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NEW JERSEY COURT OF ERRORS & APPEALS.

Between JOSEPH HOLMES and others, Appellants, *and* BENJAMIN STOUT and JOHN WILLIAMS, Appellees.	On Appeal from Decree of Chancellor Haines.

STATEMENT OF THE CASE.

BILL.

To William Pennington, Esq., Governor and Chancellor of the State of New Jersey and Ordinary in the same.

Humbly complaining, shew unto your Excellency, your orators and oratrices, Joseph Holmes, Catharine Holmes, John Predmore, and Lenah his wife, Gilbert Holmes, and John H. Chamberlin, of the township of Dover, county of Monmouth, and State of New Jersey, that on or about the twenty-third day of August, in the year of our Lord one thousand eight hundred and seventeen, one Andrew Bell was seized in fee simple of the following described tract or parcel of land; viz: situate lying and being in the township of Dover, county of Monmouth, and eastern Division of the State of New Jersey, on the north side of the North Branch of Forked river, beginning at the sixth corner of a tract of forty-five acres and fifty-three hundredths of an acre, returned to John Holmes on the 8th of October, A. D. 1759, and recorded in book S 4, page 241; thence running (1,) east seventeen chains and fifty links; thence (2,) south, 10

twenty-five degrees and thirty minutes east, twenty chains; thence (3,) south, thirty-nine degrees west, thirteen chains; thence (4,) north, eighty-two degrees west, twenty-seven chains and seventy links; thence (5,) north, fifty degrees east, thirteen chains; thence (6,) sixteen chains to the place of beginning, containing sixty-four acres and four hundredths of an acre strict measure. And being so siezed thereof, he the said Andrew Bell, on the said twenty third day of August, eighteen hundred and seventeen, for a valuable conside-
10 ration, to-wit: for the sum of eighty dollars or thereabouts, as your orators believe, then paid him by one John Holmes, Jun.. or secured to be paid, bargained, sold and conveyed by a deed of bargain and sale in fee simple, the said tract of land and premises with the appurtenances, to the said John Holmes, Jun., and all the right of the said Andrew Bell thereto, to have and to hold the same to the said John Holmes, Jun., to him, his heirs and assigns forever; which said deed was, at the date thereof, duly signed and sealed, and duly acknowledged according to law, by the said An-
20 drew Bell, and delivered by said Bell to John Holmes, Jun. Which said deed, the said John Holmes, Jun., did not cause to be recorded in the Clerk's office of the county of Monmouth according to law, but the said John Holmes, Jun., for the purpose of defrauding one John Holmes, Sen., and your orators and oratrices, as hereinafter mentioned, omitted to put the said deed upon record, and has either destroyed the same or keeps it concealed and out of the power of your orators, for the purpose of defrauding your orators and oratrices as hereinafter mentioned, and has removed
30 himself out of the State of New Jersey and the jurisdiction of this court.

And your orators and oratrices further shew unto your Excellency, that the said John Holmes, Jun., immediately after his said purchase of said tract of land from said Bell, entered upon the possession of said land and held, occupied, possessed and enjoyed the same, until the tenth day of December, eighteen hundred and seventeen, on which said tenth day of December eighteen hundred and seventeen, he the said

John Holmes, Jun., for and in consideration of the sum of fifty dollars to him then paid by one John Holmes, Sen., the father of your orators and oratrix Joseph Holmes, Catharine Holmes, and Gilbert Holmes, and grand-father of John H. Chamberlin, and Lenah, wife of John Predmore, your orators and oratrix, bargained, sold and conveyed in fee simple to John Holmes, Sen., by deed under his hand and seal, duly signed, sealed, delivered and acknowledged according to law, the following described tract of land, the same being part of the tract of land first hereinbefore described, viz: All that 10 tract of land situate on the north side of the North Branch of Forked River, in the township of Dover, in the said county of Monmouth, and eastern division of the State of New Jersey, being part of a tract of land surveyed and returned to Andrew Bell, Esquire, for sixty-four acres and four-hundredths, on the fifteenth day of May, 1817, and recorded in book S 18, page 160. Beginning at the sixth corner of forty-five acres and fifty-three hundredths of an acre strict measure, returned to John Holmes, dec'd, the eighth October, A. D., 1759, and recorded in book S 4, page 241; also being 20 the beginning corner of the said sixty-four acres and four hundredths of an acre; thence (1,) east ten chains; thence (2,) south, one degree east, sixteen chains and fifty links; thence (3,) south, sixty degrees west, seventeen chains; thence (4,) north, eighty-two degrees west, five chains and fifty links; thence (5,) north, fifty degrees east, thirteen chains; thence (6,) north sixteen chains to the place of beginning, containing twenty-two acres strict measure, which said last mentioned deed was duly recorded in the Clerk's office of the county of Monmouth, on the nineteenth day of 30 October, eighteen hundred and twenty-seven, in book O 2, of deeds, page 408, by William Ten Eyck, Esquire, then Clerk of said county, as by reference to said last mentioned deed, now in your orators' possession and ready to be produced, as this honorable court shall direct, may more fully and at large appear.

And your orators and oratrices further shew unto your Excellency that the said John Holmes, Sen., immediately

after the execution of said deed, entered into the possession of the said last mentioned tract of land and held, occupied, and possessed and enjoyed it as his own until his death, which occurred on or about the thirteenth day of September, eighteen hundred and thirty-one. And they further shew unto your Excellency, that the said John Holmes, Sen., died as aforesaid, intestate, leaving Catharine Holmes, his widow, him surviving, and Joseph Holmes, Stephen Holmes, Alice Conover, wife of Daniel Conover, Jacob Holmes, William
10 Holmes, Maria Holmes, Gilbert Holmes, Catharine Holmes, Jr., his children, and Lenah, wife of John Predmore, and John H. Chamberlin, his grand children and heirs at law, who entered upon the premises lastly above described, and possessed them in common until the delivery of the hereinafter mentioned deed to Joseph Holmes, whereby on the thirteenth day of September, eighteen hundred and thirty-two, the said Stephen Holmes and Mary, his wife, Catharine Holmes, widow, Daniel Conover and Alice, his wife, Jacob Holmes and Sarah, his wife, Maria Holmes, by deed
20 of bargain and sale, under their respective hands and seals, conveyed all their interest in the said last mentioned tract of land, together with other lands therein described, for and in consideration of the sum of twelve hundred dollars then paid them by Joseph Holmes, to said Joseph Holmes, which said last mentioned deed was duly acknowledged and recorded according to law, in the Clerk's office of the county of Monmouth, in book C 3, of deeds, pages 80, 81, 82, by D. H. Ellis, then Clerk of said county, as by reference to said deed now in the possession of your orator, Joseph Holmes,
30 and ready to be produced, as this honorable court shall direct, will more fully and at large appear. And your orators and oratrices further shew unto your Excellency that ever since the delivery of said deed they have been and still are as tenants in common in the possession of said last described tract of land.

And your orators and oratrices further shew unto your Excellency that the said John Holmes, Jr., after the execution and delivery as aforesaid by him, of his said deed to the

said John Holmes, Sen., to wit: on the twenty-eighth day of August, eighteen hundred and twenty-seven, with the view of defrauding the said John Holmes, Sen., and those who might hold under him, procured one Richard Lane to go with him to the said Andrew Bell, and thereby representing to the said Andrew Bell that the said deed from said Bell to the said John Holmes, Jun., had never been recorded, and that he the said John Holmes, Jun., had lost his said deed and had never conveyed the said land to any body else, and that he had contracted to 10 sell the said land to the said Richard Lane, but could not convey to him the legal title by reason of his having lost his said deed from said Bell, induced the said Andrew Bell to make his second deed for the premises first above described, to the said Richard Lane, dated, as your orators and oratrices are informed, about the said 28th of August, 1827, which said last mentioned deed is recorded in the Clerk's office of the county of Monmouth, on the tenth of September, 1827, in book O 2, of deeds, page 237, as by reference to a copy of the same now in your orators and oratrices posses- 20 sion will more fully appear.

And your orators and oratrices expressly charge that at the time of the said delivery of said deed from Bell to Richard Lane, that it was brought about by the conspiracy and collusion between the said John Holmes, Jun., and Richard Lane, they being brothers-in-law, for the purpose of defrauding the said John Holmes, Sen., and those who might hold under him. And your orators and oratrices also further expressly charge, that at the time of the said deed from the said Bell to the said Richard Lane, he the said Lane perfectly well 30 knew of the said first deed of said Bell to said John Holmes, Jun., and also that the said John Holmes, Jun., had sold and conveyed as aforesaid, the said secondly above described tract to the said John Holmes, Sen., and that said John Holmes, Sen., was then in possession thereof. And your orators and oratrices further shew unto your Excellency that the said Richard Lane departed this life about the year eighteen hundred and thirty, intestate, and that William

Platt and John Woodmansee took out letters of administration upon the estate of said Richard Lane, upon which such proceedings were had that afterwards and about the year 1831, the said tract of land first above described and including the said tract secondly above described was sold or pretended to be sold by the said administrators under a decree of the Orphan's Court for the payment of debts according to the statute in such case made and provided, to Benjamin Stout and John Williams for the sum of fifty one dollars, 10 but whether the said administrators had power and authority to sell the same as administrators, or whether the said sale was legal, or whether the said deed from them was executed in due form of law, your orators and oratrices are ignorant, and leave the said Stout and Williams to make out as they may be enabled.

And your orators and oratrices expressly charge, that at the time, and before the said Stout and Williams purchased the said tract of land as aforesaid, they well knew of the said first deed, of the said Andrew Bell to the said John 20 Holmes, Jun., and of the said deed from the said John Holmes, Jun., to John Holmes, Sen., and that the said John Holmes, Sen., and his heirs at law, together with your orators and oratrices had been in possession of the said premises ever since the said conveyance of the said John Holmes, Jun., to said John Holmes, Sen., and that the said purchase of the said Stout and Williams was made with a view of defeating the said deed from the said John Holmes, Jun., to the said John Holmes, Sen., and of defrauding the said John Holmes, Sen., and those who might hold under him.

30 And your orators and oratrices, further shew unto your Excellency, that part of the said tract of land secondly above described, is enclosed land and has been so enclosed ever since its first location to said Andrew Bell in 1817, and has been in the possession of said John Holmes, Jun., until his said sale to John Holmes, Sen., and after that has been in possession of the said John Holmes, Sen., and those holding under him, and that the remaining part of the said secondly described tract of land is and always has been woodland, heavily

timbered and near the water, which renders it very valuable; and has been in the possession of the said John Holmes, Jun., from the time of his said purchase of Andrew Bell, till his said sale to John Holmes, Sen., and ever since that time has been in the actual possession of John Holmes, Sen., and those claiming under him. But that on account of its being woodland, unenclosed, it is extremely difficult to establish the fact of possession in a court of law, except as connected with the title.

And your orators and oratrices further shew unto your Excellency, that on or about the twelfth day of March last, the said Benjamin Stout and John Williams commenced cutting the timber off the said tract of land secondly above described, under a claim of title derived under the said Richard Lane, as aforesaid, and carting away the same, disposing of it to their own use, and threaten to cut off and carry away and dispose of the whole of the timber growing thereon. And that your orator, Joseph Holmes, commenced an action against them therefor, in the court for the trial of small causes, before Thomas C. Throckmorton, Esquire, one of the Justices of the Peace in and for the county of Monmouth, upon which such proceedings were had that a state of demand was filed for said trespasses on the twenty-fifth of March last, in said court for the trial of small causes, before the said Thomas C. Throckmorton, Esquire, Justice of the Peace, &c., as aforesaid, when the said Stout and Williams filed in said court a plea of title to the said land, and a bond according to the statute in such cases made and provided, whereupon the said proceedings were dismissed from the said court for the trial of small causes, and your orator, Joseph Holmes, driven to seek his remedy in a court of higher and competent jurisdiction. And therefore your orators and oratrices have, at several times by themselves and their agents, in a friendly manner, applied to the said Stout and Williams and requested them to account for the wood and timber cut and carted away off from the premises secondly above described, and give up all claim of right, title, use, possession or enjoyment of said premises, and release and convey the same to your orators and

oratrices, and the complainants well hoped that the defendants would have so done, and complied with such reasonable request.

