

Louis C. Vogt, Steam Book and Job Printer, Morristown, N. J.

---

NEW JERSEY

Court of Errors and Appeals <sup>10</sup>

ELISHA RUCKMAN

vs.

WILLIAM R. BERGHOLZ.

} *In Error.*

20

NEW JERSEY, ss :

The State of New Jersey to the Justices of the Supreme Court of the State of New Jersey. GREETING: Because in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court between William R. Bergholz, plaintiff, and Elisha Ruckman, defendant, in a plea of trespass on the case upon promises, as it is said, manifest error hath intervened, to 30

SEAL.

the great damage of the said Elisha Ruckman, as by his complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be thereupon given, then, without delay, you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals on the last Tuesday in June, in the year eighteen hundred and seventy-five, together with this our writ that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the constitution and laws of this State ought to be done.

Witness Theodore Runyon, Esq., our Chancellor, at Trenton, the twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-five.

HENRY C. KELSEY, *Clerk.*

20 JACOB VANATTA, *Attorney.*

The answer of the Justices of the Supreme Court of New Jersey within named. The record and proceedings whereof mention is within made with all things touching or concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within commanded.

M. BEASLEY,  
*Ch. Jus.*

SEAL.

30

NEW JERSEY SUPREME COURT.

WILLIAM R. BERGHOLZ

*vs.*

ELISHA RUCKMAN.

*In Case.*

10

*On Postea.*

PARKER & KEASBEY,

*Attorneys.*

As yet of the twelfth day of January, A. D. eighteen  
hundred and seventy-one. 20

Witness MERCER BEASLEY, Esquire,  
*Chief Justice.*

BENJAMIN F. LEE,  
*Clerk.*

BERGEN COUNTY, ss:

Elisha Ruckman, the defendant in this suit, was sum-  
moned to answer unto William R. Bergholz, the plaintiff 30

therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff, by Parker & Keasbey, his attorneys, complains: For that, whereas the said defendant heretofore, to wit: On the thirty-first day of December, in the year one thousand eight hundred and seventy, at Hackensack, in the County of Bergen, in consideration that the said plaintiff had then and there, at the request of said defendant, agreed to procure for said defendant a purchaser for and effect and procure a sale of certain lands of him,

10 the said defendant, situate in said county, then and there undertook and agreed with the said plaintiff to pay him for such procuring a purchaser for and effecting and procuring a sale of said land after the following manner, that is to say: if the said plaintiff should procure such purchaser for such an amount of such land, whether then owned or thereafter to be acquired by said defendant to the extent of eighteen hundred acres or over, at the rate of two hundred and seventy-five dollars per acre, he, the said defendant, would pay him therefor, as and for commission upon

20 such procurement, and for his service in effecting such sale, the sum of five dollars for every hundred dollars of the money for which such lands should be agreed to be purchased by such purchaser; and the said plaintiff in fact saith that afterwards, to wit: on the day and year aforesaid, in the county aforesaid, he, the said plaintiff, having agreed with the said defendant as aforesaid, and at the request of the said defendant then and there procured, for said defendant, a purchaser, to wit: one King, for said lands, to wit: two thousand acres of land at said rate, and

30 did then and there sell to him said lands for said defendant, at and for the rate of two hundred and seventy-five dollars per acre, to wit: for the sum of five hundred and fifty thousand dollars, and the said King did then and there offer and agree with said defendant to buy the said lands of said defendant, and to pay him therefor at the said rate of two hundred and seventy-five dollars per acre, to wit: the sum of five hundred and fifty thousand dollars, of all which the said defendant then and there had due notice, and then and there agreed with said King to sell him

40 said lands at said rates for the said sum, to wit: five hun-

dred and fifty thousand dollars, whereby and by force of the premises, he, the said defendant, then and there and there became indebted to the said plaintiff in the said sum of five dollars for every hundred dollars of said money, to wit : on the sum of fifty thousand dollars, and being so indebted, he, the said defendant, afterwards, to wit : on the day and year aforesaid, at the county aforesaid, in consideration thereof, undertook and then and there promised the plaintiff to pay him the said sum of fifty thousand dollars when he thereunto should be afterwards reasonably requested. 10

Yet the said defendant, although often requested so to do, has not as yet paid the said sum of fifty thousand dollars, or any part thereof, to the said plaintiff or any person for him, but to pay the same hath hitherto wholly refused, and still doth refuse so to do for that, whereas, the defendant heretofore, to wit : on the thirty-first day of December, eighteen hundred and seventy, at Hackensack, in the County of Bergen, was indebted to the plaintiff in the sum of fifty thousand dollars for work and labor, care, diligence and attendance of the plaintiff, before that time done, performed and bestowed as the agent of the defendant in negotiating the sale of certain lands, tenements and hereditaments of the said defendant and for the said defendant, and at his special instance and request ; and in the sum of fifty thousand dollars for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendant at his request ; and in fifty thousand dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the defendant at his request ; and in fifty thousand dollars for so much money by the plaintiff before that time lent and advanced to the defendant at his request ; and in fifty thousand dollars for so much money by the plaintiff before that time paid for the use of the defendant at his request ; and in fifty thousand dollars for so much money by the defendant before that time had and received for the use of the plaintiff, and in fifty thousand dollars for interest upon and for the forbearance by the plaintiff to the defendant at his request of divers large sums of money before that time 40

due and owing from the defendant to the plaintiff; and in fifty thousand dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them; and being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendant hath disregarded his said several promises, and hath not paid the said several sums of money, nor any of them, or any part thereof, although  
 10 often requested so to do, but to do so hath hitherto wholly refused, and still doth refuse, to the damage of the plaintiff fifty thousand dollars, and therefore he brings his suit, &c.

And the said Defendant, by Dixon and Collins, his attorneys, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise to measure and form, as the said Plaintiff has above thereof complained against him, and of this he puts himself upon the country, &c., and for a further plea in this behalf, the  
 20 said Defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, as to the first count of the said Plaintiff's declaration, says that the said Plaintiff ought not to have or maintain his aforesaid action thereof against the said Defendant, because he says, that at the time when it is in said count alleged that the said Plaintiff procured for the said Defendant a purchaser, to wit: one King, for the lands in said count mentioned, and did sell to him, the said King, the said lands, for the said Defendant at and for the rate of two hundred and seventy-five  
 30 dollars per acre, to wit: on the thirty-first day of December, in the year eighteen hundred and seventy, at Hackensack, in the county of Bergen aforesaid, Plaintiff was interested with a partner of the said purchaser, to wit: the said King, in the said alleged purchase of the said lands of the said Defendant, and this he, the said Defendant, is ready to verify, wherefore, he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him. And the said William R. Bergholz, by his said Attorney, as to the said plea of the said Elisha Ruckman, by him firstly above  
 40 pleaded, and whereof he hath put himself upon the country,

doth the like. And as to the said plea of the said Elisha Ruckman, by him secondly above pleaded, he the said Plaintiff, says that by reason of any thing or matter therein mentioned, he ought not to be barred upon having or maintaining his aforesaid action against the said Defendant, because he says that the said William R. Bergholz was not interested with or a partner of the said purchaser, to wit: the said King, in the said purchase of the said lands of the said Defendant in manner and form as the said Defendant hath in his said last plea alleged, and this he prays 10 may be inquired of by the country, &c., and the said Defendant doth the like, &c.

Therefore, let a jury thereupon come before the Chief Justice or some other Justice of the Supreme Court of the State of New Jersey at a Circuit Court to be holden at Hackensack, in and for the County of Bergen, on the first Tuesday of April, in the year of our Lord, one thousand eight hundred and seventy-five, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now at this day, to wit: the first day of June, A. 20 D., eighteen hundred and seventy-five, before our said Supreme Court at Trenton comes the said Plaintiff, by his Attorney aforesaid, and the Justice before whom, &c., having sent hither his record had before him in these words, to wit:

Afterwards, to wit: on the day and before the Justice within named come as well the said Plaintiff by his said Attorney, as the said Defendant by his Attorneys aforesaid, and the jurors of the jury whereof mention is within made being summoned also come, who to speak the truth 30 of the matters within contained; being chosen, tried and sworn say upon their oath, as to the first issue joined between the said Plaintiff and the said Defendant, that the said Elisha Ruckman did undertake and promise in manner and form as the said William R. Bergholz hath within in his declaration alleged, and so to the second issue joined between the said parties, they say that the said William R. Bergholz was not interested with or a partner of the said purchaser, to wit: the said King, in the said purchase, of the said lands of the said Defendant, Elisha Ruckman, 40

in manner and form as the said Defendant hath within in his said last plea alleged, to wit : at the time of making the said contract of purchase, and they the said jury assess the damages of the said William R. Bergholz by reason of the non performance of the said promises and undertakings at the sum of thirteen thousand nine hundred three dollars sixty-five cents, over and above the Plaintiff's costs and charges by him about his suit in this behalf expended, and so say they all. Therefore, &c.

10 Therefore, it is considered that the said William R. Bergholz do recover against the said Elisha Ruckman his said damages by the Jurors in form aforesaid found to thirteen thousand nine hundred and three dollars and sixty-five cents, and also one hundred and ninety-three dollars and twenty cents for his costs and charges aforesaid by the court now here adjudged to the Plaintiff, and with his assent which said damages, costs and charges in the whole, amount to fourteen thousand ninety-six dollars and eighty-five cents.

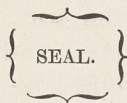
20

Judgment signed this first day of June, A. D., eighteen hundred and seventy-five.

M. BEASLEY, *Chief Justice.*

I, Benjamin F. Lee, Clerk of the Supreme Court of New Jersey, do certify that the foregoing is a true copy of the judgment in the above stated cause, as the same remains of record in my office.

30



In testimony, whereof, I have hereto set my hand and the seal of said Court at Trenton, this eighteenth day of June, A. D., 1875.

IN NEW JERSEY SUPREME COURT.

Bergen Circuit.

April Term, 1875.

10

WILLIAM R. BERGHOLZ

vs.

ELISHA RUCKMAN.

*In Case.*

COURTLANDT PARKER, Esq.,

20

*Appearing for Plaintiff.*

JACOB VANATTA AND GARRET ACKERSON, JR.,  
Esqs.,

*Appearing for Defendant.*

BEFORE HON. ALFRED REED, S. J.,

With a Struck Jury.

The Plaintiff, through his Counsel, stated his cause to  
the Court and Jury, and offered evidence as follows :

30

## BOOK I.

## FIRST DAY'S PROCEEDINGS.

*John J. Muir*, sworn for plaintiff, testifies as follows :

10 Direct examination.

By Mr. Parker :

I reside in Brooklyn ; have been living there 25 or 26 years ; my business is that of commission agent and broker ; that has been my business of late years.

*Question.* As general commission agent and broker, does your business concern you sometimes in the sale and purchase of real estate ?

20 *Answer.* Yes, sir.

*Q.* Do you know the plaintiff in this suit, Mr. Bergholz ?

*A.* I do.

*Q.* About when did you first know him ?

*A.* I think it was about the end of 1867, or about the beginning of 1868—about that it was.

*Q.* What was his engagement or employment at that time ?

*A.* A civil engineer ; have never known him as any-  
30 thing else.

*Q.* Do you know Mr. Ruckman, the defendant ?

*A.* Yes, by sight.

*Q.* When did you first know him, and who introduced you ?

*A.* I was first introduced about the beginning of March, 1868 ; I think it might be the 9th or 12th, in No. 20 Nassau street, by William R. Bergholz ; I think it was on the hall or on the stairs of that building.

*Q.* Just state how you came to be introduced to him at  
40 that time ?

A. It was by an appointment that I had with Mr. Bergholz.

Q. For what purpose?

[Defendant objects to the previous conversation between witness and Bergholz, as to the purpose of the introduction.]

*The Court :*

10

What took place after the introduction is competent.

Q. You say it was by appointment with him?

A. With Bergholz to see Ruckman; I didn't know Ruckman before that.

Q. What was stated; what occurred at this introduction; how were you introduced to him?

A. I was introduced by name, and as a purchaser of his lands

Q. Tell what was said; the first thing when you saw 20 Ruckman what was said by anybody?

A. Mr. Bergholz introduced me as a purchaser of his lands, and told me that Ruckman—

[Interrupted.]

*Defendant's Counsel :*

Give us the language of the parties?

30

A. I asked him what land he had for sale, where it was situated, and what amount, substantially; I can't give you every word, but that is the nature I asked him.

Q. Were you the first speaker of the three?

A. Bergholz introduced me.

Q. What did he say when he introduced you?

A. He said to me that, "this is the gentleman that has  
"lands for sale, Mr. Ruckman."

Q. Who, of the three, spoke next?

A. I asked him what lands he had for sale, and the de- 40

scription of them ; Mr. Ruckman then described the property to me, the amount he had, and the prices of it ; he said that he had about 2,000 acres of land for sale, and the price was \$225 an acre ; I asked him the situation of it, and he described it as being very eligible, and being near New York, and so on ; he said it was in the neighborhood of Closter there, and at Closter, and I think he said that the land run back as far as the Palisades ; that it commenced at the Palisades and run back, sloping down—giving the general description of the land, which I found afterwards to be true ; may I be allowed to remark this, that I was rather particular in asking him—

[Interrupted.]

*Q.* Tell what was said on both sides ; just go on and narrate the conversation ; that is all that is required of you.

20 *Defendant's Counsel :*

You tell us what was said ; we will judge whether you were particular or not ?

*A.* I made an appointment with him to visit the land after his description of it.

Mr. Vanatta :

30 The witness persistently mistakes conclusions for conversation.

*Q.* State just what was said when he made an appointment to meet you ; what was said between you—give us the language by which the appointment was made ?

*A.* I cannot give you the precise language ; I made an agreement with him to be at Closter about the 20th of March—I think it was on the 20th.

*Q.* Go on with the conversation ?

40 *A.* And the conversation was a kind of a general con-

versation as usually will occur about land, and one thing or another, and our interview was short—not long—it didn't last many minutes, in fact, and he said this: "Mind, "I don't pay but one commission."

Q. Well?

A. I told him I was a purchaser and not a seller.

Q. Well?

A. And that if I bought I would buy it through his agent, Wm. R. Bergholz.

Q. Well?

10

A. He said, "All right, me and him understand each other," and Mr. Bergholz was standing a little aside so that he turned around, and, pointing to him with his thumb reversed, says he, "Me and him understand each other," in that manner—[illustrating]—that is the precise words, "me and him."

Q. Well, anything further in the conversation?

A. I agreed to be there about the 20th and to examine the lands, and then we parted.

Q. Did you do anything in consequence of that conversation and appointment?

A. I spoke to several of my friends about it, but stated that I was going up to examine the land.

Q. Did you go up?

A. I went on the 20th with Wm. H. Newton.

Q. Who is he?

A. He is a civil engineer; he was an intimate friend of mine, and I depended upon his judgment in estimating the comparative value of the land.

Q. You got him to go up with you?

30

A. He went with me, sir.

Q. At your procurement; you asked him to go?

A. I did, yes, sir.

Q. Well, what occurred; where did you go when you got up to Closter?

A. I went to Mr. Ruckman's house; it was in the afternoon some time; we staid over night at Ruckman's, and examined the land next day.

Q. How did you go to examine the land?

A. There had been a frost and a little snow, and it was 40

not sleighing exactly, but he said he would take his sled out and we could stand upon the sled; he drove us over the land and I stood upon the sled, and I think he stood himself; it was either the 20th or 21st of March—I could not be certain—it was the next day after I went up there—it must have been the 21st, as it was the 20th I went up there.

*Q.* You stated you were acquainted with real estate; I want to ask of you, for convenience sake, if you know what is the ordinary commission for the sale of outside real estate in New York?

*A.* For the sale of improved property—for suburban property I speak of particularly—it is two and a half per cent.

*Q.* Such property as this?

*A.* No, sir.

*Q.* What as to this?

*A.* Property that is not improved that is to be brought into the market, as in the present instance, wild land or farm land, there is always higher commission demanded and paid; it is quite high sometimes, because it is a long while before it can be got into the market—sometimes as high as ten per cent., and that is a universal rule, sir; it is most difficult to get it into market.

Cross-examination.

By Mr. Vanatta :

30 *Q.* How long have you been a commission agent and broker?

*A.* For several years—since the termination of the war—since 1866 at any rate, and in 1865, I think, sir.

*Q.* What was your business prior to that?

*A.* For many years I was connected with the dry goods business as an agent belonging to the firm of Colgate & Wright & Co., New York; we were the agents for different manufacturers in England; I was one of the firm; we also had French and German accounts, and I was a member of  
40 the firm.

*Q.* And their place of business was in New York, where?

*A.* Corner of Cedar and William streets, upon the left hand corner going down—the south corner.

*Q.* Do you know where the Kemp building now stands?

*A.* There has been an alteration and a new building put up.

*Q.* Where the building now stands, where Day, Lord & Day have their offices—do you mean where that building 10 stands?

*A.* We had our affairs first in Pine street, and then afterwards moved up to that building, which we occupied for several years; I think the number is 145 William street, but if there is any doubt about it I can prove it by a thousand witnesses—our business and the importance of our business and our building—I may be wrong in the number.

*Q.* At what time was your office there at that place—your business? 20

*A.* It was in 1856 and 1857 and '58, I think.

*Q.* Where in 1868 was your place of business?

*A.* My desk was in my brother's store.

*Q.* Had you any other place of business?

*A.* No, not any direct place of business; my desk was there; my business was chiefly amongst stores and outside matters; I kept my desk and my papers there in the iron safe.

*Q.* Where is your brother's place?

*A.* Corner of Duane street and Broadway, the lower 30 corner, on the left hand going down.

*Q.* What was his business?

*A.* He was a merchant tailor.

*Q.* Was your desk on the first floor?

*A.* His place of business was on the first floor; he did not occupy the second; my desk was on the first floor in his office; it has a window on Broadway and one in Duane street, opening in Broadway.

*Q.* Before 1868 had you dealt in real estate?

*A.* Not much. 40

*Q.* Had you at all?

*A.* I had certain transactions with parties.

*Q.* Had you bought and sold any property as broker before 1868—any real estate?

*A.* I cannot recollect; I don't recollect whether I sold or bought any or not; I had had transactions with parties where I have introduced customers, &c.

*Q.* My question is whether you bought or sold, as broker, real estate in the year 1868, or prior to March, 1868?

10 *A.* I don't recollect.

*Q.* Don't you recollect that you never had?

*A.* I am not positive.

*Q.* Can you name any person that you have sold land to or bought land of as broker, prior to March, 1868?

*A.* I cannot recall it, sir.

*Q.* Since that, have you bought or sold any real estate as broker since March, 1868?

*A.* I don't recollect.

20 *Q.* Can you name any person to whom you have sold or of whom you have bought real estate as broker since March, 1868?

*A.* I cannot recall it.

*Q.* You speak of having met Mr. Ruckman at No. 20 Nassau street in March, 1868, and being then and there introduced to him by Major Bergholz?

*A.* Yes.

*Q.* Was that the first time that you ever seen Mr. Ruckman?

*A.* The first time I had ever seen him.

30 *Q.* You said that you went there on that occasion in pursuance of a previous appointment?

*A.* Yes.

*Q.* When and where was that previous appointment made?

*A.* That appointment was made by Mr. Bergholz to introduce me to Mr. Ruckman, in my brother's store three or four days before I saw Mr. Ruckman.

*Q.* Can you tell what day of the week it was?

*A.* I cannot.

40 *Q.* What time of day did this meeting occur?

*A.* This was, I think, about the middle of the day; I know I was delayed a little, and in going to 20 Nassau street, entering the building we met Ruckman coming down stairs.

*Q.* Was any hour named between you and Mr. Bergholz at which the interview would take place?

*A.* There must have been an hour named, because I met him by appointment, but I do not recollect the hour.

*Q.* Do you recollect whether there was one named or not? 10

*A.* I cannot recollect that there was one named, I know I met him by appointment; what the hour was I don't know; my impression is it was in the forenoon.

*Q.* You don't recollect the naming of a particular hour for the interview?

*A.* I don't, the particular hour.

*Q.* Was the day positively named?

*A.* The day was positively named.

*Q.* But you cannot recollect that any definite hour was named? 20

*A.* I cannot, I don't know whether it was half-past 12 or half-past 11, or what hour.

*Q.* Now, can you tell us whether you met Mr. Ruckman on that occasion on the stairs or at the foot of the stairs?

*A.* It was on the stairs coming down—about midway of the stairs—and then we stepped on the platform of the hall; most of the conversation occurred in the hall.

*Q.* Then you turned back yourself, did you?

*A.* Well, I suppose we did, there might be a step or two down. 30

*Q.* Do you recollect the fact that after getting half way up the stairs you descended to the foot of the stairs before the interview between you and Ruckman took place?

*A.* I didn't say half way up the stairs, Mr. Bergholz's office is in the second story, consequently it was two flights of stairs.

*Q.* What I want to get at is, whether this conversation occurred on the steps of the stairs or whether it occurred at the head or foot of the stairs? 40

*A.* Well, I think we turned back a couple of steps and stood upon the hall at the head of the stairs.

*Q.* At the head of what stairs?

*A.* Well, it is a building three or four stories high, consequently there is a great many stairs—I am speaking of this flight of stairs.

*Q.* Which flight do you speak of?

*A.* I am speaking of the first flight from the pavement to the first floor.

10 *Q.* That is, the outside stairs, do you speak of that?

*A.* No, sir, I speak of the flight of stairs to the first story above that; there is a hall way to the flight of the outside stairs; it was not outside the building; it was inside the building.

*Q.* You speak of the first flight of stairs inside the building?

*A.* Yes, sir.

*Q.* And your recollection is that you partly went up that flight of stairs?

20 *A.* I think we turned back and went up; I was introduced to him, and my recollection is that we did—

[Interrupted.]

*Q.* You went part way up and then turned around and went back again to the foot of the stairs—is that it?

30 *A.* Well, sir, my language cannot be construed that way; I said we met him coming down stairs, and as we met him coming down the stairs Major Bergholz introduced me to him, and we turned back and went up on the platform at the head of the stairs—the head of this flight of stairs.

*Q.* Then you ascended to the top of those stairs?

*A.* Three or four steps up.

*Q.* Then the conversation took place at the head of the stairs, did it?

*A.* Most of it.

*Q.* Was Mr. Bergholz's office on the same floor on which this conversation took place?

40 *A.* No, sir, it was on the floor above.

*Q.* Was anything said by anybody about having this

interview in Bergholz's office instead of having it on the stairway?

A. Not that I recollect; if so he could very easily turn back to his office.

Q. Was anything said about it?

A. Not that I recollect of; I don't recollect anything about it.

Q. If you had taken the trouble to make a previous appointment to come there that day for the purpose of meeting a man to negotiate for the purchase of 2,000 acres of land, why did you enter on the thing when you caught the man coming down stairs instead of going into some office?

A. I didn't come there for the purpose of negotiating 2,000 acres of land; I wanted to hear what he had for sale and the price of it—to be introduced to him.

Q. Then you hadn't previously heard how much land or what kind of land he had for sale?

A. Yes, I had previously heard how much land he had and what kind of land it was, for Mr. Bergholz described the land to me as being about 2,000 acres of land lying back of the Palisades.

Q. Did Mr. Bergholz tell you it was in the vicinity of Closter?

A. I don't recollect whether he mentioned the name of the place or not, but he said it was back of the Palisades, sloping down to the valley.

Q. Did Mr. Bergholz tell you it was mainly unimproved land?

A. He said it was land that might be well laid out. 30

Q. Did you understand from him that it was unimproved land?

A. I understood from him that there was no villas upon it—that it was not brought into fine farming purposes—that it was ordinary land.

Q. Then you had before you met Mr. Ruckman all the description of the property that you obtained from Mr. Ruckman?

A. I had—a portion of it—but I wanted to hear what the owner would say. 40

*Q.* What information did you get on that occasion from Mr. Ruckman that you had not previously obtained from Mr. Bergholz?

*A.* I got more definite information from him.

*Q.* Tell us what that definite information was?

*A.* He described the land and its extent, being about 2,000 acres, and that it was very eligible, a fine view from the Palisades, and one thing or another, and that he was the owner of the land, and as a man generally describes  
10 what he has got for sale, living upon the spot; for this reason I was not going to buy the land at the moment; I wanted to hear the description of it from him, then take Mr. Newton up and examine it.

*Q.* Didn't Mr. Bergholz tell you that there was about 2,000 acres?

*A.* I think he said that, more or less.

*Q.* Didn't he tell you what the price was?

*A.* He did.

*Q.* He told you that it began on the Palisades?

*A.* Laying back of the Palisades.  
20

*Q.* Didn't he tell you that it begun on the Palisades?

*A.* He didn't say it begun on the very brink of the Palisades—it run back of the Palisades.

*Q.* Didn't you ask Major Bergholz how near the river it extended?

*A.* No, I didn't ask him if there was any water privileges there.

*Q.* Why didn't you ask the Major whether the land extended to the shore of the river?

*A.* I considered it laid back of the Palisades, and I  
30 know when I went up to buy it I went to the Palisades for the purpose of seeing it.

*Q.* Are you sure that Major Bergholz hadn't told you before you met Ruckman that the land did extend from that river, or a large part of it, over the Palisades and down the descent of the Palisades?

*A.* I don't recollect.

*Q.* Can you tell us what one particle of information that you got from Ruckman on that occasion about that  
40 land that you hadn't previously got from Major Bergholz, and if so, what was it?

A. I don't recollect; I know I must have got a fuller description from Ruckman than from Bergholz.

Q. Then were all the purposes of this previously appointed interview met by that conversation that took place at the head of the stairs?

A. Repeat your question, if you please?

Q. Were all the intended objects of that prearranged interview accomplished in the short interview that you had at the head of the stairs?

A. Not until I saw the land, sir; no description can give you an idea of what the realities are if you are going to use your own judgment. 10

Q. If the sight of the ground was essential in your estimation why didn't you go with Major Bergholz, and look at the land without making an arrangement with Ruckman—without making an arrangement to have an interview with Ruckman?

A. I don't see the sense of your question.

Q. I would like to have it answered whether you see it or not. 20

A. It was very natural for Mr. Ruckman to say to me, "Come up and I will show you the land;" he knew exactly the boundaries and extent of the land.

Q. That is not answering the questions?

A. Well, that is a rational conclusion that a man would come to.

Q. But I want you to answer my question?

A. Yes, but I want you to be rational with me.

Q. Why didn't you take Bergholz up there and look at it without making an arrangement with him to bring Mr. Ruckman? 30

A. It is probable that Major Bergholz could not come up at the time; he introduced me as a buyer of the land, and I made an arrangement with Newton, a man accustomed to lay out suburban property.

Q. Answer my question; if the sight of the land was essential in your estimation why didn't you go with Major Bergholz to look at the land without making an arrangement with Ruckman, without making an arrangement to have an interview with Ruckman? 40

- A.* I don't know why I didn't make the arrangement.
- Q.* Did you tell him that you wanted to see the land?
- A.* Of course.
- Q.* Tell Bergholz?
- A.* Of course; I will tell you; I recollect distinctly Bergholz told me to go up and see the land—urged me to go up and see it.
- Q.* Did you ask him to go up with you?
- A.* I don't recollect.
- 10 *Q.* You say you understood he was the agent for selling it?
- A.* Yes, sir.
- Q.* Then why didn't you ask the selling agent to go with you and look at the land?
- A.* For the simple reason that I knew Mr. Newton was a man of very great experience, and I preferred him to go up with me; the first sight of the land was not to be the last; I expected to take a number of my friends up there; this was merely an introduction to it.
- 20 *Q.* You are not answering the question?
- A.* I cannot answer it—I know what you are driving at, but I cannot answer it.
- Q.* Then you ought to answer it if you know what I am driving at?
- A.* Well, you don't put it plain enough for me.
- Q.* You say you told Ruckman that you wanted to see the land as a buyer?
- A.* Yes.
- Q.* Not as a seller?
- 30 *A.* No, sir.
- Q.* Did you at the time expect or intend to buy the land?
- A.* Not myself—not by any means—my means were not sufficient for that.
- Q.* Then what did you mean by saying that you told Ruckman that you expected to be the buyer?
- A.* I intended to form a land association; I had wealthy friends, and of course, I would be one of the parties.
- 40 *Q.* You didn't mean by that that you intended to buy the land yourself?

A. No, sir, not entirely.

Q. Did you tell him you were going to buy it and sell it to somebody else?

A. No, sir.

Q. Did you tell Ruckman that you were wanting to buy that land if it had suited you or on account of somebody else?

A. I don't think I entered into particulars—that was an after consideration; I know several parties that would have taken part of it with me—large capitalists. 10

Q. You thought that Ruckman understood you to be a broker who wanted to sell this land, didn't you?

A. Well, when he said, "I pay but one commission," he might have supposed that; I told him distinctly I was not a seller, but a buyer of the land.

Q. Were you a buyer of the land?

A. Undoubtedly I would have been if it had been carried out—if my friends had been pleased with it; I had made several appointments to go with them, and from my description of it they were apparently very anxious to go 20 into it; it was a time there was a great deal of speculation in suburban property, and particularly in Jersey property—I was very much pleased with the land.

Q. You say that Ruckman said, "All right, Bergholz "and I understand each other"—that these are his precise words?

Mr. Parker :

No, he said, "Me and him understand each other." 30

Mr. Vanatta :

Very well, "Me and him."

A. He pointed to Bergholz with his thumb, so [illustrating.]

Q. Now, seeing that you recollect those words with entire certainty, give us the exact language of the other portions of that conversation, beginning at the beginning? 40

A. I have already answered those questions.

*The Court :*

Counsel is entitled to have it repeated.

Q. Just begin at the beginning and give us the very language used by yourself and Ruckman throughout that interview—not your understanding of it, but the precise  
10 words.

A. I may miss out a word or two, perhaps, and I can't swear that I can give you the exact language ; I can give you the substance.

Q. I want the precise language ?

A. Well, sir, when I swear to tell the truth, I suppose that God Almighty makes allowance for the defect of a word or two, and I don't expect you shall be more exacting than Him.

20 *The Court :*

You must state the exact words where you can, and where you cannot, give us the substance.

A. When Mr. Bergholz introduced me to Ruckman, I asked him the amount of the property he had—how it was situated ; he told me about 2,000 acres, he thought about 2,000 acres, and he also stated it was \$225 an acre in reply to my question what the price was, and I asked him about  
30 the lay of the land—how it laid, &c., and so on.

Q. Give the exact language ?

A. Then I think probably I may have asked him if it was in the neighborhood of the Hackensack River ; he said it was behind the Palisades ; I asked him where the land was ; he said it was close behind the Palisades—it was a sufficient answer to my question ; had it been in Nevada I should have got the map, but being a gentleman I had all the lay of the land all around here all along the North River ; I was satisfied when he said—

[Interrupted.]

Q. Isn't the truth of it just this, that you cannot undertake to give the precise language used in that interview?

A. I don't think it is by any means; I am giving you the language in answer to my question; you say the truth of it is I cannot give you the precise language; I don't know whether the first question that was asked was, "What is the price of the land," or "how much land there was;" I cannot tell exactly how the questions and answers were—not consecutively.

Q. Then do you mean to say you can give the precise language of the whole interview—that you can or cannot?

A. I say I can give you the substance of the language, and most of the words.

Q. The question is, can you give the precise language of the whole interview?

A. I think I can, to satisfy the Court—I think I can.

20

The Court :

The question is whether you can take up *seriatim* and give us the precise language of both parties during that interview?

A. Mr. Ruckman, in answer to my question—

[Interrupted.]

30

Q. That is not the question.

Mr. Parker to Mr. Vanatta :

You were asking what you know perfectly well that no man can give—the precise language of the interview, and the witness has told you that in substance over and over again; he has told you that the expression, "Me and him understood each other," is the precise language, and he has mentioned that as the only language, except that about the commission.

40

*The Witness :*

And also that it was about 2,000 acres of land, and the price was \$225 an acre, and it lay back of the Palisades, and it was a fine view.

*The Court :*

Counsel asks you whether you can give the precise  
10 words of that interview between yourself and Ruckman; you certainly can answer that question—yes or no.

A. I wish to be very particular, conscientiously so, in everything that I state; where he puts precise language to me, as if it was a stenographic report, I cannot give the precise language.

*The Court :*

20 Then say so, your counsel will set you right on it if you were not right before.

Q. The question is this: tell us how it is that you can recollect the precise language of one part of this conversation, and cannot state the precise language of the other parts?

A. The conversation occupied but a very few minutes, and I asked him the price of the land and he told me, and he told me the extent of the land and where it was situated.

30 Q. That is no answer to my question?

A. I have given you the precise language so far as I can.

Q. You cannot explain it then?

A. You are going into metaphysics; I cannot understand your meaning; I want common sense.

Q. You say you and Mr. Newton went to Ruckman's house on the 20th of March, 1868?

A. Yes.

40 Q. Who did you first meet when you arrived at his house?

A. I think I met Mr. Ruckman near the door.

Q. Is that the first person you met ?

A. I think it might be ; very shortly afterwards when we got to the door I met him, but there might be a domestic about the house, but I met Mr. Ruckman and he invited us in to supper with him and treated us very hospitably, and we spent the night there, and was introduced to a lady named Mrs. Ruckman.

Q. The first person was Mr. Ruckman ?

A. Yes.

10

Q. You met him where ?

A. Near the house at the porch, between the house and the barn, I think, on the premises there.

Q. Who first commenced the conversation, who spoke first ?

A. Of course, had the ordinary salutation, "How are you," &c., and then I introduced Mr. Newton to him.

Q. Was it before or after dark when you got there ?

A. It was, I think, a little before dark.

Q. Was it a clear or stormy day ?

20

A. I don't recollect, I think it was a clear day, kind of frosty.

Q. Wasn't it a severe snow-storm going on at that time ?

A. I don't know.

Q. Wasn't it about 8 o'clock when you and Newton arrived at his house in the evening and through a terrible snow storm ?

A. I don't recollect, if there had been a terrible snow storm ; I suppose I may at least have the privilege of drawing an inference—

[Interrupted.]

Mr. Parker :

Answer the question.

A. It was not a very severe snow storm.

Q. Was there any snow storm ?

40

A. There might have been.

Q. Didn't it rain through the night, and there was a frost on the snow and thus made a crust on the snow?

A. I can't tell.

Q. You don't recollect the time of night you got there or the time of day?

A. It was in the evening, I don't recollect the hour.

Q. Can't tell whether it was before or after dark?

A. Oh, it was before dark—yes, before dark—I am sure  
10 it was.

Q. You saw Mrs. Ruckman there?

A. There was a lady introduced to me as Mrs. Ruckman.

Q. Had there been any previous acquaintance or introduction between Mr. Ruckman and Mr. Newton?

A. I don't think there had, I never heard of it; I think Newton was an entire stranger.

Q. Did Mr. Ruckman recognize you when you came to his house that night?

20 A. Of course he did.

Q. What did he say?

A. He bade me good evening, of course.

Q. Before he bade you good evening, didn't you state to him that you had heard he had some lands for sale, and that had induced you to come there and bring Mr. Newton with you and you gave to him your name.

A. No, sir, because I had a previous introduction to Mr. Ruckman; how could I do that?

Q. Can you say that you had ever seen Mr. Ruckman  
30 or ever spoke to him before you went to the house on that night?

A. A thousand times, I can say that, most emphatically.

Q. Didn't you meet that night as perfect and profound strangers?

A. No, sir, Mr. Newton might be stranger to him, of course he was; I was a stranger so far that I saw him before and was invited by him to come up to Closter.

Q. Where is Mr. Newton now?

A. The last I heard from him was from Madison in  
40 Minnesota or Wisconsin—he is practicing his profession as civil engineer out there.

Q. Then he is in Wisconsin or Minnesota.

A. I don't know whether Madison is in Wisconsin or Minnesota—I think it is in Minnesota.

Q. The capital of Wisconsin is Madison?

A. He is out in the north west and was engaged in the Northern Pacific Railroad, and I believe is now connected with it.

Q. The next morning you say Ruckman showed you the land?

A. Yes, sir.

10

Q. What time did you start to view the land?

A. After breakfast; I don't know what time it was; I suppose his usual hour for breakfast was about 8 o'clock—it was after breakfast.

Q. What time did you get through the view?

A. I don't recollect; I know it was very cold, and I wanted to get through as soon as possible; after coming to the house Mr. Newton and I went to the Palisades and looked over the view—that is, after viewing the land.

Q. That is, after Mr. Ruckman had showed you—you 20 and Newton went and looked over the Palisades?

A. Yes, taking a walk there, we looked over.

Q. Mr. Ruckman wasn't with you?

A. He was in the neighborhood.

Q. I understood you to say that that was after you had returned to the house from that view?

A. I think it was.

Q. Did Mr. Ruckman go with you to that look on the Palisades?

A. I don't think he did.

30

Q. Where did Newton and you go from the Palisades?

A. We came back so as to take the train to New York.

Q. What time did you take the train to New York?

A. I don't recollect the particular hour.

Q. Before you went to the Palisades how long had you been engaged in viewing there about the lands?

A. I don't recollect; I know that we drove over a great portion of the land; it was very cold and we sat upon the sled, but how many hours or what length of time it took I don't recollect.

40

Q. You say there was not much snow on the ground?

A. There was not much snow—it was not a deep snow.

Q. The snow was not 15 or 18 inches deep at that time?

A. I don't know—I don't think it was.

Q. Was not the crust on the snow so hard that you could not drive the mules off of the broken road without their breaking through the crust so that they could not travel?

A. I don't recollect.

10 Q. Didn't you have to give up the team and go on foot?

A. I don't recollect; I know that we stood upon the sled and we drove some distance, &c., and it was very cold, and I preferred to come back and see the land again—it was a cold day—the depth of the snow I don't know anything about.

Q. Did you ever go back to Ruckman's place again?

A. I don't recollect; I don't think I did; I had made an appointment to go back, but the weather interfered again.

Q. My question is whether you went back?

20 A. No, I don't think I did.

Q. Did you after that at any time call at Ruckman's place of business in New York?

A. I once saw him in West street, I think it was, near one of the markets, on the right-hand side going down; I don't recollect the number—I think it was a corner, if I recollect right.

Q. You can't tell what part of the street it was?

A. No, I think I could go to it.

Q. What was he doing there at that time?

30 A. I don't know.

Q. Who was with you when you met that time?

A. I don't know that any person was with me.

Q. Wasn't Newton with you?

A. I don't know; I forget.

Q. What did you go for on that occasion?

A. I don't recollect.

Q. Did you say anything about the sale of this land at that time?

A. I don't remember.

40 Q. Did you, or Newton in your presence on that occa-

sion, ask Ruckman whether he would allow you a commission if you would sell these lands ?

A. I could not possibly say that.

Q. Did you or did you not say so ?

A. I don't think I did ; I could not possibly say it.

Q. Did Newton ask that in your presence ?

A. I don't know whether Newton was there or not.

Q. Did anybody that went there with you ask that in your presence ?

A. There was nobody with me at that time that I recollect.

Q. Then you heard nobody ask that ?

A. If there was nobody there I could not hear it ; I did not ask it myself.

Q. What did you say on that occasion ?

A. I can't recollect ; our interview was very short.

Q. What did you go for ?

A. I don't recollect.

Q. Nor you can't tell anything that was said on that occasion ?

20

A. I have no particular memory ; I know I saw him there, and what was said I cannot say ; it was but a very few minutes ; I was passing along and dropped in there.

Q. On that occasion in West street did you ask Mr. Ruckman whether if you should effect a sale of his Closter property he would allow you a commission, or words to that effect ?

A. I don't think I did.

Q. Did Ruckman say to you on that occasion that he would pay a commission to no man unless he employed 30 him ?

A. I don't think he did ; I don't recollect ; I don't see how he could either.

Q. Now when you and Newton were at Ruckman's place on the 21st of March, or the 20th, was anything said by Newton in your presence about buying any of Ruckman's land ?

A. About Newton buying any of Ruckman's land, did you say ?

Q. Yes ; when you and he was at Ruckman's place on the 20th or 21st of March ?

40

*A.* About Newton buying Ruckman's land? no, sir; nothing said about that that I know—that I recollect.

*Q.* Didn't Newton say to Ruckman in your presence that he wanted to buy about 500 acres of that land, and asked Ruckman if he would sell him that quantity?

*A.* I don't think he did.

*Q.* And didn't you and Newton both tell Ruckman that your business there was to see if he would sell to Newton 500 acres?

10 *A.* I don't think we did; I don't think I did.

*Q.* Did either one of you pretend there at all that you wanted to buy the whole quantity of land that he had?

*A.* Certainly not; we were up to inspect the land—to see it—to see the lay of it.

*Q.* Answer the question.

*A.* No, sir.

*Q.* Neither one did pretend that you wanted to buy the whole quantity?

*A.* No, sir, I don't think we did; I don't recollect of 20 anything of the kind.

*Q.* How much did you tell him that you wanted to purchase?

*A.* To whom—Ruckman?

*Q.* Yes; either you or Newton?

*A.* My conversation was not specific as to quantity; we went for the purpose of seeing this estate and seeing the lay of the land; Mr. Newton was well accustomed to laying out lands—a man of experience, and we expected, if I formed this land association, to lay out such a place as 30 Wellington Park or Montclair, or some such a place as that, and we expected to form a Land Association.

*Q.* Then you didn't mention any quantity or what quantity of land that you wanted to buy of Ruckman at that interview?

*A.* There was no specific conversation on that.

*Q.* Answer the question.

*A.* No, sir; not that I recollect of.

*Q.* Was Newton a capitalist at that time?

*A.* I don't know how much capital he had.

40 *Q.* Did you understand him to be a capitalist at that time?

A. He didn't go up with me for the purpose of buying land; he went up there for the purpose of examining it and giving his advice.

Q. Answer the question.

A. I know that he had property in the northwest, but I didn't know what his bank account was.

Q. Answer the question.

A. Well, I didn't understand him to be a capitalist; I knew the man was comfortably off; what do you mean by a capitalist? because it depends upon a person's estimation of riches—do you mean a man able to purchase the whole of the land?

Q. What did he go up there for?

A. For the purpose of giving his advice and viewing the land and giving his advice about it.

Q. To give his advice about what?

A. About the comparative value of the land, and how it could be improved, and one thing or another—giving me a general estimate of the land.

Q. Had he ever owned any land in that region of the 20 country?

A. No, sir; he lived in Jersey at that time, though.

Q. Whereabouts?

A. Hoboken.

Q. In the early part of March, 1868, where was Mr. Bergholz's place of business?

A. 20 Nassau street, in the building there.

Q. How many rooms had he, and which ones?

A. He had an office—I forget the number—on the second floor, I think—a front office. 30

Q. Was he connected with any railroad company at that time?

A. I think he was engaged in drawing the plans or engineering of the west shore Hudson River Railroad.

Q. Where was the office of that company?

A. I don't recollect where the office of that company was at that time; I think it was on Broad street—33, if I mistake not, Mr. Hays' office; yes, I think it was 33; that is upon the left hand side going down.

Q. Was not the office of that railroad company at that 40 time at 20 Nassau street?

*A.* It might have been, I say I don't recollect whether it was or not; I know that they had an office in Broad street.

*Q.* Was not Mr. Bergholz in the employ of that company at that time?

*A.* I don't know whether he was engaged particularly with them at that time—he was making plans—I can't say what his engagements was there; I think he was making plans for them.

10 *Q.* Was not his desk in one of the rooms of that company?

*A.* Not that I know of, his name was upon the door; I thought it was his own room.

*Q.* When was the office of that railroad company in Broad street?

*A.* I don't recollect, but it was there I know; I can't tell when; I was in the habit of calling there myself on Mr. Hay.

*Q.* Was it before or after you met Ruckman in the hall  
20 that the office of the company was in Broad street?

*A.* I think it was before if I mistake not, but I can't tell; I am not sure, I don't recollect; I only recollect distinctly that Bergholz had an office there and his name was upon the door.

*Q.* On the previous trial of this cause you located your brother's store and your desk room on the corner of Broadway and Reade street, did you not?

*A.* It might be Reade street, I may have made a mistake there—Broadway and Reade street? Reade street is  
30 next to Stewart's building, isn't it? It is the street above Stewart's building.

*Q.* My question is whether on the previous trial you did not testify your brother's store and your desk room was on the corner of Reade street and Broadway?

*A.* I may have done so, I may have made a mistake.

*Q.* Did you or not?

*A.* If you will show me the printed testimony I will tell you.

*Q.* Can you tell from memory?

40 *A.* I don't recollect.

*Q.* If you were wrong then which place is right now—was it on the corner of Broadway and Reade, or Broadway and Duane?

*A.* It is the corner of Broadway and Duane, I think; that is a matter of very little importance, I think.

*Q.* When did your brother cease keeping at that place?

*A.* He was there for two or three years—for several years.

*Q.* How long has he been away?

*A.* He has been away for two or three years; his present place of business is Nassau street.

*Q.* Can you tell us how it is that you are able to recollect Mr. Ruckman's precise words, better than you can tell where your own office was in 1868.

*Witness*—[Rising in his seat] :

I will not answer that question.

Mr. Parker :

20

Yes, you will if the question is a lawful one.

*Witness* :

He implies by his question that I am a liar.

Mr. Parker :

He has a right to imply that if he wants to.

30

*Witness* :

But I swear to what is true.

*The Court* :

I don't see that it is very important, but if Counsel asks it may be a circumstance. Do counsel insist upon it.

40

Mr. Vanatta :

No, sir, he didn't seem to be able to answer it.

*Witness :*

It was the corner of Duane street, now that I recollect distinctly. I might have confounded the two streets. It is a slight mistake, I am very sorry for it.

10

Mr. Parker :

They are the next streets to each other, are they not?

*A.* Yes, sir.

*Q.* Now you told us you were not able to buy this land yourself, and didn't expect to buy it yourself—tell us whom you expected to buy it for?

*A.* I am acquainted with a lot of capitalists in New  
20 York.

*Q.* Just answer the question?

*A.* I intended to have the Bernheimer Brothers with me and a Mr. Hood, and various others—men of large means and capital to take an active part.

*Q.* Name all the parties that you expected to take part in it?

*A.* Perhaps I might have had A. T. Stewart to take a portion of it; perhaps John Jacob Astor—no doubt they are very anxious to invest a few thousand dollars.

30 *Q.* Go on?

*A.* And yourself.

*Q.* One as likely as the other?

*A.* Yes, when I say capitalists I speak of legitimate men in business; there was the Bernheimer Brothers, Claffin, William G. Hunt, Thomas Slocum—excellent names; I have done a good deal of business for all of these gentlemen.

*Q.* Have you named all now?

*A.* No, sir.

40 *Q.* Tell us the rest?

A. If I should name all I would have to have a list as long as that—[Holds his hands about four feet apart.]

Q. I want the names of the parties that you expected to join in the purchase of this land?

A. Those that I spoke to positively about it, I recollect were Mr. Bernheimer and Mr. Hood, and they had made engagements to go and see the lands with me—the Bernheimers, both Isaac and Simon—but there were a great many other capitalists I expected to join with me.

Q. Name all the persons you can remember whom you 10 expected to be interested in the purchase of this property?

A. Perhaps I might expect fifty of our first New York merchants to be in; if you will give me a Directory I will point the names out, but I had not spoken to them about it; I had spoken to the Bernheimers and Mr. Hood about it.

Q. Are these all that you had spoken to—Bernheimers and Hood?

A. Might have been one or two others. 20

Q. Do you remember speaking to any others?

A. I don't recollect.

Q. What was Mr. Hood's Christian name?

A. Frederick Hood, a brother-in-law of mine; he lives in Orange.

Q. At that time?

A. No, not at that time, I believe; his place of business was in Newark, and is now.

Q. You can't tell where he resided at that time?

A. Oh, I think it was in Orange that he resided; he re- 30 moved from Newark to Orange, but I can't tell the day of the month.

