-	-	3 50
1 neck yoke and balechain,	-	-	3 00
2 wood axes, 2.00 each,	-	-	4 00
1 lot of old iron,	-	-	3 00
1 blacksmith shop,	-	-	30 00
1 fame shanty house and old frame and C and C,			300 00
Amount deducted from bill of C. F.			
Maryott, to Maryott & Swaine, and			
charged to C. F. Maryott,	-		\$1,155 50

P 16. Agreement draft as follows :

Agt. About 1 St. Apr., 1870, B. C. F. M. 1st. P. & J. J. W. & S. Swaine, parties of 2nd P. wit-th that the P. of 2 P. A. to Pay the C——t of Jany. 29th, 70, Bet. C. F. M. & J. J. & Joe W. Swaine to C. F. M. by the Ret. of said 3,600 Dollar M. canceled of Record as set F. in said Agmt, Allso to return to C. F. M., A Note made the 14th Feb. 70, for \$400 184 D. or 6 mos, By C. F. M., Paid & Satisfied dated 12th Feb., 70, & endorsed by Wm. Swaine, Dis. \$14.11. said to been Disct. B. 11th W. B. in the C. of N. Y., viz \$285.89. Allso to Pay to C. F. Mryott, \$13,914.11 Cash, with Int. as Per Said Agmt. as Aforesaid, Set forth to be Paid with-in twenty days after the Arrival of Ja. J. Swaine from S. A. Allso to give to C. F. M. a written Notice within ten Days After Said Arrival of J. J. S. from S. A. as aforsd. If He, Wm. Swaine, Atty. for aforesaid Swains intends to Carry out said agreement if no notice is Given in writing, within th 10 D. after Such Ar. by Said J. J. S. from S. A., then it is agreed By & bet. the Parties as afsd, then the A. Agmt. Shall be Carried into effect with-in the 20 Days, as As. or forfeit said Mort. Note Lands, as by S. Agmt., 29 Jan., 1870, and everything Pert. thereto.

About 12th Day of Feb., 1870, J. made a note for \$400, payable to 6 mos, payable to My Own Order, and Endorsed by me for \$400, Six Months, & Gave to Wm. Swaine, to My Partner in Minening Buissness to Negotiate for us, Wm. Swa. Promised to Secure if He Could.

P 16A. Deed, blank date 1870. Charles F. Maryott and Mary E., his wife, grantors. Grantee blank. As also consideration.

Tract 1, contains 90 acres.  
 " 2, "  $2\frac{82}{100}$  acres, bot. of C. K. Garrison.  
 " 3, "  $36\frac{38}{100}$  " " R. H. Carey.  
 " 4, "  $14\frac{1}{2}$  acres.  
 " 5, "  $24\frac{10}{100}$  "  
 " 6, "  $5\frac{1}{2}$  "  
 " 7, " 11 "  
 " 8, "  $36\frac{7}{10}$  acres, bot. of R. H. Carey.

With general covenant of title, "except so far as is understood between the parties to these presents before the execution thereof."

And warranty.

Signed, but not sealed or acknowledged.

P 17. A.

C. F. MARYOTT, Esq.:

*Dr. Sir:* I herewith send you Deeds. The one for you and your wife to sign is "endorsed." You will have no difficulty in filling up the blank places according to circumstances. Be particular that the Deed from yourself and wife is first recorded.

Yours, &c.,

BETTS.

P 18.

(Envelope postmarked New York.)

Eleventh Ward Bank, corner of Avenue D and 10th street,  
 New York.

Charles F. Maryott, Esq.,

Drakesville Station,

Morris Co.,

New Jersey.

## Eleventh Ward Bank.

Charles F. Maryott,  
Drakesville Station, N. J.:

Your note for 400 dollars is payable here August 15th,  
1870.

Deposited by 1870,  
in the Eleventh Ward Bank.

Bills,

Specie,

Checks,—Discount on note of Chas. F. Maryott, \$400, dated  
Feb'y 12, '70—6 mos.

184 days, at 7 per cent., - - - - - \$14 11

1 40

---

12 71

P 19 to 24. Are title deeds, &c.

P 25.