But now so it is, may it please your Excellency, that the said Benjamin Stout and John Williams, combining and confederating with themselves and with divers persons at present unknown to your orators and oratrices, but whose names when discovered your orators and oratrices pray may be herein inserted, and they made parties defendants hereto with proper
10 and apt words to charge them, and contriving how to defraud, injure, and oppress your orators and oratrices in the premises, sometimes pretend that your orators and oratrices have no right to the said premises secondly above described. That the said John Holmes, Jun., never conveyed the said secondly described premises aforesaid to John Holmes, Sen. That the said Andrew Bell never conveyed the said secondly above described premises to John Holmes, Jun.; and that if he did so convey the said tract of land, the conveyance not having been recorded in the Clerk's office of the county of
20 Monmouth, the same became null and void against subsequent purchasers. That neither the said John Holmes, Jun., nor John Holmes, Sen., nor those who claim under him, nor any of them, now have or ever have had possession of the said secondly above described premises. That the said defendants have good and sufficient title in fee simple, to the said secondly above described premises, from the administrators of Richard Lane. That Richard Lane had like title from Andrew Bell. That neither the said Richard Lane nor the said Stout and Williams had, on or before purchasing and
30 receiving title for said premises, any notice of adverse title or claim of title, or of adverse possession or claim of possession in your orators and oratrices and those under whom they claim or any of them. That the defendants have and together with those under whom they claim, have had possession of said secondly above described premises from the time of the said conveyance from Andrew Bell to Richard Lane. And that they have not cut and carried away the wood and timber thereon standing and growing, and converted the same to

their own use. Whereas your orators and oratrices expressly charge, and so the truth will appear, that the contrary thereof is the truth. That the said Stout and Williams and Richard Lane respectively, at the time of obtaining their pretended title, had notice of the adverse title and possession of your orators and oratrices and those under whom they claim. That the said Stout, Williams and Lane, nor any of them, are or ever have been in possession of the said premises secondly above described. And that they have cut and carried away the wood and timber thereon standing and growing and con- 10 verted the same to their own use. All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators and oratrices in the premises.

In tender consideration whereof, and forasmuch as your orators and oratrices are remediless in the premises at and by the direct and strict rules of the common law, and cannot have adequate relief save in a Court of Equity, where matters of this and the like nature are properly cognizable and relievable, to the end therefore that the said Richard Stout and John 20 Williams and the rest of the confederates when discovered, may upon their several and respective corporal oaths, full, true, direct and perfect answers make to all and singular the matters hererein before stated and charged, as fully and particularly as if the same were herein after repeated, and they thereunto distinctly interrogated: and that not only to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay and belief; and more especially that they may answer and set forth whether the said Benjamin Stout and John 30 Williams, at the time or before the purchase of the said secondly above described premises, had notice verbal or written, direct or indirect, or any knowledge, information, intimation, or warning, or had heard any rumor or report from your orators and oratrices and those under whom they claim as herein before set forth, or any of them, or from any other person or persons whatsoever, that the said premises were claimed or possessed, or pretended to be claimed or possessed, or ever had

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been claimed or possessed, or pretended to have been by your orators and oratrices, and those under whom they claim, as herein before set forth, or any of them; or that title to said premises first above described was given by Andrew Bell to John Holmes, Jun., and by him to John Holmes, Sen., to said premises secondly above described, and that his heirs at law claim from him by descent or otherwise, the said last refered to premises. And whether the said Stout and Williams, before, at the time, or since their pretended purchase of the
10 said premises, had any knowledge, information or belief, or had heard the said Richard Lane say, or any other person or persons whatsoever say, intimate, declare, rumor or hint, that the said Richard Lane had any knowledge, notice or caution from John Holmes, Andrew Bell, or any other person or persons whatsoever, at the time, or before the delivery of the said deed from Andrew Bell to Richard Lane, for the said premises first mentioned, that the said premises had been conveyed by the said Andrew Bell to John Holmes, Jun., or to any other person, and by John Holmes, Jun., to John Holmes, Sen., or to
20 any other person, or that the said premises were possessed, used, occupied and enjoyed, or had so been by the said John Holmes, Jun., or John Holmes, Sen., or his heirs as herein before stated, or any of them, or were pretended so to be—and what was said, intimated, declared, rumored or hinted, by whom and when. And whether the said complainants and those under whom they claim as herein before set forth, have been in the possession, use, occupation or enjoyment of the said secondly above described premises or any part thereof from the time of the conveyance or alleged conveyance from Andrew Bell to
30 John Holmes, Jun., or any part of said time, when and of how much thereof. And whether the said defendants or those under whom they claim, are or have been, or any one has been in the possession, use, occupation and enjoyment of said premises secondly above described, or any part thereof, since the conveyance from Bell to Holmes, or during any part of said period, and when and of how much thereof.

And that the said Stout and Williams may answer the premises, and come to a full and fair account for the value of

the wood and timber cut and carted off and from the premises secondly above described, and that what may be found due from the said Stout and Williams on such account, may be paid or secured for the benefit of your orators and oratrices. And that the title deeds of the said Stout and Williams, from the administrators of Richard Lane, and the deed from Andrew Bell to Richard Lane, may be decreed to be null and void and of no effect. And that the said deeds be directed to be delivered up to the complainants; and that the said Stout and Williams, and those who may claim under them, may 10 be perpetually enjoined against setting up title to said secondly above described premises. And that the said title of the complainants may be declared good and valid and operative in law. And that the said Stout and Williams be directed and decreed to make good and sufficient conveyances in law, for the said secondly above described premises. And that the said complainants may have such other and further relief in the premises, as to your Excellency shall seem meet and agreeable to equity and good conscience. May it please your Excellency to grant unto your orators and oratrices the state's 20 most excellent writ of subpœna directed to the said Benjamin Stout and John Williams, and the rest of the confederates when discovered, and each of them, commanding them at a certain, day thereby and under a certain day therein to be inserted, personally to be and appear before your Excellency in this honorable court, there and then to answer the premises, and to stand to and abide by such order and decree therein, as to your Excellency shall seem agreeable to equity and good conscience, and your orators and oratrices will ever pray, &c. 30

B. D. B. Smock,
Sol'r of Complainants.
Joseph F. Randolph,
Of Counsel.

ANSWER TO FOREGOING BILL.

IN CHANCERY OF NEW JERSEY.

The joint and several answer of Benjamin Stout and John Williams, Defendants, to the bill of complaint of Joseph Holmes, Catharine Holmes, Junior, John Predmore and Lenah his wife, Gilbert Holmes and John H. Chamberlain, Complainants.

These defendants now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and
10 advantage of exception to the many errors and imperfections in the complainants' said bill of complaint, contained for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material and necessary for them to make answer unto. They answer and say: That on the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventeen, a survey was duly made and returned to one Andrew Bell, of all that certain tract of land situate on the north side of the North Branch of Forked river, in the township of Dover, county of Monmouth, and
20 eastern division of the State of New Jersey, containing sixty-four acres and four hundredths of an acre, strict measure, being the same premises mentioned and described in the complainants' bill of complaint, as therein first set forth, by metes and bounds, which said return was duly approved and recorded in the Surveyor General's office at Perth Amboy, in book S 18, page 160, as by reference to the same or a duly certified or sworn copy thereof in these defendants' possession, will more fully appear, and to which these defendants refer themselves, if need be, for greater certainty.

30 And these defendants in further answering say, that afterwards, to wit, on the twenty-eighth day of August, Anno Domini eighteen hundred and twenty-seven, the said Andrew

Bell, by deed of bargain and sale, under his hand and seal duly made and executed, and bearing date the day and year last aforesaid, for and in consideration of the sum of one hundred and thirty dollars and ninety cents lawful money of the United States to him in hand paid by one Richard Lane, then of the said township of Dover, in said county, since deceased, the receipt whereof was by said deed duly acknowledged by the said Andrew Bell, and the said Richard Lane, his heirs and assigns thereof discharged forever, did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto 10 the said Richard Lane, his heirs and assigns, said tract of land, situated as aforesaid, containing sixty-four acres and four hundredths of an acre, strict measure, surveyed and returned to the said Andrew Bell as aforesaid, as described by metes and bounds in the said complainants' bill of complaint, together with the privileges, hereditaments, and appurtenances, to the same belonging or in any wise appertaining, and all the estate, right, title, interest, property, claim and demand whatsoever, either in law or equity, of him, the said Andrew Bell, of, in and to the same or any part thereof: To have and 20 to hold the said premises, with the appurtenances, to the said Richard Lane, his heirs and assigns, to the only proper use, benefit and behoof of the said Richard Lane, his heirs and assigns forever. And the said Andrew Bell, in and by the said deed, for himself, his heirs executors and administrators did covenant, grant and agree to and with the said Richard Lane, his heirs and assigns, that he the said Andrew Bell had not done or suffered to be done any act matter or thing whereby the premises thereby granted might be in any way charged or encumbered in title, charge or estate, and the 30 same in the quiet and peaceable possession of the said Richard Lane, his heirs and assigns against the lawful claim and demand of all persons whomsoever claiming by, from, or under him the said Andrew Bell, he, the said Andrew Bell would and did warrant and forever defend, as in and by the said deed now in the possession of these defendants, ready to be produced and proved as this honorable court shall direct, will more fully and at large appear, and to which these defendants for greater certainty refer themselves.

And these defendants in further answering say, that they have heard, and believe it to be true, that John Holmes, Jun., named in the complainants' bill of complaint, was present at the time of the execution of said deed to the said Richard Lane and is one of the subscribing witnesses thereto, and that said deed on the same day of the date thereof was, after its execution and delivery as aforesaid, in due form of law acknowledged by the said Andrew Bell before James Harriot, Esquire, one of the Judges of the inferior court of Common
10 Pleas in and for the county of Middlesex, in said state, as by his certificate thereon duly endorsed and signed sufficiently appear, and that said deed was afterwards, on the seventeenth day of September in the same year, duly recorded in the clerk's office of said county of Monmouth, by William Ten Eyck, Esquire, the clerk thereof, in book O 2, of deeds, folio 236, &c., as by a certificate of such recording duly endorsed on said deed and signed by the said clerk sufficiently appears.

And these defendants in further answering say, that the said Richard Lane was the brother-in-law of the said John Holmes,
20 Jun., in the complainants' bill mentioned, having married the sister of the said John Holmes, Jun., she being the niece also of the said John Holmes, Sen., in the complainants' bill of complaint mentioned, and was also the brother-in-law of the said John Holmes, Sen., he having married the sister of the said Richard Lane.

And these defendants in further answering say, that upon the execution and delivery of the said deed of bargain and sale from said Andrew Bell to the said Richard Lane, in manner aforesaid, he the said Richard Lane entered into the pos-
30 session of the said sixty-four acres and four hundredths of an acre tract mentioned and described in said deed, and continued in the full and peaceable possession of the same until his death, which occurred sometime in the month of December, eighteen hundred and thirty, as these defendants are informed and believe.