Q. Whereabouts in Newark was his place of business?

A. I don't know the names of the streets; I know Broad street very well, and Centre street, and Market street.

Mr. Parker:

It is in Washington street.

*Q.* What was his business ?

*A.* In the grocery business, as I understood—whole-sale and retail.

*Q.* Was he a capitalist at that time ?

*A.* Yes.

*Q.* A large or small one ?

*A.* I don't exactly know how much he was worth.

*Q.* Had he entered into any arrangement to take this property ?

10 *A.* If he was satisfied I suppose he would have been one of the number.

*Q.* Did you talk to him about it ?

*A.* Yes.

*Q.* Before you went to look at the property ?

*A.* I don't know whether before or after ; I think it was after, if I mistake not.

*Q.* Did you talk to the Bernheimers before you went to look at the property ?

20 *A.* I think I did, and after, when I came down, because they expressed themselves very much disappointed when Bergholz sold the property.

*Q.* Did you talk to them before you went to look at the property ?

*A.* I don't recollect ; I have had considerable sickness since I testified before, and my memory may not be so clear in the details as before, but I swear substantially to what I said before solemnly.

Recess.

30

*Q.* I will ask you whether you knew the officers of the West Shore Railroad Company in March, 1868 ?

*A.* Yes, sir ; I knew some of them.

*Q.* Who were officers at that time ?

*A.* Do you mean the President and Secretary, and so on ?

40 *Q.* Yes ; I mean the gentlemen who were in this office at that time—in 1868 ; my question is whether you know who they were at that time ; do you recollect whether you then knew who they were ?

A. I know some of the gentlemen connected with it; I don't recollect exactly who the President was.

Q. Can you tell who the Treasurer was?

A. I don't sir.

Q. Or the Secretary?

A. I recollect a person who I think was the Secretary; I forget his name; I think it is Hall—said to be; I am not positive whether he was Secretary, but he was the man who was doing the writing for them.

Q. Name the Directors?

10

A. I cannot give you the names of the Directors positively; I think Allen Hay was one of them, and I am not sure whether John R. Van Ness was connected with it at that time, and I think Mr. Van Wagener, if I mistake not; whether Van Wagener was a Director or not I can't say; I think Van Wagener was one of them.

Q. Do you know Ambrose W. Thompson?

A. By sight; I have spoken to him.

Q. Was he at that time connected with that road?

A. I don't know, in fact; I have seen him; I understood he was in some connection, but what position I can't exactly recollect.

Q. Did you ever talk with him about this property?

A. No, sir; not to my recollection.

Q. Did you talk with Allen Hay about it?

A. No, sir.

Q. Or hear either of them speak about it?

A. I never heard them speak about it; I didn't know that they knew anything at all about it.

Q. Do you know Frederick B. Betts?

30

A. I think I have seen him; I don't think I know him.

Q. Was he connected with it?

A. I don't know; I think I know the man that you refer to; I have a poor recollection of names.

Q. Did he have any talk with you or you with him about that time?

A. Not that I know of.

Q. Had you ever been—were you in the habit of being at the office of that railroad company in New York?

A. Very seldom, sir.

40

*Q.* And being in the office and having conversations there with the persons there?

*A.* Conversations about what?

*Q.* Anything.

*A.* When I went into the office I suppose I conversed with him.

*Q.* Were you at that time connected with that company?

*A.* I procured them corporators for that company.

10 *Q.* When was that?

*A.* I don't recollect it.

*Q.* As near as you can tell?

*A.* I have no memorandum with me.

*Q.* To the best of your recollection?

*A.* It would be about the time of the formation of the company; that must have been about 1867, I suppose; I don't recollect positively.

*Q.* How long before you met Ruckman was it that you had that company organized?

20 *A.* I met Ruckman in March; might be the 10th or 12th, and if the company was formed in 1867, why it might be six months before, or twelve months before.

*Q.* What was it?

*A.* I don't know whether it was six or twelve months.

*Q.* Was it six or twelve months?

*A.* I can't say.

*Q.* Were you connected with the company after it was organized in any way?

*A.* No, sir.

30 *Q.* Are you right sure you didn't talk with Ambrose W. Thompson about that company's buying this land, or he with you?

*A.* I don't recollect; I don't think I did; I don't know that the company, any of them, had any knowledge of it, in fact.

*Q.* Are you right sure you didn't talk with Allen Hay about it?

*A.* I don't think I did.

*Q.* Or with John Van Ness?

40 *A.* I don't think I did.

Re-direct examination.

By Mr. Parker :

*Q.* You stated on your cross-examination, in answer to questions of Mr. Vanatta, that you thought Bergholz had told you about the land, its price, that it was near the Palisades, and other matters ; when was it that you had had this conversation with Bergholz—how long before that with Ruckman ?

10

*A.* I think it was, it might be ten days before that, or might be a little more or less ; I know he conversed with me about it two or three times ; I was very much engaged, and had no time to attend to it until I made a special appointment.

*Q.* You say likewise that you had told Bergholz that you wished to see the land ; I want you now to state this conversation which you have partially stated on this cross-examination—that is, with Mr. Bergholz, I mean ?

*A.* Mr. Bergholz brought the land to my attention, and told me where it was—

(Defendant's counsel objects to this conversation with Mr. Bergholz in the absence of Mr. Ruckman.)

*The Court :*

I don't know how you are going to avoid it; you introduced the subject, and asked him the conversation between him and Bergholz about the description of the land ; now the other side have a right to the whole of it.

Mr. Vanatta :

The rule your Honor relies on would undoubtedly apply if I had asked him to narrate the conversation between the parties on another occasion. But my question was not of that purport. The effect of my question was whether or not he had not previous to a given date obtained certain specific items of information from Mr. Bergholz. I on no

40

occasion asked him what the conversation had been, but only asked whether he hadn't got certain items of information that he was possessed of from Bergholz before going to Ruckman. Now, I don't understand, if the Court please, that, when it is a question of what the witness knew—he says he went to a certain place to get certain information of a certain fact. You may not ask him whether he did not learn that specific fact of some other individual previous to that, and it is undoubtedly a competent question, but I don't understand that that permits the other side to prove everything that was said between him and the other party on that particular occasion; it must be confined to the particular matter inquired about or particular fact. That is the distinction which seems to me to exist. Now, the rule upon which the counsel seems to be proceeding is, that when you ask whether or no a man hadn't notice of a particular fact, that you may give all the conversation that occurred when that notice was transmitted to him or communicated to him. If I had asked for the conversation it would be legitimate.

Mr. Parker :

It seems to me that this is a distinction without a difference. Counsel asks the witness, "Did'n't Bergholz tell you "so and so." He goes over the particulars—didn't he say this, didn't he say that, and his point was, if you knew all before why did you go to Ruckman, and his object is to discredit the witness as to a fact to which he has so unequivocally and clearly sworn as to all of this interview with Ruckman. Now, haven't I the right to find out what information was got—haven't I a right to have the conversation that occurred, and must I distinguish between other things that he told in that conversation and the particular things to which he did not call his attention? I know no such binding rule as that. I hold that when a man opens upon a cross-examination by asking what somebody said, that all that *that* somebody said on that occasion is made legal testimony, on the same rule that if counsel were to prove that a man swore on a particular occasion so and so, and then

wanted to contradict that person he would have to prove, if it were by affidavit, he would have to prove the whole affidavit—he would have to put it all in—it is one thing—the rules are the same. I am very much mistaken if my friend and I haven't practiced on the rule I now enunciate all our long career.

*The Court :*

I shall admit the question as to the conversation between witness and Bergholz, as to the knowledge of the particular facts investigated—that is, as to the location, the number of acres, price, &c. I will not admit any conversation as to any other matter.

Mr. Vanatta :

My objection does not apply to those matters.

*The Court :*

20

As to any power which Bergholz claimed from the other party to sell, &c.—anything of that sort, I shall exclude.

Mr. Parker :

We pray an exception. My object was to introduce the whole of that conversation.

Q. In either of these conversations referred to was anything said about going to see Ruckman, and if yea, what was said? 30

Mr. Vanatta :

Which conversation do I understand you to refer to?

Mr. Parker :

The conversation he has referred to in his cross-examination between him and Bergholz. 40

Defendant objects to it, and the Court overrules it, to which ruling the plaintiff prays an exception.

*Q.* In either of these conversations was any reason stated why you wished to see Mr. Ruckman ; if yea, what was said ?

Defendant objects to the question unless it includes the interview when Mr. Ruckman was present, and as to that there is no objection.

10

Mr. Parker :

I don't include that.

*The Court :*

As the question is propounded I understand it as a general question. I overrule it in that shape. I overrule it except as to the conversation when Ruckman was present.

20

Plaintiff prays an exception to the ruling of the Court.

*Q.* You stated that you did not expect to buy yourself, but intended to form a land association among your friends ; state more fully the intent that you have thus expressed about forming a land association ; what was your purpose in this proposition to deal with this land ?

*A.* To have my friends and myself purchase this land and form a land association, to lay it out, and to improve it—to lay it out for villa sites, &c.

30

*Q.* Did you act upon such an intention ?

*A.* To a degree I did ; I took the initiatory steps.

*Q.* What had Mr. Newton's visit, if anything, to do with that intention ?

*A.* That his opinion might be referred to—the availability of the land might be referred to, and that he would take an active part in the engineering work for the association—that he would lay it out for them : in fact, be actively engaged in it officially in his capacity as engineer.

40

Q. Up to what time or event was this intention of yours still existing and carried out?

A. Up to the beginning of May.

Q. What stopped it?

Question objected to as irrelevant.

*The Court :*

I don't see the relevancy of it.

10

Mr. Parker :

It is relevant in this point of view—that it is to show the *bona fide* of this proposition ; that is all the purpose for which I asked it ; I want to show that he was there, just as he stated, as a person engaged in buying—not for the purpose of buying, but that he had a *bona fide* intention to sell, and to sell by these means, and that this intention existed up to the event precluding its possibility of being carried out. 20

Mr. Vanatta :

He limits its existence to May ; that ends it ; how it can be material beyond that I don't know ; I suppose I apprehend the purpose for which the question is put and the fact it is expected to elicit by it, and if it should be answered as I expect it will be, and as I suppose the question was put with a view of its being answered, I should 30 only have to ask the Court to strike out the answer, but as it now appears, I am warranted in objecting to it on the ground that it is not pertinent.

*The Court :*

It is relevant in a certain sense, but the trouble is whether in the discretion of the Court we ought to allow in so many issues which seem to be so much from the case ; I don't want to keep anything out of the case, and yet I 40 want to try it closely as possible.

Mr. Parker :

The witness has named a time, but everybody knows in the first place how uncertain memory is as to time, and we have nothing in the case yet to show anything happening at that time or afterwards.

Mr. Vanatta :

- 10 My objection is this, that I suppose if that question is answered, the answer will consist of a conversation between Bergholz and the witness in the absence of Ruckman, and that is what prompted me to object to it.

Mr. Parker :

It will probably consist in saying, "I was informed so and so."

20 *The Court* :

I think it is too far from the case ; I feel disposed to keep the case down to as close a limit as possible, while I will let in everything that is important ; he swears that up to this time he was acting in good faith and had these parties with him. I think I will overrule it.

Plaintiff prays an exception to the ruling of the Court.

- 30 *William R. Bergholz*, plaintiff, sworn in his own behalf, testifies as follows :

Direct examination.

By Mr. Parker :

Q. Where do you live ?

A. In New Rochelle, Westchester County, New York ; I have lived there the past five years.

- 40 Q. Were you born in this country ?

A. No, sir, I was born in Germany.

Q. What is your profession?

A. Civil engineer and landscape gardner.

Q. You have the title of Major, how did you acquire that?

A. I was on General Sherman's staff during the war; assistant engineer.

Q. Have you any engineer employment now?

A. I have.

Q. What?

A. I am Chief Engineer of the Pelham and Portchester Railroad, and the Huguenot Park Association. 10

Q. Have you been engineer in any other railroad?

A. I have been chief engineer of five or six other railroad corporations.

Q. Were you in the New York and Westchester and Boston?

A. I was.

Q. Have you had anything to do with the West Shore Hudson River? 20

A. I was consulting engineer of that road.

Q. Anything with the New York and Fort Lee?

A. I was Chief Engineer of the New York and Fort Lee.

Q. When was it you occupied those last two positions I have named?

A. 1867 and 1868.

Q. What is the West Shore Railroad?

A. It is a line located on the west shore of the Hudson river, from Hoboken to Athens. 30

Q. In 1868, where was the office of the West Shore and Hudson River Company?

A. 20 Nassau street.

Q. Had you any office there?

A. I had.

Q. Whereabouts in that building in relation to this office of the West Shore Railroad?

A. Fronting Nassau street; the President of the Company and myself had an office together—a private office, and the whole offices of the company were on the second floor. 40

*Q.* Who was President of the Company?

*A.* At that time A. W. Thompson.

*Q.* Do you know Elisha Ruckman, the defendant in this suit?

*A.* I do.

*Q.* When did you make his acquaintance?

*A.* Some time in January, 1868.

*Q.* Where?

*A.* He came frequently in my office during January 10 and February of that year.

*Q.* For what purpose?

*A.* He came there ostensibly to have conversations with the President of the Company, regarding his lands in the immediate neighborhood of his homestead near Closter.

*Q.* Did he ever engage you to make sale for him of any of those lands?

*A.* He did.

*Q.* State what he said to you about that, giving the 20 date of the first of it, as near as you can recollect it?

*A.* I think the first time Mr. Ruckman spoke to me on the subject was early in March, 1868, on myself leaving my office Mr. Ruckman immediately followed me and asked me if I knew anything about his doings with Mr. Thompson—that was early in March, 1868—to which I replied, I did; and then in conversation he asked me if I believed anything could be done in that way; to that I replied I thought not; he then asked me if I could do anything, if I could sell the land for him; I said I would try, if he would 30 pay me a commission; I would make some effort, to which he in substance replied, “all right, go on,” but that something must be done soon; that is about the substance of the conversation.

*Q.* Was any price named?

*A.* I don't recollect at that time; I knew the price, however.

*Q.* You knew the price?

*A.* Yes.

*Q.* You say that he said to you could anything be done 40 in that way—state from the conversation, so far as it occurred, what “that way” meant?

A. He asked me if I thought anything would come of his negotiation through Mr. Thompson, and I told him I thought not, in fact I knew not.

Q. Well, had you knowledge from him then or before of what these negotiations with Mr. Thompson were.

A. I had knowledge before from him.

Q. How and what knowledge?

A. It may be two, may be on several occasions when he came in the office: Mr. Thompson was not there, and then he spoke something about his lands to me, and from 10 those conversations.

Q. What did he tell you in those conversations?

A. He told me that Mr. Thompson was to get up for him a party to buy his lands, have a land association, and Mr. Thompson had been talking about it, whatever the precise conversation was—

Mr. Vanatta :

I don't hear what the witness says.

20

*Witness :*

Mr. Thompson was trying to get the railroad company, the directors, to form a land association of them, who would purchase his lands—that was about the substance of it.

Q. And that it was that you referred to when you said that you thought nothing would come of it?

A. That is what I referred to when I said so.

Q. I understood you to say that he asked you whether 30 you could sell it?

A. He did.

Q. What else did he say?

A. He asked me if I could sell it for him; I said if he paid me a commission I would try—make some effort, and then he said it had to be done soon—whatever I could do would have to be done soon—something to that effect.

Q. Now, in any of these conversations of Mr. Ruckman that you referred to before, had you heard of the price that he charged for these lands?

40

A. I don't recollect at this one ; I believe it was at a subsequent conversation.

Q. After this did you have anything to do with selling the land or attempting to sell it?

A. Yes, I made some effort.

Q. What was your first effort?

A. My first effort was, I think, to see Mr. Muir.

Q. What did you do in that direction?

A. I had some two and may be three conversations about  
10 this land with Mr. Muir.

Q. Did you keep a diary at that time?

A. I always do.

Q. [Showing witness diary.] Is this the diary you then kept?

A. This is my diary kept in 1868.

Q. Are you able to state the date at which you spoke to Mr. Muir in relation to this matter by reference to that diary, look at March 21st?

A. Under that date I see an entry here—

20

[Interrupted by Defendant's Counsel.]

Q. Refresh your memory and state your recollection.

A. Yes.

Q. What date did you call his attention to the property?

A. It says—

[Interrupted by Defendant's Counsel objecting.]

30

*Witness :*

March 21.

Mr. Vanatta :

We object to this mode of examination. If it goes on in this shape the witness will be but reading off his statement previously written down, when we don't know. He may  
40 refresh his memory from memoranda, known to be made at

the time, but he can only then testify to his present memory, aided or not by his inspection.

Mr. Parker to Witness :

You are not at liberty to read what is in the diary, you are at liberty to read it yourself, and speaking with a recollection refreshed, but still a recollection as of the present moment, answer such questions as shall be put to you.

10

Q. Do you remember calling Mr. Muir's attention to the matter ?

A. I do.

Q. Did you have any interview with Mr. Ruckman in consequence of your negotiation with Mr. Muir ?

A. I had.

Q. State if you can about when that was ?

A. About the middle of March.

Q. You said you called Muir's attention to the property on the 21st of March ? What did you mean by the middle of March ?

A. The 21st of March I called his attention to it.

Q. After that when was it you had the interview, if you can tell, with Mr. Ruckman ?

A. Very shortly after.

Q. Where was that interview ?

A. In the building, No. 20 Nassau street ?

Q. How came it about, by accident, or appointment, or how ?

A. I don't recollect if that interview came about by accident or appointment, but I do recollect that from that interview, I made an appointment for Mr. Muir to meet Mr. Ruckman.

Q. Then an interview with Mr. Ruckman came about by an appointment with Mr. Muir ?

A. Yes.

Q. Where was this interview with Mr. Ruckman ?

A. I know I went for Mr. Muir to his brother's store, and wanted him to come with me to see Mr. Ruckman, and while Mr. Muir and myself entered the building from the 40

outside steps, Mr. Ruckman came down from the second story steps, and while near the landing, that is the top of the first or on the foot of the second stairs we stopped, and then I introduced Mr. Muir to Mr. Ruckman as a purchaser of his lands, stating at the time that he had wealthy parties, wealthy connections; Mr. Muir, who, with him together, would probably be purchasers; and some general conversation was had then and there between all three of us about the land; Mr. Muir then asked how many acres and the price and so on, and a few words about its general location, and Mr. Ruckman turned to Mr. Muir, if my recollection serves me right, and said, "I pay commission to  
10 "but one," to which Mr. Muir replied something like this, "I am a purchaser, I expect no commission," or "I don't want any commission," something to that nature, if he purchased he would purchase through me as Mr. Ruckman's agent, and then Ruckman said something to the effect that "we know each other, or we understood each other about that," and before I left I stated to Mr. Ruckman that my commissions in New York were  $2\frac{1}{2}$  per cent.  
20 and I went up stairs immediately after and left those two gentleman on the landing; that is about the substance as near as I recollect now.

*Q.* Were you there when anything was said about their going to visit the land?

*A.* I didn't hear it, I went up stairs and left those two gentlemen on the plateau there.

*Q.* Did you make any effort to sell this land about the same time to any other person than Muir?

30 *A.* I did.

*Q.* To whom?

*A.* I tried to sell it to a Mr. Hay who had a son—his oldest son—if I recollect it was James or Jim; I also tried to sell it to Mr. John VanNess and to William A. Pond—that is about all I remember just now.

*Q.* Refreshing your memory in the same way by your diary, can you state the date on which you brought that matter to the attention of Mr. Pond?

*A.* It was on the 24th of March.

40 *Q.* At what prices did you then offer it?

A. I offered it then to Mr. Pond at \$225.

Q. After that did you on any occasion have conversation with Mr. Ruckman in relation to selling the land at a higher price?

A. I think about the middle of April Mr. Ruckman came to see me, and asked me, in conversation, how I was getting along with selling his lands, and how about Muir? to which I think I replied, that I had my doubts about Mr. Muir being active enough with his friends, but that I had seen other parties, or I said to him that I thought I could find a purchaser, and at a higher figure, and giving my reasons, that the New York and Fort Lee road was making progress in its direction, and so on, and asked what he would give me or pay me—whatever I said if I could find a purchaser of from \$250 to \$275 per acre; I think that is about the substance of what I said; to which he replied, something like this: that if I could find a man or a party who would pay \$275, that I should bring him on—that is, “fetch on your man. let me see him,” or something to that effect he used; and I said then, “No, Mr. Ruckman, that won’t do; I want to know precisely what I am to have; if you will double my commission, pay me 5 per cent., I will find a purchaser.”

Q. At what rate?

A. At \$250 or \$275; and he said then something to the effect, “All right, I will, go on;” that is about the substance of it, as I remember.

Q. Did you at that time know Dr. B. W. King?

A. I did; I had known him I think for several years.

Q. After this conversation with Mr. Ruckman, did you have anything to do with Dr. King in relation to the sale of this land?

A. I had.

Q. State with as much particularity as you can what you had to do with him?

A. The first time I think I spoke to Dr. King about this land, was when I showed it to him from a boat out on the Hudson river, and had a number of interviews—may be at his house and may be at my house—on the subject—and he then, after my explanation and views held out, said to me

that if all was so as I said, he didn't think the price was much out of the way; to him I never spoke any less than \$275 per acre, and he said to me then he thought he would buy, but he had to see the lands first, and asked me who the owner was, and at that time I don't recollect if I gave him the name of the owner or not; however, I do recollect that early in the month of May—may be the 5th, 6th or 4th—it was early in the month of May, Mr. Ruckman and myself met again, and I think, I know I stated to him then  
 10 that I had a purchaser for his lands at \$275 per acre, and requested him to appoint a time when I could introduce the purchaser to him, and Mr. Ruckman then appointed—I think he said either the 8th or 9th—a day or so after that time that he would be at home, and I arranged to bring up my customer, and asked him, I says, "Now, Mr. Ruckman, I want you to ask \$275, and not less—you can  
 "make your own terms, but ask \$275"—that is about the substance of what took place, and I either saw Dr. King on the 7th or 8th about it, and I stated to him that I had  
 20 made an engagement with Mr. Ruckman to introduce him there and make arrangements for him seeing the lands on the 9th, I think, and Dr. King and myself did go up to Closter, to Mr. Ruckman's place, on the 9th of May.

Q. Did you, before taking Dr. King up there, go up the river and show him the land?

A. With Dr. King I did.

Q. Did you go up for that purpose?

A. Yes.

Q. (Handing witness diary.) Looking at your diary  
 30 and refreshing your memory, state about what time that was?

A. It was on the 19th of April.

Q. Do you remember whether you paid another visit to that region with Dr. King, going along the line of the railroad, before you went up with him to Mr. Ruckman's, and if yea, state on what date that was?

A. (Looking at diary.) On the 30th day of April.

Q. Look at that date again?

A. On the 1st of May—I was mistaken.

40 Q. Looking at that diary and refreshing yourself, see

if you can tell us the date of that conversation when Mr. Ruckman agreed to pay you double commissions, as you have stated?

A. On the 6th of May.

Q. Refreshing your memory again, state if anything occurred on the day after that in relation to this matter?

A. [Looking at diary.] On the 7th of May I arranged and Mr. King agreed to pay \$275 per acre.

Q. State what then took place between yourself and Dr. King and Mr. Ruckman?

10

A. I introduced Dr. King as the purchaser of Mr. Ruckman's lands to Mr. Ruckman.

Q. What time of day did you get there?

A. I think it was late in the afternoon.

Q. How did you get there?

A. That I cannot tell, but I believe by rail to Closter, and there I have some slight recollection that we hired a one horse carriage or wagon and drove over to Mr. Ruckman's place.

Q. When you got there who did you first see?

20

A. Mr. Ruckman.

Q. State now the circumstances and the conversation, narrating as nearly as you can recollect consecutively?

A. As near as I can recollect Mr. Ruckman approached us when we were alighting out of the carriage, and I introduced Dr. King to Mr. Ruckman, as I have got in my mind near a spring or a well, a little distance from his house, this side of his house.

Q. Well, what did you say when you introduced him?

A. I introduced Mr. King as a purchaser of the land 30 as the agent whom I had spoken of before, who would buy his land if it was as I represented, and if I recollect aright Mr. King then asked about the price, and Mr. Ruckman stated as he had agreed to me to ask \$275, and some general talk was had, and during the conversation Mr. Ruckman spoke again about commission, said, "here, I only pay commission to one, I don't pay commission to two," to which Mr. King replied that he as purchaser of the land of course did not expect any commission, he came to buy, not to sell—something like that in substance.

40

Q. Where was this conversation—about what part of the premises?

A. I somehow got it fixed in my head, near the spring a distance from the house—a spring or a well or a running stream or something; Mr. Ruckman spoke very highly of the water, and Mr. King drank some of it—both as to quality and quantity.

Q. What then after that conversation that you have just related—what next?

10 A. The conversation lasted a little longer; I recollect that Mr. Ruckman pointed out the lands which were plainly visible, and right from there it rises from his house up to the Palisades, we saw quite a large tract of it; after some talk he invited us in to dine or take supper with him, and we did go in and had a supper there with Mr. Ruckman.

Q. With Mrs. Ruckman?

A. There was either one or two ladies there, I don't recollect, one I am certain, Mrs. Ruckman.

20 Q. How long did you remain?

A. We had our dinner or supper whatever it was, and I think we shortly after left—immediately after.

Q. Was any bargain concluded that day?

A. The bargain concluded was this far, that Dr. King was to come up again within a day or two and see the land more fully and close the bargain.

Q. After that did you hear that the bargain had been concluded?

A. I did, sir.

30 Q. Looking at your diary again, can you tell what date that was that you heard it?

A. [Looking at diary.] On the 14th of May.

Q. And do you know what time of day it was—do you remember?

A. I think evening.

Q. And from whom?

A. Dr. King.

Q. Did you on that occasion see the contract?

A. Dr. King showed it to me—I did see it.

40 Q. After that did you ever say anything to Mr. Ruckman about your commissions?

*A.* I did, sir, I asked him for my commissions in Jersey City, I think, in April, 1869.

*Q.* What did you say?

*A.* As near as I recollect the substance, I asked him if it was not about time to pay me my commissions; he said then to me, if I put that claim in my schedule.

*Q.* Before that time—that interview—had you been discharged under the bankrupt law?

*A.* Yes, before that time, I was discharged before May 1st, 1868. 10

*Q.* You were over in Jersey City when this occurred?

*A.* I was.

*Q.* What doing?

*A.* If I recollect right, I was subpoenaed there in a suit between Ruckman and King.

*Q.* Had you been examined in that case?

*A.* Yes, I recollect now, I had been examined before a Master in Chancery.

*Q.* Was Mr. Ruckman present at the examination?

*A.* He was, sir. 20

*Q.* Why was your claim for commissions postponed so long in its demand as you have stated?

*A.* I was a non-resident of the State of New Jersey, and there were these litigations pending between Mr. Ruckman and myself, and some how I had an idea in my head that unless Mr. Ruckman was obliged to convey the lands to Dr. King, that I could not recover, and I don't know if you (Mr. Parker) recollect, some time after that I had no means to employ counsel then, and some time after that I met you (Mr. Parker) by accident in New York, and I mentioned this matter to you, and from the conversation I had with you I made up my mind to bring the action, and it was brought within a few days after. 30

Mr. Parker :

I gave the other side notice to produce a letter written by Bergholz to Ruckman.

Mr. Vanatta :

40

We have no such letter ; I don't recollect ever seeing or hearing of such a letter.

Notice to produce the letter is admitted.

*Q.* (Showing witness letter book.) Is this your letter book?

*A.* Yes, it is a letter press book.

*Q.* (Calling witness' attention to letter.) Did you sign  
10 that letter to Mr. Ruckman ?

*A.* Yes.

*Q.* (Showing witness a paper.) Is this the reply to it?

*A.* Yes, it is dated November 6, 1869.

Plaintiff's counsel reads the letter in the letter press book purporting to be a letter written to Mr. Ruckman, dated November —, 1869.

*Q.* Do you know anything about Mr. Ruckman's hand-  
20 writing—did you ever see him write ?

*A.* Yes.

*Q.* Do you believe this to be his handwriting ?

*A.* I know it to be.

*Q.* Did you receive it by mail from him ?

*A.* Yes—I saw a number of letters written by him.

Plaintiff's counsel reads the letter dated Closter, Bergen county, New Jersey, November 9th, 1869, to William R. Bergholz. Signed E. Ruckman.

30  
Cross-examination.

By Mr. Vanatta :

*Q.* You have ceased keeping copies of your letters, have you ?

*A.* No, sir.

*Q.* Have you continued it constantly since 1869 ?

*A.* Yes ; I keep copies of my letters still.

40 *Q.* You have got another book, haven't you ?

A. I have got several copy books.

Q. This seems not to have been used except for one or two letters, besides this, since the one purporting to be written to Mr. Ruckman, there are but two letters, I believe, after that date?

A. Then I went away to Texas and Arkansas.

Q. Since that time you haven't kept copies of letters.

A. Yes, I did.

Q. Why did you get a new copy book when you had so much blank paper left in this? 10

A. I got plenty of new books; in this book I see there is chiefly a correspondence of one railroad; I see the correspondence is chiefly of one railroad, where I was chief of construction.

Q. Is that the reason you put this letter of Ruckman's in there?

A. I don't know.

Q. You stated you was well acquainted with Mr. Ruckman's handwriting?

A. Yes. 20

Q. When did you see him write, and where?

A. I saw several parties—at least two came to my office with letters written by Mr. Ruckman.

Q. When and where did you see Mr. Ruckman write?

A. I have seen his letters.

Q. Did you ever see him write, and if so, when and where?

A. I don't recollect that I ever saw him in the act of writing.

Q. Then you say that some parties brought letters to 30 your office?

A. Came to my office with letters written by Mr. Ruckman.

Q. How do you know they were written by Mr. Ruckman?

A. They said so, and the contents convinced me.

Q. The parties that brought the letters stated they were Mr. Ruckman's?

A. Yes, and I knew they were by the contents and by the writing. 40

*Q.* Although you have never seen him write?

*A.* I have seen his writing, but I never saw him in the act of writing.

*Q.* Who were these parties that produced the letters there and told you they were from Ruckman?

*A.* One was Charles Rehwoldt who came to me twice with letters of Mr. Ruckman, in which Mr. Ruckman was to pay him so much money if he would come into the case and be a witness for him.

10 *Q.* Who was Mr. Rehwoldt?

*A.* He was a witness of Mr. Ruckman's in this case.

*Q.* In the Chancery case?

*A.* No, I think not—just in this case.

*Q.* In this suit?

*A.* Yes, in this suit; in the suit between Mr. Ruckman and myself—this particular suit.

*Q.* He was not a witness ever sworn in this case?

*A.* Yes.

20 *Q.* Who was the other party that brought letters to you saying they were Mr. Ruckman's?

*A.* The other party, I don't know their names—a stranger.

*Q.* He said it was Mr. Ruckman's?

*A.* I know it was Mr. Ruckman's.

*Q.* When was that?

*A.* That was about the time when Mr. Rehwoldt came to me; I have seen a number of letters of Mr. Ruckman's.

*Q.* When did you first go into the employ of the West Shore Railroad Co.?

30 *A.* I think in 1867; I don't recollect the time of the year.

*Q.* Tell as nearly as you can?

*A.* I cannot.

*Q.* Was the line of that railroad located before you went into their employ or while you were in their employ?

*A.* While I was in their employ—it was a new company.

*Q.* Did you assist in the location of the route?

40 *A.* I was not an assistant; consulting engineers don't go into the field and do field work.

Q. What I want to know is whether while you were in the employ of that company, you went along the route of the road and located it on the ground?

A. I did.

Q. Did you traverse the route several times?

A. I believe so.

Q. You were pretty well acquainted with its location on the ground were you not?

A. Yes, to some extent.

Q. And the route lay across Mr. Ruckman's land, 10 didn't it?

A. Not of the West Shore road, no, sir.

Q. This West Shore road didn't run across his lands?

A. No, sir.

Q. Didn't touch his lands?

A. Yes, I beg your pardon, it went right on the river front close on shore, yes, sir.

Q. Then you were on Mr. Ruckman's land several times, were you not?

A. Yes.

20

Q. Were you on that land and acquainted with it before you saw Mr. Ruckman at President Thompson's office?

A. I knew, no, I do n't know as I knew it belonged to Mr. Ruckman.

Q. Had you been on that ground that turned out to belong to Mr. Ruckman?

A. Yes.

Q. Prior to your knowing Mr. Ruckman?

A. Yes.

Q. Seldom or often?

30

A. I suppose, certainly once or twice.

Q. Your office was in the same room with the President?

A. It was.

Q. All the while you were in their employ?

A. All the while.

Q. How large was the room?

A. I should say 10½ by 18.

Q. Were your desks near to each other—the President's desk and yours?

40

*A.* No, sir, in the extreme corners.

*Q.* Were there any other persons having desks in that room?

*A.* No, sir.

*Q.* About what time did Mr. Ruckman first make his appearance at that office?

*A.* As near as I recollect about January, 1868.

*Q.* Did he come to see you on that occasion?

*A.* The first time he came there?

10 *Q.* Yes?

*A.* He came to see Mr. Thompson.

*Q.* Did you hear the conversation between him and Mr. Thompson on that occasion?

*A.* I did not.

*Q.* Or any part of it?

*A.* No, sir.

*Q.* After he had gone did Mr. Thompson tell you the substance of the interview between him and Mr. Ruckman?

*A.* He did not.

20 *Q.* Mr. Ruckman called at the same office to see Mr. Thompson after that, didn't he?

*A.* He called there a number of times, yes, sir.

*Q.* And times not far apart?

*A.* Not very far apart.

*Q.* Did you learn what his business with Mr. Thompson was?

*A.* I knew what Mr. Thompson was to do.

*Q.* Did you know what the business between Mr. Ruckman and Mr. Thompson was that brought Mr. Ruck-

30 man to that office?

*A.* I knew at the latter part—subsequently.

*Q.* At what time did you first learn what that business was?

*A.* I think the latter part of February or beginning of March—it must have been February.

*Q.* Who did you learn it from?

*A.* From the Directors.

*Q.* What was that business as you understood it?

40 *A.* Mr. Thompson suggested a scheme by which the Directors in this road should purchase these lands, and by

some means or other he was to raise \$100,000 ; I believe that is the amount—between 20 and \$100,000 for Mr. Ruckman ?

*Q.* And how much land were they proposing to buy of Mr. Ruckman ?

*A.* I believe all he had.

*Q.* And how much was that understood to be ?

*A.* Between 1,500 and 2,000 acres.

*Q.* And did you understand at what price it was to be sold ?

10

*A.* It was stated to us by Mr. Thompson at \$225.

*Q.* How much of that was to be paid down in cash.

*A.* I knew there was no cash to be paid.

*Q.* What was the talk as to the amount Mr. Ruckman wanted ?

*A.* I think Mr. Ruckman wanted \$20,000.

*Q.* Wasn't it \$100,000 down ?

*A.* I think it was 20—I think Mr. Thompson stated to the Board that Mr. Ruckman was anxious for \$20,000, and for the balance, he was to be one of the parties—something of that kind—he wanted \$20,000 first.

*Q.* Didn't you state on the other trial that the amount of cash down that Mr. Ruckman was asking for was \$100,000.

*A.* It was \$20,000.

*Q.* My question was whether you stated anything upon that subject on the other trial ?

*A.* I think I stated on the other trial between 20 and \$100,000, but my recollection is that when the scheme was first proposed all he wanted was \$20,000.

30

*Q.* Was not the scheme talked of between you and Mr. Thompson—a scheme for the sale by Mr. Ruckman and the purchase by Mr. Thompson and his associate of 1,000 acres of land ?

*A.* I only remember that Mr. Thompson laid a scheme before the gentlemen by which the whole of Mr. Ruckman's land, between 1,500 and 2,000 acres, were to be put in at the price of \$225, and that Mr. Ruckman wanted \$20,000, and Mr. Ruckman was to be one of the parties.

*Q.* What share was Mr. Ruckman to have in the 40 scheme ?

*A.* At that time I never knew, nor anybody else, except Mr. Thompson.

*Q.* Wasn't it the understanding, as you learned it there, that Mr. Ruckman in that scheme was to have a majority of the interest?

*A.* I don't recollect.

*Q.* Did the scheme involve any location of any depot or depots on Mr. Ruckman's land?

*A.* I don't recollect what the scheme involved.

10 *Q.* Was not the offer which Mr. Ruckman made to them of \$225 an acre predicated upon his having a majority of interest in the enterprise, and having a depot or depots located on this land?

*A.* I don't know anything about what Mr. Ruckman or Mr. Thompson predicated—I merely know the facts which I learned in the Board—that is all.

*Q.* If the scheme was carried out, were you to take an interest in it?

*A.* I believe I was.

20 *Q.* To what extent?

*A.* I don't know.

*Q.* What extent was talked of?

*A.* It was nothing talked of; it was simply a scheme of Mr. Thompson, which was laid before the gentlemen, and nobody believed or thought of carrying it out.

*Q.* But they talked about it, didn't they?

*A.* Mr. Thompson laid it before them; Mr. Thompson was anxious to carry it through for Mr. Ruckman, but Mr. Thompson had no money, and those who had it would not  
30 risk a dollar.

*Q.* There was nothing said about you being a member of the association?

*A.* There was not; Mr. Thompson simply got up that scheme, and wanted all the Directors to participate in it, and if it had been done—myself being one of the Directors—that is the reason I said I supposed I would have been one of the parties; I was a Director of the road at the time.

*Q.* That scheme continued under consideration with  
40 those gentlemen till this agreement was made with King, did it not?

A I think not.

Q. When was it abandoned, if at all?

A. I don't know as it was ever seriously considered.

Q. Was it not terminated by the contract between King and Ruckman?

A. It was not.

Q. Was it talked of between the parties after that?

A. No, sir.

Q. Didn't Mr. Thompson, the President of the road, and the Directors of the road, or some of them, find fault with you for having gone behind their backs and bought this property yourself, together with King, to their disadvantage?

A. The Directors of the road—

[Interrupted.]

Q. Please answer the question?

A. The Directors of the road never intended—

20

[Interrupted.]

Q. Answer the question; didn't Mr. Thompson, the President of the road, and the Directors of the road, or some of them, find fault with you for having gone behind their backs and bought this property yourself, together with King, to their disadvantage.

A. Not that I know.

Q. Didn't some of them make that complaint to you yourself?

30

A. Not that I know; I don't see what right they had to complain.

Q. You were soon after that discharged from the employment of that Company, were you not?

A. I never was discharged in my life from any office I held.

Q. When did you leave the service of that Company?

A. I resigned September, 1868.

Q. My question is when you quit the service of that Company?

40

*A.* I answer I resigned in September, 1868.

*Q.* That don't answer the question?

*A.* I left their service when I resigned to take a better position.

*Q.* Hadn't you ceased to do any service for them a considerable time prior to your resignation?

*A.* There was nothing to do; I was their consulting engineer—they had no money.

*Q.* How long before you sent in your resignation that  
10 you ceased to have anything to do?

*A.* The real soul of that Company, who had the means and did the construction, was the New York and Fort Lee, and that Company was taken away from this and moved to 33 Broad street, and of that Company I was chief engineer; they had money to pay and money to do work with, and this Company was absorbed by this, and it was simply kept alive as an organization.

*Q.* When did you cease to do any service—any work or labor as consulting engineer for the New York and West  
20 Shore Railroad?

*A.* When I resigned.

*Q.* You say there had been nothing for you to do?

*A.* Still I had my position, and my desk was there, and I went there.

*Q.* My question is when you last did any work for that Company?

*A.* I cannot answer that.

*Q.* You got an interest in this land of Ruckman's, did you not?

30 *A.* Have I any?

*Q.* I asked you whether you didn't get an interest in the land that Ruckman sold?

*A.* Yes, in August, 1868.

*Q.* And it was conveyed or assigned to you?

*A.* To four of us—yes.

*Q.* When did you get your interest?

*A.* In August, 1868.

*Q.* By a written paper?

*A.* It is on record, yes, sir.

40 *Q.* You sold it out afterwards, did you not?

A. I did.

Q. When?

A. After the decree of the Court confirmed the lands to

Mr. King.

Q. Cannot you give the date?

A. I cannot.

Q. About when was it?

A. I think it was in 1871.

Q. Who did you assign it to?

A. To Mr. Bandolph Raymond, of New York. 10

Q. For how much?

Plaintiff's counsel objects to the question as irrelevant.

Mr. Vanatta :

We desire to show the extent and value of his interest ; the price for which that interest sold will show, to some extent, his interest.

20

Mr. Parker :

The paper will show the extent of the interest.

Mr. Vanatta :

The paper will not show the extent ; it may show a consideration, but papers don't always show the value of an estate.

30

*The Court :*

The extent of the interest, it don't occur to me, bears materially upon the question in any way ; so long as it is shown that he had an interest the extent of it is immaterial.

Mr. Parker :

It is not a cross-examination at all.

40

Mr. Vanatta :

We have a right to use it on the credibility of this witness' testimony. If I can show by him that he got from Benjamin W. King, in August, 1868, a conveyance of a one-fifth interest in 1,500 or 2,000 acres of this land, for which he paid to King nothing, and which three months afterwards he sold for \$20,000 cash. I want this jury to decide whether that \$20,000 gift was made out of pure simple benevolence, or whether it was made in execution of an agreement existing between this man King at the time the contract was made with Ruckman. It is to the point of whether he was not one of the original parties in the enterprise; the weight of it is for the jury, and it is competent to go to the jury, and it is offered in that point of view.

(Plaintiff objects to the offer of the defendant.)

20 *The Court :*

I will allow the defendant to ask the value of his interest at the time he got this assignment—if he knows the value of that interest at the time he got it from Mr. King, and I overrule the question as propounded at this stage of the case.

30 Defendant prays an exception to the Court overruling the question as asked, and prays that his exception may be sealed, and it is sealed accordingly.

ALFRED REED,  
*Jus. Sup. Ct.*

SEAL.

Q. Mr. King had agreed to transfer an interest in this land or an interest in this agreement to you before August, 1868, had he not?

40 A. He assigned to me in August the same as he did to the others.

*Q.* But hadn't he agreed before that time that he would make an assignment to you?

*A.* He had promised—yes, sir.

*Q.* How long before he actually made it?

*A.* I don't recollect how long before; I only recollect the assignment when it was made—when he assigned to the four of us.

*Q.* But he promised to make the assignment a good while before he did make it, didn't he?

*A.* He promised to make the assignment to me on the same terms as he did to the others. 10

*Q.* You cannot tell the time when he made that promise to you, I suppose?

*A.* I think some time in June or July it first was spoke of.

*Q.* What time in June?

*A.* I think about the latter part—middle or latter part of June.

*Q.* Was it not in May, 1868?

*A.* It was not. 20

*Q.* Didn't you say on the other trial that it was in May or June?

*A.* I don't recollect what I said on the other trial.

*Q.* Do you remember on the other trial testimony like this. "*Q.* Did you get an interest in it? *A.* I did.

"*Q.* When? *A.* I believe I did in the latter part of May or early in June. *Q.* How did you get it? *A.* I

"will correct that; what I meant by that was some interest from Dr. King. *Q.* What amount of interest? *A.*

"One-fifth. *Q.* What were you to give for that? *A.* 30  
"Nothing; I had nothing to give." Did you testify to that

on the former trial?

*A.* If it appears so there.

*Q.* Was that statement that you got this promise from him in the latter part of May or June correct at the time you stated it?

*A.* You say I stated from May or June—whatever statement I made there under oath I recollect so at the time.

*Q.* In the latter part of June?

*A.* What statement I made under oath I no doubt recollect it so at the time. 40

*Q.* Can you fix the date in May when he promised to assign you an interest in the land if it was in May?

*A.* I don't know if I could fix it positively.

*Q.* Can you now?

*A.* I don't know if it appears in my memorandum book.

*Q.* Can you from your memory?

*A.* From memory it strikes me now it was in June.

*Q.* Why do you think it was in June instead of May?

10 *A.* Because I believe that Mr. King did promise that, as I recollect now, in my house in Hoboken, and I recollect it was very warm weather; I think I was sitting out on the balcony with my wife.

*Q.* You stated that you gave nothing for it, and you had nothing to give?

*A.* I mean I gave no cash for it.

*Q.* Did you ever pay him any money for it?

*A.* I was to pay the same as Mr. Donaldson, and all the other gentlemen did; the paper states exactly what I was  
20 to do.

*Q.* Did you ever pay him anything for it?

*A.* I did not pay him cash for it.

*Q.* Did you ever give any note or bond or mortgage for it?

*A.* I was to pay the same as the others did—the paper shows; I said before I paid no cash for it.

*Q.* My question is whether you gave any note, bond or mortgage, agreeing to pay anything for it?

*A.* I agreed to pay for it.

30 *Q.* Did you give a note?

*A.* No, sir.

*Q.* Did you give a bond?

*A.* Yes, that bond that is in that paper, I gave my bond to pay one-fifth, whatever way it come, same as the other gentlemen; you will find it in the paper, it was signed, sealed and witnessed by me.

*Q.* On the other trial did you say, or was this question put to you, and did you make this answer? "*Q.* What was  
40 "he to give you the one-fifth interest for? *A.* For services  
" I could render; I then had influence with the Westches-

“ter and Fort Lee road, and some other influences of still  
“more importance to them.” Did you swear to that on  
the other trial?

*A.* If it appears so there.

*Q.* Do you recollect whether you did or not?

*A.* I don't recollect because it has been so long ago I  
don't recollect, but everything I was to give for it and pay  
for it, is all in that bond.

*Q.* But you never did pay anything?

*A.* Because I sold it. 10

*Q.* You never did pay anything for it?

*A.* I did not, but I agreed to.

*Q.* And that agreement is contained in the assignment?

*A.* Yes.

*Q.* But you gave no note for that?

*A.* The paper is the bond, it was signed, sealed and wit-  
nessed.

*Q.* That is the only paper you signed?

*A.* That is the only paper I signed.

.. Apart from that you never paid anything? 20

*A.* No, sir.

*Q.* Why did you say on the other trial that all you was  
to give was the services you could render?

*A.* It was the motive the gentlemen had in letting me  
come in with them on the same terms with them, but I was  
to pay the same amount of money they did—to do the  
same as they did—do every act that they did perform.

*Q.* Did you testify this on the other trial: “*Q.* What  
“were you to give for it? *A.* Nothing; I had nothing to  
“give. *Q.* What was he to give you one-fifth interest 30  
“for? *A.* For services I could render; I then had influ-

“ence with the Westchester and Fort Lee Road, and some  
“other influences of still more importance to them? *A.*

“Did he want to sell that land to the R. R. Co. *A.* No,

“sir. *Q.* What was your influence in the Railroad Co.

“worth to him? *A.* It would have been this, if that

“Railroad Co. had had the money to build that railroad,

“and I had been the chief engineer, or consulting engineer,

“the way I knew the Directors, I certainly could have in-

“fluenced location of depots and stations. *Q.* He was 40

“going to give you one-fifth of the property for your influence in the location of the depots and stations. A. “Yes, and for my services in another direction which I don’t wish to mention here. Q. You were to locate the depots and stations to the interest of the railroad or the interest of the land? A. The interest of the land. Q. “It was the understanding that you were to make the railroad interests subservient to the interests of the land? A. “I suppose so.” Did you swear to that on the other trial?

10 A. I don’t recollect if I did swear to it.

Q. At the time you got that assignment and before you got it, wasn’t it distinctly understood that you were to pay no money out any time for that one-fifth interest?

A. It was distinctly understood that I was to pay just the same in money and otherwise as the President of the Bank of North America, and the paper stated so.

Q. Why did you on the other trial put the consideration entirely as it is put here?

A. If that is properly read I have no doubt it will be  
20 explained this way, on account of the strength of my position and my influence, those gentlemen allowed me to in as one of the party.

