

*CONOVER v. WARDELL and al.*

Opinion.

THE CHANCELLOR. Henry Wardell died in 1852, intestate, seized of a farm near Long Branch, in Monmouth county, on which he resided at his death, containing several hundred acres of land. He had, in his lifetime, conveyed several lots cut off from the south part of this tract. Administration of his personal estate was granted to the defendant, Elizabeth Wardell, his widow, and one Jordan Wooley, who, by order of the Orphans Court, sold a tract of about fifty acres of the north part, now known as the Ocean House property, to Henry E. Riell, and she, with the children and heirs of H. Wardell, had conveyed a tract from the southeasterly part to the Long Branch and Sea Shore Railroad Company. Henry Wardell left six children who were his only heirs-at-law, one of whom, Henry H. Wardell, in 1855, conveyed his share in the real estate of his father to Elizabeth Wardell, his mother. The widow had removed from the farm into the village of Long Branch before 1855, and one of her sons, Edward Wardell, was living in the mansion-house and had possession of the farm. 10

The first course in the deed is along a fence and ditch which have been there for fifteen years or more, and the land south of it was offered for sale by the administrators a few years after Henry Wardell's death. Part of it had been sold by the defendants before 1868, by parol agreement, to the owners of the adjoining lands, who had taken possession of these parts, although the agreements were never carried out. In June, 1865, the widow and heirs of Henry Wardell had agreed among themselves to sell the farm north of this line, and to reserve the part south of it to enable them to fulfill their parol contracts, and authorized the defendant, Morris, who was a real estate broker at Long Branch, to sell the farm north of that line. 30

The complainant, in the latter part of June, 1865, applied

to Morris to purchase a farm. Morris immediately took him to this farm, and showed it to him. The part which they first approached was the south boundary or the beginning corner, near the school-house, on the public road over which they were driving. Morris, according to his own answer and testimony, here pointed out to the complainant the beginning corner and the south line along the fence and ditch, which is the first course in the contract and deed. But this fact is denied by the complainant in his testimony. The complainant then told Morris to procure a power of attorney from the other defendants who were the owners of the farm, to enable him to sell it, and said he would then make a bargain with him. Morris procured a power of attorney within a day or two, and on the 26th day of June, 1865, the same day on which the power is dated, made a contract, in writing, with Conover, to convey the farm to him for \$30,000; Conover joined in the contract and agreed to purchase at that price. On the 30th of October, 1865, the defendants, excepting Morris, executed a deed dated October 28th, to the complainant, which was accepted by him as a fulfillment of the contract, and he paid or secured to them the price which has since been fully paid. On the first of November, 1865, Morris executed to the complainant a deed of bargain and sale, dated October 28th, with covenants against his own acts, by which, in consideration of \$1, he conveyed all his right and title in the premises.

The complainant claims that the defendants were bound by the contract to convey to him all the homestead farm owned by Henry Wardell at his decease, except such parts as had been sold and conveyed before that contract; alleging that he was induced to accept the deeds as a fulfillment of that contract by the false assertion of Morris, the agent, at the delivery of the deeds, that all the land south of the first course had been sold. He claims that the contract was to convey the farm known as "the Wardell farm," or the homestead farm of the defendants, except such parts as had been conveyed away.

The power of attorney authorizes Morris to sell and convey "all our homestead farm on Fresh Pond, beginning at or near the Fresh Pond school-house, in the middle of the

highway, and running easterly as the ditch and fence now stands, to the sea or ocean," &c., to the place where it began; "supposed to contain about seven hundred acres, reserving thereout say one hundred acres conveyed to a Mr. Neil (Riell,) and to the Long Branch Railroad Company." The contract agrees to convey "all that tract or parcel of land lying and being on Fresh Pond, in Ocean township, Monmouth county, *and* known as the Wardell farm, *and* begins in the middle of the road leading from Long Branch to Fresh Pond, near the corner of the Fresh Pond district school-house, and runs easterly, as the ditch and fence now stands, to the sea shore;" thence and along several courses to the beginning; "supposed to contain five hundred acres, be the same more or less, reserving the right of way deeded to the Long Branch Railroad Company." 10

The deed from the widow and heirs conveyed all that certain farm and tract of land situate, &c., beginning in the centre of the road from Land's End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence (1) along the line of William West and others north 67° 15' east, 25 chains, more or less, to the Atlantic ocean at low water mark, and following by courses and distances to the place of beginning, "supposed to contain five hundred acres, more or less; it being the same premises that Henry Wardell died possessed of, and it being hereby intended to convey to said Conover all the land and premises lying within the above boundaries," (except the parts conveyed to the railroad company, and to the United States for a life boat station, in 1849.) The railroad lot and life boat lot are included in the boundaries—the lot in question is not; and it is admitted that the beginning point stated in the power of attorney in the contract and the deeds is the same. In the deed from Morris the description of the land is verbally the same as in the other deed, to the statement of the supposed contents; it then adds: "It being the intention of the party of the first part hereto, to convey to said Conover all the right, title, power, or interest which has vested or may vest in him by power, or under a certain power of attorney," describing the power; and further adds: "The above premises are known as the farm of Henry Wardell, deceased," 20 30 40

and the widow and heirs of said Henry Wardell, deceased, have, by deed of even date herewith, conveyed directly to said Conover."

It is shown that the farm occupied by Henry Wardell, at his death, included the tract in question, and also had once included a tier of lots south of it, and fronting on the public road, sold to West and others, and also the Ocean House tract, sold to Riell; all which are not included in the boundaries specified in the deeds, or the contract, or power.

10 After the contract, the defendants gave to Conover the old maps and deeds for the tract composing the farm, by which it appeared that the farm once included the disputed tract, and the tier of lots south of it. These maps and papers were given to Mr. Ryall, the counsel, who, at the request of Conover, was employed to prepare the deeds. He told Morris, in the presence of Conover, that the farm originally extended further south than the course along the fence and ditch, and asked how he ascertained this straight line to be the south boundary; Morris replied, because they owned no land to  
20 the south of it, for they had sold all the land lying to the south of that line. Morris states that until long after that time he was under that impression, that all south of that line was sold. At the request of Conover, he procured the land to be surveyed and mapped, by W. R. Mapes, between the contract and the delivery of the deed. This map Conover and his counsel had before, and at the drawing of the deed; it showed the beginning point, near the school-house, and that the first course ran north of the land in question.

The bill in this case is, in effect, to compel the defendants  
30 to perform specifically their contract, by conveying to the complainant a part of the land which, by the contract, they agreed to convey, but which was not included in the deed to him, which he was induced to accept by the representation that it included the whole of the farm which he supposed he had bought.

A suit may be maintained to compel the performance of a contract performed only in part, and a party will not be precluded by his acceptance of a deed in performance of the contract, when such acceptance was under a mistake as to  
40 the contents or effect of the deed.

In this case there is no fraud or misrepresentation. For, although Morris said all south of the line was sold, he supposed in good faith that it was, and there was no mistake in fact, either as to the land in the contract, or the land conveyed by the deed. If Morris is to be believed, the complainant was distinctly shown the beginning corner, and the south line of the farm, as specified in both contract and deed, before the contract was signed. I am inclined to believe Morris. The testimony of Conover amounts only to the fact that he does not recollect this line being pointed out to him, 10 and it is neither impossible nor very improbable that he would have forgotten it, as, on the first view of a strange farm, this would not impress itself as of any importance, while the testimony of Morris is positive. And it is hardly of itself probable that a broker, in showing a farm to a hoped-for purchaser, would pass the first boundary they came to without pointing it out. If this is true, the deed conveys the very tract that was shown to and examined by him in the negotiation for sale, and that was understood by him as the tract he bought, and by Morris as the tract he sold. 20 When the deed was being made out, and when it was delivered, he distinctly understood that this was the south boundary, and that the lands south of it formed a part of the old farm or homestead of Henry Wardell. A reason was given for this not being sold or included in the deed. The reason, by the mistake of Morris, was not the true one, but this has nothing to do with the question whether Conover understood exactly what was in the deed, and that the lands he now claims were not included. The vendors were guilty of no fraud or false representation, either in fact or law. 30 Morris was not authorized to sell any land south of that line, and any representations he made about them were outside of his authority.

There was, then, no fraud or mistake in point of fact, as the complainant got the land which was pointed out to him, both before the bargain and before the deed, as the land to be sold. But the claim of the complainant is based upon the position that the words of the agreement, by their correct legal construction, entitled the complainant to a conveyance of more land than Morris understood that he was selling, or 40

the complainant understood that he was buying, and therefore he asks a conveyance for that part.

There is certainly authority for contending that, in a deed, words like those in this contract might be held to convey the whole of the "Wardell farm," if there was a farm known by that name, although the whole was not included in the boundaries specified. But there are authorities entitled to great respect on the other side. And this construction depends upon artificial rules that, even in many cases where  
10 by authority they are clearly applicable, evidently do not affect the true intention of the parties. In applying the maxim, "*falsa demonstratio non nocet*," it is sometimes difficult to say which part of the description is intended to designate the subject matter, and which is matter of description or demonstration. In a deed poll, or executed by one party, the rule of *fortior contra proferentem* would affect the construction. But, even in a deed, I doubt whether words like these in this contract, "that tract lying in Ocean township, and known as the Wardell farm, and begins in the middle  
20 of the road," &c., would be held at law to convey more than the lands conveyed in the boundaries specified. If the land had been described as the tract known as the Wardell farm, butted and bounded as follows, it might by the authorities, have been conveyed; but, after mentioning the location of the tract, it designates it by the name, "Wardell farm," and by the description, both connected to it by the word *and*, in a way that neither is entitled to preference over the other as the principal designation.

This is another difficulty which would affect these words  
30 in a deed. The words, "the Wardell farm," are only of value by being a name applied to a definite and certain tract of land well known by that name. There is not sufficient evidence of this name being applied to any tract of known and certain boundaries, and very little of it having been generally or usually, or to any extent, applied to any tract at all. It once is said to have included the Ocean House tract, once the tier of lots fronting on the road sold off by Henry Wardell, once the railroad tract; and it might be well doubted, after this tract in dispute had been set off for sale  
40 and offered for sale, parts sold by parol and put in posses-

sion of the purchaser, and not occupied or cultivated, so far as appears, with the rest of the farm, whether it would be included in the designation of the Wardell farm. The owners had the right to cut off these lots for sale, and to call them their lots, and the residue their homestead farm. If they had done so before such deed, and conveyed the residue to the purchaser, designating the rest in the deed as the homestead farm, and pointing it out on the ground to him as such, I am not aware of any rule of law that would make the deed convey the part set off as building lots, even if once 10 part of the homestead farm, or of the tract known as such.

But in this suit I am not called upon to construe the legal effect of these words in a deed. In a court of equity, where justice and fair dealing is at the foundation of all relief, and in a suit for specific performance, when the extraordinary power of the court is called upon, and in which relief is never granted if against good conscience, or if any injustice or hardship is inflicted, relief is asked in a case where the complainant has got the precise land he bargained for, by the very lines pointed out to him, and by the precise lines design- 20 nated in the written contract, because a general expression, "homestead farm," used in the written contract as synonymous with this description, may be construed to mean more, by certain artificial rules of legal construction. If one should sell to another a city lot, of twenty-five feet by one hundred, which both had inspected and agreed upon, and in the contract should agree to convey *the* land conveyed to him by A B, instead of land conveyed by A B, and should describe it by metes and bounds as a lot of twenty-five by one hundred feet, if it turned out that the tract conveyed by A B con- 30 tained twenty acres, the purchaser could hardly prevail upon a court of equity to order a conveyance of the twenty acres for the price of one lot, but would leave the complainant to his remedy at law.

Besides, in this case, the deed from Morris to the complainant, executed and delivered with the deed from the other defendants, and which, perhaps, has no other significance in this suit, settles what the parties to this transaction meant to designate by the Wardell farm. Conover so used the name, Morris so used it, and the other defendants so 40

used it. And if parties, by writings executed at the time, settle and fix what is meant by a name used in their dealings, the meaning so fixed will be taken in preference to any other.

I am opinion that, under these circumstances, the complainant has no right to call upon this court to decree specific performance, but, if entitled to any relief, must be left to his remedy at law for damages by not performing the contract.

## In Chancery of New Jersey.

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*Between*

*ARTHUR V. CONOVER,*

*Complainant,*

*and*

*ELIZABETH WARDELL and*

*others,*

*Defendants.*

} Bill for  
Specific  
Performance.

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### Bill of Complaint.

[Filed June 21, 1866.]

*To His Honor Abraham O. Zabriskie, Chancellor of the State of  
New Jersey.*

Humbly complaining, showeth unto your Honor, your orator, Arthur V. Conover, of Long Branch, in the township of Ocean, county of Monmouth, and state of New Jersey, that Henry Wardell, deceased, late of Long Branch aforesaid, on or about the first day of January, in the year one thousand eight hundred and fifty-two, died. seized and pos- 10  
sessed of a certain farm and tract of land situate in the township of Ocean aforesaid, on Fresh Pond, and reputed and known as "The Wardell Farm," herein after more particularly described, which said "Wardell Farm" has for a long period of time been owned and possessed by the Wardell family, as will hereafter more fully appear.

And your orator further shows that the pieces, parcels and

portions of said "Wardell Farm" for the conveyance of which to your orator by the defendants herein, this suit is instituted, are included in and comprised in a certain tract of land and premises described in a deed from Joseph Wardell, acting executor of Jacob Wardell, deceased, to his son Benjamin Wardell, dated January 27th, A. D. 1800, and recorded April 3d, 1815, in the Monmouth county clerk's office, in Book X, page 724, bounded as follows: all that tract of land whereon Jacob Wardell dwelt and died in peaceable  
10 possession, bounded easterly by the sea, south westerly by a released line between this tract and John Wardell, northerly and westerly by Joseph West, and north easterly by the beach; by which deed the said Benjamin Wardell became seized of a large tract of land (comprising the above bounded tract and other tracts), which embraces and includes within its boundaries the pieces, portions, and parcels of land for the conveyance of which to your orator as aforesaid this suit is brought.

And your orator further shows, that the said Benjamin  
20 Wardell and wife did, on or about the 27th day of October, A. D. 1817, convey to Charles Wardell and the said Henry Wardell, now deceased, the tracts of land and premises described in the deed last above mentioned, by deed dated October 27th, A. D. 1817, and recorded November 10th, 1817, in said clerk's office, in Book A 2, page 315, by which deed the said Charles and Henry Wardell became seized of the land therein described.

And your orator further shows, that the said Charles Wardell and his wife did, on or about the 24th day of January,  
30 A. D. 1824, convey to the said Henry Wardell all the right, title, and interest of the said Charles Wardell and wife in the tracts of land and premises described in the deeds above mentioned, by deed dated January 24th, A. D. 1824, and recorded in the said clerk's office, in Book H 2 of Deeds, page 396, by which deed the said Henry Wardell became seized of the said tracts of land and premises described in the said deed from the said Benjamin Wardell and wife to the said Charles and Henry Wardell.

And your orator further shows, that afterwards the said  
40 Henry Wardell did become in his lifetim eseized of certain

other tracts of land (adjoining the tracts of land and premises so as aforesaid conveyed to him), as follows :

1. Lands conveyed to him by Joseph McKnight, by deed dated March 29th, A. D. 1820, and recorded in said clerk's office in Book C 2 of Deeds, page 604.

2. Lands conveyed to him by Job W. Cook, by deed dated December 24th, 1835, and recorded in said office in Book L 3 of Deeds, page 120.

3. Lands conveyed to him by Job West, by deed dated October 10th, 1835, and recorded in said office in Book L 3 of 10 Deeds, page 410.

4. Lands conveyed to him by Francis W. Brinly, by deed dated October 24th, 1837, and recorded in said clerk's office in Book P 3 of Deeds, page 540.