And these defendants in further answering say, that about the time last mentioned, the said Richard Lane was lost at sea, in a coasting vessel, and died intestate, and that ad-

ministration of his estate was afterwards granted to William Platt and John Woodmansee, of the said township of Dover, who entered upon the duties thereof, and afterwards in the term of January, eighteen hundred and thirty-two, exhibited to the Orphans' Court of said county of Monmouth, under oath, an account of the personal estate of the said deceased, and of his debts so far as they could discover the same, by which it appeared the personal estate of the said deceased was insufficient to pay the debts of said estate, and the said administrators having represented to said court that the said 10 Richard Lane died siezed of real estate in said county, and praying their aid in the premises; the said court did order and direct all persons interested in the lands, tenements and real estate of the said deceased, to appear before the said Orphans' Court on the fourth Tuesday of April in said year, and show cause, if any they had, why the same or so much thereof as might be necessary for the purpose of paying the debts and expenses then unpaid, should not be sold. And it appearing to said court at said last named time, that said order had been set up and published agreeably to law, and the court 20 having heard and examined the proofs and allegations on full examination found the personal estate of the said Richard Lane, deceased, was insufficient to pay his debts, did thereupon order and direct the said administrators to make sale of the said premises situate as aforesaid, pursuant to law. And the said administrators, pursuant to said order and decree, having given due and timely notice by advertisements agreeably to law, did, at the house of John Williams, inn-keeper, in said township of Dover, sell said premises at public vendue and out-cry to these defendants, on the second day of July, in 30 the year last aforesaid, they being the highest bidders therefor, for the sum of fifty dollars, subject to all prior incumbrances.

And these defendants in further answering say, that afterwards, on the seventh day of November, in the same year last aforesaid, the said administrators, for the consideration aforesaid, by deed of bargain and sale in due form of law executed and delivered under their respective hands and seals,

sold and conveyed the said sixty-four and four-one-hundredth acres tract to these defendants, by metes and bounds as aforesaid, in fee simple. And on the same day and year last aforesaid, acknowledged the same in due form of law, before Joseph Lawrence, Esquire one of the judges of the Monmouth county inferior court of Common Pleas, who signed and endorsed a certificate thereof on said deed; and which deed, so acknowleaged, these defendants, on the twenty-first day of November, in the year last named, caused to be recorded in 10 the Clerk's office aforesaid, by Daniel H. Ellis, Esquire, the Clerk thereof, in book B 3, of deeds, folio 496, &c., as by reference to said proceedings in said Orphans' Court, and said deed, in these defendants' possession, will appear, and to which these defendants for greater certainty refer themselves, if necessary so to do.

And these defendants in further answering say, that immediately after the execution and delivery of said deed in manner aforesaid, they entered into the full and peaceable possession of said sixty-four and four-one-hundredths acres tract, and 20 so continued and now continue in the possession of the same without any interruption; that on the sixteenth day of March, in the present year, eighteen hundred and thirty-nine, the said Joseph Holmes, one of the said complainants, sued out of the court for the trial of small causes, before Thomas C. Throckmorton, Esquire, one of the Justices of the Peace of said county of Monmouth, a summons against these defendants in trespass, for one hundred dollars damages for cutting wood, &c., on said tract so conveyed to them as aforesaid, returnable on the twenty-fifth day of March following, which 30 summons was served on these defendants, and they appeared thereto on the return day thereof, and filed a plea of title, and gave bond with sureties, which was also filed agreeably to law; whereupon said cause was dismissed by the said justice, and the said complainant, Joseph Holmes, either by himself, or with the others now named as complainants in said bill of complaint, have altogether neglected to proceed further in said matter in dispute by their suit at law.

And these defendants in further answering say, that they

deny that the said Andrew Bell, on the twenty-third day of August, A. D. eighteen hundred and seventeen, or at any other time, for the consideration in said bill mentioned, or any other, bargained, sold and conveyed by deed of bargain and sale or other conveyance in fee simple, or otherwise, the said tract of land and premises with the appurtenances, to the said John Holmes, Jun., his heirs and assigns forever, or that such deed was ever delivered and acknowledged according to law, they never having seen any such deed, or heard of any such deed, until after they became the purchasers and possessors of said premises; and the said Joseph Holmes, one of the said complainants, commenced his suit before the said justice as herein before stated.

And these defendants in further answering say, that they are altogether ignorant of any intent and purpose of the said John Holmes, Jun., in defrauding the said John Holmes, Sen., in said bill mentioned, or the said complainants, by omitting to put the alleged deed on record, or destroying or cancelling the same or keeping the same, out of the power of the complainants for the purpose of defrauding the said complainants, as charged in said bill, and leave the complainants to make such proof thereof as in their power, agreeably to the rules and practice of this honorable court; these defendants expressly deny any knowledge of such fraud, and say the said John Holmes, Jun., always bore a good character in the neighborhood in which he resided, in the township of Dover, until he removed to the western country, and subsequently until his death, so far as these defendants know or believe.

And these defendants in further answering say, that they have no knowledge of, or knew, or saw, or heard that the said John Holmes, Junior, ever was in possession of said sxty-four and four-one-hundredths acres tract, as is alleged in said bill of complaint, or any part of the same, and they leave the complainants to make such proof thereof as may be in their power, agreeably to the rules and practice of this court.

And these defendants in further answering say, that they were altogether ignorant of any deed ever having been executed by John Holmes, Junior, to John Holmes, Senior. or of

any such deed being on record in the Clerk's office of the county of Monmouth, for any part of the said sixty-four and four-one-hundredths acre tract, until since the filing of the said bill of complaint in this cause, and that upon inspection and examination of book O 2, of deeds, page 408, as mentioned in said bill of complaint, these defendants were unable to find any record of said deed, or in the index of said book any reference to any deed between said parties. and that upon these defendants requesting the said Joseph Holmes, one of
10 these complainants, to permit them to see any deed they might have in their possession, for any part of the said tract of land, about the time the suit was commenced before the justice as before mentioned, he refused to show any to these defendants, and now at the time of the making this their answer they have for the first time, by the aid of their solicitor and counsel, been able to find the record of the deed referred to by said complainants in their bill of complaint, recorded in said book O 2, pages 400, 401 and 402¼; upon the inspection of which record it appears said deed purports to bear date on the
20 tenth day of December, eighteen hundred and seventeen, to be acknowledged on the second day of August, eighteen hundred and eighteen, before Joseph Lawrence, Esquire, one of the commissioners appointed to take the acknowledgments, &c., of deeds, and who appears to be the only subscribing witness thereto, since deceased, and to be recorded on the nineteenth day of October, eighteen hundred and twenty-seven, thirty-two days after the deed from the said Andrew Bell to the said Richard Lane, for the whole of said sixty-four and four-one-hundredths acre tract, had been duly recorded as afore-
30 said.

And these defendants in further answering say, that upon further inspection of said record, it appears that after describing the said twenty-two acres, as set forth in said bill of complaint, it refers to a deed from Andrew Bell to the said John Holmes, Junior, as the title under which he holds as bearing date the ——— day of ——— 1807, and purports to convey the said twenty-two acres in as full and ample manner as the same was surveyed to him, the said Andrew Bell, as by a return

thereof dated the ——— day of ——— 1807, and recorded in the Surveyor General's office in book S, page ———, would appear. And further, that the said John Holmes, Junior, with his wife Abby, therein named, but who it appears has not executed or acknowledged the same, covenanted thereby with the said John Holmes, Senior, his heirs and assigns, that he the said John Holmes, Junior, and Abby his wife, was lawfully seized "of the right of location on which the aforesaid tract of land was surveyed and returned, the same right of location only in the quiet and peaceable possession of the said 10 John Holmes, Senior, his heirs and assigns, against the lawful claims and demands of all persons whatsoever, he, the said John Holmes, Junior, and Abby his wife, would forever warrant and defend." From which record and circumstances, these defendants in further answering say, that they believe it to be true that no deed for the said sixty-four and four-one-hundreths acres tract, was ever executed and delivered by the said Andrew Bell to the said John Holmes, Junior, or for any part thereof, and that it is apparent from said deed so recorded as aforesaid, he, the said John Holmes, Junior, then covenated 20 only, he, the said John Holmes, Junior, and his wife claimed to be seized of the "right of location only" in the said twenty-two acres tract.

And these defendants in further answering say, they are altogether ignorant of, and have no knowledge that the said John Holmes, Senior, was ever in the possession of, or claimed title to the said twenty-two acres of land in his life time; and they further state he, the said John Holmes, Senior, died about the time mentioned in said bill of complaint, as they believe, intestate, leaving the several persons named in said 30 bill of complaint, his children and heirs at law. And further these defendants deny that said children and heirs at law ever entered into the possession of said twenty-two acre tract after the decease of the said John Holmes, Senior, so far as these defendants know or believe.

And these defendants in further answering say, they are altogether ignorant of the fact that any of the children and heirs at law of the said John Holmes, Senior, have sold

and conveyed the said twenty-two acre tract, or any interest therein, to the said complainants, and leave the complainants to make such proof thereof as may be agreeable to the rules and practice of this court. And these defendants deny that said complainants have been in possession of the same since the thirteenth day of September, eighteen hundred and thirty-two, as alleged in said bill, but on the contrary, they say these defendants have, ever since the execution and delivery of their deed, as herein before stated, been in the possession
10 thereof.

And these defendants in further answering say they are altogether ignorant of the charge in said bill, that said John Holmes, Junior, procured the said Richard Lane to go with him to Andrew Bell, and making the representations in said bill mentioned, and inducing the said Andrew Bell to make a second deed for said sixty-four and four-one-hundreths acre tract, and leave said complainants to make such proof thereof as may be in their power, agreeably to the rules and practices of this honorable court.

20 And these defendants in further answering say, they deny the charge of conspiracy between the said John Holmes, Junior, and Richard Lane, in obtaining said deed from Andrew Bell, as set forth in said bill; and they further deny that the said Richard Lane knew of the alleged first deed, as charged in said bill, or that said Lane knew the said John Holmes, Junior, had sold and conveyed the said twenty-two acre tract to the said John Holmes, Senior, and that John Holmes, Senior, was then in possession of the same, and leave the complainants to make such proof of said charges as
30 may be in their power.

And these defendants in further answering say, that they deny that at the time, and before they purchased the said sixty-four and four one-hundreths acre tract, they knew of the alleged first deed from Andrew Bell to John Holmes, Junior, and of the said deed from John Holmes, Junior, to John Holmes, Senior, and they deny that the said complainants and John Holmes, Senior, had been in possession of said premises, ever since the conveyance from John Holmes, Jun-

ior, to the said John Holmes, Senior, as is, they believe, untruly set forth in said bill. And they further deny that their purchase of said premises was made with a view of defeating the said deed from John Holmes, Junior, to the said John Holmes, Senior, and of defrauding the said John Holmes, Senior, and those holding under them; but on the contrary their purchase was a fair, open and bona fide one, having no motive or disposition to defraud any one, or to defeat any deed or title, having in view only the exercise of a common right to purchase property for their own interest, the title to which, 10 they believed to be good, fair and honest.

And these defendants in further answering say, they are altogether ignorant of any part of the said twenty-two acre tract being inclosed and being in the possession of the said John Holmes, Junior, and after his deed to the said John Holmes, Senior, in his possession, and those holding under him, and they further say they never have set up any claim to any enclosed land within their sixty-four and four-one-hundredths acre tract, and believe none such is within the true boundaries of said tract; they therefore leave the com- 20 plainants to make such proof thereof as they may deem important, if in their power; the disputes and difficulties having arisen between these defendants and the complainants for cutting and carrying away wood, from the wood land unenclosed.