Q. You said you was not to give anything?

A. I was not to give anything outside of that paper.

Mr. Parker :

Not for the privilege of coming in?

A. No, but the amount of money to be paid and how to  
30 pay it, everything was in there and I bound myself by that paper.

Q. At that time you had no money, had you?

A. Not much.

Q. You had been discharged as a bankrupt at what time?

A. On the 12th of May, 1868.

Q. Twelve days before this agreement with Ruckman was made?

A. Yes.

40 Q. Are you sure of the date?

A. Yes.

Q. How do you fix the date?

A. I recollect it.

Q. Have you your discharge papers?

A. Yes.

Q. Can you bring it here to-morrow?

A. Yes, I can; I am positive, May 1st, 1868.

Q. You didn't come out of the Bankrupt Court with much money?

A. No, sir, my property was all taken by creditors. 10

Q. Then you didn't undertake to pay for this interest in the 1,500 acres of land at that time, did you?

A. That is the reason I said I paid no money; it was understood that if a payment was to be made of \$50,000, Mr. Donaldson, the President of the Bank of North America, paid the whole, and my portion would be \$10,000, and when there was profits to be divided I would not get any of the profits till my \$10,000 was paid back with interest.

Q. But you did bind yourself to pay the amount?

A. I did bind myself just the same--there was no dis- 20  
tinction.

Q. Wasn't the agreement that Mr. Donaldson should first pay himself out of the money realized?

A. I don't recollect; if you show me the paper that will specify everything that had to be done.

Q. I want to know whether that paper tells the truth?

A. Yes, it does tell the truth.

Q. Then I want to know why you gave this testimony on the other trial?

A. In that testimony I meant that these gentlemen, on 30  
account of influence and position, let me become one of the four parties interested; I was one of the four to which Mr. King assigned in August; he made four assignments.

Q. You mean by letting you in--that is, letting you have title to one-fifth?

A. They didn't give me title to one-fifth; the thing was carried out as a whole.

Q. But letting you in was giving you an assignment of one-fifth interest?

A. I didn't have my interest till I had paid the money, 40  
the same as they did.

Q. You are sure of that?

A. Yes; you find it so in the papers—everything is specified in the paper; I recollect nothing outside of the paper.

Q. Who did pay what money was paid?

A. I think Mr. Donaldson.

Q. How long had you known Dr. King before this contract was made?

A. I believe several years.

10 Q. Was he your family physician?

A. He was.

Q. And had been how long?

A. For some time; I don't recollect how long.

Q. You saw him often?

A. Not very often.

Q. When did you first speak to him about this land?

A. I think I first spoke to him in April.

Q. What time in April?

A. I don't think before the middle of April.

20 Q. You spoke to him about it before you and he went up the river together, didn't you?

A. Yes.

Q. You and he went up the river together with a view of viewing this land from the river?

A. No, sir, I showed him where our line run; I went up the river to show him where the railroad run.

Q. Is that all?

A. And to point out the lands all along the line.

Q. You pointed out this land to him, did you?

30 A. I did.

Q. And for what purpose did you point it out to him?

A. I suppose for the purpose of effecting a sale with him.

Q. Did you talk to him about his buying it at that time?

A. I think not; I think I took the preliminary steps to call his attention to it.

Q. Did you tell him it was for sale?

A. I told him it was in my hands for sale. yes sir.

40 Q. Did you tell him what it could be bought for?

A. I don't think I did at that first time.

Q. Did he ask you who it belonged to?

A. I don't recollect whether he did or not.

Q. Had he any interest in that railroad?

A. No, sir.

Q. Had you learned before that that he wanted to buy land, before you and he went up the river?

A. I don't know whether before that or immediately after that.

Q. Was the railroad built at that time along there? 10

A. No, sir, it was not built through Ruckman's land.

Q. There was no railroad there that he could see from the boat, was there?

A. Yes, I was then constructing the road from Hoboken towards Fort Lee; I was grading and building the bridges and trestle work.

Q. Didn't you ask him to go up the river on that occasion to look at this land from the river?

A. I believe I did, to show him the line of the road and point out the lands. 20

Q. Did you and he get off the boat and go on this land?

A. I don't remember; I believe not.

Q. What kind of a boat were you on?

A. I think it was one of the excursion boats.

Q. Chartered for that purpose?

A. Not chartered by us for that purpose.

Q. Where did you get off the boat?

A. I think it was some point above Nyack—somewhere above there—and came back with the boat. 30

Q. You were not on this land of Mr. Ruckman's?

A. No, sir; we were on the river.

Q. He didn't ask you what it could be bought for?

A. I think not at the time that I can recollect.

Q. How soon afterwards did he?

A. Within a few days probably.

Q. What did you tell him?

A. \$275; I never spoke to him about any price less than \$275.

Q. What did he say to that?

40

*A.* He said if the lands were as I stated he would like to see and he might buy it.

*Q.* Did you describe it to him truly?

*A.* Yes, whatever I told him was correct.

*Q.* He thought that was a fair price?

*A.* Yes, sir.

*Q.* What did he say about his willingness to take it?

*A.* He said he wanted to see it first.

*Q.* You and he went up the river in March?

10 *A.* No, in April—after the middle of April.

*Q.* You say you went up on the 19th of April, and a few days after that you told him what the price was?

*A.* Yes.

*Q.* And then he thought it must be worth that if it was as you described it?

*A.* He didn't say it must be worth that; he thought if it was as I described it, it would be a fair price.

*Q.* Then you went to see Mr. Ruckman?

*A.* Yes.

20 *Q.* And that was on the 7th of May when you told him that you must have more commission?

*A.* No, sir, I stated to him before, about the middle of April, on the 7th of May I made an appointment, about the middle of April I think I stated.

*Q.* You said that on the 6th of May he agreed to pay double commissions, and on the 7th Dr. King said that he would give \$275; now what I want to know is whether at the time when you say that Ruckman agreed to give you double commissions, whether you told him that you had  
30 found a customer who had expressed a willingness to give \$275 an acre for this land?

*A.* I believe in my testimony I did not state as you state it now; I said about the middle of April Mr. Ruckman agreed to pay me double commissions, and on the 6th or 7th I called on Mr. Ruckman, and he came to me and I stated I had a purchaser for this land who would pay that price and made an appointment, and then he said he would be at home the 8th or 9th.

*Q.* You certainly did state that it was on the 6th of  
40 May that Mr. Ruckman agreed to pay double commissions?

A. That is right.

Q. Then he agreed to that twice did he?

A. Yes.

Q. You have never heretofore stated more than one occasion when he agreed to it, have you?

A. Please repeat your question?

Q. Did you ever before this minute pretend that you ever had more than one talk with him when he said he would pay you double commission?

A. I don't recollect what I stated before.

Q. Isn't this the first time you ever stated it in the presence of anybody that there was two talks about double commissions? 10

A. I never had this diary to use before that day; I haven't seen this book, I don't know for how many years; I had it on the other trial; I got it from the hotel that night and gave it to Mr. Parker the next morning, and haven't seen it since.

Mr. Parker :

20

That book was brought here at the end of the last trial and used partially, and attempted to be used further, but objected to and excluded. I didn't hear of the existence of that book till late in that trial, and then the book was returned to Mr. Bergholz who gave it to me sometime after that trial again, I telling him that I thought he had better give me that book and I would hold it.

Witness :

30

I thought I gave it to you at that time.

Mr. Vanatta :

It was brought here in the latter part of the trial while Mr. Bergholz was still accessible to the witness stand, because he went to the witness stand and used that book to refresh his memory in connection with the subject of the date of when he got the promise of the interest, it was here during the trial. 40

*Q.* My question was whether before this afternoon you ever testified in this case to ever having had two conversations with Mr. Ruckman about double commissions?

*A.* I don't know if I did or not, I don't recollect of testifying to it before.

*Q.* Why, if King had expressed to you an opinion that the land was worth \$275 an acre after you had been employed as Ruckman's agent, why didn't you tell him of that fact instead of keeping it to yourself and trying to use  
10 it to double your commissions?

*A.* I testified that I never asked Mr. King any other price except \$275, and I stated to Mr. Ruckman that I had found a purchaser at \$275, and made an appointment to introduce him.

*Q.* That was, you say, after you got the bargain giving you double commissions?

*A.* When I first asked Mr. Ruckman for double commissions Mr. King had not agreed to pay \$275.

*Q.* Why, if you made an agreement with Mr. Ruckman  
20 in April to give you double commissions—why did you make another agreement to the same effect on the 6th of May.

*A.* I suppose I simply recalled it, I didn't make another agreement.

*Q.* Where was that agreement made in May, at what place was it made?

*A.* At 20 Nassau street.

*Q.* What room?

*A.* I think it was made in the hall.

*Q.* All these talks were in the hall?  
30

*A.* Yes, Mr. Ruckman always came out after I went out, somehow seemed to take pains to meet me in the hall; I don't know, he probably didn't want Thompson to know of it.

*Q.* He didn't talk to you of it in the office?

*A.* No, sir.

Adjourned for the day.

NEW JERSEY SUPREME COURT.

WILLIAM R. BERGHOLZ

vs.

ELISHA RUCKMAN.

10

WEDNESDAY MORNING, April 21, 1875.

SECOND DAY'S PROCEEDINGS.

20

*William R. Bergholz*, cross-examination continued :

By Mr. Vanatta :

Q. I would like to ascertain more fully and more definitely what consideration you gave, or agreed to give, for the assignment of one-fifth interest in the contract between King and Ruckman, and for that purpose I want to call your attention to testimony on previous occasions. I have already read to you and drawn your attention to what is 30

on page 38 of this printed book of the last trial; I read it to you yesterday; I want to call your attention to it so as to get your attention fixed upon the matter. You were asked what amount of interest, and you said one-fifth, and that you were to give nothing for it—you had nothing to give. You were asked, "What was he to give you one-fifth interest for?" and your answer was, "for services I could render; I then had influence with the Westchester and Fort Lee Railroad, and some more influence of still  
 10 "more importance to them." That, you stated yesterday, you supposed you had testified to on the former trial, did you not?

*A.* I suppose so; you said so; I didn't see the book you were reading from.

*Q.* I want to ask you whether you didn't also testify on that occasion—you were asked this question: "*Q.* That promise was followed up by some assignment? *A.* Some time in August I believe—perhaps the latter part of July an assignment was made by King to various parties in  
 20 "writing. *Q.* Where is that assignment now? *A.* I don't know, I had it, but where it is now I don't know. *Q.* Did you record it? *A.* I didn't—in fact I knew nothing about recording. *Q.* What did you do with your interest? *A.* I sold it to A. Raymond. *Q.* For how much? *A.* \$20,000. *Q.* Did you get the money? *A.* I did." Did you so testify on the former trial?

*A.* It appears so on my cross-examination—[refers to page 39, printed book.]

*Q.* Well, what is your memory about having said so?  
 30 *A.* I see it appears so under my cross-examination.

*Q.* Do you remember to have so testified?

*A.* All I can say that it appears so there.

*Q.* Is it true as it stands there?

*A.* If that is my testimony it is true.

Mr. Parker:

I was engaged in answering a telegram when the last few questions were put, and I want to object to them. It is  
 40 another way of getting in what was objected to yesterday.

and I move to overrule so much of that question and answer as is embraced on page 39, after and including the question, "For how much," and to the word "Recess," upon the ground that the evidence is improper and irrelevant, and those grounds were argued yesterday, and so the Court ruled.

*The Court :*

I overrule that.

10

Defendant's counsel prays an exception to the ruling of the Court overruling said evidence, and prays that his exception may be sealed, and it is sealed accordingly.

ALFRED REED,

SEAL.

*Jus. Sup. Ct.*

*Q.* On the former trial were these questions put to you and these answers given by you : "*Q.* The consideration for your one-fifth was your professional services and the location of the stations? *A.* I could not say that I could have power to influence that. *Q.* That was the consideration—the power you could exert? *A.* Yes." Did you testify so on the former trial? 20

*A.* I don't recollect about what I testified to; if you will let me see the book I will answer that question.

Mr. Parker :

30

It is in the book ; he has read it correctly from the book.

*Witness :*

[Looking at book.] Yes, it says so here.

*Q.* I know it says so there ; my question was whether you said so on the other trial?

*A.* I did.

*Q.* I want to ask you whether the questions I now read, 40

and the answers thereto, were put to you and answered by you in this way : “ Q. Tell us what you gave—everything “ that you gave for that one-fifth interest in that contract— “ the consideration? A. I didn’t give any money consid- “ eration. Q. What was the consideration? A. The con- “ sideration was specified in the assignment which was “ made to me in August, whatever that was, I don’t recol- “ lect. Q. Is that the best you can tell us as to what you “ gave for your interest in it? A. That is the only way  
10 “ positive I can tell ; any consideration I was to give or “ have given is contained in the assignment.” Did you testify in that way on the trial?

A. I did, sir.

Q. Now, I want to ask you whether you were sworn as a witness, in the suit in Chancery between King and Ruckman?

A. Yes ; in Jersey City, before a Master ; I don’t recollect his name ; I was sworn there in the suit between Ruckman and King.

20 Q. In that suit did you testify as I will now read to you : “ I am a civil engineer by profession, and am prac- “ ticed in landscape gardening, and was at that time con- “ nected with the New York and Fort Lee Railroad Com- “ pany, and believing that my professional services and my “ influence with said Railroad Company would be of great “ benefit to the owners of that tract of land for which I “ asked of King to make me one of the parties interested, “ to which King finally agreed to see the parties, and give “ me one-fifth interest for my professional skill ”—did you  
30 so testify on that occasion?

A. I did, as it appears in the book.

Q. Now, after the contract was made between King and Ruckman what, if anything, did you do on that piece of ground—this tract that was bought of Ruckman?

A. I don’t recollect doing anything on that piece of ground.

Q. Did you locate any stations on it?

A. Not that I recollect.

40 Q. Did you lay out any gardens—make any land- scapes?

A. We don't make landscapes on the ground.

Q. Did you do anything in that behalf?

A. I never made any landscapes; I don't know what you mean by that.

Q. Did you try to adorn the face of the earth in a place that you would call a landscape?

A. I never called that place a landscape.

Q. In what way were you to exert your professional skill on the place?

A. On the place itself I made no exertion. 10

Q. Was it expected that you should at the time you got that assignment?

A. At the time in August I got the assignment—yes, sir.

Q. What were you expected to do on that place?

A. It was to be laid out in roads and drives and so on.

Q. Did you ever lay out any roads on it?

A. No, sir.

Q. Ever lay out any drives on it?

A. No, sir; the intentions were never carried out. 20

Q. You did nothing on the property?

A. I stated before I did nothing on the property that I know of.

Q. What did you do in payment of that assignment elsewhere than on the property?

*Witness:*

Please repeat your question. 30

Q. Did you do anything in the way of payment for that assignment—render any services anywhere?

A. I rendered all the services asked of me by the Directors.

Q. And what were they?

A. I don't recollect now.

Q. Were you asked to render any?

A. I was.

Q. What were they?

A. Making maps and plans of the property—how it 40 could be laid out.

Q. Did you make maps ?

A. I made sketches.

Q. Did you make maps ?

A. I spent several thousand dollars for surveys ; I employed Mallory & Miller, of Jersey City, to do the surveying for me under my direction, and the plans made are now partly in their office and some with me.

Q. Plans of this property ?

A. Yes, sir.

10 Q. When was that done ?

A. I don't recollect the time when—all I do recollect is that it was done.

Q. How soon after this contract was made ?

A. It was after I had the assignment—after August.

Q. How long after that ?

A. I don't recollect.

Q. Who made those maps in Jersey City ?

A. Mallory & Miller, surveyors, made them for me, and on my direction.

20 Q. When did they do that ?

A. I don't recollect.

Q. Did you pay them for doing it ?

A. No, sir.

Q. Who did ?

A. They are not paid yet.

Q. You say it was done under your directions ?

A. It was.

Q. What do you mean by that ?

A. I was Chief Engineer of the party.

30 Q. What party.

A. Of the owners of the land.

Q. You say you spent a good many thousand dollars in surveys ?

A. Yes.

Q. Were those surveys on the Ruckman property ?

A. Yes, sir.

Q. Who made those surveys ?

A. Mallory & Miller, City Surveyors of Jersey City.

40 Q. Have you ever paid them anything for doing the surveys ?

- A. Their bill is not paid yet, so far as I know.
- Q. Did they render a bill to you for it?
- A. They did.
- Q. When?
- A. I don't recollect when ; they presented a bill to me  
as Chief Engineer.
- Q. Did they present it as a bill for you to pay?
- A. Yes.
- Q. As a bill against you?
- A. Against the owners of the land. 10
- Q. Now, it becomes quite important to know when that  
bill was presented—can't you give us some idea?
- A. I cannot.
- Q. Was it a year ago?
- A. Oh, much longer.
- Q. How much longer?
- A. I don't recollect.
- Q. How long after you got the assignment did Mallory  
& Miller make these surveys?
- A. I don't recollect how soon after. 20
- Q. Was it within two years after that?
- A. I can't state.
- Q. Was it within three years after that?
- A. I could not fix the time; all I do know positive is  
that they made it for me.
- Q. Was it before or after you assigned your interest to  
Raymond?
- A. I don't recollect.
- Q. Have you been receiving any salary from the per-  
sons interested in this land for being the Chief Engineer? 30
- A. No, sir.
- Q. Have you rendered any bills to them for your ser-  
vices as Engineer?
- A. No, sir.
- Q. Or made any demand on them for your services as  
Engineer?
- A. No, sir.
- Q. The parties interested in that land changed their  
office did they not?
- A. I do not know. 40

- Q. You don't know?
- A. I don't.
- Q. Never knew of these shares being assigned?
- A. I don't know to whom they assigned—I know to whom I assigned.
- Q. You don't know who anybody else assigned to?
- A. No, sir.
- Q. Do you know who has the property now?
- A. I do not.
- 10 Q. Didn't know anything about it after you made your assignment?
- A. I heard who had it, but I do n't know positive.
- Q. Besides these surveys which Mallory & Miller made, did you do anything else for the benefit of this property?
- A. I tried to benefit it.
- Q. What did you do in that behalf?
- A. I sent parties out there to prevent Mr. Ruckman despoiling the trees.
- Q. When was that?
- 20 A. I don't recollect.
- Q. Who did you send?
- A. Mr. Muir was one of the men I recollect now, the gentleman who was here as a witness.
- Q. When did you send him?
- A. I don't recollect.
- Q. What did you send him for?
- A. To prevent the destruction or cutting down of trees.
- Q. Did you ever send him out to stay there?
- A. I sent him to go now and then.
- 30 Q. Where did he board while he was keeping watch?
- A. I don't know.
- Q. How long did he stay?
- A. I don't know.
- Q. Did he stay an hour?
- A. I don't know.
- Q. Did he go at all?
- A. He told me he did go.
- Q. Who else besides Muir did you send?
- A. I don't recollect the parties.
- 40 Q. Can you name any one else?

A. I can't.

Q. How often did Muir go out there?

A. I don't know how often.

Q. Did you pay Muir anything for that?

A. I did.

Q. How much?

A. I don't recollect.

Q. Did you pay him more than once?

A. I have paid him several times.

Q. For that?

10

A. For that business.

Q. You can't tell how often he went there?

A. No, sir.

Q. Nor how long he stayed?

A. I can't.

Q. Nor what he did?

A. He went there and did what I sent him for, to prevent the destruction or cutting down of trees and watch what was done in that way.

Q. To watch whom?

20

A. We were informed that Mr. Ruckman had parties there cutting down trees, and we wanted him to go there and prevent that, to see what was done.

Q. Did he ever do anything in the way of stopping anybody?

A. I don't know what he did; I know he was sent there for that purpose; what effect it had I don't know.

Q. What else did you do in behalf of that property?

A. I don't recollect anything else now at this moment.

Q. On the former trial was these questions put to you 30 and these answers given by you: "Tell us the reasons you

"advanced to him for letting you have an interest in it?

"A. I was connected with these railroads and probably "could be of great benefit to him and my services also as "engineer, and then some other services I could render. Q.

"What were those services? A. Speaking of having "some government institution there. Q. What did he

"say to that? A. Well, he said he had to see his asso- "ciates." Did you so testify on the former trial?

A. It appears so here.

40

Mr. Parker :

Answer yes or no, don't consume time.

*A.* Yes.

*Q.* Were these questions put to you: "*Q.* That institution was the navy yard wasn't it? *A.* If I am not obliged to answer that I decline to answer. *Q.* That matter of having the navy yard there had been talked of  
10 "down in the railroad office? *A.* Not to my knowledge.  
"*Q.* Hadn't you talked with Thompson and those other gentlemen about the possibility and probability of having  
"the navy yard located at this property? *A.* I believe  
"not, I believe that came to my knowledge sometime afterwards. *Q.* Wasn't that the idea—that if you got control  
"of the property you would get the navy yard located there  
"—you could get the thing carried through without advancing any capital? *A.* Not to my knowledge." Did  
you so testify at the last trial?

20 *A.* I did.

*Q.* Did you ever do anything towards getting the navy yard located on or near that property?

*A.* No.

*Q.* Did you get any assistance directly or indirectly from the government to benefit this property?

*A.* No, sir.

*Q.* You said something about having got a bill through Congress, giving this railroad the right of way through the public grounds at West Point—did you do so?

30 *A.* I did.

*Q.* When did you do that?

*A.* I don't recollect when.

*Q.* Was it before or after this contract had been made with King?

*A.* After.

*Q.* About how long afterwards?

*A.* I think I did not succeed in getting that from the Secretary of War till sometime in 1869, if I recollect right.

*Q.* You mentioned in your evidence about having got  
40 a bill passed through Congress—for what did you get a bill passed through Congress?

*A.* I had get a bill passed through Congress for the railroad company, subject to the endorsement of the Secretary of War and the General of the Army.

*Q.* And that you think was done when?

*A.* Not till 1869, I think.

*Q.* Was that done at your expense or at the expense of the railroad company?

*A.* That was done at nobody's expense it didn't cost any money to pass that bill.

*Q.* Didn't you use the bonds of the railroad company 10 in Washington?

*A.* I did not, sir.

*Q.* Have you not testified that you did?

*A.* I don't know as I have.

*Q.* Were you sworn as a witness in the Marine Court in New York in an action brought by one Wheeler against the West Shore Railroad Company in 1872?

*A.* Yes, I recollect I was a witness on behalf of the Company.

*Q.* Did you not testify in that case, that the bonds in 20 suit on that trial had been given by you to different Congressmen in the City of Washington to procure the passage of this bill to let the railroad go through the public land at West Point?

*A.* I believe not.

*Q.* Are you sure you did not?

*A.* It is hardly possible that I did.

*Q.* Eh?

*A.* That is hardly possible that I made such a statement. 30

*Q.* What is your best recollection upon the subject?

*A.* My best recollection is that I never gave a bond to a Congressman in my life.

*Q.* What did you testify to there?

*A.* I don't recollect; I recollect distinctly I was a witness in a suit in behalf of the Company—I don't recollect against whom.

*Q.* Did Wheeler's counsel ask you what had been given for those bonds, or how and for what they had been obtained. 40

A. I don't recollect.

Q. And didn't you refuse to answer the question?

A. I don't recollect.

Q. And didn't the Judge tell you you must answer him?

A. I don't recollect.

Q. Did you not on that occasion, after the Judge had directed you to answer, testify in this wise: "Yes, I gave those bonds to influence legislation. You see the Company wanted to get a bill passed by Congress granting to the Company the right of way to West Point. I was to Washington to see about the matter, and procured a good many Congressmen a certain amount of these bonds. Well, the bill passed and the men got the bonds"—did you testify that in so many words or in substance?

A. I don't believe in so many words nor in substance.

Q. Are you sure about it?

A. Pretty sure.

Q. Can you tell what you did testify to there?

20 A. I cannot.

Q. Did you testify on that trial to this—

[Interrupted.]

Plaintiff's counsel objects to any further examination in that line as being irrelevant and not cross-examination.

Mr. Vanatta :

30 The reason for my taking this line of examination was to ascertain several things—primarily to ascertain what the consideration for this assignment was—the motive for making it, and when certain inducements are named, when he testifies that the consideration was his influence with the railroads and his services as engineer, and some other services he could render—his influence with the Government, it at once becomes a question whether or not that was the real consideration. If those things had no existence then there could not be any consideration; if they were never  
40 rendered afterwards, it throws a doubt over whether it was

ever agreed to be rendered. If his influence with the Government consisted in getting a bill through Congress by a fraud and lavish distribution of railroad bonds, it then raises a question whether the parties took such consideration as that, or made it one of the considerations of making the assignment, or whether that is probable. It goes to the credibility of the witness if he was engaged in influencing the Federal legislation by that sort of arguments. It is proper to go to the jury for the purpose of judging of the credibility of this man's testimony. 10

*The Court :*

I don't think that view will help the competency of the testimony at all, but you may put your question and I will rule on it.

Mr. Parker :

I think the counsel's best way is to reduce his question 20 to writing and hand it to the Court.

*The Court :*

I understand counsel has concluded his examination as to the means of using the influence by which he obtained legislation for this Company. I understand counsel has exhausted that.

Mr. Vanatta : 30

The question I was about to put was in continuation of the same thing in relation as to whether he had testified to certain things in the Marine Court in New York.

*The Court :*

I want to allow a full investigation of this witness of everything that will bear upon the subject of this interest. 40

That is the consideration, but I cannot see now how the fact of his using the bonds of the railroad company would affect materially the consideration for his interest under this assignment. I will overrule it.

Defendant, by his counsel, excepts to this ruling of the Court, and prays that his exception may be sealed, and it is sealed accordingly.

10

ALFRED REED,

*Jus. Sup. Ct.*

Q. Now, Major, I am going to another subject, that is, to the bargains between you and Ruckman; on the former trial on the direct examination you were asked this question: "Q. State, beginning as near as you can at the first, what he said to you about that. A. Ruckman came quite frequently into the office of the West Shore Hudson River Railroad Company, and he had conversations with Mr. Thompson, then the President of the Company, regarding his landed estate on the Palisades, in Bergen County; Thompson then suggested a scheme to a number of the Directors of said Company to organize a land company or association to that effect, as Mr. Thompson said to me that Ruckman was very willing to sell, or go into such a company, but that an amount of money, something like between \$20,000 and a \$100,000, had to be raised for him within a given time; it might have been as little as \$20,000 or as great as \$100,000; I am not positive; I knew from the Directors of the Company that it could not be done—that either they had not the ability nor the desire to form such an association as Directors of the Company; Mr. Thompson, individually, believed he could, and one day early in the month of March, Mr. Ruckman being then in the office, and I stepping out, immediately after my leaving the office, Ruckman, he also came out, and we walked down the steps together, and Mr. Ruckman asked me then if I knew anything about his negotiations there with Thompson, to which I replied, 'yes;' he

20

30

40

“then said what I thought of it; I replied that I believed  
 “nothing would come of it; he then said, ‘Can you sell  
 “it?’ I said, ‘I may;’ he then asked if to any parties con-  
 “nected with the Railroad Company, to which I replied,  
 “not collectively; what I meant was, not to them as a  
 “body; I said then, if you pay me a commission I will try  
 “to see what I can do; Ruckman then said, ‘All right, but  
 “if you can do anything you must do it soon;’ that is  
 “about all that was said on the subject. *Q.* At what  
 “price were you to sell? *A.* \$225. *Q.* How did you 10  
 “get that? *A.* From the Company; it was offered at  
 “that price to the Company; it had been the subject of  
 “frequent talk among parties there about Thompson try-  
 “ing to raise that amount of money.” Did you so testify  
 on the other trial?

*A.* I did.

*Q.* Then that interview on the steps was the first time  
 anything was said between you and Ruckman about sell-  
 ing Ruckman’s land, was it?

*A.* I believe it was. 20

*Q.* Now, tell me when was the second time that any  
 conversation about the sale of that land took place between  
 Ruckman and you?

*A.* I believe that was on the introduction of Mr. Muir.

*Q.* That introduction was when and where?

*A.* About the middle of March.

*Q.* How did Muir come to be there on that occasion?

*A.* I went for him to his brother’s store—I called for  
 him to his brother’s store to come over with me.

*Q.* Are you sure of that? 30

*A.* Yes.

*Q.* Did you tell it in that way on the other trial?

*A.* I don’t know.

*Q.* On the other trial, didn’t Mr. Parker, on that sub-  
 ject, ask you these questions, and did you make these  
 answers: “*Q.* How came you and Muir together? *A.*  
 “Mr. Muir came frequently to the office. *Q.* How came  
 “Ruckman there at that time, if you know? *A.* He came  
 “down stairs. *Q.* Do you know whether he came to the  
 “office for any special object? *A.* I don’t know; we met 40

“ in the house; he was coming down stairs ”—did you so testify before?

*A.* I did.

*Q.* And how is that, you recollect now that you went to the store of Muir’s brother and took him over there? what brings it to your memory at this time?

*A.* I can’t say what brings it to my mind, but I had a strong presentation—recollection that way.

*Q.* On the other trial this matter was presented to you  
10 —this meeting with Ruckman and Muir, or when Muir and you met Ruckman on the steps, was presented by you as an accidental, unexpected meeting, wasn’t it—didn’t you present it in your testimony on the other trial as an unexpected accidental meeting?

*A.* It don’t say anything about that here in this book.

*Q.* I am asking you whether that was not the idea that your testimony then did present, and was intended to present?

*A.* I said then the same as I recollect now, that Mr.  
20 Muir and me met Mr. Ruckman in the building.

*Q.* Did you state then that you had gone to Muir’s brother’s store to bring him to the railroad office on that occasion?

*A.* That question was not asked me.

*Q.* Can you tell the day of the month that this interview between you and Ruckman took place on the steps when Muir was present?

*A.* I cannot without refreshing my memory.

*Q.* Have you any means of refreshing it?

30 *A.* My memorandum book may.

[Witness looks at book.] I don’t see it in the memorandum book.

*Q.* So you cannot name the date?

*A.* I cannot.

*Q.* Cannot you give the day of the week?

*A.* I cannot.

*Q.* Nor the time of day?

*A.* I cannot.

*Q.* Now, I want you to tell everything that was said by  
40 you to Ruckman and by Ruckman to you, and everything

that was said by Muir to Ruckman and by Ruckman to Muir on that occasion in the order in which it occurred and in the language used as nearly as possible.

A. I am able to give the substance of it, not the precise language; I recollect distinctly that when Mr. Muir and me entered the building, Mr. Ruckman came down from the upper stairs and we halted near the platform or plateau, and then I introduced Mr. Muir to Mr. Ruckman as a purchaser of his lands, and I might have said a probable purchaser or a purchaser, I would not be positive about it, and in doing so I stated that Mr. Muir had wealthy parties with him with whom he together might become purchasers of his lands; Mr. Ruckman then said something to this effect, or the substance of it is this: that if you buy, or if he buys either, I will pay but one commission, or commissions to one; to which Mr. Muir replied, as near as I recollect, that he did not expect a commission, that he was buyer of the lands and not a seller, and that he was a purchaser, whatever the word he used I would not be positive about, and if he did buy he would buy through me as Ruckman's agent, to which Mr. Ruckman replied something of the kind that Ruckman and myself understood each other, that we understood each other, I believe he said "him and myself understand each other," and Mr. Muir asked at that time about the quantity of land, to which Mr. Ruckman replied, as near as I recollect, about 1,500, or he may have said 2,000, thereabouts, acres, and then he asked the price, and he said \$225 per acre; I spoke about commission I think before I left the parties; I said, "Mr. Ruckman my commission in New York is  $2\frac{1}{2}$  per cent.," something of that kind, and I left him; that is about as near as I recollect; Mr. Ruckman made some statement about his land, the location, and so on.

Q. Is that all?

A. I think that is about the substance of it, as near as I recollect just now; I know I left them talking on the steps, and I went up stairs into my office.

Q. How is it that you embraced that occasion to inform Mr. Ruckman what the rate of commissions were in New York—I mean that occasion when you were introducing

a purchaser and in the presence of the purchaser, and when you say he said you and he understood each other, what prompted you to turn in and then inform Mr. Ruckman what the rate of your commission would have been in New York, in the presence of that supposed buyer?

*A.* It interested me very materially to let somebody hear what ordinary commission was in New York for country property.

*Q.* Was that your motive, that somebody might hear?

10 *A.* What Ruckman said?

*Q.* Was that the reason you stated it there?

*A.* No, sir, it was of very material interest to me to have it understood what the ordinary commission in New York for selling country property was.

*Q.* But why did you state it on that particular occasion and in the particular presence?

*A.* I suppose my idea was this, that if Mr. Muir bought, being introduced by me, I was entitled to my commission.

*Q.* Was that the reason you stated it there?

20 *A.* It might be a reason.

*Q.* Was it?

*A.* I can't say positive now what was in my mind at the time, why I stated it.

*Q.* It didn't make any difference to Muir what your commission was?

*A.* No, sir.

*Q.* Then why did you want him to understand it?

*A.* I don't know why; maybe that I wanted him to know that my commission was to be paid by Mr. Ruckman  
30 and not by him.

*Q.* He hadn't said anything about paying a commission, had he?

*A.* No, sir.

*Q.* And you say that Ruckman said there, that you and he understood each other?

*A.* Yes, that is all very well some times; perhaps if you would say so to me, I would take it for granted, but some other parties I would not.

*Q.* You distrusted Ruckman at that time?

40 *A.* No, sir, I did not distrust at all.

Q. You wanted to have somebody by whom the amount of commissions were stated?

A. I cannot state why I stated it; all I know, I did state it.

Q. You were doubtful about Ruckman?

A. I didn't say so.

Q. If you were suspicious about Ruckman why didn't you ask him to put in writing—to sign an agreement as to the rate of commissions you was to have?

A. I had no suspicions whatever; I had no reasons to be suspicious.

Q. Then you didn't doubt about his keeping any engagements he would make?

A. I didn't doubt that.

Q. Then it comes back to the question why you should state your commissions on that unseemly occasion.

A. It might be the rates were different in New Jersey from the rates in New York; I wanted it understood what the rates in New York was I suppose.

Q. Why did you embrace that occasion to have it understood?

A. I couldn't tell you what my ideas and what my thoughts were at that moment when I said so.

Q. Wasn't it your motive in bringing Muir there to make a witness of him?

A. No, sir; I never thought of such a thing.

Q. Was not the pretence of his buying 1,500 or 2,000 acres of land at a cost of half a million, all a pretence?

A. I say most positively not; I knew Mr. Muir's standing and connection; I knew that no man had wealthier connections in this State or New York than he had.

Q. Was he not introduced for the purpose of being a witness?

A. No, sir.

Q. You said it was important to have somebody know what you said about commissions?

A. I said it might be important to have somebody there; I don't know what my thoughts were.

Q. That is the second interview between you and Ruckman; I want you now to tell me when the next and third interview occurred between you and Ruckman?

*A.* I think it was about the middle of April.

*Q.* Can you give the date?

*A.* I cannot.

*Q.* Have you any means of ascertaining?

*A.* [Looking at memorandum]. On the 11th of April.

*Q.* Have you a memorandum of it?

*A.* I am looking for it; I see some entry on the 11th; I don't know if that is the one.

*Q.* Does your diary show it was on that day?

10 *A.* My diary shows an entry here; it says, "Ruckman agreed—

*Q.* I am not asking you to read that; does your diary show the date of this interview?

*A.* No, sir; as near as I recollect it was the middle of April, 20 Nassau street, in the upper hall.

*Q.* At the same place where Muir and you met Ruckman?

*A.* No, sir; in the same building, but not on the same landing.

20 *Q.* On a similar landing?

*A.* No, sir; in the large hall—the entry to my office on the second floor above the street.

*Q.* Was anybody present?

*A.* Not to my recollection.

*Q.* Had Ruckman been in the President's room that day?

*A.* I don't recollect that day.

*Q.* Just before this interview took place did he go up stairs or did he come out of some room up there to this in-  
30 terview?

*A.* I am not positive if he came out or I came out.

*Q.* Did you go out of the room to have this interview with him, or did you accidentally meet him there?

*A.* I don't know if he came out of the room after me or if we met there; I don't recollect.

*Q.* Don't recollect whether you were there to confer, or whether you accidentally met there?

*A.* I don't.

*Q.* Can you fix the day of the week?

40 *A.* I can't.

*Q.* Who spoke first upon the subject of this land upon that occasion?

*A.* I believe Mr. Ruckman did.

*Q.* What did he say?

*A.* Asking me if I had done anything, or how was I getting along with selling his land—something to that effect.

*Q.* What did you tell him?

*A.* I think I mentioned that I doubted very much whether Mr. Muir would act quickly enough or would accomplish anything; I believe I said something of that kind, and that I believed I could get a purchaser at a higher price for him.

*Q.* Did you believe so?

*A.* I did.

*Q.* What made you believe so?

*A.* I must have seen King by that time.

*Q.* Had you?

*A.* I think I had.

*Q.* The question still remains unanswered why you thought you could get a higher price for the land.

*A.* My thoughts were this—that the Fort Lee was making progress at that time, and the way things looked, the inducements I could hold out, I didn't see why I should not be able to succeed in getting a higher price; I at least was determined to try, and I thought I could.

*Q.* Go on with the conversation?

*A.* And I mentioned that to Mr. Ruckman, that I believed I could get a higher price, and I asked him, "If I succeed in getting a customer at \$250 or \$275, that he would pay me double commissions," to which he replied, "bring on a customer," or "let me see the party"—something to that effect in substance—or he would see; to which I replied, I think that that would not do; I would like to have something more definite, or something to that effect; that if he would pay me double commission I would go and see what I could do at that price; he agreed to it.

*Q.* What did he say?

*A.* He said, "All right, I will, go on"—something to that effect; I am not positive about the language.

Q. Can't you tell the language he used ?

A. No, sir, not precisely ; it was to that effect ; it is so long since I would not be positive about the language, but I am positive about the substance of it.

Q. Have you stated all that occurred ?

A. All I think of just now ; he agreed to it.

Q. In what words did he express his agreement ?

A. The " all right," I am positive of ; the substance of the language I am positive what he stated, but I am not  
10 positive that he used the same words I used ; I know he used the words " all right."

Q. On your direct examination, page 21, did you testify as follows : A. " I saw Mr. Ruckman some time in April, and  
" stated to him, regarding Muir, that I didn't know that  
" he would carry out that purchase with his parties, but  
" that I would try to find others to purchase, and I said  
" then, that railroad matters were in such a shape that I  
" might be able to procure a customer at much higher  
" rates. I believe Ruckman said then he thought the land  
20 " was worth more too, as the railroad progressed. I asked  
" him what he would give me if I could sell the land at  
" \$250 or \$275. He replied something like this—the lan-  
" guage I won't be positive of : ' First fetch on your man,  
" and when he buys we'll see.' I said then, ' No, I like to  
" have it understood, if you double my commi-sion, I will  
" go to work.' He said, ' All right, go on, let me see the  
" man '—something like that." Did you testify that on  
the other trial ?

A. I did, sir.

30 Q. On your cross-examination upon the same subject,  
page 30, did you testify as follows : " Q. What did you say  
" to Ruckman ? A. Spoke to him about the land again, and  
" what he would give me if I could get a larger price ;  
" Ruckman said he thought the land was more worth then,  
" and I said, ' Yes, the land was worth \$250 or \$275, re-  
" garding the purpose and improvements made by the Rail-  
" road Company'—meaning the Fort Lee ; I asked him  
" what he would give me if I would find him a customer at  
" that price—if he would double my commission—and he  
40 " said something like ' first fetch on your customer,' or

“first fetch on your man’—something like that; the precise language I won’t be positive of; he said, ‘fetch on your man first,’ and agreed to it, to my commission; ‘if he buy my property at \$275,’ he said, ‘all right;’ something like that; he said, ‘all right, fetch on your man first,’ or ‘party first, and we will see about it.’ Q. That is what you mean by saying he agreed to it? A. Yes, ‘all right.’ Q. He said ‘all right,’ and by that you mean to be understood that he agreed to it? A. Yes. Q. Have you given the whole conversation that occurred there? A. About. Q. Anybody present to hear it? A. No, sir.” Did you so testify on your direct examination on the previous trial?

A. I did.

Q. On any other occasion before this forenoon did you ever testify that Ruckman said, in answer to your request to double your commissions, “I will?”

A. I don’t recollect if I have or not.

Mr. Parker :

20

He said so yesterday.

Q. You didn’t so testify on the other trial did you?

A. In substance I did—I beg your pardon—what is the question?

Q. Did you use those words in that connection either on the direct examination or cross-examination on the other trial?

A. I didn’t use the precise language.

30

Q. I think you said you had no entry in your diary of this interview.

A. I don’t see it there.

Q. Was there anything said at this interview by either you or Ruckman as to the propriety of reducing the agreement to writing?

A. No, sir; not to my recollection.

Q. Did Ruckman say anything about reducing it to writing?

A. No, sir.

40

*Q.* Didn't you?

*A.* No, sir.

*Q.* Why didn't you.

*A.* I don't know why either Mr. Ruckman said nothing about it, only I didn't say nothing about it.

*Q.* Are you in the habit, or had you been in the habit, of making contracts which if carried through would be worth from 25 to \$30,000 to you without making any agreement in writing respecting it?

10 *A.* Not in the habit, but I have made such contracts without writing.

*Q.* Was that your ordinary way of transacting business?

*A.* Do you mean verbally?

*Q.* Yes.

*A.* Yes, sir.

*Q.* In matters involving 25 and \$30,000.

*A.* Much more.

*Q.* To be performed at an uncertain time in the future?

*A.* Yes, in the future.

20 *Q.* That is the ordinary course in your business is it?

*A.* I didn't say so—my ordinary course—I didn't say I was in the habit; you asked me if I ever had done such things in my life; I didn't say in the habit—at least I understood you to ask me if I ever had done anything of that kind in my life.

*Q.* That was not your ordinary way of dealing?

*A.* That is a very extraordinary circumstance—such circumstances don't occur often.

*Q.* That is the reason you didn't put it in writing?

30 *A.* I didn't say that was the reason; I don't know why.

*Q.* Why didn't you put it in writing and have Mr. Ruckman sign it?

*A.* I never thought of it; I don't know why I didn't do the thing then.

*Q.* Why didn't you call in Mr. Muir or some friend of yours to listen to it?

*A.* I can't give reasons for things I never did—why I didn't call the Devil in.

40 Mr Vanatta:

I suppose he was near at hand.

Mr. Parker :

How far do you suppose your client was away ?

*The Court :*

Proceed, gentlemen.

*Q.* When did you next have an interview with Ruckman on this subject ?

10

*A.* Very early in May.

*Q.* Can you give us the date or day of the month ?

*A.* I think it was the 5th or 6th—might have been the 7th.

*Q.* Haven't you any means of telling which day it was ?

*A.* [Looking at memorandum.] The 6th of May, Wednesday.

*Q.* Where was that interview ?

20

*A.* The same building—20 Nassau street.

*Q.* On the stairs ?

*A.* I don't know; in the hall, I suppose, where we mostly met.

*Q.* In the hall you last spoke of ?

*A.* I spoke of the hall—I mean the ante-room—the large hall going to my office.

*Q.* Which way did Mr. Ruckman come from when you first saw him that day ?

*A.* I don't recollect.

30

*Q.* Tell us the conversation that occurred between you and him on that occasion, beginning with the beginning and telling it as it took place, as near as you can ?

*A.* I believe at that meeting I informed Mr. Ruckman that I had a customer who would pay \$275 an acre for the lands, and I asked him when and at what place I should introduce the party to him ; I think Mr. Ruckman replied to me that I should come up with my party to Closter to his house, on the 8th or 9th, I think he said that he would be at home—something like that—that is about the substance of it.

40

*Q.* Go on.

*A.* And I have a very strong impression that at that time he positively agreed—

[Interrupted.]

*Q.* No, tell what he said?

*A.* I cannot give the language, but I have got a very strong impression on my mind, and I can't get over it, that  
10 at that time he positively agreed about that commission.

*Q.* My question was for you to tell what was said?

*A.* The substance, I think, I—

*Q.* No, no?

*A.* I can't state the precise language, it took place so long ago.

*Q.* On the other trial did you testify upon that subject, page 32: "*Q.* Tell us what you told Ruckman at this last "interview in the hall? *A.* I told him that I had a cus-  
"tomer for his land. *Q.* Did you tell him who it was? *A.* I  
20 "could not tell, but I asked him when I should introduce  
"him, when and where, and he said he would be at home,  
"at his house in Closter, on the premises, somewhere be-  
"tween the 7th or 10th; It was early in May, before the  
"10th of May." Did you so testify on that occasion?

*A.* I did, sir.

*Q.* Why did this last interview take place in the hall instead of in your office?

*A.* I cannot tell.

*Q.* On the other trial did you account for it in this  
30 way: "*Q.* In what part of the building did you meet Ruck-  
"man? *A.* In the hall of 20 Nassau street; we never talked  
"together about the business in the office—always in the  
"hall. *Q.* How did that happen? *A.* Because Thompson  
"was in the office with me; he had a desk ten or twelve feet  
"from me. *Q.* Was Ruckman making any privacy of his  
"interview with Thompson there at the office? *A.* I don't  
"know as he was. *Q.* Did he talk about this matter in his  
"ordinary tone of voice? *A.* No, they didn't talk in the  
"ordinary tone." Did you so testify?

40 *A.* I did, sir.

Q. Now, that is the fourth interview with Ruckman—  
tell us when and where the next communication was had  
between you and Ruckman?

A. On his premises on the ninth of May.

Q. In whose presence?

A. Dr. King's.

Q. That was the fifth interview?

A. Yes.

Q. That is the time when you say you introduced King  
to Ruckman? 10

A. That is the time I introduced Dr. King to Ruck-  
man, yes, sir.

Q. You were not able to tell on the other trial, were  
you, how you got to Ruckman's—whether you went by  
rail or by carriage.

A. I was not positive.

Q. Are you able to tell now?

A. I am no more positive now than then about that; I  
know we got there either by rail or by carriage, but I will  
not positively state which. 20

Q. You could not tell the time of day or the hour of  
the afternoon you got there?

A. Sometime in the afternoon, I could not give the  
hour.

Q. Was it not just at their supper time?

A. No, sir.

Q. You took supper there, didn't you?

A. I did.

Q. How long about after your arrival did you have  
supper? 30

A. May be half an hour, may be an hour, I can't tell  
I don't recollect.

Q. Where did you first meet Mr. Ruckman on that oc-  
casion?

A. I have got a pretty distinct recollection that he came  
towards us; it was near a well or near a spring on his  
premises, before we came to the house.

Q. How near to the dwelling house was this place  
where you met each other?

A. I can't say how many feet; I know we met this side 40

of the spring or where the water is carried in pipes or a well—the water was either carried in pipes to this spot or it was a well or spring ; the reason I am so positive about it is, Mr. Ruckman dwelt on the subject of the fine water, both the quality and the quantity.

*Q.* It was near to the house, was it ?

*A.* No, sir, I introduced Dr. King before we came to the spring, and this spring I recollect distinctly is this side of the house.

10 *Q.* At what particular point did you make the introduction ?

*A.* I could not fix that particular spot ; I know it was before we came to the spring.

*Q.* Was it on the road or on Mr. Ruckman's premises ?

*A.* On his premises between the road and the house.

*Q.* Between the street and the main house ?

*A.* I only recollect the house where Mr. King lived, and I suppose that is the main house.

20 *Q.* You were not around at the end of his kitchen, were you—the rear side towards his kitchen ?

*A.* No, sir, I say distinctly I introduced Mr. King before we came to the spring, and after the introduction and considerable talk, we walked over to that spring, or whatever it is—the water there.

*Q.* Did you go near to the spring on your passage from the street to the house ?

*A.* After the introduction and some talk, Mr. Ruckman quite lengthy spoke on the subject of this water ?

30 *Q.* Answer my question. The question was whether in passing from the street to the house you went near to this spring that you spoke of, the place where the water was ?