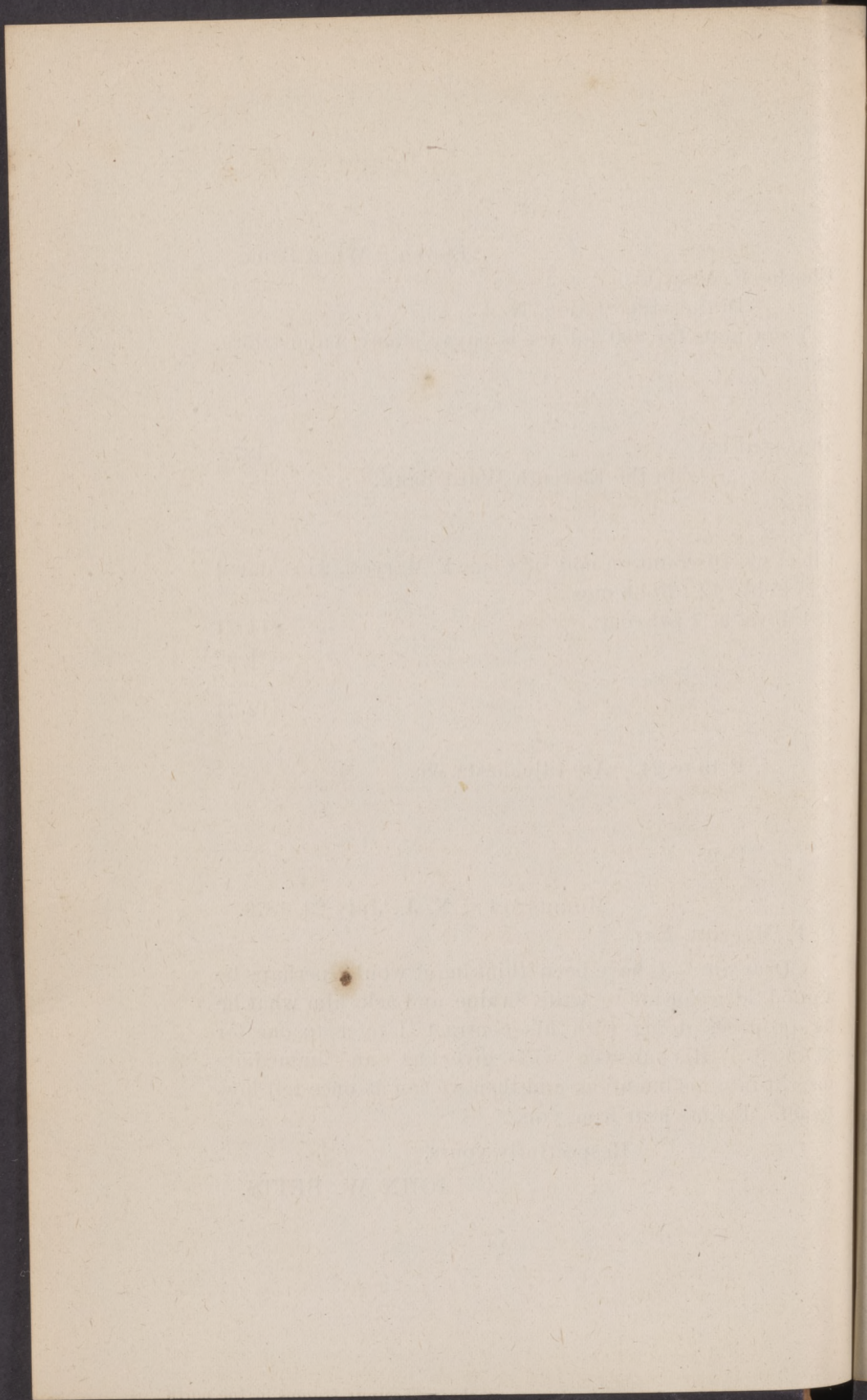
MORRISTOWN, N. J., July 23, 1870.

C. F. Maryott, Esq.

Dear Sir :—I have been thinking it would perhaps be a good idea for me to write Swaine and ask him what he proposes doing with his contract (I refer to one for \$17,900). His answer will give us an immediate insight into his intention, and then we can at once tell how to act. Let me hear from you.

Respectfully yours,

JOHN W. BETTS.



## In Chancery of N. J.

Between

JAMES J. SWAINE AND JOE W.