And your orator further shows, that these several tracts of land of which the said Henry Wardell (now deceased) became so as aforesaid seized by virtue of the said several deeds to him, lie together and constituted and were known for a long time previous to the decease of the said Henry Wardell as the "Wardell Farm," of which mention has 20 herein before been made, which said tracts of land and premises lying together as aforesaid, and known as the "Wardell Farm" aforesaid, and of which the said Henry Wardell was so seized as aforesaid in his lifetime, is more particularly described as follows : Beginning at a point in Sandy Hook on the sea shore at the southeast corner of land owned by the United States, thence westerly across the beach along the south line of the said land owned by the United States to South Shrewsbury river at low water mark ; thence southerly up said river the several courses thereof, until it strikes 30 into the mouth of Beach Channel, near Bush Point ; thence up the middle of said channel the several courses thereof to the northeast corner of land of Job West, deceased ; thence south, seventeen degrees west, three chains and forty-four links to a corner ; thence south, thirty minutes east, fifteen chains to a corner near the ice-house ; thence south, thirty-two degrees and forty-five minutes east, fourteen chains and thirty-five links to a stake near the garden fence of the Henry Wardell mansion-house ; thence south, twelve degrees east, ten chains and thirty-six links, to a stone on the 40

north side of the road from said Wardell mansion-house to Raccoon Island road; thence south, forty-six degrees and thirty minutes west, fifteen chains and sixty links to the middle of the Raccoon Island road; thence southeasterly, up the middle of said Raccoon Island road last named to the northwest corner of William Cooper's land; thence easterly, along the north line of said William Cooper's land to the Atlantic Ocean; and thence northerly, along said ocean the several courses thereof to the beginning.

10 And your orator further shows, that afterwards the said Henry Wardell and wife did, in his life time, make the following conveyances of lots and parcels, of the above "Wardell Farm," of which your orator admits he had full and due notice at the time of the agreement, herein after mentioned, as follows:

1. Deed to William West, dated February 16th, 1848, and recorded in said office in Book D 5 of Deeds, page 513, containing one  $\frac{6.5}{100}$  acres.

20 2. Deed to John Cook, dated February 14th, 1846, and recorded in said office, in Book Y 4 of Deeds, page 424, containing one  $\frac{4.0}{100}$  acres.

3. Deed to Stewart Cook, dated November 24th, 1846, and recorded in said office, in Book A 5 of Deeds, page 150, containing one  $\frac{5.2}{100}$  acres.

4. Deed to Charles H. Valentine, dated February 14th, 1846, and recorded in said office, in Book Y 4 of Deeds, page 421, containing one  $\frac{4.4}{100}$  acres.

5. Deed to Edward Lippincott, dated February 14th, 1846, and recorded in said office, in Book X 4 of Deeds, page 418, 30 containing one  $\frac{7.6}{100}$  acres.

6. Deed to Jesse Potter, dated February 14th, 1846, and recorded in said office, in Book Z 4 of Deeds, page 169, containing one  $\frac{6.2}{100}$  acres.

7. Deed dated February 10th, 1849, to the United States of North America, recorded in said office, in Book I 5 of Deeds, page 34, conveys land one hundred feet square, for a boat house, so long as it shall be occupied with apparatus for the preservation of life and property from shipwreck, &c.

40 And your orator further shows, that the said Henry Wardell owned and possessed the said "Wardell Farm," except-

ing out of the same the lots and parcels of land last above described as conveyed away by him, for a long time previous to and at the time of his death aforesaid.

And your orator further shows, that after the death of the said Henry Wardell, to wit, on the 9th day of January, A. D. 1852 (the said Henry Wardell dying inestate), letters of administration were granted to Elizabeth Wardell and Jordan Woolley, for the administration of the estate of said Henry Wardell, deceased; and that said administrators did, by virtue of an order of the Orphans Court of said county of Mon- 10  
mouth, convey to Henry E. Riell, by deed dated April 21st, 1854, and recorded May 4th, 1854, in said office, in Book D 6 of Deeds, page 418, the hotel and premises on Wardell's Beach, known as the Ocean House property, and containing fifty acres, of which said conveyance your orator admits he had full and sufficient notice.

And your orator further shows, that the said Henry Wardell died intestate, leaving his widow (Elizabeth Wardell), and the following lawful children, viz. Henry H. Wardell, Edward Wardell, Jacob Herbert Wardell, Josephine D. 20  
Wardell, Sallie A. Wardell (now wife of Henry Howland), and Eliza L. Wardell (now wife of James W. Conover), and that the said Wardell Farm, of which the said Henry Wardell died seized, excepting thereout the tract last above mentioned as conveyed by said administrators to Henry E. Riell as aforesaid, descended to and vested in said children of said Henry Wardell, subject to the dower estate of said widow, Elizabeth Wardell, in the same.

And your orator further shows, that on or about the 10th day of May, A. D. 1855, Henry H. Wardell, one of the said 30  
children of Henry Wardell, deceased, did convey, together with his wife, to the said Elizabeth Wardell, by deed dated of the date last aforesaid, and recorded July 7th, 1855, in said clerk's office, in Book I 6 of Deeds, page 608, the undivided one-sixth part in said Wardell Farm, and all their estate, right, title, and interest in the same; and the said Henry H. Wardell and wife did, by way of further assurance of title to the said Elizabeth, also subsequently convey to her all right and title of himself and wife in the balance of the homestead premises of said Henry Wardell, deceased, not heretofore conveyed, 40

by deed dated July 2d, A. D. 1864, and recorded July 30th, 1864, in said office, in Book No. 177 of Deeds, page 306, &c.

And your orator further shows, that the said Henry Howland did, by deed dated November 1st, 1858, and recorded November 10th, 1858, in said office, in Book No. 146 of Deeds, page 322, convey to the said Elizabeth Wardell, all the interest and estate of himself, in the land of which said Henry Wardell died seized.

And your orator further shows, that the said Elizabeth  
10 Wardell, Henry Howland, and Sallie C. his wife, Edward Wardell and wife, James W. Conover and Eliza L. his wife, Jacob Herbert Wardell, and Josephine D. Wardell, did convey to the Long Branch and Seashore Railroad Company, by deed dated June 27th, 1864, and recorded June 29th, 1864, in said office, in Book No. 176 of Deeds, page 184, a part of said "Wardell Farm," being part of Wardell's Beach, between Ocean House property, and property belonging to United States, of which said conveyance your orator admits he had full and sufficient notice.

20 And your orator further shows, that the said parties of the first part to the deed last above mentioned, did convey to the said Long Branch and Sea Shore Railroad Company, by deed dated July 19th, 1864, and recorded in said office July 30th, 1864, in Book No. 177 of Deeds, page 308, another part of said Wardell farm, being a tract of fifteen acres of land, and a strip of land upon the southern portion of said "Wardell Farm," of which said conveyance your orator admits he had full and sufficient notice.

And your orator further shows, that the said Elizabeth  
30 Wardell, Henry Howland, and Sallie A. his wife, Edward Wardell, James W. Conover, and Eliza L. his wife, Jacob Herbert Wardell, and Josephine D. Wardell did, on or before the 26th day of June, A. D. 1865, authorize and empower Jacob W. Morris to sell and dispose of the said "Wardell Farm," and did further make, constitute, and appoint the said Jacob W. Morris their agent and attorney, by a power of attorney in writing, duly executed under their hands and seals, and acknowledged, dated June 26th, A. D. 1865, and recorded in said Monmouth clerk's office, in Book 182 of  
40 Deeds, page 105, &c., "to sell, grant, and convey to any per-

son or persons all the homestead farm on Fresh Pond, beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly, as the ditch and fence now stand, to the sea or ocean; thence along the ocean north, to property of the Ocean House or *Neail*, called Sandy Hook, on the south line of said Ocean House lot; thence westerly, across the beach to the river; thence up the river the various courses thereof, to land formerly belonging to Job West, deceased; thence along his line to Wardell's lane, southerly; thence westerly, along Wardell's lane, to the 10 Fresh Pond road; thence up said road southerly, to where it began; supposed to contain about seven hundred acres; reserving thereout say one hundred acres sold and conveyed to a Mr. *Neail*, and to the Long Branch and Sea Shore Railroad Company, to such person or persons, for such consideration and on such terms and conditions as he, the said Jacob W. Morris, shall see fit, and for us and in our names to make, seal, and deliver and acknowledge all such deed or deeds, conveyances, contracts, and agreements respecting the same as he shall see fit, hereby ratifying and confirming all such 20 deeds and instruments as shall at any times hereafter be executed by our attorney, concerning the premises."

And your orator further shows, that on or about the 26th day of June, A. D. 1865, the said Jacob W. Morris being duly authorized and empowered, and as the agent and attorney of the said Elizabeth Wardell, Henry Howland, and Sallie A. his wife, Edward Wardell, James W. Conover, and Eliza L. his wife, Jacob Herbert Wardell, and Josephine D. Wardell, entered into an article of agreement in writing to and with your orator for the sale and conveyance to your orator of 30 the said "Wardell Farm," of the tenor and effect following: Agreement between Jacob W. Morris, attorney in fact for Elizabeth Wardell, Sallie Ann Howland, Edward Hubbard, Josephine Wardell, and Eliza L. Conover, and Arthur V. Conover, all of the county of Monmouth, in the state of New Jersey, made this 26th day of June, A. D. 1865, witnesseth—that the said Jacob W. Morris, attorney as aforesaid, for the consideration of thirty thousand dollars (\$30,000,) to be paid as herein after mentioned, doth agree with the said Arthur

V. Conover that he will well and sufficiently convey to the said Arthur V. Conover, his heirs and assigns, on or before the 1st day of April next, 1866, all that tract or parcel of land lying and being on Fresh Pond, in Ocean township, county and state aforesaid, and known as the Wardell farm, and begins in the middle of the road leading from Long Branch to Fresh Pond, near the corner of the Fresh Pond district school-house, and runs easterly, as the ditch and fence now stand, to the sea shore; thence along the sea shore  
10 northerly, to the Ocean House lot; thence westerly, across the beach, along the south line of said Ocean House lot, to to the river; thence southerly, up the shore of said river, the several courses thereof to the lands formerly belonging to Job West, deceased; still southerly along the line of said Job West, as the fences now stands, to Wardell lane; thence westerly, along the north side of said lane to the middle of the aforesaid Fresh Pond road; thence southerly, to the beginning; supposed to contain five hundred acres, be the same more or less, reserving through  
20 the same the right of way now deeded to the Long Branch and Sea Shore Railroad Company; and the said Arthur V. Conover, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said Jacob W. Morris, his heirs and assigns, that he, the said Arthur V. Conover, shall and will, on executing the said conveyance, pay or cause to be paid, to the said Jacob W. Morris, his heirs or assigns, the said sum of \$30,000, as and for the purchase money for the said tract or lot of land above mentioned. And it is further agreed between the said  
30 parties to these presents, that the said Arthur V. Conover, his heirs and assigns, shall and may, on or before the first day of April, 1866, next, enter into and upon the said tract or lot of land peaceably and quietly; and is intended to convey all lands in the boundaries above mentioned. And the said parties to these presents doth, all for themselves, their heirs and assigns, agree each to the other in the sum of \$5,000, lawful money of the United States, to forfeit and pay as liquidated damages, if either party fail to comply with these conditions.

40 And your orator further shows unto your Honor, that

under and by virtue of the above agreement, and under and by virtue of the contracts, stipulations, and covenants, between the said Jacob W. Morris, agent and attorney as aforesaid, and your orator, the said Jacob W. Morris, and the said Elizabeth Wardell, Henry Howland, and Sallie A. his wife, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, and James W. Conover, and Eliza L. his wife, or some one or more of them, became bound and were liable, both in law and equity, upon the performance of the covenants, agreements, and undertakings by your orator, on 10 his part to be performed under said agreement, to convey on or before the 1st day of April, A. D. 1866, to your orator the said "Wardell Farm," of which the said Elizabeth Wardell, Henry Howland, and Sallie A. his wife, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, and James W. Conover, and Eliza L. his wife, or any of them, were seized at the time of the appointment of the said Jacob W. Morris as their agent and attorney.

And your orator further shows, that on the day and at the time of the conveyances from the defendants herein to your 20 orator, next herein after mentioned, to wit, on the 28th day of October, A. D. 1865, that your orator paid to the said defendants, or to some one for them, the said sum of \$30,000, as and for the purchase money of the said "Wardell Farm;" and that your orator did, in all things, perform and fulfill said agreement on his part to be performed and fulfilled, and did comply with the terms thereof in each and all particulars and respects.

And your orator further shows, that the said Jacob W. Morris, Elizabeth Wardell, Henry Howland, and Sallie A. 30 his wife, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, and James W. Conover, and Eliza L. his wife, the defendants herein, and each and every of them, have failed and neglected to perform the said agreement on their part to be performed, as they were bound by law to do, and ought in equity and good conscience to have done; but, on the contrary thereof, the said Jacob W. Morris, agent and attorney aforesaid, as well as the said Elizabeth Wardell, Edward Wardell and wife, Jacob Herbert Wardell and wife, Josephine D. Wardell, Henry Howland, and Sallie A. his 40

wife, James W. Conover, and Eliza L. his wife, did, on the 28th day of October, A. D. 1865, respectively convey to your orator, and your orator did take and accept the same, by two separate deeds of the date last aforesaid, recorded on the 1st day of November last, in said clerk's office, in Book 185 of Deeds, folios 10, &c., and 14, &c.; all that certain farm and tract of land situate, lying, and being in the township of Ocean, county of Monmouth, and state of New Jersey, beginning in the centre of the road from Lanes End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence, along the line of William West and others, north sixty seven degrees and fifteen minutes east, twenty-five chains, more or less, to the Atlantic Ocean at low water mark; thence, northerly along the ocean at low water mark, the several courses thereof, to the southerly line of the ocean house property, as conveyed by Elizabeth Wardell and Jordan Wooley, administrators of Henry Wardell, deceased, to Henry E. Riell, by deed dated April 21st, 1854, and recorded in Monmouth clerk's office, in Book D 6 of Deeds, page 418, &c., on May 4th, 1854; thence, westerly (along said southerly line of said ocean house property) across the beach to South Shrewsbury river at low water mark; thence, up said river, at low water mark, the several courses thereof, (the general course of said river being northerly and southerly,) until it strikes into the mouth of Beach channel, near Bush Point; thence, up the middle of said channel, the several courses thereof, to the northeast corner of land of Job West, deceased; thence, south seventeen degrees west, three chains and forty-four links to a corner; thence, south thirty degrees east fifteen chains to a corner, near the ice-house; thence, south thirty-two degrees and forty-five minutes east, fourteen chains and thirty-five links to a stake near the garden fence of the Henry Wardell mansion-house; thence, south twelve degrees east, ten chains and thirty-six links to a stone on the north side of the road from said Wardell mansion-house to Raccoon Island road; thence, south forty-six degrees and thirty minutes west, fifteen chains and sixty links to the middle of the Raccoon Island road; thence, up the middle of said Raccoon Island road, last named, south ten degrees and thirty minutes east, fifteen chains and ten links to the

beginning; supposed to contain five hundred acres, more or less.

And your orator further shows, that your orator at the time he took and accepted as aforesaid said deeds last above set forth, and before and at the time of said conveyance of said property to him, and the payment by your orator to said defendants of the purchase money aforesaid, and for a long time since said conveyance up to a very recent period, your orator fully believed and supposed that said deeds from said defendants to him conveyed, described, included and 10 embraced all the said "Wardell Farm," of which said defendants, or any of them, were then seized; and that the said defendants reserved and kept back to themselves no part of said "Wardell Farm," of which they, or any of them, were seized at the time of said agreement between them and your orator; and that your orator was led and induced so to believe, not only from the language and terms of said power of attorney on record as aforesaid, and the said agreement between said Jacob W. Morris, agent and attorney as aforesaid, and your orator, and the assertions, declarations, and conduct of the 20 said defendants to and towards your orator before and at the time of said conveyances by them to your orator, and many other things, facts, and circumstances, but also from the language, description, and contents of the said deeds from said defendants to your orator, and from the following description and language of the said deed from said Jacob W. Morris, agent and attorney as aforesaid, to your orator, *viz.* "It being the intention of said party of the first part hereto to convey to said Conover all the right, title, power, and interest of said Jacob W. Morris, which has vested, or may 30 hereafter vest, in said Morris, by, from and under a certain power of attorney executed by Elizabeth Wardell, Edward Wardell, J. Herbert Wardell, Sallie A. Howland, Eliza L. Conover, Josephine D. Wardell, James W. Conover and Henry Howland, to the said Jacob W. Morris, dated June 26th, 1865, and recorded June 28th, 1865, in Monmouth clerk's office, in Book No. 182 of Deeds, page 105, &c. (The above premises are known as the farm of Henry Wardell, deceased, and the widow and heirs of said Henry Wardell, deceased, have by deed of even date herewith, conveyed 40 directly to said Arthur V. Conover.")