*A.* In passing from the point where I introduced Mr. King from that point we went to the spring and from the spring to the house.

*Q.* It was not in the line of your passage from the street to the house—not in a direct line ?

*A.* I think not in a direct line.

*Q.* Who first spoke with Mr. Ruckman that day, you or King ?

40 *A.* I did.

Q. Are you sure of that?

A. Yes.

Q. Who first alighted from the vehicle?

A. That I am not positive of; I don't recollect whether Mr. King was driving or I was.

Q. But didn't Mr. King alight from the vehicle and go to Mr. Ruckman's first, while you remained sitting in the vehicle holding the horse?

A. No, sir, that I am most positive of; that is simply impossible. 10

Q. Why is it impossible?

A. Because we got out before we come to the spring, and I introduced Mr. King; he would not very likely leave Mr. Ruckman and myself standing there, and go to the house and see Mrs. Ruckman.

Q. Then you alighted first?

A. I didn't say so.

Q. Then he didn't leave the vehicle first?

A. I didn't say so.

Q. You went together to Ruckman? 20

A. I didn't say so; he might have got out first, or I; I don't recollect who got from the carriage first.

Q. I want to know whether or not the first interview between King and Ruckman didn't take place while you were sitting out in the street in the carriage?

A. No, sir, I am positive about that.

Q. Didn't you see a lady about the house before you saw Mr. Ruckman at all?

A. No, sir, I saw Mr. Ruckman first; I didn't see a lady till we were into the house. 30

Q. Some female servant or otherwise?

A. I saw no female, servant or otherwise.

Mr. Parker :

Before you saw Mr. Ruckman you didn't see any female?

A. No, sir, not before, I saw a lady in the house after.

Q. Tell us what you said in introducing Mr. King to Mr. Ruckman?

A. I introduced Dr. King as a purchaser of Mr. Ruck- 40  
man's land.

*Q.* Was anything said there that night by King to Ruckman, or by you to Ruckman, when King was present, that you were King's partner in this purchase?

*A.* No, sir.

*Q.* Do you recollect a circumstance like this—that shortly before you sat down to supper, Mr. Ruckman, addressing himself to Dr. King said that he had not understood the name by which he had called you, and asked to have your name repeated to him, whereupon Dr. King said  
10 to Mr. Ruckman, "It is Mr. Bergholz, my partner?"

*A.* Most positively not; such a thing never took place.

*Q.* Didn't Mr. Ruckman then and there say in your presence that he had not understood the name by which you had been introduced, and asked Dr. King to repeat it, so that he would understand it?

*A.* He never said such a thing; I don't see how he could ask such a foolish question; Mr. Ruckman knew my name very well.

*Q.* Previous to that night had you ever been introduced  
20 to Mr. Ruckman, or Mr. Ruckman introduced to you?

*A.* I believe Mr. Ruckman introduced himself to me in my office.

*Q.* Why do you believe so?

*A.* I won't be positive about that; that is my belief—my recollection.

*Q.* I want the ground of your belief?

*A.* That is my recollection; he knew my name just as well as I knew his.

*Q.* What is your recollection as to the person who in-  
30 troduced him to you or you to him?

*A.* I believe that Mr. Ruckman introduced himself to me, but I am not positive.

*Q.* At what place or time did he introduce himself to you?

*A.* If so, in my office.

*Q.* On the previous trial did you not testify that you had been introduced to Ruckman by Mr. Thompson, the President of the Railroad Company?

*A.* I don't recollect.

40 *Q.* Did you testify as follows: "*Q.* Before that time

"had you ever been introduced to Ruckman? A. I was

"Q. Who had introduced you? A. I believe Ruckman

"introduced himself to me or I to him: he came in there

"so often. Q. Was there any introduction? A. I believe

"there was; I believe Thompson introduced us. Q. Are

"you sure of it? A. No, sir. Q. Can you name anybody

"that introduced you to Ruckman? A. I believe not;

"when Ruckman came in so often and Thompson was not

"there, of course, would be nobody there but me and him.

"Q. Did Ruckman introduce himself to you? A. I 10

"think he did. Q. Where? A. If so, it was in the office.

"Q. Did he ever introduce himself and tell you who he

"was? A. I believe he did in the office. Q. When? A.

"In 1868, January or February"—did you so testify?

A. I did testify that.

Q. Isn't the fact about it that you cannot tell whether you were introduced, or if you were introduced you cannot tell who did it—isn't that the real fact?

A. I am not positive, but as near as I recollect it is Mr. Ruckman himself introduced himself to me, but I will not 20 say so positively.

Q. Will you say you did not introduce yourself to him?

A. I don't think I did.

Q. Will you say you did not—will you swear you did not?

A. I will not swear I did not, because I am not positive about it.

Q. You say you introduced King to Ruckman; you have stated the words with which you introduced him as near as you could; now, please start from that point— 30 from the point where you had made known to each other the names of those men, and tell us the conversation between you parties and Ruckman from that time on, with relation to this land, and with relation to the sale and purchase of it?

A. I think on introducing Mr. King to Mr. Ruckman he commenced talking about the land; I introduced him as a gentleman who would purchase his lands, and the question came up; we looked around; Mr. Ruckman pointed from the place we stood in the direction towards 40

the Palisades, I think, and then the question came up how many acres he had, and Mr. Ruckman stated between 1,500 and 2,000 acres, and asked for it \$275 an acre, and then Mr. Ruckman said something, as he did on a previous occasion—I believe he said in substance to Mr. King, “If you buy I pay only commission to him,” meaning me; “I pay only one commission,” or “commission to only one,” something like that, to which Mr. King replied, as near as I recollect now, that he was a purchaser and did not expect any commission—something of that kind.

10 *Q.* Well, go on?

*A.* And talked about the lands a little while more, and then we went towards the spring; after we got through the conversation, we walked to the spring; Mr. Ruckman called our attention to the valuable spring, or water conducted to that spot.

*Q.* Well, what then?

*A.* After conversation there some time about the water, and one thing or another, he invited us to take supper with him and we did so; I think before we went to the house at the spring we talked about reviewing the land; I think Mr. King asked and made some arrangements about coming up within a day or two to close the bargain—that is about as near as I can recollect.

*Q.* Is that all the conversation about the land and about the bargain that took place?

*A.* I think that is about the substance of it.

*Q.* Was the business talked about while you were at the spring?

30 *A.* No, sir.

*Q.* Talked about after supper?

*A.* No, sir, not that I recollect.

*Q.* What time did you leave there that evening?

*A.* I don't know the hour.

*Q.* Was it before or after dark?

*A.* I think it was dark when we left—that is my impression.

*Q.* Did you go back by rail or by an ordinary carriage—buggy?

40 *A.* That is a thing that puzzles me; I think we went back by rail; still I won't be positive.

Q. You did return to your residence that night?

A. Yes.

Q. Tell us what King said about the lands in this conversation, in the presence of Mr. Ruckman?

A. King seemed to be pleased with the lands.

Q. State what he said to Ruckman about it?

A. Dr. King made an appointment with Ruckman to come up within a day or two to close the bargain—expressed something to the effect that the land suited; he would come up and look at it again with me and close 10 the bargain—something as near as I can recollect.

Q. Did King ask Ruckman what his price was?

A. Yes.

Q. What did he tell him?

A. \$275 an acre.

Q. You had previously told King the price?

A. I told King the price and I requested Ruckman to ask that price.

Q. Did King ask Ruckman what quantity of land there was?

20

A. Yes.

Q. What did Ruckman say?

A. I think Ruckman said something about 1,500 or 2,000 acres—or 1,500 or 2,000.

Q. Was anything said by Ruckman to King or King to Ruckman, as to how the payments for this land were to be made, when they were to be made, or how they were to be made?

A. Not in my presence.

Q. Nothing at all?

30

A. Not that I recollect.

Q. Before you and King went there did you tell King when and how the price of this land was to be paid?

A. I don't recollect just what I said to King, but I believe I said to Mr. Ruckman, the last interview, that he must arrange the terms, but ask \$275 an acre.

Q. My question you have not answered. My question was whether before you went to Ruckman's with King, you had told King what the terms of payment were to be?

A. I believe I had stated to him that it would not take 40

a great deal of money ; still I am not positive ; I don't recollect how far I went into that subject with King.

*Q.* Before you went up there had Mr. Ruckman ever told you what terms of payment he would expect ?

*A.* I believe not.

*Q.* Had you ever asked him when this money was to be paid, and at what terms it was to be paid ?

*A.* I don't know if I did or not, but I knew what he wanted.

10 *Q.* Didn't you on the former trial testify as follows :  
 “ *Q.* Was anything asked as to how the payments were to be made ? *A.* Not in my presence. *Q.* Had you told King how the payments were to be made ? *A.* I didn't tell him ; I didn't know anything about it ; King didn't buy in my presence. *Q.* At the time you introduced King to Ruckman, Ruckman had never told him how he wanted the lands paid for ? *A.* No, nothing about that “ whatever.” Did you so testify on the former trial ?

*A.* I did.

20 *Q.* Is that testimony correct—is it according to the fact ?

*A.* It is according to the fact, but when you ask me, of course I did know from Thompson's arrangement about how much cash Ruckman wanted, and it was between 20 and \$100,000, and I may have conveyed that to Mr. King ; I am not positive about that ; I don't say I did or not.

*Q.* I want you to explain this, how it is that you undertook to sell this large quantity of land amounting to this large sum of money without ever asking and without ever  
 30 knowing from the owner when or how he expected this large amount of purchase money to be paid to him ?

*A.* I knew the price and the number of acres from the owner, and I thought if I introduced a customer and he afterwards bought, I had nothing to do with the terms ; I knew the price the owner wanted for his land because I told him to ask \$275, which he agreed to do ; I knew the number of acres of land he had for sale—at least, about—and I thought introducing a customer, and if that party did  
 40 buy at that price, that was all I had to do—that was my idea ; what terms they made afterwards, that was an arrangement between them.

Q. Didn't you suppose that your success in finding a customer would depend very largely upon the terms of paying for the property, that almost the first question any man would ask who was going to buy it, would be how long a time he was going to have to pay this large sum of money in, and how fast it was going to be required?

A. That didn't occur to me; the main thing that occurred to me was to find a man who would buy, and if he did buy, they could agree upon the terms between them.

Q. You thought then that any man who was inclined to buy would buy just as readily if it was to be cash down on delivery of the deed, as though he could have ten years to pay it in, did you?

A. I am not as green as that; I know better than that, but that is a matter between the purchaser and the owner to settle the terms, because if the purchaser can't meet the terms he simply didn't buy, if he didn't buy, if he could not meet the terms, no commission; I think that is generally done between an owner and purchaser to agree on the terms, that is my experience. 20

Q. Didn't you know that there were 10 men who could buy if a liberal credit was given, to one that would be able to buy and pay cash down on the delivery of the deed?

A. My efforts were made to find a man.

Q. Answer the question—in other words that the chances of selling it on credit were ten times greater than they were for selling it for cash down?

A. It never occurred to me, because I knew very well that such large transactions in this country don't mean cash; there are very few transactions in this country of such magnitude where cash is expected for so large an amount; I know the credit system is very liberal in this country.

Q. Then your idea is that in this country the system is to sell without regard to paying for it?

A. No, sir, no man will part with his lands unless he gets value for them, not in any country.

Q. When was your next interview with Mr. Ruckman after you and King were at his house on the occasion last mentioned?

*A.* I don't recollect.

*Q.* Did you after that at any time have any interview with Mr. Ruckman about the sale of this property to King?

*A.* I don't recollect.

*Q.* Did you ever go to see him or he come to see you on that business after that night?

*A.* I don't recollect, I think not.

*Q.* Did you suppose that your duty and services in the matter were fully performed and ended when King agreed  
10 to take the property?

*A.* I did believe that when the gentleman introduced as a purchaser did buy the property and it was paid for that my duty was then performed, and I was entitled to my commission.

*Q.* Was it your understanding that you were not entitled to your commission till the property was paid for by the purchaser?

*A.* No, sir, my understanding was, the moment the introduction was done of the purchaser the commission was  
20 earned.

*Q.* Was that your understanding in this case?

*A.* That was my belief, my idea.

*Q.* Then you understood when you introduced King to Ruckman that you had earned your 5 per cent.?

*A.* If that party bought the land, yes, sir; if the sale was completed, yes.

*Q.* And then when the contract was signed you understood that your work was done?

*A.* I believed so, yes sir.

30 *Q.* Did you so understand at that time?

*A.* I can't say exactly if my ideas on the subject was that, but I believe that is the substance of my idea.

*Q.* You had before that time sold lands for commission, had you not?

*A.* No, sir; I believe this is the first sale I ever made in my life.

*Q.* On the previous trial did you testify as follows:

“ *Q.* Were you in any other business in 1868? *A.* I was  
“ also Chief Engineer of the Huguenot Park, and Consulting  
40 “ Engineer of the West Shore Hudson River Railroad. *Q.*

“Any other business? *A.* I believe not. *Q.* Were you engaged in the sale of real-estate as a land agent? *A.* Engineers always do—yes, *Q.* Had you previously been making sales of real estate as land agent or land broker? *A.* I always effected sales, and do it to this day. *Q.* In 1868 and 1867 were you acting as agent for the sale of real estate? *A.* Excepting this Ruckman estate. *Q.* Did you for anybody else? *A.* I believe I did. *Q.* Who else? *A.* The Huguenot Park. *Q.* On commission? *A.* Yes. *Q.* What year? *A.* 1868.” Did you so testify 10 on the former trial?

*A.* I did.

*Q.* And on page 164 of this same book, your deposition in the Chancery suit, did you say this: “I am a Civil Engineer, and tried to negotiate sales; I do to this day”—did you so testify in the Chancery case?

*A.* I did.

*Q.* Did you on the trial before this testify: “*Q.* How did King come to show it to you? *A.* I don’t know how he come; as a matter of course, as broker between the 20 parties I expected either the purchaser or the seller to inform me of the sale. *Q.* Why did King show it to you? *A.* Why shouldn’t he inform his broker? *Q.* You were his broker? *A.* I was Ruckman’s broker”—did you so testify on that trial?

*A.* I did.

*Q.* On the former trial did you testify to this: “*Q.* You had been engaged in the sale of pieces of land? *A.* I had. *Q.* Do you know whether or not that fact, that you were more or less engaged in the purchase and sale of 30 real estate, was known to Dr. King? *A.* It was”—did you so testify on that occasion?

*A.* I did.

*Q.* In your testimony before the Master in the Chancery case, did you testify as follows: “I expected to receive a commission from Mr. Ruckman for Mr. King, because he offered many thousands more than Ruckman had asked a few months previous”—did you testify to that in the Chancery case?

*A.* That appears so here, but that was not correctly re- 40 ported; they left a word out; I knew it at the time.

Q. Your attention was called to that testimony on the previous trial, was it not?

A. I don't recollect.

Q. Did you on the other trial allege any error in that print of the testimony?

A. I think I did; I think I called my counsel's attention to it.

Q. You stated that the first time you asked Mr. Ruckman for the payment of commissions, was on the day you  
10 were examined as a witness in the Chancery case at Jersey City?

A. Yes.

Q. You said that that was in April, 1869?

A. I don't know.

Q. Did you not say so yesterday?

A. About April or May, 1869.

Q. Can you fix the date from memory?

A. I know positively it was on the day I gave testimony in Jersey City.

20 Q. Wasn't that on the 12th of May, 1869?

A. I am positive it was on the day I gave testimony there.

Q. Was that not on the 12th of May, 1869?

A. I don't recollect now.

Mr. Parker :

The paper shows it to be so.

30 Q. Just one year and a day from the time this contract with King was signed?

A. If it was on the 12th of May, yes, sir.

Q. Now, just tell us again what you said to Mr. Ruckman about commissions on that occasion?

A. I think I said, "Mr. Ruckman, it is about time to pay my commission"—something like that; I don't know if I used the precise words, but he replied, "You put that claim in your schedule?"

Q. Did he make any other answer to your suggestion?

40 A. No, sir; not to my knowledge.

Q. Was that all he said about it ?

A. I think that was all.

Q. Did you say anything there about it ?

A. I think not ; that is all I recollect.

Q. When next after that, if at all, did you speak to Mr. Ruckman about the payment of the commissions ?

A. I don't recollect.

Q. Did you ever speak to him about the payment of them after that day ?

A. I don't recollect.

10

Q. You have no recollection of doing so, have you ?

A. I have not ; I don't recollect if I did or not.

Q. Then the next thing you did was to bring suit for these commissions, was it not—I mean the next thing towards getting these commissions ?

A. I brought suit for the commissions.

Q. Do you recollect when you commenced that ?

A. I don't remember.

Q. Was not that in the year 1871 ?

A. I do not recollect.

20

Mr. Parker :

It was brought about the 1st of January, 1871.

Mr. Vanatta :

January 12, 1871, is the date of the return of the writ.

Q. You say that shortly before you commenced this suit you had an interview with Mr. Parker in New York ?

A. Yes.

Q. And you first learned from Mr. Parker that you could maintain a suit against Ruckman ?

A. No, sir ; I didn't say so—that I first learned from Mr. Parker ; after a conversation with Mr. Parker I decided to commence the action.

Q. You knew before you met Mr. Parker that you had a right of action if you chose to prosecute it, didn't you ?

A. No, sir, I didn't think I had a right of action till

40

Mr. Ruckman was obliged by the decree to convey the land; that was my idea at the time—that I could not recover unless Mr. Ruckman was obliged to convey the land.

*Q.* How long have you been acting as an engineer on public works of various descriptions?

*A.* More or less for the last thirteen or fourteen years.

*Q.* And you had carried on that business in various parts of the world, had you not?

*A.* Yes.

10 *Q.* In what parts?

*A.* In Germany; in Montreal, Canada; in New York, and South Carolina, in Arkansas and Texas.

*Q.* And I understood you in your testimony to say that you understood it to be the ordinary practice of engineers on public works to sell for commission, real estate?

*A.* I did not say it was the practice on public works.

*Q.* Do you mean to say that up to about the 1st of January, 1871, that you were under the impression and belief that a broker, where no time had been fixed for paying his commission, was not entitled to his commission till the property had been conveyed by deed to the purchaser, and paid for by him?

*A.* I don't mean to say that; but this particular case was in litigation, and I had an idea—I didn't believe that I could recover till these litigations had been decided and Ruckman had in some way been made to convey the lands to the purchaser—that is my idea.

*Q.* That you had no right to the commission till he had conveyed the land?

30 *A.* No, sir, not conveyed the land—if it had been an ordinary case where there was no suit about it—but here was a suit about it.

*Q.* Was it your undertaking that because there was a suit about it you could not get your commissions till the suit was ended?

*A.* No, sir, I didn't understand it so.

*Q.* What was your idea then?

*A.* Then I was a non-resident, and I had really no means—I had no money to commence a suit against a millionaire like Mr. Ruckman was—I was a poor man.

40

Q. Hadn't you bargained your share of this property to Mr. Raymond?

A. At that time?

Q. Yes?

A. I don't recollect; I think if I understand right I brought suit in January, 1871, and I don't believe I had any bargain with anybody then.

Q. How long did the bargain exist between you and Raymond before you made the conveyance to him?

A. A very few days.

10

Mr. Parker :

When was the conveyance?

Mr. Vanatta :

March 1st, 1871, it is dated.

Q. Had you agreed with anybody that Mr. Ruckman should not pay you any commissions till all suits between him and King were settled?

A. No, sir.

Q. Then if you made no agreement to that effect why did you suppose that you could not sue for your commissions till the suit with King was settled?

A. I can't give any other reasons than those I have given already for not bringing suit before I did; there are no other reasons except those I stated.

Q. Didn't you know at that time that if you hired a man to do a week's work and no time for paying him was fixed by the agreement, that he was entitled to his pay as soon as his work was done, and that if he was not paid he could immediately bring suit for it?

A. Yes, a workman could.

Q. Then why didn't you know that if your work was done you were entitled to bring suit for your work?

A. I stated before, I had no means to employ counsel to fight a man like Ruckman.

Q. Was that the reason you didn't bring the suit?

40

*A.* Together with others I stated.

*Q.* What others that you stated?

*A.* The idea that I had in my head that unless these litigations were out of the way, and Mr. Ruckman was by some means—by decree or whatever it is called—made to convey the land, that I could not recover.

*Q.* Then, if that was your idea, why did you ask Mr. Ruckman to pay you your commissions on the 12th of May, 1869, when you knew that suit between him and King  
10 was not ended or near ended?

*A.* I knew I had earned it; I had a right to ask him for anything I had earned.

*Q.* But you say that you were under the impression that you were not entitled to your money until the suit was ended?

*A.* I didn't say so; I had the impression that I could not recover as readily till these litigations was out of the way, and besides having no funds—those were my ideas on this.

20 *Q.* Then you asked for it under the idea that the money was not yet due, that you had no right to get the money at that time unless Ruckman saw fit to pay it?

*A.* I thought I had earned my money and my money was due, but when it comes to sue for it, to go to law for it without having any money, it struck me a little different.

*Q.* Now you say that your want of means was the reason?

*A.* Yes, one of my reasons.

*Q.* Did you get an increase of your means about the 1st  
30 of January, 1871?

*A.* Yes.

*Q.* From what quarter?

*A.* From various quarters.

*Q.* What were they?

*A.* At that time I knew that the salaries were due me from several corporations which I got, which enabled me to employ eminent counsel.

*Q.* And that just happened at that very time, did it?

*A.* Yes, the salaries came due at a certain time.

40 *Q.* But you had been constantly employed ever since the 12th of May, 1868?

A. Yes.

Q. On salaries ?

A. Yes.

Q. And they had been paid to you regularly ?

A. Ah, if it had been paid to me there is the trouble ;  
it was not paid to me.

Q. What salary was not paid to you ?

A. The West Shore was not paid to me ; the New York  
and Fort Lee was not paid to me, and another railroad, the  
Memphis and El Paso and Pacific Railroad Company. 10

Q. Did they pay you in bonds ?

A. No, sir, they paid me in money.

Q. Did you at or about that time make any assignment  
of this claim you set up against Ruckman to anybody ?

A. I never made an assignment of any claim against  
Ruckman to anybody.

Q. Did you make any agreement about it with any-  
body ?

A. I never thought of such a thing.

Q. Or any share or any part of it ? 20

A. I never thought of such a thing.

Q. Did you do it ?

A. I never did.

Q. Then if a recovery takes place, all the money that  
will be recovered will belong to you, will it ?

A. Yes, sir.

Q. And no person is or will be entitled to a share of  
that money so recovered ?

A. No, sir.

Q. So that you will have a right to receive, and keep all 30  
that is recovered and paid ?

A. Certainly.

Q. You never have agreed with anybody to share the  
amount recovered here with them ?

A. No, sir.

Q. In any proportion ?

A. No, sir.

Q. Between May, 1868, and the commencement of this  
suit, did you try to sell out this claim, or to make a bar-  
gain with any one to prosecute it for you on shares ? 40

A. No, sir.

Q. Did you have any conversation with anybody on that subject?

A. No, sir.

Q. Was anything of that sort talked of between you and Schuyler Boyd?

A. No, sir, I never do anything on shares.

Q. You went in on shares with King and these other people?

10 A. No, sir, I got an interest afterwards.

Q. One-fifth part?

A. Yes.

Q. That was a share wasn't it?

A. An interest; I don't know as you call it a share; this is a different transaction.

Q. What difference is there in your mind between a share and interest? Just describe it; I may not have put my questions to meet your understanding of the terms.

20 A. If I require an interest in a certain enterprise or in a certain thing—anything—or go to a man and say, "Look here, if you do so and so, I will give you such a share, or "give you such a part," because I could not give an interest; I may not understand the English language right; I could not give an interest in my claim, but I could have given a share.

Q. You think you could not have assigned one-fifth or one quarter part in this claim to anybody?

A. It strikes me very different between a share and an interest.

30 Q. Have you ever made any agreement with anybody to assign, or give them, or entitle them to any interest in this claim?

A. I have never made any bargain with anybody to give a share, or interest, or anything else out of my claim against Mr. Ruckman.

Q. Have you any understanding with anybody about it to that effect at this time?

A. No such understanding.

Q. No agreement?

40 A. No agreement.

*Q.* From the time King made this contract to the time you had this conversation with Mr. Parker near the 1st of January, did you ever talk with any lawyer about your claim for commissions against Mr. Ruckman.

*A.* My recollection is I consulted no Counsel besides Mr. Parker on the subject.

*Q.* None before your conference with Mr. Parker about the 1st of January?

*A.* I never counseled with anybody on it.

*Q.* Mr. Parker was the first? 10

*A.* Yes.

*Q.* And the conference was with him near the 1st of January, 1871?

*A.* I think shortly before I brought the suit, yes.

*Q.* During that interval from the 12th of May, 1868, to the 1st of January, 1871, did you never have any conversation with any real estate broker or business man about this claim of yours for commission against Mr. Ruckman as to whether you were not entitled to have payment of your claim, and as to what you had better do with a view of securing your claim of payment of it—be sure you understand the question? 20

*A.* I do understand it; I don't recollect of any such transaction as you speak of.

*Q.* During that time you were very frequently in contact with lawyers who were acting for Mr. King, were you not?

*A.* No, sir, very seldom, very rare indeed.

*Q.* Were you not at Jersey City in company with a Mr. Fowler, a lawyer? 30

*A.* I was not there in company; he was present there at the examination.

*Q.* You and he were there together—in the same business, wasn't it?

*A.* I don't know what business he was on.

*Q.* Didn't you go with Fowler at the time he pretended to have made the tender of money to Mr. Ruckman, on account of that purchase, at Jersey City?

*A.* On the 1st of July I did go with Mr. Fowler to Jersey City from New York. 40

Q. Mr. Boyd was there on that occasion, wasn't he?

A. I believe so, yes, sir.

Q. You saw those gentlemen in New York before you came there, didn't you?

A. I don't know, I believe I saw Mr. Fowler.

Q. You were there with Mr. King's lawyers in Jersey City as a witness in the King case, were not you?

A. Before the Master?

Q. Yes.

10 A. Yes, sir.

Q. Were you and King in company with Mr. Boyd and Mr. Holecomb, both lawyers of King, at the very time you asked Ruckman if it was not about time you were paid your commissions?

A. I was.

Q. Now, hadn't you been in the presence of and in company with those same lawyers and other lawyers, both before and after that?

A. I don't say I was in company with them; they were  
20 there.

Q. How is it that on none of these occasions, or any occasion, you never spoke to any lawyer about this claim for commissions?

A. I don't know why I didn't; all I know I didn't.

Q. You said yesterday that you had been somewhat at a loss on the other trial as to dates, by reason of your not having had the benefit of your diary, did you not?

A. I believe I so stated.

Q. Had you not examined and read that diary shortly  
30 before you went on the stand at the previous trial?

A. I don't recollect if I did or not.

Q. Within three days of it?

A. I don't think within three days of it.

Q. How long before you went on the stand had you been perusing that diary?

A. I had not been perusing it at all.

Q. Did you testify in this wise on the other trial: "Q. "When did you first talk to Dr. King about locating de-  
'pots, &c.?" A. The latter part of May or early in June.

40 "Q. How do you fix the time? A. I recollect. Q. By

“memory alone? *A.* No; I think I could refer to my  
 “diary; I referred to my diary day before yesterday for  
 “the first time. *Q.* Had you it down in your diary, the  
 “time he promised to give you an interest? *A.* No, sir;  
 “I entered my appointments every day; if I made an  
 “appointment to meet a party, I enter on my diary, the  
 “day previous. *Q.* That is all you had in your diary?  
 “*A.* Yes. *Q.* That don’t show you when he promised to  
 “give you an interest in this? *A.* No, sir. *Q.* Where  
 “have you it written down? *A.* In my diary, at the meet- 10  
 “ing in which he agreed to give me one-fifth interest. *Q.*  
 “Where was this meeting? *A.* I don’t know where I met  
 “him; very likely I went to his house, but I am not posi-  
 “tive no interest was assigned to me before, either very  
 “late in July or August. *Q.* This was in May or June  
 “that he promised you the interest—then you saw him  
 “pretty often after that? *A.* No, not very often”—did  
 you testify in that way on the other trial?

*A.* I did.

*Q.* You brought the diary here on the last day of taking 20  
 testimony on the other trial, did you not?

*A.* Yes, I think so.

*Q.* When you were on the stand the second time?

*A.* I don’t recollect the first or second time.

*Q.* When was it that the first conversation between you  
 and King about your having an interest in this Ruckman  
 contract occurred?

*A.* I believe in the middle of June.

*Q.* Are you any way positive about that?

*A.* Not entirely; but from my recollection now I think 30  
 it was about the middle of June.

*Q.* On the other trial you were asked these questions,  
 page 48, and answer as I now read: “*Q.* You say you first  
 “talked with him about an interest along in May or June;  
 “who began that talk about you having an interest in it?

“*A.* I believe I did. *Q.* What did you say? *A.* I don’t  
 “know precisely what I did say; I know I tried to get an  
 interest in it”—did you so testify?

*A.* I did.

*Q.* On the other trial did you testify in this wise: “*Q.* 40

- “ You say he promised, you that along in May or June ;  
 “ why were the assignments put off till August ? *A.* King  
 “ simply promised, he didn’t mean to give to me ; I don’t  
 “ believe that King at any time meant to give it ; he simply  
 “ kept me on promises. *Q.* Why was the execution of the  
 “ assignment delayed till August ? *A.* Because King  
 “ wouldn’t do it. *Q.* How do you know ? *A.* He said he  
 “ would not. *Q.* Did you ask him ? *A.* Of course I asked  
 “ him. *Q.* How many times did you ask him ? *A.* I asked  
 10 “ him several times. *Q.* What reason did he give for not  
 “ making it ? *A.* He gave no answer. *Q.* Didn’t he explain  
 “ why he was putting it off ? *A.* No, he simply would say,  
 “ he would not do anything yet. *Q.* Did he say when  
 “ he would ? *A.* No. *Q.* Just said he would not ? *A.*  
 “ That is all. *Q.* Didn’t you express dissatisfaction ?  
 “ *A.* I did, because even after it was in writing they tried  
 “ to leave me out. *Q.* Who ? *A.* King and the parties. *Q.*  
 “ How ? *A.* I don’t know ; they tried to drown me out, and  
 “ they would have done it if they could, but I had it in  
 20 “ writing. *Q.* When did he promise you this interest ; was  
 “ it in May or June ? *A.* I am not positive ; it was either  
 “ in the latter part of May or early in June. *Q.* Isn’t there  
 “ some circumstances by which you can fix it ? *A.* No. *Q.*  
 “ Can you tell where you were at that time ? *A.* No. *Q.*  
 “ What is your best impression as to it ; whether it was  
 “ June or May ? *A.* I think it was in the latter part of  
 “ May. *Q.* Why do you think in the latter part of May ?  
 “ *A.* I don’t know ; it was late in May or early in June.  
 “ *Q.* If it was in June, was it before the 15th ? *A.* Yes.  
 30 “ very early in June, before the 15th. *Q.* And just at that  
 “ time it was merely a verbal promise ? *A.* Yes. *Q.* And  
 “ when you kept asking him to sign it he said he would  
 “ not ? *A.* There was nothing to sign, because there was  
 “ nothing written. *Q.* Why didn’t he assign ? *A.* I don’t  
 “ know. *Q.* You felt doubtful about getting it till you ac-  
 “ tually got the paper ? *A.* I did. *Q.* And you thought  
 “ he was not going to give it to you at all ? *A.* I did. *Q.*  
 “ Did you believe he was going to give it to you when he  
 “ said he would ? *A.* I don’t know what I thought at  
 40 “ that time. *Q.* Did you doubt his giving it to you when

"he first promised it to you? *A.* No; I think not at the  
 "time. *Q.* Did you soon after that? *A.* No. *Q.* When  
 "did you begin to doubt his giving it to you? *A.* After it  
 "was put off so long. *Q.* You got apprehensive you were  
 "not going to get it; when did your doubts about your not  
 "getting begin? *A.* At first when he could give me no  
 "reason at all. *Q.* When he first promised, didn't you ask  
 "him to make an assignment to you right away? *A.* No,  
 "I didn't, when he first promised. *Q.* How long before  
 "you asked him? *A.* I don't know; I suppose he prom- 10  
 "ised two or three times, and then I began to ask him  
 "about some writing. *Q.* That is, he promised two or  
 "three times to give you this interest? *A.* He promised  
 "two or three times that I should become interested in the  
 "transaction. *Q.* After he had done that, you began to  
 "talk to him about making an assignment to you in writ-  
 "ing? *A.* After some time. *Q.* Tell us when it was you  
 "asked him to make you a written assignment? *A.* I  
 "don't know when it was. *Q.* Was it before or after you  
 "went over with him the first time to tender money to 20  
 "Ruckman at Jersey City? *A.* It was in the early part of  
 "June or May when he first promised me, and writings  
 "were not made till late in July or August. *Q.* You say  
 "he put you off about giving you the paper? *A.* Yes. *Q.*  
 "I asked you whether you had asked him to give you a  
 "paper before you went over to Jersey City with him to  
 "make the first tender of money? *A.* I believe not. *Q.*  
 "Had he promised you an interest before you went over  
 "to make this tender? *A.* He promised me early in June  
 "or late in May. *Q.* Had he promised you an interest be- 30  
 "fore you went over to Jersey City with King to tender  
 "money to Ruckman? *A.* I believe not. *Q.* About how  
 "long after you first went over with him to make the ten-  
 "der did he make you the promise? *A.* I don't know"—  
 "did you so testify on the other trial?

*A.* I did.

*Q.* Before the Master in Chancery did you testify as I  
 shall now read to you: "I saw the contract that Mr. King  
 "had with Mr. Ruckman; I did not have any interest in the  
 "contract then—an interest is promised me now; it was 40

“promised me to have a one-fifth interest in that contract; I don’t recollect when it was promised me; I do not think it was the day the tender was made in the car—the tender was made the 1st day of July, and the interest was promised me in August, I believe”—did you so testify in the Chancery suit?

*A.* I did.

*Q.* And your recollection as to when you were first promised an interest in that contract has not at all times  
10 been the same, has it?

*A.* No, sir.

*Q.* Are you able to tell now when that interest was first promised to you—I mean are you able to tell the day?

Mr. Parker :

From memory or otherwise?

*Witness :*

20

From memoranda —[looking at diary.]

Mr. Vanatta :

I object to this resorting to that diary, because he testified it was not in there.

Mr. Parker :

30 He didn’t say that.

*Witness—[Looking at diary] :*

It was on June 10th.

*Q.* How do you fix that date?

*A.* From my memorandum.

*Q.* May I read aloud this entry of the 10th of June in  
your diary?

40 *A.* Yes.

Mr. Vanatta—[Reading] :

“Fort Lee, meeting at 3 o'clock; saw Leconi, Drake, Harrison; 225 Garden street; north 6 o'clock; Dr. King promises one-fifth in land; he bought in presence of M. M. B.” I have now read all there is in there, haven't I?

Witness—[Looking at diary] :

Yes, sir.

10

Q. I don't find anything there about Ruckman or Ruckman's land, do you?

A. No.

Q. How did you first find out that a written agreement had been signed between King and Ruckman?

A. On the 14th of May Dr. King informed me of it, and showed me the written contract.

Q. Was that the first time you saw it?

A. Yes, on the 14th of May.

20

Q. Did he tell you prior to that that it had been signed?

A. Not that I recollect.

Q. Where did you see him on the 14th of May?

A. I think he came to my house in Hoboken.

Q. Did he bring the contract with him?

A. Yes; he showed it to me.

Q. Was that his business with you on that occasion?

A. I don't recollect.

Q. Did you send for him to come to your place?

30

A. I think not.

Q. Did he give any reason for bringing the contract over to show to you?

A. I don't know; he didn't give any reason that I recollect.

Q. You read it on that occasion?

A. I think I did.

Q. Did Dr. King have any other business with you on that occasion, except to show you that contract?

A. I don't recollect.

40

Q. Did you have any talk with him about the property at that time?

A. I don't recollect.

Q. About improving it?

A. I don't recollect.

Q. Anything said about the location of depots on it?

A. I don't recollect.

Q. Anything about your laying it out with roads and drives?

10 A. I don't recollect.

Q. Anything about when or where or how the money to pay for it was to be raised?

A. I don't recollect.

Q. Anything about forming an association?

A. I recollect nothing about anything, except that he showed me the contract on that day, the 14th May, and about that I am positive.

Q. King hadn't hired you to buy this property for him, had he?

20 A. No, sir.

Q. You had nothing to do with him, but as the broker of Ruckman?

A. Yes.

Q. Now, see if you cannot give us some explanation of how it came, that this man who hadn't anything to do with you in the purchase of this property, went over from New York to Hoboken two days after this contract was signed, for the simple purpose of showing you that contract?

30 Mr. Parker :

He has not said that, and I object to the question. He says he don't recollect what his purpose was or whether he had other business there—he don't say that was the only business, he simply says he don't recollect.

*The Court :*

Can you make any explanation?

*Witness :*

I simply recollect as I stated the facts that he came and showed me ; if he had any other business at the same time I don't recollect it.

*Q.* You can give no other explanation other than you have given ?

*A.* I don't know how otherwise to explain, because I don't recollect. 10

*Q.* You have already stated that you cannot recollect any conversation that took place on that occasion, but with a view of seeing if I cannot refresh your memory, I will ask you whether there was anything said about John J. Donaldson, or Peter C. Adams, or Herman Adams, on that occasion by you to King or King to you ?

*A.* I don't recollect of anything of the kind.

*Q.* Did you at that time say anything to King about your taking an interest in the contract ?

*A.* No, sir. 20

*Q.* Did he at that time evince a willingness or unwillingness that you should have an interest in the contract ?

*A.* Neither one thing nor the other ; such a question did not come up.

*Q.* You doubtless had conversation ?

*A.* Not on the subject you mention.

*Q.* On some subject, did you not ?

*A.* May be, but I don't recollect of it.

*Q.* You didn't sit there like two mutes during that interview ? 30

*A.* Not very likely.

*Q.* Cannot you tell something that was talked about on that occasion ?

*A.* I cannot recall anything to my memory that was said.

*Q.* Did you read the contract yourself, or did Dr. King read it to you ?

*A.* I believe I read it over or glanced it over.

*Q.* Did he leave it with you on that occasion or take it away when he left ? 40

- A.* He didn't leave it with me.
- Q.* Did you take a copy of it before he left?
- A.* No, sir.
- Q.* How long before you got a copy of it?
- A.* I never had a copy of it.
- Q.* Sure of that?
- A.* Yes.
- Q.* You never showed a copy to anybody?
- A.* No, sir, I had no copy.
- 10 *Q.* When next after that did you have an interview with Dr. King?
- A.* I believe within two or three days after—within a few days after.
- Q.* Can you fix the date with any precision?
- A.* No.
- Q.* Where?
- A.* I think we were at his house.
- Q.* Where did he live?
- A.* On Grove street, New York.
- 20 *Q.* Corner of 8th avenue.
- A.* Yes; the corner is a drug store, and his residence is next to it.
- Q.* What did you call at King's house on that occasion for?
- A.* I don't know exactly what my business was on that occasion.
- Q.* Wasn't it to see him about this contract with Ruckman?
- A.* I don't recollect that I saw the contract again then.
- 30 *Q.* Didn't you call for the purpose of seeing King about the contract King had made with Ruckman?
- A.* I don't recollect if I went there for that purpose.
- Q.* On the former trial did you testify to this: "*Q.* "What was your business at King's at that time? *A.* To see him about this sale of land. *Q.* What did you want to see him about on that occasion? *A.* I wanted to see the contract; the second time I wanted to know the terms. *Q.* Why did you want to know the terms? *A.* I wanted to know about my commission; I wanted to know on what terms he had purchased. *Q.* Why did
- 40

“you want to know that? A. If the terms had been to be  
 “paid immediately or soon after, I would have got my  
 “commissions sooner. Q. Was there any understanding  
 “that you were to have your commissions when the money  
 “was paid? A. No, sir; nothing was said when commis-  
 “sions were to be paid. Q. Did you say anything to Dr.  
 “King about your commissions on that occasion? A. No,  
 “sir. Q. What occurred at that time? A. Nothing oc-  
 “curred at that time, except I wanted to see how the pay-  
 “ments were to be made regarding my commissions. Q. 10  
 “You had read the agreement a day or two before. A.  
 “Yes. Q. But you had forgotten? A. I didn’t forget  
 “about the agreement, but I wanted the terms. Q. Was  
 “that your whole reason? A. I don’t know if it was my  
 “whole reason; no other reason I now know.” Did you so  
 testify on the other trial?

A. I did.

Q. On this second occasion did you ask to see the  
 agreement?

A. I believe I did; I don’t recollect. 20

Q. Can you tell us of any conversation that took place  
 between you and King at that time?

A. I could not.

Q. Not a word that he said and you said?

A. I don’t recollect what was said; no doubt we said a  
 good many words, but I don’t recollect.

Q. When next after that was the next time you saw  
 King?

A. I don’t recollect how long after that I saw him.

Q. A long or short time? 30

A. I can’t tell, it is so long since.

Q. Between that and the 10th of July you met him on  
 a good many occasions, did you not?

A. I don’t recollect.

Q. When did this conversation about improving the  
 property and laying out roads and drives, and bringing the  
 advantage of the railroad to bear on it—when did that first  
 begin?

A. It may be before or a little after he promised me.

Q. You can’t tell how long before? 40

*A.* I can't tell it.

*Q.* There had been no talk about that before he got the contract?

*A.* No, sir.

*Q.* Did you go over to Jersey City when King was going to make or have made the tender of \$19,900 to Ruckman on the 1st of June, 1868?

*A.* No, sir.

*Q.* Are you sure of that?

10 *A.* Sure of it.

*Q.* You so testified on the other trial, did you not?

*A.* By mistake, I believe, I corrected it immediately afterwards; I got confused about the 1st of July and the 1st of June.

*Q.* Did you testify on the other trial as follows: "*Q.* Did you go there to Jersey City when he went there to Voorhis' office to tender \$19,900 on the first of June? *A.* I believe so. *Q.* How did you come to go with him on that occasion? *A.* I cannot recall to my mind now. *Q.*

20 "*Who invited you? A.* I think Dr. King did. *Q.* What reason did he give for wanting you to go along? *A.* No, I think Fowler did. *Q.* What reason did Fowler have for asking you? *A.* I believe he was a Counsel for King, and he was a neighbor of mine. *Q.* Did you learn what they wanted you to go along for? *A.* I did not know for what purpose, I think they said they wanted me to go along; I knew they were going to an office to meet Mr. Ruckman; they asked me to go over to Jersey City, and I

30 "*knew they were going to see Mr. Ruckman about a tender or payment of money. Q.* How did you get over there—in a carriage? *A.* I believe I did. *Q.* Who was with you? *A.* I think Fowler and King; that is my impression. *Q.* Then you were over there with King on another occasion when they claimed to have had \$99,900—you were along on that occasion? *A.* I believe so. *Q.*

"On whose invitation did you go then? *A.* I believe at Fowler's. *Q.* He was still acting as the attorney for Dr. King? *A.* I think so. *A.* What did you go over for then?

40 "*A.* I believe he wanted me to be a witness to see the money tendered, or something. *Q.* Who was the money

"going to be tendered to? *A.* Ruckman. *Q.* Did you ask  
 "him whether they wanted any witness for that? *A.* I be-  
 "lieve not. *Q.* Did you understand that Ruckman would  
 "be likely to be unwilling to take the money? *A.* No, I  
 "understood nothing. *Q.* Didn't you say Ruckman would  
 "be too glad to take the money? *A.* No, sir. *Q.* Did you  
 "know at that time that there was any difficulty between  
 "King and Ruckman? *A.* I believe I had heard of it, still  
 "I don't know. *Q.* King had counsel in New Jersey? *A.*  
 "I don't know, I never knew anything about counsel. *Q.* 10  
 "Before he went over with the money he had employed  
 "counsel in Jersey? *A.* I never knew that he had counsel  
 "in Jersey. *Q.* Didn't you go with him to see Mr. Boyd?  
 "*A.* I don't believe I have been with King in any lawyer's  
 "office. *Q.* Didn't you have an interview when King and  
 "Boyd were present? *A.* I don't recollect of any. *Q.* You  
 "were in Jersey City in the Chancery suit between King  
 "and Ruckman? *A.* Yes, I was subpoenaed either by King  
 "or Ruckman, I don't recollect which. *Q.* Who paid your  
 "fees? *A.* Nobody, I didn't get any fees; I didn't know 20  
 "fees were paid." Did you so testify on the former trial?

*A.* Yes, but corrected it immediately after; I got mixed  
 about the first of June or first of July.

*Q.* Did you testify as follows: "*Q.* You went over to Jer-  
 "sey City to see the tender made? *A.* I did. *Q.* Where was  
 "the tender made? *A.* If I recollect right, in Mr. Voorhis'  
 "office. *Q.* Anywhere else? *A.* In the railroad car. *Q.*  
 "Who was in the railroad car? *A.* Mr. Ruckman. *Q.*  
 "That same money was carried to Voorhis' office, and af-  
 "terwards carried to Ruckman in the railroad cars? *A.* 30  
 "Yes, sir. *Q.* Did you ever see any other money carried  
 "over there or tendered by Dr. King? *A.* I saw the  
 "second. *Q.* You saw some money? *A.* Yes, I did. *Q.*  
 "That was in Voorhis' office? *A.* Yes. *Q.* And that was  
 "afterwards tendered to Ruckman in the railroad car? *A.*  
 "Yes. *Q.* Did you ever see any other sum of money than  
 "that made a tender of in Jersey City? *A.* I think I was  
 "present on the second payment. *Q.* What was the second  
 "payment—wasn't it a payment of \$99,900? *A.* It was  
 "\$99,900. *Q.* I want you to recollect this, whether you 40

“ were there present at any other time in Voorhis’ office in  
 “ Jersey City, when money was produced by Dr. King on  
 “ account of this contract? *A.* I was. *Q.* Excepting the  
 “ time when that money was there, which was afterwards  
 “ tendered to Ruckman in the railroad car? *A.* Yes, I  
 “ was. *Q.* When was that, the first or the second time? *A.*  
 “ I was present at the first payment, I think it was \$20,000.  
 “ *Q.* Just recall, were you present then? *A.* No, I believe  
 “ I am mistaken, I have no book, and I have seen no book.  
 10 “ *Q.* You were present at that payment when money was  
 “ at Voorhis’ office, which was afterwards tended to Ruck-  
 “ man in the cars; now then, I want you to think, get  
 “ right about this matter—were you or not present at  
 “ Voorhis’ office when that \$20,000 was paid? *A.* I was  
 “ present there. *Q.* What was that that was tendered in  
 “ the cars—\$20,000? *A.* I don’t recollect just now. *Q.*  
 “ You think it was \$20,000 that was tendered then? *A.*  
 “ \$19,900, I think that was it. *Q.* Who was present at that  
 “ time in Voorhis’ office, when you saw money there pro-  
 20 “ duced by King? *A.* Mr. Boyd, Dr. King, and there may  
 “ be some other persons there, I don’t recollect. *Q.* At any  
 “ other occasion, were you there on more than one occa-  
 “ sion when money was ever tendered by Dr. King? *A.*  
 “ I think I was there on the second occasion. *Q.* You were  
 “ there on more than one occasion when money was had  
 “ there by Dr. King and tendered on this contract? *A.* I  
 “ believe I was. *Q.* Who was there on any other occasion  
 “ than the one you have specified? *A.* If I recollect right  
 “ Mr. King and Mr. Boyd. *Q.* Do you speak now of the  
 30 “ first or of the second occasion? *A.* I speak of both. *Q.*  
 “ King and Boyd were there both times? *A.* Yes. *Q.*  
 “ When you were there? *A.* Yes.” Did you so testify on  
 the other trial?