And these defendants in further answering admit that their claim of title is under their possession, under the deed from the adminstrators of Richard Lane, deceased, to them as before mentioned, and the deed from the said Andrew Bell to the said Richard Lane. And that they commenced cutting 30 timber and wood off the sixty-four and four-one-hundredths acre tract immediately after they purchased the same, in different parts of said tract, but they are ignorant whether they have yet cut more than a few trees from that part of the sixty-four and four-one-hundreths acre tract, for which the complainants have set up their claim; these defendants being ignorant as to the extent of these complainants' claim, under their alleged deed, never having seen the same run or sur-

veyed by their alleged deed. These defendants, however, have no hesitation in saying it is their wish and intention to cut off all the wood on the whole tract, and have only abstained proceeding therein until this matter is settled by this court.

And these defendants in further answering say, that they never had any notice, verbal or written, nor any knowledge, information, intimation, or warning from the said complainants or those under whom they claim, or other persons, until the commencement of the suit before the justice, that said tract
10 they so as aforesaid purchased of the administrators of Richard Lane, deceased, was conveyed by said Andrew Bell, to the said John Holmes, Junior, or that any part thereof had been sold and conveyed by the said John Holmes, Junior, to the said John Holmes, Senior, or that said premises were claimed by the complainants or those under whom they now set up their title, or were possessed by any of them. That they, the defendants, were informed by the said Richard Lane, in his life time, that he was seized and possessed of the said sixty-four and four-one-hundreths acre tract, under the said
20 Andrew Bell, and that during the life time of the said Richard Lane they never heard his title or possession to said premises disputed.

And these defendants, Benjamin Stout and John Williams, in further answering say, they never heard the said Richard Lane say, or heard any person say, the said Richard Lane had any knowledge, notice or caution from John Holmes, Junior, John Holmes, Senior, Andrew Bell, or any other person whatever, at the time or before the said deed from Andrew Bell to Richard Lane for said premises was given, or that said premises
30 had been conveyed by said Andrew Bell to said John Holmes, Junior, or any other person, or that any part of said premises had been sold and conveyed by said John Holmes, Junior, to the said John Holmes, Senior, or that the said premises, or any part of them was possessed and occupied and enjoyed, or had so been by the said John Holmes, Junior, or John Holmes, Senior, or his heirs, or were so pretended to be. And these defendants are altogether ignorant of any other person or persons except the said Richard Lane and them-

selves ever having been in possession of the said sixty-four and four-one-hundredths acre tract, or any part thereof, and that if the said complainants, or any or either of them, have since these defendants obtained their deed from the administrators of Richard Lane, and their possession under the same, ever have attempted to exercise any acts of ownership, or possession of said premises or any part thereof, it has not been to the knowledge of these defendants, and such acts have been acts of trespass against the rights and title of these defendants in the premises, which, if these defendants had 10 known, would have been prosecuted for.

And these defendants respectfully submit to his Excellency, that under the circumstances of this case, and the law of the land, their title to these premises is legal, equitable and just, and that the prayer of the complainants should be refused, their bill dismissed, they paying these defendants their costs in this case most wrongfully sustained, and they pray this honorable court will so order and decree.

And these defendants deny all unlawful combination and confederacy with which they are charged in the said bill, 20 without that, that any other matter or things material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, &c.

DANIEL B. RYALL,
Solicitor and of Counsel with defendants.

NEW JERSEY, ss.

Benjamin Stout and John Williams being severally duly 30 sworn, depose and say that the matters and things set forth

and contained in the foregoing answer, so far as they relate to their own acts and deeds respectively, are true; and so far as they relate to the acts and deeds of any other person or persons they believe to be true.

his
BENJAMIN × STOUT.
mark.
JOHN WILLIAMS.

Sworn and subscribed this 20th day of August, A. D. 1840, before me,
10 J. M. HARTSHORNE, M. C. C.

RULE,

To substitute P. Vredenburgh, Solicitor of Complainants, in place of D. B. D. Smock, who had departed this life.

REPLICATION.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer to a replication thereunto, saith that he will aver and prove the said bill to be true, certain and sufficient in the law to be answered unto; and that 20 the answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants. Without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is untrue. All which matters and things, these repliants are and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

P. VREDENBURGH,
30 *Solicitor and of Counsel with Complainants.*

COMPLAINANTS' EVIDENCE.

DEPOSITION OF ANDREW BELL, TAKEN MAY 30, 1839,

The deposition of Andrew Bell, alleged to be a material witness in the above cause, but who is ancient and infirm, taken in pursuance of a written notice signed and issued by me as one of the judges of the inferior court of Common Pleas of Middlesex county, this twentieth day of May, A. D. 1839, at 3 o'clock P. M., at the house of E. Granger, inn-keeper, in Perth Amboy, in the presence of Joseph Holmes, one of the complainants, and of Benjamin Stout, one of the defendants, 10 and of their counsel—before me,

JAMES HARRIOT,
Judge, &c.

Andrew Bell, a witness offered on the part of the complainants; his examination was objected to by the counsel of the defendants, at this stage of the cause, on the within notice; and further upon the objection of his interest, and offered in evidence a deed from him, the said Andrew Bell, to one Richard Lane, dated 28th August, 1827, for a tract of land containing sixty-four and four-one-hundredths acres, recorded in the Clerk's office at Freehold, in book O 2, of deeds, folios 20 236, &c., by me, marked Exhibit A, on the part of the defendants.

The counsel of the complainants insisting on his examination, I proceeded in the same, taken subject to exceptions before the Chancellor. Whereupon the said Andrew Bell, Esq., was by me carefully examined, cautioned and sworn to testify the whole truth, on his oath says: That he is eighty-one years of age, and that he is quite infirm. Witness made a deed to John Holmes, Junior, for sixty-four acres of land and four-hundredths, situated at Forked River, dated twenty-third 30 of August, 1817, and delivered the same to him the same day, which he perfectly recollects, and also appears by an endorsement on the return of the said land—that on the twenty-seventh

of August, 1827, the said Holmes called on the said Andrew Bell, and represented to him that the said deed was lost and could not be found after the most diligent search ; that it had never been recorded, and requested him to execute another to Richard Lane, to whom he had sold, but which the said Andrew Bell declined doing at that time, but the next day he called again, and after much hesitation prevailed on him to give a deed to the said Richard Lane ; he the said Holmes then giving to him, the said A. Bell, an engagement under 10 his hand and seal that if the first deed should ever be found, the same should be cancelled and never be made use of as a title to the said land. That the said Richard Lane was present when the above transaction took place, and received the last mentioned deed under the circumstances above related, and heard the conversation between the said A. Bell and J. Holmes, Junior, on the subject of the first deed, as above stated

The paper above referred to as given to the said Andrew Bell, by John Holmes, Junior, being hereto annexed, and 20 marked Exhibit 2, on the part of the complainants.

The deed given to Richard Lane by Andrew Bell, being the same marked Exhibit A, on the part of the defendants.

The aforesaid John Holmes, Junior, on his first application for a new deed, said that he did not remember his having received a deed from the said Andrew Bell, but he was afterwards convinced of his mistake, and allowed that he must have received it but that it was lost. Richard Lane paid to the said Andrew Bell, on the twenty-seventh of August, 1827, $60.00 on a note of John Holmes, Junior, for $119.00, which was given for the con- 30 sideration for the land when first conveyed to the said John Holmes, Junior.

ANDREW BELL.

Sworn and subscribed this 20th of May, 1839, before me, subject to exceptions before the Chancellor.

JAMES HARRIOT, *Judge.*

EXAMINATION OF WITNESSES, TAKEN MAY 11, 1840.

Examination of witnesses taken before me, the subscriber, one of the examiners in the Court of Chancery, of the State of New Jersey, in the presence of Peter Vredenburgh, Jr., solicitor of the complainants, and in the presence of the defendants, with James M. Hartshorne, Esq., their counsel, on Monday, the eleventh day of May, A. D. eighteen hundred and forty, at my office in the village of Freehold, on due notice proved upon D. B. Ryall, Esq., the solicitor of the defendants. 10

Jacob Holmes sworn on *voire dire*—witness says he does not consider himself interested in the event of this suit as one of the heirs at law of John Holmes, Senior,—witness has conveyed his part and interest of the land to Joseph Holmes. Witness gave a warrantee deed, but did not intend to give one at the time; he got a blank deed, printed "Quit Claim" on the back of it—has been told since that it was a warrantee deed. The deed was regularly executed and acknowledged by witness. If Joseph Holmes should fail in this suit, witness does not consider himself responsible to him for two reasons—20 the first is the witness did not intend to give anything more than a release, at the time it was executed. The second is that Joseph Holmes has given the witness a release this morning. Witness sold his share of the the twenty-two acres now in controversy, with the rest of the witness' share and interest in his father's estate. There was no price set down to that part—it was all calculated to be worth so much together.

Peter Vredenburgh, Junior, sworn—I saw Joseph Holmes execute the release (marked Exhibit No. 2,) and was subscribing witness to the same. 30

PETER VREDENBURGH, JR.

The defendants object to the swearing of Jacob Holmes in in chief.

Jacob Holmes sworn in chief—I am acquainted with the

land, being twenty-two acres in controversy, part of that tract is enclosed and part wood-land. My father has had that tract in possession ever since I can remember—am thirty-four, the eighteenth of this month. I can remember being out in the wood part of the property with my father when I was too small to cut wood, and my father was cutting wood on it—my father said it was his at that time, and claimed it as his own. I think I was about seven or eight years old when I first remember of my father's cutting on the property—my
10 father cut on it up to the time of his death, cut on it frequently—my father used to get his fire-wood off of that and the other wood-land he owned, adjoining the twenty-two acres; was not particular on which part he cut—my father used to send me and my brother to get the fire-wood. The enclosed part of the tract is cleared land—it has been cleared as long as I can remember. The twenty-two acres in controversy, is a part of the sixty-four acres and four-hundredths first described in the bill. My father died in May, 1832. I know Richard Lane—I heard him say he had a deed for this land. I was
20 present at the sale of the sixty-four acre tract, by the administrators of Richard Lane, about the year 1832, when it was bought by the defendants. Benjamin Stout was there before the property was struck off—while they were bidding, I told him that my father owned a part of the tract—I don't know that I told him which part—he said if I would buy it, he would not bid against me—I told him my father had bought it and paid for it, and that I would not buy what my father had bought and paid for once—I don't recollect that I told him that John Holmes, Junior, had a deed for the property
30 from Bell. I can't say that I had any conversation with defendants about that property before that. I had conversation with Benjamin Stout since the sale of the land—I told him I should not have blamed him for buying the land if he had not known all of the circumstances about it before he bought it. He said he did know about it, and that he would buy again if he had a chance. I don't know that I told him anything about the John Holmes, Junior, deed. I don't remember what other conversation occurred. I think the conversa-

tion stopped then ; only a few words passed between me and Benjamin Stout. I don't know that I told Benjamin Stout at the time of the sale, how my father owned this land. It was generally known throughout the neighborhood before the sale, that my father owned the land. The sixty-four acres that was bought by the defendants, was worth one thousand dollars, if it had been clear—the defendants gave about fifty-one dollars for it. John Holmes, Senior, had a quit claim for the twenty-two acre tract from his brother William. The quit claim was for fifty-two acres under which my father held 10 possession of the twenty-two acres, until John Holmes, Junior, had it surveyed and found the twenty-two acres to be vacant land, then John Holmes, Junior, took up the sixty-four acre tract mentioned in the bill, and sold the twenty-two acres to my father, John Holmes, Senior. I remember of hearing at the time, that John Holmes, Junior, took up the sixty-four acre tract, but don't remember how long ago it was. I heard that Andrew Bell made the deed to John Holmes, Junior. I do not remember of seeing the deed from A. Bell to John Holmes, Junior. 20