And your orator further shows, that he, before and at the time of said agreement, and before and since said conveyance to him up to a recent period, has lived at a distance, to wit, at Freehold, in said county of Monmouth, from said "Wardell Farm," and did not know until recently as aforesaid that the courses and distances in said deeds to him were a variance of the contract and agreement aforesaid, and did not include and surround the "Wardell Farm" aforesaid.

And your orator further shows that the said deeds, or  
10 either of them, last above mentioned, so as aforesaid made respectively by said Jacob W. Morris, agent and attorney as aforesaid, and the said Elizabeth Wardell, Edward Wardell's wife, Jacob Herbert Wardell and wife, Josephine D. Wardell, Henry Howland and Sallie A. his wife, James W. Conover and Eliza L. his wife, do not contain, embrace or include, and do not convey to your orator all the land the said defendants or some of them contracted and agreed to convey to your orator as aforesaid, and do not contain, embrace, or include, and do not convey to your orator  
20 "all that tract or parcel of land lying and being on Fresh Pond, in Ocean township, county and state aforesaid, and known as the 'Wardell Farm,' " as the same was for a long time previous to the decease of the said Henry Wardell, deceased, nor as the same descended, at his decease, to the said his widow and heirs; nor as the same continued to be from such descent to the time of said agreement (excepting thereout the tracts and parcels of land heretofore sold and conveyed by the owners respectively of said "Wardell Farm," as herein before particularly set forth by your orator, and of  
30 which he has herein before admitted due notice.)

And your orator further shows, that the said Jacob W. Morris, agent and attorney as aforesaid, and the said Elizabeth Wardell, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, Henry Howland, and Sallie A. his wife, James W. Conover, and Eliza L. his wife, and all and each of them, have, since the day and making of said agreement, hitherto wholly failed and neglected, and still do fail and neglect, to convey to your orator the following described pieces, parcels, and portions of the said "Wardell Farm,"  
40 and herein before referred to, of which said pieces, parcels,

and portions the said defendants, or some of them, were seized before, and at the time of, and since, the making of said agreement, and of which your orator is informed and believes the said defendants, or some of them, still are seized, *viz.* First. A triangular parcel of land, lying in the southern part of said "Wardell Farm," beginning at the northeast corner of a lot of land conveyed by said Henry Wardell and wife to William West, as afore mentioned; thence running (1) south fourteen degrees east, twelve chains, to a point where the line of land of the said Long Branch and Sea Shore Railroad Company intersects the east line of lot sold by said Henry Wardell to Charles H. Valentine, as afore mentioned; thence (2) north twenty-eight degrees and thirty minutes east, nineteen chains, until it intersects a course of north sixty-seven degrees and fifteen minutes east, from the place of beginning; thence (3) south sixty-seven degrees and fifteen minutes west, thirteen chains, to the beginning, containing seven acres and seventy hundredths of an acre, more or less.

Second. A piece and strip of land adjoining the southwestern part of said parcel last described, running and extending between the south line of the lot of land sold by said Henry Wardell and wife to Steward Cook as aforesaid, and the north line of the lot of land sold by said Henry Wardell and wife to Charles H. Valentine as aforesaid, from the middle of the Raccoon Island road, twenty feet in width, to the west line of the triangular parcel of land above described.

Third. A triangular piece or gore of land, lying and being in the southeastern part of said "Wardell Farm," bounded easterly by the Atlantic ocean; northerly by the southerly line of lands conveyed by said defendants to your orator as afore mentioned; and southerly by the north line of lands conveyed by said widow and heirs of said Henry Wardell, deceased, to the Long Branch and Sea Shore Railroad Company, by deed dated July 19th, A. D 1864, and recorded in Book 177 of Deeds, page 308.

To the end, therefore, that the said Jacob W. Morris, Elizabeth Wardell, Edward Wardell, and Sophia H. his wife, Jacob Herbert Wardell, and Ann E. his wife, Josephine D. Wardell, Henry Howland, and Sallie A. his wife, James W.

Conover, and Eliza L. his wife, and each and every of them and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were herein again repeated, and they thereto particularly interrogated, paragraph by paragraph; and that they, or some one or more of them, may be decreed by this honorable court to make a specific performance of the agreement above set forth, and  
10 to make, execute, and acknowledge in due form of law, and deliver to your orator, a good and sufficient deed or deeds for the said "Wardell Farm," of which they or any of them were seized at the time of the making and execution of said agreement, and deliver to your orator possession of the same; and that said defendants, or some one or more of them, may be decreed to make, execute, and acknowledge in due form of law, and deliver to your orator, a good and sufficient deed or deeds for the said several pieces, parcels, or portions of said "Wardell Farm," and each and every of  
20 them, which the said defendants, and each and every of them, have hitherto wholly failed and neglected to convey to your orator, as above particularly mentioned and set forth; and that the said defendants may be decreed to perform, in each and every respect, the said agreement on their part to be performed, and account to your orator for the rents, issues, and profits of the said pieces, portions, and parcels of land so as aforesaid unconveyed to your orator by them, since the 1st day of April last, and pay to your orator all costs and charges by your orator in this behalf sustained; and that  
30 your orator may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orator a writ or writs of subpoena of the state of New Jersey, to be directed to the said Elizabeth Wardell, Edward Wardell, and Sophia H. his wife, Jacob Herbert Wardell, and Annie E. his wife, Josephine D. Wardell, Henry Howland, and Sallie A. his wife, James W. Conover, and Eliza L. his wife, and Jacob W. Morris, therein and thereby  
40 commanding them, and each of them, at a certain day and

under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet, &c. And your orator as in duty bound will ever pray, &c.

WM. H. VREDENBURGH,  
*Solicitor and of counsel with complainant.*

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Answer.

[Filed September 1, 1866.]

*The joint and several answer of Elizabeth Wardell, Edward Wardell, and Sophia H. his wife, Jacob H. Wardell, and 10 Annie E. his wife, Josephine D. Wardell, Henry Howland, and Sallie A. Howland his wife, James W. Conover, and Eliza L. his wife, and Jacob W. Morris, all the defendants, to the bill of complaint of Arthur V. Conover, complainant.*

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make 20 answer unto, answer and say—they admit that Henry Wardell, mentioned in complainant's said bill, on or about the 1st day of January, 1852, died seized and possessed of certain tracts of land and real estate, referred to in said bill.

And these defendants in further answering admit, that Joseph Wardell, acting executor of Jacob Wardell, made deed to his son, Benjamin Wardell, dated January 27th, 1800, recorded April 3d, 1815, in Monmouth county clerk's office, in Book X, page 724, for lands mentioned in said bill.

But these defendants deny that all of the lands or real 30 estate which said Henry Wardell owned at his decease, were known as the Wardell farm, or that the Wardell farm com-

prised all the real estate which said Henry Wardell owned at the time of his decease.

And these defendants in further answering say they do not know whether the boundaries of the land referred to in the aforesaid deed, as set forth in said bill, are correct or not, but leave the same to be ascertained, if necessary, as this honorable court may direct.

And these defendants in further answering admit, that Benjamin Wardell and wife, mentioned in the bill, did, on 10 or about the 27th day of October, A. D. 1817, convey to Charles Wardell and the said Henry Wardell the land and premises mentioned in said bill, and that said deed was recorded November 10th, 1817, in Monmouth county clerk's office, in Book A 2, page 315.

And these defendants in further answering admit, that Charles Wardell and wife, on or about January 24th, 1824, conveyed to said Henry Wardell all his right and interest in said tract of land and premises described in the aforesaid deeds, by deed dated January 24th, 1824, and recorded in 20 said clerk's office, in Book H 2 of Deeds, page 396.

And these defendants in further answering admit, that the said Henry Wardell in his lifetime became seized of lands conveyed to him by Joseph McKnight, by deed dated March 29th, 1820; recorded in said clerk's office, in Book C 2 of Deeds, page 604; also, lands conveyed to him by Job W. Cook, by deed dated December 24th, 1835; recorded in said office, in Book L 3 of Deeds, page 120; also, lands conveyed to him by Job West, by deed dated October 10th, 1835; recorded in said office in Book L 3 of Deeds, page 30 410; also, land conveyed to him by Francis W. Brinley, by deed dated October 24th, 1837; recorded in Book P 3 of Deeds, page 545.

And these defendants in further answering admit, that said Henry Wardell and wife, in his lifetime, made the following conveyances of lots and parcels of said lands, stated in said bill:

1. Deed to William West, dated February 16th, 1848, recorded by the clerk in said clerk's office, in Book D 5 of Deeds, page 513, containing one  $\frac{6.5}{100}$  acres.

2. Deed to John Cook, dated February 14th, 1846, recorded by the clerk in said clerk's office, in Book Y 4 of Deeds, page 424, containing one  $\frac{4.0}{100}$  acres.

3. Deed to Steward Cook, dated November 24th, 1846, recorded by the clerk in said clerk's office, in Book A 5 of Deeds, page 150, containing one  $\frac{5.2}{100}$  acres.

4. Deed to Charles H. Valentine, dated February 14th, 1846, recorded by the clerk in said office, in Book Y 4 of Deeds, page 421, containing one  $\frac{4.4}{100}$  acres.

5. Deed to Edward Lippincott, dated February 14th, 1846, and recorded by the clerk in said office, in Book X 4 of Deeds, page 418, containing one  $\frac{7.6}{100}$  acres.

6. Deed to Jesse Potter, dated February 14th, 1846, recorded by the clerk in said office, in Book G 4 of Deeds, page 169, containing one  $\frac{6.2}{100}$  acres.

7. Deed dated February 10th, 1849, to the United States of North America, recorded in said office in Book I 5 of 20 Deeds, page 34, land one hundred feet square for a boat house, so long as it shall be occupied with apparatus for the preservation of life and property from shipwreck, &c., as by said deeds reference being thereto had the same may more fully, and to which said deeds, if necessary, these defendants pray reference may be had.

And these defendants, in further answering admit, that the said Henry Wardell, at the time of his decease, owned and possessed, at the time of his decease, all the first aforesaid lands and premises, except the lots and parcels herein 30 before specified as conveyed away as aforesaid.

And also, that after the death of the said Henry Wardell, letters of administration were granted to Elizabeth Wardell, his widow, and Jordan Woolley, for the administration of the estate of said Henry Wardell, deceased, and that the said administrators of said Henry Wardell, deceased, did, by virtue of an order of the orphans court of said county, convey to one Henry E. Riell, by deed mentioned in said bill, the Ocean House property, containing about fifty acres, men-

tioned in said bill, by deed duly executed to said Henry E. Riell.

But the precise quantity and boundaries these defendants do not now know, except by reference to said deed, and which said quantity and boundaries these defendants leave to be determined, if necessary, as this honorable court may direct. But these defendants insist that the said deed of conveyance so made as aforesaid to said Reill, was duly recorded in said clerk's office before said complainant at-  
10 tempted any purchase of any land of said defendants, and that the complainant had full notice and knowledge of the last aforesaid deed of conveyance before the execution of the power of attorney referred to in this cause; and these defendants, in further answering, admit that said Henry Wardell died intestate, leaving his widow and children named in said bill, and that all the said premises and real estate, except what was conveyed away by said Henry Wardell as aforesaid, and except what was sold and conveyed as aforesaid by said administrators of said Henry Wardell, de-  
20 ceased, descended to and vested in said children of said Henry Wardell, deceased, subject to the dower right of Elizabeth Wardell, his widow.

And these defendants admit, that on or about the tenth day of May, A. D. eighteen hundred and fifty-five, Henry H. Wardell, one of said children of said Henry Wardell, deceased, conveyed, together with his wife, to said Elizabeth Wardell, by deed recorded July 7th, 1855, in said clerk's office, and by deed recorded July 30th, 1864 (which said deeds are mentioned in said bill of complaint), all the right and title  
30 of said Henry H. Wardell and wife of, in, and to all the aforesaid real estate and premises; as by reference to the last aforesaid deeds or the record thereof, the same may more fully appear, and to which said deeds or the records thereof, these defendants pray leave, if necessary, to refer.

And these defendants admit, that Henry Howland, husband of Sallie A., daughter of said Henry Wardell, deceased, by his deed mentioned in said bill, conveyed to said Elizabeth Wardell, widow, all said Henry Howland's interest and estate in the land of which said Henry Wardell died seized.  
40 And these defendants admit, that the said Elizabeth War-

dell, widow, Henry Howland and Sallie A. his wife, Edward Wardell and wife, James W. Conover, and Eliza L. his wife, Jacob Herbert Wardell, and Josephine D. Wardell, children and heirs-at-law of said Henry Wardell, deceased, did, on or about June 27th, 1864, convey to the Long Branch and Sea Shore Railroad Company, (incorporated,) a part of the aforesaid real estate, which last aforesaid deed these defendants are informed and believe to be recorded in said clerk's office, June 29th, 1864, of which said deed mention is made in said bill; and for greater certainty as to the boundaries and quantity of land contained in the last aforesaid deed, these defendants pray leave to refer to the said deed, or the record thereof, if necessary so to do 10

And these defendants admit, that the widow and children of said Henry Wardell aforesaid, on or about July 19th, 1864, conveyed to the Long Branch and Sea Shore Railroad Company aforesaid, another piece of said real estate, by another deed executed by them, which last aforesaid these defendants are informed and believe was recorded in said clerk's office July 30th, 1864, mention whereof is made in said bill; 20 and for greater certainty as to the boundaries and quantity of lands embraced in the last aforesaid deed, these defendants pray leave to refer to the said deed or the record thereof, if necessary so to do.

And these defendants in further answering say, that on or about the 26th day of June, A. D. 1865, the said Elizabeth Wardell, widow, and the said Edward Wardell, Jacob Herbert Wardell, Sallie A. Howland, Eliza L. Conover, and Josephine D. Wardell, the children of said Henry Wardell, deceased, and James W. Conover, husband of said Eliza L., 30 and Henry Howland, husband of said Sallie A., signed a power of attorney in writing under their hands and seals, bearing date the day and year last aforesaid, which said power of attorney is referred to in said bill of complaint; and that the following is a copy of said power of attorney, and of the acknowledgment thereof:

Know all men by these presents, that we, Elizabeth Wardell, Sarah Ann Howland, Edward Wardell, Henry H. Wardell, Eliza L. Conover, J. H. Wardell, and Josephine Wardell, all of the county of Monmouth, in the state of New 40

Jersey, have, and by these presents do make, constitute, and appoint Jacob W. Morris, of Long Branch, county and state aforesaid, our lawful attorney, for us and in our name to sell, grant, and convey to any person or persons, all our homestead farm on Fresh Pond, beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly, as the ditch and fence now stands, to the sea or ocean; thence along the ocean north, to property of the Ocean House, or Neail, called Sandy Hook; thence westerly,  
 10 on the south line of said Ocean House lot, across the beach to the river; thence up the river the various courses thereof, to land formerly belonging to Job West, deceased; thence along his line to Wardell's lane, southerly; thence westerly, along Wardell's lane, to the Fresh Pond road; thence up said road southerly, to where it began; supposed to contain seven hundred acres; reserving thereout say one hundred acres, sold and conveyed to a Mr. Neail, and to the Long Branch and Sea Shore Railroad Company, to such person or persons, for such consideration, and on such terms and con-  
 20 ditions as he, the said Jacob W. Morris, shall see fit, and for us and in our names to make, seal, and deliver and acknowledge all such deed or deeds, conveyances, contracts, and agreements respecting the same as he shall see fit, hereby ratifying and confirming all such deeds and instruments as shall at any time hereafter be executed by our attorney, concerning the premises.

30

ELIZABETH WARDELL,	[L. S.]
EDWARD WARDELL,	[L. S.]
J. HERBERT WARDELL,	[L. S.]
SALLIE A. HOWLAND,	[L. S.]
ELIZA L. CONOVER,	[L. S.]
JOSEPHINE D. WARDELL,	[L. S.]
JAMES W. CONOVER,	[L. S.]
HENRY HOWLAND,	[L. S.]

In witness whereof we have hereunto set our hands and seals, this 26th day of June, A. D. 1845, in presence of

JACOB HERBERT,  
 W. H. SLOCUM.