*A.* I was confused about the time—about the first of June and the first of July.

*Q.* As I read that testimony did you give it?

*A.* I did; but you did not read it as I corrected it; all you read took place in the morning, and in the afternoon I corrected it.

Mr. Parker to Mr. Vanatta :

I want to call your attention to page 88, at the bottom :

“ Q. Are you able to speak with any more certainty, in relation to the fact as to whether you were present at Jersey City at the time the \$19,900 were tendered? A. I was not present. Q. You say you were not; I asked you whether you were able to speak with more certainty; what makes you certain, if you are so, that you were not present on that occasion of the \$19,900, the first money? 10  
 “ A. I looked at a book yesterday, which was laying in the parlor of the hotel, the book which contained the printed evidence given by me, for a few seconds—looked it over regarding what I said about the first payment or tender, as it is called, and on going home last night to the hotel in New York, I looked at my diary for 1868, and I was satisfied about my mistake; confounding them, the 1st of June and the 1st of July, 1868, I was satisfied, and am positive now that I was not present on any other occasion except on the 1st of July, 1868, when Dr. King tendered to Ruckman \$99,900—that is the only payment on which I was present.”

Q. I wish you would tell us how often between the 12th of May and 1st of July, you and Dr. King went up to this property of Ruckman's—that had been Ruckman's?

A. I don't recollect.

Q. You did go up there with him before the 1st of July, did you not?

A. I don't recollect just now. 30

Q. You were up there yourself without Dr. King during that period, were you not?

A. I don't recollect just now.

Q. You were frequently up together during that Summer, were you not?

A. I don't recollect.

Q. Did you in company with Dr. King go to divers persons in that neighborhood to buy lands?

A. I think I went to one person.

Q. Who was that? 40

- A.* I don't recollect the name.
- Q.* Was his name Hopkins?
- A.* I believe that is the name.
- Q.* To any other party there?
- A.* Not that I recollect.
- Q.* Did you and he go together to Warren L. Barnett with a view of buying land?
- A.* Not that I recollect.
- Q.* You were at Mr. Barnett's, were you not?
- 10 *A.* Not that I recollect.
- Q.* Don't you recollect being introduced to Mr. Barnett by Dr. King?
- A.* Not that I recollect
- Q.* And you and King were endeavoring to buy land of Barnett?
- A.* Not that I recollect; I think not.
- Q.* Don't you recollect an occasion when Dr. King introduced you to Mr. Barnett as his partner—that is Dr. King's partner?
- 20 *A.* I don't understand your question.
- Q.* Didn't you and Dr. King together, go or meet with Mr. Barnett, on a certain occasion in that Spring or Summer of 1868, and Dr. King introduced you to Mr. Barnett as his, Dr. King's, partner?
- A.* No, sir; I never was Dr. King's partner, and never introduced as such.
- Q.* You were not so introduced to Mr. Barnett?
- A.* No, I don't care who says so.
- Q.* You never was his partner?
- 30 *A.* No, sir.
- Q.* You never said you were interested with King in the purchase of this land?
- A.* Which land?
- Q.* Ruckman's.
- A.* To Barnett?
- Q.* Anybody.
- A.* After August?
- Q.* Any time that Summer?
- A.* I may have said that.
- 40 *Q.* Did you understand my question?

A. Yes, I believe I did.

Q. My question is whether you said to anybody during that Summer, that you was interested in that purchase that King made of Ruckman at the time it was made, in such a manner as to import that your interest was such at the time it was made?

A. No, sir.

Q. Did you say to any person that Spring or Summer, that you and Dr. King, or you by means of Dr. King, had purchased Ruckman's land, or words of that purport, meaning or effect?

[Question objected to by plaintiff's counsel.]

[The Court admits it.]

A. Name your man; I have not the slightest recollection of ever making such a statement.

Q. Did you make such a statement to Warren L. Barnett? 20

A. I don't recollect of making such a statement to anybody.

Q. Did you say so to, or in the presence of William Griggs?

A. I don't know such a man.

Q. Did you say so, or in the presence of John J. Donaldson?

A. No, sir.

Q. Did you say so to, or in the presence of Charles G. Rehwoldt? 30

A. No, sir.

Q. Did you say so to, or in the presence of Ambrose W. Thompson?

A. No, sir.

Q. Did you say so to, or in the presence of Joseph C. Levi?

A. No, sir.

Q. Did you say so to, or in the presence of Allen Hay?

A. No, sir.

Q. Did you say so to, or in the presence of W. L. Drake? 40

A. No, sir.

Q. O: Frederick B. Betts?

A. No, sir, I don't recollect of saying that to anybody.

Q. Was Dr. King a capitalist?

A. He had money and property.

Q. Was he a man of capital enough to buy and carry such a property as this?

A. Him and his wife had money enough to buy, but not enough to carry.

10 Q. What do you mean by that?

A. I mean I know she is a lady of fortune, worth not less than \$100,000, and Dr. King was a man of some means, I suppose he was worth \$20,000, of course they had means enough to buy.

Q. I still fail to understand what you mean by means enough to buy, and not means enough to carry?

A. What I mean by not means enough to carry is, if King or anybody else had bought the property without having associated other capitalists with him, I know he  
20 would not have had money enough to carry such a large transaction as that; still he was a perfectly good man to buy it.

Q. On the former trial was this evidence given by you:

“Q. I got the impression from the testimony this morning  
“ that Mr. King was a man of means at the time you made  
“ this arrangement with him—did I understand you cor-  
“ rectly? A. Yes, a man of some means. Q. When you  
“ were examined at Jersey City in the case of King *agst.*  
“ Ruckman—didn't you testify in this wise, I didn't believe  
30 “ that Mr. King had means enough to buy that property,  
“ to pay for it, I mean I never thought he had; Mr. King  
“ inferred that he had some means of his own, and that he  
“ had a wealthy old gentleman, at that time unknown to  
“ me, who would back him; I know now it is Herman C.  
“ Adams; he has an interest in this contract, one-fifth, I  
“ understood; I know of other gentlemen having interests  
“ in this contract; the old gentleman, Mr. Adams, his son,  
“ Peter C., J. J. Donaldson, and the persons having an  
“ interest, each one has one-fifth interest; it is hard for me  
40 “ to tell who furnished the money, I believe it come from

“ the Bank of North America, of which Mr. Donaldson is  
 “ President? A. Yes, I knew that he had no means to pay  
 “ for that property.” Did you so testify before?

A. I did.

Defendant offers in evidence record of a deed of assignment between Benjamin W. King to Peter C. Adams, dated August 20, 1868, acknowledged August 27, 1868, by Benjamin W. King, proved both as to King and Peter C. Adams, by the subscribing witness, December 11, 1868, and 10 recorded December 14th, 1868, book B 7, page 153.

The record is admitted as having the force of the original, by consent and without objection.

Defendant also offers in evidence record of an assignment by William R. Bergholz, dated March 4, 1871, recorded March 6, 1871, book A 8, of deeds, page 73.

Q. Did you get from King an actual assignment for 20 one-fifth interest in this contract?

A. I got mine simultaneously with the others; the same as Adams, Donaldson and others.

Q. A separate paper?

A. No, sir, all the same, simultaneously delivered, each one got a paper, there were four papers.

Q. Where is your assignment?

A. I assigned it to Mr. Raymond.

Q. What did you do with the paper itself?

A. I gave it to Mr. Raymond. 30

Q. Did you write on it?

A. I suppose it was written on the back of it.

Q. Where does Raymond live?

A. I don't know where he lives; his store is corner of Nassau and Fulton streets, that clothing store on the corner; this was written on the back of the paper in Mr. Hampson's law office; the papers were all alike and compared.

Q. Does this assignment which you have just heard read—does that express the consideration you received truly? 40

(Question objected to as irrelevant.)

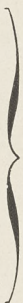
Adjourned for the day.

NEW JERSEY SUPREME COURT.

WILLIAM R. BERGHOLZ,

*vs.*

ELISHA RUCKMAN.



10

THURSDAY MORNING, April 22d, 1875.

THIRD DAY'S PROCEEDINGS.

20

Cross-examination of *William R. Bergholz* continued.

The Stenographer reads the question objected to just before adjournment last evening, as follows :

Q. Does this assignment which you have just heard read—does that express the consideration you received truly?

30

Objected to as before and overruled by the Court, to which ruling defendant prays an exception, and that his exception may be sealed and it is sealed accordingly.

ALFRED REED,

*Jus. Sup. Ct.*

SEAL.

10 Q. What was the value of your interest in that contract, at the time it was assigned to you by Dr. King?

(Same objection as to the preceding question.)

*The Court :*

I admit that question as to the value at that time.

(Plaintiff's Counsel excepts.)

20 A. I haven't the slightest recollection now of what I considered its value at that time.

Q. That is not the question I asked you—please answer the question?

[Stenographer reads :]

Q. What was the value of your interest in that contract, at the time it was assigned to you by Dr. King?

30 A. I don't know.

Q. Did you not say on the other trial that its value was the same, or so far as you know, not different at the time you got it that it was when you sold it?

A. I don't recollect.

Q. What price did you put upon it?

(Question objected to by plaintiff.)

40 The Court admits the question, to which ruling the plaintiff excepts.

A. Upon what?

Mr. Parker :

Upon your interest in the contract.

A. At the time, I don't recollect.

Mr. Vanatta :

10

I propose to ask some questions on a subject which your Honor will probably feel constrained to exclude, or some of them at least, and I ask them for the purpose of having it appear upon the record that they were put, or offered to be put. They touch the question of brokerage and license as a broker, as to whether he was ever licensed as a real estate broker.

Q. Did you take out a license, under the authority of the United States Government, as a real estate agent? 20

The Court :

I overrule that question.

Mr. Vanatta :

I will state the substance of what I propose to prove. We insist that by his own evidence already given, and we offer to prove by his further examination, that he pro- 30  
fessed to be, and was engaged in the business of real estate broker, and that for that, or on that account he had never paid any taxes to the United States Government, nor had he received any license as required by the laws of the United States for carrying on that business, and the time we offer to prove that in the year 1868, and immediately preceeding the transaction in respect to which he claims commissions, that will fix the time to which our evidence will relate.

40

Mr. Parker :

We don't object to the evidence on the part of the defendant, not that I think it at all relevant, but I think he will perhaps gain more advantage by his offer than he can derive from his proof.

*The Court :*

10 I will overrule the offer as it stands. The offer is clearly within the ruling of our Court of Errors.

Defendant's Counsel prays an exception to this ruling of the Court, and that his exception may be sealed, and it is sealed accordingly.

ALFRED REED,

SEAL.

20

*Jus. Sup. Ct.*

Mr. Vanatta :

I have concluded the cross-examination of this witness, with the exception of calling his attention to his testimony given on the previous trial, touching the value of his interest at the time he got his interest, and compared with the time he disposed of it. That, if the Court will permit me, I will examine him upon, as soon as I find it in the printed  
30 book. In the meantime the other side may proceed with the re-direct, reserving my right to examine upon that one point.

Re-direct examination.

By Mr. Parker :

40 Q. You were a witness, it is said, in a case in Jersey City between Mr. Ruckman and Dr. King—what was it about?

A. I think about a suit pending between Dr. King and Mr. Ruckman ; the suit as near as I can recollect it, was to make him perform what he had agreed to—this contract.

Q. Was or was not that suit pending when these assignments were made ?

A. Yes, it was pending.

Q. Do you know whether there were one or two suits then pending between those parties about that contract ?

A. I don't recollect—one or two.

Q. Do you remember hearing at the time, and when 10 your testimony was taken, of a cross suit brought by Mr. Ruckman to set aside the contract ?

A. Yes, sir.

Q. Do you know how soon that litigation commenced ?

A. I think almost immediately—very soon after the contract was made.

Q. I think you have mentioned that the day of the first payment was the first of June, was it not ?

A. Yes.

Q. Do you know whether that payment was accepted or 20 not ?

(Question objected to.)

A. It was not accepted.

Mr. Parker :

I don't pretend that he knew that of his own knowledge. 30

Q. Did you not know as a witness, as already related, that the tender on the 1st of June was refused, or alleged to have been refused, and that the suit was immediately commenced.

Mr. Vanatta :

The bill was not filed till the 1st or 2d of July—the first payment was to have been June 1st.

Mr. Parker :

Well, I will take it as you state.

*Q.* Then the assignment that you received was made to you in the midst of this litigation?

*A.* Yes.

*Q.* Have you any idea of when that litigation concluded?

10 *A.* I don't know—I don't recollect.

*Q.* You have been asked in relation to this tender that I have just mentioned, and your former evidence appealed to in regard to it—now at how many tenders on that contract were you actually present?

*A.* I was actually present on the 1st of July—the second tender.

*Q.* Made where?

*A.* The first was made in the office of Mr. Voorhis, the counsellor in Jersey City, and Mr. Ruckman not being  
20 there to receive the money, it was made again within an hour, or shortly afterwards, in the railroad cars, to Mr. Ruckman.

*Q.* At the last trial, after delivering the testimony which was read to you before, did you testify correctly your first statement on that subject?

*A.* Yes, sir.

*Q.* You were asked the following question, and did you  
answer as I now state—page 88: “*Q.* Are you able to  
“ speak with any more certainty in relation to the fact as  
30 “ to whether you were present at Jersey City at the time  
“ the \$19,900 were tendered? *A.* I was not present. *Q.*  
“ You say you were not; I asked you whether you were  
“ able to speak with more certainty; what makes you cer-  
“ tain, if you are so, that you were not present on that oc-  
“ casion of the \$19,900, the first money? *A.* I looked at a  
“ book yesterday, which was laying in the parlor of the ho-  
“ tel—the book which contained the printed evidence given  
“ by me—for a few seconds; looked it over regarding what  
“ I said about the first payment, or tender, as it is called,  
40 “ and in going home last night to the hotel in New York, I

"looked at my diary for 1868, and I was satisfied about  
 "my mistake ; confounding them, the 1st of June and the  
 "1st of July, 1868. I was satisfied, and am positive now,  
 "that I was not present on any other occasion except on  
 "the 1st of July, 1868, when Dr. King tendered to Ruck-  
 "man \$99,900 ; that is the only payment on which I was  
 "present." Did you so testify ?

A. I did, sir.

Q. Is that true ?

A. That is positively true. 10

Q. Look at your diary on the 1st of July, 1868, and, re-  
 freshing your memory thereby, state at what tender you  
 were present ?

A. [Looking at diary.] I was present on the 1st of  
 July, at the tender of \$99,900 in Mr. Voorhis' office, Jersey  
 City.

Q. You were asked in relation to your seeing Dr. King  
 when he showed you this written agreement ; it was at his  
 house in Grove street, was it not ?

A. Yes. 20

Mr. Vanatta :

The testimony is the other way ; he said Dr. King came  
 there to Hoboken and showed it to him.

Mr. Parker :

That is true ; I was mistaken. 30

Q. Where did Mr. Ruckman then live ?

A. Closter.

Q. Had you seen Dr. King before for the purpose of  
 ascertaining how this contract proceeded ?

A. I had seen him between the 9th and 14th.

Q. When and where ?

A. I had seen him on the night of the 11th of May, at  
 his house in Grove street.

Q. For what purpose were you there ?

A. To ascertain from him how far he had proceeded ; 40

what he had done ; if he had seen the land ; if it had suited him, and so on.

*Q.* Which was the most convenient method for you to discover the situation of this negotiation—through Dr. King or Mr. Ruckman ?

*A.* Dr. King ; he lived right on my way going to the Christopher street ferry ; I had to go right through Grove street.

*Q.* Then you had been to him about the matter on the  
10 11th ?

*A.* Yes, sir.

*Q.* And he came to see you on the 14th ?

*A.* Yes, sir.

*Q.* Your attention was called by Mr. Vanatta, to the time when the interest was first promised you in this contract, after it was made and the entry was read from the diary ; I want to ask you when these and all the entries that you have referred to were made ?

*A.* They were made at the time that they purport to  
20 have been made.

*Q.* Your attention was called to your testimony in the first case, as stated on page 162 of this book, at folio 648—did your testimony then referred to proceed as follows :  
“ I saw the contract that Mr. King had with Mr. Ruckman ;  
“ I did not have any interest in the contract then—an interest is promised me now ; it was promised me to have  
“ a one-fifth interest in that contract ; I don't recollect  
“ when it was promised me ; I do not think it was the day  
“ the tender was made in the car—the tender was made  
30 “ the first day of July, and the interest was promised me  
“ in August, I believe ; I came over on the first of July,  
“ because I was requested by Mr. King ; I went to Mr.  
“ Ruckman's with Mr. King early in May to introduce King  
“ to Ruckman as a purchaser ; I introduced him to Mr.  
“ Ruckman ; at the time I introduced King to Ruckman, I  
“ had known him probably a year or two ; I sent several parties out there previous to Mr. King, but they  
“ failed ; I did not know anything about Mr. King's means  
“ at that time ; I did not believe that Mr. King had means  
40 “ enough to buy that property—to pay for it, I mean ; I

“never thought he had; Mr. King represented that he  
 “had some means of his own, and that he had a wealthy  
 “old gentleman, at that time unknown to me, who  
 “would back him; I know now—it is Herman C.  
 “Adams—he had an interest in this contract, one-  
 “fifth, I understood; I know of other gentlemen having  
 “interests in this contract—the old gentleman, Mr. Adams,  
 “his son, Peter C., J. J. Donaldson, are the persons hav-  
 “ing an interest; each one has one-fifth interest; it is  
 “hard for me to tell who furnished the money, I believe it 10  
 “came from the Bank of North America, of which Mr.  
 “Donaldson is President; that Bank is situated on Wall  
 “street, New York.” Did you so testify?

A. I did.

Q. And was that testimony according to the fact?

A. Yes, according to the facts.

Q. You have been asked and testified respecting, as  
 was said, the consideration you gave for obtaining one-  
 fifth interest in that contract; I want to ask you whether  
 you mean by that you have stated, that you gave the con- 20  
 sideration, or that the things mentioned were the reasons  
 that induced Mr. King to admit you as one of the joint  
 owners?

A. The reasons I gave were the reasons for which I  
 was admitted to become one of the parties, and the con-  
 sideration I gave and was to give are stated in that paper;  
 I was to give and do the same as all others.

Q. Your paper is a copy of the one that has been read,  
 is it?

A. Yes, they were all alike. 30

Q. Then the bargain was that King admitted you, the  
 two Adam's, and Donaldson, upon the understanding that  
 you four were to procure all moneys necessary to pay upon  
 the contract, and not to get it back till after sales had  
 taken place?

A. Yes, sir.

(Last question objected to.)

Q. Was King by the arrangement between you, to ad- 40

vance any money?

(Defendant objects to the question, and after argument withdraws his objection.)

A. No, sir.

Q. You were asked heretofore in relation to sales of real estate, and what was the first sale of real estate that you made as a broker?

10

(Defendant's object to the question.)

Mr. Parker :

That is in direct reply to evidence already in.

Mr. Vanatta :

We withdraw the objection.

20

A. I am positive the first sale of land I ever made in my life was this sale for Mr. Ruckman.

Q. How often before this contract had you seen Mr. Ruckman, so far as you can tell?

A. Quite a number of times.

Q. At this office you have spoken of?

A. Probably some 12 or 15 times at my office, yes, sir.

Q. Did he call you by any name?

A. He did.

30

Q. What?

A. Berkhaus.

Q. He didn't call you Bergholz?

A. No, sir.

Q. But he got it the other way, "Berkhaus?"

A. Yes, sir.

Q. Is that circumstance fresh to you?

A. Positively fresh.

Q. Is there any doubt of his having known you by the name which he thus pronounced?

40 A. None whatever.

*Q.* Your attention was called to your evidence given as now included in the new book, folio 655, page 164—did you then say in addition to that you have already testified to :  
 “ At the time of the tender I believe none of the members  
 “ of the partnership were interested until I came in ; I  
 “ don’t think J. J. Donaldson was interested at the time of  
 “ the tender, but I don’t know—

[Interrupted.]

10

Mr. Vanatta :

(Objects to that mode of examining the witness.)

*The Court :*

If it is part of his examination, the portion of which was introduced on cross-examination, it is proper that the plaintiff should be allowed to give his explanation of the original testimony—if it is a part.

20

After hearing arguments of Counsel, the Court overrules the question in that shape.

Mr. Parker :

Then I will put this question.

*Q.* How soon did any of the parties, so far as you know, become interested in this contract besides Mr. King ?

30

Mr. Vanatta ;

I don’t see in what point of view this is pertinent or relevant ; therefore I object to it.

Mr. Parker :

It is a circumstance to show that he did not go in so early, if the rest did ; but if the Court has any doubt about it, I don’t want to take time.

40

*The Court :*

I will admit it, if you insist on it.

Mr. Parker :

We will waive it.

Q. In that entry in June 10th, read from your diary,  
10 it is stated that "Dr. King promises one-fifth in the land  
he bought, in the presence of M. M. B." Who is M. M. B?

A. My wife Mary M.

Q. Had you any reason for stating that it was in the  
presence of your wife in making a memorandum of it?

A. I don't recollect any special reasons now.

Re-cross-examination :

By Mr. Vanatta :

20

Q. I have now found the testimony I had in my mind,  
page 62, "Q. Are you able to say whether the value of  
"the land in question has increased, or on the contrary,  
"between 1868 and 1872? Are you able to say whether  
"that land has appreciated or not since 1868 and 1871?  
"A. I really don't know whether it has or not." Did you  
so testify on the other trial?

A. I did.

Q. Do you know when that Chancery suit was com-  
30 menced—King's suit against Ruckman?

Mr. Parker :

We can agree upon those things.

Mr. Vanatta :

The bill is marked filed July 1st, 1868.

40 Mr. Parker :

I always understood the bill was filed on the day of the tender of \$99,000.

Mr. Vanatta :

Ruckman's bill was filed July 8, 1868, and that was to set aside the contract.

(It is so agreed by counsel for the respective parties.)

10

Q. You stated to Mr. Parker that you called to see King on the 11th of May, 1868?

A. Yes, sir.

Q. And at his residence, I think you said?

A. On Grove street.

Q. Tell us the time of day you made the call?

A. I came home from Fifth-avenue Hotel; it must have been between 9 and 10 o'clock at night—on my way home to Hoboken.

Q. What did you go to Dr. King's for that night? 20

A. To ascertain what he had done; if he had bought, to ascertain about the lands.

Q. Do you recollect what passed between you and him?

A. No, sir, I don't recollect the conversation, except the substance of it.

Q. You said you went to Dr. King's that night to get information, why did you want that information?

A. I don't recollect why I wanted it; I know I did want it.

Q. What did you want that information for, for which 30  
you went?

A. I knew that he made an appointment with Ruckman to visit the lands, and I wanted to know if he had been there, what he thought of it, and what had passed between them, and what he had done.

Q. You say that when King made this assignment, the understanding was that he was not to advance any money?

A. That was the understanding.

Q. According to the understanding who was to advance the money? 40

*A.* The parties who received the interest.

*Q.* Was it the understanding that you were to advance one-fourth part of this \$99,900?

*A.* Yes, I was to do precisely the same as the others did.

*Q.* And you undertook to do it?

*A.* It was advanced.

*Q.* Did you do it?

*A.* No, sir, I didn't say I did.

10 *Q.* Who did advance it?

*A.* I believe Mr. Donaldson; I know it came out of his bank.

*Q.* Did Peter C. Adams advance any?

*A.* How it was made up I cannot tell; all I know, it came out of the Bank of North America.

*Q.* Were you called on to make advances?

*A.* I didn't know whether I was or not.

*Q.* Did you advance any?

*A.* The money came out of the Bank of North America.

20 *Q.* Did you give any note for it?

*A.* No, sir.

*Q.* Were you asked about the advance?

*A.* I believe I was; I don't recollect.

*Q.* Where did the money come from?

*A.* The \$99,900 is all I know of, and I know that came out of the Bank of North America.

*Q.* Fowler had charge of that money, hadn't he?

*A.* I don't know; I saw King count out the money.

*Q.* It was handed to him by Fowler, wasn't it?

30 *A.* I don't know.

*Q.* And Fowler took it back to the bank—did he or did he not?

*A.* I don't know—I don't recollect.

*Q.* You were not at the bank when it was got?

*A.* I think not.

*Q.* Did you ever try to sell your interest in that contract before you assigned to Raymond?

(Objected to as not responsive to the re-direct examination.)

Q. You said the first sale you ever made was this sale of Ruckman's—the first you ever made in your life?

A. Yes, sir.

Q. On the previous trial did you testify as follows, page 26: “Q. Were you engaged in the sale of real estate as a land agent? A. Engineers always do; yes. Q. Had you previously been making sales of real estate as land agent or land broker? A. I always effected sales, and do it to this day. Q. In 1868, or 1867, were you acting as agent for the sale of real estate? A. Excepting this 10  
“Ruckman estate. Q. Did you for anybody else? A. I believe I did. Q. Who else? A. The Huguenot Park. Q. On commission? A. Yes. Q. What year? A. 1868. Q. And in 1867 also? A. No, sir, I believe not.” Did you so testify?

A. I did.

Q. And on your re-direct examination, page 61: “Q. You had been engaged in the sale of pieces of land? A. I had. Q. Do you know whether or not that fact that you were more or less engaged in the purchase and sale 20  
“of real estate was known to Dr. King? A. It was.”

Q. Did you so testify?

A. I did.

Q. On page 134: “Q. What period of time do you mean when you say the officers were authorized to sell? A. From early in 1868 up to this time; a resolution was passed to pay two and a half per cent. to the Directors; and they made a contract with a real estate house in New York to pay them five per cent. and to pay the Directors 2½ for all sales, and it is in force now; that 30  
“resolution was passed early in 1868, and is in force now.”

Did you so testify?

A. I did.

Q. On the previous trial did you testify as follows, page 141: “Q. Tell us when that Huguenot Park Association was organized? A. In the spring of 1868. Q. March? A. Before March. Q. January or February? A. I don't recollect the month, but it was early in the winter of 1868, I call the winter of 1868 February or March. Q. And the resolution was then passed for the Directors 40

“ to sell lands and receive commissions? *A.* Yes. *Q.* At  
 “ that time? *A.* Yes. *Q.* Did you make any sales  
 “ after that? *A.* I did. *Q.* Right off? *A.* I think so.  
 “ *Q.* About how many? *A.* I made altogether for them  
 “ two sales; I think not more, I don’t think I made any  
 “ more than two sales. *Q.* Do you recollect who you sold  
 “ them to? *A.* One to John R. Penn, and one to David  
 “ Crowley. *Q.* You got the commission on them? *A.* I  
 “ have received the commission. *Q.* When they were  
 10 “ made? *A.* I don’t recollect the date, 1868, I think. *Q.*  
 “ Before this contract or afterwards? *A.* Before, I be-  
 “ lieve one was before and one after, I think; I don’t recol-  
 “ lect.” Did you so testify on the other trial?  
*A.* Yes, with my explanations at the bottom.

Further examined by Mr. Parker :

*Q.* Did you on the same occasion testify on that subject  
 as follows, page 133: “ *Q.* Something has been said as to  
 20 “ your carrying on the business of a land agent, I wish to  
 “ ask what sales you ever made of lands before this? *A.*  
 “ I never was known as a land agent nor land broker, real  
 “ estate agent, or anything of that kind. *Q.* Did you ever  
 “ make a sale before this for anybody else? *A.* I did not.  
 “ *Q.* Have you made any since this for anybody else? *A.*  
 “ I have. *Q.* When? *A.* In my connection with the  
 “ Huguenot Land Park Association. *Q.* You said in  
 “ your examination below, ‘by profession I am a civil en-  
 “ gineer, and try to negotiate sales’—what sales did you  
 30 “ refer to? *A.* I am Vice President and Chief Engineer  
 “ of the Huguenot Park; by resolution of the Board, every  
 “ officer was authorized to sell lots or plots of that Associ-  
 “ ation, and to receive for it two and a half per cent. com-  
 “ mission, and in that capacity and for that Associa-  
 “ tion I have effected several sales. *Q.* You stated in that  
 “ examination, ‘I tried to negotiate sales, I do to this day’  
 “ —what sales do you mean by the expression, ‘I do to  
 “ ‘this day?’ *A.* Huguenot Park. *Q.* Have you ever at-  
 “ tempted the sale of land before the sale in question  
 40 “ here? *A.* Never, for anybody; I am one of the trustees

“of the Huguenot Park, and Vice President, and a  
 “Director. Q. What period of time do you mean  
 “when you say the officers were authorized to sell? A.  
 “From early in 1868 up to this time; a resolution was  
 “passed to pay two and a half per cent. to the Directors;  
 “and they made a contract with a real estate house in New  
 “York to pay them five per cent., and to pay the Direc-  
 “tors 2½ for all sales, and it is in force now; that resolu-  
 “tion was passed early in 1868, and is in force now?”

A. I did

10

Q. And did you further testify as follows, folio 564:

“Q. Tell us when that Huguenot Park Association was or-  
 “ganized? A. In the spring of 1868. Q. March? A.

“Before March? Q. January or February? A. I don’t  
 “recollect the month, but it was early in the winter of

“1868; I call the winter of 1868, February or March. Q.

“And the resolution was then passed for the Directors to  
 “sell lands and receive commissions? A. Yes. Q. At

“that time? A. Yes. Q. Did you make any sales after

“that? A. I did. Q. Right off? A. I think so. Q. 20

“About how many? A. I made altogether for them two

“sales; I think not more; I don’t think I made any more

“than two sales. Q. Do you recollect who you sold them

“to? A. One to John R. Penn, and one to David Crow-

“ley. Q. You got the commission on them? A. I have

“received the commission. Q. When they were made?

“I don’t recollect the date, 1868, I think. Q. Before this

“contract or afterwards? A. Before, I believe one was

“before and one after, I think, I don’t recollect. Q. This

“Huguenot Park has its trustees? A. Yes, sir. Q. Do 30

“they hold the lands? A. It is one trustee who gives the

“deeds—signs them—Richard Lothies. Q. You hold

“shares? A. Yes, sir; I own five shares.” Did you so  
 testify?

A. I did.

Q. Now, have you any recollection on this subject as to  
 whether you ever had made sale for anybody before this  
 Ruckman matter?

A. I never did in my life, I am positive.

Q. And whether the other properties you have sold 40

were those in which you were a shareholder—in the Huguenot Park in which you were interested?

A. None others except in the Huguenot Park.

Further examined by Mr. Vanatta :

Q. All this testimony which Mr. Parker read to you just now, was given after Mr. Ruckman had rested his case on the former trial?

10 A. I don't recollect.

Q. Before you gave that testimony, there had been a motion made in the cause to non suit you, because you didn't have a broker's license, hadn't there?

A. I don't recollect; I recollect my testimony, but I don't recollect anything about suing.

Q. Don't you recollect there was such a motion made in your cause to dismiss your cause, because you had no license as a broker?

A. I don't recollect it.

20 Q. Don't recollect any such motion being made?

A. No, sir.

Q. You were here during the trial?

A. Yes, sir.

Q. Was not this testimony given just near the close of the case, just before we began to sum up the case?

A. I don't recollect; I paid no attention to motions.

Mr. Parker :

30 We will admit that that is so.

Plaintiff offers in evidence the contract, Book V 6, of deeds, page 588, articles of agreement, dated May 12, 1868, between Elisha Ruckman, party of the first part, and Benjamin W. King, party of the second part.

Plaintiff also offers in evidence, Book D 9, page 1, being a deed from Elisha Ruckman, and Margaret, his wife, to John L. Brownell, dated June 7, 1873, acknowledged December 6, 1873, recorded January 17, 1874.

40

[It is agreed by counsel of the respective parties, that that land described in the deed just offered, was the land referred to in the contract, and that Brownell was the assignee.]

Plaintiff also offers in evidence of the deposition of Benjamin W. King, taken by commission, found on page 69 of the book of the last trial.

Mr. Vanatta :

10

There are some expressions in those answers that are not, of course, evidence anywhere, and I suppose you will omit them in reading. They are purely hearsay.

Mr. Parker :

When I come to them will you call my attention to it?

Mr. Parker reads as follows : “ Q. State where you re- 20  
 “ side; do you know the plaintiff and defendant; if yea,  
 “ state when you first knew the defendant, and the circum-  
 “ stances attending your first acquaintance with him? A.  
 “ I reside in Hartford, Washington county, New York; I  
 “ know the plaintiff and defendant; I have known the de-  
 “ fendant upwards of four years; Mr. Bergholz took me to  
 “ Ruckman’s house at Closter, New Jersey, and introduced  
 “ me to him about purchasing some of his land—this was  
 “ upwards of four years ago; the precise date I do not  
 “ recollect. Q. Are you the same person mentioned as 30  
 “ purchaser in a certain contract, dated March 12th, 1868,  
 “ between Elisha Ruckman and Benjamin W. King, pur-  
 “ porting to be for the sale and purchase of lands in Ber-  
 “ gen county, New Jersey, and Rockland county, New  
 “ York? A. I don’t know of any such contract of that  
 “ date. Q. State the circumstances attending the making  
 “ said contract, and especially who, if any person, intro-  
 “ duced you as such purchaser to said defendant; how you  
 “ first knew of said lands and their being for sale, and par-  
 “ ticularly whether the plaintiff took any part, and if yea, 40

“ what part, in procuring your purchase of said lands?  
 “ *A.* I know of no contract of the date of March twelfth,  
 “ eighteen hundred and sixty-eight, and of no circumstan-  
 “ ces attending a contract of that date ; no one introduced  
 “ me as purchaser under any contract of that date of any  
 “ lands ; I knew nothing of lands for sale by Ruckman  
 “ prior to that date ; the plaintiff, if I remember correctly,  
 “ took no part in procuring my purchase of any lands by a  
 “ contract of that date. *Q.* Was anything said by said de-  
 10 “ fendant to you, or in your hearing, touching the payment  
 “ or allowance of commission to said William R. Bergholz,  
 “ by him, for procuring a purchaser for said lands ; if yea,  
 “ state particularly all then said, mentioning times, places,  
 “ and circumstances of the conversation ? *A.* Nothing was  
 “ said by Ruckman touching the payment or allowance of  
 “ commissions to Bergholz for procuring a sale of lands  
 “ under a contract of that date. *Q.* For account of whom,  
 “ if for any other person than yourself, did you at the  
 20 “ time make said contract referred to in interrogatory sec-  
 “ ond ? *A.* For account of no other person, I made no  
 “ contract of that date. *Q.* If you know anything else  
 “ favorable to the plaintiff in this cause, please declare it  
 “ particularly ? *A.* Mr. Bergholz took me to Ruckman’s  
 “ house at Closter, New Jersey, and introduced me to Mr.  
 “ Ruckman, with the view to my purchasing Ruckman’s  
 “ lands in Bergen county, New Jersey, and Rockland coun-  
 “ ty, subsequent to March twelfth, one thousand eight hun-  
 “ dred and sixty-eight ; there was a contract made by me  
 “ with Ruckman for the purchase of said lands a month  
 30 “ and a half or two months after that date ; Ruckman said  
 “ to me before the contract was made, I shall not pay two  
 “ commissions ; he asked me whether I expected a commis-  
 “ sion, and I replied I am buying for myself ; he said he  
 “ would only pay one commission ; there was something  
 “ else said by Ruckman as to paying commission that is  
 “ favorable, but I cannot recollect what it is without re-  
 “ freshing my memory, and I have no memorandum or  
 “ writing in my possession or under my control to do it  
 “ with.”

Mr. Parker :

My clerk in drawing these interrogatories was misled by my handwriting ; when I wrote May 12, 1868, he copied it March 12 ; that difficulty runs through the whole of it, and it makes considerable trouble.

Mr. Parker also reads the cross interrogatories as follows :

“ What is your occupation, and what has it been for the 10  
“ last twenty years, and where carried on—state in detail?

“ A. I have no occupation now ; I was a practicing physi-  
“ cian at Fort Edward, New York, and in New-York City,

“ for eighteen years, six years in Fort Edward and twelve  
“ in New York. Q. How long have you known the

“ plaintiff, what is his occupation, and what business rela-  
“ tions have ever subsisted between him and you—state

“ particularly how those business relations (if any) arose?  
“ A. I have known the plaintiff upwards of six years ; I

“ suppose his occupation is that of a civil engineer ; I at- 20  
“ tended his family in sickness, and became acquainted

“ with him ; there was no other business relations, except  
“ he introduced me to Mr. Ruckman to purchase his lands.

“ Q. At the time you made the contract mentioned in the  
“ second direct interrogatory, what means of carrying it

“ out had you, and where were those means? A. There  
“ was no contract of the date mentioned in interrogatory

“ second. Q. What arrangements for the means of car-  
“ rying out had you then made? A. No arrangements

“ were made for a contract of that date. Q. What arrange- 30  
“ ments for the means of carrying it out did you subse-

“ quently make, and when, where, and with whom did you  
“ make them? A. I made no arrangements for means

“ with any one for carrying out a contract of that date. Q.  
“ When did the plaintiff, Bergholz, become interested in

“ said contract? A. Bergholz never became interested  
“ with me in a contract of that date. Q. What interest

“ did he then acquire in it? A. He never acquired any  
“ interest. Q. When and how did he acquire that interest?

“ A. There was no interest to acquire. Q. What consid- 40

- “eration did he give, or agree to give, for that interest?  
 “*A.* Nothing was said about giving or agreeing to give any  
 “consideration. *Q.* How did he give, or how was he to  
 “give, that consideration? *A.* He was not to give any  
 “consideration for an interest in land purporting to be  
 “purchased under contract of the date mentioned. *Q.* Did  
 “he ever acquire any further interest in it—if so, what,  
 “when, how, and for what consideration? *A.* He had  
 “nothing to do with any interest in contract of that date.  
 10 “*Q.* Did any other person acquire any interest in it—if so,  
 “who were they, what were their interests, and when and  
 “how acquired, and on what consideration—state fully and  
 “in detail? *A.* There was no interest to acquire; there  
 “was no one, to my knowledge, had any interest; there  
 “was no contract of that date. *Q.* Who were present  
 “when the matters stated by you, in answer to the fourth  
 “direct interrogatory, took place? *A.* My answer is, that  
 “there was no contract made of that date, March twelfth,  
 “eighteen hundred and sixty-eight. *Q.* Why did you per-  
 20 “mit the plaintiff, Bergholz, to acquire an interest in the  
 “contract spoken of? *A.* He did not acquire an interest.  
 “*Q.* Why did you permit any other person to acquire an  
 “interest in that contract? *A.* No one did. *Q.* Are your  
 “relations with the plaintiff, Bergholz, now friendly or un-  
 “friendly—and how have they been for the last four years  
 “or more? *A.* Friendly, as far as I know. *Q.* Are your  
 “relations with the defendant, Ruckman, friendly or un-  
 “friendly—and how have they been for the last four years?  
 “*A.* Friendly and unfriendly; they were friendly until  
 30 “some litigation. *Q.* Has there not been litigations pend-  
 “ing between you and the defendant, Ruckman, for the  
 “last four years, which is still unsettled? *A.* There has  
 “been litigation; have nothing more to do with it; I sup-  
 “pose it is settled. *Q.* Were you not, within the last two  
 “years, tried upon an indictment for perjury, in which the  
 “said Ruckman was prosecutor? *A.* He procured an in-  
 “dictment for perjury against me, and employed three law-  
 “yers to prosecute me, on which I was acquitted. *Q.* If  
 “in the course of this examination you have spoken of any  
 40 “paper writing, state where, and in whose possession you

"last saw each, and where each now is? *A.* I last saw  
 "the contract I have spoken of in court in Hudson City,  
 "New Jersey, I think, a year ago last February. *Q.* Did  
 "you say to William Doyle, on or about June 19, 1868, at  
 "said Doyle's house, on the Palisades, that the reason you  
 "did not pay the June payment in the contract with Ruck-  
 "man was that you did not know where to get the July  
 "payment, and you did not mean to let the June payment  
 "slip through your fingers, until you knew where you were  
 "going to get the money for the July payment, or anything 10  
 "to that effect? *A.* I have no recollection of saying any-  
 "thing of the kind mentioned in the cross-interrogatory.  
 "*Q.* Did you not buy, in May and June, 1868, near the  
 "lands of Henry Opkins, paying him \$500, and put the  
 "contract on record, and paid him no more money? An-  
 "swer all these separate and fully. *A.* I bought some  
 "land from Henry Opkins, and made him a payment, a  
 "consideration of fifty dollars, and put the contract on  
 "record, and afterwards took his deed and paid him stipu-  
 "lated price. *Q.* When and where did you first see Ruck- 20  
 "man, and who was with him? Answer fully. *A.* I first  
 "saw Ruckman at his dwelling; Bergholz was with him;  
 "he went with me to see Ruckman. *Q.* When next did  
 "you see him? *A.* I next saw Ruckman two or three  
 "days afterwards at his house by appointment. *Q.* Did  
 "you not make over or sell the Opkins land to William R.  
 "Bergholz, and did he not pay and take the land; if not, what  
 "did you do with it? *A.* I bought the piece of land from  
 "Opkins, and hold it still. *Q.* If William R. Bergholz did  
 "not take the land, why not? *A.* I took the land. *Q.* 30  
 "Who was your partners the 12th of May, 1868? Name  
 "them all. *A.* I had no partners at that time except my  
 "wife. *Q.* Had you enough money of your own on the  
 "12th of May, 1868, to pay for the lands you bought of  
 "Elisha Ruckman and the others in May and June, 1868?  
 "*A.* I either had the money or could raise it. *Q.* If you had  
 "not, why did you purchase? *A.* I had the means or  
 "could raise it. *Q.* If you had, state the place it  
 "was kept, and produce your books, and make and exhibit  
 "them, showing this. *A.* I procured it on a loan. *Q.* 40

- “ Why did you not pay the first of June payment to Ruck-  
 “ man? State this fully. *A.* Ruckman was not at the ap-  
 “ pointed place to receive it. *Q.* If you brought some  
 “ money to the office of C. H. Voorhis, where did you get  
 “ it from, and on what security, and when did you return  
 “ it? State this fully. *A.* I got the money spoken of  
 “ from Mr. Adams and returned it the same day; there was  
 “ no security required. *Q.* Did you write to Opkins that  
 “ Bergholz was the owner of this land, or the contract to  
 10 “ take it? *A.* I don't recollect that I did; there might  
 “ have been such a letter. *Q.* Had you sold him that con-  
 “ tract? *A.* I do not recollect. *Q.* What was the date of  
 “ said contract? *A.* I do not know. *Q.* At what time did  
 “ you take in John J. Donaldson as partner in the Ruck-  
 “ man contract? Answer fully. *A.* I took no one in—in  
 “ the contract spoken of. *Q.* Where did you get the money  
 “ to pay the \$99,900 in July 1st, 1868, and what security  
 “ did you give, personal or collateral? State this fully and  
 “ particularly. *A.* A loan made by Mr. Adams from John  
 20 “ J. Donaldson; there was no security required of me. *Q.*  
 “ Why did you not pay the June payment? *A.* My answer  
 “ is, Ruckman was not at the appointed place to receive it  
 “ *Q.* From whom did you get the \$99,900; at what place  
 “ was it put in your hands, and for what purpose; how  
 “ long did you have the same, and what interest did you  
 “ pay for the use of the same, and to whom did you pay it,  
 “ and to whom did you return the principal? State also,  
 “ the date you received it. State this fully, and answer  
 “ each paragraph. *A.* I got the money from Mr. Adams;  
 30 “ it was handed me in Jersey City, to pay Mr. Ruckman, in  
 “ part, for his land; I had the sum one day, and carried it  
 “ back the same day to Mr. Adams; I received it the day  
 “ I was to pay Mr. Ruckman; I think it was July first,  
 “ eighteen hundred and sixty-eight. *Q.* Why do you not  
 “ come in person to give your evidence for Bergholz; from  
 “ whom did this way of getting your testimony come? State  
 “ this fully. *A.* I have never been subpoenaed; I do not  
 “ know who suggested this way of getting my testimony.  
 “ *Q.* Did you not want to see the men you had bought of  
 40 “ and not paid them, and how many of them are fixed so?

"State fully. *A.* I have no fear of meeting anybody; I  
 "think all of whom I bought lands, five different per-  
 "sons, I have paid or settled with. *Q.* Did Bergholz  
 "have an interest in these lands you bought in May and  
 "June, 1868, in Bergen county, N. J., and Rockland  
 "county, N. Y? *A.* I do not know what lands are re-  
 "ferred to; I think he did not have an interest, but might  
 "have had. *Q.* How long have you known Bergholz?  
 "*A.* Upwards of six years. *Q.* When did you first be-  
 "come acquainted with him? *A.* Upwards of six years 10  
 "ago. *Q.* How long have you known H. C. Adams,  
 "and when did you first become acquainted with him? *A.*  
 "I think about eight years ago—I have known him ever  
 "since. *Q.* How long have you known P. C. Adams, and  
 "when did you become acquainted with him? *A.* About  
 "the same time; eight years ago. *Q.* How long have you  
 "known J. J. Donaldson, and when did you first become  
 "acquainted with him—answer these questions fully? *A.*  
 "About four years or upwards; I became acquainted with  
 "him then. *Q.* Had you a contract with Ruckman for 20  
 "lands—if so, produce and annex it to this commission?  
 "*A.* I had a contract with Ruckman; I have not got it in  
 "my possession or under my control. *Q.* State at what  
 "bank, if any, you put this money you had in Jersey City  
 "on the 1st of June and July, 1868, and which you showed  
 "it C. H. Voorhis? *A.* I had no bank in Jersey City, and  
 "put no money in any there. *Q.* Who came with you  
 "June 1, 1868, to the office of C. H. Voorhis; also his bus-  
 "iness and residence; answer fully? *A.* A patient of  
 "mine; I cannot recall his name. *Q.* State if it was not 30  
 "his money you showed to C. H. Voorhis, if not, whose  
 "money it was? *A.* It was not his money; it was the  
 "money I procured through Mr. Adams. *Q.* Have you  
 "any bank book of the deposit of the \$19,900 of June 1st;  
 "if so, annex it to this and state how long it remained on  
 "deposit and not drawn upon; answer fully? *A.* I have  
 "none. *Q.* Who takes the deeds of the lands bought by  
 "you of Ruckman? *A.* I do not know, for I have nothing  
 "to do with the property. *Q.* Have any of your partners  
 "sold out of this contract? *A.* I had no partners, and 40

“ have nothing to do with the contract. Q. If so, to whom  
 “ sold, and the price each sold out for? A. I do not know.  
 “ Q. Who is to take the deed Ruckman is to give to fulfill  
 “ his contract made the 12th of May, 1868; name him?  
 “ A. I do not know. Q. How many times has this con-  
 “ tract, or any part of it, been sold; state all? A. I do not  
 “ know. Q. Have you paid any part of the money that  
 “ has been paid on this contract; if so, how much, and to  
 “ whom did you pay it? A. I first paid to Ruckman one  
 10 “ hundred dollars on signing contract; I paid nineteen  
 “ thousand nine hundred dollars, if I recollect correctly, by  
 “ order of the Court; I paid it to Mr. Dixon by certified  
 “ check. Q. Did you tender or offer the June payment of  
 “ \$19,900 to C. H. Voorhis on that day, and for what pur-  
 “ pose did you bring a man with you; also his name; state  
 “ fully? A. I did; I took a man to see that it was done  
 “ properly; I do not recollect his name. Q. Have you  
 “ been, or are you at present, in such poor health that you  
 “ are confined to your house? A. I have been, yes; and  
 20 “ am not well; my health is poor now. Q. If not, why do  
 “ you not appear in person in this suit of your partner,  
 “ Bergholz, in court; state fully? A. I have always been wil-  
 “ ling to go if wanted, but I have never been subpoenaed;  
 “ I do not know that Bergholz is my partner. Q. Have you  
 “ any interest in this claim? A. I have. Q. Did you not  
 “ introduce William R. Bergholz as your partner before  
 “ you made this contract for Elisha Ruckman’s land on the  
 “ 12th of May, 1868—answer this fully, and each part of it,  
 “ as to your doing so or not the time you and Bergholz  
 30 “ came to the house of Elisha Ruckman; state this fully  
 “ and particularly? A. I do not recollect that I ever in-  
 “ troduced Bergholz as my partner, or a partner to any  
 “ one; I went with Bergholz to the house of Elisha Ruck-  
 “ man in the Spring of eighteen hundred and sixty, early  
 “ in May, I think.”

