# SUPPLEMENT TO PRINTED CASE.

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| FRANK W. WILDES, and others,<br><br>*vs.*<br><br>THE RURAL HOMESTEAD COMPANY, JULIUS H. PRATT, HENRY F. TORREY, SAMUEL W. BOWER, and others, | *Opinion of the Chancellor.* |

At the suit of individual stockholders in a corporation, a transaction of the directors, which though *intra vires* and lawful in itself, is executed by them and the person with whom they deal in pursuance of a selfish scheme to perpetuate themselves as directors in the control of the company, and is conspicuously unwise and injurious to the corporation and its stockholders, will be set aside in equity.

*On Bill, Answer, Replication and Proofs.*

MR. FLAVEL MCGEE, for the Complainants.

MR. CHARLES H. VOORHIS, for the Defendants.

*The Chancellor:*

The object of this suit is to set aside a transfer of 238 shares of the capital stock of the Rural Homestead Company to one Samuel W. Bower which, it is claimed was effected by the directors of that company for a grossly inadequate consideration, in bad faith, to the injury of the company, and incidentally to the injury of the complainants, who are stockholders of

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the company, the directors motive in making such transfer being the perpetuation of themselves in office as directors.

It is disclosed that the entire capital stock of the company consist of 2400 shares of the par value of $50 each and that all of the stock was issued but that subsequently a portion of it came back to the company and was held in its treasury and disposed of from time to time to produce money for the needs of the corporation.

Immediately prior to the transaction now objected to 238 shares of that capital stock remained in the treasury, the other shares being held by various stockholders among whom were the defendants, Julius H. Pratt, who owned 891 shares, and Henry F. Torrey, the son-in-law of Mr. Pratt who held 85 shares, both of whom were officers and directors of the company. Mr. Pratt was the president and Mr. Torrey was the secretary and treasurer. Besides these, the defendants, John Linn and his son Clarence Linn and David W. McCrea were directors, each holding one share of the stock.

The company was originally organized through the instrumentality of Mr. Pratt for the purpose of disposing of land at Arlington, New Jersey in building sites; but after the land had been laid out into lots, owing to the depreciation in real estate values, the original project so failed that it was concluded to abandon it and parcel out to the different stockholders the several lots into which the land had been divided in proportion to their respective holdings of stock in the retirement of that stock. But after that determination had been partially carried into effect a scheme was devised to organize a cemetery corporation under the statutes of this state to which the land should be conveyed, in order that through such instrumentality they might find a market. Accordingly, the major

part of the land divided into lots, approximately 35 acres, was returned to the company and, on the first of December, 1882, was conveyed to the Arlington Cemetery Association, by which, in turn, it was to be sold in graves and grave yard lots for the burial of the dead.

The nominal consideration of the deed was one dollar, but, by concurrent agreement, it was arranged that the Homestead Company, after it should expend $20,000 in surveying and laying out the lands for cemetery purposes, should receive one-half of the receipts from sales of graves and lots. The other half was to be used by the Cemetery Association in paying the expenses of conducting and maintaining the grave yard.

In 1883 this agreement was modified so that 45 per cent. of the receipts were to go to each corporation and the remaining ten per cent. was to be retained and accumulated by the Cemetery Association as a fund for the perpetual maintenance of the cemetery.

Much of the stock held by Messrs. Pratt and Torrey was issued for land purchased, and it became necessary that stock in the treasury should be sold to meet the expenditures which were required to put the cemetery in operation. Accordingly, from time to time, stock was sold.

Among other purchasers of it were the complainant, Daniel L. Shearer, of Boston, and others of the complainants who were induced by Mr. Shearer to invest in the enterprise. Mr. Shearer had been interested by Mr. Pratt, who had been his college classmate and in whom Mr. Shearer for a time reposed implicit confidence.

From the outstart of this renewed enterprise, both corporations were controlled and managed by Messrs.

Pratt and Torrey who associated with themselves as directors such persons as they chose. The entire income from the sale of cemetery lots was insufficient to adequately conduct the enterprise, and consequently the share of it which otherwise, under the agreement referred to, would have gone to the Rural Homestead Company, was used for cemetery purposes and for that share the Homestead Company received merely credit in account with the Cemetery Association.

From 1885 to 1890 no elections for directors of the Homestead Company were held and the accounts of both corporations were so neglected that they were kept in shape of loose memoranda and were not written up in books of account. The excuse for this neglect was the inability of Mr. Torrey to attend to all the duties which were thrown upon him, including the keeping of the accounts. The validity of that excuse has been disputed, but it is not pertinent to the present inquiry that such dispute should be determined. It is sufficient for present purposes that the condition of the accounts and the fact that the cemetery company was deeply involved in debt, beyond that which it owed to the Homestead Company, led to dissatisfaction upon the part of the complainants, who because they almost all reside in Boston have been called "The Boston Stockholders," and they insisted upon examining the accounts and having them written up, furnishing assistance to that end. They also insisted upon having Mr. Shearer made a director of the company, and he was in June, 1890, so elected. Later in the summer of 1890 their dissatisfaction grew to such extent that the complainant, Frank W. Wildes, one of them, declared that they would change the management of the company by taking it away from Messrs. Pratt and Torrey, and after that, in apparent fulfillment of his threat, commenced to buy up stock, wherever he could find it for sale.

Though Mr. Shearer held over four hundred shares of stock, he was not re-elected a director in 1891, but

Mr. McCrea, a young lawyer and the owner of a single share was chosen a director in his stead,

When the annual election in 1892 came, the Boston stockholders represented 1124 shares of stock which they voted for a Board of Directors nominated by them, leaving the old management 1038 shares in support of their ticket, which, with the 238 shares, now claimed to have been fraudulently transferred to the defendant Bower, elected Messrs. Pratt, Torrey, John and Clarence Linn and Bower, directors. Those gentlemen still retain the direction of the company.

The transaction complained of may be stated in this way:

Mr. Bower is a lawyer of the State of New York, resident in the City of Brooklyn. In his professional capacity several years ago he became concerned for the estate of one Huntley, who in his lifetime was the owner of some lots of land at Arlington, and also of several shares of the stock of the Rural Homestead Company Through his concern in this property he became acquainted with Mr. Pratt and eventually was professionally employed by that gentleman.

Adjoining the Arlington Cemetery is a tract of upland and meadow comprising some 15 or 16 acres, yet in rough uncultivated condition upon which there was erected an old frame house, of little value. The tract formerly belonged to one John Van Emburgh, who, by his will proved in 1870, devised it to his daughter Rachel Myers and her daughter Mary, as tenants in common. Rachel Myers, by her will, proved in September, 1883, devised her undivided half of the tract to her son Moses C. Myers for the life of the daughter Mary, upon condition that Moses would support and care for his sister while she lived, she being of weak mind. After the death of Mary, the undivided half was to be divided equally between six children, of Rachel, who are named, among whom is the son Moses.

In 1886 Mary Myers conveyed to her brother Moses (Page 17) her interest in about two acres of the land upon which the house stood. Mary died and thereupon Moses, as one of her heirs took one-sixth of her interest in the property which interest was one-half of the whole less the two acres, and in virtue of his mother's will he also took one-sixth of the other undivided half. Thus his entire holding became seven-twelfths of the two acre lot and one-sixth of the remainder of the land. He yet occupies the house. I should say here that it was assumed at the argument that Moses Myers obtained title to the whole two acres upon which the house was built. I do not gather from the proofs this fact, but it is of little materiality one way or the other. The taxes were suffered to remain unpaid and, in 1887, the whole tract was sold, in enforcement of a tax lien by the township authorities and bought in by the township for the term of thirty years. In 1890 the defendant Bower took a conveyance from the township, paying some $900 in satisfaction of municipal liens. He then commenced proceedings in ejectment against Moses Myers which were not defended against and in which a judgment by default was had. Pending the Sheriff's removal of Myers from the premises, Myers, in consideration of one dollar, conveyed his interest in the land to Mr. Bower and was accorded the right to stay upon the property, at a nominal rent, for three years.

Thus Mr. Bower secured a tax title to the whole property which has now some 22 years to run and seven-twelfths or the whole of the two acre lot and one-sixth of the remaining property in fee, subject to the inchoate dower right of Moses' wife.

It is apparent that unless the other interests in this tract of land shall be secured, and until that time, the tract cannot be used for cemetery purposes. If the tax title be valid, it will not render the land available

for cemetery purposes, because each succeeding year lessens its duration and it is admitted that it is impossible to sell, to any appreciable extent, for burial purposes, for less term than a fee. If the deed from Moses Myers to Mr. Bower be valid, it conveys only undivided interests and does not retrieve the situation. Until the outstanding interests can be had the cemetery cannot safely afford to even clear and enclose the land. The only practical purpose seemingly served in such a purchase is to prevent the use of the land for a rival cemetery; but in face of the difficulties in the title and the fact that the cemetery is substantially in the country, adjacent to many as large parcels of unoccupied lands, this advantage is insignificant.

The ability of the company to control and utilize their property for cemetery purposes depends upon not only contingencies in title but also upon the expenditure of further considerable sums of money.

Moreover, the complainants object that the tax title is not valid. Moses Myers' wife refuses to part with her interest in the property, and Moses himself claims that the deed from him was had by fraud.

It is such interest in the land that Mr. Bower has exchanged for the 238 shares of the capital stock of the Rural Homestead Company.

The defendants claim that the exchange on the part of the company was made in the bona fide exercise of the directors' judgment for the best interests of the corporation. They urge that for a long time before the exchange persons interested in the cemetery deemed it desirable to have the Myers' land not only to prevent its being converted into a rival cemetery, but also in order that the Arlington Cemetery might be enlarged by it. They say that the undivided interest of the Myers' heirs, other than Moses, may be

purchased and in that way title to the whole land may be perfected.

But confronting this excuse, appear the facts, that, when the purchase from Mr. Bower was made, the Cemetery Association was burdened with a large indebtedness, more than $7000 of which was in the shape of judgments under which the Cemetery Company receipts were passing into the hands of sequestrators; that it was absolutely impossible for it to pay any part of its indebtedness to the Homestead Company or, if the Homestead Company should exact its forty-five per cent. of the current receipts from the sale of lots and graves, to maintain itself, and that it was not in need of additional land, because, in the ten years of its existence, it had not sold more than one-tenth of the land it already had.

It cannot but be concluded that in face of the financial situation of the Companies and the character of the property purchased, in absence of allegation or suspicion of bad faith, the transaction would have been conspicuously indiscreet and unwise. But it cannot be set aside merely because the directors acted indiscreetly or unwisely. It has not been suggested that the act was *ultra vires* and the well established rule is, that individual stockholders cannot in litigation question the acts of directors *intra vires* unless they can show that they are fraudulent in character. *Book on Stockholders, Sec. 684.*

In *Ellerman v. Chicago Junction Railway &c. Co. 4, Dick. Ch. 242,* Vice Chancellor Green stated the rule upon this subject in this language:

" Individual stockholders cannot question, in judic-
" ial proceedings, the corporate acts of directors if the
" same are within the powers of the corporation and
" in furtherance of its purposes, are not unlawful or
" against good morals, and are done in good faith and
" in exercise of an honest judgment. Questions of

"policy, of management, of expediency, of contracts "of actions, of adequacy of consideration not grossly "disproportinate, of lawful appropriation of corporate "funds to advance corporate interests, are left solely "to the honest decision of the directors if their "powers are without limitations and free from re- "straint. To hold otherwise would be to substitute "the judgment and discretion of others in the place "of those determined on by the scheme of incorpor- "ation."

In *Elkin vs. Camden & Atlantic R. R. Co. 9 Stewart, Eq. 241,* where an injunction was sought to restrain the making of certain contracts which were within the powers committed to the directors, Vice-Chancellor Van Fleet said:

"Unless the complainant has clearly demonstrated "that in doing them '(the acts sought to be enjoined)' "they will be controlled by a fraudulent or dishonest "purpose, and that injury will result to him, it is "clear he has no case."

"There can be no doubt that the question as to the "expediency of making a contract, which is within "the capacity of the corporation, is committed to the "judgment of the managers of the corporation, by "whom alone it can act, and so long as they keep "within the power committed to the corporation, and "act in good faith with honest motives and for honest "ends, their acts are valid, though the result may "show that what they did was unwise and inex- "pedient."

The same judge repeats the rule thus stated in *Park v. Grant Locomotive Works, 13 Stew, Eq. 114, 123.*

The question in the present case then is, was the transfer to Mr. Bower made in good faith and in the exercise of an honest judgment, to which judgment honest motives and ends are essential?

A charge that directors do not act in good faith and with honest judgment must be established by evidence which is strong enough to overcome the usual presumptions in favor of good faith and honesty of purpose. The question in such a case is one of intent, which ordinarily is susceptible of establishment only by inferences from proved circumstances, for rarely is dishonest intent admitted. Those proofs must usually contend with excuse or reason more or less plausible which will be insisted upon as having been sufficient at the time of the act in question to command honest judgment in its favor and hence the truth is not always susceptible of easy demonstration.

In the present case the complainants insist that the motive which induced the transaction complained of was the perpetuation of Messrs. Pratt and Torrey in control of the company and not the welfare of the enterprise in which the corporation had embarked. They point to the proof that they were dissatisfied with the management of the Homestead and Cemetery Companies and the manner in which the accounts of those companies had been kept, and that in consequence of that dissatisfaction Mr. Wildes had threatened to change the management of the companies; also that he and others subsequently had commenced to buy stock for that purpose, all of which was known to Messrs. Pratt and Torrey. Added to which facts they argue a consciousness upon the part of Messrs. Pratt and Torrey, that they could not calculate upon a control of the majority of the stock issued, and their appreciation of the plain problem that if to Mr. Pratt's 891 shares and Mr. Torrey's shares there should be added the 238 shares remaining in the treasury of the company, the control of a majority of the whole 2400 shares would securely be theirs.

Then they call attention to the fact that the 238 shares of treasury stock represented, at par, $11,900; that twice in the history of the company, since its re-

vivification in 1882, although no dividends had been declared, money had been raised by apportionment of treasury stock among the stockholders at par, and the 238 shares yet in the treasury remained for similar purpose in the future; that the Cemetery Company had about reached the end of its power to raise money; that it had not only exhausted its own receipts but also the entire receipts of the Homestead Company and, in addition, had had recovered against it two judgments aggregating about $7,000 under which sequestrators had been appointed to absorb whatever they might lawfully lay their hands upon; that neither company could mortgage, for such action would effectually remove the mortgaged property from the market which the cemetery afforded, and that it was at this pecuniary crisis that Mr. Bower, with a slender holding, by tax title and disputed deed for an undivided interest in a few acres of rough, uncultivated land, partly upland and partly meadow, bounding the southerly side of the cemetery appeared upon the scene and was permitted to sweep from the treasury the remaining 238 shares of stock.

That the land in which Mr. Bower was interested was without market value I think is conspicuously demonstrated by the vast discrepency in the values placed upon it by the several witnesses examined in that behalf, ranging from about $30,000 to about half as many hundreds of dollars. That it could not be utilized for cemetery purposes is made clear by the statement of the broken title and fractional interests whereby it was held. That it was not needed for the cemetery appears by the fact that in ten years not one-tenth of the land already owned by the cemetery had been disposed of.

When the transaction with Mr. Bower was in progress, although it was known by Messrs. Pratt and Torrey that the complainants were endeavoring to se-

cure the control of a majority of the stock, for that reason, that they would most strenuously have resisted any disposition of the treasury stock, which would not have given them an opportunity to acquire it, no notice of the intended transfer of it was given to them. Lastly, the event of the transaction was, that Mr. Bower, did, in fact, vote upon the stock transferred to him, to perpetuate Messrs. Pratt and Torrey in control of the company, when without such vote the complainants would have removed them.

Shortly recapitulated the leading circumstances relied upon in proof of bad faith in the transaction objected to, are, the dissatisfaction of the complainants with the management, their threat to change it, their effort to procure sufficient stock for that purpose, the uselessness of the purchase from Bower, the shocking indiscretion of that purchase in view of the financial condition of the Cemetery and Homestead Companies in the absence of any necessity for an addition to the cemetery and the valueless character of that which was purchased, the secrecy observed in the transaction and the eventual use of the stock transferred to defeat the purpose of the complainants to change the management of the Company.

I think that their strength is sufficient to overcome the presumption of good faith upon the part of the directors and Mr. Bower and that the professions of good faith by those of them who were sworn, amounting, it may be said, to mere opinions, are entitled to but little weight against them.

The Messrs. Linn do not appear to have fully understood the situation of affairs and I think, under an insufficient realization of the exact situation, partly through indifference, because of their slight pecuniary interest and the great confidence in Mr. Pratt, and partly through lack of particular information, were led, without dishonest purpose, to acquiesce in that which Messrs. Pratt and Torrey advocated.

Messrs. Bower and Torrey possibly satisfied themselves that the transaction was lawful by the spacious argument advanced in the excuse for it, to which I have adverted under the predisposition thereto which their self interest created, Messrs. Pratt and McCrea were not sworn. Mr. McCrea was not in the State when the testimony was taken, but Mr. Pratt was cognizant of the production of all the proofs, was the master spirit in the transaction, was declared by a witness to have said that he procured Mr. Bower to buy the land for the cemetery and yet remained silent.

I am of opinion that the transaction must be set aside, and will decree accordingly.

A true copy.
ALLAN MCDERMOTT,
*Clerk.*

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IN CHANCERY OF NEW JERSEY.

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| Between FRANK W. WILDES and others, *Complainants,* and THE RURAL HOMESTEAD COMPANY and others, *Defendants.* | *On Bill, etc.* *Final Decree.* |

This cause coming on to be heard at the May term, eighteen hundred and ninety-four, of the Court of Chancery, held at the State House, in the City of Trenton, in the presence of Flavel McGee of counsel with the complainants, and Charles H. Voorhis, of counsel with the defendants, and the pleadings and

proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the pleadings, proofs and arguments, and it appearing to the Court (as recited in the opinion of the Chancellor filed July 30th, 1895) that the transaction by which Samuel W. Bower conveyed to the Rural Homestead Company, some interest in lands described in the bill of complaint, for two hundred and thirty-eight shares of the capital stock of that company, set forth in the bill of complaint, was in fraud of the rights of said company, and that the same should be wholly set aside.

It is on this tenth day of April, one thousand eight hundred ann ninety-six, by ALEXANDER T. McGILL, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that said Rural Homestead Company make a re-conveyance of said lands to said Samuel W. Bower, and said Samuel W. Bower be, and he hereby is decreed to accept said re-conveyance, and to deliver up the certificate of the said two hundred and thirty-eight shares of the stock of the Rural Homestead Company, to that Company, to be cancelled, and that the Rural Homestead Company and Julius H. Pratt and Henry F. Torrey, officers, and the directors, officers and employees be, and they hereby are decreed to forthwith cancel said certificate of two hundred and thirty-eight share of stock, so, as aforesaid, issued, to said Samuel W. Bower, and forthwith retransfer said shares on the stock books of said Company to the treasury of the said Company.

And it is further ordered that an injunction issue out of this Court under its seal, directed to the said Bower and the said Rural Homestead Company, its officers and agents, enjoining and restraining the said Bower from voting or attempting to vote upon said

two hundred and thirty-eight shares of stock and from exercising or attempting to exercise any ownership over said stock and from asserting any right in virtue thereof, and also enjoining and restraining the said Rural Homestead Company, its officers and agents from accepting any vote from said Bower in virtue of said stock or in any way recognizing him as a stockholder in the Rural Homestead Association by reason of said stock.

And it is further ordered that the injunction heretofore made herein against holding corporate elections by said Rural Homestead Company be and the same hereby is dissolved and for nothing holden.

And it is further ordered and decreed that the defendants pay to the complainants their costs in this suit, to be taxed, and that the complainants may have execution for the recovery of said costs, according to the practice of this Court.

ALEX T. McGILL,
*C.*

IN CHANCERY OF NEW JERSEY.

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| Between FRANK W. WILDES and others, *Complainants,* and THE RURAL HOMESTEAD COMPANY and others, *Defendants.* | *On Bill, etc.* *Petition of Appellant.* |

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The humble petition of the Rural Homestead Company, Julius H. Pratt, Charles H. Dummer, Robert O. Babbitt, Harry H. Beadle, William R. Barricklo, John Linn, Clarence Linn, David McCrea, Olive E. Sparhawk, Henry F. Torrey and Samuel W. Bower, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor Alexander T. McGill, Chancellor of New Jersey, bearing date the tenth day of April, eighteen hundred and ninety-six, wherein Frank W. Wildes, Francis E. Wildes, Daniel E. Shearer, Katie E. Champlin, George W. Colburn, Waldo E. Cowdrey, Thomas J. Olys and Frederick H. Rindge, were complainants and your petitioners were defendants, in this respect to wit: That the said decree adjudges and decrees that said Rural Homestead Company make a re-conveyance of said lands in said bill mentioned to said Samuel W. Bower, and that said Samuel W. Bower accept said re-conveyance and deliver up the certificate of said two hundred and thirty-eight shares of the stock of the Rural Homestead Company to that Company to

be cancelled; and that the Rural Homestead Company and Julius H. Pratt, and Henry F. Torrey, officers, and the directors, officers and employees, forthwith cancel said certificate of two hundred and thirty-eight shares of stock issued to said Samuel W. Bower, and forthwith re-transfer said shares on the stock books of said Company to the treasury of said Company; and that an injunction issue out of said Court directed to said Bower and the said Rural Homestead Company, its officers and agents, enjoining the said Bower from voting upon said two hundred and thirty-eight shares of stock, and from attempting to exercise any ownership over said stock, and also enjoining and restraining said Rural Homestead Company, its officers and agents from accepting any vote from said Bower in virtue of said stock; and that said defendants pay to said complainants their costs in this suit to be taxed;

And your petitioners humbly appeal from said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, unjust and contrary to the principles of law and equity. Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

WILLIAM H. SPEER, JR.,
*Solicitor and Counsel of Appellant.*

NEW JERSEY COURT OF ERRORS AND APPEALS

Between THE RURAL HOMESTEAD COMPANY and others,
*Appellants,*

and

FRANK W. WILDES and others,
*Respondents*

The answer of the above named Respondents to the petition of appeal of the above named appellants.

These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless say and admit that a decree was, on the tenth day of April, eighteen hundred and ninety-six, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as therein stated, but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

McGEE, BEDLE & BEDLE,
*Solicitors for and of Counsel with Respondents*

# New Jersey Court of Errors and Appeals

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| THE RURAL HOMESTEAD COMPANY, JULIUS H. PRATT, HENRY F. TORREY, SAMUEL W. BOWERS, and others, *Appellants.* | |
| *and* | *On Appeal.* |
| FRANK W. WILDES, and others, *Appellees.* | |

## *Brief of Flavel McGee for Appellees.*

This was a bill of complaint, filed by stockholders of The Rural Homestead Company, to set aside the issue by that Company to one Samuel W. Bowers, of two hundred and thirty-eight shares of the stock of the Company, being the total balance of unissued shares of stock of the Company, by means of which the control of the Company was sought to be perpetuated in the officials already in power, and by which they and their friends were put in the possession of an apparent majority of the stock, whereas, without this issue a majority of the stock theretofore issued was owned by the complainants.

The control of the Company had been in Julius H. Pratt and Henry F. Torrey for many years, and, up to the time set out in the bill of complaint, their control had not been attacked.

Between the election of eighteen hundred and ninety-two, which occurred on the first Tuesday of June,

and the time for the election of eighteen hundred and ninety-three, the complainants, who, because of their residence in or near Boston, Massachusetts, were spoken of as the "Boston stockholders," had become dissatisfied and had bought shares enough to give them a majority of the issued stock, and had announced their purpose of changing the personel of the directors, and thereby the officers of the company, at the election of eighteen hundred and ninety-three.

Prior to this election, however, these two hundred and thirty-eight shares were without notice to the complainants, issued to, and at the election voted by the defendant Bowers, in favor of the past management, and the control was continued with them.

The bill alleges that the object of the issuing of these shares of stock to the defendant Bowers, was for the purpose of retaining in possession of Julius H. Pratt, Henry F. Torrey, and those who were in sympathy with them, the control of the Company; that it was not for the benefit of the Company or for its interest, or that of its stockholders; that the issue of the stock was unwise, unjust, unauthorized, and illegal, and that it was beyond the power of the directors to make such disposition of the assets of the Company without a vote of the stockholders; that it was in fraud of the rights of the Company, for a grossly inadequate compensation, to the injury of the Company and with the deliberate intention of retaining control of its affairs, and that it was a conspiracy on the part of Pratt, Torrey, Bowers, and those who acted with them for the purpose mentioned, and to prevent a majority of the bona fide stockholders of the Company from expressing their will at its annual election.

The bill alleges that the only consideration for the transfer of the stock to Bowers was the conveyance by him to the Company of certain lands in Arlington, New Jersey, which were of very little value, not a fraction of a per cent. of the par value of the stock,

even if the title had been perfect in fee, and that in addition thereto the title was defective, in that it consisted, as to all but two acres thereof, of a conveyance by the township of taxes, for the period of thirty years, part of which had elapsed, that even this conveyance was illegal, and the alleged conveyance of two acres of land, which conveyance was attacked by the grantor on the ground that it was obtained from him by fraud, misrepresentation and deceit.

The bill prayed that the conveyance from Bowers to the Company, if one had been delivered, should be decreed to be without consideration and void, and that the issue of the stock to Bowers might be decreed to have been made without power, in fraud of the rights of the Company, without consideration, and to be void. That the Company should be decreed to reconvey the lands to Bowers, and Bowers to accept the conveyance; that Bowers should be decreed to deliver up the certificate of stock to the Company to be cancelled, and that the Company, Pratt, Torrey and the other directors, officers, and employees should be decreed to cancel the stock, and to erase the name of Bowers from the list of the stockholders; and that the stock might be decreed never to have been legally issued, and to be still in the Treasury and one of its assets, and that Bowers might be decreed to be not a stockholder of the Company by reason of said shares of stock or any of them, but that the whole transaction should be decreed to be void, and that the Company, its directors and officers be decreed not to buy any more land for cemetery purposes or otherwise, until the Cemetery Association should have paid to it the moneys then due and owing, and made provision for prompt payment of future moneys and for an injunction accordingly.

On the filing of the bill an order to show cause was made, and afterward an injunction was issued, enjoining Bowers from transferring his stock and the Com-

pany from making disposition of the lands, and later, upon a separate petition filed by the complainants, an order was made that the Company should not hold its annual election for directors on June sixth, eighteen hundred and ninety-three, nor until the further order of the Court, but that the same should be adjourned from month to month until the further order of the Court

Depositions were taken, and the Chancellor ultimately found that the stock was not issued in good faith, and that the transaction must be set aside, and by decree, dated the tenth day of April, eighteen hundred and ninety-six, decreed a reconveyance of the lands to Bowers, that he should accept the reconveyance and deliver up the certificate of stock to the Company to be cancelled, and that the Company, Pratt, Torrey and its other officers and directors should forthwith cancel the certificate of two hundred and thirty-eight shares of stock, and re-transfer the stock on the books of the Company to its treasury, and that an injunction issue, directed to Bowers and the Company, its officers and agents, enjoining and restraining Bowers from voting on the stock and from exercising or attempting to exercise any ownership over said stock, and from asserting any right in virtue thereof, and enjoining the Company and its officers from accepting any vote from Bowers in virtue of said stock, or in any way recognizing him as a stockholder in the Company by reason of said stock and that the injunction theretofore made against the holding elections be dissolved and that the complainants recover costs.

Pending this suit, which, as the Court will observe, lasted from the twenty-sixth day of November, eighteen hundred and ninety-two, until the tenth day of April, eighteen hundred and ninety-five, no elections were held, and the officers re-elected by a vote of this two hundred and thirty-eight shares of stock in eigh-

teen hundred and ninety-two, have remained in power and have controlled the corporation, and exercised the authority, thus fraudulently conferred upon them.

At that election the votes of the complainants being a majority of all stock, except the two hundred and thirty-eight shares, was cast for a different board.

No election was held on the first Tuesday of May, eighteen hundred and ninety-six, which was the day to which it stood adjourned at the time of the decree.

Prior to the first Tuesday of June, which was the day for the annual election of eighteen hundred and ninety-six, the defendants applied to the Chancellor for an order restraining elections and directing their adjournment from month to month until the termination of this appeal in this Court. The Chancellor declined to make the order, but did make an order, adjourning the election to the first Tuesday of July next, thus giving the defendants an opportunity to apply to this Court.

In that order the Chancellor stipulated that no sale should be made to other parties, or other change take place in the status of the two hundred and thirty-eight shares of stock, so that as the case stands today the complainants have a majority, under this decree, of the stock of the Company entitled to a vote for directors.

The facts of the case were so well summed up in the opinion of the Chancellor, which is already in print, in the case, that it does not seem to me to be necessary to repeat his summary thereof, and I therefore respectfully ask the Court for that branch of the brief to read the Chancellor's opinion. It is a fair and impartial statement of the proofs, and from my standpoint understates rather than overstates them.

The proofs seem to me to clearly demonstrate the truth of the allegations of the bill of complaint.

The answer, as the Court will observe, is filed by all of the defendants, except William B. Shrope, who is dead, and who held one share.

The Court will perceive that the following allegations of the bill are either admitted or not denied by the answer, namely:

That at the time of the election of eighteen hundred and ninety-one, there were in the treasury two hundred and thirty-eight shares of stock;

That at the time of the election of eighteen hundred and ninety-two the complainants owned a majority of the balance of the stock, to wit, eleven hundred and ten shares, and that other shares were held in sympathy with them, and which voted with them, namely, fourteen shares, making a total held and voted by the complainants, and their friends. of eleven hundred and twenty-four shares, and that the defendants, outside of the two hundred and thirty-eight shares issued to Bowers, held but ten hundred and thirty-eight shares, or less than a majority;

That between these two elections the two hundred and thirty-eight shares had been issued to Bowers, and that they were voted by him with the defendants, and their majority thus created;

That these shares were issued to Bowers for the amount mentioned in the bill of complaint;

That Bowers did not own these lands in fee;

That as to all of it except two acres, he had only a tax title for a term of thirty years, part of which was elapsed; that as to the two acres there was an outstanding inchoate right of dower, and that these facts were known to the defendants at the time they made the transaction in question;

That the Bowers deed was not recorded, and that the reason was that the Company desired to keep it off the record until an effort could be made to buy the interest of the other Myers' heirs;

That they knew that the land was held by several people, and that no purchase had been made from them of their interest;

That Moses C. Myers had a right to occupy the land for three years at least, and claimed that the deed was fraudulent in toto;

That the Boston stockholders had opposed the issue of the two hundred and thirty-eight shares of stock in eighteen hundred and ninety, and that its proposed issue had been given up at that time for that reason;

That the outstanding fees in the other Bowers' heirs who constituted all but one-third, excepting in the two acres, was of little value—they say that it could be bought for two thousand or three thousand dollars;

That no money was paid for it;

That the deed from Bowers was only a quit-claim, and contained no covenants as to either title or encumbrances, and was not recorded;

That no notice of the transaction was communicated to the complainants, and that the land was of comparatively little value, and, for a cemetery, under the circumstances of no value;

That much of the land in the cemetery was still vacant, and that all of it would not be in use for a long time;

That no directors of the company had been elected during the times mentioned in the bill of complaint, which were long periods, and they give as a reason

that during that time the business of the Rural Homestead Company was in complete suspense, and that its directors had nothing to do, and that the appointment of new directors during these periods would have been an idle and useless ceremony (page 46); in other words, that they did not call annual meetings because they did not consider it important;

That the affairs of the Company had been mismanaged in that no annual meetings had been held, the accounts had not been written up, and debts had been incurred by the Cemetery Association to an amount of nearly half of the capital stock of the Rural Homestead Company;

That the defendants knew that the complainants were dissatisfied and trying to gain control, and that the Cemetery Association then owed the Rural Homestead Company more than it could pay, and a very large sum, namely, fifty thousand dollars;

That the Cemetery Association had no present need for more lands, and that the Rural Homestead Company had no need at all for them.

In short, all the allegations of the bill of complaint which bear upon the equities of the case are admitted, save only the allegation that the purpose was to retain control of the concern, and that this was the purpose is manifest even in the answer, because, on page sixty-three they give their reason for desiring to retain control, which is that from their experience and knowledge of the business they are fully assured that that course, which they say the Boston stockholders intend would result in the ultimate ruin of the companies, which course is that the Boston stockholders, if they retain the power, will insist upon the Cemetery Association paying to it the moneys it has agreed to pay. And it seems to me that pages sixty-three and sixty-four of the printed book, containing that part of the answer, cannot be read without disclosing

beyond question that the action of the officials was deliberately taken for the purpose of retaining control.

The proofs in the case are substantiated by the foregoing admissions, and in addition the following facts are proved.

That the Rural Homestead stock never paid a dividend;

That all its share of the proceeds of sales of cemetery lots had either been covered back into the treasury of the cemetery company, or never paid over to the Rural Homestead Company;

That at the meetings of the Cemetery Association in January and April, eighteen hundred and ninety-two, and of the Rural Homestead Company in June, eighteen hundred and ninety-two, no report had been made of the Babbitt and Crane judgments;

That no notice was given prior to this litigation of either judgment, or of the sequestration proceedings, or the interpleader suit;

That such judgments were allowed to go by default;

That sequestrators were appointed by consent of the officers of the company;

That the interpleader suit was conducted by Clarence Linn, the solicitor for the Cemetery Association, and John Linn, as solicitor for the Rural Homestead Company, the two being father and son, both being connected with the Rural Homestead Company, and counsel for the management; the outcome of the suit being, by possibility, to conclude the Rural Homestead Company of its rights, and all of this without notice to the Boston stockholders, who were the only ones who had any considerable money in the stock or assets of the Rural Homestead Company;

That Mr. Pratt, the president, had a stipulation, not known to the complainants, by which he was entitled to the proceeds of the sale of four hundred lots of the cemetery, and therefore in interest with the Cemetery Association as against the Rural Homestead Company.

That both companies for years past had been conducted by Messrs. Pratt and Torrey alone;

That an annual meeting was called in eighteen hundred and eighty-five to raise money, and another in eighteen hundred and ninety for the same purpose, and no other meetings between;

That Mr. Torrey not only did not write up the books of the cemetery, but prevented Mr. Cowdry from doing so;

That the Babbitt judgment was founded upon the following consideration: Shares of stock had been bought of the Barnes Estate in the name of Babbitt, and by him transferred to Pratt, and paid for by notes which Pratt held against the cemetery, which were taken up by other notes given directly by the cemetery to Babbitt; in other words, that the Babbitt judgment was really, in equity, the property of Pratt;

That Torrey is Pratt's son-in-law;

That Crane is an intimate of Torrey's, and the foundation of his claim is unknown, except to Pratt and Torrey;

That but for the accidental discovery by the Boston stockholders of these judgments and suits the control of the cemetery would have been taken from the Rural Homestead Company;

That the two hundred and thirty-eight shares of stock constitute the balance of power in the Rural

Homestead Company, and without its issue the complainants could and announced that they would change its control, and that by its issue they were prevented from so doing;

That this stock was so issued after this knowledge was made public, and before the first opportunity to vote thereon, and that by means thereof Pratt and Torrey continued in control;

That Bowers was a New York lawyer who had done business for Pratt;

That Bowers had never seen the land in question before his purchase;

That he paid for it only nine hundred and nine dollars and six cents;

That the land was partly rough, unimproved land, worth very little, and the meadow land was swamp, having almost no value. Van Deren, a real estate agent in the vicinity, puts the upland at fifty dollars an acre, including Moses Myer's house, and the meadows at about twenty-five dollars an acre. Canfield puts it at one hundred dollars for the upland and twenty-five dollars for the meadow;

That the defendants knew it had no value is apparent from Bowers' letter to Parker, in which he says the property has no value for building lots, its chief value being the quarry, and that will be worked out before he (Myers) will come into possession, and so it is probable that the value will be less than it now is, and any sale, if it is made, must be subject to the lease of the house and the two acres to Moses Myers for three years from last April. It is true that high values are placed upon it by some of the defendant's witnesses, but the Court will perceive that one of them is a dry goods merchant, and the other a New York lawyer, and neither of them experts, within

the test laid down by the Supreme Court of this State.

That it had no present value for cemetery purposes;

That it had no value to the Rural Homestead Company;

That it was not needed for cemetery purposes in the near future;

That two acres of it was held upon a title which was fraudulent, and that the balance was a tax title, and which appears, even in that respect, to be bad;

That it was subject to a mortgage and dower right, and a three years lease, and that Bowers had no possession, and no apparent right of possession;

That the officers of the company knew these facts, except, perhaps, as to the fraudulent character of Moses Myers' deed, when it was purchased. Besides this, it appeared that Mr. Bowers had no apparent interest to buy the land; that Mr. Pratt knew he had bought it; that he said to Davis, whose veracity no one would question, that Mr. Myers had bought it for the cemetery, and that a proposition to redeem it had been pending;

That the conveyance by Moses was obtained by fraud seems to have been abundantly proven. He is a very ignorant man and his whole conduct bears out the truth of his allegation that he thought he was signing a lease; it is admitted that it was not read over to him; he swears that when he had signed it without having it read over to him, and was told it was not a lease, but a deed, that he immediately disavowed it, and left it with Mr. Parker only because Mr. Parker promised to have it rectified. While Mr. Parker denies this, he does not deny that he made an

effort to have it rectified; and Moses was allowed to consider it as a lease appears to be evident from the whole trend of the testimony, and the letters, in which it appears to be admitted that he is allowed to remain there as a tenant, the whole dispute being whether he is to have the right to redeem pending the time. And I respectfully submit that it is proven in the case that such right of redemption did exist, and that even as to the two acres there is no conveyance or title to any part thereof valid in Bowers or his grantees.

In connection with this summary, two or three things are noteworthy. First, the most important man on the side of the defendants in this transaction is Mr. Pratt, the man who was at the head of both these corporations, President of one and in complete control of the other.

The allegation of the defendants is that the transaction with Bowers was a purely business one, and that Bowers' only connection in the transaction is to be found in the correspondence, but Mr. Davis, a highly respectable lawyer, and Mr. William H. Meyers, a man against whom nothing has been said, both swore to statements by Mr. Pratt.

On this subject Mr. Davis says that Mr. Pratt told him prior to this transaction that Mr. Bowers was a friend of his, and that he had bought this property for the cemetery. Page 320, and William H. Meyers says that in the summer of '91 he spoke to Mr. Pratt about his mortgage on the Moses place, and asked him what was going to be done about it, and Pratt said he supposed it would have to go with the rest. Page 302, showing that at that time Pratt was familiar with what had then been done.

Now Pratt is not called to contradict this or any of the other allegations with reference to his management of the Company. So, too, Moses' wife swears

that when Mr. Parker came to see her, he tried to obtain her signature to the deed by threats, and threatened her with ejection by the Sheriff unless she signed the paper. There were two people with him, yet neither of them is called to contradict this testimony.

Besides it is proven, and not denied or attempted that Moses was a man given to drunkenness, and that he had been drunk at that time for some weeks before and at the time of the transaction.

It is noteworthy also that the testimony of the complainants as to the values of the land consists of that of its owners, the Myers, and two real estate brokers in the vicinity, whereas, no real estate agent is called by the defence to contradict this testimony, but they seek to off-set it by the testimony of a New York lawyer and a New York merchant, both of whom were land owners in the vicinity, but neither of whom was a real estate dealer.

## THE TAX SALE.

It may not be very important in this case, especially as the land has been shown to be no adequate consideration for the issue of the stock, but it is of some importance, and I therefore call the attention of the Court to the fact that no legal title, even for years, was conveyed by the tax deed.

The sale was made under the township charter, which will be found in the Session Laws of 1871, beginning on page 1371, which provides, Section 36, that a declaration of sale shall be given, and that such declaration of sale shall be recorded, and also provides, Section 36, that no mortgage shall be cut off or affected by the tax sale, unless six months' notice in writing shall have been given to the mortgagee. This act was superseded by the act of 1879, Supplement, page 990, in which the lien of taxes is provided to remain for only two years, and that a certificate of sale must be

given and recorded in the County Clerk's Office within twenty days from the receipt thereof, and that, in case the premises are occupied by the owner, notice must be given to him, demanding possession within thirty days, and at the same time, that he must exhibit to the owner the certificate.

Smith, the Township Collector was sworn and produced the books of the Township (see pages 448 to 452 of the printed book of this case), and he says that the two books produced by him complete the whole Township Record of the proceedings which resulted in the sale of these lands, and they show that there was no declaration of sale given to the Township recorded and therefore that the Township had no power to convey them.

Besides the testimony of the Meyers' heirs is that no notice was given to them to redeem. The sale to Bowers was therefore illegal and void.

Besides that these taxes were unpaid taxes for the year 1885, and the sale to Bowers by the Township was made in 1890 or after the lien of the taxes had expired.

Now, there having been no certificate of sale given and the lien of the taxes having expired before the conveyance to Bowers by the Township, there was not only no title in the Township which could be conveyed but no taxes which were then lien, under which even a new sale could be made.

Johnson v. Van Horn, 16 Vroom, 136.

I therefore contend that no title passed to Bowers from the Township and that there was nothing he could convey to the Rural Homestead Company.

As a necessary consequence of this, the paper signed by Moses C. Meyers, must I submit, be held by

the Court to be void for want of consideration whatever may be the conclusion the Court may reach as to the bona fides. On Bowers' own admission, the sole consideration was his alleged right of possession, which, in point of fact, as the above shows, was false. He had no legal title even for years, and had taken no steps to perfect one, and he therefore had neither possession nor right of possession nor title of any kind, and his alleged consideration for the conveyance failed.

It was alleged below, and may be urged here, perhaps, that the defendants had some rights as against Moses Meyers under their writ of ejectment.

1. It is admitted by the defendants that the judgment in that case was taken by default, under an allegation of fact, which appears to be false.

2. The only method for obtaining possession is that pointed out by the statute, supplement page 991, section 56, which was not the method pursued by Bowers, so that there seems to be no consideration whatever for the conveyance by Bowers to the Company.

The pleadings and depositions then in this case establish beyond controversy, it seems to me, the character of this transaction.

We have proven that this Rural Homestead Company had been denominated by Pratt and Torrey from its beginning; that under their management the cemetery had become largely indebted to the Homestead Company, and in a sum upwards of $50,000, and besides that it had contracted other debts of considerable amount; that it had never paid a dividend; that the Boston stockholders had not been allowed any knowledge of its concerns; that its accounts had not been kept and were not accessible; that its expenditures exceeded its income; that the

Homestead Company had not, at any time, received from it any of the moneys promised in the agreement, under which it was being conducted; that the Boston stockholders were dissatisfied and justly so, and that their dissatisfaction was known to Pratt and Torrey; that they had invested their money in it in the beginning solely upon the representations of Pratt, and that these representations had proved to be cruelly untrue; that in this status of affairs it was also known to Pratt and Torrey that the Boston stockholders were trying to buy stock enough to change the management, and had bought some.

It was apparent that the stock held by Pratt and Torrey, without the two hundred and thirty-eight shares, was insufficient to constitute a majority; that if the Boston stockholders should succeed in buying enough stock to overcome these holdings, the management would be changed; that Mr. Pratt was largely interested in the cemetery results, as contra distinguished from those of the Rural Homestead Company; that Mr. Pratt knew that Bowers had bought this property and said that he bought it for the Cemetery Company; that he also knew that the land was worthless or nearly so; that Moses Myers was a man given to drunkenness; that as to the two acres bought from him, there is evidence amounting to demonstration that the deed was obtained by fraud, on misrepresentation and by deceit, and without consideration; that Pratt and Torrey and all the directors knew, when they made the transaction and issued the stock, that the title to the land was a tax title merely, except as to the two acres; that they purposely kept the deed from the record, that they might endeavor with other moneys, to secure the balance of the title; that pending these proceedings they had permitted judgments to be entered against the Cemetery Association without notice to the stockholders of either company, one of which judgments was founded upon a claim which had been owned by Pratt, and which was transferred

to Babbit, and with the evident intention of creating a claim against the Company in the hands of a third party; that as to the other, it was held by an intimate of Torrey; that sequestrators had been allowed to be appointed without being known to the stockholders on behalf of this judgment, and that this had not been reported to the stockholders; that a bill of interpleader was filed in which the Company's counsel appeared, one on one side and one on the other; that except for the accidental discovery of this fact by the Boston stockholders the matter would have been adjudicated by consent, perhaps, and certainly without their knowledge and the property thus removed beyond their reach without giving them an opportunity to know the facts or take action in the matter. In other words that the litigation was proceeding under the direction on the two sides of Pratt himself.

Finally, that an issue of these two hundred and thirty-eight shares had been suggested to the stockholders, opposed by them, and abandoned for that reason, a year or two earlier, and was made with the knowledge that it was against their will, and with the further knowledge that the result of it would be to perpetuate the control in the hands of Pratt and Torrey.

That it should have been done, just at that time, under those circumstances, for that inadequate consideration and have produced that result brings the mind to the irresistible conclusion that it was done for the purpose of preventing any change in the management.

That it was all innocent is impossible to conceive, that it lacked the elements of conspiracy, I do not believe. The Chancellor has reached the conclusion that it was fraudulent, and I submit to the Court that his conclusion was correct.

The case of Guilds, executor, vs. Parker, 14 Vroom; 430, holds, that a Board of Directors, who have made a barter of the assets of the company for personal gain, cannot, by an act, purporting to be an acceptance for the company, of an equivalent for such assets, conclude the stockholders or their representatives from showing that no equivalent was received.

The cases of Park, vs. Grant Locomotive Works, 13 Stewart, 114, and Ellermon, vs. Chicago Junction Railway, etc. Co., 4 Dickinson, 232, held that the absolute commission to the judgment of the managers of a corporation, as to the expediency of making a contract, is conditional upon their acting in good faith, with honest motives and for honest ends,

And the case of Archer, vs. the American Water Works Company, 5 Dickinson, 50, holds that when through fraud, a serious wrong is threatened for which there can be no adequate redress at law, special reason for equitable interference is presented, which demands the protection that a court of equity is able to afford.

And also where it is plain that the scheme of a director and his party is that that director shall control the Company by depriving others of their rights, the execution of such a scheme is fraud.

The case of Guild v. Parker was in this Court, and the Archer case was, on appeal, affirmed in this Court. Under these decisions I respectfully submit that the Chancellor's conclusions were correct, and that the decree should be affirmed.

It is plain in this case that this whole transaction was a scheme, planned and executed for the improper purpose of preserving these officers in power, and that they hesitated at nothing to accomplish this end. It is plain that the contract which they made was for their own benefit, and for their personal gain, and that

it was not made in good faith, with honest motives or for honest ends; that it was without consideration and should be decreed to be void.

I therefore submit that the Chancellor's decree should be wholly affirmed.

With reference to the motion made by Mr. Linn, and laid over by the Court until the argument of the appeal, that an order be made postponing the election *pendente lite*, I respectfully contend that it should be denied.

1. This Court has no jurisdiction. It is not an application to continue an injunction in favor of the appellants; the injunction was issued to the complainants against the appellants, and to keep them from changing the status. This Court has power to continue an injunction on application of those in whose favor it was granted, but I know of no precedent where an injunction has been continued at the instance of those against whom it was granted. There is nothing here upon which to found the order; there is no petition or other proceedings. It is a verbal application to issue an injunction in behalf of the defendants.

But if the right exists, it ought not to be exercised. These men have been proven to be and decreed to be in power by fraud; by means of fraud they have continued in power since the first Tuesday of June, eighteen hundred and ninety-three, three years.

This application is to continue them in the fruition of that fraud for another year, whatever may be the result of the appeal. The election now is set for the first Tuesday of July. There is not now time between this time and the first Tuesday of July for them to make other fraudulent disposition of the stock, if the election be further postponed. They being in the control of the machinery of the Company, it is impossible

to tell what next may be done; we cannot tell when the opinion will be rendered, nor how many days there will be between that and the time to which the election will then be adjourned.

I would respectfully submit that the Court ought not to assist them again in the effort to prevent the majority stockholders from exercising the right to which their holdings entitle them.

# New Jersey Court of Errors and Appeals

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| THE RURAL HOMESTEAD COMPANY AND OTHERS. *Appellants* *and* FRANK W. WILDES AND OTHERS. *Respondents.* | *On Appeal from Chancery.* |

## *Brief of Appellants' Counsel.*

The object of this suit, as correctly stated by the Chancellor in the introductory part of his opinion, is to set aside a transfer of two hundred and thirty-eight shares of the capital stock of The Rural Homestead Company made to Samuel W. Bower, which it is claimed was effected by the directors of the company for a grossly inadequate consideration, in bad faith, to the injury of the company, and incidentally to the injury of the complainants who are stockholders of the company, the directors' motive in making such transfer being the perpetuation of themselves in office as directors.

The directors of the company against whom this serious charge is made are Julius H. Pratt, Henry F. Torrey, John Linn, Clarence Linn and David W. McCrea.

Mr. Pratt is the owner of eight hundred and ninety one shares of the company's stock. Mr. Torrey owns

eighty-five shares, John Linn and Clarence Linn and David W. McCrea each own one share of the stock only.

The law governing this transaction is undoubtedly correctly stated by the Chancellor. He says "the well established rule is that individual stockholders cannot in litigation question the acts of directors *intra vires*, unless they can show that they are fraudulent in character," referring to authorities. And he then adds, "the question in the present case then is, was the transfer to Mr. Bower made in good faith and in the exercise of an honest judgment, to which judgment honest motives and ends are essential."

The Chancellor then further adds that "a charge that directors do not act in good faith and with honest judgment must be established by evidence which is strong enough to overcome the usual presumptions in favor of good faith and honesty of purpose."

The opinion does not maintain that there are any direct proofs of fraud in the case, but claims that fraud and a dishonest intent may be inferred from proven circumstances.

It certainly is not saying too much for these directors to insist that when five reputable men, well known for many years in the community where they live, whose integrity has never been impeached, are charged with dishonesty, in the absence of any direct proof of fraud, the inference of fraud to be drawn from proved circumstances should be so clear and convincing as to leave no reasonable doubt upon the mind that the charges thus preferred are undoubtedly true and thoroughly established.

The opinion maintains that in the transaction complained of, the directors were actuated by a selfish intent and that they acted in bad faith towards certain stockholders.

The evidence relied upon for this decision has been erroneously interpreted by the Chancellor, and even when so interpreted is insufficient to substantiate the charge of bad faith. While the great array of evidence on the other side is either lightly considered or entirely overlooked.

## WAS THERE ANY PROSPECTIVE BENEFIT TO BE GAINED?

When it is claimed that a selfish intent opposed to the interests of their constituents, was the governing motive in the action of a board of directors, it is proper to consider what was the advantage or prospective benefit to be gained by them personally. If there could be no personal gain to them independently of the stockholders for whom they act, it must be admitted that there was no selfish intent in their action.

A majority of the directors in this case had been in continuous service of the two associated companies known as Rural Homestead Co., and Arlington Cemetery Association from the commencement of their business, embracing a period of eight years.

Their election had in every instance, excepting one, been unanimous. (Minutes of Arlington Cemetery, Exhibit P.13, Minutes of R. H. Co. Exhibit P.6.)

Had any of them any personal profit or derived any personal advantage by reason of their office?

As directors of one Company and Trustees of the other, they received no compensation.

Mr. Pratt as President and Mr. Torrey as Secretary and Treasurer of Rural Homestead Co., performed the duties of their offices gratuitously.

Exhibit D. 38 (Page 453).

Mr. Torrey as Cemetery Superintendent and at the same time as Secretary and Treasurer of Arlington Cemetery Association, was entitled by agreement to a salary of $1,800 per annum.

Minutes Exhibit P. 13. (Page 5–6).

The three offices filled by him are ordinarily filled by three or certainly not less than two persons.

Mr. Torrey's long experience as chief engineer of the Delaware and Hudson Canal Co., and as expert civil engineer in other connections, qualified him peculiarly for the delicate work of laying out the ground and the general care of the cemetery.

Printed Book (Page 573 L. 10–22).

As Treasurer he always paid the expenses of the Cemetery (whether there were funds in the treasury or not) and preserved its credit by making up deficiencies from his own private means and from money borrowed from his personal friends.

Cash Book Exhibit D. 26.

For the money so advanced he has had no security and at the time of the first demand of the Boston Stockholders in August, 1890 for a change of administration the cemetery was owing him for money so advanced, $4,385.36 and to his family $1,045.50, making a total of $5,430.86 of which neither principal or interest, nor any part thereof, has been repaid. His professional services elsewhere at the usual rate would have commanded a much larger sum than the salary which he agreed for, but which he was unable to collect.

Exhibit D. 2, (P. 582-630).

This was the only salary ever paid by the Associated companies excepting a salary of $200 per month paid to Mr. Pratt as Comptroller during the

first three years of the business and this was voluntarily relinquished by him from and after that time.

Exhibit P. 13 (P. 5).

Mr. Pratt also advanced money from his own personal means and those of his family amounting in 1891 to $5,749.60 which was unsecured and on which neither principal nor interest has been paid.

Exhibit D. 2, (P. 582).

These facts show conclusively that there had never been during the eight years of service by the defendants in this case any selfish interest or purpose, but on the contrary that their course had been one of great sacrifice and generosity toward their fellow-stockholders.

Nor could they in any way derive any incidental benefit as officers in the management. There was no money for them to handle, and no reward of social or political influence. The only motive that can be inferred from many years of unrequited devotion to the service of these companies must have been a desire to protect and make valuable the stock of the Company in which they owned a large share, and in so doing to benefit all stockholders alike.

All the ingenuity of the counsel for the complainants has failed to fasten upon these officers a single act of wrong doing during the whole term of their long service, and the only substantial complaint was that the complicate details in the accounts had been delayed in their compilation.

It appears from the proofs in the case that all essential features in the accounts showing the exact condition of the affairs of Rural Homestead Co., were accurately entered up every month, so that any stockholder by reference to the sales book could at all times learn the amount of the sales and the propor-

tion due to the company, and could also learn that the deficiency in current receipts made it impossible to provide for dividends on the stock. These accounts always plainly entered upon the books, and always accessible to every stockholder, were the only accounts in which the stockholders of Rural Homestead Company had any interest or concern.

(Page 169 L. 18).

Testimony of Mr. Cowdrey, Boston Stockholder, Expert Bookkeeper, and one of the plaintiffs. (Page 169, line 18).

*Cross Examination by Mr Parker:*

Q. Did you find any account of the sales of burial lots?

A. We found certain debits to the Association for lots sold and money received for them.

Q. Did you find any monthly statements of the number of lots sold?

A. Yes, the accounts would show the number of lots sold.

Q. Every month?

A. Yes, every month.

Q. And the price received for them?

A. Yes.

Q. And also an account of the expenses?

A. Yes.

(See also Reddish's testimony, page 281).

The minor items in the Cemetery accounts which, by reason of Mr. Torrey's many onerous duties and the inability of the company to employ a professional bookkeeper, were for a time deferred, were subsequently all entered up and carefully examined and approved by these auditors, two of whom were named by the counsel of the plaintiffs.

Cemetery Minutes (P. 44 and 45).

No injury was sustained by any one in consequence of this delay.

But it must be observed that if there was any neglect on the part of Mr. Torrey, that Mr. Pratt was in no degree responsible for it.

Both officers were appointed by the Board of Trustees and accountable only to the Board, not to each other.

(By-Laws of Minutes, P. 10 Art. 1). Exhibit P. 13.

## DID THESE OFFICERS DESIRE TO PERPETUATE THEIR CONTROL?

The first request from the Boston stockholders for a representation on the Board of Directors was made at the annual meeting July 9th, 1890, and the correspondence below indicates the same disinterested conduct on the part of the officers that had been observable during the eight previous years, and shows also an absence of any wish on their part to perpetuate their control of the management, but on the contrary a positive desire to be relieved of that burden, if it could be done with safety to the company.

Minutes of Rural Homestead Co. (P. 49. Exhibit P. 6).

"Mr. Pratt read to the meeting (annual stockholders' meeting, July 9th, 1890), a letter which he had received from Mr. Frank W. Wildes of Boston expressing a desire of the Boston stockholders that Mr. Shearer should be elected to represent their interests upon the Board."

Exhibit P. 6.

The election of Mr. Shearer and of all the other directors was unanimous.

Minutes (P. 49) Exhibit P. 6.

(The following letter was then written by Mr. Pratt in reply to Mr. Wildes).

"JERSEY CITY, N. J., July 9, 1890.

"MR. F. WILDES,

DEAR SIR—Your note of 7th inst. by hand of Mr. Shearer was duly received. All the Stockholders present at our meeting to-day very cheerfully assented to your suggestion and elected Mr. Shearer as one of the Directors of Rural Homestead Company. Mr. Shearer alone was from his natural modesty, averse to the appointment, and required much urging to bring him to the point of voting his large handful of proxies in order to make it unanimous.

We are very glad to have the active co-operation of our Boston Stockholders in the person of Mr. Shearer as their representative. I made him the proposition that we would elect the entire ticket from his Boston friends on condition that he would guarantee that the Cemetery should be as well managed for the next two years as it had been for the past two, and agreed to pay him $1,000, myself besides, in order to be relieved from the personal care of the management.

The offer is still open. The phrase "as well managed" was thus explained:

First. The sales of lots should continue at the same rate of increase.

Second. The expenses should not exceed those of the past year.

Third. The bills incurred for expenses should be promptly paid as heretofore and the credit of the concern be preserved up to the present standard.

Yours truly,
JULIUS H. PRATT."

Exhibit D. 15, (Page 619).

This was followed by other letters, copies of which are here submitted.

Letter of Mr. Pratt to Mr. Shearer and others, Aug 20, 1890.

"The affairs of the Arlington Cemetery and Rural Homestead Company (which are indissolubly merged in one interest) urgently demand some relief and support in addition to that which the officers of the two companies can give.

The burden of carrying the enterprise which should be borne proportionably by the Stockholders, has been sustained for two or three years by great personal sacrifice on the part of the executive officers and of others who, at their solicitation have advanced money for that purpose. The situation was fairly stated in our director's report at the recent annual meeting, and the only remedy that we could suggest was set forth in the report.

On the presumption that the business hitherto has been honestly and economically administered, the policy proposed is such as all reasonable men would approve, viz.: that those whose interests are at stake should join in a movement for their protection.

If any better plan can be suggested for our relief let us unite in promoting it.

The only other plan usually adopted by corporations is to wind up the concern by legal process. That method, even if it were advisable, is in our case absolutely impossible. The Cemetery business is by law perpetual and the Cemetery Association is a legal creation belonging practically to the Rural Homestead Company. The contract nominally made by two corporations is in fact a contract of one party made with itself, and any attempt to wind up the

Rural Homestead Company, independent of the Cemetery association would easily work the destruction of all value in the stock of the former by deranging the business and the credit of the latter.

I am not aware of any disagreement in the views of our stockholders, for we have not been advised of any. We certainly all agree in deploring the unprofitable speculation as developed up to the present time, and no one has suffered from it so much as myself, but it has not been shown that anything better could have been done.

In the interview to be had with Mr. Torrey, as proposed by Mr. Shearer, I hope a full and candid expression of opinion will be given by our Boston Stockholders.

If they can suggest anything for the improvement in value of our stock we will hasten to adopt it, and, if we cannot agree in a policy, I will sell out my interest at a very low figure and in that way make over to them the entire control, rather than have a controversy among ourselves which would bring sure disaster to all concerned.

If the plan proposed in the Director's report is approved by our Boston friends, let them sign the subscription which is already signed for one-half the requisite amount. If they have anything better to suggest let it be stated clearly so that we can all act in harmony. If there are any facts they wish to learn about our affairs let Mr. Cowdrey, whom we are always glad to see, make the investigation, and so by patience with each other and with the adverse condition we are in, we can ultimately save ourselves from loss.

Respectfully,
JULIUS H. PRATT."

Exhibit D. 16, Page of Book 620.

"JERSEY CITY, August 23, 1890.

*"To Messrs. Daniel F. Shearer, Waldo S. Cowdrey, and Francis J. Parker:*

This letter intended for any or all of the Boston Stockholders of Rural Homestead Co., I address to you because heretofore my correspondence in regard to our affairs has been mostly with you. Will you kindly favor me with a reply individually or collectively as you may prefer?

On the 9th of last month a new board of directors of the Rural Homestead Co., was elected by the unanimous vote of the Stockholders present in person or by proxy including all of the Boston Stockholders.

Since that meeting nothing whatever has transpired and no new facts have appeared which can change the status of our affairs except that in the absence of sales of cemetery lots, I have paid out of my private funds for the common benefit of Stockholders nearly $600 on account of Cemetery expenses, for the reimbursement of which neither interest or principal I have no hope for a long time to come.

During the past week while Mr. Torrey, our secretary, was in Boston it came to my knowledge that a peremptory demand had been agreed upon by all of the Boston Stockholders for a change in the administration created by their votes. This demand has not been formally made upon the directors, or upon any of them to my knowledge but has been made known through a verbal statement of your authorized mouthpiece Mr. Wildes in a conversation with Mr. Torrey.

A lawyer in Jersey City has also stated to another lawyer, (who may be supposed to have some connection with us, but who in fact has not the slightest authority or power to act on the matter involved) that he is instructed by all the Boston Stockholders, who are his clients, to demand for them entire control of

our business and in the event of our failure to surrender to them the control he will commence legal proceedings to compel it. Such an extraordinary demand made in such an extraordinary and indirect manner would receive no attention from me except for the fact that it is the exact line of my wishes. There has been no time since our business commenced that I would not gladly have surrendered my part of its management into competent and responsible hands. I will therefore make no comment on the discourteous method adopted by your representative for percipitating a controversy with other stockholders. Nor will I discuss the question of modesty on the part of a minority of about one-fourth interest demanding the entire surrender of the other three-fourths without assigning a reason for it, nor will I express my views of the spirit which animates the whole proceedings as emphatically announced by Mr. Wildes to Mr. Torrey that he, as your representative "would control the whole business or ruin it." But I will at once cooperate with you in the effort to dissolve a connection which cannnot in view of what has happened, be harmonious hereafter.

The following plans occur to me as fair for both parties and practicable, inasmuch as the stock now controlled by me will when joined to yours make a majority, I will not wait to consult with others, but will treat with you on my own account.

First. The proposition I volunteered to make to Mr. Shearer at our Stockholders' meeting that I would help elect any persons he might name, provided he would give to the Company a guarantee that the business should be as well managed as it has been, was *bona fide* and reasonable, but does not seem to be acceptable to you. If on further consideration you wish to adopt such a method, please inform me and we will try to arrange on that basis.

Second. I will agree to sell all my stock, and that of my friends who may desire to be included, at a price to be fixed by two professional "Actuaries," the price to be determined on the basis of past experience and future probabilities.

Third. Not less than 541 nor more than 601 shares of the R. H. Co., stock duly assigned in blank shall be placed by the Boston Stockholders in the hands of an umpire agreed upon. I will place in the hands of the same umpire a corresponding number of shares, also duly assigned and an agreement shall be entered into by each party either to sell, or to buy the shares so deposited by the other.

The umpire will then call for bids and shall determine which of the two shall make the first bid. The bid may be either to sell or to buy. If to sell, then the party making the first bid will offer to the other party all of his deposited stock at a certain price. The other party will then agree to buy it at the price offered or will in turn offer to sell at a lower price. The bids shall proceed in the same manner until one or the other ceases to bid and takes the stock. If the reverse process is adopted, then the first party will offer to buy at a certain price and the second party will either sell at the price offered or will offer a higher price and so on until one or the other shall cease to bid.

The terms of sale to be 10 per cent. cash at time of sale and 90 per cent. within sixty days. If one of these propositions or some one equally fair, reasonable and conclusive is not accepted by you and your friends I will accept your challenge to meet you in the Courts and the responsibility for the consequences will rest with you.

Yours truly,

JULIUS H. PRATT."

Exhibit D. 17, page 621.

Three copies of the last were sent, one to each of the persons to whom it was addressed. No reply was received to any of them, excepting one from Mr. Parker two months later of a non-committal tenor. The letters are now introduced for the purpose of showing an entire absence of any desire on the part of Mr. Pratt and his associates in the management, to perpetuate their control, but on the contrary to show that they would gladly retire on condition that proper assurance could be had that the business should be safely and economically administered.

Page 267, L. 5.

The decision of the Court of Chancery invites us to deal with "inferences."

We are entitled to the inference that a long continued course of conscientious and self-sacrificing purpose by the officers of the company in the effort to promote its success, would not be abandoned by them at a time when the steadily increasing receipts of the Cemetery promised success to their enterprise, and that they would not then substitute selfish intent for the disinterested motives that had been governing their actions uniformally for a term of nine years.

Exchange, (P. 26 Cash Book 478).

THE SPECIAL ACT COMPLAINED OE.

We come now to the special act of the defendants which is complained of.

In the month of January, 1892 there were in the treasury of Rural Homestead Co., 238 shares of its stock, which was the remainder of 2,400 shares originally issued, all of which, excepting the 238 shares had been sold by the directors some years previously at different times to the stockholders, and the proceeds had been used in the business of the Arlington Cemetery.

The last sale was made in January, 1886, (Exhibit D. 31, P. 435), when 172 shares were sold in pursuance of a pro-rata subscription of the stockholders as resolved in stockholders meeting, Dec. 10, 1895, "for the purpose of enabling the directors of this company to loan (the proceeds) to Arlington Cemetery." Attempts were subsequently made by the directors to sell the remaining 238 shares of stock. The stockholders had been appealed to in vain to purchase it. At the annual meeting July 9, 1890, a bonus in Cemetery lots was offered to stockholders if they would buy the stock, but no stockholder could be found to take it.

At a subsequent meeting of the directors, Nov. 7, 1890, Mr. Wildes testifies (P. 204, L. 10). "At that meeting a proposition was made by Mr. Pratt to divide the balance of the stock then remaining in the treasury, pro-rata among the stockholders to which we objected," and in consequence such division was not made.

Wildes testimony (P. 205, L. 7).

These two attempts to dispose of the stock were made by the directors *subsequently* to the purchase by Bower of the Meyers property which was in May, 1890. These efforts of the directors to sell the stock after the date of Bower's purchase disposes very conclusively of the allegation that there was any understanding between Mr. Bower and the officers of Rural Homestead Co., that the property was to be bought by him and subsequently exchanged for stock of the Rural Homestead Co.

The stock at that time (1890) had no market value and but little intrinsic value, as testified to by Mr. Wildes, page 201, line 30. "The stock was not worth anything then," August, 1890. It remained in the hands of the directors to be disposed of, as all the

rest had been, for the benefit of the Cemetery, whenever they found the opportunity.

After all other efforts had failed, the opportunity came to make the stock available for the purpose both of protecting the Cemetery against a threatened competition, and of promoting the original design of enlarging the cemetery. The acquisition of land in addition to the original 35 acres bought for Arlington Cemetery had from the first been the settled policy of the Rural Homestead Company.

A subscription of $10,750 by stockholders was made in April, 1883 in response to a circular issued by the directors of Rural Homestead Co., (Exhibit D. 32) "for the purpose of buying additional land for their Cemetery," but the rapid absorption of the desired land, by other purchasers, for buildings and improvements defeated this attempt of the Company. The only chance of enlargement of the Cemetery had become narrowed down exclusively to the purchase of this Myers' tract.

The matter of this purchase was first brought to the notice of the Board of Directors by the President at their meeting December 28, 1891. (Minutes, page 55, Exhibit P. 6). "The President stated to the Board that the interests of the company were seriously menaced by a recent purchase of a tract of land adjoining Arlington Cemetery which the present owner proposes to convert into a competing Cemetery, as he claims he has a right to under a law passed in 1890."

A committee was then appointed to negotiate with the owner, Mr. Bower, and on their recommendation the interest of Mr. Bower in the land was purchased and paid for by the 238 shares of stock.

## THE MENACE OF A RIVAL CEMETERY.

The opinion (page 7) says, "In face of the fact that the cemetery is substantially in the country, adjacent

to many large parcels of unoccupied lands, this advantage (the prevention of a rival cemetery) is *insignificant.*"

The Chancellor evidently did not understand that the tract of land in question, was the *only* land in the township of Kearney outside of that controlled by Arlington Cemetery Association that could legally be converted into a cemetery. The Cemetery Laws 1883 provide in Chapter 135, Section 2, "That no more than three cemeteries shall be located or placed under and by virtue of said act to which this is a supplement in any one city, township or town, in any county of this state."

The Rural Homestead Co. had under its control three legally organized cemeteries, viz: "Arlington," "North Arlington" and "West Arlington."

Page 497, l. 19-22.

(Although the last two embracing only three or four acres each were too small for practical use without further enlargement), and each had separate tracts of land. This arrangement would have given to the Rural Homestead Co., the legal right to the exclusive cemetery business in the township of Kearney, but for the intervention of a subsequent law of 1890, Chapter 43, which gives to owners of private burying grounds the right "To convey to any Cemetery Association organized under the laws of New Jersey their title to the unoccupied portion of said burying grounds."

The Myers' tract had been used as a burying ground and many graves are still in it.

Exhibit D. 10, (Page 616, l. 16).

Under this law Mr. Bower could have organized a rival Cemetery Association and converted the whole tract into a competing cemetery in spite of the law of

1883, without the usual formality of getting consent from local authorities or health boards.

Thus the menace of a rival cemetery was a serious one and the mere control of the land for 25 years without actual ownership was a valuable consideration, and by no means, as the Chancellor without knowledge of these facts, terms it, "insignificant."

R. H. Co., Minutes, (Pg. 55. Exhibit P. 6).

## VALUE OF TWO ACRES.

The value to Arlington Cemetery of the two acres in fee is easily shown by mathematical demonstration to be at least $30,000. The stock which was exchanged for the entire Bower interest including the fee of two acres would be at par $11,900.

## TESTIMONY OF MR. TORREY.

Q. "How much space of ground is used for a single grave—I mean in that single grave part of the cemetery, for the purpose of a single burial?

A. The grave and the path space at the end between that and the next grave, takes 27 square feet of ground.

Q. When you sell a single grave, you sell that space? How much about?

A. We sell a single grave 27 feet—square feet—for $16. It is 24 square feet of ground, that is what we sell as graves, we don't sell the paths.

Q. Is it 2x12 or how?

A. It is 3x8 long, allowing for the box 7 feet long and the mark or head stone.

Q. 3x8 and the price you get is $16?

A. $16, yes, sir."

(Pg. 444, L. 30, to Pg. 445, L. 5).

The number of square feet in an acre is 43,560. This divided by 27 gives the number of graves in an acre as 1613, exclusive of paths. With due allowance

for a little waste in laying out the graves we may safely estimate the number as 1500.

The net price received by the cemetery for the land of each grave (deducting the cost of interment as shown in all entries of the cash book Exhibit D. 26, to be six dollars) is ten dollars which multiplied by 1500 shows the income derived from one acre in single graves to be $15,000, and for the two acres $30,000.

## IMMEDIATELY AVAILABLE FOR USE.

Besides this it is shown that the two acres could be made available for almost immediate use, and was much needed by the cemetery.

It joins that portion of the cemetery which is the only section used for single graves, and which is nearly all sold, and no portion of the present Arlington Cemetery is so well adapted as this two acre plot for an enlargment of the single graves' section.

## MR. TORREY'S TESTIMONY.

Q. "You know that two acres of the Myers' property that Moses Myers claimed to own the fee of, do you?

A. I do.

Q. Does or not that two acres immediately adjoin the cemetery?

A. It immediately adjoins the single grave ground, the land which we are using for single graves in the cemetery—the lower portion of the single graves' ground.

Q. The southerly side of the cemetery is the part devoted mainly to single graves?

A. The only part which we use for public ground or for single graves is lying right along at the southwestern boundary.

Q. Is the house on the two acres?

A. It is, the house in which Moses Myers has been living.

How much of your single grave territory there remains unoccupied between Myers' property, north of the line between the cemetery and Myer's property?

A. Just a strip ten feet wide which we are keeping open until we shall have filled the other part, for convenience in getting between the lines and those graves and a space of probably three hundred or four hundred graves in the ground which we propose to lay out for single graves—three hundred graves, I should say, at the east end of the ground now used for single graves.

Q. According to the rate of demand which has existed during the last two years for single graves how soon will the whole of that part of the cemetery be exhausted between the graves already there and the Myers' property?

A. I should say probably three years, from three to four years, to use up the ground that we have allotted for single graves, that is only an estimate on my part.

Q. An estimate based on what?

A. An estimate based on my knowledge of the business. I could give you more correct figures by going over our figures for the sales of single graves if you wish anything closer than that.

Q. If you extend the single grave territory southward, the Myers' property would be required for that purpose in your judgment within the next year?

A. The use of the Myers' property for that purpose would prevent the necessity for our using much more valuable land for cemetery purposes in the improved portions of our cemetery.

Q. Do you mean to say that unless you use the Myers' property that within the next twelve months you will be required to use more valuable portions of the cemetery?

A. Not within the next twelve months but within the next two or three years we would have to lay out grounds in another portion of the cemetery where it would bring more money for cemetery lots unless we

get ground that can be used for that purpose outside of our present cemetery grounds.

Q. Is there any other ground outside of your present cemetery and contiguous to it that can be acquired except this Myers' property?

A. None that is suitable for that purpose in connection with our cemetery work."

(Pg. 417, L. 12 to 40, Pg. 418, entire).

This purchase from Mr. Bower did not increase the debt of either of the companies, nor affect their financial condition, nor require the use of any further considerable sums of money for many years. By paying the small annual taxes they could hold control of the entire tract, or by a small mortgage on the property while held by the Rural Homestead Co., they could provide money with which to buy out the Myers' heirs and acquire the fee to the whole, or they could take immediate use of the two acres which was already paid for. In view of all these facts which the Chancellor has overlooked, or neglected to consider, his declaration, that "the transaction would have been conspicuously indiscreet and unwise," is not supported by generally accepted and well established principles of business management. If these directors who have testified are to be believed, they clearly did not think so. In their judgment it was a wise act and clearly in the interest of both companies to do.

It was simply the conversion of a nominal asset of dormant stock for which the directors had been unable to find any beneficial use, into a substantial property of great prospective value to the Associated Companies.

The failure of the directors to avail themselves of such a rare opportunity open to them to promote the interests of their constituents would have been a culpable neglect of duty. If in the performance of this duty, the secret machinations of a faction of

stockholders who were working to gain control with the avowed purpose "to rule or ruin" (Page 440 L. 33-40, Page 441, L. 1-30, Page 201, L. 26-35) happened to be interfered with, the directors cannot be held accountable for that incidental result. Moreover, all of them who voted for the Bower purchase (a majority of the board) who appeared as witnesses declare positively that they did not know that the issue of the stock to Mr. Bower would determine or even affect the control of the future management.

TESTIMONY OF JOHN LINN.

*Cross Examination by Mr. McGee.*

Q. "You knew there was at the time a struggle between the Pratt party and the people known as the Boston party for the control of the company, did you not?

A. No, I did not."

(Page 388, Line 34).

TESTIMONY OF CLARENCE LINN.

*Cross Examination by Mr. McGee.*

Q. "Did you know at the time you voted for this resolution that the issue of these two hundred and thirty-eight shares of stock would change the majority of the ownership of the stock to the parties acting with Mr. Pratt from the parties known as the Boston Stockholders to the parties acting with Mr. Pratt?

A. I don't think that I knew that at that time.

Q. Nothing was said about that?

A. No, sir."

(Page 396, Line 19).

## TESTIMONY OF MR. TORREY.

*Cross Examination by Mr. McGee.*

Q. "You were aware, were you not," that the issue of the stock, 238 shares, would have the effect to keep the control of the corporation in the hands of Mr. Pratt and those who had been acting with him?

A. I supposed the control was with him and his friends at that time, there were transfers of stock made afterwards which surprised me very much, because they came from parties whom I supposed were strongly with Mr. Pratt in all actions pertaining to the Company.

Q. You knew the Boston stockholders were endeavoring to secure the majority?

A. I cannot say that I knew that they were endeavoring to secure the majority, I knew they had been buying some stock."

(Page 478 L., 23-28).

## THE FEE OF TWO ACRES.

The Chancellor does not gather from the proofs that Moses Myers obtained title to more than seven-twelfths of the two acres upon which the house was built.

The will of Rachel Ann Myers offered in evidence by Mr. McGee, (Page 99) is recited by the Chancellor as proving that Moses Myers inherited from his mother, Rachel Ann Myers, only one-sixth of Rachel Ann Myers interest in the two acres in question.

The testimony on page 99 reads as follows: (Moses C. Myers being on the stand at the time, called by Mr. McGee.)

"Counsel offers in evidence the record of a will of Rachel Ann Myers, widow,

recorded in book 16, page 334, of Wills for Hudson County, which Will bears date November 24, 1882, and asks

Q. Is that the Rachel Ann Myers who was your mother?

A. Yes, sir.

Q. This will, in its disposition of the real estate, devises to her son, Moses C. Myers the old house and two acres of land adjoining the same, situate under the hill, formerly owned and occupied by Joseph Felter now in the town of Arlington, County of Hudson, and State of New Jersey, to him forever—are you that Moses C. Myers?

A. Yes, sir.

Q. And is the house you have been speaking of?

A. That ain't the house; that house is down; I am living in a house on the same two acres.

Q. A house you built since?

A. I had it put there.

Q. It's the same land?

A. Yes, sir.

Q. And she gives, bequeaths and devises to her son, Moses C. Myers, the residue or balance of all her real estate during her daughter Mary's life, only provided that Moses shall take into his family her daughter Mary, and kindly care, support and maintain her, to the best of his ability, during her natural life, the profits and income from the same to pertain to Moses C., for the support of Mary, and after the decease of Mary then the said balance of her real estate shall be equally divided between her children, Moses C. Myers, William H. Myers, Peter Myers, Jane Myers, Ann Myers, and Eliza Myers, each to share alike; is that the land you have spoken of as constituting the balance of that lot?

A. Yes, sir.

The Chancellor, in his opinion, overlooks the bequest to Moses C. Myers, of the two acres, and in-

cludes said two acres in the subsequent bequest of the residue or balance of all her real estate to Moses during the life of Mary, and at Mary's death to be equally divided among the six children of whom Moses was one.

It is in evidence (page 101), as stated in the Chancellor's opinion, that Mary conveyed in 1886 her interest in about two acres of land, on which the house stood, to her brother Moses, and this conveyance completed the title of Moses to the whole two acres, and not, as stated in the opinion, to only seven-twelfths thereof.

It is claimed that this title was subject to dower right. We admit that to be true, and without allowing for the chance of Mrs. Myers' death prior to her husband's, or for the chance of purchasing her dower right, we may set off one-third as devoted to her use during life, and the remaining two-thirds would be of more value to the cemetery than all the 238 shares of stock at par, as has already been clearly proved.

## WAS THE LAND NEEDED?

The Chancellor holds that the land was not needed for the cemetery, "because in the ten years of its existence it has not sold more than one-tenth of the land it already had."

He gives no consideration to the well known fact that the interments in all new cemeteries are few at first, but increase rapidly after the cemeteries have become fully established. The yearly statements of sales of lots in Arlington Cemetery, as in all cemeteries, show a cumulative business, advancing rapidly in geometrical ratio. From the cash book (Ex. P.26), page 478, we find that the sales of lots for the first five years amounted to $17,003.50, and for the next five years $34,100.00, an increase of 100 per cent. in

the second five years period. An increase of even 50 per cent. every five years would exhaust the entire tract for burial purposes in less than 30 years, as any one can easily demonstrate. A first class rural cemetery should provide not only for one generation, but for many, and should be established in view of a demand for public use for a century.

It is a matter of general knowledge obtained from official annual cemetery reports that Greenwood Cemetery (organized in 1842) embraces an area of over 470 acres.

Woodlawn Cemetery commenced in 1855 with more than 400 acres. But neither Greenwood nor Woodlawn at the time of their commencement had a greater surrounding population than Arlington Cemetery has today. According to the last census the population within a radius of six miles, or one hour's drive from Arlington, exceeds 500,000.

New York Bay Cemetery in Jersey City, now nearly full, has an area of 70 acres, and Fairmount Cemetery in Newark, also fast filling up, has an area of 90 acres.

The laws of New Jersey until 1889 provided for a limit of 75 acres of land in any one county. In that year the legislature recognized the need for increasing that limit, and gave to cemetery associations the right to hold not more than 125 acres.

Experience and sound judgment therefore indicate that 35 acres is quite too small for Arlington Cemetery.

## WAS THERE ANY SELFISH INTENT?

Having shown that during the many years of their administration the conduct of these officers had been above suspicion, and that in the transaction of the Bower purchase the best interests of the Associated

Companies were to be subserved, let us consider whether there are any proofs that this single transaction was tainted with any selfish intent, or that the directors acted in bad faith towards any of the stockholders.

Mr. Bowers made his purchase of the tax title to the Myers' land May 28, 1890.

Exhibit 9 (Page 608).

At that date there was no disagreement among the stockholders of Rural Homestead Company. The Boston stockholders at that time held altogether 601 shares of the 2,162 shares of outstanding stock, or less than one-third of the whole that had been issued.

Exhibit P 9.

Therefore there could be no reason for the directors or officers who had always received the unanimous vote of stockholders and lot owners, to strengthen their position as managers. At the subsequent annual meeting of stockholders in July, 1890, Mr. Shearer, representing all the Boston stockholders voted for the re-election of the old Board, excepting that Mr. Shearer was substituted for Andrew Reasoner, and the vote was unanimous.

R. H. Co. Minutes (Pg. 49-49 Exhibit P 6.

At the same meeting the president, Mr. Pratt, proposed to sell the treasury stock, (238 shares) to the stockholders, and, as an inducement for them to buy, proposed a bonus of cemetery lots. This was embodied as a recommendation in the annual report, but no action was had upon it by the stockholders.

R. H. Co. Minutes (Pg. 48, Exhibit P 6.)

At a directors' meeting November 7th, in the same year, (1890), "called to consider the distribution,

among the present stockholders, of the full paid stock belonging to them which is now in the hands of trustees," the proposition failed because it was not desired by the Boston stockholders.

Exhibit P 6, (Pg. 51.)

Mr. Wilde testifies (page 204).

"At that meeting a proposition was made by Mr. Pratt to divide the balance of the stock then remaining in the treasury, pro rata, among the stockholders, to which we objected."

(Page 204, L. 10-13).

*If Mr. Pratt in May, 1890, when Mr. Bower made his purchase, had any intention of using that treasury stock in a deal with Mr. Bower, he certainly would not have made efforts to sell the stock to existing stockholders in the following July, nor would he have proposed a pro rata division of it among stockholders in the month of November following.*

On the other hand Mr. Bower could not have had any understanding with the officers of Rural Homestead Company, that his purchase of the Myers property should be made on their account with a view to giving him the voting power on stock of the company, because it is shown by Mr. Parker's testimony, page 363 L. 10–18, that about a year after Bower's purchase, viz: the spring of 1891, he offered to sell to W. H. Myers all the rights he had acquired in the land, and Myers agreed to buy at a price representing the actual cost to Bower. This testimony is corroborated by that of M. H. Myers (page 306, L. 31–40 pg. 307, L. 1-10, pg. 312 L. 15-20 and page 313 L. 2-6), who admits that he changed his mind and refused to buy as agreed.

It is further shown in Exhibits P. 1, P. 2, P. 3, P. 4, that during the summer of 1891 Mr. Bower and Mr. Parker, or his agent, were negotiating with M. H. Myers for a sale of the property, agreeing to join in a sale and a fair division of the proceeds.

Exhibits P. 1, P. 2, P. 3, P. 4. (Pages 576-579).

If Mr. Bower had, at the time of purchase May, 1890, any intention of disposing of his interest in the land to Rural Homestead Co., he would not have agreed to sell the same without a profit to M. H. Myers a year later in 1891, nor would he have been in negotiation with Myers during several months thereafter for a sale or division of the land.

Thus all the historical facts as proved by the evidence, show the impossibility of any collusion between Mr. Bower and the officers of Rural Homestead Co., in the purchase or holding of the property of Mr. Bower. But what is the testimony of all the parties connected with the transaction?

TESTIMONY OF MR. BOWER.

Page 377, line 40.

*Cross Examination by Mr. McGee.*

Q. Mr. Bower is it not a fact that at the time you bought this tax title there was some agreement, expressed or implied, with Mr. Pratt, or Mr. Torrey, or some one for them, or one of them, that this land was to be bought by you and conveyed to the Rural Homestead Company, or to somebody for that company?

A. No, not in the least degree.

Q. Who furnished the money to pay the township for it?

A. I did.

Q. Was it not furnished to you in some way by somebody else?

A. No, sir.

Q. Or promised to be rebated or re-paid in some way?

A. No, sir.

(Page 379, L. 30-40).

Q. At the time you made the conveyance of this property to the Rural Homestead Company, or at any other time before or since, was anything else given to you as consideration except the share of the stock of the Rural Homestead Company, given or promised?

A. Nothing else.

Q. No lots given as collateral in the Cemetery?

A. No sir.

Q. Or promised?

A. No, sir,

Q. Then, as I understand you, the sole consideration for that conveyance by you to the Cemetery was the issue to you of those 238 shares of the stock?

A. Whatever the number was, that was the sole consideration.

## TESTIMONY OF JOHN LINN.

(Page 382, L. 33).

*Direct Examination by Mr. Voorhees.*

Q. You have been acquainted with the business of both corporations from the beginning?

A. I have known something of the business of both of them from the beginning of them.

Q. Have you had personal knowledge of their policy with reference to the quantity of land to be held or acquired?

A. I knew in regard to that it was expected that quite a large body of land would be obtained, more than was ever secured by the company, and it was

always desired, so far as opinions were expressed by those with whom I had any association in regard to the acquiring more land."

(Page 383, l. 25.)

Q. "Did you know of this purchase from Mr. Bower of the Myers title?

A. Yes, sir.

Q. You were a director at that time?

A. Yes, sir.

Q. I will call your attention to the minutes of the Rural Homestead Company at page 55 under date of December 28, 1891, where it is recorded as follows: "The president stated to the board that the interests of the company were seriously menaced by a recent purchase of a tract of land adjoining Arlington Cemetery which the present owner proposes to convert into a competing cemetery, as he claims that he has a right to do, under a law passed in 1890. The president asked for such action by the board as might be deemed expedient under the circumstances. On motion of John Linn it was resolved that committee consisting of Mr. David W. McCrea and Mr. H. F. Torrey be appointed to investigate the matter which has been brought to the attention of the board, and that such committee report the fact concerning the case at a meeting of the board to be held at an early date to be named by such committee." Were you present at that meeting?

A. Yes, sir.

Q. Do you remember that occasion?

A. Yes, sir.

Q. And you know of such action taken then and there?

A. Yes, sir.

Q. I will call your attention to page 56 of the book of minutes, under date of January 7th, 1892, where it is recorded as follows:

(Page 384, l. 17-40; page 385, l. 1-30.).

"The committee appointed at the last meeting to report upon matters affecting the interests of this company in connection with the recent change of ownership of land adjoining the cemetery, presented their report, stating that the property is favorably located and is valuable for use as a cemetery, for which use it could be made immediately available under the operation of the law of 1890, providing for the incorporation and enlargement of existing burial grounds, as many interments have been heretofore made in the tract. That the committee believe that it would be disastrous to the interests of this company to have a competing cemetery established upon said property, and that such a competition should be prevented by all possible means. The committee have been in communication with the owner, Mr. Samuel W. Bower, and submit the correspondence with him, which brings the matter to a point where this board can take practical action, if they deem it best. Mr. Bower's final proposition being to accept 238 shares of the Rural Homestead Company stock for his title to the property in question. On motion, it was voted that the report of the committee be received and placed on file. Mr. John Linn moved the adoption of the following resolution:

"Whereas, in the judgment of this Board, it is of vital importance to the interests of this Company to secure control of the property adjoining the Arlington cemetery, known as Myers' farm, and whereas, the proposition of Samuel W. Bower, the present owner of the property is fair and the acceptance of the same will, in our opinion, be advantageous to this Company, resolved that the President and Secretary be, and they are hereby directed to complete the purchase of said Bower's interests in said property and to issue certificates of 238 shares of stock in The Rural Homestead Company therefor."

The resolution was adopted, John Linn, Clarence Linn, D. W. McCrea and H. F. Torrey voting in the affirmative."

Q. Were you present at that meeting?
A. I was.
Q. Do you remember that occasion?
A. Yes, sir.
Q. The statement in the minutes in regard to that is true?
A. I think so, I recollect very well the thing was discussed and talked over, and from representations made to me and from what I understood of the interests of the company, I thought it was a wise thing to get control of the property and so advised it.

(Page 386, L. 23.)

Q. Was there any other reason that you know of than which you have stated, for the acquisition of this Myers' property, and if so state it.
A. I know of no other reason.

*Cross Examined by Mr. McGee:*

(Page 388, l. 14.)

Q. At the time you say you advised the purchase of this land you say this matter was discussed in the meeting; it was a directors meeting, was it not?
A. Yes, sir.
Q. The people who gave you the advice on which you acted were principally Mr. Pratt?
A. I learned perhaps more from Mr. Pratt than any other one, except it may have been Mr. Torrey and possibly Mr. McCrea. *I relied, of course, upon the report made by the Committee.* It was in accordance with my view as to the best interests of the Company to get more land.

(L. 34.)

Q. You knew there was at the time a struggle between the Pratt party and the people known as the Boston party for the control of the Company; did you not?

A. No, I did not. I knew there were complaints made against Mr. Pratt and Mr. Torrey, I think, of mismanagement, by the gentlemen from Boston, but I don't recollect now. But it seems to me I had an impression that that was over with. It was said that matters had been investigated and everything turned out to be satisfactory so far as the books were concerned. I did not pay special attention to that.

Q. Mr. Pratt did not tell you that these 238 shares would determine the control, did he?

A. Oh, no; nothing about that.

(Line 25.)

Q. Did he (Pratt) tell you or did you know that the title you were about to buy was a tax title, and the only interest purported to be conveyed by the deed of the fee was a one-sixth interest, except the two acres, and that there was a dower right outstanding?

A. I think I knew all that, and notwithstanding that, I thought it was a good purchase. My impression was at the time, that the company would be able to acquire the whole title without difficulty.

(Page 389, l. 25-33).

Q. Did Mr. Pratt say to you that he had conversations with Mr. Bower on the subject?

A. No, sir, not to my recollection. I don't recollect anything about it.

(Page 391, l. 21).

Q. You don't know then how Bower first came to know about it?

A. No, I have not any idea."

(Line 37).

## TESTIMONY OF CLARENCE LINN.

*Direct Examination by Mr. Voorhis:*

Q. Do you remember the resolution there recorded (Minutes of directors' meeting, page 56) as proposed by John Linn?

A. Yes, sir.

(Line 11).

Q. Did you vote for that resolution?

A. I did.

Q. For what reason?

A. Because I thought the best interests of the company would be promoted by making the purchase of the Myers' tract.

Q. Had you any other reason for so doing?

A. No, sir.

(Page 394, l. 4).

*Cross Examined by Mr. McGee.*

Q. Do you know that Mr. Bower did not have the title in fee simple, to the land?

A. I think that matter was discussed at that time and whatever title Bower had was stated then and there. I don't recall now whether he had a title in fee simple to all of it—I think he had to a portion. But I know that by making that purchase it was thought that we would get control of that land and prevent anyone else from using it for cemetery purposes for the period of the tax title, and I think it was stated too that it was thought that we might ultimately, in heading others off, obtain the fee of the property for the company.

(Page 394, L. 26.)

Q. As I understand you, your recollection is that when you made the purchase—when you voted for the

resolution, you knew that Mr. Bower's title was, as to all except two acres, a small part, that of the owner of a tax title for thirty years supplemented by a deed from Moses Myers for his one-sixth interest therein, whatever that might be?

A. I knew exactly what title Bower had. Whether you have stated it correctly or not I don't know.

Q. Whatever it was you knew it?

A. I knew it.

Q. And you knew that he did not have the title in fee to it all.

A. That is my impression, yes, sir.

Q. Your understanding was that an effort was to be made to purchase the outstanding title afterwards?

A. I think something of that kind was suggested or talked about.

(Page 395 L. 18-35).

Q. "Did you know at the time you voted for this resolution that the issue of these two hundred and thirty-eight shares of stock would change the majority of the ownership of the stock to the parties acting with Mr. Pratt, and from the parties known as the Boston stockholders to the parties acting with Mr. Pratt?

A. I don't think that I knew that at that time.

Q. Nothing was said about that?

A. No, sir.

Q. Did you have any interviews with Mr. Bower before this resolution was passed?

A. No, sir.

Q. Did any of the parties have interviews with him?

A. To whom do you refer?

Q. Any of the parties present at this meeting, you say it was discussed?

A. I only know what the documentary evidence shows, the correspondence, etc., whether they saw him personally or not I cannot say.

Q. Did any of them say that they had talks with him about it?

A. I don't recall that they did.

(Page 396, line 18-40.)

Q. Was there any statement made at that meeting of information, with reference to the property, derived from any source except this correspondence you speak of?

A. Not that I recall.

(Page 397, line 1-6.)

TESTIMONY OF H. F. TORREY.

*Direct Examination by Mr. Voorhis.*

Q. Were you present at the meeting of the directors of the Rural Homestead Company, when that report was presented?

A. I was.

Q. You were one of the directors that voted for its adoption?

A. Yes, I was probably as familiar with Mr. Bowers' ownership as anyone who was there, as he had talked with me about his purchase of the Myers' property. I had, at his request gone upon the ground with him, he wishing some information in regard to our cemetery, and at the same time wishing to know something about the exact boundaries of the Myers' property.

Q. When was that, before or after he bought the tax title?

A. That was after he bought the tax title; that was the time I first knew that he had bought the tax title.

Q. Was it before the negotiation by the Rural Homestead Company for its purchase from him?

A. It was; there had been no negotiations, it had not been brought up at all in our Rural Homestead Company's matters at that time.

(Page 414, l. 17-40.)

Q. Was the negotiation with Mr. Bower for the sale of his interest in the Myer's property to the Rural Homestead Company wholly in writing or not?

A. The negotiation was wholly in writing. I had heard it said some days before. I think Mr. Parker first called my attention to the fact that Mr. Bower had some thought of using that land for cemetery purposes. Mr. Bower had inquired very particularly in regard to the cemetery, of the plan and management, when he was upon the ground with me after his purchase of the Myer's property, and the matter was brought up in our Rural Homestead Company meetings and the committee was appointed to see if Mr. Bower could be induced to work with us. I do not remember the wording of the resolution, but that was the purpose of it. Mr. McCrea and myself were appointed the committee. I went out upon the grounds with Mr. McCrea, showing him the property and explaining as fully as my own knowledge would permit the situation as to the title of the property. We returned to the city and wrote to Mr. Bower the first letter in this correspondence appended to the report.

Q. The document annexed to that report contains the whole of the negotiations with Mr. Bower; you have said it was all in writing?

A. I think that is so.

(Page 415, L. 1-28.)

Q. Were you not familiar at that time and before with this Myer's property ?

A. I have been familiar with it ever since operations of the cemetery were first begun, we had had that property in view from the start as a part of the cemetery in the future, and in all my visits to the cemetery with any of our Rural Homestead Company Stockholders, that was pointed out as property which we hoped and expected to acquire some time in the future, it was tied up at that time and was not available, but

we hoped to have it as a part of the considerable increase in area which we deemed essential for the success of the Rural Homestead Company.

(Page 416, L. 8-23.)

Q. You were present, according to the record, at the meeting that adopted the report of the committee recommending the purchase of the Bower title?

A. Yes, I was.

Q. Did you vote for its adoption?

A. Yes, I did.

Q. For what reason?

Objected to.

A. Because I had looked very carefully into the matter and saw that it was thoroughly to the interest of the Homestead Company, that the cemetery should acquire that property in the future.

Q. Had you any other motive for so voting?

A. My only motive was the interest of the Homestead Company—the best interest of the Homestead Company.

(Page 419 to L. 20).

*Cross Examination by Mr. McGee.*

Q. Are you related by blood or marriage to Mr. Bower?

A. I am not, I never saw Mr. Bower until after he purchased the Myer's property?

Q. Is Mr. Pratt?

A. He is not.

Q. No connection?

A. None whatever.

Q. How did Bower come to know about this land?

A. I could not tell you that; the first intimation I had of it, was from Mr. Parker, who was counsel for Mr. Bower.

Q. Mr. Parker represented Mr. Platt also?

A. No, sir; he was counsel for Bower in that matter.

(Page 453, l. 27-40).

Q. How did this negotiation with Bower for the land in question have its inception?

A. My first knowledge of the purchase was when Mr. Bower wished to get some information about the cemetery and also learn something about the boundaries of the Myer's land there, as I understood it and asked me to go out to the cemetery with him.

Q. Asked you by letter or verbally?

A. He called at the office and asked me verbally to make an appointment.

Q. How did he come to buy this Myer's property?

A. I cannot tell you that; I was not acquainted with him until after he had made the purchase.

Q. Had he been Mr. Pratt's counsel before that?

A. Not that I know of.

Q. Had he had law business for him?

A. Not that I am aware of.

Q. Did he know that Mr. Pratt was anxious to get this land?

A. I don't know as to that, it had been a matter of common talk with us in all our conversations that it was a desirable plot of land to get for the cemetery. I don't know what Bower knew about that.

Q. You don't know whether it was suggested to him by anybody in the interest of the cemetery to Mr. Pratt that he should bid it in for the cemetery.

A. I never understood it was, I understood at the time it was suggested to him by Mr. Parker.

(Page 453, l. 30).

Q. Referring to this matter of the purchase from Mr. Bower, you say that prior to that matter coming up, you had visited the cemetery in connection with Mr. Bower. Is my memory correct?

A. At the time of my first knowledge of that purchase I made an appointment to go to the cemetery with him and went with him; he seemed anxious to learn what he could in regard to the management and care of the cemetery, in regard to our cemetery business there, and wished to have me show him on the ground about the boundaries of that land, because of my familiarity with Arlington property.

Q. Who first spoke to you about this visit to the cemetery with Mr. Bower?

A. I think Mr. Bower either spoke to me or left word for me at the office; I am not positive whether I was in the office or not.

Q. Who first told you about Bower's purchase?

A. I think Mr. Parker first spoke to me about it on the train.

Q. And Mr. Pratt said anything about it?

A. Nothing until after that.

Q. Who wrote the letters that were written in connection with this purchase, and that were attached to the report of the committee?

A. I made the memorandum of both our letters to Mr. Bower, and Mr. McCrea had them written by a typewriter.

Q. Did McCrea have any other connection with this matter except to carry out the instructions of Mr. Pratt or yourself?

A. He had no connection with it except to carry out the instructions of the Board of Directors as a Committee of the Board.

Q. Who appointed him?

A. (Witness refers to the minutes and answers). He was appointed on motion of John Linn.

Q. Not appointed then by the president without a resolution?

(Page 472 L. 1-40.)

A. No, I think I proposed—I remember that I proposed Mr. Linn's name for the committee and he

made the motion that Mr. McCrea and I be put upon the committee.

Q. Tell us who were present at that meeting?

A. All the members of the Board—the full Board of Directors.

Q. Who were they?

A. John Linn, Clarence Linn, D. W. McCrea, Julius H. Pratt and Henry F. Torrey.

Q. On this trip to the cemetery with Mr. Bower and during this trip, what was said between you and Bowers and by whom, with reference to the annexation of this property to the cemetery property?

A. It was not spoken of on that trip—I know I was not certain as to what Mr. Bowers position would be in regard to it, after going out there with him; I had no authority to make any offer for the purchase of the land, and he made no offer as to the sale of it.

(Page 473 to L. 25, excepting lines 11-13.)

Q. Who talked out with Mr. Bowers the plan which was afterwards adopted as to acquiring it?

Objected to unless it is qualified with "if anybody did," it does not appear that anybody did so far.

A. I never talked over any definite plan with Mr. Bower for such acquisition; I talked it over with Mr. McCrea, and with other members of our Board as to what could be done while we were committee.

(Page 474, L. 3-13).

Q. In the letters which you have offered in evidence, and a part of the committee's report is one under date of December 30, 1891, to Mr. Bower, which is signed by you and McCrea, and in which you state that "you have acquired possession of the Myers farm in Arlington, and you contemplate converting the same into the cemetery, etc., etc."

My question is, who had the conversation or conversations with Mr. Bower which resulted in the writing of that letter?

A. My conversation was with Mr. Parker, he represented Mr. Bower in the purchase of the property.

Q. Tell us what you said to Mr. Parker?

A. Mr. Parker spoke of the possibilities or prospects of there being a competing cemetery there, and he also spoke to Mr. Pratt about it, and I had some conversation with Mr. Pratt about it, it was talked over among us that there was a plan under consideration by Mr. Bowers.

(Page 474, L. 19-37).

Q. Don't you know whether there had been intercourse between Mr. Pratt and himself before his purchase of this land with reference to it?

A. I don't know. Mr. Pratt was acquainted with him, I cannot say what conversation there may have been between them.

Q. Before this purchase at the tax sales, do you know whether Mr. Pratt knew that the land had been sold to the township?

A. I don't know.

Q. Did Mr. Pratt have any conversation with you on the subject?

A. None that I remember.

Q. Nothing said by him about acquiring it in that way—buying the tax title?

A. No, I think my first knowledge in regard to that was the information that Bower bought it.

Q. You think Mr. Parker told you that?

A. That is my recollection, that the first information I had was from Mr. Parker.

(Page 482, L 17-37.)

TESTIMONY OF JOSEPH PARKER, JR.

*Direct Examination by Mr. Voorhis.*

Q. Where do you reside?

A. I reside at Arlington, Hudson County, New Jersey.

Q. What is your business?

A. My business is that of a lawyer in this state.

Q. Do you know Samuel W. Bower?

A. Yes, sir.

Q. How long have you known him?

A. Since about 1884 or 1885.

Q. Did you ever hold the office of Town Treasurer in Kearny?

(Page 338, L. 30-40).

A. Yes, sir, from 1884 to 1889, I occupied the office of Treasurer and Collector of Taxes.

Q. Then you know this property which is claimed now by the Rural Homestead Company?

A. Yes, sir.

Q. In Kearny?

A. Yes, sir; I do.

Q. Do you know that property being bought by the Township of Kearny for taxes?

MR. MCGEE: I object to oral testimony on that point, as documentary testimony is the best evidence.

A. Yes; I was treasurer at the time it was sold to the township.

Q. Had you any knowledge of any negotiations between Mr. Bower and the Township for the transfer to him of their title?

A. Yes, sir.

Q. Who transacted the business between them?

A. I did.

Q. How did you become acquainted with Mr. Bower?

A. I made his acquaintance at the time I was the treasurer and collector of taxes. His office was in Pine street, in the City of New York, at that time, with a gentleman by the name of Mr. Huntley, in whose name some property in Kearny Township was assessed,

and I called there to collect the taxes, and in that way made Mr. Bower's acquaintance.

Q. Who called his attention, do you know, to this tax title, and suggested the purchase of it, if you know?

Objected to as to form, and as calling for the opinion of the witness.

A. I called his attention to the fact.

(Page 339, L. 1-40.)

Q. Do you know who drew the conveyance from the township to him?

A. No, I don't know, I think Counsellor E. J. Kenny did—he was counsel at the time the conveyance was made.

Q. Were you not employed by Bower after, to do anything about the title of the possession?

A. I was after he had procured his conveyance from the township committee. I did commence an action in the Supreme Court of New Jersey in ejectment———

Mr. McGee. I object to the proving the contents of the action, as that is of record and is the best evidence.

———against Moses C. Myers and commenced that action in the month of January, 1891.

Q. Was the suit prosecuted to judgment.

Objected to as the record is the best evidence.

A. Yes, sir, it was prosecuted to judgment.

(Page 340, L. 8-31.)

Q. Who conducted the negotiations between Mr. Bowers and Moses?

A. I did.

(Page 341, L 27-30.)

Q. Do you remember an occasion at your house, when Moses and his brother William were together?

A. Yes, on the fourth of July, in the front yard.

Q. Please state what occurred there then?

The subject matter of the declaration of Moses and his wife being now finished, objection is hereby entered to the whole thereof except such questions as specifically state the evidence of one or the other of them when called for, and negation or affirmation thereof. This objection being entered in one place instead of to each question as appears by the memorandum above, and counsel for the complainants move to strike out all testimony not thus excepted for the reasons given in the objections to the same questions above.

A. It was on the fourth day of July, on the morning of the Fourth that Moses and his brother William came to the fence, the property being on the corner of the street, Kearny Avenue and Midland, and spoke to me in regard to the deed. William Myers had called to see me——

The declarations of William and Moses, if he is about to testify to any, are objected to, for the same reasons as given above in the objection to the declarations of Moses.

*Witness:*

Before the deed was executed, some time, and wanted to pay up all the taxes to Mr. Bower, and have the proceedings ended.

(Page 352, L. 4-40.)

He called again a few days after and said that Moses was a shiftless fellow, and that he had decided not to pay up the taxes to Mr. Bower, because when he came to look for his own, he would be considered the biggest scoundrel of the lot, and he went away from the office.

Moses had not, at that time, executed the deed, and on the fourth of July, when they were called——it was after I had been to see Mrs. Myers, and after she had refused to sign the deed, and after I had submitted her action to Mr. Bower, and after I had written to Mr. Myers telling him in the letter that Mr. Bower had decided to permit Moses Myers and his family to remain on the premises for three years without the signature of Mrs. Myers to the deed as long as Moses had executed it, and it was in consequence of that letter which William Myers had with me, that he came to see me; William Myers requested that the deed be not put on record for a time, until he might see what could be done about the premises, and I agreed with him that I would not put the deed on record until the first of August. I did not see him again, and on the third of August I recorded the deed in the Register's office of the County of Hudson.

Q. For whom were you acting, when you recorded the deed?

A. For Mr. Bower.

(Page 353, L. 1-30).

*Cross Examination by Mr. McGee.*

Q. How long have you known Mr. Pratt?

A. I have known Mr. Pratt since about about 1878 or 1879.

Q. You knew his connection with the cemetery?

A. Yes, sir.

Q. And the Rural Homestead Co.?

A. Yes, sir.

Q. Who first spoke spoke to you about buying the tax title to this land?

(Page 357, L. 30-40).

A. Mr. Bower.

Q. What did he say?

A. He said he wanted to invest some money in Arlington property, and I think I spoke to him about buying this title.

Q. Had he bought or owned any Arlington property before?

A. Not that I know of.

Q. Did he mention Mr. Pratt at all?

A. I don't know.

Q. Have you heard?

A. No, sir.

Q. Is he any connection by marriage with the wife?

A. Not that I know of.

Q. Do you know whether he was Mr. Pratt's New York counsel?

A. No, sir.

Q. Had any tax title been sold by the township in this way before this one at private sale?

A. Not during my term of office.

Q. Or since?

A. Not that I can recall, no.

Q. Had Mr. Pratt said anything to you about Mr. Bower?

A. No.

Q. Had Mr. Pratt spoken about securing this tax title before?

A. Not to me, no.

Q. Had anybody else spoken to you about securing it for the Cemetery in any way?

A. No, sir.

Q. Did you know that the Cemetery wanted to buy it?

A. I did not.

Q. Or get possession of it in any way?

A. No, sir.

(Page 358, L 1-40.)

Q. What connection was there between Mr. Pratt or Mr. Torrey and Mr. Bower?

A. I don't know of any.

Q. When did Mr. Pratt first speak to you about it—about this property?

A. I do not recall that he ever spoke to me about it.

Q. Have you acted with the Rural Homestead Co., or the Cemetery Co., before this?

A. Never before this suit.

Q. Did Mr. Bower give you any reason why he wanted to invest money in Arlington?

A. Nothing more than he wanted to invest.

Q. What did he say?

A. He said he wanted to invest some money in Arlington property, and I think I advised him to buy this property.

Q. Can you remember what you said?

A. I think I told him that if he bought the tax title to it, I thought he could secure the property at a very reasonable figure.

Q. He knew that he was only buying the tax title?

A. Yes, sir.

Q. Was it not Mr. Bower suggested buying the tax title to you rather than you to him?

A. I think not.

(Page 359, L. 1-26.)

Q. Don't you know as a fact that B ,wer in this matter represents, and has from the beginning represented Mr. Pratt of the cemetery.

A. No, sir.

(Page 367, L. 10-17.)

Q. Do you know of any conference between Mr. Bower and Mr. Pratt, about the purchase of this property?

A. No, sir.

(Page 368, L. 27-30).

We have here the plain and unequivocal testimony of Mr. Bower that in May, 1890, he purchased the tax title of the Myers' land, and subsequently the fee of Moses Myers' two acres, as a private speculation solely on his own account; that the only person who offered any suggestion to that end was Mr. Parker, with whom he had previously had business transactions, and whom he constituted his agent in making the purchase.

That having possession of the same for nearly two years, during which time he had made proposals to M. H. Myers, with a view to selling the same to Myers; or to joining him in a sale to some other persons, he received from a committee of Rural Homestead Co., a letter, (Exhibit D 11) asking if he "would be inclined to connect his land with that of the Arlington Cemetery, and operate the business of both in some equitable way for mutual benefit."

That this letter was the first suggestion that was ever made to him of selling his interest to the Rural Homestead Co.

We have the corroborative testimony of Mr. Parker, direct and unequivocal that he (Mr. Parker) first called the attention of Mr. Bower to the advantage of this purchase; that he made the negotiations for Mr. Bower as his agent; that he (Parker) had no relations with the Arlington Cemetery people, and did not know that they wanted to buy it or get possession of it in any way.

We have the testimony of Mr. Torrey, that he never saw Mr. Bower until after he purchased the Myer property, that prior to the negotiation for the purchase from Mr. Bower by Rural Homestead Co., Mr. Bower went with Mr. Torrey to the cemetery

and made inquiry as to the land and management, (Mr Parker having already informed Mr. Torrey that Mr. Bower contemplated using the Myers' land for a Cemetery) (Page 454, line 1-10, page 472, line 1-22), and that in consequence of this contemplated use of the land by Bower the subject of working in harmony with Bower and the avoiding of the threatened competition was first introduced to the notice of the directors at their meeting December 28, 1891. (A copy of the minutes of which meeting is found on page 383, L 30-40, and page 384, L 1-10).

We have the testimony of John Linn that he was conversant with all the facts relating to the title and the value of the land, and that in view of the facts, he, as one of the directors moved and voted for a resolution to purchase the Bower property and to pay for it by a delivery of the 238 shares of treasury stock, because in so doing the directors would be carrying out the well established policy of the Company and because he believed it would be for the best interests of the Company, and for no other reason.

We have the testimony of Clarence Linn that as another of the directors he was conversant with all the facts relating to the title and value of the land and that he voted for the resolution, because he thought the best interests of the Company would be promoted by making the purchase of the Myers' tract, and for no other reason.

As against all this array of documentary evidence and oral testimony, the plaintiffs have produced no evidence whatever, excepting a casual remark said to have been made by Mr. Pratt to William J. Davis, which in view of the abundant evidence already produced cannot be construed as conflicting evidence excepting on the theory that Mr. Davis did not correctly quote Mr. Pratt's remark, or else that Mr. Pratt was stating what was not true.

(Page 320, L. 30-35.)

This hearsay testimony purports to relate a conversation had between Davis and Pratt several months prior to the giving of the testimony, and is as follows: "After that conversation, and having other business with Mr. Pratt, I called in Jersey City to see him, and he told me that Mr. Bowers was a friend of his, and that he had bought it for the cemetery, and that he was willing to deed the property back, provided he got his taxes and interest."

We learn from this, and from the testimony of Mr. Davis immediately preceding, on the same page, that he had been employed professionally by Myers to clear up the complications in the title to the land, and while so employed he called on Mr. Pratt, and learned that Pratt had already obtained Bowers consent to relinquish his claims on payment by Myers of the expenses incurred.

Incidentally in this interview Mr. Davis understood Mr. Pratt to say that Bowers had bought the land for the cemetery.

It is true that Mr. Pratt did learn by common report of the purchase by Mr. Bower, and he also learned from William H. Myers that he (Myers) felt uneasy as to the situation, and therefore as a friend and neighbor of Myers he undertook to assist him in making a settlement with Bower, and persuaded Bower to agree to sell to Myers all that he had bought, if Myers would re-imburse him just the amount he had paid with interest. This was the subject of the interviews referred to in the rather obscure testimony of Myers.

(Page 301-303.)

The proof of the offer appears in Mr. Parker's testimony.

(Page 363, L. 10-18, Page 312, L 13-20.)

This explains the statement of Davis that Mr. Pratt said "Mr. Bower was willing to deed the property back, provided he got his taxes and interest." But let it be observed, that if Mr. Pratt had any intention of securing this property for the Arlington Cemetery, or to use Rural Homestead Company stock in exchange for it, it is quite certain that he would not have attempted to aid Myers in getting Bowers interest for what it cost.

It is almost impossible for a witness to quote the exact words of another in conversation after a period of months has elapsed, nor do we understand that Mr. Davis professed to give the exact words, but as he says only the "gist."

Mr Davis may have added, or omitted, or changed a word essential to the true meaning.

We must interpret the conversation in view of other testimony showing Mr. Pratt's relation to this matter.

Davis quotes him as saying that Mr. Bower had bought it "for the cemetery." He does not say the "Arlington Cemetery." If those words were used, they must be interpreted as meaning that Bower bought it for because of *the* cemetery, which the tract already embraced (as shown in the report of committtee, page 616.)

This would mean the same as if he had said, what we may assume he in fact did say: "Bower bought it for a cemetery," that is another cemetery. This interpretation is the only one that is consistent with all the other testimony showing the understanding of the officers of the company, that Bower held the property for the purpose of a rival cemetery, and explains Mr. Pratt's desire to get the property back into the hands of the Myers family, who would not be likely to use it for that purpose.

But we may for illustration allow the most favorable construction of Davis' testimony for the complainant's purpose, and it cannot prove their contention that Bower even intended to purchase the Myer property for the purpose of a deal with Rural Homestead Co. Mr. Davis' testifies that Mr. Pratt said that Bower "bought it for the cemetery" meaning, as complainants contend, the Arlington Cemetery. Now the Arlington Cemetery is owned and governed by an association of lot owners, and is a corporation with an independent existence, having no relations with Rural Homestead Co., excepting such as are involved in an agreement between the two corporations as to the management of thirty-five acres of land and no more. The Arlington Cemetery Association is entirely free to purchase other land independently of Rural Homestead Co., and make terms with the seller of such land in which Rural Homestead Co. would have no interest or connection.

Even admitting that Bower and "the Cemetery" (Corporation) had an understanding with each other as to the use of the Myers' property, that did not and could not involve the use of the stock of another corporation in payment for the land, and therefore, "The Cemetery" could not agree to deliver 238 shares of stock of the Rural Homestead Co., thus admitting everything that the complainants claim from the testimony of Mr. Davis, they fail utterly to show any connection or contemplated dealing between Mr. Bower and the Rural Homestead Co., for Davis did not mention the Rural Homestead Co., but only the cemetery.

All the evidence and all the testimony of every one of the persons by whose acts the transaction between Mr. Bower and Rural Homestead Company was accomplished, proves conclusively that no correspondence or conference by any one representing the Rural Homestead Company was had with Mr. Bower in regard to this transaction excepting the written corres-

pondence in evidence; that no previous understanding had existed between any of the directors or officers of Rural Homestead Company, as to any disposition to be made, either of the land which Mr. Bower had held in possession during nearly two years, nor as to the subsequent use of the stock which Mr. Bower acquired in exchange for the property.

The only connection which any of the directors had with the transaction is fully set forth in the minutes of the meeting of December 28, 1891, (page 383 line 30) at which they appointed two of their number to investigate the matter and to report thereon, the correspondence and report of the committee recommending the purchase, and the final vote of the board to complete the purchase as recorded in the minutes of their meeting. January 7, 1892.

(Page 384, L 17, and page 385, L 1-20.)

Nor is there any evidence that Mr. Bower had any intention of voting on the stock in favor of any particular party or candidates at the subsequent election, nor that he was in any way pledged to any such use of his voting power. There is nothing in evidence to show that he had determined in his own mind prior to the election in which he participated (January 7, 1892) to vote one way or another. He says positively that he did not know and had not heard of there being any controversy between the shareholders of the stock.