State of New Jersey, Monmouth county, ss.—Be it remembered, that on the 27th day of June, A. D. 1865, before the undersigned, one of the masters of the Court of Chancery of said state, personally appeared Elizabeth Wardell, Edward Wardell, J. Herbert Wardell, Sallie A. Howland, Eliza L. Conover, and Josephine D. Wardell, who are, I am satisfied, the grantors in the within power of attorney named, and I having first made known to them the contents thereof, they did thereupon acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed, for the 10 uses and purposes therein expressed.

W. H. SLOCUM, *M. C.*

And the aforesaid power of attorney was recorded in the Monmouth county clerk's office, on June 28th, 1865, in Book 182 of Deeds, page 105, &c., as in and by said written power of attorney or instrument of writing, when produced, will fully appear, and to which said power of attorney or instrument of writing, or certified copy thereof, these defendants jointly and severally pray leave to refer.

And the said Edward Wardell, and Sophia H. his wife, 20 Jacob H. Wardell, and Anna E. his wife, Henry Howland, and Sallie A. his wife, James W. Conover, and Eliza L. his wife, in further answering insist that the aforesaid power of attorney or instrument of writing was not at any time acknowledged or proven by them in due form of law, as required by the fourth section of the act of the legislature of the state of New Jersey, entitled an act respecting conveyances, revision approved April 15th, 1846, and claim the same benefit as if they had specially pleaded the same.

And the said Elizabeth Wardell, Edward and Sophia H. 30 his wife, Jacob H. Wardell, and Annie E. his wife, Josephine D. Wardell, Henry Howland, and Sallie A. his wife, James W. Conover, and Eliza L. his wife, jointly and severally submit, that the aforesaid power of attorney did not give said Jacob W. Morris any lawful authority to make any legal contract that could in law or equity bind the last aforesaid defendants, or either of them, respecting the aforesaid lands, or any part thereof; and they jointly and severally submit, that by the aforesaid power of attorney no con-

tract could be made respecting the sale of the aforesaid lands, or any part thereof, that would be binding either in law or equity upon said defendants, or either of them; that no previous acknowledgment was made by said Sophia H., wife of said Edward Wardell, Annie E., wife of said Jacob H. Wardell, Sallie A., wife of Henry Howland, Eliza L. Conover, wife of James W. Conover, or either of them, on a private examination, apart from their said husbands, before any of the officers aforesaid; that they signed, sealed, and  
10 delivered, the said power of attorney as their voluntary act and deed, freely, without any fear, threats, or compulsion of their husbands, respectively, or otherwise; that the aforesaid power of attorney was not in any wise acknowledged in due form of law, according to the statute in such case made and provided by all the persons who made and signed the same; and they jointly and severally claim, that on account thereof, and inasmuch as the said bill does not allege that the said power of attorney was acknowledged in due form  
20 of law, and according to the statute in such case made and provided; they jointly and separately claim the same benefit thereof, as if they had jointly or separately pleaded the same or demurred therefor; and they insist, that the said power of attorney being a joint act, and not a several or individual act, in its form and operation, if invalid and void, as to any one of the defendants signing the same, should be inoperative and void as to all the defendants who signed the said instrument or power of attorney; and they jointly and severally claim the same benefits as if they had jointly or  
30 severally pleaded the same in this cause; and for the reason, and under the circumstances aforesaid, they are advised and jointly and severally insist, that the said complainant is not entitled to any benefit from said power of attorney, touching the matters complained of in said bill; and the defendants jointly and severally say, that by the fourteenth section of an act of the legislature of the state of New Jersey, entitled, an act for the prevention of frauds and perjuries, passed the 26th of November, 1794, no action shall be brought whereby to charge any executor or administrator  
40 upon any special promise to answer damages out of his own estate, or whereby to charge the defendants, upon any special

promise to answer for the debts, defaults, or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract, or sale of lands, tenements, or hereditaments, or any interest in, or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto, by him or her 10 lawfully authorized.

And that the said power of attorney and agreements in the said bill alleged to have been made by the last aforesaid defendants, were not made and executed pursuant to the last aforesaid act of the legislature, or the said fourteenth section thereof, and therefore they jointly and severally insist that the same be void as against the defendants, and that they, or either of them, cannot be affected thereby; and they jointly and severally claim the same benefit of said act of the legislature, or of said section of said act, as if they had 20 jointly or severally pleaded the same; and they, for the reasons and under the circumstances aforesaid, are advised, and jointly and severally insist, that the said complainant is not entitled to any relief against the defendants, or either of them, touching the matters complained of in said bill.

And these defendants in further answering say, that the aforesaid power of attorney was recorded in the clerk's office of said county; and that said complainant was well informed and had full knowledge of the contents of the same, and of the nature thereof, long before he attempted any negotiation 30 for the purchase of any of said lands mentioned in the deed made to the complainant, referred to in said bill; that the complainant has for a long time past been actively engaged in the purchase of real estate and property in other parts of said county, for the purpose of speculation and profit; that he has heretofore for several years past been surrogate of said county, and has been and is well conversant with the nature and effect of papers and contracts relating to sale of land and titles of real estate, and that there was not any- 40 thing contained in said power of attorney, or of the transac-

tions connected with the subject matter thereof, to mislead or cause any surprise to the complainant.

And these defendants in further answering say, that on or about the 26th day of June, A. D. 1865, the said Jacob W. Morris made an agreement in writing, bearing date the day and year last aforesaid, with the said complainant, mention of which said agreement is made in said bill, and of which said agreement the following is a copy :

Agreement between Jacob W. Morris, attorney in fact for  
10 Elizabeth Wardell, Sallie Ann Howland, Edward Hubbard,  
Josephine Wardell, and Eliza L. Conover, and Arthur V.  
Conover, all of the county of Monmouth, in the state of New  
Jersey, made this 26th day of June, A. D. 1865, witnesseth—  
that the said Jacob W. Morris, attorney as aforesaid, for the  
consideration of thirty thousand dollars (\$30,000,) to be paid  
as herein after mentioned, doth agree with the said Arthur  
V. Conover that he will well and sufficiently convey to the  
said Arthur V. Conover, his heirs and assigns, on or before  
the 1st day of April next, 1866, all that tract or parcel of  
20 land lying and being on Fresh Pond, in Ocean township,  
county and state aforesaid, and known as the Wardell farm,  
and begins in the middle of the road leading from Long  
Branch to Fresh Pond, near the corner of the Fresh Pond  
district school-house, and runs easterly, as the ditch and  
fence now stand, to the sea shore; thence along the sea shore  
northerly, to the Ocean House lot; thence westerly, across  
the beach, along the south line of said Ocean House lot,  
to the river; thence southerly, up the shore of said river,  
the several courses thereof to the lands formerly belong-  
30 ing to Job West, deceased; still southerly along the line  
of said Job West, as the fences now stand, to Wardell  
lane; thence westerly, along the north side of said lane  
to the middle of the aforesaid Fresh Pond road; thence  
southerly, to the beginning; supposed to contain five hun-  
dred acres, be the same more or less, reserving through  
the same the right of way now dedeed to the Long Branch  
and Sea Shore Railroad Company; and the said Arthur V.  
Conover, for himself, his heirs, executors, and administrators,  
doth covenant, promise, and agree, to and with the said  
40 Jacob W. Morris, his heirs and assigns, that he, the said

Arthur V. Conover, shall and will, on executing the said conveyance, pay or cause to be paid to the said Jacob W. Morris, his heirs or assigns, the said sum of \$30,000, as and for the purchase money for the said tract or lot of land above mentioned. And it is further agreed between the said parties to these presents, that the said Arthur V. Conover, his heirs and assigns, shall and may, on or before the first day of April, A. D. 1866, next, enter into and upon the said tract or lot of land peaceably and quietly; and is intended to convey all lands in the boundaries above mentioned. And 10 the said parties to these presents doth, all for themselves, their heirs and assigns, agree each to the other in the sum of \$5,000, lawful money of the United States, to forfeit and pay as liquidated damages, if either party fail to comply with these conditions.

In witness whereof, the aforesaid parties have hereunto set their hands and seals, for the uses and purposes therein mentioned, this 26th day of June, A. D. 1865.

J. W. MORRIS. [L. s.]

ARTHUR V. CONOVER. [L. s.] 20

Witnessed and signed in the  
presence of

W. H. SLOCUM.

As in and by the said written agreement when produced, and to which said agreement the defendants jointly and severally crave leave to refer, will fully appear.

But the defendants, jointly and severally, deny that, by said agreement, the said defendants, or either of them, were or are bound, either in law or equity, to assure or to convey to said complainant any other land or real estate than what 30 was conveyed and specifically set forth by metes and bounds in and by the deed dated October 28th, 1865, made by Elizabeth Wardell, widow, and Edward Wardell and wife, Jacob Herbert Wardell and wife, Josephine D. Wardell, Henry Howland and wife, James W. Conover and wife, defendants herein, to said complainant, mention of which said deed is made in said bill and herein set forth, as follows:

This indenture, made this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and

sixty-five, between Elizabeth Wardell, widow, and Edward Wardell and Sophia his wife, Jacob Herbert and Ann E. his wife, Josephine D. Wardell, Henry Howland and Sallie A. his wife (late Sallie A. Wardell, and James W. Conover and Eliza L. his wife, late Eliza L. Wardell), heirs-at-law of Henry Wardell, deceased, all of Long Ranch, Monmouth county, New Jersey, party of the first part, and Arthur V. Conover, of Freehold, in said county and state, party of the second part, witnesseth, that the said party of the first part,  
10 for and in consideration of the sum of thirty thousand dollars, lawful money of the United States of America, to the said party of the first part in hand well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, enfeoff, convey, and confirm to the said party of the second part, and to his heirs and assigns forever, all that certain farm and tract  
20 of land situate, lying, and being in the township of Ocean, county of Monmouth, and state of New Jersey, beginning in the centre of the road from Lanes End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence along the line of William West and others, north sixty-seven degrees and fifteen minutes east, twenty-five chains, more or less, to the Atlantic ocean at low water mark; thence northerly along the ocean at low water mark the several courses thereof to the southerly line of the Ocean House property, as conveyed by Elizabeth Wardell and Jordan Woolley, administrators of Henry Wardell, deceased, to  
30 Henry E. Riell, by deed dated April 21st, 1854, and recorded in Monmouth clerk's office in Book D 6 of Deeds, page 418, &c., on May 4th, 1854; thence westerly along said southerly line of said Ocean House property across the beach to South Shrewsbury river at low water mark; thence up said river at low water mark, the several courses thereof, the general courses of said river being northerly and southerly, until it strikes into the mouth of Beach Channel, near Bush Point; thence up the middle of said channel the several  
40 courses thereof, to the northeast corner of land of Job West,

deceased; thence south seventeen degrees west, three chains and forty-four links to a corner; thence south thirty minutes east, fifteen chains to a corner; thence south, thirty minutes east, fifteen chains to a corner near the ice-house; thence south thirty-two degrees and forty-five minutes east, fourteen chains and thirty-five links to a stake near the garden fence of the Henry Wardell mansion-house; thence south twelve degrees east, ten chains and thirty-six links, to a stone on the north side of the road from said Wardell mansion-house to Raccoon Island road; thence south forty-six degrees and thirty minutes west, fifteen chains and sixty links to the middle of the Raccoon Island road; thence up the middle of said Raccoon Island road last named, south ten degrees and thirty minutes east, fifteen chains and ten links to the beginning, supposed to contain five hundred acres, more or less, it being the same premises that Henry Wardell, deceased, died possessed of, and it being hereby intended to convey to said Conover all the land and premises lying within the above boundaries, except only such rights and interests as were acquired by the Long Branch and Sea Shore Railroad company, by deed from widow and heirs of Henry Wardell, deceased, to said railroad, dated June 27th, 1864, and recorded in said Monmouth clerk's office June 29th, 1864, in Book No. 176 of Deeds, page 184, and except such rights and interests as were acquired by the United States of North America or others, by deed from Henry Wardell to them, dated February 10th, 1849, and recorded March 5th, 1849, in Book I 5 of Deeds, page 34, for lot one hundred feet square, used as life saving apparatus station (subject, however, to a mortgage from Henry Wardell and wife to the board of chosen freeholders of the county of Monmouth, for three thousand dollars, dated May 10th, 1849, and recorded in said clerk's office May 21st, 1849, at twelve o'clock, in Book Q of Mortgages, page 196, upon which the interest has been paid up to May 10th, 1865, and endorsed on the bond.

Together with all and singular the buildings, improvements, ways, woods, water courses, rights, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part

and parcel thereof, and also all the estate, right, title, interest, use, possession, property, claim, and demand, whatsoever, both in law and equity, of them, the said party of the first part, of, in and to the said premises, with the appurtenances, to have and to hold the tract of land, hereditaments, and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said party of the second

10 party, his heirs and assigns, for ever; and the said Elizabeth Wardell, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, Henry Howland, and Sallie A. Howland, James W. Conover, and Eliza L. Conover, party aforesaid of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and grant, to and with the said Arthur V. Conover, party of the second part, his heirs and assigns, that at the time of the sealing and delivery hereof, they, the said party of the first part, were seized in

20 their own right, of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises hereby granted with the appurtenances, and have good right, full power, and sufficient authority, in the law, to grant, bargain, sell, and convey, the same unto the said party of the second part, his heirs and assigns for ever, according to the true intent and meaning of these presents; and, also, that it shall and may be lawful for the said party of the second part, his heirs and assigns, at all times for ever hereafter, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said premises, with the appurtenances,

30 and every part and parcel thereof, without the lawful let, rent, eviction, interruption, or disturbance, of the said party of the first part, their heirs or assigns, or any other person or persons whomsoever, lawfully claiming or to claim the same; and that the said premises are free and clear, and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and from all other encumbrances whatever; and lastly, that they, the said party of the first part, and their heirs, all and singular the tract of land, hereditaments, and premises, hereby

40 granted, with the appurtenances, unto the said party of the

second part, and his heirs and assigns, against them, the said party of the first part, and their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and for ever defend.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

ELIZABETH WARDELL,	[L. S.]	
EDWARD WARDELL,	[L. S.]	10
SOPHIA H. WARDELL,	[L. S.]	
JACOB HERBERT WARDELL,	[L. S.]	
ANN E. WARDELL,	[L. S.]	
JOSEPHINE D. WARDELL,	[L. S.]	
HENRY HOWLAND,	[L. S.]	
SALLIE ANN HOWLAND,	[L. S.]	
JAMES W. CONOVER,	[L. S.]	
ELIZA L. CONONER,	[L. S.]	

Signed, sealed, and delivered, in the presence of

PETER L. VOORHEES, 20  
J. W. MORRIS.

As in and by the last aforesaid deed, when produced and to which, or the record thereof, for their greater certainty the defendants crave leave to refer, will more fully appear.

And the defendants jointly and severally claim the same benefit as if they had pleaded the last aforesaid deed in this cause.

And they jointly and severally insist that the execution of the last aforesaid deed and delivery thereof to the complainant, was and is a full compliance and performance of all or 30 any valid agreement between them or either of them, the defendants and the said complainant, respecting the same or purchase of the land described in said written agreement, and specifically set forth in the last aforesaid deed, and they jointly and severally claim the same benefit thereof as if they had pleaded the same in this cause.