Cross-examined—I have seen this twenty-two acre tract run out by the deed from John Holmes, Junior, to my father. I think John Holmes, Junior, was not present—began to run out by some Spanish-oak trees on the edge of a little hill. I think it was six or eight feet from the Spanish-oak trees that my father began to run out—I think it was about twelve or fifteen years ago. Can't remember exactly the time—did not run the lines of any of the adjoining tracts. I saw a part of the outside line of the sixty-four acre tract run out. Can't say whether it was the same time. My father undertook to 30 find the sixth corner of the forty-five acre tract. He began at the beginning corner of the forty-five acre tract. The beginning of the twenty-two acre tract is at the sixth corner of the forty-five acre tract. The Spanish-oaks were at the beginning of the forty-five acre tract. I do not know where Mill Hill is. I never heard my father say anything about it. I do not know of Richard Lane's cutting

wood on the twenty-two acres. I know that he pretended to claim the sixty-four acres of which the twenty-two is a part. I heard my father tell Richard Lane that he dare not cut on the twenty-two acres, and that he would cut on it whenever he pleased. I suppose it was nine or ten years ago. I do not recollect that I told Benjamin Stout at the time of the sale how my father got title to the land. I have no personal knowledge that William Holmes gave a quit claim for the fifty-two acres, but I saw the deed with his name signed to it,
10 and acknowledged before the proper authority. I know that the twenty-two acres are included in the fifty-two acres by having seen it run. I have no personal knowledge that John Holmes, Junior, surveyed the twenty-two acres, and found the tract vacant land, except from hear-say. I have no knowledge, except from hear-say, that John Holmes, Junior, took up the sixty-four acres as vacant land. I have no knowledge except from hear-say, that John Holmes, Junior, sold and conveyed the twenty-two acres to my father. I do not know that my father agreed to buy the twenty-two acres of
20 Richard Lane. I never heard my father say any thing about it.

Examined in chief—It was generally talked throughout the neighborhood, before the sale to defendants, that John Holmes, Junior, had a deed for the sixty-four acres from Andrew Bell, and that John Holmes, Junior, had made a deed for the twenty-two acres to my father, and for the remainder to Samuel Leaming. The defendants lived in the neighborhood at the time, and had lived there for a number of years before.

30 JACOB HOLMES.

I certify that the above depositions were taken before me at the time and place above specified, and that the annexed paper was marked Exhibit No. 1.

JOSEPH COMBS,
Master and Examiner in the Court of Chancery.

EXHIBIT No. 1.

KNOW ALL MEN BY THESE PRESENTS, That I, Joseph Holmes, of Dover, Monmouth county, New Jersey, for and in consideration of one dollar, to me in hand paid, by Jacob Holmes of the same place, do hereby release the said Jacob Holmes from all covenants and warrantees of every kind soever, in a certain deed from said Jacob Holmes and others to me for their right and interest in a certain tract of land situate in Dover, aforesaid, and formerly conveyed by John Holmes, Junior, to John Holmes, Senior; and I do hereby release the 10 said Jacob from all actions and causes of actions, which I now have or hereafter may have against said Jacob by reason of any covenant or warrantees in said deed, or by reason of any breaches of said covenants which have been made, or which hereafter may be made of said covenants. And I do further release said Jacob from all actions and rights of actions which I now have or hereafter may have against said Jacob, by reason or under said deed in any way whatsoever. Witness my hand and seal this eleventh of May, eighteen hundred and forty. 20

JOSEPH HOLMES. (*Seal.*)

Signed, sealed and delivered in the presence of
P. VREDENBURGH, JR.

EXAMINATION OF WITNESSES, TAKEN JULY 2, 1841.

Depositions taken before me, the subscriber, one of the Masters and Examiners of the high Court of Chancery of New Jersey, in the above cause, in the presence of Peter Vreden-

burgh, Jr., Esq., the solicitor of the complainants, and in the presence of Daniel B. Ryall, Esq., solicitor of the defendants, upon notice admitted by Mr. Ryall, this second day of July, A. D. eighteen hundred and forty-one.

JOSEPH COMBS.
Master and Examiner in Chancery.

James D. Rogers being duly sworn on the part of the complainants, on his oath saith—I have surveyed the sixty-four acre tract mentioned in the complainants' bill of com-
10 plaint. I have surveyed it several times, but sometimes did not run around the whole of it. I made the map marked Exhibit No. 3, on the part of the complainants, which is a map of the sixty-four acre tract with the twenty-two acre tract, a part of the sixty-four acre tract laid off, also the part of the twenty-two acre tract that is enclosed. The last time I surveyed it, I ran it out the twenty-ninth of June, A. D. eighteen hundred and forty-one, and made the map the thirtieth. The first time I surveyed it was in January, eighteen hundred and seventeen, my field book says. The sixty-four
20 acre tract was vacant land then and I was making the survey. If I remember right, I surveyed it on Andrew Bell's rights. I afterwards surveyed it for the purpose of running off the twenty-two acres from the sixty-four acres. I cannot say when it was, but suppose it was a short time before the date of the deed from John Holmes, Jr., to John Holmes, Sr., for the twenty-two acres. I expect I surveyed the twenty-two acres at the request of John Holmes, Jr., but I am not positive. I think both John Holmes, Jr., and John Holmes, Sr., were present at the running. The object of running it off was to
30 make a deed for the twenty-two acres. When the location was made, I surveyed it at the request of John Holmes, Jr. I understood from John Holmes, Jr., at the time I located it, that he intended to get a deed from Andrew Bell. When I ran off the twenty-two acres I do not remember that I understood from John Holmes, Jr., that he had a deed or not. I expect he had one, but it is so long ago that I cannot undertake to say positively whether he had or had not a deed. I think I

drew the deed from John Holmes, Jr., to John Holmes, Sr., for the twenty-two acres. I saw the deed some time ago and I think it is in my hand writing; if it was here I could tell certainly whether I wrote it or not. I made the deed from the survey which was run as they agreed to have it. I cannot say that I saw a deed from Andrew Bell to John Holmes, Jr., at the time I ran off the twenty-two acres. It was not necessary to have it, for I could have run it from my field book, but suppose John Holmes, Sr., would not take a deed and pay for the land, without John Holmes, Jr., had had a 10 deed for it. Judge Joseph Lawrence is dead. I have been assessor of the township of Dover upwards of twenty years, with the exception of four, five or six years. I assessed to John Holmes, Sr., forty or fifty acres of the land—I do not recollect which. I saw a deed from William Holmes to John Holmes, Sr., which called for fifty acres, and it took in, if I recollect right, about sixteen acres of the twenty-two acre tract, (the proof of the assessment in this way is excepted to by Mr. Ryall.) It was ascertained that a part of the land called for by the deed from William Holmes to John Holmes, 20 Sr., was vacant land, and they then had this survey made—and when it was located, the agreement between John Holmes, Jr., and John Holmes, Sr., was that John Holmes, Sr., was to have the part his deed called for, for the same per acre that it cost John Holmes, Jr. (The understanding of witness from the parties objected to.) William Holmes was reputed to be the father of John Holmes, Jr. I have heard John Holmes, Jr's, father was named William. I never knew him. I do not know that I ever saw him. I cannot say that I understood from John Holmes, Jr., at the time I made the 30 survey of the sixty-four acre tract, that the deed from William Holmes to John Holmes, Sr., was from his father. I assessed John Holmes, Sr., for forty or fifty acres of land where he lived, which was called for by the deed from William Holmes to him and which took in part of the twenty-two acres. I assessed him for that, for that was what he gave in—he gave in no other. As long as I was assessor I assessed to John Holmes, Sr., forty or fifty acres. I do not recollect which it

was the same quantity the whole time I was assessor. I expect it was the tract on which he lived. I intended to assess him for the land where he lived, which included a part of the twenty-two acres. I never knew that he ever owned any other land in that township. I do not know that I ever assessed it to Richard Lane. I do not know that Sout and Williams ever gave in this land to assess. It is more than I can say to whom I assessed the other part of the sixty-four acres. I do not know that I ever assessed it to Richard Lane or to 10 Stout and Williams. Stout and Williams never gave in any land in partnership. I assessed a considerable land against both Stout and Williams, but they never gave any in as partners. Samuel Leming was assessed for a considerable of land, who lived near the property. He bought the balance of the sixty-four acres of John Holmes, Jr., (objected to by Mr. Ryall.) He used to give in a considerable of land, and I expect he intended to give in that, but I do not know; there might have been enough land besides that and there might not—I do not know. After the decease of Samuel Leming, 20 I do not know whether the balance was assessed to any one or not. I understood that Samuel Leming gave his daughter and son Charles a deed for all his property; and the part known by the name of Holmes' Mills, including the balance of the sixty-four acre tract, fell to his daughter, and after Leming's death I assessed all of the property about said mills that I had before assessed to Leming, to Francis Cornelius, who had married his daughter. I expect I took an account of it from the old duplicate. I do not recollect whether Richard Lane ever did or did not give in to me any land to 30 assess. I do not know whether I ever did or did not assess any land to him.

Being cross-examined, says—I think I have run all around the sixty-four acre tract once, but do not recollect the time when, nor for whom. I think I have run some of the lines for Stout and Williams, and I think Holmes was along at the time. I have run a part of it for Stout and Williams as it was originally located. This was since I understood they got their title from the administrators of Richard Lane. This

was some time ago but I cannot recollect how long ago it was; probably it was five or six or seven years ago. I ran it as far as I did run it, as it was originally located on the same ground. It was three days since that I run the lines of the twenty-two acre tract for Joseph Holmes; Francis Cornelius, Samuel Beatty, Isaiah Chamberlin and Joseph Holmes were along at the time. The defendants were not present and I do not know whether they had any notice of the running. I saw John Williams the morning as I was going down to run out the twenty-two acre tract. He enquired of me 10 where I was going? I told him I was going to Stout Parker's. I did not tell him I was going to run out the twenty-two acres. Joseph Holmes did not request me not to inform Williams about my running it for him. I did not tell Williams what I was going to do, because I knew he would be asking me questions, and I was in a hurry and did not wish to be detained. When I ran the tract the last time for Joseph Holmes, I commenced running where we made the beginning of the forty-five acre tract, when we made location and run the first, second, third, fourth and fifth line, as far as the cleared field extends. I 20 first ran five chains east from the beginning corner of the forty-five acre tract, to make the beginning corner of both the sixty-four acre and the twenty-two acre tracts, both of which have the same beginning; from thence I ran east ten chains; second, south, one degree east, sixteen chains and fifty links; third, south, sixty degrees west seventeen chains; fourth, north, eighty-two degrees west, five chains and fifty links; fifth, north, fifty degrees east, ten chains to the fence which encloses the cleared land. I commenced at the beginning corner of the forty-five acre tract and ran five chains east to 30 make the sixth corner of said forty-five acre tract, that being the beginning of the sixty-four acre tract. I knew the beginning corner of the forty-five acre tract when I made the location. On the seventh of August, eighteen hundred and forty, we went to measure down from what Stout and Williams called Mill Hill, to ascertain the beginning corner of the forty-five acre tract. They pointed out to me a place they called Mill Hill. I cannot say that John Holmes, Sr., ever pointed

out the same place as Mill Hill. I cannot say whether he ever did or did not. I do not think that quite the same place that John Holmes, Sr., and John Holmes, Jr., pointed out to me as Mill Hill. I think the Holmeses pointed out another place as Mill Hill, a little below the place that Stout and Williams pointed out to me. When I located the sixty-four acre tract, I commenced at the same beginning that I did the other day when I ran out the twenty-two acre tract, as near as I can tell. A short time before the deed for the twenty-two acre
10 tract was made by John Holmes, Jr., to John Holmes, Sr., I do not know whether or not I ran any of the lines thereof, but expect I did. Three acres and a quarter of the twenty-two acre tract is cleared, and it is connected with the field on the forty-five acre tract. I do not know that there is any other portion of the twenty-two acre tract that is in fence; but there is a small part of the sixty-four acre tract in fence adjoining the three acres and a quarter, all of the rest is unenclosed woodland. I expect Stout and Williams are in possession of the balance of the sixty-four acre tract; for I believe they had
20 the wood cut off of it. It may be eight years ago since I ran the tract for Stout and Williams, and it may be five. They were on it when I ran it. I expect they have claimed to be in possession of the balance ever since I ran it for them. I have some of my duplicates that I had when I was assessor. I cannot pretend to say how many I have got of them. I have one of them at any rate. I do not know that I have more. I do not know how many years back. I have not made any search for them. The whole time that I was assessor I assessed John Holmes, Sr., for forty or fifty acres of land, with-
30 out any variation as long as he lived. I do not think there was any variation as long as he lived—I do not think there was any variation. I cannot certainly say whether John Holmes, Sr., gave in forty or fifty acres to be assessed; it was one or the other. John Holmes, Sr., claimed under the alleged deed of William Holmes, more land than is included in the forty-five acres survey. It did not take in all of the forty-five acres; it took in other lands. I do not recollect that there was any addition to the number of acres assessed to