(Page 375, L 17-21.)

Thus we have the testimony of five unimpeached witnesses, who show that they were the only persons engaged in the transaction between the Rural Homestead Company and Mr. Bower, in pursuance of which the 238 shares of stock were exchanged for Bower's interest in the Myers' land, all of whom show reasons entirely consistent with duty and integrity, for the part performed by them respectively. There is no evidence

which points to the presumption of bad faith on the part of any one of the five persons who are wholly responsible for the transaction.

The proof is abundant that there could have been no collusion between the officers of Rural Homestead Company and Mr. Bower, either in the purchase or sale of the Myers property or in the use of the stock after it should come into Bower's possession.

That there was no private understanding among the directors of Rural Homestead Company that the sale of the stock to Mr. Bower should serve to the strengthening of any faction, among the Stockholders, for a majority of the directors who voted for the sale of the stock did not even know of any controversy among the stockholders at the time.

TESTIMONY OF SAMUEL W. BOWER.

Q. "At the time you made this sale with the Rural Homestead Company and accepted this stock, did you know or had you heard of there being any controversy between the shareholders of the stock of this Company?

A. No."

(Page 375, L 17-22.)

TESTIMONY OF JOHN LINN.

Q. "You knew there was at that time a struggle begun between the Pratt party and the people known as the Boston party for the control of the Company, did not you?

A. No, I did not.

(Page 388, L 34-38, Page 389, L 6-8.)

Q. Mr. Pratt did not tell you that these 238 shares would determine the control, did he?

A. Oh, no, nothing about that."

(Page 389, L 6-8.)

## TESTIMONY OF CLARENCE LINN.

Q. "Did you know at the time you voted for this resolution that the issue of these two hundred and thirty-eight shares of stock would change the majority of the ownership of the stock to the parties acting with Mr. Pratt and from the parties known as the Boston stockholders to the parties acting with Mr. Pratt?

A. I don't think that I knew that at that time.

Q. Nothing was said about that?

A. No, sir."

(Page 396, L. 19-28).

That no selfish, personal or pecuniary interest could have actuated the directors in their action, for it is shown by ample proof that the management of the cemetery involved self-sacrifice and pecuniary loss, without any compensating advantage.

And finally it has been proved that the transaction was beneficial to the company and its stockholders, because of the conversion of a useless asset of only nominal value into substantial property of great use and value to the Cemetary and Rural Homestead Companies.

That the act of the Directors was not only "intra vires," but was wise and judicious and that it was in the direct line of policy previously agreed upon, recognized and acted upon by all the stockholders.

All this evidence is disregarded by the Chancellor because, as he says, it amounts to "mere opinions," and he therefore prefers to rely upon no evidence at all on the other side in determining his conclusion.

The Chancellor admits "that a fraudulent purpose must be clearly demonstrated."

We have shown that the exactly opposite purpose has in this case been "clearly demonstrated," and no conflicting evidence or contradictory testimony has been produced to weaken the force of such evidence.

Mere inferences derived from assumed but disproved circumstances constitute the whole foundation of the Chancellor's opinion.

The Chancellor holds (Opinion, page 10) that "the question in the present case is, was the transfer to Mr. Bower made in good faith and in the exercise of an honest judgment," and that "the question in such a case is one of intent, which ordinarily is susceptible of establishment only by inference from "proved circumstances."

The "proved circumstances" relied upon and the consequent inferences are briefly as follows:

1st. That the Bower property was of little or no value to the Cemetery and Rural Homestead Companies and could not be utilized by them. Hence the inference that there must have been an ulterior and unworthy motive which inspired the actions of the directors.

Inasmuch as it is clearly proven in the evidence and demonstrated to a mathematical certainty that the control of the property was of great value to the Companies and that it could be almost immediately utilized to any extent far beyond the value of the stock for which it was exchanged, it would seem that this important evidence was overlooked by the Chancellor. The proof of its value and usefulness to the companies having now been plainly set forth, the wisdom of the directors in making the purchase is fully vindicated, and the inference of bad faith must disappear with the supposed or assumed proofs which do not exist.

2nd. That the financial condition of the companies did not justify the purchase.

As it had been proved that the financial condition of the companies would not be sensibly affected by the transaction, this basis for the inference of bad faith must also be dismissed.

3rd. The secrecy of the transaction is adduced as another of the proved circumstances implying bad faith on the part of the directors.

There is no evidence showing that the course pursued in this transaction differed from the usual methods of directors of corporations. If by "secrecy" is meant a neglect to consult Boston Stockholders, it must be remembered that they had elected to communicate with the officers of Rural Homstead Company only through their legal attorney, whose attitude precluded any confidential intercourse with the directors. He was, however, never refused any information he asked for at the office, and the minute book and all other books were always open to his inspection.

This Court certainly cannot hold that it is the duty of directors to consult with remote stockholders about the ordinary business of a corporation, or that such a custom is common, or that a failure to do so implies bad faith on their part.

In the absence of any proof showing that there was anything exceptional or unusual in the course pursued by the directors, they cannot be charged with culpable secrecy.

The inference of bad faith is thefore in this respect without foundation.

4. The "eventful use of the stock by Mr. Bower," is cited as another of the proved circumstances justifying the inference of bad faith. The use of the stock by Mr. Bower differed in no respect from the use of their stock by all the other stockholders. As stock-

holders they all voted to the extent of their holdings for the persons they preferred to elect as directors. The question back of this, whether there was any collusion or agreement with others, before or at the time he acquired the stock as to its use in a subsequent election, is the only pertinent question to be considered.

The testimony on this point has been abundantly quoted. Mr. Bower says, (Page 375, L. 17-22) that at the time of accepting the stock he did not know, and had not heard of any controversy between the shareholders, and (Page 379, L. 30) that neither at that time nor at any other time before or since did he receive any consideration for the sale of the property, except the 238 shares of stock.

The evidence shows that the negotiation with Mr. Bower was wholly in writing (Page 371, L 12-18) (Page 415, L 1-15) (Page 474, L 3-12). And that no correspondence nor conference was had with Mr. Bower in regard to this transaction excepting the written correspondence in evidence.

Any proof of collusion in the use to be made of the stock by Mr. Bower is not only wholly wanting, but abundant proof to the contrary is produced.

The inference of bad faith in this regard also, lacks the "proved circumstances" on which the Chancellor declares this inference should rest.

## PRATT THE MASTER SPIRIT.

After complimenting two of the directors (the Messrs. Linn) because of their ignorance of what they were doing, when they had both very positively testified that they did understand, or thought they understood, exactly what they were doing, and that the resolution appointing a committee to investigate and report as to the purchase (Page 384, line 2) and also the resolution directing the purchase (Page 385, line 3) were intro-

duced by one of them, the Chancellor in closing his opinion proceeds to present a new element in the case as "the master spirit in the transaction," in the person of Mr. Pratt.

Did the Chancellor make this supposed discovery by appropriating some of the numerous unsupported allegations of the plaintiffs, and the oft reiterated but unverified innuendoes of their counsel and by a mistake substitute them for evidence in this case.

The discovery if made at all was made wholly outside of all the evidence in the book of 630 pages which the litigous plaintiffs have caused to be compiled. All the witnesses who knew of the transaction, and who frankly stated that they were responsible for it, were plied by all the questions that the plaintiff's counsel could devise in order to discover what connection, if any, Mr. Pratt had with this purchase and sale by Mr. Bower, and the transfer of stock to him. Not a word of evidence was elicited from any of the five reputable witnesses in response to these questions to show that Mr. Pratt had any connection with it whatever, excepting as presiding officer he brought up the subject for the consideration of the directors. At one time after Mr. Bower had had possession of the property for about a year, Mr. Pratt endeavored to assist his neighbor M. H. Myers in regaining possession of the land, and persuaded Mr. Bower to make the generous proposition to Myers, to convey to him all the rights that he (Bower) had acquired if Myers would re-imburse to him the actual cost of the same.

These are the only instances where Mr. Pratt appeared as having anything to do or to say about the Myers property. On the contrary we have the testimony of Mr. Bower and Mr. Parker who were the only persons having anything to do with the Bower purchase, that Mr. Pratt was not known to them as in any way connected with or cognizant of the transaction, and of Mr. Torrey and John Linn and

Clarence Linn, who (excepting Mr. McCrea, who was unavailable as a witness) were the only persons who had anything to do with the purchase from Bower by Rural Homestead Company, that Mr. Pratt was not known to them as in any way connected with that transaction, excepting as before stated that in the exercise of his duty as presiding officer, he presented the subject for their action.

Are we to suppose that Mr. Pratt by some undiscovered and mysterious power without their knowledge or consent, had compelled the two persons who initiated, and the six persons who two years later completed this transaction, to perform acts which they declare to have been voluntarily and conscientiously performed, and for doing which they assign intelligent and logical reasons?

There is no evidence of any such hypnotic power, and nothing whatever to justify the inference that "Mr. Pratt was the master spirit in the transaction."

Allegations by the plaintiffs are abundant as to Mr. Pratt's domination, but there is no proof that he exercised any unjust control, or any power or influence, other than that derived from his ownership or more stock than any other holder, with the consequent rightful voting power it conferred, and from his position of Vice-President and Comptroller of the Cemetery Company, and President of Rural Homestead Company, to which offices he had been always elected by a unanimous vote.

On the 1st of January, 1886, when the business of the Cemetery had become largely a matter of routine and his services in the active management could be dispensed with, in order to lighten the financial burden of the business, he voluntarily relinquished the salary to which he had become entitled by vote of the Cemetery trustees, and devoted himself to other occupations,

and the business of the Cemetery mainly by Mr. Torrey and his subordinates.

Thus it happened that the transaction with Mr Bower was one in which Mr. Pratt had no connection, excepting as heretofore stated. He did not vote for it

His only role has been to pose as a target for the aim of his defamers in their bitter personal warfare, who sought by every inquisitorial method possible to fasten upon Mr. Pratt some responsibility for the transaction with Bower.

Let us review some of the testimony to ascertain the result of his inquiry.

What is the testimony of Mr. Bower?

*Cross Examination by Mr. McGee.*

Q. "Mr. Bower, is it not a fact that at the time you bought this tax title, there was some agreement expressed or implied with Mr. Pratt or Mr. Torrey or some one for them or one of them, that this land was to be bought by you and conveyed to The Rural Homestead Company or to somebody for that Company?

A. No, not in the slightest degree."

(Page 377, L 40; page 478, L 1-5, page 380, L 14-18.)

Q. With those letters, did there come any letters from Mr. Pratt or Mr. Torrey?

A. No, sir, except one of the letters is signed by Mr. Torrey. The first letter there, I think he was one of the committee—none other than those."

(Page 380, L 14-18.)

TESTIMONY OF JOHN LINN.

Q. "Mr. Pratt did not tell you these 238 shares would determine the control, did he?

A. Oh, no, nothing about that."

(Page 389, L 6-8.)

TESTIMONY OF CLARENCE LINN.

Q. "Did you know at the time you voted for this resolution that the issue of these two hundred and thirty-eight shares of stock would change the majority of the ownership of the stock to the parties acting with Mr. Pratt and from the parties acting with Mr. Pratt?

A. I don't think that I knew that at that time.

Q. Nothing was said about that?

A. No, sir.

Q. Did you have any interviews with Mr. Bower before this resolution was passed?

A. No, sir.

Q. Did any of the parties have interviews with him?

A. To whom do you refer?

Q. Any of the parties present at this meeting, you say it was discussed?

A. I only know what the documentary evidence shows, the correspondence etc., whether they saw him personally or not, I cannot say.

Q. Did any of them say that they had talks with him about it?

A. I don't recall that they did?

Q. Was there any statement made at that meeting of information with reference to the property derived from any source except this correspondence you speak of?

A. Not that I recall."

(Page 396, L. 19; Page 397, L. 1-15).

Q. "Now is it not also a fact the statement with reference to the position of this land, its character and desirability, and the danger of a competing cemetery were made by Mr. Pratt or Mr. Torrey?

A. I cannot change the answer already given."

(Page 399, L. 9-14).

## TESTIMONY OF H. F. TORREY.

Q. "How did Bower come to know about this land?

A. I cannot tell you that; the first intimation I had of it, was from Mr. Parker, who was counsel for Mr. Bower.

Q. Mr. Parker represented Mr. Pratt also?

A. No, sir; he was counsel for Bower in that matter."

(Page 453, L. 35-40).

Q. "You don't know whether it was suggested to him by anybody in the interest of the cemetery to Mr. Pratt that he should bid it in for the cemetery?

A. I never understood it was suggested to him by Mr. Parker."

(Page 454, L. 26-30).

Q. Who first told you about Bower's purchase?

A. I think Mr. Parker first spoke to me about it on the train.

Q. And Mr. Pratt said anything about it?

A. Nothing until after that."

(Page 472, L. 19-23).

Q. "In the letters which you have offered in evidence, and a part of the committee's report is one under date of December 30, 1891, to Mr. Bower, which is signed by you and McCrea, and in which you state "that you have acquired possession of the Myers' farm in Arlington, and you contemplate converting the same into a cemetery, etc., etc." My question is, who had the conversation or conversations with Mr. Bower which resulted in the writing of that letter?

A. My conversation was with Mr. Parker, he represented Mr. Bower in the purchase of the property.

Q. Tell us what you said to Mr. Parker?

A. Mr. Parker spoke of the possibilities or prospects of there being a competing cemetery there, and he also spoke to Mr. Pratt about it, and I had some conversation with Mr. Pratt about it, it was talked over among us that there was a plan under consideration by Mr. Bowers."

(Page 474, L. 19-37).

Q. "Don't you know whether there had been intercourse between Mr. Pratt and himself before his purchase of this land with reference to it?

A. I don't know; Mr. Pratt was acquainted with him—I cannot say what conversation there may have been between them.

Q. Before his purchase at the tax sales, do you know whether Mr. Pratt knew that the land had been sold to the township?

A. I don't know.

Q. Did Mr. Pratt have any conversation with you on the subject?

A. None that I remember.

Q. Nothing said by him about acquiring it in that way—buying the tax title?

A. No, I think my first knowledge in regard to that was the information that Bower bought it.

Q. You think Mr. Parker told you that?

A. That is my recollection, that the first information I had was from Mr. Parker."

(Page 482, L 18-38.)

MR. PARKER'S TESTIMONY.

Q. "Who conducted the negotiations between Mr. Bower and Moses?

A. I did.

(Page 341, L 27-30.)

Q. Who first spoke to you about buying the tax title to this land?

(Page 357, L 39.)

A. Mr. Bower.

Q. What did he say?

A. He said he wanted to invest some money in Arlington property and I think I spoke to him about buying this title.

Q. Had he bought or owned any Arlington property before?

A. Not that I know of.

Q. Did he mention Mr. Pratt at all?

A. No, sir.

(Page 357, L 39.)

Q. Had Mr. Pratt said anything to you about Mr. Bower?

A. No.

Q. Had Mr. Pratt spoken about securing this tax title before?

A. Not to me, no.

(Line 27-30.)

Q. When did Mr. Pratt first speak to you about it—about this property?

A. I do not recall that he ever spoke to me about it.

(Page 359, L 4-6.)

Q. Don't you know as a fact that Bower in this matter represents and has from the beginning represented Mr. Pratt of the Cemetery?

A. No, sir.

Q. You have not been told that?

A. No, sir.

(Page 367, L 10-16.)

Q. Do you know of any conference between Mr. Bower and Mr. Pratt, about the purchase of this property?

A. No, sir.

(Page 368, L 28-30.)

Thus we have on one side the allegations of the complainants that Mr. Pratt was connected with this transaction and the statement of the Chancellor that Mr. Pratt was "the master spirit," allegations unsupported by a particle of evidence. On the other side we have the testimony of five witnesses, of unimpeached character, who testify frankly to their own acts, which brought about the exchange of the Rural Homestead Company stock for the Bower interest, giving good reasons therefor, and all of them deny any agency of Mr. Pratt in the transaction, excepting that as presiding officer in the directors' meeting, December 28, 1891, he performed the simple duty of bringing the matter before them for action. Unless we adjudge all these five witnesses guilty of perjury, we must admit that Mr. Pratt not only was not the "master spirit" of the movement, but that he knew less and did less than any of the actors in the transaction. He knew so little about it that Mr. Voorhis the counsel of the defendants did not think that his testimony could add any weight to the cumbersome and largely irrelevant mass of material with which the case was already burdened. He therefore left with the opposing counsel the responsibility of calling Mr. Pratt as a witness if he desired, a privilege that was not availed of.

But the crowning feature in this structure of inferences is that which is derived from the unwarranted statement, that Mr. Pratt "was declared by a witness to have said that he procured Mr. Bower to buy the land."

As this is perhaps the make-weight which tipped the balance in favor of the opinion we are considering, we will analyse the statement.

William J. Davis is the only one of all the witnesses in the case who professes to relate any remark of Mr. Pratt on this subject, and Davis is therefore necessarily the witness, who according to the Chancellor quotes Mr. Pratt as saying, "that he procured Mr. Bower to buy the land." Having already quoted Davis' testimony in full, we refer to that portion that is misquoted by the Chancellor (Page 320, L. 32): "He (Pratt) told me that Mr. Bower was a friend of his, and that he (Bower) had bought it for the Cemetery."

In this statement we are told by the witness that Mr. Pratt said that "Mr. Bower had bought the land for the Cemetery," or, as we say, *a* cemetery.

Mr. Pratt according to the witness was stating what he knew or professed to know about *Bowers' act* of purchase and not about any act of his own. The interpreting of this testimony to mean that Mr. Pratt procured Bower to buy the land, is an unjustifiable perversion of language and of truth.

It is upon this perversion of testimony that the Chancellor founds an opinion, which the testimony itself does not sustain.

Of course Mr. Pratt knew of the purchase made by Bower and could not avoid knowing it, when it was shown by Mr. Parker and the Myers', and their friends, and all the town authorities who sold the tax title to Bower, and through them by all the gossips of Arlington, but it is not true as the Chancellor asserts that any witness in this case declared that Mr. Pratt said "that he procured Mr. Bower to buy the land." Overwhelming proof has been produced that Mr. Pratt did *not* procure Mr. Bower to buy the land, and no distortion of language can wrest such a conclusion from any of the evidence in this case. This false quotation of a reported conversation is used by the Chancell or as the instrument for breaking down a solid

wall of facts and evidence, and for branding five respectable witnesses with the stigma of perjury: If inferences derived from circumstances hastily assumed, but not proven are unjustifiable, what shall we say of inferences derived wholly from imaginary or invented testimony?

As opposed to these false inferences we have positive and conclusive evidence that Mr. Pratt's efforts were all in the direction of *preventing* the purchase from Mr. Bower, and the sale of the stock to him by Rural Homestead Co. In that respect only can he be regarded as a "master spirit."

At the stockholders' meeting, July 9, 1890, some months after Mr. Bower had acquired the Myers' property, Mr. Pratt proposed that the stockholders should buy the 238 shares of treasury stock, and that a bonus of cemetery lots should be included as an inducement for them to purchase. The Boston stockholders were fully represented at that meeting, but declined to act upon the proposition.

(Ex. p. 6 minutes, page 48).

If they had acceded to Mr. Pratt's wishes, it would have become impossible to sell the stock to Mr. Bower.

In November following, a meeting of the directors was called to consider the question of distributing the stock pro-rata among the stockholders.

(Ex. P 6 minutes, page 51).

Mr. Pratt advocated such distribution, and his proposition was defeated by the opposition of the Boston faction. If they had consented to his proposition it would have made it impossible to sell the stock to Mr. Bower.

(Book Wildes testimony, page 204)

Thus on two occasions after Mr. Bower had become possessed of the Myers property, Mr. Pratt endeavored to place the stock beyond the possibility of being used in the purchase of the Bower interest, and his efforts in both cases were defeated by the Boston stockholders. Besides it appears that Mr. Pratt as a neighborly act towards W. H. Myers, was also using his influence to get the Myers family re-instated as owners in place of Bower, which would also have made it impossible to exchange the stock for the land, because a large number of heirs in humble circumstances could not afford to hold the stock. In the face of these facts, the complainant's were audacious enough and the Chancellor is oblivious of the evidence enough to allege that Mr. Pratt was all this time planning to exchange the stock with Bower for his interest in the Myers property.

If the evidence in this case is to be regarded, it must be adjudged that Mr. Pratt not only did not "procure Mr. Bower to buy the land" and had no connection or agency in that matter, but that everything he did effecting it, was in the direction of *preventing* the issue of stock to Mr. Bower by Rural Homestead Company.

(Book page 301-303.)

At the risk of being tedious, we have thus reviewed and quoted at length from the testimony in the cause bearing upon and elucidating the questions involved, because in that way only can a correct and just conclusion be attained.

The honesty and good faith of the defendants, directors and officers of the Rural Homestead Company, acting in a capacity of trust and confidence, has been directly assailed, and the decree of the Chancellor upholds the accusation made against them. But is it possible that such a charge against respectable persons of hitherto unsullied reputations, can be allowed

to stand by any Court in this state, supported only by far-fetched inferences from imaginary and unproven facts?

The decree of the Court of Chancery should be reversed and the complainants' bill dismissed.

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# In Chancery of New Jersey.

Between

FRANK W. WILDES AND OTHERS,

*Complainants,*

*and*

THE RURAL HOMESTEAD COMPANY AND OTHERS,

*Defendants.*

*Bill.*
*Filed Nov. 26, 1892.*

*To the Honorable Alexander T. McGill, Chancellor of New Jersey.*

Humbly complaining, show unto your Honor, your orators, Frank W. Wildes, Frances E. Wildes, his wife, of Boston, Massachusetts, Daniel L. Shearer, Katie E. Champlin and George W. Colburn, of Cambridge, Massachusetts, Waldo E. Cowdrey, of Wakefield, Massachusetts, Thomas J. Olys, of Boston, Massachusetts, and Frederick H. Rindge, of Los Angeles, California.

That they are stockholders in the Rural Homestead Company, a corporation of New Jersey. That the total capital stock of said company is twenty-four hundred shares of the par value of fifty dollars each share. That of this stock your orators own eleven hundred and ten shares, as follows:

The said Frank W. Wildes, three hundred and thirty-three shares, Frances E. Wildes, one hundred shares, Daniel L. Shearer, four hundred and thirty-two shares, Katie E. Champlin, fifteen shares, George W. Colburn, fifty-five shares, Waldo E. Cowdrey, forty-four shares, Thomas J. Olys, sixty-five shares, and Frederick H. Rindge, sixty-six shares.

That prior to the last annual meeting, which occurred on the seventh day of June last, the balance of said stock was held, ten hundred and forty-three shares, by other stockholders, as follows, namely:

Julius H. Pratt, of Montclair, New Jersey, who is the President of the company and has been from the beginning, eight hundred and ninety-one shares; Charles H. Dummer, Jersey City, New Jersey, twelve shares; Robert O. Babbitt, Jersey City, New Jersey, one share; H.———R. Beadle, of———one share; William R. Barricklo, of Jersey City, New Jersey, four shares; John Linn and Clarence Linn, both of Hackensack, New Jersey, one share; David W. McCrea, of Jersey City, New Jersey, one share; William B. Shrope, of Jersey City, New Jersey, one share; Mrs. O. E. Sparhawk, of Philadelphia, Pennsylvania, forty shares, and Henry F. Torrey, of Montclair, New Jersey, who is and for many years has been the Secretary of the company, eighty-five shares; Henry E. Reddish, of Brooklyn, New York, nine shares; Flavel McGee, three shares, and Joseph D. Bedle, Jr., and Lucien D. Fowler, all of Jersey City, New Jersey, one share each, making in all ten hundred and fifty-two shares, and the balance of the stock, namely, two hundred and thirty-eight shares, was held in the treasury of the company.

That ever since the connection of your orators or any of them with the company the said Julius H. Pratt, has been President thereof, and since June, eighteen hundred and eighty-three, the said Henry F. Torrey, who is his son-in-law, has been the Secretary thereof.

Your orators further show that the Rural Homestead Company was incorporated under the laws of New Jersey in the year eighteen hundred and seventy-two and they acquired title to lands at Arlington, Hudson County, New Jersey, which at that time they proposed to sell in building lots, but for

some reason that plan was not carried out, and about the year eighteen hundred and eighty-two the company was re-organized or resusitated, and the cemetery company known as the Arlington Cemetery Association was organized and a sale to that association was made of the lands of the Rural Homestead Company upon the following terms, namely:

That one-half of the sales of burial lots and plots for interments or tombs, to-wit, one-half of all the monies received from such sales as the same should from time to time be received, should be paid to the Rural Homestead Company as the consideration for the conveyance of said lands, and that the other half of such receipts should be applied to the improvement and maintenance of the ground and necessary expenses incidental to the management of the cemetery association. With the further agreement that the Homstead Company should survey and properly lay out and improve the land for the purpose of a cemetery; the expense of such surveying and laying out to be contributed by the Rural Homestead Company as fast as required, not to exceed the amount of twenty thousand dollars, of which one thousand dollars was to be regarded as having been already expended in the preliminary expenses necessary to the organization of said association. And with the further right in the Rural Homestead Company to distribute gratuitously certain lots not exceeding sixty in number, for the purpose of initiating the cemetery, after which the minimum price for lots of three hundred square feet each was fixed at two hundred dollars each, for the first hundred lots sold, and three hundred dollars each for all lots subsequently sold, which prices might be increased at the option of the Cemetery Association, but should not be reduced except by the consent of the Rural Homestead Company.

And your orators further show that afterwards and about the fifth day of June, eighteen hundred and

eighty-three, this agreement for the payment by the Cemetery Association to the Rural Homestead Company of fifty per cent. of the proceeds of sales of lots was changed to forty-five per cent. thereof, which rate has never been changed. But the change was made upon the further stipulation that ten per cent. of the gross receipts from the sale of all lots and burial places in said cemetery should be reserved and set apart by the Cemetery Association as an accumulating and permanent fund to be used in the maintenance and perpetual care of the cemetery, which stipulation was a condition precedent to and the condition of the said change in the per cent. to be paid to the Rural Homestead Company.

A conveyance in accordance with the terms first above named, was made by the Rural Homestead Company to the Arlington Cemetery Association by deed bearing date December first, eighteen hundred and eighty-two, the consideration expressed in which was one dollar and other valuable consideration, but was in fact the consideration above set forth, which deed was recorded on January second, eighteen hundred and eighty-three, in book three hundred and seventy-five of deeds for the County of Hudson, New Jersey, on page ninety-five, &c. To which deed or the record thereof, and to which agreements above stated, dated respectively the eleventh day of November, eighteen hundred and eighty-two, and the fifth day of June, eighteen hundred and eighty-three, and in possession of said Rural Homestead Company, these complainants make reference.

After this re-organization of the Rural Homestead Company, the said Julius H. Pratt was elected President and in June, Eighteen hundred and eighty-three the said Henry F. Torrey was elected Secretary and they have continued to be such ever since. The terms of the said agreement as to the said twenty thousand dollars were carried out and the sales of the lots of the Cemetery Association were made to a

large amount, but to what extent exactly your orators do not know.

From the year eighteen hundred and eighty-five to the year eighteen hundred and ninety, no annual meeting of said company was called nor any election held, and during that time neither the accounts of the Rural Homestead Company nor the Arlington Cemetery Association were regularly written up, but were kept, so far as they were kept at all, in such a way that none of the stockholders excepting those that were in the office of the company as officers, could ascertain anything accurate in regard to the financial condition of either company, although efforts to do so were made by your orators, nor were the accounts of said Cemetery Association audited as provided by the by-laws. At that time all of your orators were stockholders in said company.

Your orators further show that during all the time since eighteen hundred and eighty-two, none of the proceeds of sales of the cemetery lots has been actually turned over to or paid to the Rural Homestead Company. For a time, and perhaps up to about sometime in the year eighteen hundred and eighty-four, a pretense was made of paying to the Rural Homestead Company, the proportion of the sales of lots to which it was entitled under the above mentioned contract, but even during that time, by action of the Board of Directors of the Rural Homestead Company, which was then as it has ever since been, dominated by the said Julius H. Pratt and Henry F. Torrey and John Linn, who also controled the Cemetery Association, the monies so received were loaned back by the Homestead Company to the Cemetery Association. During that year some action of the Board of Directors of the Rural Homestead Company was taken by which thereafter, the Cemetery Association was relieved from even going through the form of making such payments, but were to be charged therewith as if the payment and loan had been for-

mally made. From that time on, no money had been paid by the Cemetery Association to the Rural Homestead Company at all on account of lots sold by the Cemetery Association.

In the year eighteen hundred and ninety, your orator, Daniel L. Shearer was elected a director of the company and was allowed to remain as such director for one year, but with that exception, during the whole time since the re-organization of the Rural Homestead Company, in eighteen hundred and eighty-two, your orators have had no representation in the Board, and the affairs of the company have been controlled and dominated entirely by the persons who held from time to time, the stock now represented by the defendants above named and largely by the said Julius H. Pratt and Henry F. Torrey and John Linn and those who were in the same interest with them as your orators understand it.

At the time of the election of the year eighteen hundred and ninety-one, there still remained in the treasury of the company, two hundred and thirty-eight shares of stock, which stock, as your orators are advised and charge, neither the directors nor any officer of the company had any right to sell or dispose of except for cash or for property purchased to the full value of the par of the stock. By the time of the election of eighteen hundred and ninety-one, your orators by reason of the financial mismanagement of the company and of the fact that their rights were ignored and they were not allowed any voice in the management of the company nor their holdings considered nor any satisfactory opportunity given them to ascertain or know the condition of the company and of the Cemetery Association, which by that time had become a debtor to the Homestead Company in very large amounts, aggregating upwards of fifty thousand dollars, for monies due, besides the amounts of money to grow due from future sales of the cemetery lots, became very much dissatisfied, and there-

after, and before the election of eighteen hundred and ninety-two, your orators purchased enough stock in addition to that already held by them to give them a majority of the stock of the company as it stood at the time of the election of eighteen hundred and ninety-one, and as they understood it, of all the stock of the company that had been issued, namely, eleven hundred and ten shares, so that the stock then stood, as they understood it, eleven hundred and ten shares held by your orators, fourteen shares held by Messrs. McGee, J. D. Bedle, Jr., Lucien D. Fowler and Henry E. Reddish, all of whom were in sympathy with your orators, ten hundred and thirty-eight shares held by the defendants and two hundred and thirty-eight shares held in the treasury.

The annual meeting of eighteen hundred and ninety-two was held in Jersey City on the seventh of June, and when the list of stockholders was produced it stood as above stated, with the exception that one Samuel W. Bower appeared as a holder of the said two hundred and thirty-eight shares of stock, which your orators supposed, and had a right to suppose, was treasury stock, and of the issue of which they had no notice or information until the second day of said month of June.

At the election the following Board of Directors was elected:

Julius H. Pratt, Henry F. Torrey, John Linn, Clarence Linn and the said Samuel W. Bower, each of whom received twelve hundred and seventy-two votes, which included the votes of all the persons other than your orators, and the said McGee, J. D. Bedle, Jr., Fowler and Reddish, who voted with your orators, and four shares of others, which stock was not voted and included the said two hundred and thirty-eight shares of stock which your orator had supposed were in the treasury.

Your orators further show that the whole of your orators' said eleven hundred and twenty-four shares of stock were voted for a different board.

Your orators further show that prior to said annual meeting they had no official notice of any sale of this treasury stock, but that the first notice thereof to them was on the second day of June aforesaid when they obtained from the Secretary a list of the stockholders, and they had no knowledge of the consideration for which it was issued until the day of the annual meeting, when they were informed that it had been issued for land. At this meeting a report was read, in which it was stated that twelve acres of land suitable for cemetery uses had been purchased and payment made therefor by the sale of the two hundred and thirty-eight shares of stock.

Your orators further show that the purchase of this land and the sale of this stock was, as they are advised and charge, not only illegal but was a surprise to them, and under the circumstances of the condition of the Cemetery Association, seemed to them the more surprising and for the following reasons:

*First.* The Cemetery Company already owned thirty-five acres of land, of which in the ten years of its existence only about one-fourth had been sold, the other three-fourths remaining undisposed of, and so far as your orators know, and as they are informed and believe, unoccupied, so that the lands owned by the Cemetery Association seemed to them and now seem to them sufficient to accommodate the wants of the association for many years to come, and in addition thereto there were at that time two judgments in existence against the Cemetery Association, one in favor of Israel Crane for two thousand and fifty-eight dollars and forty-eight cents, obtained on the fourth of August, eighteen hundred and ninety-one, in the Supreme Court of New Jersey, and another obtained on the eighth day of October, eighteen hundred and ninety-one, in the same court, in favor of the said Robert O. Babbitt, for the sum of five thousand three hundred and fifteen dollars and sixty-four

cents, on which, although your orators did not then know it, executions had been issued and writs of sequestration obtained and sequestrators appointed for the incomes of said Cemetery Association.

*Second.* No report was made to said meeting of either said judgments or executions or writs of sequestration, and your orators discovered the fact thereof only recently, when there appeared on the list of the Court of Chancery at its now last term, a suit wherein the Arlington Cemetery Association was complainant and the Rural Homestead Company was defendant, and your orators did not at the said meeting even know that the said judgments of the said Babbitt and Crane had been obtained.

*Third.* Because the Cemetery Association was, as above mentioned, still indebted to the Homestead Company in the very large sum of money above mentioned, and had been unable during all the period of its existence to make sales sufficient to meet its current expenses and obligations, or to pay to the Homestead Company the moneys from time to time accruing to it, as aforesaid.

*Fourth.* The Rural Homestead Company, under the circumstances above recited and the business it has been doing, for the last ten years and the intention of its continuance, had no use for any additional lands and was not engaged in the business of selling lands to miscellaneous purchasers and the purchase of lands of any outside parties by the directors without the knowledge and action of the stockholders was such a departure from the uses to which the property was being put, that it would be beyond their powers and illegal, without the matter having been first brought to their attention and authorized by them as a body.

The purchase of this land and the issue of this stock in the manner above detailed and under the cir-

cumstances, aroused the suspicions of your orators and caused them to institute an investigation as to the facts concerning it, and they discovered them to be and they say and charge that they are as follows:

By a deed bearing date the twenty-eighth day of May, eighteen hundred and ninety, and recorded on the thirtieth day of June, eighteen hundred and ninety, the Board of Township Committee of the Township of Kearney, in the County of Hudson and State of New Jersey, as party of the first part, conveyed to the said Samuel W. Bower, as party of the second part, certain lands therein mentioned, in which deed, after reciting that the late Treasurer of Kearney at the time had a list of the names of delinquents in the Township of Kearney, with the sums due from them respectively for taxes and assessments, and had delivered the same to the Clerk of said Township before the thirtieth day of September, eighteen hundred and eighty-five, and before delivering the same to the Township Clerk, had taken and subscribed an oath that the monies mentioned in said list had been demanded of each delinquent and due notice given at the place of residence of each delinquent who could be found or who resided in the said Township, and that the said Clerk had reported the facts with the list of delinquents to the Board of Township Committee of the said Township, and the Board had passed a resolution appointing and limiting a day in the then future, on or before which the said taxes or assessments described in said list should be paid and in default thereof that the property should be sold, and whereas the time limited by the said Board of Township Committee for the payment thereof had expired, and whereas the following taxes and assessments in said list named at the expiration of said time limited and appointed by said Board remained unpaid, to-wit, the sum of fifty dollars assessed and imposed upon the following lots, namely:

1. Lot 49 block 218 Coppermine avenue, $25. On

plot 48, block 217 Schuyler avenue, $20. On plot 4 Meadow property, $5. As designated upon the township map of said township and assessed in the names of Moses Meyers, Rachel Meyers and the estate of C. Meyers, aad after reciting the advertisements for said sales for the payment of said taxes, and the adjournments of said sale to the twenty-sixth day of February, eighteen hundred and eighty-seven, at 2 o'clock in the afternoon, at the Town Hall in said Township of Kearney, and that at that time the said taxes with interest and all charges amounted to sixty-three dollars and fifty cents, and that at that time said lots were put up for sale at public auction for the shortest time for which any person would agree to take the same and pay the said amount of sixty-three dollars and fifty cents, and that then and there the said Board of Township Committee, by its Treasurer, did offer to take the same for the term of thirty years and to pay the said sum of sixty-three dollars and fifty cents, and no other person offering to take the same for a shorter time, were accordingly cried off and sold to said Board of Township Committee for the said term of thirty years. And after further reciting a resolution by said Board at a meeting held on the twentieth of May, eighteen hundred and ninety, to dispose of the same to Samuel W. Bower, authorizing the Chairman of said Board to execute an assignment thereof to him and an offer by said Bower to pay to the Township all the liens on said lots and a recitation that said liens amounted altogether to nine hundred and nine dollars and six cents, in consideration of the premises and of the payment of the said nine hundred and nine dollars and six cents, sold and transferred unto said Bower, his heirs and assigns all the rights, title and interest of said Township in said property and lots of land therein numbered and designated as aforesaid. To have and to hold the same for the term of thirty years from the twenty-sixth day of February, eighteen hundred and eighty-

seven, which your Honor will perceive was not a conveyance to him of the title in fee simple of said land, but only a tax title for a limited number of years.

And by another deed dated the twenty-seventh day of May, eighteen hundred and ninety-one, and recorded in the Register's office of said County of Hudson on the third day of August, eighteen hundred and ninety-one, at twelve o'clock noon, in book 529 of deeds for said county on page 609, &c., one Moses Meyers, of the Township of Kearney, in the County of Hudson and State of New Jersey, as party of the first part, conveyed to the said Samuel W. Bower, of the City, County and State of New York, as party of the second part for the consideration of one dollar, the following described land, namely:

All those certain tracts or parcels of lands and premises situate lying and being in the Township of Kearney, in the County of Hudson and State of New Jersey, which, on the tax or township maps of the Township of Kearney, are known, marked and designated as follows: Lot number 49, block 218, Coppermine avenue, plot number 48, block number 217, Schuyler avenue, and plot No. 4, meadow property, assessed in the names of Moses Meyers, Rachel Meyers and the estate of C. Meyers, and which taken together are bounded and described as follows. Beginning at a point in the southwesterly corner of the property of the Arlington Cemetery Company, which point is in the easterly side of Schuyler avenue, thence southwesterly and along the easterly line of Schuyler avenue 437 5-100 feet by the same more or less tothe sou hwesterly corner of plot No. 48, in block No. 217; thence southeasterly and along the southerly line of plot No. 48, in block No. 217, continuing through Coppermine avenue and along the southerly line of plot 49, in block 218, and at right angles or nearly so to Schuyler avenue, 640 feet; thence northeasterly and along the southeasterly line of plot No. 49, in block No. 218, 89 7-100 feet; thence southeast-

erly and along the southerly line of plot No. 4, (meadow) 585 feet to the southeasterly corner of plot No. 4 (meadow); thence northeasterly and along the easterly line of plot No. 4 (meadow) 382 feet to the southeasterly line of the property of the Arlington Cemetery Company; thence northwesterly and along the southerly line of the cemetery property 1,267 feet be the same more or less to the easterly line of Schuyler avenue, the point or place of beginning. Excepting and reserving from the said description so much thereof as has been dedicated for an avenue now laid out and designated as "Coppermine avenue" in the aforesaid township map. And also all those tracts or portions of land and premises lying in the Township of Kearney, in the County of Hudson and State of New Jersey.

The first tract, beginning in the center line of the road leading from Watkins' tavern to Hackensack, commonly known as the Coppermine road, at the northeasterly corner of land formerly belonging to John Van Emburgh, Jr., now to Julius H. Pratt; thence running south forty-six degrees and ten minutes east 515 feet and one-half inch; thence running north sixty-nine degrees forty eight minutes east 241 feet and five inches; thence north forty-six degrees ten minutes west 640 feet and seven inches to the center line of Coppermine avenue aforesaid; thence running south thirty-nine degrees 4 minutes along the center line of Coppermine avenue 215 feet nine and one-half inches, be the same more or less to the point or place of beginning.

The second tract beginning at a point in the first course of a deed given to John Van Emburgh, and recorded in Liber I 3 of deeds for Bergen County, pages 61, &c., and at a distance of 447 feet from said beginning; thence south forty-eight degrees forty minutes east forty-eight feet; thence north fifty degrees and thirty minutes east 210 feet; thence south thirty-nine degrees thirty minutes east 412 feet; thence south

fifty-two degrees west 122 feet; thence due west 198 feet; thence south forty-one degrees west 462 feet; thence south 57 degrees thirty minutes west 195 feet; thence north forty-eight degrees forty minutes west 1,010 feet; thence north forty-three degrees east seventy-four feet; thence north seventy-three degrees thirty minutes east 141 feet eleven inches; thence north sixty-three degrees thirty minutes east 178 feet; thence south forty-eight degrees forty minutes east 585 feet; thence north forty-one degrees twenty minutes east 382 feet, to the place of beginning, containing 12 and 79-100 acres. The party hereto of the first part by this conveyance conveys all his right, title and interest in and to the above described premises.

Which deed bears the signature of Moses C. Meyers only, and was acknowledged according to the certificate endorsed on the record thereof on the twenty-seventh of May, eighteen hundred and ninety-one, by said Moses C. Meyers before Joseph W. Parker, Jr., a Master in Chancery of New Jersey.

Your orators are informed and charge that the parcels of land described in these two deeds are the same and are the lands which purport to have been sold by said Bower to the Rural Homestead Company for the said stock.

Your orators further show that the records further disclose that the said Moses C. Meyers was not the owner of the said lands, but that the said lands were the property in his lifetime of one John Van Enburgh, who at his death devised them by his will, which bears date the twenty-third day of July, eighteen hundred and sixty-three, and was proved October three, eighteen hundred and seventy, in the Surrogate's office of the said County of Hudson, to his daughter Rachel Meyers and her daughter Mary Meyers as tenants in common, and that the said Rachel Meyers at her death devised her half of them by her will, which bears date the twenty-fourth day

of November, eighteen hundred and eighty-two, and was proved on the seventeenth of September, eighteen hundred and eighty-three, before the said Surrogate, to her son Moses C. Meyers, upon condition of his care and support of said Mary for life, and at her death the same to be equally divided between her children, Moses C. Meyers, William H. Meyers, Peter Meyers, Jane Meyers, Ann Meyers and Eliza Meyers, in equal shares, and that of the share which had been devised originally by said Van Enburgh to Mary Meyers two acres was conveyed by said Mary Meyers to said Moses C. Meyers by deed bearing date the sixth of April, eighteen hundred and eighty-six and recorded in the Register's office of said County of Hudson on July twenty-ninth, eighteen hundred and eighty-six, in book 421 of deeds for said county, on pages 467, &c., as by reference to the record of said deeds and wills above mentioned will more fully and at large appear.

And your orators further show that at the time of the said conveyance by Moses C. Meyers to the defendant, Samuel W. Bower, he was not the owner of said lands, so far as appears by the record, and as your orators are informed and believe, but had only the two acres conveyed to him by his sister Mary Myers and the one one-sixth interest of the balance devised to him by his mother, the said Rachel Meyers, and inherited from his said sister Mary, and was not the owner of the balance of the title to said property at all, but that the balance thereof belonged to the said persons to whom they were devised as aforesaid by said will of Rachel Meyers, who are living, and as your orators are informed and believe in the following places:

William H. Meyers, in Montclair, New Jersey, Peter Meyers, at Arlington, New Jersey, and one of the sisters, but which one your orators do not know, in the state of Ohio. The residence of the other two sisters your orators have been unable to ascertain

Your orators further show in addition to the foregoing facts, that the said Moses C. Meyers says that he never made any conveyance of said lands to said Samuel W. Bower and has not sold any property to the Cemetery Association or anybody else, that Mr. Samuel W. Bower bought it in at a tax sale, and that a lawyer who represented him named Joseph Parker, Jr., came to him and told him that it would be better for him if he could get Bower to give him a lease of the property for three years with permission to redeem the property in the meantime by the payment of the taxes and produced a paper which as he understood was such a lease and that he acted on that advice, believing that that was the best way to save the property. That he signed what he supposed was a lease and that this lawyer afterward took the paper to his, Meyer's, wife, and tried to persuade her to sign it and showed her his, Meyer's signature, which she recognized but declined to sign, and that this lawyer offered her fifty dollars if she would sign it, and that it was only afterwards that he learned that the paper he signed was a deed. He says further that he knew that the paper was in the hands of Mr. Bower, and he supposed that Mr. Bower and Mr. Pratt were the same thing. And he further says that he received no consideration for signing that paper.

Your orators further show that on the property in question, there is a house and that at the time of said meeting and afterwards and as late as the eighteenth of October last, the said Moses C. Meyers, was still living in that house on the property and had not delivered possession, and so far as your orators know and as they believe he lives there still, and as your orators are informed and believe and charge there has been no actual delivery of possession of said property by said Meyers and that the possession, if any, of the Rural Homestead Company of the land is constructive only.

Your orators further show that at the time of the

annual meeting of the Rural Homestead Company, in June last, as aforesaid, and at the time of the voting upon said stock in the name of said Bower, there had been no conveyance of said property by said Bower to the Rural Homestead Company, recorded, and that no such conveyance appears of record in the records of deeds of said County of Hudson, up to this present time. Whether any conveyance thereof has ever been made to the Rural Homestead Company your orators have no means of knowing, but if so it has never been recorded so far as appears by the records, and has been for some purpose kept off the records by said Pratt and Torrey or one of them, and your orators charge that no such conveyance has been delivered to said company.

Your orators further show that the lands in question have no market value; that the village of Arlington, near which they are situated, is a place in which the growth has been slow, and that there is no special demand for building lots and is not near enough to the village to have much value if any for building lots, and that if it had there are only a few lots fronting on Schuyler avenue that have any appreciable value, and those not to exceed two hundred dollars each, and that the meadow lands of which the property principally consists has no value for building lots at all and that the lands can hardly be said to have any value except for farming purposes and that according to the best information your orators can obtain, two hundred dollars per acre would be a large price for the said lands even if the title were perfect.

Your orators further show that most of them reside at a distance from Jersey City, the home office of the said Rural Homestead Company and Arlington Cemetery Association, and that the management of both corporations has been as heretofore mentioned, under the control of the said Julius H. Pratt and Henry F. Torrey almost exclusively and that said Julius H. Pratt and Henry F. Torrey

were aware before the issue of the said two hundred and thirty-eight shares of stock to said Samuel W. Bower, that some of your orators had bought additional shares of stock of said Rural Homestead Company, sufficient to give them a majority of the stock of said Company then issued.

In view of the facts above set forth and of the history of the case as above detailed, and your orators respectfully charge that the object of said Julius H. Pratt and Henry F. Torrey in issuing said shares of stock to the said Samuel W. Bower, was for the purpose of retaining in their possession and that of those who were in sympathy with them, the control of said Rural Homestead Company and not for the benefit of the Company or in any respect for the interest of the Company or its stockholders, and they further respectfully charge, that not only was said issue of said stock unauthorized and illegal under the circumstances, but that in view of the condition of the Cemetery Association and of its indebtedness to the Rural Homestead Company and of its financial affairs, and of the objects for which the Rural Homestead Company was maintained, and to which its land had been put, the purchase of additional land by it was unwise and not only so but was unauthorized and beyond the power of the Directors to make, and that such a disposition of the assets of the Company without a vote of the stockholders, was unwise and unjust and beyond the powers of the Directors to make, and they further respectfully charge that the issue of said stock for said lands was in fraud of the rights of the Company, and that it was issued for a grossly inadequate compensation and to the injury of the Company and with the deliberate intention, not of benefiting the Company, but of retaining the control of its affairs, preventing your orators from electing a Board of Directors composed of other persons than said Pratt and Torrey and those in sympathy with them, and for no other purpose, and that the purchase of said land by the said Bower and the issue

of said stock to said Bower and the whole transaction connected therewith as detailed above, was a conspiracy on the part of said Pratt, Torrey and Bower and such others as acted with them, for the purpose of retaining the control of the affairs of said Company and preventing a majority of the bona fide stockholders thereof from expressing their will at its annual meeting and was in fraud of the rights of your orators and against their interests and the interests of said Company.

And your orators are advised and charge that the officers of a corporation have no power at law or in equity to use their official position for the purpose of defeating the will of stockholders, or preventing themselves from being deposed from office, nor to issue stock for that purpose, and that any effort to do so, is illegal and inequitable and beyond their powers and in fraud of the rights of stockholders.

Your orators further show that their only reason for desiring a change of management of said corporation, was to preserve it from what they believe to be mismanagement and loss, to preserve its assets, and to secure a proper and more satisfactory arrangement of its relations to The Arlington Cemetery Association, and they further say that they are advised and charge that whatever may be their motive, they are by law entitled to the full weight of their holdings at all elections of the corporation, and that any attempt to defeat that will in this way is illegal and inequitable and the proper subject of investigation and injunction and decree by this Court.

And your orators further charge that one of the objects, if not the principal object of said Pratt and Torrey in issuing this two hundred and thirty-eight shares of stock and their retaining control of the management of that company, is to prevent an investigation being instituted by that company into the affairs and management of the Cemetery Association, which they themselves also control, and an effort to

secure an accounting by that association, and a collection from it of the monies due by it to the Rural Homestead Company, and to prevent an investigation as to the ownership in equity of the said judgments in favor of said Babbitt and Crane against the Cemetery Association, and of the alleged debts upon which they are founded, and of the expenditures of the Cemetery association and the disposition of its lots, all of which in your orator's opinion demand investigation, but your orators charge that none of these reasons justify said Pratt and Torrey, nor any of the officers of said company in issuing stock of said company, and that stock of said company cannot be legally issued except for cash to the amount of its par value, or property equivalent in value thereof, and in the latter case not at all, unless the purpose and uses of the association demand it, and they charge that under the facts of this case the issue of said stock was in every view of the case reprehensible, tyrannical, unjust, inequitable and illegal, and that it ought to be so decreed. And your orators further show that under the circumstances of the case, they are prevented and unlawfully so, from having any voice in the management of said corporation. That they constitute a legal majority of the legal and bona fide stockholders of said company, and are by law entitled to such control, and that they have no recourse in the premises at law, and cannot obtain their rights, excepting by the aid of a court of equity.

In tender consideration whereof and forasmuch as your orators are without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relievable.

To the end therefore that the said defendants, The Rural Homestead Company, Julius H. Pratt, Charles H. Dummer, Robert O. Babbitt, H. ———, H. Beadle, William R. Barricklo, John Linn, Clarence

Linn, David W. McCrea, William B. Shrope, Mrs. O. ———, E. Sparhawk, Henry F. Torrey and Samuel W. Bower, but without oath, oath being waived, to the best of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and that the said conveyance from said Samuel W. Bower to The Rural Homestead Company if one was delivered may be decreed to be beyond the power of the corporation to take, to be without consideration and void, and that the issue of said two hundred and thirty eight shares of the capital stock of the Rural Homestead Company to said Samuel W. Bower may be decreed to have been made without power and in fraud of the rights of said Company, and without consideration and to be void. And that the said Rural Homestead Company may be decreed to make a re-conveyance of said lands to said Samuel W. Bower and said Samuel W. Bower, may be decreed to accept said reconveyance, and that the said Samuel W. Bower may be decreed to deliver up the certificate of said two hundred and thirty-eight shares of the stock of the Rural Homestead Company to be cancelled, and that the Rural Homestead Company and Julius H. Pratt and Henry F. Torrey and its Directors, Officers and employees, may be decreed to cancel said two hundred and thirty-eight shares of stock issued to said Samuel W. Bower as aforesaid, and the issue thereof, and to erase the name of said Samuel W. Bower from the list of stockholders of said Company, and that said shares of stock may be decreed to have been never legally issued, but to be still in the Treasury of the Rural Homestead Company and one of its assets. And that the said Samuel W. Bower may be decreed to be not a stockholder of the said Company by reason of said shares of stock or any of them, but that the whole

transaction above recited in reference to the issue of said stock and the sale of said property to the Company may be decreed to be void, and that the said The Rural Homestead Company, its Directors and Officers may be decreed not to buy any more land for cemetery purposes or otherwise until said Cemetery Association shall have paid to it the amounts owing by said association to it, and shall have made provision for the prompt payment hereafter of the moneys accruing to it from time to time for sales of cemetery lots and plots, and the said two hundred and thirty-eight shares of stock be decreed not to have any voting power at elections of said corporation.

And that an injunction may issue according to the practice of this Court, to be directed to the said Samuel W. Bower, his executors, administrators, assigns and agents, enjoining them and each of them pending the determination of this court from transferring or assigning or in anywise parting with, the title to said shares of stock or any of them, except to transfer them to said Rural Homestead Company for cancellation, and that the said Rural Homestead Company, its Directors, Officers and Agents and Julius H. Pratt and Henry F. Torrey, be enjoined from making any conveyance or other disposition of said lands except to reconvey them to the said Samuel W. Bower, and from making or attempting to make any sale, issue or other disposition of said two hundred and thirty-eight shares of stock or any of them, and from taking any action pending this suit that will change the status of the said two hundred and thirty-eight shares of stock, except to cancel the issue thereof, and that the officers of said Rural Homestead Company may be enjoined from reporting said two hundred and thirty-eight shares of stock as issued on any list of stockholders at any election of said company or otherwise that your orators may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orators not only the State's Writ of Injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Samuel W. Bower, his assigns and agents restraining them and each of them from transferring and assigning or in anywise parting with, the title to said shares of stock or any of it, except to transfer them to said Rural Homestead Company, for cancellation and to the said Rural Homestead Company, and the Directors and Officers thereof and said Julius H. Pratt and said Henry F. Torrey, from making any conveyance or other disposition of said lands except to reconvey them to the said Samuel W. Bower, and from making or attempting to make sale issue or other disposition of said two hundred and thirty-eight shares of stock or any of them, and from taking any action pending this suit, that will change the status of the said two hundred and thirty-eight shares of stock, and from reporting said two hundred and thirty-eight shares of stock as issued on any list of stockholders at any election of said company or otherwise, but also the States Writ of Subpoena issuing out of and under the seal of this honorable court, to be directed to the said defendants, The Rural Homestead Company, Julius H. Pratt, Charles H. Dummer, Robert O. Babbit, H. —— H. Beadle, William R. Barricklo, John Linn, Clarence Linn, David W. McCrea, William B. Schrope, Mrs. O. —— E. Sparhawk, Henry F. Torrey and Samuel W. Bower, commanding them and each of them by a certain day and under a certain penalty therein, to be expressed to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises and stand to, abide by and perform such order and decree therein as to your Honor shall seem meet as shall be agreeable to equity and good conscience.

And your orators as in duty bound will ever pray, &c.

Bedle, McGee & Bedle,
Solicitors for and of Counsel with Complainants.

Frank W. Wildes,
Frances E. Wildes,
Daniel Shearer,
George W. Colburn,
Katie E. Champlin,
Waldo E. Cowdrey,
Thomas J. Olys,
Frederick H. Rindge, by his Attorney in fact, Fran. J. Parker.

STATE OF MASSACHUSETTS, } ss.
COUNTY OF SUFFOLK, }

Frank W. Wildes, of full age being duly sworn according to law on his oath saith: I reside in Boston, Massachusetts. I am one of the complainants named in the foregoing Bill of Complaint and for the last two years have represented the interests of the other complainants in said bill named in connection with their holdings in the Rural Homestead Company within mentioned. I have read the foregoing Bill of Complaint; and the statements of fact therein made, so far as they are stated positively are true and so far as they are stated on information and belief, I believe them to be true.

That the allegations as to the amount of stock held by the Complainants and each of them is true; that the statements with reference to the holdings at the time of the annual meeting of eighteen hundred and ninety-one, the official connection of Julius H. Pratt and Henry F. Torrey with the Rural Homestead Company, the statements with reference to the relations between the Rural Homestead Company and the Arlington Cemetery Association and the sale of lands by

the Homestead Company to the Cemetery Association and the rates and methods of payment agreed upon, are true as stated in the Bill. The statements with reference to the failure to call or hold annual meetings of the Rural Homestead Company, with reference to the keeping of the accounts of both companies and the auditing of the accounts of the Cemetery Association and the failure to make payments by the Cemetery Association to the Homestead Company, the election of Mr. Shearer in the year eighteen hundred and ninety as a Director of the Rural Homestead Company and the lack of representation of the complainants at all other times in said Board are true as stated in the Bill. The statements with reference to the two hundred and thirty-eight shares of stock of the Rural Homestead Company remaining in the treasury of the said Company and that the same were issued without the knowledge of or notice to the complainants, and of their first knowledge thereof are true as stated in the Bill of Complaint. The statements with reference to the purchase of additional stock by the Complainants and that by means thereof the Complainants, together with Messrs. McGee, Bedle, Fowler and Reddish, held eleven hundred and twenty-four shares of the capital stock of said Company, and that these gentlemen were in sympathy with the Complainants and that thereby they held a majority of the stock of said Company, which so far as they knew had been issued, and that the Complainants alone, held a majority are true as stated in the Bill of Complaint.

This deponent further saith that such additional purchases were made by the deponent and the said Daniel L. Shearer, but with the knowledge and approval and in the interest of the other complainants in the Bill named.

That the statements with reference to the ignoring of the rights of the complainants, the financial mismanagement of the company, the indebtedness by the

Cemetery Association to the Homestead Company, the failure to pay, and all the statements with reference to the affairs of the company are true as stated in the Bill of Complaint.

That the statements with reference to the obtaining title by Samuel W. Bower to the lands mentioned in the Bill of Complaint, from Moses C. Meyers and the township of Kearney and of the connection of Julius H. Pratt therewith, this deponent is informed and believes to be true.

The statements with reference to the election held on the seventh of June, eighteen hundred and ninety-two, and the result thereof and the Board elected thereby, and of the votes then given are true as stated in the Bill of Complaint.

That the statements in the Bill contained in which are set forth the lack of necessity for the purchase of the said lands, and the inadvisability and uselessness and impropriety of the purchase of said lands by the Rural Homestead Company under the circumstances are true.

And deponent further saith that at the time said corporation was resusitated or reorganized, whichever may be the better word, in the year eighteen hundred and eighty-two, until the present time, the Rural Homestead Company has actually received no money whatever from the Cemetery Association so far as deponent knows and as he believes. That as stated in the Bill there were some years when there was a form gone through of paying to the Rural Homestead Company, the amounts owing to it by the Cemetery Association, but such money so received were, under the administration of the said Pratt and Torrey, forthwith loaned back by the Directors to the Cemetery Association; and that later and from about the year eighteen hundred and eighty-four or five, even that formality has been dispensed with and none of these monies so far as deponent knows or has any reason to believe, have been actually paid to the Rural

Homestead Company, but have been simply placed to its credit on the books of the Cemetery Association, and that during all those years there have been sales of lots in considerable number by the Cemetery Association, but its affairs have been so conducted that it has not been able in any year, according to the statements of its officers, to realize money enough to meet its current outgoes.

Deponent further saith that he and those that are acting with him in this matter, are of opinion, that under the circumstances of the case, it is extremely unwise that any more land should be purchased by the Rural Homestead Company or by the Arlington Cemetery Association, or any more debt on that account be incurred by the Cemetery Association, but that on the contrary, the only safety for the property of the Rural Homestead Company, lies in pursuing such a course as will secure to it as speedily as possible, consistent with its interests, a collection of the moneys due to it from the Cemetery Association.

Deponent further saith that the statements made in the Bill with reference to the proportion of lots of said Cemetery Association which have been sold, with reference to the judgments in favor of Israel Crane and Robert O. Babbitt, and the executions and writs of sequestration thereon, and the lack of reports with reference thereto to said company, and the indebtedness of said association to said company, and the failure to make sales of cemetery lots sufficient to meet current obligations. and the business pursued by the said Rural Homestead Company, and all the circumstances detailed in the Bill of Complaint, as those which aroused the suspicions of the complainants are true as stated; but deponent saith that with reference to the existence of the judgments of Israel Crane and Robert O. Babbitt, deponent was not aware of their existence until after the annual meeting of eighteen hundred and ninety-two, and as to the sequestration proceedings and the Bill of Complaint founded

thereon, mentioned in the Bill of Complaint, this deponent did not know thereof, and so far as he knows and as he verily believes, none of the complainants knew thereof, until within a few days last past.

Deponent further saith that during the whole time since eighteen hundred and eighty-two, the said Julius H. Pratt, has been President of the Homestead Company, and since eighteen hundred and eighty three, the said Torrey, secretary thereof, the Cemetery Association has been under the control and domination of the said Pratt and Torrey. The said Pratt being both Vice-President and Comptroller, and the said Torrey being Secretary and Treasurer. The Comptroller is given by section four of the By-Laws of the said Cemetery Association, the general management of the business of the Association, at the office of the Association and elsewhere under the direction of the Board of Trustees, and he is to report to the Board from time to time as they may require. And he is also empowered thereby to act as Agent or Trustee for any corporation having an agreement with the Association, entitling said corporation to a part of the proceeds from sales of lots, and to collect and pay over to said corporation, any funds due under said agreement, and as a fact he has had practical control of the Association. And that at no time during that period, have the complainants had any operative or controlling voice in the affairs of the corporation. That their residences are properly stated in the Bill of Complaint, and that they have not until recently attempted to secure control of the corporation, and that they now desire to secure it, only for the purpose of preventing what seems to them to be a certain and speedy loss of their entire property.

Deponent further saith that in his opinion and that of the complainants, the purchase of lands in addition to that already owned by the Cemetery Company, is beyond the needs of the Cemetery Association for many years to come, is unnecessary and unwise, and

if the same should be sold to the Cemetery Association, will increase the indebtedness of that association to the Rural Homestead Company, to an extent which will jeopardize and probably destroy your orators property in stock of the Rural Homestead Company; and further, as deponent and the other complainants understood it, the two hundred and thirty-eight shares of stock so held in the treasury was not within the power of the Directors to dispose of, except to raise money for the legitimate use of the company.

Deponent further saith that prior to the issue of the said stock to the said Samuel W. Bower, said Julius H. Pratt and Henry F. Torrey knew that deponent and said Shearer had commenced to buy additional shares of stock, and he says that the statements in the bill as the belief of the complainants that the said stock was issued to said Bower for the purpose of preventing the complainants from obtaining a majority of the issued shares of stock of said company, and from obtaining control of the direction of its affairs are truly stated therein.

Deponent further saith that under all the circumstances of the case and the financial condition of the Cemetery Association and the large proportion of its lots still unsold, there is no justification in the judgment of complainants, for the purchase of additional lands at this time, and that there is no reason apparent to the complainants for the issue of the additional two hundred and thirty-eight shares of stock, excepting to retain control of the management of the said Rural Homestead Company and said Cemetery Association, and that in the belief of deponent and that of the other complainants, the object of issuing the said stock was to retain such control and for no other purpose whatever.

FRANK W. WILDES.

Sworn and subscribed before me a Notary Public, in and for the County of Suffolk, State of Massachusetts, this 23rd day of November, 1892.

CHAS. HALL ADAMS,
Notary Public.

Sworn and subscribed at Boston in the County of Suffolk, and State of Massachusetts, this 23d day of November, A. D. 1892, before me a Notary Public, in and for the County of Suffolk and State of Massachusetts, duly commisioned and sworn.

CHAS. HALL ADAMS,
Notary Public in and
[L. S.] for the County of Suffolk
State of Massachusetts.

STATE OF MASSACHUSETTS, }
COUNTY OF SUFFOLK. } *ss.*

Frances E. Wildes and Thomas J. Olys, of full age, being duly sworn on their oaths respectively say that they are two of the complainants in the foregoing Bill of Complaint named. That they have read the said bill and have alse read the affidavit of Frank W. Wildes annexed. and that the statements made in the affidavit of the said Frank W. Wildes are true.

Frances E. Wildes.
Thomas J. Olys.

Sworn and subscribed at Boston, in the County of Suffolk and State of Massachusetts, this twenty-third day of November A. D. 1892, before me a Notary Public in and for the County of Suffolk and State of

Massachusetts, duly commisioned and sworn.

CHAS. HALL ADAMS,
Notary Public in and
[L. S.] County of Suffolk and the
State of Massachusetts.

STATE OF MASSACHUSETTS, }
COUNTY OF SUFFOLK. } *ss.*

Daniel Shearer, George W. Colburn and Waldo E. Cowdrey, of full age, being duly sworn on their oaths respectively say, that they are three of the complainants in the foregoing Bill of Complaint named. That they have read the said bill and have also read the affidavit of Frank W. Wildes annexed, and that the statements made in the affidavit of the said Frank W. Wildes, are true.

DANIEL L. SCHERER.
GEORGE W. COLBURN.
WALDO E. COWDREY.

Sworn and subscribed at Boston, in the County of Suffolk and the State of Massachusetts, this twenty-fifth day of November, A. D. 1892, before me a Notary Public in and for the County of Suffolk and State of Massachusetts, duly commissioned and sworn.

CHAS. HALL ADAMS,
Notary Public in and
[L, S.] for the County of Suffolk,
State of Massachusetts.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } *ss.*

Waldo E. Cowdrey, of full age, being duly sworn according to law on his oath saith, that he is one of

the complainants in the foregoing bill named. That he has read the foregoing Bill of Complaint and that the allegations therein contained with reference to the statements of Moses C. Meyers, are true and that they were made to Deponent.

That on the sixteenth day of October last he was in Arlington and visited the said Moses C. Meyers at his residence. That the said Moses C. Meyers at that time resided in a house on the lands adjoining the Arlington Cemetery and which the said Meyers told him, was the land of which the said Bower claimed to have obtained a conveyance from him. Deponent further saith that at that inserview said Meyers made the following statements to Deponent.

He said that he never made any conveyance of said lands to said Samuel W. Bower, and that he has not sold any property to the Cemetery Association or anybody else, that Samuel W. Bower bought it in at a tax sale and that a lawyer named Joseph Parker, Jr., came to him and told him that it would be better for him if he could get Bower to give him a lease of the property for three years with permission to redeem the property in the meantime by the payment of the taxes and produced a paper which as he understood it, was such a lease and that he acted on that advice believing that that was the best way to save the property. That he signed what he supposed was a lease and that this lawyer afterwards took the paper to his, Meyer's, wife and tried to persuade her to sign it and showed her his, Meyer's, signature, which she recognized but declined to sign and that this lawyer offered her Fifty Dollars if she would sign it and that it was only afterwards that he learned that the paper he had signed was a deed. He further said that he knew that the paper was in the hands of Mr. Bower and he supposed that Mr. Bower and Mr. Pratt were the same thing. He further said that he received no consideration for signing the paper.

Deponent further saith that he has been familiar

with the condition of the accounts of the Arlington Cemetery Association for the last seven years and that on several occasions when the complainants were urging that the accounts be written up, he has come on from Boston to Jersey City and assisted Mr. Torrey, the Secretary, in the endeavor to straighten them out and that the statements made in the Bill of Complaint with reference to the accounts and the affairs of the Arlington Cemetery Association are true as they are stated therein.

Deponent further saith that at each of the times when he came on to assist in writing up the accounts he had great difficulty to get appointments with Mr. Torrey and that he was put off by Mr. Torrey, from time to time.

WALDO E. COWDREY.

Sworn and subscribed before me
this 26th day of November 1892.

THEO. RURODE,
Notary Public, N. J.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*

Marshall W. Van Winkle, of full age, being duly sworn on his oath saith that he is an Attorney at Law of New Jersey, and that he made an examination of the title to the lands described in the Bill of Complaint as recorded in the Registers and Surrogates offices of Hudson County, New Jersey, and that the statements made in the Bill of Complaint with reference to the state of the records of Hudson County, New Jersey, with reference thereto are true, and that the statements made therein on that subject are taken from his examination thereof, and that he has examined said records down to the twenty-first day of November, eighteen hundred and ninety-two, and finds therein no record of any deeds relating to said lands later than those mentioned in the Bill of

Complaint, and that there is no deed thereof of record, so far as he can ascertain or so far as appears from the indexes of said records to the Rural Homestead Company or Arlington Cemetery Association from Samuel W. Bower or anybody else.

M. W. VAN WINKLE.

Sworn and subscribed this 26th day of November, 1892, before me, a Notary Public of New Jersey.

THEO. RURODE,
Notary Public, N. J.

STATE OF NEW JERSEY, } ss.
COUNTY OF HUDSON, }

Moses C. Meyers, of full age, being duly sworn on his oath, saith:

I live at Arlington, Hudson County, New Jersey, in a house situate on lands adjoining the Arlington Cemetery, containing about twelve acres of land. They are the same lands as those described in a deed from the Board of Township Committee of the Township of Kearney, in the county of Hudson, and state of New Jersey, to Samuel W. Bower, dated May 28, 1890, and recorded June 30, of that year, and described in a deed from myself to said Samuel W. Bower, bearing date May 27th, 1891, and recorded August 3d, 1891. This land was willed by my grandfather, John Van Enburgh, Sr., to my sister Mary Myers one-half, and to my mother Rachel Myers one-half. My mother at her death willed her half to myself and my five brothers and sisters as follows: William H. Myers, Peter Myers, Jane Myers, Ann Myers, Eliza Myers, and myself, each one-sixth. My sister, Mary Myers, in her lifetime conveyed to me her half interest in two acres. She also is dead, and I, with my five brothers and sisters aforesaid inherited her interest in the balance, so that the land now, except for the deeds hereinafter mentioned, belongs the two acres to myself and the balance to myself

and my five brothers and sisters, each one-sixth. The said five brothers and sisters are all living; William H. lives at Montclair; Peter lives at Arlington; my sister Jane married a man by the name of Routan; he is dead; she is a widow and lives at Arlington; my sister Ann is married to a man by the name of Martin Vernan, and lives at Cleveland, Ohio; my sister Eliza is married to a man by the name of Henry Williams, and lives between Arlington and Newark, in the township of Kearney.

The lands have been assessed by the Assessor of the township for taxes for some time prior to the last two years at three thousand dollars; what they have been assessed the last two years I do not know. I did not pay the taxes prior to the tax sale on which the deed above mentioned from the township of Kearney to Bower is founded, because I did not know what they were. I did not know that they had been advertised for sale for taxes, nor did I hear of the sale until after the deed from the township had been made.

In the spring of 1891, about the month of March, some paper was served on me notifying me that the lands had been sold for taxes. Whether it was served on the others or not I do not know. In May of that year, a lawyer by the name of Joseph W. Parker, Jr., who lives in Arlington, sent for me to come to his office, and told me that the land had been sold to Mr. Samuel W. Bower for taxes, and that it would be better for me, if I could get him to give me a lease of the property for three years, with the privilege of redeeming it on payment of the taxes in that time; otherwise I would be turned out of possession. I told him I would talk with my folks about it. I did so, and supposing that I could do nothing better, and not knowing my rights, I concluded to act on that advice, believing that it was for the best. I then went back and told him I would accept of his proposition, and he produced a paper which he said

was the lease I was to sign. I had no reason at that time to question his honesty, and I accordingly signed the paper without reading it, supposing and believing that I was signing a lease of the property for three years with the privilege of redemption in that time. After I had sigued the paper, I spoke about the payment of the taxes, and he then told me that after the three years I would have nothing further to do with the property, and I said to him, "Why, I didn't make any such agreement as that," and he then said he would see Mr. Bower and have the restrictions put in that I could redeem it within three years for the payment of the taxes, and I, relying upon his statements and promises, came away. That was the paper which appears to be the deed above mentioned.

A short time after that, perhaps about a week, Parker met me in the street, and wanted to get my wife to sign the deed too, and said he would give her fifty dollars to do so, and I told him she would not do that, and afterwards he went to my house, in my absence, and as my wife tells me, made her an offer of fifty dollars to sign the paper, and showed her the paper with my signature attached, which she refused to sign, and she never has signed it.

I received no consideration whatever for signing this paper, and I signed it under the belief that it was a lease to me for three years with the the privilege to redeem the land in the meantime by the payment of the taxes, and I never would have signed it if I had known, or had any reason to suppose, that I was signing a conveyance of the property. Neither of my brothers and sisters above named signed that paper, nor so far as I know they have never made any conveyance to Mr. Bower or any body else of the property. I have never delivered possession of the property, or any part thereof, but have resided in the house and on the property, and so far no effort has been made to dispossess me.

After this deed was given, the men employed in the Arlington Cemetery quarried some stone on the property, and I heard of it and went up and stopped them. The men stopped and went away to Mr. Sickles, the superintendent of the cemetery, and then came back and commenced to quarry again. I then went to Mr. Sickles and asked him what he meant, and he said the cemetery had permission from Mr. Bower, and he produced a paper and handed it to me, which I read, and which was signed by Samuel W. Bower, and gave the cemetery people permission to quarry there. I then didn't know what to do, as I did not know what my rights were, and I did not interfere further. I have never signed any deed for this property to Samuel W. Bower, or the Cemetery Association, or the Rural Homestead Company or anybody else, that I knew to be a deed. The only paper which I signed was this paper, which I supposed was a lease from Bower to me, with a clause of redemption. I have never taken any proceedings as yet to maintain my rights in the premises, but I have been to see a lawyer about it, and propose to do so. The paper, if it is a deed, is different from what I understood it to be; and was obtained from me by fraud and false representation.

Before this tax sale of these lands above mentioned, I went to said Joseph Parker, Jr., who was then treasurer of the township, two or three times, to ascertain how much the taxes were on my two acres, so that I could pay them, and he said that they were not apportioned and he couldn't tell me, but would let me know, which he never did. I then got Lawyer William Davis to go, and he couldn't ascertain, and I didn't know that the property was in danger of sale and didn't hear of it, nor know anything about it, until that paper was served on me in March, 1891, of which I have spoken above.

MOSES C. MYERS.

Sworn and subscribed, this twenty-sixth day of November, eighteen hundred and ninety-two.

THEO. RURODE,
*Notary Public, N. J.*

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IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES AND OTHERS,
*Complainants,*
*and*
THE RURAL HOMESTEAD COMPANY AND OTHERS,
*Defendants.*

*On Bill, etc.*

On reading the bill of complaint in the above entitled cause, and the affidavits thereto annexed, it is on this twenty-sixth day of November, eighteen hundred and ninety-two, on motion of Bedle, McGee & Bedle, the complainants' solicitors.

Ordered, that the defendants therein named show cause before this court at the Chancery Chambers in Jersey City, on the twelfth day of December, next at ten o'clock in the morning, or as soon after as counsel can be heard, why an injunction should not issue according to the prayer of the bill, and that in the meantime and until the further order of this court the defendant, Samuel W. Bower, do refrain from transferring or assigning, or in any wise parting with the title, the two hundred and thirty-eight shares of the stock of the Rural Homestead Company issued to him by said company, or any thereof, except if he please, to transfer it to the Rural Homestead Company for cancellation, and that the defendants, The Rural

Homestead Company, their directors and officers, and said defendants Julius H. Pratt and Henry F. Torrey and Samuel W. Bower and their agents, do refrain from making any conveyance, or other disposition of the lands, situate in the township of Kearney, county of Hudson, adjoining the Arlington Cemetery property, in said bill described, and which were conveyed to the said Samuel W. Bower by the Board of Township Committee of the Township of Kearney by tax deed dated the 28th of May, 1890, and recorded the 30th of June, 1890, and also alleged to be conveyed to the said Samuel W. Bower by Moses Meyer by deed dated May 27, 1891, and recorded August 3, 1891, and which are said to have b en conveyed to the Rural Homestead Company as the consideration for the issue of the said two hundred and thirty-eight shares of stock of that company, and from making, or attempting to make sale, issue, or other disposition of said two hundred and thirty-eight shares of said stock, or any of them, and from taking any action that will change the status of the said two hundred and thirty-eight shares of stock, and that the said The Rural Homestead Company, Julius H. Pratt, and Henry F. Torrey, and their respective agents, do refrain from reporting said two hundred and thirty-eight shares of stock as issued in any list of stockholders at any election of said corporation or otherwise.

And it is further ordered that a copy of this order be served within five days from the date hereof upon the defendants Bower and the Rural Homestead Company. The service upon the latter company to be upon Julius H. Pratt, the President thereof, and that a copy of the bill and affidavits thereto annexed be served within the same time upon the said Pratt. The copies served need not be certified.

ALEX. T. MCGILL,

*C.*

IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between<br>FRANK W. WILDES AND OTHERS,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY AND OTHERS,<br>*Defendants.* | *On Bill, etc.* |

The order to show cause in this case why an injunction should not issue according to the prayer of the bill, coming on to be heard, in the presence of Messrs. Bedle, McGee & Bedle, for the complainants, and Messrs. Joseph Parker, Jr., and Theodore Runyon, of counsel with the defendants, and the court having heard and considered the pleadings and affidavits in the cause, it is on this thirteenth day of February, eighteen hundred and ninety-three, on motion of the complainants solicitors,

Ordered, that a writ of injunction do issue out of and under the seal of this court, directed to the said defendant Samuel W. Bower, his assigns and agents, restraining them and each of them from transferring or assigning, or in anywise parting with the title to the two hundred and thirty-eight shares of stock of the Rural Homestead Company, mentioned in the bill of complaint, or any of it, and to the defendants The Rural Homestead Company and the Directors and Officers thereof, from making any conveyance or other disposition of the lands mentioned in the bill of complaint.

ALEX. T. MCGILL,

*C.*

NEW JERSEY, to wit:

The State of New Jersey to Samuel W. Bowers, his assigns and agents and
[L. S.] The Rural Homestead Company its directors, officers and agents, and each and every of them Greeting:

Whereas, it hath been represented to us, in our Court of Chancery, on the part of Frank W. Wildes and others, complainant, that they have lately exhibited in their bill of complaint against you, the said Samuel W. Bowers and The Rural Homestead Company defendants, to be relieved touching the matters set forth in the said bill.

We therefore, in consideration of the premises, and of the particular matters set forth in the said bill, do strictly enjoin and command you, the said Samuel W. Bowers and the Rural Homestead Company and all and every the persons before mentioned, and each and every of you, under the penalty that may fall thereon, that you, the said Samuel W. Bowers, your assigns and agents, and every of you, do absolutely desist and refrain from transferring or assigning or in anywise parting with the title to the two hundred and thirty-eight shares of stock of the Rural Homestead Company mentioned in the bill of complaint, and that you, the said The Rural Homestead Company, your directors and officers do absolutely desist and refrain from making any conveyance or other disposition of the lands mentioned in the bill of complaint until you, the said defendants, shall have fully answered the said bill of complaint, and our said court shall make other order to the contrary.

Witness, his Honor, Alexander T. McGill, our Chancellor, at Trenton, the fifteenth day of February, in the year of our Lord one thousand eight hundred and ninety-three.

BEDLE, MCGEE & BEDLE,
*Solicitors.*

ALLAN MCDERMOTT,
*Clerk.*

STATE OF NEW JERSEY, COUNTY OF HUDSON. } *ss.*

Edward T. Morgan, being duly sworn on his oath, saith, that he served the within injunction on the within named defendants Samuel W. Bowers, and The Rural Homestead Company, on the seventeenth day of February instant, as follows, on said Samuel W. Bower, by showing him the original writ, explaining to him its contents, and leaving with him a copy thereof, certified under the seal of the Court of Chancery and the hand of the clerk thereof—on The Rural Homestead Company by showing the original writ to Julius H. Pratt, Esquire, the President thereof at the office of the company, and explaining to him its contents, and leaving with him a copy thereof similarly certified.

E. T. MORGAN.

Sworn and subscribed before me this seventeenth day of February, 1893.

THEO. RURODE,
*Notary Public of New Jersey.*

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES AND OTHERS,
*Complainants,*
*and*
THE RURAL HOMESTEAD COMPANY AND OTHERS,
*Defendants.*
} *Answer.*

The joint and several answer of The Rural Homestead Company, Julius H. Pratt, Charles H. Dummer, Robert O. Babbitt, Harry H. Beadle, William R. Barricklo, John Linn, Clarence Linn, David W. McCrea, Mrs. Olive E. Sparhawk, Henry F. Torrey and Samuel W. Bower, defendants, to the bill of complaint of Frank W. Wildes and others, complainants. These defendants have been informed and believe that the several allegations in the bill of complaint contained from the words "That they are stockholders" to and including the words "to what extent exactly your orators do not know," are substantially correct and therefore they admit the same.

1. And these defendants further answering say that it is true that the accounts of the Arlington Cemetery Association were not regularly written up during the period intervening between the years 1885 and 1890, for the reason that the small income from the business of the cemetery would not justify the employment of a regular bookkeeper, other than the defendant Mr. Torrey, who was the Secretary of the Company. That Mr. Torrey was over-burdened with duties as superintendent at the Cemetery and out-door work, such as seeking customers for cemetery lots, and providing funds by various expedients for carrying on the business. That the accounts of the Cemetery Association were subsequently written up in de-

tail, showing that during the period named, the defendant Julius H. Pratt had not received a dollar compensation for his services, but had advanced out of his own private means, from time to time, funds to sustain the Cemetery Association, to a large amount, and that the defendant Torrey had advanced out of his own private means, from time to time, funds for the same purpose to a large amount, for which advances, neither of them had received a dollar for interest. That these accounts were carefully audited by Henry E. Reddish, who was the special representative of the complainants and his report was duly signed by himself and his associate auditor, C. C. Jewell, and submitted to the Annual Meeting of the lot owners, April 23, 1891, and examined by Flavel McGee, attorney for complainants.

It is true alse that during the aforesaid time the receipts of said Cemetery Association for sales of lots and graves were entered upon the books, as the sales were made, and that at no time during said period did the complainants fail to receive upon application, a statement of the amount of said sales, up to and including the last preceding months of said period, such amounts of sales forming the only new item from time to time, in the account of the Cemetery Association with the Rural Homestead Company, and being the only item which could properly go into the accounts of the Rural Homestead Company.

That the accounts of the Rural Homestead Company, the only one of the two companies with which the complainants as stockholders have any connection, were at all times accessible to said complainants, and they were fully informed as to the same.

That the accounts of said company are exceedingly plain and simple, because it transacted no active business, incurred no expense for salaries, rent or any other purpose whatever, nor did it contemplate any business of any kind, except to receive such money as it could obtain out of its relations with the Arlington

Cemetery Association, and when so obtained, to divide it among its stockholders.

That during the time named, since 1882, the Cemetery Association could not, with the most rigid economical management be kept from insolvency and ruin, except by using all its receipts for the payment of current expenses.

That the financial ruin of the Cemetery Association would necessarily involve the ruin of the Rural Homestead Company. and that the directors of the Rural Homestead Company, with the approval of all the stockholders as far as they could ascertain, and with the approval of a large majority of the stockholders, including complainants, waived their claims for any immediate payment of money from the Cemetery Association. That all this was well known to the complainants and was never objected to by them, to the best of the knowledge and belief of defendants. That in their visits to New York, they often called at the Cemetery Office, in Jersey City, and went to the Cemetery at Arlington, N. J., in company with the officers, with whom there was the utmost freedom in conferring, and they always expressed themselves satisfied and pleased.

That at the suggestion of some of the complainants, and by the concurrent desire of the officers of the Cemetery Association, one of the complainants, Waldo E. Cowdrey, an expert accountant, was employed to assist the Secretary, H. F. Torrey, in elaborating and systematizing the Cemetery accounts. At different times between 1885 and 1890, he spent many consecutive days in that work, and specially supervised, corrected and made up the personal account of Julius H. Pratt, and also of Henry F. Torrey, with the Cemetery Association, which he balanced to January 1st, 1891.

That the said Waldo E. Cowdrey was recognized as the confidential representative of the so-called "Boston Stockholders," who are the complainants herein, and

became well informed as to the financial business o both corporations as the officers themselves, and it is not true, as the complainants allege, "that none of the stockholders, excepting those that were in the office of the Company, as officers, could ascertain anything accurate in regard to the financial condition of either company." On the contrary, the complainants knew everything essential which was known by the officers of The Rural Homestead Company, or that could be known by any one of the financial and all other business of the Rural Homestead Company.

That they knew from the monthly statements which were always open at the office for their inspection, the exact amount due every month from the Cemetery Association to the Rural Homestead Company, and knew that the whole of it and more was by consent of the Rural Homestead Company used by the Cemetery Association, to prevent a financial catastrophe to both companies.

That the business of the Rural Homestead Company was in a condition of complete suspense, and its directors had nothing to do. That the appointment of new directors during the aforesaid periods would have been an idle and useless ceremony, and although the complainants always acted as a unit under the assumed title of "Boston Stockholders," and demanded and received special recognition and deference on that account, their entire holdings of stock were only 601 shares, which is a small fraction, more than one-fourth of the whole issue, and less than the stock held by defendant Pratt, individually.

That during the aforesaid period they never asked for the appointment of any of their number on the Board of Directors, nor requested any election of new directors.

They made frequent visits and held consultations with the officers of both of the companies, and from year to year acquiesced in the existing status of the Board.

That the Cemetery Association was originally created as an auxiliary to the Rural Homestead Company for the purpose of enabling the said company to make an advantageous use of its capital.

That all the money necessary to start the cemetery was provided by the Rural Homestead Company, and subsequently, on three occasions, when it became evident that the Cemetery Association required more money, the stockholders of The Rural Homestead Company, including complainants, again provided it, by subscribing for additional stock, with the condition that the money paid therefor should be turned over to the Cemetery Association.

That in pursuance of this policy, which pervaded the whole existence and connection of the two companies, the directors at a meeting held July 15th, 1884, passed the following resolution:

"Resolved, that for the present, and until otherwise ordered by this Board, such part of the proceeds of the sales of cemetery lots as this company is by contract entitled to, may be used by the Arlington Cemetery Association, and may be deemed a loan to said Association, to be returned as soon as the financial condition of said association will admit of."

That on the 10th day of December, following, in pursuance of a notice duly sent to all, a meeting of stockholders of the Rural Homestead Company was held "to consider the present need for additional capital for Arlington Cemetery Association."

That at said meeting the following resolution was unanimously adopted:—"That for the purpose of enabling the Directors of this Company to loan to the Arlington Cemetery Association such further sums as in their judgment may be necessary, all the stockholders of this company be requested to subscribe for additional stock at par, now in the Treasury, to the extent of ten per cent. upon the amount now held by each respectively."

That all the money called for in said resolution was subscribed and the stock issued therefor.

That all the complainants in this suit subscribed their pro rata, and received certificates therefor.

That during the interval between 1885 and 1890 the expenses of the Cemetery Association were reduced to the lowest minimum consistent with the maintenance of the Cemetery, only one salary was paid, $150 per month to H. F. Torrey, who performed all the duties of secretary and treasurer at the office, and of salesman and superintendent outside and at the cemetery. The other expenses were for workman in the cemetery and small incidentals. The utmost efforts were put forth by both defendants, H. F. Torrey and J. H. Pratt, to increase the sales of lots, but the business all along was a losing one.

That the average annual receipts during the said period were $6,045.40 and the average annual current expenses were $9,225.73, but the receipts from year to year were in a uniformly increasing ratio, those in the last year of the series amounting to one hundred and twenty per cent. more than those of the first year, so that by the careful and economical management then existing, the business would in time become more than self-sustaining. The deficiency during those years of more than $15,000 was supplied by new subscriptions as recommended at the stockholders meeting of December 10th, 1885, to the amount of $10,000, and the remaining deficiency was provided by defendants J. H. Pratt and H. F. Torrey, by loans of money without any stock being issued therefor.

And that is true that no money was paid by the Cemetery Association to the Rural Homestead Company during the time aforesaid as alleged in the complainants' bill of complaint.

2. The defendants further answering say, that it is true that none of the complainants were elected until June, 1890. Their holdings were small, all of the

said complainants together holding less than one-third of the stock; that they all lived in Boston and could not conveniently attend meetings in New Jersey; that they had never expressed any desire to be so elected, nor was there any actual business done, or any business requiring action by the directors except to wait for developments and results in the cemetery business.

Defendants further answering say, that at the annual meeting in the year 1890, the first request was made in a letter from Frank M. Wildes, one of the complainants, to the President, that one of the Boston stockholders (naming Mr. Shearer), be elected on the Board of Directors.

That the President read the letter to the meeting and recommended the appointment. That Mr. Shearer was present and represented in person or by proxy all the stock owned by the Boston stockholders, and voted on all of said stock in favor of the following persons who were unanimously elected by more than a two-thirds vote on all the outstanding stock, namely, Henry E. Reddish, Julius H. Pratt, Henry F. Torrey, John Linn, and Daniel L. Shearer.

That the complainants had never before requested any such appointment, and that at the annual election in 1884, complainants were present and voted for a full Board of Directors other than themselves.

3. Defendants further answering say that if it is true that at the time of the election of the year 1891, the directors had in their control 238 shares of Rural Homestead stock, but whether said stock was "Treasury stock" or original stock to be issued for cash or for property purchased these defendants are unable to state. That it had always been considered and referred to by the directors and stockholders as Treasury stock in the hands of the Directors for sale. That it was by stipulation and compact entered into between the Rural Homestead Company and the complainants, at the time the complainants became stockholders, to be

either distributed pro rata among stockholders, or sold, by the directors for the benefit of all stockholders, but without any restriction or limitation as to price being expressed in said stipulation. That if it was original stock, unsold, then the directors were authorized by the laws of 1867 of the State of New Jersey, under which the Rural Homestead Company was organized, to receive payment therefor "either in money or in land to be appraised by the Board of Directors." That under either one or the other of these provisions the directors were authorized to dispose of the stock by distribution among stockholders, or for cash or land as their best judgment might dictate, for the benefit of all stockholders, but under no obligation to sell the stock at par.

That at a meeting of the directors held November 7th, 1890, it was proposed to distribute the 238 shares in the Treasury among the stockholders pro rata, but that Mr. Shearer, who was at that time one of the directors, stated that his friends the Boston stockholders, meaning the complainants herein, did not desire such distribution and that the proposition was withdrawn.

That at that time (1891) there was no market value and very little if any intrinsic value to the stock. That it continued to depreciate in value and was bought by Mr. Wilde, as the defendants hereto are informed and believe, at prices ranging from $5 00 per share to $10.00 per share.

That on January 7th, 1892, the directors unwilling any longer to act as Trustees for stock which had become discredited, or for persons who were endeavoring, as they believed, to destroy the little value remaining in the stock, voted to sell the said 238 shares of stock to Mr. Samuel W. Bower, who had offered to take the stock in payment for the property adjoining the Arlington Cemetery, which he held in part under a tax title and in part under a deed from the owner, of a house and lot which was included in

the same tract. He also informed the directors that he was negotiating with the former occupants of the land for the purchase of their remaining interest which he believed could soon be obtained for a small consideration.

That the deed of Mr. Bower's interest in this property was duly executed by Mr. Bower and wife, and delivered to the Secretary of the Rural Homestead Company, February 1, 1892, the same day that the stock was issued to Mr. Bower, but was not then recorded, because it was deemed best that Mr. Bower should complete his negotiations for the purchase of the remaining interest in the land.

It was not the duty of the officers as the defendants are advised and believe to give official notice or information to the complainants of this transaction, and said officers were forbidden by the action of the said complainants to give such information.

That as far back as the month of August, 1891, complainants had refused to have any personal communication or correspondence with the officers of the Rural Homestead Company, except through their attorney, Mr. Flavel McGee, who had assumed in their behalf to watch and inspect the affairs of the Arlington Cemetery Association, and who frequently appeared at the cemetery office to inquire about its affairs.

That he repeatedly threatened legal proceedings against them, to compel a surrender of the places of directors, which his clients had just helped to elect, and to substitute the Boston stockholders, who at that time held less than one-third of the stock.

That notwithstanding the indignity thus put upon them, the officers cheerfully gave him the fullest information on all subjects about which he inquired and exhibited to him all books and papers which he called for.

That the purchase of the land aforesaid and the issue of stock therefor being matters belonging to

Rural Homestead Company were duly reported and explained at the first stockholder's meeting of said company, subsequent to the transaction.

4. That it is not true that the complainants did not have the fullest opportunity to learn all the facts in respect to said transaction at any or all times prior to said annual meeting of June 7, 1892, through their attorney, Mr. McGee, who was never denied any information he desired from the two companies.

That on the 4th day of May, more than a month prior to said annual meeting, Joseph D. Bedle, Jr., who is Mr. McGee's partner, called at the office and made a transfer of twelve certificates from sundry persons to his clients Frank W. Wildes and Daniel L. Sheaaer; that at that time the certificate book with all transfers plainly written on the margin was handed to him for examination, and immediately preceding the certificates which were filled out by his request were six transfers one of which was the transfer of the 238 shares to Mr. Bower.

The defendants further answering, deny that the purchase of the land and sale of stock in payment therefor, as alleged by the complainants in their bill of complaint herein, was illegal, and say that it ought not to have been a surprise to the complainants or any of them, for the following reasons:—

That the transaction was strictly within the lines of policy and procedure adopted by both the officers and stockholders of Rural Homestead Company.

That at the time of the organization of the Arlington Cemetery Association, much inquiry was made by the officers of Rural Homestead Company, among the managers of the best Rural cemeteries in the country and their advice was sought and obtained: The principal criticism of the plans which were made by them, was that the area proposed for the cemetery was too small, and certain managers of an eminently successful cemetery near New York, were deterred from investing in the Arlington enterprise, as they

said, because too small a tract of land had been secured.

That during the past years of carrying on the cemetery, other persons at various times, proposing to buy lots in the cemetery have declined to do so, for the same reason.

That about three months after the cemetery was started the Directors of Rural Homestead Company at a meeting held February 17, 1883, passed the following vote: "Voted, that for the purpose of buying "additional land, we offer for sale from the reserve "now in the Treasury two hundred (200) shares of "the capital stock of this company at par as follows:

"1st.—To all stockholders pro rata of stock now "owned or subscribed for by them."

"2nd.—To any stockholders, such surplus as may "be left out of the said two hundred shares not sub-"scribed for."

"3rd.—To outside subscribers any further surplus "of said two hundred (200) shares."

That immediately thereafter, a circular letter was written and sent by the President to all the stockholders of Rural Homestead Company, containing the following words:

"It now becomes my duty to call the serious "attention of our stockholders to a subject of import-"ance as effecting their future interests."

"An area of thirty-five acres, while larger than any "cemetery heretofore existing in the vicinity of "Jersey City, does not fully meet the requirements "of the case, and the stockholders of the Rural "Homestead Company would be blind to their best "interests if they refused to make available "additional territory, when offered at a cheap rate. "Contiguous to our land are four connecting parcels "held by different owners, from whom I have now "obtained offers of sale. This land, taken together, "constitutes the key to further acquisitions and gives "us practical future control of large tracts in the

"rear, which will enable us at our leisure to provide "another cemetery for Newark, with its population of "150,000, who are at present almost destitute of de- "cent burying ground. Moreover, if we fail to secure "it at once, it is almost certain that florists, who are "now negotiating and locating in this vicinity, will "secure and permanently occupy the property to our "exclusion."

"The paid up stock in the Treasury was issued "with a view to such a contingency, and our directors "have therefore, determined to offer $10,000 additional "stock at par."

That the conditions of subscription were set forth as provided in the aforesaid vote of the directors, and a form of subscription was inclosed, of which the following is a copy:

"Subscriptions for capital stock."

"Whole amount not to exceed $10,000.—Shares $50.

"The undersigned will take.....shares "amounting to $.....of the capital stock "of Rural Homestead Company, in accordance with "the offer made by the directors of said company for "the purpose of buying additional lands for their "cemetery; said subscriptions to be payable within "thirty days from date.

"Jersey City, February.....1883.

"Signed....."

That the whole amount offered was subscribed and the complainant Frances E. Ball, (now Wildes), Daniel L. Shearer, George W. Colburn, Waldo E. Cowdrey, Thomas J. Olys and Frederick H. Rindge, subscribed and paid for the stock so offered, to the amount of $6,500.

That with the money so obtained, the directors bought two of the tracts of land, which, from the peculiar situation appeared to the directors to control the other and larger tract of 52 acres lying between them. That the small receipts from the cemetery

business, and the extraordinary demand for building lots which brought the land into market, frustrated their purpose.

That no opportunity has occurred to regain the advantage so lost, for the reason that the resources of the cemetery were insufficient to make any new investment, and no owner of adjoining land had been found willing to take Rural Homestead Company stock in exchange for his land at any price, until about one year ago, when it came to the knowledge of the directors of the Rural Homestead Company, that the most desirable for its use, of all the property around the cemetery, was in the possession of Mr. Samuel W. Bower, who had at one time been the attorney of one of its stockholders, and had known of the great expectations of said stockholders, and was willing to negotiate with a view to exchanging his land for stock in the Rural Homestead Company.

That the directors were aware that under a law passed in 1890, by the legislature of New Jersey, this tract of land could be at once converted into a competing cemetery at the option of the owner or owners, because a portion of it had already been used as a burying ground, which would be greatly detrimental to the interests of the Rural Homestead Company, and they therefore appointed a committee, at a meeting held December 28th, 1891, to investigate and report the facts regarding the property, and to make their report at an early date. That this committee reported at a meeting of directors held January 7th, 1892, that Mr. Bower held all the property under a tax title, having 25 years to run, and also the fee of two acres thereof, with a house, which was the most valuable part of the land, and they also reported that Mr. Bower was negotiating with the representative of the heirs to said property for their remaining interest, which it was probable could be soon secured for about $2,000 or $3,000. That the directors deemed it was dangerous to delay further, and with the agreement on the part

of Mr. Bower that he would continue his negotiations on account of the Rural Homestead Company, they adopted at said meeting of January 7th, 1892, the following resolution.

"Whereas, in the judgment of this Board it is of "vital importance to the interests of this company to "secure control of the property adjoining the Arling-"ton Cemetery, known as the Myer's Farm, and

"Whereas, the proposition of Samuel W. Bower is "fair, and the acceptance of the same will in our "opinion be advantageous to this Company,

"Resolved, that the President and Secretary be "and they are hereby directed to complete the pur-"chase of said Bower's interest in said property and "to issue certificates of 238 shares of stock in Rural "Homestead Company, in payment therefor."

That the officers subsequently in compliance with the aforesaid vote, exchanged the said stock for the deed of the Mr. Bower's interest in the property.

The defendants further answering say, that the purchase of the said property was not as they are advised and believe illegal, and not beyond their powers as directors, but was for the true interests of the Rural Homestead Company, and for the following reasons:

1st.—The market, as well as the intrinsic value of the stock was uncertain, and it was doubtful if anything could be realized out of it for the Rural Homestead Company in any other way.

2nd.—It was then and is now the belief of the officers, that the simple right of control of said land thereby preventing its adverse use as a cemetery for the term of twenty-five years is worth more to the Rural Homestead Company than all the stock that was sold to Mr. Bower.

3rd.—That it was then and is now the belief of the officers, that the judicious use of the quarry on said property (which has already proved of great advantage to the cemetery), will realize a profit equal to

five per cent. annual interest on the par valuation of the 238 shares of stock, a profit which could in no way be realized from said stock while remaining in the hands of the Directors.

4th.—That it was then and is now the belief of the officers that the interest in the land purchased from Mr. Bower is worth much more to the Rural Homestead Company than the whole of said stock, if valued at par.

5th.—That it was then and now is the belief of the officers that the whole upland property, in fee, is worth $18,000.00 to $21,600.00 to which is to be added the meadow land, which is worth, according to actual sales heretofore made $3,000.00 more or a total of $21,000.00 to $24,600.00, and that the possession of the tax title alone was and is worth more than $11,900.00, which is the par value of the 238 shares of stock aforesaid.

6th.—That the land adjoining the Bower tract, which in the year 1882 was bought by the Rural Homestead Company, and sold to Arlington Cemetery Association, was bought at the rate of $1,800.00 per acre, and stock was issued therefor, to the owners at par.

That five acres of said land was "meadow land" and is used for dumping the waste earth which is produced from all new graves that are opened in the cemetery, so that ultimately said meadow land will become as valuable for cemetery purposes as the upland. That the same result will follow as to the six acres of meadow land in the Bower tract, so that by comparison, the whole 18 acres of the Bower land is worth as much per acre, as the thirty-five acres now belonging to Arlington Cemetery. That the upland in the Bower tract is fully as valuable for cemetery use as the upland in Arlington Cemetery.

That Mr. Bower in becoming a stockholder of the Rural Homestead Company, has the equitable right to receive as much stock per acre for his land as the other stockholders have received for theirs. That on that

basis of calculation the 18 acres if sold with full title would require $32,400.00 of stock at par. And that Mr. Bower has received only $11,900.00 of stock for his interest, and that the stock issued to Mr. Bower is represented by more value of property contributed by him to the common fund, than any equal amount of stock similarly issued to other stockholders.

Defendants further answering, say that it is true that much of the land in the cemetery still remains unoccupied and according to wise cemetery management there should be in said cemetery unoccupied land for half a century to come. That the only portion of the cemetery which is devoted to single graves, and which is suitable therefor, is more than two-thirds of it already occupied. This portion of the ground is adjacent to the new purchase made by Rural Homestead Company, and its enlargement by annexing said new purchase is urgently needed for almost immediate use.

Defendants further answering say, that the judgments in existence against the cemetery in favor of Israel Crane and Robert O. Babbitt do not affect the question of the value to the Rural Homestead Company of the property bought from Mr. Bower. That the title to said property is held solely by the Rural Homestead Company and will continue in said company, until the improved financial condition of the cemetery will justify its transfer to that corporation.

The defendants further answering admit all the allegations of the complainants' bill of complaint herein relating to the purchase of the tax title by Bower from the Board of Township Committee of Kearney Township, and from Moses C. Myers to Bower, from the words "By a deed bearing date the 28th day of May, eighteen hundred and ninety," to and including the words "The residences of the other two sisters your orators have been unable to ascertain."

The defendants further answering say, that they have been informed and believe it to be true, that the

said Moses C. Myers, did execute in due form of law a deed of his one-sixth interest in and to the aforesaid premises, and of the two acres conveyed to him by his sister Mary, to the said defendant Samuel W. Bower, by a good and sufficient deed of conveyance, and for a valuable consideration therein expressed, and that the said conveyance was executed before and in the presence of Joseph Parker, Jr., one of the Masters of this Court, who made known to the said Moses C. Myers the contents thereof, and that at the time of the execution of the said deed, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed; that Moses C. Myers well knew that he was executing a deed and not a lease, as alleged in complainants' bill of complaint herein.

Defendants further answering say, that they have been informed and believe it to be true, that the deed aforesaid, was executed and delivered by the said Moses C. Myers, in consideration of one of the defendants herein, Samuel W. Bower, having agreed to and with the said Myers to permit him to remain in possession of the two acres aforesaid, for the term of three years from the 1st day of April, 1891, rather than be ejected from the said premises, by the Sheriff of the County of Hudson, in whose possession a Writ of Ejectment had been placed in an action commenced in the Supreme Court of the State of New Jersey, and prosecuted to judgment, wherein Samuel W. Bower was plaintiff and Moses C. Myers was the defendant.

Defendants further answering say, that they have been informed and believe it to be true, that the said Moses C. Myers, in consideration of the sum of one dollar, paid to Moses C. Myers by Samuel W. Bower, and of the execution of said deed to Bower, obtained from Samuel W. Bower, the right and privilege to occupy, use and enjoy the premises, to wit, the two acres aforesaid, for the term of three years from

April 1st, 1891, at the rental of $1.00 per year, and that the said Rural Homestead Company at the time of taking said conveyance and since that time, have recognized the said lease and permitted Moses C. Myers and family to remain in possession thereunder.

The defendants further answering, deny that there had been no conveyance of said property by the said Bower to the Rural Homestead Company, or delivery of a conveyance to the said company, at the time of the annual meeting and the voting upon the said stock in the name of said Bower, but admit that said conveyance did not then, and at this time does not appear of record in the records of deeds of said County of Hudson, and say that it was kept off record, and was at that time and now is in the possession of the said company, and was kept off record for the purpose of not interfering with the negotiations of Samuel W. Bower, with the other Myers heirs for their interests in said property.

Defendants further answering, deny that "the lands in question have no market value;" that the village of Arlington, near which they are situated, is a place in which the growth has been slow and that there is no special demand for building lots. On the contrary they say that the growth of Arlington, and of the whole Township of Kearney, of which Arlington is a part, has been for some years and is at the present time phenomenal and extraordinary, far exceeding any other part of Hudson County. That the published official census of New Jersey shows that the population of Kearney Township in 1885 was 3,338 and in 1890 was 7,064, an increase of more than 100 per cent. in five years.

The valuation of real and personal property subject to taxation has increased from $1,380,442 in 1882 to $5,094,250 in 1892, being an increase of nearly 300 per cent. in ten years.

That in the direction of the northern section of the township, where the Arlington Cemetery is located,

the price of land is rapidly advancing; that within the last five years large tracts of land have been opened, avenues and highways cut through them, the principal thoroughfare macadamized, the lands laid out into plots and lots and maps thereof filed in the Register's office of Hudson County, and new buildings erected upon said lands, which has advanced and increased the value of the adjoining lands.

The defendants further answering, deny the several charges of fraud made in the bill of complaint of the complainants herein, but admit that the said defendants Pratt and Torrey, have from the time of the organization been entrusted with the management of the cemetery; but, nevertheless, in the only legal way, which was by the vote and usually by the unanimous vote of the lot owners in said cemetery, and that said Pratt has occupied the office of President of Rural Homestead Company, and that said Torrey has occupied the office of Secretary, all of the time, and of Treasurer part of that time; that for a period of eight years past, and up to the time of the demand made upon them by the Attorney of the complainant, who represented about one-quarter of the stock of said company, in the month of August, in the year 1890, for the immediate surrender of control, the said defendant Pratt and Torrey had never heard of any desire on the part of any of the stockholders for a change in the administration of either company.

That they were subsequently informed and believe it to be true, that one of the complainants, Mr. Wildes, was buying from different stockholders large amounts of stock at prices ranging from $10 per share to less than $5 per share, but the defendants did not know whether said Wildes had obtained sufficient or not to make a majority (when counted with the other complainants herein, who were known as the Boston stockholders) of all the stock issued. That they had good reason to believe otherwise at the time of the purchase from Mr. Bower, for the following reasons:

1st.—That at the annual election, July 1890, all of said complainants voted unanimously for Pratt and Torrey as Directors of Rural Homestead Company for one year ; that at the next annual election in the year 1891, all of the Boston stockholders to wit, the complainants voted, and they then held much less than one-half the stock. That from the time of said last election, until the purchase of land from Mr. Bower, no transfer of stock whatever had been made on the books of the company to said Wildes, or to any of his Boston associates, who are the complainants herein.

That the defendants have been informed and believe it to be true, that said Wildes in said purchase of stock invariably bound the sellers to secrecy, so that any knowledge of his said purchase from the seller or sellers should not reach the said defendants or any of them. That it is not true that the defendants knew of the extent of said purchases of stock by the complainants at the time of voting to buy the Bower land.

That the said Pratt, who was the presiding officer at the said meeting of directors, January 7th, 1892, did not vote either for or against the purchase of said land from Samuel W. Bower.

That the said Torrey and Pratt charge and insist that in the purchase of said land they considered the best interests of Rural Homestead Company, and of all the stockholders thereof.

They deny the charge of conspiracy and fraud with intent to defeat the wishes of a majority of the stockholders, or the doing or attempting anything illegal, inequitable and beyond their power, and in fraud of the rights of the stockholders.

Defendants further answering on information and belief deny the allegation of the complainants, " that the complainants' only reason for desiring a change of management of said corporation was to preserve it from what they believe to be mismanagement and loss, to preserve its assets and to secure a proper and

more satisfactory arrangement of its relations to the Arlington Cemetery."

Defendants further answering say that the complainants herein have always received full weight of their holdings at all elections of the corporation, and that no attempt has been made to defeat their will, and that defendants have not attempted to defeat that will in any way or manner whatsoever.

Defendants further answering say that no charge of incompetency, wrong doing or extravagance in management has at any time been heretofore made against these defendants or either of them. That the reason on the part of the complainants for a change of management on their part, as defendants believe, is that they may be enabled to enforce a demand on the Cemetery Association for the payment of moneys to the Rural Homestead Company, they believing that the Cemetery Association, will, in some way or other, be protected and cared for without the aid of the Rural Homestead Company.

Defendants further answering, say that from their experience and knowledge of the business of both the Cemetery Association and the Rural Homestead Company, they are fully assured that such a course would result in the ultimate ruin of both companies. That the Boston Stockholders, complainants herein, if they had the power, would, as defendants believe, subvert the whole system and policy which was originally agreed upon, and has been hitherto pursued.

That they would deprive the Cemetery Association of the resources which are absolutely necessary to its existence, and would evade the obligations that they entered into with the public, by which more than one thousand (1,000) families have been induced to become owners of burial places in Arlington Cemetery, and by this mistaken policy would leave it to its fate, and would destroy all hope of future profit from their investment in Rural Homestead Company.

That the present officers of the Rural Homestead

Company are also, in pursuance of the original terms of agreement between the said companies, trustees of the Arlington Cemetery, and have not violated their trust in either company.

That the secretary and treasurer, defendant Torrey, who is the superintendent of said Association, has served the Association for a salary much less than the market value of his services and has been unable to collect the money due him, and that the said Cemetery Association is now indebted to him to the amount of more than six thousand dollars.

That the defendant Pratt, President, has been for many years and is now the largest stockholder in the Rural Homestead Company and is desirous of getting dividends, equally with the complainants, but asserts and maintains that the policy proposed by the complainants would wholly destroy the value of his stock. They would both gladly resign in favor of others, and have offered to do so, if the complainants would guarantee that the business would be carried on as faithfully, efficiently and economically in the future, as in the past.

The defendants further answering deny that one of the objects, if not the principal object, of said Pratt and Torrey, in issuing the two hundred and thirty-eight shares of stock and their retaining control of the management of the company was to prevent an investigation being instituted by that company into the affairs and management of the Cemetery Association, and to prevent complainants from securing an accounting by that association, and collecting from it of the monies due by the Rural Homestead Company, and to prevent an investigation as to the ownership in equity of the judgments in said bill of complaint set forth, and of the debts upon which they are founded, and of the expenditures of the Cemetery Association and the disposition of its lots, and deny that the issue of said stock so as aforesaid was in every or any view of the case, reprehensible, tyrannical, unjust, in-

equitable and illegal and that it ought to be so decreed.

Defendants further answering say, that on the contrary a statement and annual report of the business of the Cemetery Association has been made every year, excepting one year, at the annual meeting of lot owners.

That on November 10th, 1890, the Secretary, H. F. Torrey, in anticipation of the annual meeting of the Arlington Cemetery Association, invited Waldo E. Cowdrey, one of the complainants, to come from Boston and assist him in making up the accounts and offered personally to pay for his services; Waldo E. Cowdrey came and spent several days in said work, but owing to other engagements was unable to carry the work to completion, and a similar arrangement was then made with H. E. Reddish, who was recognized as a representative of the complainants, the Boston Stockholders, and at the request of the complainants herein, had been appointed officially, as auditor of the cemetery accounts. That Mr. Reddish spent about thirty days in auditing the books and accounts, and made his report to the adjourned annual meeting of lot owners, held April 23d, 1891, which report covered the entire financial history of the Cemetery Association from the commencement down to January, 1891, and of which report the following is a true copy:

## FINANCIAL STATEMENT OF THE ARLINGTON CEMETERY ASSOCIATION

*From January 1st, 1883, to December 31st, 1890.*

Dr. Receipts.

| | |
|---|---|
| To Loans under contract | $39,524.33 |
| " " Special | 17,217.37 |
| " " Temporary | 12,284.76 |
| " Sales of lots | 17,243.37 |
| " Permanent fund | 3,831.75 |
| " Interments | 120.21 |

| | | |
|---|---|---|
| To Sundry sales rents and interest | | 1,106.64 |
| " Bills payable | | 5,071.33 |
| | | $96,399.76 |

Cr. Disbursements.

| | | | |
|---|---|---|---|
| By Construction | $36,030.87 | | |
| " Expenses | 57,507.01 | | |
| " Property, personal | 1,233.05 | | |
| " Bills receivable | 1,426.90 | | |
| " Balance Cash Dec. 31, 1890 | 201.93 | | $96,399.76 |

The above statement has been prepared by the Board of Auditors of the Arlington Cemetery Association, after careful examination of the books and accounts of said Association and after comparison with the proper vouchers therefor.

H. E. REDDISH,
C. C. JEWELL.

Jersey City, April 22d, 1891.

Individual Creditors.

Amount due for money borrowed for the maintenance of the Cemetery other than provided by the Rural Homestead Co.

| | |
|---|---|
| Demand note R. O. Babbitt | $4,916.80 |
| " " Israel Crane | 2,500.00 |
| " " J. H. Pratt, Jr. | 832.80 |
| Note, H. F. Richards | 1,400.00 |
| " Samuel I. Myers | 2,000.00 |
| " S Torrey Est. | 627.30 |
| " " " | 418.20 |
| Balance due H. F. Torrey | 4,385.36 |
| | $17,080.46 |

That all the complainants were present in said meeting, either in person or by their attorney, and heard the said auditors report, and all explanations desired in respect to the same were made by the sec-

retary and auditor. Mr. Reddish had examined all the details involved in said accounts with Babbit and Crane and was as well informed about them as were the officers of the Association.

That it is not true that the defendants, the officers of said company, desire to continue in the management any longer than is necessary to discharge their obligations as trustees for the lot owners, who have been influenced to purchase burial places by the promises of advantage publicly held out by the Rural Homestead Company, and to protect the interests of all stockholders in the Rural Homestead Company, a majority of whom have elected them to office, and whose interests are identified with those of the Arlington Cemetery.

That in the hope of some satisfactory adjustment of the controversy which was precipitated by the extraordinary action of the Boston stockholders, the complainants herein, just after the unanimous election of officers in July, 1890, the President, Julius H. Pratt, addressed a letter to Daniel L. Shearer, Waldo E. Cowdrey and Francis J. Parker, attorney of F. H. Rindge, and through them to all the Boston stockholders, and sent to each of the said persons, namely, Shearer, Cowdrey and Parker, separately, a letter, of which the following is a true copy :—

"Jersey City, August 23rd, 1890.

To Messrs. Daniel L. Shearer, Waldo E. Cowdrey and Francis J. Parker :

This letter intended for any or all of the Boston stockholders of Rural Homestead Co., I address to you because heretofore my correspondence in regard to our affairs has been mostly with you. Will you kindly favor me with a reply individually or collectively as you may prefer.

On the 9th of last month a new board of directors of the Rural Homestead Company was elected by the unanimous vote of the stockholders present in person or by proxy including all the Boston stockholders.

Since that meeting nothing has transpired and no new facts have appeared which can change the status of our affairs, except that in the absence of sales of cemetery lots, I have paid out of my private funds for the common benefit of stockholders nearly $600 on account of cemetery expenses for the reimbursement of which, either interest or principal, I have no hope for a long time to come.

During the past week while Mr. Torrey, our Secretary, was in Boston it came to my knowledge that a peremptory demand had been agreed upon by all the Boston stockholders for a change in the administration created by their votes. This demand has not been formally made upon the directors or upon any of them to my knowledge but has been made known, through a verbal statement by your authorized mouthpiece Mr. Wildes in a conversation with Mr. Torrey.

A lawyer in Jersey City has also stated to another lawyer, (who may be supposed to have some connection with us, but who in fact has not the slightest authority or power to act in the matter involved) that he is instructed by all the Boston stockholders, who are his clients, to demand for them entire control of our business and in the event of our failure to surrender to them the control he will commence legal proceedings to compel it. Such an extraordinary demand made in such an extraordinary and indirect manner would receive no attention from me except for the fact that it is in the exact line of my own wishes. There has been no time since our business commenced that I would not gladly have surrendered my part of its management into competent and responsible hands. I will therefor make no comment on the discourteous method adopted by your representative for precipitating a controversy with other stockholders. Nor will I discuss the question of modesty on the part of a minority of about one-fourth interest demanding the entire surrender of the other three-fourths without assigning a reason for it, nor will I express my

views of the spirit which animates the whole proceeding as emphatically announced by Mr. Wildes to Mr. Torrey that he as your representative "would control the whole business or ruin it." But I will at once co-operate with you in the effort to dissolve a connection which cannot in view of what has happened be harmonious hereafter.

The following plans occur to me as fair for both parties and practicable, and inasmuch as the stock now controlled by me, will, when joined to yours make a majority, I will not wait to consult others but will treat with you on my own account.