And these defendants, in further answering admit, that said Jacob W. Morris executed to said complainant a deed in writing, under his hand and seal—mention whereof is made in said bill, and herein set forth, as follows :

This indenture, made this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and sixty-five, between Jacob W. Morris, of the township of Ocean, county of Monmouth, and state of New Jersey, party of the first part, and Arthur V. Conover, of the township of Freehold, county and state aforesaid, party of the second part, witnesseth—that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to the said party of the first part  
10 in hand well and truly paid by the said party of the second part, before the sealing and delivery of these presents, the receipt whereof he, the said party of the first part, doth hereby acknowledge, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm to the said party of the second part, his heirs and assigns, all the right, title, and interest of the said Jacob W. Morris of, in, and to all that certain farm and tract of land, situate, lying, and being in the township of Ocean, county of Mon-  
20 mouth, and state of New Jersey, beginning in the centre of the road from Lane's End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence along the line of William West and others north, sixty-seven degrees and fifteen minutes east, twenty-five chains, more or less, to the Atlantic ocean at low water mark; thence northerly, along the ocean at low water mark the several courses thereof, to the southerly line of the Ocean House property, as conveyed by Elizabeth Wardell and Jordan Woolley, administrators of Henry Wardell, deceased, to Henry E. Riell,  
30 by deed dated April 21st, 1854, and recorded in Monmouth clerk's office, in Book D 6 of Deeds, page 418, &c., on May 4th, 1854; thence westerly, along said southerly line of said Ocean House property across the beach to South Shrewsbury river at low water mark; thence up said river at low water mark the several courses thereof, (the general course of said river being northerly and southerly) until it strikes into the mouth of Beach Channel, near Bush Point; thence up the middle of said channel the several courses thereof, to the northeast corner of land of Job West, deceased; thence  
40 south seventeen degrees west, three chains and fifty-four

links, to a corner; thence south thirty degrees east, fifteen chains, to a corner near the ice-house; thence south thirty-two degrees and forty-five minutes east, fourteen chains and thirty-five links, to a stake near the garden fence of the Henry Wardell mansion-house; thence south twelve degrees east, ten chains and thirty-six links, to a stone on the north side of the road from said Wardell mansion-house to Raccoon Island road; thence south forty-six degrees and thirty minutes west, fifteen chains and sixty links, to the middle of the Raccoon Island road; thence up the middle of said Raccoon Island road last named, south ten degrees and thirty minutes east, fifteen chains and ten links, to the beginning; supposed to contain five hundred acres, more or less, it being the intention of the said party of the first part hereto to convey to said Conover all the right, title, power, and interest of said Jacob W. Morris which has vested, or may hereafter vest, in said Morris by, from, or under a certain power of attorney, executed by Elizabeth Wardell, Edward Wardell, J. Herbert Wardell, Sallie A. Howland, Eliza L. Conover, Josephine D. Wardell, James W. Conover, and Henry Howland, to the said Jacob W. Morris, dated June 26th, 1865, and recorded June 28th, 1865, in Monmouth clerk's office, in Book No. 182 of Deeds, page 105, &c. The above premises are known as the farm of Henry Wardell, deceased, and the widow and heirs of said Henry Wardell, deceased, have, by deed of even date herewith, conveyed directly to said Arthur V. Conover.

Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and also, all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of him, the said party of the first part, of, in, and to the said premises, with the appurtenances: to have and to hold the right, title, power, and interest of said Jacob W. Morris, with hereditaments and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the

said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said party of the second part, his heirs and assigns, for ever; and the said Jacob W. Morris, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said Arthur V. Conover, his heirs and assigns, that he, the said Jacob W. Morris, hath not done, nor suffered to be done, any act, matter, or thing whereby the premises hereby granted may be any way charged or encumbered in title,  
 10 charge, or estate.

In witness whereof, the said Jacob W. Morris hath hereto set his hand and seal the day and year first above written.

J. W. MORRIS. [L. S.]

Signed, sealed, and delivered  
 in the presence of

PHILIP J. RYALL.

As in and by the last aforesaid deed or record thereof, when produced, and to which these defendants, for greater certainty, crave leave to refer, if necessary, will fully appear.  
 20

But the said defendants, Elizabeth Wardell, Edward Wardell and wife, Jacob H. Wardell and wife, Josephine D. Wardell, Henry Howland and wife, James W. Conover and wife, deny that the said Jacob W. Morris had any right or authority, in law or equity, to make or execute to the said complainant or to any other person the last aforesaid deed or instrument of writing, to affect or bind the said defendants or either one of them respecting the said lands or real estate mentioned in said bill, or any part thereof.  
 30

And they jointly and severally submit that they are not either jointly or severally bound, either in law or equity, under the circumstances and for the reasons herein by the said deed or instrument of writing so executed as aforesaid, by the said Jacob W. Morris; and that the said complainant is not entitled to any relief by reason of the execution of the last aforesaid deed in the premises.

And the defendants, in further answering say, that the deed or instrument of writing so executed as aforesaid by  
 40 said Jacob W. Morris, was written and framed and the

phraseology therein expressed by the complainant's attorney selected and chosen by the said complainants, and the contents of said Morris deed, the defendants believe were not known to the other defendants until the filing of the bill.

And that the aforesaid deed, executed as aforesaid by said widow and children, heirs-at-law of said Henry Wardell, deceased, to said complainant, was also prepared by the complainant's attorney, selected and chosen by the complainant; that the boundaries and description of the land and real estate contained in the last aforesaid deed was therein written by his said attorney and counselor; that the said complainant was, long before the day of the execution of said deed, fully informed of the metes and bounds, and monuments and quantity of land expressed and contained in the last aforesaid deed; and also, before the execution of said written agreement the said complainant was informed of the precise extent and boundaries of the land which the defendants offered and agreed to sell to the complainant, and conveyed in the last aforesaid deed to him, and which was the subject matter of purchase by him, and of sale to him; and that the last aforesaid deed to said Arthur V. Conover, by said widow and heirs of said Henry Wardell, embraces all the land that was at any time the subject matter of sale by the said defendants in any of the agreements or negotiations between the said complainant of the one part, and the defendants, or either of them, of the other part.

And the defendants in further answering say, that the said complainant accepted the last aforesaid deed so made as aforesaid from the said widow and heirs of Henry Wardell, deceased, without any objection at any time, either as to the form or otherwise.

And these defendants in further answering say, that the said Arthur V. Conover, with his wife, executed, under his hand and seal, a mortgage to said Elizabeth Wardell, bearing even date with the last aforesaid deed, for the payment of twelve hundred and forty dollars, with interest, from April 1st, 1866, on the same premises contained in the last aforesaid deed, and that the description, metes, and bounds of said lands are expressed and written in said mortgage the same as in the last aforesaid deed.

And that it is also expressed in the body of said mortgage in addition to the description of said land, as follows: "it being the same premises that Henry Wardell, deceased, died possessed of," excepting out of the same such rights and interest as was acquired by the Long Branch and Sea Shore Railroad Company, by deed from widow and heirs of Henry Wardell, deceased, to said railroad company, dated June 27th, 1864, and recorded in said Monmouth clerk's office, June 29th, 1864, in Book No. 176, of Deeds, and page 184; 10 and except such rights and interest as were acquired by the United States of North America, (or others,) by deed from Henry Wardell to them, dated February 10th, 1849, and recorded March 5th, 1849, in said office; in Book I 5 of Deeds, page 34, for a lot one hundred feet square, used as a life-saving apparatus station, being the same premises conveyed to said Arthur V. Conover, by widow and heirs of said Henry Wardell, deceased, by deed dated October 28th, 1865.

And these defendants submit, that the complainant, thereby, and by other mortgages of a like import, given by 20 him on said premises, adopted the description, and boundaries, and quantity of land, as contained in the aforesaid deed, executed to him by the widow and heirs-at-law of said Henry Wardell, as the real boundaries, embracing all the land, and no more; that the defendants, or either of them, were, in any wise, bound to convey or assure to said complainant; which said mortgage herein particularly specified these defendants jointly and severally crave leave to produce and refer to, for greater certainty, with the other mortgages or papers given by said complainant, and of which these 30 defendants jointly and severally claim the same benefit as if they had jointly or severally pleaded the same.

And these defendants in further answering jointly and severally deny, that they, or either of them, were or are, at any time, either in law or equity, under either of said agreements referred to in said bill, bound or liable to convey, at any time, to the said complainant the Wardell Farm, of which the said Elizabeth Wardell, Henry Howland, and Sallie A. his wife, Edward Wardell, Jacob Herbert Wardell, Josephine D. Wardell, James W. Conover, and Eliza

L. his wife, or any of them, were seized, or any part thereof, as claimed in said bill.

And these defendants in further answering, jointly and severally deny, that the complainant paid to the defendant, or any of them, at any time, said sum of \$30,000, or any other sum of money, as and for the purchase money of the "Wardell Farm," as claimed and alleged in said bill.

But they say, that the said \$30,000 was the consideration for the land conveyed to the complainant, by the deed executed to the complainant, by Elizabeth Wardell, and children of said Henry Wardell, herein set forth, and no more; and that the complainant paid part of said purchase money in money, at the time of the signing the agreement, and a part of the purchase money at the time of the execution of said deed, and secured the balance of the said \$30,000 by mortgage security, on the same real estate conveyed to him by the last aforesaid deed. 10

And these defendants in further answering jointly and severally say, that the last aforesaid deed, so executed as aforesaid, to said complainant, conveys to the said complainant all the land or real estate that the said complainant purchased, either directly or by the medium of an agent, in any way, of the said children and widow of said Henry Wardell; and that the said land and real estate, conveyed to the said complainant, by the last aforesaid deed, as therein contained and described, is all that the defendants, or either of them, ought or were or are bound, either in law or equity, to convey to said complainant, under the agreement set forth in said bill. 20

And that the defendants have not, either of them, failed or neglected to perform the agreement; and these defendants, in further answering, jointly and severally deny, that the complainant believed or supposed that the aforesaid deeds so executed as aforesaid, to him conveyed, described, included, or embraced, any more land than what is contained in said deeds, so executed by said widow and children, heirs of said Henry Wardell, or that the said deeds, or either of them, conveyed, described, included, or embraced all or any or either of the parcels of land described in said bill, as follows, to wit: 30

1. A triangular parcel of land, being in the southern part of said "Wardell Farm," beginning at the northeast corner of a lot of land conveyed by said Henry Wardell and wife to William West, as afore mentioned; thence running (1) south fourteen degrees east, twelve chains to a point where the line of land of the said Long Branch and Sea Shore Railroad Company intersects the east line of lot sold by said Henry Wardell to Charles H. Valentine, as afore mentioned; thence (2) north twenty-eight degrees and thirty minutes  
10 east, nineteen chains, until it intersects a course of north sixty-seven degrees and fifteen minutes east, from the place of beginning; thence (3) south sixty-seven degrees and fifteen minutes west, thirteen chains to the beginning, containing seven acres and seventy hundredths of an acre, more or less.

2. A piece and strip of land adjoining the southwestern part of said parcel last described, running and extending between the south line of the lot of land sold by said Henry Wardell and wife, to Stewart Cook as aforesaid, and the  
20 north line of the lot of land sold by said Henry Wardell and wife to Charles H. Valentine, as aforesaid, from the middle of the said Raccoon Island road, twenty feet in width to the west line of the triangular parcel of land above described.

3. A triangular piece or gore of land lying and being in the southeastern part of said "Wardell Farm," bounded easterly by the Atlantic ocean, northerly by the southerly line of lands conveyed by said widow and heirs of said Henry Wardell, deceased, to the Long Branch and Sea Shore Railroad Company, by deed dated July 19th, A. D. 1864, and  
30 recorded in Book 177 of Deeds, page 308.

And these defendants jointly and severally deny that the complainant was led and induced so to believe, as alleged in said bill, either from the language and terms of said power of attorney or agreement herein before recited, or from the assertions, declarations, and conduct of the said defendants, or either of them, to and toward the complainant, at any time or by any other facts or circumstances, or from the language, descriptions, and contents of either of said deeds, so executed as aforesaid to the said complainant.

40 And these defendants in further answering jointly and

severally deny, that there were any assertions, declaration or conduct of the defendants or either of them at any time whereby the complainant was led or induced or could be led or induced, to believe that the aforesaid deeds so executed as aforesaid to said complainant, embraced in their description or conveyed to said complainant the last aforesaid three strips, parcels, portions, or gores of land, or either of them, or that the defendants or either of them had at any time sold to the complainant the last aforesaid three strips, parcels, portions, or gores of land or either of them; or that the complainant had at any time purchased of the defendants, or either of them, the last aforesaid three strips, parcels, portions, or gores of land, or either of them; or that the defendants, or either of them, had sold to him at any time, or ought to sell or convey to the complainant the last aforesaid three strips, parcels, portions, or gores of land, or either of them. 10

And the defendants in further answering jointly and severally say, that the assertions, declarations, and other things, facts, and circumstances alleged in said bill are therein in said bill referred to by the complainant generally, and are not therein given or set forth with any certainty by the complainant, either as to the words or the substance or character thereof, and therefore, for want of such certainty, and on account of such general allegations in said bill, these defendants jointly and severally pray the same advantage of exception as if they had specially pleaded or demurred for the same. 20

And these defendants in further answering jointly and severally submit to this court, that no proceeding can be instituted or will be maintained in this court, to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized, and by reason that the said bill of complaint does not allege that the assertions, declarations, other things, facts, and circumstances are in any agreement, or memorandum or note thereof in writing, signed by the defendants, or either of them, or by 30 40

some other person thereunto by the defendants, or any of them, lawfully authorized, and by reason of the statute of the state of New Jersey herein before referred to, entitled an act for the prevention of frauds and perjuries, passed the 26th of November, 1794, the defendants jointly and severally pray the same advantage of exception as if they had jointly and severally specially pleaded or demurred for the same.

And these defendants in further answering say, that the boundary line expressed or written in the power of attorney  
10 referred to in the complainant's bill, to wit, "beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly, as the ditch and fence now stand, to the sea or ocean," is the same boundary line expressed and written in the agreement referred to in said bill, "o wit, "begins in the middle of the road leading from Long Branch to Fresh Pond, near the corner of the Fresh Pond district school-house, and runs easterly, as the ditch and fence now stand, to the sea shore;" that the land described in said power of attorney, and in said written agreement, all  
20 lies and is situate wholly northward of the said boundary line so expressly mentioned and particularly designated in said power of attorney and written agreement.

And the said Elizabeth Wardell, Edward Wardell and wife, Jacob H. Wardell and wife, Josephine D. Wardell, Henry Howland and wife, James W. Conover and wife jointly and severally submit and insist, that even if said power of attorney or written agreement was sufficiently valid, legal, or binding on the defendants, or either of them, claimed in said bill, the said Jacob W. Morris, either as  
30 agent, attorney, or otherwise, had no power, authority, or right in any transaction with the complainant respecting the sale or purchase of any of the real estate of the said children of Henry Wardell, deceased, to alter or vary or depart from the said boundary line so expressly set forth in said power of attorney, or the location of said boundary line.

And the said Jacob W. Morris in further answering for himself denies, and the other defendants jointly and severally deny, that the said boundary line so expressly written and specified as aforesaid, is in any way varied or departed  
40 from in the deeds so executed as aforesaid to said complainant.

And these defendants jointly and severally insist, that the boundary line expressed and written in said deed executed by said Elizabeth Wardell, Edward Wardell and wife, Jacob H. Wardell and wife, Josephine D. Wardell, Henry Howland and wife, James W. Conover and wife, as follows: "Beginning in the centre of the road from Lane's End to Raccoon Island, and near the corner of the Presh Pond district school-house; thence along the line of William West and others north sixty-seven degrees and fifty minutes east, twenty-five chains, more or less, to the Atlantic ocean at low water mark," is the said boundary line, and in the same line and location as is expressly written and specified as aforesaid in said power of attorney, as by reference to the aforesaid instruments of writing the same will more fully appear, and to each of which said instruments of writing these defendants, for greater certainty, jointly and severally pray leave to refer. 10

And these defendants in further answering say, that the aforesaid boundary line, running to the sea or Atlantic ocean, at low water mark as aforesaid, is the boundary line of the southward end of the tract of land purchased by and sold to said complainants by the said widow and said children of said Henry Wardell, deceased, in and by their said deeds to said complainant; that all the lands which the said complainant bought of the said defendants, or was the subject matter of purchase or sale between the parties, lies wholly northward of said boundary line, and consists partly of sea shore and beach land, liable to vary and fluctuate as to its quantity and boundaries in some parts, by force of the tides and elements; that the three pieces, strips, or gores, or portions of land lastly described in said bill of complaint, and which the complainant by his bill claims ought to be conveyed to him, and for which relief is prayed in his bill, lie wholly all southward of the aforesaid boundary line that is expressed as aforesaid, as follows: "Beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly as the ditch and fence now stands, to the sea or ocean." 20

And the said Jacob W. Morris, for himself says, that before the signing of the said power of attorney, and before 40

the signing of the said agreement referred to in said bill, he was informed by the other defendants, or by some of them, and he believed that the aforesaid three strips, gores, or parcels of land which lie and are situate southward of said boundary line of the southward end of the land described in the aforesaid deed, executed to said complainant, were all sold and disposed of to other persons, by the said widow and children of said Henry Wardell, deceased, or by some of them, long before the date of said power of attorney.