B. W. KING.

Affirmed and subscribed before me this twenty-first day  
 of August, 1872.

Mr. Parker :

I now read from the testimony of Mr. Ruckman, delivered in the case before the Court of Chancery, in the old book, page 39, folio 10th :

“ Mr. Burkhaus introduced Mr. King to me ; I couldn't  
“ tell what day it was, but I think it was about a week be-  
“ fore this contract, they both came to my house in a 10  
“ wagon ; it appears to me it was pretty well towards night ;  
“ the subject of buying land was spoken of ; he spoke about  
“ buying land from me ; he did not say anything about  
“ quantity ; I do not know whether he said anything about  
“ price ; he agreed to come on a fixed day, to come and  
“ look at it, and he did come ; I am sorry that he did come ;  
“ I couldn't fix the day when he next saw me, but it was  
“ shortly ; I think within a week, and I bargained to sell  
“ to him ; I do not know that it was mentioned by me to  
“ Mr. King how much land I could make a deed of.” 20

Plaintiff rests.

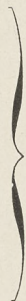
NEW JERSEY SUPREME COURT.

10

WILLIAM R. BERGHOLZ,

*vs.*

ELISHA RUCKMAN.



DEFENSE.

20

Mr. Ackerson opens the case for the defense, and evidence is offered as follows :

*William R. Bergholz*, called by defense, testifies as follows :

*Q.* [Showing witness paper]—Is that your signature?

*A.* That looks like my signature.

*Q.* Is it your handwriting?

30 *A.* It looks like it.

*Q.* Is that the deposition you subscribed to at Jersey City on the occasion you were there as a witness?

*A.* If you say it is I will take it for granted.

*Q.* That is your signature?

*A.* It looks like my signature, yes, sir; I write ordinarily a better hand than this, but if you say it is I will take it for granted that it is.

Mr. Parker :

10

There is no doubt that it is his signature.

*Witness :*

It looks very much like my signature, but I ordinarily write a better hand.

Defendant's offer in evidence the original deposition of William R. Bergholz, in the Court of Chancery, as follows,  
 "page 160 : I live at No. 25 West Twenty-third street, New 20  
 "York City ; I know the defendant, Dr. King, and the com-  
 "plainant, Mr. Ruckman ; I was in an office represented to  
 "me as the office of Mr. Voorhis, on the first of July last ;  
 "Mr. King, and a Mr. Fowler, and a Mr. Adams --Peter C.,  
 "I think--were with me from New York ; I believe I saw  
 "Mr. Boyd there that day ; I am certain he was there ; I was  
 "at Mr. Voorhis' office that morning about 11 o'clock, sooner  
 "or later ; I did not see Mr. Ruckman at Mr. Voorhis'  
 "office that morning, or during the day ; I saw Mr.  
 "Voorhis at his office that morning, he was the gentleman 30  
 "having apparently charge of the office ; I did hear in-  
 "quiries made for Mr. Ruckman that morning ; I saw  
 "money offered to Mr. Voorhis that morning by Dr. King ;  
 "I understood it to be a payment of a contract made be-  
 "tween the parties ; Mr. King went there that morning for  
 "the purpose of making a payment on that contract exist-  
 "ing between him and Mr. Ruckman, regarding the pur-  
 "chase of land situated on the Palisades ; I saw the money  
 "counted to Mr. Voorhis on his table ; the amount of  
 "money counted out to Mr. Voorhis was, I believe, \$99,- 40

“ 900 ; I understood the money was tendered to Mr.  
 “ Voorhis, because Mr. Ruckman was not there ; at the  
 “ same time I understood him to be the attorney or agent  
 “ of Mr. Ruckman ; Mr. Voorhis did not receive the money  
 “ so tendered him in my presence ; I believe he declined to  
 “ receive the money ; the gentlemen I have named re-  
 “ mained in and about the office for several hours ; Mr.  
 “ Boyd and I, during that afternoon, went in search of Mr.  
 “ Ruckman ; we went towards the cars of the Northern  
 10 “ New Jersey Railroad ; we went to the cars ; we found  
 “ Mr. Ruckman ; I believe he was sitting in the car at  
 “ the time ; Mr. Boyd then approached him and spoke to  
 “ him ; the precise language I can't remember ; I believe  
 “ he said that Mr. King was ready or waiting for him to  
 “ make his payment ; I believe he said he was waiting at  
 “ Voorhis' office, and asked him to come there and arrange  
 “ matters ; I don't know what words he used ; Mr. Boyd  
 “ had not this money with him at the time to make this  
 20 “ payment, to my knowledge ; Mr. Boyd did not show the  
 “ money to Mr. Ruckman in my presence ; I never saw  
 “ Mr. Boyd have \$1,000, let alone \$100,000 ; Mr. Boyd  
 “ then requested me to go to Mr. Voorhis' office ; I  
 “ believe I went to Mr. Voorhis' office ; I went for Mr.  
 “ King ; he might have been in or about there ; I saw  
 “ him ; he came over to the train ; I believe Mr. Fowler,  
 “ Mr. Adams, and, I believe, another gentleman—I don't  
 “ recollect his name ; we went over together ; the party  
 “ went into the car ; I went into the car with them ; I saw  
 “ Mr. Ruckman there ; I saw some money tendered to  
 30 “ Mr. Ruckman by some person ; the money was tendered  
 “ by Dr. King ; I saw him tender the money, and I did not  
 “ hear Mr. Ruckman's reply ; I do not recollect precisely  
 “ the words used by Dr. King ; I simply know that he  
 “ tendered the money to fulfill his agreement, but the  
 “ language he used I don't recollect ; the agreement I refer  
 “ to was for the lands situated at or near the Palisades, in  
 “ the vicinity of Closter ; I believe the other gentlemen of  
 “ the party were all present ; I believe Mr. Boyd was pres-  
 “ ent ; Mr. Ruckman did not receive the money when ten-  
 40 “ dered by Dr. King ; Ruckman used pretty hard language

“ to Dr. King, I know he said God damned sons of bitches,  
 “ you are all a pack of thieves, or something; I have a  
 “ good mind to whale the whole of you; I never knew the  
 “ money to be in the possession of Mr. Boyd at all; Mr.  
 “ Doyle did not tender Mr. Ruckman any money in my  
 “ presence that day; after Mr. Ruckman’s tirade the party  
 “ left the car quietly; after my party left the car, we  
 “ went to an eating or drinking place.”

And being cross-examined he says: “ I have known 10  
 “ Mr. Ruckman since a year ago last winter; when Mr.  
 “ Voorhis worked for Mr. Ruckman—I do not recollect  
 “ what he said; I don’t recollect whether he said Mr.  
 “ Ruckman was expected there that day; I believe I heard  
 “ Mr. King inquire for Mr. Ruckman; I don’t recollect  
 “ exactly what King asked Voorhis; I believe it was  
 “ whether Mr. Ruckman had been or would be there that  
 “ day; I believe I never was at Voorhis’ office with Doctor  
 “ King before; I was not there on the first of June; when  
 “ King asked Voorhis’ whether Ruckman had been or 20  
 “ would be there, I don’t recollect what answer he made;  
 “ we waited at Mr. Voorhis’ office because we expected Mr.  
 “ Ruckman would be there to receive the money; we were  
 “ led to think so because it was understood; Mr. King  
 “ told me that Ruckman was expected there. I do not  
 “ recollect that anybody else ever told me so; I saw the  
 “ contract that Mr. King had with Mr. Ruckman; I did  
 “ not have any interest in the contract then—an interest is  
 “ promised me now; it was promised me to have a one-  
 “ fifth interest in that contract; I don’t recollect when it 30  
 “ was promised me; I do not think it was the day the ten-  
 “ der was made in the car—the tender was made the first  
 “ day of July, and the interest was promised me in August.  
 “ I believe I came over on the first of July, because I was  
 “ requested by Mr. King; I went to Mr. Ruckman’s with  
 “ Mr. King early in May to introduce King to Ruckman as  
 “ a purchaser; I introduced him to Mr. Ruckman; at the  
 “ time I introduced King to Ruckman, I had known him  
 “ probably a year or two; I sent several parties out there  
 “ previous to Mr. King; but they failed; I did not know 40

“ anything about Mr. King’s means at that time ; I  
 “ did not believe that Mr. King had means enough to buy  
 “ that property—to pay for it, I mean ; I never thought he  
 “ had ; Mr. King represented that he had some means of  
 “ his own, and that he had a wealthy old gentleman, at  
 “ that time unknown to me, who would back him ; I know  
 “ now—it is Herman C. Adams ; he has an interest in this  
 “ contract, one-fifth, I understood ; I know of other gentle-  
 “ men having interests in this contract—the old gentle-  
 10 “ man, Mr. Adams, his son Peter C., J. J. Donaldson, are  
 “ the persons having an interest ; each one has one-fifth  
 “ interest ; it is hard for me to tell who furnished the  
 “ money ; I believe it came from the Bank of North Amer-  
 “ ica, of which Mr. Donaldson is President ; that bank is  
 “ situated on Wall street, New York ; King only requested  
 “ me to come over with him ; I wasn’t present at any con-  
 “ versation before I came over ; I don’t think I ever spoke  
 “ to Donaldson about the money ; I know nothing about  
 “ the money arrangement ; I never heard anything men-  
 20 “ tioned about the money being brought over here, and the  
 “ tender made, and the money returned. Mr. King told  
 “ me that Mr. Adams negotiated the money arrangements ;  
 “ that he depended on him for that purpose ; the Mr.  
 “ Adams’ were very wealthy men. I believe on that day I  
 “ was informed that the first payment had not been ac-  
 “ cepted ; I received this information from Mr. King ; I  
 “ don’t think any other of the parties informed me of the  
 “ fact ; I don’t recollect ; King did not tell me who came  
 “ over on the first day of June ; by profession, I am a civil  
 30 “ engineer, and tried to negotiate sales—I do to this day.  
 “ I didn’t employ Mr. Fowler in this case ; I never em-  
 “ ployed any lawyer ; I do not know who employed Mr.  
 “ Fowler ; I never heard who employed him, and do not  
 “ know who pays him ; if I recollect aright, I saw the  
 “ money counted in Mr. Voorhis’ office—I believe there  
 “ was \$99,900 ; the man who was over, that I do not recol-  
 “ lect, was not John J. Donaldson—I believe it was War-  
 “ ren C. Barnett. At the time this tender was made, I do  
 “ not know that Mr. King’s counsel had a bill already  
 40 “ drawn. I was not aware that that money was tendered

" only to found a law suit on ; I have not been informed so  
 " by any of the parties since. Neither of the five partners  
 " informed me that that tender was made to found a law-  
 " suit on. I am a civil engineer by profession, and am  
 " practiced in landscape gardening, and was at that time  
 " connected with the New York and Fort Lee Railroad  
 " Company, and believing that my professional services,  
 " and my influence with said railroad company, would be  
 " of great benefit to the owners of that tract of land, for  
 " which I asked of King to make me one of the parties in- 10  
 " terested, to which King finally agreed to see the parties,  
 " and give me one-fifth interest for my professional skill.  
 " At the time of the tender I believe none of the members  
 " of the partnership were interested ; I believe none were  
 " interested until I came in ; I do not think J. J. Donald-  
 " son was interested at the time of the tender, but I don't  
 " know ; I do not know who is bearing the expenses of this  
 " lawsuit ; I never heard who is bearing it ; the first inti-  
 " mation I had of any money was from Mr. Holcomb ; he  
 " told me he paid some money to Mr. Boyd, but who 20  
 " gave it to him, he didn't tell me ; I heard other parties  
 " speak about money ; I heard King say it would take all  
 " his small change, all his pocket money, to carry on this  
 " suit ; from what King states to me, I believe he spends  
 " all the money. I am not now engaged with Mr. King in  
 " any other land speculations ; he has informed me that he  
 " has purchased different tracts on the Palisades ; I did not  
 " become a partner in these purchases—never gave him  
 " any money, and never had any deed in my name ; Mr.  
 " King had a contract from Henry Opkins for some land, 30  
 " and he brought it to my office, but whether it was  
 " assigned to me I don't know ; I intended to take the  
 " land, but did not, because I hadn't the money to pay for  
 " it ; I believe Mr. Opkins came to my office and asked  
 " me if I was going to take the land, and I told him that if  
 " I could have more time I would take the land, or forfeit  
 " the contract ; I do not know what became of the assign-  
 " ment King gave me, whether I gave it back to Mr. King  
 " or whether I lost it ; I never had it recorded ; I think a  
 " man would not be apt to make a mistake, sitting in a seat 40

“ in a car, as to who made the tender ; Dr. King is a very  
 “ large man ; I am positive it was King who had t' e money  
 “ in the car ; Mr. King said nothing to me about how long  
 “ he could keep Ruckman in law—on the contrary, he said  
 “ he thought it would be settled long ago, but I thought  
 “ not ; I know such matters can be kept in court a long  
 “ time ; Mr. King did not tell me that if he did not get it  
 “ he would carry it to the United States Court, to my recol-  
 “ lection ; he expected to get it from month to month, and  
 10 “ now he says he will get it by the middle of June ; I went  
 “ to Hackensack last month to be a witness in this case ; I  
 “ do not remember if a reporter was taken along ; I think  
 “ something was said about a newspaper man—somebody  
 “ connected with the *Mercury* ; he was in the seat with Mr.  
 “ Holcomb, but he was a stranger to me ; I don't know  
 “ what he went for or what he did there ; I don't know  
 “ what the intention was in taking the reporter there ; he  
 “ was there when I left ; I do not know if he reported any-  
 “ thing ; I saw the next number of that paper after that  
 20 “ time ; I saw an article in that paper reflecting on Mr.  
 “ Ruckman ; it seemed to me to be a very libelous article on  
 “ Mr. Ruckman, or somebody, if I understand the English  
 “ language ; I can't say if this reporter was taken up there  
 “ to report an article of that kind ; I was not introduced to  
 “ him ; none of the parties have told me, since that time,  
 “ that that was what the reporter was taken there for ; I  
 “ have heard the parties speak about this article ; Mr. King  
 “ asked me if I had seen that article in the *Sunday Mercury*.  
 “ to which I replied, yes ; he asked me what I thought of  
 30 “ it ; I replied that I expected to read worse, from what I  
 “ had heard in Hackensack ; I simply was present, and I  
 “ heard persons saying bad things and using bad language  
 “ to Mr. Ruckman ; nobody else ever spoke to me on the  
 “ subject ; I don't recollect the contents of the article ; I  
 “ don't recollect whether it said anything about this suit or  
 “ not ; Mr. King did not tell me that they had got that ar-  
 “ ticle written for the purpose of prejudicing this suit ; no-  
 “ body else told me ; I did not infer from Dr. King's con-  
 “ duct that he had procured the writing of it ; I inferred  
 40 “ nothing from Dr. King's conduct ; it is natural if I go in

" court room, and seeing a reporter there, and being fa-  
 " miliar with articles published in it, I looked for the paper  
 " the next Sunday morning to see if it was in; I know  
 " nothing about the matter more than you do (referring to  
 " the counsel, but seeing the reporter there, and seeing  
 " him in the seat with Holcomb, I was prepared for any-  
 " thing in the *Mercury* (witness refers to J. W. Holcomb);  
 " I do not think I have talked with Mr. Boyd about this  
 " matter, and I believe I have not heard him say anything  
 " about it; neither Mr. Boyd, nor Mr. King, nor Mr. Hol- 10  
 " comb, told me they procured this reporter to go to Hack-  
 " ensack; I asked either Mr. Holcomb or Mr. Boyd who  
 " this person was, and either one of them told me who it  
 " was, or I wouldn't have known it; I didn't ask them for  
 " what purpose he was going; I don't remember the date  
 " of that issue of the paper, but I think it was the Sunday  
 " following the examination; I don't recollect what the  
 " article stated; it may just as likely as not refer to this  
 " suit; I don't recollect; I saw the money counted in Mr.  
 " Voorhis' office; I think there was \$99,900; I saw every 20  
 " bill counted; it was during the day; I suppose about  
 " noon; I don't recollect the hour; I did not hear any  
 " reason given by Mr. Ruckman for not receiving this pay-  
 " ment; at the time of this conversation in the cars, I was  
 " close enough to hear every word Mr. Ruckman said; he  
 " talked loud enough; I did not hear Mr. Ruckman as-  
 " sign any reason for not receiving the payment; I do not  
 " believe I heard any of the party say that they heard  
 " Ruckman assign any reason for not receiving the pay- 30  
 " ment when they went over in the ferry boat; I expected  
 " to receive a commission from Mr. Ruckman for Mr.  
 " King, because he offered many thousands more than  
 " Ruckman had asked a few months previous; I don't  
 " know what was done with the \$99,900 on the first of  
 " July, after the parties went back to New York: I don't  
 " recollect that any of the persons who came over with me  
 " said on that day that they had come to demand a deed;  
 " I do not recollect that King has told me that he came  
 " over that day to take me by surprise; I believe something  
 " was said by King about that; he had applied to me for 40

- “ an extension of time ; I don’t recollect ; John J. Donald-  
 “ son has not told me that he had paid out any money  
 “ on this account. King has not told me who paid the  
 “ lawyers, but from what he said, I inferred he did ; John J.  
 “ Donaldson has not told me that he paid out money to the  
 “ lawyers. Neither of the Adams’ have told me that they  
 “ paid out any money to the lawyers. Neither of King’s  
 “ lawyers have told me who they received money from. I  
 “ have not talked about the prospects of getting the land ;  
 10 “ I have not talked with Mr. Boyd about this suit since it  
 “ was commenced, or about the article in the *Mercury*.  
 “ King told me that he had arrested Ruckman, and that  
 “ Ruckman had arrested him ; he said nothing else ; he did  
 “ not say why he arrested Ruckman ; he did not say that  
 “ he would not have arrested Ruckman if Ruckman had  
 “ not arrested him ; we did not converse ; I don’t recollect  
 “ having conversation with Boyd about the arrest. Boyd  
 “ has said to me that this suit was very laborious ; that a  
 “ great many witnesses had sworn they would not believe  
 20 “ Ruckman under oath ; that he did not understand why I  
 “ had not shown any interest in the matter ; he complained  
 “ that no person but King showed any interest in the mat-  
 “ ter ; and that King was very busy—had a large practice ;  
 “ that’s about the substance of what he said. He said  
 “ nothing to me about his intention of arresting me on the  
 “ morning of the twenty-fourth of March ; King never said  
 “ anything to me about when he would arrest Ruckman for  
 “ perjury. He never said to me that he intended arresting  
 “ Ruckman in the morning instead of the afternoon ; J. W.  
 30 “ Holcomb has not said anything to me about when they  
 “ intended to arrest Ruckman ; I believe I have not con-  
 “ versed with either of these persons about the arrest of  
 “ Ruckman since that time. They did not state what ob-  
 “ ject they had in taking me to Hackensack to examine  
 “ me ; I did not know where the proper place was ; I have  
 “ not heard King, or Boyd, or Holcomb, or anybody else,  
 “ say they would have me in State Prison for perjury. I  
 “ have not heard Boyd say that he would have me before  
 “ Judge Bedle, and in State Prison ; they did not ex-  
 40 “ press themselves highly satisfied that they had arrested

"me. Q. Has King, Boyd, or Holcomb stated to you, or  
 "in your presence, whether they paid anything to that re-  
 "porter of the *Sunday Mercury*, that went to Hackensack  
 "with them, and if so, how much? A. They never said a  
 "word to me on the subject in any shape whatever, and I  
 "do not know if Holcomb has any interest in the *Sunday*  
 "*Mercury*. Holcomb never spoke to me about the *Sunday*  
 "*Mercury* or the reporter." And being examined in chief,  
 "he says: I left Hackensack on the day I was there, be-  
 "cause I was informed I wasn't wanted there—was a wit- 10  
 "ness on the stand. I do not know anything about who  
 "sent the *Mercury* reporter to Hackensack.

" W. R. BERGHOLZ.

"Taken, sworn to, and subscribed, this twelfth day of  
 "May, A. D. 1869, at Jersey City, before me.

" ISAAC ROMAINE, M. C."

Defendant also offers the deposition of John J. Donald-  
 son, page 178, as follows: "John J. Donaldson, being 20  
 "duly sworn on the Holy Bible, on behalf of the defend-  
 "ant, doth depose and say: Q. Where do you reside?  
 "A. At No. 23 West Forty-seventh street, New York City.  
 "Q. What is your business? A. I am the President of  
 "the Bank of North America, of New York City. Q. Do  
 "you know the plaintiff and the defendant in this suit?  
 "A. I do. Q. How long have you known Mr. Ruckman?  
 "A. I think I met Mr. Ruckman first in the Summer or  
 "Autumn of 1869. Q. On what occasion? A. He com- 30  
 "menced suit against me soon after the Chancellor's de-  
 "cision in the case of King *agt.* Ruckman, and I sent for  
 "him and he came; I think that's the first time I saw him.  
 "Q. How long have you known Mr. Bergholz? A. Since  
 "about June or July of 1868. Q. On what occasion was  
 "your acquaintance with him formed? A. I can't recall  
 "the circumstance under which I first met Mr. Bergholz.  
 "Q. Where did you first meet him? A. It was either at  
 "my bank, 44 Wall street, New York City, or at the office  
 "of Peter C. Adams, on Nassau street, New York City.  
 "Q. On what business? A. About a land contract made 40

“ by Mr. Ruckman in favor of Dr. King. *Q.* What, partic-  
 “ ularly, was the object of his interview with you? *A.* I  
 “ had been solicited to take an interest in the contract re-  
 “ ferred to by Peter C. Adams and his father, H. C. Ad-  
 “ ams, and Mr. Bergholz was mentioned as one of the party  
 “ in interest; this, I think, was before I had met Mr. Berg-  
 “ holz, but subsequently, having agreed to become inter-  
 “ ested in the contract, I met Mr. Bergholz with Dr. King  
 “ one or more times. *Q.* Can you give us the substance of  
 10 “ any conversation had at that first interview, either with  
 “ Mr. Bergholz or in his presence, in regard to this con-  
 “ tract? *A.* I cannot; my recollection of my conversa-  
 “ tion with Mr. Bergholz was regarding the value of this  
 “ contract as influenced by a projected railroad with which  
 “ Mr. Bergholz was connected. *A.* Did any negotiations  
 “ pass between you as to the terms on which you might  
 “ become interested in the contract? *A.* No; the negoti-  
 “ ations were all through Peter C. Adams? *Q.* Did you  
 “ become interested in the contract? *A.* I did. *Q.* Be-  
 20 “ fore the tender of the \$99,900, on July, 1, 1868? *A.* Yes,  
 “ sir. *Q.* How long before? *A.* I think it was about the  
 “ middle of June, 1868. *Q.* How long were the negotia-  
 “ tions between you and Adams pending before you became  
 “ actually interested? *A.* My impression now is that noth-  
 “ ing was said to me on the subject until after the first of June,  
 “ 1868. *Q.* How long before you became actually interested  
 “ did you first see Bergholz about the matter? *A.* I didn’t  
 “ see Mr. Bergholz until after I had agreed to take an in-  
 “ terest in the contract. *Q.* What interest did you acquire  
 30 “ in the contract? *A.* One-fifth. *Q.* Who owned the other  
 “ four-fifths? *A.* Dr. King, Mr. Bergholz and the two  
 “ Adams—each one-fifth. *Q.* Do you know how long be-  
 “ fore you acquired your interest those persons had become  
 “ interested? *A.* I do not. *Q.* Had you any conversation  
 “ with Bergholz which would indicate how long he had  
 “ been interested in the contract? *A.* I do not recall any  
 “ such conversation. *Q.* How was your interest in the  
 “ contract evidenced; had you a written agreement or as-  
 “ signment to show it? *A.* My impression is Dr. King  
 40 “ assigned to each of the parties in interest a fifth of the

“contract in writing; I think there was one writing for  
 “all. Q. When was that writing made? A. It was dur-  
 “ing the Summer of 1868, and not long after the first of  
 “July; I think it was after July 1st. Q. Do you know  
 “where that writing is? A. I gave it to Mr. Aaron Ray-  
 “mond when I assigned my interest in the contract to  
 “him, which was in February or March, 1871. Q. Did  
 “you alone furnish the \$99,900 which was tendered July  
 “1st, 1868, under the contract? A. I did. Q. Did you  
 “furnish the \$19,900 which was paid in March, 1871, or 10  
 “any part of it? A. I did not. Q. Had you ceased to be  
 “interested in the contract when the money was paid?  
 “A. I had.

“JOHN J. DONALDSON.

“Sworn to before me July 6th, 1871.

“JOSEPH C. LEVI,

“Commissioner for New Jersey in New York.”

Mr. Vanatta :

20

Instead of going on with the depositions, I have a witness  
 who desires to go away by the next train, and I will call  
 him now.

*Frederick B. Betts*, for defendant, sworn, testifies as fol-  
 lows :

Direct examination.

30

By Mr. Vanatta :

Q. Where do you reside?

A. Morristown, this State.

Q. Have you ever been engaged in any business in  
 New York?

A. Yes; I have been in business there for the last thir-  
 ty-five years, and am now.

Q. How long have you resided in Morristown?

A. I have been there off and on for about fifteen 40

years; have previously resided in Jersey City; I resided there for twenty-eight years.

*Q.* Do you know William R. Bergholz, the plaintiff?

*A.* I do.

*Q.* In the early part of the year 1868 were you connected with or interested in the West Shore Hudson River Railroad Company?

*A.* I was; I was a Director.

*Q.* What part of 1868?

10 *A.* In the early part of 1868.

*Q.* Extending through what year?

*A.* I think in the Fall of 1868, when I ceased.

*Q.* Was Mr. Bergholz connected with the Company at the time you were?

*A.* He was; he was Assistant Engineer and Director.

*Q.* During that time do you remember any negotiations had or talked over among the members of the Board of Directors of that Company, in the Spring of 1868, in reference to the purchase of lands of Elisha Ruckman on the  
20 west shore of the Hudson River?

*A.* It was talked over in the Board; it was chiefly with the President, Mr. Thompson

*Q.* Was it talked at Board meetings?

*A.* I don't know that it was in regular Board meetings; it was when we met there.

*Q.* Oh those occasions was or not Major Bergholz present?

*A.* I believe he was always there; I don't remember of his ever being absent from the meeting of the Board.

30 *Q.* State what those conversations about the purchase of the land were.

*A.* I can only state to you that Mr. Thompson--

[Interrupted.]

Mr. Vanatta:

I mean when Major Bergholz was by.

*Witness :*

I know that Thompson was negotiating for the purchase of that land.

*The Court :*

Confine your statement to conversations at meetings when Bergholz was present.

10

*Witness :*

I will do so ; the matter was talked over to Mr. Thompson—I use his name because he was the person negotiating for it as President of the Board—the intention was to make the purchase of that land, and on examination we found that as a Board of Directors we could not purchase it to own it, and it was concluded to purchase it as individuals and not as Directors, but own it as individuals, and negotiations were made or attempted to be made by Thompson, which he reported to us, with Ruckman. 20

*Q.* How long was that negotiation going on with you gentlemen who belonged to this Board?

*A.* I cannot tell you ; it was some considerable time.

*Q.* A few days or a few weeks?

*A.* I should think, as near as my memory serves me, it was two or three months it was under consideration.

*Q.* If it had been consummated were you to take a share in it—an interest in it?

*A.* I was, yes, sir.

30

*Q.* Was Mr. Bergholz?

*A.* Yes, sir.

*Q.* At what time did that negotiation come to an end?

*A.* When we heard of the purchase by Major Bergholz.

*Mr. Parker :*

What did you say?

*A.* When we heard of the purchase by Major Bergholz, 40

or through Major Bergholz, of the purchase of the land, then it was dropped in the Board.

*Q.* Do you refer to the transactions with King?

*A.* Yes.

*Q.* Did you have any conversation with Major Bergholz after you heard that this agreement had been made with King?

*A.* Yes, I did.

*Q.* How long after you first heard of this sale having  
10 been made, or the agreement to buy?

*A.* I cannot tell you, but it was shortly after the purchase; how long after I cannot say; it must have been in May; it may not have been till June of that year, 1868.

*Q.* How many times have you seen Bergholz after you heard of the sale before you talked with him about it?

*A.* That I cannot say; it is more than probable it might have been—

[Interrupted.]

20 Mr. Parker :

Don't give us probabilities—give us recollections.

*Witness :*

As near as I can recollect, I think it must have been the first time I saw him after I heard of his purchase—that would be natural.

30 Mr. Parker :

We don't want what is natural; we want your memory.

*Witness :*

I should say as near as I can remember, it was my first meeting him after I heard of the purchase by King.

40 *Q.* State the conversation or the substance of it, as well

as you can of the conversation between you and Bergholz at this first interview?

A. As near as my memory serves me, Bergholz told me that Dr. King, a gentleman I never knew, had purchased the land, and that he had an interest in it—that was the substance of the conversation with Bergholz and myself.

Q. In that conversation did you say anything to him in a complaining way of that purchase having been made?

A. I don't recollect that I did, more than likely I did, because I felt very indignant at the purchase being made 10 in the manner in which it was.

Q. How?

A. The manner in which it was purchased outside of the board; as one of our comrades we thought he had taken advantage of his position.

Q. At what place did this conversation take place between you and Bergholz?

A. My impression is it was at the office of the company, 20 Nassau street.

Q. Did you say that you had heard of this sale of 20 Ruckman before you talked with Bergholz about it?

A. Yes, sir, I heard of it before.

Q. Can you tell where you heard of it before?

A. I can't say, but I presume it was at the office of the company; my impression is that Thompson is the first man that told me of it.

Cross-examination.

By Mr. Parker :

30

Q. Mr. Bergholz was the assistant engineer?

A. He was employed there, yes, sir—assistant engineer.

Q. Was there any such thing there as assistant engineer?

A. Yes, sir.

Q. Wasn't he consulting engineer?

A. I call him that.

Q. Then you are not very exact about these things?

A. No, when I call him the assistant, I mean consult- 40

ing—one and the same thing—he assisted and he consulted.

*Q.* Don't you know what the names of the officers were?

*A.* They had an engineer in chief.

*Q.* And a consulting engineer, hadn't they?

*A.* Yes, you may call him consulting or assistant; I suppose it was published in the book as consulting, I don't remember.

*Q.* You have been examined about this thing before at the last trial?

10 *A.* Yes.

*Q.* Let me read some testimony to you, and then ask you if you gave that testimony on that occasion?

Mr. Parker reads as follows: "*Q.* (By Court.) This contract was signed May 12th—can you say how soon after that you heard of the fact of the purchase?"

"*A.* I cannot. *Q.* Can you come within a month of it?"

"*A.* It couldn't have been later than the month of June"

20 "*Q.* How soon after that was it you had a conversation with Bergholz? *A.* I think it was early in June—some

"time in June or July. *Q.* Can you come any nearer than

"that? *A.* No, I can't, I know it all transpired very shortly after the purchase, as I understood." Did you give that testimony.

*A.* I did.

*Q.* And does that accord with your recollections of the matter?

*A.* It does.

30 *Q.* You say Mr. Bergholz was present at some of these conversations in the Board—did you ever see Mr. Ruckman there?

*A.* I have an indistinct recollection, I did see him once, but I cannot say positively that I ever did.

*Q.* Who was present at the time you saw him there?

*A.* I cannot tell, I am not positive that I saw him.

*Q.* Do you remember whether Mr. Bergholz was there when you saw Mr. Ruckman there?

40 *A.* I don't know whether he was or not; I don't remember whether Ruckman was there positively.

*Q.* The point of your feeling complainingly was that you wanted this land, and somebody else got it, wasn't it?

*A.* That is true to a certain extent; yes and no will answer that question.

Didn't you testify on the other trial this: "*Q.* You were provoked with him because you thought of getting that land, and it was gone, and because he had to do with the loss of the land? *A.* I was provoked for this reason, because we supposed that he was acting in conjunction with us, and took advantage of that and went and bought the land unbeknown to us. *Q.* Your point was the sale to somebody else? *A.* My point was, he took advantage of the knowledge he obtained in the company, and went and bought the land unbeknown to his colleagues. *Q.* Your point was that you wanted the land and you lost it? *A.* Our point was that we wanted it and somebody else got it. *Q.* And if he helped King to get it, you would have been as much provoked as if he shared with King in the purchase? *A.* Yes." Didn't you say that?

*A.* I did.

20

*Q.* Are you able to say at this distance of time with certainty that Bergholz told you he was interested in the purchase, or whether he didn't say, "I got King to buy it?"

*A.* I stated just what I stated in my direct examination; he told me that he had an interest in it; that a man by the name of Dr. King bought it and he had an interest in it, and it was impressed upon my mind simply from the fact of the manner in which it was done.

30

*Q.* Now, are you willing to say that all he told you, or all you heard, was any more than that he had procured a purchaser—got Mr. King to buy it, or something of that sort.

*A.* Repeat your question, please?

[Stenographer reads the last question.]

*A.* I don't know how to answer that question any different from what I have answered in my direct examination in regard to what he did tell me.

40

Defendant offers in evidence, and reads, the deposition of Charles G. Rehwoldt, and reads as follows: " Q. Where do you live, what is your business, and do you know Mr. Bergholz? A. I live at the Liberty House, corner Green and West Houston streets, New York City; I am interested in Colorado mining business; I know William R. Bergholz; have known him about five years. Q. Have you ever had any conversation with Mr. Bergholz in reference to his interest in the contract for the purchase of lands in New Jersey, made between Elisha Ruckman and Benjamin W. King? A. Yes; I was well acquainted with Bergholz; we used to come together every evening or so, and then he used to tell me a good deal about his business, the Western Shore Railroad, &c. He told me that the best he had done through that railroad was that he bought with others a large portion of land, and he expected to make a good fortune out of that, and he was obliged to live in Jersey on the account that he was land owner in Jersey. Q. Did he say anything about the quantity of land he had bought? A. No, only that they had bought a large quantity. Q. Did he say from whom they had bought it—or who were partners with him in it? A. No, he didn't name the names; on one occasion he named Dr. King as being interested in it. Q. Where was the property—did he say? A. It was in Jersey, and had something to do with that railroad, or they expected to build a railroad. Q. Where did you understand the railroad was or going to be? A. Somewhere on the west shore of the Hudson River, or Fort Lee. Q. When was this conversation with Bergholz? A. I think it was in the Spring of 1868; it was at the door of Fifth Avenue Hotel, New York, I believe, in the evening. Q. Did you ever hear Ruckman's name mentioned in connection with the matter? A. No, not that I took any notice of; I was little interested in the whole thing. Q. Did you ever hear him say whether he had any lawsuit about that same land afterwards? A. I heard him say so, long after this conversation; it was lately; he said he sued Ruckman for \$27,000 (I think) for commissions. Cross-examined: Q. How came you to

"recall to mind the conversation you speak of at the Fifth  
 "Avenue Hotel? *A.* I can't tell; you ask me, and I re-  
 "member it. *Q.* Did you not know before coming here,  
 "what testimony you were expected to give? *A.* I knew  
 "it was in the case about Mr. Bergholz, and his purchase  
 "of land. *Q.* Did you not know that you were expected  
 "to give some testimony about Bergholz's conversation as  
 "to this land? *A.* I expected something like it. *Q.*  
 "When then did you first recall to your mind or state to  
 "any other person that you had had this conversation at 10  
 "the Fifth Avenue Hotel, with Bergholz? *A.* I think the  
 "first time was at Mr. Grigg's office, about three months  
 "ago. *Q.* Who is Mr. Grigg? *A.* He is a lawyer at 192  
 "Broadway, New York City; I don't know if he is Mr.  
 "Ruckman's lawyer. *Q.* How came you to call this con-  
 "versation then and there? *A.* I think I was asked if I  
 "could remember something about it. *Q.* By whom? *A.*  
 "By a young man in the office with Mr. Grigg, named An-  
 "derson. *Q.* Were you sitting or standing when you and  
 "Bergholz had this conversation at the Fifth Avenue Ho- 20  
 "tel? *A.* We were standing at the doors; stayed there  
 "then about an hour. *Q.* What sort of weather was it?  
 "*A.* I couldn't recollect. *Q.* Have you any date by which  
 "you can be at all certain of the time of year when it oc-  
 "curred? *A.* No, sir, I could not say; as far as I recol-  
 "lect it was in the Spring, and soon after he bought it.

"C. G. REHWOLDT.

"Sworn to before me, July 6th, 1871.

"JOSEPH C. LEVI, 30

"Commissioner for New Jersey in New York."

Defendant offers in evidence deposition of Ambrose W.  
 Thompson, and reads as follows: "*Q.* State your resi-  
 "dence and occupation? *A.* My residence is in New  
 "York City; am not engaged in any business at present.  
 "*Q.* Do you know William R. Bergholz? *A.* I do. *Q.*  
 "What is his business? *A.* I don't know what his pres-  
 "ent business is. *Q.* What was his business in June,  
 "1868? *A.* In June, 1868, he was consulting engineer of 40

- “ the West Shore Hudson River Railroad Company, of  
 “ which I was then President. *Q.* During what time did  
 “ he hold that position? *A.* From the organization of the  
 “ Company, up till July or August of that year; it was  
 “ more than six months in all. *Q.* While he was engineer  
 “ of that Company, was he engaged in any other business?  
 “ *A.* Not to my knowledge. *Q.* Where was his office dur-  
 “ ing that time? *A.* 20 Nassau street, New York City;  
 “ the office of the Company. *Q.* Had he any signs at that  
 10 “ office to indicate that he was a real estate broker? *A.*  
 “ None; he had a sign to indicate that he was consulting  
 “ engineer of the company. *Q.* Had he any other office  
 “ to your knowledge? *A.* Not to my knowledge, sir. *Q.*  
 “ Did you ever hear from him about his being concerned  
 “ with Dr. King or any one else in the purchase of real es-  
 “ tate on Hudson River from Elisha Ruckman? *A.* I did.  
 “ *Q.* Please state what you heard from him on that sub-  
 “ ject? *A.* I cannot state the language; the substance  
 “ was, that either he or King had purchased the land, or  
 20 “ King had purchased it, and he was interested in the pur-  
 “ chase; I think it was the latter. *Q.* Where did he tell  
 “ you this? *A.* He told me in the office of the Company.  
 “ *Q.* Can you state when? *A.* I cannot, it was just after the  
 “ purchase was made, however. *Q.* Had you more conver-  
 “ sations with him on the subject than this one? *A.* I  
 “ don’t know that there was any conversation, it was a  
 “ mere statement, referred to by him more than once. *Q.*  
 “ Did you hear him say anything about it before the pur-  
 “ chase? *Q.* No, I did not, Ruckman’s lands were the  
 30 “ subject of frequent conversation, but as to his intent to  
 “ purchase them, nothing was said till after the purchase  
 “ was made. *Q.* Do you remember what he said about  
 “ them before the purchase? *A.* Mr. Ruckman and my-  
 “ self were engaged in negotiations in reference to the  
 “ lands; it was contemplated to purchase those lands for  
 “ the benefit of a Company to be formed—a land Company  
 “ —Mr. Ruckman wanted to borrow \$100,000, and wanted  
 “ me to get it for him on those lands; he agreed to sell the  
 “ lands to a land Company in case it was done, for a cer-  
 40 “ tain price—I think it was \$225 an acre, and that part of

“the matter was the frequent subject of conversation between Bergholz and others and myself, and it was about the time the arrangements for raising this money were made, Mr. Bergholz told me of the purchase, as I have already stated. Q. Was Bergholz at this time under a salary from the Company? A. Yes, he was. Q. Was that salary for his whole time? A. So understood. Q. Was Bergholz a Director in the Company? A. He was. Q. Where was the road of this Company to be built? A. On the West Bank of the Hudson River, extending from 10 the line between New Jersey and New York, to Athens, in New York State.

“AMBROSE W. THOMPSON.

“Sworn to before me, July 19th, 1871.

“JOSEPH C. LEVI.

“Commissisoner for New Jersey in New York.”

Defendant also offers in evidence, and reads deposition of Allan Hay: “Q. Where do you live? A. In New 20 York City. Q. What is your business? A. Merchant. Q. Are you connected with the West Shore Hudson River Railroad Company? A. Yes, sir, I am President of it. Q. Were you connected with it in May, June, July, 1868, and in what capacity? A. I was a Director. A. Was William R. Bergholz connected with it, and in what capacity? A. Yes sir, as Director, and in forepart of 1868 as assistant engineer also. Q. Had you any conversation with him about that time in regard 30 to the purchase of Elisha Ruckman’s property on the West Shore of the Hudson River? A. Yes, sir, from time to time Mr. Bergholz spoke to me in reference to that land, desiring myself and others, associates, to make the purchase of it. Q. Whom do you mean by associates? A. Mr. Van Wagener and Mr. John Van Nest were also approached on the same subject, about the same time. Q. State more specifically, please, what Bergholz said about this? A. He described the land as being very desirable for an investment, and desired us to go up and examine 40 it, together with some other lands, which he had the

“ sale of, at the same time stating that he believed the  
 “ price very reasonable, and that he believed it would make  
 “ a good investment. *Q.* Did he say anything to you  
 “ about the King purchase? *A.* After we declined to pur-  
 “ chase the lands from him, he then stated, a gentleman,  
 “ I think by the name of King, had purchased these lands  
 “ —purchased them or had made a contract to purchase  
 “ them—I don’t remember the least conversation. *Q.* Did  
 “ he say that he, Bergholz, had any interest in the purchase  
 10 “ or not? *A.* No, the impression he conveyed to me was  
 “ that King either had purchased them, or had a contract  
 “ to purchase them. *Q.* Did he ever say to you whether  
 “ he had any interest in the contract to purchase or not?  
 “ *A.* I’ve always understood that he had an interest in the  
 “ contract, but Mr. Bergholz, I don’t think, ever stated to  
 “ me so ; not to my memory.

“ Cross-examined :

20 “ *Q.* At what price, if you remember, were the lands  
 “ first offered to you by Mr. Bergholz, in those conversa-  
 “ tions referred to? *A.* \$275 per acre, I believe.

“ ALLAN HAY.

“ Affirmed before me, July 19th, 1871.

“ JOSEPH C. LEVI,

“ Commissioner for New Jersey in New York.”

Defendant also offers in evidence, and reads, the deposi-  
 30 tion of William L. Drake : “ *Q.* Where do you live? *A.*  
 “ At 320 West Thirty-fourth street, New York City, and  
 “ also at Yonkers. *Q.* What is your business? *A.* Banker  
 “ and broker, at 16 Broad street, New York City. *Q.*  
 “ Do you know William R. Bergholz and Elisha Ruckman?  
 “ *A.* Yes. *Q.* How long have you known Bergholz? *A.*  
 “ Three or four years. *Q.* Have you held any position in  
 “ the West Shore Hudson River Railroad, or in the Hud-  
 “ son River West Shore Railroad Company? *A.* Yes ; I  
 “ was Treasurer in both Companies. *Q.* When? *A.* In  
 40 “ 1868. *Q.* Had Bergholz any position in either of those

"Companies—and if so, what? *A.* He was an engineer—  
 "Consulting Engineer—in each of these Companies. *Q.*  
 "Had you ever any conversation with him in regard to  
 "Elisha Ruckman's property on the west shore of the Hud-  
 "son River? *A.* Yes, sir. *Q.* When was these conversa-  
 "tions? *A.* I think it was in the Spring of 1868. *Q.*  
 "Please detail them as nearly as you can? *A.* He con-  
 "versed with me several times; the first conversation I  
 "remember having with him in regard to it was when there  
 "was some talk about the Railroad Company purchasing 10  
 "the property; there was general conversation in the  
 "Board of Directors, at which he was present, as to  
 "whether the Railroad Company could purchase it, and  
 "whether it was advisable for it to purchase it, and as to  
 "what price it could be purchased at; the Board con-  
 "cluded they had no right to purchase it as a company;  
 "then there were several meetings and conversations on  
 "matters partially pertaining to that and partially to other  
 "subjects—meetings and the conversations of several mem- 20  
 "bers of the Board of Directors, and in one or two in-  
 "stances there were other parties, with a view of forming  
 "an association to consider whether it was best to pur-  
 "chase these lands. *Q.* Do you remember anything that  
 "Mr. Bergholz said at any of those meetings? *A.* Berg-  
 "holz told what the property could be purchased at, and  
 "expressed his opinion about the advisability of buying it; I  
 "think he said it could be purchased at \$225 an acre; he  
 "advised that it should be bought; it was understood that  
 "he was to become a member of the association that was  
 "to buy it; I so understood it, and so did the others; I 30  
 "so understood it from the fact that we met together in-  
 "tending to act as a whole if we acted at all; he being  
 "present at our meetings as one of our members; we  
 "finally concluded not to buy; some little time  
 "after this I remember meeting him, in the street,  
 "I think it was, and he stated to me that it  
 "was a great mistake that we hadn't bought, as  
 "there were other parties after it, and the price had been  
 "put up. At a meeting in my office, some time after that,  
 "he stated that the property had been sold, and said, as 40

" before, that it was a great mistake we hadn't bought it ;  
 " I asked him at the time who had purchased it ; he said  
 " an acquaintance of his from Hoboken, Dr. King I think  
 " it was. Q. Did he say whether he had any interest in it  
 " or not? A. Yes, he said he had ; I asked him if he had  
 " any interest in it, and he said he had ; he did not say  
 " how much. He spoke of there being two or three parties  
 " who were to back Mr. King in it ; he named the parties,  
 " but I can't call to mind who he named. I spoke of the  
 10 " purchase being a very large one, and asked him whether  
 " Mr. King was able to make the payment. He said if he  
 " (King) wasn't, he had good men back of him who would  
 " make them. I understood him that the purchase price  
 " was \$275 an acre. These negotiations and conversations  
 " with Bergholz were all within the scope of two or three  
 " months, I think. All of them were before the tender of  
 " \$20,000 was made on the contract, on the first day of  
 " June, 1868 ; for I met him in the street on the first or  
 " second day after that tender was made, and he told me  
 20 " that the tender of the first payment due on the contract  
 " had been made, and his interest now secure, and he  
 " seemed very much pleased. He said the tender had been  
 " made yesterday or the day before. I understood him  
 " that the tender was \$20,000. I don't think he said if it  
 " has been received or not. Q. How long was he engineer  
 " of those companies? A. Up to as late as the fall of  
 " 1868, I think. I am not aware that during this time he  
 " was in any other business than in the employ of the  
 " Company.

30

“ WILLIAM L. DRAKE.

“ Sworn to before me, August 16, 1871.

“ JOSEPH C. LEVI,  
 “ Commissioner for New Jersey, in New York.”

Warren L. Barnett for defendant sworn, testifies as follows :

Direct examination.

40

By Mr. Vanatta :

Q. Where do you reside ?

A. In New York.

Q. Where did you reside in 1867 and '68 ?

A. New York.

Q. Did you in 1868 own any land in the neighborhood of Elisha Ruckman's property ?

A. Yes, sir.

Q. How much did you own ? 10

A. What time in 1868 do you mean ?

Q. About the 1st of March, 1868 ?

A. I owned about 43 acres.

Q. After that and up to June 1st, how much did you own ?

A. The same amount.

Q. Had you contracts for any other besides your own ?

A. I had verbal contracts with some parties for their lands.

Q. About what amount ? 20

A. At what time do you mean ?

Q. The greatest number you had between March and the 1st of June or July ?

A. With what I owned myself, and what I had contracts for, about 500 acres.

Q. Were you acquainted with Mr. Ruckman at that time ?

A. Yes, I have known him since about 1860, I think.

Q. Are you acquainted with Mr. Bergholz ?

A. I am now. 30

Q. Were you acquainted with Dr. King ?

A. I am.

Q. When did you first become acquainted with Dr. King ?

A. The latter part of June, 1868.

Q. Under what circumstances did you become acquainted with Dr. King ?

A. I introduced myself to him at his house, I should think about a week before the 1st of July—about the last week of June in 1868. 40

Q. For what purpose?

A. For the purpose of trying to sell him some land; he had been to my house previously, which my wife reported to me, talking about buying land, and I called upon him upon the subject of selling my lands.