1st.—The proposition I volunteered to make to Mr. Shearer at our stockholders' meeting, that I would help elect any person he might name, provided he would give to the Co. a guarantee that the business would be as well managed as it has been, was bona-fide and reasonable, but does not seem to be acceptable to you. If on further consideration you wish to adopt such a method please inform me and we will try to arrange on that basis.

2nd.—I will agree to sell all my stock and that of my friends who may desire to be included, at a price to be fixed by two professional "Actuaries," the price to be determined on the basis of past experience and future probabilities.

3rd.—Not less than 541 nor more than 601 shares of the R. H. Co. stock duly assigned in blank shall be placed by the Boston stockholders in the hands of an umpire agreed upon. I will place in the hands of the same umpire a corresponding number of shares, also duly assigned, and an agreement shall be entered into by each party either to sell or buy the shares so deposited by the other.

The umpire will then call for the bids and shall determine which of the two shall make the first bid. The bid may be either to sell or to buy. If to sell, then the party making the first bid will offer to the other party all of his deposited stock at a certain price. The

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other party will then agree to buy it at the price offered or will in turn offer to sell at a lower price. The bids shall proceed in the same manner until one or the other ceases to bid and takes the stock. If the reverse process is adopted, then the first party will offer to buy at a certain price, and the second party will either sell at the price offered or will offer a higher price, and so on until one or the other shall cease to bid.

The terms of sale to be ten per cent. cash at the time of sale and 90 per cent. within sixty days. If one of these propositions, or some one equally fair, reasonable and conclusive is not accepted by you and your friends, I will accept your challenge to meet you in the courts, and the responsibility for the consequences will rest with you.

Respectfully,

JULIUS H. PRATT."

That no reply to said letter was received from said Shearer or Cowdrey, and only after two months had elapsed, was one received from Mr. Parker, which was wholly non-committal, but in which occurred the following words: "I am quite at a loss to see why Mr. Shearer should not have been satisfied with such a proposition as the 1st, named in your letter."

And these defendants deny all and all manner of unlawful combination and confederacy wherewith by the said bill they are charged, without that, that any other matter or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed,

with their reasonable costs and charges in his behalf most wrongfully sustained.

JOSEPH PARKER, JR.,
Solicitor and of Counsel with Defendants.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } *ss.*

Julius H. Pratt, of full age, being duly sworn according to law, on his oath saith, that he is one of the defendants in this suit; that he is the President of Rural Homestead Company and Vice President of Arlington Cemetery Association; that he has read the foregoing answer to the complaint of Frank W. Wildes and others, and that the statements and allegations contained in said answer, of his own knowledge are true, excepting such as are therein stated to be on information and belief, and that as to them he believes them to be true.

JULIUS H. PRATT.

Sworn and subscribed before me this 30th day of December, 1892, at Jersey City.

EARLE INSLEY,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } *ss.*

Henry F. Torrey, of full age, being duly sworn according to law, on his oath saith: that he is one of the defendants in this suit; that he is the Secretary and Treasurer of Rural Homestead Company and of Arlington Cemetery Association; that he has read the foregoing answer to the complaint of Frank W. Wildes and others, and that the statements and allegations contained in said answer, of his own knowledge are true, excepting such as are therein stated to be on information and belief, and that as to them he believes them to be true,

This deponent further says, that on the twentieth

day of August, 1890, he was in the City of Boston attending a convention of American Cemetery Superintendents; that Daniel L. Shearer, one of the complainants in this suit, called on him and requested him to accompany said Shearer to the office of Frank W. Wildes, another of the complainants hereto; that deponent went with him as requested; that said Wildes there informed this deponent that he had engaged Mr. McGee of Jersey City to take such action in the courts as would give to him and his Boston associates the control of the whole business of Rural Homestead Company. He made no explanation of the reason for such action, but only asserted that he proposed to get rid of the existing management. Deponent protested that it might be easy to ruin the value of the Rural Homestead investment by litigation. He replied that that was just what he proposed, using the words "I propose to control the entire business or to ruin it." He then said that it was best for this deponent to know just what his position was, as plainly as it could be stated. Deponent replied that his statement was certainly plain enough, in reply to which remark said Wildes repeated the words, "I propose to control the entire business or to ruin it," and that is what I mean that you shall understand. Later in the conversation said Wildes said that he did not mean that he intended to ruin the Rural Homestead Company, but as this deponent had expressed a fear that his proposed course of action would ruin it, he, Wildes only spoke upon that theory; that he himself did not believe that litigation would produce such a result, but that if it would the company would have to be ruined, for he proposed to have litigation if he could not get entire control of the company without it. Deponent further says that he was so astounded at the declarations made by said Wildes, that immediately on reaching his hotel he carefully made a memorandum of the words spoken at the said interview, and this affidavit is copied from said memorandum,

and deponent solemnly swears that the foregoing statement is strictly true.

H. F. TORREY.

Sworn and subscribed before me this 30th day of December, 1892, at Jersey City.

EARLE INSLEY,

*Master in Chancery of New Jersey.*

CITY AND COUNTY OF NEW YORK, *ss.*

Sherman W. Knevals, being duly sworn says: that he resides in the City of New York, and is familiar with the facts and circumstances connected with the creation of the Arlington Cemetery in the State of New Jersey.

At and prior to the date of the organization of that Cemetery deponent had some experience in regard to the management of Cemeteries in the State of New York, and knowledge of their requirements; and by reason of such experience and knowledge deponent was consulted in 1882 by Julius H. Pratt in regard to the organization of the said Arlington Cemetery.

While deponent and his partner, Mr. Rastus S. Ransom, deemed his (Pratt's) general plan wise and feasible and most likely to result in providing a successful Cemetery in the environs of Jersey City, still deponent raised the special objection that the contemplated amount of land to be acquired by the promoters, viz.: 35 acres, was altogether to small for practical use. The objection was answered by Mr. Pratt, that it was the purpose of the Rural Homestead Company to acquire additional land which could be bought at low prices. This declaration of the purpose of the Rural Homestead Company was satisfactory to me, and I made an investment in the stock of that Company.

It is my opinion that fifty acres of land is the minimum amount requisite for such a Cemetery, and

that any stock which derives its value from the successful operation of the Arlington Cemetery, would be more valuable in consequence of the acquisition of an increased area of land over and above the original 35 acres.

S. W. KNEVALS.

Subscribed and sworn to before me this 7th day of December, 1892.

JOSEPH PARKER, JR.
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY, COUNTY OF HUDSON. } *ss.*

Joseph Parker, Jr., being duly sworn according to law, on his oath, deposes and says, that he is a resident of the Township of Kearney, in the County of Hudson and State of New Jersey, and has resided there for the past fourteen (14) years; that he is a Counsellor of the Supreme Court of this State; durring the aforesaid time he has filled the office of Township Treasurer and Collector of Taxes for five (5) years; from the first day of April, eighteen hundred and eighty-four until the first day of April, Eighteen hundred and eighty-nine. That during that time he was, and since has been, largely engaged in the practice of his profession, in the searching of titles to property, and in dealing in real estate, and loaning money upon real estate security, in said Township.

Deponent further says, that the value of real estate has largely increased, and is at the present time rapidly increasing in value; that during the past five (5) years the population of the town has increased about one hundred (100) per cent., or thereabouts, and the assessed value of property within said Township has during the same period increased from $1,380,442 in Eighteen hundred and eighty-two to $5,094,250 in

Eighteen hundred and ninety-two. An increase of nearly 300 per cent. in the past ten years. That the population is at present growing rapidly, in the direction of the northern section of the Township, where the Arlington Cemetery is located, and the prices of land in that section is rapidly advancing; that within the last five years large tracts of land have been opened, avenues and highways cut through them, the principal thoroughfare macadamized; the lands laid out into lots and plots, and maps thereof filed in the Register's office of Hudson County, and new buildings erected upon said lands, which materially advanced and increased the value of the adjoining lands; that nearly all of the Township is now laid out in building lots, and it is difficult to buy land by the acre, and is now being offered mostly in small lots or plots.

Deponent further saith that he is well acquainted with the tract of eighteen acres or thereabouts, owned by Samuel W. Bower and adjoining the Arlington Cemetery on the South; that said tract comprises about twelve acres of upland and six acres of meadow land; that a fair value for the upland is eighteen thousand dollars ($18,000.00), and for the six acres of meadow about four hundred dollars ($400.00) per acre. Deponent further says that he is well acquainted with Moses C. Myers, who lives at Arlington, aforesaid, and resides upon the premises aforesaid; and that the lands are the same lands as those described in a deed from the Board of Township Committee, of Kearney, in the County of Hudson and State of New Jersey, to Samuel W. Bower, dated May 28, 1890, and recorded June 30, of that year, in the Register's Office of the County of Hudson, in Book 504 of Deeds for said county, on page 495 &c., and indexed under County Block Number 1441; and the same lands described in the deed from Moses C. Myers to Samuel W. Bower, bearing date May 27, 1891, and recorded August 3, 1891, in Book 529 of Deeds, on

page 609 &c., in the Register's Office of the County of Hudson and indexed under the aforesaid County Block Number.

Deponent further saith, that as the attorney of Samuel W. Bower he purchased of the Board of Township Committee of the Township of Kearney, the aforesaid property for Samuel W. Bower, at his special instance and request for the sum of Nine hundred and nine dollars and six cents, and that the said Board purchased the same at a tax sale advertised according to law, and according to the provisions of the charter of the Township of Kearney, relative to the sale of past due taxes and assessments, for the sum of sixty-three dollars and fifty cents, and that the said Bower took the same for the term of thirty years from the 26th day of February 1887, and that the Board of Township Committee executed and delivered to this deponent a deed for the same, which deed was duly recorded as aforesaid on the thirtieth day of June, 1890; that Moses C. Myers well knew that the said lands were to be sold for taxes, and knew of the time and date of the same, which was conducted openly and publicly in the Township Hall of the Township of Kearney, pursuant to advertisements as required by law.

Deponent further saith, that after the delivery and recording of the deed from the township aforesaid to Bower, and at that time, and up to the present time Moses C. Myers was, and has been in possession of the said premises; deponent further saith that as the attorney of Samuel W. Bower, he commenced an action in Ejectment in the Supreme Court of this State, for Samuel W. Bower, plaintiff, against Moses Myers defendant, and that the summons was dated January 27th, 1891, and returnable February 9, 1891; that on the said date he mailed the summons and declaration in the suit to the sheriff of Hudson County, for service, and that on the 7th day of February, 1891, the defendant filed an affidavit of merits in said suit

with the clerk of the Supreme Court of the State of New Jersey, and that Messrs. Coult & Howell, of No. 766 Broad Street, Newark, New Jersey, were the attorneys of record, and appeared for the defendant, Moses Myers, and that this action was commenced for the purpose of ejecting Moses Myers, the defendant from the premises described in the deed from the Township Committee aforesaid; that thereafter, and on the 27th day of February, at the special instance of Messrs. Coult & Howell, the deponent extended the time for defendant to file his plea until March 14th, 1891; that the reason for this extension of time was due to a statement made to deponent by Mr. Bower, that Mr. Myers wished to settle the Ejectment suit, in consequence of which statement deponent sent to Mr. Joseph Coult a letter, of which the following is a true copy.

February 25th, 1891.

NEW JERSEY SUPREME COURT.

SAMUEL W. BOWER
against
MOSES MYERS. } In Ejectment.

JOSEPH COULT, ESQ.,

MY DEAR SIR:

Mr. Bower informs me that as attorney for Mr. Myers, you wish to settle the above suit, by paying the taxes and interest, &c.; please let me know when I can call upon you at your office and find you. I send statement of the amount due to Mr. Bower.

| | |
|---|---|
| Back taxes paid June 12th, 1890..... | $914.80 |
| Back taxes paid January 23rd, 1891..... | 47.35 |
| Amount paid me by Mr. Bower..... | 25.00 |
| Amount paid me by Mr. Bower..... | 50.00 |
| Amount due..... | 25.00 |
| Total.... | $1,062.15 |

Interest to be computed at the rate of 12 per cent. on the taxes from the date of payment, to the time of settlement, together with costs of suit on discontinuance. Mr. Bower is to execute deed to your grantee. Will you require Mrs. Bower to sign the tax-deed?

Respectfully yours,

JOSEPH PARKER, JR."

and that on March 4th, 1891, deponent received the following letter; a copy of which is herein set out:

"COULT & HOWELL, Counsellors at Law,
766 Broad Street, Newark, N. J.
JOSEPH COULT. JAMES S. HOWELL. JAY TEN EYCK.

JOSEPH PARKER, ESQ.,

Dear Sir:

We have yours of February 25th, in relation to the Myers matter. We have written to Mr. Myers, and urged upon him the necessity of giving the matter immediate attention, but have not heard from him since your letter reached us. We will send him to see you as soon as we hear from him.

Yours,

COULT & HOWELL.

Mch. 4-91."

Deponent further saith, that between March 4th, 1891, and March 13th, 1891, William Myers, a brother of Moses Myers, called at the office of deponent and arranged to pay for Moses Myers, to Samuel W. Bower, the amount as stated in deponent's letter to Joseph Coult, of date February 25th, 1891, on or before the 1st day of April, 1891, saying that he represented his brother Moses Myers, and that he would take the tax title by conveyance from Samuel W. Bower; that on March 13th, 1891, a representative of Messrs. Coult & Howell called for a further extension of time, for filing a plea, which was refused, because defendant had seen deponent, and had stated that his brother William Myers would pay and reimburse Samuel W. Bower and

take the tax title; deponent further saith, that thereafter, and before the 1st day of April, 1891, and some time between March 13th, 1891 and March 18th, 1891, William Myers again called at the office of this deponent and said that he decided not to do as he had first thought he would do, and that he would not pay and re-imburse Mr. Bower, and said that Moses Myers would never thank him for doing it, and that when he came to look for his own from Moses Myers he would be regarded as ungrateful, and that he would have trouble with Moses Myers and his whole family; and that thereafter, and on March 18th, 1891, deponent entered judgment against defendant, and that a Writ of Ejectment was issued, and that deponent did not put the Writ of Ejectment into the hands of the Sheriff of Hudson County for execution until April 15th, 1891, and that the Sheriff proceeded to execute the Writ, and that frequently after the Sheriff had been to the premises, as deponent was informed by Moses Myers, Moses Myers came to see deponent and endeavored to have deponent prevail upon his client, Mr. Bower, to give to him a lease of the said premises, rather than dispossess him and put his family in the street, as Moses Myers said he did not know where to go or where to take his family; deponent further says that he did see Mr. Bower, and that Mr. Bower decided that for and in consideration of Moses Myers and his wife executing to him a deed of the premises he would give him a lease of that portion upon which he resided and upon which the house is located for the term of three years from the first day of April, 1891; deponent further says that he submitted this proposition to Mr. Myers, and that he, the defendant, agreed to execute such a deed, but informed deponent that his wife might want to be paid something; that thereafter deponent again saw Mr. Bower, and he instructed deponent to offer $50 for the signature of Mrs. Myers; that deponent submitted this proposition to Mr. Myers, and he informed deponent to prepare the deed and his

wife would execute it; deponent further saith that he prepared a deed and notified Mr. Myers that it was ready for execution, and that on the 27th day of May, 1891, Moses Myers called at the office of deponent and executed the deed dated May 27th, 1891, and recorded August 3d, 1891, as hereinbefore set forth, and told deponent that if he would call at the house on Friday evening, his wife would execute the deed upon the payment of $50.

Deponent further saith, that when Moses Myers signed said deed he was perfectly sober; that the deed was read to him by deponent, and explained to him in every particular, and that deponent took his acknowledgment, as a Master of the Court of Chancery of New Jersey, and solemnly swears that he made known to him the contents and that he then acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, and that deponent then told him that he could remain in the possession of the said premises for three years from the first day of April, 1891, upon paying to him each year for Mr. Bower the sum of One Dollar. Deponent further saith that acting upon the suggestion of Moses Myers, and relying upon the fact that he had stated that his wife would execute the deed deponent made the arrangement in regard to the lease; he did call upon Mrs. Myers on the Friday evening mentioned, and took with him as witnesses, one Leonard McCloud and one Simon Van Emburgh; and informed them, that he would like to have them as witnesses because he was to pay Mrs. Myers $50.00 for executing a deed; that deponent went with them to the house, offered her the $50.00 which she refused to take, refused to execute the deed, and deponent and the witnesses came away; that deponent reported the fact to Mr. Bower, that Mrs. Myers had refused to execute the deed, and asked for instruction from Mr. Bower, in regard to ejecting them under the writ then in the hands of the sheriff and that Bower decided to agree

to deponents agreement with Myers, to permit Moses Myers to have a lease of the said premises, from April 1, 1891, for the term of three years, for the rent of One dollar per year, irrespective of the signature of Mrs. Myers to the conveyance, and that thereafter, this deponent sent to William Myers a letter to that effect, of which the following is a copy:

"New York, July 2nd, 1891.

WILLIAM MYERS, ESQ.,

Montclair, New Jersey.

Dear Sir:

Mr. Samuel W. Bower has decided since Moses Myers has already executed the deed to him of his interest in the tax property, and that which Mr. Bower has since purchased from the Township, to permit Mr. Myers to remain as his tenant, on the premises for three years, from April 1st, 1891, at the nominal rent of $1.00 per year, without requiring the signature of Mrs. Myers to the deed, for which he was to pay $50.00. Mr. Bower is inclined to deal very liberally with them.

Yours very respectfully,

J. PARKER, JR.

and that the said deed of conveyance from Moses Myers to Samuel W. Bower, was not recorded in the Register's office of the County of Hudson until August 3rd, 1891, one month after the letter was written to William Myers, aforesaid.

Deponent further saith, that on the 4th day of July, 1891, William Myers and Moses Myers, both called upon this deponent at his residence, in Arlington, New Jersey, that he was in the yard at the time they called, and that he talked with both of them in regard to the premises, and in regard to the payment of the money to Mr. Bower, and told them that he would not put the deed upon record before the 1st day of August, and that they, and especially William Myers, asked deponent not to record the deed until the 1st

day of August, as they well hoped within that time to reimburse Mr. Bower for the money he had paid, laid out and expended. Deponent further saith, that he told them that in case they reimbursed Mr. Bower within tnat time that he would as the attorney for Mr. Bower, have him convey Mr. Bower's interest in the property to William Myers, and that Mr. Moses Myers then said that that would be satisfactory to him, because if brother Bill paid the money he should have the property, that the conversation then ceased, and the two went away, and that deponent heard nothing from them thereafter, and that on the 3rd day of August, 1891, he recorded the aforesaid deed.

Deponent further saith, that he is well acquainted with William J. Davis, who is a reputable counsellor at law of the State of New Jersey, and who, prior to this purchase by Bower from the Township, called upon deponent for a statement of the taxes due against the property of Myers, and that the same was furnished to him, and that from the time of deponent's first appointment as Treasurer and Collector of Taxes for the Township of Kearney up to the time of deponent's removal he furnished to Moses Myers annually a just, true and correct statement of the amount of taxes due upon the Myers' property as appeared from the books of the Assessor of the Township of Kearney and deponent further saith that he informed the said Moses Myers that he as Treasurer and Collector had no authority to apportion taxes, and that if he wished an apportionment as between himself and the others, he must make application to the Board of Township Committee pursuant to law. Deponent further saith, that he has no knowledge as to whether he ever made any such application or not.

JOSEPH PARKER, JR.

Subscribed and sworn to before me this eighth day of December, 1892.

GEORGE R. DUTTON,
*Master in Chancery, of New Jersey.*

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Samuel W. Bower, of full age, being duly sworn according to law, on his oath doth depose and say: "I reside in the City of Brooklyn, in the State of New York; I have read the affidavit of Joseph Parker, Jr., made the 8th day of December, 1892, and am familiar with its contents, and that so far as the statements therein contained relate to transactions for me, or in my behalf by the said Parker, the same were authorized and approved by me, and so far as the same relate to personal transactions with me; the same are true, and so far as the same relates to transaction in my behalf, when I was not present, I verily believe the same to be true."

SAMUEL W. BOWER

Subscribed and sworn to before me,
this 22nd day of Dec., A. D., 1892.

J. FRANKLIN CROWELL,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
COUNTY OF HUDSON. } ss.

Michael M. Forrest, being duly sworn on his oath says, "I am a resident of Arlington, in the Township of Kearney, New Jersey. I have been, for some years, and am now engaged largely in the purchase and sale of real estate. In the year 1889, with my partner, Mr. Robert Allen, I bought a tract of fifty-two acres of land known as the Bloomingdale Tract in said Township of Kearney, which tract as I was afterwards informed by Julius H. Pratt, the officers of the Arlington Cemetery Association, or Rural Homestead Company, had expected to buy as the said land lay between, and was connected with two tracts already owned by them, which intervened between said Bloomingdale land and the highways, one on the east

and the other on the west, of said Bloomingdale land. Since said purchase by myself and partner, the said land has been laid out in streets and building lots, and is now occupied by many residences. The said land is now selling freely at the rate of about twenty-five hundred dollars per acre. I know about the tract of land adjoining the Arlington Cemetery on the south said to belong to Mr. Bower, and so much of said land as is generally designated "up land," and which appears to be about twelve acres, is in my opinion worth about fifteen hundred dollars per acre; but a valuable quarry, which I am informed is on the property, would increase this valuation probably to eighteen hundred dollars per acre. I am not fully informed as to the value of the meadow land included in said tract."

MICHAEL M. FORREST.

Sworn and subscribed before me this 29th day of December, A. D., 1892.

J. FRANKLIN CROWELL,
*Master in Chancery of N. J.*

COUNTY OF ESSEX, }
STATE OF NEW JERSEY, } *ss.*:

David Young, of full age, being duly sworn according to law, on his oath deposeth and saith, that he resides in the City of Newark, New Jersey; that he is now, and has been for a period of twenty years, the official surveyor of the Township of Kearney, Hudson County, New Jersey, and has prepared the township maps now in use for the purpose of assessing taxes in said township; that he has also surveyed and laid out many streets and lots for private owners of land in said township; that he is conversant with the value of property generally in said township and particularly in the northern section of said township in which the Arlington Cemetery is situated; that he knows

the situation and condition of the tract of land adjoining said Arlington Cemetery on the south, known as the Myers' farm; that in his opinion the said tract is well adapted for use as a cemetery, and for that purpose is worth at least $1,500.00 per acre.

DAVID YOUNG.

Sworn and subscribed this fourth day of January, A. D. 1893, before me,

HENRY B. TAYLOR,
*Master in Chancery of N. J.*

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IN CHANCERY OF NEW JERSEY.

Between

FRANK W. WILDES *et als*,
*Complainants*,
*and*
THE RURAL HOMESTEAD COMPANY *et als*,
*Defendants.*

*On Bill, etc. Replication.*

The complainants join issue on the answer of the defendanst.

BEDLE, MCGEE & BEDLE,
*Solicitors and of Counsel with Complainants.*

# IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES AND OTHERS,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY AND OTHERS,<br>*Defendants.* | *On Bill, etc.* |

*To the Chancellor of the State of New Jersey:*

Your petitioners, Frank W. Wildes, Frances E. Wildes, and Thomas J. Olys, of Boston, Massachusetts, and Katie E. Champlin and George W. Colburn, of Cambridge, Massachusetts, and Frederick H. Rindge, of Los Angeles, California, respectfully represent to the Chancellor:

That they are the complainants in the above named cause. That on or about the twenty-sixth day of November last they filed their bill of complaint in this court, in which they prayed, amongst other things, that an injunction might issue to be directed to the defendant, The Rural Homestead Company, its directors, officers and agents, and Julius H. Pratt and Henry F. Torrey, enjoining them from making any conveyance or other disposition of the lands mentioned in the bill of complaint, except to reconvey them to Samuel W. Bower, another of the defendants therein mentioned, and from making or attempting to make any sale, issue or other disposition of the two hundred and thirty-eight shares of stock of the Rural Homestead Company therein mentioned, or any of them, and from taking any action pending this suit that would change the status of the said two hundred and thirty-eight shares of stock, except to cancel the issue thereof, and that the officers of said Rural Home-

stead Company might be enjoined from reporting said two hundred and thirty-eight shares of stock as issued on any list of stockholders at any election of stockholders or otherwise.

That on said bill of complaint, and the proofs thereto annexed, and after hearing the answer and affidavits of the defendants, there was, in pursuance of the order of this court, an injunction issued on the fifteenth day of February last, enjoining the said Samuel W. Bower and the Rural Homestead Company, and all and every person therein mentioned, their assigns and agents, from transferring or assigning, or in anywise parting with the title of the two hundred and thirty-eight shares of stock of the Rural Homestead Company mentioned in the bill of complaint, and enjoining the Rural Homestead Company, its directors and officers, from making conveyance or other disposition of the lands mentioned in the bill of complaint until the defendants should have fully answered the bill of complaint and the court should make other order to the contrary.

Your petitioners further show that since that time the complainants' depositions have been taken in Boston and in Jersey City, and testimony on the complainants side has been declared closed, and all the defendants, with the exception of William E. Shrope, who is dead, answered in one answer, in and by which it was admitted that all the allegations of the bill of complaint about the purchase of the tax title by the defendant Bower from the Board of Township Committee of the Township of Kearney were true, excepting that the deed therein mentioned from Moses C. Myers to Samuel W. Bower was a lease, and it was denied therein that that paper was a lease, but it was claimed that it was a deed given upon the consideration that the said Moses C. Myers should be allowed to occupy the premises for three years at the rent of one dollar a year, and it admits that the deed therein mentioned from Samuel W. Bower to the

Rural Homestead Company had not been recorded, but was kept off the record in order to let the said Bower negotiate with the other owners of the property for their titles ; and it further admitted that the said Julius H. Pratt and William F. Torrey had been President and Secretary of the Rural Homestead Company during the whole time mentioned in the bill of complaint.

Your petitioners further show that by the answer and depositions taken, it appears that the complainants are all of them stockholders in the Rural Homestead Company as set forth in the bill of complaint. That the title to the property in question was not in the said Moses C. Meyers, but that he had a fee in severalty in only two acres thereof, subject to the inchoate right of dower of his wife, who is living, and that he was seized of an undivided one-sixth interest only in the balance, which balance belongs to the said Moses C. Meyers, and his brothers and sisters, William H. Meyers, Peter Meyers, Jane Meyers, who is now a widow by the name of Routan, Ann Myers who is the wife of Martin Vernon, and Eliza Myers, who is the wife of Henry Williams, one-sixth each; all of whom live in New Jersey, excepting said Ann Vernon who lives in Cleveland, Ohio. And it further appears by the testimony that at least the said William H. Meyers is known to the said Julius H. Pratt, and resides at Montclair, which is the place where the said Julius H. Pratt resides, and that the others live in the vicinity, namely, Peter and Jane at Arlington, the place where the cemetery is, and Eliza in East Harrison, New Jersey, which is in the vicinity of Arlington.

And your petitioners further show that Moses C. Meyers testifies that when he signed the paper which purports to be a deed from him to the said Samuel W. Bower set forth in the bill of complaint and answer in the cause, that he understood that he was taking a lease of the property for three years, with

a privilege to redeem within that time upon payment of the taxes, and that that was what he thought the paper was that he signed, and that he signed the paper without reading it himself or having had it read to him, and that after he had signed it he was told by Mr. Joseph Parker, Jr., that he was not to be allowed to redeem, to which he replied that he didn't agree to any such thing, and that Mr. Parker said that he would see Mr. Bower about having the restrictions, that is the clause of redemption, put in the paper, and that was the reason he left the paper and didn't take it away with him.

It further appears by the said answer and testimony that no notice of demand for possession was served under the tax title by the said Bower on any of the owners of the land at all, and that no effort has been made to obtain possession or a right of possession thereto by him, excepting an alleged action of ejectment begun against Moses only. That no conveyance of the fee of the others, or of any of their interest, excepting said tax sale, has been made or attempted. That this was known to the said Julius H. Pratt, the President of the Rural Homestead Company, before the conveyance to the Rural Homestead Company, and it is testified to by William J. Davis, who is a practicing attorney at law of New Jersey residing in the town of Harrison, Hudson County, and who knows Moses C. Meyers, and Julius H. Pratt, that said Pratt told him that said Samuel W. Bower was a friend of his, and that he had bought the property for the cemetery.

Your petitioners further show that it appears from the by-laws of the Rural Homestead Company, which are in evidence in the case, that the time for the holding of the annual meeting of the company for the election of directors, will occur on June sixth next, and that it appears by the bill and answer and evidence that the complainants hold eleven hundred and ten shares of the Capital Stock of the said com-

pany; that the defendants hold ten hundred and thirty-eight shares, and that the said Henry E. Reddish, Flavel McGee, Joseph D. Bedle, and Lucien D. Fowler, who are stated in the bill of complaint to be acting in sympathy with the complainants, hold fourteen shares, and that the two hundred and thirty-eight shares issued as set forth in the bill of complaint to said Samuel W. Bower for the land in question is outstanding in his name, so that, without the two hundred and thirty-eight shares, your petitioners, the complainants, have a majority of the Capital Stock of the company outstanding, and that if the two hundred and thirty-eight shares be not allowed to vote at the coming election your petitioners will have a majority of the Capital Stock, and will be able to elect the Board of Directors, whereas if the two hundred and thirty-eight shares be allowed to vote with the defendants, as at the last election, the defendants will have a majority of the Capital Stock of said company, and will be able to elect the Board of Directors.

Your petitioners respectfully represent to the court that under the admitted equities in the case, namely, that the said Samuel W. Bower had no title nor claim of title in fee to any part of the lands in question, unless perhaps the two acres, and that subject to an outstanding dower right, and that his title in fee even to the two acres is disputed, and that his only title is an estate for years subject to a right of redemption within a time which has not yet expired, and of the fact that this infirmity of title was known to the President of the Rural Homestead Company at the time the deed was taken, and that the deed was kept off the record and concealed, with knowledge, for the avowed purpose of making an effort to secure other titles, and the manifest intention of the officers of the Rural Homestead Company to issue the stock in question for the purpose of controlling the election, against the will of the complainants, who held and

still hold a majority of the stock legally and equitably entitled to vote, that it is inequitable that the said two hundred and thirty-eight shares of stock should be allowed to vote or control the election of a new Board of Directors pending this suit.

Wherefore your petitioners respectfully pray that an additional injunction, according to the prayer of the bill, may be issued, to be directed to the Rural Homestead Company, its directors, officers, and agents, enjoining them and each of them from reporting said two hundred and thirty-eight shares of stock as issued on any list of stockholders at the coming election of said company, or any election of said company, and from permitting them to be voted on at the coming election of said company if they are already listed, or at any election of said company, until the determination of this suit, and the further order of this court to the contrary. Or, if your Honor deems it more equitable, that they be enjoined from holding the annual meeting for the election of directors until such time as the legality of the issue of said stock and its status shall be determined in this case, and for such other or further relief pendente lite in the premises as to your Honor shall seem meet.

And your petitioners respectfully pray that in support of this petition, and the relief herein prayed, they may be allowed to read in evidence as proofs, the depositions taken in the cause, and the minutes and other documentary evidence which are in evidence in the cause.

And your petitioners will ever pray, &c.

Dated May 29th, 1893.

BEDLE, MCGEE & BEDLE,
*Complainants' Solicitors.*

IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between<br>FRANK W. WILDES et als,,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY et als.,<br>*Defendants.* | *On Bill, &c.*<br>*On Petition, &c* |

On reading and filing the petition of Frank W. Wildes and others made in the above entitled case on the twenty-ninth day of May, eighteen hundred and ninety-three, and the depositions and other proofs taken on the part of the complainants in said cause and referred to as proofs in the said petition, it is on this twenty-ninth day of May, eighteen hundred and ninety-three, on motion of Bedle, McGee & Bedle, of Counsel with the petitioners, the Complainants in the cause,

Ordered, that the defendants show cause, on Monday next, June fifth, at ten o'clock in the morning, or as soon after as counsel can be heard, at the Chancery Chambers in Jersey City, why an injunction should not issue according to the prayer of said petition.

And further that a copy of said petition and this order which may be uncertified, be served upon the said The Rural Homestead Company, by leaving the same at its office in Jersey City at least five days before the return hereof.

ALEX T. MCGILL.
*C.*

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES et als<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY et als<br>*Defendants.* | *On Bill, etc.* |

The order to show cause made in this cause on the twenty-ninth day of May last coming on to be heard this day, and counsel for both parties having been heard and the petition, answer and proofs having been considered, it is on this fifth day of June, eighteen hundred and ninety-three, on motion of Bedle, McGee & Bedle, complainants' counsel.

Ordered, that the said The Rural Homestead Company, its directors and officers do not hold the annual election for directors of said company on June sixth, instant, nor until the further order of this court, but that the same be adjourned to-morrow for one month and thence from month to month until the further order of this court.

ALEX. T. McGILL,
*C.*

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES ET ALS,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY ET ALS.<br>*Defendants.* | *On Bill, &c.* |

Examination of witnesses, &c., on the part of the complainants in the above entitled cause before me, George W. Cassedy, a Master and Examiner in Chancery of New Jersey, at my office, No. 1 Exchange Place, Jersey City, New Jersey, on Thursday, March 30th, 1893, at 10 o'clock in the forenoon in the presence of

FLAVEL MCGEE, ESQUIRE, counsel of complainants and JOSEPH PARKER, JR. and CHARLES H. VOORHIS, ESQUIRES, counsel of the defendants, pursuant to notice, service of which is acknowledged.

MOSES C. MEYERS, a witness produced on the part of the complainants, being duly sworn, according to law on his oath deposeth and saith.

*Direct examination by Mr. McGee:*

Q. Mr. Myers, where do you live?
A. Arlington.
Q. New Jersey?
A. Yes, sir.
Q. And how near does the property you reside on come to the property of the Arlington Cemetery Company?
A. Right adjoining it.

Q. On which side?

A. On the south side of the cemetery.

Q. That is, your property is south?

A. Yes, sir.

Q. How long have you lived there—all your life?

A. Oh, no, sir, not where I am now; I have lived there about six years, I guess.

Q. You are familiar with the question at issue in this litigation?

A. Yes, sir.

Q. And you know the property which Mr. Bowers claims to have taken from you?

A. Yes, sir.

Q. And do you live on that property?

A. Yes, sir, part of it?

Q. How many houses are there on the property?

A. Only the one.

Q. And who lives in it?

A. I do.

Q. And are you married?

A. Yes, sir.

Q. And what's your wife's name?

A. Catharine.

Q. Does she live with you?

A. Yes, sir.

Q. How much land is there in the Meyer's property there, not confining it to your individual two acres?

A. Well, I dont't know exactly—I suppose nine or ten acres.

Q. Of upland?

A. Yes, sir.

Q. Well, how much meadow?

A. Well, in the neighborhood of eight acres, I should judge.

Q. The property that was set off as the dower of John Van Emburgh's wife, Susan Shoemaker, how much was there in that?

A. Well, I suppose in the neighborhood of three acres of upland, more or less.

Q. And how much meadow?

A. Well, the meadow that she claimed was in the neighborhood of about three acres.

Q. About three acres of upland then, and three acres of meadow?

A. Yes.

Q. That was set off for her by the Commisioners?

A. Yes.

Q. And where did that lay as to the rest of the property?

A. South; the meadow lay east.

Q. The part that was set off to the widow, and the rest of the Meyers land join?

A. Yes, sir.

Q. And do they lay on the same side or not of the road?

A. Next to the Cemetery.

Q. But how as to Schuyler Avenue?

A. Runs right along Schuyler Avenue.

Q. All of it, or was some of it west?

A. Some of it's west.

Q. Some of it's west and some of it east?

A. No, sir, Schuyler Avenue is west of the property.

Q. It is all then east of Schuyler Avenue?

A. Yes sir.

Q. Isn't some of it across the road?

A. No, sir.

Q. Now, this property, to whom did it originally belong in your family? I want to go back to the first one you remember

A. Grandfather.

Q. What was his name?

A. John.

Q. John what?

A. Van Emburgh.

Q. When did he die?

A. Somewhere's near about 1870.

Q. And when he died, was he seized of this property—did he die seized of the whole property?

A. Oh, yes.

Q. Did he live on it?

A. Yes.

Q. What family did he leave?

A. He left my mother.

Q. Did he leave a widow?

A. Yes, sir.

Q. What was her name?

A. Susan, then she married Shoemaker afterwards.

Q. He left his widow Susan, now what children?

A. Well, there was mother.

Q. What was her name?

A. Rachel Ann, Isaac, Peter, John and Mary.

Q. Those were his children?

A. Yes, sir.

Q. Did he leave a will?

A. Yes, sir.

Q. Covering this property?

A. Yes, sir?

Mr. McGee: The record of the will of John Van Emburgh, Sr., in liber 5, page 739, of wills of Hudson County, offered in evidence.

It is consented by counsel that the records of papers on record in the public offices might be offered without the present production of the books or the marking of copies in evidence. Copies of the records to be used subject to verification from originals in case error therein was alleged by either counsel.

Q. This will, Mr. Meyers, in its fifth clause, devises to Mr. Van Emburgh's daughter, Rachel Meyers, and

her daughter Mary Meyers, as tenants in common, the meadows on the easterly side of said road, and bounded by Morgan's line and the lot above mentioned in the will, namely, the one that had been devised therein to Peter on the north, and by a swamp ditch on the east, by a line ditch on the south, and by the upland on the west, containing about six acres; and he also gives in the same clause, to the said Rachel and Mary Meyers, all the upland which he owned on the easterly side of the said road, that is Schuyler avenue, down to the fence separating the upland from the salt meadow, containing about eleven acres; now, is that the property that you have been speaking about?

A. Yes, sir.

Q. And who was this Rachel Meyers as to you—what relation was she to you?

A. Mother.

Q. She was your mother; and who was Mary?

A. Sister.

Q. And was she Rachel's daughter?

A. Yes, sir.

Q. Now, after John Van Emburgh's death, where did Rachel live?

A. On Schuyler avenue.

Q. She didn't live on the property?

A. No, sir.

Q. Who lived on it before you went there?

A. She rented it out to a man by the name of Martin Nepler, I think.

Q. And she took the rent as long as she lived?

A. Yes, sir.

Q. When did she die?

A. 1863, as near as I can recollect; I may be wrong by a year or two.

Q. And she left a will?

A. Yes, sir.

Counsel offers in evidence the record of a will of Rachel Ann Meyers, widow, recorded in book 16, page 334, of wills for Hudson County, which will bears date November 24, 1882, and asks

Q. Is that the Rachel Ann Myers whom was your mother?

A. Yes, sir.

Q. This will, in its disposition of the real estate, devises to her son Moses C. Meyers, the old house and two acres of land adjoining the same, situate under the hill, formerly owned and occupied by Joseph Felter now in the town of Arlington, county of Hudson, and state of New Jersey, to him forever—are you that Moses C. Myers?

A. Yes, sir.

Q. And is the house you have been speaking of?

A. That ain't the house; that house is down; I am living in a house on the same two acres.

Q. A house you built since?

A. I had it put there.

Q. It's the same land?

A. Yes, sir.

Q. And she gives, bequeaths and devises to her son, Moses C. Meyers, the residue or balance of all her real estate during her daughter Mary's life, only provided that Moses shall take into his family her daughter Mary, and kindly care, support and maintain her, to the best of his ability, during her natural life, the profits and income from the same to pertain to Moses C. for the support of Mary, and after the decease of Mary then the said balance of her real estate shall be equally divided between her children, Moses C. Meyers, William H. Meyers, Peter Meyers, Jane Meyers, Ann Meyers, and Eliza Meyers, each to share alike; is that land the land you have spoken of as constituting the balance of that lot?

A. Yes, sir.

Q. And it is bounded on the north by Arlington cemetery, and on the west by Schuyler avenue—the whole tract?

A. Yes, sir.

Q. When did Mary die?

A. She died about April 17th, 1890.

Q. Before her death, and after her mother's death, where did she live?

A. On Schuyler avenue.

Q. With whom—Mary?

A. She lived with me.

Q. Did you take care of her in accordance with these provisions up to the time of her death?

A. Yes, sir.

Q. What children did your mother leave her surviving?

A. Four boys and three girls.

Q. Give us their names?

A. William H. Meyers, Mary Meyers, Jane Meyers, Ann Meyers, Eliza Meyers and Moses C. Meyers and Peter Meyers.

Q. Are all these people living except Mary?

A. Yes, sir.

Q. Where does William live?

A. Montclair.

Q. New Jersey?

A. Yes.

Q. Peter?

A. Arlington, New Jersey.

Q. Jane?

A. Arlington, New Jersey.

Q. And what is her name?

A. Jane Routan.

Q. And her husband's name?

A. Routan; dead.

Q. And she's a widow?

A. Yes, sir.

Q. How long has he been dead?

A. That I couldn't say.
Q. Some time?
A. Quite some time.
Q. Ann; whereabouts does Ann live?
A. Cleveland, Ohio.
Q. And what's her name?
A. Ann Vernon.
Q. What's her husband's name?
A. Martin.
Q. And Eliza?
A. Williams.
Q. And what's her husband's name?
A. Henry.
Q. And where do they live?
A. East Harrison, New Jersey.
Q. Then they all live in New Jersey?
A. Except Ann, yes, sir.
Q. So far as you know has there ever been any conveyance by any of these people of their interest in any of this land, except by yourself?
A. Not that I know of.

Mr. McGee: I offer in evidence the record of a deed from Mary Meyers, single, of Kearney township, to Moses C. Meyers of the same township, dated April 6, 1886, recorded July 29, 1886, in book 421 of deeds for Hudson county, in the Register's office of that county, pages 467, etc., purporting to convey her equal undivided half interest in lots in the township of Kearney, the first of one acre and the second of 83-100 of an acre.

Q. Is the Mary Meyers in that deed the Mary Meyer that is your sister?
A. Yes, sir.
Q. And you are the Moses C. Meyers?

A. Yes, sir.

A. And is that the two acres of land where you live?

A. Yes, sir, where I live.

Q. As you understand it to whom does the two acres of land we have been speaking about, belong, independently of the paper purporting to be a deed from you to Samuel W. Bowers?

A. Belongs to me.

Q. And your wife is living?

A. Yes, sir.

Q. And the other part of the land which John Van Emburgh willed to his wife and daughter, to whom, as you understand it, does that land now belong?

A. Well, it belongs to us heirs.

Q. That is, the people you have mentioned?

A. Yes, sir.

Q. The six children of Rachel Ann Meyers?

A. Yes, sir.

Q. Did Mary leave any will?

A. No, sir.

Q. Was she ever married?

A. No, sir.

Q. Was she of age?

A. Yes, sir—second eldest.

Q. She died unmarried, intestate, and without issue?

A. Yes, sir.

Q. Now, Mr. Meyers, there appears of record a paper writing in the form of a deed, in which you are the party of the first part, and one Samuel W. Bower of New York, is the party of the second part, which is dated the 27th of May, 1891, and acknowledged on that day before Joseph Parker, Jr., a Master in Chancery, and appears to have been recorded on the third of August of that year, in book 529 of deeds for Hudson County, pages 609, &c.; will you tell us how you came to execute that paper, and what were the conversations that took place before you did it?

A. Mr. Parker was to give me a lease of the property for three years, that's what I supposed it was to be.

Q. Take a little further back; begin with the first interviews that were had between you and him, or anybody else, on the subject of the interest of Mr. Bowers in this property; what was the first you knew that Mr. Bowers claimed to own it?

A. I had papers served on me.

Q. What was it, do you know—when was it?

A. It was in March, I think, two years ago.

Q. That's '91; have you got the paper?

A. No, sir, I think its in Newark.

Q. Do you remember what it stated?

A. Well, I had to appear at Trenton at such a time.

Q. And what?

A. I forget the date of it.

Q. To do what?

A. In regard to these taxes on the property, Mr. Bowers had bought it in.

Q. For taxes?

A. Yes, sir.

Q. From the township?

A. Yes.

Q. That was what you understood?

A. Yes, sir.

Q. Whose name was signed to the paper as attorney?

A. That I don't know.

Q. Attorney for Bowers, I mean?

A. I suppose it was Mr. Parker.

Q. Do you remember?

A. I couldn't say exactly, only I found out afterwards.

Q. When you found out—when you got this paper, who did you go to see about it as representing Mr. Bowers?

A. I first talked to my brother here, William H.,

and we took them to a lawyer in Newark, and I suppose there there yet.

Q. And who did you go to see as representing Mr. Bowers?

A. Mr. Parker.

Q. Where?

A. Arlington.

Q. Do you remember when?

A. I went two or three times—then I was called —and went on my own accord.

Q. What did you say to him and what did he say to you?

A. He said he didn't know what he could do for me, only to give me a lease for three years on the property.

Q. Did you make any effort to redeem the property?

A. Yes, sir.

Q. What shape?

A. I thought I would take a lease of the property, and that was giving me three years to redeem.

Q. Did you come to any agreement on that subject?

A. He was to give me a lease.

Q. And you were to have the property for three years, and what then?

A. With the privilege of redeeming it.

Q. By what, upon the payment of the taxes?

A. Yes, sir.

Q. That was in the spring of '91?

A. Yes, sir; spring.

Q. Was such a paper drawn?

A. No, sir, it appears it was not.

Q. Did you suppose it was?

A. I thought it was, yes, sir.

Q. And is this the paper that you supposed was a lease?

A. Yes, sir.

Q. Where was this paper signed?

A. Where I signed it?
Q. Yes.
A. Parker's office.
Q. Arlington?
A. Yes.
Q. Now tell us when you went to his office what was said between you and him?
A. There was nothing said when I signed it.
Q. He didn't read it to you?
A. No, sir; and I asked him "Now, this is mine after three years" and he said "No, after three years you haven't anything more to do with it."
Q. Where was the paper when you said that?
A. On the table.
Q. Did he give it back to you?
A. No, sir.
Q. You signed it then; without having read it or having it read to you?
A. Yes, sir.
Q. How old are you?
A. Fifty-three years the fourth of April.
Q. What is your business?
A. Carpenter.
Q. How much education have you had?
A. Not much.
Q. Can you read?
A. Yes, sir.
Q. Did he give you any money for it?
A. No, sir.
Q. Did you ever receive any money for this paper?
A. No, sir.
Q. What was his claim as to how he happened to have the land—Bowers.
A. That I couldn't say.
Q. Did he claim to own it by any other title than a tax title?
A. That's all.
Q. Did he say when he bought it and from whom?
A. I don't know as he did.

Q. As I understand it then you say that the agreement on which you signed the paper was that you were taking a lease from Bowers for three years, with the privilege of redeeming it by the payment of the taxes in the apportionment, and that after you signed the paper and he had it, he told you that after three years you wouldn't have anything more to do with it?

A. Yes sir.

Q. Up to the time that this paper was served on you in March of '91, which was some kind of a summons probably, did you know that the property had been sold for taxes?

A. No, sir.

Q. Before that time had you made efforts to find out how much taxes were applicable to your part?

A. Yes, sir.

Q. And how much to the other?

A. Yes, sir.

Q. How did you make those efforts?

A. I went to Mr. Parker, he was Treasurer.

Q. Treasurer of what?

A. Of the township.

Q. And he was to do what?

A. He was to find out what my taxes were and let me know, but he never done it.

Q. Did you go to any other lawyer?

A. I got Mr. Davis to go down there, and I met him afterwards, and he said it was such a mixed up mess he couldn't make anything out of it, and I made up my mind that if two lawyers couldn't make anything out of it I couldn't.

Q. Did you know that the property had been advertised for sale for taxes?

A. Been advertised a good many times, more than once, and bought by the township.

Q. You knew that the township had bought it?

A. Yes.

Q. You supposed you could redeem it any time by paying the taxes?

A. Yes, sir.

Q. And your reason for not redeeming it was because you couldn't get it apportioned.

A Yes, sir.

Q. And you say Mr. Parker was treasurer of the township?

A. Yes, sir, at the time I wanted to redeem mine.

Q. Did you know how much the taxes were against the whole property?

A. No, sir, I didn't know.

Q. Did you tell your brothers and sisters that the land had been sold for taxes, other than William.

A. Yes, sir; I took the papers, when I got the papers, I went right up to my brother——

Q. Which brother?

A. This one (referring to William.)

Q. I am asking you whether you told your other brothers and sisters up to the time of the deed to Bowers—this paper that you signed?

A. No, sir.

Q. Who made the proposition that you should take a lease from Bowers for three years?

A. Mr. Parker.

Q. Do you remember what he said, exactly?

A. He said he didn't know what else he could do with me, but give me a lease for three years, and he asked me if my brother from Montclair would go my security, and I told him I didn't need any security, I would pay in advance.

Q. Do you remember how much a year the rent was to be?

A. $150.

Q. A year?

A. Yes, sir.

Q. Had you known Mr. Parker a good while?

A. Oh, yes sir.

Q. Did you have confidence in him at that time?

A. Well, more or less.

Q. Did you have any reason at that time to doubt him?

A. No, sir.

Q. If you had known that this paper was in its form a deed of conveyance of the land, would you have signed it?

A. No sir; I didn't think that he would use my name on to it as it was.

Q. That is, after you had signed it?

A. After I had signed it.

Q. Those three years are not yet up?

A. No, sir.

Q. When he told you that after the three years you would have nothing further to do with it, what did you tell him?

A. I told him I didn't agree to no such thing.

Q. Did he say anything further about having the restrictions put in?

A. He said he weuld see Mr. Bower about having those restrictions put in, and I saw him down in the street afterwards, and he said Mr. Bowers wouldn't do that, but he would give my wife fifty dollars to put her name to the paper.

Q. Did he afterwards go down to your wife?

A. He went there one evening, he and two or three more, to try and get her name to the paper. I wasn't there at the time.

Q. Did she sign it?

A. No, sir.

Q. Since that time have you continued to live on the property?

A. Yes, sir.

Q. Has there been any effort made since then to dispossess you?

A. No, sir.

Q. Have you ever delivered possession to Bowers, or any one for him?

A. No, sir.

Q. How is it as to the rest of the property, are you still in possession of that?

A. Well, yes.

Q. Had any notice, prior to this summons from Parker, ever been served on you that the property had been sold for taxes?

A. No, sir.

Q. Had there been any notice served on you to redeem it?

A. No, sir.

Q. Was there any demand of possession of it ever made on you?

A. Nothing more than when they went to work to quarry there.

Q. The employees of the Arlington Cemetery Company?

A. Yes, sir.

Q. Did you give them any notice?

A. Yes, I told them to leave.

Q. You never assented to their being there?

A. No, sir.

Q. Did you know when you signed that paper which you thought was a lease that it contained a description of the whole property, including the part that had been set off to the widow of Van Emburgh?

A. It included it all, as I understood it.

Q. At that time?

A. Yes, sir.

Q. I am talking now about the time that you signed it?

A. I was to take all the property for $150 a year.

Q. Did you know that it included all the widow's dower part?

A. It included all; she was dead at the time.

Q. When did she die?

A. She died shortly before Mary, I don't know how long.

Q. And you supposed you were taking a lease of it all?

A. Yes.

Q. And when you insisted upon having these restrictions in, Mr. Parker did not deny your statement that you were to have these restrictions?

A. No, sir.

Q. How many wives did John Van Emburgh have?

A. I remember two; that's all I remember.

Q. He had more than that as you have heard?

A. I heard he had more.

Q. This wife that he left, she was a young woman?

A. Quite a young woman, yes, sir.

Q. Do you remember that after his death that Commissioners were appointed to set off her dower?

A. Yes, sir.

Q. And do you know what they did set off?

A. Yes.

Q. And it's the property you have spoken of in the first part of your examination?

A. Yes, sir.

Q. And adjoins the rest?

A. Yes, sir.

Q. Under his will, this land, at her death, comes back to you and your brothers and sisters?

A. Yes, sir.

Q. So that the fee in it would be in you free of the dower, on the death of this widow?

A. Yes, sir.

Q. After this paper to Bowers, which you thought was a lease, did you go to the Town Hall with your brother William to ascertain—

Objected to as leading.

Q. Did you go to the Town Hall with your brother William with reference to the taxes?

A. Yes, sir.

Q. For what purpose did you go there?

A. To see how much the taxes were.

Q. And anything else?

A. Nothing that I know of.

Q. Did you mean to pay them?

A. No, we knew the property was sold before.

Q. And did you ascertain there from any official how much the taxes were?

A. No, sir, not then.

Q. Did you at any other time?

A. No, sir.

Q. Did you know at that time that the dower part of the property was in the Bowers paper that you signed?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. And you thought it was Mrs. Van Emburgh's dower?

A. Oh, yes, sir.

Q. You knew that, did you?

A. Yes, sir.

Q. Have you seen Mr. Bower, or had any talk with him since?

A. Been there twice.

Q. What does he say on the subject of the lease?

A. The first time we were there he allowed that Mr. Parker had all to do with it, and he wouldn't have anything to do with it, for if he did he would probably get blamed for it, so he wouldn't say anything about it; and Mr. Parker agreed to take the money.

Q. What money?

A. The taxes.

Q. That was after this interview?

A. After we saw Bowers the first time.

Q. And about what time was it you saw Bowers the first time—about what date?

A. It was shortly after these papers were served on me

Q. How soon after that was it you saw Parker and that you have just mentioned?

A. Shortly after that.

Q. Did you see Bowers again?

A. Yes sir.

Q. What did he say?

A. Since I signed this paper, he wouldn't take the taxes.

Q. That's what he said?

A. Yes, sir.

Q. And that's the last?

A. He admitted that he could hold the property; he could buy it cheaper than anybody else—let it go for two years and keep buying it in.

Q. Did you know that Bowers had made a conveyance of the property to the Rural Homestead Company?

A. No, sir.

Q. Do you know Mr. Pratt?

A. I know him when I see him.

Q. Do you know what position he holds in the Cemetery Company?

A. No, sir.

Q. Do you know that he's an officer in it?

A. I don't know, sir.

Q. Have you talked with him any on the subject of this?

A. No, sir.

Q. Do you know whether Bowers was connected with the company?

A. I don't know sir, I couldn't say.

Q. The Mr. Parker that you speak of, is the gentleman that's appearing in this case here as counsel for the defendant?

A. Yes, sir.

Q. What kind of land is this as to its being—the whole property there?

A. Its a different kind of soil where I live; its kind of sandy.

Q. Is it a level piece of property?

A. Not altogether.

Q. Does this Schuyler avenue bound it all along the westerly side?

A. Yes, sir.

Q. How much higher is Schuyler avenue than where your house is?

A. Its a good deal higher.

Q. Well, twenty-five feet?

A. Oh, yes.

Q. Is any part of it built upon except where your house stands?

A. No, sir.

Q. Is there any road into your house?

A. Yes, sir.

Q. Is it a road that's used as anything but a private road?

A. A private road down to the property.

Q. Is there any public road?

A. No, sir.

Q. The meadow part of it, what sort of a meadow is that?

A. Its a mixed meadow.

Q. Salt meadow?

A. No, sir, not altogether.

Q. What connection does it bear to the great stretch of salt meadows that boarders the Hackensack river?

Witness: What did you mean—in regard to the grass?

Mr. McGee: As to whether its the edge of that meadow.

Witness: I don't understand.

Q. Is the meadow tillable land?

A. No, sir, it ain't tillable; get a good deal of grass off of it.

Q. What kind?

A. Mixed grass—meadow grass.

Q. After you leave the easterly edge of that up-

land, how far is it before you come to any more upland going east?

A. I guess you will have to go clean across the meadows.

Q. To what point?

A. Bergen Hill, I guess, or somewhere about there.

Q. How far is it from the river to that upland?

A. That I couldn't say.

Q. Is it a mile or two?

A. Yes.

Q. And from the Hackensack river to Bergen Hill, do you know how far that is?

A. I guess it is about four mile from Bellin's Corners to Bergen Hill.

Q. The meadow part of this, what is it worth an acre?

A. I don't know what its worth; its assessed for $50 an acre; it has been assessed for $100.

Q. Do you know what the upland is assessed for?

A. I don't know.

Q. Can you tell pretty near?

A. $1.75 or $2 an acre.

Q. That's the taxes—what is it assessed for?

A. I don't know.

Q. What, in your judgment, is the upland worth—the fee of it?

A. I've got no idea of it.

Q. Has it ever been cut up into lots?

A. No, sir.

Q. Has any part of it been sold for lots?

A. No, sir.

Q. Is there any lot on the property fronting on Schuyler avenue that would be level with the road?

A. No, sir.

Q. Until you got this paper in the Spring of 1891, had you heard that there had been any sale by the township to Bowers?

A. No, sir.

Q. Had you any suspicion of it?

A. No, sir.

Q. Have any of the other heirs made any deeds?

A. No, sir, I made inquiries of different ones, and they didn't know anything about it.

Q. And that paper that you got in the Spring is the only paper that's been served on you?

A. Yes, sir.

Q. Can't you get that and produce it later?

A. I think I could, sir.

Q. And will you?

A. I will try, sir.

*Cross Examination by Mr. Parker.*

Q. Mr. Meyers, how long have you known me?

A. Well, I don't know; I have known you ever since you came to Arlington, I guess.

Q. And you have lived on or near this property all this time?

A. Yes, sir.

Q. How long is it since you have paid any taxes on it?

A. Well, that I don't know. I couldn't say.

Q. Have you ever paid any taxes upon it since your father's death?

A. On this property?

Q. Yes.

A. Before my mother died—

Q. Have you ever paid any taxes—

A. Not myself.

Q. Since your mother's death have you ever paid—

A. Yes, I have paid taxes on it; I have taken money there to the appraiser in Arlington—Benninger.

Q. When was he the Treasurer?

A. Some time ago.

Q. Have you ever paid any taxes since I was Treasurer?

A. I don't believe I have.

Q. Did you ever pay me any taxes since I was Treasurer?

A. Not that I know of.

Q. Do you know how long I was Treasurer?

A. I don't know.

Q. Did you not receive every year tax bills and statements of the taxes due upon this property?

A. On my two acres?

Q. Upon this property?

A. I didn't receive none on mine.

Q. That isn't the question.

A. The bills came there.

Q. Did it not include the taxes upon the two acres which you claim belongs to you?

A. I don't know whether it did or not; I have got two tax bills—separate bills, sent of the two acres; I brought one to your office if you remember, when I wanted to find out the taxes; I brought you one bill when I wanted to find out the taxes on my two acres.

Q. You never paid me any taxes, did you?

A. No, sir, I couldn't find out what to pay you.

Q. At the time that you say you brought your tax bills to me, at the time that you brought the tax bills to me—

Witness. I didn't bring any tax bills.

Q. At the time you brought a tax bill to me, what did I tell you?

A. I forget now what you said; you got the map down, and you wanted to know where this property of mine laid.

Q. Did you ever bring me a tax bill of those two acres?

A. Yes, sir.

Q. Separate?

A. Yes, sir.

Q. Can you produce such tax bill?

A. Yes, sir.

Q. Will you produce it?

A. Yes.

Q. Who made out that tax bill?

A. Johnson, I think.

Q. Do you not know that Johnson was the assessor who made the assessment of taxes?

A. Yes, at the time.

Q. Have you ever known of your property, during Johnson's assessorship, being assessed to you as far as those two acres were concerned?

A. I have one or two bills.

Q. Did you ever know, during the time of Mr. Johnson's assessorship of your two acres being taxed separately?

A. Yes, sir.

Q. What year?

A. I couldn't say what year, but I have got the bill; I can show you a bill.

Q. Is that bill receipted?

A. No, sir, because I wanted to find out what the dog taxes were.

Q. When did you get that bill?

A. I couldn't say.

Q. What year was it made out in?

A. I couldn't tell you.

Q. It wasn't made out during my term of office, was it?

A. That I don't know.

Q. Was it made out back of 1884?

A. I couldn't say, but the bill will tell itself.

Q. Was that property then assessed to you?

A. The two acres?

Q. Yes.

A. It must have been, or I wouldn't have got a tax bill.

Q. Did you ever look up the tax to see whether it was assessed to you?

A. No, sir.

Q. Are you familar with the manner in which taxes are assessed in Kearney township?

A. No, sir, I don't trouble my head much about them.

Q. You say that during the last years, before you signed this deed mentioned, or sign this paper which you say was a lease, that you didn't receive your tax bills?

A. Back of this time I didn't; I have got one or two tax bills.

Q. Did you not receive every year, from 1884 up to 1889—

Mr. McGee (interrupting): He has'nt sworn that he didn't get tax bills; he has sworn—

Q. (continued) yearly, the tax bills for your property included?

A. I didn't get tax bills first off; I got tax bills towards the last.

Q. Did you not frequently, during my term of office, come to me for tax bills?

A. No, sir; I came there to see what my taxes were.

Q. Did I not make out tax bills for you and send them to you?

Witness: On my two acres?

Mr. Parker: On the property as assessed by the assessor?

A. Yes, the whole of it together.

Q. Was not your two acres included?

A. I suppose included with the whole.

Q. Did you not call to see me in regard to having your taxes apportioned?

A. Yes, sir.

Q. Twice?

A. Yes, sir.

Q. At two separate times?

A. More than once.

Q. What did I tell you?

A. You said you would try and do it for me, and you never done it.

Q. Are you sure of that?

A. Yes, sir.

Q. Do you remember my referring to any law book in regard to it?

A. I think you did.

Q. Do you remember my reading you the law in regard to apportioning the taxes by townships and boards of townships?

A. That I couldn't say.

Q. Do you remember my showing you the plan you would have to follow in order to have the taxes apportioned among the different owners?

A. I don't know about that.

Q. Do you remember that I told you that one of the parties being a non-resident it would be necessary for the apportionment to be advertised?

A. I don't remember it.

Q. Do you remember saying that, in consequence of the expense attached to the advertising, it wouldn't be necessary for me to do it?

A. I don't remember it.

Q. Do you ever remember of my refusing to give you tax bills, or to do that work for you if you wanted it done?

A. You promised to do that—to have my two acres apportioned, and you never done it.

Q. Do you know the reason why it was not done?

A. I don't know.

Q. Do you remember that because of the fact that it would have to be advertised under the statute you would have to abandon it?

A. No, sir.

Q. Are you at all familiar with the manner in which tax sales are conducted in the township of Kearney?

A. I am not, sir.

Q. You allege that you have received no notice of the tax sale of this property?

A. No, sir.

Q. Do you remember that the property yearly was advertised for sale in the two newspapers printed and circulated in the township of Kearney, county of Hudson?

A. I remember the township buying it in once or twice.

Q. Do you remember of having heard that the township bought this property in?

A. Yes, sir.

Q. Do you know for what years Mr. Bowers paid the taxes upon that property?

A. No, I do not.

Q. Do you know how long a time from the time the township buys the property in the owner has the right to redeem?

Mr. McGee: I object to that, because it calls for a legal opinion which I am convinced neither counsel nor myself can give.

Q. Do you know how many years expired between the time that the township bought this property and the time that Mr. Bowers took the deed of it?

A. No, sir, I do not.

Q. You don't know whether it was two, three or four years?

A. I couldn't say how long it was.

Q. This was in April, '91—do you not know that the paper to which you have testified as being served upon you, was a writ in ejectment?

A. I don't know what it concerned, I am sure.

Q. Were you not told that it was a writ in ejectment?

A. I don't know as I was.

Q. Didn't I tell you that it was writ in ejectment?

A. You might have told me so, I don't remember.

Q. Just after it was served upon you, did I not tell you that just after it was served upon you?

A. I don't remember whether you did or not.

Q. Were you not notified by me that Mr. Bowers had purchase this property—that he had purchased it?

A. I believe you told me so in the office.

Q. Before the suit in ejectment was commenced?

A. No, sir, not before.

Q. How long was it from the time that Mr. Bowers purchased the property that he commenced the suit in ejectment?

A. It was shortly afterwards; I went up to your office.

Q. You don't know how long it was between those dates?

A. No, sir.

Q. During the pendency of this action in ejectment, did you come to see me?

A. After that?

Q. Did you come to see me during the pendency of the action of ejectment, after you received the summons in ejectment?

A. Yes, I guess I have been in the office more than once.

Q. Then you took the summons to Messrs. Coult & Howell?

A. Yes.

Q. And they took charge of the case for you?

A. Yes, sir.

Q. Between the time of the suits being commenced, and the time of judgment being entered, did you have any conversation with me in regard to a lease?

A. Yes, sir.

Q. What was that conversation?

A. Well, you was to give me a lease for three years, at $150 a year.

Q. I had then told you that this action of eject-

ment was brought for the purpose of putting you out of possession of the premises?

A. Yes, sir.

Q. And suggested that you take a lease?

A. Yes, sir.

Q. And that Mr. Bowers would lease you that ground for $150.

A. Yes, sir, for three years.

Q. What ground did I say that he would lease you?

A. As I supposed it was the whole ground.

Q. And did you agree to take that lease?

A. I did; I consulted my folks, and they thought it would be the best thing; we would have three years to redeem it in.

Q. That was before the judgment was entered in the ejectment suit, was it not?

A. It was after I had these papers served upon me.

Q. It was before the constable came to your property?

A. It was after—I didn't know anything about it until I received this paper.

Q. That was when the constable came and served you with the paper; now, between that time and the time that he came with the execution was when you and I talked with regard to the $150 rent?

A. I don't remember ever seeing this constable?

Q. Do you remember ever seeing the constable there with an execution?

A. No, sir.

Q. Do you know whether the constable was there with an execution?

A. No, sir, I don't believe he ever was there.

Q. Or the sheriff?

A. No, sir.

Q. The sheriff, Mr. McPhillips?

A. I never saw him.

Q. And Mr. Carrol was the deputy?

A. He was the one served the first papers on me

Q. And you don't remember seeing him there with the writ of execution?

A. No, sir.

Q. Between this time you and I spoke of taking a lease for $150 a year for three years?

A. Yes, sir.

Q. And you were to furnish security, were you not?

A. You asked me about security, and I said there was no need of it; that I would pay in advance; you asked me if my brother Bill, at Montclair, would go security.

Q. Did you see your brother Bill about it?

A. No, sir; the next time I saw you you had those papers drawn up that I signed.

Q. You never furnished the security, did you?

A. I had no need to.

Q. You never did?

A. No, sir.

Q. We talked about the security?

A. Yes.

Q. And you never furnished it?

A. I had no need to furnish it.

Q. What was it that brought you to my house to sign this lease as you call it?

A. To get the lease of the property for three years.

Q. What reason did you have for coming?

A. For that reason, that's all.

Q. Was it not from the fact that the Sheriff had been there to put you out of possession?

A. The Sheriff was never there.

Q. Or his deputy?

A. Never there, or down to the house; the papers were served on to me up on the road when I was coming home from work.

Q. You don't know whether the Sheriff or his deputy was ever there?

A. He might have been there and I wouldn't know it.

Q. Do you know how long it was from the time the

suit was commenced to the time that you signed this paper?

A. I do not.

Q. When you came to my office in Arlington who was in the room besides me?

A. I don't know as any one—wasn't any one there—I don't know who was there, it appears some one was there when I went in, but wasn't there when I signed that paper; we was all alone.

Q. Do you remember how long you were there with me?

A. I wasn't there but a few minutes.

Q. Weren't you there at least a half hour?

A. I don't know.

Q. You say you weren't there but a few minutes, that might give the wrong impression?

A. I wasn't there any longer than I could help when I found out what I had signed.

Q. Do you remember my showing you anything else besides the paper which you claim is a deed?

A. No, sir.

Q. What else was there upon my office table, if you remember?

A. I don't know.

Q. Didn't we talk about this property together, about the whole of it?

A. At that time, no sir.

Q. Didn't say anything about it?

A. No, sir.

Q. Did I say anything, do you recollect, about how much Jane Routan's share in this property could be bought for?

A. Not that evening.

Q. That was the last time?

A. We never talked anything about it the last time—that was the last time I was at your house.

Q. Didn't we have a conversation about buying the interest of these heirs?

A. You spoke about it before that.

Q. The heirs had no interest whatever in your two acres, had they?

A. I don't suppose they had.

Q. And then we were talking about the other property, were we not?

A. We did one time I was there before the last time.

Q. During the time of this ejectment suit, was it not?

A. I suppose it was after I received this paper.

Q. Didn't we speak about purchasing Jane Routan's interest?

A. There was something said about it one time there—that was first off.

Q. Then we did speak about purchasing this interest, did we not?

A. I don't know.

Q. Do you remember saying how much you thought it could be purchased for?

A. I do not.

Q. Do you remember you saying it could be purchased for $500?

A. No, sir, you said it could be purchased for that.

Q. And what did you say?

A. I told you I didn't know.

Q. And do you remember saying anything about Harry Williams' interest—his wife's interest?

A. I almost forget now.

Q. Did you not say to me you thought it would be difficult to get that interest, because Harry and his wife were not upon good terms?

A. I might have said so.

Q. And you didn't think he would sign off?

A. I might have said so.

Q. Do you remember saying anything about the interest of this one who lives in the west?

A. I most forget, it might have been talked about.

Q. That you would endeavor to find out what they would take for their interest?

A. No, sir, I don't remember saying any such thing; no interest for me to find out.

Q. You are sure that at the time that you signed this paper it wasn't read to you?

A. Yes, I am sure of it.

Q. Ever remember seeing this map which I show you, marked "Hudson Orphans Court. In the matter of assignment of estate dower interest of John Van Emburgh, filed July 29th, 1872"?

A. I don't remember ever seeing it.

Q. You don't remember that I didn't show you that?

A. I don't remember that I saw that before.

Q. You don't remember of seeing this map which is also attached to it?

A. No, sir.

Q. Now, Mr. Meyers, this piece of property, marked with red lines, is the 12 and 79-100 acres, is it not, which is included in the paper which you say you thought was a lease?

A. I don't know anything about that map anyhow.

Mr. Parker: The first map that I speak of is marked B, and the other one A.

Q. This is the piece of property (referring to map A) which with other property on the other side of the road was set off to Susan Shoemaker as her dower, by the Commissioners, is it not?

A. Yes, sir, that looks like it.

Q. And in the paper which you signed and thought was a lease, is included that piece of property, is it not?

A. It included it, yes, all of it.

Q. It includes that piece of property?

A. Yes, sir, all of it.

Q. And you have examined that deed, read it over?

A. No, sir.

Q. Never have read it at all?

A. No, sir.

Q. And the piece of property on map B, marked 12 and 79-100 acres, and described by red boundary lines, includes the meadow property and the two acres belonging to you, does it not?

A. Upon my word, I can't make out nothing about that. (Referring to map.)

Q. What property is this along the turnpike? That is where the quarry is, your quarry, as you call it. On Schuyler avenue?

A. Oh, on Schuyler avenue.

Q. That's marked turnpike road, but it's Schuyler avenue. There is 12 and 79-100 acres of meadow that belonged to you there, does it not?

A. No.

Q. Its assessed to you then?

A. There ain't nine—a little over eight acres.

Q. This is the Bellville turnpike road (referring to road marked "Turnpike Road")?

Q. Do you not remember that at the time that you signed that paper which you say is a lease, that this map (B) was upon my table?

A. Don't remember seeing it.

Q. And that we followed these courses and you located it as the meadow property?

A. It was a map which you had hanging up; it was a township map that you got down.

Q. I am speaking now of the time that you executed that paper, supposing it to be a lease?

A. I didn't see any map.

Q. You didn't see this map?

A. Not to my knowledge.

Q. You did'nt see either of these maps, marked A and B?

A. No, sir.

Q. At the time that you executed that paper at my house, do you remember what evening it was?

A. No, sir, I do not.

Q. What was said by you in regard to your wife executing that deed, if anything, there?

Witness: What I said?

Q. What was said by you, if anything, in regard to your wife executing the paper?

A. At that time, I said my wife wouldn't do it, or I wouldn't either.

Q. You said that your wife wouldn't do it?

A. Yes, that's what I said, nor I either.

Q. You did sign that paper in my office?

A. I am satisfied I signed a paper in your office, but I didn't know what it was until you told me afterwards.

Q. And we spoke about your wife's signing it?

A. And I told you she wouldn't do it, nor me either.

Q. When did you say she wouldn't do it?

A. Then.

Q. At the time that you signed it?

A. Yes, sir, at the time you told me that I would have nothing more to with it after three years.

Q. You had already signed the paper?

A. I admit it.

Q. Did I tell you why it was necessary for your wife to sign it?

A. I don't know as you did.

Q. What was said about it?

A. I most forget what was said about it; there wasn't much said then, anyhow, after I found out what it was.

Q. There was something said about your wife's signing it?

A. Oh, yes, the deed—or the lease.

Q. Which was it, the deed or the lease?

A. The lease.

Q. Then Mr. Meyers, she was to sign something according to the first conversation?

A. She was to sign a lease, yes sir.

Q. She was to sign something?

A. Yes, that's correct.

Q. Was there anything to be paid to her by signing it?

A. Not to my knowledge.

Q. Wasn't there anything said between you and me?

A. Nothing more than in the street, after I had signed it, when you was going to get Bowers to make it over as a lease, then you said he wouldn't do it, and I met you in the street and you said you would give my wife Fifty dollars to sign it, and I said she wouldn't do it.

Q. Did you not say, at the office, at the time that you signed the paper, that your wife would sign it for Fifty dollars?

A. No, sir, I didn't; it wasn't mentioned.

Q. Was there anything said about Ffty dollars?

A. No, sir, not at that time.

Q. Did you not say you would let me know whether she would sign it for Fifty dollars?

A. No, sir.

Q. Didn't you speak to your wife about her signing a paper for Fifty dollars?

A. No, sir; after I met you in the street I went home and told her what you had said.

Q. What did you ask me?

A. I asked you if you were going to get Mr. Bowers to put in the restrictions, and you said he wouldn't do it, and that ended that, and you asked me if my wife would sign it for Fifty dollars, and I said she wouldn't do it.

Q. How many days after?

A. Some days after.

Q. A few days after?

A. Yes, sir.

Q. How many?

A. I couldn't say.

Q. After you signed this paper you saw me before I went to see your wife.

A. Yes, sir.

Q. And what did you tell me then?

A. I told you she wouldn't do it, accept the fifty dollars, or me either.

Q. How would you know she wouldn't accept the fifty dollars if you had not spoken to her about it?

A. I know she wasn't so foolish.

Q. Hadn't you spoken to Mrs. Meyers between the time you executed the paper and the time you saw me?

A. No, sir, not until I met you in the street.

Q. Do you recollect when that was?

A. It was shortly after I was to your office—I couldn't say.

Q. This paper which you signed at my office wasn't drawn at that time, was it; it was all ready for you to sign when you came there?

A. I signed a paper there; I supposed it was all right.

You don't know when it was drawn?

A. I didn't know anything about it; didn't know what was into it until you told me after I had signed it.

Q. You didn't have any conversation a few days before in regard to signing a paper?

A. In regard to signing a lease.

Q. Where was that conversation?

A. In your office.

Q. And I said I would prepare some paper?

A. Yes, sir.

Q. And we made an appointment for you to come on a certain night and execute it?

A. I suppose we did.

Q. And you came up and executed it?

A. Yes, sir, I signed the paper there, as I thought was a lease, nothing more.

Q. How do you spell your last name, Mr. Meyers?

A. Myers.

Q. Do you remember your telling me I had spelled your name wrong in the deed?

A. I do.

Q. When did you tell me that?

A. I remember of something of the kind, but I don't remember of telling you that; when I wrote my name there you said "you write your name with a 'C'." You didn't have the "C" into it, and you asked me about the middle letter.

Q. Do you remember telling me that I hadn't spelled your last name correctly?

A. No, sir, I don't remember anything of the kind. I remember you speaking about it, after I had written my name with the middle letter "C", but I never spoke about it.

Q. Didn't you tell me I hadn't used your middle letter in the deed?

A. I did not, as there wasn't any use of telling you, you could see that.

Q. You don't remember that you did not?

A. I don't remember anything about it.

Mr. McGee: Objected to because the witness has already stated what he says was all that was said about it.

Q. Don't you remember telling me that I had spelled your name with an "e," and you spelled it "Myers"?

A. No, sir, I don't; don't remember telling you any such thing; something said about my middle letter, after I wrote my name, and that you said yourself.

Q. After you had executed this paper which you say is a lease, and after we had had the conversation in the street which you testified to, in regard to Mrs. Meyers, and after you had said, as you say, that she wouldn't accept Fifty dollars to sign a paper, when was the next time that you saw me?

A. I don't remember seeing you, only in the street.

Q. Did you ever, after that, have any conversation with me about this matter?

A. Only on one Fourth of July, when my brother met you there in your door-yard; that's the only time.

Q. Then you spoke to me about this matter?

A. No, sir, that's the only time I spoke to you in regard to anything.

Q. Then did you not speak to me about this matter?

A. My brother did.

Q. Did you say anything?

A. I don't remember saying anything.

Q. You was with him?

A. Yes, sir.

Q. You were outside the fence?

A. Yes.

Q. And I was inside the fence?

A. Yes, sir.

Q. And I came to the fence and spoke with you?

A. Yes, sir.

Q. You heard the conversation that you and your brother and myself had there?

A. I might have heard it, but I don't know what was talked about; I know it was talked about the place.

Q. Was there anything said about this paper?

A. Oh, yes, sir.

Q. You remember that distinctly?

A. I most forget what was said. I remember the paper was spoke about.

Q. Tell what you remember?

A. I don't remember much about it; I know you and my brother here was talking about it.

Q. Tell what you do remember.

A. Well, I most forget what was said about it; I know it was spoke about betwixt my brother and you.

Q. You remember that it was distinctly spoken about—this paper?

A. I don't know what was said about it.

Q. Tell to the best of your recollection?

A. I don't remember much about it, what was said about it?

Q. Whatever you do remember?

A. I know you and my brother was talking about this paper.

Q. What was the reason, if any, for your coming to see me on that Fourth of July?

A. We couldn't help but see you; we ran again you.

Q. Was it accidental?

A. It was accidental.

Q. You didn't intend to see me?

A. No, sir.

Q. You called me to the fence?

A. I think my brother spoke to you first, and you came to the fence; you was in the yard.

Q. Do you remember Mr. Meyers, of your brother William Meyers showing me a letter at the fence at that time?

A. Don't remember, no, sir.

Q. Or any paper that he had?

A. No, sir.

Q. And saying that he had received it from me?

A. No, sir; I remember him showing me that very day a letter that was sent from Bowers to him; I don't know whether he showed it to you or not.

Q. And you don't know whether that letter purporting to come from Bowers might not have come to me?

A. Bowers name was on to it.

Q. Did you see that letter?

A. Yes, sir.

Q. Do you know the contents of it?

A. Yes, he stated that being I had signed my name to this paper, he wouldn't accept the tax.

Q. Didn't he say anything about your wife's signature to the paper?

A. No, sir.

Q. Do you know where that letter is?

A. I guess my brother is got it; it wasn't sent to me.

Q. You mean William Meyers?

A. Yes, sir.

Q. Can you produce it?

A. I don't know; I guess he can.

Q. I ask you to produce it?

A. It wasn't sent to me.

Q. This is the letter? (Witness shown a letter which Mr. William H. Meyers produces).

A. I couldn't say, Mr. Parker. It read to that effect, anyhow.

Q. You think that is the letter?

A. I am pretty positive it is.

Letter offered in evidence and marked Exhibit D1.

Q. You have just read that letter which has been offered in evidence?

A. Yes, sir.

Q. And that was the letter that Mr. Meyers had on the Fourth of July, when he called upon me?

A. I am pretty positive of it; the contents was like it, anyhow.

Q. Do you remember what was said about the deed or the paper at that time?

A. No, sir.

Q. Was anything said about its being recorded?

A. Not that I know of; I don't know what conversation you and my brother had altogether; I didn't stand right up to you all the time.

Q. Was there anything said about not putting it in record for a time?

A. Not that I know of.

Q. Was there anything said at that time about paying the taxes up to Mr. Bowers?

A. That I don't know; it appears to me there was something said about the taxes, about paying them of course.

Q. And was there anything said about Mr. Bowers conveying the property to William in case the taxes were paid up?

A. Not that I know of, no, sir.

Q. How long were you there at the fence?

A. I didn't have no watch; I didn't keep the time.

Q. Can't you tell?

A. I couldn't say.

Q. You weren't there over an hour?

A. I couldn't say; I don't think we were.

Q. Did you hear your brother William make any proposition to me at all about the property?

A. Yes; I said I had heard that he had been down to your office in New York and offered to settle the taxes.

Q. Did you hear him say that at the fence?

A. I think he spoke something or other about it; I ain't positive.

Q. Was anything said then about any time in which the taxes were to be paid back to Mr. Bower?

A. Not that I know of; there was a time set; my brother set a time to meet you in your office.

Q. By either you or Mr. William Meyers?

A. By my brother.

Q. Was he not proposing to pay these taxes and redeem the property?

A. Yes, sir, he was going to redeem the property.

A. And did he not request, and you also, that this paper be not put on record for a time?

A. Not that I know of; don't know whether he did or not.

Q. Did you go to see lawyer Davis that day, that Fourth of July?

A. No, sir.

Q. Did you go to see Davis?

A. No, sir.

Q. Did your brother William go to see Davis?

A. I don't think he did; not while I was with him.

Q. Mr. Meyers, where is the quarry located on this property; is it on your two acres?

A. No, sir.

Q. Its on the upland, isn't it?

A. Yes, sir, betwixt what they call Coppermine avenue and Schuyler avenue.

Q. And the cemetery people have worked that quarry, haven't they?

A. They made a break onto it for a little while.

Q. When?

A. Last fall, I think it was.

Q. It was after the signing of this paper which you call a lease?

A. Oh, yes.

Q. Can't tell how long after?

A. Some time after that; I couldn't say exactly when it was.

Q. Did you ever hear that Bowers had sold this property to the Cemetery Association?

A. No, sir.

Mr. McGee: You mean not until after this litigation?

Witness: No, sir, of course I have heard so lately since this has been going on, but I didn't know at the time.

Q. Who told you?

A. I think I understood it here.

Mr. Voorhis: In Jersey City.

Witness: Yes, sir.

Mr. Voorhis: From whom?

Witness: Mr. McGee.

Q. Mr. Meyers, when was it I agreed to take the taxes; when was that?

A. I think it was in August.

McGee: '91?

Witness: '91, I think.

Q. You are not positive about that?

A. Nothing only what my brother told me; of course I didn't go down.

Q. Didn't I agree to take the taxes when you were present on the Fourth of July.

A. No, sir, not to my knowledge.

Q. And did I not say I would hold the paper off record until the first of August?

A. Not that I know of; didn't hear anything of the kind.

*Re-direct examination by Mr. McGee:*

Q. Mr. Meyers, as I understand you, what you have been testifying is that after the suit in ejectment was begun you agreed to accept the lease of the property, with the privilege of redemption as a means of disposing of the law suit, is that it?

A. Yes, sir.

Q. Did Mr. Parker tell you that if you did this the law suit would stop?

A. He told me virtually that.

Objected to as leading.

Q. Do you remember what Mr. Parker said to you which led you to accept the lease?

A. That led me to sign this lease, this paper?

Q. Yes.

A. Well, he said the sheriff would put us out.

Q. Did he say anything about, if you would sign the lease so and so would happen; tell what you can remember?

A. He offered to give me a lease for three years; with the privilege of redeeming the property.

Q. What did he say about the law suit in case you did that?

A. I don't know as anything was said about the law suit.

Q. Did the law suit go on after that; didn't you hear anything further about it?

A. No sir.

Q. This letter here that's just been offered in evidence, is that Mr. Parker's signature?

A. Well, that I couldn't say.

Q. Do you know his writing?

A. Not altogether.

Q. Where did you see that letter first, who had it?

A. My brother Bill had it, I think; I think that's the letter he has the last Fourth of July.

Q. Did you ever, at any time, to any person, under any circumstances, admit that you had knowingly signed a deed of the property? Did you ever admit that you signed a paper which you knew to be a deed?

A. No, sir.

Q. Why was it that you left the paper in Mr. Parker's hands after he told you?

A. I didn't think he would have anything to do with it; didn't think he would use my name; didn't think there would be anything done with it whatever.

Q. Do you know whether there had been any correspondence prior to this one in writing, with reference to Mrs. Meyers signing the deed?

A. No, sir.

Q. You can't recall the conversation that occurred on that Fourth of July, between your brother—

A. No, sir, I wasn't paying much attention to it.

Q. What are your habits as to temperance?

A. I drink once in a while.

Q. At the time that you sign the deed, had you been drinking?

A. I had been drinking the day before.

Q. The day before?

A. Yes, sir; so my wife didn't want me to go over.

Mr. Parker: I move that that be stricken out.

Q. You spoke of the Cemetery people quarrying that a little last fall?

A. Yes, sir.

Q. I think you said in your direct examination that you told them to quit; and they didn't quit?

A. Yes, sir; they left it, and they went to see Mr. Sickles, the superintendent, and he sent them back.

Q. How long did they quarry?

A. I don't know how many days.

Q. A week?

A. In the neighborhood of a week.

Q. Why didn't you use force to put them off?

A. Well, I didn't know whether I had a right to do it or not.

Q. Didn't know what your rights were?

A. No, sir; I stopped them, and they did stop, and Sickles put them to work again.

Q. With that exception has there been any effort made to get possession of any part of the property by anybody?

A. No, sir.

Q. Did Mr. Parker, or anybody, say anything to you about your wife executing that paper, before you had signed it?

A. Oh, yes, he spoke about my wife signing the lease, you know.

Q. What did you say to Parker as to what she would do in that respect; would she have signed it?

A. Yes, she would have signed the lease for three years.

Q. And when you said she wouldn't do it, nor you either, what do you mean?

A. Because we wouldn't sign it.

Q. What was the reason you said you wouldn't when you knew you had done it?

A. Didn't think he would use my name; didn't think there was any good on to it.

Q. You supposed that would go for nothing?

A. Yes, sir.

Q. Have you had any letters yourself from Parker?

A. Have not, sir.

Q. Or from Bowers?

A. No, sir.

Q. They mentioned in this letter that has been offered in evidence that the rent was to be a dollar a year, and you say one hundred and fifty dollars a year; was there anything said to you at any time about a rent of one dollar a year?

A. No, sir.

Q. Was there anything said to you about a lease except the lease you have mentioned, one hundred and fifty dollars a year?

A. No, sir.

Q. Did Mr. Parker show you any maps at the time the paper was signed?

A. No, sir.

Q. Township map?

A. No, sir.

Q. Well, what is this that he has been asking you about a map?

A. Well, when I went there to find out my taxes on the two acres he got down the township map, and he wanted to know where it was, and that's the time he got the map down.

Q. Up to the time you signed this lease, had you seen Mr. Bowers?

A. Oh, yes, my brother and me was in there once.

Q. Before you signed the lease?

A. I say before, before I signed.

Q. The lease is dated the twenty-seventh of May, had you seen Bowers before that?

A. Yes, sir.

Q. How many times had you seen Bowers before that.

A. Only the once.

Q. What conversation did you have then?

A. We went to see him about the taxes, and he said he had left it all to Mr. Parker.

Q. Are you willing now to join with the others in the payment of these taxes and the redemption of this land, according to the terms of the lease?

A. Yes, sir.

*Re-cross by Mr. Parker*:

Q. Have you paid any rent since you have been in possession there?

A. No, sir.

Q. Why not?

A. Never had no cause to pay rent.

Q. Didn't you agree to pay one hundred and fifty dollars a year.

A. Yes, but I didn't get a lease. Before I pay rent I want a lease, I should judge.

Q. Why was the law suit stopped?

A. I don't know.

Q. It was ended at the time that you signed that paper?

A. I don't know.

*Mr. McGee*:

Q. When you say you didn't get a lease, what do you mean by that—what view do you take of this paper that is in form a deed—this paper that you signed?

A. Well, I thought it was a lease, of course.

Q. You thought this would not be used, and that a lease would be given?

A. Yes.

*Mr. Parker*:

Q. You never paid a cent of rent—you never paid a portion of one hundred and fifty dollars a year?

A. Had no reason to pay it, who would I pay it to?

Q. Do you say that when you signed that paper you supposed you were signing a lease at one hundred and fifty dollars a year?

A. After I signed it you told me it was a quit claim deed, why would I pay rent?

Q. Weren't you there as a tenant?

A. I don't think I am there as a tenant.

Q. Didn't you say that the law suit was ended by your agreeing to sign a lease at one hundred and fifty dollars a year for three years?

A. I don't think I did; don't remember saying so.

Q. As a matter of fact wasn't the law suit ended?

A. Don't know.

Q. The sheriff never put you out of possession?

A. No.

Q. Nor any of his deputies?

A. No.

Q. You say that you are sometimes intemperate?

A. I say I drink.

Q. And under the influence of liquor?

A. Not liquor.

Q. On the night that you came to my house—

Mr. McGee: What do you drink?
Witness: Beer, and ale.

Q. At the time that you came to my house you were perfectly sober?

A. I don't think I was; couldn't be.

Q. Were you drunk?

A. I couldn't say; had enough that day anyhow.

Q. Were you drunk?

A. I went home and had a sleep and came over and saw you.

Q. You remember that you were there and signed a paper?

A. Yes, sir.

Q. And you remember, as you say, that it wasn't read to you?

A. Yes, it wasn't neither?

Adjourned to Wednesday, April 5th, at 10 o'clock A. M. at the same place.

MRS. KATIE E. CHAMPLIN, one of said witnessses, appearing before me, and being by me duly sworn, deposes and says that the answers she should give to the interrogatories put to her should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants and Joseph Parker, Jr. Esq., on behalf of the defendants, as follows:

*By Mr. McGee.*

Q. Where do you live, Mrs. Champlin?

A. Cambridge, Mass.

Q. About what time did you get your stock in The Rural Homestead Company of New Jersey?

A. I do not remember exactly. I think it was in 1882, or something about there.

Q. Have you ever had a dividend on it?

A. No, sir.

Q. Did you ever have any notices of annual meetings?

A. No.

Q. Or meetings of any kind?

A. Not that I remember.

Q. Did you ever have a statement of the Company's condition?

A. No, sir.

Q. Did you ever receive any communication from this Corporation of any sort?

A. None that I know off.

Q. You received your stock from Mr. Daniel L. Scherer?

A. Yes.

Q. And your knowledge of the Company all was through him?

A. Through him, yes.

Q. You never knew anything about it except from him?

A. No.

Q. Have you been in sympathy with Mr. Wildes and Mr. Scherer in their recent efforts to acquire information with reference to the Company?

A. I have.

Q. And to secure a change of management?

A. Yes.

Q. What was your object in desiring a change of management.

A. Well, I suppose primarily because there was no dividend, and I thought it was not perhaps as it should be.

Q. Had there been efforts made by those of you in this neighborhood to procure the books to be written up? The accounts?

A. I heard so, although I do not know.

Q. You have entrusted the matter on your behalf altogether to Mr. Scherer?

A. Yes, entirely.

Q. It has been alleged in the answer and affidavits of the defense in this case that there were some ulterior object on the part of the Boston stockholders in their effort to procure a change in the management. Have you any knowledge of anything of that sort?

A. No, sir.

Q. Have you yourself, or have you heard from any

of the others any reason given except to have the management better.

A. None whatever.

*Cross Examination* :

Q. [*By Mr. Parker, Jr.*] Mrs. Champlin, you say that Mr. Scherer represented you?

A. Yes.

Q. And he purchased the stock for you, did he?

A. I don't know exactly what you mean by "represented me."

Q. In the purchase of the stock. He represented you in that respect?

A. I suppose so. He gave it to me, Mr. Parker.

Q. Then he invested your money for you in that stock?

A. No, it was a gift to me.

Q. You do not know of any reason why you have not received any dividend? You never have received any?

A. No, I never have received any.

Q. You did not know of any reason why you have not received any?

A. No, sir.

Q. Then you do not know of your own knowledge whether Mr. Scherer received for you any statement of the expenses, etc.?

A. Well, it did not stand in his name ; it stood in my name.

Q. You do not know of your own knowledge whether he received any for you, do you?

A. Well, I never heard of any.

*Re-direct Examination.*

Q. (By Mr. McGee.) Mr. Scherer is your uncle?

A. Yes, sir.

Subscribed and sworn to at Boston in the County of Suffolk, and State of Massachusetts, before me this thirty-first day of March, A. D., 1893.

*Commissioner of Deeds of the State of New Jersey.*

WALDO E. COWDREY, one of said witnesses, appearing before me, and being by me duly sworn, deposes and says that the answers he should give to the interrogatories put to him should be the truth, the whole truth, and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants and Joseph Parker, Jr., Esq., on behalf of the defendants, as follows:

*By Mr. McGee:*

Q. Mr. Cowdrey, where do you live?

A. In Wakefield, Mass.

Q. And what is your business?

A. I am bookkeeper in one of the National Banks in the city here.

Q. And you are a stockholder in The Rural Homestead Company of New Jersey?

A. I own forty-four shares.

Q. When did you buy them?

A. Well, the first that I bought was when the Arlington Cemetery Association was organized at the start, with the other Boston stockholders.

Q. That must have been about 1882?

A. Yes, sir, I think that was the date.

Q. The par value was $50.00.

A. Yes sir.

Q. Now, from that time to this have you ever had a dividend?

A. No, sir.

Q. Are you a lot owner in the Arlington Cemetery?

A. I own one lot.

Q. At the time you bought the stock who were the officers of the Company? Of the Rural Homestead Company?

A. Mr. Pratt was President and Comptroller, and Mr. Torrey, Secretary.

Q. Julius H. Pratt and Henry F. Torrey, do you mean?

A. Yes, sir.

Q. You say "President and Comptroller." Was not the office of Comptroller connected with the Cemetery and not with the Homestead Company?

A. Well, perhaps I am mistaken. Mr. Pratt was President of The Rural Homestead Company, and I think he was Vice-President and Comptroller of the Cemetery Association.

Q. Now, I am speaking of The Rural Homestead Company. Who has been President of that Company from that time until the present?

A. Mr. Pratt.

Q. And who has been Secretary?

A. Mr. Torrey.

Q. And Treasurer?

A. Mr. Torrey.

Q. Now, in the Arlington Cemetery Association at that time who was President?

A. Mr. Dummer.

Q. Now, who held the office of Comptroller?

A. Mr. Pratt was Vice-President and Comptroller.

Q. And who was Secretary of that?

A. Mr. Torrey I think.

Q. Do you know how much active co-operation there was on the part of Mr. Dummer in the affairs of the Cemetery Association at that time, or while he was President?

A. I think his connection with the Company was largely nominal.

Q. Had he other business?

A. He had other business; he was Paying Teller

of the Merchants' Exchange National Bank of New York City.

Q. Did Mr. Dummer spend any time at the office of the Cemetery Company to speak of?

A. Well, he might have been there evenings sometimes, but during my business there I do not know that I ever saw him at the office of the Company.

Q. Now, from the time you bought your stock how long was it before there was an annual meeting held, or a change in the election of Directors?

A. Well, I could not say about that. I could not say from memory.

Q. Well, whether there was any within the next year or two as far as you can recall?

A. My impression is that there might have been some annual meetings held of the Rural Homestead Company for a year or two after their organization, and then that there were no meetings at all called.

Q. Well, from, do you remember what time?

A. Well, there was a meeting of the Rural Homestead Company in November, 1885, to subscribe additional stock if the stockholders saw fit.

Q. Did you take any?

A. Yes, sir, I took additional stock at that time.

Q. At that time?

A. Yes, sir. I think I held $2,000 originally, and at that time I subscribed for $200 more.

Q. On whose recommendation did you buy your original stock.

A. On Mr. Scherer's recommendation, and the papers that he had came from Mr. Pratt.

Q. Do you know whether Mr. Scherer and Mr. Pratt were friends at any time in their lives.

A. Yes, I learned that, and I talked with Mr. Scherer and he said that they were old college friends. Classmates.

Q. Harvard?

A. No, Yale.

Q. At the time you bought your stock had you ever seen the Cemetery?

A. Well, I think before I completed the payments to my stock that I went out there and saw the grounds.

Q. I am speaking of the time you bought, or agreed to buy?

A. No, I don't think I had. I think that I agreed to take a certain amount of stock before I ever saw it.

Q. Now, when this meeting was held in the fall of 1885, which you say was for the purpose of having more stock taken, what was the reason given, and by whom, for the issue of more stock?

A. The reasons were given by the officers of the Company, more especially Mr. Pratt, and his statements were substantiated by Mr. Torrey, that the money was needed to put the Cemetery into condition and carry on the enterprise.

Q. Well, who was the spokesman at that meeting?

A. Mr. Pratt.

Q. You say you did subscribe for how much more?

A. For 10 per cent. of my holdings at that time.

Q. That is an additional 10 per cent.?

A. Yes, an additional 10 per cent.

Q. How much were your holdings? At that time?

A. I had $2,000.00.

Q. Who else were present?

A. Mr. Scherer and Mr. Champlin.

Q. And Mr. Wildes?.

A. Yes, I think Mr. Wildes was there. I am not certain about Mr. Wildes being there.

Q. Did all the Boston people then subscribe for 10 per cent. more? All that were there?

A. I think that they did.

Q. Now, when was the next annual meeting after that one, or the next stockholders' meeting after that one?

A. Well, I could not say about that. I have no memorandum to refresh my memory about the matter.

Q. Was it pretty soon or a good while?

A. Well, I am not certain that there was another meeting ever held.

Q. Well, was not there a meeting held in 1890?

A. Yes, I mean up to a comparatively recent date.

Q. Well, so far as you can remember, was there any meeting held of stockholders between that one of November, 1885, and the annual meeting which was held sometime in 1890?

A. Well, I think not.

Q. Are you sure that meeting of 1885 was in November? Wasn't it December?

A. Well, I feel pretty certain that it was in November; I think it was the 20th of November, 1885.

Q. Well, did you get between that and this meeting in 1890 any notices of any meeting?

A. I don't recollect of receiving any.

Q. Now, do you remember when the meeting of 1890 was held? Was it held at the time provided by the By-laws?

A. Well, as I understand it the time for the regular meeting was in June, and my impression is that this meeting in 1890 was called in January.

Q. July, isn't it?

A. July? Well, I could not say about that.

Q. You are speaking now of The Rural Homestead Company.

A. Yes, of The Rural Homestead Company.

Q. Were you aware of the contract upon which the sale of the land of The Rural Homestead Company was originally made to the Cemetery Company, namely, that The Rural Homestead Company should receive 50 per cent. of the sale.

Question objected to by Mr. Parker, subject to appeal.

A. Why I was most certainly aware of that con-

tract existing between the Cemetery Association and the Rural Homestead Company, and that was part of the reason for my subscribing to the stock of the Rural Homestead Company.

Q. Have you ever given any consent to any change of the terms of that contract.

A. Yes, sir, I think I consented to its being made 45 per cent. instead of 50 per cent.

Q. Have you ever consented to any other change?

A. No, sir, that is the only change.

Q. Have you consented in any wise to any arrangement by which payments should be postponed entirely, or postponed at all?

A. Payment of dividends?

Q. No, payments of the Rural Homestead Company's proportion of the proceeds of sales?

A. No. sir, I have not.

Q. During the five years from 1885 to 1890, do you know what was the condition of the books of the Cemetery Company?

A. Well, the books of the Cemetery Company were a blank and not written up to date.

Q. How do you know that?

A. Well, I know it from my connection with the Cemetery Association as Auditor of the Association.

Q. What do you mean by Auditor?

A. Well, I was chosen to perform the usual duties of an Auditor; to examine accounts, and see if they were correctly kept and properly vouched for.

Q. You mean at the annual meetings?

A. Well, it should properly be done by the Auditor previous to the annual meetings in order that the accounts might be presented to the stockholders interested at the annual meeting.

Q. Well, did you audit?

A. I did perhaps for a couple of years.

Q. That is up to about 1882?

A. Yes, I think about 1882.

Q. Then after that?

A. After that I was not called upon for the reason that the accounts were not made up so that they could be audited.

Q. Now, just tell us exactly the condition in detail of those books. What books were kept, if any, and how much they were kept up?

A. Well, the accounts of the Cemetery Association were kept in a single book, in which all the receipts were recorded and also all the expenditures supposed to be kept in terms of a month and balanced at the end of each month.

Q. Now, are you telling us what was done or what was the rule?

A. That was the rule in the opening of the accounts as they continued for a couple of years or so.

Q. That was the method. Now, then, in what respect was it fulfilled?

A. It was not fulfilled after this short time from the opening of The Cemetery Association.

Q. Not kept at all?

A. Not kept at all in the book provided.

Q. No entries at all?

A. No, sir.

Q. Were there any books kept that you saw?

A. Not that I am aware of.

Q. Well, in your efforts to audit would the books have been within your notice if there had been any?

A. I could not make any efforts to audit because there were no books to audit.

Q. Did you try to get hold of the books. Did you ask for them?

A. Well, I never was called upon to audit the accounts for the reason that they were not in the books.

Q. Who had called upon you?

A. The officers of the Cemetery Association.

Q. Well, who?

A. Mr. Pratt or Mr. Torrey.

Q. Did Mr. Dummer?

A. Well, Mr. Dummer himself was an auditor of the Cemetery Association.

Q. Who were the auditors?

A. The auditors at the organization were Mr Charles H. Dummer, Mr. J. T. Wilcox and myself.

Q. Mr. Dummer lives where?

A. In Jersey City.

Q. Mr. Wilcox lives where?

A. In Montclair.

Q. And you where?

A. Wakefield.

Q. Wakefield is near Boston?

A. About ten miles out.

Q. During this year was that Board of Auditors called together at all?

A. Not after the accounts ceased to be written up.

Q. How many times during those five years were you in the office of the Company?

A. After the accounts were not written up?

Q. Well, after 1885.

A. I am not able to cover all the times but I took off in my expense book the following dates when I was there, and I can read them to you. I was there from April 6th to 15th, 1888, and from January 7th to 11th, 1889, and from May 6th to 11th, 1889; also from October 8th to 16th, 1889, and from January 16th to 27th, 1891.

Q. Now how did you happen to be there those days in 1888; you say April 6th to 15th?

A. Well, I think I was requested to go on there by Mr. Torrey, to assist him in making up the accounts.

Q. Had there been any criticism at that time by the Boston stockholders?

Question objected to by Mr. Parker as leading.

A. Yes, there had been objections; most decided objection from the Boston stockholders.

Q. At that time?

A. Yes, at that time.

Q. Had you been present when anything was said?

A. I was present and heard objections made by Mr. Scherer.

Q. To whom?

A. To me.

Q. Well, I mean were you present at any time when objections were made to Mr. Pratt?

A. Yes, I think that Mr. Scherer made objections at the time of the meeting for the increase of the stock, when the additional 10 per cent. was asked for in November, 1885.

Q. That the books were not even then up?

A. That the books were not kept in proper shape.

Q. Well, you were there these nine days, or thereabouts, in April, 1888, doing what?

A. I was assisting Mr. Torrey to get the accounts into the book which was provided for them to be kept in.

Q. And did you accomplish it up to date?

A. No, not up to date, but we accomplished some work though we did not catch up.

Q. Well, now then, you were there again in 1889, in January from the 7th to the 11th, and May from the 6th to the 11th, and October from the 8th to the 16th. What was the occasion of those three visits?

A. Well, the occasion was to assist Mr. Torrey to get the accounts written up.

Q. Well, when you got there in January of that year did you find that anything had been done on the books since you were there before in April, 1888?

A. No; I think not.

Q. Well, in May when you went back there had there been anything done on the books since the then previous visit?

A. I think not.

Q. And how in October?

A. Same condition.

Q. Then you did not find when you were away that any effort was made to keep up the books?

A. No, sir.

Q. Do you know whether by the year 1889 the Boston stock-holders, as they were called, were becoming clamorous to have the books attended to?

Question objected to by Mr. Parker as leading.

A. Yes, I am very well aware of that.

Q. Do you know what was the occasion of the annual meeting of The Rural Homestead Company being held in June or July, 1890?

A. I think the occasion was at the request of the Boston stock-holders. They wished to get at the condition of things.

Q. Who were the people in Boston to whom the other stock-holders entrusted the matter?

A. Mr. Scherer and Mr. Wildes.

Q. Well, when you came to write the books up at these various times from what source did your information come?

A. From Mr. Torrey.

Q. And how had he kept the accounts?

A. I am not aware how he had kept the accounts, but as far as I know and can judge he had memorandums in envelopes of the various transactions, which he used to write up the accounts with.

Q. Well, you say your information came from Mr. Torrey. Now, in what shape did he impart it to you, verbally or in writing?

A. Well, sometimes verbally; I think most of the time he read it to me.

Q. Simply read it to you?

A. Yes.

Q. From what?

A. From his memorandums.

Q. From slips of paper?

Question objected to by Mr. Parker as leading.

A. Yes.

Q. Did he produce any book in which there was any account kept?

A. I think they had a book of the sales of the lots; of the lots that were sold, of course, but so far as any book which would record the financial conditions I do not know that he had any.

Q. Then the entries that appear on the books of this Corporation in your hand-writing are taken from Mr. Torrey's statements, and not from original knowledge?

Question objected to by Mr. Parker as leading.

A. Yes, sir.

Q. You went there again on the 16th of January, 1891, you say; what was the condition then of the books as to being written in since your last meeting?

Question objected to by Mr. Parker.

A. They were still very far from being brought up to date.

Q. Had they been written in or kept up any since your last work upon them so far as you can recall?

Question objected to by Mr. Parker.

A. So far as I can recall they had not.

Q. It is alleged in the answer and some of the affidavits in the case that all these accounts of the Cemetery Association were from time to time audited by you and passed upon. What is the fact with reference to that?

A. The fact is that I never audited or passed upon any accounts of the Cemetery Association after the first two or three years.

Q. At these times that you wrote in the books

and that appear in the statements or reports that were made, were vouchers furnished to you? Did you inspect the details?

A. No, I made no attempt to do anything, but simply assisted Mr. Torrey in getting the accounts up, and I was not there as an Auditor, and did not vouch for any of the accounts, of course.

Q. How was it that you happened to go down to Jersey City and do this work?

A. Well, it was done by request of Mr. Torrey, and perhaps at certain times I went down at the request of Mr. Wildes, when Mr. Torrey did not send for me.

Q. What was the object?

A. The object was to have the accounts of the Cemetery put in condition, so that stockholders of the Rural Homestead Company who were interested in the matter could know the financial condition of the association.

Q. When you went at Mr. Wildes' request what did you find Mr. Torrey's frame of mind to be with reference to letting you work on the books at such times?

A. I recall distinctly going on there at the request of Mr. Wildes with a view to working on the accounts and Mr. Torrey was not willing that I should do so, and said he did not know what The Rural Homestead Company had to do with the accounts of the Association anyway.

Q. Do you remember a conversation with Mr. Julius H. Pratt on the subject of the books at one time?

A. Yes, I recall a conversation with him with regard to the condition of the books.

Q. Can you recall what Mr. Pratt said?

A. I had been on there for a number of times, and instead of the books getting any nearer up to date they were farther behind, and in view of that condition Mr. Pratt said to me that he thought it would be well

and better to drop the whole matter and let the accounts go. He said there was no money in them for The Rural Homestead Company, and he thought it would be well to drop the whole matter and start anew.

Q. What do you mean by "start anew"?

A. Well, I mean start a new set of accounts.

Q. Well, then, what as to the accounts prior to that date?

A. Well, drop them; let them go as no use.

Q. Do you remember what answer you made to that?

A. Well, I don't know that I made any definite answer. It struck me as an absurd proposition.

Q. What was the condition of the account between The Arlington Cemetery Association and The Rural Homestead Company at that time?

A. They were owing them a large amount.

Q. Do you know what is owing by the Cemetery Association to the Homestead Company at this time?

A. No, I do not recall about the figures.

Q. Do you know the minimum?

A. No, I do not. I haven't it in my mind.

Q. Don't you know a sum over which it is?

A. Well, I want to explain that I knew it was a definite matter. The books show so I did not keep it in my mind at all, but I have an impression that it is over $10,000.00 and perhaps a great deal more than that.

Q. Have you any means of ascertaining that amount?

A. Yes, sir.

Q. Will you do so later?

A. I think it can be obtained from the books of the Association.

Q. I mean have you any means here of finding out?

A. No, sir, but I presume some of the Boston

stock-holders have statements that might have been received from Mr. Torrey that would show.

Q. Are you now aware of the fact that Robert O. Babbitt and Israel Crane have judgments against the Cemetery Association?

Question objected to by Mr. Parker as leading.

A. Yes, sir, I am aware of that fact.

Q. When did you first learn of that?

A. Well, I learned of it a very short time ago.

Q. And through what source?

A. From Mr. Wildes, whom I think had a copy of the judgment of the Court.

Q. From whom did he get it?

A. From your firm.

Q. Was any report of the fact of those judgments made at the Cemetery meeting of January last?

A. No, sir, not that I am aware of.

Q. Was any notice given to you that the Cemetery was being sued?

A. No, sir.

Q. Has any notice ever been given to you of any of the proceedings in connection with those judgments?

A. No, sir.

Q. Have you had any information whatever with reference to that excepting through our firm?

A. None at all.

Q. I have here in my hands a copy of a report to the stock-holders of the Rural Homestead Company at their annual meeting of July 9th, 1890. Did you see the original of that report? Were you present at that meeting?

A. I think I was present at that meeting.

Q. Did you hear the report read?

A. I heard the report read.

Q. Just look at this copy and see if it refreshes

your memory as to the amount of indebtedness by the Cemetery to the Homestead Company.

A. Well, I presume that is the correct amount, but as I say I did not fix the amount in my memory at all, because I considered it a matter which the books would show.

Q. Then you are unable from the perusal of this copy to recall any better than you were before?

A. No, I don't recall any better than I did before. I only presume that that is a correct statement, that is all.

Q. Did you ever receive any notices until the 1892 meeting of June, 1892, of the Rural Homestead Company, that the 238 shares of stock which were in the treasury had been issued?

Mr. Parker objects on the ground that it does not appear that he ever knew that there was any stock in the Treasury.

A. No, sir, I did not.

Q. Mr. Cowdrey, you have heard Mr. Parker's objection. Did you know there was any stock unissued in the Treasury?

A. Yes, sir, I did.

Q. What business was the Rural Homestead Company doing after the sale of its lots to the Cemetery Association?

A. It was doing no business; its simple business was to receive the proceeds of its share of the sales of the lots of the Cemetery Association.

Q. Was it incurring expense of any kind?

A. None at all, as I understand.

Q. Had it any remaining lots to dispose of—The Rural Homestead Company?

A. Well, it owned what was called the North Arlington Cemetery lot, and the West Arlington Cemetery lot.

Q. They are Cemetery Associations?

A. Yes.

Q. But with that exception had it any?

A. With that exception it had no lots to dispose of.

Q. At any time since you have been a stock-holder were there any lots other than those conveyed to it by these three cemetery associations?

A. No, sir, not to my knowledge.

Q. Are you aware of the intention of the people interested in the Rural Homestead Company since the time of its reorganization in 1882 as to the business it should do?

A. Yes, sir.

Q. And what was that?

A. It was to simply receive a share of a certain percentage of the sales of lots made by The Arlington Cemetery Association.

Q. In other words you mean that it had closed out this land to these Cemetery Associations, and had nothing else to do but receive the money?

A. That is all.

Q. In your judgment, had it any use for the Meyers' property adjoining the Cemetery?

A. No, I think it had not.

Q. Have you been on this Meyers' property?

A. Yes, sir.

Q. What kind of land is it in appearance?

A. Well, it is very up-hill or down-hill land.

Q. Is any of it level?

A. There is some meadow land that is level.

Q. What do you mean by "meadow land"?

A. I mean marsh land.

Q. Has it been laid out into lots, or roads through it?

A. No, sir.

Q. How many houses are there on it?

A. One house.

Q. What kind? What sort?

A. It is a poor sort of a house. I think it is a house that was moved from the present grounds of

The Arlington Cemetery Association; slid over there on to that lot.

Q. Does it look like land that is worth much for cultivation?

A. I should say not.

Q. Does it have the appearance of having been cultivated?

A. Very slightly and a very small portion of it.

Q. The meadow land,—how far can you look off to the East over the meadows?

A. You can look clear out across the Hackensack River.

Q. What character is the ground you look over?

A. Mostly covered with reeds.

Q. Is it marsh land?

A. Yes, marsh land.

Q. Have you sympathized and taken part in the effort to have the management of the Rural Homestead Company and the Arlington Cemetery Association changed?

A. Yes, sir, I have.

Q. Has what Mr. Wildes has done been with your knowledge and consent?

A. It has.

Q. What is your reason for wanting a change of management?

A. Well, my reason is just this,—I invested my money in the Rural Homestead Company to the extent of $2,200.00, and I have not felt that I have had any voice in the expenditure of that money; I have had no opportunity to check what I might think was extravagance or to have any control over the expenditure of the money that was put in, or over the management of the Cemetery, and I thought it was time that the stock-holders who put in their money had a chance to exercise a control over the management of the enterprise in which it was invested.

Q. There is an in insinuation in the answer in the case that there is some desire on the part of the

Boston stock-holders to injure the Cemetery for the benefit of the Rural Homestead Company? Is that true in any way in your case?

A. Not at all.

Q. Is there any desire on your part, or has there been at any time, to change the present management from any personal reason?

A. No, sir, not the least.

Q. Are you satisfied with the financial management of either of the concerns?

A. No, sir, I am not.

Q. When did the Boston stock-holders first begin to contemplate an actual change of the personelle of the officers of the Company?

Question objected to by Mr. Parker as leading.

A. Well, I think there was a suspicion aroused in the minds of the Boston stock-holders from the fact that the accounts were left as they were.

Q. My question is not when did they become dissatisfied, but when did they conclude that the Board of Directors ought to be changed somewhat, or that the officers ought to be changed?

A. I don't remember about that. I don't know as I can fix it at any definite time.

Q. Is it somewhat recently?

A. I should say it existed for some time.

Q. Mr. Cowdrey in one of the answers in the allegation in the case between the Arlington Cemetery Association and the Rural Homestead Company, it is alleged that it was agreed or provided in some way in 1882 or thereabouts, by the Rural Homestead Company in connection with the organization with the Cemetery that there should be placed at the disposal of Julius H. Pratt as a commission, all benefits that might accrue from the sale of the first 400 lots of 300 square feet each, or the equivalent area thereof. Did you know that?

Mr. Parker objects on the ground that it has nothing to do with this case.

A. No, sir.

Q. When was the first you heard of it?

A. I heard of it a short time ago, when the information came I think from your firm.

Q. Your attention was called to it through us?

A. Yes, sir, that was my first knowledge of it.

Q. In the books of the Company during the times you have seen them have you ever found any reference to this subject matter?

A. No, sir.

Q. Do the books of The Cemetery Association show the sales of all lots or only the sales of those accounted for to the Association?

A. Well, I could not say.

Q. You do not know?

A. I do not know.

Q. Have you ever audited the sale of lots book?

A. No, sir.

Q. Is there anything to show on the books how much Mr. Pratt should receive on this account?

A. No, sir.

Mr. Parker moves that all the interrogatories relating to the commission which Mr. Pratt should receive be stricken out as not applicable to this case.

Q. How were the monies of The Cemetery Association banked so far as the books show?

A. Well, the books don't show anything about that.

Q. Did you see any bank deposit book, or any check book?

A. No, sir. In my work there in getting up the accounts it was not necessary to see any books of that sort, and the accounts kept in this book would not show.

Q. Could you audit the accounts of The Cemetery Association without having access to the bank account?

A. Well, it was only for the first two or three years that I did audit.

Q. Well, could you write the books up without having access to the balances?

A. Well, this was simply to write up the books for months back and I made no effort to prove that the balance agreed with the cash in the bank.

Q. Was there anything in the books to show how payments were made; whether in cash or checks, and if so, by whom?

A. No, sir.

Q. Do you know now?

A. No, sir, I do not know.

Q. Did you ask Mr. Torrey, or Mr. Pratt?

A. No, sir, I did not.

*Cross Examination by Mr. Parker.*

Q. Mr. Cowdrey, when yon first took your shares of stock in the Rural Homestead Company had it then sold the land to the Arlington Cemetery Association?

A. Well, I don't know whether it had or not.

Q. About what date was it that you took your stock?

A. I could not inform you that without reference to some records. I took my stock when the other Boston stock-holders subscribed.