- 10 And these defendants in further answering, personally and severally say, that the said complainant, before he made any bargain or negotiation concerning the purchase of any land of said defendants, or of either of them, went with said Jacob W. Morris and viewed the premises, and the said Jacob W. Morris pointed out to the complainant, on the ground, the said boundary line specifically set forth, as aforesaid, in said power of attorney, as the southern boundary of said farm, proposed to be sold to the complainant by the widow and children aforesaid of said Henry Wardell; and that the
- 20 said complainant, was then fully informed that only the land of the said widow and children of said Henry Wardell, deceased, lying northward of said fence and ditch line, as specified aforesaid, was or comprised the farm proposed or offered to be sold to the complainant.

And these defendants say, that the said complainant, before the time of the signing of said power of attorney, was fully informed that the three strips, parcels, or gores of land aforesaid, lying southward of said boundary line, that is specifically expressed as aforesaid, along the fence and ditch to the

30 sea, were not, either of them, embraced in the farm, or land proposed to be sold to the complainant.

And said Jacob W. Morris, for himself, says of his own knowledge, and the other defendants for themselves say, they the other defendants are informed and believe that after the said instrument, or power of attorney was written, and before the same was signed, the said complainant read and examined the said instrument of writing, having the said boundary line so expressed as aforesaid therein, and consented to the same, without any objection on his part in any way.

- 40 And these defendants in further answering say, they are

informed and believe that after said instrument or power of attorney was signed, and before the written article of agreement referred to in said bill was signed, the said complainant again went on the land and viewed the premises; the said complainant, after viewing and examining the premises as aforesaid, read, and perused, and signed the said written agreement, referred to in his said bill, and herein before set forth, without making any claim to any of said three portions of land claimed by the bill.

And these defendants in further answering say, that there- 10  
after and before the said widow and children of said Henry Wardell, deceased, executed said deed to said complainant, the land and premises so shown to said complainant, and so viewed and examined by said complainant as aforesaid, were, at the request of said complainant, surveyed as he, the complainant, requested, and a survey or map made thereof, in accordance with the complainant's instructions; and the said survey or map was approved of and taken away and retained by said complainant, and the same accepted by him, and said deed made and executed as aforesaid, from said widow 20  
and children of said Henry Wardell, deceased, to said complainant as aforesaid, was made in accordance with said survey or map, and accepted by said complainant, without any objection on the part of said complainant, and without any claim on the part of the complainant as to said three portions of land or either of them.

And these defendants in further answering say, that the complainant took possession of said land conveyed to him by the last aforesaid deed, at or about the date of said deed, and did not then or since then take possession nor exercise 30  
any control, and did not pretend until recently, about the time of filing the bill, to have any right or claim to any other or more land than what is set forth and described and conveyed by the last aforesaid deed.

And the defendants in further answering, jointly and severally deny that the complainant was led or induced to believe, either from the language and terms of any of the afore mentioned instruments of writing, or from the assertions, declarations, or conduct of the defendants, or either of them, or from any other things, or facts, circumstances 40

legitimately connected with the transaction between the parties, or from the language, description, and contents of the said deeds, that the said deeds from the defendants conveyed all the said land of which the said defendants, or any of them, were seized, as claimed in said bill, and that the defendants reserved or kept back no part of the said land of which they, or any of them, were seized at the time of said agreement, as complained of in said bill.

And the defendants jointly and severally submit and in-  
10 sist, that when in a transaction or agreement between parties respecting the sale or purchase of land, any general name is used as the Wardell farm, or words or expressions of like import of a general character as and in said bill, and at the same time and in the same transaction and proceedings to agreement, the specific boundary is given of said land or any part thereof, and the plain visible monuments fixed points and boundary of said land or any part thereof shown in or along said land or part thereof, and the specific and certain description of such monuments, fixed points, or  
20 boundary given, expressed, and described in said transaction, agreement, or proceedings, exhibiting clearly the extent, location, and description of the land bought, sold, or negotiated for in such transaction, agreement, or proceedings, such monument, fixed points, or description and boundary, and not the general name of the land or premises used in common parlance in respect to the land bought, sold, or negotiated for, must govern and control the parties both in law and equity, both as to the quantity and extent of the land bought, sold, or negotiated in the same transaction,  
30 proceedings, or agreement, as also, the location thereof.

And the defendants jointly and severally claim the same advantage as if they had specially pleaded or demurred therefor in this cause.

And the defendants in further answering jointly and severally submit and insist, that they have not either of them conveyed or agreed to sell or convey to the complainant, and jointly and severally deny that they, the defendants, or either of them, are bound or ought to be bound, either in law or equity, to convey to the complainant the said three  
40 pieces, strips, portions, or gores of land for which the relief

is prayed for by the complainant in said bill and therein described.

And these defendants in further answering jointly and severally submit and insist, that they have in each and every respect before the commencement of this suit, and at the time of the execution of said deed by said widow and children of Henry Wardell, deceased, as aforesaid to said complainant, performed the said agreement fully to said complainant; and they jointly and severally deny that they ought to account to said complainant for the rents, issues, 10 and profits of the said pieces, portions, and parcels of land or of any part thereof, so as aforesaid unconveyed to said complainant.

And the defendants jointly and severally deny all unlawful combinations and confederacy charged in the bill, without that, &c.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained. 20

ROBERT ALLEN, JUN.,

*Solicitor and of counsel with defendants.*

New Jersey, ss.—Elizabeth Wardell, Edward Wardell, and Sophia Wardell his wife, Henry Howland, and Sallie A. Howland his wife, James W. Conover, and Eliza L. Conover his wife, Jacob H. Wardell, Josephine D. Wardell, Jacob W. Morris, and Anna E. Wardell, wife of Jacob H. Wardell, the within named defendants, being duly severally sworn according to law, on their respective oaths say, that the matters and things set forth in the foregoing answer, so far 30 as they relate to their own acts, are true; and that so far as they relate to the acts and deeds of other persons, they believe them to be true.

HENRY HOWLAND,  
SALLIE A. HOWLAND,  
JAMES W. CONOVER,  
ELIZA L. CONOVER,  
ANNIE E. WARDELL,

ELIZABETH WARDELL,  
EDWARD WARDELL,  
SOPHIA H. WARDELL,  
J. HERBERT WARDELL,  
JOSEPHINE D. WARDELL,  
J. W. MORRIS.

Subscribed and sworn to, this 28th day of August, A. D. 40  
1866, before me. JNO. A. LANNING, M. C.

### Replication.

[Filed October 2, 1866.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without that,  
 10 that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is, and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

Dated September 29th, 1866.

WM. H. VREDENBURGH,  
*Solicitor for and of counsel with complainant.*

### Depositions.

20

[Filed October 19, 1869.]

Depositions of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Arthur V. Conover is complainant, and Elizabeth Wardell, Edward Wardell, and Sophia H. his wife, Jacob Herbert Wardell, and Ann E. his wife, Josephine D. Wardell, Henry Howland, and Sallie A. his wife, James W. Conover, and Eliza L. his wife, and Jacob W. Morris, are defendants, taken before the subscriber, Aaron R. Throckmorton, one of the masters and examiners of said court,  
 30 on Tuesday, the 20th day of August, A. D. 1867, at the

hotel of Cooper & Laird, at Long Branch, in Monmouth county, in the presence of William H. Vredenburgh, esquire, solicitor of the complainant, and Joel Parker, esquire, of counsel with complainant, and of Robert Allen, jun., esquire, solicitor and of counsel with the defendants, on notice on the part of the complainant, the service of which is admitted.

A. R. THROCKMORTON, *M. C.*

The solicitor of the complainant offered in evidence a statement (by consent of the counsel of the defendants,) 10 made by William H. Slocum, relative to the execution of an agreement bearing date June 26th, 1865, executed by Jacob W. Morris, attorney in fact for Elizabeth Wardell and others, of the one part, and Arthur V. Conover of the other part, and marked *Exhibit A*, on the part of the complainant in this cause.

Also, an agreement bearing date June 26th, 1865, made and executed by Jacob W. Morris, attorney in fact for Elizabeth Wardell and others, of the one part, and Arthur V. Conover of the other part, which is marked *Exhibit B*, on 20 the part of the complainant in this cause. [Objected to by defendants.]

He also offered in evidence a copy of a power of attorney, bearing date the 26th day of June, A. D. 1865, from Elizabeth Wardell and others to Jacob W. Morris, duly certified by Holmes W. Murphy, clerk of Monmouth county, under his seal of office, and which is marked *Exhibit C*, on the part of the complainant in this cause, (which is objected to by the solicitation of the defendants.)

Also, a deed dated October 28th, 1865, made and executed 30 by Elizabeth Wardell and others, of the first part, and Arthur V. Conover of the second part, acknowledged October 31st, 1865, before Jacob W. Morris, one of the masters in chancery of New Jersey, recorded in the clerk's office of Monmouth county, November 1st, 1865, and which is marked *Exhibit D*, on the part of the complainant in this cause.

Also, a quit claim deed, bearing date October 28th, 1865, made by Jacob W. Morris, of the first part, and Arthur V. Conover of the second part, acknowledged November 1st,

1865, before Philip J. Ryall, one of the masters in chancery of New Jersey, and recorded in the clerk's office of Monmouth county, November 1st, 1865, which I have marked *Exhibit E*, on the part of the complainant in this cause. [Objected to by the counsel of the defendants.]

Also, a copy of deed, bearing date July 19th, 1864, executed by Elizabeth Wardell and others, of the first part, and the Long Branch and Sea Shore Railroad Company of the second part, acknowledged July 19th, 1864, before Francis  
10 Corlies, master in chancery, recorded in the clerk's office of Monmouth county, July 30th, 1864, and duly certified by Holmes W. Murphy, clerk of said county, under his seal of office, and which is marked *Exhibit F*, on the part of the complainant in this cause.

Also, a copy of a deed, bearing date June 27th, 1864, executed by Elizabeth Wardell and others, of the one part, and the Long Branch and Sea Shore Railroad Company, of the other part; acknowledged June 27th, 1864, before Francis  
20 Corlies, master in chancery; recorded in the clerk's office of Monmouth county, and duly certified by Holmes W. Murphy, clerk of said county, under his seal of office, and which I have marked *Exhibit G*, on the part of the complainant in this cause.

*Francis Corlies*, of Monmouth county, a witness produced on the part of the complainant, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed according to law, saith—

I am a practical surveyor, residing at Long Branch; I have  
30 been a practical surveyor for the last fifteen or eighteen years; my surveys have been made in this section of the country, principally; I was acquainted with Major Henry Wardell in his lifetime—I knew him very well; I often visited at his house; I had known him always—certainly ten years before his death—but more intimately a few years before his death; at the time when I knew him and visited him, he lived on the old homestead, where Doct. Arthur V. Conover now lives.

*Quest.* What farm was it called? [Objected to.]

*Ans.* I don't know that it had any particular name; War-

dell's beach is an old name; I don't know that it had any particular name, more than any other farm; the northern part of it was generally known as Wardell's beach.

*Quest.* Did you make a map of the property formerly owned by Henry Wardell?

*Ans.* I did make a map of a part of the property.

*Quest.* What part of it?

*Ans.* The south part of it.

[Map shown witness, marked *Exhibit H* on the part of the complainant]—That is the map; I believe that to be a correct map of that part of it.

The north line of William Cooper's land is the south line of the Wardell property by that map; the ocean is the eastern boundary of that property.

*Quest.* What is the western boundary of the southern part of the Wardell property you have spoken of? [Objected to.]

*Ans.* It is bounded partly by the road from Long Branch to Raccoon Island; lands formerly Jesse Potter's, deceased; Edward Lippincott, Charles H. Valentine, Stewart Cook, John Cook, William West, Job West, and Obadiah West, 20 and others, perhaps.

*Quest.* What do you mean by others, perhaps?

*Ans.* I think there is another owner on the west side not named; the party I mean is Dan Woolley.

The names I have mentioned of Potter, Lippincott, Valentine, the two Cooks, and West are put down on the map spoken of by me; they lie on the southern portion of the farm.

*Quest.* Did you draw the deeds and make the survey from the heirs of Harry Wardell, deceased, to the Long Branch 30 and Sea Shore Railroad Company? [Objected to.]

*Ans.* I did; one of those conveyances are mentioned and written upon the map.

*Quest.* Does the map marked *Exhibit H* show these conveyances? [Objected to.]

*Ans.* It shows the whole of the second conveyance, and a part of the first.

The second conveyance to the railroad conveyed the property on the southern portion of the farm. [Objected to.]

*Quest.* Is that second conveyance, the one you mean, marked on the map as dated July 19th, 1864? [Objected to.]

*Ans.* It is.

*Quest.* How long have you known the property lying within the boundaries you have mentioned? [Objected to.]

*Ans.* Twelve or fifteen years.

*Quest.* How long have you known Henry Wardell to have been in possession of the property within those boundaries previous to his death? [Objected to.]

10 *Ans.* Ever since I knew Henry Wardell.

I think Henry Wardell died in 1852; the property I have marked on the map lies together—that is, there are no detached pieces.

*Quest.* Was it or not known as one property as long as you have known it, as marked on that map? [Objected to.]

*Ans.* It was.

And being cross-examined on the part of the defendant, says—

20 That map was made about a year ago—since the complainant lived on the property; it was made about October, 1866, I think, but am not positive; I think it was made at the request of the complainant, or of Messrs. Ryall & Vredenburg.

*Quest.* Who were present when you surveyed the property of which that map purports to be the survey?

*Ans.* I doubt whether I surveyed the property at all; I don't think I surveyed it all; I made the map from the title deeds.

*Quest.* What title deeds?

30 *Ans.* The deed from the heirs of Henry Wardell to the Long Branch and Sea Shore Railroad Company; Henry Wardell and wife to Jesse Potter; Henry Wardell and wife to Edward Lippincott; and the same to Charles H Valentine, Steward Cook, John Cook, and William West; and from the deed from the heirs and widow of Henry Wardell to Doct. Arthur V. Conover.

Nobody that I know of was present when I made the map; I did not consult any of the heirs or the widow of Henry Wardell, or any of their agents, when I made the map, that I am aware of.

I have surveyed the property; I can't tell when; I surveyed the south part of the property for Major Edward Wardell, one of the heirs, after I made this map, that is, I surveyed a part of the south part; I surveyed seven and seventy hundredths acres of the south part; in the first place, I surveyed the railroad tract, just previous to the time the deed was made; I afterwards surveyed the seven and seventy hundredths acres for Doct. Arthur V. Conover; and after that, I surveyed the same tract for Edward Wardell, with reference to cutting it up into lots, and continuing the front 10 lots to the railroad.

*Quest.* Did you survey any of the property, except what you call the railroad tract, and the tract of seven and seventy hundredths acres?

*Ans.* I measured these lots lying between the seven and seventy hundredths acre tract and the highway, and about twelve acres of the south part of the property, conveyed by the heirs to Doct. A. V. Conover; that twelve acres I plotted and laid off into lots for Doct. A. V. Conover.

I surveyed the railroad tract just previous to July 19th, 20 1864; I surveyed it in July 1864; I surveyed the seven and seventy hundredths acres tract for the complainant about a year ago, and about a month or so after that I surveyed it for Edward Wardell; from memory I can't give the time accurately; I surveyed and plotted out the twelve acre tract for the complainant, at the same time that I surveyed the seven and seventy hundredths acre tract for him.

*Quest.* Did you, at any time before the heirs made the deed to Arthur V. Conover, survey or plot out the seven and seventy hundredths acre tract, or any part thereof, for the 30 purpose of continuing the front lots, you have spoken of, towards the railroad or sea, for any of the heirs of Henry Wardell, deceased—and if so, when? [Objected to.]

*Ans.* I surveyed the south part of the tract conveyed to the railroad, and the south part of the seven and seventy hundredths acre tract, ten or twelve years ago, for the heirs or administrators of Henry Wardell; it was done for the purpose of selling lots; it was plotted out; I don't recollect about its being done for the purpose of continuing the front lots spoken of towards the sea.

*Quest.* Was there any arrangement or conversation, at that time, between Charles H. Valentine, Stewart Cook, John Cook, William West, or any of them, the owners of the front lots on that map, with any of the heirs or representatives of Henry Wardell, deceased, with the view of purchasing any part or lot of the seven and seventy hundredths acre tract? [Objected to.]

*Ans.* I don't know.

*Quest.* Have you surveyed any more of the property, except the twelve acres, the tract of the railroad, and the seven and seventy hundredths acres?