Q. Where did you next meet Dr. King?

A. At his house; I think I had two or three meetings at his house.

Q. All with reference to the purchase of your land?

10 A. Yes; the last meeting I had of the three he agreed to purchase it.

Q. Did you at any time meet Dr. King in Jersey City?

A. Yes; on the 1st day of July, at Charles Voorhis' office—I met him there by appointment.

Q. Who else did you meet there?

A. I met Mr. Bergholz and several other gentlemen.

Q. Were you on that occasion introduced to Mr. Bergholz?

A. I was, yes, sir.

20 Q. By whom?

A. By Dr. King.

Q. How were you introduced—in what words, as nearly as you can remember?

A. I don't know as I can give the exact words; I can give you the substance to the best of my recollection. He took me there for the purpose of introducing me to his partner in the land transactions and to make a payment for the purchase.

30 Mr. Parker :

The question was how were you introduced by Dr. King to Mr. Bergholz; we don't want what Dr. King told you elsewhere. I move to overrule that which the witness has stated in reference to something not in the presence of Mr. Bergholz.

*The Court.* To witness :

40 Just give the words at the introduction.

*Witness :*

I cannot remember the exact words ; he says, " This is " Mr. Bergholz, my partner ; you will talk with him about " it ; I am busy now trying to make a tender of some " money to Mr. Ruckman, and you talk with him about the " land."

*Q.* What land ?

*A.* The land that he had agreed previously to purchase from me—this 500 acres I spoke of.

10

*Q.* Did you have any conversation with Bergholz on that occasion after the introduction ?

*A.* We talked a little on different matters, and I think at that time he made an engagement to go up and look at the land, and agreed to meet me at the office, over in Broad street, I can't remember the number ; I remember it was the office of Allan Hay, and I think the West Shore or Fort Lee had an office in the same room or building.

*Q.* At the time Dr. King introduced you to Mr. Bergholz, where was Mr. Bergholz ?

20

*A.* I cannot remember whether it was in the hall or in Charles Voorhis' room ; we were walking back and forward ; there was half a dozen gentlemen there with Mr. King and Mr. Bergholz, and they were walking in and out, and I think it was in the hall just before we went into the office of Charles Voorhis.

*Q.* Was Dr. King there when you got to Voorhis' office ?

*A.* Yes, sir.

*Q.* Where was Bergholz when you first saw him ?

*A.* I think it was near the door in the hall ; I think he brought him out of Charles Voorhis' office to introduce him to me.

30

*Q.* How far was he from you when he introduced him to you ?

*A.* I think I shook hands with him at the time.

*Q.* Right at the time the introduction was made ?

*A.* Yes, sir, at the time of the introduction.

*Q.* Mr. Bergholz was near enough to hear all that was said at the time the introduction was made ?

*A.* Yes, sir, I should say so, everything that was said between us ; there was no secrecy about it at all.

40

*Q.* Did Dr. King introduce you in the ordinary tone of voice?

*A.* Yes.

*Q.* How long did you and Mr. Bergholz continued talking after the introduction?

*A.* For a few moments.

*Q.* What did you talk about?

*A.* I couldn't give you the whole conversation; but it is my impression that he wanted to look at the land, and  
10 I told him I would go with him, and he said if I would meet him over in Broad street, giving me the number and place, that he would make an engagement when he could go up.

*Q.* Did he give any reason for not talking about it with you.

*A.* Yes, sir, they were very busy; they were looking for Mr. Ruckman to tender him some money, and appeared to be doing that.

20 *The Court :*

What was the date of that visit?

*A.* The 1st of July.

*Q.* Did he talk with you on that day about the Ruckman purchase?

*A.* I think not; I don't remember anything particular that was said.

*Q.* From what was said to you at the time of your introduction to Bergholz—did it appear that he was aware  
30 of the purpose for which you were introduced to him

(Question objected to, and overruled by the Court.)

*Q.* Did you on that occasion state to Mr. Bergholz—

(Mr. Parker objects to the form of the question as leading.)

40 *Mr. Vanatta :*

I was going to ask him whether he mentioned to Mr. Bergholz at that time, the conversation that had taken place between him and Dr. King with reference to his lands—the former conversation.

Mr. Parker :

I don't think that is a legal question, and it is leading.

*By the Court :*

10

Was anything said by you to Bergholz about the previous conversation you had with Dr. King?

*A.* I don't remember that there was on that occasion.

*Q.* When next did you meet Mr. Bergholz, and where?

*A.* I can't remember the exact date, but from my impression now, the 1st of July came on Saturday, I think—I won't be certain about that—and I think it was either the next Monday or Tuesday—within a few days, at any rate, two or three days from the time I saw him on the 14th of July; I met him according to appointment at that office.

*Q.* What took place between you at that time—what conversation?

*A.* He made an engagement with me to come up and look at the land, the land I was offering for sale to King and his partner, as I understood it at the time.

*Q.* Was there anything said about the land more than that on that occasion?

*A.* Yes, sir; I think Mr. Bergholz expressed a dissatisfaction that there was so little front to one piece of land called "Clinton Point"—land that I had for sale; he said that the river front—they wanted a good deal of river front, and there was a very small frontage in proportion to the amount of land there was on the top of the hill, and expressed surprise at that because I supposed from the conversation I had had with him that they wanted the hill property, the upland, and then he mentioned that the Railroad Company were interested in the purchase of this land that I was offering him, and I think I made a remark

30  
40

something to this effect—that he as an engineer must have good opportunities of making money or speculating in lands, and he mentioned—I can't give the precise words, but it was to the effect that he did have—that he was interested in the purchase of land, was interested in this Ruckman purchase, and that he didn't wish his name to appear in it, as he was the engineer of the Company, and that the Railroad Company were interested in it, and that seemed to be his idea of finding fault with the small front  
10 in proportion to the amount of land on top.

*By the Court :*

*Q.* That the Railroad Company was interested in it?

*A.* Yes, sir.

*Q.* You had heard of the purchase of the Ruckman property previous to this interview?

*A.* Yes, sir.

20 *Q.* And previous to the interview at Voorhis' office?

*A.* Yes, sir; and previous to my first interview with Dr. King.

*Q.* Did you understand when he was interested in the Ruckman property, at that time?

(Question objected to.)

*The Court :*

30 You cannot give a man's impression that way—give us the language.

*Q.* Did he say when he was interested in the Ruckman purchase?

*A.* I cannot give the exact language that he used, but from conversation I had with him—

(Mr. Parker objects.)

40 *Q.* State the substance of it.

A. The substance, as near as I can recollect it, that he was interested in the purchase of the Ruckman piece, and this property I was going to sell them, dove-tailed in with that, and that was the reason they wanted it, and they wanted more than I was going to sell them.

Q. State as fully as you can all that was said at that time by Bergholz and yourself with relation to the Ruckman property and the purchase of it.

A. I cannot give the exact conversation, and I cannot state exactly what occurred on each separate visit; I had 10 three or four interviews with Bergholz; I could give my impressions of the substance of the whole conversation I had with him.

Mr. Parker:

I don't think that will do.

Q. Give the substance of this conversation fully—everything that you remember of it—this first conversation 20 that you have mentioned at Broad street, New York.

A. The substance of it was that he was interested in the purchase of Ruckman's land, and was very particular about inquiring about my land that I was offering to sell them in connection with that, and wanted to go up and look at it with the idea of seeing how it did lay.

Q. All your land lay next to Ruckman's?

A. Part of it did.

Q. Did he make an appointment to go up with you?

A. He made two or three appointments. 30

Q. Did he go?

A. No, he never went.

Q. When was the next interview after the one at Broad street?

A. I think the next interview was in a day or two; I couldn't say the exact time—at the same place; I may have gone to his house in Hoboken; when he didn't keep his appointment I went over to see the reason—to see if he was going to make a new appointment, just at the evening. 40

*Q.* What conversation, that you remember, took place on those three occasions?

*A.* I think I have related about the substance of all our conversations as near as I can get at it; I wanted to see if they were going to carry out the contract—if they were going to make a written contract and pay me the \$3,000 promised me, and I couldn't get at the subject.

*Q.* Was anything said at that time about the Ruckman property?

10 *A.* Nothing more than I have stated; I think he mentioned that he was interested in the purchase of the Ruckman property, and this land was to go with it; that is the way I understood it—the substance of it.

*Q.* Did Bergholz on more than one occasion, tell you the reason why he didn't have his name appear in this contract of the sale of the Ruckman property?

(Question objected to.)

20 *A.* I don't remember more than on one occasion that we talked on the subject particularly; I remember there was one occasion that we were a little longer together than at any time, because we were waiting, he said, for a gentleman to come in that wasn't in there, who he wanted to introduce me to who was interested in the matter—that was Mr. Allan Hay, and he did introduce me to him when he came in—otherwise than that, our interviews were short.

Cross-examination.

30

By Mr. Parker :

*Q.* These negotiations came to nothing?

*A.* No, sir.

*Q.* And you spoke of his waiting once for Mr. Hay; he was to introduce you to Mr. Hay that he might have something to do with buying this property?

*A.* Yes; one of the parties who was talking of buying the land.

40 *Q.* What is your business?

A. Hotel business is my business ; I have dealt in land considerably ; I was at the time selling and buying a great deal of land.

Q. You are a good deal about with Ruckman ?

A. I have been for the past two days, since I have been here as a witness ; I don't think I have seen him before for two months.

*Elisha Ruckman*, the defendant, sworn in his own behalf. 10

Direct examination.

By Mr. Vanatta :

Q. You are the defendant in this cause ?

A. Yes, sir.

Q. You reside at Closter ?

A. Yes, sir.

Q. How long have you lived there ? 20

A. Since May, 1857.

Q. Did you see Mr. Muir who was called here as a witness by the plaintiff ?

A. I have seen him, sir.

Q. Tell us when and where you first saw that gentleman, Mr. Muir ?

A. Some time in the fore part of March or latter part of February, 1868, at my house.

Q. Who came with him, if anybody ?

A. A man he called Mr. Newton. 30

Q. What time of day ?

A. It was in the evening, I think, nearly 8 o'clock—snowing very hard.

Q. Had you ever seen Mr. Muir previous to that occasion ?

A. I had not to know him or to speak to him.

Q. Do you know how they got there ?

A. No, sir ; the first I saw of them they were on my stoop.

Q. They staid all night with you ? 40

A. They did, sir.

Q. Had you ever seen Mr. Newton previous to that?

A. Not to know him.

Q. Had you ever had any conversation with Newton previous to that?

A. No, sir.

Q. What passed between you that evening after their arrival?

A. Mr. Newton represented that he wanted to buy some  
10 land.

Q. How much?

A. 500 acres.

Q. State what was said about it on that occasion?

A. I told them it was a bad time to go on the land; the snow was deep, and there was a soft crust on top of the snow, and they could not drive over it, and we went up.

Q. Before you started to view the land, I want to know whether Mr. Muir said anything to you about his wanting to buy land?

A. He did not.  
20

Q. Well, any further conversation that evening or the next morning about the land?

A. Nothing more than they staid there to go and see it, and the next morning I got up my team and took them up to the northeast, and where the road was broken before the last snow, and the crust was broken.

Q. State generally how far the view extended?

A. I didn't drive but a very few feet along my land before I had to stop, and they got out and walked towards  
30 the river front, but I didn't go with them; they were gone a very little while, I should think less than half an hour, and came back and got in the sled and went back home with me, and took dinners with me and went away—Newton saying he would come up again when he could see the land.

Q. Did Muir say anything about returning?

A. He didn't say anything about buying any land himself; it was Newton that said he wanted to purchase.

Q. Did Muir say anything about returning to your  
40 place?

A. They both said they would come up again.

Q. Did they ever come back again?

A. I never saw them there again.

Q. When and where did you next see them or either of them?

A. A short time after that. I had given my address while they were there where my office was in New York, in West street, north of West 10th, and a short time after that they both came up there.

Q. About how long afterwards?

10

A. I don't think I could say—less than a week, I should think.

Q. Well, what occurred then—state what was said?

A. After the time of day, Mr. Muir asked me if he made a sale of the land if I would pay him a commission; I replied that I would not pay him a commission, or any other man that I didn't employ.

Q. What else took place on that occasion?

A. The rest of the conversation I don't remember; it was not in regard to the land; they staid but a few minutes and went off.

Q. Did they ever communicate with you again?

A. Never.

Q. Did you ever see Muir after that day till he appeared here as a witness on the other trial?

A. That is the first I saw him since to know him or notice him, when he appeared on the other trial.

Q. Mr. Muir speaks of having been introduced to you at 20 Nassau street, in March, or about that time?

A. I never saw him there or any other place to know him till he came to my house.

Q. Had you any such introduction as he speaks of?

A. I never had; I didn't know Bergholz at that time only when I saw him; I didn't know him by name.

Q. When did you first know William R. Bergholz' name—when did you first know his name?

A. The evening he came to my house, when Dr. King introduced him to me by name as his partner.

Q. Had you seen Bergholz before that?

A. Frequently.

40

*Q.* Where?

*A.* In the office 20 Nassau street—the Hudson River West Shore Railroad Co.'s; I saw him frequently when I went there.

*Q.* What was he doing on those occasions?

*A.* I saw him sitting to a table.

*Q.* In what room?

*A.* That only consisted of one room, but it had a partition across running north and south; then it had another  
10 one—a rail, running east and west, and I saw him in the northeast end, inside of the partition that run across north and south.

*Q.* Did anybody else occupy that space on the north side of the partition?

*A.* The President sat a little ways south of him, and he had a desk there.

*Q.* On what side of the partition?

*A.* He was on the east side—the same side with Bergholz.

20 *Q.* What was the size of that room north of the partition?

*A.* Well, it is only guess-work; I should think it might possibly be 20 or 22 feet, perhaps 12 or 15 feet wide; I don't know unless by guess-work.

*Q.* How near were the desks together, the President's and Bergholz'?

*A.* As near as I can tell they were within 6 or 7 feet; Bergholz' place, that he sat at, was north of Thompson's, the President, but inside the same partition.

30 *Q.* What was your business there with Thompson?

*A.* J. S. Herring told me he was employed in that office and they wanted me to come down there; they wanted to get the right of way across my property in Rockland county, New York State, and that was my business that first called me there.

*Q.* Did any other matter arise between you and the President?

*A.* Yes, after I was there—I can't say at which inter-  
40 view—they proposed buying a half share of some land, or nearly that, or 1,000 acres, and paid me \$100,000 down, and

the other \$125,00 I was to keep, the majority share, and they to fix a road on the cliff of the shore and station houses advantageously to the property as a recompense for part of the payment.

*Q.* How long was that thing under negotiation with Thompson?

*A.* Run along through March and April at different times talked about it, and I went there by appointment several times.

*Q.* Before going any further, fix as nearly as you can 10 the time when you first called there to see Mr. Thompson?

*A.* I could not fix the date; I now think it was pretty well towards February, in January—possibly the latter part of January, I think.

*Q.* And this project of buying an interest in a thousand acres of your land sprang up about that time?

*A.* I should think sometime in the fore part of February.

*Q.* And continued until what time?

*A.* Continued until May at different interviews; they 20 seemed not to be able to make up the amount that they were to pay me, or so represented to me.

*Q.* While you were having these talks from time to time with President Thompson, whereabouts was Mr. Bergholz?

*A.* He was sitting perhaps 8 feet, may be 9—somewhere between 7 and 9 feet—as near as I can tell from Mr. Thompson, and I sat between them and Thompson, that is where I generally took a seat, right at the end of Thompson's desk.

*Q.* In what tone of voice was your conversation with 30 Thompson carried on?

*A.* An ordinary tone of voice, fully as loud as they were talking here yesterday when Bergholz seemed to understand all the questions, and I didn't hear them well yesterday; my sense of hearing for the last 2 or 3 years has failed me a little.

*Q.* How was it at that time?

*A.* It was not as acute as some, so I would want people to talk a little loud to me.

*Q.* What I want to get at is whether there was any 40

lowness in the conversation between you and Thompson?

A. No, sir, none whatever on my part.

Q. Was it upon every conversation.

A. Yes.

Q. Did Bergholz ever take any part in those conversations that you were having there with Mr. Thompson in your presence?

A. No, sir.

Q. Before he came up to your house with Dr. King, did  
10 you ever have any conversation with Bergholz?

A. I have nodded to him when I went in, and when Thompson would not be there I would ask him if he could tell me when or how soon he would be in—that is the extent—no other conversation; I didn't know what his position was; I didn't have any other conversation with him.

Q. He speaks of having gone out of the office and you following him, and talking to him on the steps before he came to your house?

A. There never was any such transaction took place.

Q. He testifies to having on another occasion in the  
20 hall, or somewheres in that vicinity, talked with you, or you with him, about paying him double commissions if he would effect a sale.

A. I never spoke to him about commissions or selling my land in no shape or place, till he came to my house and was introduced to me as partner.

Q. Did you ever ask him to sell your land?

A. Never.

Q. Did you ever know that he was pretending to act as  
30 your agent before you made this contract with King?

A. No, sir.

Q. At that time did you have any real estate broker in your employ in the City of New York?

A. I had one that I had left my map with for him to sell some land for me if he could; that was Mr. Seymour, 171 Broadway, corner of Courtlandt street.

Q. Had you ever inquired Bergholz name of anybody before he made his appearance at your house?

A. No, sir; nor never had heard any one mention it.

Q. At what time did King and Bergholz arrive at your  
40 place, at Closter?

A. I should think between 5 and 6 o'clock in the evening, on the 9th of May, 1868.

Q. Did you see them approaching?

A. I did not.

Q. Did you afterwards see by what means of conveyance they had come to your house?

A. Yes, I saw a one-horse wagon, and I saw Bergholz sitting in it when I came out of my door way.

Q. Where was the wagon at the time you first saw it?

A. Standing in my roadway about 40 or 50 feet from 10 my house at the end of the kitchen.

Q. Where was King at the time you first saw him?

A. He was standing on the kitchen stoop.

Q. How did you discover that he was there?

A. My wife spoke and told me there was a gentleman at the door wanted to see me; as I came out he was standing on the kitchen stoop, and I stepped out by him.

Q. Where was Bergholz then when you got out on the stoop?

A. I talked with King half a minute, probably, and 20 asked him in, and he said that there was a gentleman out here in the wagon, and then I turned around and seen out in the carriageway; I couldn't see, where I stood on the stoop, then I turned and saw Bergholz sitting in the wagon; that is the first I saw him.

Q. You had a conversation with King on the stoop?

A. He told me his name was King, and he had come up to see if I had any land to sell or had sold my land—which of them two ways he put it I am not clear—and I told him I had not sold it; then I asked him in to take tea; then he 30 spoke about the other gentleman out there; then he went out toward where the wagon was and Bergholz got out, and my man there that takes care of my horses took charge of the horse, and they came in, and as we sat down to the table I says to Mr. King—

Q. Where were you when Bergholz came up?

A. I was standing out between the stoop and the yard fence.

Q. What occurred then?

A. Then King went out by him and he got out and I 40

had asked King into supper, and then King and him came in together and I stood inside, and then as they went in by the table they were seated about as close together as people ordinarily sit at the table, and me across the way about three and a-half feet off, and I asked Mr. King this gentleman's name—that I didn't know him, and he said, "Mr. Bergholz"—a strange name, I didn't catch it; I says, "I don't understand you;" he says, "Mr. Bergholz, my partner;" and then we sat down and took tea, and as soon  
10 as we were through they left and went away.

*Q.* Was there anything said about looking after the land on any future occasion?

*A.* Yes; they agreed to come up the next week—this was Saturday—and on Monday morning Mr. King came up without Bergholz.

*Q.* Is there any well at your house or near your house?

*A.* No, nor spring.

*Q.* How is your house supplied with water.

*A.* Just one-third of a mile from there is a spring, and  
20 it is fetched down with a pipe; the spring is higher than the house, and we draw it with faucets, and in the garden there is a hydrant that you put your hand on and it runs.

*Q.* Did you go into the garden with King and Ruckman?

*A.* No, sir; only in the house and out to the carriage-way that day.

*Q.* What time did they leave that evening?

*A.* They left a very few minutes after we got up from tea; I now think it was about 6 o'clock, but I didn't look  
30 at the time piece, but I judge by the time the cars run down.

*Q.* Was there any reference made to the cars?

*A.* Yes; talked about the time they went; I believe they went at half past 6, but I am not clear on that.

*Q.* Did you observe the conveyance they had?

*A.* A horse and wagon I took to belong to a livery-stable over at Closter; I thought I knew 'em.

*Q.* On that evening was there anything said about the price of the land?

40 *A.* No; not one word.

Q. Or about commissions?

A. No, sir; not one word in my hearing.

Q. You say that they went away that evening, and did you say or did you not say that they said or you understood they were both going to return?

A. I understood they were both coming up, as they had represented themselves to be partners, on the next Monday—that would be the 11th.

Q. On Monday who appeared?

A. B. W. King. 10

Q. What occurred then?

A. I asked Mr. King—I went with a two-horse wagon—I asked him where his partner was, and he said—

Mr. Vanatta:

I offer to show that no part of the contract was made on that Saturday at all, but whatever negotiations there was was first entered upon on the following Monday in the absence of the plaintiff. 20

Q. State what was done by you and King on that Monday, omitting to state the conversation that took place between you at that time?

A. I went there with a double team to the station to meet King by appointment and Bergholz; Bergholz wasn't there, but King was, and then we went over a portion of the land that day.

Q. How much time did you consume in the view?

A. I think we got back home to what I should call a pretty late dinner; my recollection is that it was as late as between 2 or 3 o'clock, and then, when we got back to the house—we went over a very small portion of the land—then King wanted to know the price, and I told him the price at \$300 an acre. 30

Q. Don't state the conversation.

A. We went over the land and was till 2 or 3 o'clock when we got back to the house, and then took dinner and he went back; I took him over to the cars, and he went back that afternoon or evening. 40

*Q.* Did you make any arrangement for any other interview—any other meeting with him?

*A.* Yes, he made arrangements to meet me next morning at Charles H. Voorhis' office, at 10 o'clock, to make the contract.

*Q.* When did you first talk with King about the terms of that contract?

*A.* In my house after dinner; then I asked him \$300 an acre; he offered me \$250, and after chaffering awhile I got up to \$275, and after talking awhile I asked him if he had come there through any land commission or broker; he said he had not—none had nothing to do with it; then I asked him what terms he could make the payments on; he said he could make the payments to suit me; then I said how I must have the payments made, or I would not sell—it was \$20,000 down on signing the contract, and \$80,000 when the deed should be given, in either 30 or 60 days, and interest from the date of signing the contract, and the \$80,000 to make up the 100 at giving of the deed; this was in talk on the 11th day of May, 1868, at my house.

*Q.* Were those terms agreed to?

*A.* He agreed to them.

*Q.* What did he propose, if anything?

*A.* He agreed to those terms.

*Q.* Did you write them down?

*A.* I didn't.

*Q.* Why not?

*A.* He pulled out a contract out of his pocket, all in writing, and wanted to sit down and fill in; I didn't read the form, but he had it—all the blanks left; he wanted to sign a contract then; I told him I wouldn't do it; that I didn't consider myself competent to make a contract for that amount, and I preferred to have my counsel do it; there was nothing done in writing that day, and not at all till we met at Voorhis' office, on the 12th.

*Q.* Did you at any time say anything to King about paying commissions except the conversation which you have mentioned as taking place upon that subject on the 11th of May?

*A.* Never a word.

*Q.* Did you make inquiry of him that day why Bergholz was not there?

*A.* I didn't when he first came. He said that his partner had some urgent business at Washington, and had gone to Washington—giving me to understand Washington, District of Columbia.

*Q.* Had Bergholz ever told you that you should ask \$275 for that land?

*A.* Never; I have been of age a good many years.

*Q.* What occurred next day?

10

*A.* We met the next day about on on time at Voorhis' office; we talked over the pros and cons of the agreement, and Mr. Voorhis jotted down along till we got to the point of \$20,000 down; then King began to equivocate from that—

[Plaintiff's counsel objects.]

Mr. Vanatta :

20

We propose to prove that in the settlement of some points of the agreement—in settling the terms of some of the details of the agreement there was a debate between the parties—a chaffering between the parties, and that King represented that his difficulty in agreeing to it was that his partner was absent and that he didn't feel willing, or felt dubious about agreeing to such terms in the absence of his partner. Now, King is a witness here—his deposition is introduced and he says that Bergholz was not his partner. Now it is competent in contradiction of him, and 30 I take it where his evidence is put in on deposition that we cannot be held to the rule, that we must first call his attention to it. It is a matter of discretion with the Court, and under the circumstances it seems to me it is proper.

*The Court :*

If you desire it I will allow you to ask that question.

Mr. Parker :

40

On page 107, folio 426, it appears in this way: " Q. On the next day, the 12th of May, in Mr. Voorhis' office, did Mr. King say anything about his partner? A. He did. Q. What did he say? Question objected to. Q. Was it before or after the signing of the agreement? A. It was before the signing of the agreement and while we were chaffering about \$20,000 payment."

Now, I don't think it material enough, and I will waive the objection, but I do not withdraw my right to object to  
10 whatever may come in the same way.

Q. You say that Judge Voorhis had written down a memorandum, till you got down to the point of paying the \$20,000?

A. Yes.

Q. State what occurred then?

A. He objected to having it stated that the \$20,000 should be paid down, and he wanted that incorporated in that payment on the 1st of July of the \$100,000, that, I  
20 told him, I would not agree to, and then, after talking the pros and cons, and Mr. Voorhis talking as much as both of us pretty near; Voorhis said that whatever we did agree to it was better to put it in the contract in writing, and then King altered the terms and agreed to pay \$100 that day and the balance, \$19,900, the first day of June following, and we did make the agreement, and signed it in that way, and King paid the \$100 and took the contract away with him.

Q. What, if anything, did he say about his partners on  
30 that occasion?

A. He said that his partners not being there he could not agree to it, and made no more talk, but one remark he made I remember, that his partners would raise hail Columbia if he agreed to pay it before the deed was to be given on the 1st of July.

Q. He wanted to pay the whole \$1,000 on the 1st of July?

A. Except the \$100, to make the balance less the \$100 on the 1st day of July, and I told him that would not do,  
40 it was no use, then we drew it \$100 that day, and \$19,900

on the first day of June following, and the \$80,000 to be paid on 1st day of July.

*Q.* About what time of day did you complete the execution of your contract—or in other words what time of day did you get away from Judge Voorhis' office?

*A.* My memory is not much different from one o'clock; I can't say that I remember looking at any time piece.

*Q.* Up to that time of day had you seen Mr. Bergholz?

*A.* Not that day I didn't, not since the Saturday before, the 9th.

*Q.* When you left Judge Voorhis' office, where did you go? 10

*A.* I went over immediately to the West Shore Railroad office.

*Q.* Who did you see there?

*A.* Mr. Bergholz.

*Q.* State what was said between you, then and there?

*A.* I says I am astonished to see you here, Mr. King told me you had gone to Washington, he says, "I did expect to go, but I haven't gone;" I told him we had signed the contract, and he said that him and King was together in the purchase, and then made some statements about roads, and avenues, and walks that he intended to make in it, and that he was a landscape gardner and engineer; that is the first I ever knew of his business; that was on the 12th of May, and between one o'clock and three, I should think, as near as I can tell.

*Q.* What was the occasion of your going over to the office that day—who did you go to see?

*A.* Mr. Thompson had spoken to me about buying a 30 farm up there for him, and I went over there to see him about that, but Thompson wasn't in.

*Q.* What then.

*A.* After this conversation with Bergholz, I left and done some little marketing, and went home.

*Q.* Did he say anything about any other person being interested in the contract?

*A.* He did.

Mr. Parker :

Who ?

Mr. Vanatta :

Bergholz.

*Q.* Who ?

*A.* Mr. Adams.

*Q.* Tell what he said ?

10 *A.* Now, I am not clear that he said Mr. Adams' name that day ; I am not clear on that, but he did at a subsequent, either the next day or else the 15th of the same month, and same week.

*Q.* On one or the other of these occasions what, if anything, did he say about Mr. Adams ?

*A.* He spoke about the great wealth of Mr. Adams and the extensive improvements they were going to make, and among the rest that he had something to do with the Fort Lee Railroad.

20 *Q.* Who had ?

*A.* Bergholz did, and could or would bring it across that property up on the cliff.

*Q.* You say Mr. Thompson was not there that day, on the 12th—how long after that was it before you did see Mr. Thompson ?

*A.* Either the 15th or 16th of the same week.

*Q.* Did you or not inform him of your having made the agreement with King ?

30 *A.* No, sir, he informed me of it ; it seems he knew it before I saw him ; I found he knew it, and was very much displeased about my parting with the property, or so he stated to me.

*Q.* Had you ever offered the property at less than \$275, with the exception of the offer contained in that proposition to Thompson ?

40 *A.* I never had offered it at any price in so large a quantity, except about two years before ; I had given a man a refusal of it for a short time, but not of this property, for about sixty days, I think, fifty or sixty days, to Mr. Leeds, about 1,300 acres, but that 1,300 acres didn't

take in any more than about 8 or 900 in this contract.

Q. You spoke about seeing Bergholz on the 12th at the railroad office ; when did you next see him after that ?

A. I think I saw him the 13th.

Q. Where ?

A. At his office

Q. What occurred then ?

A. That was the day they were to introduce me to Mr. Adams, and did introduce me to him, but I think Mr. Bergholz didn't go up into Mr. Thompson's office then. 10

Q. Who did introduce you then ?

A. Mr. King.

Q. Did anybody go with you to Bergholz's office, or did you find King there ?

A. I think I found King there ; I think they were both sitting at the desk together.

Q. Who went with you to Mr. Adams ?

A. Mr. King.

Q. Why were you introduced to Mr. Adams ?

A. As his partner with him. 20

Q. Which of the Adams' was it ?

A. H. C., the old gentleman, the father of the other Adams—one was father and the other was son.

Q. You was introduced to the old gentleman, Adams ?

A. Yes, sir.

Q. Did he or not say anything about being connected ?

A. They talked about the purchase, and that Adams then fixed to come up the next day with Mr. King.

Q. Did he come up ?

A. No, sir ; that is, I didn't see him ; I attended to the 30 station with my team to take them, as they had requested me, and he didn't come, but King came.

Q. Did you have any conversation with Mr. Bergholz before going to Adams that day, on the occasion when you met him and King together in the railroad office ?

A. I can't say now, unless I could refresh my memory, whether there was any more than the time of day passed ?

Q. When next after the 13th did you see Bergholz ?

A. The 15th, in that office of the West Shore Railroad, 40  
20 Nassau street.

*Q.* Did you have any conversation with him on that day?

*A.* Yes, I did; but I don't know that I can recall it without refreshing my memory.

*Q.* Did you see Thompson that day?

*A.* I either saw him that day or the next; I am not clear—one or the other—but it was that week.

*Q.* At the time you met Thompson that week in the railroad office whereabouts did you have that conversation  
10 with him?

*A.* In his office; he had been sitting down by the desk, and he followed me out to the door; he was angry.

*Q.* Where was Major Bergholz when you were having this conversation with Thompson, if you know?

*A.* I don't know that I can remember that.

*Q.* Did Thompson find fault with you?

*A.* He did indeed.

*Q.* Did you try to excuse yourself?

*A.* I told him I couldn't hold the wheels of time still.

20 *Q.* Next after that interview with Thompson, when did you see Bergholz?

*A.* I came there, and he went up with me into Adams' office; I don't think I can fix the date.

*Q.* Who was with you up there in Adams' office?

*A.* At that time King was not there; old Mr. Adams was there, and Peter C.

*Q.* Who went with you there?

*A.* Bergholz went up there with me.

*Q.* The two Adams, Bergholz and yourself?

30 *A.* Yes, sir; King wasn't there then.

*Q.* What did you go there for on that occasion?

*A.* King hadn't paid me the money, and my remembrance is, to see what was the reason—now, understand, I don't mean the \$19,900; he had agreed with me in words on the 19th of May that he would give me 6,000 the next week down; there was some money that some heir wanted that was owing, and he agreed to give me 6,000 before the 1st of June, to relieve some pressing claim.

40 *Q.* That was a verbal matter outside of the written contract?

A. That was not in the written contract, but it was a verbal agreement made on the 19th of May; then I went to try and get that.

Q. That was the occasion of your going to Adams at that time?

A. Yes.

Q. How long after the 19th was it?

A. I was to have it then within a week, or about a week; that was the inducement for me to alter the contract, and this \$6,000 he was to pay me within a week, but 10 we hadn't any writing—only his word for it.

Q. You didn't get it at the time you expected?

A. I didn't get it at all.

Q. That was the occasion you went to see Adams?

A. Yes. Then Bergholz went up with me to see the Adams' about that payment, but Adams didn't pay it to me.

Q. Did you talk to him about it in the presence of Bergholz?

A. I think so; I think Bergholz staid there; I am not 20 certain that he staid there as long as I did, but he was in there.

Q. What did he go along with you for?

A. My remembrance is to see about getting that money—to see if King was there or something—I can't state that clearly.

Q. Tell us when Bergholz first said anything to you about his having a claim for commissions against you?

A. On the 12th of May; I was cross-examining him in that Chancery suit; I was out of money and I couldn't 30 hire lawyers, and I had to learn the business myself, and I was cross-examining him, and he didn't answer it, but he blurted out, "I expect to receive a commission from Mr. Ruckman, because he sold his land to Mr. King for many "thousands more than he had asked a few months before;" but I didn't ask him that question.

Q. Was that the first you ever heard him say anything about commissions?

A. That was the first. Then when I went down on the sidewalk, him and Holcomb and Boyd gathered around me, 40

and he asked me about the commission ; I says, " Did you " put that in your schedule." I had been told that he had just come out of the Bankrupt law. I thought he had come out of the Bankrupt law in May before, and I went and looked, but I found that I was mistaken as to the dates.

Mr. Parker :

10 Say that again.

A. I asked him some other question, and he blurted out without my asking him at all, " I expected Mr. Ruck- man to pay me a commission, because he had sold his " lands to Mr. King for many thousands more than he had " asked for it a few months before ;" I didn't ask him that question.

Mr. Parker :

20

Now, about the schedule.

A. Then when we went down on the walk Bergholz and Holcomb and Boyd clustered around me, and he asked me if I was not going to pay him his commissions ; I says, " Did you put that in your schedule" meaning his Bankrupt act, but I was misinformed in that ; it was a trap or a trial to entrap me ; I had been misinformed about his dates about the bankruptcy.

30 Q. After the 12th of May, 1869, when did you next hear anything about Bergholz and his commission ?

A. Nothing more till I was served with the writings or pleadings or summons of this suit.

Q. Before that time did he ever present you any bill for these commissions ?

A. Never, that I received.

Q. Did you ever hear of any being sent to you ?

A. Never till this suit was brought that we are now trying.

40

Cross-examination.

By Mr. Parker :

Q. You have had a good deal of law about this, haven't you?

A. I have had very little justice.

Q. How many suits have you brought in relation to this trouble between you and King, and those that stood behind him.

10

[Question objected to.]

Mr. Parker :

I want to show that he has himself entered upon litigation in relation to this, in New York and in New Jersey with different people, and created the expense of which he talks.

Q. You were examined in this cause before? 20

A. I was, on the last trial before Judge Bedle.

Q. When you were asked about this interview in Mr. Voorhis' office, did you not say that Mr. King said that his partner or partners would raise Hail Columbia with him if he did so in their absence?

A. Let me have the book—give me the page and folio.

Q. Page 108, folio 431—didn't you say on that occasion that among other reasons that he gave why he would not have the \$19,900 put in only on the day of giving the deed, was that his partner or partners would raise Hail Columbia with him if he did so in their absence. 30

A. [Looking at book.] That is the way it reads here.

Q. Isn't that what you stated?

A. I expect so; no doubt of it.

Q. Now, I want to know whether in any of the litigation that took place about this transaction before this suit, you ever stated in any of your testimony that Dr. King had said that Mr. Bergholz was his partner—any of the examinations which you had in that cause or any of those causes that arose out of this King business, did you ever 40

say or pretend that Dr. King ever said that Bergholz was his partner ?

*A.* I can't recollect whether I did or not.

Mr. Vanatta calls Mr. Parker's attention to page that the witness did say so.

Mr. Parker :

10 I know he did in this cause ; I mean prior to this cause.

*Q.* Didn't you say so in all the prior examinations that King had told you that he had a partner, and mentioned that partner as Mr. Adams ?

*A.* Please to read that place again.

*Q.* Answer the question.

*A.* I don't remember about that unless I could refresh my memory ; I told it exactly as I understood it.

*Q.* Didn't you say in your examination before the Master, King had told me that Herman C. Adams was his partner the date the contract was made ?

*A.* I expect I did ; he did tell me so.

*Q.* Didn't you say in the same connection that on the 28th of May, King told you he had new men he expected to take in as partners ?

*A.* Does it read so there ?

*Q.* It does.

*A.* Please read it.

*Q.* " On the 28th of May King told me he had new men  
30 " he expected to take in as partners."

*A.* Is that at the Norwood House ?

*Q.* I don't know where it was.

*A.* He told me so at the day of the opening of the Norwood House.

*Q.* I am asking you whether you didn't say in your examination, that on the 28th of May that King told you he had new men he expected to take in as partners ?

*A.* If it is so there, I said so ; it is as correct a copy as I ever saw.

40 *Q.* Now, did you not in the same examination say that

Mr. King was up to your place between the 12th and 28th of May at least four, and perhaps six times—he met me by appointment at the train, where I met him with a team to take him and his partner over the lands, but he never brought his partner?

A. Does it say “partner” or “partners?”

Q. Partner.

A. No doubt of it, no question of it.

Q. Did you not say again to this effect: “He stated, meaning King, that he had told his friend that he had 10 gone to Washington, that he thought I was human and would do anything that was right about it, and that if he thought that was right, and that his partner Mr. Adams had disappointed him, but now he had some new men there would be no failure in it if he could get the extension?”

A. Is that so there?

Q. Yes.

A. No doubt of it.

Q. Then I ask you whether you ever pretended till this 20 suit was brought, that Mr. King told you in the beginning that Bergholz was his partner?

A. I have always said so.

Q. I mean on any one of those examinations?

A. On these examinations I merely stated what I suppose belonged to the case.

Q. You conducted this case more or less yourself?

A. I took the whole of that examination, I believe, except one day, both direct and cross—it was my misfortune.

Q. There was a commission issued in this case was 30 there not, to Mr. King? Did you not frame the questions that were put upon your side to Mr. King?

A. All but eight or nine of them, and Mr. Parker was smart enough in the absence of my counsel to get them most all struck out.

Mr. Parker :

No, your counsel was there.

*Witness :*

No, he was not present.

*Q.* You say I think that the price at which this land was to be sold to this company, was \$225 an acre was it not?

*A.* More—that much in money, and then in addition, improvements.

*Q.* Then you were going to help them along by taking 10 a portion of the company yourself?

*A.* Yes.

*Q.* But the price was \$225 an acre was it not?

*A.* That is what I was to let them have.

*Q.* Now, you had that property at that time, had you not, in the hands of a broker to sell in New York.

*A.* Yes, Mr. Seymour.

*Q.* He could sell any portion of it?

*A.* No, sir, when he brought a customer, he could sell about 500 acres, provided the price was agreed on, but no 20 price set till the man selected.

*Q.* Suppose he brought a customer for 1,500 acres?

*A.* I didn't authorize him to sell any more than 500, and the price to be fixed when he located his lot.

*Q.* He had the land for sale on a commission, had he not?

*A.* Yes.

*Q.* What was that commission?

*A.* They informed me it was  $2\frac{1}{2}$  per cent.

*Q.* You took the lands out of his hands when this con- 30 tract was made, did you not?

*A.* Yes.

*Q.* You authorized another person to obtain a purchaser for these lands after the King contract was made, did you not?

*A.* Read that to me.

*Q.* In obtaining a purchaser for part of these lands after the King contract was made?

*A.* Read who it was; refresh my memory of that.

*Q.* Didn't you do so?

40 *A.* I don't recollect it now.

Q. Didn't you say that the person you authorized, was Collins Newcomb, who lives at Tenafly station?

A. Yes, he talked about buying a large quantity.

Q. Didn't you authorize him to bring you a customer for this land in October or November, 1868, and that you would give him a commission if he sold.

A. He was to have a commission if he sold.

Q. You gave the refusal of the property to a person named Leeds?

A. That was about 2 years before. 10

Q. And at \$225 an acre, you left the land with him?

A. Yes, but that took part of some other people's land there.

Q. There was 1,300 acres in that lot?

A. Yes; but that wasn't all mine.

Q. This 2,000 wasn't all yours?

A. What I didn't own I had contracts for.

Q. Then why didn't you make the conveyance to King for more than 1,300 acres?

A. Because I lost the other by not having money to 20 meet the contracts; I had written agreements for them; I had written refusals for part, and for part I had contracts for.

Q. Then it is true that before this sale of yours, you had placed your lands for sale with an agent in New York?

A. I placed it in his hands something like 1865 or 1866, I think; I can't fix the date without looking.

Q. But there it was, wasn't it?

A. Not the whole.

Q. You had left the lands there for sale? 30

A. If he could sell them.

Q. On a commission of two and a half per cent.?

A. Yes, sir.

Q. And that your price to the land company, other things being talked of besides—the money price was \$225?

A. Yes; that is the money they was to pay.

Q. And that you had asked \$225 of this Mr. Leeds?

A. That was nearly two years before.

Q. And for lands in that quantity, but you say some of it you hadn't got and some you had? 40

A. There was some other to be put in with it, without taking so much of my river front.

Q. After this contest of King's you tried again to sell the property, did you not, while that suit was pending, immediately after the commencement of the suit, did you not?

A. I did, as soon as they failed to carry out their agreement; I would have sold it if I could.

Q. And you employed people to obtain a purchaser for  
10 you?

A. I don't remember any one but Collins Newcomb.

Q. And you then asked a higher price?

A. \$500 an acre.

Q. You tried very hard to sell the property after this time at which you say this contract was unperformed?

A. I don't know how to answer that.

Q. Didn't you show the property to numerous other persons between the 1st of June and the day of taking this evidence, which was February 10, 1869—didn't you show  
20 this property to numerous other persons respecting the sale?

A. I never remember showing any one the property, except a man named Anthony—that was either June or July, 1868; but my remembrance is now that Newcomb's was after the Chancellor had decided to set the contract aside; I didn't offer to sell it to Anthony; he came and looked over it and offered me \$600,00, but I didn't sell it to him.

Q. Didn't you testify that you had shown this property  
30 to numerous other persons since the 1st of June, respecting a sale? Didn't you testify this:

" I don't know as I offered this property for sale to any one between the first day of June and the first day of

" July—yes, I offered it for sale to Herman C. Adams.

" I don't know that I offered it to any other person for sale.

" I can't tell whether I would recollect if I offered the property for sale to any other persons.

40 " W. P. Seymour is one of the persons who spoke to me about the sale of the lands to King after the contract was recorded.

" W. P. Seymour lives in New York, I believe ; he does  
 " not live in Washington ; he is a real estate broker ; his  
 " office is at 171 Broadway ; he is a real estate broker.

" He has seen this land of mine ; from 1860 to 1868 he  
 " has seen it perhaps a dozen times ; he has been to my  
 " house often ; I have never known him to live there.

" He had a map and had my lands for sale ; I could not  
 " fix the date when I saw him ; I often saw him ; he had  
 " the lands for sale on a commission.

" I took the lands out of his hands immediately when I 10  
 " made this contract.

" These lands were in no other person's hands for sale  
 " in the year 1868.

" These lands are not in the hands of Mr. Thompson now  
 " for sale.

" They are not in the hands of any other person.

" I did not, during last year, after the King contract was  
 " made, authorize Seymour to sell these lands.

" I authorized another person to act for me in obtaining  
 " a purchaser for part of these lands, after the King con- 20  
 " tract was made.

" The part that I authorized him to act for me was for  
 " five hundred acres lying in this State ; the person I au-  
 " thorized was Collins Newcomb ; he lives at Tenafly  
 " station.

" I don't know anything about his doing business, or  
 " whether he has an office ; I do not know if he has a real  
 " estate office at Tenafly.

" I authorized him to bring me a customer for these lands  
 " in October or November, 1868 ; I would give him a com- 30  
 " mission if he sold.

" He said he thought he had a party who would buy five  
 " hundred acres ; he said the party was Mr. Southard ; I  
 " do not know him.

" He came with Mr. Southard, and he came with a Mr.  
 " Jones ; they would not buy until this contract was cleared  
 " off record ; at least they said they wouldn't.

" I don't remember Mr. Jones' Christian name ; Mr.  
 " Newcomb brought him up ; I think his office is at No.  
 " 291 Broadway, corner of Duane street ; it may be 281 ; 40

" I don't know whether he is a real estate dealer ; he is a stranger to me ; I have seen him once at his office in Broadway, at, I think, that number ; he has a life insurance office.

" He said he wouldn't have it as long as this contract was lying on it.

" I told him how much I would take for the property ; I told him \$300 an acre.

10 " He did not make me any offer for this property ; he did not make me any offer for the property, if it were released from this contract.

" I will state that the greatest portion of this contract was not in the King contract, but the most desirable portion, the river front, did belong in the King contract.

" There was 270 acres was not included in the King contract.

" I never saw Mr. Southard except the one time, when he was there ; Mr. Newcomb has not sent or brought any one else to me.

20 " I have shown this property to numerous other persons since the 1st day of June, respecting a sale.

" I did sell a portion of it, and made a deed to George H. Bend.

" Twenty-one acres on top, on the Palisades, and a small piece of shore for \$10,000 ; he paid me \$1,000, and Mr. Southmayd, his lawyer, wouldn't let him pay me any more until I got this contract released.

" I have got others standing ready to buy as soon as I can get this contract off record.

30 " These persons are George H. Bend's friends ; I couldn't tell you their names ; I never saw them to know them.

" I couldn't tell you where Mr. Bend lives, his office is at 32 Broad street, New York ; I couldn't tell you if he lives in this State ; I do not know that he does not live in this State.

" Mr. Bend says they will all take the same sized lots that he takes ; they all want to build together, so he states to me.

" I have not agreed with them as to price.

40 " Mr. Bend says he will take his property as soon as this contract is off.

" I do not know any other persons than Mr. Bend's friends, who are ready to take this property if the contract is off.

" Mr. Seymour came one day with a Mr. Anthony to my place ; he said he wanted to buy the two thousand acres ; he wanted to buy on account of this King contract ; I don't know whether he intended to buy or not.

" Mr. Anthony's residence is at Rockland, in the State of New York, his business is a real estate broker, purchaser and seller ; I have known him for a year or two ; he was up to look at the property during the fall of 1868. 10

" I don't think I told him what I would take for the two thousand acres.

" I told him this contract was on record.

" He made me directly three offers, \$500,000 and take it with the contract on, \$550,000 and take it with the contract on, and \$600,000 and me get the contract off.

" This was for the whole two thousand acres of land ; the terms were cash down at \$500,000, half cash at \$550,000, half cash at \$600,000." Did you testify to that on the other trial? 20

A. Substantially that is all correct, but the 300 is Mr. Jones ; he was going to take part of my property and part somebody else.