Q. Do you know what the contract was between the Rural Homestead Company and the Arlington Cemetery Association, at the time of the sale to the Arlington Cemetery Association?

A. Yes. It was that there should be 50 per cent. of the proceeds of sales of all lots paid over to the Rural Homestead Company.

Q. By the Arlington Cemetery Association?

A. Yes, sir.

Q. And who were the officers at the time of the Rural Homestead Company?

A. Mr. Pratt was President, I think, and Mr. Torrey Secretary.

Q. And then was it that Mr. Dummer was President of the Arlington Cemetery Association?

A. I think at the start.

Q. At the start of the Cemetery Association?

A. Yes, sir.

Q. Now what business did the Board of Directors or officers of the Rural Homestead Company have to do after the Arlington Cemetery Association was organized?

A. Well, they had simply to receive their money from the Arlington Cemetery Association.

Q. Under the contract, which was that they were to be paid 50 per cent. of the sales of lots?

A. Yes, sir.

Q. Do you remember when that was changed, if it was changed?

A. I do not remember when it was changed, but it was subsequently changed to 45 per cent., 10 per cent. being set aside as a permanent fund.

Q. For the maintainance of the Cemetery?

A. Yes.

Q. How long did Mr. Dummer act as President of the Association?

A. I suppose he is acting as President up to the present time.

Q. He is President at the present time?

A. Yes.

Q. And Mr. Pratt, then, is Vice-President and Comptroller?

A. Yes, sir.

Q. Now, do you remember at what time, if at any time, there was any arrangement made by the Board of Directors in regard to the 45 per cent.?

A. I do not remember the time.

Q. Do you know that there was an arrangement made by the Board of Directors in regard to that 45 per cent. that was to be paid to the Rural Homestead Co?

A. I think there was an arrangement made.

Q. Was there any further arrangement made by

which the Arlington Cemetery Association were to use that 45 per cent.

A. That might have been.

Q. Did you have any knowledge of that?

A. Yes, I think I understood that that was the arrangement.

Q. Did you understand it to be that instead of 45 per cent. being paid over to the Rural Homestead Company, it was to be used by the Arlington Cemetery Association?

A. Well, I think the stockholders here, myself among the number, found that the money was so used, and subsequently might have been ratified by the Board of Directors.

Q. That was brought to the notice of the stockholders?

A. It came to my notice.

Q. As far as you know it was brought to your notice, and you acquiesced to that arrangement, did you?

A. I had no voice in the matter.

Q. You never dissented to it in writing or otherwise?

A. No, sir.

Q. And that was prior to the time that you made your second subscription of 10 per cent?

A. I do not know what time the arrangement was made, so I could not say.

Q. Whether it was prior to that time or not?

A. No, I could not say.

Q. Well, at the time you made your second subscription, when you invested $200, did you then know that this 10 per cent. had been disposed of in the manner mentioned?

A. I knew it might have been paid over to the Rural Homestead Company.

Q. Now you say that the reasons were given by the officers of the Company, Mr. Pratt and Mr. Torrey, and that Mr. Pratt was the principal spokesman at

that meeting. Now will you state to the best of your knowledge what Mr. Pratt said?

A. I should say the substance of his remarks were the same as he had previously written to the stockholders here,—that they needed the money to carry on the enterprise.

Q. The Cemetery Association then at that time was not paying, was it?

A. No.

Q. And to the best of your knowledge it never has paid?

A. No, sir.

Q. And the money that was to be turned over, the 45 per cent. was used for the expenses, as you are informed?

A. Yes, it was used by the Association. It was never turned over to the Rural Homestead Company.

Q. And was not the reason that you did not receive any dividend that this money instead of being turned over to the Rural Homestead Company, was used by the Arlington Cemetery Association?

A. I suppose it was.

Q. When were you appointed auditor of these accounts?

A. At the organization of the Cemetery Association.

Q. And what was it they had to do?

A. The usual duties of an auditor.

Q. Audit the accounts of the Cemetery Association?

A. Yes, sir.

Q. How many times did you say you called there?

A. How many times did I audit?

Q. Yes.

A. I could not say. It might have been two or three years.

Q. Did you audit those accounts at the suggestion of Mr. Torrey?

A. Well, an auditor of an Association is supposed

to be called upon by the proper officer to audit the accounts. I should not say that it was at the suggestion of Mr. Torrey. I expected to be called upon previous to the annual meeting.

Q. Were you not written by Mr. Torrey to come on and audit the accounts?

A. I presume so.

Q. When you said you did audit those accounts from what did you audit them to the best of your recollection?

A. Well, we took the accounts as we found them in a book provided for the writing up of the accounts, and then we examined the vouchers to see if there were vouchers for the expenditures.

Q. You found vouchers for the expenditures?

A. We certainly did so far as we audited.

Q. Did you find any account of the sale of burial lots?

A. We found certain debits to the Association for lots sold and money received for them.

Q. Did you find any monthly statements of the number of lots sold?

A. Yes, the accounts would show the number of lots sold.

Q. Every month?

A. Yes, every month.

Q. And the price received for them?

A. Yes.

Q. And also an account of the expenses?

A. Yes.

Q. Now when you were there, did you examine the check books, if there were any check books?

A. You mean the bank account?

Q. Yes.

A. Well, so far as it entered into the account of the Association I presume I examined it, and verified the balance.

Q. You say you did verify the balance?

A. Yes, I presume so. Mr. Dummer might have done so, he was then auditor with me.

Q. Then there was a bank account kept by the Board of Directors, was there not?

A. Yes, they had a bank account, I think, most decidedly.

Q. And there were drafts drawn on the bank for all the money expended?

A. No, not for all.

Q. For some of the monies expended?

A. Yes, for some of the money.

Q. Did you audit all those?

A. Yes, we made, I think, a thorough and satisfactory audit of the accounts, as far as we did audit them.

Q. Now, after you had made a thorough and satisfactory audit of those accounts as far as you examined them, what did you do next in regard to them?

A. The next thing, I went on there to assist Mr. Torrey to write up the accounts.

Q. And did you assist him in writing them up?

A. Yes.

Q. And how far up did you bring them? To what year?

A. Well, I could not say at the present time. The last time I was there to work on the accounts was in January, 1891.

Q. Now, did Mr. Torrey, or Mr. Pratt, or any other officer to your knowledge in their employ in the office, ever refuse to permit you to do that auditing?

A. I was not doing any auditing then.

Q. What were you doing?

A. I was assisting Mr. Torrey to write us the accounts.

Q. Well, did they ever refuse to permit you to audit the accounts?

A. Well, there were no accounts to audit. The accounts were not written up. You cannot audit accounts that were not written up. I did not do any

auditing since the first two or three years of the organization of the Cemetery.

Q. Why haven't you?

A. Because I had no opportunity.

Q. Who has deprived you of the opportunity?

A. Well, the accounts were not written up.

Q. Didn't you find vouchers for those accounts?

A. No, sir.

Q. None.

A. Why, I didn't go there to audit and examine vouchers, and didn't do anything of the sort?

Q. What did you audit when you were there?

A. When I was there for the first two or three years I audited the accounts in the usual manner?

Q. And you found them satisfactory?

A. Yes.

Q. And have you been an auditor since?

A. I have been an auditor so far as I know since.

Q. But you have not been permitted to audit the accounts? Is that the idea?

A. No, that is not the idea.

Q. What is the idea?

A. There were no accounts made up to audit, that is the idea.

Q. Did you ever have any conversation with Mr. Torrey in regard to the accounts?

A. Yes, I had more or less conversation with him; told him the Boston stockholders were dissatisfied, that the accounts were not written up and put in shape.

Q. Didn't Mr. Torrey offer to employ a man at his own expense to write up those accounts?

A. Well, he employed me.

Q. Well, then, did you write them up?

A. Yes, certainly.

Q. Well then, there were accounts to be written up?

A. Certainly, they were way behind and to be written up.

Q. And you wrote them up?

A. Yes.

Q. Now what was the result after you had written them up? What did you find?

A. I could not tell you the figures.

Q. Up to what time did you write them up?

A. I could not tell you that. The last time I was there to assist Mr. Torrey was in January, 1891.

Q. And did you assist him at that time?

A. Yes.

Q. And you wrote the accounts up to a certain date, did you?

A. Yes, sir.

Q. Balanced them up in every way, did you?

A. Yes.

Q. You say that you are not aware of how he kept his accounts?

A. No, I am not.

Q. But they were written up by you and him from the manner in which he kept them?

A. Yes, they were written up.

Q. Why did you stop work on the accounts at any time?

A. Well, the length of time that I could be there of course was limited sometimes, so that after staying there as long as I could I would be obliged to leave.

Q. One time was it due to your illness that you did not continue to write them?

A. I do not recollect any such time as that.

Q. Well, is it not a fact that you worked from the check books of the Association in entering up accounts of payments, and verifying them by vouchers?

A. No, that is not a fact.

Q. Were not the vouchers kept in a separate envelope from month to month?

A. I have an impression that Mr. Torrey kept his vouchers and accounts in envelopes.

Q. Do you remember whether Mr. Knevells, Mr. Van Buren and Mr. Whittlesey were present in regard to the transaction in 1885?

A. I should say that Mr. Van Buren was not there

I do not know that Mr. Knevills was; I think Mr. Whittlesey was.

Q. Did they not recommend it?

A. Well, the conversation was largely to get information as to the need of any such assessment; as to the advisability of their paying an assessment.

Q. They did get that information, did they?

A. They doubtless got some information.

Q. From that they recommended the loan?

Question objected to unless witness states what was said.

Q. State what was said.

A. I cannot state what was said.

Q. Do you remember Mr. Knevells saying anything about it?

A. No, I don't remember seeing Mr. Knevells there; and Mr. Van Buren I don't think was there.

Q. And Mr. Whittlesey?

A. Mr. Whittlesey didn't say anything about it?

Q. Are you personally acquainted with Mr. Knevells? Should you know him if you saw him?

A. No, I don't know him, but I should doubtless have met him there. He would have been pointed out to me.

Q. Do you know how many shares altogether the so-called Boston stock-holders represented?

Mr. McGee objects on the ground that the holdings of the Boston stockholders have changed from time to time.

A. That is a matter that I did not keep in my mind because it is entirely a matter of record.

Q. In the year 1885?

Mr. McGee objects to the question as irrelevant to the issues in the case.

A. No, I don't know what it was; it was a matter that I have not kept in my mind.

Q. Did you not receive notice of the annual meetings of the stockholders?

A. Well, I presume we received whatever was sent.

Q. Can you answer that either yes or no?

A. I have received notices.

Q. Did you attend in person at the annual meetings.

A. I think I have attended some of them.

Q. Did you ever attend by proxy?

A. Yes, I was either present personally or by proxy, I think.

Q. At every annual meeting?

A. Yes, sir.

Q. Do you remember who represented you when you attended by proxy?

A. I think Mr. Scherer did at one time, and subsequently Mr. Wildes.

Q. When was it that Mr. Pratt said that it would be well to start a new set of accounts and drop the old ones?

A. It was during one of my visits there for the purpose of assisting in writing up the accounts.

Q. Do you remember which one?

A. No, I do not.

Re-direct examination.

Q. (By Mr. McGee.) In your cross-examination with reference to the change from the fifty per cent. to be paid by The Cemetery Association to the Rural Homestead Company to forty-five per cent., you stated that you were aware that the change was made. Was that change ever presented to the stock-holders so far as you recall?

A. So far as I know I cannot recall that it was.

Q. Did you ever assent to it?

A. No.

Q. Do you know of any other stock-holder who did outside of the Board of Directors?

A. No, sir, I do not.

Q. Now then, this assent which was afterwards made that the money need not be paid but that it should be loaned backed to the Cemetery Association which you have spoken of in your cross-examination. Do you know when you first learned of that?

A. No, I do not.

Q. Well now, isn't it a fact that you did not learn of it until after the stock-holders annual meeting of 1885?

Question objected to by Mr. Parker, Jr. as leading.

A. Of the ten per cent. assessment?

Q. No, not of the ten per cent. assessment, but the consent that the monies owing from The Cemetery Association to The Rural Homestead Company should be allowed to go to the Cemetery Association and there be paid over and loaned back, or not paid over at all. My question is whether you did not first learn of that after the meeting of 1885?

A. Well, I could not say when I learned of that.

Q. Was there any meeting of the stock-holders between November, 1885, and July of 1890?

A. Well; I should say that there was not.

Q. During that time by what Board was the affairs of the Rural Homestead Company and the Cemetery Association managed?

A. As far as I know I supposed managed by the officers of the Rural Homestead Company, and I don't know as I need to amplify that answer.

Q. Then the same Board that was elected at or before 1885 remained in office, in charge, until the meeting of 1890?

A. Yes, sir.

Q. In point of fact by what men have the affairs of both Companies been managed since you have been a stock-holder?

A. Well, in point of fact they have been managed by Mr. Pratt and Mr. Torrey.

Q. At the time you invested your money, the second time, which was in the autumn of 1885, was your confidence in Mr. Pratt shaken any, at that time?

Question objected to by Mr. Parker, Jr., as leading.

A. No, I should say it had not been.

Q. In your cross-examination you say that you found vouchers as far as you audited. In your direct examination, as I understand you, you said you did not audit more than the first two or three years?

A. Well, I could not say definitely as to the time, but it was a short time; it might have been two years or three years possibly.

Q. Well, do you mean that during the years you audited the books were written up?

A. Yes, sir.

Q. When was it that the failure to write the books up commenced?

A. Well, I could not say about that, but of course it began the succeeding year.

Q. You have subsequently helped to write the books up, and must be able to recall the time at which the stoppage commenced?

A. It must have commenced at the time we ceased to audit.

Q. Which was when?

A. Well, after two or three years.

Q. You said in your direct testimony that you found no bank books. In your cross examination you have spoken of examining balances of bank account.

A. That is when we were auditing.

Q. Do you mean that there was a bank account at that time and none since?

A. Well, I have no official knowledge since we ceased to audit.

Q. Well, in point of fact, have you any information on the subject of the bank account at the time of your auditing, or is that all inference?

A. Well, I think they had a bank account.

Q. Do you regard it as a fact?

A. I should say so.

Q. When you came to write them up as a book-keeper afterwards, what is your recollection at that time?

A. I think there was an account in the Hudson County Bank of Jersey City.

Q. Well, when you say you saw no bank account?

A. I mean that I had no connection with a bank book. I might have seen a bank book lying in the office, but I had no occasion to use it.

Q. Were the bank books that you saw in the name of the Association or in the name of the officers?

A. Well, I think that one bank book was in Mr. Torrey's name. I think he told me that he found it convenient to keep an account in his own name; that it was a benefit to the Cemetery and that he got a discount in that way.

Q. When you have spoken of examining the balances of the bank books, do you refer to the book in his name or the book in the name of the Association?

A. Well, I should say so far as we audited it should be a book in the name of the Association.

Q. Well, my question is whether it was?

A. I could not say as to that exactly.

Q. Do you know whether there was any check book, or bank deposit book in the name of the Association?

A. Well, I should have to give a general answer to that; that while I could not say that there was, yet the accounts were audited for two or three years at the beginning and I suppose the bank account was in proper shape or we should have noticed it.

Q. When was it that he told you that he kept an account in his own book?

A. When I was writing up the books there.

Q. You have spoken in your cross examination of finding debits and account of expenses and vouchers. When was that?

A. That was when we were auditing?

Q. For the first two or three years?

A. Yes.

Q. Did you find any vouchers except those that you made yourself?

A. I was making the entries in the book.

Q. You were asked in your cross examination if they ever refused to permit you to audit the accounts, to which you answered that they were no accounts to audit; and then you were pressed with the same question as to the bookkeeper. In your direct examination you had said that you went there several times with a view to write up the books and were put off by Mr. Torrey. What is the explanation of that apparent discrepancy?

A. There was no discrepancy. The question in the cross examination was in regard to the auditing and if I was refused permission to audit, and I answered that there was nothing to audit.

Q. Then your answer referred only to that?

A. That is all.

Q. Was there anything about this book-keeping that was particularly difficult if it had been done from day to day as it arose?

A. No, there was not.

Q. Was there anything which any ordinary book-keeper could not have done from day to day?

Question objected to by Mr. Parker, Jr.

A. No, sir.

Q. Was there any necessity for the accounts falling behind in that way?

Question objected to by Mr. Parker, Jr., as leading.

A. I should say that there was not.

Q. In your cross-examination you were asked in reference to your writing up the books whether it was not a fact that you worked from check books of the Association. What is the fact with reference to that?

A. The fact is that I did not.

*Re-cross Examination by Mr. Parker, Jr.*

Q. When you audited these accounts up to 1885 did you not find that in these accounts this 45 per cent. that should have been turned over to the Rural Homestead Company had been used by the Cemetery Association?

A. Yes, it was, and the proceeds of all sales were charged to the Cemetery Association on the books.

Q. After the Board of Directors had passed this vote, did you audit any of the accounts?

A. I could not say that I did.

Q. Did that appear at any time in the auditing of the accounts, when you did audit the accounts?

A. No, I don't think that it did. I don't recollect that it did.

Q. Didn't the books show while you were auditing the accounts that this 45 per cent. was so used?

A. The books invariably showed the total proceeds of the sale of lots, footed in three columns, 45 per cent. for the Association, 10 per cent. for the permanent fund and 45 per cent. loaned from the Rural Homestead Company.

Q. And then, didn't it also show that the 45 per cent. had been used by the Association?

A. Yes, the accounts would show that.

Q. Now you say that Mr. Pratt and Mr. Torrey were the officers of this Company all this time, and that they were elected at the annual meetings. How were they elected at the annual meetings?

A. I suppose in the usual manner.

Q. Well, what was the usual manner?

A. Well, it is customary for a stock-holder to write his name and the number of shares he has on the back of the ticket, and on the face of the ticket he would write the officer he voted for.

Q. And the person who received the majority of votes is elected, is he not?

A. Yes.

Q. Then at each of these elections Mr. Pratt and Mr. Torrey received the majority of the votes of the stock-holders, did they?

A. If any elections occurred they would not have been elected unless they had.

Q. Now, didn't you go in November to help Mr. Torrey write up those accounts?

A. I took a list there which would show.

Q. I do not think you mentioned 1890.

A. No, I don't think I did. On the 21st of August, 1890, Mr. Torrey was here and talked to the Boston stock-holders, and they wanted me to go on and attend to the accounts, and the arrangement, as I remember it, was that I was to go on as soon as Mr. Torrey would send for me. He was here in August, 1890, and I think I did not go on until Jan. 16th, 1891.

Q. You are not certain that you were not there in November, 1890?

A. I should say, I certainly think I was not there.

Q. Do you ever remember Mr. Reddish having been called there to audit the accounts?

A. Yes, I remember that.

Q. Did you ever see a copy of the account that Mr. Reddish made?

A. Yes, I think I received one which was sent on by Mr. Reddish?

Q. Do you know who else signed it beside Mr. Reddish

A. I don't remember.

Q. Are you acquainted with a man by the name of Jewell—C. C. Jewell?

A. Yes, sir.

Q. Now, were you present in Jersey City on April 23rd, 1891?

A. Well, I could not say about that.

Q. Were you present at a meeting in which the accounts as audited up to Dec. 31st, 1890 were presented to the stockholders?

A. I think likely that I was.

Q. At that meeting, did not those accounts then show that this 45 per cent. had been used by the Cemetery Association?

A. I don't know whether I was present at that meeting or not.

*Re-direct Examination by Mr. McGee.*

Q. You recall Mr. Parker's question in his re-cross examination as to whether you were not in Jersey City in November 1890, to which you said you did not find a memorandum of it in your expense account. Didn't you go at that time at the expense of the Boston stock-holders, and were not you put off by Mr. Torrey and not allowed to do anything at that time?

A. Well, I looked over my expense book and I don't find that I went to New York in 1890.

Q. If your expenses were paid by the Boston stock-holders would that appear on your book?

A. Well, I should have some slight expenses and I should know whether I went there or not.

Q. Didn't you go beyond New York, to the west, and stop over on the way home?

A. No, I did not that I recall.

Q. Some time in the autumn of 1890 or winter of 1891?

A. Oh, I went through there in January 1891 going west, but I don't think I went there in the autumn of 1890.

Q. Now, Mr. Cowdrey you know that the vote which permitted this money to be used in the way it is being used was passed in the year 1884.

A. No, I have no memorandum of those votes and I do not recollect about them.

Q. Well, assuming that this is the date, have you audited the accounts since then?

A. Well, I cannot say the exact date up to which I audited the accounts.

Q. Have you any recollection of auditing since that time?

A. No, I have not.

Q. Would such a thing appear anywhere on the minutes?

A. It would not appear on the accounts.

Q. Did you undertake to go through the minutes when you audited?

A. No, sir, never.

Q. When you undertook to go down and write up the accounts, was that after the friction commenced?

A. Yes, I went a good deal at the solicitation of the Boston stock-holders who were dissatisfied, and as I said in my direct examination I sometimes went on at their expense and at their solicitation entirely. I think that I did in May. 1889.

Q. Was this condition of the manner in which the books were kept a matter of discussion and complaint for several years?

A. It was.

*Re-cross Examination by Mr. Parker, Jr.*

Q. As to the additional land adjoining the Cemetery, you say there are no roads through that property to the best of your knowledge?

A. I have been all over the property.

Q. You have never examined the maps of the township to see if there were any roads laid out?

A. No, but I have been all over the property.

Q. Did you ever hear of the name of Coppermine Ave. running through the Cemetery?

A. Yes, I have heard that name mentioned.

Q. And you have seen sort of a road way across it then?

A. Well, there is no road across there certainly.

Q. No, there is no road laid out across there, but there is a road way, and you have never examined the maps of the township to see whether that is laid out upon such maps?

A. No, I have not. There is a cart way down from Schuyler Avenue to the woods, that is all I know of.

Q. No, I don't refer to that, Mr. Cowdrey, I refer to the road running directly across there.

A. I do not know of any road running directly across there.

Subscribed and sworn to at Boston, in the County of Suffolk and State of Massachusetts, before me this thirty-first day of March, A. D., 1893.

*Commissioner of Deeds of the State of New Jersey.*

THOMAS J. OLYS, one of said witnesses, appearing before me and being by me duly sworn, deposes and says that the answers he should give to the interrogatories put to him, should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of complainants, and Joseph Parker, Jr., Esq, on behalf of the defendants, as follows:—

*By Mr. McGee*:

Q. Mr. Olys where do you live?

A. Boston, Mass.

Q. And are you a stock-holder in the Rural Homestead Company?

A. I am.

Q. How much stock do you own, do you remember?

A. Sixty-five shares.

Q. How long have you been a stock-holder?

A. Since 1882.

Q. At whose suggestion did you purchase this stock?

A. Mr. Scherer.

Q. Daniel L. Scherer?

A. Yes.

Q. Had you known him a long time?

A. Twenty-five years.

Q. Did he give you his reasons for thinking the stock was good?

A. Yes, sir.

Q. Do you recall what he said about it?

A. Well, as near as I can remember now, the first time he ever spoke to me about it he said that he had an old schoolmate of his, or classmate, who had a project on foot, and he was looking into it (Mr. Scherer), and as soon as he was satisfied he would let me know what it was, and a short time afterwards he unfolded the scheme to me, and I told him I would have to depend upon him entirely, if he thought it was a good thing and was going into it himself.

Q. Did he tell you who this old friend was?

A. Yes.

Q. Who did he say he was?

A. Mr. Pratt, and they had been to college together, and that he was a very nice gentleman and christian man.

Q. Well, since you bought this stock—what year did you say it was?

A. 1882.

Q. Since that time have you had any notice of meetings of the Company?

A. Never but once.

Q. Do you remember when that was?

A. I think in 1891. Seems to me it was.

Q. Do you know whether any meetings were held continuously during the years prior to that?

A. I could not say that there was to my own knowledge.

Q. Did you visit Jersey City during the intervening years?

A. Yes, sir.

Q. Did you call at the office of the company?

A. Yes, sir.

Q. Who did you see there?

A. I saw Mr. Pratt and Mr. Torrey.

Q. Did you talk with them on the subject?

A. Oh, yes.

Q. Do you recall any conversation with either of them?

A. Well, we talked in a general way, and Mr. Torrey and I went out to the Cemetery a number of times.

Q. Well, with reference to the accounts. Did you have any conversation with either one of them on that subject?

A. Yes, sir.

Q. Do you remember what you said, and to whom?

A. Most of my conversation in regard to the accounts was with Mr. Torrey. I went there a number of times on purpose to look over the accounts and post myself as to the standing of this Company, and I always found Mr. Torrey had not had time to attend to them, and the business was not written up, and that he was so busy selling lots and attending to the business of the Cemetery that he did not find time to write them up, so that my information in regard to the accounts is not very satisfactory.

Q. Do you know whether there were books kept at any time in the history of the Company after you became connected with them?

A. I looked over the book at one time.

Q. About what time was that?

A. Well, I should think that was somewhere along about 1886 or 1887—somewhere along there.

Q. Do you know up to what date they had been kept?

A. No, I could not make it out.

Q. Have you ever received a dividend on your stock?

A. No, sir.

Q. Have you been in sympathy with the movement that has been made in the last year or two to change the Board of Directors of the Company?

A. Yes, sir.

Q. What was the cause of the dissatisfaction?

A. Well, I don't think that the Boston stock-holders were being paid for the money that they invested there as agreed upon at the time. There was no statements made of the financial condition of the Company—it was almost impossible to find out anything about the standing of the Company financially. The Boston stock-holders seemed to have no voice in the management and they were not represented on the Board, and simply because I wanted to know just where the Company stood.

Q. Have you been able up to the present time, to ascertain anything definite with reference to the status of the Company?

A. I have not.

Q. These times you were there to look at the books, and there were no books kept, were you shown accounts at all?

A. I was shown this one book at one time.

Q. Well, as to the other methods of keeping the accounts?

A. No. I think Mr. Torrey had a memorandum book in his pocket at one time. That was full of memoranda to write up in the books in the office, he said.

Q. On slips of paper?

A. I could not say as to that.

Q. There is an allegation in the pleadings of the case on the part of the defendants, that the Boston stock-holders have some ulterior object in view in their effort to change the Board of Directors. What is the fact with reference to yourself.

A. Well, so far as I am concerned it is immaterial to me who manages the affairs of the corporation, if they are managed so thatI am satisfied that it is all right, and whether the project is a success or not, I should be satisfied if I felt sure that everything was being taken care of in the proper manner.

Q. Then is there any feeling in your mind personally against any of the officers?

A. No, not at all. It is not a personal matter at all.

Q. Is there any motive guiding you other than that to make an effort to see whether the Company can be made to pay?

Question objected to by Mr. Parker, Jr., as leading.

A. No, there is none.

Q. Did you make any complaint to Mr. Torrey, or Mr. Pratt, or both, against this method of keeping the accounts?

A. Yes, I complained to Mr. Torrey several times.

Q. Speak to Mr. Pratt about it?

A. No. Mr. Pratt didn't seem to have much to do about the financial part of it when I went to look into it.

Q. What did he say?

A. Mr. Pratt?

Q. Yes. Did he refer you to Mr. Torrey?

Question objected to by Mr. Parker, Jr., as leading.

A. Yes, sir.

*Cross Examination*:

Q. [*By Mr. Parker, Jr.*] How many shares of stock did you say you had, Mr. Olys?

A. Sixty-five.

Q. In the Rural Homestead Company?

A. Yes, I suppose so.

Q. And you were induced to invest your money n that on the representation of Mr. Scherer?

A. Yes sir.

Q. And you say you have never had notice of meetings of the Company but once?

A. Yes, sir.

Q. Do you remember when that was?

A. I think in 1890 or 1891.

Q. And did you attend that meeting?

A. No, sir.

Q. Did you attend by proxy?

A. I have attended meetings by proxy. I think that was one, yes, sir.

Q. Do you know who represented you at that time?

A. Mr. Scherer or Mr. Wildes, I don't know which one.

Q. You don't know then, of your own knowledge, whether at that meeting these accounts that were written up to the 31st of December, 1890, were read and explained to the stock-holders?

A. No, sir, I do not.

Q. And whatever your proxy did at that time, of course you were agreeable to?

A. Yes, certainly.

Q. Have you ever been told why you did not receive a dividend?

A. No, I don't know that I have.

Q. Do you know why you have never received a dividend?

A. No.

Q. You have relied principally on Mr. Scherer in

regard to this matter, as far as your shares of stock were concerned?

A. Yes, sir.

Q. Do you recollect now what book it was Mr. Torrey showed you when you say you saw him at Jersey City?

A. I could not tell you what he called it.

Q. Did it have any accounts written up in it?

A. Yes, it had some entries written in of different items.

Q. Did you see any Bank books?

A. No.

Q. Any check books?

A. No.

Q. Do you remember at any time of a request being made by the Boston stock-holders that they should have a representative on the Board?

A. Yes, I think there was a request of that kind made.

Q. And they did not then have a majority of the stock, did they?

A. I could not tell you about that.

Q. After that request was made at the annual meeting, one of the stockholders was elected, was he not?

A. Yes sir.

Q. Do you remember who that was?

A. Mr. Scherer.

Q. How long did he serve?

A. I believe one year.

Q. How often have you examined these books?

A. I never examined this particular book, or any book, but once.

Q. Then your ground of dissatisfaction in regard to the management is due to the fact that you have not received any dividends, is it not?

A. Not altogether. My ground for complaint is that the books were not kept in a systematic manner according to my idea of doing business. I think I

have never received any statement of the financial standing of the Company; have never received any notices of annual meetings, election of officers, or anything of that kind.

Q. You have had conversation in regard to this suit with the other Boston stock-holders, and you have been induced through them to commence this action?

A. Yes.

Q. And largely from their statements?

A. No, no—partly from their statements, but mostly from my own judgment.

Subscribed and sworn to at Boston, in the County of Suffolk, and State of Massachusetts, before me this thirty-first day of March, A. D., 1893.

*Commissioner of Deeds of the State of New Jersey.*

GEORGE W. COLBURN, one of said witnesses, appearing before me, and being by me duly sworn, deposes and says that the answers he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants, and Joseph Parker, Jr., Esq., on behalf of the defendants, as follows:

Q. Mr. Colburn, where do you live?

A. Cambridge.

Q. Cambridge, Mass.?

A. Yes, sir.

Q. You are a stock-holder in the Rural Homestead Company?

A. Yes, sir.

Q. Do you remember how many shares you have?

A. Fifty-five.

Q. Do you remember when you bought them?

A. I bought forty in 1883—January 19th.

Q. And the rest?

A. March 15th, 1884, ten shares. January 14th, 1886, five shares.

Q. On whose recommendation did you buy it?

A. On Mr. Scherer's.

Q. Had you any knowledge of the Corporation yourself?

A. Yes, sir.

Q. Have you ever received a dividend on it?

A. Never.

Q. Have you ever received notices of meetings?

A. One notice.

Q. What date was that?

A. I think it was in 1884.

Q. Notice of what kind of a meeting?

A. Annual meeting of The Rural Homestead Company, for the election of five directors.

Q. For what date?

A. For Tuesday, the third day of January.

Q. Are you in sympathy with the movement that has culminated in this suit?

A. I am, so far as I should like to have some returns for the investment I have made. That is my principle sympathy.

Q. Has Mr. Wildes and Mr. Scherer been acting with your consent?

A. Yes, sir.

*Cross Examination by Mr. Joseph Parker, Jr.*

Q. You don't know why you have not received any dividend, do you?

A. No, sir. I never received any reports of the actions of the Directors, or of the Company at all.

Q. Did you not leave it all to Mr. Scherer?

A. I didn't leave it particularly to him, no. He was not my agent at all?

Q. Through his recommendation you took the stock?

A. I invested, that is all.

Q. And the only sympathy that you have in it is, that you would like to have some return for the money you have invested?

A. I should like to have some show for paying money out?

Q. You don't know anything about any of the transactions during the whole time?

A. No, sir. I might have known some few things. I knew if Mr. Scherer's connection with Mr. Pratt, and I thought it was a safe investment.

Subscribed and sworn to at Boston, in the County of Suffolk, and State of Massachusetts, before me, this thirty-first day of March, A. D. 1893.

*Commissioner of Deeds of the State of New Jersey.*

Mrs. Francis E. Wildes, one of said witnesses, appearing before me, and being by me duly sworn, deposes and says that the answers she should give to the interrogatories put to her should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants, and Joseph Parker, Jr., Esq., on behalf of the defendants, as follows:

*By Mr. McGee*

Q. Mrs. Wildes, where do you live?

A. In Boston.

Q. You are the wife of Frank W. Wildes?

A. Yes, sir.

Q. Are you a stock-holder in The Rural Homestead Company?

A. Yes, sir.

Q. When you bought your stock you were not married to Mr. Wildes?

A. No.

Q. On whose recommendation did you buy the stock?

A. Well, on Mr. Scherer's. Mr. Scherer told Mr. Wildes about its being a good investment, and then he told me about it, and then Mr. Scherer spoke to me about it, and told me about Mr. Pratt's being an intimate friend of his, an old college classmate, and that he had every confidence in him; that he was a religious man, and that he thought he was perfectly trustworthy in every way, and so we concluded from what he said that it would be well to rely on Mr. Pratt.

Q. And so you bought?

A. Yes, and so I bought.

Q. Do you remember how many shares you have?

A. I think one hundred.

Q. Have you ever received a dividend?

A. No, sir.

Q. Have you ever received any reports of accounts from the Company?

A. No.

Q. Have you ever received any notices of meetings?

A. I remember one; I could not say exactly when it was. It seems to me it was either last year, or the year before.

Q. But any before that?

A. No, none before that.

Q. Are you in sympathy with the movement which has culminated in this suit?

A. Yes, I am thoroughly in sympathy with it.

Q. What is the ground of your dissatisfaction with the present management?

A. Well, they don't seem to be inclined to let us look into their affairs at all, and to see how our money is being expended, and I would like to know something about it.

Q. Is there any feeling in your mind against the officers themselves?

A. No, I have no feeling at all. I don't know them at all.

Q. You have never been at the office of either The Rural Homestead Company or The Arlington Cemetery Association?

A. No.

Q. Did you consent to the loaning of the share of The Rural Homestead Company of the proceeds of sales of lots to The Cemetery Association?

A. I don't tnink I did, I have no recollection of it.

Q. Did you ever do anything about the Company since you purchased your stock except to sign one or two proxies?

A. No, I don't know that I did.

*Cross Examination by Mr. Parker, Jr., Esq.*

Q. Mrs. Wildes, you never attended any of the annual meetings of the stock-holders?

A. No, sir.

Q. Did anybody represent you by proxy at any of the meetings?

A. Either Mr. Wildes or Mr. Scherer did.

Q. To the best of your recollection, whenever there was a meeting of the stock-holders of The Rural Homestead Company held did either Mr. Wildes or Mr. Scherer represent you?

A. Do you mean that they were allowed to vote for me by proxy, or what?

Q. They represented you by proxy?

A. Yes, I think they did; it seems to me that they did.

Q. Whenever there was an annual meeting of the stock-holders of the Association held did either your husband, Mr. Wildes, or Mr. Scherer represent you at that meeting by proxy?

A. I think they did.

Q. You don't know of any reason why you have not received a dividend, do you?

A. No, I do not.

*Re-direct Examination.*

Q. (By Mr. McGee.) When you say that your husband or Mr. Scherer represented you at any meeting of the stock-holders, do you mean to cover every meeting, or meetings at which they were present?

A. I mean, if any notices came to me, or there was anything to be attended to, I suppose Mr. Wildes would attend to it for me.

Q. You don't know whether they attended at every meeting or not?

A. No, I don't think they did.

*Re-cross Examination by Mr. Parker, Jr., Esq.:*

Q. At every meeting at which you received a notice, at which Mr. Scherer and Mr. Wildes attended they represented you, either one or the other of them? At every annual meeting which they attended they either one or the other represented you by proxy?

A. Yes, I suppose so. I can only remember one notice now; a notice sometime in June, but what year it was I cannot tell.

Q. Might it not have been in 1891?

A. I don't remember.

Subscribed and sworn to at Boston, in the County of Suffolk, and State of Massachusetts, before me, this thirty-first day of March, A. D., 1893.

*Commissioner of Deeds of the State of New Jersey.*

FRANK W. WILDES, one of said witnesses, appearing before me and being by me duly sworn, deposes and says that the answers he should give to the interro-

gatories put to him, should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants and Joseph Parker, Jr., Esq., on behalf of the defendants, as follows:

*By Mr. McGee.*

Q. Mr. Wildes, where do you live?

A. Boston, Mass.

Q. And are you one of the stock-holders in The Rural Homestead Company?

A. I am.

Q. You read the bill of complaint in this case, did you?

A. I did.

Q. Are the statements in this bill with reference to the holdings of the various persons correct?

A. They are.

Q. Not only as to the present, but as to the time prior to the last annual meeting?

A. They are. Of course I don't know what changes have been made on the stock books since in regard to the shares of the others.

Q. How did you come to buy stock in this concern?

A. Through Mr. Scherer.

Q. Do you know what was Mr. Scherer's motive?

A. Mr. Scherer regarded it as a good investment.

Q. Well, what was his source of knowledge?

A. Through Mr. Pratt who was an old college-mate of his.

Q. Then, am I correct in the understanding that all the complainants were induced to become stock-holders through Mr. Scherer, by reason of his friendship for Mr. Pratt?

A. So far as I know.

Q. When did you become a stock-holder?

A. In the winter of 1882 to 1883.

Q. These people, known as the Boston stock-holders, all went in at that time?

A. Yes, at that time. It was my wife that became a stock-holder at that time, not myself.

Q. When did you become interested?

A. I became interested later, by the transfer of her to me of some stock.

Q. Do you know how much that was?

A. I know how much I have at present.

Q. I mean at first?

A. I could not tell you the exact amount without looking at the papers, but she transferred a considerable amount of her stock to me.

Q. She was not your wife when she bought her stock?

A. No, sir.

Q. Now, Mr. Wildes, you have been the most active person in the ~~notice~~ movement of the Boston stockholders as they are called in this movement to re-organize the direction of The Rural Homestead Company, have you not?

A. I suppose so.

Q. Will you then, without being specifically questioned, tell us what has aroused the feeling of the Boston people that the concern was not being properly managed, and what has been done since and the motives. Begin with your first connection with it.

A. Well, the first that created my dissatisfaction was the fact that the books were not being kept in proper shape, and I made different attempts—

Q. Pardon me, but can you locate somewhere near the time when you first began to have this feeling?

A. It was somewhere after January 1886. It was in a year or two from that time.

Q. Well, now proceed.

A. And I used to hear then from Mr. Scherer and Mr. Cowdrey, who visited New Jersey at the office of the Cemetery, that the books were not written up, and then I noticed that no meetings were called, and it ran along that way for several years, until 1889.

In August, 1889, I went to New York and called upon Mr. Dummer, President of the Association. I went over to his house one evening, and we had a long talk about cemetery affairs, and I called his attention to the condition of the books; that we in Boston were told by Mr. Scherer and Mr. Cowdrey, who visited New York, that there was no regular set of books kept, that everything was kept on loose memoranda, and I told Mr. Dummer that I considered it a very improper state of things. Told him we had had no meeting and asked him who was auditing at that time, and he said he didn't know that he was himself—had the impression that he was, but did not know, but he had not audited the books himself and did not know of any auditing being done for several years—not since 1885. He admitted that things were not as they should be, and said he would speak to Mr. Torrey about it. I also asked him to get me a copy of the by-laws, if he could, and he said he would. He said nobody had called upon him to audit the books, and that he was President of the Association just the same, and had been ever since its foundation. I got a letter from Mr. Dummer the next month—September—in which he said he had seen Mr. Torrey, and Mr. Torrey promised to attend to it, but nothing further was done. I did not get any by-laws, and Mr. Torrey paid no further attention to the books, so far as I could see. In July, 1890, we got a notice of a meeting of the stock-holders.

Q. For what date?

A. Either the 7th or 9th, I won't say which, but I think it was the 9th, which was called a deferred annual meeting.

Q. And the regular date for the annual meeting what was that?

A. The regular date, according to the by-laws which I afterwards obtained, was the first Tuesday in June of every year.

Q. Do you know what was the reason that meeting was deferred?

A. I know this, that Mr. Torrey told me in my office in August, 1890, that Mr. Pratt had recently acquired the stock formerly held by the Barnes estate. That it was transferred to him about the first of July, although he had acquired it a month or two earlier in the spring, but it was not transferred until about the first of July, and I have that reason to suppose that the meeting was deferred in order that the voting power of that stock might be held by Mr. Pratt. We knew nothing here in Boston at that time of the condition of affairs, except that there was this irregular system of accounts and that we had had no dividend; that Mr. Torrey had repeatedly in reply to written demands for the care of the books pleaded lack of time; that he had postponed several attempts made by Mr. Cowdrey to help write up the books,* and these remarks have come to my ears that Mr. Pratt and Mr. Torrey made in regard to the right of the Rural Homestead Company in the matter, and that Mr. Pratt seemed to think, and had suggested that the accounts had better be dropped, and no further attempt made to write them up, it being an impossible thing to do, and that there was no need of it.* When Mr. Scherer went on to attend that meeting, as I say, we knew nothing about the state of affairs beyond this, and he took our proxies, mine with the rest, as far as I know. When he returned he brought the report which was read by Mr. Torrey—the first official statement that we had had for five years, that is, there had been no meeting of the stockholders of the Rural Homestead Company since December, 1885, according to this report of Mr. Pratt's read July 9th, 1890. At that meeting, according to the report, the amount of indebtedness by the Cemetery Association to The Rural Homestead Company was stated as being over $50,000.00, and it was further stated that there were pressing demands

being made for money on the part of the creditors of the Association, and an intimation made that unless money was forthcoming promptly there was danger of a receivership.

Q. Do you know what the Boston stock-holders paid for their stock?

A. They paid par.

Q. Now proceed, please.

A. The last previous meeting held by the stock-holders, and called by Mr. Pratt, was for the purpose of raising the 10 per cent. assessment, or was for the purpose of getting 10 per cent. additional subscription, and at that time it was said that this 10 per cent. would relieve the Company from its debts, the proceeds of that subscription having been voted to be especially devoted to the object of paying off the debts of the Association, and would be sufficient also to provide a certain balance, which was represented as being sufficient to carry the Cemetery along for a certain period, and was to be devoted strictly to that purpose of paying the debts of the Cemetery and to be used at the Cemetery grounds, and for no other purpose. We had had no reason to suppose, other than the fact that we got no report of any meetings held, that the Cemetery was in a tight place financially, until this meeting of July 9th, 1890. Consequently when Mr. Scherer returned—

Q. From the meeting of July 9th, 1890?

A. Yes, from the meeting of July 9th, 1890, we were very much disgusted at having a receivership impending, after what we considered a silence of five years. I will say right here that I wrote to Mr. Pratt, prior to that meeting, asking that Mr. Scherer's name be presented at the election, in order that we might, if possible, get information during the coming year, which we had been up to that time unable to obtain, and was ignorant, entirely ignorant, of what that meeting disclosed at the time I wrote the letter to Mr. Pratt. Mr. Scherer had promised at the meet-

ing to get us together to meet Mr. Torrey, who was coming on to attend the meeting of the Cemetery superintendents in August, to discuss this question of raising more money, but when we met, before meeting Mr. Torrey, several of us met to hear what Mr. Scherer had to report; and to read the statement of Mr. Pratt's which he brought with him---we decided that under the circumstances we should put in no more money, but should at once begin an effort to change the control of the Company. Mr. Torrey came to Boston in August, and Mr. Scherer brought him to my office. We had a conversation, and in consequence I told Mr. Torrey that I and the others, but I for one, had made up my mind to do all I could to change the control of the Company, and that I was very much dissatisfied, and I replied to his question as to whether I knew that a lawyer in Jersey City had called at the Company's office, that I did, and that I had between the time of the meeting in July and that time, visited Jersey City, and placed our affairs, in company with Mr. Scherer, in the hands of Mr. McGee, of the firm of Bedle, McGee & Bedle, to protect our interests in case the receivership which was threatened in this report of July 9th, 1890, should be pressed. Mr. Torrey asked me if I was aware that any proceedings at law would ruin the Company, and I told him I did not think it would. And ruin the stock; I told him I did not think it would, but that that would make no difference. The stock was not worth anything then and would not be, in my judgment, under the then management, and I was determined at the risk of ruining the stock to push the matter even if it were necessary to have recourse to the law. I had no intention at the time, or wish, to control the Company myself, it being utterly impossible for me here in Boston, with such business interests as I have, to do so beyond what I could do indirectly, but I did mean, and have ever since done what I could to bring about a change in the control,

by from time to time acquiring such stock as I could get hold of.

Q. Before leaving that topic, Mr. Torrey in his affidavit annexed to the Bill of Complaint in this case, makes this statement: "That said Wildes there informed this deponent that he had engaged Mr. McGee of Jersey City, to take such action in the Courts as would give to him and his Boston associates the control of the whole business of the Rural Homestead Company." Is that true?

A. That is not true.

Q. He further goes on to say; "He made no explanation of the reasons for such action, but only asserted that he proposed to get rid of the existing management." Is that so?

A. That is not so.

Q. He further goes on to say,—"Deponent protested that it might be easy to ruin the value of the Rural Homestead investment by litigation. He," that is you, "replied that that was just what he proposed, using the words 'I propose to control the entire business or ruin it.'"" Is that true?

A. That is not true, I never used the words "rule or ruin."

Q. Mr. Torrey then goes on in his affidavit to say, —"He," that is you, "then said that it was best for this deponent to know just what his position was, as plainly as it could be stated. Deponent replied that his statement was certainly plain enough, in reply to which remark, said Wildes repeated the words 'I propose to control the entire business or ruin it' and that is what I mean that you shall understand." Did you use those words?

A. No, I did not say that, or anything to that effect, or anything that meant other than this, that I should change the control of the Company if I could do so, even at the risk of ruining the stock.

Q. Mr. Torrey goes on in his affidavit to say,— "Later in the conversation said Wildes said that he

did not mean that he intended to ruin the Rural Homestead Company, but as this deponent had expressed a fear that his proposed course of action would ruin it, he, Wildes, only spoke upon that theory." Is it true that that occurred later in the conversation?

A. I don't remember anything of that sort.* I endeavored to make it as plain as possible that my intention and determination was from that time forth to do all that I could to change the control of the Company.

Q. And for what reason?

A. Why to put an end to what I considered an unsystematic, unbusiness-like, and dishonest management.

Q. He goes on to say,—"That he himself," referring to you, "did not believe that litigation would produce such a result, but if it would the Company would have to be ruined, for he proposed to have litigation if he could not get the entire control of the Company without it." Did you use any such language?

A. Well, perhaps that might be inferred from the statement that I made that I should change the control of the Company even if it were necessary to resort to litigation to do it. That possibly might be inferred. I certainly did say that I considered the stock of no value then, and considered it would never be of any value under the then management, and that I should do what I considered necessary, even to going to law about it, to bring about a change in the control, and even if the stock were destroyed in value by it.

Q. Now proceed, sir, with your statement in your own way. Now you have brought us up to the time of the conversation with Mr. Torrey in 1890 after I had been employed. Now do you remember the date of that conversation?

A. It was in August, 1890, I think.

Q. Now the next time you were in Jersey City in reference to it, was when, and about what?

A. The next time was at the directors meeting in November, 1890.

Q. Of what Company?

A. The Rural Homestead Company, at which you and I were both present.

Q. Now can you tell us what occurred at that meeting?

A. At that meeting a proposition was made by Mr. Pratt to divide the balance of the stock then remaining in the Treasury pro rata among the stock-holders, to which we objected, and a conversation on the subject was held as to the condition of accounts and a promise extorted finally from Messrs. Pratt and Torrey that they should be attended to just as soon as possible, and that in December Mr. Cowdrey should be sent for to help write up these accounts.

Q. How many shares of stock were in the Treasury?

A. 238, I believe, as we supposed. Of course we only know from Mr. Pratt's statement.

Q. That was your understanding also from other sources of information?

A. Yes, sir.

Q. Do you recall the terms on which that stock had been left in the Treasury?

A. It had never been issued.

Q. Was that stock left there for a purpose?

A. It was left there, as I suppose, subject to sale for cash.

Q. What was the reason urged for its distribution; and what the objections urged at that meeting?

A. The reason Mr. Pratt gave was that he saw no use in holding it any longer, and that in view of the attitude of the Boston stock-holders he thought it should be distributed.

Q. What was the objection urged against the distribution?

A. The objection was that there seemed no good reason for its distribution, and that it was illegal.

Q. What was the result of the discussion?

A. The result was that Mr. Pratt withdrew the intention.

Q. And the stock was not distributed?

A. And the stock was not distributed.

Q. Now at that meeting do you recall anything else? Mr. Scherer was then a director, was he?

A. Yes, Mr. Scherer was a director then.

Q. Do you remember whether the accounts were discussed?

A. Yes, I said that.

Q. Well, now when was the next time you were there?

A. The next time I was there was at a meeting of the Cemetery Association in January following. Meanwhile, Mr. Cowdrey had been to Jersey City, not in December, as was promised, but in January, if I remember rightly in the early part of January, and had assisted Mr. Torrey in writing up the accounts for the year 1890, in order to be prepared for the meeting of the Cemetery lot owners in January, 1891, and a portion of the period from 1885 to 1890.

Q. Do you recall what happened at that meeting?

A. At this meeting of the Cemetery Association?

Q. Yes. Do you remember who was there and what happened?

A. I remember that there was a discusion as to whether a committee should be appointed to investigate the accounts.

Q. Do you remember whether the motion to make the Committee nominated the men?

A. I think it did.

Q. Do you remember the rule of the President on it?

A. The rule of the President was that there was already an auditing committee* in existence under* the

by-laws of the Cemetery Association which he considered was all sufficient.

Q. Do you remember who presided at the meeting?

A. Mr. Pratt presided at the meeting. I remember that Mr. Linn, their own counsel, saw no objections to* it, rather favored it.*

Q. Well, what was the result, was the motion put, or was it ruled out of order?

Question objected to by Mr. Parker, Jr. as leading.

A. The motion was ruled out of order. Mr. Pratt declared that the meeting was called for the sole purpose of electing the trustees, and listening to the report.

Q. And there was no committee appointed?

A. No, there was not a committee appointed. But there was an adjournment taken to the following April, at which time Mr. Pratt and Mr. Torrey thought the accounts would be written up. My impression is that at that meeting Messrs. Jewell, Reddish and Beadle were appointed as an auditing committee for the ensuing year, and were to report in April upon the accounts, which were supposed to be written up by that time. Mr. Beadle was taken sick, I think, and the report when it came in, was signed, if I remember rightly, by Messrs. Jewell and Reddish, on which, Mr. Reddish, by Mr. Jewell's own statement had done practically all the work, and had spent a number of weeks with Mr. Torrey in putting the accounts in shape upon the books.

Q. Were you present at the meeting in April?

A. I think I was.

Q. At that meeting was any business transacted except listening to the report?

A. At that meeting there was no business transacted.

Q. Do you remember whether an effort was made to introduce resolutions, or other business?

A. I think there was an effort made, but it was ruled out of order.

Q. Now when were you next there?

A. At the meeting in June, 1891. The annual meeting of the Rural Homestead Company.

Q. At that meeting was any effort made to defeat the existing management? Any effort made on your part?

A. Yes. I made a few remarks at the time giving my reasons for thinking there should be a change, but we were out-voted. We were still in the minority.

Q. Now the next time you were there was at the annual meeting of 1892, was it?

A. Yes, the next time I was there was at the annual meeting of 1892.

Q. Prior to that meeting had you and Mr. Scherer bought additional stock?

A. Yes.

Q. What is the capital stock of the Company?

A. $120,000.00.

Q. How many shares?

A. That would be at $50.00 a share, 2,400 shares.

Q. At the meeting of June, 1892, how many shares of stock were owned by the complainants?

A. Eleven hundred and ten (1,110) shares.

Q. And you state in your bill of complaint that there were 14 shares owned by Messrs. McGee, A. D. Bedle, Jr., Fowler and Reddish. If the 238 shares had not been issued would that be a majority?

A. It would.

Q. When you came on from Boston to attend that meeting did you know that 238 shares had been issued?

A. I did not.

Q. What was the first notice you had of it?

A. At that meeting.

Q. Didn't you learn of it that morning before the meeting?

A. Yes, sir.

Q. I told you about it, didn't I?

A. Yes, sir.

Q. At that meeting was the stock of the complainants, together with the 14 shares we have spoken of all voted for one board?

A. It was.

Q. The rest of the stock, with the exception of four votes was all voted for a different board?

A. Yes, sir.

Q. And which board was declared elected?

A. The board not voted for by us.

Q. If the 238 shares which was in the Treasury at the meeting of 1891 had not been voted, would that have elected your board?

A. It would.

Q. The 238 shares stood in whose name?

A. In Mr. Samuel W. Bower's.

Q. Do you know who he is?

A. Only by hearsay.

Q. What do you know about him?

A. I know that he is a lawyer having an office in New York and residence in Brooklyn.

Q. Who presided at that meeting?

A. Mr. Pratt.

Q. Was any statement made by the President as to issuing that stock, and consideration therefor?

A. He said that the stock had been issued in payment for a certain amount of land which the directors had decided to purchase in that way.

Q. Did he say anything about its being available for cemetery purposes?

A. He said that he thought it was available for cemetery purposes.

Q. Do you remember his words as to that?

A. *He gave me the report at that time.*

Q. Now, then, have you been on the grounds, or

do you know where the land is that was claimed to be purchased at that time?

A. I do.

Q. And was it stated where it was, or what land it was, or who had been the former owners of it?

A. It was stated that it was adjoining the Cemetery grounds. Whether it was stated who the former owners were I should have to look at the report to see.

Q. After that meeting what did you do with reference to obtaining information in regard to that land?

A. I visited it for one thing, and through you attempted to find out particulars as to its value, and as to the legality of the purchase.

Q. Title?

A. Yes, its title.

Q. And what was the result of your investigations?

A. I became satisfied that the land was not what it was represented to be, either in point of availability for cemetery purposes, or as to its value in the market.

Q. How about the title?

A. And that the title was defective.

Q. Well, the meaning of my question was not what did you find out in these respects, but what did you direct to be done after your investigations were concluded?

A. I directed that steps should be taken to annul the sale?

Q. And also to annul the sale of anything else.

A. To annul the sale of the stock with this litigation as the result.

Q. Do you know what proportion of the lots of the cemetery, of the present cemetery, have been sold?

A. I do not.

Q. Well, what do the reports show?

A. My impression is the reports show that about 1-3 of it has been sold.

Q. How many years has it been in existence?

A. Since 1883.

Q. If the matter had been brought to the attention of yourself and the other Boston stock-holders, should you have consented to the purchase of any more land?

A. We should not.

Q. Why not?

A. On the ground that it was not needed.

Q. Well, how about the finances?

A. Well, the condition of the finances of the Company would not justify it.

Q. Up to the time in 1890 when Mr. Scherer was elected director, had your suspicions been aroused except anything further than a laxity of the management of the affairs of the cemetery?

A. Well, the laxity was of such a nature that I felt suspicious that there was some concealment, which ought to be investigated.

Q. I am speaking now about the time prior to the election of Mr. Scherer.

A. Well, there was nothing perhaps I might say beyond the statement which I had heard had been made with regard to our relation to the cemetery, which seemed to indicate a disposition to ignore our rights.

Q. You have stated that you had written to Mr. Pratt asking that Mr. Scherer be appointed a director for the reason that you wanted to have some one in the Board who could obtain information. Notwithstanding that you had all given Mr. Scherer proxies up to that time, had you intimated any desire to have the officers changed?

A. No.

Q. How soon after Mr. Scherer's return was it that you began to feel different with reference to it?

A. Immediately after his return.

Q. Was that the first?

A. Yes, that was the first.

Q. In the answer considerable point is made that at that meeting Mr. Scherer voted with the proxies of the Boston stock-holders in favor of the existing management?

A. They were given to Mr. Scherer, because as I say, we were in the dark until his return from that meeting as to the actual condition of affairs, and knew nothing beyond the fact that the accounts had not been written up, and there was at least one year when there were no accounts at all entered, but the balance of the time for short periods it was covered, but the books were not written up, and the accounts were in the form of loose memoranda.

Q. And was it the report that was read at that meeting that caused you to feel that the management was not only lax but incompetent?

A. It was. Of course, I had previous to that made an attempt to learn through Mr. Scherer and Mr. Cowdrey when they visited Jersey City, what was possible to learn, but never could learn anything satisfactory. I had been trying to get the by-laws and could not get them, and felt that if Mr. Scherer went in as a director we could learn more.

Q. *In the report of that meeting was any report made in favor of the judgments with reference to Robert O. Babbitt and Israel Crane?*

A. There was not.

Q. What was the first you learned about that?

A. The first I learned of that was from you.

Q. Last year.

A. Since the meeting of 1892.

Q. Did you know at the meeting of 1892, or at any time prior to that of the fact of the application for sequestrators?

A. I did not.

Q. When did you first learn of the filing of the bill of interpleader.

A. Through you.

Q. Since the meeting of 1892?

A. Since the meeting of 1892.

Q. Do you know to what extent the Cemetery Association is indebted to the Rural Homestead Company?

A. I know it is an amount greater than what was stated at the meeting of July 1890, as being over $52,000, and I would state that at one of the meetings either of The Rural Homestead Company or the Cemetery Association, subsequent to the meeting in July 1890, Mr. Pratt said that in case the issue was between the Cemetery Association and The Rural Homestead Company he should side with the Cemetery Association, for which remark you took him to task, as being a very improper one for him in his position to make. * I will also state that at least on two occasions in the meetings of The Rural Homestead Company or the Arlington Cemetery Association, Mr. Pratt, the moment the election was over checked an attempt on our part to discuss the affairs of the Company, one of which, or both, was the annual meeting, on the ground that* it was out of order, and the moment the election was over declared the meeting adjourned, in spite of our protests that we ought to be heard, and got up and left the room, as it were slamming the doors in our faces.

Motion made by Mr. Parker, Jr., that "slamming the doors in our faces" be stricken out.

Q. In your judgment what was the motive of Mr. Pratt in the issue of this stock to Mr. Bowers, for the purchase of the land for which it was issued?

Question objected to by Mr. Parker, Jr., because it is not in evidence that Mr. Pratt issued the stock.

A. To retain control of the Rural Homestead Company.

Q. In whose control has the affairs of both Companies been since you have had any connection with them?

A. Messrs. Pratt and Torrey. Mr. Dummer said to me himself when I first applied to him in August, 1889, that I must go for information to Mr. Torrey, that he did not pretend to be posted as to the affairs of the Cemetery Association or the Rural Homestead Company either.

Q. In your judgment was the purchase of that land for the best interest of the Rural Homestead Company?

A. It was not.

Q. In your judgment has The Rural Homestead Company any use for land in addition to that which was already owned before this purchase?

A. "Any use" is rather broad. They claim that there is a benefit to the Cemetery Association on the quarry which exists on the property, but I do not consider that that in itself is sufficient to warrant the purchase of the land, as I know of.

Q. Well, in your judgment can enough be gotten out of that quarry for the purposes of the Cemetery to justify its purchase?

A. No.

Q. In view of the financial circumstances of the two Corporations, is it in your opinion justifiable that there should be additional indebtedness incurred?

A. No.

Q. Or additional lands purchased?

A. No.

Q. You say you have seen this land?

A. I have.

Q. Just describe its appearance and its location?

A. It adjoins the Cemetery—the bulk of it. It is low land and a large portion of it meadow land. With the exception of a narrow strip along the present roadway (a very narrow strip which* projects*

abruptly from the roadway to the meadow land) it is, I should say, of very little value, and the narrow strip is not sufficiently broad to effect the general character of the whole.

Q. What do you mean by meadow?

A. Well, the land,—I don't know whether it would properly be called marsh land or not, but it would not surprise me if it had been at times more or less of it over-flowed. I don't know that for a fact, however. It would certainly require grading to a considerable extent to make it available.

Q. Have you any reason for desiring the change of management other than those you have stated?

A. Well, I think I have stated that I considered the present management are not conducting the business in the interests of The Rural Homestead Company, and that it is an incompetent management, looking at it from that standpoint; and I consider that it is a dishonest management.

Q. You have been informed of the judgments of Babbit & Crane since the meeting of 1892. Have you any information with reference to the foundation of the claim on which Mr. Babbitt's judgment is based?

A. * My knowledge of that was obtained originally from Mr. Torrey who told me that the purchase of The Rural Homestead Company's stock in the Barnes estate by Mr. Pratt was made on the basis of an exchange with Mr. Babbitt of a claim which Mr. Pratt then held, or in round numbers $5,000 against the Cemetery Association, which was probably strengthened by some cemetery lots, and possibly some Rural Homestead Company's stock. *

Q. Do you mean as collateral?

A. Yes, sir.

Q. Well, that answer is not quite clear. Do you mean that Mr. Pratt purchased the stock through Mr. Babbitt, or what do you mean?

A. I mean in fact that he purchased the stock through Mr. Babbitt. That Mr. Torrey informed me

that the Barnes estate went in the first instance to Mr. Pratt, for a purchaser for their stock in the settlement of the Barnes estate. That Mr. Pratt informed them he did not want it, but would do what he could to obtain a purchaser for it, and that Mr. Babbitt was put forth as a purchaser.

Q. By whom?

A. By Mr. Pratt. And that Mr. Babbitt purchased the stock and held it but a month or two and then did not want it any longer and Mr. Pratt took it from him on these terms I have mentioned, which story was corroborated by General Barnes, the executor of the Barnes estate, to me personally when he said that the stock had been sold through young Mr. Pratt, as he remembered it, and also the same story was corroborated in fact to me by Mr. Moon, secretary of the Barnes estate, in whose office young Mr. Pratt at that time was employed as a clerk.

Motion made by Mr. Parker, Jr., that the portion of the answer be stricken out where Mr. Wildes says that Mr. Barnes, executor, informed him that it was purchased in that way; also in regard to Mr. Moon, for the reason that it was not said in the presence of Mr. Pratt, and is not legal.

Q. Did Mr. Torrey tell you how many cemetery lots, and how much Rural Homestead Company stock had been put up as collateral?

A. He didn't. I didn't ask him.

Q. Are you sufficiently familiar with the keeping of accounts to know whether the accounts of this Cemetery Association, as they appeared after they were written up, required any book-keeping knowledge beyond that of an ordinary book-keeper?

A. Yes, I am sufficiently acquainted to know that they are in their nature simple.

Q. In your judgment, if they had been attended to from day to day, how much time of a book-keeper, or person familiar with book-keeping would it require to keep them up?

A. It would have taken but a very short time every day, and in that opinion I am confirmed by a letter which I have from Mr. Reddish, who has been Treasurer of the Rural Homestead Company from its beginning, in which he states—

Mr. Parker, Jr., asks if he can produce the letter.

(Upon looking Mr. Wildes fails to find the letter, and will preduce it at a later date.)

Q. It is stated in the answer, Mr. Wildes, in this case, that there was no time in which the complainants failed to receive on application a statement of the amount of sales of lots. Did you ever receive such a statement?

A. There have been statements made of the number of lots sold. Just how many I could not tell you.

Q. In your judgment are you at all familiar with Cemetery affairs?

A. Well, in what sense?

Q. Well, with the management of Cemetery affairs?

A. Well, no I cannot say that I am, particularly. I have lots in several Cemeteries, and know something of their management, but I have never been connected officially with any cemetery.

Q. Did you ever consent, or, so far as you know, any of the Boston stock-holders, to the loaning of the share of the income of the Cemetery which belonged to the Rural Homestead Company to the Cemetery Company?

A. It was understood in the beginning that the Rural Homestead Company should assist the Cemetery Association by loaning it money from time to time. In the early stage of the game it was done by first checking the proportion of The Rural Homestead Company to its Treasurer, Mr. Reddish, who then checked it back to the Cemetery Association, but that system ceased after July, 1884. when a vote was

passed by the Directors of The Rural Homestead Campany--not by the stock-holders—it was never submitted to the stock-holders—that from that time forth the Cemetery Association should not be required to pay over to the Rural Homestead Company its proportion.

Q. My question is, whether you ever assented to that, or any of the stock-holders in Boston, so far as you know?

A. No, not so far as I know. Then there was another vote passed about the same time which changed the status of the two Companies, in that it from that time forth permitted the Cemetery Association to sell its lots at any price it saw fit, whereas in the original contract it was to sell them at a fixed price up to a certain limited number, and beyond that at a certain increased price.

Q. Has that ever been agreed to by the stock-holders?

A. It has not, any more than the other.

Q. Have either of these matters ever been brought before any stock-holders' meeting?

A. They have not, so far as I know.

Q. In your judgment, is there any necessity for a cemetery to cost so much money?

A. There is not. I think this, that a cemetery of course can spend any amount of money which may come into its possession. There is no limit to the money that can be expended in a cemetery association. *That it is unjustifiable, I admit.*

(Motion made by Mr. Parker, Jr., that this be striken out, as witness has already testified that he is not familiar with cemetery affairs.)

(The witness): I do not mean my answer to be quite so broad as that. * Of course anyone sufficiently acquainted with

the Cemetery can be said to be familiar with the details of cemetery management, and beyond this, it is a simple business enterprise, which anyone who has had experience in business matters, I should say was competent to pass upon. *

Q. You have been a business man?

A. I have.

Q. All your life?

A. I have. And in several companies in which I am director or president, I do not claim to be competent to take the executive business of the companies in my own hands, but still I feel competent to pass upon whether they have been wisely administered or not.

Q. It is stated in the answer, and I ask you questions about it at this time because of the distance at which you live from Jersey City, that the Directors of The Rural Homestead Company, with the approval of all the stock-holders as far as they could ascertain, and with the approval of a large majority of all the stock-holders including complainants, waived any payment by the Cemetery Association to the Rural Homestead Company. Is that true?

A. They never did so * as stock-holders. *

Q. It is further stated therein that the Boston stock-holders often called at the office, and that with them there was the utmost freedom in conferring, and that they always expressed themselves satisfied and pleased. Is that true?

A. * No, though * I can only state what they have themselves told me, for I never myself called at the Company's office for information; never thought it best to do so. After making attempts through those who were more intimately connected with the Company than I was to get information, and failing to do

so, I felt it waste of time to take any direct steps myself by going to the Company's office.

Q. How did it happen that Mr. Cowdrey living in Boston was employed to assist in this book-keeping?

A. Mr. Cowdrey was an auditor, appointed at the start of the Cemetery Association. He became personally acquainted with Messrs. Pratt and Torrey, and having experience as a book-keeper, and being put forward too by us at various times, to seek this information, was asked by Mr. Torrey to help him in putting the accounts into the books.

Would the Boston stock-holders have asked to have Mr. Cowdrey, or anybody else, sent on if the accounts had been kept up in shape?

A. Certainly not.

Q. Do you know how much money has been put into this concern by the Boston stock-holders; by the complainants?

A. Not exactly. I know the greater part of the capital to establish the Cemetery was furnished by the Boston stock-holders. The original amount called for was $25,000, which was afterwards reduced to $20,000 and of which the Boston stock-holders contributed the greater part; and the same is true of the additional subscription of 10 per cent.

Q. The stock that was issued to Mr. Pratt, and those who originally owned the land in The Rural Homestead Company, do you know how that was paid for?

A. Mr. Pratt was one of the owners of the land, and together with the other owners took a large lot of stock in payment for that land.

Q. At the time the Cemetery Association was formed, do you know about what was the value of the land for other than Cemetery purposes?

A. I do not.

Q. Had it any greater value than farm land?

Question objected to by Mr. Parker, Jr. as leading.

A. I should say not. I can say that the fact that the Company was originally organized as a a land company in 1872 and was disbanded in 1875, and the lots into which the property had been divided for sale were distributed among the share-holders, and the Company went into a state of "innocuous desuetude," and remained in that state until 1882, when it was revived, for the express purpose of establishing a cemetery, and in that way disposing of the land, goes to show that the land was not of much use for any purpose; of not much value.

Q. It is stated in the answer on page 9 of my copy, that the 238 shares was "by stipulation and compact entered into between The Rural Homestead Company and the complainants, at the time complainants became stock-holders, to be either distributed pro rata among stock-holders, or sold by the directors for the benefit of all stock-holders, but without any restriction or limitation as to price being expressed in said stipulation." Did you ever hear of that before it was set up in the answer?

A. I never did.

Q. Did you ever see any such stipulations as that?

A. I never did.

Q. It is stated in the answer on page 11 of my copy, "that as far back as the month of August, 1891, complainants had refused to have any personal communication or correspondence with the officers of The Rural Homestead Company, except through their attorney Mr. Flavel McGee." Is that true?

A. I never was asked to personally.

Q. Have you ever refused, or any of the stock-holders in Boston so far as you know to communicate with the officers if they had an opportunity.

A. Not so far as I know. That *idea* arose probably from the fact that a letter from Mr. Pratt to several of the Boston stock-holders in 1890 (in the fall of 1890) was not replied to for the simple reason that it seemed a waste of words to do so.

Q. That was the proposition to buy or sell?

A. Yes, that was the proposition to buy or sell.

Q. What was the reason that you neglected to answer that?

A. Well, because the proposition seemed absurd for us to entertain.

Q. You spoke I think during your examination of the Company having at one time owned lots in two other cemeteries. Do you recall what reason was given by Mr. Pratt for the purchase of these cemeteries?

A. The reason given at the time was that the New Jersey law permitted three cemeteries, and only three in a township, or county, I won't say which, and Mr. Pratt thought that as a matter of protection we should establish these other cemeteries so as to keep out other cemeteries from entering the field.

Q. Have either of these been recently sold?

A. One of these has been recently sold.

Q. Within what time?

A. The sale was reported in the annual report of June, 1892, I think.

Q. And was that the additional land referred to in the form of subscription which is set out in the answer, as having been the form of subscription at the time the additional stock was subscribed for by the Boston stock-holders?

A. *No, those purchases were not made with the additional subscription,* but were purchased immediately after the establishment of the cemetery in the spring of 1883.

Q. Then this form of subscription that he sets out here was not presented to the Boston stock-holders?

A. No, those purchases were made with a part of the original funds subscribed principally by the Boston stock-holders. The money that was raised from the additional subscription *of 1885* was by vote especially devoted to certain purposes all relating to the payment of debts then due by the Cemetery

Association, and providing for a certain balance to go towards current expenses at the grounds.

Q. It is alleged in here that the object of the Boston stock-holders in desiring to change the control of The Rural Homestead Company was for the purpose of depriving the Cemetery Association of the resources which are absolutely necessary to its existence, and to evade the obligations entered into with the public by it. Is that true?

A. That is not true.

Q. In one of the answers in the case of the Arlington Cemetery Association against the Rural Homestead Company, it is set out amongst other things "that a Cemetery Association to be composed mainly of respectable citizens of Jersey City shall be duly organized, and for that purpose there shall be placed at the disposal of Julius H. Pratt, as a commission all benefits that may accrue from the sale of the first four hundred lots, of three hundred square feet each, or the equivalent area thereof," and that at the same meeting the Board of Directors accepted the report and the conditions named in the report for the proposed purchase of land, and that in pursuance, etc. The Rural Homestead Company took a title by due conveyance to a certain tract of land situated at Arlington, and then describes the present Cemetery lot. Did you ever hear of that four hundred lot clause until a copy of this answer came into your possession?

(Moved that the above question be stricken out as incompetent, irrelevant and immaterial, and having nothing to do with this case, as it applies to another case.)

A. I never did.

Q. Did that report ever come to your notice until you saw it set out in this answer?

(Mr. Parker makes the same objection as made to the preceding question.)

A. No.

Q. At the time that the Boston stock-holders purchased their stock was any attention called to this?

A. Not to my knowledge.

Q. Do you know how many of these lots have been sold?

A. I do not know.

Q. Has any reference been made to it by anybody since you have been connected with this Company?

A. I don't know of any.

Q. Has any reference been made to it verbally at any meetings of either The Rural Homestead Company or the Cemetery Association at which you have been present?

A. I think not.

Q. Have you heard any other stock-holder speak of it?

A. Never.

Q. Did you ever have any knowledge of it whatever?

A. I never did.

(Mr. Parker, Jr., objects to all the questions referring to the case of The Rural Homestead Company against The Arlington Cemetery Association as incompetent, irrelevant and immaterial, and having nothing to do with this case.)

Q. Since Mr. Scherer's term expired has any representative of the Boston stock-holders been in the Board?

A. No, sir.

Q. In the report of the meeting of 1892, of the purchase of the land from Mr. Bowers, it is said that this land is suitable for cemetery purposes. Is land to which a Company has no title in fee, but only a

title in an unexpired term for thirty years, suitable for cemetery purposes?

Question objected to by Mr. Parker, Jr., as leading.

A. I should say not.

Q. The lots of the Cemetery are disposed of to lot owners to purchase in what way?

A. By deed.

Q. By deed in perpetuity?

A. I so understand it.

Q. If there is anything that occurs to you you may state it.

A. I was going to say that a further fact which has excited our distrust is the fact that at this meeting in July, 1890, the first since 1885, the amount of indebtedness from the Cemetery Association to The Rural Homestead Company was stated as a little over $10,000—between $10,000 and $11,000—but the examination made within the following six or eight months between that time and the meeting of the Cemetery Association in 1891, disclosed the fact that instead of being a trifle over $10,000 it was $17,000, which increase did not seem to be natural, or reasonable, and excited the belief that the first amount was not correct.

Q. Mr. Reddish has been represented in the answer as the representative of the Boston stock-holders. Is that so?

A. No, he is not a representative of the Boston stock-holders strictly speaking. Mr. Reddish was voted for, by the votes of the Boston stock-holders, direct or by proxy at the meeting in July, 1890, for treasurer, for the simple reason that he had been Treasurer and that he was better fitted for that position than anybody else, but has not in any other sense been our representative any more than anyone else voted for at that time. He has been in sympathy with us to a

certain extent, and we have looked to him for knowledge.

Q. Is there any other bond of sympathy between you except the common opinion as to the management of the Company?

A. No.

*Cross Examination by Mr. Parker, Jr.*

Q. Mr. Wildes, you regard the success of the Cemetery Association and the success of The Rural Homestead Company as identical, do you not?

A. Yes.

Q. And that without the success of the Arlington Cemetery Association The Rural Homestead Company could not exist, could it?

A. No.

Q. And when you purchased your stock in the Association you say it was in 1883?

A. Well, my wife purchased it; she was one of the original subscribers and my stock came through her.

Q. You took some of her stock?

A. I did, yes, sir.

Q. Do you know in what way the stock of The Rural Homestead Company was first issued?

A. How do you mean, "in what way"?

Q. When The Rural Homestead Company was first organized, prior to the time when the Arlington Cemetery Association was organized?

A. I knew nothing further about it at that time beyond what is stated in the little book which was issued by Mr. Pratt, of which we all had copies.

Q. After that stock was issued, do you know whether it was all returned to the treasury or not, before the Arlington Cemetery Association was organized?

A. Well, I think the way they state it in this little book is as clear as I can state it.

Q. Now at the time that the Arlington Cemetery Association was organized how many shares of stock did you say it was divided into?

A. The capital of the Rural Homestead Company at the time we became interested in it was set at $120,000.

Q. And how much of that was issued for cash?

A. Now that I cannot tell you exactly.

Q. And how much of it was issued for land purposes?

A. My impression is that $57,500, was issued for land purchases.

Q. And the balance was not issued was it at that time?

A. The balance was issued according as it was sold, more or less of the balance, the whole of it was not issued of course. Out of the balance came the stock which was purchased. The different complainants purchased more or less stock.

Q. Some of you have since purchased from other holders of it?

A. Yes, I have come in possession from other stock-holders since that time of more or less stock.

Q. Then there was from time to time in the control of the Board of Directors of the Rural Homestead Company more stock to be sold than the 238 shares of stock?

A. Oh, certainly.

Q. And from time to time they were sold prior to this sale of the 238 shares?

A. Yes.

Q. Do you know to whom they were sold?

A. Well, the different Boston stock-holders purchased their lots from that balance.

Q. Do you know whether all those shares were sold for par, except those which were for land purchase?

A. No, that I don't know.

Q. Was there any restriction put upon the Board of Directors of The Rural Homestead Company as to the price for which they should sell stock?

Question objected to by Mr. McGee, on the ground that the law of New Jersey places a restriction as to price.

A. Restriction placed by whom?

Q. By the stock-holders.

A. Any restriction by the stock-holders at the time the Company was organized?

Q. Yes, or any other time?

A. I don't know whether there was or not. You see I attended personally no stock-holders meeting in the early history of it.

Q. You have stated that these 238 shares of stock was Treasury stock. Will you please explain what you mean by Treasury stock?

A. Well, what I mean by Treasury stock, is stock not issued, which is one of the assets of the Company.

Q. Was not the other stock that was issued as much Treasury stock as the 238 shares in the litigation?

A. Well, I should say that it was until it was issued.

Q. Then in what way do you regard it illegal?

A. Regard what illegal?

Q. The issue of the 238 shares of stock which were issued for the purchase of land?

A. Well, I think it was beyond the legal power of the Company to issue it for that purpose, except for full value.

Q. Was it any more illegal to issue it for that purpose than for cash?

A. Well, that depends upon the purposes for which it was issued, and the value for which it was issued.

Q. At the time that you were first notified of this issue of 238 shares of stock, and the purchase of the property from Meyers, I think you stated it was by Mr. Pratt you were first notified?

A. No, I first learned of it through Mr.Mc Gee (I think, on the morning of the meeting, or the day before, I wont say which it was) about the time of the meeting in June, 1892.

Q. At the time of the meeting in June, 1892, did Mr. Pratt make any statement as to the reasons why they had purchased this land?

A. Only what was in the report.

Q. Did he not state at that time that negotiations were pending with the Meyers heirs, for the perfecting of the title?

A. Verbally, you mean?

Q. Yes.

A. I don't remember any such statement.

Q. You don't remember of his stating that negotiations were pending, and that it was thought they could purchase this perfect title for about $3,000?

A. I don't think he made any such statement.

Q. Did you not know that at that time the Cemetery Association, or, West Arlington Cemetery Association, had parted with their one purchase?

A. I knew at that time, *as it is stated there, *that the West Arlington Cemetery had been sold.

Q. And Mr. Pratt had given the reasons for having these three cemetery associations, because of the fact, that under the statute only three could be organized within a township?

A. I don't think any allusion to that fact had been made at this meeting.

Q. But Mr. Pratt had so stated at the time when these three properties were purchased?

A. They were purchased in the spring of 1883.

Q. Then they had disposed of one of them?

A. They had disposed of one of them, as mentioned in that report, a short time prior to that report. About one year prior to June 7th, 1892.

Q. Did Mr. Pratt say anything at that meeting about the value that this property of Meyers would

be to the Cemetery, as to the control of it until the title could be perfected?

A. Not beyond what is stated in that report.

Q. Didn't he make any verbal statement to your recollection?

A. Not to my recollection. I know the meeting was adjourned summarily after the polls were closed, on the ground that nothing else was in order, and he got up and left the room. I don't think that he amplified at all upon the matter.

Q. Had you ever had any conversation with any of the Board of Directors in regard to the necessity for getting control of this property? Of this Meyers property?

A. No.

Q. Do you know whether any of the Boston stockholders had?

A. I don't think they had I don't think anyone *of them* knew of the purchase of the Meyers property until about the time of this meeting.

Q. You say you went to Jersey City to examine the books?

A. No.

Q. You never went yourself?

A. I went to the Cemetery.

Q. But all the examination of the books then was made by others and reported to you?

A. Exactly.

Q. And through their reports you have been induced to come to the conclusion that there is a mismanagement. Do you know of your own knowledge of any specific act of dis-honesty on the part of these people, the defendants? You have stated that you regarded their conduct as un-business like, un-systematic and dis-honest.

A. Well, I consider it dis-honest in the first place to fail to call meetings at the times specified in the by-laws.

Q. Meetings of The Rural Homestead Company?

A. Yes.

Q. And that you regard as dis-honest on their part?

A. I do.

Q. How many notices of meetings did you receive?

A. I think I have received a notice since 1890.

Q. Any before that?

A. I do not remember of receiving any before that. And yet, I won't say that I didn't receive any in the years prior to 1885, but I don't remember.

Q. Do you know why Mr. Pratt made a proposition to divide these 238 shares of stock pro rata among the stock-holders, including the Boston stock-holders?

A. I don't know, but I can guess.

Q. Well, I don't wish you to guess, I would like to know if you know?

A. My opinion is, that "it was because" he and his sympathizers held the controlling interest, and it would strengthen their controlling interest if it was divided pro rata.

Q. And it would not weaken your interest, would it?

A. It would in that sense, yes. It would require us to obtain a greater number of shares to get control of it,* (the Company.)*

Q. At that time you did not have the controlling interest?

A. No.

Q. When did you say it was you commenced to purchase stock in order to get the controlling interest?

A. Subsequent to the meeting of 1890.

Q. What stock did you purchase? Whose stock did you purchase?

(Question objected to by Mr. McGee, as the books show all the transfers that have been made.)

(Exception taken.)

Q. Did you purchase some of Mr. Reddish's stock?

A. Yes, a portion of it.

Q. How much of it did you purchase?

A. I purchased the greater part of it. I could not tell you exactly how much without looking.

Q. After you had purchased this stock, you and the rest of the Boston stock-holders, you would have received the controlling interest in the Cemetery, provided these 238 shares had not been issued.

A. After we had purchased that with other stock.

Q. That would have given you the controlling interest in the management, so that you could have elected a Board of Directors?

A. Yes.

Q. And that was your intention and purpose?

A. It was.

Q. Was it at this meeting of the Arlington Cemetery Association that was held on April 22nd, do you remember, that a report was made by Mr. Reddish and Mr. Jewell?

A. Yes.

Q. Were you present when that report was made?

A. Yes, I think I was present.

Q. Did you not know at that time that there was a demand note due Mr. Babbitt for $4,916.80?

A. I think it was stated in the report, but I am not positive.

Q. And also to Israel Crane for $2,500?

A. I think likely. I don't remember about that. I have the report here I can look and see.

Q. Will you just look at the report and see, please?

A. Yes, there was appended to that report a statement of the individual creditors.

Q. Will you then read from that report what was the amount due for money borrowed for the maintainance of the Cemetery, other than that provided by The Rural Homestead Company?

A. $17,080.40.

Q. Including various items as therein set out?

A. Yes.

Q. Now you were present at that meeting when that report was made?

A. I don't remember whether I was there or not but I think I was, but I don't remember.

Q. Was not that the meeting at which you made a few remarks, giving your reasons for a change?

A. No, that meeting was at the annual meeting of the Rural Homestead Company.

Q. Then you are not certain that you were present when that report was read?

A. I am not positive about that.

Q. Is not that report made by Mr. Reddish and Mr. Jewell, two of the gentlemen who then owned stock in the Company?

A. I don't think Mr. Jewell owned stock in the Company.

Q. How was it that Mr. Jewell, not being a stock-holder, signed that report?

A. Well, this is the Cemetery Association and not the Rural Homestead Company.

Q. Was he a lot owner in the Cemetery?

A. I don't know. I think likely he was.

Q. At that time was Mr. Reddish a stock-holder in the Rural Homestead Company?

A. Yes.

Q. Now is not that a detailed report from January 1st, 1883 to December 31st, 1890?

A. It is to the extent which it shows on its face.

Q. Now, were there any explanations made in regard to that report at that time?

A. Well, if I was not present, I could not say. I don't remember any.

Q. Cannot you give any conversation or any of the remarks that Mr. Pratt made when, as you say, he stated that all those accounts had better be dropped?

A. I was not present at that conversation.

Q. Who was present?

A. That was a conversation between Mr Pratt

and Mr. Cowdrey, and was reported to me by Mr. Cowdrey.

Q. Then you only know that as hearsay?

A. That is all.

Q. And the matter of the Barnes stock, is that hearsay also?

A. Mr. Torrey told me a portion of it, and a portion I got from Gen. Barnes and Mr. Moon.

Q. Did you know what the deficiency was at the time when this extra assessment of 10 per cent. was levied, or the contribution of 10 per cent. was made?

A. I don't remember. I know that the stockholders were urged to take that additional amount of stock in order to pay off the indeptedness. and the statement* here in the answer I think* tells just how it was voted that it should be disbursed.

Q. Do you know that it was more than $15,000 at the time the $10,000 was subscribed or contributed?

A. No, I don't know. I should suppose that it was not so much as that from the fact that the vote which sanctioned this subscription stipulated that the balance which would result after paying what was considered the pressing demands would be used for running expenses at and upon the Cemetery Grounds.

Q. Therefore the deficiency might have been over and above the $10,000 subscribed. Do you know who furnished the money to pay that?

A. I didn't suppose there was any deficiency over and above that. I had every reason to suppose from this which I have just read that the proceeds of that subscription would more than meet the demands against the Cemetery at that time, and leave a balance, which, as stated here, was to be expended for the running expenses at and upon the Cemetery Grounds from December, 1885, to December, 1886. The inference naturally is that this subscription would pay off the debt of the Association and leave a balance which was to be expended on the Cemetery Grounds from December, 1885, to December, 1886.

Q. What is the date of that statement?

A. November 30th, 1885, I think.

Q. Well, that was November 30th, 1885. Now I ask you between 1885 and 1890,—do you know whether the deficiency during those years amounted to more than $15,000, for which the $10,000 was subscribed?

A. Do you mean that up to January 1890, there had accumulated a deficiency greater than $15,000 over and above the amount of this subscription?

Q. No, not over and above the amount of the subscription, but whether the deficiency amounted to more than $15,000 for which this additional subscription of $10,000 was made?

A. We did not know anything about the condition of the finances from this meeting of November, 1885, until July 9th or 7th, 1890, because there was no meeting called during that entire period, and it was on the 10th of December, 1885, or about that time we made our contribution of $10,000. The meeting was held, I think, on the 20th of November, and these resolutions were passed at that meeting, but Mr. Pratt finding that the shares represented at that meeting were a minority of the stock outstanding concluded to call another meeting to ratify the action of that meeting, and that meeting was held in the early part of December. It was the 10th of December, the date of the last stock-holders' meeting.

Q. Now, that was the time at which the $10,000 was contributed?

A. It was voted at that meeting. That meeting was called to confirm the action of the meeting of November 20th, which voted that subscription, and it was raised very shortly after and stock issued for it.

Q. And that money was used, was it not, as far as you know, for the running expenses from 1885 to 1890?

A. No, that money was used as I have just read, to pay off the indebtedness at that time, leaving a

balance which was to be used to pay current expenses the following year,—1886.

Q. Then would it have taken all of the $10,000 to have paid up the debts to December 10th, 1885, and for the current year of 1886?

A. It does not state that it would. It states that what was left over after paying the indebtedness should be loaned to the Cemetery Association under the express understanding that the balance of the fund arising from the sale of stock as aforesaid should be used at and upon the Cemetery Grounds.

Q. Well, from that time on until 1890 you had no reports, and you did not know how that money was appropriated?

A. Well, this is the way it was appropriated.

Q. But you don't know how it was appropriated?

A. No, as a matter of fact I don't know beyond that it was voted to be expended. *—— ——*

Q. You don't know how much more the running expenses amounted to and how much greater the deficiency was from 1885 to 1890?

A. The only knowledge we have of that is what was given to us in this report made at the meeting of July 9th, 1890, when Mr. Pratt states that the deficiency "heretofore created is to-day represented by the following debt of $10,304.49."

Q. What is the date of that?

A. July 9th, 1890.

Q. Do you know that such a vote was passed as that which you have referred to in the letter you have read?

A. *That is Mr. Pratt's statement in his own handwriting.*

Q. That is all you know about it?

A. That is all I know.

Q. Does he state that it was so voted in the letter?

A. He does so state.

Q. May I be permitted to look at the letter?

(Mr. Wildes after looking for the letter fails to find it.)

A. I think that letter must be at my office.

Q. You say that letter is in your posession at the office?

A. It is.

Q. Will you try and produce it.

A. I will.

Q. Now, you say, Mr. Wildes, that it was understood at the beginning that the money received from the sale of lots was to be checked to Mr. Reddish, the treasurer, and by him checked back to The Arlington Cemetery Association as a loan, and that that continued until July 1884, or thereabouts?

A. Yes, I suppose so, inasmuch as that vote was passed in 1884.

Q. Well, was it up to the time that you refer to in this communication that you have just read?

A. It could hardly be after the passage of that vote in July, 1884.

Q. And was not that the reason why they ceased to transfer the money by check to The Rural Homestead Company and then back again?

A. The passage of this vote was very probably. It was to relieve the Cemetery from doing just that thing.

Q. And you say in your direct examination that this sentence, "It was by stipulation and compact entered into between The Rural Homestead Company and the complainants, at the time complainants became stock-holders, to be either distributed pro rata among stock-holders, or sold by the directors for the benefit of stock-holders, but without any restriction or limitation as to price being expressed in said stipulation," you say that you did not know of that option?

A. I do not know what the price was to be prior to 1883.

Q. At the time the 238 shares of stock were issued or at the meeting just after, that you have spoken of, was not there something said about part of that land being held under a deed from the owner?

A. Nothing was said about the conditions under which the land was held.

Q. You also say that as stock-holders you never had any notice of the judgments obtained by these different parties against The Arlington Cemetery Association?

A. No, I never did.

Q. And as a matter of fact when was it that you first knew of that?

A. Through Mr. McGee.

Q. When did you first visit this land that you speak of—the Meyers' land?

A. I visited that about three months ago.

Q. Did you go over all the land?

A. No.

Q. It has the same slope, has it not, of the present Cemetery Grounds?

A. No, not exactly, except where it has been graded off. There is not so much high land in it.

Q. It has not so much frontage on ~~Statler~~ Schuyler Avenue?

A. As to the extent of frontage on the Avenue I won't say. I know it *projects* very abruptly from the road.

Q. Now, you have testified, Mr. Wildes, in regard to the affidavit which is made here by Mr. Torrey that you did not say in the conversation which you had with Mr. Torrey in Boston in the month of August, 1890, that you did not use the words, "I propose to control the entire business, or to ruin it"?

A. Yes, that is what I said.

Q. Do you remember exactly what you did say?

A. Well, I remember that I did not use the words, "Rule or ruin it," that is all. I remember Mr. Torrey asking the question, "Then you propose to rule or ruin it," and I said I did not believe it was

going to ruin the Association, but that I would change the control in any event.

Q. Did you use the words, "I propose to control the entire business"?

A. I stated that I should change the control if I could, not that I would propose to control it, but I would change the control.

Q. Did you make any memorandum at the time of the conversation you had with him?

A. Yes, I did.

Q. Have you that memorandum with you?

(Mr. Wildes after looking fails to find the memorandum, but says he will produce it later.)

Q. Then this other expression that the deponent, meaning Mr. Torrey, replied that your statement was certainly plain enough, in reply to which you repeated the words "I propose to control the entire business, or to ruin it, and that is what I mean that you shall understand." Did you say so, or what did you say?

A. I did not say so. I told him that I would use every means in my power to change the control.

Q. Will you then produce that memorandum and letter to-morrow, if you can?

A. Yes, I will try and find them both.

Not being able to complete the taking of the said deposition, by reason of the lateness of the hour, I adjourned the further taking of the same till to-morrow, Saturday, the first day of April, A. D. 1893, then to be continued at the same place, and between the same hours mentioned in the annexed notice.

Pursuant to adjournment as above stated, on Saturday, the 1st day of April, A. D., 1893, at nine o'clock

in the forenoon, at the place named in the caption and notice I continued the taking of said depositions as follows,—viz:—

Frank W. Wildes in continuation of his deposition commenced yesterday on his oath further says:

(By Mr. Wildes.) I would like to correct the answer I made with reference to having received a statement from Mr. Pratt in the month of November, 1885, or thereabouts. I find that the copy of the statement is in Mr. Torrey's handwriting.

Also* in regard to the* letter of August 6th, 1885, written by Mr. Pratt, in which Mr. Pratt states secondly, "that each stock-holder can add 10 per cent. to his holdings of stock and pay for it in cash. This will pay off all indebtedness and carry us through to another spring, when the presumption is the concern will be self-sustaining."

With reference to the memorandum of the conversation with Mr. Torrey in the month of August, 1890, the witness says, "I have looked diligently for that this morning, and I cannot find it amongst my papers. I think Mr. McGee must have it in Jersey City, but about the same time shortly after I wrote a letter in which I related the interview, of which I think I can find the copy if necessary, and will endeavor to produce if you desire."

The letter to Mr. Reddish, which was called for, I also failed to find, for which I have looked diligently, and that too, I think, must be in Mr. McGee's possession in Jersey City. Mr. McGee will produce both that letter and the missing memorandum if you desire if he can find them.

Mr. McGee asks Mr. Parker., Jr, as to the letter of August 6th, 1885,—"Do you care to have any more of the letter in evidence than the clause you have read aloud?"

(*By Mr. Parker.*)

No, I don't care to have any more of it in evidence than the second clause.

(*By Mr. McGee.*)

With reference, Mr. Parker, to the copy of the resolution or the extract in Mr. Torrey's handwriting. will you be satisfied if the Master annexes a copy of the papers so that Mr. Wildes can keep the original?

(*By Mr. Parker, Jr.*)

Certainly.

(*By Mr. McGee.*)

Then you offer that in evidence?

(*By Mr. Parker, Jr.*)

No, I won't offer that in evidence.

(*By Mr. McGee.*)

Then I will offer it in evidence and ask that it be marked Exhibit A.

Mr. Parker, will you be contented if the Master annexes a copy instead of the original?

(*By Mr. Parker, Jr.*)

Certainly.

*Re-direct examination of Mr. Wildes:*

Q. (*By Mr. McGee*): Mr. Wildes, in your cross examination Mr. Parker asked you if you could state any specific action of dishonesty on the part of the management of The Rural Homestead Company, and you stated one which appeared to relate to a time a

long distance back. Have other things since that time transpired to confirm that opinion, and if so what?

A. Yes, there have several things appeared. In the first place the discovery which was made, after we obtained through you a copy of the by-laws of The Cemetery Association which we had tried in vain before to get, that the officers and trustees of the Association had utterly ignored and failed to comply with those sections of the by-laws relating to meetings and duties of the auditing committee, certainly since the year 1885 and presumably before that time; Mr. Pratt having been in control during the whole period.

(Motion made by Mr. Parker, Jr., that "presumably before that time" be stricken out of the answer.)

A. [Second,] then another thing the discrepancy existing between the amount of indebtedness of The Cemetery Association as stated by Mr. Pratt at the annual meeting of July 9th, 1890, as being $10,000 or thereabouts, and the statement made as to said indebtedness by the auditing committee of the Association in the following spring, showing a discrepancy of some $7,000 or thereabouts.

[Third,] another thing the fact, or rather the statement made in the report of the balance of the receipts and expenditures up to December 31st, 1890, and the balance as reported by Mr. Torrey at the close of the year 1889 of receipts and expenditures, which balance Mr. Torrey in both cases reported to be identically the same sum to a cent, thereby throwing doubt as to the correctness of the accounts, in view of the improbability of any such co-incidence arising from correct accounts.

[Fourth,] another thing, the discovery more recently of an agreement said to have been made before the connection of the Boston stock-holders with the Com-

pany, by which Mr. Pratt was to receive as a commission all the benefits arising from the sale of the first 400 lots in the Cemetery Association, thereby creating an interest hostile to The Rural Homestead Company and one which explains somewhat the remark made by Mr. Pratt at a meeting at which I was present, of either The Rural Homestead Company or the Cemetery Association, that in case he were called upon to take sides with either he should side with the The Cemetery Association, giving plausible reason* for the belief that in conducting the affairs of the Cemetery Association, Mr. Pratt, although having always been President of The Rural Homestead Company, was conducting its affairs and pursuing a policy in the interest of his own lots rather than in the interest of the Rural Homestead Company, whose interests he, as President, was bound to protect.

(Motion made by Mr. Parker, Jr., that there be stricken out from the words "thereby creating an interest hostile to The Rural Homestead Company," all that the witness has said to the words "that in case he was called upon," as that is an opinion and not evidence. And also from the words "thereby giving plausible reason" as that is an inference and not evidence.)

(Mr. McGee says that the question called for an opinion, and was proper matter of re-direct examination, in view of the question in the cross-examination which calls for specific instances of dishonesty, according to the witness's opinion.)

Q. Proceed, please, Mr. Wildes?

A. [Fifth]. Another thing, the fact that we have been kept in ignorance of the judgments obtained

against the Cemetery Association by Messrs. Babbitt and Crane. At no annual meeting of The Rural Homestead Company were statements made of the fact of those judgments, or of the sequestration suits which followed them, to these stock-holders, or to any stock-holders so far as we know, and certainly no information of either those judgments or the sequestrations has come to the Boston stock-holders who have put their money largely into the enterprise, except through our counsel, Messrs. Bedle, McGee & Bedle, together with the fact that in investigating these judgments and sequestrations, and the basees for them we have been met by opposition, on the part of Mr. Pratt especially.

Q. Are you aware that the judgments of Babbitt and Crane against the Cemetery Company were entered by default, and that no defense was made against them?

A. I am.

Q. Are you also aware of the fact that sequestrators were appointed in that case by the Chancellor by agreement of the officers of the Company with the Attorneys of the plaintiffs?

A. I am.

Q. What impression on this subject in regard to which you have been last testifying has that made upon your mind?

A. The impression that an attempt was made in both instances to procure ex parte certain decisions without the knowledge of the Boston stock-holders, and to the injury manifestly of their interests and rights as stock-holders in the Rural Homestead Company.

Q. If you had known that suit had been brought by Mr. Babbitt upon the note held by him, would you, if permitted to do so by the officers of the Company, The Rural Homestead Company, have been at the expense of the defense?

A. Yes, rather than have had that judgment entered, of course I should.

When the fact was made known in April, 1891, by the report of the auditing committee that Mr. Babbitt held a note, what effect did that produce upon your mind, as to the relationship between Mr. Babbitt and Mr. Pratt?

A. I believed that Mr. Pratt was behind Mr. Babbitt and was the bona fide holder of the note.

Q. In one of your answers a little while ago you stated that one of the things that seemed an act of dishonesty in your opinion, was the fact that had come to your knowledge recently with reference to the agreement that Mr. Pratt should have the benefit of the sale of the first 400 lots as a commission, at a price fixed in the agreement between the two companies. How much would the sale of those 400 lots net in dollars?

A. In answer to that question I will read article 6 of the original contract between the Rural Homestead Company and the Arlington Cemetery Association. Article 6 reads—"The Rural Homestead Company reserves to itself the right to distribute gratuitously certain lots, not exceeding 60 in number, for the purpose of initiating the Cemetery, for which the minimum price for lots of 300 square feet each is fixed at $200 each for the first 100 lots sold, and $300 each for all lots subsequently sold, which price may increase at the option of said Cemetery Association, but shall not be reduced except by consent of the Rural Homestead Company."

Q. Then as you understand it, what would be the value in dollars of the first 400 lots sold?

A. Well, I should say $110,000.

Q. Is it this sum of money that you had in mind in the language you used in your fourth sub-division this morning, when you said that "it created a hostile interest to The Rural Homestead Company"?

A. Certainly.

Q. Is there anything further you would like to say?

A. Well, I would like to call attention to the fact which appears in this clause which I have just read, that provision was made for introducing the Cemetery by distribution gratuitously of 60 lots, showing that there was no such intention in the 400 lot clause, that the 400 lots be used for any such purpose.

Q. Did you ever hear of the 400 lot clause until you saw it set up in one of the answers in the Interpleader case?

A. Never.

Q. Mr. Wildes, just now you had in your hands a pamphlet entitled "The Arlington Cemetery" with the words "For private distribution" upon it, which pamphlet was in print. Where did you get that?

A. That pamphlet came to me from the office of The Rural Homestead Company. It either came to me directly, or through Mr. Scherer, I don't know which.

Q. Did the Boston stock-holders each receive a copy?

A. I don't know. There were several copies among the Boston stock-holders, but whether each had a copy or not I don't know. I presume they did?

Q. Were they sent out from the Cemetery Association early in the history of it?

A. Yes, at the beginning. It was one of the first documents we had.

(Mr. McGee offers that pamphlet in evidence and will have it marked Exhibit B.)

Q. Now, there is another pamphlet, Mr. Wildes, that is entitled "The Arlington Cemetery Association." Do you know when you procured that?

A. Well, that was not long after the other; it was in the early stage of the game.

Q. Did that come from the office of the Rural Homestead Company?

A. It did.

Q. About the same time as the other?

A. I think so.

(Mr. McGee offers this pamphlet in evidence and will have it marked Exhibit C.)

*(Re-cross Examination by Mr. Parker, Jr., Esq.:)*

Q. Mr. Wildes, in regard to these 400 lots that are spoken of as being reserved by Mr. Pratt, this section, that Mr. Pratt is to receive as a commission all benefits that may accrue from the sale of the first 400 lots of 300 square feet each, or the equivalent area thereof, is contained in a report is it not, of a meeting of the Directors?

A. It is contained in the report made to the Directors on July 15th, 1882, by Mr. Pratt who had been appointed as President a committee of one to report to the said meeting upon what terms the land there-to-fore owned by The Rural Homestead Company, when it was a land company strictly, and known as the Morgan farm (which land had been restored pro rata to the original stock-holders of the land when the said Company ceased to do business as such in 1875, and of which land Mr. Pratt had been originally, and was at the time now spoken of, the principal owner, directly or indirectly) could be repurchased or regained possession of, by the revived, or about to be revived Rural Homestead Company.

Q. When was this property conveyed by deed to the said Cemetery Association, if you know?

A. Subsequent to that time.

Q. Have you the exact date? Do you know the exact date?

A. No, not at this moment.

Q. Have you examined that deed? The deed from The Rural Homestead Company to the Arlington Cemetery Association?

A. No, sir. I never saw the original deed.

Q. Do you know of your own knowledge that Mr. Pratt claimed any of these 400 lots?

A. I knew nothing about the 400 lot clause until we learned it through Mr. McGee and this paper.*

Q. This report was made at the time of the re-organization, was it not, of The Rural Homestead Company?

A. It was, about that time.

Q. Do you know of Mr. Pratt and Mr. Scherer and any lawyer ever having any conversation in regard to those 400 lots?

A. I know of no such conversation. I have been told by all the Boston stock-holders that they were none of them aware of it until they received the information in the same way that I have indicated my own information was obtained.

Q. Did you, or any of the Boston stock-holders, ever hear that Mr. Pratt claimed to be the owner of any such number of lots?

(Question objected to by Mr. McGee, as misstating the position. The allegation is not that Mr. Pratt claimed to be the owner of lots, but to be entitled to the proceeds.)

Q. Well, to be entitled to the proceeds of that number of lots?

A. I never knew that Mr. Pratt had mentioned it to the Boston stock-holders in any way, shape or manner.

Q. Did Mr. Scherer ever tell you that there was any such arrangement in existence?

A. Mr. Scherer told me that he never heard of the arrangement at all until he learned of it in the way just indicated.

Q. There was no reservation of any such number of lots in the deed that conveyed the property to The Cemetery Association, so far as you know?

A. So far as I know. I never heard of any.

Q. You do not know of Mr. Pratt's ever claiming any specific interest in these 400 lots, or the proceeds of them?

A. Mr. Pratt has never alluded to them to any person who has reported the same to me.

Q. Do you know whether at the organization of the Cemetery it was not understood and agreed, that instead of the 400 lots there should be placed at Mr. Pratt's disposal 60 lots to be used in the initiating of the Cemetery?

A. I don't know that, no.

Q. Do you know whether the minutes of The Rural Homestead Company were ever examined by counsel representing Mr. Scherer, in regard to these 400 lots, before any investment was made by Boston parties?

A. I know that counsel representing Mr. Scherer, and in company with Mr. Scherer did visit Jersey City in the early history of the enterprise and some memoranda purporting to be extracts from the minutes have been brought home by them. On this memoranda there is nothing whatever relating to this 400 lot arrangement.

Q. Do you know whether Mr. Scherer was present at the time this report was made?

A. He was not present.

Q. Are you sure of that?

A. Well, I was not there myself. That meeting was before we had any connection with the Company as stock-holders.

Q. At the time you took your stock in the Company you never examined to see whether there was any such report on record, did you?

A. I never examined the minutes of The Rural Homestead Company's books.

Q. Now, I would like to ask you again, whether of your own knowledge, either directly or indirectly, Mr. Pratt has ever claimed any of the proceeds from the sale of the 400 lots or any part thereof?

(Question objected to by Mr. McGee on the ground that it already appears that the witness did not know.)

A. I don't know whether he has or not.

Q. And from the fact that since you purchased your stock, not being one of the original stockholders at the organization of the Company; and from the fact that the original condition upon which the Company was formed was not known to you, you base one of your reasons for charging Mr. Pratt with being dishonest. Is that so?

(Question objected to by Mr. McGee as not being a fair statement of the witness' testimony, and therefore not capable of being answered yes or no. The witness has not stated that that agreement constituted a cause of his belief of dis-honesty, but that that fact taken in connection with the subsequent conduct of Mr. Pratt, lead him to that belief.)

(*By Mr. Parker, Jr.*)

Q. I ask the stenographer to read the testimony of Mr. Wildes as to the reasons on which he bases his charge of dishonesty, so far as it relates to the proceeds of the 400 lots.

(The stenographer then read the above to Mr. Wildes.)

Q. Among other reasons, Mr. Wildes, this fourth

one which has just been read to you, is one of your reasons upon which you charge Mr. Pratt with dishonesty, is it not?

A. In this way it is, that I consider that the concealment of the fact of this condition or agreement, whatever it may be called, from the Boston stockholders, at the commencement of the enterprise, when Mr. Pratt solicited those stock-holders to take stock in it, and pretended to give them at the time a true history and account of the relation of the two companies; the concealment of that fact, which so closely affected The Rural Homestead Company, and in my judgment furnishes a good reason for the non-success of the Cemetery, as a Cemetery thus far, was an act of dishonesty, in as much, moreover, as he was at that time President of The Rural Homestead Company and Vice-President and Comptroller of the Cemetery Association.

Q. Do you know that at that time, or prior to that time, he had had any conversation with Mr. Scherer in regard to the proceeds of those 400 lots?

A. Mr. Scherer has told me that he never heard of those 400 lots.

Q. Did Mr. Scherer ever tell you anything about 60 lots?

A. We have both alluded to the clause which has been read in my testimony just back—clause 6—which states that provision with regard to the distribution of the 60 lots as a means of initiating the Cemetery. We have both been aware of that.

Q. Do you know of Mr. Pratt's having sold any of the lots of The Arlington Cemetery Association and claiming the proceeds under any such existing agreement.

A. I don't know whether he has or not.

Q. Do you know that there is any such agreement in existence?

A. I have no reason to think to the contrary.

Q. Do you know that there was any such agree-

ment in existence at the time of the sale of the land to the Cemetery Association, of your own knowledge?

A. Well, it appears by the minutes that the land was purchased on these conditions.

Q. Have you examined the minutes?

A. I have read what purports to be a copy of the minutes as set up in the proceedings between the Arlington Cemetery Association and The Rural Homestead Company, in the Inter-pleader case.

Q. And you have never examined the original minutes of The Arlington Cemetery Association, or the Rural Homestead Company?

A. No.

Q. Do you know at what time the judgments of Babbitt and Crane were procured?

A. No.

Q. In the year 1891 Mr. Pratt was President of the Board of Directors of The Rural Homestead Company, was he not?

A. Yes.

Q. And Mr. Dummer was president of the Cemetery Association in 1891?

A. Yes.

Q. And Mr. Pratt was Vice-President and Comptroller?

A. Yes.

Q. Who composed the Board of Directors of the Cemetery Association in 1891?

A. Well, they had none. They were trustees.

Q. Well, the Board of Trustees, do you know?

A. Well, no.

Q. Were the Board of Trustees of the Cemetery Association in 1891, Messrs. Pratt, Torrey, Linn, Clerrihue and Jewell, as far as you know?

A. I can't remember exactly, but I take your word for it that they were?

Q. And they were elected by the lot owners, were they not?

A. I presume so.

Q. And they had charge of the management of the Cemetery Association, did they not?

A. No. Article 1 of the By-Laws of the Cemetery Association says that the Vice-President and Comptroller, who is and always has been Mr. Pratt, have practically the entire control both of the management of the grounds, and the finances of the Cemetery.

Q. Does it not state that he shall have the general management under the direction of the Board of Trustees?

A. Yes. I said "practically." The Board of Trustees as a matter of fact never have taken any personal interest in the management of the affairs, either of the finances or grounds of the Cemetery.

Q. That is as far as you know?

A. That is as far as I know and have reason to believe.

Q. These judgments were obtained during the trustee-ship of these men mentioned?

A. I don't know when the judgments were obtained.

Q. And in accordance with the by-laws of the Cemetery Association they had the management of the affairs of the Cemetery Association, did they not?

A. No, I don't think so. Section 4 of Article 1 reads, "The Comptroller shall have the general management of the business of the Association at the Cemetery and at the office of the Association, and elsewhere, under the direction of the Board of Trustees, and shall report to the Board from time to time as they may require." Now, if they didn't require he didn't report. And with regard to whether the other officers of the Cemetery Association took any active part in the management of the affairs of The Cemetery Association, I would say that the President of the Association himself told me in 1889 that he didn't know whether he was an auditor then or not, although as it afterwards appeared he was at that very time himself an auditor. He said that he

had audited no books since 1885, and knew of no one else having done so, and that he had not been called upon to audit the books.

Q. I am speaking of the judgments. Do you know of your own knowledge whether the Trustees had notice of these suits, upon which the judgments were procured?

A. I don't know whether they had or not.

Q. Do you know whether the amount claimed as being due to Messrs. Babbitt and Crane was a bona fide debt or not, of your own knowledge?

A. Well, I have my belief about it.

Q. I would like you to answer whether you know of your own knowledge that the amount due to Messrs. Babbitt and Crane was a bona fide debt or not?

A. I have just answered, have I not?

Q. Will you please answer it yes, or no.

A. I don't know whether it was or not, not having been a party to the transactions.

Q. Do you know whether there was any defense to these suits?

A. I don't know whether there was or not, but think there was.

Q. What leads you to think there was?

A. My belief in the nulle fide nature of the claim.

Q. Do you know what the nature of the claim was?

A. I have been informed.

Q. Do you know of your own knowledge?

A. I was not a party to the transaction.

Q. Then from the fact that suits were brought in 1891 by Babbitt and Crane against the Arlington Cemetery Association, who were represented by a Board of Trustees, and from the fact that there was no defence put in to these actions, and from the fact that you did not know whether there was any defence to the suit or not, and from the fact that you, as one of the stock-holders, were not informed of those suits,

you base one of your charges of dishonesty against Mr. Pratt, do you not?

A. Not as you put it.

Q. Did you know of these judgments being in existence at the annual meeting of the stock-holders in 1892?

A. No, I did not.

Q. You never knew anything of them until Mr. McGee informed you?

A. I never did.

Q. Now you say that another reason for charging him with dishonesty is the discrepancy in a certain statement made by Mr. Pratt on July 9th, 1890, as differing from a statement made by the auditing committee in the following Spring, showing a discrepancy of $7,000. Did that statement of the indebtedness made by Mr. Pratt up to July 9th, 1890, show a discrepancy of $7,000, as between him and the auditing committee up to July 9th, 1890, up to the time when he made the statement, or did the auditing committee audit the accounts which showed the $7,000 up to the Spring of 1891, or up to December 31st, 1890.

A. The account which showed this discrepancy of about $7,000 was made up by the auditing committee to December 31st, 1890, and the improbability of an increase of $7,000 in the indebtedness of The Cemetery Association having accrued within the six months subsequent to July 9th, has created in my mind a suspicion as to the accuracy and honesty of the account.

Q. Then it is because of the improbability of an indebtedness of $7,000 having accrued between July 9th, 1890, and December 31st of that year, that you make another charge against Mr. Pratt of dishonesty, is it?.

A. It is that in connection with other matters. Of itself alone I would not have gone so far as to have suspected the honesty of the accounts.

Q. You make no charge of dishonesty against Mr. Dummer, do you?

A. I do not. Simply neglect of duty.

Q. What reason have you for making the statement that you believed Mr. Pratt was behind Mr. Babbitt?

A. The history of the transaction as given to me by Mr. Torrey in my office in Boston.

Q. The history of the transaction in relation to what?

A. In relation to the Barnes Estate stock.

Q. In what manner, if any, was there anything in that transaction to arouse your suspicions?

A. As to what?

Q. As to Mr. Pratt being behind Mr. Babbitt.

A. Why, it was the account of that transaction which lead me to believe that Mr. Babbitt was not the bona fide owner of the claim, but Mr. Pratt was.

After the stenographer's notes were written out, the witness stated he desired to have the following changes made in his testimony before signing the same.

PAGE.

82 Substitute "Told him we had had no meeting recently and asked him who were auditors at that time, and he said that he did not know that he was one himself."

84 Substitute "Certain remarks had come to my ears that Mr. Pratt and Mr. Torrey had made in regard to the rights of The Rural Homestead Company in the matter, and Mr. Pratt seemed to think and had suggested that the accounts had better be dropped, and no further attempt

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made to write them up, as being an impossible thing to do, and unnecessary."

88 Substitute "phrase."

89 Substitute "I do not so remember it."

93 Substitute "provided for by."

93 Substitute "The appointment of the Committee, but."

97 Substitute "They are given in the report presented at that time."

101 Substitute "In the report of that meeting was any reference made to the judgments in favor of Robert O. Babbitt and Isreal Crane."

102 Substitute "I will also state that at least on two occasions in the meetings of the Rural Homestead Company or the Arlington Cemetery Association, one of which or both were annual meetings, Mr. Pratt the moment the election was over checked an attempt on our part to discuss the affairs of the Company, on the ground that—".

104 Substitute "Descends."

105 My knowledge of that was obtained originally from Mr. Torrey who told me that the purchase by Mr. Pratt from Mr. Babbitt of the Rural Homestead Company's stock formerly held by the Barnes estate, was made on the basis of an exchange with Mr. Babbitt of a claim which Mr. Pratt then held, of in round numbers $5,000, against the Cemetery Association, which was

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strengthened by some Cemetery lots, and possibly some Rural Homestead Company's stock."

110 Substitute "That a limitless expenditure is unjustifiable is admitted."

110 Substitute "Of course no one not officially connected with a Cemetery can be said to be familiar with the details of Cemetery management,—but beyond this it is a simple business enterprise whose management anyone who has had experience in business matters I should say was competent to pass upon."

111 Omit "as stock-holders."

111 Insert before "I", "No, though."

114 Insert "Idea."

115 Substitute "Those purchases were not made with the additional subscription voted in 1885."

115 Insert "of 1885."

124 Substitute "As it is stated in the annual report read at the meeting."

126 Insert "Of them."

127 Insert "It was because."

127 Insert "The Company."

132 Substitute "Referred to in my answer a while ago."

134 Insert "In this way."

135 Substitute "What I have read is taken from Mr. Pratt's statement in his own handwriting."

PAGE.

138 Substitute "Descends."

140 Substitute "I find a."

143 Insert "Also."

150 Insert "Referring to one of the documents present."

DANIEL L. SCHERER, one of said witnesses, appearing before me, and being by me duly sworn, deposes and says that the answers he should give to the interrogatories put to him, should be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on part of the complainants, and Joseph Parker, Jr., Esq., on behalf of the defendants, as follows:

(*By Mr. McGee:*)

Q. Mr. Scherer, where do you reside?

A. Cambridge, Mass.

Q. Have you been present yesterday and to-day during the taking of the depositions?

A. I have.

Q. Have you heard what the various stock-holders have testified as to the inducement which led them to purchase stock in The Rural Homestead Company?

A. I have.

Q. Will you tell us how you came to purchase stock, and advised them to do so?

A. I was acquainted with Mr. Pratt from 1838 to 1842; was a classmate in New Haven.

Q. In college?

A. Yes.

Q. Yale?

A. Yes, at New Haven. And Mr. Ward a classmate, came to me when Mr. Pratt's son was in college and wanted to know if I would subscribe $25.00 a

year to his expenses. Then after I had done that, in about 1882 I think, he wrote me a letter?