*Ans.* Yes; I have surveyed a good deal around there; I surveyed in reference to the line between Job West and the Wardell Farm; I surveyed the railroad the whole extent of the farm, from the south line up to the Ocean House property, formerly Henry Riell, now Lemuel Smith's; I never surveyed the whole farm together; the time when I surveyed the railroad purchase, was before the railroad was built.

And being again examined on the part of the complainant, says—

I acted for the railroad company when I made that survey, so far as the railroad company was concerned; I was assistant engineer for the railroad company at that time.

*Quest.* Did you or not draw your map (*Exhibit H.*) from all and by the aid of all the different surveys you have spoken of? [Objected to.]

*Ans.* I did.

FRANCIS CORLIES.

Subscribed and affirmed at Long Branch, August 20th, 1867, before me,

A. R. THROCKMORTON, *M. C.*

The solicitor of the complainant then offered in evidence the map referred to in the evidence of Francis Corlies, the witness sworn above, and which I have marked *Exhibit H* on the part of the complainant in this cause. [Objected to by the solicitors of the defendants.]

And thereupon at the request of the counsel of the respective parties the further examination of witnesses was adjourned by me until to-morrow morning, August 21st, 1867, at nine o'clock A. M., at the same place.

A. R. THROCKMORTON, *M. C.*

Long Branch, August 21st, 1867. The examination of witnesses in the above stated cause was resumed in the presence of the counsel of the respective parties pursuant to the adjournment made yesterday.

A. R. THROCKMORTON, *M. C.* 10

*Benjamin White*, of Monmouth county, a witness produced on the part of the complainant on his oath saith—

I am seventy years old; I have lived most of my time where I now live, in Ocean township, Monmouth county, at what was formerly called Fresh Pond; I moved there when I was about eleven years old; my father's name was John White; he owned property there; I knew Henry Wardell in his life time; Henry Wardell owned a farm on Fresh Pond. [Objected to by counsel of defendants.]

*Quest.* Where was this farm of Henry Wardell's in reference to your father's land? [Objected to.] 20

*Ans.* They adjoined lands; some of Henry Wardell's land lay north and some lay to to the east; they adjoined on two sides; some of my father's land lay on the south side of some of Henry Wardell's; my father's land run to the sea; that part of father's land which laid next to the sea lay south of Henry Wardell's; Henry Wardell lived upon this property of his which I have spoken of; he was in possession of it; I don't know exactly how long he was in possession of this farm; he was in possession of it up to his death.

*Quest.* Who was in possession of that Henry Wardell's farm prior to Henry Wardell? [Objected to.] 30

*Ans.* His father, Benjamin Wardell; Benjamin Wardell was in possession of it when I first knew it.

*Quest.* What was this farm always called? [Objected to.]

*Ans.* I never heard any other name than Wardell's farm.

*Quest.* For the length of time you have known it, up to

the time of Doct. Conover, the complainant, got possession, who has been in possession of it? [Objected to.]

*Ans.* Henry Wardell's sons and family, after his death; Benjamin Wardell before Henry Wardell took possession, and Henry Wardell himself.

*Quest.* How has this Wardell farm you speak of laid—together or separated? [Objected to.]

*Ans.* It has laid together always since I have known it.

*Quest.* What land has been the southern boundary, and 10 who has owned the land within your recollection of the southern boundary of the Wardell farm? [Objected to.]

*Ans.* My father, John White, first owned it; William Throckmorton got the land from my father, and William Cooper got it from William Throckmorton; the ocean or sea bounded it on the east; it adjoined land of my father on the west, nearly all the way I believe; there has been a road laid on the line since my father owned it; that road leads from Raccoon Island to Long Branch.

*Quest.* What is the length of this Wardell farm, as near as 20 you can tell? [Objected to.]

*Ans.* I should judge about three miles in length.

*Quest.* Has that farm been the homestead farm or not of the Wardells? [Objected to.]

*Ans.* Yes, it has until Doct. Conover got it; I always considered that that farm lay on Fresh Pond.

*Quest.* Who now owns the land on the south of this Wardell farm that your father owned? [Objected to.]

*Ans.* William Cooper.

*Quest.* Do you know this gore of land lying back of 30 Valentine's lot and Cook's lot, between them and the railroad?

*Ans.* Yes, sir, I know it; there is now corn upon that gore. [Objected to as to the crop.] George W. Brown put the crop in, as I understood, upon shares, for the Wardell's; I have understood the Wardells claimed that gore.

*Quest.* Is that gore of land a part of the Wardell farm that you have spoken of? [Objected to.]

*Ans.* Yes, sir; it always laid in that farm, as long as I have known it.

And being cross-examined on the part of the defendant, says—

I have generally followed fishing and farming for over forty years.

And being again examined on the part of the complainant, says—

My fishing has generally been off the shore where I lived, and nearly opposite; I fished in a small boat, and would be off some days half a day at a time, and some days only an hour or two, depending on the weather and how the fish bit. 10

And being again cross-examined on the part of defendants, says—

Of my business, fishing was the principal business; fish in the forenoon and work land in the afternoon; my fishing was generally in the ocean and not in the river; the land I speak of having worked was my own land, of about twenty acres; I have not done much fishing this summer because I am too old.

And being again examined on the part of the complainant, says— 20

The land I speak of as having worked used to adjoin the Wardell farm; it does not adjoin it now, because they sold off lots to the railroad company and Mr. Valentine.

And being again cross-examined on the part of the defendants, says—

*Quest.* Who do you mean by they sold?

*Ans.* I mean Major Henry Wardell sold it to Jesse Potter, and Jesse Potter died and it was sold, and Jacob W. Morris bought a part of it, and I think William Manahan bought a part of the Jesse Potter lot, and then they sold to the railroad company, as I understood; Henry Wardell sold to Mr. Valentine. 30

BENJAMIN WHITE.

Sworn and subscribed, at Long Branch, August 21st, 1867, before me.

A. R. THROCKMORTON, M. C.

[The counsel for the complainant then offered in evidence a deed, bearing date October 27th, 1817, made and executed by Benjamin Wardell and wife to Charles and Henry Wardell, acknowledged October 27th, 1817, before Jacob Croxson, one of the judges of the Court of Common Pleas of Monmouth county, recorded November 10th, 1817, and which I have marked *Exhibit I* on the part of the complainant.]

[Also, a deed from Charles Wardell and wife to Henry Wardell, dated January 24th, 1824, acknowledged April 1st, 10 1824, before Samuel F. Allen, one of the commissioners for taking the acknowledgments and proofs of deeds for Monmouth county, recorded in the clerk's office of said county, July 24th, 1824, and which I have marked *Exhibit J* on the part of the complainant in this cause.

*Philip J. Ryall*, of Monmouth county, a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I am a counselor-at-law, at Freehold, New Jersey.

[*Exhibits D* and *E* on the part of complainant, shown to 20 witness]—I drew those deeds; I don't recollect distinctly how I came to draw those deeds; some of the parties came to my office; I recollect that Doct. Arthur V. Conover, Jacob W. Morris, and Elizabeth Wardell, the widow, were there, and I think Jacob Herbert, the husband of one of the heirs of Henry Wardell, deceased, was there, and there may have been others, but if so I don't recollect them; this is the day the deeds were delivered; they were delivered, I think, a few days after they bear date; the deed from Jacob W. Morris I think I drew the day they came there; the deed 30 from Elizabeth Wardell and others I think was drawn before that, and was taken away by Jacob W. Morris for execution, as the grantors in that deed lived in different places, and he undertook to get that deed executed.

*Quest.* By whose direction did you draw those two deeds to Doct. A. V. Conover? [Objected to.]

*Ans.* The deed from Elizabeth Wardell and others I drew and charged to the grantors, making up the description from old deeds, papers, &c., furnished by Jacob W. Morris; these deeds offered in evidence here yesterday and to-day

were among them; after I had completed the description, Mr. Morris took them, or several of them, and put them back in his bundle of papers and took them away with him; I have a memorandum by which to refresh my recollection, which was made at the time; that memorandum is made on a legal envelope, in which I placed all the papers, &c., of Doct. A. V. Conover relating to this sale; this paper is the memorandum marked *Exhibit K* on the part of the complainant; I have no doubt but that I made it as of the date, November 1st, 1865, according to custom. 10

*Quest.* At the time you drew those two deeds, and they were executed and delivered, did you know or have any information as to the lines or boundaries of what has been called the Henry Wardell farm? [Objected to.]

*Ans.* None whatever, except from the papers furnished at the time of the drawing of the deed from Elizabeth Wardell and others, and from the verbal description furnished by Jacob W. Morris, at the time of the drawing of it.

And being cross-examined on the part of the part of the defendants, says— 20

I did not draw the papers all in one day; the deed from Elizabeth Wardell and others was drawn before the title papers were delivered, so that the parties could execute it, as they were scattered; the parties were at my office while I drew three mortgages; Mrs. Wardell wanted the purchase money divided up, and I drew three mortgages for her; the description of the property was pretty long, and there was a great deal of talk; I think they came in the morning, and I not sure whether we got through before dinner or not; I don't remember whether they all remained in my office all 30 the time or not.

And being again examined on the part of the complainant, says—

The way I came to draw three mortgages was this, all the purchase money was not to be paid in cash, and, I think, it was Mrs. Wardell that wished the part that was to lay on the property divided up into three mortgages; I drew the deeds first, and made up the description in the mortgages from the

deeds, the same as I always make up mortgages for the consideration money.

PHILIP J. RYALL.

Sworn and subscribed, at Long Branch, August 21st, 1867, before me.

A. R. THROCKMORTON, *M. C.*

*Doct. Arthur V. Conover*, the complainant in this cause, being duly sworn, on his oath, says—

In June, 1865, I resided at Freehold—I had lived there  
10 for some time—I now reside on what is called the Wardell farm; I went there to live about the middle of March, 1866.

*Quest.* When did you negotiate for this Wardell farm?  
[Objected to.]

*Ans.* In the summer of 1865—in June.

[Article of agreement marked *Exhibit B*, shown witness.]  
I am a party to that agreement and it is my signature to it; Jacob W. Morris is the other party to it. [Objected to as the agreement shows for itself.] He signed it in my presence.  
[Objected to.]

20 *Quest.* Had you seen this Wardell farm before you entered into this agreement—and if so, when?

*Ans.* Well, sir, I was upon the Wardell farm the Saturday previous, I think.

I drove in the old road to the building, at the homestead, and drove down in the field where there was and is a pond, to the northeast of the building, and I drove back, and then drove about one hundred and fifty yards, in a field where there was a potato patch, I think, I then drove out of the field and drove back the same way I went in, and then went  
30 away; the point where I went a hundred and fifty yards in the field, is at the first turn of the lane leading south from the house, and from that point I went south about one hundred and fifty yards into the field; I was there about fifteen or twenty minutes on this Wardell farm, I suppose, maybe not so long; Jacob W. Morris was with me, and no one else.

*Quest.* Did you, before or at the time of the execution of this agreement, (marked *B*,) have any knowledge, informa-

tion, or idea, whatever, of the extent and boundary lines of the Wardell farm? [Objected to.]

*Ans.* I had no knowledge of it whatever, except what I could see along the road as I went in.

*Quest.* What did you suppose or expect you were agreeing to buy by that article of agreement marked *Exhibit B*? [Objected to.]

*Ans.* All the lands and real estate of Henry Wardell, deceased, not conveyed by deed, on record that day.

*Quest.* Did you suppose you were buying anything more 10 or less than what is called the Wardell farm? [Objected to.]

*Ans.* I supposed I was buying all the Wardell farm—that is what I supposed I was buying.

*Quest.* If there were any tracts of land disconnected from this Wardell farm, did you suppose you were buying them? [Objected to.]

*Ans.* I did.

*Quest.* When did you first discover that the gore of land lying between Valentine and Cook and others, and the railroad, was not included in the conveyance from the Wardells 20 and Morris to you?

*Ans.* I think about the first of March, 1866.

*Quest.* How did you first discover it? [Objected to.]

*Ans.* I stopped at Charles H. Valentine's, and inquired of him who owned that gore of land; he told me that he guessed that I thought that I had bought it, but guessed that my title did not cover it, or to that effect; that is about what he told me.

*Quest.* Go on and state what induced you to believe that the Wardells still claimed to reserve it to themselves, after 30 the execution of the deeds to you?

*Ans.* At that time I supposed I had bought the rails and posts on the farm at the purchase of the farm, and I saw them piled up on that lot or gore [this part of the answer objected to]; it was that that induced me to inquire whose land it was, as I had that day discovered that they had been moved from near the buildings where they were, and where they had been piled up; that summer of 1866, I had seen Mr. Wardell's hands, or I supposed they were his, cultivating it; it is in cultivation this year, or a part of it; I have never 40

had possession of it; I suppose the Wardells have been reaping the profits of it; I instructed Wm. H. Vredenburg to demand of the Wardell's a deed for this gore of land before the commencement of this suit; they have not conveyed it to me.

*Quest.* At the time that you received these deeds from Elizabeth Wardell and others, and Jacob W. Morris, did you know or suspect that they had not conveyed to you the whole of the Wardell farm?

10 *Ans.* I did not, sir.

*Quest.* Did you at any time before you saw Valentine know or suspect that the Wardell's and Morris had failed to convey to you the whole of the Wardell farm? [Objected to.]

*Ans.* I did not; Freehold is about twenty miles from this farm.

*Quest.* Did you at any time give any instructions or information to Mr. Ryall as to the extent or boundaries of this farm? [Objected to.]

*Ans.* No; I do not know all the boundaries of this farm  
20 yet.

*Quest.* Did you request Mr. Ryall to draw these deeds from the Wardells and Morris to you?

*Ans.* I did not; Mr. Morris either wrote to him, or I carried a message to him from Mr. Morris; I think Mr. Morris wrote to him, and sent the title deeds; I did not see the papers or old title deeds.

*Quest.* You have said that you had no knowledge whatever of the extent and boundaries of the Wardell farm, except what you saw as you rode in with Morris; state, if you please,  
30 which bounds, if any, of the farm were pointed out to you by Morris? [Objected to.]

*Ans.* As we turned to go into the house by the lane leading from the Raccoon road, Mr. Morris said to me that the land on the left hand as we went in, belonged to other parties; I don't recollect who they were—they were three, I think; I told him I would like to buy it; the road ran angular, and I told him if it did not belong to the farm I wanted him to get the price, as I would like to have it if I bought the farm; there was nothing else pointed out to me

by Morris, except the government station house, and he said the land on which it stood belonged to the farm.

*Quest.* About how long is this farm, doctor? [Objected to.]

*Ans.* I don't know; the map makes it about three miles of shore property; I could not and cannot see the northern boundary from where I was that day; the northern part of it is sandy and beach; the time that I was there with Jacob W. Morris, it was very foggy; there is a long sandy front on the north; I drove back after dinner, and when I got as far as Mr. Valentine's, it was so foggy that I turned around and went home; I was to meet Mr. Morris the Tuesday following, and he was to get a power of attorney from the heirs.

And being cross-examined on the part of the defendants, says—

Mr. Ryall is my son-in-law, and has been for seven or eight years; I could not say within two years; I did not suggest to Mr. Morris that Mr. Ryall should write the deed; my agreement with Mrs. Wardell was that Mr. Morris should write the deed; I wanted him to do it.

20

ARTHUR V. CONOVER.

Sworn and subscribed at Long Branch, August 21st, 1867, before me.

A. R. THROCKMORTON, *M. C.*

*Stewart Cook*, of Monmouth county, a witness produced on the part of the complainant, on his oath saith—

I am forty-eight years old; I have lived where I now live, that is in the neighborhood, for upwards of thirty years; I got my property of Henry Wardell; I own a house and lot on Raccoon road; that is the one I got of Henry Wardell; I knew Henry Wardell in his lifetime for thirty years.

*Quest.* Did you know the farm on which he lived?

*Ans.* Yes, sir.

*Quest.* What was that farm called? [Objected to.]

*Ans.* It was called the Wardell farm ever since I have known it.

*Quest.* Where does that farm lay with reference to Fresh Pond? [Objected to.]

*Ans.* The neighborhood is called Fresh Pond ; I suppose Henry Wardell's homestead was on that farm ; he lived there as long as I knew him.

*Quest.* What bounded that farm and lies on the east of it?  
[Objected to.]