John Holmes, Sr., after the deed was made from John Holmes, Jr., to John Holmes, Sr. I do not know whether there was or not, but I do not think there was. I cannot tell from the way the assessments were made, what particular land was assessed, without they should point out to me the land; and no part of this twenty-two acre tract was ever pointed out to me, but I expect a part of it was given in, as it was enclosed. I cannot say that Richard Lane was assessed for any land. I do not think that he was—I do not recollect whether he was or was not. I cannot say whether I was or was not assessor 10 the year of his death or the year preceding his death. I have made upwards of twenty duplicates and think the bigger part of them may be found. Mr. Williams and Stout have been individually assessed for a considerable of land since eighteen hundred and thirty-two. I do not know anything about it, whether the sixty-four acre tract was or was not included in their respective assessments. I cannot say whether any other person has been assessed for any other portion of the sixty-four acre tract except what is included in fence, since eighteen hundred and thirty-two. I expect that John Holmes, Jr., was 20 brother-in-law to Richard Lane. I believe John Holmes, Sr., married a sister of Lane. All of the lands that were returned to Daniel and John Holmes, about there, were called the mill lands, and the forty-five acre tract was one that was returned to them. I ran a part of the mill lands for Benjamin Stout and John Lane a good many years ago, when they informed me that they had bought a quarter of them. It might be twenty years ago, and it might not. I do not know that I can tell within ten years of it. I think it was since I was first elected assessor. It is about twenty-seven years ago since I 30 was first elected assessor. And that which John Holmes, Jr., sold to Samuel Leming, is also a part of the mill property, but the sixty-four acres is not a part of the mill property. I do not know that there was or was not any portion of the sixty-four acre tract assessed to Samuel Leming.

Being examined in chief, says—I expect the land that is now enclosed in fence was enclosed when I located the land in eighteen hundred and seventeen. They have moved the ence in a little since then.

Being cross examined, says—John Holmes, Jr., was the owner of the mill property when the sixty-four acre tract was located, and John Holmes, Sr., was the owner of the fifty acre tract. John Holmes, Sr., and John Holmes, Jr., were present at the time I made the location. The chain-bearers, according to my field book, were John Holmes, Sr., and David Meshler. The object was to locate the vacant land, a part of which was in the field. The location was made with the approbation of both the Holmeses. At the time I ran the
10 sixty-four acre tract for Stout and Williams, I ran it according to the original location as far as I did run it.

Being examined in chief, says—When I ran the twenty-two acre tract for Holmes, the other day, I saw that some trees had been cut upon it. I saw the stumps.

Being cross examined, says—I did not know who cut the trees.

JAS. D. ROGERS.

Sworn and subscribed this 2d day of July, 1841, before me
JOSEPH COMBS, M. & E. C. C.

20 *Isaiah Chamberlin* being duly sworn on the part of the complainants, on his oath saith—I saw Mr. Rogers survey the twenty-two acre tract two or three days ago. I cut some wood on this twenty-two acre tract some time ago for Joseph Holmes. It was about two years ago. Both Mr. Stout and Williams carted some of that wood away. They carted about two cords and a half. I suppose it was worth about a dollar and a half per cord in the woods, cut.

Being cross examined, says—The defendants at the time they took the wood away, forbid my cutting. They told me
30 it was their land. I did not cut any more after that day. Joseph Holmes set me to cutting there. I guess I cut between six and seven cords. I believe Mr. Holmes carted off that which the defendants did not. He cut some himself. Jacob Holmes, his brother, cut some; also John Maybee. I think all of us cut about ten or eleven cords, which I expect was carted off by Mr. Joseph Holmes, except the two and a

half cords that was carted off by the defendants. I was the only one at work in the woods when the defendants came, and I believe there was no wood cut there after I was forbidden by them. After the wood was cut into cord wood it was carted by Mr. Holmes three or four hundred yards on some other land that Mr. Holmes owned. I expect the ground was as good to cord the wood where it was cut as it was where it was corded: I did not assist to cart any of it off. It was carted off as it was cut up into wood. I do not know that there was any dispute between Joseph Holmes and the de- 10 fendants about the land upon which the wood was corded. Joseph Holmes carted off the wood because there would be a law suit about it, as he said, with Stout and Williams. It was not all carted off in one day. It was not carted off as fast as it was cut up. I was cutting about four days. A part of it was carted the first day, by Joseph Holmes, and a part of it was carted off the last day, by Stout and Williams. When I first commenced cutting, I believe the four persons I have named commenced. It was not understood among us before we went upon the land, that Stout and Williams claimed 20 it. I never heard from Stout and Williams before we went there to cut, that they claimed the land.

Being examined in chief, says—The wood that Stout and Williams carted off, was carted from the land where it was cut. It was a clear spot of land along the road to the landing where Mr. Holmes carted what he took off. The place where it was cut had some stumps and brush on it.

Being cross-examined, says—It was about two miles from there to the landing, where the wood was carted. It was cut for the New York market. 30

Being examined in chief, says—It was less exposed to fire where Mr. Holmes carted it than it was in the woods. The same time that I was cutting on the twenty-two acre tract for Mr. Holmes, Mr. Stout and Williams were cutting off the balance of the sixty-four acre tract. I believe Stout and Williams took the wood they carted from the twenty-two acre tract to the balance of the sixty-four acre tract, and corded it up with theirs.

Being cross examined, says—I never saw the sixty-four acre tract run, and do not know how it lays. They carted the wood on to the land they were cutting off. I saw where it was put. It was on the sixty-four acres adjoining the twenty-two.

Being examined in chief, says—They carted the wood about twenty yards east of the second line of the twenty-two acre tract. I saw that line run.

Being cross examined, says—I mean they put the wood 10 upon the same land they were cutting off, but did not mingle it with theirs.

Isaiah Chamberlin.

Sworn and subscribed this 2d day of July, 1841, before me
Joseph Combs, M. & E. C. C.

Francis Cornelius being duly sworn on his *voire dire*, at the request of Mr. Ryall, saith—I do not know whether I am or not interested in the event of this suit. I have said to day 20 that I had been interested in this suit, but I do not calculate that I am now. I once owned the land in partnership with John Holmes, Sr.

Being examined by Mr. Vredenburgh, says—I never owned all of the sixty-four acres. John Holmes, Sr., owned the twenty-two acre part and I owned the forty-two acres, the balance of the sixty-four acres, and that was what I meant by owning it in partnership. It is as much as fifteen or sixteen years ago that I became the owner of the forty-two acre part. I became the owner of it by heir-ship from my wife's 30 father, whose name was Samuel Leming, who bought it of John Holmes, Jr. It is two or three and twenty years ago that he bought of John Holmes, Jr. I gave a quit claim to Stout and Williams for the forty-two acre part, about four or five years ago, as near as I can tell. I believe they gave me fifty-five dollars for the release. I do not think I am interested in any other way than I have stated. (Mr. Vredenburgh's examination of witness objected to by Mr. Ryall.)

Being examined by Mr. Ryall—Benjamin Stout and Stout

Parker told me I was interested in the event of this suit; and I told them I did not know but that I was. I told them I thought likely I was. I do not now claim to be interested in the forty-two acre part. I have no claim whatever in the forty-two acre part.

FRANCIS CORNELIUS.

Sworn and subscribed this 2d day of July, 1841, before me
JOSEPH COMBS, M. & E. C. C.

Francis Cornelius being duly sworn on the part of the complainants, on his oath saith—I used to be acquainted with the sixty-four acre tract. I was with them the other day when they were running it out; I do not know when I have been around it before. I saw Mr. Rogers run around a part of the twenty-two acres the other day. I have seen the whole of the sixty-four acre tract run out a good while ago, while I owned it. James Rogers ran it once for me while I had it in possession—and Esquire Lawrence once. I don't live over a quarter of a mile from the tract. It joins the land where I live, at one point, and which I calculate I own and have deeds for. I have lived there sixteen years. I guess John Holmes, Sr., owned the twenty-two acre tract some time ago—he said he had two deeds for it and said he had paid for it twice. (Objected to by Mr. Ryall.) I do not know when the sixty-four acre tract was located by Rogers. I supposed John Holmes, Sr., had possession of the twenty-two acre tract. From the time I moved upon the property where I now live, till the death of John Holmes, Sr., I lived one side of the mill pond and he the other. We lived about four hundred yards from each other. I became the owner of the forty-two acre part of the sixty-four acre tract about fourteen or fifteen years ago. I think it is as much as fifteen years ago. I continued to own it till I gave a release to Stout and Williams, which was about five or six years ago. Four, or five, or something. I cannot tell. It is as much as six years ago. (Objected to by Mr. Ryall.) I cannot tell you whether I paid tax for it or not while I possessed it—I expect I did. I always

paid a high tax. I thought I paid tax for more than I had. I think I paid tax for all the land I owned and more besides. I gave the tract in to James D. Rogers, when he was assessor, to be assessed. During the time I owned it, I had possession of it. I cleared out the dead timber from it while I had it in possession. I recollect of cutting six or seven cords of wood on the forty-two acre part of the sixty-four acre tract, the next season after Richard Lane got his deed from Andrew Bell. I do not know that Richard Lane ever cut any on it, 10 during his life time. I believe Stout and Williams cut on it before I gave them a release. To the question, how long before you gave the release to Stout and Williams, was it that they cut on the property? the witness says it was not long after that that they sued me. I carted the wood away that Stout and Williams cut on it. They sued me then before Justice Haines, I believe it was. Pretty soon afterwards I gave a release to them. They paid me better than fifty dollars. I am not lawyer enough to tell what they did it for. I I think Jesse Cowdrick held the release until the money was 20 paid, I will not be certain. I agreed to give them a release, but for no certain sum. They paid the fifty dollars for my wife to sign the release. I became owner of the property by heirship through my wife. She got it from her father, Samuel Leming, who bought it from John Holmes, Jr., and paid the money for it. (Objected to by Mr. Ryall.) It is two or three and twenty years ago, since he bought it of John Holmes, Jr., as near as I can recollect. (Objected to by Mr. Ryall.) Samuel Leming, from the time he bought of John Holmes, Jr., claimed to have the right and possession of it. John Holmes, Jr., 30 claimed title to the land before he sold to Samuel Leming, by locating it, I expect. I do not know that he had a deed from Andrew Bell. I did not see John Holmes, Sr., before his death, cut upon the twenty-two acre tract.