SWAINE, *Compl'ts.*

AND

CHARLES F. MARYOTT, AND MARY

E., his Wife, JEREMIAH EIGHMIE,

et als, *Def'ts.*

} *On Bill to Fore-*  
*close.*

} *Final Decree.*

This cause having been heard in the presence of the Counsel for the Complainant, and of the Defendants, Charles F. Maryott and Mary E., his wife, the Complainants bill having been theretofore taken as confessed as against the other Defendants; and the Court having ordered, adjudged and decreed that the Complainants are entitled to the relief sought against the said Defendants, Charles F. Maryott and wife, and are entitled to have the amount due them on their said bond and mortgage, described in their Bill of Complaint herein; and the Court having ordered that the whole of said mortgaged premises except that part thereof sold and conveyed by the Defendants Charles F. Maryott and wife to the Defendant Sarah Swaine, wife of William Swaine, by deed executed in due form of law, bearing date on the ninth day of April, eighteen hundred and seventy, and described in the interlocutory decree herein, be first sold for the payment and satisfaction of the principal, interest and costs due to the said Complainants, and if the sale of such part of said mortgaged premises does not produce a sum sufficient to pay and satisfy the sums due for principal, interest and costs to the said Complainants, that then, and in that case, that part of said mortgaged premises so conveyed to the said Sarah Swaine, be sold secondly for the payment and satisfaction of the balance of the sums due to the said Complainant for principal, interest and costs.

And the said Court having further ordered that it be referred to John A. Blair, one of the Masters of this Court, to ascertain and report the amount due to the said Complainants for principal and interest upon their said mortgage, and the said Master having made his report bearing date on the ninth day of January, eighteen hundred and seventy-seven, and the same having been filed, and it appearing from a reading of said report that there was due to the Complainants on the day of the making of the said report for principal and interest on their said mortgage, the sum of five thousand three hundred and fifty dollars, (\$5,350), and no cause being shown or appearing to the contrary,

It is thereupon on this tenth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said report and all the matters and things therein contained do stand ratified and confirmed, and that the said mortgaged premises excepting therefrom all that part thereof described as follows: "All that tract or parcel of land situate, lying and being in the township of Roxbury, in the County of Morris, and State of New Jersey, containing three chestnut stumps in the north



Maryott by Ralph H. Cary and wife, August 3, 1867, being a part of the five and one half acres tract mentioned in said deed recorded August 8th, 1867, in Morris County, in Book C 7 of Deeds, for said County, on pages 168, &c. Beginning at three chestnut stumps as above described, running (1) south and parallel with three rods twenty-four rods to a stake and stones; (2) thence west and parallel with north line twenty rods to a stake and stones; (3) thence north and parallel with first line twenty-four rods to a stake and stones in the north line; thence (4) east along north line twenty rods to the place of beginning, containing three acres or four hundred and eighty square rods strict measure, being the premises conveyed to the Defendant, Sarah Swaine, be first sold to raise and satisfy the amount of principal, interest and costs due to the said complainants, that is to say the sum of five thousand three hundred and fifty dollars, (\$5,350), together with lawful interest thereon, from the ninth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, being the date of the Master's Report, with the Complainants' costs in this cause to be taxed, and to the Complainant a counsel fee of twenty dollars; and if the sale of said mortgaged premises excepting the part so reserved, does not produce a sum sufficient to pay and satisfy the sums due for principal, interest and costs to the said Complainant, then, and in that case, all the remainder of the said mortgaged premises, being that part thereof above excepted, be secondly sold to raise and satisfy the balance of the amount due to the said Complainant for principal, interest and costs, and that a writ of fieri facias do issue out of this Court for that purpose, directed to the Sheriff of the County of Morris, commanding him to make sale according to law of a part or the whole of said mortgaged premises in the order aforesaid; and that out of the money arising from such sale he pay to the Complainants or to their solicitor, his said debts, interest and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such payments, that such surplus be brought into this Court to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ. And in case the proceeds of such sale shall be insufficient to satisfy and discharge the said mortgage debt, then it is hereby further ordered, adjudged and decreed, that said deficiency shall be made of the lands and tenements, goods and chattels of the said Defendants, Charles F. Maryott, and Mary E., his wife, as specifically prayed in the Bill of Complaint filed in this cause; it appearing to the Court that notice that such relief was sought by said bill has been duly served and given to said Defendants according to law and the rules and practice of this Court; and that a writ of fieri facias therefor do issue accordingly out of this Court against said Defendants for that purpose, payment of the said deficiency being hereby decreed, to be made by them the said Defendants, and that the Sheriff make return to this Court of his proceedings by virtue of the said writ.

And it is further ordered, adjudged and decreed, that the Defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

THEODORE RUNYON, C.

A true copy—H. S. LITTLE, Clerk.



of New Jersey, beginning at three chestnut stumps in the  
line of a tract of five and a half acres conveyed to Charles F.