Q. Then the result of it was that you had this land on commission ?

A. No, sir.

Q. That you made a contract for it at \$275, that after that time you immediately went to work and tried to sell it for a great deal more money, and this contract was in the way of it—isn't that so ? 30

A. It wants some variations, that does.

Adjourned for the day.

NEW JERSEY SUPREME COURT.

10

WILLIAM R. BERGHOLZ,

*vs.*

ELISHA RUCKMAN.

FRIDAY MORNING, APRIL 23d, 1875.

20

FOURTH DAY'S PROCEEDINGS.

*Elisha Ruckman*, Cross examination continued.

By Mr. Parker :

Q. I want to ask you a little more about that land—you were anxious to sell the land, were you not, at that time?

A. What time do you mean?

Q. About the time of the actual selling to Mr. King?

30 A. I was very anxious to sell some.

*Q.* And had been for some time?

*A.* Yes, sir.

*Q.* You had been negotiating for the sale of that property, before you saw Mr. King, with several persons?

*A.* For the whole? no, sir.

*Q.* Did you say in your examination in the Chancery suit, as follows, page 38, line 37: "Before I saw Mr. King "I had been negotiating for the sale of that property with "several persons; 1,000 acres was about as much as most "of them wanted to buy; one person I had been negotiat- 10  
"ing with was Frederick Prentice, who represented him-  
"self as principal; another person was named Newton,  
"72 Wall; he wanted about 800 acres." Did you say that before.

*A.* No doubt of it.

*Q.* And you actually gave the refusal before that of 1,300 acres?

*A.* That was nearly two years before.

*Q.* Yes, to Mr. Leeds—how much of what you owned at the time you sold to King, was included in that 1,300 20  
acres?

*A.* Between 800 and 900, I think.

*Q.* Wasn't there more?

*A.* I think not.

*Q.* Didn't you testify on the last trial as follows, page 124: "*Q.* I understand you to say, that at the time you gave "the privilege to Lee, that it was for 1,300 acres about, "and that that comprised all you then owned, except your "homestead? *A.* I did answer that in that way, meaning "in Harrington Township, and a portion that run over in 30  
"Rockland county, in York State; I didn't mean south  
"of the Closter dock road. *Q.* I understood that was all  
"you then owned of what you afterwards sold, excepting  
"your homestead? *A.* No, sir, it was not. *Q.* Wasn't  
"that what you said? *A.* I said it was about 1,500 acres  
"and I gave the refusal of about 1,300 of it. *Q.* And your  
"homestead is about 200? *A.* 219. *Q.* Take your home-  
"stead out, and take the 1,300 acres out, what is left? *A.*  
"There would be down below the Closter dock road, some-  
"thing less than 100 acres, and over 75. *Q.* (By defend- 40

" ant.) South of Closter dock road, but in Harrington township? A. Yes." That is what you testified to before, was it not?

A. Yes, sir.

Q. Do you still say that there was only 900 acres of that 1,300 in the 1,500, or the 2,000 that you sold to King?

A. I don't understand you.

Q. Do you say there was only 900 acres out of the 13 in the 1,500 acres that you sold to King?

10 A. There was between 8 and 900; I still say that that was in that district—then it was to cross the road west.

Q. What I want to get at is, how much of that 1,300 was in the King purchase?

A. Between 8 and 900.

Q. No more?

A. I think not, but I had never measured it.

Q. Didn't you say on the last trial that it was all there except your homestead?

A. I did, but not meaning the whole district.

20 Q. I don't care about the district—I want to get at the fact of how much land was there?

A. I never had reckoned it up not even to the last trial.

Q. What was this additional property, not comprised in the Leeds offer.

A. I don't think that I could describe it to you unless I had the map.

Q. Whereabouts did it lay, about?

A. It laid south, and some of it in Hackensack township.

30 Q. Not on the Hudson River?

A. That was put in on the 19th of May when Blanche put it there.

Q. I didn't ask about that—I asked about the 1,500 acres?

A. Before the contract was enlarged?

Q. Yes, sir.

A. There was a little over 1,500 acres in that; that is what I thought at the time; when we came to measure it, it wasn't so.

40 Q. That is that you have spoken of, over the 13 or over the 8 or 900—which ever you say—where was it—was it on the river?

A. It began down to the river edge and ran over the road from Piermont to Englewood.

Q. Which did?

A. The homestead did.

Q. That was not included in the 1,300 acres?

A. No, sir.

Q. There was no other land included in the 1,300 refusal that lay on the river, was there, excepting what was in the 1,500 sale?

A. Yes, there was some fronted the river. 10

Q. I want to get at this; you say that in this 1,300 refusal there was only about 8 or 900 acres that was afterwards in the sale to King?

A. That I have deeded to King's assignee.

Q. Now, what I want to know is as to the difference; the 1,500 sale included your homestead didn't it?

A. Yes.

Q. That counted for 200 acres and over; now, then, between the 8 and 900 and the 1,300 there was a difference of 400 acres—200 is the homestead now—I want to know as to the other 200. 20

A. You want to know where that was?

Q. Yes.

A. West of the road leading from Piermont to Englewood and adjoining the farm on the east; that belonged to Ferdem.

Q. Your most valuable land of the whole 1,500 tract was that which was upon the Hudson River?

A. Yes, to sell—not to farm—it was more valuable.

Q. A good deal the most valuable? 30

A. Yes; three or four times.

Q. You say that you told Muir and Newton, that you would pay no man a commission whom you didn't employ?

A. I told them so when they came to my office in West street.

Q. Didn't you on the former trial first say that you told them you would pay no man a commission?

A. Before I amended it I did.

Q. And didn't you amend it, after testimony had been 40

given that you had employed Mr. Seymour on a commission ; wasn't it then, as you say, you amended the testimony ?

*A.* I don't think I understood you ; the answer is in full with the amendment that I would pay no man a commission that I didn't employ.

*Q.* Wasn't the testimony thus, page 129 : “ *Q.* In that  
 “ examination did you testify in substance to this : ‘ W. P.  
 “ Seymour lives in New York ; I believe he does not live in  
 10 “ Washington ; he is a real estate broker ; his office is 171  
 “ Broadway ; he is a real estate broker ; he has seen this  
 “ land of mine from 1860 to 1868 ; has seen it perhaps a  
 “ dozen times ; he has been to my house often ; I have  
 “ never known him to live there ; he had a map, and had  
 “ my lands for sale ; I could not fix the date when I saw  
 “ him ; I often saw him ; he had the lands for sale on a  
 “ commission ; I took the lands out of his hands immedi-  
 “ ately when I made this contract ; these lands were in no  
 “ other persons hands for sale in the year 1868.’ Did you  
 20 “ testify to that ? *A.* I did generally ; my recollection is  
 “ so, and that is about the form of the statement. By wit-  
 “ ness —I would like to qualify a statement I made when  
 “ Muir and Newton called at 398 West street, and asked  
 “ me if I would pay them a commission if they bought or  
 “ sold my lands ; I told them I would not pay anybody a  
 “ commission that I didn't employ to do it ; I said, if I re-  
 “ member right, yesterday, that I would not pay any man  
 “ a commission ; I want to correct it, and say my expres-  
 “ sion to Muir was that I would not pay any man a com-  
 30 “ mission that I didn't employ” —wasn't that the testi-  
 “ mony ?

*A.* That is about it.

*Q.* I think I asked you yesterday, but I am not sure, whether you ever mentioned any one as a partner of King by name before the Master in Chancery, excepting Adams ?

*A.* That was not the issue then.

*Q.* Answer that question.

*A.* My issue then was to try to get this contract out of the way ; that was the issue then ; I was not trying this  
 40 case then.

*Q.* It was somewhat material then to know who was interested in the contract?

*A.* I never seen any place that it was—only King, as he held the contract.

*Q.* Do you remember saying in your evidence: “Mr. King was up to my place between the 12th and 28th of May, at least four, perhaps six times; he met me by appointment at the train, where I met him with a team to take him and his partner over the lands, but he never brought his partner”—did you say that? 10

*A.* I remember to that purport; I guess that is about the thing.

*Q.* In referring to your testimony which I have read to you, was not Adams to come up, and wasn't that the partner you mentioned?

*A.* I expected to see his whole Company.

*Q.* Was not Adams to come up, and was not that the partner you mentioned?

*A.* He was one of them.

*Q.* Wasn't he the one you mentioned? 20

*A.* I have no doubt it is one of them.

*Q.* Wasn't he the one you mentioned?

*A.* He was the one that promised me he would come; the rest didn't.

*Q.* Wasn't it Adams that made an appointment with you to come up there with King?

*A.* Yes; he made an appointment to come up as much as two or three times.

*Q.* Is he the man you referred to as being the man not brought up? 30

*A.* I think it must have been so.

Re-direct examination.

By Mr. Vanatta :

*Q.* Do you remember any surveying being done on this tract of yours by Mallory & Miller, Engineers, from Jersey City?

*A.* The surveyors came there, I should think, about the 40

1st of May, as well as I can tell, in 1871, but Mallory & Miller I don't know ; but I saw the surveyors there.

*Q.* What were they surveying ?

*A.* Surveying this property I owned.

*Q.* The boundary lines ?

*A.* I couldn't tell ; I didn't go with them ; they got some of the neighbors there to go with them that was acquainted with the country and different lands, but I never went with them.

10 *Q.* Were there any surveyors on your property between the time you made this contract with King and the Spring of 1871 ?

*A.* Never, that I saw.

*Q.* Did you at any time know or see Mr. Muir up there watching your movements, after this contract was made with King ?

*A.* I never saw him there only the time he came up with Mr. Newton.

20 *Q.* Did you ever hear of his being up there to look after you ?

*A.* I never heard of it till I heard of it before this court—this trial.

*Q.* This contract that has been read in evidence, was it all made at one time, or part at one time and part at another.

*A.* It was only made at one time so far--

[Interrupted by Mr. Parker, objecting as no part of a re-direct—not responsive to anything brought out on the  
30 cross-examination.

Mr. Vanatta :

I didn't think of it till this morning.

Mr. Parker :

40 Don't let us take time about it ; I will admit that that contract was altered by consent of parties, so as to take in more ground than was originally described, and to increase

it from about 1,500 acres that he owned, to 2,000 that he said he would convey.

Mr. Vanatta :

The contract originally was for all the land and premises which Ruckman owned or held contracts for, situated in the township of Harrison, County of Bergen, which lay east of the old Closter road leading from Piermont to Englewood, and between the Alpine road and the old Closter Dock road and the north line of the State of New Jersey ; also, all the lands situated in said township lying between Huyler's Landing road and the old Closter Dock road, and all his land situated in Rockland County, State of New York, and lying east of the old Closter road leading from Piermont to Englewood ; and that afterwards, in the month of May, they added to the contract also two lots of land in Hackensack Township, State of New Jersey, and County of Bergen, and all of the above described premises, containing about 2,000 acres—the portion of the above land bounded by the Hudson River—that latter part, I want to show, was added somewhere about the 19th of May.

Mr. Parker :

The whole point is the number of acres, isn't it?

Mr. Vanatta :

That was added on the 19th of May.

30

*Witness :*

Yes, on the 19th of May, in Mr. Blanche's handwriting, just a week after the original contract was signed.

Mr. Parker :

The only practical use of it is to settle the actual difference in area, and you haven't settled that.

40

Mr. Vanatta :

It is a question that if it should be held that if he is entitled to commissions on what was agreed on the first contract, or whether he is entitled to commissions on the contract as amended by the additions a week after.

*Witness :*

- 10 The 800 acres, now I come to refresh my memory, is the quantity that Newton wanted to buy—that is the quantity. I think I stated before 500, but on reflection I refreshed my memory, and it was 800.

Re-cross-examination.

*Q.* You referred yesterday to your saying to Bergholz, “ Did you put that in your schedule? ”

*A.* Down on the walk.

- 20 *Q.* After that did you go to Mr. Boyd and ask him what you had said?

*A.* What I had said?

*Q.* Yes.

*A.* On that walk at that time?

*Q.* Yes.

*A.* Never, that I remember.

*Q.* Now, think?

*A.* Never, that I remember.

*Q.* Didn't you go to Mr. Boyd?

- 30 *A.* I did, and expected to have him for a witness till you, through a cloud or a bribe, engaged him—not to lead a locomotive—he is about as much to be compared to you, as an ox-team is to a locomotive.

*Q.* I was guilty of bribery, was I?

*A.* That is the way you got him away from me.

- Q.* After that I will ask you the question over again, and say to you, didn't you go to Mr. Boyd, the same day I think it was of this conversation, when you had told Bergholz this about his schedule, and asked Mr. Boyd to  
40 tell you over what you had said?

A. On the 12th of May, 1869?

Q. That is the day.

A. That day nor no other—no other time or place.

Q. Did you deny that at the last trial?

A. I don't know that it was asked me.

Q. Yes, it was.

A. I went to Mr. Boyd; I knew—

Q. I want you to answer the question. Didn't you go back to Boyd and ask him what you had said on that occasion?

10

A. I never did—no other time or place.

Q. I think you are the same Elisha Ruckman who was once punished at the Bar of this Court, for interference with jurors, are you not?

A. Yes, sir, but it was a false charge, and that gentleman [pointing to Mr. Ackerson, one of his counsel] was with me all day that they said I done it.

Q. And the same Elisha Ruckman who was convicted here of poisoning cattle?

A. Yes, sir; and they would have convicted a saint 20 with the same influence; but not one word of it was true; I proved a perfect alibi.

Mr. Vanatta:

We have subpoenaed both Mallory and Miller; we have sent an officer twice with processes for them. Yesterday Mallory appeared here in answer to subpoena, but Miller did not. Mallory brought a letter from Washington B. Williams, saying that Mallory had come here at great 30 discomfort—saying he was quite ill, and begged me to excuse him if possible. Mallory expressed his discomfort and disability, owing to the state of his health, to remain here. I found he recollected the event which I wished to prove by him, but he was not personally active in it. It was a transaction with his firm, and said the precise time was ascertainable by their books where they charged for their services, the order having been taken by his partner, Mr. Miller. Yesterday afternoon we sent an officer for him, with a process, to bring him back, and it was served 40

on his place of abode, he not being found yesterday. I think my information was that he was somewhere in Jersey City. The officer has gone again this morning to bring him here. The simple point I wanted to prove by him was as to the time when Mallory and Miller did the work of surveying this property. I mention this, that if he gets in here before the evidence is wholly and entirely closed, I may be indulged in calling him, although a little out of place.

10

Mr. Parker :

We shall make no trouble about that.

*Warren L. Barnett*, recalled by defendant, testifies as follows :

Direct Examination.

20 Q. You spoke of having made an agreement with Dr. King for the sale of 500 acres of land adjoining Ruckman's land ?

A. Yes, sir, part of it was adjoining.

Q. And I understood you to say that he had agreed to take it if his partner approved.

A. He agreed to take it, and when I went to see when he would close the arrangement—

[Interrupted by Mr. Parker, objecting as not material.]

30

Mr. Vanatta :

What I want to get at is what the contract price was that he agreed to take it at.

Mr. Parker objects to it as immaterial.

Mr. Vanatta :

40 I want to prove Mr. King's estimate of the value of lands in that locality at that time.

Mr. Parker :

I don't see how it is relevant.

*The Court :*

It won't take long to take it ; you may take it.

*Q.* What was the price King was to give you for that land? 10

*A.* \$500 an acre.

*Q.* In your conversation with Bergholz, did you learn of him what value he placed upon the Ruckman purchase?

*A.* I did not ; I don't remember that I heard him say anything about the value of it.

Mr. Vanatta :

With the exception of Mr. Miller ; when he comes we rest. 20

*William R. Bergholz, recalled.*

Direct examination :

By Mr. Parker :

*Q.* Did you ever say, or did Mr. King ever in your presence say, by any form of words, that you and he were partners in this purchase of Mr. Ruckman? 30

*A.* No, sir.

*Q.* When you were examined before the Master, did you blurt out any portion of your testimony as Mr. Ruckman has declared?

*A.* I did not blurt, if I understand the meaning of that word.

*Q.* In what manner was that examination conducted?

*A.* Very carefully, indeed.

*Q.* Was there Counsel on both sides?

*A.* Yes, sir, Counsel on both sides. 40

*Q.* And did you answer questions only?

*A.* Only questions.

*Q.* Did you on the 13th or 15th of May, or at any time, declare to Mr. Ruckman, or say in his presence, that you were interested jointly with Mr. King, in that original purchase?

*A.* I never said so to Mr. Ruckman.

*Q.* Something has been said about your being asked on the next day after this contract, about your being at  
10 Washington, by Mr. Ruckman—was there anything of that sort said at that time?

*A.* Not that I recollect.

*Q.* Do I understand you or not—did you say when next after the time you introduced Mr. King, did you see Mr. Ruckman?

*A.* No, sir.

*Q.* When next after that did you see him?

*A.* I don't know when; I don't think I saw Mr. Ruckman till in Jersey City.

20 *Q.* You said that you knew Charles G. Rehwoldt?

*A.* I do know him.

*Q.* Can you call to mind any conversation that you had with him, such as he refers to?

*A.* No, sir.

*Q.* In what year did you talk with him?

*A.* In 1868; till late in the fall I resided in Hoboken, and I may have spoken to him about my affairs in 1869 when I was living in the same house, where he lived for a little while—from the fall of 1869 till March, 1870, when I  
30 went to Arkansas.

*Q.* The question is, did you in 1868 talk with him about the interest in the Ruckman property, and your having purchased it, in the spring of 1868?

*A.* No, sir.

*Q.* Are you able to say whether you ever conversed with him in the spring of 1868, at the door of the 5th Avenue Hotel in New York, or at any other time in relation to your interest in that property?

*A.* I am pretty certain I did not.

40 *Q.* Do you remember meeting him in 1869, at the 5th Avenue Hotel?

A. Yes, sir, I was living then next door to the 5th Avenue Hotel.

Q. Did you in the spring of 1868, any where tell Reh-woldt to the effect that you had bought with others a large portion of land and expected to make a good fortune in it, and you was obliged to live in Jersey because you were a land owner in Jersey?

A. No, sir, I was obliged to live in Jersey under the laws of the State, because I was a Director in the New York and Fort Lee Railroad, and a majority of the Direc- 10 tors had to live in this State, and I was selected as one to come here.

Q. When did you come to Hoboken?

A. Early in 1868, about February or March, I think, and I remained there till the fall of 1868; then I resigned as Director and chief engineer of the New York and Fort Lee, and I was at liberty to move back to the State of New York.

Q. Did you tell Mr. Thompson, the President of your Company, just after the purchase of King, to the effect 20 that King had purchased it, and you were interested in the purchase?

A. Mr. Thompson and myself did not speak together at that time.

Q. You were in the same office then?

A. I was in the same office, and partly in the Fort Lee office, 33 Broad street.

Q. You say you did not speak together then?

A. No, sir, not on business matters.

Q. There was ill-feeling? 30

A. Yes, sir.

Q. What offices had you at that time?

A. I was chief engineer of the New York and Fort Lee.

Q. And your were still consulting engineer of the West Shore and Hudson River?

A. I was.

Q. Where was the office of the Fort Lee?

A. 33 Broad street.

Q. You retained your desk at 20 Nassau street at that time. 40

A. I did.

Q. So that you did go there at times?

A. Yes, sir.

Q. Did you say anything to Mr. Thompson just after the purchase of King was made, to the effect that King had purchased it and you were interested in the purchase?

A. No, sir.

Q. Did you know Mr. Drake, the other one of the witnesses?

10 A. Yes, sir.

Q. He speaks of a conversation as having occurred between you and him, in which you said something to the effect that the first tender of the payment on the contract had been made, and you knew your interest was secure, and that tender had been made yesterday or the day before, and your interest was secure?

A. I had a conversation with Mr. Drake on this subject, after the tender of 99,900.

20 Q. Was that tender the only tender that you personally saw?

A. The only tender I personally saw and was present at, yes, sir.

Q. Did you know anything of the other tender?

A. No, sir, till the 1st of July.

Q. Had you heard of the \$20,000 tender?

A. I think not.

Q. Have you any recollection of the conversation you had with Mr. Barnett, in relation to those lands?

30 A. I have not this land, not Ruckman's; I haven't the slightest recollection.

Q. What was the fact as to your connection with this other land that was about to be purchased?

40 A. As near as I can recollect, I was introduced by Dr. King to Mr. Barnett on the 1st of July, 1868, I believe in Jersey City, and Mr. Barnett—I don't recollect if Dr. King said that Mr. Barnett had some lands for sale at the time or not, but I do recollect that Barnett came to see me at my office, 33 Broad street, and stated to me that he had lands; I don't recollect the number of acres, if he said 3, 4 or 500, I don't  
recollect, and wanted me to get him a purchaser; I believe

on one occasion I told him that Mr. Hay might buy with others, and I introduced him to Mr. Hay; on one occasion I recollect this, I recollect meeting Barnett once after that in the latter part of 1868 in Mr. Adams' office; we then were anxious to get out the surveys and get at the extent of the number of acres which were in that property, and Barnett had mentioned to Mr. Adams and to me, that he thought he could get us a map of Ruckman's if we would pay him; I don't know whether he asked 50 or \$100.

Q. You did have conversation with him, and to what 10 lands did it relate to?

A. To his own lands, either 3, 4 or 500 acres.

Q. What was the state of facts between you and Mr. King at that time in relation to these lands? were you a partner in this land, or did you expect to be?

A. If those lands were bought, I expected to be interested.

Q. The lands were actually not bought?

A. No, sir.

Q. Mr. King did not buy them? 20

A. No, sir.

Q. Did he buy any other lands that you had any interest in?

A. No, sir, he bought some other lands, I believe, but I had no interest in them.

Q. Did you in your conversation with Barnett use any language to the effect, or with the meaning, that you had been interested with Mr. King in the original purchase of the Ruckman tract?

A. I never did. 30

Cross-examination.

Q. You say that when you were examined in the Chancery suit, on the 12th of May, 1869, the questions put to you were put by counsel on each side—both the direct examination and cross-examination was conducted by counsel, did you?

A. I think so.

Q. Do you know so? 40

- A.* Yes, sir ; there were three or four lawyers there.
- Q.* What lawyer put questions to you on behalf of Mr. Ruckman ?
- A.* I don't recollect the gentleman's name.
- Q.* Was there any lawyer that cross-examined you there that day ?
- A.* I think there was.
- Q.* Who was it ?
- A.* I don't know the name.
- 10 *Q.* How do you know there was any lawyers examined you for Mr. Ruckman, or cross-examined you ?
- A.* I was asked questions by Mr. Ruckman and by this lawyer.
- Q.* Ruckman did ask you questions ?
- A.* I think he did ; still I won't be positive about it.
- Q.* Did anybody besides Ruckman on cross-examination ask you any questions ?
- A.* I think so.
- Q.* Can you tell who it was ?
- 20 *A.* No, sir, I can't give any names.
- Q.* What lawyers were there on the part of King ?
- A.* I think Mr. Boyd and Mr. Holcomb.
- Q.* Was Fowler there ?
- A.* No, sir, I think not—no, he was not there.
- Q.* When did you commence to live in Hoboken ?
- A.* In 1868 ; probably February or March ; I staid there till the Fall of 1868.
- Q.* You say that in May, 1869, you and Thompson didn't speak together ?
- 30 *A.* I didn't say May, 1869 ; May, 1868.
- Q.* In May, 1868, you and he didn't speak together ?
- A.* I didn't mean to say we didn't speak together—he may speak to me officially, but he didn't speak to me about his matters, nor I to him about my matters.
- Q.* Had there been any quarrel between you and him ?
- A.* No, sir ; no special quarrel—no open quarrel ; he never liked me ; I never liked him.
- Q.* How long had that ill-feeling been existing ?
- A.* Not long.
- 40 *Q.* About when did it start ?

A. I don't know.

Q. You still occupied a desk within a few feet of him all the time?

A. Yes, sir, I had as much right to a desk there as he did, otherwise he never would have allowed me if I had not a right.

Q. And you spoke to him?

A. Officially, whatever we had to say; Thompson was the President of the railroad; I was the Consulting Engineer; I suppose if he had anything to ask or say officially, he would say, and I officially answered it. 10

Q. You were particular to be official whenever you talked?

A. I didn't say so; I simply wanted to convey the idea—if I am able to do it—that Thompson had no inclination to speak to me only when it was necessary; I had no inclination to speak to him only as it was necessary; that is what I mean by officially.

Q. If you intervened to break up his negotiations he probably had some occasion to speak to you, hadn't he? 20

A. I don't know that there were any negotiations except as I state; I never broke up anything.

Mr. Parker:

Q. The date of your removal to Hoboken has been spoken of. Look at your memorandum-book and see if you can refresh your memory and state the exact date.

A. [Looking at book.] I moved over to Hoboken on the 18th of March, on Wednesday. 30

Plaintiff rests.

Case closed.

NEW JERSEY SUPREME COURT.

10

WILLIAM R. BERGHOLZ,

*vs.*

ELISHA RUCKMAN.

}  
} *Requests.*  
}

Defendants's Counsel requests the Court to charge the Jury as follows :

20

1. That the first alleged employment, by the defendant, of the plaintiff to sell defendant's lands for ordinary commissions, (which are said to be two and one half per cent.) according to the plaintiff's own evidence, was waived and abandoned when the alleged agreement to pay double commissions was made, and no recovery can legally be had on any alleged employment made prior to the making of the alleged agreement to pay double commissions.

30 2. If the Jury are not satisfied that the defendant

agreed to pay the plaintiff a commission of five per cent., and are satisfied that the plaintiff has so alleged and attempted to prove for the purpose of misleading the Jury, and imposing upon and defrauding the defendant, then the Jury may and should render the verdict for the defendant.

3. That no verdict can be rendered in favor of the plaintiff upon the first count in the declaration without satisfactory proof that the plaintiff effected a sale as well as introduced a purchaser. That there has been no evidence given in this case, sufficient to sustain a finding that the plaintiff effected a sale to King, and that, therefore, there can be no finding in favor of the plaintiff on that count. 10

4. That the alleged agreement to pay two and one half per cent. commission having been abandoned, and the special agreement set out in the first count of the declaration, not being proved; if the defendant employed the plaintiff to merely introduce a customer, there was no amount or rate of compensation agreed upon between the parties, and for whatever services the plaintiff may have actually rendered to the defendant after the first agreement was abandoned; in finding and introducing a purchaser, he can only recover a reasonable compensation for the time consumed and labor actually bestowed in finding a purchaser and making the introduction. 20

5. That as according to the plaintiff's evidence in this trial he was not a real estate broker, and did not hold himself out to the world as such, and had not previously acted as such, there can be no implication that the defendant was to pay, or the plaintiff to receive the commissions usually charged by those who are engaged in, and carrying on the business of land brokers, for introducing purchasers and such, commissions cannot reasonably or justly be awarded to the plaintiff. 30

6. If the plaintiff was employed by the defendant as his agent to sell the land, for the sale of which he claims com- 40

missions, the plaintiff had no right to purchase, or to be one of the purchasers of that land, without the consent of the defendant, given after being informed that the plaintiff was one of the buyers, and if the plaintiff was interested in the purchase without Ruckman's consent, when King made the contract that he, the plaintiff, should at the same time be a buyer and the selling agent also, the plaintiff cannot recover in this action.

10 7. That the plaintiff's claim in this suit in form and in substance is a claim for unliquidated damages, dependant upon the number of acres Ruckman might be able to convey by good title, as the number of acres he could so convey was not ascertained, and as the plaintiff made no effort with nor offer to the defendant to ascertain or settle upon the number of acres he could convey by good title before the commencement of this suit, if entitled to recover anything, he is not entitled to be allowed any interest for the time prior to the commencement of this suit.

20 8. That the remarks of the plaintiff to the defendant, "is it not about time to pay my commission for selling this land," made May 12th, 1869, was not an offer to ascertain or agree upon the amount of his alleged commissions, nor can it be regarded as such a demand of payment as in this case can entitle the plaintiff to be allowed any interest for any time prior to the commencement of this suit, nor for any time prior to the ascertainment of the number of acres defendant could convey by good title.

## C H A R G E .

GENTLEMEN OF THE JURY : As you are already aware the present action is brought to recover the amount of commissions which William R. Bergholz alleges is due to him from Elisha Ruckman on account of services rendered to Ruckman in effecting the sale of a certain tract or tracts of 10 land. The insistent of the plaintiff is that he was employed by the defendant to sell a quantity of land of about 1,800 acres, and that, in pursuance of that employment, he did certain things which caused the execution of an agreement between Ruckman and one King, by which agreement Ruckman contracted to sell the said land or part of the same to King for the price of \$275 per acre.

The first question which I will submit for your determination is this : Was there an employment of Bergholz by Ruckman to sell this property, or any portion of it. The 20 evidence upon this point is conflicting, the plaintiff testifying to the contract of employment and its terms, and the defendant denying the existence of any such employment. The testimony of the plaintiff is that he, the defendant, followed him out of the office, 20 Nassau street, and spoke to him, the plaintiff, about the sale of this property, and the plaintiff said, " If you pay me a commission I will make some effort ;" that the defendant said, " All right—go on"—but that something must be done soon." Then follows the introduction of Muir, and the conversation on the 30 stairs, in which the plaintiff says that Ruckman said he would not pay commissions to but one person. This is the first conversation between the parties concerning any employment. Afterwards follows the conversation after Bergholz had expressed doubts as to Muir taking the property, and it is upon this conversation that the plaintiff relies to establish the special employment upon which the plaintiff declares in the first count of his declaration, and which has been the principal feature of the plaintiff's case. Bergholz says that the conversation was substantially this : that if 40

he, Bergholz, would find a purchaser for this tract of land at the rate of \$250 or \$275 an acre, the defendant would pay the plaintiff double commissions, or five per cent. Then Bergholz says, "I asked what he would give me or "pay me if I could find a purchaser for \$275 per acre," and Ruckman replied that if I could find such a man "bring "him on—fetch on your man—let me see him," or something to that effect, and I said then, no, Mr. Ruckman, I won't do that, I want to know precisely what I am to have,

10 if you will double my commissions, pay me five per cent., I will find a purchaser at the rate of \$250 or \$275 an acre, and Ruckman said, "All right—go on." Now, gentlemen, this conversation is the basis of the alleged special contract of employment for the sale of this land, and the defendant denies that employment as set out by Bergholz entirely, and the existence of any such contract is entirely a question for you. You must look at the testimony and make up your minds whether there was really any such contract for employment, on the terms stated in that conversation,

20 and if you conclude that there was such a contract entered into between the parties, then the next question is, did Bergholz perform the contract, did he do that which entitled him to the five per cent. You recollect that on May 12th, 1868, an agreement was entered into between Ruckman and King, for the sale of land therein mentioned as amounting to about 2,000 acres. A portion of that tract, at least, was the same land which Bergholz insists he was employed to sell, and, therefore, the question arises, did

30 Bergholz procure the purchaser for the sale from Ruckman to King. It is not necessary, gentlemen, that he should actually have made the agreement for that sale, or have been present when the agreement was executed; if you believe that he was the procuring cause of the sale, it is sufficient. If in the performance of that agency he brought the parties together to negotiate, or caused them to come together to negotiate, and such negotiations resulted in a sale, it is sufficient. Again, if you find that Bergholz was the procuring cause of such sale from Ruckman to King, acting as Ruckman's agent, under such special agreement

40 to pay five per cent. on the amount of said sale for effect-

ing it, the plaintiff would be entitled to recover that per cent. upon the amount of said sale at the rate of \$275 per acre.

All this, gentlemen, is subject to another matter which may prevent a recovery, to which I will hereafter allude. The amount, therefore, having found the special agreement and sale, will depend upon the number of acres of land, which Bergholz was employed to sell, contained in the tract which Ruckman did sell to King. The area of that tract is left in a great deal of uncertainty. The contract between Ruckman and King, made on May 12th, mentions about 2,000 acres. The conveyance made by Ruckman to King is for 1,353 acres. This last number of acres is not conclusive of the number of acres in the contract to sell, for it does not appear that all the land agreed by Ruckman to be sold to King, was actually conveyed by Ruckman to King. You must make up your minds from the statements of the parties, the proportion of the land which was included in both the contract of Bergholz to procure a sale, and the agreement of Ruckman to sell to King; that is, the amount of land which was contained in both of these contracts; the contract by which Bergholz was employed to sell, and also in the contract by which Ruckman agreed to sell to King. Having found the number of acres, to the best of your ability, and having found the special contract to sell, and that the sale was procured by Bergholz, your computation of the damages is simple. All this, gentlemen, is upon the assumption that you have found the special contract, and the performance by the plaintiff of the special contract to procure a purchaser for all or part of the property conveyed to King. Now, if you find that there was no employment at all of Bergholz by Ruckman to effect a sale of this property, that ends the case, the plaintiff cannot recover; but if you find that there was no special agreement to sell for 250 or \$275 per acre at five per cent. commission, but you believe that there was an employment upon terms different from the special contract to sell this property, and that Bergholz did sell or cause to be sold the said property, then the plaintiff is entitled to re-

cover ; but the measure of compensation, however, will be different. If the employment was to sell for a different rate of computation, then you must conform your verdict to such rate, and if you find a general employment to sell this property, with no rate of compensation mentioned, then you will find the amount which the labor and services of Bergholz in causing and procuring a sale were reasonably worth. In estimating the value of such labor and services, you must not consider Bergholz a professional  
 10 broker. The employment of Bergholz by Ruckman, under those circumstances, would raise no implied promise to pay any ordinary rate of commissions. You are, therefore, not to take the ordinary rate of commissions payable to brokers, as conclusive of the amount plaintiff would be entitled to ; but that rate may be considered with other evidence and circumstances in making up your verdict of the value—the actual value of such labor and services of the plaintiff, considering him as an ordinary agent.

20 You will perceive, therefore, that you must first find an employment, if you do not find that the case ends. If you do find such an employment you should find the nature of it, whether for five per cent., or any other rate, or with the mention of no particular rate.

Secondly, you should find that Bergholz caused the sale of the land, or a part of the land which he was employed to sell. Now, gentlemen, if you should find these two things, that there was an employment, and in pursuance of that  
 30 employment Bergholz procured the sale, still, it may not be necessary for you to consider the number of acres, or other matters necessary to fix the damages in this case. The defendant insists that even if it is true that there was such an employment to sell and he did procure the sale, yet, he cannot recover in this action, because at the time of the said sale or agreement for sale, he was interested in the transaction as a part purchaser, without notice to Ruckman of the fact of his interest as such part purchaser at that time. The law is that an agent cannot become the  
 40 buyer at a sale made for his principal, unless he is known

to his principal at that time to be a purchaser. The law requires a man to put off the character of an agent when he assumes that of a principal. I charge you that if you believe that Bergholz was on the 12th of May, 1868, in-interest with King as a purchaser, with no notice of such interest given at the time to Ruckman, then you must find for the defendant. The defendant must convince you, however, from all the testimony and circumstances, of the existence of such interest and want of knowledge, but if you are convinced, it is a complete de- 10  
fence to the action. And now, gentlemen, if you pass through all these stages of the suit, if you find an employment and sale, and the defendant has not established the fact of interest in the plaintiff as purchaser, you will find for the plaintiff, according to the instructions, I have already attempted to give, and you will compute interest upon that sum from the 12th of May, 1868, up to the first of June, the day of the meeting of our Supreme Court. But if you find that there was no employment and no procurement of this sale, or, if you find that he was actually 20  
interested at that time, as I have already stated, you must find for the defendant.

As to the written requests of the defendant's counsel the Court declines to charge further than is already charged.

Defendant's counsel excepts to the refusal of the Court to charge as requested, and prays that his exception may 30  
be sealed, and it is sealed accordingly.

ALFRED REED,

*Jus. Sup. Ct.*



Defendant's counsel excepts to so much of the charge as is contrary to the requests made by the defendant, and prays that his exception may be sealed, and it is sealed accordingly.

ALFRED REED,

*Jus. Sup. Ct.*



NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ELISHA RUCKMAN.

*vs.*

WILLIAM R. BERGHOLZ,

*In Error.*

20

Afterwards, that is to say, on the twenty-ninth day of June, in the year of our Lord eighteen hundred and seventy-five, before the Judges of the Court of Errors and Appeals, in the last resort in all causes, comes the said Elisha Ruckman, by Jacob Vanatta, his attorney, and says that in the record and proceedings aforesaid, and in the giving of the judgment aforesaid, there is manifest error in this, to wit: That by the record and proceedings aforesaid, it 30

appears that judgment was rendered in favor of the said William R. Bergholz, and against the said Elisha Ruckman, when by the law of the land, the said verdict and judgment should have been rendered in favor of the said Elisha Ruckman and against the said William R. Bergholz.

2. There is also manifest error in this, to wit: That by the bills of exception, sealed at the trial of said action, it  
 10 appeared by the testimony of the said William R. Bergholz, then and there given, that he had before the said trial, sold and assigned his interest in the lands and in the contract for the sale of lands by said Elisha Ruckman to one King, mentioned in the said declaration; whereupon the said William R. Bergholz, while giving his testimony at said trial as a witness therein, in his cross-examination for the said Elisha Ruckman, was asked, on the part of said Ruckman, for how much he sold his interest in said land and said contract, which question, on objection made  
 20 thereto for the said William R. Bergholz, was overruled, dis-allowed, and not permitted to be answered by the Justice of the Supreme Court, before whom the said trial was had; whereas, by the law of the land, the said question should not have been overruled or dis-allowed, but should have been permitted to be answered, therefore in that there is manifest error.

3. There is also manifest error in this, to wit: That it  
 30 appears by the said Bills of Exception, that on the trial of this case, the said Elisha Ruckman, when said Bergholz was being examined as a witness in said case on said trial, without objection, proved by said Bergholz, that he, said Bergholz, had testified on a previous trial that he, said Bergholz, had sold and assigned his interest in said lands, and in said contract, and had received therefor the sum of twenty thousand dollars, and thereupon, after said testimony, and other testimony following it had been given, the said William R. Bergholz, by his counsel, moved the said  
 40 Justice to overrule the said testimony as to the price or

amount said Bergholz had received for his said interest, which motion was granted by the said Justice, and said testimony was overruled and excluded, when by law it should not have been excluded, and in that there is manifest error.

4. There is also manifest error in this, to wit : That on the said trial, and when the said William R. Bergholz was being examined as a witness therein, for the purpose of showing his credit and credibility as a witness in said cause, said Ruckman proposed to put certain questions to said Bergholz, as to whether or not he had given certain testimony as a witness in a certain Court, in the city and State of New York, as to his having procured from Congress, legislation granting the right of way for a certain railroad referred to in said trial, through lands of the United States at West Point, New York, by bestowing, or giving railroad bonds to Members of Congress, said questions were by the said Justice prohibited, and the evidence intended to be elicited thereby was excluded, whereas by the law of the land said questions should have been allowed to be put and the answers to them given, and in that there is manifest error.

5. There is also manifest error in this, to wit : That on the trial of this case, when said Bergholz was being examined as a witness therein, the said Elisha Ruckman offered and read in evidence a certain Deed of Assignment, made by the said William R. Bergholz, to one ——— Raymond, dated March 6th, 1871, and thereupon asked said Bergholz this question :

“ Does this assignment which you have just heard read— “ does that express the true consideration therefor?” which question being objected to by the counsel of said Bergholz, was overruled by the said Justice and not allowed to be answered ; whereas, by the law of the land, said question was legal, relevant and material, and should have been answered, and in that there is manifest error.

6. There is also manifest error in this, to wit: That at the trial of this case, the said Elisha Ruckman offered to prove, that said Bergholz, on and prior to the 12th of May, 1868, professed to be and was engaged in the business of a real estate broker, and that for that, or on that account, he had never paid any taxes to the United States Government, nor had he received any license, as required by the laws of the United States, for carrying on that business, which evidence the said Justice overruled and refused to  
 10 receive; whereas, by the law of the land, the said evidence should have been received and admitted, and in that there is manifest error.

7. There is also manifest error in this, to wit: That at the said trial, after the said parties had, severally, put in their evidence, and after each of them had rested his case, the said Elisha Ruckman, by his counsel, before the said Jury had retired to consider of their verdict, and before  
 20 the said Justice had delivered his charge to said Jury, requested the said Justice to charge the said Jury, that the first alleged employment by said Ruckman of said Bergholz, to sell said Ruckman's lands for ordinary commissions (which are said to be two and one-half per cent.), according to the plaintiff's own evidence, was waived and abandoned when the alleged agreement to pay double commissions was made, and that no recovery could legally be had on any alleged employment made prior to the making of the alleged agreement to pay double commis-  
 30 sions, but the said Justice declined and refused so to charge; whereas, by the law of the land, he should have charged so as aforesaid requested, and in that there is manifest error.

8. There is also error in this to-wit: that at the said trial, after the putting in of evidence had ceased, before the said Jury had retired to consider of their verdict, and before the said Justice had charged the said Jury, the said Elisha Ruck-  
 40 man, by his counsel, requested the said Justice to charge

said Jury that " if the Jury were not satisfied that the said  
 " Elisha Ruckman agreed to pay the said William R. Berg-  
 " holz a commission of five per cent., and are satisfied that  
 " said Bergholz had so alleged and attempted to prove, for  
 " the purpose of misleading the Jury and imposing upon  
 " and defrauding said Ruckman, then the Jury might and  
 " should render the verdict for said Ruckman," which charge  
 the said Justice then and there declined and refused to  
 make, whereas, by the law of the land, the said Justice  
 should have charged so as aforesaid last requested, and in 10  
 that there is manifest error.

9. There is also error in this, to wit : that at the said  
 trial, after the evidence of both parties was closed, before  
 the said Jury had retired to consider of their verdict, and  
 before the said Justice had delivered his charge to said  
 Jury, the said Elisha Ruckman, by his counsel, requested  
 the said Justice to charge the said Jury, that no verdict  
 could be rendered in favor of said Bergholz on the first 20  
 count in the declaration, without satisfactory proof that the  
 said Bergholz effected a sale as well as introduced a pur-  
 chaser. That there had been no evidence given in the  
 case sufficient to sustain a finding that said Bergholz had  
 effected a sale to King, and that, therefore, there could be  
 no finding in favor of the said Bergholz on that count ;  
 but said Justice then and there declined to charge as, so  
 as last aforesaid requested, whereas, by the law of the  
 land, he should have so charged, and in that there is mani-  
 fest error. 30

10. There is error also in this, to wit : that at the said  
 trial, after the evidence of both parties was closed, before  
 the said Jury had retired to consider of their verdict, and  
 before they had been charged by the said Justice, the said  
 Elisha Ruckman, by his counsel, requested the said Justice  
 to charge the said Jury that the alleged agreement to pay  
 two and one half per cent. commission having been aban-  
 doned, and the special agreement set out in the first count 40

of the declaration not being proved, if said Ruckman employed said Bergholz to merely introduce a customer, there was no amount or rate of compensation agreed upon between the parties, and for whatever services said Bergholz may have actually rendered to said Ruckman after the first agreement was abandoned, in finding and introducing a purchaser, he could only recover a reasonable compensation for the time consumed and labor actually bestowed in finding a purchaser and making the introduction; and  
 10 that as, according to the evidence of said Bergholz in that trial, he was not a real estate broker and did not hold himself out to the world as such, and had not previously acted as such, there could be no implication that said Ruckman was to pay or said Bergholz to receive the commissions usually charged by those who are engaged in and carrying on the business of land brokers, for introducing purchasers and such, commissions can not reasonably or justly be awarded to said Bergholz, but said Justice refused to charge as so, as last, aforesaid, requested,  
 20 whereas, by the law of the land he ought so to have charged and in that there is manifest error.

11. There is also error in this, to wit: that at the said trial, after the evidence on both sides was closed, before the said jury retired to consider of their verdict, and before the said jury had been charged by the said justice, the said Elisha Ruckman, by his counsel, requested the said Justice to charge the said jury that the claim of said Bergholz  
 30 in said suit, in form and in substance is a claim for unliquidated damages, dependent upon the number of acres said Ruckman might be able to convey by good title, as the number of acres he could so convey was not ascertained, and as said Bergholz made no effort with nor offer to said Ruckman to ascertain or settle upon the number of acres he could convey by good title before the commencement of this suit, if entitled to recover anything, he is not entitled to be allowed any interest for the time prior to the commencement of this suit, but the said Justice refused so to

charge, whereas, by the law of the land, he ought so to have charged, and in that there is manifest error.

12. There is error also in this, to wit: that at the said trial, after the evidence on both sides was closed, before the said jury had retired to consider of their verdict, and before the said Justice had delivered his charge to said jury, the said Elisha Ruckman, by his counsel, requested the said Justice to charge the said jury that the remark of said Burgholz to said Ruckman—"Is it not about  
"time to pay my commissions for selling this  
"land?"—made May 12th, 1869, was not an offer  
to ascertain or agree upon the amount of his al-  
leged commissions, nor can it be regarded as such a de-  
mand of payment, as in this case can entitle the said Berg-  
holz to any interest for any time prior to the commence-  
ment of this suit, nor for any time prior to the ascertain-  
ment of the number of acres said Ruckman could convey  
by good title, but the said Justice refused so to charge, 20  
whereas, by the law of the land, he should so have charged,  
and in that there is manifest error.

13. There is also error in this, to wit: that after, at the said trial, the evidence on both sides had been closed, the said Justice, in charging said jury, said to them, in case they should find in favor of said Bergholz, "You will com-  
"pute interest upon that sum from the 12th of May, 1868,  
"up to the first of June, the day of the meeting of our Su- 30  
"preme Court," whereas, by the law of the land, the said  
Justice should not have so charged, and in that there is  
manifest error.

Therefore, the said Elisha Ruckman prays that the judgment aforesaid for the errors aforesaid, and for the errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said Elisha Ruckman may be restored to all things he has 40

lost on occasion of said judgment, and that the said William R. Bergholz may rejoin to the said errors.

JACOB VANATTA,  
*Attorney of Plaintiff in Error.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

ELISHA RUCKMAN.

*vs.*

WILLIAM R. BERGHOLZ,

*Joinder in Error.*

And hereupon, afterwards, to wit, on the                    day of  
1875, before the Court of Errors and Appeals, <sup>10</sup>  
comes the said William R. Bergholz by Parker & Keasbey  
his attorneys, and says that there is no error in the said  
record or proceedings, or in the giving of the judgment  
aforesaid, and he prays that the said Court now here, may  
proceed to examine, as well the record and proceedings  
aforesaid as the matters aforesaid above assigned for error,  
and that the judgment aforesaid in form aforesaid given,  
may be in all things affirmed.

PARKER & KEASBEY,

*Attorneys of Defendant, in Error.* 20

# INDEX.

---

	Page.
Pleadings and Judgment.....	3
<b>WITNESSES.</b>	
JOHN J. MUIR.....	10
Cross.....	14
Re-Direct.....	41
WM. R. BERGHOLZ.....	46
Cross.....	58
Re-Direct.....	146
Re-Cross.....	154
Further examined by Mr. Parker.....	158
“    “    “    Mr. Vanatta.....	160
BENJAMIN W. KING, taken from book of last trial.....	161
Cross.....	163
ELISHA RUCKMAN, taken from book in Court of Chancery.....	169
<b>DEFENSE.</b>	
WM. R. BERGHOLZ.....	170
Deposition in Court of Chancery.....	171
Cross.....	173
Re-Called.....	241
Cross.....	245
JOHN J. DONALDSON, Deposition.....	179
FREDERICK B. BETTS.....	181
Cross.....	185
CHARLES G. REHWOLDT, Deposition.....	188
AMBROSE W. THOMPSON, “.....	189
ALLEN HAY, “.....	191
WILLIAM L. DRAKE “.....	192
WARREN L. BARNETT.....	194
Cross.....	202
Re-Called.....	240
ELISHA RUCKMAN.....	203
Cross.....	221
Re-Direct.....	235
Re-Cross.....	238
Requests.....	248
Charge.....	251
Assignments of Errors.....	257