Q. Who did?

A. Mr. Pratt did—he wrote me a letter stating what his scheme or project was in regard to The Rural Homestead Company.

(*By Mr. Parker, Jr.*)

Have you that letter?

(The witness.) I won't be positive; I think I have, somewhere.

(*By Mr. Parker, Jr.*)

I would like you to produce it?

(The witness.) And I made an agreement to meet him I think by letter, but I don't think I have a copy, and I met him at a certain time, I think it was in September of 1882, at 223 Broadway.

Q. New York?

A. Yes, New York. And he made a statement to me of what his plans were. He said that he was interested in the Rural Homestead Company, and the land was paid for sure at $57,500, and they wanted to raise $25,000 more, to build the lodge and fix the grounds. He said that the stock was capitalized at $120,000, and that $57,500 was for the land, and wanted I should take a certain amount of the stock. I says that will leave $82,500, and I asked him what in regard to the other stock. He said he called it Treasury stock, and that would remain in the treasury. At that time I subscribed for $5,000, and then he was very anxious that I should see some friends here in Boston and see if they would take some, and I saw Mr. Wildes and told him what he told me, and

after some conversation Mr. Wildes subscribed I think for Mrs. Francis Ball.

Q. She is now his wife?

A. Yes, she is now his wife. Then I saw Mr. Olys,—was acquainted with him,—it was a firm then of Cartwright & Olys. I think they subscribed for $3,000. And then I saw Mr. Cowdrey and he subscribed, I think, for $2,000; and I saw Mr. Ridge who subscribed for $2,000, I think, and $1,000 afterwards, but I won't be positive whether he did it all at once or not. Then I saw Mr. Colburn, and he subscribed for $2,000, as I remember it. That makes, I think, about $20,000, and he wanted then to send the paper on to have us sign, and said that when $20,000 was subscribed it would not nullify the subscription, and they could go to work building the Lodge and fixing the grounds. And I think I signed it and I think the others all signed it. Then he said that 50 per cent. of the sale of the lots would go to The Rural Homestead Company and 50 per cent. to The Arlington Cemetery for running the business of The Arlington Cemetery. I asked him when the money should be paid over and he said it should be paid every month, or every three months, just as they liked, to the Rural Homestead Company, that is the way he told me. And he told me that there were either fifty or sixty lots to be set apart to be distributed among those that took this $25,000 in order that they could make friends who would interest themselves in the sale of lots.

Q. And on the strength of that statement of his you made your purchase and advised the others?

A. On this very positive statement I advised the others.

Q. And bought yourself?

A. And bought myself.

Q. Had you confidence in Mr. Pratt?

A. I had confidence, because he was a classmate and he became as I understood religious while in

college there, and I supposed had maintained his standing afterwards.

Q. Did you make any other investigations as to the value of the stock except what he said?

A. Except what he said, I don't know that I could get anything further than his statement.

Q. At that time was he in control of the affairs of the Cemetery?

A. He told me he was in control.

Q. Has he been so ever since?

A. I think he has, so far as I know.

Q. Has that been your understanding of it.

A. Yes, that has been my understanding of it.

Q. You were elected a director in the year 1890. Up to that time had you taken any active interest in the affairs?

A. No.

Q. What caused you to want to be elected a director at that time?

A. Well, I wanted and all along I had tried to get information in regard to the transactions of The Arlington Cemetery, and also in regard to The Rural Homestead Company, because they showed no disposition and would not pay over as he told me the proceeds of the lots, but I did not know at the time that there had been a change from 50 per cent. to 45 per cent., and not knowing that I went there frequently as I had business in New York to see if they had got the books fixed. They didn't have any books along after the first of it, and Mr. Torrey told me that they had been busy and hadn't written up anything, and they were on papers, so far as I saw on slips of paper, and he took out, I think it was a kind of a small pocket book and some papers with it, but there was no definite document, and I know but very little about it further than that there were some general statements.

Q. Have you ever received a dividend?

A. No.

Q. Did you at any time succeed prior to 1890 in seeing accounts other than on little slips of paper?

A. I don't know. They may have had a book, I saw it on the desk but knew nothing about it. It was along towards 1886 or 1887, or somewhere about there perhaps; not later than that.

Q. Did you at any time see any other book than the sale of lots book?

A. No.

Q. Do you know whether any bank account was kept in the name of the Association?

A. I do not.

Q. Did you find any?

A. No.

Q. Was any ever shown you?

A. No.

Q. During the time from 1885 until the time you were elected a director in 1890, was there any meeting held of the stock-holders of The Rural Homestead Company?

A. No, that is I have learned there was not and I didn't have any notice of any.

Q. You didn't hear of any during that time?

A. No, I didn't hear of any.

Q. Did you ever hear until within a few months of that clause with reference to giving Mr. Pratt the proceeds of the sale of the first 400 lots as a commission?

A. Not until recently.

Q. If you had known that at the time you subscribed would you have subscribed?

A. No, he told me positively that there were 35 acres at the time, and it was all free and clear and no debts and that it all went in to the Cemetery.

Q. At the time that the request was made for your election as a director had you begun to be dissatisfied with the management?

Question objected to by Mr. Parker, Jr., as leading.

A. Yes.

Q. Up to within a year or two before that had you still trusted Mr. Pratt?

Question objected to by Mr. Parker, Jr., as leading.

A. I was not satisfied, because I could get no information about the affairs of the Cemetery.

Q. Since that time have you and Mr. Wildes been acting together in the matter?

A. Yes.

Q. Have you approved of what has been done by him?

A. Yes.

Q. You have heard the testimony, have you not, of the other witnesses?

A. Yes.

Q. Have you heard the reasons Mr. Wildes has given this morning for the dissatisfaction of the Boston stock-holders, and their belief that the management had not been strictly upright?

A. Yes.

Q. Will you tell us whether that is your state of mind, or have you other reasons?

A. Well, that is about it, and then we have not had any knowledge of how things were going, and then the statements that have come through you have made me suspicious that it was not just right?

A. Did you know anything about the suits by Babbitt and Crane until recently?

A. Not until recently.

Q. Did you know anything about them at the time of the meeting last June?

A. No, I don't think I did.

Q. Did you have any knowledge of the proceedings for the appointment of sequestrators for the Inter-

pleader suit until within the last three or four months?

A. No.

Q. During the time you were director did you have talks with Mr. Pratt on this subject, or about that time?

A. Well, not as definite as I had before.

Q. Well, did you complain to Mr. Pratt of the management?

Question objected to by Mr. Parker, Jr., as leading.

A. I wanted a statement made and I wanted to look into it.

Q. What did you say to Mr. Pratt about it; about the accounts not being written up and matters of the Association prior to that date.

A. Well, I thought it was a very wrong thing to have a business of that kind kept without books.

Q. Did you say so to him?

A. I said so to him and Mr. Torrey.

Q. It is alleged in the answer in this case that there is some ulterior object in the minds of the Boston stock-holders in this allegation, some other object than to have the affairs conducted in a business-like way. Is that so?

A. I don't know of anything. There is nothing in my mind, and I never heard them express any such opinion.

Q. It is alleged in the answer that your object is to further the interests of The Rural Homestead Company to the harm of the Cemetery Association. Is that so?

A. No.

Q. Did you ever consent to the change of plan with reference to payments; I mean did you ever consent that The Cemetery Association should be relieved from paying over money to the The Rural Homestead Company?

A. I don't think I ever did.

Q. Did you hear the testimony of Mr. Wildes and Mr. Cowdrey with reference to the efforts that were made to procure the books to be written up and the accounts to be kept?

A. Yes, I heard it.

Q. Are those statements about as you recall the facts?

A. Yes, I think they are correct.

Q. In addition to the question I just asked you, did you hear Mr. Olys' statement?

A. Yes.

Q. Does he state it about as you remember?

A. He does.

Q. Up to the time you were elected a director had you been able to ascertain anything with reference to the accounts?

A. No, that is there may have been some general statements,—just general, but nothing that you could draw any conclusion from.

Q. What was the first knowledge you had of the issue of the 238 shares of stock to Bowers?

Question objected to by Mr. Parker, Jr., as leading.

A. Well, I think that came through you only a short time ago.

Q. Were you present at the meeting of 1892?

A. I don't think I was.

Q. You have never been out to see this land that purports to have been purchased from Mr. Bowers, have you?

A. I have seen the land adjoining there a number of times.

Q. You have never gone out specially to look at it?

A. No.

Q. How old a man are you, Mr. Scherer?

A. About 72.

Q. In your opinion, Mr. Scherer, under the circumstances is it any advantage to The Rural Homestead Company to buy additional land?

A. I don't believe it is.

Q. Do you regard it as good judgment to buy land when the Cemetery Association is already indebted to the Company over $50,000.

Question objected to by Mr. Parker, Jr., as leading.

A. I don't believe it is.

Q. You are a merchant and business man?

A. I have been.

Q. All your life?

A. Yes, since graduation.

Q. You have been successful?

A. Well, I am not a millionaire.

Q. Well, in your judgment is it good financial policy for a Cemetery Association to buy additional land when it is unable to meet its running expenses?

Question objected to by Mr. Parker, Jr., as leading.

A. No, sir, that is my opinion.

Q. In your opinion is it good judgment for a Cemetery Association to buy lands which are held only by a tax title for a short term of years?

Question objected to by Mr. Parker, Jr., as leading.

Q. It is stated in the answer that since 1890, the Boston stock-holders have refused to communicate with Mr. Pratt except through counsel. Is that true as to you?

A. No, I have not written often, but I don't know but what gave rise to that was that he wrote a letter to me that he was willing to make a change in the direc-

tion if I would give him security that the affairs of the Cemetery should be conducted as well as it was at that time; if I would give him ample security.

Q. You did not answer that letter?

A. No, I didn't answer that letter because I did not suppose that it was genuine. He said ample security, I think, if I remember it.

*By Mr. Parker, Jr.*

Can you produce that letter Mr. Scherer?

(The witness.) I don't know whether I can or not. But it was so indefinite nobody could tell just what it meant. I felt that it was not sincere.

A. Were you present in Mr. Wildes' office in the summer, I think it was the month of August, 1890, at which there was a conversation between Mr. Torrey and Mr. Wildes?

A. Yes.

Q. It is alleged in the affidavit of Mr. Torrey annexed to the answer that Mr. Wildes at that time said that he either proposed to control the entire business or to ruin it. Was there any such statement as that made?

A. No, sir.

Q. Do you remember what was said?

A. I went to the American House and found Mr. Torrey there, as I remember, and walked down with him to Mr. Wildes' office. After having a conversation with Mr. Wildes in regard to the affairs of The Rural Homestead Company and The Cemetery Association, Mr. Wildes said that the management was not satisfactory to him; that he should endeavor to change the management, or control, I think it was the word "management" of the affairs there, even if he had to resort to a suit at law, and the answer that Mr. Torrey made was, "why that will ruin it." Well,

Mr. Wildes said that he did not know how that would ruin it, but nevertheless he should not be deterred from trying to change the management.

*Cross Examination (by Mr. Parker, Jr.)*

Q. Mr. Scherer, did you make any memorandum of this conversation that you heard between Mr. Wildes and Mr. Torrey at the time it was made.

A. I didn't make any memorandum, but I think Mr. Wildes did, because I know my memory on that is clear.

Q. Did you have any conversation with Mr. Wildes in regard to it since?

A. I never, I don't think, until I heard something through these papers about the words, "rule or ruin."

Q. Since then you have had conversation with Mr. Wildes in regard to it?

A. Yes, I have spoken to him.

Q. You say that Mr. Wildes said that he intended to change the management?

A. Yes, he wanted to change the management because he did not think that it had been right. He wanted to change the management and said he would if he had to resort to law. I think that was it, and Mr. Torrey says, "That will ruin it."

Q. Did you ever have a lawyer go carefully over all the previous history of The Rural Homestead Company?

A. Not that I know of. There was a lawyer went on with me.

Q. Who was that lawyer?

A. Mr. Appleton.

Q. When was that?

A. I think at the early beginning.

Q. Before you invested at all?

A. Yes, before I invested at all, and he was with me at 233 Broadway.

Q. Were you one of the original incorporators of

The Rural Homestead Company, or did you come in later?

A. I came in first, I think in September, 1882.

Q. Do you know whether your counsel after examining the records of The Rural Homestead Company recorded the adoption of the stock-holders at a meeting called for that purpose?

A. I don't know that he examined them.

Q. And do you know that he helped in preparing the agreement between the two Companies?

A. No.

Q. Now, you say, Mr. Scherer, that there was an arrangement by which fifty or sixty lots were to be set aside, and he never mentioned to you anything in regard to the 400 lots?

A. Mr. Pratt told me that there were fifty or sixty.

Q. And what were those fifty or sixty lots, did he tell you, to be used for?

A A portion of it to those that subscribed to the stock of $25,000, that is, one lot to each $1,000, that they subscribed.

Q. You have never heard, have you, of Mr. Pratt's claiming the proceeds of any 400 lots?

A. I don't know anything about it.

Q. You don't know that he ever did receive any money for the sale of any lots under any such arrangement?

A. I don't know whether he has or not.

Q. You say that you went to see in regard to the books being written up? Did you ever see any check book?

A. I have an impression that I did not. I think Mr. Torrey had a check book of his own, but I cannot say positively.

Q. Did he show you any vouchers?

A. He showed me what he paid out for assets, that is a few on papers.

Q. Did he take them from the safe, any of them?

A. Not that I remember. I remember he had some in his pocket, in sort of a field book, I should think it was with a strap as I remember it, and some papers in it.

Q. Do you not know that Mr. Torrey was engaged for a long time at the Cemetery in laying out the grounds?

A. He said he was there.

Q. He said that he was selling lots?

A. Yes.

Q. And there was nothing to be written up, was there, except the sale of lots and the account of the expenses?

A. The expenses, I should suppose, ought to be written up daily. I was surprised that they were not.

Q. There was nothing for The Rural Homestead Company's Board of Trustees to do, was there, except to wait for the results of the sale of lots?

A. I take it to wait for the sale of stock which was promised to be paid over once a month, or once in three months.

Q. Do you know whether the money for the sale of lots ever passed to Mr. Reddish and then back to the Cemetery, or not?

A. That I don't know.

Q. Have you ever seen this Meyers' property?

A. Oh, yes, that is I have not gone over there lately, but I have seen it quite a number of times, because I have been to the Cemetery quite a number of times.

Q. Have you been there with Mr. Torrey?

Q. Yes.

Q. And with Mr. Pratt?

A. With Mr. Pratt, that is in the earlier times.

A. Have you ever said that you thought it would be a good thing to extend the property by the control of the Meyers' land?

A. No, I don't think that I ever made any such remark.

Q. Do you remember there was a nice grove upon it?

A. I don't think much of the grove as I remember it.

Q. You don't remember of ever making such a remark?

A. No, I don't.

Q. You say there were about 35 acres to be conveyed, and that it was all free and clear. Have you ever found it to be otherwise?

A. If there were 400 lots that I don't know were sold or not, of course it was not free and clear, that is, if there were 400 lots transferred or given away to Mr. Pratt.

Q. You don't know of any specific act of dishonesty on the part of Mr. Pratt?

A. Only what has come up.

Q. Your idea is that the business has been carried on in an unbusiness-like and unsystematic manner, but you don't make any direct charge of dishonesty, do you, against Mr. Pratt.

A. Why only my suspicion that it has not been correct, that is the keeping of the accounts, and our surprise that we could not get any knowledge of them.

Q. You say you have never received any dividend. Do you know about the arrangement by which the 45 per cent. was to be used by The Arlington Cemetery Company as a loan?

A. I don't remember of ever attending any such meeting to dispose of it.

Q. You don't remember of ever hearing about any such arrangement?

A. I don't remember until afterwards they told me that it was changed to 45 per cent., and it surprised me that the change was made.

*Re-direct Examination (by Mr. McGee.)*

Q. Do you know where Mr. Parker is?

A. Mr. Wildes told me that Mr. Parker was in California.

Subscribed and sworn to at Boston in the County of Suffolk, and State of Massachusetts, before me, this thirty-first day of March, A. D. 1893.

*Commissioner of Deeds of the State of New Jersey.*

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IN CHANCERY OF NEW JERSEY.

Between

FRANK W. WILDES ET ALS.,

*Complainants,*

*and*

THE RURAL HOMESTEAD COMPANY ET ALS.,

*Defendants.*

*On Bill, etc.*

April 5th, 1893.

Met pursuant to adjournment, and adjourned to Friday April 7th, 1893, at the same hour and place, at the request of Mr. Parker.

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April 7th, 1893.

Adjourned to Friday, April 14th, 1893, at the same hour and place.

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April 14th, 1893.

Adjourned to April 21st, 1893.

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES ET ALS,
*Complainants,*
and
THE RURAL HOMESTEAD COMPANY ET ALS,
*Defendants.*
} *On Bill, &c.*

Examination of witnesses before George W. Cassedy, pursuant to adjournment, this twenty-first day of April, 1893.

Present: Flavel McGee, Esq., counsel of complainants, Joseph Parker, Jr., and Charles H. Voorhis, Esquires, counsel of the defendants.

HENRY E. REDDISH, a witness produced on the part of the complainants, being duly sworn, according to law on his oath deposeth and saith:

*Direct Examination by Mr. McGee.*

Q. Mr. Reddish, are you a stock-holder of the Rural Homestead Company?

A. Yes, sir.

Q. And a lot owner in the Arlington Cemetery?

A. Yes, sir.

Q. Were you a director in the Rural Homestead Company?

A. I was at one time, yes, sir.

Q. Do you remember when you were elected?

Witness: What year?

Mr. McGee: Yes.

A. No, I do not remember.

Q. Well, was it in the meeting of 1890 or '91?

A. It was previous to that, sir.

Q. Do you remember dissatisfaction being expressed by Mr. Wildes and others of the Boston people, with the management of the affairs of the Cemetery Association?

A. Yes, sir.

Q. Do you remember when that first began?

A. It was previous to '90, I think.

Q. Were you present at the meeting of the Cemetery Association in January of '90?

A. Yes, sir

Q. At that time do you remember whether the books of the Cemetery Association had been recently written up?

A. They had not been written up.

Q. Do you recall for how long a period they had not been written up?

A. For a number of years, four or five years.

Q. Do you recall whether anything was said about that at the time?

A. Yes, sir.

Q. And by whom?

A. It was said by Mr. Wildes, and I think by Mr. Scherer also.

Q. And had there been any action of auditors during the time that you say the books had not been written up?

A. No, sir.

Q. At that meeting were auditors appointed?

A. No, sir.

Q. Do you remember a time when you were appointed an auditor—you and Mr. Jewell and somebody else?

A. Yes, sir.

Q. Do you remember who the other man was?

A. I don't recall his name; he never acted with us.

Q. Wasn't that at the meeting of '90? Or was it '91?

A. I think it was '91 or '92.

Q. Up to the time that that appointment was made there had been a long interval when the books had not been written up; is that the time you mean?

A. Yes, sir.

Q. At whose suggestion were you appointed an auditor?

A. I can't tell that.

Q. Was there any suggestion for your appointment made by the Boston people?

A. No, sir.

Q. Do you recall what Mr. Pratt said in answer to a suggestion as to who should be auditors at that meeting?

A. Well, he said that he had power and would appoint auditors.

Q. Without listening to suggestion from anybody?

A. Yes, sir.

Q. And do you know who he did appoint?

A. He appointed Mr. Jewell and myself and the other man, I forget his name.

Q. Do you remember at that meeting whether there was an adjournment to a later date, and for what purpose?

A. I don't recall.

Q. Do you recall any meeting at which the annual meeting was adjourned to the following April for some purpose.

A. I can't recall it.

Q. Do you remember, after the meeting at which you were appointed an auditor, that the books were written up?

A. Yes.

Q. And by whom?

A. They were written up by Mr. Torrey, and I believe Mr. Cowdrey.

Q. And then were they audited after that, and by whom?

A. Yes, sir, by myself, I did most of the work; Mr. Jewell was there at the last of it, and went over with me the results of my work.

Q. And you made your report at an adjourned meeting?

A. Yes, sir.

Q. And wasn't that the year you have spoken of?

A. The adjourned meeting—I think my report was made in April, '91, I think the first report was—

Q. Now, how long before that meeting when you made that report did you begin the work, the auditing, and how did you know it was ready for you?

A. By notification from Mr. Torrey. I think it was in the spring, early in the spring of '91.

Q. That audit of yours was made up from what books?

A. From the—

Q. I do not care necessarily about your auditing each book, but books written up by whom?

A. Written up by Mr. Torrey mostly.

Q. Of what did your audit consist?

A. It consisted in examining the vouchers for each month, examining the log book to see whether that agreed with the daily entry—the cash book, and additions of the accounts.

Q. Then did your audit consist of anything more than a mathametical computation of the books, and a comparison with these results?

A. No, sir.

Objected to.

Q. Did you have any means of verifying the foundations of the statements?

A. I had none.

Q. Or the justness of the items, or accuracy?

A. No, sir.

Q. Do you belong to the party known as Boston stockholders?

A. No, sir.

Q. Have you any partisan interest in either side of this controversy?

A. Well, I sympathize with the Boston stockholders in the position they took in the matter.

Q. That is, for what reason?

A. Well, I thought there had ought to have been an accounting to them each year; that the books ought to have been written up, and they ought to have been satisfied in their demands for an accounting.

Q. How long have you been a stock-holder in the Rural Homestead Company?

A. Since its commencement.

Q. By that you mean its reorganization?

A. Yes, sir.

Q. About what year?

A. It was about '82—'81 or '2.

Q. Who has been in control of its affairs since that time?

A. Mr. Bratt, the President, and Mr. Torrey.

Q. And who has had control of the affairs of the Cemetery Association for the same time?

A. I think Dummer was the President and Mr. Pratt and Mr. Torrey, I don't know what capacity they sted in; I think Mr. Torrey was the superintendent, or had general supervision of the cemetery.

Q. Who held the office of comptroller?

A. Mr. Pratt.

Q. Do you recall the by-law with reference to the duties of comptroller?

A. I don't.

Q. What I want to get at is, who, in point of fact, had charge and control of the affairs of the Cemetery Association as the actual man?

Objected to as a matter of opinion.

Q. Do you remember the two hundred and thirty-eight shares of stock that were in the treasury, and that are the subject matter of this controversy?

A. Yes, sir.

Q, Do you recall an effort any one time to distribute them amongst the stock-holders?

A. Yes, sir.

Q. By whom was that proposition made?

A. I forget who made the proposition; it was made by the Boston party.

Q. The proposition to distribute it—to divide it up amongst the stock-holders?

A. There was a proposition made for their distribution, but I really don't know, or don't remember, by whom.

Q. Wasn't it Mr. Wildes that opposed it?

A. I couldn't say that.

Q. You don't recall about that?

A. I don't recall, no sir.

Q. During this period, when you say the books were not written up—four or five years—was there any elections of officers of the Rural Homestead Company, or any annual meeting that you recall? I speak now of the Rural Homestead Company?

A. I think there were annual meetings?

Q. During that time?

A. I think so.

Q. Aren't you in error about that?

Witness: That's previous to '90, you mean?
Mr. McGee: Yes.

A. Well, it's not distinct—I can't bring it distinctly to mind.

Q. You don't remember?

A. No, sir.

*Cross Examination by Mr. Voorhis:*

Q. What is your business, Mr. Reddish?

A. I am not in business at present, other than I am at present with the Brooklyn City Railway Company, but only in a special business for a short time; my business was previously the manufacture of boots and shoes and leathers, but I retired from the firm in '83.

Q. You retired from the boot and shoe business in '83?

A. Yes, sir.

Q. In what capacity are you now with the Brooklyn Railroad?

A. I have charge of the bureau of consents for property owners for franchises that they are seeking from the city; the consents of property owners is necessary to carrying out the franchise.

Q. The Brooklyn elevated did you say?

A. No, Brooklyn surface.

Q. How long have you been connected with that corporation?

A. Well, I have been this last time about six months; I was with them two years before, getting the consents to change the motive power from horse to trolley—electricity, that was in '90 and '91.

Q. Have you ever been in the employ of that corporation as an auditor or expert accountant?

A. No, sir.

Q. Have you ever acted in that capacity—in the capacity, I mean, of an expert accountant?

A. I had charge of the books of our firm for twenty years; I was bookkeeper and financial man of the concern.

Q. Do you remember how long a time you were occupied in the auditing of the books of the Rural Homestead Company?

A. I can tell pretty near the time; I should think I was off and on for sixty days, but I wasn't constantly there; I would go probably once a week, an afternoon or part of the day.

Q. I understood you to say that the vouchers were exhibited to you, and examined?

A. Yes, sir.

Q. Well, did the vouchers indicate—of course, they indicate the character, of the charges for which they were presented?

A. Yes, sir.

Q. Would not such vouchers indicate the propriety of the charge?

A. They would; yes, sir.

Q. Had you any difficulty in understanding the books, in your examination, with the vouchers?

A. No, sir.

Q. The books indicated the condition of affairs?

A. Yes, sir.

Q. Did, or not, the books, by your examination and comparison with the vouchers, indicate the truth?

A. Yes.

Mr. McGee: That's question that no witnes can answer. I objected to answer on the ground that its giving an opinion which it is impossible for him to give.

Q. How, Mr. Reddish, did you test, for instance, the charge for a discount paid; what voucher would you require for that?

A. The voucher I had for that was the bank book.

Q. By that you mean the pass book with the bank?

A. Yes.

Q. Whenever there was a charge, then, for a discount, a reference to the pass book of the association, with the bank was your test for the correctness of that charge?

A. Yes, sir.

Q. How long were you engaged in your firm, as you have mentioned, in the capacity of bookkeeper?

A. Twenty years.

Q. How many?

A. Twenty years.

Q. Was the system under which you had kept the auditing and testing of your own accounts in that firm, the same as that which you used in testing the accounts and vouchers here?

A. It was this difference—everything passed through my own hands there, and of course we had vouchers for all payments; I always kept them; it was similar in that respect.

Q. You mean by that that over there your entries were made at the time?

A. At the time, yes, sir.

Q. While here you examined a series of accounts already entered, and tested them by the vouchers?

A. Yes, sir.

Q. Who presented these vouchers to you here?

A. Mr. Torrey.

Q. Henry F. Torrey?

A. Yes, sir.

Q. Had you any difficulty whatever in understanding the accounts and vouchers?

A. No, sir.

Q. Was there anything complicated about the manner of keeping these accounts, or were they such as any ordinary bookkeeper could understand?

A. Any ordinary bookkeeper could understand them; they were a little complicated, but a bookkeeper could understand them.

Q. Readily?

A. Yes, sir.

Q. Mr. Reddish, after you had gone through your examination of the books and vouchers, and completed your test and audit, did you make a report in writing?

A. Yes, sir.

Q. I show the witness a paper purporting to be a financial statement of the Arlington Cemetery Association from January 1, '83, to December 31, 1890, and ask him whether that is one of those reports?

A. Yes, sir.

Q. In whose handwriting is it?

A. Mine.

Q. The whole of the first page in your handwriting?

A. Yes, sir.

Q. The whole of the first page is in your handwriting except the signature of C. C. Jewell.

A. Yes, sir.

Q. Do you know C. C. Jewell?

A. I have met him three or four times.

Q. Did you see him sign that?

A. I couldn't say.

Q. Do you know his handwriting?

A. No, I do not.

Q. On the third page whose handwriting is that which appears there?

A. Mine.

Q. The whole of it?

A. The whole of it.

Q. Beginning with "Individual creditors" and ending with the summary of addition "$17,080.46?"

A. Yes, sir.

Q. I show the witness a paper purporting to be a financial statement of the Arlington Cemetery Association from January 1 to December 31, 1891, and ask whether that is another of those reports of which he has spoken?

A. Yes, sir.

Q. In whose handwriting is the first page of that?

A. The figures and certificate are mine; the rest, I think, is Mr. Torrey's hand.

Q. That is, the body of the writing opposite the figures?

A. Yes, sir.

Q. The title, and the writing of the items opposite the figures and the signature of C. C. Jewell are not in your handwriting, and all the rest is?.

A. Yes, sir.

Q. Do you know whether or not the writing opposite the figures was there before you signed your certificate?

A. Yes, sir, it was there.

Q. Now, on the third page, whose handwriting is that?

A. Mine.

Q. Beginning with the words "amounts due for money borrowed for the" and ending on the twelfth line with the summary "$16,728.30"; all that's in your handwriting?

A. Yes, sir.

The two statements offered in evidence by defendants' counsel.

Objected to by complainants' counsel as not evidence for the defendants.

Marked respectively D2 and D3.

*Re-direct Examination by Mr. McGee.*

Q. Now, Mr. Reddish, in this statement of the eight years that has been offered in evidence and is marked Exhibit D2, the first item appears to be "Loans under contract $39,524.33", and the next item "Loans special $17,217.37". Can you tell what loans those were?

Witness: Do you mean the loans under contract?

Q. Were they the moneys owing to the Rural Homestead Company?

A. The loans under contract $39,524.33 were loans made by the Rural Homestead Company to the Cemetery Association, consisting of the moneys they received from the sale of stock?

Q. You don't mean that?

New Jersey State Library

Mr. Voorhis: Yes, he does.

Witness: For the original money put in.

Q. Now, the special loans $17,217.37, were what?

A. There were made up of the share of The Rural Homestead Company for the lots sold.

Q. Up to that time?

A. Up to that time.

Q. Now, this was the report you made, was it?

A. Yes.

Q. This was what was laid before the adjourned meeting in April?

A. Yes, sir.

Mr. Voorhis: In April '91?

Witness: Yes.

Q. Now, on the next page, what Judge Voorhis called the third page, you put down "Demand note R. R. Babbitt $4,916.80" and "Israel Crane $2,500." In your next financial statement including the year 1891, marked D3, you put down the note of R. O Babbitt at $4,916.80, and interest, the same amount, and that of Israel Crane at $2,000; where did you get the material for those two items?

A. It must be from the same source I got the original.

Q. Where was that, from Mr. Torrey?

A. From the books.

Q. You observe that you have put Mr. Babbitt's note down at the same amount both years?

A. Yes, sir.

Q. How does that happen?

A. Well, one is the interest from—they had not been made up, interest had not gone into it.

Q. But you notice the amount is the same for both years; how do you account for that?

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A. It would be the same, if the interest was paid, or if the interest had not been entered in the note, or a new note given, it would be the same.

Q. In the earlier case you speak of the note and make no mention of interest, and then you speak of the note and interest and yet make the amount the same?

A. I can't account for that.

Q. Were you informed, or was there anything in the office to call your attention to the fact that at the time of your second report Exhibit D3, Mr. Babbitt's note had been sued on and put in judgment?

A. No, sir.

Q. If you had been told that by Mr. Torrey, or if it was been anywhere in the book, you would have mentioned it, would you not?

A. Yes.

Q. Had you any interest in concealing that fact?

A. No, sir.

Q. When did you first learn that Mr. Babbitt had obtained a judgment against the association?

A. I don't think I was ever informed of it.

Q. Didn't you know it until now?

A. No, sir.

Q. Do you know that Mr. Crane had also a judgment?

A. No, sir.

Q. Was anything said to you when you were making that audit that Mr. Crane or Mr. Babbit, had, either one of them brought suit or recovered judgment?

A. I don't recall that there was anything said to me at this time that the note had been sued.

Q. As far as you can recall this is the first information you have had of that?

A. Yes, sir.

Q. How do you account for the fact that in your second statement Exhibit D3, Mr. Crane's note appears to be $500 less than in your first one?

A. I can't recall that.

Q. In some of the affidavits in this litigation Mr. Pratt has made considerable point of the fact that his claim against the company was audited by you. Have you any recollection of having seen the foundations of that claim?

A. No; I didn't see the foundations of the claim; it came in the books.

Q. And you simply took it from the items as collected in the books?

A. Yes, sir.

Q. Were you informed that Mr. Pratt's note—

Objected to.

Q. Were you informed that Mr. Babbitt's note was a note or notes which had been held by Mr. Pratt against the company, or a renewal thereof?

A. Yes, sir, I was informed.

Q. At that time?

A. I don't think it was at that time.

Q. You think that was since?

A. That was since.

Q. Within the last year?

A. Within the last year.

Q. My question is, whether, at the time you were auditing the accounts, you were informed of that?

A. No.

Q. Did you have any information furnished to you of the foundation of Mr. Crane's note?

A. Well, if I had I don't recall it.

Q. In his cross examination Judge Voorhis asked you if the books indicated truth, to which you answered "yes;" what do you mean by that?

A. The vouchers.

Q. The vouchers—very well, what do you mean by that answer?

A. Well, the pay-rolls were vouched for by the superintendent.

Q. Mr. Torrey?

A. No, by—I forget his name—

Mr. Voorhis: Sickle.

Witness: Sickle, that's his name. He certified to them; the rest of the vouchers were receipts for goods, or flowers, or printing.

Q. Would that apply to the items in favor of Mr. Pratt and Mr. Torrey?

A. No, sir.

Q. When you say that the vouchers indicated truth, you simply mean that there was a writing that that much money had been paid?

A. Yes, sir.

Q. Any voucher in that sense would indicate truth, wouldn't it?

A. Yes, sir.

Q. In Exhibit D3, Judge Voorhis asked you if it was not all in your handwriting except the words opposite the figures, and Mr. Jewell's signature, to which you answered "yes;" you didn't write the heading of it, did you?

A. No, sir.

Q. Nor the items opposite which the figures are put?

A. No, sir.

Q. Who prepared this statement, other than the figures?

A. That I couldn't say.

Q. Who handed it to you?

A. Mr. Torrey.

Q. And you added the figures?

A. Yes, sir.

Q. From what source?

A. From the source of the audit.

Q. Did you have a duplicate statement before you at the time you filled those figures in?

A. This was written before I put the figures in.

Q. The day that you put the figures on, did you take it from memorandum you had in the office from your work?

A. From my work, yes, sir.

Q. You didn't make out a tabulation from which you wrote those figures, yourself?

A. No, sir.

Q. Who did that?

A. I couldn't say. I don't know the handwriting.

Q. There seems to be some misunderstanding by counsel as to your meaning. You say you went over the books at intervals during the period of sixty days, and that this is the result of your work. My question is this. Did you make up the totals which you have there written, from your own work at the time you wrote it in this paper, or were the memoranda of your work left, and tabulated by somebody else, and these results exhibited by you at the day you wrote them there?

A. Yes, of course; were put in at the time I reached the result; the very day, and after they were put in I never went there again. This was written, and then I filled them out from the results of my effort.

Q. From your own handwriting?

A. From my own handwriting.

Q. This one, Exhibit D2, from January, '83 to December, '90, is that the time during which the books had not been kept up?

A. Yes.

Q. The corporation the Rural Homestead Company, was reorganized in what year?

A. I think '82.

Q. And the Cemetery Association organized about the same time?

A. Yes, sir.

Q. Then, until this year of 1890, the books had been written up but one year, at the proper time, is that so?

A. I couldn't say, for I didn't come into the work until they were written up; I had nothing to do with them.

Q. And you thought that this neglect of the books was a just ground of complaint?

Objected to on the ground that the witness says he doesn't know they weren't written up.

Q. You were a stock-holder?

A. Yes, sir.

Q. And a lot owner?

A. Yes, sir.

Q. And when you say you didn't come into the work you mean the audit?

A. Yes, sir.

Q. Did you not know that complaints were made that they were not written up.

A. Yes.

Q. Was that assertion denied?

A. I think not.

*Re-cross by Mr. Voorhis:*

Q. At the time when you made up this first exhibit D2, had you examined the books and compared them with the vouchers, and reached these results by your own additions and calculations before you put them in this statement?

A. Yes, sir.

Q. I understood you to say so. So that it is a fact that both these exhibits, D2 and D3, show, in your own figures, the results of your own examination and auditing of the books, and your own additions and calculations?

A. Yes, sir.

Q. And I understood you to say that all that part of D3 which is not in your handwriting, except the

signature of C. C. Jewell, was on this paper before you put in the figures?

A. Yes, sir.

Q. And before you and Jewell signed as auditors?

A. Yes, sir.

WILLIAM H. MEYERS, a witness produced on the part of the complainants, being duly sworn, according to law, on his oath deposeth and saith:

*Direct Examination by Mr. McGee*:

Q. Now, Mr. Meyers, where do you live?

A. Montclair.

Q. And are you a brother of Moses C. Meyers?

A. Supposed to be so.

Q. You have been informed of the land which is part of the subject matter of this suit?

A. Yes, sir.

Q. And where is it situated?

A. Well, its in Kearney township.

Q. Adjoining what?

A. Adjoining the Arlington Cemetery.

Q. What was your grandfather's name?

A. John Van Emburg.

Q. Did your grandfather own this property originally?

A. Yes, sir.

Q. About how many acres at that time?

A. The whole place?

Q. Yes.

A. About seventy-five acres, I guess.

Q. Did that include the meadow?

A. No, sir.

Q. About how much of it was meadow?

A. About thirty acres.

Q. When did he die?

A. 1870, I think.

Q. Had he more than one wife?

A. Yes, sir.

Q. Did he leave a widow?

A. Yes, sir.

Q. Was she your grandmother?

A. No, she wasn't.

Q. Which of his wives was your grandmother?

A. Well, her name was Jeroliman.

Q. Which wife?

A. His first wife.

Q. By his will as recorded it appears that he left this property to his daughter Rachel, and her daughter Mary, as tenants in common; who was Rachel?

A. My mother.

Q. And Mary?

A. My sister.

Q. What was his widow's name?

A. Susan.

Q. Did she afterwards marry?

A. Yes, sir.

Q. What was her husband's name?

A. Shoemaker, or some such name.

Q. Is he living?

A. He is.

Q. Is she?

A. She's dead.

Q. Do you remember about when she died?

A. Well, I couldn't tell; it must be two or three years ago now.

Q. You recall the fact that a part of the land was set off by commissioners to this Susan Shoemaker as her dower in your grandfather's estate?

A. Yes, sir.

Q. Do you know where the piece was that was set off to her?

A. It was the south side of the farm.

Q. Do you recall where the house is that Moses lives in?

A. Yes, sir.

Q. On which piece is that, on the piece that was set off to her, or the other piece?

A. No, sir, the piece adjoining the Cemetery.

Q. Did the dower piece adjoin the piece of which his house is a part?

A. I don't think it did quite.

Q. Was there other lands between?

A. I am not positive.

Q. They were south of his?

A. Yes sir.

Q. Have you looked over the record of the deed from Moses Meyers to Samuel W. Bower, which is one of the items of dispute in this case?

A. No, sir.

Q. Didn't I show you a copy of it?

A. You might have; I didn't read it.

Q. Did I call your attention to the lands that were described there?

A. Yes, sir.

Q. Do you know whether the part of lands set off to the widow as her dower was a part of the lands described in that deed?

A. It would be the one-sixth part, beside the two acres?

Q. You mean his interest in the property?

A. Yes, sir, his interest in the balance of the two acres is one-sixth, you see; it covers his whole interest in the whole property, whatever that may be, as I understand it. Mr. Bower wrote me once that he had now got Mose's part, and didn't feel willing to give up the balance.

Q. Now, the record of your mother's will, Rachel Meyers, shows that she left her interest in the two acres that Mose's house is on, to Moses, upon condition that he should take care of Mary. Are Moses and Mary your brother and sister?

A. Yes, sir.

Q. Is Mary living?

A. No, sir, she's dead.

Q. When did she die?

A. It must be three years since her death.

Q. With whom did she live after your mother's death?

A. With Moses.

Q. Did she leave any will?

A. I guess not.

Q. Ever heard of any?

A. No, sir.

Q. Did you have any notice, before Mr. Bower's claimed to own Moses' interest in the property, that the place had been sold for taxes?

A. Yes, sir, it has been sold, well I might say half a dozen times.

Q. What was the first notice you had that Mr. Bowers claimed to own it?

A. Well, I couldn't tell that; I think Kenney told me there was some parties wanted to buy it.

Q. Kenney, who was he?

A. Town Collector.

Q. Told you there were some parties wanted to buy it—did he tell you who they were?

A. He said Mr. Pratt was looking after it.

Q. What Pratt?

A. Julius H. Pratt, I suppose.

Q. How long ago was that?

A. Oh, I don't know.

Q. Well, four or five years?

A. No, it ain't as long ago as that.

Q. Was it before Mr. Bowers took title to it from the township?

A. Yes, sir; I was talking to him one day in the town house about it, and he said there were some parties wanted to buy it, and the town committee had a notion to sell it, and so on; that's the way he told me.

Mr. Voorhis: You mean Kenney?

Witness: Yes.

Q. Had you gone there to see about paying the taxes?

A. No, sir.

Q. Why didn't you pay them?

A. Because I didn't feel able to do it out of my own money; I did redeem the old homestead; I had to pay eight hundred and fifteen dollars there.

Q. What was the first information you had that Mr. Bowers had bought it for the township?

A. I forget now.

Q. Do you remember Moses coming to see you in the spring of 1891?

A. I think he did.

Q. Before that had you heard anything about it?

A. I couldn't say.

Q. About his having bought it. After you learned that Bowers had taken title to it in some way, did you go to see Bowers?

A. Yes, I think I was there twice.

Q. Where?

A. In his office.

Q. Where is his office, do you know?

A. I think its in Pine street, if I ain't mistaken.

Q. What is he, a lawyer?

A. He said he was.

Q. What is his sign?

A. I didn't look.

Q. You saw him?

A. I did.

Q. What was the conversation you and he had—what did you say and what did he say?

A. Well, I asked him how much of the property he would take and give up the rest—one time I know—and he said that he would want all the property adjoining the Cemetery at the end of Moses' lot of two acres; that would take about half of the place at a rough guess running from the meadow up to Schuyler avenue; and then when I saw him again—I think I saw him twice—he wouldn't give it up; something like that.

Q. You spoke to me in my office about making an offer to pay up the taxes; tell us what it was about that?

A. Well, I thought better after whole, of it. on account of the rest of them, and I made a bargain with a man to sell him part of the property on conditions that it could be got back, and then I went to New York and didn't find Mr. Bower home, or Mr. Parker, and I left word there that I was ready to settle the case.

Q. Did you get any answer from him?

A. Some time after got a letter, I think it was from Bower, that he didn't feel like giving it up, as he had a deed from Moses; I think you have a letter to that effect; I think the second time I saw Mr. Bower he said he would join in a sale; I mentioned about this sale in the first place, and he said he would join in that sale of the property, and I didn't see where he had a great deal to sell, and didn't bother my head.

Q. Have you ever disposed of your interest in the property in any way?

A. No, sir.

Q. Did you hear Moses testimony the other day?

A. Yes, sir.

Q. Did you hear his deposition as to who his brothers and sisters were?

A. Yes.

Q. Was that correct?

A. That was correct.

Q. When you saw Mr. Bowers at first, was anything said about a lease to Moses?

A. No, sir.

Q. Well, at any of the times?

A. No, sir. The first I knew anything about it was in Mr. Bower's letter; I think it came from Mr. Bower, or Mr. Parker, but I think it was Mr. Bower; that was the first thing I knew that the property was disposed of.

Q. Moses hadn't told you that he had signed the paper?

A. No, he hadn't, and I went down and gave him Hail Columbia.

Q. You gave who Hail Columbia?

A. Mose.

Q. Now, I show you a letter signed "Joseph Parker, Jr.," dated July 2, '91, and addressed to you; did you receive that letter? (Witness shown a letter already marked Exhibit D1).

A. Yes, sir, I received that letter.

Q. Now, tell me what had passed between you and Mr. Parker or Mr. Bower previous to that letter, which was the cause of the letter being written?

A. Well, I suppose this was an answer to my going down and offering to pay the taxes, if I understand it.

Q. Had you done that before this letter?

A. Yes, sir, I think he mentions there about having Moses' part there; it was after that, anyhow.

Q. Now, that was dated the second of July, and it states that since Moses had already executed a deed to him of his interest in the tax property, and that which Mr. Bower had since purchased from the township, that he had decided to permit him to remain as his tenant on the premises for three years from April 1st, '91, at the nominal rent of one dollar a year, without requiring the signature of Mrs. Meyers to the deed, for which he was to pay Fifty dollars. Now, after that, did you go to see either Parker or Bowers about it?

A. No, sir.

Q. Here's a letter, signed Joseph Parker, Jr., dated July 10, '91, and a copy of a letter dated July 8, '19 to Mr. Parker from Mr. Bowers. Did you get that letter and was the copy inside of it?

A. Yes, sir. He states there that I failed to perform what I agreed to do, and I never agreed to pay the taxes before that.

The letters are offered in evidence, that of Mr. Parker being marked Exhibit P1, and the letter of Mr. Bower Exhibit P2.

Q. Mr. Bower in his letter to Mr. Parker says that Mr. Meyers, after breaking an agreement that I generously made with him last spring, cannot now expect me to make another like it. Do you know what he means?

A. I do not; for I never made an agreement with him; not in regard to that; he talks as though I made an agreement with him to redeem the property; I suppose that's the meaning of it.

Q. After the receipt of these letters, did you go to see either Parker or Bowers?

A. I think I was after some of the letters; I think I saw him once after that.

Q. Well, here's another letter of July 21, '91, signed Joseph Parker, Jr., in which he says that he has again consulted with Mr. Bowers relative to your proposition (the letter is addressed to you) to redeem the land bought by him at the tax sale, and Mr. Bowers refuses to accept the money and interest; he will abide by the proposition in his other letter. Did you receive that?

A. Yes.

Q. About the time of its date?

A. I must have received it at this date.

Offered in evidence and marked Exhibit P3.

Q. I now hand you a letter signed "Samuel W. Bower," and dated August 3, '91, addressed to you. Did you get that letter, and if so about what time?

A. Yes, sir, that seems to be August 3d.

Q. You got it about the time of its date?

A. I suppose I did; that ought to tell about when I received it.

Offered in evidence and marked Exhibit P4.

Q. Prior to, or after the time, that you first called to see Mr. Parker or Mr. Bower about the tax, had you been to the Town Hall to find how much taxes were due on the part that had been set off for the dower?

A. Yes, sir.

Q. And did you get from the town officials a statement of the amount?

A. Yes, sir.

Q. Is that it? (Handing witness a paper).

A. I think it is.

Q. Is that the paper they gave you that purported to be the amount due?

A. Yəs, sir, that's the one.

Q. That was given to you at the town house?

A. Yes, sir.

Q. By an official in charge?

A. Yes, sir, Mr. Rəid's help there, I forget his name.

Q Do you remember about how much that amounts to?

A. I undertook to run over it one day, and I thought it was in the neighborhood of $240, along there.

Q. How much did Mr. Parker demand as the amount?

A. When I came down to settle it, and I found it was redeemable yet, I told Mr. Parker at his office in Broadway, and he said it was over six hundred dollars, and I told him it wasn't, as I had the amount from the town house; that's about what it amounted to; I thing Uncle Peter paid the taxes up to '80; I think the clerk told me it was paid up to '80.

Q. Have you ever received any notice from Mr. Bowers, or the town, of the sale of the land for taxes?

A. No, sir.

Q. Have you ever received any demand of possession, or any notice that unless you paid at a certain time your right to redeem would run out?

A. No, sir, not that I remember.

Q. When you say it was sold for taxes several times, where did you get that information?

A. I got that from mother, she was always worrying about taxes.

Q. Was it the custom for the town to buy in and hold, and then redeem it when the property was sold?

A. At the time Mose was a poor, miserable fellow, and he had full sweep of that property for twenty years, and never paid a dollar taxes.

Q. Is Moses a drinking man?

A. Yes, he has his drinking spells.

Q. Did he tell you he had signed any paper to Mr. Bower?

A. He told me when I came down the next morning after getting that letter, he said he had signed a lease for three years, and I told him it was a deed, and he said it was no such thing.

Q. When you saw Mr. Bowers first, did he say he had a deed, or a lease? Your only interviews with Mr. Bowers on the subject of the deed or other paper from Moses, is through the letters?

A. Yes. sir.

Q. When you went to see Mr. Bowers before those letters, you thought his only title was a tax title?

A. Yes, sir.

Q. So far as you know, has either one of your brothers and sisters made any conveyance of the property?

A. I guess not.

Q. Or received any notice of tax sale?

A. No, sir, I couldn't say.

Q. Or demand for possession?

A. I couldn't say.

Q. Was there any suit brought against you on account of it?

A. No, sir.

Q. Or against any of the rest?

A. Not that I know of.

The statement that Mr. Meyers spoke of is offered in evidence and marked Exhibit P5.

Q. Mr. Meyers, didn't you go to Mr. Bowers office in New York when he was away in the spring of '91, and see his clerk?

A. Yes, sir.

Q. Didn't you at that time leave word that you were ready to pay the taxes?

Objected to.

A. I don't think I did in Mr. Bower's office, but I did in Mr. Parker's office, the same day.

Q. What was the name of the person who was there?

A. It was a young man in your office (meaning Mr. Parker's office).

Mr. Parker: I wasn't there?

Witness: No, sir.

Q. Did you go again to Parker's office in June or July to pay the taxes?

A. I went down to pay the taxes on the widow's third after that. I don't know what time it was exactly?

Q. That's the time he told you it was over six hundred dollars?

A. Yes, sir.

Q. Did you receive any letter from Mr. Pratt on the subject?

A. Yes, sir.

Q. Have you got it?

A. No, sir.

Q. Have you hunted for it?

A. I haven't got it; I thought I brought all the papers down; I might not have saved that one; it was from Mr. Pratt.

Q. Do you recall what it said?

Objected to.

A. I don't know but what I did save it.

Q. You remember telling me that you got such a letter, and I asked you to look for it; did you do it?

A. I think I did.

Q. Did you find it?

A. No, sir.

Q. How old a man are you?

A. About seventy-seven. Well, I can tell you just what it said.

Counsel for defendants object to the statement of the contents of the letter.

Witness: I think it is likely I can find it.

Mr. McGee (to counsel): Will you accept verbal notice to produce your letter press copy?

Mr. Parker: Yes; when counsel gives notice.

Q. After this letter from Mr. Pratt, did Mr. Pratt call on you about it?

A. He was there a number of times.

Q. Do you remember whether he was there in July of '91, to see you?

A. I couldn't talk about dates; the letter came through the post; I know he stopped there one Sunday, a few minutes, passing by.

Q. Did he see you during the summer of '91, the summer that you were seeing Bower and Parker with reference to this matter?

A. Yes, sir.

Q. Tell me what he said?

A. Well, there wasn't much said about it. I know one Sunday forenoon he came along there, and I was sitting on the stoop, and he came up, and I said to him "What's going to be done about my mortgage on Moses' place," and says he "I suppose it will have to go with the rest."

Q. Had he said anything before that which indicated a knowledge on his part that Bower had bought the property for taxes? I want to get, as near as I can, what was said by you and by him.

A. I don't remember anything about that.

Q. How many times did you see him in which the subject was referred to?

A. Well, two or three times, once going down from Montclair we had a little talk in the cars about it; it didn't amount to anything; he asked me if I had done anything about it, and I told him "No."

Q. Can you remember pretty near what he said?

A. No. It was an ordinary conversation.

Q. Did you tell him that Bower had bought it for taxes, or did he speak to you first?

A. I don't know as I said anything to him about Bower buying it for taxes, or he to me.

Q. How did it come up?

A. Oh, a general talk; I know this day going down on the car he said a piece of property in Colville, of his, was sold for taxes.

Q. What did he say about this?

A. He didn't say anything about it; I can't remember, just meeting a man, what he has to say.

Q. Do you remember ever saying anything to him in that summer that you wouldn't buy any man's property for taxes?

A. I did, and he said the same to me.

Q. Just what did he say?

A. He said he wouldn't buy anybody's property for taxes.

Q. Was that this summer?

A. I think it was.

Q. What I want to get at is this: Your recollection as to whether you talked with Mr. Pratt during the same summer that you were seeing Parker and Bower about redeeming this property?

A. Well, it was just about that time, when I was receiving letters and one thing and another; I don't know what time it was; we had a little talk about it most every time we met; it wasn't very often we did meet.

Q. Where does he live?

A. I guess he lives in Montclair.

Q. How long have you known him and he you?

A. Thirty years I guess.

Q. Mr. Meyers, what I want to get from you is your knowledge, if you have any, as to whether Mr. Pratt, during that summer that you were negotiating with Bower, knew that Mr. Bower's title was a tax title?

A. Why certainly, we knew it. Everybody knew that it was a tax title first.

Q. About how much upland is there in the property of the heirs, other than that which was set off to the widow?

Mr. Voorhis: Do you mean in the part east of the road?

Mr. McGee: I mean the part which the devisees of Rachel Meyers took under her will.

A. As near as I can remember, grandfather always used to call it eleven acres of upland?

Q. That included the part that was set off to the widow and all?

A. Yes, sir.

Q. And Moses' two acres?

A. Moses' two acres.

Q. How much was set off to the widow?

A. About one-third of the front.

Q. Would that be about one-third of the whole area, or more?

A. I guess it would be about one-third of the whole. It might not be quite one-third of the whole. They might have took in Moses' part in consideration.

Q. Is there any street cut through the property?

A. There was a street; that was Mr. Pratt's doing, and I signed the paper to have it vacated.

Q. Where was that?

A. That run the same as Schuyler avenue.

Q. East of it?

A. At the foot of the hill.

Q. Between Moses' house and the road?

A. About half way down; it didn't go to the house.

Q. This meadow, what character of land is that?

A. Well, its—

Q. Is it salt meadow?

A. Its partially salt; it aint the real salt meadow; it is called fresh meadow grass.

Q. Can you drive over it?

A. You can in dry time.

Q. Can you in wet time?

A. No, sir.

Q. Is it tillable land?

A. No, sir.

Q. Is it the edge of the swamp?

A. It runs from the upland down to the edge of the swamp; grandfather bought thirty acres of it.

Q. Do you remember what he paid for it?

A. Twenty-five dollars an acre.

Q. Do you know of any sales of meadow since that time?

A. No, sir, not that I know of.

Q. Do you know what the meadow was worth?

A. The tax valuation was one hundred dollars, and they put it down to fifty; they ought to put it down to twenty-five.

Q. What's the upland worth; what's that taxed for?

A. I couldn't tell.

Q. Is it taxed by the acre?

A. Yes, sir, I think it is; I think the map shows.

Q. Have you any idea what its worth?

A. No, sir, I don't know what its worth.

Q. One hundred dollars an acre?

A. Yes, a good deal more than that.

Q. Well, two hundred and fifty?

A. Put it about five hundred dollars an acre.

Q. That would be for the fee simple?

A. Yes, sir.

Q. Is there any mortgage on it?

A. Only the mortgage I hold on Moses' two acres.

Q. How much is that?

A. Only a hundred dollars, and some interest.

Q. How many years?

A. Well, it has been running three or four years, I guess, ever since my sister's death—before her death.

Q. Then its back four or five years?

A. Yes, sir.

Q. That mortgage has never been paid?

A. No, sir.

Q. Is it recorded?

A. Yes, sir.

Q. That included a part that's further east, and is now a part of the town?

A. No, it ran right back west.

Q. It ran over on the upland; between Schuyler avenue and the next street?

A. North, up almost to Kearney avenue.

Q. That was more valuable than this?

A. I suppose it is; still, I think there's a very valuable quarry on this place; I know there is; the upper Montclair church trimmings is all built out of that quarry; some excellent stone there.

Q. What kind of stone?

A. Gray.

Q. You wouldn't be willing to stand still and see a man that has a tax title take the stone out of that quarry?

A. Well, I wouldn't like it. I have never paid much attention to the property.

Q. Why not?

A. Because I had nothing to say about it; it was in mother's hands.

Q. Since her death?

A. Well, it was willed to Moses until Mary's death, and I wanted to go to work and pay that tax, and work the quarry, and he wouldn't allow it, and I got disgusted with it, and I told Mr. Parker that.

Q. Did you think it wasn't worth the money it would cost to redeem it?

A. No, I didn't think that; it was worth more than that; I wasn't going to rob myself. If I had redeemed that property I would have had to pay the taxes and pay the interest.

Q. You are willing to join with the others in redeeming it?

A. Certainly.

*Cross Examination by Mr. Parker:*

Q. When you met me on the avenue, just referring to your last answer, you told me that you were disgusted with it?

A. I did.

Q. Don't you remember also saying that if you did redeem that property you would have to pay the taxes and the interest?

A. Just exactly what I said here.

Q. And when you came to look for your own they would take you for the biggest rascal of the lot?

A. Yes.

Q. That's what you said to me?

A. I did.

Q. That was during the time that you and myself and Mr. Bower were endeavoring to effect some settlement in regard to these taxes, wasn't it?

A. I think it must have been at about the same time.

Q. You had been to my office in Arlington to see me about the taxes; you remember calling there one evening to see me?

A. I remember that.

Q. And you remember seeing me on the fourth of July?

A. That's the day I was going to East Newark.

Q. That was after you had received the letter of July 2, '91, that letter which was shown to you here to-day, July 2, '91. You never knew that Moses had executed a deed to that property?

A. Not until I got Mr. Bower's letter, or yours, I didn't know which one.

Q. You never knew about the transaction between me and Mose about it?

A. Not a bit.

Q. When you went down to Mr. Kenney's to see about these taxes, as are shown on Exhibit P5—you look at that, and you will see that that is the assessment for the taxes on the interest of Susan Shoemaker?

A. Yes, sir.

Q. The widow's.

A. That was supposed to be.

Q. And that you figured up to be Two hundred dollars?

A. I think about two hundred and forty or fifty dollars; I didn't figure up the interest exactly.

Q. This only includes the interest of Susan Shoemaker?

A. That's all; that only includes mother's part of it.

Q. By mother, who do you mean?

A. My mother.

Q. And when you called to see me and told me you had been to Mr. Kenney, and he said this was the amount of taxes on the property, and I told you they amounted to a great deal more, about Twelve hundred dollars, did not that include all the rest of the property?

A. You said Six hundred dollars.

Q. Did not that include all the other property embraced in this deed, as well as that?

A. You didn't say nothing about that.

Q. I told you that it amounted to about—

A. I supposed afterwards that that included the meadow and all what other people owns.

Q. You thought so?

A. I did afterwards.

Q. You found out afterwards that it did not?

A. I only made up my mind that it covered the other part of it.

Q. That was only your inference?

A. That's all. Mr. Reid's man gave me this as being the tax due on mother's part of Susan's third.

Q. But now Susan is dead, isn't she?

A. Yes. There was only two plots there to be taxed, because the meadow was included in the other part of the place.

Q. You are familiar with the way property is assessed in Kearney township, aren't you?

A. No, I can't say that I am.

Q. Well, the assessor does the assessing, and the bills are made out by the township treasurer. Just look at that paper which is marked Exhibit P5, and I show you a receipt for the taxes that were paid by Mr. Bower to the township of Kearney, the receipt is

numbered thirteen, the amount is One hundred and twenty-two dollars and thirty-five cents; the assessment is in the name of the estate of C. Meyer, location meadow, block fourteen; does that show upon this part of Susan Shoemaker's interest—this part of the tax—as shown as Exhibit P5?

A. No, there's no meadow on this. (Referring to Exhibit P5.)

Q. I show you receipt numbered fourteen by J. W. Reid, township treasurer; it says block two hundred and seventeen, lot forty-eight; do you find that on Exhibit P5?

A. There's only two plots here.

Q. The amount of that is six hundred and thirty-seven dollars; that doesn't show upon that bill of Exhibit P5, does it?

A. No.

Q. I also show you a receipt of June 12, 1890, number fifteen, of J. W. Reid, township treasurer, block two hundred and eighteen, lot forty-nine, assessed in the name of Moses Meyers, amount $155.45; that doesn't show upon Exhibit P5, does it?

A. Its all moonshine to me to look at it.

Q. You can't tell, because you haven't your glasses to see correctly?

A. No, sir, but you can see yourself.

Q. At the time that you spoke of a conversation with Mr. Bower, where he thought a proper adjustment would be one-half of the property—

Witness: I said I thought it was something near one-half.

Q. At that time you do not know whether he had bought, at tax sale, the Susan Shoemaker piece, do you?

A. I couldn't say whether he had bought it then or not.

Mr. McGee: For the sake of having it here, so that the testimony can be more intelligible, will you state how much tax Mr. Bowers did pay altogether?

Mr. Parker: Mr. Bower paid back taxes, June 12, 1890, $914.80, just as those three receipts show. And he paid back taxes January 23, 1891, $47.35. Which is the amount of the tax sales, together with interest and taxes subsequent to the purchase by the township—everything that there was against the property. And the deed from Moses C. Meyers included not only the property which he bought from the township, but also the property which he bought at the tax sale of the Shoemaker part.

Q. So, Mr. Meyers, when you conferred with Mr. Bower in regard to an adjustment of this matter, where he spoke about a division of about one-half—

Witness (interrupting): There was nothing said about half; he said he wanted from about the line of these two acres to the line of Schuyler avenue; which I say, was, as nearly as I can guess, about one-half.

Q. At that time you don't know whether he had taken a tax title for the Susan Shoemaker piece?

A. I couldn't say.

Mr. McGee: was it after he had taken the paper from Moses?

Witness: If it was before we might as well have given him the whole of it; there wouldn't have been much left.

Q. Didn't you know that an action of ejectment was commenced in this way?

A. I heard Mose say something in regard to it; I don't know what it was; he said there was a paper—something came there—and he said he wasn't home.

Q. Did you attend with him at Messrs. Coult & Howell's office, Newark?

A. Yes, sir.

Q. What did you go there for?

A. Well, to see about this property.

Q. About the suit?

A. Yes.

Q. And Coult & Howell were retained, were they not, to represent Mose in the ejectment suit?

A. Yes, sir.

Q. You called on me in New York and saw me in New York one time Mr. Meyers, did you not?

A. Yes; I don't know whether I was more than once. I saw you there the day I wanted to settle them taxes.

Q. You saw me there once?

A. Yes. I don't know whether I saw you there before?

Q. That was after July second, was it not?

A. That I couldn't tell.

Q. That was between the time that Mose told you that he had received that letter about the deed?

A. I guess it was.

Q. And the time the deed was put on record?

A. I guess it was.

Q. On the fourth of July, when you met me in front of my house, we had a conversation in regard to these taxes, didn't we, you and I and Mose together by the fence?

A. Well, I don't remember exactly what was said about taxes now.

Q. Do you remember that occasion?

A. We talked something about it; whether it was taxes, or what, I don't remember.

Q. You remember the occasion of being there?

A. Oh, I remember of being there and talking with you, and I guess I told you I was disgusted with it.

Q. You had been to see me at the house before that?

A. Yes, sir.

Q. During the pendency of the ejectment suit?

A. I guess it was before that that I saw you home there.

Q. Before the fourth of July?

A. Before there was anything done about it; I think it was; I can't be positive about it.

Q. At the time that you saw me at my office at the house, you then spoke about the taxes?

A. Yes, sir.

Q. And wanted to pay them. Didn't you say you thought you would redeem the property?

A. I might have said I thought I would.

Q. And then you called again to see me, don't you remember?

A. I never remember being there but once.

Q. Don't you remember coming again, at which time—

A. Oh, we met you on the street, Mose was with me.

Q. Yes.

A. And we spoke something about it then, that you were to see Bower about it.

Q. And I told you afterwards that I did see Bower; when you met me in New York I told you I did see Bower?

A. I forget about that.

Q. And that at that time Mr. Bower was willing to transfer the property upon the payment of these taxes?

A. He was willing to do it according to what Mr. Pratt told me, but I don't remember you ever telling me that.

Q. You don't remember me ever telling you that?

A. No.

Q. And after that interview you remember making the statement that you didn't intend to redeem them, because when you came to look for your own you would be considered the worst rascal of the crowd?

A. Yes, I remember that very well.

Q. And it was after that time that this paper was put on record, was it not?

A. That I couldn't tell anything about when it was on record, or even when it was done; the first intimation I had of it was from a letter from Mr. Bower.

Q. At the conversation we had on July fourth, do you not remember me saying to you that I would hold the deed from record until the first of August—at the time when you and Mose and I were there together.

A. No, sir.

Q. In order to give you an opportunity to redeem it?

A. No, sir, don't think there was anything said about a deed; the first notice I had was from Mr. Bower's letter, because as soon as I got that letter I went down the next morning.

Q. You went right down to see Mose?

A. Yes, sir.

Q. That was the fourth of July?

A. No, it wasn't the fourth of July.

Q. When was that?

A. I don't know when it was; I couldn't tell; I can tell, for I was down the next day according to that letter.

Q. Which letter do you refer to?

A. Mr. Bower's letter that he wrote me that he had now got Moses Meyers' part and wasn't willing to give up the rest; and I went down the next morning to Mose—whether it was on Sunday or the fourth of July I don't know—the date of that would tell when it was; I think it was from Mr. Bower.

Q. Is that the letter you mean? (Reading letter of July 2 to witness.)

A. Yes, sir, the next day I had a blow up with Mose.

Q. On the third—and you saw me on the fourth?

A. Yes, sir.

Q. And you don't remember that I told you at that time that I wouldn't put the deed on record?

A. It seems to me that you said something to Moses about a deed or something.

Q. Did I say anything about not putting it on record, do you remember?

A. Not that I remember.

Q. Did you not say at that time that you were on your way to see Mr. Davis?

A. No, sir; didn't see Mr. Davis; didn't go to see him.

*Re-direct Examination (by Mr McGee).*

Q. Did Mr. Parker represent Mr. Pratt as well as Mr. Bowers?

A. I didn't take it in that way.

Q. Did he say anything about Mr. Pratt?

A. No, sir, not that I know of; don't remember anything of the kind.

Q. This talk that Mr. Pratt had with you about the tax sale to Bowers, was this before this time you saw Parker on the fourth of July?

A. I don't know; I never kept any date of anything.

Q. Was it along that summer or spring?

A. Must have been that summer I guess.

Q. When was the first you heard that the Cemetery had bought it.

A. I think that somebody came up to see Mose. Mose told me about it—come up to see me.

Q. Do you remember when it was?

A. No, sir, I do not; nor he didn't say who it was that come up there.

Adjourned to Monday, April 24th, at the office of the Arlington Cemetery Association, 239 Washington street, Jersey City.

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IN CHANCERY OF NEW JERSEY.

Between

FRANK W. WILDES ET ALS,

*Complainants,*

and

THE RURAL HOMESTEAD COMPANY ET ALS,

*Defendants.*

*On Bill, &c.*

April 24th, 1893.

Met, pursuant to adjournment, at the office of the Arlington Cemetery Association.

Present:

Flavel McGee, Esquire, for Complainants.

Charles H. Voorhis, Esquire, for Defendants.

Counsel for Complainants asks the Secretary of the Rural Homestead Company to produce the book of minutes of that corporation. The Secretary produces the book, which is a book without title, but with minutes of the corporation beginning with the subscription for Capital Stock on page 1, bearing date on the fourteenth of May, 1872, and being written on pages 1 to 61 inclusive of the book.

The book is offered in evidence in whole, and marked Exhibit P6.

Counsel next asks for the production of the stock certificate book of the Rural Homestead Company. The Secretary produces two stock certificate books, one containing certificates from numbers one to two hundred and fifty inclusive, most of which appear to have been surrendered and pasted back, and with three certificates on the back of the book unnumbered and unissued. The date of Certificate number one in the book was June 29, 1872, and the date of Certificate number two hundred and fifty, April 19, 1889, and the other certificates appear to be dated at dates between those two. The other Certificate book containing stock certificates numbers two hundred and fifty-one to three hundred and eighteen, inclusive, with the balance of the book unissued. Most of the Certificates from two hundred and fifty-one to three hundred and eighteen appear to be surrendered, and pasted back in the book, but the rest are outstanding.

Mr. McGee: I offer in evidence the first certificate book mentioned, and also the second, but not including in the offer a piece of paper pasted in the second above named book on the first page, signed Julius H. Pratt, and dated May 7, 1890.

The same are marked respectively Exhibits P7 and P8.

Counsel for complainants calls for the stock lists of the various meetings of the stockholders of the Rural Homestead Company for the last four elections, namely 1885, 1890, '91 and '92, and the Secretary produces the lists for 1890 and '92, and says that he cannot at this moment lay his hands on those for 1885 and 1891, but if desired will make a further search.

Those stock lists offered in evidence and marked, that for 1890 Exhibit P9, and that for 1892 Exhibit P10.

Counsel for complainants asks the Secretary, Mr. Torrey, to produce the check books of the Rural Homestead Company.

Mr. Torrey: I never had any check book of the Rural Homestead Company; Mr. Reddish, who was Treasurer, had that.

Counsel for complainants asks the Secretary to produce the books of account of the Rural Homestead Company. The Secretary produces a book entitled "Cash Book and Journal Rural Homestead Company, auxiliary to Arlington Cemetery," cash book from page 2, journal from 100; pages 1 to 7 inclusive, beginning with the date of December 18, 1882, and ending with the date of June 3, 1891, appear to be the cash book, and are offered in evidence by the complainant, and pages 100 to 113 inclusive appear to be the journal and the first date is July 15, 1882, and the last date December 31, 1892 Pages 108 to 113 are in a different ink from the rest, and Mr. Torrey states that they were written in within the last year from the Cemetery books. These pages 100 to 113 inclusive are also offered in evidence, and the whole book marked Exhibit P11.

The Secretary also produces a book entitled "Ledger of Rural Homestead Company, auxiliary to Arlington Cemetery Association;" the earliest date in the book appears to be July 15, 1882, and the most recent date December 31, 1892; pages 2 to 56 appear to be written up except pages 52 to 55 inclusive which are blank; page 56 appears to be in different color ink from the rest, and Mr. Torrey says it was posted from Book Exhibit P11 and subsequently to the writ-

ing up of that book. Page 9 purports to show the loans under contract from the Rural Homestead Company to the Arlington Cemetery Association, and foot up $43,400.25; and page 56 purports to show the special loans from the Rural Homestead Company to the Arlington Cemetery Association, and they foot up $22,997.08.

This book offered in evidence and marked Exhibit P12.

Counsel for complainant asks for the minutes of the Arlington Cemetery Association. The Secretary produces the book, without title, which purports to contain the minutes beginning with the thirteenth of November, 1882, and ending with the trustees' meeting of February 23, 1893, which minutes are found on pages 1 to 56 of the book.

Offered in evidence and marked Exhibit P13.

Adjourned to Friday, April 28th, 1893, at 10 o'clock in the forenoon, at the office of George W. Cassedy, Master. At which time the meeting was further adjourned to Friday, May 12 at 2 o'clock.

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES ET ALS.,
*Complainants,*
*and*
THE RURAL HOMESTEAD COMPANY ET ALS.,
*Defendants.*
} *On Bill, etc.*

Examination of witnesses before George W. Cassedy, pursuant to adjournment, this twelfth day of May, 1893.

Present:

Flavel McGee, Esq., Counsel of Complainants, Joseph Parker, Jr. and Charles H. Voorhis, Esquires, Counsel of the Defendants.

WILLIAM J. DAVIS, a witness produced on the part of the complainants, being duly sworn, according to law on his oath deposeth and saith:

*Direct Examination by Mr. McGee.*

Q. Mr. Davis, where do you live?
A. Town of Harrison, Hudson County.
Q. And your business?
A. Practicing attorney of the state.
Q. Do you now Moses C. Meyers?
A. I do.
Q. And are you familiar with the property on which he lives?
A. I am.

Q. Did he come to see you some time ago with reference to the property having been sold for taxes?

A. Yes, sir.

Q. Just tell us what occured about it?

A. I had been called to settle up the Meyers estate, so called, of some property on the west side of Schuyler Avenue; I had closed it up, and in that way I was spoken to by Moses Meyers in relation to the property on the east side of the avenue; the property was encumbered for taxes, and he asked me if I wouldn't see what could be done, and to have the taxes apportioned, as it included another plot of salt ground taxed in together. I told him it was necessary to have a township search first to find out how the matter stood. I obtained that search, and the matter laid dormant for several months, and he came down and saw me again and said that he wanted the matter closed up as soon as possible and I told him to go to the township committee, or treasurer, and find out if they had apportioned the taxes. He reported to me that they hadn't done anything, but the property had been purchased by Mr. Bowers of New York. I asked him if he knew who he was, and he said he did not, but he said he would try and find out. He came down and saw me at my office shortly after that, and told me Mr. Bowers, so he had heard, had purchased it for the cemetery, or Mr. Pratt—that's the way he put it. After that conversation, and having other business with Mr. Pratt, I called in Jersey City to see him, and he told me that Mr. Bowers was a friend of his, and that he had bought it for the cemetery, and that he was willing to deed the property back, provided he got his taxes and interest. I made some remark that we were entitled to redeem it, or something of that kind. That's about the gist of the connection I had with the matter.

Q. And this was shortly after the sale by the township?

A. Shortly after the sale by the township.

Q. About two or three years ago?

A. About two or three years ago.

Q. You never pursued the matter further yourself?

A. I never went any further because Mose never had the money to redeem the property, and it lagged along on that account. I never had anything more to do with it.

Q. You didn't represent anybody else?

A. No, sir, nobody else.

Q. This was before the paper that Moses signed?

A. Yes.

Q. I mean the paper which purports to be a deed from Moses to Bowers?

A. I haven't seen any such deed; I suppose so.

Q. By Mr. Pratt, you mean Julius H. Pratt, President of the Cemetery Company?

A. The gentleman here in this room; I don't know whether he is President of the Cemetery or not.

Q. You understand that he's an officer in the Cemetery Company?

A. I understand he is, yes, sir.

CATHARINE ANN MEYERS, a witness produced on the part of the complainants, being duly sworn, according to law, on her oath deposeth and saith:

*Direct Examination by Mr. McGee:*

Q. You are the wife of Moses C. Meyers?

A. Yes, sir.

Q. Do you know the property that Mr. Samuel W. Bowers bought in at a tax sale of the township of Kearney, and that Moses afterwards signed a paper about that is called a deed? Do you know what property that is?

A. Yes.

Q. Its the property you live on?

A. Its the property we live on.

Q. Now, do you remember shortly after the time when Moses signed that paper, do you remember shortly after that somebody coming to your house and wanting you to sign the paper?

A. Yes, Mr. Parker.

Q. Just tell us what occurred?

A. What occurred just then?

Q. Yes. Who came, and what was said?

A. He came—

Q. Who?

A. About eight o'clock in the night—in the afternoon—

Q. Who?

A. Mr. Parker, Mr. Van Emburgh, and Mr. McCloud—he had then with him—Len McCloud and Simon Van Emburgh—about eight o'clock at night.

Q. About eight o'clock in the night?

A. It was late at night.

Q. What time of year?

A. In July.

Q. Do you remember how long ago?

A. I should say two years this July.

Q. Just tell what passed?

A. Well, he said he had come down to let me sign a paper that my husband had signed, and I told him I should like to know what the paper was.

Q. By Mr. Parker, you mean this gentleman here, Mr. Joseph Parker?

A. This gentleman here; he knows it just as well as can be; and he asked me if I would sign it, and I told him I would like him to read it, and he said would I know my husband's signature. I told him I couldn't tell my husband's signature from any other man's. Then he told me it was a quit claim deed my husband had signed, and he asked me if I would sign it. I said, no, sir. Well, he says, if you don't sign it, he says, I will have the sheriff down here next morning and put you out.

Q. Yes.

A. I said I can't help that, but I ain't going to sign it.

Q. Well, what else?

A. And he says, if you sign it you will get Fifty dollars for signing it. Then he asked me the third time, and I said, no, sir, and he says, he tells me, if I didn't—He says it was a quit claim deed my husband signed; that we were to have house rent free for three years, and after the term of three years that we had nothing more to do with it. I told him if my husband signed that he was either drunk or crazy. That's all I said to him.

Q. Did you sign it?

A. No, sir.

Q. Does your husband get drunk?

A. Drunk—he wasn't sober for two weeks before the transaction, after he heard the property was sold.

Q. You mean before the transaction, before he signed that paper?

A. Before he signed that paper. That night he told me he was going to lease the ground off Mr. Parker, and Mr. Parker set his price on it for One hundred and fifty dollars a year.

Q. (Mr. Parker:) Mose told you that, didn't he?

A. No, sir Mose told me what he was going to do, and instead of that you drawed a quit claim deed for him.

*By Mr. McGee:*

Q. He told you that?

A. He didn't tell me that. He told me he was going to see Mr. Parker, and I didn't know the paper was drawn yet till Mr. Parker came down to the house.

Q. You say that Moses told you that he was going to lease the property for One hundred and fifty dollars a years, and you added "you drawed a quit claim deed." You don't mean Mose told you that?

A. No, Mr. Parker told me that; instead of leasing it was a quit claim deed he had drawed.

Q. Moses told you he was going to lease it for One hundred and fifty dollars a year?

A. For one hundred and fifty dollars; he said before that time we may be able to redeem the property, and I said, wait until your head is level before doing anything.

Q. You say he wasn't sober for two weeks before this day Mr. Parker came there?

A. No; it was before he drawed this paper.

Q. The day he signed the paper?

A. I couldn't tell you when he signed the paper, or nothing about it; I didn't know until Mr. Parker came down; he took me on a surprise.

Q. You just now said he wasn't sober for two weeks before he signed the paper. Do you mean for two weeks before Mr. Parker saw you?

A. No, before he leased this property.

Q. Did he tell you what day he signed it?

A. He did'nt tell me.

Q. How do you fix the time?

A. Two weeks—I couldn't tell you. He wasn't sober for two or three weeks, or a month before these papers came out; he just turned into drink before these premises were sold for taxes. One night he came home and said he was going to see Mr. Parker, to see if he couldn't rent it, and he said he couldn't rent it until he saw Mr. Bower, and he saw Mr. Bowers, and as he supposed he thought he was signing a lease and instead of that he was signing a deed.

Q. Moses told you that?

A. No, Mr. Parker. He thought he was signing a lease.

Q. He told you that what he signed was a lease?

A. It was a lease; that he leased the property for three years for one hundred and twenty-five dollars —one hundred and fifty dollars, a year.

Q. For how much?

A. One hundred and fifty dollars a year.

Q. Do you mean—you are speaking of the two or three weeks, do you mean for two or three weeks before he told you he had signed the lease?

A. Yes, sir.

*Cross Examination by Mr. Parker.*

Q. Mrs. Meyers, you never saw me in regard to this business until I presented the paper to you, did you?

A. No, sir.

Q. I never had any conversation with you of any kind; that's the only talk you ever had with me, wasn't it?

A. Yes, that's the only talk.

Q. At the time that I called at your house with Leonard McClowd and Simon Van Emburgh?

A. Yes, sir.

Q. When was it that you first discovered that this property had been sold for taxes?

A. I couldn't tell you, sir.

Q. How long before the time that I called there with the deed?

A. I couldn't tell you that, sir; I had nothing to do with the property at all.

Q. Did anybody tell you that I was coming down there to see you?

A. No, sir, I shouldn't think they did; you took me by surprise.

Q. Didn't you have any conversation with your husband in regard to it at all?

A. No, sir.

Q. Didn't you have any conversation with your husband in regard to this property before the time that I brought the deed down there?

A. No, sir.

Q. Not a word?

A. Not a word.

Q. Did Mose ever tell you anything at all about the property?

A. I knew nothing about it.

Q. Nothing at all?

A. Nothing at all.

Q. Didn't he ever tell you before I came down there anything about a lease?

A. No, sir.

Q. Never said anything to you about a lease?

A. Nothing at all about it.

Q. Didn't he ever tell you that he came to my house to sign a paper?

A. He told me he come to your house to sign a paper.

Q. When did he tell you that?

A. I couldn't tell you.

Q. Wasn't that before I came down to your house?

A. It was.

Q. How long before?

A. It was two months.

Q. Two months before?

A. Yes.

Q. When he spoke about the lease?

A. Yes, about the papers he had drawn.

Q. Which he was to pay One hundred and fifty dollars a year for this property?

A. Yes, sir.

Q. That was about two months before I came down to see you?

A. Yes sir.

Q. Then you did have a conversation with him in regard to this property?

A. Yes.

Q. Didn't he tell you at that time the property had been sold for taxes?

A. He told me it was sold for taxes.

Q. And didn't he tell you Mr. Bower had bought it?

A. Mr. Bowers had bought it.

Q. From the township?

A. Yes.

Q. Now, do you know that he was served with a summons in an action in this matter?

A. No, sir.

Q. Do you know anything about the Sheriff serving him with papers?

A. No, sir, there was no Sheriff served him.

Q. Was there any summons in ejectment served on him to your knowledge?

A. Never served on him.

Q. Do you know Mr. Carroll?

A. No sir.

Q. Did you ever see the Sheriff there at your premises?

A. No, sir, no Sheriff there.

Q. Or his deputy?

A. No, sir, no Sheriff there. There hasn't been any man there since the night you were there.

Q. Prior to the night I was there wasn't there a man came there with a paper that purported to be a writ of ejectment to put you out of possession of those premises?

A. No, sir.

Q. Never came there?

A. Never came.

Q. Didn't you know that a suit had been commenced to dispossess you of those premises by Mr. Bower?

A. No, sir.

Q. Or to dispossess your husband?

A. No, sir.

Q. Do you know the difference between a quit claim deed and a bargain and sale deed?

A. No, sir, I wouldn't know the difference between either.

Q. I believe you said that he was to have a lease of the place for a dollar a year?

A. Not a dollar a year; I said one hundred and fifty dollars a year.

Q. Well, that was two months before the ejectment suit—two months before I came to the premises?

A. No, sir; what my husband said was that he had leased it of you.

Q. When did he tell you that?

A. I couldn't tell.

Q. That was before I came to see you?

A. That was before you saw me.

Q. The evening I came, Mr. McClowd and Mr. Van Emburgh were with me?

A. Yes, sir.

Q. And I showed you a paper?

A. You didn't show me a paper, nor you didn't read it.

Q. Didn't I show you a signature on it and ask you if you knew who it was?

A. What did I tell you?

Q. What did I ask you? Can you read and write?

A. No, sir.

Q. Can you write your name?

A. No, sir.

Q. You say I told you this paper was a quit claim deed, is that right as you remember it?

A. Yes.

Q. What did I tell you it purported to be; what did I tell you it meant?

A. I couldn't tell you what it meant.

Q. What did I tell you it meant?

A. You said it was a quit claim deed.

Q. What did you understand that to be?

A. I thought it was a lease of the property. He expected a lease.

Q. Did you think I said it was a lease?

A. Yes, sir.

Q. Weren't you willing to sign a lease of the property?

A. I was going to lease it until such a time as we could redeem it.

Q. Why did you refuse to sign if you supposed it to be a lease?

A. I would have.

Q. At the time that I showed you this paper—

Witness: You showed me no paper.

Q. At the time that I had a paper in my hand which I did not show you as you say, but which I had in my hand, and which I told you was a quit claim deed and asked you to sign, what did you understand it to be?

A. A lease.

Q. Didn't I tell you that Mose had signed this paper?

A. Yes, you told me he had signed it.

Q. Didn't I also tell you that if you would sign it you were to be paid fifty dollars?

A. Yes, sir.

Q. And didn't I also tell you that it was a conveyance of Moses' interest in the property that Mr. Bower had bought at tax sale and upon which a suit of ejectment had been commenced to dispossess Mose from the premises; didn't I tell you that?

A. No, sir. All that you told me was that the Sheriff would be down to put me out the next morning, when I didn't sign it; that's all you said.

Q. You say that it was in the month of July?

A. Yes, sir.

Q. Aren't you mistaken about that?

A. No, sir, I ain't mistaken about it.

Q. Is that the only time I was there with Van Emburgh and McCloud?

A. That was the only time.

Q. In the month of July?

A. In the month of July.

Q. They were in the room, weren't they, with us?

Witness: Who?

Mr. Parker: Mr. McCloud and Mr. Simon Van Emburgh.

A. Yes.

Q. They came right in and sat down?

A. Yes, sir.

Q. We all sat down together?

A. Yes.

Q. And they heard the whole conversation?

A. Yes, sir; there was my son and my sister-in-law there.

Q. Did you ever see William Meyer about this matter?

A. Yes, sir.

Q. When did you see him?

A. Before you came down.

Q. Before I came down?

A. Yes.

Q. Before I came down to have you sign that paper?

A. Yes, sir.

MARSHALL W. VAN WINKLE, a witness produced on the part of the complainants, being duly sworn, according to law, on his oath saith:

*Direct Examination by Mr. McGee*:

Q. What is your business?

A. Attorney at Law.

Q. And are you in the habit of making searches of title?

A. I am accustomed to making searches.

Q. Quite considerably?

A. To a large extent.

Q. Did you, at my request, make an examination of the title of the lands contained in the deed from Moses C. Meyers to Samuel W. Bowers?

A. I did, yes, sir.

Q. Have you notes of search that you made?

A. I have.

Q. Will you just give us a chain of title as you found it, with the dates, &c., of the deeds, so that they can be offered in evidence from it?

A. Starting where.

Q. Beginning at the point you began at and going in the direction you went?

A. I first examined the index of the County of Hudson, and I found a deed from Moses Meyers to Samuel W. Bowers, dated May 27, 1891, recorded August 3, '91, book 529, page 609.

The record of that deed offered inevidence.

(Witness continuing): The premises you asked about seemed to be included in this deed; I endeavored to find where Moses Meyers got title, and in doing so I came across another deed from the Board of Township Committee of the township of Kearney, in the county of Hudson, and state of New Jersey, to Samuel W. Bower, deed dated twenty-eighth of May, 1890, recorded June 30, '90, book 504, page 495.

Q. That was a tax deed?

A. That was a tax deed. The premises as described in there are described by lot and block number on tax map.

Mr. McGee: I offer in evidence the record of that deed.

(Witness continuing): I next found in tracing the title back, a deed from Mary Meyers, single, to Moses C. Meyers, dated April 6, '86, recorded July 29, '86, book 421, page 467, consideration one dollar.

Q. And that conveyed how much?

A. This deed conveys an undivided half interest in two lots in the township of Kearney, first tract an acre tract, the second tract an acre more or less.

There's a recital in this deed "being a part of property devised to party of the first part and Rachel Meyers, as tenants in common, by last will and testament of John Van Emburgh, deceased, and also being same premises devised to Moses C. Meyers by last will and testament of Rachel Meyers, deceased."

Mr. McGee: I offer in evidence the record of that deed.

(Witness continuing) That gave me a clue, and I worked it back and found next in the Surrogate's office recorded in book 316, page 344, Hudson, the last will and testament of Rachel Ann Meyers, widow.

Q. It seemed to be the same property?

A. Yes. There's a life estate created here.

Mr. McGee: I offer in evidence the record of that will, together with the proceedings connected therewith in the Surrogate's office.

(Witness continuing) Then I found in the Orphans' Court records, liber 4, page 519, Hudson, proceedings for the assignment of dower of Susan Schumacker, wife of Peter Schumacker, and late widow of John Van Emburgh.

Q. Which proceedings resulted in the setting off of the lands referred to in that report of which you have just given the book and page?

A. Yes.

Mr. McGee: I offer in evidence the report and the record and proceedings therewith connected to which the witness has just referred.

(Witness continuing) Then I found the will of John Van Emburgh, Senior, which had been referred to in one of the deeds offered in evidence, approved October 3, 1870, liber 5, page 739.

Mr. McGee: I offer in evidence the record of that will and probate.

Q. Then you didn't go back further?

A. No, sir; I think I couldn't go back further.

Q. What is the date of that will?

A. July 23, 1863.

Q. Did you find of record any deed from Samuel W. Bower to the Rural Homestead Cmpany, or anybody else of this property?

A. I searched Samuel W. Bower from May first, eighteen hundred and ninety to the twenty-first of November, eighteen hundred and ninety-two, and I found no deed from him to anybody.

Q. That was the date at which you finished your search?

A. Yes, sir, the date of these notes.

*Cross Examination by Mr. Parker.*

Q. You discovered in the examination of the title that the land described in the deed from the Township Committee to Bower didn't comprise all the land comprised in the deed from Moses Meyers to Bower?

A. The deed from the Township Committee to Samuel W. Bower describes the property as plot 49, block 218, Coppermine avenue, and plot 48, block 217, Schuyler avenue, and lot four meadow property. There is no more particular description.

Q. In order to get a more particular description of that it would be necessary to consult the Township map?

A. Yes, sir.

Q. You couldn't tell whether that included all the property contained in the deed from Meyers to Bower, or not?

A. No, sir, I could not. My only means of identification is the name of the avenue.

It is consented by counsel that copies of the records above referred to may be produced in evidence instead of the production of the original books of record.

It is agreed that there is no other tax deed from the Township to Bower of record in the office of the records of deeds of Hudson county but that the balance of the property described in the deed from Moses C. Meyers to Samuel W. Bower, and not described in the deed from the Township to Samuel W. Bower, was sold by the township at tax sale to whomsoever would take the property for the shortest term of years and pay the taxes then unpaid on that parcel, which amounted to .....
dollars, on the.....day of.....
eighteen hundred and.....was struck off to Samuel W. Bower for the term of thirty years, who paid the township therefor the said sum, which sale has been entered upon the township records, but no certificate of sale has been issued to said Bower. And further that the description contained in the deed from Moses C. Meyers to Samuel W. Bower above referred to includes the two acres on which Moses C. Meyers' house is situated and the property mentioned in the will of Rachel Meyers, but does not cover that part of the property mentioned in the will of John Van Emburgh which was set off to his widow for her dower, nor any

property devised by that will to persons other than Rachel Meyers, and her daughter Mary Meyers.

Mr. McGee: I offer in evidence a certified copy of a bill of complaint filed in this court between Moses C. Meyers and Catharine Meyers, his wife, Peter Meyers and Jane Routan, William H. Meyers, Ann Vernon and Martin Vernon her husband, Eliza Williams and Henry Williams, her husband, against Samuel W. Bower and The Rural Homestead Company, in which Mr. Michael T. Barrett is solicitor for and of counsel with the complainant, and which bill was filed on the day of 1893, and prays for an answer without oath, and for a decree that a deed from the township committee of the township of Kearney to said Samuel W. Bower may be decreed to be void as against the complainants, and that the deed from Moses C. Meyers to Samuel W. Bower mentioned by the last witness, may be decreed to be void as a deed of lands, and to be a lease of said property to Moses C. Meyers for three years at the rent of one dollar a year, with the privilege of redemption on payment of the amount paid by said Bower for taxes, and that all said deeds may be decreed to be a cloud on the complainants title to said lands and to be cancelled and removed therefrom, and that the said Bower and the Rural Home-

Ruled o
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stead Company may be decreed to reconvey said premises to Moses C. Meyers, free from any incumbrances not existing thereon at the time of said conveyance to him, and that the Chancellor may ascertain and decree how much ought to be paid to said Samuel W. Bower or the Rural Homestead Company, to in equity reimburse them or either of them, to the township of Kearney by way of taxes, on the lands in said bill mentioned, and that whichever one of them should be so decreed by the Chancellor to be the one entitled to receive the same should be decreed to accept said money in full payment therefor, and to convey to the complainants, by sufficient deed, all right, title and interest claimed by them in and to the said lands and every part thereof, and that said Samuel W. Bower and the Rural Homestead Company, and all persons or corporations claiming under them or either of them might be decreed to have no interest in or lien upon or title to said lands, and that the complainants might be decreed to own said lands and every part thereof, free from any claim or lien thereon, by said Samuel W. Bower or the Rural Homestead Company, or either of them, or any one claiming under either of them, and for such other and further relief in the premises as to the Chancellor should seem meet, and as should be agreeable to equity and good conscience; and for process of

uled out

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appearance, and which bill contained an offer on the part of the complainants to pay to said Bower or the Rural Homestead Company, or whomsoever is the proper person, the amount of the taxes paid by said Bower to the Township of Kearney, together with lawful interest thereon, and tender themselves ready to pay said moneys into the register of said court, or into such other depository, and within such reasonable time; as the Chancellor might fix.

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Objected to as inadmissible, incompetent, irrelevant and immaterial.

Offered in evidence and marked Exhibit P14, subject to objection.

Adjourned to Tuesday, May 16, 1893, at 4 P. M., at the same place.

At which time and place Flavel McGee, Esquire, counsel for the complainants, and Joseph Parker, Jr., and Charles H. Voorhis, Esquires, counsel for the defendants, appeared, whereupon Mr. McGee declared the testimony on the part of the complainants closed.

By agreement between counsel the examination was adjourned to Tuesday, May 30, 1893, at 10 o'clock in the forenoon, at the same place.

*Supreme Court Commissioner of New Jersey.*

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES ET ALS.,
*Complainants,*
*and*
THE RURAL HOMESTEAD COMPANY ET ALS.,
*Defendants.*
} *On Bill, etc.*

Examination of witnesses, &c., on the part of the defendants in the above entitled cause, before me, George W. Cassedy, a Master and Examiner in Chancery of New Jersey, at my office No. 1 Exchange Place, Jersey City, N. J., on Monday, June 5th, 1893. at 10 o'clock in the forenoon, in the presence of Joseph Parker, Jr., Esq., and Charles H. Voorhis, Esq. counsel for defendants, and Flavel McGee, Esq., counsel for the complainants.

JOSEPH PARKER, JR., a witness produced on the part of the defendants, being duly sworn according to law on his oath deposeth and saith:

*Direct Examination by Mr. Voorhis:*

Q. Where do you reside?

A. I reside at Arlington, Hudson County, New Jersey.

Q. What is your business?

A. My business is that of a lawyer in this State.

Q. Do you know Samuel W. Bower?

A. Yes, sir.

Q. How long have you known him?

A. Since about 1884, or 1885?

Q. Did you ever hold the office of Town Treasurer in Kearney?

A. Yes, sir, from 1884 to 1889, I occupied the office of Treasurer and Collector of Taxes.

Q. Then you know this property which is claimed now by the Rural Homestead Company?

A. Yes, sir.

Q. In Kearney?

A. Yes, sir, I do.

Q. Do you know of that property being bought by the township of Kearney for taxes?

Mr. McGee: I object to oral testimony on that point, as documentary testimony is the best evidence.

A. Yes, I was the treasurer at the time it was sold to the township.

Q. Had you knowledge of any negotiations between Mr. Bower and the Township for the transfer to him of their title?

A. Yes, sir.

Q. Who transacted the business between them?

A. I did.

Q. How did you become acquainted with Mr. Bower?

A. I made his acquaintance at the time I was the treasurer and collector of taxes. His office was in Pine Street, in the City of New York, at that time, with a gentleman by the name of Mr. Huntley, in whose name some property in Kearney Township was assessed, and I called there to collect the taxes and in that way made Mr. Bower's acquaintance.

Q. Who called his attention, do you know, to this tax title and suggested the purchase of it, if you know?

Objected to as to form, and as calling for the opinion of the witness.

A. I called his attention to the fact—

Objected to as giving a conclusion and not what was said in the first place and second, as giving evidence of the declaration of the defendant in the absence of the complainants.

Q. Do you know who drew the conveyance from the Township to him?

A. No, I don't know, I think Counsellor E. J. Kenny did—he was counsel at the time the conveyance was made.

Q. Were you not employed by Bower after to do anything about the title or the possession?

A. I was after he had procured his conveyance from the Township Committee. I did commence an action in the Supreme Court of New Jersey in Ejectment—

Mr. McGee: I object to the proving the contents of the action, as that is of record and is the best evidence.

—against Moses C. Meyers and commenced that action in the month of January, 1891.

Q. Was the suit prosecuted to judgment?

Objected to as the record is the best evidence.

A. Yes, sir, it was prosecuted to judgment.

Mr. Voorhis: I offer in evidence a certified copy of a judgment in the New Jersey Supreme Court wherein Samuel W. Bower was plaintiff and Moses Meyers was defendant. Marked Ex-

Objected to as irrelevant.

Q. Did you ever issue a writ of possession on that judgment?

A. Yes, on the 16th day of March, 1891.

Q. Was that writ executed?

A. No, sir.

Q. Why not?

A. From the fact that after the writ was issued, and placed in the hands of the sheriff for execution, Moses C. Meyers executed to Samuel W. Bower a deed for his interest in the property, which was conveyed by the township committee to Bower, and also the property which was thereafter bought by Bower at a subsequent tax sale from the township, in consideration of Mr. Bower's permitting Moses Meyers to occupy the premises for three years from April 1891 at the nominal rent of one dollar a year.

Objected to as stating the contents of a written paper and as an expression of opinion by the witness as to the effect of the paper, which Moses signed and as being hearsay and a statement of declarations made by the defendants and by people not parties to this suit in the absence of the complainants and as stating conclusions of the witness.

Q. Who conducted the negotiations between Mr. Bower and Moses?

A. I did.

Q. Did you ever hear of a proposed arrangement between Mr. Bower and Moses Meyers for a lease of the two acres at $150 a year?

A. Yes, sir.

Q. State what you know about that?

A. After the action of Ejectment was commenced and after Messrs. Coult & Howell had appeared for Moses Meyers in the action, and after an affidavit of Merits had been filed by Moses Meyers, I saw Mr. Meyers—

Mr. McGee: I object to any evidence as to what Mr. Meyers said, his declarations are not evidence in the case against the complainants, and if the testimony is offered for the purpose of contradiction, then it must be confined to the answer of the witness, it must be stated and either affirmed or contradicted under the rules.

A. I saw Mr. Meyers and spoke with him and he said to me about this summons in ejectment which had been served upon him. I told him that Mr. Bower had purchased the property from the Township and that this proceeding was to put him out of possession of the premises. He asked if he might not have a lease of the premises and said he was willing to pay $150 a year for a lease of the two acres on which the house stood. I then reported the conversation to Mr. Bower and he agreed and from the conversation—

Mr. McGee: It is understood that all this testimony as to the declarations of Moses Meyers and also as to the declaration of Bower are being taken under objection and under protest.

Witness.—And from the conversation I had with Mr. Bower I offered Mr. Meyers a lease of the premises for three years for $150 a year upon condition that he would give security for the rent—which he never did.

Q. Was that arrangement ever carried out?

A. It was never carried out.

Mr. McGee: I move that all this testimony with reference to the declaration of Bower and Meyers, be stricken from the record.

Q. Was there any other arrangement substituted for that?

A. There was.

Q. What arrangement?

Question objected to for the same reasons.

A. After the writ of ejectment was placed in the hands of the sheriff and before its execution Mr. Meyers agreed with me to execute a deed for his interest in the property purchased of the Township, and also that which he afterwards purchased of the Township at a subsequent tax sale, in consideration of his occupying the two acres upon which the house stood for three years at the nominal rent of $1; and upon the further consideration that his wife was to receive $50 for executing the deed.

Q. Was anything done afterwards in pursuance of that arrangement?

A. Yes, sir.

Q. What?

Mr. McGee: I move to strike out all this testimony which has been taken.

Mr. Voorhis: I suppose your objection covers it—you can put it at the end.

A. I prepared a deed for the premises as described in the declaration in the Ejectment Suit, and which also contained the further description of Moses Meyers interest in the property which had been assigned to Susan Schumacher in lieu of dower in the estate of her husband, which interest was subsequently purchased by Bower at tax sale for thirty years I think it was, from the township describing it as in the report of the commissioners on file in the Hudson County Surrogate's office.

Q. What paper is that?

A. That is the deed which I had drawn.

Q. The one you have just spoken of?

A. Yes, sir. It purports to be a deed dated the 27th day of May, 1891, between Moses Meyers and Samuel W. Bower of the City, County and State of New York.

Q. Acknowledged when?

A. Acknowledged on the 27th day of May.

Q. Before whom?

A. Before me, a Master in Chancery of this Court.

Q. When recorded?

A. Recorded in the Register's office of the County of Hudson in Liber 529 of Deeds of said County, on page 609, the 3rd day of August 1891.

Q. Who was the subscribing witness to that deed?

A. I am.

Q. By whom was it signed?

A. By Moses C. Meyers.

Q. Where was it executed?

A. At my office in Arlington.

Q. Who was there besides you and him, any one?

A. There was no one in the office when he executed this paper?

Q. Except you and him?

A. That is all, yes, sir.

Q. Whose signature is that to the certificate of acknowledgment?

A. Mine.

Q. Is that certificate true?

Objected to as calling for an opinion and conclusion.

A. It is true.

Q. Now state what occurred at the time of the execution and acknowledgment of that paper?

Objected to as giving the declaration of the witness and Moses Meyers in the absence of the complainants.

A. He called at my office according to agreement, I having subsequently made the arrangement heretofore testified to, and agreed to prepare this deed, and he called at my house on the 27th of May, at about 8 o'clock in the evening, and I had with me at the time a copy of the declaration in the Ejectment Suit and also these maps entitled "Hudson Orphan's Court in the matter of the assignment of Dower in the estate of John Van Emburgh, Report filed July 29, 1872, R. C. McCague, Jr. Surrogate, Liber 40 C. R., page 519, etc.", marked B. Attached to it there was also a map marked A. and I compared with Mr. Meyers the description in the deed as taken from this map and also as taken from a copy of the declaration in this suit, which description I procured from the township map of the township of Kearney at the office of the treasurer and after the comparing of the same, he executed it in my presence. I made him acquainted with the contents thereof and he acknowledged that he executed it and that he signed, sealed and delivered it as his voluntary act and deed. At that time he requested me to call at his house and procure his wife's signature for which I was to pay her $50, and I did call there on the Friday night of the same week and she refused to accept the paper. I took with me to the house one Leonard McCloud and Simon Van Emburgh, who heard all the conversation between Mrs. Meyers and myself.

Q. Did you read the deed to Moses before he signed it?

A. I did, and when I read it over he called my attention to the fact that I had left his middle letter "C." out of the name, and he executed it "Moses C. Meyers."

Q. Did he read the paper himself?

A. No he did not.

Q. Was the understanding as to his having the privilege of occupying the premises for three years at the nominal rent of a dollar a year, in writing or not?

A. No, sir.

Q. Was he sober at that time?

A. Yes.

Q. Was he not under the influence of liquor the time he executed this deed?

A. He was not.

Q. How long was he there at the time he executed the deed?

A. He was there about an hour.

Q. Did he make any objection to the deed?

A. None whatever.

Q. Was anything said by you or him at that time about the privilege of redeeming the land?

A. There was not.

Q. Mr. Meyers was asked in his direct examination:—

"Q. Did you make any effort to redeem the property?

"A. Yes.

"Q. What shape?

"A. I thought I would take a lease of the property and that was giving me three years to redeem.

"Q. Did you come to any agreement on this subject?

"A. He was to give me the lease.

"Q. And you were to have the property for three years and what then?

"A. With the privilege of redeeming it.

"Q. By what—upon the payment of the taxes?

"A. Yes, sir.

"Q. That was in the spring of 1891?

"A. Yes, spring."

Q. And on page 12 of the testimony of Moses C. Meyers did any such thing occur between you and Moses Meyers or not?

A. No, sir, no language was ever used between Moses Meyers and myself in regard to his redeeming that property, and I might say that William Meyers was the only one who ever spoke to me about buying it back from Mr. Bower.

Q. Mr. Meyers further says:

"Q. Was such a paper drawn?
"A. No, sir, it appears it was not.
"Q. Did you suppose it was?
"A. I thought it was, yes sir.
"Q. And is this the paper that you supposed was a lease.
"A. Yes, sir.
"Q. Where was this paper signed?
"A. Where I signed it?
"Q. Yes, sir.
"A. Parker's office."

A. That is right.

Q. Was anything said by you at that time to him or ever from which he could suppose that that deed was a lease?

A. No, sir.

Q. He says in his testimony page 13:

"Q. He did not read it to you?
"A. No, sir, and I asked him now this is mine after three years."

Did that occur or not?

A. I did read it to him and he did not ask me or say "Now this is mine after three years."

Q. Mr. Meyers says on page 14 of his testimony

"As I understand it then you say that the agreement on which you signed the papers was that you were taking a lease from Bower for three years with the privilege of redeeming it by the payment of the taxes in the apportionment and that after you signed the paper and he had it, he told you that after three years you would not have anything more to do with it?

"A. Yes, sir."

A. That is not true, except that I told him after three years the lease would be up—his lease would expire.

Q. What else?

A. A verbal lease in consideration of his executing the deed that he should remain there for three years at the nominal rent of a dollar a year.

Q. On page 16 he says:—

Q. Do you remember what he said exactly?

A. Mr. Parker, he said he did not know what else he could do with me, but give me a lease for three years and he asked me if my brother from Montclair would go my security, and I told him I didn't need any security, I would pay in advance.

"Q. Do you remember how much a year the rent was to be?

"A. $150.

"Q. A year?

"Yes, sir."

Q. What have you got to say about that?

A. That is true in so far as it refers to the conversation that we had in regard to the making of a

lease prior to the writ of execution being put in the hands of the sheriff. He failed to get the security except in the fact of his saying he would pay in advance, he did not need any other security, I don't remember any such remark as that.

Q. But that fell through?

A. It fell through absolutely.

Q. As he did not furnish the security?

A. Yes.

Q. And all that was prior to the time the arrangement was actually made and consummated by the signing of the deed in your office?

A. Yes, sir.

Q. On page 17 he says:

> "Q. When he told you after the three years you would have nothing further to do with it, what did you tell him?
>
> "A. I told him I did not agree to any such thing."

Q. Is that so?.

A. It is not so, only so far as it refers to the expiration of the lease.

Q. You did tell him that after the execution of the deed that after three years he would have nothing further to do with it?

A. I did, yes.

Q. And he did not answer or say that he did not agree to any such thing?

A. He did not.

Q. On the same page he says:

> "Q. Did he say anything further about having the restrictions put in?
>
> "A. He said he would see Mr. Bower about having those restrictions put in, and I saw him down in the street

afterwards, and he said Mr. Bower would not do that, but he would give my wife $50 to put her name to the paper."

A. That is not so, I never heard anything about any restrictions being put in until this suit was commenced.

Q. When was the arrangement made between you and Moses to pay his wife $50 for signing the deed?

A. The arrangement was made a few days before he signed the deed and then I drew the deed and upon the night on which he executed it at the house, he told me to call on Friday night at his house and get his wife's signature to the deed—that was two nights afterwards.

Q. He executed the deed himself on Wednesday night?

A. Yes; sir.

Q. You have already stated I believe that at the time Mr. Moses Meyers signed this deed, he acknowledged to you that he signed, sealed and delivered it as his voluntary act and deed, after you had made known the contents thereof to him?

A. Yes, sir.

Q. You afterwards went down to see Mrs. Meyers to get her signature pursuant to that arrangement?

A. I did.

Q. Who went with you, if anybody?

A. Leonard McCloud and Simon Van Emburgh.

Q. Did you find her?

A. Yes, sir.

Q. State what occurred then?

A. We all went in the house and in the room where she was, and there was present besides us, her son and a lady. I told her that I came down to pay her $50 and have her execute the deed of the premises and she refused to sign the deed. I also told her there was a writ of ejectment in the hands of the

sheriff and they would be put out of possession, and she said she would rather be put out than sign that paper.

Q. Were you present when Mrs. Catharine Ann Meyers testified in this case?

A. Yes, sir.

Q. State what occurred there, what you said, tell what passed?

A. I called there with Mr. McCloud and Mr. Van Emburgh and told her that I was to pay her fifty dollars to execute the deed which I had in my hand at the time, and which was then executed by Moses Meyers, and she refused to accept the money or to sign the deed. I told her there was a writ of ejectment in the hands of the sheriff, and that they would be put out of possession, and she remarked that sooner than sign the deed, she would let the sheriff put her out of possession. We came away, and I reported the fact to Mr. Bower.

Q. How long have you known Moses C. Meyers?

A. I have known him ever since 1878 I guess, or 1879.

Q. Did you say anything to her about a lease?

A. No, sir, never spoke to her about a lease.

Q. Had you any conversation with her before that?

A. Never before that, nor ever since.

Q. Did you tell her that the deed which you wanted her to sign was a quit claim deed?

A. No.

Q. Did you explain to her what it was?

A. I told her it was a bargain and sale deed?

Q. Did she say anything to you about a lease?

A. No, sir.

Q. Did she say she was willing to sign it if it was a lease?

A. No, sir.

Q. What paper was it that you asked her to sign?

A. The deed which Moses had already executed.

Q. The same one on which appears your certificate of acknowledgment that Moses had executed it?

A. Yes, sir.

Q. Do you remember an occasion at your house, when Moses and his brother William were together?

A. Yes, on the fourth of July, in the front yard.

Q. Please state what occurred there then?

The subject matter of the declaration of Moses and his wife being now finished, objection is hereby entered to the whole thereof except such questions as specifically state the evidence of one or the other of them when called for, and negation or affirmation thereof. This objection being entered in one place instead of to each question as appears by the memorandum above, and counsel for the complainants move to strike out all the testimony not thus excepted for the reasons given in the objections to the same questions above.

A. It was on the fourth day of July, on the morning of the Fourth that Moses and his brother William came to the fence, the property being on the corner of the street, Kearney Avenue and Midland, and spoke to me in regard to the deed. William Meyers had called to see me—

The declarations of William and Moses, if he is about to testify to any, are objected to, for the same reasons as given above in the objection to the declarations of Moses.

Witness:—Before the deed was executed, sometime, and wanted to pay up all the taxes to Mr. Bower and have the proceedings ended. He

called again a few days after and said that Moses was a shiftless fellow, and that he had decided not to pay up the taxes to Mr. Bower, because when he came to look for his own, he would be considered the biggest scoundrel of the lot, and he went away from the office. Moses had not, at that time, executed the deed, and on the fourth of July when they called—it was after I had been to see Mrs. Meyers and after she had refused to sign the deed and after I had submitted her action to Mr. Bower and after I had written to Mr. Meyers telling him in the letter that Mr. Bower had decided to permit Moses Meyers and his family to remain on the premises for three years without the signature of Mrs. Meyers to the deed as long as Moses had executed it, and it was in consequence of that letter which William Meyers had with me, that he came to see me, William Meyers requested that the deed be not put on record for a time, until he might see what could be done about the premises, and I agreed with him that I would not put the deed on record until the first of August. I did not see him again and on the third of August I recorded the deed in the Registers office of the County of Hudson.

Q. For whom were you acting? When you recorded the deed?

A. For Mr. Bower.

Mr. McGee:—I make the same objection to this testimony as to the testimony above objected to and for the same reasons and I make the same motion to strike out.

Q. Are you well acquainted with the values of real estate in Arlington?

A. Pretty well acquainted, yes, sir.

Q. How have you become so?

A. From being treasurer of the Township and having dealt in Real Estate, bought and sold the same, examined titles to real estate and placed values upon different pieces of real estate for the last fourteen years.

Q. You have made loans upon the real estate in that township?

A. Yes, sir.

Q. How have the values of real estate in that township in the neighborhood of where the cemetery properties are compared with the values five years before this deed was made?

A. The values have increased very much.

Q. Can you state approximately how they compare in value with the values of five years before?

A. Well, in some places they have increased one hundred per cent. and in some places two hundred per cent. The meadow property probably has not increased very much. Since I have lived there, almost all the property in the township north of the railroad cut has been laid out into lots and plots and blocks and avenues run through them, streets macademized, and it is difficult to buy any land there by the acre.

Q. Are you not well acquainted with this tract that Mr. Bower had, adjoining the Arlington Cemetery?

A. Yes, sir.

Q. The Arlington Cemetery on the north side of the railroad cut?

A. Yes, sir.

Q. What is the character of this land included in the Bower piece?

A. The land from Schuyler avenue slopes towards the meadow, and upon the land there is a large and valuable quarry below, and at the foot of the hill there is a brook that runs across it and just at the brook is the house in question in this suit located upon the two acres, and further beyond that comes the meadow line which runs to the Hackensack River.

Q. What is a fair value for the upland included in that deed?

A. I should say it was worth $1,500 an acre.

Q. For the six acres of meadow?

A. They are worth $400 an acre.

Q. Do you know what Mr. Bower paid the township for those?

A. Yes, I can tell, between $900 and $1,000, that is for all the property. I made up a statement of the amount at the time that I sent word to Coult & Howell in regard to it, back taxes, he paid June 12th, 1890, $914.80—back taxes he paid January 23, 1891, which was on the Susan Schumacher dower property, $47.35, and he paid me $100, which made $1,062.15, that he had paid altogether at the time I wrote to Coult & Howell on the 25th of February, 1891.

Q. How do you know that he paid that money?

A. I paid it for him—I took his check, if I remember correctly, to the treasurer of the township when they delivered to me the deed.

Q. The money was paid through you for Mr. Bower?

A. Yes, sir.

Q. When did you first hear that Moses Meyers claimed that this deed to Mr. Bower was not what it ought to be, or that there was any objection to it on the part of Moses C. Meyers?

A. I never heard anything in regard to it until Mr. Pratt told me about this suit that had been brought.

Q. It was after the commencement of this suit?

A. Yes, sir.

Q. Whose duty was it to furnish tax bills in the township of Kearney, to people who were taxed?

A. It was the treasurer and collector's business to do it.

Q. Had you furnished such bill to Moses Meyers while you were Town Treasurer?

A. Yes, sir, every year I furnished bills to every body that was assessed.

Q. Do you know anything about Mr. Bower's efforts to purchase the interest of the other tenants in common, which were subject to the tax title?

A. Only such knowledge as I derived from Moses at the time he executed the deed that Jane Routan's interest could be purchased for Mr. Bower for $100. He did not know what he could purchase William Meyer's interest for. I spoke to him about the interest of Eliza Williams, wife of Harry Williams, and he said he would see about that, but he was afraid he could not purchase her interest, as her husband might not sign off, they were having some difficulty. The interest of the one in Ohio he did not speak about.

Said paper offered in evidence, being a deed of Moses C. Meyers to Samue W. Bower, dated May 27, 1891.
Marked Exhibit D5.

Also a certified copy of the Naar in Samuel W. Bower against Moses Meyers in Ejectment in the New Jersey Supreme Court.
Marked D6.

Also certified copy in the same case of the summons, affidavit, consent and haberi facias.
Marked D7.

Also the map about which the witness has testified.
Marked D8.
Also deed dated May 28, 1890, made by The Board of Township Committee of the Township of Kearney to

Samuel W. Bower, recorded June 30, 1890, in Hudson County Register's office, Book 504 of Deeds, page 495. Marked D9.

Mr. McGee:—I object on the ground that it is not competent by law for the Board of Township Committee to make a conveyance of land bought in under a tax title by private sale, and further that there appearing in the case, to have been no demand for possession made or other proceedings to entitle the Township or other purchaser to possession. That the deed by the Township was ultra vires and void.

Mr. Voorhis: I also offer in evidence a deed dated January 14, 1892, made by Samuel W. Bower and Catharine his wife, to the Rural Homestead Company acknowledged January 14, 1892, before Philip D. Mason, a Notary Public in and for the County of Kings in the State of New York, with the certificate attached. Marked D10.

*Cross Examination by Mr. McGee:*

Q. How long have you known Julius H. Pratt?
A. I have known Mr. Pratt since about 1878 or 1889.
Q. You knew his connection with the cemetery?
A. Yes, sir.
Q. And the Rural Homestead Co.?
A. Yes, sir.
Q. Who first spoke to you about buying the tax title to this land?

A. Mr. Bower.

Q. What did he say?

A. He said he wanted to invest some money in Arlington property and I think I spoke to him about buying this title.

Q. Had he bought or owned any Arlington property before?

A. Not that I know of.

Q. Did he mention Mr. Pratt at all?

A. No, sir.

Q. What relation is he to Mr. Pratt?

A. I don't know.

Q. Have you heard?

A. No, sir.

Q. Is he any connection by marriage with the wife?

A. Not that I know of.

Q. Do you know whether he was Mr. Pratt's New York Counsel?

A. No, sir.

Q. Had any tax titles been sold by the township in this way before this one at private sale?

A. Not during my term of office.

Q. Or since?

A. Not that I can recall, no.

Q. Had Mr. Pratt said anything to you about Mr. Bower?

A. No.

Q. Had Mr. Pratt spoken about securing this tax title before?

A. Not to me, no.

Q. Had anybody else spoken to you about securing it for the Cemetery in any way?

A. No, sir.

Q. Did you know that the Cemetery wanted to buy it?

A. I did not.

Q. Or get possession of it in any way?

A. No, sir.

Q. What connection was there between Mr. Pratt or Mr. Torrey and Mr. Bower?

A. I don't know of any.

Q. When did Mr. Pratt first speak to you about it —about this property?

A. I do not recall that he ever spoke to me about it.

Q. Have you acted with the Rural Homestead Co. or the Cemetery Co. before this?

A. Never before this suit.

Q. Did Mr. Bower give you any reason why he wanted to invest money in Arlington?

A. Nothing more than he wanted to invest.

Q. What did he say?

A. He said he wanted to invest some money in Arlington property, and I think I advised him to buy this property.

Q. Can you remember what you said?

A. I think I told him that if he bought the tax title to it, I thought he could secure the property at a very reasonable figure.