Being cross examined, says—I do not think that I have any interest in the event of this suit. I do not think I have told any one that I am interested in the event of the suit. I told Benjamin Stout I might be, but I did not see what way. I have not made any bargain with Mr. Holmes about being a

witness for him. I am forty-four years old, I believe. I have been married sixteen years. I live on what is called the mill tracts. I calculate I own them by heirship through my wife. The forty-five acre tract lays on one side of the pond and the mill tract on the other. The mill tract is assessed for two hundred acres. I own the whole of it through my wife. I do not own the forty-five acre tract on the other side of the pond. I never saw any part of the twenty-two acre tract run out, before I saw Rogers run it one day this week. I saw the line run between the two tracts twice. The first time I saw it run was when I fell heir to it pretty much. It was run by Joseph Lawrence then. John Holmes, Sr., and myself were by when he run it, and somebody else, but I do not recollect who. The forty-two acre tract was run all around at that time. That was what I mean by running the line of the twenty-two acre tract—Lawrence run it for me. I am taxed for about two hundred acres. I do not know that I have ever paid tax for more than two hundred acres. Ever since I have heired the mill tract, I have paid tax for two hundred acres. The number of acres has not varied before or since I gave the release. The assessor never came to see me after I first began to pay tax, but did come when he first assessed me. I suppose there is a little rising two hundred acres in the mill tract that I own. I cannot tell how much; I estimate it to be over two hundred acres in the mill tract. To the question, did you give in both tracts, the mill tract and the forty-two acre tract? Rogers knew as well as I did. I gave in to Rogers four or five tracts. I cannot tell how many years ago it was. I did not give in the different tracts. Rogers asked me whether I had any more than I formerly had? I told him I had no more—he then said he knew how much there was. He never called on me more than once. I do not know how long it is since Richard Lane got his deed from Andrew Bell, for the sixty-four acre tract. I was not by when the deed was delivered by Andrew Bell to Richard Lane. John Williams once showed it to me, but I do not know when it was; it is six years ago, if not more. I guess it was before Stout and Williams had gone into possession of the property, but I do not know. It must have been after I

was sued by them—I do not recollect though. I did not know anything about that deed before John Williams showed it to me—I had heard talk about it but had never seen it. The six or seven cords of wood that I cut, was within the boundaries of the forty-two acre part of the sixty-four acre tract, as Esquire Lawrence and Rogers ran it. At the time Stout and Williams sued me, both parties claimed title, and both entered into bonds to have it tried at court. I do not know that I abandoned the case when I saw the title of Stout and
10 Williams. I did not go on with the suit because I signed it away to them to get clear of costs and trouble. I do not recollect whether or not the suit was abandoned sometime before I gave the release.

Being examined in chief, says—that the time Rogers came to asssess me was after I had heired this property. I gave him all I had. He asked me if I had any more land than the Holmes' property, to be taxed—I told him not. When Reuben Hains came as assessor, I gave in two hundred acres. The time when Haines came there was before I released to
20 Stout I think; I will not be certain.

FRANCIS CORNELIUS.

Sworn and subscribed this 2d day of July, 1841, before me
JOSEPH COMBS, M. & E. C. C.

David I. C. Rogers, being duly sworn on the part of the complainants, on his oath saith. I heard a conversation between Mr. Benjamin Stout and Joseph Holmes relating to this matter. It was at the house of Garret Stout, in Dover township—it was shortly after the commencement of the suit be-
30 tween these parties in the justice's court. I think it was before the commencement of the suit in Chancery. At that conversation Garret Stout was present—the suit was brought in question, and Benjamin Stout remarked that they had better divide the tract than to have any difficulty between them, or leave it to men. Joseph Holmes replied that if Mr. Stout had bought it unknowingly, or been deceived in it, he would be willing to do so; but as he had been informed by his brother Jacob, that his father had a deed for it and owned it,

that he was not willing to do so. Mr. Stout replied that when property was advertised at public sale, he did not think it was his business to run and ask Jacob Holmes whether he could buy it or not. I believe the conversation ended then, as far as I recollect. Mr. Stout did not deny at that time, whether he knew or not, that John Holmes, Sr., had a deed for the property. I mean to say that from the tenor of the conversation, Benjamin Stout was apprised that John Holmes, Sr., had a deed for the property. Joseph Holmes told Mr. Stout that his brother Jacob had informed him before he bought, 10 that John Holmes, Sr., had a deed for the property. He did not deny that he knew it. I had a conversation yesterday, with Mr. Williams, relating to the controversy—but cannot repeat the words, as we were riding, jolting along on our way up here. Mr. Williams remarked that he had requested Mr. Stout to make the proposal to Mr. Holmes, to leave it to men. I suppose Mr. Stout lives about two miles from the land in controversy—John Williams lives about a mile and a half or three quarters from it. Mr. Williams keeps a public house. I recollect of hearing when Lane's property was sold by the 20 administrators. I call it two miles from the premises in dispute to where I live. To the question, whether at the time of the sale of the Lane property, the circumstances were not generally known in the neighborhood, under which the property was placed? (Mr. Ryall objected to the question.) The witness answers, I do not know, for I did not go much in company at that time I did not hear of it myself. (After the answer, Mr. Ryall still objected to the question as an improper one, Mr. Vredenburgh waived it, and Mr. Ryall insisted upon having the history of transaction put down. 30

Being cross examined, says—I took Mr. Stout's offer in the way of a compromise that he made to Mr. Holmes in the conversation that I have related as taking place at Garret Stout's. Joseph Holmes told Mr. Stout that his brother Jacob had informed him that John Holmes, Sr., had a deed for the property, and Mr. Stout admitted that he had. I think Mr. Holmes told Mr. Stout that his brother Jacob had told him on, the day of the administrator's sale, before Mr. Stout bought,

that John Holmes, Sr., had a deed for the property, and if my memory does not deceive me, Mr. Stout replied, yes. From this conversation I drew the inference that Mr. Stout admitted that John Holmes, Sr., had a deed for the property. I understood from Mr. Williams, yesterday, that he had assented to the proposed compromise that Mr. Stout had made.

DAVID I. C. ROGERS.

Sworn and subscribed this 2d day
of July, 1841, before me
10 JOSEPH COMBS, M. & E. C. C.

NOTICE OF

EXAMINATION OF WITNESSES, TAKEN JUNE 3, 1843.

NEW JERSEY, SS:

Depositions made and taken, and exhibits made in the above stated cause, pending in the High Court of Chancery, of the State of New Jersey, wherein Joseph Holmes and others are complainants, and Benjamin Stout and others are defendants, at the city of Perth Amboy, in said state, on the third day of June, A. D., eighteen hundred and forty-three, in the presence of Joseph F. Randolph, Esq., of counsel with the 20 complainants, and no person appearing for said defendants, and at the house of Elmer Granger, between the hours of one and two o'clock in the afternoon.

Joseph F. Randolph, Esq., aforesaid, being duly sworn on his oath saith—That on or about the twenty-first day of May, 1843, deponent received by mail, a letter from Peter Vredenburgh, Esq., the solicitor of the complainants, the same being in the proper hand writing of said Vredenburgh, dated Freehold, May 18th, and post-marked the 20th of May, 1843, informing witness that he had given Daniel B. Ryall, Esq., the 30 solicitor of the defendants, notice of the taking of depositions in

this case, at one o'clock in the afternoon, at Perth Amboy, be-
fore William H. Leupp, examiner for this day; and further,
said deponent states, that B. D. B. Smock, Esq., was the ori-
ginal solicitor in this cause for the complainants; owing to
some engagements of said B. D. B. Smock and deponent, the
original draft of the bill in this cause was made by said Peter
Vredenburgh, Esq.; the bill was completed and subpœnas
issued from the office of said Smock and deponent. It was
the invariable practice of this deponent to examine all bills
and other original papers before they were sent or taken from 10
said office—and from this circumstance, the witness has no
doubt that the said bill in this cause was so examined, with
the view of comparing the papers therein copied, with their ori-
ginals; this being as above stated, the uniform practice of this
deponent; and witness fully believes, though he is not able so to
state from positive recollection, that on that occasion, he compar-
ed the description in said bill with the original deed made by
John Holmes, Jr., to John Holmes, Sr., from this circumstance,
and from the purport of said deed in the said bill, and description
of the deed in said bill, deponent has no doubt that he had said 20
original deed in his possession at that time; it has since been
lost or mislaid, as it cannot be found among the papers of said
Smock or of deponent. Deponent has no recollection of hav-
ing seen the record or registry of said deed until some time
after the answer in this cause was filed—the bill in its de-
scription, contains several matters which could not have been
taken from the registry. In the registry, the day and the
month in the date of the original survey is in blank, in the
deed as described in the bill, it is on the fifteenth day of May,
A. D. eighteen hundred and seventeen, (1817,)—in the regis- 30
try, it is described as recorded in book S, page ———, in the
bill, as in book S 18, page 160, in the registry John Holmes',
Senior, survey, is described as recorded in book S, page 241;
in the bill as book S 4, page 241; in the registry, the deed
from Andrew Bell to John Holmes, Junior, is described as
dated ——— day of ——— 1807, by virtue of a survey to
Andrew Bell, dated ——— day of ———, 1807, which depo-
nent believes are errors in the registry, and that the original

deed had the true dates filled up, the records during that period were very loosely kept, as witness knows; deponent having known of several errors in the registry of papers in that office. William Ten Eyck was then Clerk, since deceased, as is also deceased Joseph Lawrence, the commissioner, before whom said deed was acknowldged—said Lawrence was a very correct business man. Paper writing being a certified copy of deed from John Holmes, Junior, to John Holmes, Senior, dated December 10, A. D. 1817, is offered and marked exhibit A, 10 on the part of said complainants. Said B. D. B. Smock died several years since, and his papers came into the possession of said deponent, and said original deed is not to be found and was not at any time to be found among them as far as witness could ascertain.

JOSEPH F. RANDOLPH.

Sworn and subscribed this 3d day of June, A. D. 1843, before
W. H. LEUPP, *Ex.*

Andrew Bell, Esq., a witness produced, sworn and ex- 20 amined on the part of said complainants, being duly sworn on his oath, saith—That heretofore, to wit: the twenty-third day of August, A. D. 1817, deponent made and delivered unto John Holmes, Junior, a deed of conveyance for sixty-four and four-one-hundredths acres of land, situate at Forked River, Monmouth county, in this State—this appears from the endorsement made on the original return of said land, in the hand writing of witness. The said original return, with the said endorsement, are identified and produced by said Andrew Bell, and offered and marked exhibit B, for the said 30 complainant; the said original return with said endorsement, except what relates to the registry of said return, is in the proper hand writing of this deponent; the endorsements on said return were made on or about the day of the date thereof, this being the uniform practice of this deponent. Deponent took the promissory note of said John Holmes, Junior, for the consideration of said deed, which note is offered in evidence, and marked exhibit C, for said complainant—taking these

circumstances, and with witness' recollection together, the deponent has no doubt that he made and delivered said deed. On the twenty-seventh day of August, A. D. 1827, said Holmes, in company with Richard Lane, called upon this deponent and said he did not recollect his getting said deed from deponent, as he could not find it among his papers. Witness told him that he was sure he had it, and must search among his papers for it; that if he could not find it by the October term of the court, he, deponent, would bring with him the original return, and do what might be advisable in relation to giving him another 10 deed. The next day said Holmes and Richard Lane called again on witness and prevailed on the deponent to execute another deed for said tract of land, to Richard Lane, to whom said Holmes had sold said tract of land—said Richard Lane was present at both said interviews during the whole time; the said second deed was made on the ground that the first deed was lost, as said Lane knew, as he heard the whole conversation—the said original return with its endorsement was shown to Lane at the time; immediately after giving the second deed, witness made the (2) second endorsement on said 20 return, deponent made also at the time, a private memorandum of the transaction. Witness also took from said John Holmes, Jr., a paper writing now produced in deponent's hand writing, being Exhibit No. 2, appended to deponent's original deposition (and now marked Exhibit D, for said complainants by myself:) from these various memoranda, and witness' own recollection of the facts, he has no doubt of the accuracy of the above detail of the transaction—at this time Richard Lane paid on said Holmes' note sixty dollars, leaving then due thereon seventy dollars and ninety cents, which has never been paid 30 to witness. At the time that the said deed was given to said Richard Lane, there was due on said Holmes' note one hundred and thirty dollars and ninety cents, which is the sum named in the said deed to said Richard Lane, as the consideration thereof. Said Lane did not either then, or at any time pay any money to deponent, except as aforesaid, upon said note of Holmes, nor did witness consider said Lane his debtor for said consideration or take from him any promise or security for

the payment of any part of said sum of money—said Holmes told witness that if he was willing to give him another deed, he might give it to said Lane to whom he had sold it, and it would save him the expense of two deeds. A statement and calculation of the amount due on said note of said John Holmes, Jr., is produced by witness, by him identified, and marked by me Exhibit E. Witness received a letter from Corlies Lloyd, dated Freehold, February the twenty-ninth, A. D. 1828, informing witness that Francis Cornelius, of Do-
10 ver, had purchased some time before, of Samuel Leming, a tract of land conveyed to Leming by John Holmes, Junior, and others, which had been conveyed, as said Cornelius had heard, by deponent to Lane, and asking information in relation to such conveyance. Said Lloyd was then a lawyer at Freehold, and several years since died.