Q. He knew that he was only buying the tax title?

A. Yes, sir.

Q. Was it not Mr. Bower suggested buying the tax title to you rather than you to him?

A. I think not.

Q. What is his business?

A. A New York lawyer.

Q. And lives in Brooklyn?

A. Yes, I think so.

Q. Do you know what this property is assessed for now?

A. No, sir, I don't at the present time.

Q. What was it assessed for the last year you were collector?

A. I could not state without referring to the books.

Q. You know that Moses Meyers only owned the undivided one-sixth interest in the property, did you?

A. Yes, sir.

Q. You told him so?

A. Yes, sir.

Q. And you knew where the others lived and who they were?

A. Yes, sir.

Q. Did you tell him?

A. I think I did, I am not sure, I think so.

Q. At that time the time that he took his deed from the Township, the dower title had not fallen in, had it?

A. I think not, I think Susan Schumacher was still living at that time.

Q. And he bought that after her death?

A. Yes, sir.

Q. And you included it all in the deed from Moses?

A. Yes, sir. I think uncle Peter Van Emburgh bought that at the tax sale, but did not perfect it.

Q. Did you hear Mrs. Meyers' testimony?

A. Yes, sir.

Q. You were present and examined it?

A. Yes, sir.

Q. You say he states what is not true when he says that you did not read this deed to him?

A. Yes, sir.

Q. Did you read it all?

A. Every bit of it.

Q. What kind of a fellow is Moses?

A. Moses is a shiftless fellow.

Q. He drinks a good deal—he goes on a drunk?

A. Yes, sir.

Q. He goes on a drunk for eight or ten days at a time?

A. I never knew him to be drunk that length of time; he is a drinking man and does not provide for his family.

Q. The night he was at your house, had he not been drinking?

A. No, sir.

Q. Don't you think it possible that Moses was under the impression that the agreement about the $150 lease was part of this bargain?

A. No, sir.

Q. You mean to say then that he had told an absolute untruth?

A. Yes, sir.

Q. No room for any misunderstanding?

A. No, sir.

Q. And you say that this title of his was got from him for three years occupation of the two acres?

A. Yes, three years occupation of the two acres upon which the house was?

Q. You have said nothing was said about putting into the deed the restriction that he might redeem in three years?

A. No, sir, he never spoke to me about it afterwards, the only one who spoke to me about redeeming the property afterwards was Mr. William Meyer.

Q. Did you say that the deed was executed on May 27th?

A. Yes, sir.

Q. 1891?

A. Yes, sir.

Q. Please look at this letter of July 21, 1891, (handing witness Exhibit P.3.)?

A. Yes. sir, by William H. Meyers.

Q. That did not relate to anything that Moses had said?

A. No, sir. Mr. William H. Meyers did speak to me about redeeming the land, but he was the only one that ever did.

Q. I show you a letter Exhibit P.1—a copy of the letter—July 8th, 1891, addressed to you and signed by Samuel W. Bower, did you send that to William H. Meyers?

A. I think I did.

Q. That was the one that was enclosed in your letter of July 10th which is Exhibit P2?

A. Yes, these were all written to William H. Meyers.

Q. As I understand you, you say this upland of which there is 12 acres—

A. About from 9 to 12 acres.

Q. That you say is worth $150 an acre?

A. I should think so.

Q. And the meadow land of which there is 6 acres, is worth $400 an acre?

A. I should think it was.

Q. And Moses is the owner in fee of two acres?

A. Yes, sir.

Q. And the owner of an undivided sixth fee of the balance—do you mean us to understand that Moses sold all that interest of his to Bower for a three years occupation of the two acres?

A. Yes, sir.

Q. Did you think under those circumstances that Moses understood what he was doing?

A. I think he did, yes, sir.

Q. You have never made any demand on any of the heirs for possession?

A. No, sir.

Q. So far as you know, no demand has been made?

A. Not that I know of.

Q. Did you tell Moses that the $150 plan was off?

A. I submitted a proposition to him that he should pay us $150 a year and give us ~~credit~~ Security for the rents.

Q. Did you afterwards tell him that your proposition was abrogated?

A. I told him that before the writ of ejectment was put in the hands of the sheriff.

Q. You know the reason why the writ of ejectment was not defended?

A. No, sir.

Q. Did not Coult tell you? Or Moses?

A. I never had any conversation with Coult about it.

Q. Did not you know it was because Moses had not any money to pay the fee?

A. No, I did not.

Q. Did not you think Moses was justified in understanding that he had a right to redeem the property within three years?

A. I don't know whether what I think would be evidence.

Q. Question repeated?

A. No, I will tell you why, the only one that offered to do anything for him was William H. Meyers, and he agreed that he would pay all the taxes up to Mr. Bowers, and then he came and told me he would not do it, he would let it go if Moses went to the poor house because when he came to look for his own, he would be the worst scoundrel of them all.

Q. That was after Moses had signed the deed?

A. No, it was before Moses signed the deed, and after Moses had signed the deed, then William Meyers met me at the fence after I had written the letter of the 2nd of July, and asked ~~him~~ me to hold the deed of record until we could see somebody else about it.

Q. Did you tell any of the other ones about the tax title being sold?

A. No. I never spoke to any of them.

Q. Is that property assessed now at more than $100 an acre—the meadow?

A. No, I don't suppose the meadow is ~~worth~~ assessed so much.

Q. Do you think any of it is?

A. No, sir.

Q. The growth of Arlington has been largely towards East Newark?

A. Yes, sir, up to within the last four or five years, and within the last four or five years it has been largely towards the Belleville line.

Q. There is no house on the east side of the road

—the side on which this property is within an eighth of a mile of it, is there?

A. Yes, sir.

Q. How near?

A. The house now owned by a man by the name of Beck.

Q. That is the old Van Emburgh homestead?

A. The old John Harry Van Emburgh homestead is right adjoining it.

Q. I am asking about the location of the house itself?

A. The house is on the east side of Schuyler Avenue.

Q. How far from the southerly line of this quarry?

A. I think it is right on the line right next to the Susan Schumacher place.

Q. How far is it from the cemetery?

A. 600 feet.

Q. From the cemetery, is it not three times that?

A. I don't think so—I think not.

Q. Is not this property 1800 feet—this Myers property?

A. I think it is.

Q. And this is south of that, is it not?

A. South of the Cemetery line.

Q. Is it not south of the Meyers property?

A. It is south of the Meyers property.

Q. Then it is at least 1800 feet from the Cemetery, is it not?

A. I guess it is from the southern Cemetery line.

Q. From that house, how long is it before you come to any other house on that side of the road going south?

A. Dick Westlake's house is next.

Q. How far is that—that is a good ways is it not?

A. No, that is about 1200 feet.

Q. On the west side of the road, what class of improvements are there?

A. Then John Shepherd's house on the corner,

Simon Van Emburgh's large house and Vernell Hacks house, George Byron's house and houses running right along the west side in front of the Cemetery.

Q. They are separate and a good ways from one another?

A. Two or three hundred feet.

Q. They are a cheap quality of houses $1,500 to $2,000 a house, are they not?

A. No, John Shepherd's house is more valuable than that—Van Emburgh's house is a stone house.

Q. Is it old?

A. I don't know how long or how many years it has been built—it has been there ever since I have been there, and there are some other new ones there.

Q. It is not a property that is devoted to the houses, so far as it is to the houses of poor people largely?

A. I don't know anything about the circumstances of any of them except Simon Van Emburgh and John Shepherd there, both supposed to be very well off.

Q. The property itself is a rough uncultivated piece of property and until very recently at least comparatively worthless?

A. It is unimproved property, it is not worthless.

Q. It is on the side of a hill and runs from the road down to the Salt Meadow?

A. Yes, sir.

Q. You are aware, are you not, that a man who buys the tax title would not be permitted to remove stone from a quarry without getting the right from the owner, do you know that?

A. I don't know whether that is so or not.

Q. You would not think it legal to sell lots for burial purposes on a tax title?

A. No.

Q. There is no witness as to what passed between you and Moses at the time he signed that deed?

A. No, sir, it was at my house.

Q. That was at night?

A. In the evening about eight o'clock.

Q. There had been efforts made to have the property apportioned before that?

A. Moses had spoken to me about having it apportioned by the Township Committee and I told him that it would be necessary to advertise as against this Ann Vernon who lived in Ohio and on that account he abandoned it. William J. Davis also came about it, and he never did anything in regard to it.

Q. Moses had arranged to pay the taxes on the two acres?

A. He had often spoken about paying the taxes on the two acres but they have never been assessed by themselves.

Q. Is it not the custom and the law that when a man applies to have his individual portion apportioned, that the township shall do it for him?

A. The law is in the revision and it says that where they are non-residents owners or outside of the county, it is necessary to advertise as against them.

Q. Is it not the township's duty to do it?

A. The township has never done it, only the one that makes the application.

Q. Is this tax in Arlington under the general State Law?

A. No, sir, under the Township Charter, the act of 1871.

Q. The public act?

A. Yes, sir.

Q. And the supplement?

A. It is a special charter which governs the township.

Q. Subject to the general revision?

A. I presume so, yes, sir.

Q. There has never been any effort made to acquire possession of the property—you have made no effort to acquire the possession of the property?

A. Not since the execution of the deed.

Q. Moses still lives there?

A. Yes, sir.

Q. When you speak of $1,500 and $400 values, you mean the fee unincumbered with a good title?

A. Yes, sir.

Q. And the total cost of it to Mr. Bower is $1,062.15 together with interest from that time?

A. Yes, sir.

Q. Don't you know as a fact that Bower in this matter represents and has from the beginning represented Mr. Pratt of the cemetery?

A. No, sir.

Q. You have not been told that?

A. No, sir.

Q. You did not furnish any tax bills to the other heirs of this property?

A. Yes, I furnished the tax bills to all the parties in whose name the property was assessed by the assessors, it was always assessed to the estate of C. Meyers, and also to Rachel Ann Meyers, and I sent the bills to Moses Meyers for the estate of C. Meyers and Rachel Ann Meyers both.

Q. You did not send tax bills then to any of the other heirs?

A. No, sir.

Q. You did not make any of the others defendants in the ejectment suit?

A. No, sir.

Q. You did not describe the dower part of the property in the ejectment suit?

A. No, sir.

Q. You observe that the deed from Bower to the Rural Homestead Company which you ~~purchased~~ Produced this afternoon, has not been recorded, at whose direction was that?

A. I don't know, I don't know anything about the transfer from Bower to the Rural Homestead Company.

Q. You did not superintend that?

A. I had nothing to do with it whatever.

*Re-direct Examination by Mr. Voorhis.*

Q. When did Mr. Bower acquire the tax title of the dower part of the property?

A. After the ejectment suit had been commenced and before the deed was executed.

Q. Which deed?

A. The deed by Moses Meyers.

Q. You have spoken of the total cost to Mr. Bower of this property, how much did you say it was?

A. $1,062.15.

Q. How about the cost of the ejectment and your services in perfecting the title?

Objected to as irrelevant.

A. Tne costs of the ejectment have never been paid.

Q. You have spoken of the cost to Mr. Bower of the property?

A. That includes the fee for ejectment, $100, it don't include the taxed costs—they never were paid.

*Re-cross Examination by Mr. McGee:*

Q. Do you know of any conference between Mr. Bower and Mr. Pratt, about the purchase of this property?

A. No, sir.

Adjourned to Wednesday, June 14, at 11 A. M. at the office of Charles H. Voorhis, Esq., at Jersey City.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES ET ALS.,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY ET ALS.,<br>*Defendants.* | *On Bill, etc.* |

Examination of witnesses, etc., on the part of the defendants in the above entitled cause, before me, George W. Cassedy, a Master and Examiner in Chancery of New Jersey, at the office of Charles H. Voorhis, Esq., in the Provident Bank Building, Jersey City, N. J., on Wednesday, June 14th, 1893, at 11 A. M., in the presence of Charles H. Voorhis, Esq., counsel for defendants, and Flavel McGee, Esq., counsel for the complainants.

SAMUEL W. BOWER, a witness produced on the part of the defendants, being duly sworn according to law on his oath testifies as follows:

*Direct Examination by Mr. Voorhis:*

Q. Where do you live and what is your business?

A. I live at 770 Lafayette Avenue, in the City of Brooklyn, and my business is that of a practicing lawyer in the City of New York.

Q. In the State of New York?

A. In the State of New York, I am also admitted over here, in the United States Circuit Court and United States Supreme Court.

Q. I show witness Exhibit D9—the deed from the Township to Mr. Bower. Are you the grantee named in that deed?

A. Yes, sir.

Q. After the delivery of that deed to you, did you take any legal measures to obtain possession of the property?

A. Well, yes, I employed Mr. Joseph W. Parker, Jr. to get possession of it and I believe an action was commenced.

Q. Mr. Parker acted for you in that matter?

A. Yes, sir.

Q. I show the witness Exhibit D5—that is the deed from Moses to him. You are the grantee named in that deed?

A. Yes, sir.

Q. And the same was delivered to you through Mr. Parker?

A. Yes, sir.

Q. I show the witness Exhibit D10—that is the deed to the Rural Homestead Company. You are the grantor named in that deed?

A. Yes, sir.

Q. And the same was executed by you and your wife?

A. Yes, sir.

Q. And acknowledged as certified thereon?

A. Yes, sir.

Q. Where was it delivered?

A. At my office, 35 Pine Street, in the City of New York.

Q. When?

A. I think the day of its date, but it was about that time.

Q. What was its date?

A. The 14th of January, 1892.

Q. You think the day of its date was about that time?

A. Yes, sir—I think the day of its date—within a few days though.

Q. The answer says the first day of February?

A. It was delivered at the time that the certificate of stock was delivered to me.

Q. To whom did you deliver it?

A. To Mr. Torrey.

Q. Henry F. Torrey?

A. Yes, sir, the secretary of the Rural Homestead Co.

Q. And he at the same time delivered to you the certificate for 238 shares of stock of the Rural Homestead Co.?

A. Yes, sir.

Q. Was the negotiation between you and the Rural Homestead Company conducted in writing or otherwise?

A. I think it was in writing.

Q. Wholly in writing?

A. I think so.

Q. Have you the letters that passed between you and the Rural Homestead Company—did you keep them?

A. I don't think I kept them, I have not them with me, that I am sure of, I don't think I kept them, I think the transaction being consummated there was no need of keeping the letters.

Q. I show the witness a paper purporting to be a letter addressed to him, dated December 30th, 1891, from D. W. McCrae and H. F. Torrey, committee of the Rural Homestead Company?

A. I think that is a copy of the letter?

Q. That is a copy of the letter that you received?

A. Yes, substantially so anyhow.

Mr. Voorhis :—I want to offer that just as it is, and then I will proceed to offer the rest of the correspondence after proving it.

Objected to as not the best evidence, and the absence of the best evidence has

not been satisfactorily accounted for, and second because it is irrelevant to the issues in the case.

(*Mr. McGee:*)

Q. Have you made any search for them or any hunt for them?

A. No, sir.

(*Mr. Voorhis*):

Q. I show witness a paper purporting to be a letter dated December 31, 1891, addressed to McCrae and Torrey committee of the Rural Homestead Co. signed Samuel W. Bower. In whose handwriting is that?

A. That is in my handwriting.

Q. Did you send that letter?

A. Yes, sir.

Q. To whom?

A. To the persons it was addressed to, Messrs. McCrae and Torrey, committee of the Rural Homestead Co.

Q. How?

A. I think I sent it by mail, I am not sure, or if I did not, I sent it by messenger, but I think I sent it by mail.

Q. Was it in answer to a letter received from them, a copy of which purports to be annexed here?

A. Yes, sir.

Q. Did you receive any reply?

A. I did.

Q. In writing?

A. Yes, I believe it was.

Q. I show the witness a paper dated January 5th, 1892, addressed to McCrae and Torrey, committee of the Rural Homestead Co. Signed Samuel W. Bower, in whose handwriting is that?

A. That is in my handwriting, the whole of it is in my handwriting.

Q. Did you send it to the persons addressed in it?

A. Yes, sir, I did.

Q. In reply to a communication that you received from them?

A. Yes.

Q. A copy of which purports to be annexed to it?

A. Yes, sir.

Q. Was that proposition and acceptance consummated afterwards or not?

A. Yes, it was.

Q. How?

A. By the delivery of this deed, marked Exhibit D10 and the receipt of a certificate for 238 shares of the Rural Homestead Co. stock to me.

Q. At or after the delivery of the deed, was there any arrangement between you and the Rural Homestead Co. with reference to the purchase of the interests of any of the other tenants in common which were subject to the tax title.

Mr. McGee: I object to the question, not only as irrelevant, but also because it is not the best evidence. The only evidence of the arrangement with the corporation being that which has taken shape in a resolution or other proceeding on the minutes or in writing in some way.

A. I told Mr. Torrey some of the efforts I had been making to get the interests of these other parties and I told him I would continue with my efforts and perhaps as I had already started it, I might do better and he could keep the deed off record until I had come to an understanding with these people, because it would be to the interest of the corporation to have the title further protected as much as possible and he assented to that.

Mr. McGee:—I move to strike out both the question and answer as irrelevant, incompetent and mere repetition of the declaration not binding upon either the complainants or the corporation, and not evidence in the cause.

Q. What interest had you in procuring such additional interests for the Rural Homestead Co.?

A. Well, I was then a stockholder to the extent of 238 shares and I considered that I would be benefited proportionately anyhow by what benefitted the corporation, and further I expected whatever expenses there might be would be borne by the corporation of course. It was only a friendly act.

Q. What knowledge had you about the stock of this corporation at the time when you made this sale?

A. Well, an old friend of mine, a Mr. Huntley, had owned five shares of the stock for a number of years, and when he died I think in 1885, the stock passed to his widow, and she employed me to try to sell it and realize on it in some way, and I knew that Mr. Pratt was President and I spoke to him about it, and he thought it was worth only about fifty dollars for the five shares; he said it would be hard to get that. Mrs. Huntley thought she ought to get more than that, and I did too at the time, but I could not find out that it was worth any more, and I think it was finally sold to Mr. Pratt or some one to him for that price. Mr. Huntley had also told me about the Arlington Cemetery scheme and I heard a good deal about it in various ways. I understood that this Rural Homestead Company, did really manage the Cemetery—that Mr. Huntley told me. I think the conversation came up with Mr. Huntley; some one had been buried at Woodlawn and he spoke about Woodlawn Cemetery and the money that had been made there and he said it was the idea of those who carried this on, that some day or other this would, of course, not be equal to it, but would come in some-

wheres nigh it, that it was a very valuable piece of property—but what he said was in the future. At the time he spoke of it, the matter was only started and there was very little value to it at that time. There was hardly a market for the stock—I think he said there was no market for it. In other words he gave me the impression that nothing could be got on the stock at that time. This conversation took place some time prior to his death, but I could not say when it was, it may have been four or five years before that time, it was a casual conversation, one of the many I had with him—he may have spoken of it several times, I did not charge my memory with it as to the time.

Q. At the time you made this sale with the Rural Homestead Company and accepted this stock, did you know or had you heard of there being any controversy between the share-holders of the stock of this company?

Objected to as irrelevant from this witness.

A. No.

Mr. Voorhis: I offer in evidence this copy of a letter, purporting to be dated December 30th, 1891, addressed to Samuel W. Bower, signed D. W. McCrae and H. F. Torrey, Committee of the Rural Homestead Company.

Marked Exhibit D11.

Objected to as secondary evidence and as irrelevant and illegal.

Mr. Voorhis: I offer the letter from Bower to McCrae testified to above, dated December 31, 1891.

Marked Exhibit D12.

Same objection as irrelevant and incompetent.

Mr. Voorhis: I offer a copy of letter dated December 31, 1891, addressed to Samuel W. Bower, signed D. W. McCrae and H. F. Torrey Committee of the Rural Homestead Co.

Marked Exhibit D13.

Objected to as secondary evidence and irrelevant.

Mr. Voorhis: I offer a letter dated January 5, 1892, addressed to McCrae and Torrey Committee, signed Samuel W. Bower testified to the above; all of which are annexed to the report purporting to be signed by D. W. McCrae and H. F. Torrey.

Marked D14.

Objected to as irrelevant.

*Cross Examination by Mr. McGee*:

Q. How old are you?

A. I am told I was born on the first of December, 1850, you can figure it out from that.

Q. Are you any relation to Mr. Julius H. Pratt or his wife?

A. No, sir.

Q. Or connection?

A. No, sir.

Q. Or to Mr. Torrey?

A. No, sir.

Q. How long have you known Mr. Pratt?

A. Well, I have known him a number of years I should imagine.

Q. Well?

A. Slightly.

Q. How long?

A. I have knownh im since 1883 or 1884, I don't exactly know when I did first meet Mr. Pratt, I think I saw him about that time.

Q. How did you come to first get acquainted with him?

A. I can hardly say I was much acquainted with him until I had asked him about the sale of this stock after Mr. Huntley's death.

Q. When was that?

A. I think it might have been about 1886, somewhere about that time.

Q. Did he tell you about this land?

A. At that time?

Q. At any time.

A. No.

Q. Who did?

A. Mr. Parker told me about this land, Joseph W. Parker.

Q. Did you have any conversation with Mr. Pratt about it before this transaction—before this deed was taken from the township?

A. I don't recollect clearly whether I did or not, I may have had, I may have told him that I purposed buying it.

Q. What was your idea in buying it?

A. My idea was to make some money off of it in some way, I know a great deal of money had been made in buying the tax titles in Brooklyn.

Q. Did you ever buy one before or since?

A. No, I don't know as I have.

Q. Was Mr. Pratt a client of yours at any time?

A. Well, I had done work for him, yes.

Q. Covering what periods of time?

A. I could not state that.

Q. Beginning when—it was before this transaction?

A. Yes, sir.

Q. Mr. Bower is it not a fact that at the time you bought this tax title, there was some agreement ex-

pressed or implied with Mr. Pratt or Mr. Torrey or some one for them or one of them, that this land was to be bought by you and conveyed to The Rural Homestead Company or to some body for that Company?

A. No, not in the slightest degree.

Q. Who furnished the money to pay the township for it?

A. I did.

Q. Was it not furnished to you in some way by somebody else?

A. No, sir.

Q. Or promised to be rebated or repaid in some way?

A. No, sir.

Q. Do you know Mr. Davis a Lawyer in this county out near Arlington?

A. No, sir.

Q. You never lived at Arlington, have you?

A. No, I have never lived there.

Q. Did you ever buy any other land there?

A. No, sir, but I had the sale of some lots there, some three or four lots in Arlington, that is how I came to get acquainted with Mr. Parker, I believe I paid the taxes on them for the owner for a number of years, and finally sold the property.

Q. Whose lots were they?

A. They were Mr. Huntley's lots and afterwards Mrs. Huntley's.

Q. Mr. Davis, the lawyer, of whom I have just spoken, says that he had been called to settle up the Meyers Estate so called on some property on the west side of Schuyler avenue; he was then speaking of Arlington, he said that Moses Meyers told him the property had been purchased by a Mr. Bowers of New York, and that he asked him if he knew who he was, and he said he did not, but he would try to find out, that he—that is Moses—came down to his office, that Mr. Bower, so he had heard, had purchased it for the cemetery of Mr. Pratt, that is the way

he put it. He says that after that conversation, and having other business with Mr. Pratt, he called in Jersey City to see him. Now, Mr. Davis says that Mr. Pratt told him that Mr. Bower was a friend of his, and that he bought it, that is the land, for the cemetery. In view of the light of that testimony, wont you tell us what connection there was, if any, between you and anybody in the matter of this purchase of this land?

A. That testimony don't enlighten me any, I know of no connection with any one.

Q. What I want is to tax your memory with reference to this transaction and have you state whether or not there was any connection with this purchase of anybody on behalf of the Rural Homestead Company or the Arlington Cemetery Company or the officers of it for them?

A. Well, I say there was not.

Q. At the time you made the conveyance of this property to the Rural Homestead Co. or at any other time before or since, was anything else given to you as consideration except the shares of the stock of the Rural Homestead Co.—given or promised?

A. Nothing else.

Q. No lots given as collateral in the cemetery?

A. No, sir.

Q. Or promised?

A. No, sir.

Q. Then, as I understand you, the sole consideration for that conveyance by you to the cemetery, was the issue to you of those 238 shares of the stock?

A. Whatever the number was there, that was the sole consideration.

Q. At the beginning of the cross-examination I asked you if you were any relation or any connection by marriage with either Mr. Pratt or Mr. Torrey. I will make it broader and ask you if you are any relation to, or any connection by marriage with any member of the family of either of them?

A. No, sir.

Q. Whatever was done towards getting possession was done by Mr. Parker?

A. Yes, sir.

Q. You did not do it yourself?

A. No, I did not do anything personally about getting possession, I know he lived there and could do it a great deal better than I could.

Q. Who first suggested to you this transfer to the Rural Homestead Co.?

A. In that letter, a copy of which I have testified to, that was the first suggestion.

Q. With those letters, did there come any letters from Mr. Pratt or Mr. Torrey?

A. No, sir, except one of the letters is signed by Mr. Torrey. The first letter there, I think he was one of the committee—none other than those.

Q. Did anybody suggest the general tenor of the answer that should be written to these letters?

A. No, sir.

You have not succeeded in buying the interests of any of the other heirs?

A. Since the suit was commenced, I did not do anything at all.

Q. I only ask the facts?

A. Nothing was accomplished that I know of at all, unless Mr. Parker has done something, he was left attending to that.

Q. You have not, so far as you know, purchased or acquired in any way, the interests of any other heirs to the Meyers property?

A. No, sir, unless Mr. Parker has done something which he has not told me.

Q. Did you make an offer to any of them before you knew of this suit—to either of the Meyers heirs to purchase their interest?

A. Whatever offer was made, was made by Mr. Parker and not by me personally.

Q. You don't know what sums were offered?

A. I don't know what was offered, that is I don't recollect now, I knew at the time whatever he did, because he reported to me, but now I don't know.

Q. Did you ever see this land before you purchased it?

A. No, I did after.

Q. Did you ever see it before you purchased it?

A. No, sir, I knew whereabouts it was located, it was described to me exactly just how it was.

Q. By whom?

A. By Mr. Parker.

Q. Do you know whom he represented?

A. He represented me I presume.

Q. But at that time he told you about what lands he took.

A. I don't know that he represented anybody but myself, I know that prior, at one time, he was treasurer of the town, tax collector or something like that, that I know.

*Re-direct Examination by Mr. Voorhis:*

Q. Had you known and observed this Meyers' land, that is the cemetery, before you made this purchase?

A. I knew of the cemetery, and I knew the location of this land, with reference to the cemetery, but I don't think I had ever been personally there, I don't recollect that I have.

At which time a recess was taken until 2 P. M.

JOHN LINN a witness produced on the part of the defendant, being duly sworn according to law on his oath testified as follows:

*Direct Examination by Mr. Voorhis:*

Q. You are a counsellor at law of the State of New Jersey and have been for some years?

A. Yes, a good many years—for forty years.

Q. Do you know the Rural Homestead Company?

A. Yes, I have knowledge of it.

Q. And have been connected with it in what capacity?

A. As counsel part of the time and as a director.

Q. How long have you been a stock-holder—from its beginning?

A. I don't recollect, perhaps from its beginning, I never owned much stock, but I think from its beginning.

Q. You were concerned with its organization, were not you?

A. I believe so.

Q. And examined the titles to its property and generally supervised its organization?

A. Yes, that is my recollection.

Q. Do you remember the organization of the Arlington Cemetery Association in 1882?

A. Yes, sir.

Q. Had you anything to do with that?

A. I had, I took some part in it.

Q. Did you act as counsel in that matter too?

A. I believe so.

Q. The two companies were auxiliary to each other?

Objected to on the ground that the certificate of incorporation and the by-laws should show that better than the witness can.

A. They were intimately connected and in a measure depended on each other.

Q. You have been acquainted with the business of both corporations from the beginning?

A. I have known something of the business of both of them from the beginning of them.

Q. Have you had personal knowledge of their policy with reference to the quantity of land to be held or acquired?

Objected to as calling for an individual opinion of an individual person, and as speaking, not to the policy of the corporation as such, but as to the actions of the directors and matters which are contended by the complainants to be ultra vires.

A. I knew in regard to that, it was expected that quite a large body of land would be obtained, more than was ever secured by the company, and it was always desired so far as opinions were expressed by those with whom I had any association in regard to the acquiring more land. I had confined it to those with whom I had associated.

Objected to as irrelevant, and counsel asks that the answer be stricken out.

Q. What did you mean by that, "confining it to those with whom you were associated?"

A. I do not speak of the opinions of the individuals except those with whom I came in contact in the business of the company.

Q. Did you know of this purchase from Mr. Bower of the Meyers' title?

A. Yes, sir.

Q. You were a director at that time?

A. Yes, sir.

Q. I will call your attention to the minutes of the Rural Homestead Company at page 55 under date of December 28, 1891, where it is recorded as follows: "The president stated to the board that the interests of the company were seriously menaced by a recent purchase of a tract of land adjoining Arlington Cemetery which the present owner propose to convert into a competing cemetery, as he claims that he has a right to do, under a law passed in 1890. The president asked for such action by the Board as might be

deemed expedient under the circumstances. On motion of Mr. John Linn it was resolved that a committee consisting of Mr. David W. McCrae and Mr. F. H. Torrey be appointed to investigate the matter which has been brought to the attention of the Board, and that such committee report the fact concerning the case, and a meeting of the Board to be held at an early date to be named by such committee." Were you present at that meeting?

A. Yes, sir.

Q. Do you remember that occasion?

A. Yes, sir.

Q. And you know of such action taken then and there?

A. Yes, sir.

Q. I call your attention to page 56 of the book of minutes under date of January 7th, 1892, where it is recorded as follows: "The committee appointed at the last meeting to report upon matters affecting the interests of this company in connection with the recent change of ownership of land adjoining the cemetery presented their report, stating that the property is favorably located and is valuable for use as a cemetery, for which use, it could be made immediately valuable under the operation of the law of 1890, providing for the incorporation and enlargement of existing burial grounds ~~of~~ as many ~~investments~~ interments ~~that~~ have been heretofore made in the tract. That the committee believe that it would be disastrous to the interests of this Company to have a competing Cemetery established upon said property, and that such a competition should be prevented by all possible means. The committee have been in communication with the owner Mr. Samuel W. Bower, and submitted the correspondence with him which brings the matter to a point where this board can take practical action if they deem it best. Mr. Bower's final proposition being to accept 238 shares of the Rural Homestead Company stock for his title to the property

in question. On motion it was voted that the report of the committee be received and placed on file. Mr. John Linn moved the adoption of the following resolution: "Whereas in the judgment of this Board, it is of vital importance to the interests of this Company to secure control of the property adjoining the Arlington Cemetery known as the Meyers farm, and whereas, the proposition of Samuel W. Bower, the present owner of the property is fair and the acceptance of the same will in our opinion be advantageous to this Company, resolved that the President and Secretary be, and they are hereby directed to complete the purchase of said Bower's interests in said property and to issue certificates of 238 shares of stock in The Rural Homestead Company in favor therefor. The resolution was adopted, John Linn, Clarence Linn, D. W. McCrea and H. F. Torrey ~~moving~~ Voting in the affirmative."

Were you present at that meeting?

A. I was.

Q. Do you remember that occasion?

A. Yes, sir.

Q. The statement in the minutes in regard to that is true?

A. I think so, I recollect very well the thing was discussed and talked over, and from representations made to me and from what I understood of the interests of the company, I thought it was a wise thing to get control of the property and so advised it.

Q. I show the witness a paper purporting to be a report of the committee in the matter of the Bower property at Arlington, dated January 5th, 1892, signed D. W. McCrae and H. B. Torrey. Do you know Mr. McCrae?

A. Yes, sir.

Q. You have seen him write and know ~~their~~ his handwriting when you see it?

A. Yes, I think so, I think I could, McCrae was in my office and a student at law for some time.

That is his handwriting, and I think that is Mr. Torrey's handwriting, I have seen him write.

Q. Look at the paper—is that the report mentioned and spoken of in these minutes which I last read to you?

A. I should think it was, so far as I have any recollection.

Q. Look at the paper and the document annexed to it and satisfy yourself?

A. (Witness examines paper.) The letter of Mr. Bower there, I don't know his handwriting, I could not swear to that.

Q. But that is the report?

A. That is the report I think, without doubt.

Q. How long have you known Mr. Julius H. Pratt?

A. Twenty years or over.

Q. How long have you known Henry F. Torrey?

A. I don't recollect—ever since the organization of this company or soon after that, I don't recollect how long it was.

Q. Was there any other reason that you know of than which you have stated for the acquisition of this Meyers property, and if so, state it?

Objected to as irrelevant and calling for hearsay testimony.

A. I know of no other reason.

*Cross Examination by Mr. McGee:*

Q. This Mr. McCrae that you speak of is he the one whose name appears throughout the minutes quite frequently David W. McCrae?

A. I suppose so.

Q. The minutes show that meeting were frequently held at the office of Linn & Babbitt; that was your office, was it?

A. Yes, sir.

Q. And the Babbitt was Robert O. Babbitt?

A. Yes, sir.

Q. Your partnership with Linn & Babbitt was dissolved some years ago?

A. Yes, sir.

Q. Since that, until recently McCrae was with Babbitt?

A. I believe so.

Q. As a clerk or employee in his office?

A. He was employed in his office, I don't exactly know how.

Q. When did he leave, when did he go away?

A. I don't recollect—within a year or two.

Q. Was he Babbitt's brother-in-law?

A. Yes, sir.

Q. That is the same Babbitt that has the suit against the company—that has a judgment against the cemetery association?

A. Yes, sir.

Q. Do you know how much stock McCrae held?

A. I don't.

Q. Do you know how he got it?

A. I don't.

Q. Was it not given to him?

A. I don't know anything about that. I don't recollect, possibly I might have known at the time, but I don't recollect now.

Q. Do you know Samuel W. Bower?

A. Yes, I have known him for several years. I don't recollect now when I first formed his acquaintance—several years ago.

Q. Did you have business for Mr. Pratt?

A. I don't recollect whether we had any business for Mr. Pratt or how we formed his acquaintance, I have forgotten.

Q. How did he come to buy this land?

A. I don't know how he came to buy it.

Q. Who first called your attention to the matter?

A. That I don't recollect, probably it was Mr. Pratt or some one connected with the company.

Q. Do you remember what he said about it?

A. No, I don't recollect what he said about it.

Q. The people you speak of whose opinion was that more land ought to be bought, were Mr. Pratt and those about him, were not they?

A. Yes, there was Mr. Pratt and others having an interest in the company, whoever they might have been.

Q. None of them were the Boston people?

A. I don't recollect.

Q. At the time that you say you advised the purchase of this land, you say this matter was discussed in the meeting—it was a directors' meeting, was it not?

A. Yes, sir.

Q. Do you remember who was present?

A. No, I don't recollect now, so as to state distinctly who were present, I suppose the directors perhaps were all present.

Q. The people who gave you the advice on which you acted were principally Mr. Pratt?

A. I learned perhaps more from Mr. Pratt than any other ones except it may have been Mr. Torrey and possibly Mr. McCrae. I relied of course upon this report made by the committee—it was in accordance with my view as to the best interests of the company to get more land.

Q. Did not you know that the cemetery corporation was largely in debt already at that time?

A. Perhaps I did, I don't recollect, I cannot recall just what I did know about it.

Q. You knew there was at that time a struggle begun between the Pratt party and the people known as the Boston party for the control of the Company, did not you?

A. No, I did not, I knew that there was complaints made against Mr. Pratt and Mr. Torrey I think, of mismanagement by the gentleman from Boston, but I

don't recollect now. But it seems to me I had an impression that that was over with. It was said that matters had been investigated and everything turned out to be satisfactory so far as the books were concerned, I did not pay special attention to that.

Q. Mr. Pratt did not tell you that these 238 shares would determine the control, did he?

A. Oh, no, nothing about that.

Q. If he told you that it would have aroused your suspicions as to his motives?

A. I don't know what it would do, I cannot tell.

Q. You know that that has proved to be the result, don't you?

A. I could not say that I knew that absolutely either, I heard something about it, but just how it stands I am unable to say because I paid really no attention to that.

Q. Then you acted entirely on Mr. Pratt's statement in reference to that—you formed your opinion upon his statement?

A. Very materially I supposed I had the utmost confidence in Mr. Pratt and of his knowledge of the situation of the Company and the best interests of it.

Q. Did he tell you or did you know that the title you were about to buy was a tax title, and the only interest purported to be conveyed by the deed of the fee was a one-sixth interest except for the two acres, and that there was a dower right outstanding?

A. I think I knew all that, and notwithstanding that I thought it was a good purchase. My impression was at the time, that the company would be able to acquire the whole title without any difficulty.

Q. You thought it could?

A. Yes, sir.

Q. And it was on the theory that it could that you advised it?

A. Yes, that had an influence upon my mind and opinion without doubt.

Q. Who told you that that could be done, do you remember?

A. That I don't remember possibly it may have been Mr. Pratt, I had that understanding from somebody.

Q. You would not think of enlarging the cemetery on the ground of that kind of a title or burying in that ground, would you?

A. No, not entirely, no I doubtless thought that a perfect title could be obtained and that if the cemetery had owned it for twenty-five years and that they might hold it under the tax title and there would be no difficulty in acquiring the whole property.

Q. You thought the land was of small value, did you?

A. No, I thought the land was of a good deal of value to the company.

Q. I am speaking of its market value?

A. I cannot speak now with certainty as to the market value of it. I don't think the stock of the company was so valuable, it had not paid anything for years, and I thought to make the stocks of the Rural Homestead Company valuable, the cemetery company would have to succeed, that was my notion about it.

Q. This man McCrae, whose report was made, don't you know that he only held one share of stock and that was put into his name in order to enable him to be a director?

A. I didn't know it. I don't know it now unless you say so.

Q. You have no knowledge either way?

A. No.

Q. Do you know whether Bowers is connected by blood or marriage with Mr. Pratt or Mr. Torrey in any way?

A. No, I don't know, I have not the least idea.

Q. Do you know whether the purchase by Bowers

of the land was suggested or engineered in any way by Mr. Pratt or Mr. Torrey?

A. No, I have not the least idea of it, I don't know that I know, I knew he owned the land until this thing came up about purchasing.

Q. The management of both companies has been in the hands of Mr. Pratt and Mr. Torrey most all the time?

A. To a very great extent.

Q. You have not paid much personal attention to it?

A. Not very much, I have paid attention when I have been consulted and my opinion asked.

Q. On specific things?

A. Yes, principally.

Q. There was a long time, four or five years, when there were no stock-holders' meetings of the Rural Homestead Co. held at all, was not there?

A. That may be, I don't recollect that.

Q. Did Mr. Pratt say to you that he had conversations with Bower on the subject?

A. No, sir, not to my recollection, I don't recollect anything about it.

Q. How did he come to know, or did you learn how he came to know about this tax sale and about Bower's purchase?

A. I cannot tell you, Mr. Pratt gave a good deal of attention to the interests of this cemetery company and the Rural Homestead Co., and the effort to purchase more land and had more to do with it than I can tell. He was generally pretty well posted about the situation, about the lands which might be obtained, and how they might be obtained, how he acquired all this knowledge, I cannot tell.

Q. You don't know then how Bowers first came to know about it?

A. No, I have not any idea.

Q. Do you know how many lots have been sold in the cemetery?

A. No, I don't recollect.

Q. Do you know who this Israel Crane is?

A. No, I don't know that I am personally acquainted with him, and yet I may have met him.

Q. Is he connected with Mr. Pratt?

A. Not that I am aware of.

Q. Do you know this judgment that Mr. Babbitt holds against the company—do you know whether he holds lots as collateral or other collaterals to his claim?

A. No, I don't know, I don't know anything about that, I didn't have anything to do with it.

Q. Do you know why it was that the deed to the Rural Homestead Company from Bower was withheld from record?

A. No, I don't know of any reason why it was withheld, in fact I could not say that I knew it was withheld.

*Re-direct Examination by Mr Voorhis*:

Q. You have stated in your cross-examination that at the time of this sale from Bower to the Rural Homestead Company that you had the utmost confidence in Mr. Pratt?

A. Yes, I said so.

Q. How is it now?

A. I have still, I have had no reason to change my opinion.

Q. Your feeling in that regard is just the same now as it was then?

Objected to as utterly irrelevant.

A. There is no reason why I should change my opinion.

Q. You know of no reason, but has it changed?

A. No, it has not changed.

At which time the examination was adjourned to Wednesday and Thursday, June 21st and 22nd, at 11 A. M., at the same place.

Stenographer's transcript of proceedings of June 22nd and 23rd, 1893.

At which time, June 22nd, 1893, at 11 o'clock, A.M., the examination was resumed in the presence of Flavel McGee, counsel for the complainants and Charles H. Voorhis, Esq., and Joseph Parker, Jr., Esq., counsel for the defendant.

CLARENCE LINN, a witness produced on the part of the defendant, being duly sworn according to law on his oath, testified as follows:

*Direct Examination by Mr. Voorhis.*

Q. Are you an officer of The Rural Homestead Co.?
A. Yes, sir.
Q. What?
A. Director.
Q. Since when?
A. For a number of years, I don't remember when I was first elected.
Q. Then you are also a stock-holder?
A. Yes, sir.
Q. Were you a director at the time of this purchase of the Myers property?
A. I was.
Q. I show the witness Exhibit P7 (the minutes of the Rural Homestead Co.), page 55 under date of December 28th, 1891. Were you present at that meeting?
A. I was.
Q. Do you remember that occasion?
A. I do.
Q. Was there such action taken then and there as there recorded?

A. Yes, sir.

Q. Look at page 56 of the same book. Were you present at that meeting?

A. Yes, sir.

Q. Do you remember the Resolution there recorded as proposed by John Linn?

A. Yes, sir.

Q. It was adopted as there recorded?

A. The Minutes correctly set forth what took place at that meeting.

Q. Did you vote for that resolution?

A. I did.

Q. For what reason?

Objected to as irrelevant.

A. Because I thought the best interests of the Co., would be promoted by making the purchase of the Meyers tract.

Q. Had you any other reason for so doing?

A. No, sir.

*Cross Examination by Mr. McGee.*

Q. Did you know that Mr. Bower did not have the title in fee simple to the land?

A. I think that matter was discussed at that time and whatever title Bower had was stated then and there. I don't recall now whether he had a title in fee simple to all of it—I think he had to a portion. But I know that by making that purchase it was thought that we would get control of that land and prevent anyone else from using it for cemetery purposes for the period of the taxed title, and I think it was stated too that it was thought we might ultimately, in heading others off, obtain the fee of the property for the company.

Q. Who made the statement in regard to the conditions of things there?

A. I don't recall whether it was Mr. Torrey or Mr. McCrae or Mr. Pratt one or all of them.

Q. I mean as to the title?

A. I cannot answer that.

Q. Was it Mr. Pratt or Mr. Torrey?

A. I cannot answer any different than I have.

Q. I am trying to call your attention particularly to whether Mr. McCrae made any statement on this subject at all?

A. I think he did.

Q. On the question of title?

A. I think so.

Q. Did he say that he had conversations with Mr. Bower?

A. Just what he said I don't remember, but I think he spoke of the subject of the title?

Q. As I understand you your recollection is that when you made the purchase—when you voted for the resolution you knew that Mr. Bower's title was as to all except two acres of a small part, that of the owner of a tax title for thirty years supplemented by a deed from Moses Meyers for his one-sixth interest therein whatever that might be?

A. I knew exactly what title Bower had. Whether you have stated it correctly or not I don't know.

Q. Whatever it was you knew it?

A. I knew it.

Q. And you knew that he did not have the title in fee to it all?

A. That is my impression, yes, sir.

Q. Your understanding was that an effort was to be made to purchase the outstanding title afterwards?

A. I think something of that kind was suggested or talked about.

Q. Who is Mr. McCrae?

A. He was a practicing lawyer in this city with Mr. R. O. Babbitt.

Q. He is a brother in-law of Mr. Babbitt?

A. I think so.

Q. He was a student at law in the office of Linn & Babbitt?

A. Yes, sir.

Q. And when Linn & Babbitt dissolved he went with Mr. Babbitt?

A. Yes, sir.

Q. How many shares of stock did he ever own?

A. I don't know.

Q. Is it not a fact that he never owned but one share?

A. I don't know whether he owned one or one hundred.

Q. Do you know how he got that?

A. I don't know.

Q. Was not that share put in his name for the purpose of enabling him to become a director?

A. I don't know.

Q. Did you know at the time you voted for this resolution that the issue of these two hundred and thirty-eight shares of stock would change the majority of the ownership of the stock to the parties acting with Mr. Pratt and from the parties known as the Boston stock-holders to the parties acting with Mr. Pratt?

A. I don't think that I knew that at that time.

Q. Nothing was said about that?

A. No, sir.

Q. Did you have any interviews with Mr. Bower before this resolution was passed?

A. No, sir.

Q. Did any of the parties have interviews with him?

A. To whom do you refer?

Q. Any of the parties present at this meeting, you say it was discussed?

A. I only know what the documentary evidence shows, the correspondence etc., whether they saw him personally or not I cannot say.

Q. Did any of them say that they had talks with him about it?

A. I don't recall that they did.

Q. Was there any statement made at that meeting of information with reference to the property derived from any source except this correspondence you speak of?

A. Not that I recall.

Q. You would not think that the owner of a tax title would be able to sell lots for burial purposes, would you?

A. It was not expected that any interment should be made on that portion of the purchase covered by the tax title.

Q. How then do you justify at that meeting the statement in the resolution of December 28, which was page 55 of the Minutes, that the present owner proposed to convert the property into a competing cemetery?

A. It might have been the present owner's intention to obtain the fee to the portion which he did not own and having done so convert it into a competing cemetery as long as it stood in its present shape it was a menace to the interests of the Homestead Company.

Q. Did you at the time that you voted for these resolutions know that the Cemetery was largely indebted to the Rural Homestead Co.?

A. I think that I had a general knowledge of the affairs of the Rural Homestead Co., and the Cemetery Association.

Q. At that time the suit of Babbitt and Crane against the Corporation had gone to judgment, hadn't they?

A. I cannot tell you.

Q. You were counsel in one of those cases, were you not?

A. No, sir, I think not, neither of them.

Q. Had not the Sequestration proceedings been commenced at that time?

A. I have not those dates clearly in my mind and I cannot answer. The record will show that.

Q. I show you certified copies of the summons and declaration in the case of Babbitt against The Cemetery Association and also in the case of Crane. See if they will help you recall the time about those suits or either of them.

A. It appears from these certified copies that both of these suits where commenced prior to the meeting of December 28, 1891. It does not refresh my memory any in the matter.

Q. You are in the same office with John Linn your father?

A. Same office, yes, that is, we have our offices together, but we are not associated in business together.

Q. You know that John Linn was the solicitor of the defendant, The Arlington Cemetery Association in the Sequestration suit of Crane & Babbitt against that Company?

A. Yes, sir.

Q. I show you a certified copy of the Bill of Complaint in that case, and asked if that refreshes your memory any as to the time when those judgments were obtained and that bill filed?

A. No, I cannot say that it does, I don't recall these matters with reference to that meeting at all, except as you furnish me with the dates appearing on the papers.

Q. Let me call your attention to the certified copies of the papers in that cause, John Linn, Solicitor.

A. It appears from the papers that you have submitted to me that these proceedings all took place before the meeting of December 28th, 1891.

Q. Were you aware of the filing of this answer at about the time it was filed?

A. Yes, sir.

Q. You knew of it?

A. Yes, sir.

Q. Then with that in view can you not answer more specifically my question, whether at the time you voted for this resolution you knew that Babbitt and Crane had sued and got judgment and that the Sequestration proceedings had been taken?

A. I knew those facts at about the time the judgments were obtained.

Q. Now, is it not also a fact that the statements with reference to the position of this land, its character and desirability, and the danger of a competing cemetery were made by Mr. Pratt or Mr. Torrey?

A. I cannot change the answer already given.

Q. Is it not a fact that you, all of you, outside of those two gentlemen acted in this manner largely on statements and recommendations of one of those gentlemen?

A. I will answer that yes.

Q. At whose suggestion was it that Mr. McCrae was selected to serve on that committee?

A. I don't remember how the committee was appointed or by whom?

Q. At this time you knew that there was a feeling of friction existing between what is known as the Boston stock-holders and Mr. Pratt's friends, didn't you?

A. I cannot say that I do, I don't remember with reference to this meeting, whether I knew at that time of the trouble and controversies which have arisen in this matter or not. If the trouble arose before that meeting I think it is quite probable that I knew of it. With reference to the meeting my mind is entirely a blank.

Q. You were present at the meeting of the stock-holders when Mr. McCrae was elected, were not you?

A. I presume so, I think I attended most of the stock-holder's meetings since I have been a stock-holder myself.

Q. You remember at that meeting of June 1891 of the stock-holders, that the Boston stock-holders voted for one ticket and all the other parties voted for the other ticket with the exception of one proxy which was voted for Mr. Shearer, don't you?

A. Yes, sir.

Q. And you know that at that time there was discussion which showed that the Boston people were dissatisfied?

A. Yes, sir.

Q. That was in June, 1891—Mr. McCrae was elected at that meeting?

A. I don't recall.

Q. Just look at your minutes there?

A. Yes, sir (witness does so).

Q. Then those comparisons of dates must fix in your mind that you knew of this trouble by that time, didn't you?

A. I think I did.

Q. Now, recall carefully after these facts coming to your knowledge, is it not a fact that you were aware that the issue of this stock would change the majorities as they were in June, 1891, to a majority the other way together with the changes of stock which occurred in the meantime?

A. I knew nothing about any changes of stock in the meantime, I don't know as I gave this matter a thought.

Q. Did I understand you that in this matter you formed your opinion largely on the statements made by Mr. Pratt?

A. By Mr. Pratt and Mr. Torrey and Mr. McCrae, I think Mr. McCrae had some statement or recommendation to make in the matter.

Q. In writing?

A. But outside of all that in the discussion we had then and there—if I recollect rightly that discussion was held in our office.

Q. Did Mr. McCrae ever have any interest in this company that you know of outside of his one share?

A. I don't know what his interest was or to what extent he was interested.

Q. He was a man of means?

A. I cannot answer that, I know he spent money like a drunkard salor.

Q. Where is he now?

A. I don't know where he is.

Q. Did he leave unexpectedly or suddenly?

A. Yes, I think he did.

Q. He left no memorandum of his whereabouts?

A. Not that I am aware of, he did not notify me where he was going.

Q. You don't know anybody else that knows where he was going, do you?

A. No, sir.

Q. How long have you known Mr. Bower?

A. I could hardly be said to have any acquaintance with Mr. Bower at all, I don't think I have ever seen him on more than two occasions and then simply was introduced to him.

Q. Since this purchase?

A. I have seen him once since this purchase, but I think that I saw him once before that time a long while ago.

Q. Do you know whether he was representing Mr. Pratt as his counsel in New York?

A. I did not.

Q. Do you know whether he is related to Mr. Pratt or Mr. Torrey? by blood or marriage?

A. No, I don't.

Q. Or to any of their families?

A. No, sir, I don't.

HENRY F. TORREY, a witness produced on the part of the defendant, being duly sworn according to law testified as follows:

*Examined by Mr. Voorhis:*

Q. You are an officer of The Rural Homestead Company?

A. I am.

Q. What position do you hold?

A. I am a Director, Secretary and Treasurer.

Q. How long have you been a stock-holder in it?

A. Since sometime in 1883.

Q. How long have you been a director in it?

A. I think I was elected a director in the annual meeting in 1883. Can I refer to the record to see whether that is in 1883 or 1884?

Q. Certainly, yes.

A. (Witness refers to the record and says) I was elected in 1883, and have continued to be a director ever since that date.

Q. When were you chosen Secretary?

A. I was chosen June 22, 1883, I see by the record.

Q. And have you continued so?

A. I have been Secretary ever since that date.

Q. When did you become Treasurer?

A. I was elected Treasurer to succeed Mr. H. B. Reddish, June 3, 1891.

Q. Have you continued to be Treasurer ever since?

A. I have been Treasurer ever since that date.

Q. When did Mr. Reddish become Treasurer?

A. In 1883 is my recollection, (Witness refers to the books and answers) June 22, 1883, he was elected treasurer.

Q. And he continued to be treasurer up to June 1891?

A. Until I was elected.

Q. Do you hold any office in the Arlington Cemetery Association?

A. I am a Trustee and Secretary and Treasurer of the Arlington Cemetery Association.

(*Mr. McGee.*)

Q. And Superintendent?

A. Engineer and general Superintendent.

(*Mr. Voorhis.*)

Q. How long have you been Secretary?

A. I was elected Secretary in 1883, I cannot say as to that, it may have been in 1882. I was made Secretary in 1882, in November it appears on the Minutes.

Q. You have continued to be Secretary ever since?

A. I have been Secretary ever since that.

Q. You have been Treasurer since when?

A. I was elected treasurer in 1885 and have been treasurer ever since that time, and I am now treasurer of the Association.

Q. Whose duty is it to keep the accounts of the Arlington Cemetery Association?

A. It is the duty of the secretary and I have always had charge of those accounts from the time that I became connected with the Association, practically from the organization of the Association.

Q. Will you explain generally, Mr. Torrey, in your own way the method of keeping the accounts of the Cemetery Association?

A. We started our business expecting all the business of the Association to be a cash business, and I opened a cash book which should cover all the general accounts of the Association in separate columns, showing the distribution of each gross amount, cash received or paid, intending in this book to show all the financial business of the Association. It has been necessary to modify the system of keeping those accounts very materially because of the necessity in our business of doing our business very largely on credit, because of the necessity of borrowing money for the purposes of the Association requiring a credit

account in connection with our loans, and also having this book which was originally started as a cash book arranged to show in these general accounts the transactions in this portion of our business so that what started as a cash book has become a book of the general accounts of the Association, showing in its footings and summaries of accounts all the accounts of the Association.

Q. Have you that cash book here?

A. I have, I consulted in laying out this work with book-keepers who were helping me with portions of the work. Mr. Reddish and—interrupted—

Objected to as irrelevant.

Q. Will you produce it?

A. (The witness produces a book).

Q. I would like you to explain the method and meaning of the entries in this book, take any page as a sample—take page 90 for instance for a sample?

A. The last column of figures show the gross receipts for the month upon our books.

Q. From all sources?

A. From all sources. In the columns ruled for journalising the book we have the first two columns representing loans under contract, which is an item of the Rural Homestead Co., advances only—the first one is under contract and the second temporary loans. The second column temporary loans includes as a special loan marked "S", various items through the book, forty-five per cent. of each gross amount of the sale of a lot or grave—it is forty-five per cent. of the money received on each gross amount. In that column are carried also temporary loans from other parties of money which has been required for the purposes of the Cemetery and been borrowed by the officers—either loaned by them or borrowed from their friends and re-paid as temporary loans.

The third column—there is only forty-five per cent.

of sales of lots and graves under the head "Sales of lots."

The fourth column headed "Permanent Funds" is ten per cent. of all sales of lots which is to go in the permanent fund for the care of the Cemetery.

The fifth column "interments, labor and material" represents the costs of opening graves, of building foundations for monuments for which we are paid by the owners of the lots on which the work was put, the cost of setting corner posts, to mark the boundaries of the lots which is paid to us by the purchasers of the lots, and any items of receipts for labor done, and for material furnished by the Cemetery Association, for which payment is received from other parties—that column carrying all items for which we received payment as labor done by us.

The sixth column, sundry sales and rents ~~other than~~ including rents of a house there near the cemetery, any sales of old tools or grass cut from the cemetery, hay and stone anything which ~~when~~ they sell from the cemetery, or any income derived from the property of the cemetery in the way of rental, and the last two columns of the distribution are bills payable and bills receivable; bills payable representing notes given by the Cemetery Association, cash received for notes going into the receipts, proceeds of notes discounted in bank or loans represented by notes of the Association and the bills receivable come into our accounts through the necessity of selling lots, partly on credit. It was desired whenever a sale was made to bring the entire amount upon our books for distribution—the forty-five per cent. to the credit of the Rural Homestead Company so that we made it a rule to take a note for the deferred payment whenever the parties did not pay in full, and distributed the whole amount as if cash had been received, and then entered upon the other side of the cash book the amount of the note taking it out of the cash and then bringing the amount of that note into bills receivable in our

receipts when the note is paid, this enabling us to distribute the total amount of the sale at the time of the sale and to make out monthly statements which were always available on any of our Rural Homestead Company stock-holders monthly statements of the amount of the sale, showing the actual amounts of sales from this cash book footings.

Q. By way of illustration I call your attention to line five on that page, page 90?

A. Line five is a sale of a single grave.

Q. For how much?

A. It is a sale of a child's grave for eight dollars.

Q. So that eight appears where?

A. It appears in the last column as cash received.

Q. The last column to the right?

A. Yes, sir.

Q. The other entries on that line indicate the distribution of that eight dollars?

A. Yes.

Q. How?

A. Under the head of permanent fund ten per cent. or eighty cents, under the head sale of lots $3.60 ~~and~~ forty-five per cent.—

Q. That is for the Cemetery Association?

A. Yes, that is the Cemetery Association's ultimate share of the whole, and then $3.60 under the head of special loan, ~~the~~ in temporary loan account is forty-five per cent. to the Rural Homestead Company which is initialed "R. H.," and in the case of a sale of a lot for a larger amount it has been customary to make a separate entry for that Rural Homestead Company's account. There you see (indicating) is a sale for $100 on page 78, John H. Robinson. $10 of that ten per cent. going into permanent fund, $45 to sale of lots and a separate entry Rural Homestead Company $45, in the next line under the head of special loans. So that in all those cases where the two ~~lots~~ lines are taken the sale is shown by the two items in the last column in aggregate cash for the items.

Q. You have explained to us page 90 by way of illustration, now explain page 91 by way of illustration?

A. That is the credit side of the book, the last column showing the items of cash paid out to be accounted for by vouchers kept by me, the first column of that is "Construction account," which is mostly made up of a portion of the weekly pay rolls. The work done upon the laying out of new grounds, the grading of new lawns, opening of new roads and the planting of trees and shrubbery in unfinished portions of the ground to prepare them for cemetery use, we have always considered as construction work, and it has been our policy from the start in our weekly pay rolls through a large part of the year, that is in our weekly work to have some portions of that construction work on hand upon which our men can work when they are not pressed with other work. We have to keep a certain number of men on the grounds at all times to be provided for emergencies of interments and when they are not busy with the ordinary work of the cemetery we can be increasing our other ground for use by grading and improving it.

Q. Your next column?

A. The expense account, which is the main disbursement account of the cemetery which covers all the care of the grounds, the supplies for our work, tools and materials, except such as are required for construction work. The salaries of the employees, our office expenses and our interest account was carried in that column for a number of years until Mr. Reddish in going over the books with me helped me to separate it and carry it as a separate account.

The next column, the third column, is "Property account" which was active only in the early work of the cemetery carrying in that personal property purchased for the use of the cemetery, tools, horses and wagons which were necessary for our operations, and the expense in that same work since then ~~have~~ has been

principally renewels going into the expense account

Then the fourth column is temporary loan account in which the payment in return for temporary loans are entered.

The fifth column shows the payment for interments, labor and materials making the other side of the account headed in the same way in our page of receipts. This is the credit side of our cash the other being the debit. This account is made up mostly from the pay rolls, the time of the men in opening graves, in opening and caring for the graves, the bills for material ~~using~~ used lime, cement etc., in building foundations and purchases of any stone or brick ~~but~~ for doing work for which we have paid to outside parties and setting the corner posts which is paid to us again by the lot owners and shown in the other side of this account.

Then we have bills payable and bills receivable in the next two columns, and the last column has been made our interest account, showing discounts paid to the bank for notes in bank—interest paid to parties from whom we have borrowed money.

~~The last column is distribution~~—the last column on the page is our cash account column.

Q. The other columns on that same page indicate the distribution of the last column?

A. Yes, sir, each month is footed separately in these acoounts. At the last of the book you will find on pages 476 and 477, the footings of all these different accounts and in their respective columns for each month in the year 1883, and for each month in the year 1884, with the total of each column and of the cash account column on each side of the book for each year, and that has been carried back on the next preceeding pages in order up to the first of January of this year—the 31st of December of last year, which is the last full year which could be so entered —it appears on pages 470 and 471.

The last two pages of the book 478 and 479 are given up to the annual footings of these same accounts

taking one line from each year and giving the footings from each month's statement and in the preceding pages the footings of each year as shown on the monthly statements carried into the annual statement these last two pages being sufficient to carry all the annual footings for the time to be required to fill the book.

Q. These pages then 478 and 479 show the summary of said respective footings for each year from the beginning?

A. Yes, sir, they do.

Q. I want to ask you whether that book was ever audited by Mr. Reddish or Mr. Cowdrey?

Objected to as irrelevant and as to Mr. Reddish, also the further objection that the complainants would not be bound by what he might do.

A. The book was audited by Mr. Cowdrey and Mr. Dummer in the earlier years, then for some time I was so crowded with my work at the cemetery that I was compelled to carry my accounts on the check books, holding the vouchers for bringing up in the future deciding that it was more important for the cemetery to keep up the work of the sales of lots on which our very existence as an enterprise depended than to spend the time in the office. The books were considerably behind and when they were brought up to date again Mr. Reddish took hold of them with me and helped me to write them up and went over all the accounts from the beginning, including those which Mr. Cowdrey had already examined making his own statement of footings of these several pages which were entered at the end of the book in these summaries of the accounts. Those summaries were all entered from Mr. Reddish's figures and checked by him upon the last few pages of the book that I have shown the cemetery. The last years' work was

not audited by Mr. Cowdrey or Mr. Reddish, but it was audited by Mr. Jewell and Mr. Beadle, the other two auditors.

In connection with Mr. Cowdrey's auditing of the accounts I will say here a book—interrupted—

Mr. McGee: I object to this evidence with reference to Mr. Cowdrey as it is not in evidence, I do not care anything about it, and it seems to be an effort to get in something that is not relevant to the case.

Q. I show the witness a book, what is that?

A. ~~Our~~ A Ledger.

Q. What does it purport to be?

A. A Ledger for the general accounts of the Arlington Cemetery Association from November 23, 1883, to December 31st, 1886.

Q. In whose handwriting is that book?

A. That is all in Mr. Cowdrey's handwriting. It was posted by him various times from this cash book. A large part of the time while he was at work upon it I was busy out at the cemetery, and he worked on the book in the office with our cash book and our check books and our bank books to guide him in posting these accounts.

Q. Had he also the vouchers?

A. In going over the vouchers I was with him, he did not need them for reference in posting this book, but whenever we were working over the vouchers there were two or three of us together, that was a matter of auditing.

Q. In his auditing were or were not the vouchers exhibited to him and examined by him?

A. They were always exhibited and examined.

Q. And checked by him?

A. Checked by him as he examined them from the book, some of them checked by him and some by Mr.

Dummer who was working with him most of the time when he was auditing.

[Recess.]

Mr. Voorhis: I sent a notice down to you, Mr. McGee, to produce some letters, did you have time to get them?

Mr. McGee: I have them.

Mr. Voorhis: Will you let me see them—will you produce them?

Mr. McGee: Those letters are letters written by Mr. Pratt and are in the nature of compromises or efforts of compromise and therefore are not evidence; they are also not evidence because they are documents of Mr. Pratt's own making, letters that were not so far as I know answered. Besides they are irrelevant to the issues in the case, and I shall therefore refuse to produce them unless the Chancellor rules that they are relevant evidence.

Mr. Voorhis: The letters which my demand calls for are the following: the original letter from Julius H. Pratt to Frank W. Wildes dated July 9, 1890; letter from Julius H. Pratt to Daniel L. Shearer dated August 19 or 20, 1890, and the letter from Julius H. Pratt to Shearer, Cowdrey, Parker and others dated August 23, 1890.

Mr. McGee: I am willing that they should be marked for identification and that

These letters should be admitted in evidence (Signed) A. T. McGill Co. July 24/93



the matter should be presented to the Chancellor and ruled on.

(Mr. McGee produces three letters, to-wit:) one dated July 9, 1890, marked for identification D15.

One dated August 20, 1890, marked D16 for identification.

One dated August 23, 1890, marked D17 for identification.

Upon the statement that if the Chancellor rules that they are evidence he will produce them, otherwise not.

Mr. Voorhis: My claim is that they are competent evidence, and therefore I offer them as evidence, if the Chancellor says next Monday that they are not evidence of course they do not go in.

(Mr. McGee retains possession of the letters.)

Q. I show the witness a paper marked Exhibit D14,—it is the report of the committee—ask him whether he recognizes that paper?

A. I do.

Q. What is it.

A. It is a report of the committee appointed by the Board of Directors of the Rural Homestead Company to look into the ownership by Mr. Bower of the Myers place and to see whether any arrangements can be made by which he would join with the Rural Homestead Company in cemetery operations in connection with the Arlington Company.

Q. Is that the original report?

A. That is the original report signed by Mr. McCrae as chairman of the committee and myself.

Q. Please look at the documents annexed to the report and tell us whether they are the same as were annexed to it at the time it was presented to the Board of Directors?

A. They are.

Q. The first document annexed purports to be a copy of a letter dated December 30, 1891, does it not?

A. Yes, sir.

Q. And another purports to be a copy of a letter dated December 31, 1891?

A. December 31, 1891, that is right.

Q. Can you produce the originals of which those are copies now?

A. They were with this paper a few minutes ago—these are the originals of both letters.

Q. The first one dated December 30, 1891, is that the original of which the other is a copy?

A. It is, it was sent by Mr. McCrae and myself as committee of The Rural Homestead Company to Mr. Bower.

Q. Whose signatures are those to it?

A. It is signed by Mr. McCrae and by me.

Q. Now about the other one dated December 31st.

A. That is another letter also to Mr. Bower signed by Mr. McCrae and by me as committee of The Rural Homestead Company, they are both signed by us as the committee—these are the original letters which were sent to Mr. Bower.

Q. Of which the others are copies?

A. Of which those attached to the report are copies?

Q. Where did you get these originals?

A. I received them by mail from Mr. Bower, I wrote to him for them.

Q. You borrowed them from Mr. Bower when?

A. I received them this morning.

Q. You borrowed them from Mr. Bower to produce here?

A. Yes, sir.

The two letters referred to are offered in evidence.

Objected to as irrelevant.

Marked Exhibits D18 and 19.

They are the originals of letters on D14 —they are the originals of D11 and D13.

Q. Were you present at the meeting of the Directors of the Rural Homestead Company when that report was presented?

A. I was.

Q. You were one of the Directors that voted for its adoption?

A. Yes, I was probably as familiar with Mr. Bower's ownership as anyone who was there, as he had talked with me about his purchase of the Meyer's property. I had at his request gone upon the ground with him, he wishing some information in regard to our cemetery and at the same time wishing to know something about the exact boundaries of the Meyer's property.

Q. When was that, before or after he bought the tax title?

A. That was after he bought the tax title, that was the time I first knew that he had bought the tax title.

Q. Was it before the negotiation by the Rural Homestead Company for its purchase from him?

A. It was, there had been no negotiations, it had not been brought up at all in our Rural Homestead Company's matters at that time.

Q. Was the negotiation with Mr. Bower for the sale of his interest in the Myers property to the Rural Homestead Company wholly in writing or not?

A. The negotiation was wholly in writing, I had heard it said some days before. I think Mr. Parker first called my attention to the fact that Mr. Bower had some thought of using that land for cemetery purposes, Mr. Bower had inquired very particularly in regard to the cemetery of the ~~land~~ plat and management when he was upon the ground with me after his purchase of the Myers property and the matter was brought up in our Rural Homestead Company meeting and the committee was appointed to see if Mr. Bower could be induced to work with us. I do not remember the wording of the resolution, but that was the purpose of it, Mr. McCrae and myself were appointed the committee. I went out upon the grounds with Mr. McCrae showing him the property and explaining as fully as my own knowledge would permit the situation as to the title of the property. We returned to the City and wrote to Mr. Bower the first letter in this correspondence appended to the report.

Q. The document annexed to that report contain the whole of the negotiations with Mr. Bower, you have said it was all in writing?

A. I think that is so.

Q. Who delivered the deed to Mr. Bower?

A. I delivered the deed to him.

Q. I mean the deed from Mr. Bower to the Homestead Company?

A. I delivered the consideration, I received the deed from Mr. Bower, I passed the papers and delivered the stock and received the deed.

Q. Can you tell when and where that was done?

A. It was done at Mr. Bower's office, I took the stock certificate book over with me to get his signature upon the stub of the certificate book.

Q. And he then and there delivered the deed and

you delivered the certificate, and he signed the receipt in the certificate book for the stock?

A. Yes, sir.

Q. On the day of the date indicated in the certificate book?

A. It was on the day of that date, February 1st, 1892.

Q. Were you or not familiar at that time and before with this Myer's property?

A. I had been familiar with it ever since operations of the Cemetery were first begun, we had had that property in view from the start as a part of the Cemetery in the future and in all my visits to the cemetery with any of our Rural Homestead Company stock-holders that was pointed out as a property which we hoped and expected to acquire some time in the future, it was tied up at that time and was not available but we hoped to have it as a part of the considerable increase in area which we deemed essential for the success of The Rural Homestead Company.

Q. Was it ever pointed out by you or in your presence to the Boston stock-holders as property desirable to be acquired by The Rural Homestead Company?

A. It was so pointed out by me to all the Boston stock-holders who ever have been in the Cemetery with me looking over the ground.

Q. Will you name them and when this happened?

A. I could not fix the dates because I have no record of the dates we visited the Cemetery, but it has been spoken of repeatedly with Mr. Cowdrey and with Mr. Shearer upon the grounds. I remember particularly Mr. Shearer speaking of a tall tulip—poplar tree in the corner of the Meyers woods near the corner of a Cemetery which he thought would be important to watch and arrange not to have the

owners of the property cut before we could get hold of the land for the Cemetery.

Q. Did this Meyers land adjoin the Cemetery?

A. Runs the entire length of the Cemetery on one of the long sides—the south side or south west side—south west side.

A. Are the two acres of it in which Mr. Bower had the fee right next to the cemetery?

Objected to as stating as a fact that which is not proven and is disputed. 10

Q. You know that the two acres of the Myers' property that Moses Myers claimed to own the fee of, do you?

A. I do.

Q. Does or not that two acres immediately adjoin the cemetery?

A. It immediately joins the single grave ground, the land which we are using for single graves in the cemetery—the lower portion of the single graves ground. 20

Q. The southerly side of the cemetery is the part devoted mainly to single graves?

A. The only part which we use for public ground or for single graves is lying right along at the south-western boundary.

Q. Is the house on the two acres?

A. It is—the house in which Moses Myers has been living. 30

Q. How much of your single grave territory there remains unoccupied between Myers' property, north of the line between the cemetery and Myers' property?

A. Just a strip ten feet wide which we are keeping open until we shall have filled the other part, for convenience in getting between the lines and those graves and a space of probably three hundred or four hundred graves in the ground which we propose to 40

lay out for single graves—three hundred graves, I should say, at the east end of the ground now used for single graves.

Q. According to the rate of demand which has existed during the last two years for single graves how soon will the whole of that part of the cemetery be exhausted between the graves already there and the Myers' property?

A. I should say probably three years—from three to four years to use up the ground that we have allotted for single graves, that is only an estimate on my part.

Q. An estimate based on what?

A. An estimate based on my knowledge of the business. I could give you more correct figures by going over our figures for the sales of single graves if you wish anything closer than that.

Q. If you extend the single grave territory southward the Myers' property would be required for that purpose in your judgment within the next year?

A. The use of the land on the Myers' property for that purpose would prevent the necessity for our using much more valuable land for cemetery purposes in the improved portions of our cemetery.

Q. Do you mean to say that unless you use the Myers' property that within the next twelve months you will be required to use more valuable portions of the cemetery?

A. Not within the next twelve months but within the next two or three years we would have to lay out grounds in another portion of the cemetery where it would bring more money for cemetery lots unless we get ground that can be used for that purpose outside of our present cemetery grounds.

Q. Is there any other ground outside of your present cemetery and contiguous to it that can be acquired except this Myers property?

A. None that is suitable for that purpose in connection with our cemetery work.

Q. You were present according to the record at the meeting that adopted the report of the committee recommending the purchase of the Bower title.

A. Yes, I was.

Q. Did you vote for its adoption?

A. Yes, I did.

Q. For what reason?

Objected to.

A. Because I had looked very carefully into the matter and saw that it was thoroughly to the interest of The Homestead Company, that the Cemetery should acquire that property in the future.

Q. Had you any other motive for so voting?

A. My only motive was the interest of The Homestead Company—the best interest of The Homestead Company.

Q. You have stated that Mr. Reddish was Treasurer of The Rural Homestead Company for a time?

A. He was.

Q. Have you his original book account as such Treasurer here?

A. I think I have.

Q. Will you produce it?

A. (Witness produces a book.)

Q. In whose handwriting is that book?

A. That is all in Mr. Reddish's handwriting.

(*Mr McGee.*)

Q. Will you be good enough to give the date of its beginning and ending?

A. It is marked on the outside H. E. Reddish, Treasurer, 1882.

(*Mr. Voorhis* :)

Q. What is the first entry in it?

A. The first entry 1882, December 19.

Q. And what is the last one?

A. 1886, March 29.

Said book is offered in evidence.

Marked Exhibit D20.

Objected to as irrelevant.

Q. Have you here the check books of the Arlington Cemetery Co.?

A. Yes—I have not the one we are using now, I have here all that cover this period.

Q. You have here how many?

A. The other can be produced if it is needed, I did not suppose that you required that to-day.

Q. How many are there here?

A. I have here five.

Q. Beginning when?

A. Beginning in 1883.

Q. What date?

A. March 14.

Q. And ending—the fifth one ends when, or will you give each one?

A. These five cover everything up to March, 1890.

Offered in evidence. Marked D21, D22, D23, D24 and D25 respectively.

Objected to as irrelevant.

Mr. Voorhis: I want to offer in evidence this first book—the cash book.

Marked Exhibit D26.

Objected to for the same reason.

Mr. Voorhis: I offer in evidence the book which the witness has testified to as

being wholly in the handwriting of Mr. Cowdrey.

Marked Exhibit D27.

Same objection.

Q. Mr. Cowdrey in his testimony on page 12 is asked, "Have you consented in any wise to any arrangement by which payment shall be postponed entirely or postponed at all?

"A. Payments of the dividend.

"Q. No, payment of the Rural Homestead Company's proportions of sales?

"A. No, sir, I have not."

Q. Is that so?

A. In reply to that, I will state, that I consulted very freely with Mr. Cowdrey in regard to the accounts as entered in this cash book, so that he was familiar with the fact from the start and advised me as to the method of making that forty-five per cent. a charge against the Cemetery Association in favor of the Homestead Company on all the books of the Cemetery. Mr. Cowdrey posted in the Ledger in his own handwriting that account in favor of the Homestead Company up to the year 1887 including the time in November and December 1885 when the Homestead Company stock-holders held a meeting at the Cemetery office to consult as to means for providing more funds for the use of the Cemetery in addition to the gross receipts which were already going into the Cemetery. Mr. Cowdrey was one of the stock-holders of the Homestead Co. at that time; he subscribed his full 10 per cent. of his present holdings of stock to make up additional capital for the purpose of loaning the money so received to the Cemetery Association. Mr. Cowdrey has been familiar since that time and has talked with me in regard to our accounts, knowing at all times that this forty-five per cent.

was being charged upon our books in favor of the Homestead Company, instead of being paid over to them and that the very existence of our Cemetery enterprise and necessarily ~~the very purpose of~~ the success of The Homestead Company enterprise depended upon our present use of more than all the money that we were receiving including that and never made any objection whatever to that money being so used.

Mr. McGee :—I move that that answer be striken out first as not responsive, second as irrelevent, third as argumentative and fourth as leading with an entirely different condition of affairs from that involved in the question.

Q. You have spoken of a ledger in your answer. Do you mean by the ledger that cash book marked D26.

A. The ledger of which I spoke was the ledger posted by Mr. Cowdrey.

Q. The book that is all in his handwriting?

A. Yes, sir, the material in that book, the facts presented by that posting, are all summarized now in the cash book. Through my work with Mr. Reddish subsequently the end of the cash book was made a ledger for all those amounts.

Q. Is any part of D26 in Mr. Cowdrey's handwriting?

A. Yes, there are a number of memoranda explaining the entries which I have made in the cash book, ~~are~~ in Mr. Cowdrey's handwriting, for instance here is a small payment of Mr. Pratt he has marked "for disbursement" on page 3, January 17th, and a subsequent payment to Mr. Pratt, February 3rd, is marked "for services", in Mr. Cowdrey's handwriting. There is another memorandum of payment of Mr. Pratt, he

has marked "for disbursements", page 17, May 14th. May 3rd is marked in the same way by Mr. Cowdrey.

Q. What year?

A. 1884, May 3rd and 14th, two items small payments representing cash which had been paid out by Mr. Pratt for small bills marked in this way to assist him in writing up the account which he was making between the Cemetery Association and Mr. Pratt. The two items on page 19, marked in the same way in his handwriting. Here are two entries made by him, page 21, October 4th, discount on four notes of this date and the payment to H. F. Torrey on "Salary account", and on the other side, page 20, the same date entered in his handwriting the four notes which are distributed to bills payable in the proper column. There are a number of these memoranda of disbursements, but they are all about the same thing. Here is a memorandum in his handwriting, "See other side", on page 27, the re-payment to me $90.90, on "loan account" which he marked "see other side," referring simply back to the time when the same amount was loaned to the cemetery by me on the opposite page. Here on pages 28 and 29 are a number of entries in his handwriting "bills payable" on both sides of the account. An entry there of a payment to me on account of salary on page 29 is in his handwriting. That entry, by the way, I may explain, was to bring a note given to me on salary account into the account at the time the note was given, instead of leaving it to go in as cash when the note was paid. I had entered it simply as a memorandum that such a note was given, and he changed it and put it into "bills payable" account. On page 31 he gives some items of discount that run through all the succeeding pages. On page 33 I had failed to credit myself as treasurer by a cross entry of $100, two notes, bills receivable, and Mr. Cowdrey makes that entry to my credit. Page 34 and 35 he makes some cross entries to bring into the account some notes which I had been carrying

as memoranda. I had been carrying the notes as cash in hand, notes received for the sale of cemetery lots, and they were brought into the account as bills receivable. Page 36 and 37 there are some entries of the same character as those last mentioned, brought in, in Mr. Cowdrey's handwriting, these are in 1886, the reference to the page gives the year.

Q. 36 begins in January 1886—January and February?

A. Yes, those items are in February 1886. There were quite a number of these notes received for cemetery lots which I was carrying in memorandum on my cash book without extending them until I should have an opportunity to consult with Mr. Cowdrey as a book-keeper as to the best method of handling those accounts to have them show intelligently upon the books.

(*Mr. McGee*:)

Q. Are these the accounts that were written up between the meeting of January 1861 and the adjourned meeting of the Cemetery in April?

A. These are the accounts that had been written up previous to that meeting, that had been posted by Mr. Cowdrey in the Ledger which has been offered in evidence in his own handwriting.

Q. D27 do you mean?

A. Yes, sir, but these accounts were all summarized by Mr. Reddish in his examination and writing up with me of the accounts during that time that you speak of in 1891, making his first report of the Auditor's running from 1883 to 1891 include these accounts now under consideration, but this work by Mr. Cowdrey upon these accounts his corrections and explanation of them in the book all came previous to that time.

(*Mr. Voorhis*):

Q. You were picking out places in this book that

n the handwriting of Mr. Cowdrey, you refer now
nat page?

Page 41 has a number of items explanatory of
ntries which are in his handwriting.

In what month and year?

April 1886, which was a bill for tools; he
, in looking over the vouchers, it was tools and
zers.

That is April 26th, 1886?

Yes sir, you will find that a large portion of
istribution, many items of this distribution are
handwriting. I have entered the figures in the
column and have left the distribution columns
until I should consult with him in regard to
per accounts as to how it was best to keep our
ts.

eptember 1886, page 47, there is a memorandum
handwriting on September 9th. There is a
ion in his handwriting on page 47, sixty-five
ntered as a discount, was erroneously entered,
e he notes here ~~it was discounted when the note
pposite page~~—it was deducted from the note
opposite page, the note showing only the net
, September 30th, 1886.

nuary 1887, there are a number of items in
drey's handwriting on both sides of the book,
e mostly in connection with the notes received
tery lots, helping me to get those accounts
upon my books. That I think covers the
covered by Mr. Cowdrey's work on the books.
There?

hat ends January 1887, pages 52 and 53.

ow, during the periods within which these
ere made in the handwriting of Mr. Cow-
wit, up to and in January 1887, and prior
did or not Mr. Cowdrey, in connection with
inspect and examine the vouchers pertain-
e accounts prior to January 1887?

es, he and Mr. Dummer went over all the

vouchers up to January 1886, I don't think he audited any accounts in 1886. He worked over the books, but I think he did not come back to audit those accounts, they were subsequently audited by Mr. Reddish and Mr. Jewell.

(*Mr. McGee:*)

Q. When?

A. At the time that they audited the other accounts up to December 1890.

Q. That was in 1891?

A. That was in 1891.

(*Mr. Voorhis:*)

Q. I understood you to say a moment ago, that on several of these pages from which you have selected entries made by Mr. Cowdrey, the cash column figures are in your handwriting, and the distribution in many cases is in the figures of Mr. Cowdrey?

A. That is the case, there are a number of cases on those pages—those were accounts which were left open for consultation with him.

Adjourned to Friday, June 23, at 11 A. M.

At which time, June 23rd, 1893, the examination was resumed in the presence of Flavel McGee, Esq., counsel for the complainant, and Joseph Parker, Jr., and Charles H. Voorhis, Esqrs., counsel for the defendant.

HENRY F. TORREY, a witness heretofore produced and sworn, testified as follows:

*Direct Examination resumed by Mr. Voorhis:*

Q. In Mr. Cowdrey's work upon this book, D26, and the one that is all in his handwriting, D27, did he, or not, have access to and use the check books

which you have produced here and which have been offered in evidence?

A. He had access to them always and he used them wherever it was required in the work that he was doing upon the books, they were really at his disposal; frequently when I went out to the cemetery, when I was at work with him, I left him with the check books and other books to work on during my absence—check books, bank books and other books to carry on the work while I was attending to matter which called me to the cemetery.

Q. Now the last of the handwriting of Mr. Cowdrey which you find in this book, D26, is on what page?

A. The last of which I called attention yesterday was, I think, on page 53—there were several items on that page. I noticed nothing later than that in his handwriting.

Q. What date?

A. January 1887, page 53.

Q. I show the witness Exhibit D2, the financial statement of the Arlington Cemetery Association from January, 1883 to December 31, 1890, which was signed by Mr. Reddish and Mr. Jewell?

A. It is dated April 22, 1891.

Q. In the auditing which resulted in that statement, did Mr. Reddish use this book D26?

A. He did, and he checked every footing of the columns from the beginning up to the date when he concluded this work, examining the items very carefully with me—we were working it over as carefully as possible because some of my work upon the books had been done hurriedly and not thoroughly checked by me previously, and I wished to have the benefit of Mr. Reddish's experience and skill as a bookkeeper from the very start in getting the entire book where we could depend upon it—in the shape in which we could depend upon it.

Q. Did he have also the check books?

A. Yes, sir.

Q. And vouchers?

A. Yes, sir.

Q. I mean the vouchers that represent the items in this book D26?

A. He did, and in his examination in auditing the accounts, went over the vouchers very carefully—I think he has so testified.

Q. Where are the check marks made by him to indicate on this book D26.

A. We worked together upon this book. These checks marks on this column (indicating) being made sometimes by his pencil and in some cases by me at his request, he examining the voucher carefully and making the footings and initialing the vouchers and stating to me check that amount when looking over the account with me.

Q. So that this book and the vouchers were marked at the same time?

A. Yes, sir.

Q. Now by this line as you have stated, you mean what?

A. I mean the line separating the cash account column from the rest of the page representing the distribution.

Q. You mean the first heavy line at the right hand?

A. The first double line from the right hand of the page.

Q. The odd pages of the book?

A. Yes, sir.

Q. 71 you are looking at now?

A. Yes.

Q. I show witness Exhibit D3 purporting to be report of the Auditors Reddish and Jewell, from January 1st to December 31st, 1891. Was this same book used by Mr. Reddish in the work which resulted in that report?

A. It was, this was simply bringing his work up one year further.

Q. Did he also have the check book and the vouchers as in the other case?

A. He did, and tested all amounts by the vouchers as he did in the other auditing.

Q. And checked them in the same manner?

A. Yes, sir, and explained his work to Mr. Jewell, who came in to look over it with him, and certified to it with him, Mr. Reddish doing the clerical work, and he also in all these cases for all these years made up tabulated statements in the last pages of the book and showing the monthly footings of each year and then on a separate page, the yearly footings of all the accounts entered by themselves for the purpose of comparison.

Q. Were you present at the meeting at which these auditors made and presented this report that is dated April 22nd, 1891?

A. I was.

Q. Can you recall who was present at that meeting then?

A. I may be able to tell by reference to the minute book—I cannot say who were present at that meeting. I know that Mr. McGee was there with Mr. Wildes, Mr. Reddish and Mr. Jewell were there, Mr. McCrae, Mr. Pratt and myself were certainly there; I cannot say whether Mr. Cowdrey was at that meeting or not; I think Mr. John Linn was there. Mr. Dummer and Mr. Jewell, Mr. Pratt and myself with the others whom I have named are all that I can recall now, the record does not give a list of those who were present.

Q. I call your attention to the testimony of Mr. Wildes on page 143, where he says "4th, another thing, the discovery somewhat recently of an agreement said to have been made before the connection of the Boston stock-holders with the company, by which Mr. Pratt was to receive as a commission all the benefit arising from the sale of the first 400 lots in the Cemetery Association," what do you know about that?

Objected to as being only part of an answer or even of a sentence.

A. (Witness refers to the printed minutes) I know in regard to that, that the agreement spoken of was upon the minutes of the Rural Homestead Company before Mr. Shearer came into the cemetery enterprise at all, and that it was simply an agreement between Mr. Pratt and some individual owners of Rural Homestead Co. stock, who were joining their interests with his for the purpose of organizing the cemetery enterprise and were agreeing to allow him compensation for giving his time to working up the business in the manner that they had agreed upon. I know also in regard to it that Mr. Shearer and his counsel Mr. Appleton, were in Mr. Pratt's office, in I think September 1882 when I was looking over the cemetery enterprise with Mr. Pratt, they were looking into this very matter of these 400 lots, and arranged with Mr. Pratt first, that the stock of the Boston stock-holders should not be subject to this agreement—interrupted.

Objected to as stating a conclusion. If the witness proposes to state anything that Mr. Shearer did, then it should be the language used or the written document executed and not a conclusion of the witness.

A. I know that that agreement as to the 400 lots has never had any force as to any of the Boston stock.

I object and move that the answer be stricken out from the record, as being parol evidence to contradict the terms of a written instrument and as being the opinion of the witness.

Witness: I know that the stock to which this provision applies, had endorsed

upon the face of it, the statement that it was subject to the rights of Mr. Julius H. Pratt to all profits arising from the first 400 lots sold in the Cemetery.

Objected to for the same reason, and also because it is secondary evidence.

Witness: I will read from page 24 of the minutes of The Rural Homestead Company—at the same interview between Mr. Shearer and his counsel Mr. Appleton and Mr. Pratt at which I was present at Mr. Pratt's office.

Mr. McGee:—I object to anything being given but the language and not the conclusion.

Witness: An arrangement was made to place at Mr. Pratt's disposal 60 lots.

Objected to.

Q. State what was discussed?
A. There was a long discussion.

Mr. McGee: The result of that discussion appears in writing in the minute book and is the best evidence of what the bargain was, and I object to any oral testimony of it.

Q. Can you indicate on what page of the minute book the result of that discussion is recorded?
A. May I read the portion—
Q. No, just indicate on what page?
A. It is the provision in regard to the distribution of 60 lots—on page 24.

Q. And it begins on what line?

A. Section 6th of the agreement between the Homestead Company and the Cemetery Association.

Q. It is line 4 then, on page 24?

A. Line 4, yes.

Q. Do you know whether or not the original arrangement with Mr. Pratt to give to him the proceeds of the sale of the first 400 lots referred to on page 19 of the minutes of the Rural Homestead Company, Exhibit P6, was ever carried out?

A. I know positively that it never was carried out and that Mr. Pratt never received any amount whatever from the proceeds of the sale of any of those lots and never claimed that any such amount was due to him under any such agreement, and never received any credit for any such amount upon any of our books.

Q. Now referring to page 24?

A. Page 24 of the minutes of the Rural Homestead Company?

Q. Referring to page 24 of the minutes of the Rural Homestead Co. and what is there recorded, beginning at line 5, with reference to the distribution of the 60 lots. Do you know whether any such distribution has since been made or not?

A. I know that distribution has been made of those 60 lots. Can I testify as to—interrupted.

Q. I ask you whether you know whether or not distribution has been made?

A. I know that distribution has been made of those 60 lots.

Q. Now can you tell to whom they were distributed?

A. I can, by reference to our list of plot owners, but I can say here—

Objected to by Mr. McGee as oral testimony if it appears anywhere else in writing.

A. I declare from absolute knowledge and I can state from absolute knowledge that 16 of those 60 lots were distributed to subscribers to the stock from Boston—Mr. Shearer and his friends; that 8 of them went to Mr. Pratt, on which he put a family monument, one of the most expensive in the cemetery; ~~another one~~ others went to people whose influence was supposed to be valuable and to other stock-holders—distributed in the same proportion to stock-holders who were subscribers for stock for cash, the same proportion as was given to the Boston stock-holders.

Q. Do you know what proportion that was?

A. It was awarding a lot to each one who subscribed on the first subscription $1,000 or over, if I remember rightly.

Q. At the rate of one lot for a thousand dollars?

A. No, not always at that rate, but one lot to all who subscribed a thousand dollars or over. Mr. Shearer and Mr. Wildes and Mrs. Ball each received five lots for their subscription of $5,000 each, I believe, and the others in Boston, Mr. ~~Raines~~ Rinaldo received two lots, others receiving one lot each, excepting Mrs. Church who received two—that was a special arrangement made by Mr. Shearer.

Q. That made how many in all to the Boston stock-holders and their friends?

A. 16 to the Boston stock-holders. There were others distributed to stock-holders whose stock is now held by Mr. Wildes and Mr. Shearer, I don't know that they hold the lots, but there has been no change upon our books.

Mr. Voorhis: I offer in evidence a blue covered book entitled on the outside "Rural Homestead Company and Arlington Cemetery Company," containing between its covers first, a printed pamphlet entitled on its outside "for private distribution, the Arlington Cemetery."

Marked D28.

Second, subscription to Arlington Cemetery Syndicate pasted on which are a subscription, dated September 14th, 1882, for 100 shares, signed V. L. Shearer; one signed Frank W. Wildes, dated September 29, 1882 for 100 shares; one signed Samuel B. Rindge, dated October 5th, 1882, for 40 shares and one signed Waldo E. Cowdrey, dated October 25, 1882, for 20 shares; one signed James A. Cartwright, Thomas J. Olys for 40 shares, one signed David R. Benton by S. W. Knevels, dated November 9, 1882. for 50 shares; one signed Knevels and Ransom, dated November 9, 1882, for 50 shares, and pencil memorandum Van Beuren substituted one dated July 18, 1893, signed Elizabeth H. Church, for 40 shares; Clarence Linn, 10 shares, Oliver E. Sparhawk by H. F. Torrey, 40 shares; H. F. Torrey, 10 shares; Total $25,000.

Marked D29.

Subscription dated Boston April 26, 1883, headed in pencil "No. 2", signed by Samuel B. Rindge, Thomas J. Olys, George W. Colburn, Waldo E. Cowdrey, D. R. Benton, H. F. Torrey, H. E. Reddish, A. S. Barnes, George W. Colburn by D. L. Shearer, Francis E. Ball, ditto, D. L. Shearer, Porte B. Ransom; Total $10,750.

Marked D30.

Subscription headed in pencil "No. 3" dated December 16, 1885, signed Francis E. Ball by Frank W. Wildes, D. L. Shearer, Waldo E. Cowdrey, Thomas J. Olys, George W. Colburn, F. H. Rindge 42 shares and of the subscription H. E. Reddish, H. H. Beadle, C. H. Dummer, A. S. Barnes, Thomas B. Van Beuren, E. Whittlesey, E. B. Thatcher, A. F. Pratt, J. H. Pratt, Jr., Chandler, Ransom, Ransom, A. Thompson, D. R. Benton, Reasoner, C. Linn "H. F. T."

Marked Exhibit D31.

On Exhibit D31, opposite Francis E. Ball by Frank W. Wildes, under announced opposite $550 in ink, appears $600 in pencil—the same figures in pencil opposite D. L. Shearer $600. At the bottom of the same "F. H. Rindge" is in pencil; also a number of shares and the amounts set opposite, the total of the shares 42, is in pencil—the summary of amounts is in pencil to wit, $2,100, under it $100; total $2,200.

The following portions of the next subscription, the lower subscription, are in pencil:

| | | |
|---|---|---|
| Thomas B. Van Beuren | | $600 |
| E. Whittlesey per F. H. G. | | 700 |
| E. V. Thatcher | $600 | |
| H. F. Rindge | 100 | 700 |
| A. F. Pratt | 450 | |
| J. H. P., Jr. | 100 | |
| Chandler | 100 | |

| | | |
|---|---|---|
| Reasoner | 150 | |
| Ransom | 350 | 1,150 |
| A. Thompson | 100 | |
| D. R. Benton | 300 | |
| Reasoner | 100 | |
| C. Linn | 50 | |
| H. F. T. | 250 | 800 |
| Total | | $6,400 |

I offer in evidence two pages of the printed circular entitled "to stock-holders of the Rural Homestead Co.", the marks printed or written thereon to be disregarded.

Marked D32.

Q. Do you know the original of the claim of R. O. Babbitt against the Arlington Cemetery upon which judgment has been obtained by him?

A. I know that it originated in a note given by the Cemetery Association to Mr. Babbitt on his surrender of a note given by the Cemetery Association to Mr. Julius H. Pratt, endorsed by Mr. Pratt, and brought in by Mr. Babbitt for a new note in his own name, that was brought into the office.

Q. Can you point to the page where that claim begins?

A. Witness refers to the cash book. Do you wish the origin of the claim where the money came from in the first place?

Q. Yes.

A. It was money loaned to the Cemetery Association by Mrs. Pratt, in January, 1885.

Q. On what page?

A. It shows on page 24, of the cash book, aggregating $3,350.

Q. And what date and the items?

A. Well, it was in four separate items—two checks for $1,000, one for $850 and one for $500, from January 21st to 28th.

Q. The first is January 21st?

A. January 21st, $1,000; 22nd, $1,000; 23rd, $850 and 28th $500. A demand note was given to Mr. Pratt dated September 30th, 1885, at the request of Mrs. Pratt who was then dangerously ill.

Objected to as hearsay and irrelevant. 10

Witness: Mrs. Pratt requested me to make the transfer of the account.

Q. Is she living or dead?

A. She never got off that bed—that note was brought to the office.

Q. How much was the note for?

A. $3,826.30, so that when that note was given to 20 Mr. Pratt it left a considerable balance still due to him from the Cemetery Association. Mr. R. O. Babbitt brought the note to the office June 30, 1890, and I made up the interest account upon it gave him a new note for $4,916.80. That note of June 30, 1890, is the basis of that judgment.

Q. And it represented the principal and interest owing upon the old note and up to the time that you gave the new one?

A. It did. 30

[Recess.]

Q. Can you indicate on the Cowdrey Book, which is Exhibit D the items which make up the Babbitt claim?

A. Yes I think I can.

Q. State the page and the date and the amounts of the items?

A. On page 73 temporary loan account items, January 21, $1,000, January 22, $1,000, January 23, 40

$850, and January 28, $500. Those are the items which were the basis of the note which was afterwards acquired by Mr. Babbitt.

Q. Those items were for money loaned—interrupted.

Objected to as leading.

A. Those items represented loans to the Cemetery Association by Mrs. Adeline F. Pratt?

Q. Is that all your answer?

A. That is all my answer in regard to your question in regard to the entries on this book—that is what you asked for I believe, to identify the entries in this book which were the basis of that Babbitt note.

Q. Those items amounted to how much?

A. They amount to $3,350, they were loaned by Adeline F. Pratt and the account transferred to the account of Julius H. Pratt.

Q. By her request?

Objected to.

A. By her request, both verbal and written.

Q. That made $3,350 of the claim?

A. I don't think that that with the interest makes up the full amount of the note, I think there were some small items in Mr. Pratt's accounts also included in that note, I could not identify them now, it was simply charged against his account—the amount of the note.

Q. What is the Crane judgment based on?

A. Upon a loan of cash to the Cemetery Association in our temporary loan account.

Q. Borrowed when?

A. I think in June, 1891. June 6, 1891, $2,000 for which we gave a demand note. That was the last loan which Mr. Crane made to the cemetery.

Q. Were you in Boston in August, 1890?

A. Yes, I was.

Q. Did you see Mr. Shearer on that occasion there?

A. I did. I went on there partly by arrangement with Mr. Shearer to meet his friends in Boston, who had subscribed to the stock of The Rural Homestead Company. I was planning to go on there at the time, to attend the convention of Cemetery Superintendants for consultation in regard to cemetery work. He asked me to be sure to come, so that he could arrange a meeting of all the Boston stock-holders with me, to talk over our cemetery matters.

Q. Where did you meet him?

A. He came to the hotel where we were holding our convention—the American House I believe it is—where we were holding the convention of the Cemetery Superintendants, and said that he would like me to go around and see Mr. Wildes first, and afterwards we could see the others. He said he would arrange to come for me later in the day, and he came and called me out from the meeting of the Cemetery Superintendents, and I went with him to Mr. Wildes' office, that was on the 20th of August, 1890.

Q. Did he come around again?

A. He came again, and I went with him to Mr. Wildes' office on Washington street, and we had some little talk there.

Q. Who was there?

A. Mr. Wildes was there, and he and Mr. Shearer and I there were no other stock-holders came in. We sat there and had some conversation. I read to them a letter which I had brought from Mr. Pratt.

Mr. McGee: Will you produce that letter so that he may identify it—the letter of August 20?

Mr. McGee produces the letter and it is marked for identification D16.

Q. Did you then and there read to Mr. Shearer and Mr. Wildes this letter which was yesterday marked Exhibit D16 for identification?

A. Yes, sir, this is a letter which I took on there with me, and I read it to Mr. Wildes and Mr. Shearer.

Q. Then and there do you mean?

A. At that interview in Mr. Wildes' office. The letter is a letter of August 19th rather than 20th however. It was on the 20th that I was there in the office—the type-written date at the head of the letter is in error. It is signed by Mr. Pratt and dated in the end August 19th, 1890, dated in his handwriting, but the type-writer dated it August 20th.

Q. At the top?

A. At the top. It shows here as signed by him and dated by him when he signed it, the 19th.

Q. Give us what happened at that interview, what you said and what they or either of them said?

A. I read this letter and Mr. Wildes stated to me that they had decided to put no more money into the Cemetery Association—into the Rural Homestead Co.

Q. What did he say?

A. Into the Rural Homestead Co., while Mr. Pratt remained in the management, and in the course of the conversation he told me that he had employed Mr. McGee of Bedle, Muirheid & McGee. I have here a memorandum which I made within half an hour afterwards of some of the points of his conversation there, in order to not be dependent entirely upon my memory of the conversation when I should return to the office.

Q. Can you now give the conversation from your memory as refreshed by your memorandum?

A. I will now give just what I put upon the memorandum—it is a pencil memorandum made by me and immediately after I left Mr. Wildes' office. Mr. Wildes said to me that he had engaged Mr. McGee to take such action in the courts as would give to him the control of the whole business. I protested against

any such action, as it may be would ruin the value of the Rural Homestead Company investment by litigation and he replied to that, that that was just what he proposed—he proposed to control the entire business or ruin it. He then said it ~~is~~ was best for ~~him~~ me to know just what his ~~business~~ purpose was as plainly as could be stated. I said his statement was certainly plain enough, as he repeated it saying, that it was just what he meant that I should understand, and repeated the words that I propose to control the entire business or ruin it. Later in the conversation he said, he did not mean that he intended to ruin the Rural Homestead Co., that I had expressed a fear that this course of action would ruin it, and he only spoke upon my theory, and that he himself did not believe that litigation would produce any such result, but if it did ~~so~~ the company would have to be ruined, because he proposed to have litigation if he could not get control of the company without it. He spoke in the first person in speaking of getting control, giving me the impression that he proposed that his objection was to Mr. Pratt's management of the company and he proposed to take the management into his own hands. I asked him what his ground of complaint was against Mr. Pratt, and he declined to give me any reason for his dissatisfaction, giving me to understand that it was enough that he proposed to get rid of his management. After leaving his office I went I think with Mr. Cowdrey, who called at the hotel, to Mr. Olys at his place of business on Elm street.

Q. Do you mean that Mr. Cowdrey called at Mr. Wildes' office where you and Mr. Shearer were?

A. No, at the hotel.

Q. At your hotel?

A. Yes, sir.

Q. Mr. Cowdrey called at your hotel and you accompanied him to the office of Mr. Olys?

A. Yes, sir, and I read Mr. Pratt's letter to them also.

Q. Give the conversation that you had with them, what you said and what they said?

A. Mr. Olys had very little to say about it, he told me that he had left the matter in Mr. Shearer's and Mr. Wildes' hands. Mr. Cowdrey stated that he was not in sympathy with that action, engaging counsel for litigation, that he knew more about the business than any other of the Boston people, and he was sure that they had made a great mistake. I had no further conversation with either Mr. Olys, Mr. Shearer or Mr. Wildes during my stay in Boston at that time.

Q. Or with Mr. Cowdrey?

A. I had no opportunity to meet them together. Mr. Cowdrey came in to see me two or three times, and seemed to regret very much that the others had taken the action which they had.

Q. Did Mr. McGee call upon you afterwards in Jersey City?

A. He was in the office—Mr. McGee was in the office a number of times claiming to represent the Boston stock-holders, but I could not give you dates except as the minute books will show his presence there at the meetings.

Q. Do you remember his having a conversation with you or in your presence at the office about these matters?

A. I remember soon after these proceedings were begun.

Q. Do you mean this suit?

A. Soon after Mr. Wildes took this position and engaged Mr. McGee as counsel, I think after the next annual meeting of the cemetery—at the close of the next meeting of the cemetery association.

Q. That would have been when?

A. That would have been in January 1891, that is my recollection of the time of the occurrence.

Q. Have you given the whole conversation as you remember it?

A. That is all that made an impression upon me.

Q. Do you know, Mr. Torrey, of any application by any stock-holders of the Rural Homestead Co., to any of the officers of the company for information that has ever been denied?

A. I don't know of any such denial, there have been applications for information, which was not in my power at the time to give, but we have been ready. I have been ready to give all the information that I could in regard to the affairs of the cemetery to the stock-holders of the Homestead Co.

Q. Were you present at a meeting of the Arlington Cemetery Association in January 1891, the 26th I think?

A. January 26th, 1891, there was a meeting of lot owners.

Q. Were you present at that meeting?

A. I was present at that meeting, and acted as secretary of the meeting.

Q. Do you recollect Mr. McGee at that meeting offered a resolution that Mr. Reddish and Mr. Jewell and Mr. Wildes be appointed auditors?

A. Mr. McGee offered such a resolution at that meeting, that a committee of three be appointed, consisting of Mr. Jewell, Mr. Reddish and Mr. Wildes, to audit the accounts of the association and report at an adjourned meeting.

Q. Who presided at that meeting?

A. Mr. Pratt, the Vice-President, presided; Mr. Dummer, the President, was not at the meeting.

Q. Did you hear what Mr. Pratt said at that time about that resolution.

A. I did.

Q. What did he say?

A. He objected to the resolution, that it was not in order, because the by-laws of the association provided another method for appointing an auditing committee, and he said that such a committee would be appointed in the manner designated by the by-laws.

Q. Do you remember what that manner is?

Objected to as the by-laws show for themselves.

Q. Turn to the by-law and state what the by-law provides on this subject?

A. (Witness refers to the by-laws).

Mr. McGee: I object to the by-laws substance being given, as the by-laws speak for themselves.

A. The by-law is in evidence, page 12.

Q. Of what?

A. Page 12 of the minutes of the Arlington Cemetery Association, section 7, that is, T13.

Q. Were auditors afterwards appointed?

A. Auditors were appointed by nomination of Mr. Dummer, the president of the association, he nominated Henry E. Reddish, Charles C. Jewell, both of whom had been nominated by Mr. McGee at the previous meeting. They were nominated by the president and elected by the vote of trustees. The first was Mr. H. H. Beadle, Mr. Reddish and Mr. Jewell.

Q. And that action is recorded on what page of that Exhibit?

A. On page 45 of the minutes of the Cemetery Association.

Q. How much space of ground is used for a single grave—I mean in that single grave, part of the cemetery, for the purpose of a single burial?

A. The grave and the path space at the end between that and the next grave, takes 27 square feet of ground.

Q. When you sell a single grave, you sell what space? How much about?

A. We sell a single grave 27 feet—square feet—for $16. It is 24 square feet of ground, that is what we sell as graves, we don't sell the paths.

Q. Is it two by 12 or how?

A. It is 3x8 long, allowing for the box 7 feet long and the mark or head stone.

Q. 3x8 and the price you get is $16.

A. $16, yes sir.

Q. Can you tell how many such graves were sold by the Cemetery Association last year—within the last twelve months?

A. I can, if you will let me look at the map of single graves.

Q. Is not the book in evidence, cannot you tell from that?

A. Not without considerable examination, and picking out the items, because we have not kept the account of the numbers of the graves, I can ascertain that from the map of single graves or from our interment book, showing the number of single graves used.

Q. Is the interment book here?

A. It is in the office.

Q. Can you produce for example, the package of bills and vouchers used by Mr. Cowdrey in his work upon the books?

A. I will have to look over the book and the older vouchers for that, I have not them here.

Q. They are in the office?

A. Yes, sir.

Q. I understood you to say that the vouchers for all the items—

A. You asked me to bring the package of vouchers here, those that I brought were not during Mr. Cowdrey's examination, but during Mr. Reddish's examination, I simply took them at random from the pigeon hole.

Q. I understood you to say that Mr. Cowdrey in his work upon the books examined all the vouchers for the time covered by his work?

A. Yes, sir.

Q. Was that so, with reference to Mr. Reddish

and his work upon the books during the time that he worked upon them?

A. It was.

Q. What book is this (showing witness a book)?

A. That is the book of sales of lots and graves in the cemetery.

Q. It is a cemetery association record of them?

A. It is their record, it was carried out by me rather as a Rural Homestead Company—I have always considered it a book belonging to the Rural Homestead Co.—the record of the sales of lots to be kept permanently as a Homestead Co. record. On the cemetery books the lots are all divided, showing the Homestead proportions of them, but in this book they are given in gross.

Said book is offered in evidence.

Marked Exhibit D33.

(*Mr McGee*):

Q. Does that show the sales of all the lots?

A. I think it shows all the sales up to date, yes.

(*Mr. Voorhis*):

Q. Have you figured up the number of single graves that were sold during the year 1892. If so, tell us how many were sold?

A. There were 74 single graves sold at $16, 19 at $12, and four at $8.

Q. What are the $16 ones?

A. They are graves laid out upon the ground, 8 feet long by 3 feet wide, allowing a space for the interment of the box of about 7 feet by two or two and a half. The $12 graves are used for children not over 10 years old and the $8 graves for boxes for coffins not over 3 feet and a half in length.

Q. What space is taken for the $12 graves?

A. 2½x6 feet.

Q. What space for the $8 graves?

A. They take, I think our measurement is 22 inches in width, by 4½ feet in length, it may be 24 inches, I am not positive as to the width, we experimented a little upon the width required, and I am not sure without looking at the plans, which we decided upon, the 22 or 24.

Adjourned to Thursday and Friday, July 6 and 7, 1893, at 11 o'clock A. M., by consent.

The further taking of testimony was continued on Thurday, July 6th, 1893, at eleven o'clock in the forenoon, in the presence of counsel for the respective parties.

William Smith, a witness produced on the part of the defendants, being duly sworn according to law on his oath, deposes and says:

*Direct Examination by Mr. Voorhis.*

Q. Where do you live, Mr. Smith?

A. At Kearney.

Q. Township of Kearney, in this County?

A. Yes, sir.

Q. Do you hold any office there?

A. Yes, sir.

Q. What?

A. Township Clerk.

Q. Are you the custodian of the books of records of the Township?

A. I am, sir.

Q. Have you the book of minutes here, of the Township Committee of the Township.

A. Yes, sir.

Q. Will you produce it?

(The minute book is produced.)

Q. When does this book begin?

A. December 3, 1889.

Q. And comes down to the present time?

A. No sir. It ends July 14th, 1891.

Q. Have you the salesbook of sales for taxes made by the Township here?

A. Yes sir, this is the book.

Q. When does that record begin?

A. 1875.

Q. And comes down to—

A. The present time.

The minutes book above referred to is offered in evidence and marked Exhibit D34.

The salesbook above referred to then offered in evidence and is marked Exhibit D35.

Mr. Voorhis: In the above exhibits we refer specially to page 100 of the minute book, paragraph 3, entitled tax resolution of May 13, 1890, which reads as follows:—

"The following was read, and on motion, adopted, Messrs. Swift, Stillwell, Bloodgood, Reed and Carver voting aye:

Be it resolved that the tax title to Plots 48, Block 217, on Schuyler Avenue, and Plot 49, Block 218, Coppermine Avenue, be conveyed to Samuel W. Bower, and that the Chairman of the Board of Township Committee and the Clerk, execute a deed on behalf of the Board of Township Committee, on condition that the said

Samuel W. Bower shall first pay to the Township Treasurer all unpaid taxes on said plots, and interest thereon at the rate of twelve per cent. per annum, beside costs.

Mr. Voorhis:—We also refer to page 106, entitled May 20, 1890, last paragraph on the page, where is recorded the following:—

"The following was read, and on motion adopted, Messrs. Swift, Stillwell, Bloodgood, Reed and Carver voting aye:—

Be it resolved that the tax title to Plot number 47 Meadow property, be conveyed to Samuel W. Bower, upon all the taxes and assessments, and the interest and costs thereon being paid to the Township Treasurer, and that the Chairman be and he is hereby authorized to execute a deed on being notified of the payment of all money due on the property."

Mr. Voorhis: We also refer to page 351, about the middle of the page, where the following is recorded:

"A meeting was called on Saturday, April 25, 1891, at the Township Hall, for the purpose of selling at public auction certain lands and real estate for unpaid taxes for the year 1889."

About the center of the page is recorded the following:

Susan Schumacher, Block 218, Plot 51, sold to Samuel W. Bowers, thirty years, $6.13.

Mr. Voorhis: We offer the books in evidence but refer specially to the above portions noticed.

Mr. McGee: Before I decide whether to object or not, complete your offer, so that I may know exactly what it is.

Mr. Voorhis: As to Exhibit D35, we refer specially to the following:

Under the title list of property sold by the Township of Kearney for arrears of taxes and assessments for the year 1887, at Firemans Hall, Kearney Avenue, June 1, 1889, on page 105, is the following record:

Coppermine Avenue, Rachel Myers, Block 218, part of lot 49 and house, $15.24 sold to Township for thirty years.

Moses Myers, Block 218, part of lot 49 and house, $5.08, sold to Township for thirty years.

On page 108 appears the following record:

Rachel Myers, Block 217, Plot 48, $17.78, sold to Township for thirty years.

C. Myers' Estate, Block 217, Plot 19, $25.40, sold to Township for thirty years.

On page 107 appears the following record:

Estate of C. Myers, $5.08, Plot 4, meadow, sold to Township for thirty years.

Mr. Voorhis: That is all we refer to in that book.

*Cross Examination by Mr. McGee:*

Q. Now, Mr. Smith, this minute on page 100—that

is a resolution to sell to Samuel W. Bower—is that all there is of record about that sale?

A. Yes, that is all that I can see in there.

Q. That was a sale of lots the Township had bought in at some earlier day?

A. That is how I understand it.

Q. That is all the book shows?

A. That is all.

Q. This one on pages 106–7 about conveying the meadow; that is all there is about that?

A. Yes; that is all I can see.

Q. These are different properties?

A. Yes, sir.

Q. It was not sold for taxes at that time, was it?

A. They would be sold to the Township some time before.

Q. And in this minute book, page 351, Susan Schumacher, Block 218, Plot 51, Samuel W. Bower, thirty years etc., is that all about that?

A. Yes; that is all there is about that.

Mr. McGee: I object to the admission in evidence of this book D34 and of each of the items, first because it is irrelevant, and second, because it has no evidential value; it does not prove anything; it is no evidence at all.

Q. These records that were read from the book D35—the list of property sold book; that is all the record you have?

A. Yes; all the record in that book.

Q. These two books complete the whole township record of those matters?

A. There is a declaration of sales book also.

Q. But these two books complete the whole township record of the proceedings which resulted in the sale of these lands?

A. Yes, sir.

Mr. McGee: I object to the admission of this book D35 and of each of the items for the same reason as before.

Mr. McGee:—Counsel for complainants will demand the production of the original books in Court on argument of the cause if they are to be in evidence.

HENRY F. TORREY, a witness heretofore produced and sworn, on behalf of the defendants, testified as follows:

*Direct Examination continued by Mr. Voorhis:*

Q. What book is that you have here?

A. That is the ledger of the Rural Homestead Company—the old ledger of the Rural Homestead Company—ledger, journal and cash book.

Q. The first one you have there, is the ledger?

A. Yes, sir.

Q. Beginning when?

A. Beginning in 1872, the first entry on page 1, is June 29, 1872.

Q. In whose handwriting are the entries in that book?

A. They are in the handwriting of Josiah T. Wilcox.

Q. What office did he hold?

A. He was the secretary of the Rural Homestead Company from the organization of the company until I became secretary June 22, 1883.

Q. Is Mr. Wilcox living?

A. He is not, he has been dead several years.

Q. What is the other book you have?

A. Cash book, also in Mr. Wilcox's handwriting.

Q. Beginning when?

A. Beginning June 29th, 1872. The entries to June 1883 are in Wilcox's handwriting, and the subsequent entries are in my handwriting.

Q. The next book?

A. The next is the journal of the Rural Homestead Co., also beginning June 29th, 1872, with the entries in Mr. Wilcox's handwriting, also to 1883. The subsequent entries are in my handwriting.

Q. Those are books of the Rural Homestead Co.?

A. They are the books of the Rural Homestead Co. covering all their land company business up to the organization of the cemetery and with the entries also of all cash received for stock issued in the organization of the cemetery.

Mr. Voorhis: I offer in evidence the ledger. Marked Exhibit D36.

I offer the journal in evidence. Marked Exhibit D37.

I offer the cash book in evidence. Marked Exhibit D38.

[RECESS.]

*Cross Examination by Mr. McGee:*

Q. What relation are you to Mr. Pratt?

A. Son-in-law.

Q. Are you related by blood or marriage to Mr. Bower?

A. I am not, I never saw Mr. Bower until after he purchased the Myers property?

Q. Is Mr. Pratt?

A. He is not.

Q. No connection?

A. None whatever.

Q. How did Bower come to know about this land?

A. I could not tell you that; the first intimation I had of it, was from Mr. Parker, who was counsel for Mr. Bower.

Q. Mr. Parker represented Mr. Pratt also?

A. No, sir, he was counsel for Bower in that matter.

Q. How did this negotiation with Bower for the land in question have its inception?

A. My first knowledge of the purchase was when Mr. Bower wished to get some information about the cemetery and also learn something from me about the boundaries of the Myers land there, as I understood it and asked me to go out to the cemetery with him.

Q. Asked you by letter or verbally?

A. He called at the office and asked me verbally to make an appointment.

Q. How did he come to buy this Myer property?

A. I cannot tell you that. I was not acquainted with him until after he had made the purchase.

Q. Had he been Mr. Pratt's counsel before that?

A Not that I know of.

Q. Had he had law business for him?

A. Not that I am aware of.

Q. Did he know that Mr. Pratt was anxious to get this land?

A. I don't know as to that, it had been a matter of common talk with us in all our conversations that it was a desirable plot of land to get for the cemetery. I don't know what Bower knew about that.

Q. You don't know whether it was suggested to him by anybody in the interest of the cemetery to Mr. Pratt that he should bid it in for the cemetery?

A. I never understood it was, I understood at the time it was suggested to him by Mr. Parker.,

Q. Had Mr. Parker been representing Mr. Pratt before that?

A. He had done some work for our cemetery.

Q. You don't know then what had passed between Mr. Pratt and Mr. Parker on the subject?

A. I don't know that anything passed between them on the subject.

Q. Nothing was said to you about it?

A. No, sir.

Q. Can you tell me how many lots have been sold in the cemetery altogether up to this date?

A. It would take considerable examination to state that accurately, because so many sales have been made of certain number of graves in a lot, so that it requires several sales, two or more sales, to cover the lot.

Q. I mean sales by the company?

A. That is what I refer to.

Q. Does the cemetery association sell parts of lots?

A. It sells graves in a lot.

Q. Independently of the single grave territory?

A. Yes, sir, for instance a four grave plot, a lot counted in twelve graves, may be divided into three plots, holding four graves each and sold by the number of the graves.

Q. Cannot you give me an approximate idea somewhere near?

A. It would take a little time to get it from the maps, I can give it to you to-morrow if that will answer your purpose.

Q. How many lots are there in the cemetery altogether—how many plots or lots whichever is the proper word?

A. I could not tell you that, because only a comparatively small portion is laid out in lots.

Q. Can you tell me how many lots are left?

A. No, I cannot—there is a large proportion of the cemetery that is not laid out in lots.

Q. What proportion of the whole area of the cemetery has been sold?

A. I should estimate not over one-tenth—estimating without looking at the map.

Q. Independently of the single grave area, you think that nine-tenths of the area of the property remains?

A. Including the single graves.

Q. So that when you thought that the single grave

area would not last more than three years longer, you meant simply that which has heretofore been set apart?

A. What we had devoted for that purpose.

Q. There is nothing to prevent any other part of it being devoted to that is there?

A. No.

Q. Is not the sale of the property for single graves as profitable to the association in the aggregate as when sold for lots?

A. No, it is not.

Q. Do you charge more for a lot than you do per grave for single graves?

A. We do; our charge for single graves is upon a lower basis per square foot than the lots—upon a lower basis of price per square foot than our price per lot.

Q. Why is that?

A. Partly because the sale of single graves in so many cases serves to bring customers for lots. The single graves are sold to a poorer class of people who can afford to pay very little for the graves, but if they are able afterwards to buy a lot, they almost invariably make a removal to the lot, purchase the lot and make the interment from single graves to the lot; so that it is business policy in the sales to attract as many as possible to those single graves at this stage of our business.

Q. You think out of the 35 acres of ground, that about nine-tenths remain unsold?

A. That is only a rough estimate.

Q. That is your judgment now?

A. Yes, sir, it may not be that—it may be seven-eighths.

Q. How many lots have been pledged up to this time as collateral for loans or other indebtedness or engagements?

A. I would have to refer to the map for that.

Q. Please do so?

A. (Witness refers to the map). There are eight

lots, the deed of which is in escrow with an option to H. F. Richards to purchase the lots for the amount of a loan of $2,000 which he has made to the cemetery; 13 lots, the deed of which is in escrow under the same conditions in connection with a loan by Dr. Myers to the cemetery.

Q. And that loan, how much is it?

A. $2,000. The Richards loan is $1,400; Richards originally was $1,500 and $100 was paid off by his taking ten per cent. of his stock-holdings, leaving $1,400—he took $100 in stock, the cemetery having to pay him $100 on account of his loan when he subscribed $100 stock in order to give the Rural Homestead Co. that $100 subscription.

Q. What do you mean?

A. It means that at the time of the ten per cent. additional subscription, Mr. Richards subscribed his proportion of it, amounting to $100, two shares of stock, and called upon us to make him a payment of $100 on account of his loan.

Q. Mr. Richards' first collateral was Rural Homestead Co. stock, was it not?

A. Yes, it was.

Q. Who gave him that?

A. That was given him by the officers of the Rural Homestead Co.

Q. Is there any authority in the by-laws for the officers to pledge the stock of the Rural Homestead Co. for loans to the cemetery?

Objected to as the by-laws speak for themselves.

A. There is authority in the action of the directors of the Rural Homestead Co. as recorded in the minutes of the Rural Homestead Co. for just what was done, on page 43 of the minutes of ths Homestead Co. which are in evidence, under date of July 15, 1884, it was a resolution.

Q. As I understand you, you don't claim that there is any authority in the by-laws, but only that a resolution of the Board of Directors was passed to that effect.

Objected to.

A. I make no claims one way or the other in regard to it.

Q. Is there any authority in the by-laws of the Cemetery Co. to pledge its lots as collateral for loans?

A. If those lots are taken, they are taken in the course of a sale, on which the parties have an option. We have the authority for sale.

Q. Does it seem to you that that is an answer to the question?

A. I don't know whether there is authority in the by-laws or not, they speak for themselves.

Q. Who else—what other people have lots as collateral?

A. These are the only parties for whom deeds for lots have been put in escrow giving them the privilege of buying under any contingency.

Q. Does it seem to you that that is an answer to that question?

A. Will it be in answer to the question, if I say that there are no parties who have lots as collateral. The lots are in escrow in these two cases, with an option for sale.

Q. Were they given as security for loans?

A. The loan is to be paid by us, or the lots taken by the party at their option.

Q. You mean of the debt?

A. I mean of the amount which they have loaned, that is the price of the lots to them.

Q. Let us see whether we understand each other. My question is, whether these people hold these lots as collateral for their loans. You, as I understand you, say that they have the deeds in escrow, and if

he loans are not paid, then they are to be owners of the lots in lieu of the payment of the debt, is that it?

A. They have the option of taking the lots.

Q. Question repeated?

A. Strictly speaking, that is not the case.

Q. What is the case?

A. They have the option to either take the lots at that price, or to make such other arrangements as they may agree upon, for the payment by other methods of the loan.

Q. What do you mean by that?

A. I mean that in the case of Mr. Richards he has preferred to let the loan run along from time to time, collecting only interest upon it, rather than to take lots.

Q. His bargain, if the loan is repaid—the loans are to be repaid,—if the loan is not paid, he is to take the lots?

A. By the payment of the loan, we may take up the deed for the lots.

Q. Then it is collateral, is it not?

A. I don't know whether under your meaning of the word, it is collateral or not, I tried to explain as fully as I could what the situation is.

Q. The word "collateral" has a common well known name in business—it means given as security. Is that the case with these lots?

A. The arrangement is intended to secure the loan.

Q. Do you know of any authority in the by-laws to pledge or otherwise pledge the lots of the association for loans?

A. I know of no legal impediment in the way of it.

Q. Do you know of any affirmative authority for it?

A. None, excepting the acts of our directors and trustees.

Q. There is no provision for it in the by-laws, is there?

Objected to.

A. The by-laws answer that question.

Q. Will you show me any by-law that permits it?

A. I don't know that I can, I will get the minutes (witness refers to the minute book); I find no by-laws authorizing us to sell lots in our cemetery business under any circumstances.

Q. My question was, whether you find any by-laws authorizing you to pledge them as security?

A. I suppose that we would do that under our authority to sell the lots, but I find no by-law authorizing us to sell the lots.

Q. Then you are not able to find any by-law that authorizes you to pledge the lots as collateral, is that so?

A. I am not—I suppose that is one of the inherent rights of the cemetery in the transaction of its business.

Q. You have been a director or trustee all the time?

A. Yes, sir.

Q. Does Mr. Crane hold any lots as collateral for his claims?

A. No, sir, he does not.

Q. What collateral has he?

A. A judgment of the Court of Chancery I believe.

Q. Is that all?

A. I think so.

Q. Was no collateral given him for his claim?

A. No.

Q. Who is Mr. Crane, what relation is he to Mr. Pratt?

A. He is no relation to Mr. Pratt.

Q. What connection?

A. Mr. Crane's wife was a niece of Mr. Pratt.

Q. In your testimony, you spoke of the Crane

loan, as being of a recent period. That was a renewal, was it not?

A. No, it was not a renewal.

Q. Don't your books show a loan for the same amount running for some years?

A. No, sir.

Q. For some time, for a larger amount?

A. I borrowed money a number of times from Mr. Crane when I needed it for our cemetery purposes. Our books show a loan of a larger amount before the time of this loan.

Q. Was not there a note become due a few days before this last note was given? Don't that appear on the books?

A. The note was paid only a few days before this —it did not become due.

Q. Then the position you take, is that the note, was not due?

A. It became due—it was a demand note.

Q. Is it not a fact that a sum amounting to about the same as the note which the Crane Judgment is founded on, is credited as paid a few days before this last note was given?

A. It is a fact that Mr. Crane called upon me and told me that he wished a little money and he would have to call upon us for the payment of that note. The note of $2,500 which he held against the cemetery. I paid the note without saying anything to him about any further accommodation from him. I afterwards asked him if he required the whole of that money, whether he would not loan some sum to us upon the same conditions as the old loan, and he loaned $2,000 to us.

Q. And you said it was entirely without collateral?

A. It was entirely without collateral.

Q. What collateral does Mr. Babbitt hold?

A. I don't think that Mr. Babbitt holds any collateral.

Q. Do you know what Mr. Babbitt gave for the note he holds against the association?

A. I don't, I did not sell the note to him.

Q. It was given to him for the Barnes amount of stock, was it not?

A. I don't know that.

Q. Have you not been so told?

Objected to.

Q. I can surmise.

Q. Didn't you tell Mr. Wildes so in Boston at the time you were there, at the time of the convention of the Superintendents of Cemeteries?

A. I gave Mr. Wildes my surmise in regard to it at that time I think. I knew nothing of my own knowledge.

Q. What did you tell him about it?

A. That I thought the payment for the Barnes stock was made partly by a note of the cemetery which Mr. Pratt held and assigned to Mr. Babbitt.

Q. You must have got that from some source; didn't Mr. Pratt tell you?

A. No, I knew from my having charge of the accounts and from some knowledge I had of Mr. Pratt's business, something what was going on in his business.

Q. Was the certificate for the Barnes stock transferred to Mr. Pratt's name about that time?

A. I don't remember as to that.

Q. Do you remember when that note was given to Babbitt?

A. I can tell by reference to the books (witness refers to the books) the note was given June 30th, 1890, for $4,916.80.

Q. When was the transfer of the Barnes stock to Mr. Pratt?

A. The transfers were made in May 1890.

Q. Tell me how many shares of the stock Mr McCrae held?

A. One share.

Q. And from whom did it come to him?

A. It was transferred to him by Mr. Pratt.

Q. Did he pay any consideration for it?

A. I don't know that.

Q. Was it not given to him?

A. All that I had to do, was to transfer the stocks upon the books.

Q. Was it not given to him so that he might be a director?

A. I don't know.

Q. Did Mr. Pratt say anything about it?

A. No, sir.

Q. Nor Mr. McCrae?

A. No, sir, Mr. McCrae receipted for the stock on the stub and took the certificate.

Q. McCrae was a clerk in Babbitt's office, was he not?

A. I don't know whether he was a clerk or a partner.

Q. You never heard of his name in the firm or on their paper, did you?

A. I don't remember, I understood he was a brother-in-law of Mr. Babbitt's, I presume you are more familiar with that than I am. At the time of this transaction, however, I think Mr. McCrae was in business for himself. All the business I ever had with him was when he occupied an office by himself.

Q. Don't you know that prior to his disappearance from Jersey City he never had any office by himself?

A. I know I have been to his office, I suppose a dozen times on business with him, in the Fuller Building in another building from Babbitt's—in the Weldon Building when Babbitt was on the other side of Montgomery Street.

Q. How long was that before he went away?

A. I couldn't say.

Q. It was not long, was it?

A. I don't know how long—he had two rooms in the east end of the Weldon Building.

Q. Now referring to these books of account, with reference to which you testified the other day. Is it not a fact that they were not written up at all from 1885 until 1890?

A. No, it is a matter of fact that they have been entirely written up.

Q. My question is whether between those two dates, they did not remain unwritten, whether they were not written up; whether that period was not written up after that date or most of it?

A. I think I so testified that during that time, the books were very badly behind.

Q. Mr. Cowdrey was here several times and offered to help you with them during that time, didn't he?

A. He was here several times and helped me with the books.

Q. My question was a little different from that (the stenographer reads the previous question)?

A. He came here several times at my request to help me with the books—I think several times when I wished him to come he was not able to come. I don't remember any time when he came on here offering to help me when I did not avail myself of his help to some extent.

Q. Don't you remember during the time from 1885 to 1890 that there was several occasions when he offered to help you—came here and offered to help you and you replied that you were too busy then to give the matter attention?

A. No, I remember distinctly that such was not the case, I remember distinctly when Mr. Cowdrey gave his testimony, saying that he was entirely mistaken in his recollection of the circumstances.

Q. You think his testimony is erroneous under that head?

A. I think his memory is at fault upon that, and upon a number of other points about which he testi-

fied. There were times when we would postpone work upon the books because of the pressure of cemetery work requiring my attention and his not being able to go on with the work without my being with him, and that was talked over freely with him at the time, we never had any disagreement about it.

Q. Were not there a number of times during that period that he offered to come here and help you, and you declined on the ground that you were too busy to attend to it?

A. I don't remember any such circumstance of his coming here and offering to help me.

Adjourned to Friday, July 7th, 1893, at 11 A.M.

At which time, July 7, 1893, the examination was continued in the presence of the Master and counsel for the respective parties.

HENRY F. TORREY, a witness heretofore produced and sworn, testified as follows:

*Cross Examination continued by Mr. McGee:*

Q. Were not there many efforts by Mr. Cowdrey or by the Boston people, to have Mr. Cowdrey come and help you at times when you did not avail yourself of it?

A. It was talked over a number of times with Mr. Shearer about getting Mr. Cowdrey's assistance. Mr. Cowdrey came on here several times offering to help me on the books and helped me I think to some extent every time that he came here. There were times when I was so busy with cemetery work that we could not work to advantage.

Q. I don't think that either myself or the Court can tell exactly what you mean by that answer. You say he helped you every time he came. To what extent?

A. I could not tell that exactly; he worked upon

the books I think every time that he came here for that purpose.

Q. Then you make a distinction between the times when he came in and offered to help you then, and the times when he came here purposely for that?

A. I don't know of any time when he came and offered to help me, that he did not help me.

Q. Did not he stop in here at least as often as twice a year in passing, and did not he at each of those times offer to take hold, and did not you most of the time refuse on the plea that you did not have time to attend to it?

A. Most emphatically not.

Q. Then you think he is in error in his testimony in regard to that?

A. If he has testified to that effect, there is certainly an error in his recollection.

Q. Do you remember a request from the Boston stock-holders for copies of the by-laws and matters of that kind, which were not complied with on the same plea?

A. I remember one case of that kind, of which Mr. Shearer complained about a copy of the by-laws, which I had already copied three times for him or his counsel, and I was extremely busy at the time and put it off for a more convenient time.

Q. You did not give him that reason?

A. No, I did not think it expedient to give him that reason—I expected to give him a copy of the by-laws and did subsequently do so.

Q. Now how many folios of manuscript would a copy of the by-laws make?

Objected to as it is capable of demonstration by the by-laws.

A. The by-laws were very brief—I had in mind at the time he wrote, the by-laws of the Rural Homestead Company which were much longer.

Q. Were not they only one page?

A. The by-laws of the cemetery, I cannot say as to them; they were brief.

Q. And the by-laws of the Rural Homestead Company?

A. They were considerably longer.

Q. Question repeated?

A. No, they are not only one page.

Q. Have you a copy of them here?

A. (Witness refers to the book.)

Q. That would not make over a page of foolcap, would it?

A. I was in error, he wanted the by-laws of the Homestead Co. and I had in mind the by-laws of the cemetery association at the time.

Q. Have you those here?

A. They are here.

Q. That is only two pages and a half of the minute book?

A. That is all.

Q. Now these books of account, they are written up now?

A. For the years 1885 to 1889 inclusive.

Q. How many pages do they make altogether—you have them here?

A. (Witness produces a book) 88 pages of the large cash book.

(*Mr. Voorhis*):

Q. In that one book?

A. Yes, sir.

Q. What book is that?

A. Exhibit D26.

(*Mr. McGee*).

Q. That is a little over a page a month, is it not?

A. Yes, that is the way the accounts run—two pages a month—it would figure a little over a page a month; there are 60 months, that shows what the proportion is.

Q. In your testimony you speak of Mr. Cowdrey's auditing the books—you don't claim that he audited any after 1882, do you?

A. He audited the first three years, 1883, 1884 and 1885; he did not audit anything before 1882.

Q. Did he audit for the year 1885?

A. Yes, sir.

Q. Those books were not written up until the spring of 1891? For that year, were they?

A. For 1885, they were written up by Mr. Cowdrey and me, by me with Mr. Cowdrey's assistance, I cannot tell you the date, but they were not part of the work that was done in 1891.

Q. Then the time that they were written up in 1891, was not 1885 to 1889 inclusive, but was from 1885 to 1891?

A. From 1885 to 1891.

Q. The number of pages is about the same, is it not?

A. There is not very much difference in the space taken per month for the account.

Q. Now those accounts were not audited at all during that five years that you have last mentioned, were they?

A. They were not audited until 1891, until Mr. Reddish audited them.

Q. That was after the time when the Boston stock-holders at the annual meeting in January made a demand for an auditing, was it not?

A. Yes, the appointment of Mr. Reddish as an auditor was made after he had been nominated by the Boston stock-holders.

Q. You knew that the Boston stock-holders named a committee of audit of which Mr. Wildes was one?

A. Yes, I did.

Q. And that the president declined to appoint that committee and did appoint a committee of which he was not one?

A. The chairman of the meeting declined to

appoint a committee in any way except as provided by the by-law.

Q. The committee, named by the stock-holders, was not appointed?

A. Two of the members were.

Q. Was there anybody on the committee appointed from Boston?

A. There was not; Mr. Reddish was considered as a representative of the Boston stock-holders by the persons who made up the committee.

Q. Now, at the time these books were written up, in the spring of 1891, you have stated that you worked part of the time with Mr. Reddish and part of the time he worked alone—what figures he put in the book for those years had to be put in from memoranda furnished to him by you?

A. Certainly, I had been keeping all the accounts for the corporation.

Q. And in what manner?

A. During those years, when I considered it more important to be doing lucrative work for the cemetery than in writing up the books in which there was no money at that time for anyone, unless it was myself, I entered the current accounts so far as they did not show quickly in the check book, in our book of sales of lots and in the blotter which I carried for that purpose.

Mr. McGee: I move that all that part of the answer which relates to Mr. Torrey's opinion as to the best plan, be stricken out as irresponsive.

Q. And where a voucher was obscure, the information as to its meaning had to be derived from you, did it not?

Objected to as there is no evidence that any voucher was obscure.

A. If the voucher was not understood, I would nat-

urally be the one to explain it and make it understood.

Q. Question repeated?

A. Naturally that would be the case, in case any vouchers were obscure.

Q. During those five years, was there any annual meeting of the Rural Homestead Co. called?

A. There was not.

Q. Had there been any annual meeting in 1885?

A. There was no annual meeting in 1885, there were two meetings of the stock-holders in 1885.

Q. They were called to raise money, were not they?

A. They were called to arrange for the raising of additional capital.

Q. The meeting in 1890, for what date was that called?

A. July 9th, 1890.

Q. The date of the annual meeting was what,—the date fixed by the by-laws?

A. In June.

Q. Why was the meeting not called on the regular date that year?

A. I don't remember now the reason for the delay.

Q. Do you remember when the Barnes estate stock was transferred to Mr. Pratt's name?

A. The books show that.

Q. Just look at the books and give us the date?

A. The transfer of the Barnes stock was made in May, 1890.

Q. What date?

A. May 7th.

Q. I mean to Mr. Pratt's name?

A. I so understood you, that was what I was answering—if it was a different date from that, I was in error yesterday; the book says May 7th.

Q. What was the date of its transfer to Babbitt?

A. I don't think the stock ever was transferred to Babbitt; I think the heirs had not finished their

arrangement for the transfer of the stock to Babbitt until May, 1890—it was not transferred on our books to Babbitt.

Q. What was the regular day for the annual meeting, what day of the month that year?

A. The first Tuesday of June.

Q. It must have been the first day of June, was it not?

A. I could not tell you as to that.

Q. Give me the numbers of the certificates that were issued to Mr. Pratt for that stock?

A. The certificates issued to him at that time were numbered 274, 275—

Q. Give us the number of shares in each case?

A. 274 for 47 shares, 275 for 50 shares, 276 for 78 shares, 277 for 10 shares, 278 for 78 shares, 279 for 112 shares, 280 for 34 shares, 281 for 11 shares, 282 for 120 shares. That is all that was issued to him at that time.

Q. Were they all issued on the 7th?

A. All issued on May 7, no there was one issued to me on the 10th for 10 shares.

Q. Were there other shares issued at a later day?

A. I don't know as to that—I see there were other certificates issued for some of those that were issued at that time.

Q. After looking at the dates of those transfers, can you remember any better what was the probable cause of that annual meeting being held so late?

A. ~~I know~~ No—those transfers made no difference that I can see upon anything bearing upon that annual meeting.

Q. Was there nothing said—there was no reason given for postponing the call of the meeting?

A. I don't remember the reason for the postponement—the impression on my mind was that it was a matter of convenience to some of the parties interested to meet in July instead of in June, on account of engagements elsewhere.

Q. Referring to this matter of the purchase from Mr. Bower. You say that prior to that matter coming up, you had visited the cemetery in connection with Mr. Bower. Is my memory correct?

A. At the time of my first knowledge of that purchase I made an appointment to go to the cemetery with him and went with him; he seemed anxious to learn what he could in regard to the management and care of the cemetery, in regard to our cemetery business there and wished to have me show him on the ground about the boundaries of that land, ~~and~~ because of my familiarity with Arlington property.

Q. Who first spoke to you about this visit to the cemetery with Mr. Bower?

A. I think Mr. Bower either spoke to me or left word for me at the office; I am not positive whether I was in the office or not.

Q. Who first told you about Bowers purchase?

A. I think Mr. Parker first spoke to me about it on the train.

Q. And Mr. Pratt said anything about it?

A. Nothing until after that.

Q. Who wrote the letters that were written in connection with this purchase, and that were attached to the report of the committee?

A. I made the memorandum of both our letters to Mr. Bower and Mr. McCrae, had them written by a typewriter.

Q. Did Mr. McCrae have any other connection with this matter except to carry out the instructions of Mr. Pratt or yourself?

A. He had no connection with it except to carry out the instructions of the Board of Directors as a committee of the Board.

Q. Who appointed him?

A. (Witness refers to the minutes and answers) He was appointed on motion of Mr. John Linn.

Q. Not appointed then by the president without a resolution?

A. No, I think I proposed—I remember that I proposed Mr. Linn's name for the committee and he made the motion that Mr. McCrae and I be put upon the committee.

Q. Tell us who were present at that meeting?

A. All the members of the Board—the full Board of Directors?

Q. Who were they?

A. John Linn, Clarence Linn, D. W. McCrae, Julius H. Pratt and Henry F. Torrey.

Q. Where is Mr. McCrae now?

A. I know nothing about him now; I have not heard from or of him.

Q. On this trip to the cemetery with Mr. Bower, and during this trip, what was said between you and Bowers, and by whom, with reference to the annexation of this property to the cemetery property?

A. It was not spoken of on that trip—I know I was not certain as to what Mr. Bowers position would be in regard to it, after going out there with him; I had no authority to make any offer for the purchase of the land, and he made no offer as to the sale of it.

Q. That is hardly the question. The question was not as to a purchase and sale, the question was, what was said on the subject of annexing it to the cemetery property?

A. That question did not come up at all on that occasion.

Q. When was the first occasion that it did come up when you were present?

A. I could not say how long after that Mr. Bower said something to me in regard to the property being desirable—would be desirable property in connection with the cemetery. There was no very definite talk about it, but it conveyed the impression to my mind that he thought it would have a future value and most desirable for our cemetery purposes.

Q. What did you say?

A. I cannot remember the words—that was the

impression on my mind. I was not authorized to make any offer and arrangement whatever.

Q. Who talked out with Mr. Bower the plan which was afterwards adopted as to acquiring it?

Objected to unless it is qualified with "if anybody did," it does not appear that anybody did so far.

A. I never talked over any definite plan with Mr. Bower for such acquisition; I talked it over with Mr. McCrae and with other members of our Board as to what could be done while we were committee.

Q. What members—Mr. Pratt?

A. Mr. Pratt and Mr. Linn together in our office.

Q. Who made the suggestion of buying it for stock?

A. I don't remember as to that where the suggestion first came from.

Q. In the letters which you have offered in evidence, and a part of the committee's report is one under date of December 30, 1891, to Mr. Bower, which is signed by you and McCrae, and in which you state that you have acquired possession of the Myers Farm in Arlington, and you contemplate converting the same into the cemetery etc. etc. My question is, who had the conversation or conversations with Mr. Bower which resulted in the writing of that letter?

A. My conversation was with Mr. Parker, he represented Mr. Bower in the purchase of the property.

Q. Tell us what you said to Mr. Parker?

A. Mr. Parker spoke of the possibility or prospects of there being a competing cemetery there, and he also spoke to Mr. Pratt about it, and I had some conversation with Mr. Pratt about it, it was talked over among us that there was a plan under consideration by Mr. Bowers.

Q. Then the conversation which you had with reference to it, was with Mr. Pratt and Mr. Parker?

A. At that time.

Q. That is prior to the writing of this letter?

A. I had some conversation, I have testified, with Mr. Bower, but no definite proposition or offer came through it.

Q. In these conversations with Mr. Bower that you have had, the subject of in some way annexing the two properties had been discussed, had it?

A. Not definitely, I drew my inference from what he said, that he thought possibly the property could be used in connection with our cemetery, and of value to him, being most desirable for that purpose.

Q. And you gathered that that was the reason that made him buy it?

A. I could not say as to that.

Q. Then, in order to find out what passed directly with Bower with reference to it, we will have to go to Mr. Parker, or do you know what was said by Mr. Parker to Mr. Bower?

A. I don't know what was said in regard to it.

Q. Did Mr. Parker report to you what Mr. Bower had said?

A. Only in a very general way, our correspondence brought it out more definitely.

Q. I am trying, if I can, to get so far as you know it, what passed between the parties prior to the correspondence and on which it was based?

A. I heard very little over it prior to the correspondence excepting the fact that there was another cemetery talked of there.

Q. You knew that Bower had only a tax title, didn't you?

A. I understood at that time that he had only a tax title to the larger part of the property, but I supposed there would be very little difficulty in making or getting the remaining title as he states he expected to in his letters.

Q. You knew it was a tax title for a term of years?

A. Yes, sir.

Q. You did not suppose there could be any serious intention of establishing the cemetery or making interments in the piece of land, the fee of which belonged to some other person, did you?

A. I certainly supposed there was a serious intention of establishing a cemetery there.

Q. Question repeated?

A. I knew from my conversation with Mr. Bower when he was on the ground that he expected to acquire the rights of the various heirs to that property, and probably that influenced my opinion in regard to it.

Q. Then your answer given a moment ago refers to what would perhaps take place after he had made additional purchases; was that it?

A. I was under the impression from my conversation with him upon the ground that he was in negotiation at the time for the other rights to the land, and did not know whether he had acquired them or not, I didn't know anything about that.

Q. Did you not know it before the title was taken?

A. Yes, sir, at the time the title was taken I considered the two acres of which he had the fee worth more than the entire stock which was offered for it for our cemetery purposes.

Q. You knew that Mrs. Moses Myers' dower right was outstanding in the two acres?

A. I did not.

Q. You knew that she had not signed the deed, didn't you?

A. I don't recollect as to my knowledge of that—Mr. McCrae was looking up matter of the title in connection with it, and I looked over the papers with him, but I am not positive as to her not having signed the deed, but I should pay very little importance to that under the circumstances.

Q. Do you mean to have us understand that as a manager of the company and one of its officers and a member of this committee, that you took title to this

land without enquiring whether any part of it had been conveyed to the vendors?

A. I certainly looked over the title papers of the property—I had a lawyer on the committee with me.

Q. You would not think of making interments for your corporation in a piece of property in which a woman's inchoate right of dower was outstanding, would you?

A. I should probably inquire as to our legal rights in the matter—I am not a lawyer.

Q. You do know enough of law to know that a married woman has a dower right in her husband's land, unless she signs a deed, don't you?

A. I don't know what that dower right includes—there is a right to a share in whatever income there may be from the land.

Q. Did you not know that she has a right to have a one-third of it set off to her, after her husband's death?

A. I don't know what the laws of New Jersey are as to dower rights.

Q. You do know that you would not dare to make an interment in that part of it until the other interests were acquired?

A. I know that I have not planned to make any interments in land held under the tax title.

Q. You knew at the time the stock was issued, that unless he succeeded in obtaining their interests, the land would go back to the owners at the end of thirty years?

A. Yes, I knew it would be necessary to get the interests of the other owners to have a clear title to the entire property.

Q. When you took the title of the property from him, did you understand that he was to purchase the other interests or they were to be purchased by the company, or at any rate with the company's moneys?

A. I understood that he was to negotiate the purchase of the other interests for us and it was in such

shape that it could be done at that time for a very small amount.

Q. You knew that no contracts to that effect had been signed by the other owners?

A. I did not know that any contracts had been signed.

Q. Did you know what was the condition of the stock list at that time?

A. I think so.

Q. You knew how many shares had been voted at the last annual meeting by the Boston stock-holders?

A. Certainly I must have known that.

Q. You knew that they had acquired other parcels of the stocks, didn't you?

A. I didn't know what else they had acquired?

Q. You heard they had bought the Whittlesey stock?

A. Yes, I presume I had heard that.

Q. Do you remember how many shares that was?

A. I don't remember, it was quite a large holding.

Q. You were aware, were you not, that the issue of the stock, 238 shares, would have the effect to keep the control of the control of the corporation in the hands of Mr. Pratt and those who had been acting with him?

A. I supposed the control was with him and his friends at that time, there were transfers of stock made afterwards which surprised me very much, because they came from parties whom I supposed were strongly with Mr. Pratt in all actions pertaining to the company.

Q. You knew the Boston stock-holders were endeavoring to secure the majority?

A. I cannot say that I knew that they were endeavoring to secure the majority, I knew they had been buying some stock.

Q. Did not you tell me so, or did not Mr. Pratt say so in your presence?

A. I don't remember that he did.

Q. To return to the question of the conversation with Mr. Bower prior to the purchase from him, cannot you tell me who it was first suggested the plan of making the transfer for a stock consideration?

A. I don't know who first suggested it, it was talked over among us. The question was considered as to whether we could make an offer to Mr. Bower of a certain amount for cash and a certain amount of stock, and finally developed this proposition. I could not say whom the different suggestions came from in regard to it.

Q. You considered the land of very little value?

A. I knew that the heirs did not put a high value upon it. The owners whom I knew to hold title, they never put a high value upon it. I knew that we would have had it as part of the cemetery before that, upon such valuation as they put upon it, but for its being tied up in this estate, during the life time of the mother of some of the heirs, the mother and imbecile sister, who had a life interest in it.

Q. She had been dead some years, hadn't she?

A. She was living at the time we were buying the land for the cemetery there, we considered the purchase of that tract and found that there was this matter stood in the way of it at that time.

Q. The effect of the issue of this 238 shares of stock, was to keep the control in the hands of Mr. Pratt and those who were acting with him?

A. It has proved to have had that effect, at the last meeting.

Q. Was the subject of issuing the stock brought up at any time before the annual meeting or presented to the stock-holders in any way?

A. Not specifically in regard to this transaction.

Q. The subject of the issue of this stock had come up once before the stock-holders meeting?

A. The subject of distributing to the stock-holders.

Q. And it was opposed by the Boston stockholders?

A. It was.

Q. You were aware of that?

A. I was aware of that.

Q. Did they give their reasons?

A. I don't remember their reasons, if given.

Q. Had that deed from Bowers ever been put on record?

A. I don't know whether it has been recorded now, it hadn't been recorded at the time you filed your papers in this suit, and it was so stated.

Q. These Myers heirs, with the exception of one, live near by here, don't they?

A. I don't know the addresses of the various heirs.

Q. Do you know where the money came from that was paid to the township for the land—for the tax title?

A. I suppose it came from Bower.

Q. Did you furnish it or any part of it?

A. I did not, I knew nothing about it at that time.

Q. Do you know whether Mr. Pratt did?

A. I knew nothing about the transaction at that time.

Q. I am asking your present knowledge?

A. I don't think Mr. Pratt did; I know nothing about it.

Q. You had not been told anything?

A. No, sir.

Q. Had Mr. Bower been Mr. Pratt's lawyer before this time in New York matters at any time?

A. I cannot say as to that.

Q. Mr. Bowers lives in Brooklyn, does he?

A. I don't know that—I know his office address in New York; my only acquaintance with him has been in connection with this transaction.

Q, Did Mr. Bower make any inquiries as to the value of the Rural Homestead Co. stock?

A. He made no inquiry of me.

Q. Then so far as you know, this exchange on his part was made without having ascertained anything about the value of the stock?

A. I understood that he knew something of the stock some years before, I think he had been interested in some land sold for the Rural Homestead Co. in Arlington.

Q. Did he know that the Homestead Co. had never received any of the percentages that were agreed to come to it from the Cemetery Co., or at least, that all those percentages had been retained by the Cemetery Co.?

A. I could not say as to that, he knew from his conversation with me at the cemetery that our cemetery sales were not yet paying expenses of our work there.

Q. You told him that?

A. I told him that.

Q. Did the subject of whether another cemetery alongside of it would pay, come up between you?

A. No, I think not, he enquired as to prices we were getting for the lots, he enquired as to the prices we were getting for cemetery lots, and figured out the amount which that would yield per acre. I called his attention to the fact that up to that time our sales had been so small that our expenses of operating the cemetery had more than covered the amount of the sales.

Q. And you told him how many years the cemetery had been in existence?

A. I don't know that, he knew how many years it had been in existence I presume.

Q. And so far as you know, the transaction in his behalf was completed without any more light than the knowledge of the fact that the cemetery thus far had been a losing institution?

A. I don't know as I quite understand your question.

Q. Question repeated?

A. I could hardly say that, because we had talked over the reasons for the slow sales in the past, he had considerable light as to what our cemetery business was.

Q. Was it part of the understanding that he was to be made a director in the Rural Homestead Company?

A. I don't remember as to whether that arrangement was made to put him in as director?

Q. You don't know whether that was part of the consideration of the transfer?

A. I should not suppose it was.

Q. Did you tell him that there was a difference of opinion among the stock-holders as to the management of the company?

A. I don't know whether I did or not.

Q. Don't you know whether there had been intercourse between Mr. Pratt and himself before his purchase of this land with reference to it?

A. I don't know. Mr. Pratt was acquainted with him—I cannot say what conversation there may have been between them.

Q. Before his purchase at the tax sales, do you know whether Mr. Pratt knew that the land had been sold to the township?

A. I don't know.

Q. Did Mr. Pratt have any conversation with you on the subject?

A. None that I remember.

Q. Nothing said by him about acquiring it in that way—buying the tax title?

A. No, I think my first knowledge in regard to that was the information that Bower had bought it.

Q. You think Mr. Parker told you that?

A. That is my recollection, that the first information I had was from Mr. Parker.

Q. At the time that the Rural Homestead Co. was reorganized, by whom was the land conveyed to the company?

A. Conveyed by the several owners of the land, who held deeds from the Rural Homestead Co. for the land.

Q. Their name?

A. I cannot give you much in detail about that.

Q. Don't it appear on the books?

A. It was a matter in Mr. Linn's hands in searching the property.

Q. Does it appear on the books?

A. (Witness refers to the books). I don't see it in the minutes; I know that these purchases were being made, they were not all completed at the time of the organization of the Cemetery Association, the matter was in Mr. Linn's hands to pass upon the title, and that the land was all conveyed to the Homestead Co. with the exception of four lots, I think it was four lots, of 25x100—they were acquired soon afterwards and conveyed by the Homestead Co. to the cemetery.

Q. At that time the new tract was not laid out into lots on the ground?

A. It was laid out in lots on the ground, and streets graded across it in both directions, and gutters and culverts.

Q. Any building on it?

A. There was only one house upon it, there was no new house built upon it by the purchasers of the lots.

Q. They were not residents of Arlington?

A. Quite a number of them were.

Q. Were they people who had taken it for stock?

A. Some for stock and some had purchased it for cash. At the time it was laid out in lots, it was advertised and there was an auction sale of lots upon the property. There was a great boom in real estate along the line of the railroad at that time, that was in 1872.

Q. Was the stock that was issued at the time of the reorganization, issued to these people for land?

A. $57,500 was issued in stock for this land.

Q. Can you turn to the place in the books where the people to whom that stock was issued, appear?

A. (Witness turns to page 32 of the journal 1, which is Exhibit D37, and says) "Stock was issued to this list of persons, the entry is land:

| | |
|---|---|
| A. T. Reddish | $7,500 |
| A. S. Barnes | 9,950 |
| J. H. Pratt | 6,250 |
| E. Whittlesey | 6,950 |
| Elizabeth B. Thatcher | 3,250 |
| J. H. Pratt, Trustee, Est. G. Thatcher | 2,700 |
| R. H. Humphrey | 125 |
| Anna E. Crump | 400 |
| Adeline F. Pratt | 1,850 |
| C. H. Dummer | 1,500 |
| H. H. Beadel | 500 |
| Adeline F. Pratt | 12,400 |
| Adeline F. Pratt | 250 |
| Total | $53,625 |

Q. Those dollars represent the par value?

A. Yes, sir.

Q. How much of the land of the cemetery did that cover, the whole of it?

A. No, there was some land came in afterwards I think. There are two other items on succeeding pages—on page 34 Adeline F. Pratt, $900, and page 35 "Land new account to land old account, $2,975."

Q. Who was the person that got that?

A. Those were outstanding shares in the capital stock account at the time of the organization of the cemetery, it never had been taken up in the old distribution. Here is the item in capital stock account "balance forward $2,975," that was not taken up by he treasurer, but was held by the old stock-holders, and is entered here to complete that land account ~~($57,900.~~ $57,500

Q. That is, you mean to say, that in the distribu-

tion of the land at the time it was made prior to this date, that the amount of stock had not been surrendered and it still remained out?

A. It still remained out in the hands of the stockholders.

Q. It had been originally issued for land?

A. Yes, sir, and still made part of the ~~$57,900~~ $57,500, it had never been surrendered.

Q. Who held that?

A. Leaving stock outstanding as appears on the books June 6, 1882, as follows: R. H. Huntley, 2½ shares; Adeline F. Pratt, 47 shares; J. H. Pratt, 1 share; J. Linn, 1 share; J. T. Wilcox 11-5 shares; Adella Pratt, 3 shares; R. O. Babbitt, 1 share; J. Howard Pratt, 2 shares; W. D. Shrope, 1 share.

Q. That makes the $2,975 and leaves the fifth of a share accounted for it in the same way?

A. That makes $2,975 and leaving one-fifth of a share which was settled in some other way.

Q. At the time the Boston stock-holders subscribed, which I understand you to say was 1882, do you remember how many shares they took?

A. It is all in evidence.

Q. Was all the rest of the stock issued for cash or was there more stock issued for the land?

A. There was stock issued for the commission and legal expenses.

Q. That was the 60 lots?

A. No, it was stocks which were issued by agreement at the time of the reorganization.

Q. Tell us the number?

A. $6,500 of stock was issued for commissions on sales of stock for cash and for legal expenses in the reorganization of the cemetery.

Q. There appears on the minutes of the Rural Homestead Co. under date of July 15th, 1882, a report of Julius H. Pratt, who had been appointed a committee to negotiate for the purchase of certain land, in which among other things appears this section

"Second.—That the Cemetery Association to be composed mainly of respectable citizens of Jersey City shall be duly organized and for that purpose there shall be placed at the disposal of Julius H. Pratt as a commission, all benefits that may accrue from the sale of the first 400 lots of 300 ~~feet~~ square feet each, or the equivalent area thereof."

Now in your testimony the other day, you said that the agreement as to the 400 lots had never had any force as to any of the Boston stock, and that the stock to which it applied had endorsed upon the face of it, a statement that it was subject to the rights of Mr. Julius H. Pratt to all profits arising from the first 400 lots sold in the cemetery. Will you show me any of the stock that has that endorsement?

A. (Witness produces certificate No. 94 bearing date November 1882; it appears it was so issued from the date on certificate and stub.)

Q. In whose handwriting is that memorandum appearing on that certificate?

A. In the handwriting of Mr. Wilcox, the Secretary of the Homestead Co.

Q. In red ink?

A. Yes, sir.

Q. Read it?

A. (Witness reads as follows) "This certificate don't entitle the holder thereof to dividends or profits until after 400 lots or their equivalent in area in the Arlington Cemetery shall have been disposed of by gift or otherwise."

Q. In connection with the question, I asked you a few moments ago. Just look at your minute book and see whether that report to which I referred and from which I quoted was not accepted, and the conditions named therin adopted at that meeting?

A. That is the case.

Q. Now, are all these certificates in Mr. Wilcox's handwriting, these memoranda?

A. All which were issued at that time were in his

handwriting; there are some in my handwriting after I became secretary for certificates which were issued in lieu of these which had this endorsement upon, I simply put the same provision on the new certificates. There was no new stock came under that, it was simply when the old certificates were brought in for transfer.

Q. What is the date of the last certificate which contains that memorandum?

A. The certificates upon the Barnes stock which had that provision on it.

Q. There is certificate No. 259?

A. That is the date of the last April, 1889.

Q. In whose handwriting is that?

A. In my handwriting?

Q. When did Mr. Wilcox die?

A. I don't remember the date.

Q. That certificate that bears that is April 19, 1889?

A. Yes, sir.

Q. Will you show me any authority in the minutes other than this to put that memorandum on the stock?

A. That is the only authority that I know of.

Q. Then will you show me any authority in the minutes to issue certificates of stock without that memorandum?

A. I don't think I can show you any authority in the minutes to issue any certificates of stock.

Q. Then the putting of that memorandum on the stock was done either in pursuance of that minute I read, or without authority at all?

A. I understand it was done entirely in pursuance of that minute and the written agreement upon which that minute was based.

Q. Have you that agreement?

A. I have not; the entire report is taken from the written agreement made at that time. I ~~don't~~ understand it was made at that time. The conditions on which the purchase of the land should be effected are

mainly expressed in a written agreement signed by Frank T. Benner, attorney for the heirs of L. Keese, A. S. Barnes, D. Whittlesey, Thomas A. Thatcher, Elizabeth P. Thatcher, which agreement provides—then it goes on with these provisions.

Q. Can you show me the paper or other agreement or authority by which this privilege was relinquished?

A. I cannot.

Q. You have stated, have you not, that the Barnes stock was issued to Julius H. Pratt on the 7th of May, 1890; am I right about that?

A. You are, if the date is right—the 7th of May 1890.

Q. Here is a paper, signed Julius H. Pratt, bearing date May 7, 1890, which reads "For value received I hereby surrender all claim to benefits due me by virtue of the conditions written in red ink across certificates numbered 248-251 to 259 inclusive (see records page 19) and do hereby cancel the same. New certificates are to be issued in lieu of all said restricted certificates. [Signed] Julius H. Pratt," is that Mr. Pratt's handwriting (showing witness paper writing)?

A. I think so. I should say it was.

Q. The whole paper?

A. I think so.

Q. And his signature?

A. I think so.

Q. That is the same date as the issue to him of the Barnes stock, is it not?

A. It is the same date.

Q. Tell us what certificates of stock the ones that were issued to him on that date, took the place of?

A. The 7th of May, 1890; they took the place of 191, 264, 240, 260, 262, 273, 263, 265, 266, 268, 273, 229, 234, 248, 251, 252, 253, 254, 255, 256, 257, 258, 259, 261, 267, and 245.

Q. Now, this certificate No. 279, which was issued on May 7th, 1890, in lieu of certificates Nos. 248, 251

252, 253, 255, 256, 257, 258 and 259 is in lieu of the certificates mentioned on this paper I just showed you, is it not?

A. It seems to be.

Q. Those are the numbers mentioned in the paper, are not they?

A. They are.

Q. Do you know how this paper came to be written, do you remember the circumstances?

A. I don't.

Q. Do you know where it has been until now?

A. I don't.

Q. Did you know it was in this stock book that you handed me?

A. I didn't remember it.

Q. That is where I found it?

A. It has been placed in the stock book as my authority for the issue of the particular certificate called for by that memorandum.

Q. Can you show me any authority to omit the memorandum from any other stock?

A. I think that is the only stock which ever came to my hands for transfer with that memorandum upon it.

Q. Does not a reference to the stock book show that that memorandum was written upon certain shares of stock and not upon other shares without reference to any corporate authority or authority apparent upon the books?

A. The reference to the minutes shows it was put on in accordance with the agreement which is referred to in the resolution you have quoted.

A. (The witness says the paper belongs in the book at the stub of certificate 279 and it is therefor in evidence as part of the book without being offered.

[Recess.]

Q. In your testimony at an earlier date, you said that of the 60 lots which were to be distributed to

subscribers 8 went to Mr. Pratt. If I remember correctly, the record shows that those 60 lots are to be distributed, one lot to each subscriber to a thousand dollars worth of stock, and the balance to people whose influence would be advantageous?

A. The records don't show that.

Q. Did you state it?

A. No, I stated that some of the lots were distributed to subscribers of stock.

Q. On what basis did Mr. Pratt get those eight lots?

A. The 60 lots had been substituted for the 400 lots in the former agreement with the company—the 400 lots to which he was entitled, the distribution was left entirely with him.

Q. With Mr. Pratt?

A. Yes, sir.

Q. Then you mean to say it was left with Mr. Pratt to distribute them and he took eight of them himself?

A. Yes, sir.

Q. Show me anywhere in the records of the company the agreement for that substitution?

A. That agreement does not appear in the records of the company.

Q. Was it made with all the parties, with all the stock-holders of the company, all being parties to it?

A. It was made with Mr. Shearer before the Boston parties subscribed to the stock.

Q. Then what you are testifying to is some conversation between Mr. Shearer and Mr. Pratt, is that it?

A. What I am testifying to now, this arrangement?

Q. Yes, sir.

A. That was a conversation between Mr. Shearer and his lawyer and Mr. Pratt.

Q. You don't pretend it was ever reduced to writing, do you?

A. I don't know whether it was or not.

Q. Is there such a writing in existence?

A. I have no such writing.

Q. Then you are testifying what somebody told you, or what you heard somebody say, is that it?

A. What I heard the parties themselves say.

Q. You don't mean to claim here that Mr. Pratt and Mr. Shearer were the corporation, do you?

A. No.

Q. Or that they could make a bargain to bind the corporation?

A. I mean only that Mr. Pratt had a right to the 400 lots before that, and Mr. Shearer's counsel objected to that, and that the arrangement was made between them to substitute the 60 lots for the 400 lots.

Q. Don't you know you were not present when Mr. Shearer and Mr. Appleton were at Mr. Pratt's office, but that you were in Pennsylvania or somewhere else away from home at that time?

A. No, I remember being in Mr. Pratt's office when Mr. Appleton was there.

Q. Where?

A. In New York.

Q. Where abouts?

A. 223 Broadway.

Q. You testified positively to the fact that you were there when this matter was discussed, when Mr. Appleton and Mr. Shearer was there?

A. I have a distinct recollection of seeing Mr. Appleton and Mr. Shearer in the office and of hearing conversation between them and Mr. Pratt in regard to it.

Q. You are quite sure that this is not all that you have been told by somebody else?

A. I am very sure I saw them there.

Q. Don't you know that Mr. Shearer, Mr. Pratt and Mr. Appleton were there but once?

A. I don't know whether they were there more than once or not.

Q. Don't you know also at that time that neither the books or any of the records of the Homestead Co. or the Cemetery Company were there?

A. I don't know what was there, I remember simply their talking over the arrangement as to the lots, and it was talked over subsequently with some other counsel who came on here with Mr. Shearer.

Q. Where? Jersey City or New York?

A. I am not sure whether it was in Jersey City or New York.

Q. That time you refer to, was when Mr. Champlin came on in 1884 or 1885, and after the Boston stockholders had subscribed for the stock they got?

A. I remember Mr. Champlin being here, I think that was after we opened the office in Jersey City.

Q. Is that the second time you refer to—the time when somebody else came on with his lawyer?

A. I think Mr. Champlin was the lawyer who came on the second time; I had in mind the first time, I was in New York only for a day.

Q. And you are quite certain you were present when Mr. Shearer and Mr. Appleton were there?

A. I am quite certain I heard conversation between them and Mr. Pratt while I was in the office.

Q. In New York?

A. In New York.

Q. Were you not at one time in Pennsylvania in the employ of a railroad?

A. Yes, I was on railroad service in Pennsylvania.

Q. During what period?

A. At the time this organization of the cemetery was in progress I was looking after some mining work.

Q. Where?

A. In Virginia.

Q. That was about the time, was it not?

A. I came from there here.

Q. When did you come from there here?

A. I came on several times—three or four times in 1882, and then in January, 1883, I moved here with my family.

Q. You are quite certain—you are as certain of that as of anything else that you were present at the meeting between Mr. Shearer, Mr. Appleton and Mr. Pratt?

A. I don't think I can be at fault in my recollection of it, it is clearly impressed on my mind.

Q. Don't you also know that the subject of the 400 lots was not mentioned at that time?

A. My recollection was, that the minute book was there, and that it was mentioned, or the subject was brought up, I know I heard it spoken of a number of times between Mr. Pratt and Mr. Shearer.

Q. How do you account for it if the 60 lot arrangement was substituted for the 400, that you kept on making those memoranda in the stock book with reference to the 400 lots up to a date anterior to that?

A. The memorandum in regard to the 400 lots I understood as an agreement with the stock-holder, between the stock-holder and Mr. Pratt endorsed upon that stock.

Q. You didn't know of this memorandum in the minutes then until it had been brought out in this case?

A. I have always known of the memorandum in the minutes of the 400 lots, but it is in the minutes as a part of an agreement between these individual stock-holders and Mr. Pratt, it is so stated in the minutes.

Q. Is it not there as a part of the corporate action?

A. It is a part of the corporate action, based on that agreement, it is an approval of the agreement.

Q. Don't you read it as the terms upon which the Rural Homestead Company were to acquire the land?

A. Yes, I read it as a restriction in the terms upon which the Rural Homestead Co. was to acquire

the land and as operating as an approval on the part of the corporation of this agreement between the named stock-holders here and Mr. Pratt.

Q. Then as I understand you—do I understand you correctly that what you want to have understood, is that your record of that report, and its adoption as having a different meaning from its language, is that it?

Objected to.

A. I regard it as meaning just what is stated here, the conditions under which the purchases of the land could be effected are mainly expressed in the written agreement signed by Frank T. Benner, Attorney for L. Keese, A. S. Barnes, E. Whittlesey, Thomas S. Thatcher, Elizabeth B. Thatcher.

Q. What date?

A. The preamble to the report or rather the introduction to the report from which you quote in regard to the 400 lots under date of July 15th, 1892, pages 18 and 19 of the minutes, one of which provisions is about the 400 lots as quoted by Mr. McGee. I understood this always as an agreement between Mr. Pratt and the principal stock-holders in the company by which they surrendered to him all their claims for any profit from the organization of the cemetery upon this first 400 lots upon consideration of his doing the work for them involved in bringing about the organizatiou and the starting of the enterprise.

Q. Your testimony on this subject is based upon that understanding of the matter?

A. Upon that understanding of the matter and upon repeated instructions from Mr. Pratt to not credit him with anything under this provision for 400 lots as the 60 lots had been substituted for it.

Q. And it is from that source that you get the leave that you have testified to, that this is a substitution?

A. It is from that source and it was upon those

instructions that I made the deeds of the lots to various stock-holders to cover these 60 lots.

Q. And the 8 lots of the 60 for which you made deeds to Mr. Pratt was also upon his instructions, was it?

A. It was. I recognize no difference between my authority to make the deeds of five lots to Mr. Shearer and my authority to make the eight lots to Mr. Pratt upon the same instructions from him.

Q. Turn to the contract which is copied in the minutes in or immediately after the minutes of November 13, 1882, between the Rural Homestead Company and the Arlington Cemetery Association, and read from the sixth paragraph and see whether that is not the authority for the distribution of the 60 lots instead of some private bargain which you have been speaking of.

A. "Witness reads The Rural Homestead Co. reserves to itself the right to distribute gratuitously certain lots not exceeding 60 in number, for the purpose of initiating the cemetery," is that what you referred to?

Q. Yes. Is not the authority for the distribution of the 60 lots that?

A. That is the authority for not accounting to the Cemetery Association for those 60 lots as we would otherwise have to in our accounts; that is recognition by the Homestead Co. of the fact that they assented to setting apart of those 60 lots as agreed upon.

Q. Don't you know that the agreement upon which the stock was issued at that time and those 60 lots distributed was that one lot was to be given as commission to each person who subscribed for a thousand dollars worth of stock, and the balance of the 60 to be distributed to those whose influence might be thought to be beneficial to the cemetery?

A. I don't know of anyone whose influence has been of greater benefit to the cemetery than Mr. Pratt's.

Q. That was the ground upon which they were distributed to him?

A. No, they were allotted to him in this agreement at the time the arrangement was made with Mr. Shearer in behalf of the Boston stock-holders.

Q. The agreement you speak of between Mr. Shearer and Mr. Pratt, is that what you mean?

A. The agreement between Mr. Shearer as representing those whom he should bring in as subscribers and Mr. Pratt, the beneficiary under the clause to which Mr. Shearer objected in regard to the 400 lots.

Q. Your recollection now—you refer now to the time when Mr. Shearer was at Mr. Pratt's office with Mr. Appleton?

A. I do, I refer to a number of different times when it was talked over in the office.

Q. You have testified in your previous testimony that Mr. Shearer came on with his counsel Mr. Appleton, and you have stated an agreement made at that time. Do you mean to say that prior to the subscription by Mr. Shearer and the other Boston people for the stock, that there were other agreements made between Mr. Pratt and Mr. Shearer?

A. I don't know that I understand your question clearly.

Q. Question repeated?

A. I heard a conversation, discussion of the various points in connection with this matter between Mr. Shearer and Mr. Pratt repeatedly in the office, but I could not say as to the dates of the various conversations.

Q. Don't you know that the only time that Mr. Shearer had any conversation with Mr. Pratt about this matter prior to the subscription of the Boston stock-holders was the one time when he and his counsel came to Mr. Pratt's office in New York?

A. I don't know whether that is so or not.

Q. Do you know that it is not?

A. That is answered, is it not,—I don't know

whether it is so or not. I don't know that it is so, and I don't know that it is not so.

Q. On page 132 of the minutes of this testimony you say—I will read from page 24 of the minutes of the Homestead Co. "at the same interview between Mr. Shearer and his counsel Mr. Appleton, and Mr. Pratt, at which I was present at Mr. Pratt's office, the arrangement was made to put at Mr. Pratt's disposal 60 lots," is that the time you are referring to?

A. That is my recollection of the time.

Q. You don't mean to say that there was any other interview than that one at which Mr. Shearer and Mr. Appleton was present, do you?

A. I don't mean to say that Mr. Shearer and Mr. Appleton were present at any other time, if that is what you mean; I never saw them but the once together.

Q. There were two other cemeteries organized in connection with this one, aren't there, North and West Arlington?

A. Yes, sir.

Q. Had the North Arlington been sold?

A. No, the North Arlington has not been sold.

Q. It has never been used as a cemetery?

A. It has not.

Q. The West Arlington has been?

A. The West Arlington was sold.

Q. Is there a mortgage on the North Arlington?

A. There is.

Q. How much?

A. $2,000, held by Peter Van Emburgh.

Q. Is the interest paid up on it?

A. I could not say now to what date it is paid up.

Q. Is there any foreclosure pending on it?

A. No.

Q. Are there any suits now pending against either the Rural Homestead Co. or the Arlington Cemetery Co. except the Babbitt and Crane suits and this suit?

A. None that I am aware of.

Q. Are there any judgments against either one of these companies except the Babbitt and Crane judgments?

A. Not that I am aware of.

Q. Did Mr. Pratt subscribe for any stock at the time the 8 lots were issued to him?

A. I don't know, he was a very large stock-holder, but I don't know as to his subscribing at that time, none of the lots were issued to the stock-holders at the time of their subscription—the deeds were made at our convenience at various times.

Q. You were going to tell me to whom the rest of the 60 lots went, you said 16 went to the Boston stock-holders and 8 to Pratt, did you look at it?

A. I have a memorandum of it here, it is among the papers somewheres.

Q. Just give us that, will you, (referring to your testimony on pages 145 etc.) where you speak of a conversation with Mr. Wildes in Boston, in which you say that you told him that any such action would ruin the value of the Rural Homestead Company investment by litigation, and that he replied that that was just what he proposed—he proposed to control the entire business or ruin it &c., was not this what happened:—Did you not ask him if he was aware that a lawyer in Jersey City had called at the company's office, to which he replied that he did. Did not he tell you that he had placed his affairs in the company with Mr. Shearer in the hands of Mr. McGee, to protect their interests in case the receivership, which was threatened in the company's report of July 9th, 1890, should be pressed?

A. I did not so understand him.

Q. Did not you then ask him if he was aware that any proceedings at law would ruin the company?

A. I am very sure I did not ask him that, but it was an explanation on my part rather, that litigation would ruin the Homestead Co.

Q. Did not he tell you that he did not think it would?

A. I don't think he did, his first reply to me I understood simply as an attempt to intimidate us into yielding to his demand.

Q. And didn't you add, would ruin the stock? And did not he say to you that he did not think it would, but if it would, it would make no difference?

A. I have given in my testimony the conversation as nearly as I can recollect it immediately after I left him—read from a memorandum made by me just as soon as I reached the hotel.

Q. That is your opinion of it, that the version of that conversation given by Mr. Wildes and Mr. Shearer in their testimony in the case is not correct, is it?

A. I understood that they differ very materially in their account of it in their testimony as I heard it.

Q. Did not Mr. Wildes say to you that the stock was not worth anything then and would not be in his judgment under the then management?

A. I don't remember any such a statement, I would not say that such a statement was not made.

Q. Don't you know that what he said about the control was, that he was determined if possible to change the control, not that he was determined to get control?

A. I know that he spoke in the first person threatening to ruin the company if he could not control it.

Q. You are quite certain of that?

A. I am absolutely certain of that, it made such an impression upon me that I could not be mistaken about that.

Q. In your testimony with reference to the book, you refer in a number of places to notes or memoranda on the books, in Mr. Cowdrey's handwriting, where the entry itself was in the handwriting of some other

person. Those notes were all of them explanatory notes, are not they?

A. Generally so.

Q. And they were the explanations given to him by you?

A. In some cases I presume given to him by me and others information which he derived from the vouchers, showing that my memorandum was not complete as to the subject of the expense.

Q. In these check books which you have offered in evidence—this one you have just handed me—have you made on the other side of the deposit stub a memorandum of the receipts?

A. Of all the receipts that were deposited in the bank in some cases where money was paid out the voucher was entered on the cash book.

(*Mr. Voorhis*):

Q. I understand you to say that this check book which you now produce, was not produced before, because it was not included in the call?

A. It was not produced until Mr. McGee asked for it. It was a check book in present use at that time in our business and covered a time subsequent to the time concerning which the question was up in regard to our account.

Q. This book, with the other check books that have been offered, covers the whole period?

A. Yes, sir.

Said book is offered in evidence and marked Exhibit D39.

Adjourned to Tuesday and Wednesday, July 18th and 19th, at 11 A.M.

At which time, July 18th, 1893, the examination was resumed in the presence of the Master and Counsel for the respective parties.

WILLIAM H. MYERS, a witness produced on the part of the defendants having been previously sworn, testified as follows:

*Direct Examination by Mr. Voorhis.*

Q. Have yon any suit against The Rural Homestead Co.?

A. Not that I know of myself.

Q. Have you authorized anyone to bring a suit in your name against The Rural Homestead Co.?

A. No, sir.

Q. Do you know Michael T. Barrett of Newark?

A. Yes, sir.

Q. Have you ever employed him or authorized him to bring any suit in any Court in this State against the Rural Homestead Co., for you?

A. No sir—I was there two or three times—my brother had seen him, but I was there two or three times and asked him if my brother had been down and he said he had not yet—that is all I know about it.

Q. When was that?

A. I could not tell, it was sometime ago.

*Cross Examination by Mr. McGee:*

Q. You know that Mr. Barrett has brought a suit in the names of all of you to get the title of the property back—didn't you know that?

A. No, Mose told me afterward, that he had seen Mr. Barrett and he was going to do something about it.

Q. Did you not make an affidavit or statement about that—not in Barrett's office, but it was in that suit?

A. No, sir.

Q. Don't you remember—how old are you Mr. Myers?

A. In my 77th year; next month I will be 77.

Q. Have you forgotten giving a statement of the facts and of the names of the various people that are

the owners of the property and where they live so that a bill could be drawn against Bowers to set aside the conveyance to him by Moses and the tax title?

A. No, sir, I don't think I have—if I have I have forgotten it.

Q. Don't you remember when you were in my office, the question of bringing the suit was discussed?

A. I might have said that Mose had seen him about it, I know Mose had undertaken to go on with the suit.

Q. You know your name was to be used as one of the parties?

A. Nothing was said about my name—they might have used my name, but I don't remember signing my name—of course I expected we would all be in if there was a suit to go on.

Q. You knew there was a suit to go on?

A. I know Mose told me that he had seen Mr. Barrett, and Mr. Barrett was to go on with it.

Q. You mean you have no knowledge of what has been done?

A. No, sir.

Q. You knew that such a suit was to be begun?

A. I remember that very well, I remember that and I remember calling on Mr. Barrett once or twice or three times to see if Mose had been there to commence it—that is what I remember good enough, but I did not know—I have never paid any attention to it since that time.

*Re-direct Examination.*

Q. Who suggested Mr. Barrett?

A. I think I did, I told you how far Mose spoke about Mr. Barrett, he was pretty well acquainted, and I said, I think he will be a very good man—that is the way it stands, that is, as far as I spoke anything about Mr. Barrett.

HARRY WILLIAMS, a witness produced on the part of the defendants being duly sworn, testified as follows:

*Direct Examination by Mr. Voorhis:*

Q. Have you any suit at law or in Chancery against The Rural Homestead Co.?

A. Not that I know of, sir.

Q. Has your wife any such suit?

A. Not that I know of, sir.

Q. Neither you nor she has ever authorized the bringing of any such suit?

A. I only speak for myself, sir.

Q. And she never has as far as you know?

A. As far as I know.

NO CROSS-EXAMINATION.

PETER MYERS, a witness produced on the part of the defendant being duly sworn according to law, testified as follows:

*Direct Examination by Mr. Voorhis:*

Q. You are a brother of William H. Myers and Moses?

A. Yes, sir.

Q. Have you any suit at law or in Chancery against The Rural Homestead Co.?

A. No sir, I have not myself.

Q. Have you ever authorized anybody to bring a suit in your name or to use your name in such a suit?

A. No, sir.

*Cross Examination by Mr. McGee:*

Q. Did not Moses tell you that such a suit had been brought?

A. He said he was going to, but I don't know whether he had or no.

Q. You agreed for him to use your name?

A. No sir, there was talking about it, but I did not tell him to use my name and I did not go down myself.

Q. You knew that the suit was brought to get back the title to the property?

A. Yes, I supposed that was what it was to be for.

Q. You told him not to use your name?

A. No, sir.

Q. You did think he was going to use your name?

A. I thought he was going to use it—my name.

Q. Would it have been contrary to your will if he had used your name?

A. No, sir—I think he did use it—I said that he signed some papers to Mr. Barrett—interrupted—

*Re-direct Examination.*

Q. That was the first Mose told you about it just now?

A. I think it is, I don't remember his telling me before, I know I went down with him once—he did not sign any paper, the date when I went down with him.

*Re-cross Examination.*

Q. Did you go to Mr. Barrett's office with him?

A. Yes, I went in the office with him—I did not tell nobody to use my name, although if they had went on I was willing to take my part of it.

Q. Did you expect to pay anything if any such suit or any part of the suit for carrying it on?

A. I don't know that, sir.

Q. There is no arrangement about it?

A. No, sir, I have not been asked for any money yet.

Mrs. Jane Routan, a witness produced on the part of the defendants being duly sworn, testified as follows:

*Direct Examination by Mr. Voorhis.*

Q. You are a sister of William H. Myers and of Peter?

A. Yes, I am.

Q. Have you any law suit against the Homestead Co.?

A. No, sir.

Q. Have you ever authorized anybody to use your name in such a suit?

A. No, sir.

*Cross Examination by Mr. McGee.*

Q. You know Moses had brought one in the name of the family—did not Moses tell you that he had brought suit to get back the property?

A. He did not say nothing to me.

Q. Nor William?

A. No, sir, I have not seen William.

Q. They went along without saying anything to you?

A. I did not know nothing about it until I got the subpoena—that was Saturday.

ELIZA WILLIAMS, a witness produced on the part of the defendants being duly sworn, testified as follows:

*Direct Examination by Mr. Voorhis:*

Q. You are a sister of William H. Myers?

A. Yes, sir.

Q. Have you any suit in Chancery against The Rural Homestead Co.?

A. No.

Q. Did you ever authorize anybody to use your name in any such suit?

A. No, sir.

*Cross Examination by Mr. McGee:*

Q. You are also a sister of Moses Myers?

A. Yes, sir.

Q. Did you know that a suit had been brought by Moses through Mr. Barrett to get the title of the property back?

A. I heard so.

Q. Did he use the names of the family?

A. Yes, sir.

*Re-direct Examination.*

Q. When did you hear that Moses had brought suit?

A. Sometime ago.

Q. Did you know that he was using your name in it?

A. No, sir, I have not heard anything about that.

Q. And you never authorized him to use your name?

A. No, sir.

*Re-cross Examination.*

Q. You did not object to it?

A. No, sir.

CATHARINE MYERS, a witness produced on the part of the defendant having been previously sworn, testified as follows:

*Direct Examination by Mr. Voorhis*:

Q. Have you any law suit against The Rural Homestead Co., or any suit in Chancery?

A. Not that I know of.

Q. Did you ever authorize anybody to use your name in such a suit?

A. No, sir.

Q. You are the wife of Moses Myers?

A. Yes, sir.

*Cross Examination by Mr. McGee*:

Q. Don't you know that Mr. Barrett has brought a suit to get back the title to the property?

A. Oh, yes, I know that Mr. Barrett has brought a suit to bring back the property.

Q. You authorized that?

A. Yes, I authorized that, I did not understand what you said.

Q. You knew you were complainant in the suit, didn't you?

A. Yes, sir.

*Re-direct Examination.*

Q. Did you ever see Mr. Barrett about it?
A. No, sir, my husband has, sir.
Q. Do you know who is to pay the expenses?

Objected to.

A. I cannot tell you, sir.

MOSES C. MYERS, a witness produced on the part of the defendant having been previously sworn, testified as follows:

*Direct Examination by Mr. Voorhis*:

Q. Have you a suit against The Rural Homestead Co.?
A. Yes, sir.
Q. In what Court?
A. I suppose the Supreme Court, I don't know much about Courts myself, I trust to Mr. Barrett.
Q. The Supreme Court of New Jersey?
A. I don't know—Trenton, I think.
Q. When did you begin it?
A. I signed papers about two weeks ago, I think a little over.
Q. How long?
A. About a couple of weeks, it might be over that.
Q. Where did you sign them?
A. At Mr. Barrett's office.
Q. Michael T. Barrett?
A. Yes, sir.
Q. Was that the first time that you had signed papers there in the suit?
A. In Barrett's office?
Q. Yes, sir.
A. Yes, sir.
Q. Two or three weeks ago?
A. About that time, yes, sir.

Q. Was that the first that you knew that he had brought such a suit for you?

A. Yes, I had spoken to him about it before, but it was the first I signed any papers to that effect.

Q. When did you see him about it the first time?

A. I saw him a long while ago, the biggest part of the year, I guess I talked the matter to him.

Q. Was it before or after you went down to see Mr. McGee at his office about the suit with the Cemetery Co.?

A. The first time I went to Mr. Barrett, do you mean?

Q. Yes.

A. It was before.

Q. Which was before?

A. When I went to see Mr. Barrett.

Q. Before you went down to see Mr. McGee?

A. Yes, sir.

Q. Have you any arrangement or understanding with anybody as to who is to pay the expense of that suit?

Objected to as irrelevant.

Mr. McGee: You need not answer that unless you want to.

Witness: All right, sir.

Mr. Voorhis: I insist upon an answer.

Mr. McGee: My objection is that it is irrelevant to the issues of the case.

The Master: The question does not seem to be relevent.

Objection sustained. Appeal.

Adjourned to Tuesday, July 25th, 1893, at 11 A.M.

Mr. McGee states that there has been set apart these two days for this evidence and that this adjournment is against his protest.

The proceedings in the Meyers suit were not properly put in evidence their admission led to this question The masters ruling upon this question was proper he is sustained

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The examination was resumed Tuesday, July 25th, at eleven A.M., in the presence of George W. Cassedy, the Master, and Mr. McGee and Mr. Voorhis, counsel for the complainant and defendant respectively.

Mr. Voorhis: The Chancellor having sustained the Master's ruling, I have no further question to ask this witness Moses C. Myers, and he may be cross-examined.

*Cross Examination by Mr. McGee*:

Q. How many times, Mr. Myers, have you been at Mr. Barrett's office about this case?

A. I have been there four or five times.

Q. And when you say that the suit was begun two or three weeks ago, you mean that was the first time you heard or signed any papers?

A. Yes.

Q. You knew papers had been prepared before that, didn't you?

A. Yes.

Mr. Voorhis to Mr. McGee:
Will you produce those letters?
Yes.

Mr. Voorhis: Under the Chancellor's ruling yesterday, I now offer in evidence a letter produced by the complainants, dated July 9th, 1890, from Julius Pratt to Wildes.

Letter objected to by Mr. McGee a irrelevant to the issues in the cause, and illegal, and as against all the complainants except Mr. Wildes, the person to whom it is written, it is not evidence in any way.

The letter is marked Exhibit D15.

Mr. Voorhis: I next offer in evidence the letter produced by the complainants,

dated at the top in typewriting August 20, 1890, and at the bottom in manuscript August 19, 1890, Pratt to Shearer and others.

Objected to as irrelevant and illegal.

Letter is marked Exhibit D16.

Mr. Voorhis: I next offer in evidence a letter of Julius H. Pratt to Daniel F. Shearer, Waldo S. Cowdrey, and Francis J. Parker, dated August 23, 1890, now produced here by the complainants.

Objected to as irrelevant and illegal, and also because it has no evidential force against anybody but Mr. Shearer, Mr. Cowdrey and Mr. Parker.

Letter is marked Exhibit D17.

The three foregoing exhibits are the same which were heretofore marked by the Master respectively D15, D16 and D17 for identification.

Mr. Voorhis: On July 12th, 1893, I served a notice on the Solicitors of the complainants, as appears by this notice and acknowledgment of service thereon to produce the original agreement in writing, dated November 29, 1882, between Julius H. Pratt of the first part and Daniel L. Shearer, Samuel B. Rindge, Frank W. Wildes, J. A. Cortright, F. J. Olys and W. E. Cowdrey of the second part, purporting to waive and surrender as to them, all his right in or to the proceeds of sale of 340 of the 400 lots mentioned in the records of The Rural Homestead Company. I now call

upon the Solicitors of the complainants to produce that written agreement.

The notice referred to in my demand and the acknowledgment of service thereof I now produce and offer in evidence, and the notice is marked Exhibit D40.

Counsel for the complainants, in reply to this demand, says: That Messrs. Shearer, Rindge, Wildes, Olys and Cowdrey all say that they never received, or saw, or heard of such a paper; Mr. Cortright is dead. They say that they never entered into such a contract, nor heard of its existence, nor that any such contract was alleged to exist until this notice and alleged copy were presented to them by their counsel, and that the other complainants not mentioned therein whom Counsel has been able to see, or communicate with, say the same thing. And Counsel produces a contract bearing date on that day, to wit, the 29th day of November, 1882, and signed by Julius H. Pratt, Pres't of Rural Homestead Company, which he (Counsel) received from Mr. Shearer by the hands of Mr. Wildes, which those gentlemen say is the only contract entered into on that day, of which they have any knowledge, in relation to the subject matter of the notice. This paper is at the disposal of Counsel for the defendant, if he sees fit to offer it in evidence.

Mr. Voorhis: This paper produced has no relation whatever, that I can see, to

the contract called for, and I hand it back to the Solicitor of the complainants.

Counsel for the complainants asks that the Master mark this paper in some way so that its identity may be preserved.

The paper referred to is marked at the request of Mr. McGee, Exhibit P15 for identification.

Mr. Voorhis: I declare the defendants' testimony closed.

JOHN H. APPLETON, one of said witnesses appearing before me and being by me duly sworn deposes and says that the answers he shall give to the interrogatories put to him shall be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on the part of complainants, deposes and says as follows:

Q. 1. Mr. Appleton, what is your first name?

A. John; John Henry Appleton.

Q. 2. Mr. Appleton, where do you live?

A. In Cambridge, Mass.

Q. 3. And your business?

A. I am an attorney at law.

Q. 4. Do you know Mr. Daniel L. Shearer?

A. I do.

Q. 5. Are you related to or connected with him in any way?

A. I am related by marriage; I married his niece.

Q. 6. Do you remember going on with him some years ago to New York City with a view of examining somewhat with reference to the affairs of the Rural Homestead Company?

A. I do, in September, 1882.

Q. 7. In what capacity did you go?

A. I went as a friend of his and possibly as an investor.

Q. 8. Did you go in any representative capacity, as counsel or attorney?

A. Not at all; that happened to be my occupation; I was under no retainer,—under no instructions to make any exhaustive examination of the records or the organization, but I went to hear Mr. Julius H. Pratt who was interested in the Rural Homestead Association, set forth plans of investment in the stock of that corporation and to consider with Mr. Shearer how feasable such investment was.

Q. 9. How did Mr. Shearer come to go?

A. I saw what purported to be a letter from Mr. Julius H. Pratt inviting Mr. Shearer to come on.

Q. 10. Mr. Pratt was at that time soliciting Mr. Shearer to invest in the stock of this company?

A. He was.

Q. 11. Now will you tell us where you saw Mr. Pratt, where your interview was had, and briefly the places in which you saw him during your visit?

A. It was Sept. 14, 1882, in the forenoon, I was with Mr. Shearer in New York and we went to Mr. Pratt's office, I should say up two flights, at 233 Broadway, New York; we either found Mr. Pratt there alone, or he came in very soon after we arrived there and Mr. Julius H. Pratt and Mr. Daniel L. Shearer and myself had an interview there of about an hour's duration, and Mr. Pratt there talked over his ideas of investment in this Rural Homestead Co. and stated that the company had about 35 acres of land free from incumbrances of every kind and that for that they had given $57,500 worth of the stock at par of the Rural Homestead Co. and that they needed about $25,000 to start the cemetery and prepare it in a proper way in laying it out and perhaps a chapel and matters of that sort; that Knevals & Ransom there in New York,—attorneys in New York had talked of disposing of that stock, but that he, Pratt, had the opportunity in their absence of disposing of it among his friends if he could, and from that $25,000 he wanted Mr. Shearer to take

what he could and dispose of what he could among his friends; he said there would be a commission of 20 per cent. in stock for Mr. Shearer for what stock he sold. Mr. Shearer asked him where that was to come from, and he said that an arrangement was made that it was to come out of the $57,500 of stock which was held by the parties who furnished the land and not out of the treasury stock; he also said,—

Q. 12. Did he give you the names of them?

A. Prof. Thatcher, A. S. Barnes and one Reddish, and I should say two or three others.

Q. 13. Gen. Whittlesey?

A. Yes, Gen. Wittlesey.

Q. 14. Pardon me, sir, proceed.

A. He also said that Knevals & Ransom held some of that $57,500 stock; he also said that there was about 50 or 60 lots that were to be disposed of in this way; one lot was to be given to each subscriber for $1,000 of stock which he was soliciting Mr. Shearer to dispose of, and that other lots one at a time were to be given to influential people who lived in the vicinity of the cemetery, so that their holding of those lots might be an advantageous advertisement for the sale of those lots to other persons.

Q. 15. Was there a clause that the whole number of those lots should not exceed 60?

A. He said not more than 50 or 60 lots would be given away, he said to Mr. Shearer, and I gathered from their talk that there might not be as many as that.

Q. 16. Was anything said about any of this stock commission or bonus whichever it may be called, coming out of the treasury stock?

A. None whatever; that was distinctly discussed between myself, Mr. Shearer and Mr. Pratt, and he said that was to come out of the people who were already in the Homestead Co. and not out of the treasury stock.

Q. 17. Do you remember that Mr. Shearer made some inquiry as to the meaning of "treasury stock"?

A. He did, and Mr. Pratt and I explained to him what treasury stock was.

Q. 18. When you left, the understanding as to the terms on which Mr. Shearer should take the stock were as you have now narrated them?

A. Yes, sir; that there was no incumbrance whatever on the land; that the commission was to be paid out of the $57,500 of stock held by the people whom he designated, and that one lot for each $1,000 subscription which Mr. Shearer should get should be given and a few other lots should be given to influential people in the vicinity of the cemetery, and that the treasury stock was intact; that the $25,000 would furnish all the ready capital necessary, and that the treasury stock of $37,500 would remain in the treasury and there would be no necessity of issuing that.

Q. 19 When you speak of some of the lots being given to people in the vicinity, do you mean stock-holders or citizens?

A. Influential citizens in the vicinity.

Q. 20. Not stock-holders?

A. Not stock-holders.

Q. 21. You saw Mr. Pratt, you say, first at his office in New York; how long were you in the vicinity of New York at that visit?

A. We were in his office I think about an hour; he invited us to go to his home at Montclair and we were there to tea and over night, and the next morning he drove us about Montclair and Orange and to the station and we drove to the land of the Homestead Co. and we were there about an hour, I think, Mr. Pratt, Mr. Shearer and myself.

Q. 22. Did you see Mr. Torrey, Henry F. Torrey, who is secretary of the company?

A. I have never seen Mr. Henry F. Torrey or anybody by the name of Torrey in my interviews with Mr. Shearer in Mr. Pratt's office in September or any other time.

New Jersey State Library

Q. 23. Was Mr. Torrey's name mentioned during that interview; were you told where he was?

A. Mr. Pratt said that Mr. Torrey was either in Pennsylvania or Virginia; that he was out of the city at that time.

Q. 24. Was that the only time you were there?

A. That is the only time I was there.

Q. 25. Was your attention called during any of that visit to the fact that there was an antecedent agreement by which Mr. Pratt was to receive the proceeds of the sale of 400 lots of square feet each?

A. Nothing whatever.

Q. 26. Did you see anything of that in the minute book or anything that was brought to your attention?

A. I saw no minute book; no mention was made of any 400 lots, nothing more than 50 or 60 lots as I have testified to.

Q. 27. Did you ever hear of any other distribution of lots or the giving away of lots or anything in connection of that kind until this suit has been in progress?

A. I never have; I might say, if proper—

Q. 28. Certainly.

A. That in the course of conversation Mr. Pratt said that his only interest was the amount of stock that his wife held and that he would probably receive a small compensation or salary for looking after the cemetery.

Q. 29. I show you a notice issued in this case, dated July 11 1893, signed by the counsel for the defendant and addressed to our firm, attached to which is a copy of an alleged agreement bearing date Nov. 29, 1882, and signed by Julius H. Pratt; will you look at that copy and tell me if you ever saw the agreement of which that purports to be a copy, or in any way heard of it until this copy was shown you through our firm or the Boston parties recently?

A. I have never seen the agreement of which this

is a copy or any agreement or any matter like the substance of this?

Q. 30. Nothing like that?

A. Nothing to this effect.

Counsel states that the paper just shown to the witness and to which he referred is a copy of "Ex. P15 for identification" and that is a copy served upon the counsel for complainants. The notice and copy are offered in evidence and marked "Ex. AA."

Q. 31. Mr. Torrey in his testimony in this case on page 182 says that he spoke of the complaint that he had not made copies of the by-laws for Mr. Shearer and other Boston stock-holders—and says that the request was for a copy of the by-laws which he had already copied three times for him or his counsel; did he ever make a copy of them for you?

A. He never did.

Q. 32. Either of the Rural Homestead Co. or the Arlington Cemetery Association?

A. No, sir, he never made a copy of any of them either for me or at my request.

Mr. McGee: That is all, Mr. Appleton.

Edgar F. Champlin, one of said witnesses appearing before me and being by me duly sworn, deposes and says that the answers he shall give to the interrogatoris put to him shall be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on the part of complainants, deposes and says as follows:

Q. 1. Mr. Champlin, where do you live?

A. Cambridge, Mass.

Q. 2. And your occupation?

A. Attorney-at-law.

Q. 3. Do you know the parties complainant in this suit, Mr. Wildes, Frank W. Wildes and others?

A. I believe I know them all; I do most of them if not all.

Q. 4. Frank W. Wildes, Francis E. Wildes, his wife, Daniel L. Shearer, Katie E. Champlin, Geo. W. Colburn, Waldo E. Cowdrey, Thos. J. Olys and Frederick H. Rindge?

A. Yes, sir, I know them all.

Q. 5. Katie E. Champlin is what relation to you?

A. My wife.

Q. 6. Do you remember some years ago going on to Jersey City in connection or in relation to the affairs of the Rural Homestead Co.?

A. I remember going to New York in November 1882 with D. L. Shearer.

Q. 7. For what purpose?

A. Primarily to see that the Rural Homestead Co. was properly organized.

Q. 8. You went how many times altogether?

A. I am unable to state with certainty but I was there in November 1882; again about January 1885 and I think November 1885.

Q. 9. Have you a recollection of any other time?

A. I have not.

Q. 10. You were here just now and heard the testimony of Mr. Appleton?

A. I was.

Q. 11. Have you seen this paper which I showed to him and which has been marked "AA" in this case?

A. I have.

Q. 12. And an alleged copy of an agreement annexed to it?

A. I have, and examined it carefully.

Q. 13. Did you ever see any paper,—the original paper of which that is a copy?

A. I have absolutely no recollection of seeing any such paper.

Q. 14. Do you remember the subject matter there of ever having been brought to your notice?

A. I do not.

Q. 15. At the time you were in New York, where were you; in whose office?

A. In the office of Mr. Julius H. Pratt on Broadway; I also went to his house for a short time and we drove to the cemetery grounds.

Q. 16. That is at Arlington?

A. At Arlington.

Q. 17. And who was with you?

A. Mr. D. L. Shearer, Mr. Pratt and myself were together.

Q. 18. Was Mr. Shearer the only one of the Boston people?

A. The only one.

Q. 19. At any of the times you were in New York during that visit?

A. Yes, sir, Mr. Shearer was the only one of the Boston people; Mr. Shearer was the only one of the Boston people who was with me at the time I saw Mr. Pratt at his office and at the time I went to the cemetery at Arlington.

Q. 20. That covers the whole of the interview of November 1882?

A. Yes, sir, the whole of it.

Q. 21. Did you see during that visit at any time Mr. Henry F. Torrey?

A. I did not, but I heard of him from Mr. Pratt who in unfolding his schemes somewhat to me spoke of the ability of—his son-in-law, I think,—Mr. Torrey, speaking of him as an engineer and being adapted to the work of laying out the cemetery grounds; he told me Mr. Torrey was away, at that time, and I think he said he was in Virginia, but the place I am not certain about.

Q. 22. Was he present at any part of any of the interviews of that visit?

A. He was not.

Q. 23. You have just stated you have no recollection of ever having seen any such paper as the one I just now showed, "Ex. AA." in this examination and the

"Ex. P-15" of the defendants. During that interview was there a paper drawn and signed by Mr. Pratt?

A. There was, at my suggestion.

Q. 24. Will you look at the paper I now hand you and tell me whether that is it?

A. That is the paper which Mr. Pratt wrote and signed and executed in the presence of Mr. D. L. Shearer and myself at his office in New York.

Q. 25. Have you any recollection of his signing or executing any other paper at that interview?

A. I have not.

Q. 26. Or have you ever seen any other paper on that subject; was there any other paper ever signed so far as you recollect?

A. No.

(Counsel reads paper.)

"233 Broadway,
Opposite Post Office.
New York, Nov. 29., 1882.

D. L. Shearer, Esq.

In consideration of your procuring subscriptions to the stock of The Rural Homestead Company in conformity with circular recently issued,—to the amount of fifteen thousand dollars, I hereby agree to deliver to you as a commission certificates of said stock to the amount of 20 per cent. on the amount of subscriptions so obtaintd, not exceeding, however, twenty thousand dollars of subscriptions; said delivery to be made as said subscriptions shall be paid.

Julius H. Pratt,
Pres't of Rural Homestead Co."

Mr. McGee: The paper is offered in evidence and marked "Ex. BB."

Q. 27. Now will you tell us, Mr. Champlin, how

this paper came to be signed; what was said that led up to it?

A. I suggested to Mr. Pratt that Mr. Shearer ought to have something in writing to show his rights to a commission on the purchase or sale by him of this stock; Mr. Pratt readily acquiesced and sat at his desk and wrote that paper, and when he had written it read it to me and asked me if I thought it would do.

Q. 28. At that time were you the husband of Mr. Shearer's niece?

A. I was not, but Miss Payne, now Mrs. Champlin, and I were at that time engaged to be married.

Q. 29. Was there any relation of attorney and counsel between Mr. Shearer and yourself in this matter?

A. Yes, sir, he had me go on not only as a friend but also as counsel and paid me for going.

Q. 30. And what was the thing you were employed to do?

A. To examine the legality of the organization of the corporation.

Q. 31. Did you undertake to make any other investigation except on that subject?

A. I did not, except what came along incidentally.

Q. 32. With reference to the subject matter of this paper "Ex. BB" how did the question of Mr. Shearer's having a commission—how did that come up, I mean incidentally?

A. I learned that Mr. Shearer was to have a commission of 20 per cent. in stock and advised him to have some agreement in writing concerning the matter, and with his approval asked Mr. Pratt to execute such a paper and in response to that request this one was executed.

Q. 33. At this time did you know what the details of the proposed bargain was between Mr. Shearer and Mr. Pratt?

A. I knew no more than this, that he thought of

buying stock and expected to get 20 per cent. on all that he took or sold.

Q. 34. A commission in cash or stock?

A. In stock.

Q. 35. At that time was there anything said between them as to the source from which this 20 per cent. stock commission was to come that you recall?

A. That matter was never discussed between Mr. Pratt and Mr. Shearer in my presence.

Q. 36. At the subsequent visits there,—you say you were there twice afterward, once or twice afterward?

A. Yes.

Q. 37. At either of those times did you hear or have brought to your attention anything with reference to an allowance of 400 lots or any number of lots to Mr. Pratt?

A. I did not, and I can recall no reference or suggestion to or about any 400 lots until after this pending proceeding was begun.

Q. 38. This present law suit?

A. Yes.

Q. 39. Mr. Torrey in his testimony says that at their various visits to the Arlington cemetery he pointed out to each of the Boston stock-holders the Myers land,—that is the land in question in this suit—as a future purchase, or words to that effect; you are not and never have been a stock-holder, have you?

A. No.

Q. 40. Did he point out that land to you?

A. Mr. Torrey never pointed out any land to me.

Q. 41. Did you see Mr. Torrey at the subsequent interview or interviews?

A. Yes, sir, I think I saw Mr. Torrey on two occasions in the year 1885, but only at the office of the company in Jersey City.

Q. 42. Did you hear the question I asked Mr. Appleton this morning with reference or as to whether Mr. Torrey ever furnished him any copies of the by-laws?

A. I did.

Q. 43. Did he ever furnish any copy of the by-laws of either company to you?

A. I can't recall any which he furnished.

Q. 44. Did you ever ask him to furnish you with a copy of the by-laws of either company?

A. It is possible I have, because I have asked Mr. Torrey for a good deal of information which I was never able to obtain, he assigning as an excuse that he was exceedingly busy in superintending the details of the cemetery itself, that his time was taken up upon the grounds and that he felt that it was more advantageous to put his time in there than in the books and that consequently things were not written up.

Q. 45. During any of the interviews with Mr. Pratt did the subject of the distribution of 60 lots come up?

A. Yes.

Q. 46. Do you remember what was said about that and by whom?

A. Mr. Pratt spoke about some 50 or 60 lots which were to be available for distribution; that one lot was to go to each subscriber of $1,000, or rather one lot was to be given with each $1,000 which Mr. Shearer succeeded in placing and that some few lots were to be given to influential people residing in the vicinity of the cemetery, as it was thought it would help the sales of other lots to have prominent people owners of lots in the cemetery.

Mr. McGee: That is all, sir.

THOMAS J. OLYS, one of said witnesses appearing before me and being by me duly sworn deposes and says that the answers he shall give to the interrogatories put to him shall be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on the part of complainants, deposes and says as follows:

Q. 1. You are one of the stockholders in the Rural Homestead Company?

A. Yes, sir.

Q. 2. You were sworn before in this case?

A. Yes, sir.

Q. 3. I show you a notice served on our firm in this case to which is annexed what purports to be a copy of an agreement dated Nov. 29, 1882, between Julius H. Pratt of New York City, of the first part, and Daniel L. Shearer, Samuel B. Rindge, Frank W. Wildes, J. A. Cortright, T. J. Olys and W. E. Cowdrey, all doing business in Boston, and which is signed with the name of Julius H. Pratt, which copy has been this morning offered in evidence and marked "Ex. AA." and ask you if you ever saw an agreement or the agreement of which that purports to be a copy?

A. No, I don't remember that I ever have.

Q. 4. Or had your attention called to any such paper until here within a few weeks.

A. Never.

Q. 5. Did you ever have your attention called to the subject matter of that paper until within a few weeks?

A. No, I never have.

Q. 6. Were you ever aware until within a few weeks that there was any agreement existing by which Mr. Pratt was to have the proceeds of the sales of the first 400 lots in that cemetery?

A. That is the first intimation I have ever had of it, just this minute.

Q. 7. You didn't hear Mr. Wildes' examination at the last meeting?

A. No, sir, I didn't hear his testimony.

Q. 8. Have you ever been at the Arlington Cemetery?

A. Yes, sir.

Q. 9. With whom?

A. I have been with Mr. Torrey, Mr. Shearer and Mr. Pratt.

Q. 10. Did Mr. Torrey at any time you was there with him call your attention to the Myers property, the property now in question, as a future purchase?

A. No, not that I have any recollection of.

Q. 11. Did he call your attention to it at all in any way?

A. Not that I remember; the subject of the Myers property—I never heard the name mentioned in any of my visits to the cemetery.

Mr. McGee: That is all.

DANIEL L. SHEARER, one of said witnesses appearing before me and being by me duly sworn deposes and says that the answers he shall give to the interrogatories put to him shall be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on the part of complainants, deposes and says as follows:

Q. 1. Mr. Shearer, you are one of the stockholders of this company?

A. Yes.

Q. 2. You have heard the depositions taken this morning?

A. Yes.

Q. 3. You are the Mr. Shearer there referred to?

A. Yes.

Q. 4. Do you remember visiting New York in 1882 to see Mr. Pratt with reference to the proposed purchase of stock in the Rural Homestead Company?

A. Yes, sir.

Q. 5. Who went with you?

A. Mr. Appleton.

Q. 6. Where was that interview, where did you see Mr. Pratt at that time?

A. At 233 Broadway, New York.

Q. 7. And any other place?

A. At that time?

Q. 8. Yes.

A. We went over to his house; you mean Mr. Pratt?

Q. 9. Yes; to his house in Montclair in New Jersey?

A. Yes, sir.

Q. 10. And spent the night?

A. Yes.

Q. 11. Without questions just state about driving about the next morning?

A. We went to the cemetery, he took us to the grounds of the cemetery, that is the intended cemetery, showed us the land and we went, I think, to Orange and then came back through Newark, and whether we went to the cemetery before or after I don't recollect, but my impression is that we took the cars that afternoon.

Q. 12. Did you see Mr. Henry F. Torrey during that visit?

A. He was not with us.

Q. 13. Was he at any of the interviews?

A. No.

Q. 14. Did Mr. Pratt tell you where he was?

A. I believe it was at that time he told me he was in Pennsylvania.

Q. 15. You have been present this morning?

A. Yes, sir.

Q. 16. Have you seen this notice which I showed Mr. Appleton and Mr. Champlin and Mr. Olys and which is marked "AA." and has a copy of an alleged agreement annexed to it (Handing paper)?

A. Yes.

Q. 17. Did you ever see an agreement such as that purports to be a copy of?

A. I have never to my knowledge ever seen anything of the kind; I hunted very thoroughly over my papers and never had anything to my knowledge of the kind.

Q. 18. I sent you this a few weeks ago?

A. Yes, sir.

Q. 19. And it was after that you made the search you speak of?

A. Yes sir, I made the search and sent one of the same date as that one.

Q. 20. To me?

A. Yes sir.

Q. 21 (Showing witness "Ex. BB.") Is this the one you mean?

A. Yes sir; Mr. Champlin I think enclosed it; I was there and gave it to Mr. Champlin and he enclosed it to you I think.

Q. 22. At any rate "BB." is the paper you mean?

A. Yes, sir.

Q. 23. Did you receive from Mr. Pratt on or about Nov. 29, 1882, any other paper than this paper "BB."?

A. Not that I know of.

Q. 24. What was the first that this matter of the 400 lots was brought to your attention?

A. I think through you here in the spring somewhere; April or along there.

Q. 25. Of this spring?

A. Yes, sir.

Q. 26. Since this suit?

A. Since this suit, yes sir.

Q. 27. You were in New York or New Jersey afterward with Mr. Champlin with reference to this matter?

A. Yes.

Q. 28. Was the 400 lot matter spoken of at that time?

A. I never had any conversation with them about any 400 lots.

Q. 29. Now with reference to the giving of some stock to you as a commission and the distribution of some lots in connection with the sale of stock, will you tell us what Mr. Pratt's proposition to you was?

A. He said that to get one we subscribed to this stock of $25,000; that is, one lot went with every $1,000 of stock subscription; then he was to give 20 per cent. in stock for the subscriptions that I made or procured from my friends.

Q. 30. And was that all there was about the distribution of stock or lots?

A. That would take, according to that $25,000, 25 lots, and as I remember it, it was 50 or 60 lots,—not over 60 lots all together,—so that one lot,—they wanted to give one lot to men of influence there to assist them in selling there, to influence their good will.

Q. 31. Co-operation?

A. Co-operation.

Q. 32. Was anything said with reference to the source from which the stock commission was to come?

A. The owners at that time, he said,—he gave me the names,—of $57,500—I asked him where that commission of stock was to come from; he said it came out of the $57,500 as he had an arrangement with these parties.

Q. 33. They were men who had originally taken stock at the purchase price of the land?

A. Yes, sir, $57,500.

Q. 34. How did he come to make this statement?

A. I didn't want to take any commission from any of my friends if it was going to come out of the treasury stock because they would not get the amount that they would if it came out of the $57,500 income.

Q. 35. You understood that as a gratuity from the original owners?

A. From the original owners.

Q. 36. Did you ever see the minute books of the Rural Homestead Co.?

A. No.

Q. 37. Mr. Shearer, Mr. Torrey in his testimony testifies that you and your counsel, Mr. Appleton, were in Mr. Pratt's office looking into this 400 lot matter in September, 1882; is that true?

A. No.

Q. 38. Were you ever looking into that matter with Mr. Appleton, or in any wise?

A. No.

Q. 39. He also says referring to the 400 lots on page 226, "I heard a conversation and discussion of various points in connection with this matter between Mr. Shearer and Mr. Pratt, repeatedly in the office, but I could not say as to the dates of the various conversations." Did you ever have a conversation with Mr. Pratt on the subject of the 400 lots?

A. I did not.

Q. 40. On page 111 Mr. Torrey, testifying with reference to the Myers property, which is this property in question in this suit,—I asked "Was it ever pointed out by you or in your presence to the Boston stock-holders as a property desirable to be acquired by the Rural Homestead Co?" And he answered, "It was so pointed out by me to all the Boston stock-holders who have been in the cemetery with me looking over the ground." Did he ever point it out to you?

A. I never had any conversation with him to my recollection on the subject.

Q. 41. He further says on page 111, "I remember particularly Mr. Shearer speaking of a tall tulip poplar tree in the Myers woods near the corner of the cemetery which he thought it would be important to watch and arrange not to have the owners of the property cut before we could get hold of the land for the cemetery." Did anything of that kind occur?

A. He may have showed me a tree there with flowers on it, but I had no idea that they had any contemplation of buying it.

Q. 42. Nothing was said about that?

A. No sir, nothing of the kind.

Q. 43. Mr. Torrey says, on page 182 of his testimony being asked with reference to a request from the Boston stock-holders for copies of the by-laws and matters of that kind, that he remembered one case of that kind in which Mr. Shearer complained about a copy of the by-laws which he had already copied three

times for you or your counsel; did anything of that kind occur?

A. Not that I remember, nothing; I never had any except I got it at that time in 1890.

Q. 44. At the time you were elected a director?

A. Director.

Q. 45. And when you were there?

A. Yes, sir; I had been trying previous to that to get it but had always been put off.

Q. 46. Is that the only copy you ever had?

A. That is all that I remember.

Mr. McGee: That is all.

FRANK W. WILDES, one of said witnesses appearing before me and being by me duly sworn, deposes and says that the answers that he shall give to the interrogatories put to him shall be the truth, the whole truth and nothing put the truth, and being examined by Flavel McGee, Esq., on the part of the complainants, deposes and says as follows:

Q. 1. Mr. Wildes, you are one of the complainants in this case?

A. I am.

Q. 2. I show you a notice to which is annexed a copy of an alleged agreement and which has been shown to the other witnesses to-day and is marked "AA." Did you ever see or hear of an agreement of which that purports to be a copy until a copy was sent you after service upon us a few weeks ago?

A. I never did.

Q. 3. I show you also "Ex. BB." which is an agreement bearing the same date, viz.: Nov. 29, 1882, and signed by Mr. Pratt; did you know of the existence of that paper or an agreement to that effect?

A. I knew there was an agreement to that effect.

Q. 4. Prior to the commencement of this suit did you ever know that there was any agreement by which Mr. Pratt was to receive the proceeds of the sale of the first 400 lots in the cemetery?

A. I never did.
Q. 5. Mr. Wildes, where do you live?
A. In Boston, Mass.
Q. 6. And where does Mr. Shearer live?
A. Cambridge, Mass.
Q. 7. And Mr. Olys?
A. Boston, Mass.

Mr. McGee: I think that is all.

(Examination of witnesses adjourned until 3:30 P. M.)

3.30 P. M.

WALDO E. COWDREY, one of said witnesses appearing before me and being by me duly sworn deposes and says that the answers he shall give to the interrogatories put to him shall be the truth, the whole truth and nothing but the truth, and being examined by Flavel McGee, Esq., on the part of complainants, deposes and says as follows:

Q. 1. Where do you live?
A. In Wakefield, Mass.
Q. 2. That is near Boston?
A. It is 10 miles North of Boston.
Q. 3. In his testimony on page 102 Mr. Torrey says speaking of the ledger for the general accounts of the Arlington Cemetery Association from Nov. 23, 1883 to Dec. 31, 1886, "That is all in Mr. Cowdrey's handwriting, it was posted by him at various times from his cash book; a large part of the time while he was at work upon it I was busy out at the cemetery and he worked on that book in the office with our cash book and our cheque books and our bank books to guide him and post him on these accounts." Did you make or have an opportunity to make any investigation of the sources of these items which were posted by you in that book?
A. I did not.
Q. 4. From whom did you get your information?

A. I got it from Mr. Torrey.

Q. 5. What is the fact with reference to your working from vouchers and books in his absence?

A. It is a fact that I didn't work from vouchers and used no vouchers during his absence, used no cheque books or bank books.

Q. 6. When he went away what was the result as to you?

A. The result largely was that my work was suspended; that is the reason that it progressed so slowly that I could not work except in his presence; it was possible for me to work on the cash book in the way of posting from it into this ledger, but that is all it was possible for me to do.

Q. 7. Were you able from his vouchers to make anything whatever of the accounts in his absence?

A. I didn't have any of the vouchers except when he was there and then he had them.

Q. 8 Then do I understand you that the fact is that he didn't leave you possession of these vouchers at all?

A. That is the fact.

Q. 9. On this large book there are a number of memoranda in your handwriting explaining the meaning of items; from whom did you get the information from which you made the memoranda?

A. From Mr. Torrey.

Q. 10. Was there any means, any papers or vouchers shown you by which you could make these memoranda?

A. I am not aware that there was; they probably were made by me after questioning Mr. Torrey about the matter.

Q. 11. Do they represent then any more than his statement of the meaning of the items?

A. No, they do not.

Q. 12. On page 124 in answer to this question "Now during the periods within which these entries were made in the hand-writing of Mr. Cowdrey; to-wit,

up to and in January 1887 and prior thereto did or not Mr. Cowdrey in connection with this book inspect and examine the vouchers pertaining to the accounts prior to January 1887" to which he answered, "Yes, he and Mr. Dummer went over all the vouchers up to January 1886." Is that true?

A. I only examined the bills and vouchers so far as were covered by the length of time that I signed in the book as Auditor as having done so.

Q. 13. And not after that?

A. And not after that.

Q. 14. And the examination of those vouchers, did it involve any investigation of the sources of the expenditures, or did you simply take the figures in the vouchers?

A. We took the figures in the vouchers where we were auditing, and made no special examination; made no examination.

Q. 15. Did your auditing amount to anything more than a statement that the calculations in the book were correct?

A. It amounted to a proper auditing but it didn't go to the sources of information absolutely.

Q. 16. Did you make any investigation as to whether the bills were correct or not?

A. I should add the bills.

Q. 17. No, I mean as to whether the charges were just?

A. No, I had no means of doing that; we took the bills as we found them.

Q. 18. You simply took the data he gave you?

A. Yes.

Q. 19. Without investigating them?

A. There was no opportunity for investigation.

Q. 20. In one of the early questions I asked you this afternoon as to the posting of that book, the date 1886 was fixed; did you cover any further than the date 1885?

A. Well, I don't know; the books would show.

Q. 21. A few weeks ago a notice was served on me to produce an agreement which I sent on to Boston and which has been this morning offered in evidence and marked "AA." attached to which is a copy of an alleged agreement signed by Mr. Pratt; I show it to you and ask you if you ever saw or heard of such an agreement prior to this copy being sent to Boston by me?

A. (After reading the paper.) No, I never heard of any such agreement.

Q. 22. Did you ever know of the 400 lot matter therein referred to until since this suit was commenced?

A. I never did.

Q. 23. You have read Mr. Torrey's testimony on the subject of the "rule or ruin conversation" with Mr. Wildes?

A. Yes.

Q. 24. On pages 146 and 147 of his testimony Mr. Torrey says "After leaving his (referring to Mr. Wildes') office I went, I think, with Mr. Cowdrey and called at a hotel and on Mr. Olys at his place of business on Elm street; then after locating the places you called he says "Mr. Cowdrey stated that he was not in sympathy with that action of engaging counsel for litigation, that he knew more about the business than any of the other Boston people and that he was sure that they had made a great mistake," and later on page 147 he says, "Mr. Cowdrey came in to see me two or three times and seemed to regret very much that the others had taken the action which they had." Will you tell us what is the fact about that?

A. At the time I met Mr. Torrey I was unaware of what conversation took place between him and Mr. Wildes and consequently I could not speak understandingly about the matter; as I was expecting to go on to assist him in making up the accounts and wished to do so in the interest of the Boston stockholders, I didn't wish to antagonize him in any way,

and whatever I might have said was with that in view.

Q. 25. Do you remember having said anything to that purport?

A. I do not.

Q. 26. He says that you said that you were not in sympathy with that action in engaging counsel for litigation; is that a fact?

A. It is a fact that I was in sympathy with the Boston stock-holders; I had no knowledge at that time that they had engaged counsel.

Q. 27. He makes you say here that you were not in sympathy with the engaging of counsel for litigation?

A. Well, I could not have spoken understandingly about that matter because I knew nothing about it.

Q. 28. Have you any recollection of making that statement?

A. I have none; I have no recollection of it.

Q. 29. At that time were you aware of what Mr. Shearer had ascertained in that visit to Jersey City?

A. No, I was not.

Q. 30. You had entrusted the conduct of the affair to Mr. Wildes and Mr. Shearer?

A. I had, yes.

Q. 31. On page 179 Mr. Torrey was asked "Don't you remember during the time from 1885 to 1890 that there were several occasions when he (referring to Mr. Cowdrey) offered to help you, that he came here and offered to help you and you replied that you were too busy then to give the matter attention," to which he answered, "No, I remember distinctly that such was not the case; I remember distinctly when Mr. Cowdrey gave his testimony saying that he was entirely mistaken in his recollection of the circumstances." "Q. You think his testimony is erroneous on that head." to which on page 1890 he answered, "I think his memory is at fault upon that and upon a number of other points upon which he testified." What is the fact about that?

A. The fact is that my memory cannot be at fault about that matter; I have the most distinct remembrance of going on to Jersey City and offering to take hold and work on the books to get them up with Mr. Torrey, and his declining to give me any opportunity to do so; on one occasion particularly to which I refer I went to Elizabeth to transact some business for Mr. Wildes and at the same time, on the same trip I went to Jersey City and offered to carry out the wishes of the Boston stock-holders, Mr. Wildes, Mr. Shearer and the rest, to take hold and work on the books for Mr. Torrey and he declined; I can't be mistaken about the matter.

Q. 32. At that time had you any other occupation?

A. At that time I was not holding any position here, so that I had ample opportunity to work on the books.

Q. 33. And were you allowed to do it?

A. I was not allowed to do it.

Q. 34. On pages 110 and 111 Mr. Torrey says referring to the Myers property, which is the property in question, "In all my visits to the cemetery with any of our Rural Company stock-holders that was pointed out as a property which we hoped and expected to acquire some time in the future; it was tied up at that time and was not available, but we hoped to have it as a part of the considerable increase in area which we deemed essential for the success of the Rural Homestead Co. Did he ever point this property out to you as a property to be acquired?

A. He never did point out the Myers property to me; it was never spoken of to me in that connection; on the contrary, the whole talk which I ever had with Mr. Pratt or Mr. Torrey in regard to that matter was the extension of the cemetery to the West of Schuyler Avenue and they acquired a piece of property there on the West side of Schuyler Ave. with the idea which they informed me repeatedly about of extending the cemetery in that direction,

and they also said in that connection that it would be very easy to put an archway under Schuyler Ave. from the present cemetery to connect with the extension to the West of the Avenue; on one occasion Mr. Torrey was on the ground with me and he looked over on the wood land of the Myers property and he said that that would make a nice back-ground for the cemetery, and I assented to it, but I had not the remotest idea and there was nothing said about buying the property for burial purposes.

Q. 35. Was anything said about buying it at all?

A. There was nothing said about buying it at all; it seemed to me—in view of the finances of the cemetery, it didn't enter into my mind that they thought of buying even the strip of wood land.

Q. 36. What is the topography of the Myers property?

A. Well, it is quite a steep side hill and where it is level it is marsh land; the property is entirely unsuited from its being on a side hill and from its rough character to be devoted to burial purposes.

Q. 37. On page 118 Mr. Torrey testifies, speaking with reference to the arrangement by which the payment of the 45 per cent. of the sales of lots from the Cemetery Association to the Rural Homestead Co. was based, "I consulted very freely with Mr. Cowdrey in regard to the accounts as entered in this cash book so that he was familiar with the fact from the start and advised me as to the method of making that 45 per cent. a charge against the Cemetery Association in favor of the Homestead Co. on the books of the cemetery." What is the fact with reference to that?

A. The fact is that I gave Mr. Torrey no advice as to the desirability or advisability of the loaning of that money by the Rural Homestead Co. to the Cemetery Association; when I consulted with him it was merely as an assistant to him in writing up the books; I found the condition of things just such as they were and I never advised or consulted with him

about the desirability of that money being loaned to the Cemetery Association and I never had occasion to do so.

Q. 38. Do I understand you with reference to the time since the year 1885 so far as your handwriting appears in the books, it was merely that of a book-keeper?

A. That is all.

Q. 39. And you neither assented or dissented to the condition of the things found?

A. I did not; I neither assented or dissented from the condition of things as I found them.

Q. 40. On page 152 the witness Torrey was asked to produce the package of bills and vouchers used by you in your work upon the books, and after saying that the bundle that he had there was another bundle he says on page 153 in answer to this question, "I understood you to say that Mr. Cowdrey in his work upon the books examined all the vouchers for the time covered by his work," to which he answered, "Yes, sir." Is that true?

A. It is not true; I had nothing of the sort; I didn't have the bills or vouchers; they were invariably in Mr. Torrey's possession and I made no examination of them; I was not auditing the books but was simply assisting Mr. Torrey to write up the books.

Mr. McGee: That is all.

COPY.

## IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES ET ALS.,<br>*Complainants,*<br>*and*<br>THE RURAL HOMESTEAD COMPANY ET ALS.,<br>*Defendants.* | *On Bills etc.* |

You are hereby notified and required to produce before George W. Cassedy, Examiner in Chancery at the office of Charles H. Voorhis, 239 Washington St., Jersey City, on July 18, 1893, at eleven o'clock, A.M., the original Agreement dated November 29, 1882, between Julius H. Pratt of the first part and D. L. Shearer and others of the second part, a copy of which is hereto annexed.

J. C., July 11, 1893.
To Bedle, McGee & Bedle,
Sols. of Complts.

Your obdt. srvt.
Chas. H. Voorhis,
of Counsel with Defts.

"Exhibit AA."
Chas. Hall Adams, Comr.
Sept. 7, 1893.

[COPY.]

This agreement made this twenty-ninth day of November, 1882, between Julius H. Pratt of New York City, of the first part, and D. L. Shearer, Saml. B. Rindge, Frank W. Wildes, J. A. Cortwright, F. J. Olys and W. E. Cowdrey, all doing business in Boston, in the State of Massachusetts, of the second part, witnesseth: Whereas the parties of the second part have subscribed for the stock of The Rural Home-

stead Company in different amounts, with the understanding and upon the representation that one-half of the proceeds of sales of lots owned by said Company should be distributed among the parties of the second part in the proportion to which they may be severally entitled thereto by reason of being stockholders therein; and whereas the party of the first part has a contract under which he is entitled to the proceeds arising from the sales of the first four hundred (400) of said lots as more fully appears from the records of said company, now therefore, I, said party of the first part, in consideration of the several parties of the second part paying the first installment of his subscription to the capital stock of said company promised to each and all of said parties who shall pay their first subscription as aforesaid to release, assign, transfer and set over to each such one all my right, title and interest in and to a part of said proceeds in the proportion which the number of shares held by each such one may bear to the whole number of shares sold from the entire capital stock of said company at the time I shall receive any part of said proceeds, meaning and intending to give to said parties severally the right to receive the same amount which each would receive from the sales of said four hundred (400) lots had there not been said contract by which the party of the first part became entitled thereto to be estimated by the ratio which the number of shares held by each may bear to the number of shares then sold.

In witness whereof I have hereunto set my hand the day and year first above written it being mutually understood that sixty of said lots have already been disposed of and only three hundred and forty (340) of said lots are to be considered as included in the above agreement.

(Signed) JULIUS H. PRATT.

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES ET ALS.,
*Complainants,*
*and*
THE RURAL HOMESTEAD COMPANY ET ALS.,
*Defendants.*
} *On Bill etc.*

J. Parker, Jr., Sol.

Notice.

Served July 12, 1893.
Bedle, McGee & Bedle,
Sols. of Complts.

[COPY].

233 Broadway,
opposite Post Office.

New York, Nov. 29th, 1882.

D. L. Shearer, Esq.,

In consideration of your procuring subscription to the Stock of the Rural Homestead Company in conformity with the circular recently issued to the amount of Fifteen Thousand Dollars, I hereby agree to deliver to you as a Commission, Certificates of said Stock to the amount of twenty per cent. on the amount of subscriptions so obtained, not exceeding, however, twenty thousand dollars of subscription, said delivery to be made as said subscription shall be paid.

JULIUS H. PRATT,
Pres't. of Rural Homestead Co.

"Exhibit BB."
Chas. Hall Adams, Comr.
Sept. 7, 1893.

Wildes et als.

vs.

The Rural Homestead et als.

For Identification.

Julius H. Pratt.
Agreement
for use to obtain subscription to the R. Homestead Co. dated Nov. 29, 1882, and the amount he will pay for it 20 per cent.

No. 21.

P. 15, July 25, 1893.
S. M. Cassedy,
Master.

Fricdabfin,
P.
G. W. C.

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IN CHANCERY OF NEW JERSEY.

Between

FRANK W. WILDES, ET ALS.,
*Complainants,*

*and*

THE RURAL HOMESTEAD COMPANY, ET ALS.,
*Defendants.*

*On Bill, &c.*

Examination of witnesses on the part of the complainants, before George W. Cassedy, Esquire, Master in Chancery, at his office No. 1 Exchange Place, Jersey City, on Thursday, October 12, 1893, at 11 A. M.

Present,
Flavel McGee, Esq., for complainants.
Charles H. Voorhis, Esq., for defendants.

CLARENCE T. VANDEREN, a witness produced on the part of the complainants, being duly sworn and examined, testified as follows:

*Direct Examination by Mr. McGee:*

Q. Mr. Vanderen, where do you live?
A. Harrison.
Q. Hudson County, New Jersey?
A. Yes, sir.
Q. And your business?
A. Real estate and insurance.
Q. And you are located where?
A. In Harrison.
Q. How long have you been in that business in Harrison?
A. Eight years—about eight years.
Q. And how close is that to the township in which Arlington is?
A. About two miles.
Q. Does your business include Arlington and that township?
A. Yes, sir.
Q. Are you familiar with the location of the Arlington Cemetery?
A. I am.
Q. And of the values of land in that immediate vicinity?
A. I am.
Q. Have you looked at the land immediately south and east of the cemetery, which is known as the Meyers property?
A. I have.
Q. And you know that it is bounded on the west by the old Coppermine Road, known as Schuyler Avenue now, and runs down the hill and into the meadows?
A. Yes, sir.
Q, Those meadows are the meadows between Arlington and what place?

A. And the Hackensack River.

Q. And what is their nature?

A. Nothing but what would be called cat tails?

Q. Well, as to the soil, whether its dry or wet, upland or swamp?

A. Swamp land.

Mr. Voorhis: I object to testimony as to the character and value of this land, because its part of the complainants main case.

Q. Have you seen Mrs. Meyers house?

A. I have.

Q. And you are familiar with its character and construction.

A. I am.

Q. From your knowledge and experience as a dealer in real estate, and your knowledge of values in this vicinity, what, in your judgment, is the fair market value of the upland part of the property considering its location and contour of its surface and all the circumstances connected with it?

A. You mean including the frontage on Schuyler Avenue?

Q. Yes, and including Moses Meyers house, and I don't ask you to give me a total valuation of the upland, because I am not quite certain of the amount of the acreage, but give it by some measure of acreage or otherwise that we can compute a total from?