ANDREW BELL.

Sworn and subscribed at Perth Amboy, this 3d day of June, A. D. 1843, before
20 W. H. LEUPP, *Ex.*

EXHIBITS MARKED ON PART OF COMPLAINANTS.

1. A certified copy of deed from John Holmes, Junior, to John Holmes, Senior, dated December 10th, A. D. 1817, marked exhibit A. Recorded October 19, 1827.

Copy of endorsements on original return in Bell's writing, referred to in his evidence.

"Conveyed this tract to John Holmes, Jr., the 23d August, 1817, and delivered the deed to him same day. Consideration $119—his note taken
30 for that sum."

"28th August, 1827.—Mr. Holmes saying that he could not find the above deed, and having sold the land to Richard Lane, he prevailed on me to execute another to said Lane, and gave me an engagement to cancel the other when found."

2. Original return, dated May 17, 1817, made to Andrew Bell, for sixty-four and four-one-hundredths acres, marked exhibit B.

3. Promissory note made by John Holmes, Jr., to Andrew Bell, dated August, 23d, 1817, at thirty days for $119.00, marked exhibit C.

Endorsements on said note in Bell's writing.

Rec'd from Joseph Wilkinson the amount of his note assigned to me by John Holmes, being forty-two dollars on account of this note.—Nov. 14th, 1817. ANDREW BELL. 10

Rec'd by the hands of Richard Lane, sixty dollars on account of this note.—Aug. 28th, 1827. A. BELL.

4. A paper writing sealed and signed by John Holmes, Junior—a covenant of indemnity to A. Bell against his first deed. Dated 28th of August, 1827—marked exhibit D.

5. Paper writing, a statement of amount due on promissory note of John Holmes, Junior, to Andrew Bell—marked exhibit E.

DEFENDANTS' EVIDENCE.

The defendants offered, 20

1. Deed from Andrew Bell to Richard Lane. Dated 28th August, 1827. Recorded 17th September, 1827, in book O 2, of deeds, at Freehold.

2. Deed from Platt and Woodmansee, administrators of Richard Lane, deceased, to Stout and Williams—dated Nov. 7, 1832. Recorded Nov. 21, 1832.

OPINION OF CHANCELLOR.

THE CHANCELLOR. On the twenty-third of August, eighteen hundred and seventeen, Andrew Bell conveyed to John Holmes, Junior, a tract of land of sixty-four acres and four hundredths, in the county of Monmouth, for one hundred and nineteen dollars, and took his note for the money.

On the tenth of December, eighteen hundred and seventeen, John Holmes, Junior, conveyed to John Holmes, Senior, twenty-two acres, parcel of the lot of sixty-four acres and four 10 hundredths, for fifty dollars.

On the twenty-seventh day of August, eighteen hundred and twenty-seven, John Holmes, Junior, represented to Mr. Bell that he had lost his deed, and that it had not been recorded, and urged him to make out a new deed for the sixty-four acres and four hundredths of an acre lot, to his brother-in-law, Richard Lane. Mr. Bell at that time declined making a new deed; but on the next day, Holmes, Junior, and Lane called upon him and urged him till he was induced to execute to Lane a new deed for the premises, dated the twenty-20 eighth of August, eighteen hundred and twenty-seven; and Lane then paid Mr. Bell sixty dollars on Holme's note. Part of the money due on the note still remains unpaid. The deed was recorded on the seventeenth of September, eighteen hundred and twenty-seven.

In eighteen hundred and thirty, Lane died intestate, and his administrators, by virtue of an order of the orphans' court, sold and conveyed the whole premises to Stout and Williams, the defendants, by deed dated the seventh of November, eighteen hundred and thirty-two, and recorded on the 30 twenty-fourth day of November, eighteen hundred and thirty-two. The deed from John Holmes, Junior, to John Holmes, Senior, was not recorded until after the execution of the administrators' deed to Stout and Williams.

The complainants claiming under John Holmes, Junior, now file their bill, and seek a perpetual injunction, to quiet their title, and to set aside so much of the deed from Bell to

Lane as covers the twenty-two acres before conveyed to John Holmes, Senior.

From the testimony in the case, Lane appears to have been a purchaser for a valuable consideration, and as his deed was duly recorded before the deed from John Holmes, Junior, to John Holmes, Senior, his claim to the premises is to be preferred, unless it can be shown that he purchased *mala fide*, or with notice of the deed to John Holmes, Senior: *Act of 7th June*, 1799, *sec.* 8, *Pat.* 399.

It is not enough to show that he had notice of the deed 10 from Mr. Bell to John Holmes, Junior. Lane purchased of Holmes, Junior, and whether the conveyance were made by Holmes or Bell, was as between them immaterial.

There is no proof of actual notice to Lane, nor of any constructive notice, unless it be under the allegation of possession of the premises by Holmes, Senior. Possession is sometimes notice of claim of title, sufficient to put a purchaser on inquiry; but it must be an actual possession, manifested by notorious acts of ownership, such as would naturally be observed by, and known to the public. 20

In this case there is no evidence of such possession. The premises consist of uninclosed woodland, except about two acres which are included within the inclosure of an adjoining tract of forty-five acres. Upon it John Holmes, Senior, occasionally cut wood, which cutting, under the circumstances, would be regarded as so many trespasses quite as probably as acts of ownership.

As to possession being notice, see *Daniels* v. *Davison*, 16 *Ves.* 249; *Taylor* v. *Stibbert*, 2 *Ves.* 440; *Smith* v. *Low*, 1 *Atkyns* 490; *Allen* v. *Anthony*, 1 *Merivale*, 282; 2 *Fonb.* 30 *Eq. B.* 2, *ch.* 6. *sec.* 3, *and note (m.)*; *Hanbury* v. *Litchfield*, 2 *Mylne and Keene*, 629, 632, 3; *Flagg* v. *Mann*, 2 *Sumner R.* 486, 554, 555.

If Lane, then, were a bona fide purchaser without notice, the sale to the defendants by the administrators may be good, even though the defendants had such knowledge and notice of all the circumstances of the case. For it is well settled, as a general rule that the grantee of a bona fide purchaser with-

out notice, is not to be charged with the incumbrance or fraud, although directly known to him before he acquired his title; otherwise the loss must be visited upon the bona fide purchaser as he would thereby be obliged to keep the property or to sell it at such price as would enable his purchaser to discharge the incumbrance or purge the fraud: *Harrison* v. *Forth*, *Prec. in ch.* 51; 2 *Fonb. Eq. B.* 2, *ch.* 6, *sec.* 2; *Lowther* v. *Carlton*, 2 *Atk.* 242; *Ferrars* v. *Cherry*, 2 *Vern.* 383; *Mertins* v. *Jolliffe*, *Amb. R.* 313; *Sweet* v.
10 *Southcote*, 2 *Brown's Ch. R.* 66; *McQueen* v. *Farquhar*, 11 *Ves.* 477, 8; *Ingram* v. *Pelham et al.*, *Amb.* 153; *Alexander* v. *Pendleton*, 8 *Cranch*, 462; *Fitzsimmons* v. *Ogden*, 7 *Cranch*, 2.

In this view of the case, it is unnecessary to inquire into the alleged notice to the defendants. The bill must be dismissed, with costs.

Decree accordingly.

DECREE.

IN CHANCERY OF NEW JERSEY.

Of the term of January, in the year of our Lord one thousand eight hundred and forty five.

20 This case coming on to be heard at the term of July last past of the Court of Chancery, held at the State House in the city of Trenton, before the Chancellor in the presence of Joseph F. Randolph, and Peter Vredenburgh, Junior, Esquires, of Counsel with the complainants and Garret D. Wall, and Daniel B. Ryall, of Counsel with the defendants, and the pleadings, depositions, exhibits and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon—and now on this twenty-second day of January in the

year of our Lord one thousand eight hundred and forty-five, it appearing to the Chancellor that the complainants are not entitled to the relief sought and prayed for by them in their said bill of complaint—It is is ordered, adjudged and decreed that the complainants' said bill be, and the same is hereby dismissed with costs.

DANIEL HAINES, C.

Dated, 22d January, 1845.

NOTICE OF APPEAL.

Between Joseph Holmes, Gilbert Holmes, Catharine Holmes, Jr., John Predmore and Lenah his wife, and John H. Chamberlin, Complainants,
and
Benjamin Stout and John Williams, Defendants.
} *On Bill—Appeal.* 10

The complainants hereby appeal from the final decree made in this court, in the above stated cause dismissing the bill of complainant with costs, to the Court of Errors and Appeals in 20 the last resort.

P. VREDENBURGH, JR.,
Solicitor of Complainants.

Dated, Dec. 23d, 1847.

I conceive there is good cause for appeal in the above stated cause.

J. S. BLAUVELT,
of Counsel of Complainants.

PETITION OF APPEAL.

Between Joseph Holmes, Gilbert Holmes, Catharine Holmes, Junior, John Predmore and Lenah his wife, and John H. Chamberlin, Appellants, *and* Benjamin Stout and John Williams, Appellees.	*On Bill, &c. Petition of Appeal.*

To the Honorable the Court of Errors and Appeals in the last resort in all causes of law.

10 The humble petition of the above named appellants, respectfully shew that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his excellency, Daniel Haines, Governor and Chancellor of New Jersey, bearing date the twenty-second day of January, 1845, wherein the said appellants were complainants and the said Appellees were defendants in this respect, to wit, that in and by the said decree, the said complainants' bill was thereby dismissed with costs. And your petitioners humbly appeal from the said decree upon the ground that the same is erro-
20 neous. Your petitioners therefore pray that the said decree may be reversed, set aside, and for nothing holden—and that your petitioners may have such relief in the premises as to this honorable court shall seem meet

P. Vredenburgh, Jr.,
Solicitor of Appellants.
J. S. Blauvelt,
Of Counsel.

The Respondents answered Petition and denying it.

RULE,

30 To substitute Joel Parker Solicitor for Appellants, in place of P. Vredenburgh, who was appointed a Justice of Supreme Court.