A. Well, if you want me to include the frontage on Schuyler avenue—

Q. And Moses house—?

A. And his house—I should say it was worth about one hundred and fifty dollars an acre, including his house.

Q. Is there any part of it that has any other value excepting acreage value? I am speaking now of the upland.

A. Only the Schuyler Avenue front.

Q. Is there any demand for building lots in that neighborhood on that side of Schuyler Avenue?

A. Never heard of any.

Q. Assuming a possibility of a sale of lots on that side, what would be an outside limit of value per lot?

A. Fifty dollars.

Q. Leaving out all question of frontage of lots on Schuyler Avenue, assuming that they would be a hundred feet deep, what would be, in your opinion, the value of the remaining portion of the property including Moses house?

A. About fifty dollars an acre.

Q. What would you think Moses house was worth?

A. About one hundred dollars.

Q. The meadows, what are they worth per acre or otherwise?

A. About twenty-five dollars an acre.

Q. Have you sold recently, or do you know of a sale recently, of land in that immediate vicinity?

A. I sold a piece of land adjoining the land in question on the south, I think it was about two or three years ago, and I think it consisted of either five or seven acres or in that neighborhood, upon which was a good two story brick house, and I think I sold that property—

Q. And a barn?

A. Well, yes, there was an out building used as a barn, but that wasn't taken into consideration—it didn't amount to much—I think I sold the property for about fourteen hundred dollars.

Q. And about what was the value of the house?

A. Well, I should think the house was worth at least one thousand dollars.

Q. And how did that land compare with this in other respects?

A. Well, it compared—the comparison was about the same; it laid side by side, and ran from Schuyler avenue down into the meadows.

Q. And how was it as compared with its vicinity to the village?

A. It was a little better.

Q. Nearer the village?

A. Nearer the village, and better inasmuch as it was further away from the cemetery.

Q. I was going to ask what would be the effect upon a possible sale of the land for building lots by reason of the immediate vicinity of the cemetery?

A. It would have a great deal of effect upon the sale of property in that location.

Q. It is said that there is a deposit of stone on this Myers property, have you looked at that?

A. I have.

Q. What kind of stone is it?

A. In my opinion it's a kind of a sandstone.

Q. Has it any value for the making of roads?

A. They have used it for the making of roads, and found it a failure. They have used it on the road leading from Arlington commencing north of the Bergen County line or the turnpike road, leading from Belleville to Jersey City, running to Kingsland, and the road did not last very long, and they are filling it all in now—the ruts of the road.

Q. And what was the cause of its failure?

A. The stone being so soft.

Q. And in your opinion does that quarry then add materially to the land?

A. None whatever.

Q. Do you know of the price offered and asked for lands immediately north of the cemetery adjoining the cemetery on the north?

A. Yes, I know a company that are endeavoring to buy a thousand acres of meadow land, and they have offered twenty dollars an acre for a number of acres in that location, and the party owning it has asked twenty-five dollars an acre, and says that he is under the impression that he will let them have it at twenty dollars an acre.

Q. Is that the same quality of meadow land?

A. The same quality exactly.

Q. And how far north?

A. Just north of the Arlington Cemetery.

Q. Now, these prices that you have given us, are they on the theory that the title to the land is good, and immediate possession possible to be given?

A. Yes, sir.

Q. It is in evidence in this case that as to all the land, excepting the two acres on which Moses Meyers house stands, the only title held by the vendor was a tax title of the township of Kearney for thirty years —a sale for taxes for thirty years—of which two or three years have now elapsed; with this exception, that the vendor in this case claims to hold a deed from Moses Meyers for the fee of the two acres on which his house stands and for his interest in the other part of the lands, which deed was not signed by Moses wife, and which deed it is alleged was obtained by fraud and misrepresentation and was not understood by Moses to be a deed; in other words, the title conveyed by Moses is in dispute, and the title to the balance is only a tax title, as I have stated. Under those facts, what, in your opinion, would this land be worth?

Objected to as incompetent and irrelevent.

A. It is a hard matter to determine as to what it would be worth, because, if you undertook to sell it the party buying it would want a good title, and if the title was good it would be worth in my opinion about two hundred dollars, that is, to say, the house and two acres. Taking the theory that the title is good the balance of that upland would be, in my opinion, fifty dollars an acre.

Q. My question is, that assuming that the title is only as I have stated, can you fix any value on it?

A. No, sir, I don't think I can.

Q. Will it be saleable at all?

A. No, sir, you might possibly rent it.

Q. Is there any barn on it?

A. No barn on it that I know of; I don't see any.

Q. Any building except this little house?

A. That's all I saw.

Q. Taking those facts into consideration, what, in your opinion, would be the proper rental value of it?

A. You might get twenty-five to fifty dollars a year.

Q. For the whole property?

A. For the whole property, yes, sir.

*Cross Examination by Mr. Voorhis:*

Q. How old are you?

A. I am in my thirty-fifth year.

Q. How long have you lived in Harrison?

A. Going on thirty-one years.

Q. How long have you been in the real estate business?

A. In Harrison for myself?

Q. Yes?

A. About eight years for myself. I have been in the real estate business about eighteen years.

Q. Where?

A. Newark, and in Harrison.

Q. Have you ever bought any real estate in the township of Kearney north of the Montclair Railroad?

A. Not for myself.

Q. Have you ever sold any in the township of Kearney, north of the Montclair Railroad, except the one piece you have mentioned?

A. I have.

Q. When and what?

A. I sold two lots there about a month or six weeks ago.

Q. To whom?

A. I couldn't just recall his name now; he lives in Arlington; I think he's in the express business.

Q. Whose land was it?

A. Belonged to John Van Emburgh.

Q. Where is it located with reference to the cemetery?

A. It's on the north side of Van Emburgh Avenue. Van Emburgh Avenue commences a little south of the cemetery and runs west. It's the first street south of the cemetery commencing on the west side of Schuyler Avenue running west.

Q. Were these lots on Schuyler Avenue?

A. No, sir, these lots were on Van Emburgh Avenue.

Q. How far from Schuyler Avenue?

A. I should judge about three or four hundred feet—probably about three hundred feet.

Q. What other land have you sold in Kearney north of the Montclair railroad?

A. Outside of this piece I have referred to adjoining this property on the south? Well, I have sold other property, but just at the present time I can't recall to memory. I have sold lots on Kearney Avenue.

Q. Where is that with reference to Schuyler Avenue?

A. Well, it's the main avenue running from Harrison to Kearney and Arlington.

Q. West of Schuyler Avenue?

A. Yes, sir, west of Schuyler Avenue.

Q. How far west?

A. Oh, I should judge six or eight blocks west.

Q. Who bought the property—the five or seven acres—that you sold for fourteen hundred dollars?

A. A man by the name of Beck, of New York City.

Q. Who sold the property—whose was it?

A. It was originally sold at Sheriff's sale, but I attended to all the matters for him.

Q. Who did you sell it for—you sold it to Beck, you say?

A. It was under a foreclosure sale, and I was instructed to bid a certain price and not go over it, and

I did and purchased the property; he said he would give that much for it and no more.

Q. You were employed by Beck to buy it for him and not by the seller to sell it?

A. It was under foreclosure sale—being sold by the sheriff. I was instructed by him—

Mr. Voorhis: By Beck?

Witness: By Beck, to buy it for him at a certain figure, and if it went above that to let it go. He had made me an offer for the property before it came to the sale, of twelve hundred dollars, and the mortgagee thought best to let it go to a sale.

Q. The cemetery is an injury to property in its near vicinity, is it?

A. I have always considered so.

Q. Were you ever in the Moses Meyers house?

A. Well, some years ago I was; I haven't been in the house lately; I was some years ago.

Q. How many years ago?

A. I guess ten years ago.

Q. Never since?

A. Never since, no, sir.

Q. What is the name of the party negotiating for a thousand acres that you have testified about?

A. I can't give you the name. I was told lately that there was a party or company negotiating for the purchase of a thousand acres.

Q. Then you don't know about it, it is only hearsay?

A. I don't know the name of the company, no, sir.

Q. Who is the owner that you have testified about who had been offered twenty dollars?

A. George Bayliss.

Q. Where is he?

A. He lives on the corner of Schuyler Avenue and

the Belleville turnpike in Bergen County, just over the line.

Q. How many acres does he own?

A. That I really don't know; quite a number; but just exactly how many I don't know.

Q. Then you don't know how many acres he offered to sell at twenty-five dollars an acre?

A. All he had.

Q. I didn't ask you that. I wanted to see if you knew how many he had?

A. No, sir; I don't know how many acres he offered to sell at twenty-five dollars an acre.

Q. All you know about it is what he told you?

A. And I have heard such is the case some little time ago, and that there was a party or corporation endeavoring to buy a number of acres in that location.

Q. That's all you know about it, what you have been told?

A. About what?

Q. About a party proposing to buy a thousand acres—you say you don't know the party?

A. No, sir, I don't know the party.

Q. When were you on this Myers land?

A. There Tuesday afternoon.

Q. Of this week?

A. Of this week.

Q. Who went with you?

A. Mr. Canfield.

Q. The gentleman here?

A. Yes, sir.

Q. Any one else?

A. No, sir.

Q. When were you on it before that?

A. Oh, I have passed it probably once or twice, sometimes three times a week, every week; drive up that way in pleasant weather. I have got a plot in the Cemetery, and pass that property in going up to the Cemetery; known it for many years.

Q. Were you ever on it before last Tuesday?

A. Yes, sir.

Q. When?

A. I was, about—that is to go over it—about ten years ago. You can't learn any more by going on or over it than you could by passing it.

Q. How did you come to go on it last Tuesday?

A. I went up to the Cemetery, Mr. Canfield and I, and showed Mr. Canfield the plot up there—the monument I had erected; we took about two or two hours and a half; we didn't know where to go and took a drive up that way.

Q. Did you drive in upon this property?

A. There's no way of driving in or upon the property without expecting to get thrown out of your wagon and dumped on your head; there's a road that might be taken, leading from Schuyler Avenue down to it, but I didn't think it was safe; hardly safe enough to go down by foot let alone by horse and wagon.

Q. Where did you leave your horse?

A. In the cemetery.

Q. At whose request did you go upon this Meyers land, last Tuesday?

A. Nobody's in particular that I know of.

Q. Didn't you go there for the purpose of being a witness in this case?

A. I did in one sense of the word, yes, sir.

Q. You were employed by the complainants in this case, through Mr. McGee, to examine this land and give an opinion upon its value?

A. Might say so, yes, sir.

Q. That was really it?

A. That's about it.

Q. How did Mr. Canfield come to go with you?

A. I asked Mr. Canfield to go up with me on the property and look it over; he had seen it as many times probably as I, but never gave it a thought to give any particular attention to it.

Q. How is he related to you?

A. Only as a man in the same business as I am, and an acquaintance.

Q. Where is he in business?

A. 711 North Fourth street, adjoining the Erie Railroad property.

Q. In Harrison?

A. Just this side of Kearney.

Q. Are there any real estate agents in Arlington?

A. Yes, sir.

Q. Who are they?

A. A man by the name of Brockway, and a man by the name of Green, and I think our town Treasurer is in that business in Arlington.

*By Mr. McGee*:

Q. What is his name?

A. Dorlin. And there are one or two others, the names of which I don't exactly recall to mind now.

Q. How far is your place of business from the Arlington station?

A. Well, it might be termed by some two miles; I should think it was a mile and a half; a mile and three-quarters; some people call it two miles.

Q. How far is it from the Arlington station to the Cemetery?

A. About a quarter of a mile.

Q. That all?

A. I am taking it cutting across lots. It might be a little more than a quarter of a mile. I never walk it; always drive up that way; it might possible be a half mile.

Q. Do you let, and collect rents as well as—

A. Yes, sir.

Q. In Arlington?

A. Not in Arlington, in Kearney.

Q. But never in Arlington?

A. No, sir.

GEORGE D. CANFIELD, a witness produced on the part of the complainants, being duly sworn, testified as follows:

*Direct Examination by Mr. McGee:*

Q. Mr. Canfield, where do you live?

A. I live in Kearney, on Kearney avenue, Kearney.

Q. What is your business?

A. Real estate and insurance.

Q. How long have you been in that business?

A. About six years and a half.

Q. How long in Kearney?

A. I have lived in Kearney twenty-two years.

Q. And before you went to Kearney, where were you in business?

A. I was in business in New York; before I started in business there I lived in Kearney and was in business in New York City.

Q. How far is your house from Arlington?

A. Its a short mile and a half.

Q. (By Mr. Voorhis) You mean from the station?

A. I mean from the Arlington station to my house is a short mile and a half.

Q. How far are you from the nearest limits of the borough?

A. Its a hard matter to tell where the limits are.

Q. You have seen Arlington grow up?

A. I have seen Arlington grow up, but I have never yet found out where the limits are.

Q. Are you familiar with the values in and about Arlington?

A. Yes, sir, quite well.

Q. Does your business run up into Arlington?

A. I have got a good deal of business in Arlington.

Q. And you have kept track of sales of real estate in Arlington?

A. I have looked after it very well. I have con-

siderable property lying between the two railroads in what would be Arlington.

Q. You mean you have got it for sale?

A. For other parties.

Q. You have heard Mr. Vanderen's testimony just now?

A. Yes, sir.

Q. And you have heard what he said about his visiting the Meyers property within a few days together with you?

A. Yes, sir.

Q. You went on the property?

A. We went on the property.

Q. Prior to that time were you familiar with the property?

A. Yes, sir, quite familiar. I have often been over it, hunting and tramping round.

Q. Will you give us, in your opinion, the value of that property, taking into account all its surroundings and details as I expressed to him in my questions which you heard, giving first the upland and then the meadow?

A. Well, in the upland, do you mean the whole of the upland, take it all together, the price of the upland altogether from the road down to the edge of the meadow or just a part of the upland?

Q. Taking it in any way you please to give us what would be its market value by the acre?

A. I should consider that piece of ground as being worth about one hundred dollars an acre; take the piece as it stands with the house to it.

Q. That's from Coppermine—

A. From Schuyler Avenue, taking to the edge of the meadow land.

Q. And as to the meadow land, what would be your opinion as to its value?

A. From what I have seen of it, and from sales that have been made there, about twenty-five dollars an acre would be a fair value for the meadow land.

Q. Referring to the upland now, is there any demand for any part of it for building lots?

A. Well, I have had some inquiries for property up that way. Two years ago I had an office by the Arlington depot, and during that time of course I had some inquiries up there, but I, myself, don't know of any sales having been made right in that immediate neighborhood.

Q. Did you ever have any call for any property on that side of Schuyler avenue there?

A. No, sir.

Q. Do you know of any property that's been sold for building lots on that side of Schuyler avenue, as far out as that?

A. I don't know of any at all.

Q. If it were possible to dispose of any part of it for building lots, what part of it would it be?

A. It would be the parts on Schuyler avenue; its the only part that would be available for building lots; it lies right on the side of the hill; its very steep.

Q. What would be the outside price for a building lot on Schuyler avenue, on that property?

A. I should consider as the street runs there, that fifty dollars would be a fair price; would be all that I should want to give for it; if I were offered a piece of ground I shouldn't want to give more.

Mr. Voorhis: Understand me as making the same objection to this as to Mr. Van Derev.

Witness: (Continuing.) There's no frontage; you can't build there; it runs right straight down the hill; as soon as you get off the sidewalk it pitches right straight down.

Q. Is there a sidewalk there?

A. No, sir; there's not.

Q. As at present it stands is Schuyler Avenue anything more than a country road?

A. No, sir, its not.

Q. How long have you known Moses Meyers' house?

A. I have known that for the last twenty-two years; I have gone up there once or twice a year since.

Q. What kind of a house is it?

A. Just a small house, and very shabby looking.

Q. Is it painted?

A. If it is its pretty well worn off.

Q. One room down stairs and one over it?

A. Never was inside of the house; been all round the house, but never inside.

Q. Is it large or small?

A. A very small house.

Q. What do you think its worth, the house alone?

A. The house as it stands there?

Q. Yes, without the ground?

A. I wouldn't want to give fifty dollars for it.

Q. You mean to intimate that it has no market value?

A. No; only to move it off the ground; it has no value except for old lumber?

Q. Did you notice the deposit of stone there that they call the stone quarry?

A. I have been in through it. They have made several attempts to open a stone quarry there. I was down there along in the spring and they had made an attempt to open a quarry, but never made a success of it.

Q. What kind of stone is it?

A. It's a sort of a soft stone.

Q. Have any value for any purpose that you know?

A. Well, they have used some of it for building purposes. It hasn't paid to take it out. Last year there were parties wanting some building stones down below, and I was speaking about getting stones out of that, and he said it was worthless.

Q. Did you see this road upon which it was used as a macademizing material?

A. I have known the road there ever since I have been in town.

Q. What was the result of it?

A. Well, I know when they came to macademize Kearney Avenue they wouldn't let them put it on; the contractor would not allow them to put on that stone up there; they decided the stone was too soft, and they would have to get traprock from upper Montclair.

Q. These figures that you have given us, are they on the theory that there's a good title, and that immediate possession could be given?

A. That is what I figured on.

Q. You heard the question I put to Mr. Van Deren as to what the evidence shows as to the present state of the title, do you remember it?

A. Yes, sir.

Q. Under that state of facts, what would be your idea as to its value?

A. It would be only just as rentable value. I consider property that the title isn't good as not worth handling.

Q. What purposes could it be put to for rent, any purpose but farming?

A. Only farming.

Q. What, in your opinion, would be its rental value for farming purposes?

A. Well, I should say that about five dollars a month, sixty dollars a year, would be rather a fair price—a liberal price.

Q. Would that predicate that the landlord would have to pay the taxes and interest?

A. Certainly.

Q. That would be the gross rental value?

Q. Yes, sir. I am judging on that by other property that we have rented in Kearney township that is

just as available, and I am putting the same value on it that we would get for other properties.

*Cross Examination by Mr. Voorhis.*

Q. What is your age, Mr. Canfield?

A. Fifty-three years.

Q. What was your business before you went into the real estate business?

A. I was in the rubber stamp and stencil business in New York City.

Q. How did you come to go upon this land last Tuesday?

A. Well, I went out as much to take a drive as anything. I was by there Sunday; went up there with my wife; very often go up; we go up through Kearney Avenue to Passaic, and I suppose I have gone up that way a dozen times this year.

Q. You heard Mr. Vanderen give his testimony here?

A. Yes, sir.

Q. The whole of it?

A. Yes, sir.

Q. Did you go there last Tuesday at the request of Mr. McGee for the purpose of being a witness in this case?

A. No, sir, I never heard of Mr. McGee until to-day; didn't know there was such a party. Don't know as I ever heard of his name before, or anything connected with the case.

Q. When you were on the property last Tuesday did you look at it with a view of giving the testimony as to your judgment of its value?

A. Well, yes, somewhat to that extent.

Q. You knew then you were to be a witness in this matter?

A. I was told—I was given to understand that I might be called as a witness.

Q. Who told you?

A. For who or for what purpose I don't know.

Q. Who told you?

A. Mr. Vanderen asked me to take a ride and said there was a piece of ground up here they are talking about. I have known this ground ever since I have been in town.

Q. You went there as an expert in real estate?

A. You might put it that way.

Q. You were employed to do that—to go there and look at it, and give your opinion as an expert?

A. No, sir, I was not employed at all; wasn't spoken to of that.

Q. Who pays you for attending here?

A. I don't know that even.

Q. Haven't you been paid for this service?

A. No, sir.

Q. You expect to be paid for it, don't you?

A. I don't know that I do, sir; I haven't been offered, or even been asked, what my bill was, nor do I expect anything.

Q. You are simply a volunteer?

A. Simply a volunteer.

Adjourned to Monday, Oct. 16, 1893, at 3 o'clock in the afternoon at same place.

Oct. 16, 1893. The complainants announce their testimony closed.

IN CHANCERY OF NEW JERSEY.

Between
FRANK W. WILDES,
*Complainant,*
*and*
THE RURAL HOMESTEAD CO., AND OTHERS,
*Defendants.*

Depositions of witnesses taken before me, George W. Cassedy, Master and Examiner in Chancery of New Jersey, on Friday, December 8, 1893, at 2.30 P. M., on behalf of the defendants in reply to the rebuttal of the complainant, and in support of the defendants affidavits this evidence being taken in the presence of Flavel McGee, Esq., counsel for the complainant, and Hon. Charles H. Voorhis, counsel for the defendants.

Mr. McGee: Counsel for the complainant objects to the taking of any further testimony on the part of the defendants on the ground that the complainant's rebuttal closed the case, and that no evidence can be taken now by the defendants unless it be with reference to some matter newly raised in the rebuttal.

It is understood that all questions are objected to on the ground above stated, and that the ground of the objections shall apply to all questions without repetition.

EDWARD P. HATCH, a witness produced on the part of the defendants, being duly sworn according to law on his oath saith:

*Examined by Mr. Voorhis:*

Q. What is your business?

A. Merchant of the firm of Lord & Taylor.

Q. You know the Myers property, south of and adjoining the Arlington Cemetery in Hudson County?

A. I do.

Q. How long have you known it?

A. Since 1875.

Q. Have you as far back as that date been interested in real estate in Arlington?

A. Yes, sir.

Q. So that you have personal knowledge of real estate in that neighborhood?

A. I have.

Q. Are you concerned in the buying and selling of real estate there?

A. Not much in buying, but a good deal in selling.

Q. What experience generally have you had in that line there?

A. I was mainly instrumental in starting the town of Arlington, I built most of the houses that were built there for the four years between 1874 and 1878.

Q. Have you had to do with any sales of real estate in Arlington within the last three or four years?

A. Indirectly—I am not giving my personal attention now, but I know what is being done there in the property I am interested in.

Q. Are you able from your personal knowledge of sales of real estate that have been made in Arlington within the last three or four years to give a judgment of what is a fair market value for the Myers property adjoining the Cemetery?

Objected to as irrelevant.

A. I would hardly be able to give a very intelligent opinion about that as a whole.

Q. I will limit my question to that part of it which adjoins the Cemetery and east of Schuyler Avenue?

Objected to as irrelevant and illegal for the reasons above given, and also because the witness does not appear to be an expert within the rules laid down by the Courts of New Jersey.

A. We are selling property on Schuyler Avenue, similarly situated to this property—on Schuyler Avenue at two hundred dollars for twenty-five feet front, running back two hundred feet, that would—of course, that is nearer the depot, and in that respect it has got an advantage—whether there could be property bought any cheaper than that—that was as far away from the depot as this, I would not be able to say—we think we are selling property very cheap as our idea is to get out of the business and wherever we have sold property, I don't think anybody could buy it from the people who bought it as cheap as we sold it for. The property is situated on the east side of Schuyler avenue, and runs down to the meadow, it is similar property.

Q. How far away from this?

A. There is three properties between, I could not tell what the distance was, I should think, possibly it may be fifteen hundred feet, I should think, I do not know, that is something very easy of learning—my recollection about it is, that, it is something like that, possibly it may be two thousand.

Q. Have you been upon and over this Myers property east of Schuyler avenue?

A. The part of it I am specially familiar with is that lying east of Schuyler avenue and the quarry, I leased the quarry at one time.

Q. When did you lease the property?

Mr. McGee: This is all objected to.

A. I think it must have been between 1875 and 1878, most of that time I was working it more or less.

Q. What did you get out of it—I mean what sort of material?

A. Stone for foundations and also stone for a nicer class of work, I had quite a good deal of cut stone.

Q. Stone for foundation and stone for a nicer class of work?

A. Yes, sir. We got out quite a good deal of what is called broken ashlar—it is a stone, the face of it is left with the regular face, but the top and bottoms and sides is clear, so that it can be laid up in a nearly regular uniform way, with regular seams, in twelve inch pieces and six inch pieces and four inch piece.

Q. Where was the stone used that you took out?

A. I used the bulk of it in Arlington, the stone that is in the school house in Arlington came out of this quarry, I furnished that—I sold some to go out of the town, some of this broken ashlar.

Q. Where did that go to?

A. There was some of it went for a church in Upper Montclair and, I think, some at Short Hills, but I am not sure, the things are out of my mind now.

Q. What did you pay for the use of this quarry?

Objected to for the same reasons as before, and also because this question itself otherwise is irrelevant.

A. We paid twenty-five cents a cubic yard.

Q. What did you get for it?

Same objection.

A. The stone I sold and finished, I got fifty cents a square foot for.

Q. Regardless of its thickness?

A. A front foot, that would not average more than probably eight inches thick.

Q. What kind of stone was that quarry?

A. A sandstone, a gray sandstone—light gray,

Q. What was its quality?

A. Very excellent quality, that is according to my judgment—if I had been able to have got a lease that I could have depended on so that it would have paid me to have done so, I should have put in the

necessary machinery there and worked it on a large scale about that time. I was not able to get anything more than a verbal lease from the people.

Q. Then as it was you worked it at a profit?

A. I never kept a very accurate account of that, but it was to my advantage to work the stone there, instead of getting it in any other way than I did get it, otherwise I would not have got it.

Q. How did you get access to the quarry from Schuyler Avenue?

A. We went down through the woods to the north of it as I recollect it, the road as we left Schuyler Avenue went north a little ways, and then turned, and whether it went north all the way down to the edge of the meadow or not I do not know, but it went into the woods, and south of it and finally came down to the meadow or down as low as the quarry—the quarry was probably one-half or two thirds the way down to the meadows that is the place we were working at. As I recollect it, the road was good enough to be practicable, because we never had any difficulty about that. I have an indistinct recollection that they used to draw half a load up to the top of the hill, and then go back and get another half load, and then when they came back they would put another on -half on, then they would draw the full load, but I have only an indistinct recollection of it. It is the best stone there is out there. On account of the difficulty of getting a written lease, so that I could go ahead and work the thing to the best advantage, I tried the quarry next south of it. There was one on John Harry Van Emburgh's, I tried there, and also one on Elias Van Emburgh's, and also one on Westlake's; then I went further north on the Stuyvesant property, opened out a quarry there, but there was none of them that was as good stone as this, this was the best stone there was, and I finally had to go back to it and do the best I could.

Q. Can you give any idea of the quantity of the stone there is there?

Mr. McGee: In addition to the standing objection under which the testimony is being taken, this testimony is also objected to as irrelevant to the issues in the case.

A. I was working the upper level of the quarry and there was a lower level—the next layer that could have been worked, if I had got a lease of it so as to warrant the going to the expense, that could have been worked to better advantage than the part I was working was worked.

Q. Why?

A. There was no uncovering to do where this layer had been taken off, it had been worked a great many years before I had anything to do with it, it left the top of this next layer uncovered of the next layer, and there was no deads to take away—I would have had to have quarried away the front so as to have let the water out, taken the dirt away from the face of it for eight or ten feet, then it would have been all clear work. There was a great deal of stone there. It is very easy to measure it up and see what it was, there was a lot of it.

Q. How is the surface of the ground eastward beginning at Schuyler Avenue?

A. It is quite steep, but I don't think any steeper than the property I have referred to, that we have been selling for building lots. They built the houses and the basements and kitchens came out on a level on the slope, and the garden—the land they used for the garden slopes down with an easterly slope, and it is quite desirable.

Q. The slope of the ground on the Myers property, east of and adjoining Schuyler Avenue is capable of such use?

A. I should say it was, every piece of property

between our land and this, there is a house on it and people live on it, and there is a house on Westlake's and a house on Elias Van Emburgh's and a house on John Harry Van Emburgh's.

*Cross Examination by Mr. McGee:*

Q. How long ago was this that you were operating in Arlington?

A. I think I commenced to work the quarry in the Spring of 1875.

Q. I mean operating the purchase of real estate?

A. I commenced building there in December 1874.

Q. And at that time were you connected with this firm of Lord & Taylor?

A. No.

Q. When did you begin to give your time to mercantile life?

A. I went into this concern June 7, 1879.

Q. You have not given the Arlington land and the building of houses in Arlington any attention since that day?

A. I have been posted on it because I have very large interests there.

Q. You don't buy and sell for other people?

A. No—our prices in a measure represented really the largest holders of real estate there and our prices regulated the prices of other land there.

Q. What is the population of Arlington?

A. I do not know.

Q. Is it over a thousand people?

A. I should think it was.

Q. Two thousand?

A. Well, I should think it was all of that.

Q. And the depot you speak of is near the easterly boundary of the town, is it not?

A. If the town—it was at the time I was working there—it was on the northeasterly part of where the most building was going on.

Q. The town lies to the west and south mainly of the station?

A. There has been a great deal of building on the north of the station, since the last few years, quite a large amount, I don't think as much as on the other side.

Q. There is no town out where this property lies?

A. No, it is in the township of Kearney.

Q. The town itself has not grown out to the property?

A. It is in the township of Kearney and Arlington, there have been houses built out there, pretty much out that way.

Q. They are all on level ground?

A. I think they are all on the outside of Schuyler avenue

Q. Are you aware that the title of this Myers' property which has been conveyed to this defendant and about which the litigation is consists mainly of a tax title of a sale for thirty years and excepting as to two acres which were owned by Moses Myers and Moses Myers' one-sixth interest in the balance which last named interest of Moses Myers is disputed it being alleged that the conveyance was gotten by fraud—did you know that?

A. I do not know anything about that.

Q. Assuming that to be the case, you would not put much value on it?

Question objected to.

A. That would be a very indefinite kind of thing.

Q. The allegation of the bill and the evidence on the part of the complainant is this: that Moses being the owner of two acres with a little house on it, and the one-sixth owner of the rest made a conveyance to a man by the name of Bowers, which Moses alleges was obtained by fraud, and upon the representation that he was signing a lease and not a deed. The balance of the property Bowers held by a tax title only. The convey-

ance to the defendants was from Bowers and conveyed what he had, which was this: there is no dispute in this case as to the tax title part of the case, but only as to the validity of the conveyance by Moses. The conveyance to the defendants was made by Bowers and conveyed what he had. Under that state of facts would you regard the property as having any considerable value?

Objected to as the value of the property would be the same.

Q. Would such a title have any value of any consequence?

Objected to.

A. If I was in the defendants case or the plaintiff, which ever it is that owns the property, but if I were in their place, I should take some steps to have that title perfected and I should think I could have it done, that is what I would go for.

Q. You suppose they are entitled to a title in fee simple free of encumbrances?

A. Yes, sir, that is all.

*Re-direct by Mr. Voorhis:*

Q. You have said something about our property, to whom did you refer?

A. The land of the North Jersey Land Co.

Q. Your dealings there in real estate were for the North Jersey Land Co.?

Same objection.

A. Yes, sir; they had two hundred acres of land besides the meadow, and they paid two hundred thousand dollars for it.

MICHAEL M. FOREST, a witness produced on behalf of the defendants being duly sworn according to law on his oath saith:

*Examined by Mr. Voorhis:*

Mr. McGee makes the same protest as to the taking of this testimony as was introduced in the other case, and it is agreed that the questions are to be subject to objection without a repetition of the same.

Q. Where do you live?

A. Arlington, New Jersey.

Q. What is your business?

A. Lawyer; practicing in the city of New York.

Q. Are you acquainted with real estate in Arlington?

A. Yes, sir; I have lived there ten years, and bought and sold real estate during that time.

A. Did you know this Myers property, the Moses Myers Homestead, and the land surrounding it, adjoining the cemetery?

A. I do, yes, sir.

Q. Have you bought and sold real estate in that neighborhood?

A. I have bought and sold to the west of it, I have bought and now own to the east of it, that is out on the meadows.

Q. Do you know the quarry on this Moses Myers tract?

A. Yes, sir, I do.

Q. Are you able to give a judgment of what is the value of the Myers property adjoining the cemetery and east of Schuyler avenue?

Objected to, not only for the standing objection, but also because this witness has not shown himself to be an expert within the recent rulings of the Courts of New Jersey.

Q. Have you bought and sold during the time you have lived in Arlington any land for other people?

A. Both for other people and myself.

Q. Land in that neighborhood?

A. Right adjoining, yes, sir, within a thousand feet of it.

Q. Question repeated?

Same objection.

A. I think I have.

Q. What is your judgment as to the value of the twelve acres of up land lying east of Schuyler avenue?

Same objection.

A. It is worth in the neighborhood of $1500. an acre

Q. In your estimate, do you or not, take into consideration the quarry as an element of value?

Objected to.

A. No, sir; I do not. I suppose they value it for the purpose of cutting it up into building lots and selling it for homes for working people generally.

Q. Is, or not, these twelve acres capable of being used for building lots?

Same objection.

A. The greater part of it is, yes, sir.

Q. What part of it, if any, is not?

A. Perhaps the two or three acres at the easterly end of it, the meadow end of it.

Q. All the rest is?

A. Yes, sir; perfectly good for building lot purposes.

Q. Is that so considering the present lay of the ground, or is it too steep?

A. It is not too steep, it is not so steep as land I have used and sold lots for building purposes on, which I have built houses and sold them.

Q. Taking into consideration the quarry as an element of value, what would be your estimate of the value to be put on the twelve acres?

A. If the lots were to be used simply for quarry purposes I should consider it of more value. I think the element of the stone being there so near to the village which now contains over three thousand people, and which is building up very rapidly and where building stone commands a larger price than it did a year ago, I think it enhances the value of the quarry in that immediate neighborhood.

Q. Do you know the tract of land there called the Bloomingdale tract?

A. Yes, sir.

Q. Where is that located with reference to the cemetery?

A. To the west of the cemetery and the meadow land belonging to the Bloomingdale tract is to the east of it—west of Schuyler Avenue. The Bloomingdale tract did not come quite down to Schuyler Avenue, it had no front on Schuyler Avenue, and all laid west of Schuyler Avenue I think it came within about four to five hundred feet from Schuyler Avenue and extended from that point westerly over to the Passaic River.

*Cross Examination by Mr. McGee:*

Q. You say you are a lawyer by profession?

A. Yes, sir.

Q. Practicing in New York?

A. Yes, sir.

Q. You have stated that you bought or sold property a thousand feet from this property?

A. Yes, sir.

Q. In what direction?

A. East and west both.

Q. West would take you over another street?

A. Yes, sir.

Q. And east would take you out in the meadows in the swamp?

A. Yes, sir.

Q. These opinions as to value that you have been

expressing are based upon the idea of a title in fee simple without encumbrance entirely.

A. Entirely, yes, sir.

HENRY F. TORREY, having been previously sworn on the part of the defendant, testified as follows:

*Examined by Mr. Voorhis:*

Mr. McGee: I make the same objection as I made before.

Q. Have you had any experience as a mining engineer?

A. That is my profession, civil and mining engineering.

Q. What experience have you had in that line?

A. I have had an experience of something over thirty years as an engineer. For nine years I was Chief ~~miner~~ mining engineer of the Delaware and Hudson Canal Company. I have had considerable experience in railroad engineering and have done a great deal of work as consulting engineer in various branches of engineering work within the last few years.

Q. You know this quarry on the Myers tract?

A. I do very well.

Q. Have you ever made an examination of it with a view of ascertaining the quantity of stone there, and the extent of the quarry?

A. I have, I made an examination of it to estimate upon it with reference to a lease for quarrying purposes.

Q. When did you do that?

A. I think about four years ago, I could not tell you the date exactly, but it was just after Mr. Bowers purchased there, and he was in negotiations with some party with reference to working a quarry, and asked my opinion as to the quantity of stone and its value.

Q. Have you not examined it since?

A. I examined it, and set some men at work from

the cemetery, quarrying stone in the quarry, acting then for the ~~Burial Homestead~~ Cemetery Co.

Q. Was your investigation sufficient to enable you to ascertain the quantity of stone?

A. My investigation was sufficient to show me that there was more than a certain quantity of stone which I reported. I measured the thickness of the stone, which could be readily worked so far as we knew, it absolutely from what had been already worked there, and taking the length of where it was available, and the breadth of it, I was certain was available, I estimated over one hundred and sixty thousand yards of available stone.

Mr. McGee: In addition to the regular objection I object to his giving an estimate of the amount of stone as irrelevant and also because it does not appear that he is an expert.

Q. Have you done some work in other parts?

A. I have, considerable of it.

Q. Where?

A. In Pennsylvania for the Delaware and Hudson Canal Company, and in Virginia, in laying out granite works there, and testing and examining the stone with reference to opening new quarries and in Canada and Nova Scotia.

Q. How old are you now?

A. Fifty-one years old.

*No Cross Examination.*

Council for complainants gives notice that on Monday next at the Chancery Chambers in Jersey City, at ten o'clock in the morning or as soon thereafter as Counsel can be heard he will apply to the Chancellor to strike this testimony all out.

December 11, 1893.

Pursuant to the above notice Mr. McGee moved the Chancellor to strike out the testimony taken on December eighth instant—Mr. Voorhis opposed the motion.

The Chancellor laid over the decision thereof until final hearing.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>FRANK W. WILDES, *et als*,<br>*Complts*,<br>*and*<br>THE RURAL HOMESTEAD COMPANY, *et als.*,<br>*Defts.* | *On Bill, &c.*<br>*Complainant's Exhibits.* |

## Exhibit P 1.

[COPY.]

NEW YORK, July 8, 1891.

*Mr. Joseph Parker, Jr.,*
*No. 167 Broadway, N. Y.*

DEAR SIR: I do not wish to be bothered with any of the business details of the Arlington property, and prefer to leave the whole matter to your management; but I will say generally that Mr. Myers, after breaking an agreement that I generously made with him, last Spring, cannot now expect me to make another like it.

Having waited more than a year without any income, I expect now to make a profitable use of the property. If Mr. Myers, as you say has a customer for it, at a fair price, I will join in the sale, provided we can agree on the relative value of his interests and mine. I will get the opinion of an expert accountant on that point and will do the fair thing in a division of the proceeds. His interest is of course only a small proportion of the value and may be estimated by a sum of money to-day as compared with its

equivalent 27 years hence; thus $100, if paid to him to-day and used at 6 per cent. interest, will be worth in 12 years $200, and in 27 years $450, so that the present equivalent of what he will come into possession of at the end of my lease, is less than one quarter of the value at that time.

The property has no value for building lots, its chief value being the quarry and that will be worked out before he will come into possession, so that it is probable the value will be less then than it now is. Any sale that is made must be subject to the lease of the house and 2 acres to Moses Myers for 3 years from last April.

Very truly yours,

[Signed] SAMUEL W. BOWER.

A true copy.

## Exhibit P 2.

NEW YORK, July 10th, 1891.

*William H. Myers, Esq.*,

MY DEAR SIR:—

I enclose you a true copy of a letter, which Mr. Bower has just delivered to me, of date July 8th, 1891.

You can see by this letter that Mr. Bower has not been pleased because you broke your agreement with him. He is willing, however, to join in a sale of the premises, subject to Moses' lease, if you can agree upon the relative value of your own and his interest.

While I have not asked him the question, I think he will either buy or sell.

Most respectfully yours,

JOS. PARKER, JR.

New Jersey State Library

## Exhibit P 3.

NEW YORK, July 21st, 1891.

*Mr. William H. Meyers,*
*Montclair, New Jersey.*

DEAR SIR:—

I have again consulted with Mr. Bower, relative to your proposition, to redeem the land bought by him at the tax sale. Mr. Bowere refuses to accept the money and interest. If you can make a sale and you and Mr. Bower can agree upon a division of the proceeds, he will join in the conveyance.

He will abide by the proposition in his other letter.

Most respectfully yours,

JOSEPH PARKER, JR.

## Exhibit P 4.

NEW YORK, Aug. 3, 1891.

*Mr. Wm. H. Meyers,*
*Montclair, N. J.*

DEAR SIR:—

Mr. Parker just before leaving for his August vacation, informed me that you had an offer for the Arlington property, and wanted to know what I would take for my interest. As Mr. Parker will be absent for several weeks, I write to say that at the time I agreed to sell to you, last Spring, I had another opportunity of investing in Arlington, which I have lost in consequence of your failure to abide by the agreement. I am not now disposed to sell. I do not, however, wish to prevent you from realizing all you can by sale of your interest. Perhaps we can agree to divide the land so you can sell such part of it as fairly belongs to you. As I hold a deed of the two acres, with the house now occupied by Moses Meyer,

I should want, for my portion, the land lying in front of it. What do you think would be a fair division?

Yours truly,

SAMUEL W. BOWER.

## Exhibit P 6.

Extract from minutes of Rural Homestead Co. (*Exhibit, P 6.*) of meeting Jany. 12th, 1875.

"The committee appointed at a meeting of Directors held Sept. 10, '74 to prepare a plan for disposal to the Stockholders of the unsold lots by auction beg leave to report that on full consideration of the subject they found so many practical difficulties incident to that plan that they after consultation with stockholders representing a very large part of the whole, adopted the plan embraced in the circular herewith submitted, viz.

"Office of the Rural Homestead Company.

November 11, 1874.

"*Sir*:

"At a meeting of the Trustees of this Company held Sept. 10, 1874, the question of dividing the Real Estate and assetts of the Company among its Stockholders was discussed and it was the unanimous opinion that it was for the interest of all to do so, and save the expense of our present organization, and give to each Stockholder possession of his own share to do with as he may deem best. In view of this expression the undersigned were appointed a committee to prepare a plan that should be equitable, and submit the same to the stockholders for their approval and assent.

"After considering several plans, the committee present the following as being equitable to all, as well as practically the easiest to carry out.

"A careful valuation has been made of each lot

"amounting in the aggregate to $108,000, varying in "price from $125 to $400 per lot, this amount with "the assetts (Mortgages, &c.) will reach the amount "of the Capital Stock of the Company viz. $120,000.

"To divide the Real Estate we propose to place the "name of each stockholder in a box and the stock- "holder whose name is first drawn is to select five lots "in a body at the valuation placed on them. Then "another name drawn and selection of five lots made "and so on till each name is drawn and selection made, "and the same process to be repeated till the whole "number of lots is disposed of, when deeds will be "given. In case a stockholder is not entitled to what "any five lots amount to at the valuations he may "take in lots the sum he is entitled to.

"The amount in value of the lots taken by each "stockholder will be charged to their account on the "books of the Company and endorsed on the certi- "ficates of stock held by him, and when the final dis- "tribution of the assetts is made, the stock will be "cancelled and the Company dissolved.

"If you favor this plan please signify your assent "to the Secretary of the Company at once by signing "and retaining the form hereto annexed, and an early "day will be fixed for this proposed division of which "you will be notified, that you may be present either "in person or by proxy.

"Signed, J. T. WILCOX, GEO. W. ABBE } Committee

"Form of Assent,

"J. T. Wilcox.

"Secretary of Rural Homestead Company:

"I hereby give my assent to the foregoing plan for "the division of unsold lots ———name——— "——number of shares———to which all the stock- "holders have given their assent and notices have "been subsequently sent that the distribution would "be made on the 13th day of January 1875 in accord-

"ance therewith on motion. This report was adopted "and the action of the committee ratified."

---

## DEFENDANTS EXHIBITS.

### Exhibit D 1.

NEW YORK, July 2nd, 1891.

William Myers, Esq.,

Montclair, New Jersey.

*Dear Sir:*

Mr. Samuel W. Bower has decided, since Moses Meyers has already executed the deed to him of his interest in the tax property, and that which Mr. Bower has since purchased from the Township, to permit Mr. Myers to remain as his tenant, on the premises for three years, from April 1st, 1891, at the nominal rent of $1.00 per year, without requiring the signature of Mrs. Myers to the deed, for which he was to pay $50.00. Mr. Bower is inclined to deal very liberally with them.

Yours very respectfully,

JOS. PARKER, JR.

### Exhibit D 2.

Financial statement of the Arlington Cemetery Association from January 1st, 1883 to December 31st, 1890.

DR. RECEIPTS.

| | |
|---|---|
| To Loans under contract | $39,524 33 |
| " " Special | 17,217 37 |
| " " Temporary | 12,284 76 |
| " Sales of Lots | 17,243 37 |
| " Permanent Fund | 3,831 75 |
| " Interments | 120 21 |
| " Sundry Sales, Rents and Interest | 1,106 64 |
| " Bills Payable | 5,071 33 |
| | $96,399 76 |

CR. DISBURSEMENTS.

| | | |
|---|---|---|
| By Construction | $36,030 87 | |
| " Expenses | 57,507 01 | |
| " Property Personal | 1,233 05 | |
| " Bills Receivable | 1,426 90 | |
| " Balance Cash Dec. 31, 1890 | 201 93 | |
| | | $96,399 76 |

The above statement has been prepared by the Board of Auditors of The Arlington Cemetery Association after careful examination of the books and accounts of said Association and after comparison with the proper vouchers therefor.

H. E. REDDISH,
C. C. JEWELL,

Jersey City, April 22d, 1891.

INDIVIDUAL CREDITORS.

Amounts due for money borrowed for the maintenance of the Cemetery other than that provided by the Rural Homestead Co.

| | | |
|---|---|---|
| Demand Note, | R. O. Babbitt | $4,916 80 |
| " " | Israel Crane | 2,500 00 |
| " " | J. H. Pratt, Jr | 832 80 |
| Note, | H. F. Richards | 1,400 00 |
| " | Samuel I. Myers | 2,000 00 |
| " | S. Torreys Est | 627 30 |
| " | " " " | 418 20 |
| Balance due | H. F. Torrey | 4,385 36 |
| | | $17,080 46 |

## Exhibit D 3.

Financial statement of Arlington Cemetery Association from Jan. 1st to Dec. 31st, 1891.

| | | |
|---|---|---|
| DR. To balance on hand Jan. 1st | $201 93 | |
| " Loans under Contract R. | | |

| | | | |
|---|---|---|---|
| H. Co. | 3,965 92 | | |
| " Special Loans | 2,682 45 | | |
| " Sales of Lots and Graves | 2,682 45 | | |
| " Permanent Fund | 596 10 | | |
| " Interments, Labor & Material Bal. | 197 89 | | |
| " Sundry Sales and Rents | 114 87 | | |
| " Bills Payable | 6,288 69 | | |
| " Bills Receivable | 554 55 | $17,284 85 | |

Cr. By Disbursements.

| | | | |
|---|---|---|---|
| " Construction Acct. | 1,260 40 | | |
| " Expense " | 6,941 89 | | |
| " Personal Property | 50 24 | | |
| " Temporary Loan Acct. | 8,230 71 | | |
| " Interest | 576 86 | | |
| Bal. on hand Dec. 31st, 1891 | 224 75 | $17,284 85 | |

The above statement has been prepared by the Board of Auditors of the Arlington Cemetery Association, after careful examination of the books and accounts of said Association, and after comparison with the proper vouchers therefor.

H. E. Reddish, }
C. C. Jewell, } *Auditors.*

Amounts due for money borrowed for the maintenance of the Cemetery other than that provided by the Rural Homestead Co.

| | | |
|---|---|---|
| R. O. Babbitt, Demand Note | $4,916 80 | and Int. |
| Israel Crane, " " | 2,000 00 | " " |
| H. F. Richards, " | 1,400 00 | " " |
| Sam'l I. Meyers, " | 2,000 00 | " " |
| S. Torrey Estate, " | 627 30 | " " |
| " " " | 400 00 | " " |
| H. F. Torrey, Balance due | 5,384 20 | |
| | $16,728 30 | 40 |

## Exhibit D 4.

NEW JERSEY SUPREME COURT.

| | | |
|---|---|---|
| Samuel W. Bower, *Plaintiff.* | In Ejectment, By Default, | As yet of the ninth day of February, A. D. eighteen hundred and ninety-one. |
| *vs.* | Joseph Parker, Jr. | Witness Mercer Beasley, Esq. Chief Justice. |
| Moses Meyers, *Defendant.* | *Attorney* | Benj. F. Lee, *Clerk.* |

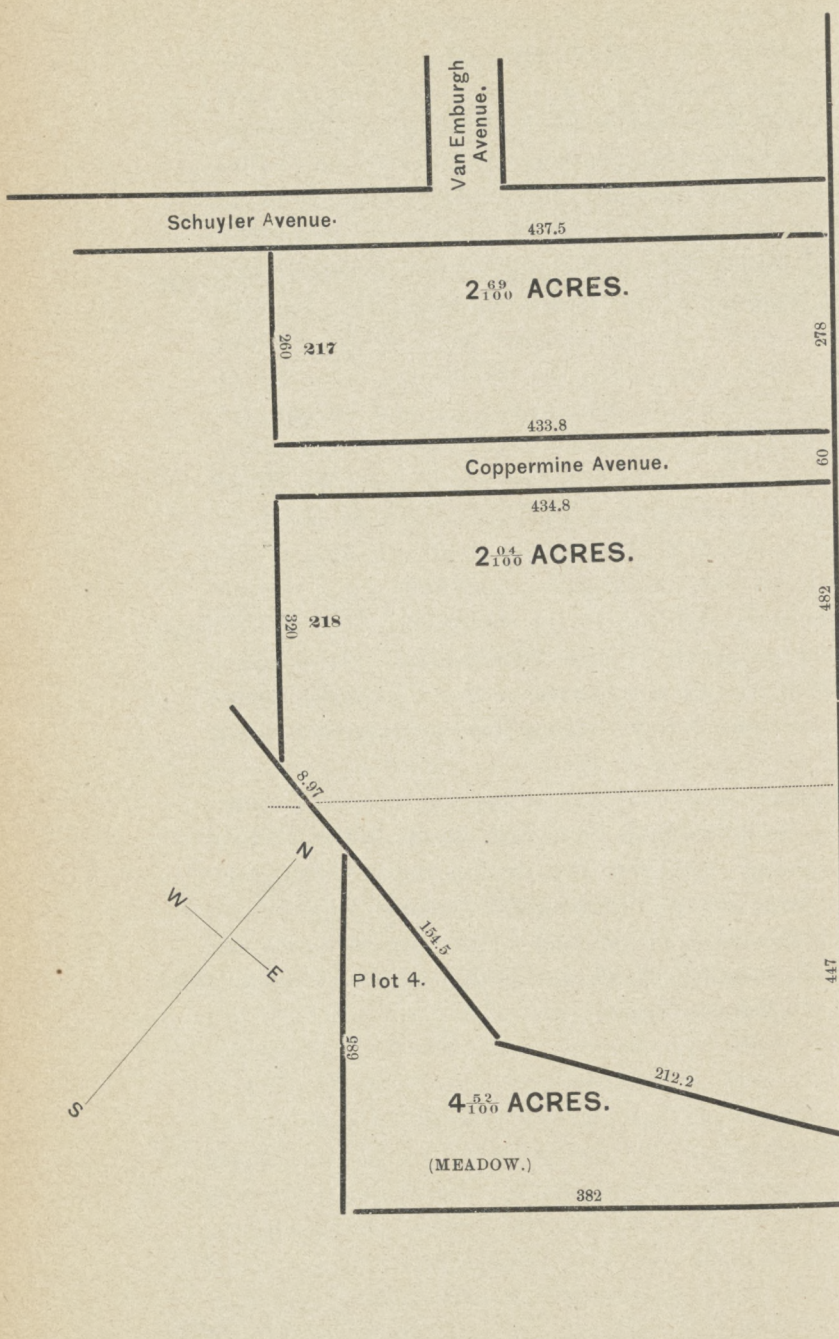
HUDSON COUNTY, SS.:

Samuel W. Bower, the plaintiff in this action, by Joseph Parker, Jr., his attorney, demands of Moses Meyers, the defendant therein, the possession of all those certain tracks or parcels of land and premises, situate, lying and being in the Township of Kearney, in the County of Hudson and State of New Jersey, which, on the Tax, or Township Map or Maps, of the township of Kearney, are known, marked a and designated as follows: Lot number forty-nine (49) Block two hundred and eighteen (218) Coppermine Avenue, Plot Number forty-eight (48), Block two hundred and seventeen (217) Schuyler Avenue and Plot Number four (4) Meadow property assessed in the names of Moses Meyer, Rachel Meyer and the estate of C. Meyer; and which taken altogether, are bounded and described as follows: Beginning at a point in the Southwesterly corner of the property of Arlington Cemetery Co., which point is in the Easterly side of Schuyler Avenue; thence Southwesterly and along the Easterly line of Schuyler Avenue, four hundred and

thirty-seven and five hundredths feet (437.05) be the same more or less to the Southwesterly corner of Plot Number 48 in Block Numbered 217; thence Southeasterly and along the Southerly line of Plot Number 48, in Block Numbered 217, continuing through Copermine Avenue and along the Southerly line of Plot 49, in Block 218 and at right angles, or nearly so, to Schuyler Avenue, six hundred and forty feet (640); thence Northeasterly and along the Southeasterly line of Plot Number 49, in Block Number 218, Eighty-nine and seven one hundredths feet (89.07); thence Southeasterly, and along the Southerly line of Plot Number 4 (Meadow), Five hundred and eighty-five (585) feet to the Southeasterly corner of plot Number 4 (Meadow); thence Northeasterly and along the Easterly line of Plot Number 4 (Meadow) Three hundred and eighty-two feet (382) to the Southerly line of the property of the Arlington Cemetery Co.; thence Northwesterly and along the Southerly line of the Cemetery property, Twelve hundred and sixty-seven (1267) feet; be the same more or less, to the Easterly line of Schuyler Avenue, the point or place of Beginning.

Excepting and reserving from the aforesaid description, so much thereof as has been dedicated for an Avenue now laid out and designated as "Coppermine Avenue," on the aforesaid Township Map.

The following is a diagram of the property, above described, as marked and designated on the aforesaid Township Map or Maps.


Van Emburgh Avenue.
Schuyler Avenue.
437.5
2 69/100 ACRES.
260
217
278
433.8
Coppermine Avenue.
60
434.8
2 04/100 ACRES.
320
218
482
8.97
N
W
E
S
154.5
Plot 4.
447
685
212.2
4 52/100 ACRES.
(MEADOW.)
382

And the plaintiff says that his right to the possession of the same accrued on the twenty-eighth day of May, eighteen hundred and ninety, and that the defendant wrongfully deprives him of the possession thereof, to his damage One Thousand Dollars.

And now at this day; to wit, the eighteenth day of March, A. D., eighteen hundred and ninety-one, before the Supreme Court of the State of New Jersey, at Trenton, comes the said plaintiff by his attorney aforesaid, and the said defendant though solemnly called comes not but makes default.

And hereupon the plaintiff prays judgment and the possession of the premises in his declaration mentioned with his costs and charges by him about his suit in this behalf expended to be adjudged to him. Therefore it is considered that the said plaintiff do recover against the said defendant as well the possession of the premises in his declaration mentioned and described with the appurtenances as also thirty-one dollars and seventy-eight cents for his costs and charges in this behalf expended by the court now here adjudged to the said plaintiff and with his assent.

And hereupon the plaintiff prays the writ of the State of New Jersey to be directed to the Sheriff of Hudson to cause him to have possession of the premises aforesaid with the appurtenances and it is granted returnable &c.

Judgment signed this eighteenth day of March, A. D. eighteen hundred and ninety-one.

M. Beasley,
*C. J.*

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, Do Certify that the foregoing is a true copy of the Judgment in above stated

cause as the same remains of record in my office.

In Testimony Whereof, I have hereto set my hand and the Seal of said Court at Trenton, this twenty-fourth day of April, A. D., eighteen hundred and ninety-three.

BENJ. F. LEE,

## Exhibit D 5.

This Indenture, made the twenty-seventh day of May, in the year of our Lord Eighteen hundred and ninety-one, Between Moses Meyers, of the Township of Kearny, in the County of Hudson and State of New Jersey, part parties of the first part, and Samuel W. Bower, of the City, County and State of New York, party of the second part; Witnesseth, that the said parties of the first part, for and in consideration of the sum of one dollar, and other good and valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said parties of the first part being 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 unto the said party of the second part, and to his heirs and assigns forever, all those certain tracts or parcels of land and premises, situate, lying and being in the Township of Kearny, in the County of Hudson and State of New Jersey, which on the Tax or Township Map or Maps of the Township of Kearny, are known, marked and designated as follows: Lot Number forty-nine (49), Block Two hundred and eighteen (218) Coppermine avenue, Plot Number Forty-eight (48) Block Two

hundred and seventeen (217) Schuyler avenue, and Plot Number four (4) Meadow property, assessed in the names of Moses Meyers, Rachael Meyer and the Estate of C. Meyer; and which taken together, are bounded and described as follows: Beginning at a point in the Southwesterly corner of the property of the Arlington Cemetery Co., which point is in the Easterly side of Schuyler Avenue; thence Southwesterly and along the Easterly line of Schuyler Avenue, Four hundred and thirty-seven and five hundredths feet, (437.05) be the same more or less, to the Southwesterly corner of Plot Number 48, in Block Numbered 217; thence Southeasterly and along the Southerly line of Plot Number 48 in Block Numbered 217, continuing through Coppermine Avenue and along the Southerly line of Plot 49, in Block 218, and at right angles, or nearly so, to Schuyler Avenue, Six hundred and forty feet (640); thence Northeasterly and along the Southeasterly line of Plot Number 49, in Block Number 218, Eighty-nine and seven one hundredths feet (89.07), thence Southeasterly and along the Southerly line of Plot Number 4 (Meadow), Five hundred and eighty-five (585) feet, to the Southeasterly corner of Plot Number 4 (Meadow), thence Northeasterly, and along the Easterly line of Plot Number 4 (Meadow), Three hundred and eighty-two feet (382) to the Southwesterly line of the property of the Arlington Cemetery Co., thence Northwesterly and along the Southerly line of the Cemetery property, Twelve hundred and sixty-seven (1267) feet, be the same more or less, to the Easterly line of Schuyler Avenue, the point or place of beginning, excepting and reserving from the said description so much thereof as has been dedicated for an avenue, now laid out and designated as "Coppermine Avenue," on the aforesaid Township Map. And Also All those tracts or portions of land and premises lying in the Township of Kearny, in the County of Hudson and State of New Jersey. The first Tract: Beginning

in the center line of the road leading from Watkin's Tavern to Hackensack, commonly known as the Coppermine Road, at the Northeasterly corner of land formerly belonging to John Van Emburgh, Jr., now to Julius H. Pratt, thence running South forty-six degrees and ten minutes, East Five hundred and fifteen feet and one-half inch; thence running North sixty-nine degrees and forty-eight minutes, East Two hundred and forty-one feet and five inches; thence running North Forty-six degrees ten minutes, West Six hundred and forty feet and seven inches to the center line of Coppermine Avenue, aforesaid; thence running South Thirty-nine degrees and four minutes, along the center line of Coppermine Avenue Two hundred and fifteen feet nine and one-half inches, be the same more or less, to the point, the place of beginning.

The Second Tract: Beginning at a point in the first course of a Deed given to John Van Emburgh and recorded in Liber I:3 of Deeds for Bergen County, Page 61, &c., and at a distance of Four hundred and forty-seven feet from said beginning; thence South, Forty-eight egrees, forty minutes, East Forty-eight feet; thence North Fifty degrees thirty minutes, East two hundred and ten feet; thence South Thirty-nine degrees, thirty minutes, East Four hundred and twelve feet; thence South Fifty-two degrees, West One hundred and Twenty-two feet; thence due West One hundred and ninety-eight feet; thence South Forty-one degrees, West Four hundred and sixty-two feet; thence South fifty-seven degrees thirty minutes, West One hundred and ninety-five feet; thence North Forty-eight degrees forty minutes, West Ten hundred and ten feet; thence North Forty-three degrees, East Seventy-four feet; thence North Seventy-three degrees, thirty minutes, East One hundred and forty-one feet, eleven inches; thence North Sixty-three degrees thirty minutes, East One hundred and seventy-eight feet; thence South Forty-eight degrees, forty minutes, East Five hundred and eighty-five feet; thence

North Forty-one degrees twenty minutes, East Three hundred and eighty-two feet, to the place of beginning, containing 12 79-100 acres.

The party hereto of the first part, by this conveyance, conveys all his right, title and interest in and to the above described premises, 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 parties of the first part, of, in and to the same, and of, in and to every part and parcel theroof. 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, and to his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; And the said Moses Meyers does, for himself, his heirs, executors, administrators, covenant and agree to and with the said party of the second part, and his heirs and assigns, that the said Moses Meyers is the true, lawful and right owner of all and singular the above described land and premises, and 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 whatever, 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.

And Also that the said parties of the first part now have good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. And Also, that Moses Meyers will warrant, secure and forever defend the

said land and premises unto the said Samuel W. Bower, and his heirs and assigns forever, against the lawful claims and demands of all and every person of persons, freely and clearly freed and discharged or and from all manner of encumbrances whatever.

In Witness Whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

Moses C. Myers. [L. S.]

Signed sealed and delivered in the presence of

Joseph Parker, Jr. [L. S.]

---

## Exhibit D 6.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| Samuel W. Bower, *vs.* Moses Meyers. | In Ejectment. |

Certified copy of Narr.

New Jersey Supreme Court of the ninth day of February, in the year eighteen hundred and ninety-one.

Hudson County, ss.

Samuel W. Bower, the plaintiff in this action, by Joseph Parker, Jr., his attorney, demands of Moses Meyers, the defendant therein, the possession of all

those certain tracts or parcels of land and premises, situate, lying and being in the Township of Kearney, in the County of Hudson and State of New Jersey, on the Tax or Township Map or Maps of the Township of Kearney, are known, marked and designated as follows: Lot number forty-nine (49) Block two hundred and eighteen (218) Coppermine avenue. Plot number forty-eight (48), Block two hundred and seventeen (217) Schuyler Avenue. and Plot number four (4) Meadow property. Assessed in the names of Moses Meyer, Rachel Meyer and the estate of C. Meyer; and, which taken together, are bounded and described as follows: Beginning at a point in the southwesterly corner of the property of the Arlington Cemetery Co., which point is in the easterly side of Schuyler Avenue; thence southwesterly and along the easterly line of Schuyler Avenue four hundred and thirty seven and five-hundredths feet (437.05), be the same more or less to the southwesterly corner of Plot number 48 in Block numbered 217; thence southeasterly and along the southerly line of Plot number 48 in Block numbered 217, continuing through Coppermine Avenue and along the southerly line of Plot 49, in Block 218, and at right angles, or nearly so, to Schuyler Avenue, six hundred and forty feet (640); thence northeasterly and along the southeasterly line of Plot number 49, in Block number 218, eighty-nine and seven one-hundredths feet (89.07); thence southeasterly and along the southerly line of Plot number 4 (Meadow), five hundred and eighty-five (585) feet to the southeasterly corner of Plot number 4 (Meadow); thence northeasterly and along the easterly line of Plot number 4 (Meadow) three hundred and eighty-two feet (382) to the southerly line of the property of the Arlington Cemetery Co., thence northwesterly and along the southerly line of the Cemetery property, twelve hundred and sixty-seven (1267) feet; be the same more or less to the easterly line of Schuyler Avenue, the point or place of beginning.

New Jersey State Library

Excepting and reserving from the aforesaid description, so much thereof as has been dedicated for an avenue now laid out and designated as " Coppermine Avenue " on the aforesaid Township Map.

The following is a diagram of the property, above described, as marked and designated on the aforesaid Township Map or Maps.

See diagram.

And the plaintiff says that his right to the possession of the same accrued on the twenty-eighth day of May, eighteen hundred and ninety, and that the defendant wrongfully deprives him of the possession thereof, to his damage one thousand dollars.

JOSEPH PARKER, JR.,
*Attorney of Plaintiff.*

---

NEW JERSEY SUPREME COURT.

---

SAMUEL W. BOWER,
*Plaintiff,*
*vs.*
MOSES MEYERS,
*Defendant.*
} *In Ejectment.*

---

SUMMONS AND DECLARATION.

Returnable February 9th, 1891.

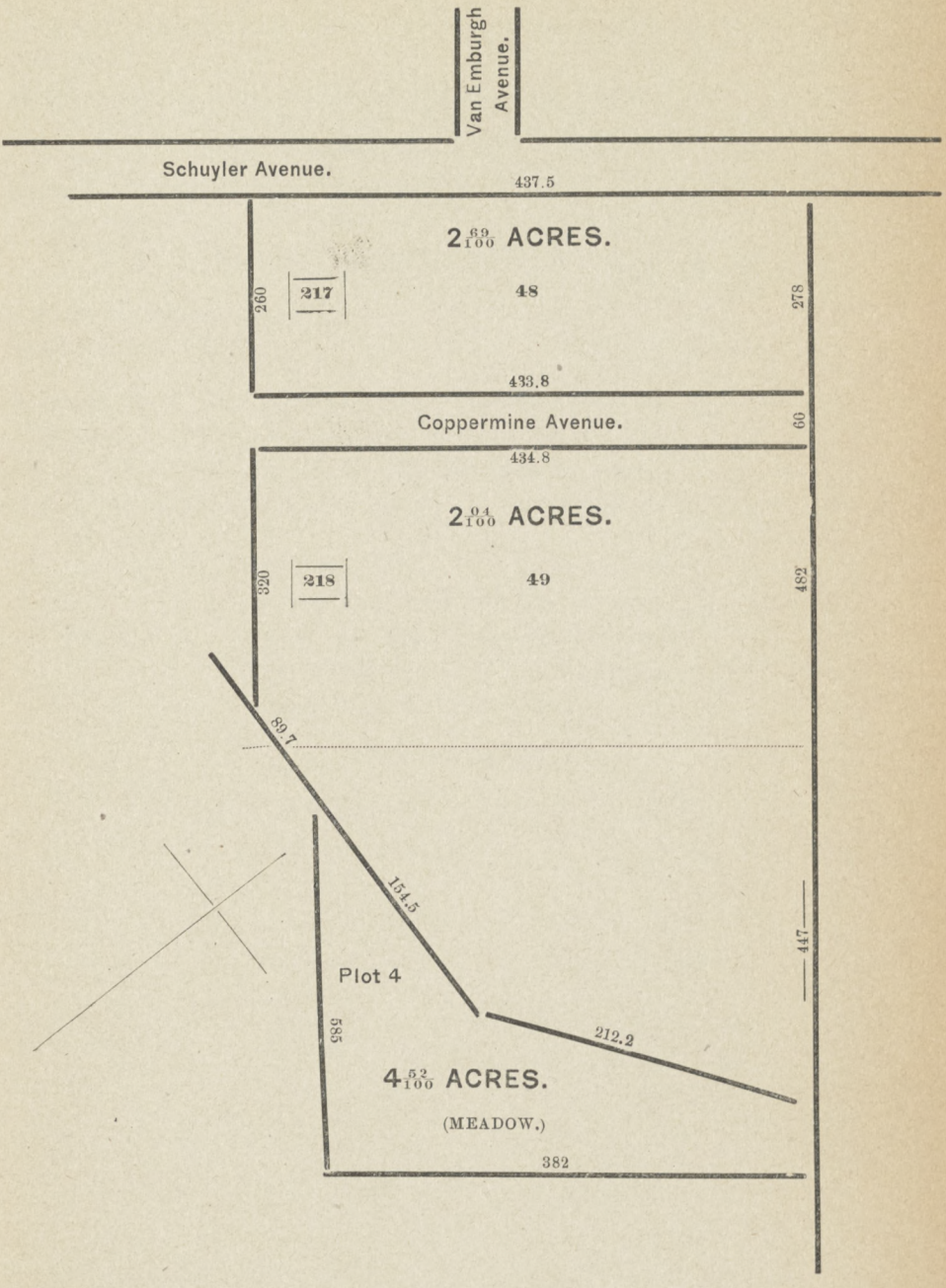
JOSEPH PARKER, JR., *Atty.*

*To the within named defendant:*

Take notice, that unless you appear and file a plea or demurrer within thirty days after the day of service hereof upon you, judgment will be entered against you.

JOSEPH PARKER, JR., *Attorney.*

New Jersey State Library


Van Emburgh Avenue.
Schuyler Avenue.
437.5
2 69/100 ACRES.
217
48
260
278
433.8
Coppermine Avenue.
60
434.8
2 04/100 ACRES.
218
49
320
482
89.7
154.5
Plot 4
585
212.2
447
4 52/100 ACRES.
(MEADOW.)
382

(Endorsed)

I hereby deputize Michael Carroll to serve the within writ.

Witness my hand and seal this 30 day of Jany., 1891.

JOHN J. McPHILLIPS, *Sheriff.*

Served personally Jany. 30th, 1891.

JOHN J. McPHILLIPS, *Sheriff.*

By MICHAEL CARROLL.

Sheriff's fees $2.84.

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the Declaration in above stated cause as the same remains on file in my office.

In Testimony Whereof, I have hereto set my hand and the seal of said Court at Trenton, this twelfth day of May, A. D., eighteen hundred and ninety-three.

[SEAL.]

BENJ. F. LEE, *Clerk.*

## Exhibit D 7.

NEW JERSEY SUPREME COURT.

SAMUEL W. BOWER,
Plaintiff.
*vs.*
MOSES MEYERS,
Defendant.
} In Ejectment.

CERTIFIED COPY OF SUMMONS, AFFIDAVIT, CONSENT AND HAB. FAC.

Hudson County, ss.

Michael Carroll, Special Deputy Sheriff of Hudson County, being duly sworn, on his oath saith that he did, on the thirtieth day of January, 1891, served the annexed Summons upon Moses Meyers the tenant in possession of the premises in the said Summons mentioned and described by said writ, and the deponent at the same time acquainted the said Moses Meyers with the intent and meaning of said Summons and service.

MICHAEL CARROLL,
Special Deputy Sheriff.

Subscribed and sworn to this 18th day of March, 1891, at Jersey City, before me,

J. J. MAHER,
*Notary Public of New Jersey.*

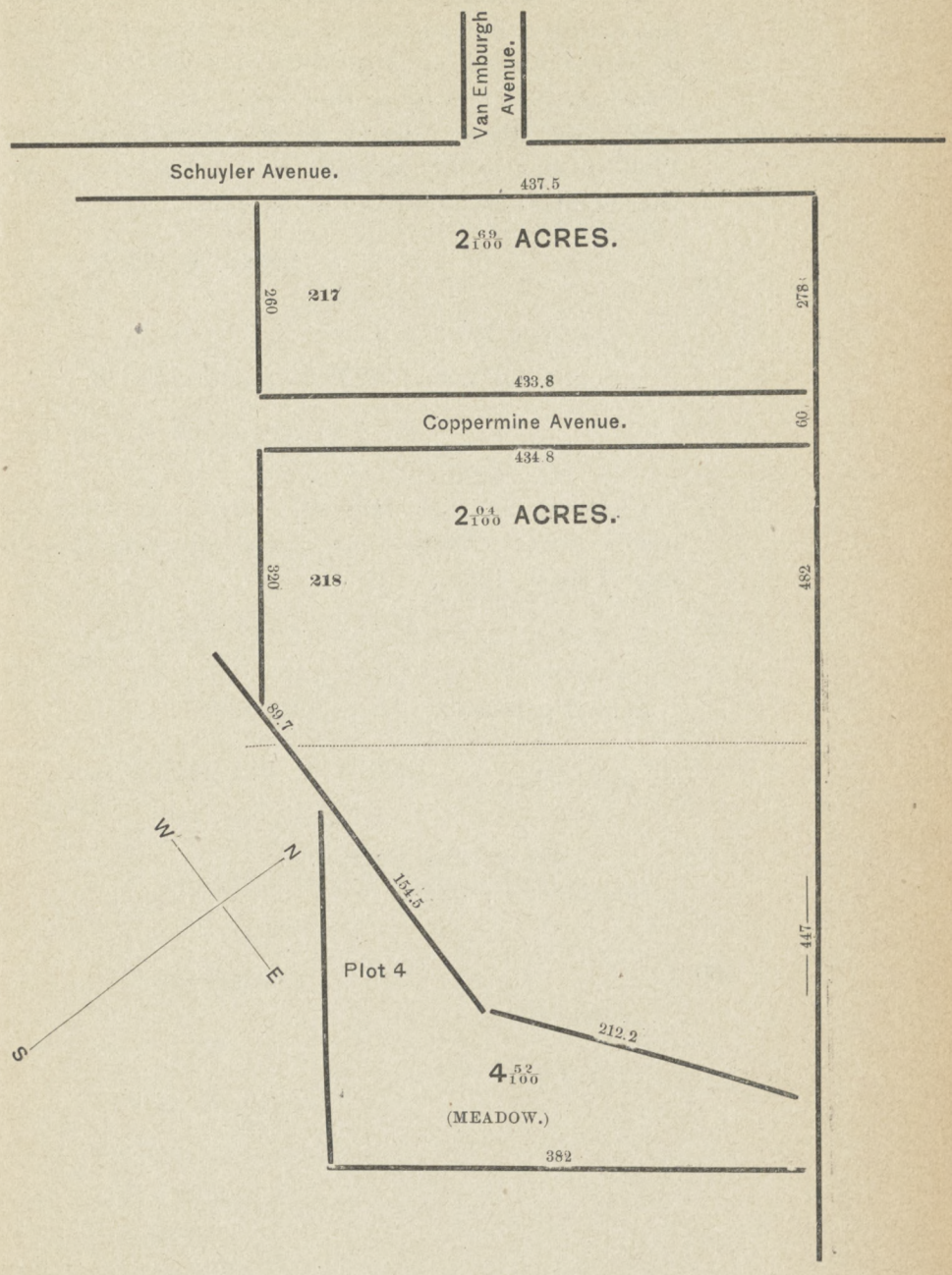
NEW JERSEY, ss:

[L. S.] The State of New Jersey, to the Sheriff of Hudson County, Greeting:

We command you to summon Moses Meyers, to be and appear before our Supreme Court, at Trenton, on the ninth day of February, next, to answer to the complaint of Samuel W. Bower, who demands of him the possession of All those certain tracts or parcels of land and premises, situate, lying and being in the Township of Kearney, in the County of Hudson and State of New Jersey, which, on the Tax, or Township Map, or Maps, of the Township of Kearney, are known, marked and designated as follows: Lot Number Forty-nine (49) Block Two hundred and eighteen (218) Coppermine Avenue, Plot Number Forty-eight (48) Block Two hundred and seventeen (217) Schuyler Avenue, and Plot Number Four (4) Meadow property, Assessed in the names of Moses Meyers, Rachael Meyer and the estate of C. Meyer; and, which taken together, are bounded and described as follows: Beginning at a point in the Southwesterly corner of the property of the Arlington Cemetery Co., which point is in the Easterly line of Schuyler Avenue; thence Southwesterly and along the Easterly line of Schuyler Avenue, Four hundred and thirty-seven and five hundredths feet (437.05), be the same more or less, to the Southwesterly corner of Plot Number 48, in Block numbered 217; thence Southeasterly and along the Southerly line of Plot Number 48, in Block Numbered 217, continuing through Coppermine Avenue and along the Southerly line of Plot 49, in Block 218, and at right angles, or nearly so, to Schuyler Avenue, Six hundred and forty feet (640); thence Northeasterly and along the Southeasterly line of Plot Number 49, in Block Number 218, Eighty-nine and seven one hundredths feet (89.07); thence Southeasterly, and along the Southerly line of Plot Number 4 (Meadow), Five hundred and eighty-five (585) feet to the Southeasterly corner of Plot Number 4 (Meadow); thence Northeasterly and along the Easterly line of Plot Number 4 (Meadow) Three hundred and eighty-two feet (382), to the Southerly line of the property of the

Arlington Cemetery Co.; thence Northwesterly and along the Southerly line of the Cemetery property, Twelve hundred and sixty-seven (1267) feet; be the same more or less, to the Easterly line of Schuyler Avenue, the point or place of Beginning: Excepting and reserving from the aforesaid description so much thereof as has been dedicated for an avenue now laid out and designated as "Coppermine Avenue," on the aforesaid Township Map.

The following is a diagram of the property, above described, as marked and designated on the aforesaid Township Map, or Maps.


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434.8
2 04/100 ACRES.
218
320
482
89.7
154.5
447
212.2
Plot 4
4 52/100
(MEADOW.)
382
W
N
E
S

And in default of his appearing and defending this action, judgment will be entered against him, and he will be turned out of possession of said land. And have you then and there this writ.

Witness, Mercer Beasley, Esquire, Chief Justice, at Trenton, the twenty-seventh day of January, in the year eighteen hundred and ninety-one.

BENJ. F. LEE,
*Clerk.*

JOSEPH PARKER, JR.,
*Attorney.*

(Endorsed).

I hereby deputize Michael Carroll to serve the within writ. Witness my hand and seal this 30 day of Jany., 1891.

JOHN J. McPHILLIPS,
*Sheriff.*

Served personally, Jany. 30th, 1891.

JOHN J. McPHILLIPS,
*Sheriff.*

By Michael Carroll.
Sheriff's fees $2.84.

NEW JERSEY SUPREME COURT.

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| | |
|---|---|
| SAMUEL W. BOWER,<br>*Plaintiff,*<br>*vs.*<br>MOSES MYERS.<br>*Defendant.* | In Ejectment. |

SUMMONS AND DECLARATION.

Returnable February 9th, 1891.

JOSEPH PARKER, JR.,
*Attorney.*

*To the within named defendant:*

Take notice, that unless you appear and file a plea or demurrer within thirty days after the day of service hereof upon you, judgment will be entered against you.

JOSEPH PARKER, JR.,
*Attorney.*

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NEW JERSEY SUPREME COURT.

| | |
|---|---|
| MOSES MEYERS,<br>*ads*<br>SAMUEL W. BOWER. | Affidavits of Merits. |

STATE OF NEW JERSEY, County of Essex. } ss.

Moses Meyers, being duly sworn according to law on his oath says, that he is the defendant in this

action, that this affiant believes that the said defendant has a just and legal defence to the action on the merits of the case.

MOSES C. MYERS,

Subscribed and sworn before me this seventh day of February, 1891.

J. ALBERT MCGOWN,
*N. P. of N. J.*

---

NEW JERSEY SUPREME COURT.

MOSES MEYERS,
*vs.*
SAMUEL W. BOWER.
} In Ejectment.

Affidavit of Merits.

COULT & HOWELL,
*Attorneys.*

Filed Feb. 7, 1891.

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NEW JERSEY SUPREME COURT.

MOSES MEYERS,
*ads.*
SAMUEL W. BOWER.
} In Ejectment.

I hereby consent to extend the time for filing plea by the defendant in this action to March 14th, 1891.

JOSEPH PARKER, JR.,
*Plaintiff's Atty.*

Dated February 27th, 1891.

(Endorsed).

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| Moses Meyers, *ads.* Samuel W. Bower. | In Ejectment. |

Extension of time to file plea.

Filed Feb. 27, 1891.

New Jersey, ss.

[L. S.] The State of New Jersey to our Sheriff of our County of Hudson, Greeting:

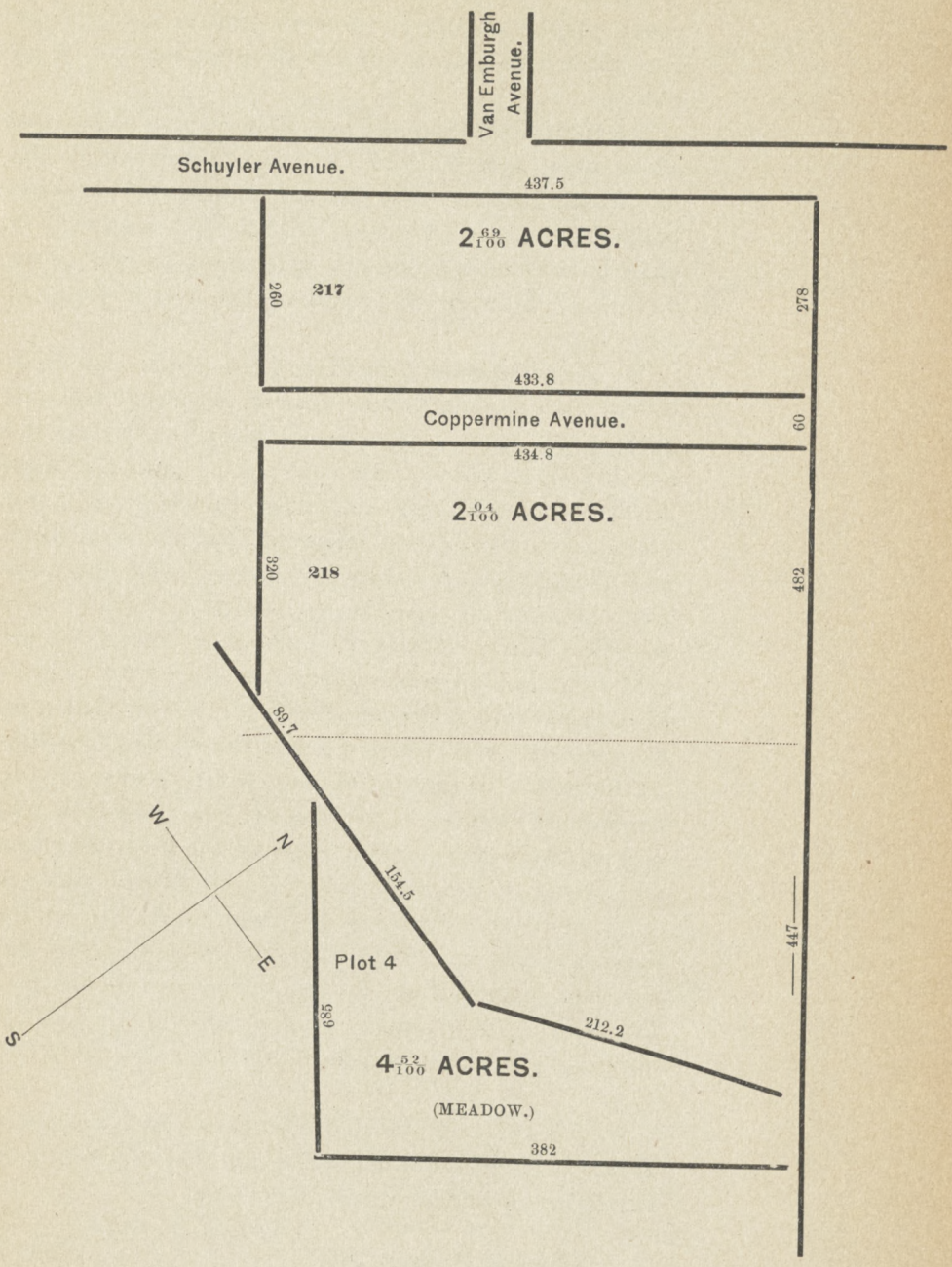
Whereas Samuel W. Bower, has lately in our Supreme Court of Judicature by the judgment of the said Court recovered against Moses Meyers, the possession of all those certain tracts or parcels of land and premises, situate, lying and being in the Township of Kearney, in the County of Hudson and State of New Jersey, which on the Tax or Township Map, or Maps of the Township of Kearney are known, marked and designated as follows:

Lot number forty-nine (49) Block two hundred and eighteen (218) Coppermine Avenue. Plot Number forty-eight (48), Block two hundred and seventeen (217) Schuyler Avenue and Plot Number four (4) Meadow property, assessed in the names of Moses Meyer, Rachel Meyer and the estate of C. Meyer, and which taken together are bounded and described as follows:—Beginning at a point in the Southwesterly corner of the property of the Arlington Cemetery Co; which point is in the Easterly side of Schuyler Avenue, thence Southwesterly and along the

Easterly line of Schuyler Avenue, four hundred and thirty seven and five-hundredths feet (437.05) be the same more or less to the Southwesterly corner of Plot Number 48, in Block numbered 217; thence Southeasterly and along the southerly line of Plot number 48 in Block 217 continuing through Coppermine Avenue and along the Southerly line of Plot 49, in Block 218 and at right angles or nearly so to Schuyler Avenue six hundred and forty feet (640); thence Northeasterly and along the Southeasterly line of Plot Number 49, in Block Number 218 eighty-nine and seven one-hundredths feet (89.07); thence Southeasterly and along the Southerly line of Plot number 4 (Meadow) five hundred and eighty-five (585) feet to the Southeasterly corner of Plot Number 4,(Meadow); thence Northeasterly and along the Easterly line of Plot Number 4, (Meadow) three hundred and eighty-two feet (382) to the Southerly line of the property of the Arlington Cemetery Co: thence Northwesterly and along the Southerly line of the Cemetery property, twelve hundred and sixty-seven (1267) feet, be the same more or less, to the Easterly line of Schuyler Avenue, the point or place of Beginning:

Excepting and reserving from the aforesaid description, so much thereof as has been dedicated for an Avenue now laid out and designated as Coppermine Avenue on the aforesaid Township Map.

The following is a diagram of the property above described as marked and designated on the aforesaid Township Map or Maps.


Van Emburgh Avenue.
Schuyler Avenue.
437.5
2 69/100 ACRES.
217
260
278
433.8
Coppermine Avenue.
60
434.8
2 04/100 ACRES.
320
218
482
89.7
154.5
447
Plot 4
685
212.2
4 52/100 ACRES.
(MEADOW.)
382
W
N
E
S

Which said premises have been and still are unjustly withheld from the said plaintiff by the said defendant, whereof he is convicted as appears to us of record.

We therefore command you that without delay you cause the said plaintiff to have possession of the premises aforesaid with the appurtenances thereunto belonging and appertaining, and in what manner you shall have executed this our writ, made known to our Justice at Trenton aforesaid on the first Tuesday of June next:

We also command you that of the goods and chattels of the defendant above named, in your county you cause to be made the sum of thirty-one dollars and seventy-eight cents, which in and by our said Court at Trenton aforesaid, according to the form of the statute was adjudged to the said plaintiff for his costs and charges in this behalf laid out and expended, and whereof there is a recovery as also appears to us of record: And if sufficient goods and chattels of the said defendant in your county you cannot find whereof to make the damages aforesaid, then in that case we command you that you cause the whole or residue as the case may require of the damages aforesaid to be made of the lands, tenements, hereditaments and real estate in your county whereof the said defendant was seized on the eighteenth day of March instant, or at any time afterwards in whose hands soever the same may be; and have you that money before our Justices aforesaid at Trenton aforesaid on the first Tuesday of June next, to render unto the plaintiff for his costs aforesaid; and have you then and there this writ.

Witness Mercer Beasley, Esquire, Chief Justice at Trenton, aforesaid this eighteenth day of March, A. D., eighteen hundred and ninety one.

BENJ. F. LEE,

JOSEPH PARKER, JR., *Clerk.*

*Attorney.*

(Endorsed).

NEW JERSEY SUP. CT.

HUDSON.

SAMUEL W. BOWER,

*vs.*

MOSES MYERS,

*In Eject.*

Ret'ble June Term, 1891.

JOSEPH PARKER, JR.,
*Atty.*

Hab. fac for within described premises and fi fa for costs.

Costs, $31.78.

Interest March 18, 1891.

Received April 16th, 1891, at 9 o'clock A. M.

JOHN J. McPHILLIPS,
*Sheriff.*

Recorded in the office of Clerk of Supreme Court in Book "A 28&, of Process, page 305.

BENJ. F. LEE,
*Clerk.*

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, Do certify that the foregoing is a true copy of the Summons issued and Sheriff's return thereto and affidavit of merits, consent and Hab. Fac., issued in the above stated cause as the same remains on file in my office.

In Testimony Whereof I have hereto set my hand and the Seal of said Court at Trenton, this twenty-seventh day of April, A. D., eighteen hundred and ninety-three.

[L. S.]

BENJ. F. LEE,
*Clerk.*

## Exhibit D 9.

This Indenture made the twenty-eighth day of May in the year of our Lord One thousand eight hundred and ninety, between the Board of Township Committee of the Township of Kearney in the County of Hudson and State of New Jersey party of the first part, and Samuel W. Bower, of the City, County and State of New York, party of the second part;

Witnesseth, That whereas the late Treasurer of the Township of Kearny did make out a list of the names of all delinquents in the said Township of Kearny, with the sums due from them respectively for taxes and assessments and did deliver the same to the Clerk of the said Township before the thirtieth day of December eighteen hundred and eighty-five, and the said Treasurer before delivering such list to the Township Clerk of said Township did take and subscribe an oath before a person authorized to take the same, that the moneys on said list mentioned had been demanded of each delinquent, and due notice given at the usual place of residence of each delinquent therein named who could be found or who resided in said Township; and

Whereas the Clerk of said Township did report these facts together with a list of the delinquents to the Board of Township Committee of the Township of Kearney, and the said Board did thereupon pass a resolution appointing and limiting a certain day in the then future on or before which the taxes and assessments described in the said lists should be paid, and in default thereof, the property upon which they were a lien should be sold; and

Whereas the time limited and appointed by the said Board of Township Committee for the payment of said taxes and assessments did expire; and

Whereas the following taxes and assessments in said list named at the expiration of said time limited and appointed by said Board remained unpaid, to wit;

the sum of Fifty dollars assessed and imposed upon the following lots, viz.:

On Lot 49, Block 218, Coppermine Avenue, $25; On Plot 48, Block 217, Schuyler Avenue, $20; On Plot 4, Meadow property, $5; as designated upon the Township Map of the Township of Kearny, and assessed in the names of Moses Myer, Rachel Myer, and the estate of C. Myer; and

Whereas the Board of Township Committee of the Township of Kearney, in pursuance of the requirements of the Charter of the Township of Kearny and the various supplements thereto, and of the authority vested in said Board by law, did give public notice, that the said Board would on Saturday, the twenty-sixth day of February, eighteen hundred and eighty-seven, at two o'clock in the afternoon, at the Town Hall, Kearny Avenue, in the Township of Kearny, sell at public auction, the lands and real estate upon which the aforesaid unpaid taxes had been assessed or were a lien (of which said taxes and assessments respectively with the lands and real estate whereon the same had been assessed or were a lien and the names of the respective owners of said lands and real estate, a schedule was set forth) for the shortest term for which any person would take the same respectively and pay such taxes and assessments or the balance thereof remaining unpaid, with the interest thereon and all lawful costs, charges and expenses, unless such taxes and assessments had been previously paid. And whereas said sale was duly advertised for sixty days in two newspapers generally circulated in said Township of Kearney, to wit: The "Kearny Record" and "The Hudson County Despatch," and also by advertisements put up in at least five public places in said Township, which said advertisements did briefly describe the said lands, tenements and real estate with the names of the person to whom said tax and assessment was assessed, and if the owner of any land was unknown, it was so stated in the said advertise-

ments, and the said advertisements set forth the time and place of sale, which time was the twenty-sixth day of February, Eighteen hundred and eighty-seven, at two o'clock in the afternoon, and said place was the Town Hall, Kearny Avenue, in the said Township of Kearny, and Whereas, the amounts so assessed on said lots known as aforesaid, together with the interest thereon and all costs, charges and expenses did amount to sixty-three dollars and fifty cents, the said Board of Township Committee, a majority or quorum being present on the said twenty-sixth day of February eighteen hundred and eighty-seven, at two o'clock in the afternoon of that day, at the Town Hall in the Township of Kearney, did cause said lots known as aforesaid in said Township of Kearney, to be exposed for sale at public auction for the shortest term for which any person would agree to take the same and pay the said sum of sixty-three dollars and fifty cents, being the amount of taxes and expenses as aforesaid, for the purpose aforesaid, and thereupon the Board of Township Committee, by its Treasurer, did there and then offer to take the same for the term of thirty years and pay the sum of sixty-three dollars and fifty cents, being the amount assessed on said lots as aforesaid and the interest thereon and the said costs, charges and expenses. And no other person offering to take the same for so short a time, the same was accordingly openly and publicly cried off and sold to the said The Board of Township Committee of the Township of Kearny, for the said term of thirty years.

And Whereas, the said Board of Township Committee of the Township of Kearny, at a regular meeting of said Board held at the Township Hall, May twentieth, Eighteen hundred and ninety, did resolve to dispose of the said land to the said Samuel W. Bower and the chairman of said Board was authorized to execute an assignment of the title held by the Township of such person or persons, and the Clerk

was thereby authorized to affix the seal of the Township thereto.

And Whereas, the said Samuel W. Bower has offered to purchase the title of the Township and to pay all liens on the lots aforesaid: Now, in consideration of the premises and the sum of nine hundred and nine dollars and six cents, (the same being the amount of all liens on the aforesaid lots) paid to the Township Treasurer the receipt whereof is hereby acknowledged the said the Board of Township Committee of the Township of Kearny doth hereby sell, assign, transfer and set over unto the said Samuel W. Bower, his heirs and assigns, all its right, title and interest in and to the aforesaid property and lots of land numbered as aforesaid as designated on the Township Map of the Township of Kearny and assessed in the names aforesaid.

To Have and to Hold the same for the term of thirty years from the twenty-sixth day of February, Eighteen hundred and eighty-seven.

In Witness Whereof, The Board of Township Committee of the Township of Kearny has caused the common seal of the Township of Kearney to be hereunto affixed and these presents to be signed by the chairman of said Board and attested by the Clerk of said Township, this twenty-eighth day of May in the year Eighteen hundred and ninety.

JESSE CARVER, [L. S.]
*Chairman.*

[L. S.]

Attest:

JOSEPH RANDALL,
*Township Clerk of Kearny Township.*

Signed, sealed and delivered in presence of Edward Kenny.

Acknowledgement in usual form.

## Exhibit D 10.

This Indenture made the fourteenth day of January in the year of our Lord One thousand eight hundred and ninety-two, Between Samuel W. Bower and Catharine S. Bower his wife of the city of Brooklyn in the County of Kings and State of New York of the first part; and the

Rural Homestead Company a corporation of the State of New Jersey of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of one dollar (and of other valuable considerations) 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 being 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 unto the said party of the second part, and to its successors heirs, and assigns forever, All the right, title, and interest of the said party of the first part in and to all those tracks or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the Township of Kearny in the County of Hudson and State of New Jersey which on the tax or Township Maps of said Township of Kearny, are known, marked and designated as follows:

Lot number forty-nine (49) Block number two hundred and eighteen (218) Coppermine Avenue. Lot number forty-eight (48) Block number two hundred and seventeen (217) Schuyler Avenue, and plot number four (No. 4) Meadow property, which lots or plots have been assessed in said Township in the names of Moses Myers (or Meyer), Rachael Myers (or Meyer), and the estate of C. Myers (or Meyer) and which

taken together are bounded and described as follows:

Beginning at a point in the Southwesterly line of land of the Arlington Cemetery Association at its intersection with the Easterly side of Schuyler Avenue; thence Southwesterly along the Easterly line of Schuyler Avenue, Four hundred and thirty-seven and five hundredths feet (437.05) be the same more or less to the Southwesterly corner of plot number 48 in Block number 217, thence Southeasterly and along the Southwesterly line of plot No. 48 in Block numbered 217 and continuing across Coppermine Avenue and along the Southwesterly line of plot number 49, in Block number 218 and nearly at right angles to Schuyler Avenue Six hundred and forty (640) feet; thence Southeasterly and along the Southerly line of plot numbered 49 in Block numbered 218, eighty-nine and seven one-hundreds (89.07) feet; thence Southeasterly and along the Southwesterly line of plot numbered four (4) (Meadow), Five hundred and eighty-five (585) feet to the Southerly corner of said last mentioned plot, thence Northeasterly and along the Southeasterly line of said plot number 4 (Meadow) Three hundred and eighty-two (382) feet to the Southwesterly line (or an extension thereof) of the Arlington Cemetery grounds, and thence Northwesterly and along the Southwesterly line of said Cemetery grounds twelve hundred and sixty-seven (1267) feet, be the same more or less to the Easterly line of Schuyler Avenue, the point or place of beginning. [Excepting and reserving from the said description so much thereof as has been dedicated for an avenue and now designated as Coppermine Avenue on the aforesaid Township Map].

And Also all those tracts of land and premises lying in the Township of Kearny in the County of Hudson and State of New Jersey described as follows:

The first track, Beginning, beginning in the center line of the road which formerly led from Watkins Tavern to Hackensack commonly known as the Coppermine

Road at the Easterly corner of land formerly belonging to John Van Emburgh, Jr., now to Julius H. Pratt, thence South forty-six degrees and ten minutes East five hundred and fifteen (515) feet and one-half inch, thence North sixty-nine degrees and forty-eight minutes East, two hundred and forty-one feet and five inches; thence North forty-six degrees and ten minutes West, six hundred and forty feet and seven inches to the center line of said Coppermine Road and thence along the center line of said Coppermine Road South thirty-nine degrees and four minutes West, two hundred and fifteen feet, nine and one-half inches to the place of beginning.

The second tract. Beginning at a point in the first course of a deed given to John Van Emburgh, and recorded in Liber 1: 3, of Deeds for Bergen County, page 61, etc., and at a distance of four hundred and forty-seven feet from said beginning, thence South forty-eight degrees and forty minutes East, forty-eight feet; thence North fifty degrees thirty minutes East, two hundred and ten feet; thence South thirty-nine degrees thirty minutes East, four hundred and twelve feet; thence South fifty-two degrees West, one hundred and twenty-two feet, thence due West, one hundred and ninety-eight feet; thence South forty-one degrees West, four hundred and sixty-two feet, thence South fifty-seven degrees and thirty minutes West, One hundred and ninety-five feet; thence North forty-eight degrees forty minutes West, ten hundred and ten feet, thence north forty-three degrees East, seventy-four feet; thence North seventy-three degrees thirty minutes East, one hundred and forty-one feet eleven inches; thence North sixty-three degrees thirty minutes East, one hundred and seventy-eight feet; thence South forty-eight degrees forty minutes East, five hundred and eighty-five feet; and thence North forty-one degrees twenty minutes East, three hundred and eighty-two feet to the place of beginning

containing twelve and seventy-nine one-hundredths (12 79-100) acres.

The party of the first part hereto, by this conveyance, sells and conveys all his right, title and interest in and to all of the herein described tracts of land and premises.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in any wise 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, its successors, heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors, heirs and assigns forever;

And the said Samuel W. Bower for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the second part, its successors and assigns, that he has not made, done, committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered in any manner or way 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.

SAMUEL W. BOWER. [L. S.]
CATHERINE S. BOWER. [L. S.]

Signed, Sealed and Delivered, in the Presence of

PHILIP D. MASON.

Acknowledgment in usual form.

Report of Committee in the matter of the Bower property at Arlington:

*To the Board of Directors of the Rural Homestead:*

The undersigned, a committee appointed by the Board to investigate and report concerning a tract of land adjoining Arlington Cemetery, respectfully report:

That they have carefully examined the property and have investigated the questions pertaining thereto which involve the interests of the Arlington Cemetery and Rural Homestead Company. The property is favorably located and is quite suitable for use as a cemetery, for which use it can be made immediately available under the operation of the law of 1890, Chap. 43, because of many interments that have been heretofore made in the tract. Your committee believe that it would be disastrous to the interests of this Company to have a competing cemetery established on the property in question and that such a competition should be prevented by all possible means. The committee have therefore been in communication with the owner, Mr. Samuel W. Bower, and submit the following correspondence which brings the matter to a point where the Board of Directors can take practical action if they deem best.

Jersey City, January 6th, 1892.

D. W. McCREA.
H. F. TORREY.

## Exhibit D II.

*Copy.*

JERSEY CITY, December 30, 1891.

*Samuel W. Bower, Esq., 35 Pine St., New York:*

DEAR SIR:

We are informed that you have acquired possession of the Myers Farm in Arlington, and that you contemplate converting the same into a cemetery. We write to inquire if you would be inclined to con-

nect your land with that of the Arlington Cemetery and operate the business of both in some equitable way for mutual benefit. If so, please make some proposition with that end in view and name the price at which you value the property.

Yours truly,

Signed, D. W. McCREA,
H. F. TORREY,
*Committee of Rural Homestead Co.*

## Exhibit D 12.

35 Pine street,
NEW YORK, December 31, 1891.

*Messrs. D. W. McCrea and H. F. Torrey, Committee Rural Homestead Co.*

GENTLEMEN:

Yours of December 30, 1891 is received, I own the fee of a part of the land, and an undivided one-sixth of the whole tract. I also hold the tax title to the whole tract, embracing between seventeen and eighteen acres which gives to me the use of all the property for about twenty-three years.

In order to convert it into a Cemetery, it will be necessary to pay some small amount to certain heirs with whom I am now negotiating. I am inclined to adopt your suggestion as to some plan of co-operation. My views of value are, that for a cemetery the property is worth more than that of the Arlington Cemetery because of the beautiful grove of forest trees and because of its proximity to the village of Arlington; in addition to this, it has a superior quarry of building stone, which I understand may be worked at a profit of $500 per year or more.

A client of mine was once a stockholder in your Cemetery Co., and my recollection is that the Cemetery Co., bought from him and others their land at about $2,000 per acre, payable in stock. At the

same valuation the two acres is worth $4,000, and the house standing thereon is worth $1,200, say at a total of $5,200. My interest in the property as indicated by the above facts would be worth perhaps $13,000 cash.

Yours truly,

SAMUEL W. BOWER.

## Exhibit D 13.

*Copy.*

JERSEY CITY, December 31st, 1891.

*Samuel W. Bower, Esq.:—*

DEAR SIR: Yours of this date is received.

We cannot conveniently pay cash for your interest in the Myers property, but we have some shares of Rural Homestead Company Stock, which the Directors are authorized to use in the purchase of property. We have exactly 238 shares of $50 each, having a total par value of 11,900. If you offer to sell your interest in the property for that amount, we will suggest the acceptance of your offer to our Board of Directors.

Yours truly,

Signed, D. W. McCREA.
H. F. TORREY.
*Committee of Rural Homestead Co.*

## Exhibit D 14.

35 Pine St.,
NEW YORK, January 5, 1892.

*Messrs. D. D. McCrea and H. F. Torrey, Committee of Rural Homestead Co.:—*

GENTLEMEN: Your favor of December 31, 1891, duly received.

If the stock described in your note is full paid and is not subject to assessment, and if the Rural Homestead company is, as I am informed, practically free

from debt, I will accept the 238 shares of stock for my interest in the Myers farm.

Yours very truly,

SAMUEL W. BOWER.

## Exhibit D 15.

JERSEY CITY, N. J., July 9th, 1890.

*Mr. F. W. Wildes*:

DEAR SIR:—Your note of 7th inst. by hand of Mr. Shearer was duly received. All the Stockholders present at our meeting to-day very cheerfully assented to your suggestion and elected Mr. Shearer as one of the Directors of Rural Homestead Co. Mr. Shearer alone was from his natural modesty, averse to the appointment, and required much urging to bring him to the point of voting his large handful of proxies in order to make it unanimous.

We are very glad to have the active co-operation of our Boston Stockholders in the person of Mr. Shearer as their representative. I made him the proposition that we would elect the entire ticket from his Boston friends on condition that he would guarantee that the Cemetery should be as well managed for the next two years as it had been for the past two, and agreed to pay him $1000. myself besides, in order to be relieved from the personal care of the management.

The offer is still open—The phrase "as well managed" was thus explained—

1st The Sales of Lots should continue at the same rate of increase.

2nd The expenses should not exceed those of the past year.

3d. The bills incurred for expenses should be promptly paid as heretofore and the credit of the concern be preserved up to the present standard.

Yours Truly,

JULIUS H. PRATT.

## Exhibit D 16.

*Letter of Mr. Pratt to Mr. Shearer and others, Aug. 20, 1890.*

The affairs of the Arlington Cemetery and Rural Homestead Co. (which are indissolubly merged in one interest) urgently demand some relief and support in addition to that which the officers of the two Companies can give. The burden of carrying the enterprize which should be borne proportionably by the Stockholders has been sustained for two or three years by great personal sacrifice on the part of the executive officers and of others who, at their solicitation have advanced money for that purpose. The situation was fairly stated in our director's report at the recent annual meeting, and the only remedy that we could suggest was set forth in the report.

On the presumption that the business hitherto has been honestly and economically administered. The policy proposed is such as all reasonable men would approve; viz., that those whose interests are at stake should join in a movement for their protection.

If any better plan can be suggested for our relief let us all unite in promoting it.

The only other plan usually adopted by Corporations is to wind up the concern by legal process. That method, even if it were advisable, is in our case absolutely impossible. The Cemetery business is by law perpetual and the Cemetery Association is a legal creation belonging practically to the Rural Homestead Co. The contract nominally made by two Corporations is in fact a contract of one party made with itself, and any attempt to wind up the Rural Homestead Co., independent of the Cemetery Association would easily work the destruction of all value in the stock of the former by deranging the business and the credit of the latter.

I am not aware of any disagreement in the views of our stockholders, for we have not been advised of any.

We certainly all agree in deploring the unprofitable speculation as developed up to the present time, and no one has suffered from it so much as myself, but it has not been shown that anything better could have been done.

In the interview to be had with Mr. Torrey, as proposed by Mr. Shearer, I hope a full and candid expression of opinion will be given by our Boston stockholders. If they can suggest anything for the improvement in value of our stock we will hasten to adopt it, and, if we cannot agree in a policy, I will sell out my interest at a very low figure and in that way make over to them the entire control, rather than have any controversy among ourselves which would bring sure disaster to all concerned.

If the plan proposed in the Director's report is approved by our Boston friends, let them sign the subscription which is already signed for one-half the requisite amount. If they have anything better to suggest let it be stated clearly so that we can all act in harmony. If there are any facts they wish to learn about our affairs let Mr. Cowdrey, whom we are always glad to see, make the investigation, and so by patience with each other and with the adverse condition we are in, we can ultimately save ourselves from loss.

Respectfully,

JULIUS H. PRATT.

Jersey City, Aug. 19, '90.

## Exhibit D 17,

JERSEY CITY, August 23, 1890.

*To Messrs. Daniel F. Shearer, Waldo S. Cowdrey, and Francis J. Parker*:

This letter intended for any or all of the Boston Stockholders of Rural Homestead Co., I address to you because hereiofore my correspondence in regard

to our affairs has been mostly with you. Will you kindly favor me with a reply individually or collectively as you may prefer.

On the 9th of last month a new board of directors of the Rural Homestead Co. was elected by the unanimous vote of the stockholders present in person or by proxy including all the Boston Stockholders.

Since that meeting nothing whatever has transpired and no new facts have appeared which can change the status of our affairs except that in the absence of sales of cemetery lots, I have paid out of my private funds for the common benefit of Stockholders nearly $600 on account of Cemetery expenses, for the reimbursement of which either interest or principal I have no hope for a long time to come.

During the past week while Mr. Torrey our Sec'y was in Boston it came to my knowledge that a preemptory demand had been agreed upon by all the Boston Stockholders for a change in the administration created by their votes. This demand has not been formerly made upon the directors, or upon any of them to my knowledge but has been made known through a verbal statement by your authorized mouthpiece Mr. Wildes in a conversation with Mr. Torrey.

A lawyer in Jersey City has also stated to another lawyer, (who may be supposed to have some connection with us but who in fact has not the slightest authority or power to act in the matter involved) that he is instructed by all the Boston Stockholders, who are his clients, to demand for them entire control of our business and in the event of our failure to surrender to them the control he will commence legal proceedings to compel it. Such an extraordinary demand made in such an extraordinary and indirect manner would receive no attention from me except for the fact that it is the exact line of my own wishes. There has been no time since our business commenced that I would not gladly have surrendered my part of its management into competent and respon-

sible hands. I will therefore make no comment on the discourteous method adopted by your representative for precipitating a controversy with other stockholders. Nor will I discuss the question of modesty on the part of a minority of about one-fourth interest demanding the entire surrender of the other three-fourths without assigning a reason for it, nor will I express my views of the spirit which animates the whole proceeding as emphatically announced by Mr. Wildes to Mr. Torrey that he as your representative "would control the whole business or ruin it." But I will at once co-operate with you in the effort to dissolve a connection which cannot in view of what has happened, be harmonious hereafter.

The following plans occur to me as fair for both parties and practicable, and inasmuch as the stock now controlled by me will when joined to yours make a majority I will not wait to consult others but will treat with you on my own account.

1st. The proposition I volunteered to make to Mr. Shearer at our Stockholders' meeting that I would help elect any persons he might name provided he would give to the Co. a guarantee that the business should be as well managed as it has been, was bona fide and reasonable, but does not seem to be acceptable to you. If on further consideration you wish to adopt such a method, please inform me and we will try to arrange on that basis.

2d. I will agree to sell all my stock, and that of my friends who may desire to be included, at a price to be fixed by two professional "Actuaries," the price to be determined on the basis of past experience and future probabilities.

3rd. Not less than 541 nor more than 601 shares of the R. H. Co. stock duly assigned in blank shall be placed by the Boston Stockholders in the hands of an umpire agreed upon. I will place in the hands of the same umpire a corresponding number of shares, also duly assigned, and an agreement shall be entered

into by each party either to sell or to buy the shares so deposited by the other.

The umpire will then call for bids and shall determine which of the two shall make the first bid. The bid may be either to sell or to buy. If to sell, then the party making the first bid will offer to the other party all of his deposited stock at a certain price. The other party will then agree to buy it at the price offered or will in turn offer to sell at a lower price. The bids shall proceed in the same manner until one or the other ceases to bid and takes the stock. If the reverse process is adopted then the first party will offer to buy at a certain price and the second party will either sell at the price offered or will offer a higher price and so on until one or the other shall cease to bid.

The terms of sale to be 10 per cent. cash at time of sale and 90 per cent. within sixty days. If one of these propositions or some one equally fair, reasonable and conclusive is not accepted by you and your friends I will accept your challenge to meet you in the Courts, and the responsibility for the consequences wil rest with you.

Yours truly,

JULIUS H. PRATT.

## Extract from Exhibit D 26, at Page 90.

DR. CASH.

| 1889. | | LOANS Under Contract | LOANS Temporary and Special | Sales of Lots | Permanent Fund | Interments, Labor and Materials | Sundry Sales and Rent | BILLS. Payable | BILLS. Receivable | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Feb. | 1. To Bills Rec'l Disct. A.E. Brown | | | | | | | | 76.52 | 76.52 | 625 |
| | 2. " Bills Pay'l " G. Stevens | | | | | | | 120.00 | | 120.00 | |
| | 5. " " Rec'l " N.C.& Ward | | | | | | | | 168.86 | 168.86 | |
| | 5. " " " " E. Blamey | | | | | | | | 68.93 | 68.93 | |
| | 10. " Sale of S. G. 65A | | s3.60 | 3.60 | .80 | | | | | 8.00 | |
| | 10. " Interment Cochran | | | | | 4.00 | | | | 4.00 | |

40 30 20 10

## Extract from Exhibit D 26, at Page 91

| 1889. | | CASH, CR. Construction- | Expense | Property | Temporary Loan Account | Interments Labor and Material | BILLS Payable | BILLS Receivable | Interest | |
|---|---|---|---|---|---|---|---|---|---|---|
| Feb. 1. | By H. F. Torrey, salary | | 150.00 | | | | | | | 150.00 |
| 1. | " John Brooks, papers | | 3.20 | | | | | | | 3.20 |
| 1. | " B. Rec'l, took up note of A. E. Brown | | | | | | | 86.33 | | 86.33 |
| 1. | " Disc't A.E. Brown on renewal | | | | | | | | 1.30 | 1.30 |
| 2. | " Pay Roll 76.62, Forman 6.00 | 31.00 | 42.62 | | | 9.00 | | | | 82.62 |
| 2. | " The Eagle Adv'g | | 2.50 | | | | | | | 2.50 |

## Extract From Exhibit D 37, at page 25,

1875 Capital Stock.

TO SUNDRIES.

For endorsements on their Certificates of amount land received by them by distribution.

| | | No. of Cert. | Shrs. | | |
|---|---|---|---|---|---|
| March 26, | E. Whittlesey, | 17 | 347 | $15,625 | 10 |
| 27, | H. Winchester, | 15 | 80 | 3,600 | |
| 29, | Chas. Smith, | 23 | 133 | 6,000 | |
| 31, | Andrew Frink, | 26 | 53 | 2,300 | |
| April 6, | Charles Storrs, | 73 | 201 | 9,050 | |
| | Geo W. Abbe, | 14 | 103 | 4,800 | |
| 7, | Walter Abbe, | 13 | 30 | 1,325 | |
| 6, | Levi P. Stone, | 45 | 50 | 2,250 | |
| 6, | Henry Seibert, | 12 | 100 | 4,500 | |
| 9, | Richard H. Huntley, | 74 | 20 | 875 | |
| 26, | Elizabeth B. Thacher, | 36 | 174 | 7,800 | 20 |
| 30, | Geo. Thacher, | 27 | 173 | 7,800 | |
| May 15, | Levi Keese, | 7 | 370 | 16,675 | |
| June 19, | Alfred S. Barnes, | 50 | 100 | 4,500 | |
| " | " " | 51 | 100 | 4,500 | |
| July 23, | Mason Loomis, | 67 | 20 | 910 | |
| " | J. T. Wilcox, | 6 | 2 | 90 | |
| 1876. | | | | | |
| Dec. 24, | W. B. Shrope, | 72 | 124 | 3,250 | |
| 1879. | | | | | |
| May 29, | E. Whittlesey, | 17 | 374 | 1,725 | 30 |
| 27, | C. Smith, | 23 | 133 | 650 | |
| " | A. Frink, | 26 | 53 | 350 | |
| June 6, | N. Winchester, | 15 | 80 | 400 | |
| 25, | W. Abbe, | 13 | 30 | 175 | |
| " | L. P. Stone, | 45 | 50 | 250 | |
| " | M. Loomis, | 67 | 20 | 90 | |
| July 9, | H. Seibert, | 12 | 100 | 500 | |
| 9, | C. Storrs, | 73 | 201 | 1,000 | |
| Sept. 26, | L. Keese, | 7 | 370 | 1,825 | |
| Dec. 14, | G. W. Abbe, | 14 | 103 | 350 | 40 |

| | | | | |
|---|---|---|---|---|
| 1881. | | | | |
| June 15, | G. Thacher, | 27 | 173 | 850 |
| | J. H. Pratt, | 47, 48, 59, 60, 61 | 200 | 10,000 |
| 1882. | | | | |
| June 6, | W. B. Shrope, | 75, 79 | 22 | 1,100 |
| Dec. " | J. T. Wilcox, | 6 | 2 | 10 |
| | A. S. Barnes, | 50, 51 | 200 | 1,000 |
| | | | | $116,125 |

1875.

June 4, Capital Stock.

To E. B. Thacher

This amount stock surrendered for land under distribution. $900

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## Exhibit D 40.

IN CHANCERY OF NEW JERSEY.

Between

FRANK W. WILDES, ET ALS., *Complts,*

*and*

THE RURAL HOMESTEAD COMPANY, ET ALS., *Defts.*

*On Bill, &c.*

You are hereby notified and required to produce before George W. Cassedy, Examiner in Chancery, at the office of Charles H. Voorhis, 239 Washington St., Jersey City, on July 18, 1893, at 11 o'clock A. M., the original agreement, dated November 29, 1882, between Julius H. Pratt of the first part and D. L. Shearer

and others of the second part, a copy of which is hereto annexed.

Your obed't serv't,

CHAS. H. VOOHIS,
*Of Counsel with Defts.*

J. C., July 11, 1893.

To BEDLE, MCGEE & BEDLE,
*Sols. of Complts.*

J. PARKER, JR.,
*Sol. of same.*

*Copy.*

This agreement made this twenty-ninth day of November, 1882, between Julius H. Pratt, of New York City, of the first part, and D. L. Shearer, Saml. B. Rindge, Frank W. Wildes, J. A. Cortright, F. J. Olys, and W. E. Cowdrey, all doing business in Boston, in the State of Massachusetts, of the second part, *Witnesseth;*

*Whereas*, the parties of the second part have subscribed for the stock of the Rural Homestead Company, in different amounts, with the understanding and upon the representation that one-half the proceeds of sales of Lots owned by said Company should be distributed among the parties of the second part in the proportion to which they may be severally entitled thereto by reason of being stockholders therein; and whereas the party of the first part has a contract under which he is entitled to the proceeds arising from the sales of the first four hundred (400) of said lots as more fully appears from the records of said Company. Now, therefore, I, said party of the first part, in consideration of the several parties of the second part paying the first instalment of his subscription to the Capital Stock of said Company, promise to each and all of said parties who shall pay their first subscription as aforesaid, to release, assign, transfer and set over to each such one all my right,

title and interest in and to a part of said proceeds, in the proportion which the number of shares held by each such one may bear to the whole number of shares sold from the entire capital stock of said Company at the time I shall receive any part of said proceeds, meaning and intending to give to the said parties severally, the right to receive the same amount which each would receive from the sales of said four hundred (400) lots, had there not been said contract by which the party of the first part became entitled thereto, to be estimated by the ratio which the number of shares held by each may bear to the number of shares then sold.

In witness whereof I have hereunto set my hand the day and year first above written, it being mutually understood that sixty of said lots have already been disposed of and only three hundred and forty (340) of said lots are to be considered as included in the above agreement.

(Signed) JULIUS H. PRATT.