*Ans.* The sea, I suppose.

*Quest.* Who owned the land on the south of that Wardell farm when you first remember it? [Objected to.]

*Ans.* William Throckmorton.

10 *William Cooper bought of William Throckmorton—*[Objected to]; William Throckmorton occupied the land south of the Wardell farm, and William Cooper occupied it also, after he bought it ; William Cooper occupies it now.

*Quest.* Do you know the gore of land now in corn just back of your lot, between you and the railroad ?

*Ans.* Yes, sir ; I know the land.

*Quest.* Was that gore of land a part of the Wardell farm, or not? [Objected to.]

*Ans.* I expect it was ; I did not know anything different.

20 *Quest.* For how long have you known that gore of land ?

*Ans.* I have known it as long as I have known the farm.

*Quest.* Was it and has it been always since you knew it tilled, cultivated, and used by Henry Wardell and his heirs?  
[Objected to.]

*Ans.* Yes, sir ; it has, as far as I know.

And being cross-examined on the part of the defendant, says—

*Quest.* What house and lot on the Raccoon road adjoins your house and lot on either side ?

30 *Ans.* John Cook on the north and Charles H. Valentine on the south.

William West has a lot on the north of John Cook's house and lot.

*Quest.* Do you know, Mr. Cook, if the gore of seven and seventy hundredths was ever mapped or plotted out in lots, either by Henry Wardell or any of his heirs—and if so, when? [Objected to as not being a proper matter of cross-examination.]

*Ans.* That is a little more than I can answer ; I don't know whether or not.

*Quest.* Do you know whether Henry Wardell or any of his heirs talked with other persons or dealt with that gore with the view of disposing of it, or of any part of it in lots—and if so, when? [Objected to.]

*Ans.* I think it was to be sold off in lots.

*Quest.* What leads you to think so?

*Ans.* Well, the reason why is, that I went over to buy a lot the day the lots were to be sold; this was after Henry Wardell's death; I suppose it was some seven or eight or ten years ago; I suppose the lots were to be sold by Mrs. 10 Wardell, the widow of Henry Wardell, or by Edward Wardell; I went over to this gore we have been speaking about; it was a public sale.

*Quest.* Was the proposed sale you speak of publicly advertised—and if so, how?

*Ans.* I expect it was, I do not know certain; there were several on the ground at the time of this proposed sale; I don't recollect who now.

And being again examined on the part of the complainant, says—

20

These lots were not sold then.

*Quest.* Are there any fences running back across the gore from these lots to the railroad? [Objected to.]

*Ans.* No, sir; and the gore is not separated into lots.

*Quest.* Is there a fence around the corn in this gore?

*Ans.* The railroad fences it on one side, and on the north side Doct. Conover has fenced it, I suppose; and our fences in the rear of these lots fences the gore on the west.

And being again cross-examined on the part of the defendant, says—

30

*Quest.* For how long have you known the fence which you call the Doct. Conover fence?

*Ans.* For several years; they take them down and put them up, I suppose.

*Quest.* Please state the first time that you knew of a fence being where what you call the Doct. Conover fence now stands? [Objected to.]

*Ans.* I can't tell exactly; I can give some idea; it is four or five years, or longer.

*Quest.* How long have you lived in the house and lot where you now live?

*Ans.* About twenty years; the fence that runs along the rear of my lot, and the adjoining lots, has been standing there several years.

STEWART COOK.

Sworn and subscribed, at Long Branch, August 21st, 1867,  
10 before me.

A. R. THROCKMORTON, *M. C.*

*Charles H. Valentine*, of Monmouth county, a witness produced on the part of the complainant, on his oath says—I am aged forty-five the 25th day of last June; I have lived in the neighborhood called Fresh Pond ever since I was three years old; I knew Major Henry Wardell for thirty years, probably longer, previous to his death; he occupied a farm on Fresh Pond; it was the homestead farm, always called the Wardell farm.

20 *Quest.* Who, when you first recollect that Wardell farm, owned the land to the south of it? [Objected to.]

*Ans.* Wm. Throckmorton; he tilled the land and had possession of it; William Cooper got it of him, and has occupied it since, and now occupies it; the ocean bounds this Wardell farm on the east, I suppose.

*Quest.* Do you own a lot on the west of this farm, sold you by Henry Wardell?

*Ans.* Yes, sir; there is a gore back of my lot, which is a part of the gore of seven and seventy hundredths acres spoken  
30 of, which adjoins my lot; the railroad is on the east side of that gore; on the west, my lot, the lot of the two Cooks, and Wm. West, adjoin this gore.

*Quest.* How long have you known that gore?

*Ans.* Thirty years and over.

*Quest.* Is it or not a part of the Henry Wardell farm? [Objected to.]

*Ans.* It is.

*Quest.* For the length of time you have known it, who has tilled or cultivated or used it? [Objected to.]

*Ans.* For the last two years I have cultivated a part of it, and Mr. Steward Cook has cultivated a part of it for the last two years; and this year Capt. Brown cultivates it; I cultivated it under the expectation that the property was mine; I bought it of Mr. Wardell; I never paid any money on it; I had no article of agreement, and I never had any title; prior to the time I cultivated the gore, Mr. Wardell cultivated it, and the Wardells.

10

And being cross-examined on the part of the defendants, says—

*Quest.* When was it you say you bought of Wardell the part you have spoken of? [Objected to.]

*Ans.* In the neighborhood of two years ago, and maybe a little more.

The part I refer to is the part directly between the rear of my lot and the railroad.

*Quest.* Do you know if the gore of seven and seventy hundredths acres, or any part thereof, was arranged or plotted by Henry Wardell or his heirs, with the view of disposing of the same, or any part, in lots, and if so, when? [Objected to.]

*Ans.* I think it was to be sold in lots some years ago, but I don't think it was run off into lots—not to my knowledge; it was probably as long ago as eight or ten years.

*Quest.* What now encloses the gore of seven and seventy hundredths acres?

*Ans.* The railroad fence on the east; Doct. Conover on the north; and the fence of the two Mr. Cooks and Mr. West on the west; there is a fence along the north side of the gore. 20

*Quest.* How long have you known that fence along the north side of the gore? [Objected to.]

*Ans.* As long as I can remember—probably twenty years; that fence extended from the Raccoon road to the sea bank; I don't know that I can say how long I have known the fence as I have last described it; it has been taken up and put down and shifted a good many times.

*Quest.* What do you mean by shifted?

*Ans.* I don't know that it has been taken off of the line

any, but there has been a new fence put up there in my time as many as two or three times, I think.

Just previous to the building of the railroad, the fence I last speak of was a continuous fence from the Raccoon road to the sea bank; I don't remember the fact that there was an opening made in that fence for the railroad to go through; I was sick at that time; there is no fence on the line of this fence between the railroad and the sea.

And being again examined on the part of the complain-  
10 ant, says—

Ten or twelve years ago, the lots I have spoken of purported to extend on to the sea; the railroad was not there then.

*Quest.* Are there or not fences running parallel with this last fence spoken of, and north of it, running from the Raccoon road across the Wardell farm to the sea? [Objected to.]

*Ans.* Yes, sir; these are old fences, and have been there ever since I can remember anything.

CHARLES H. VALENTINE.

20 Sworn and subscribed, at Long Branch, August 21st, 1867, before me.

A. R. THROCKMORTON, *M. C.*

[The solicitor of the complainant offered in evidence the memorandum referred to in the evidence of Philip J. Ryall, endorsed on an envelope, and which I have marked *Exhibit K*, on the part of the complainant in this cause.]

[The solicitor of the complainant then declared to the master that the testimony on the part of the complainant was concluded.]

30 A. R. THROCKMORTON, *M. C.*

[The further examination of witnesses in this cause, on the part of the defendants, was then adjourned, by consent of the solicitors of the respective parties, until Saturday, the 31st day of August, A. D. 1867, at ten o'clock A. M., at my office in Freehold.]

A. R. THROCKMORTON, *M. C.*

[Further examination of witnesses in this cause, on the part of the defendants, taken in the presence of the solicitors of the respective parties, at my office in Freehold, on Saturday, October 31st, A. D. 1867, pursuant to adjournment.]

A. R. THROCKMORTON, *M. C.*

*Jacob W. Morris*, of Monmouth county, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I reside at Long Branch; I moved there in 1832, and have lived there since that time; my business for the last ten 10 years has been that of a real estate agent; I have known Doct. Arthur V. Conover for twenty years at the least; part of the time he was acting as surrogate of the county of Monmouth; he was surrogate for ten years, I think; I do not know how old a man he is, but I should take him to be sixty or sixty-five years of age; I do not know his age; I knew Harry Wardell, who is now deceased, before he was married, and his wife also; that is forty years ago; I have known Harry Wardell fifty years; I think Harry Wardell died in 1853; his wife's name was Elizabeth; she is sti<sup>l</sup> 20 alive; he left the following children his heirs at the time of his death, *viz.* Sarah Ann, wife of Henry Howland; Edward Wardell, Henry H. Wardell, Eliza L. Conover, wife of James W. Conover (she died last spring), Jacob H. Wardell, and Josephine D. Wardell; they are all of age; Eliza L. Conover, wife of James W. Conover, who died last spring, left three children, all of whom are infants; I don't know their names certainly, but I have heard that the oldest is named Henry, aged six years; the next is named Sarah W., aged four years, and the youngest is named Ida, less than 30 a year old; these heirs and children of Harry Wardell, deceased, have always lived on the homestead farm at Fresh Pond, called the Wardell farm, until within two years past, about, in Monmouth county, Ocean township, in Long Branch neighborhood; I should think that Josephine D. Wardell, the youngest child of Harry Wardell, was aged between twenty-three and twenty-four years, although I don't know certain; she is the youngest child; I think Sarah Ann Howland, wife of Henry Howland, has not lived on the

farm at home within the past sixteen years ; she has lived for the past twelve years in Howland's boarding-house at Long Branch, about two and a half miles from the homestead farm ; Eliza L. Conover, I think, has not lived on the farm for the last six years ; she lived with her mother in the village when she was married ; the last four years she lived with her husband in the village of Long Branch ; within two years I think J. Herbert Wardell moved from the farm ; I think Edward Wardell moved off the farm about a year and  
10 a half ago ; I think Elizabeth Wardell, the widow of Harry, moved off the farm three years ago last spring ; Josephine moved off with her mother.

*Quest.* On what part of the homestead of Henry Wardell, deceased, was his dwelling-house at the time of his decease ?

*Ans.* I think about a half a mile from the south line, and it was generally called three and a half miles from the north line, and about three-eighths of a mile from the sea.

Henry Wardell occupied that dwelling-house for the last  
20 fifty years to my knowledge, and he, with his family, occupied it for thirty-five or forty years ; he has been dead nearly fifteen years ; I knew him and his family to occupy it for twenty years ; he and his children were all born there ; Henry Wardell was a farmer in his lifetime ; after his death his widow and his oldest son, Edward, managed his farm ; his widow and his family occupied that dwelling-house after his death ; there was no other dwelling-house on the farm while he was living except the one occupied by him ; there were at his death two hay buildings and two  
30 buildings what we call barns, joined together, a carriage-house, and what we call a cheese-house ; there was an ice-house about a quarter of a mile from the dwelling-house, near the line of Job West, near the west line ; the cheese-house was about ten feet north of the main dwelling ; the carriage-house was about fifty feet east of the main dwelling ; the barns, I should think, were about a hundred feet northeast of the dwelling-house ; at his death there was a government station house about three-quarters of a mile to  
40 a mile to the north eastward of the dwelling-house on the beach near the sea ; it is now called Station No. 3 ; that sta-

tion-house was not one of Henry Wardell's out-buildings; it belonged to the government of the United States, and they had the control of it.

*Quest.* Who has always had control of that station-house since it was built?

*Ans.* The United States government.

*Quest.* Since Henry Wardell's decease has there been any other dwelling-house erected on that farm, occupied by any of the family?

*Ans.* No, sir.

10

*Quest.* Since Henry Wardell's decease has there been any other buildings erected on lands of Henry Wardell, deceased?

*Ans.* None that I know of, except there have been, by permission of the widow and the family, some fish huts and ice-houses erected on the beach, but not occupied in winter, only used in the summer for fishing purposes; none of his family resided in those huts; I don't know whether the persons who used the fish-huts and ice-houses paid rent for them or not. (*Exhibit C*, on the part of the complainant shown to witness.) I presume I am the person called Jacob W. Morris 20 in that paper; I wrote the original paper of which that is a copy; I wrote it at the request of all the heirs and of Doct. Conover, also; Arthur V. Conover first suggested that I should have a power of attorney; the first suggestion that the complainant made about the power of attorney, I was riding in the carriage of his with him from the farm; no one else was then present; I had been showing him the lines of the farm, and we were riding along the shore towards home; he took me to my home in his carriage.

*Quest.* When he left you at your home did he then refer 30 or urge your having a power of attorney?

*Ans.* He did, and we agreed on the time to have the thing completed; I mean by we, Arthur V. Conover, and myself; he said that he would be down on Monday, and that if I had the power of attorney signed, acknowledged, and recorded, he would then be ready to enter into an agreement for the purchase of the farm or land that we had been looking at; further than that he said, I will not buy unless you are fully empowered to sell, and that power of attorney must be recorded before I do buy; at one o'clock on Monday he was 40

to be at my house, but instead of coming on the Monday he came on Saturday before the Monday we had agreed on, and asked me if I was ready; I told him I was not, but I would try to get ready that afternoon; he said the reason was, he was obliged to go away on Monday, and wanted the power of attorney fixed before he went away, so that he would know that I had a right to sell; I got the power of attorney all ready that afternoon, and took it to the doctor at the mansion-house that evening; he said it was all right, and  
 10 he was satisfied then that I had a right to sell; I mean by the mansion-house, Samuel Laird's boarding-house, where the doctor was stopping.

*Quest.* Why did the complainant insist on having the power of attorney written and fixed? [Objected to as a conclusion of the witness.]

*Ans.* He said that the reason that he wanted it fixed, was to know whether I had full power to sell, as he would not buy unless I had.

No one but myself was present when I wrote the original  
 20 power of attorney but myself; I wrote it at my own desk, and submitted it to him; I took it to him before it was signed and showed it to him, and also afterwards; no one else but he and myself had seen it before it was signed, and no one knew of it then but myself and him.

*Quest.* Before the time you say you showed it to the complainant, at the mansion-house, did any of the defendants, or their representatives, know that you were writing it, or intended to write it?

*Ans.* No, sir.

30 *Quest.* How long was it after you say you showed it to the complainant, at the mansion-house, before you saw any of the defendants about it?

*Ans.* I am not right sure now, but I think about twenty hours; I wrote it Thursday night, and showed it to the complainant on Friday morning, and Saturday about half-past one and two o'clock in the afternoon, I went to get it signed; on Saturday evening, after it was signed, I took it to the complainant again, at the Mansion House; on Saturday evening, I then put it in my pocket and took it home.

*Quest.* What do you mean when you say that all the parties requested you to write it?

*Ans.* I mean to say as I said before, that the doctor would not buy unless I had a power of attorney, and the other parties were willing to sign it, for the sake of the sale.

*Quest.* How came the expression, "to contain about seven hundred acres," to be used in that paper? [Objected to, because the answer tends to control or vary the terms of a written paper.]

*Ans.* The reason I done that, was because I thought there 10 was that, and I had never consulted any of the parties.

*Quest.* Was that expression made use of to embrace either of the three parcels of land, the first containing seven and seventy hundredths of an acre; the second, a strip of land extending between the south line of the Stewart Cook lot and the Valentine lot; the third, the gore of land bounded east by the ocean, and southwardly by the railroad or any part of those three parcels? [Objected to, for the reasons above assigned.]

*Ans.* I know nothing about the three pieces, and never 20 did.

*Quest.* How came the expression, "and running easterly as the ditch and fence now stands, to the sea or ocean, to be used in that paper?" [Objected to, for the above reason.]

*Ans.* Because I showed Doct. Arthur V. Conover the beginning corner, and the ditch and the fences, as they stood, and that was the line from which I agreed to sell, and he to buy.

*Quest.* What fences did you show the complainant?

*Ans.* The fences that stood on the ditch bank, a part of 30 the fence and one side of the ditch, and part on the other side; that is, a part of the fence was on the north side, and a part on the south side of the ditch; the fences joined across the ditch; this ditch runs east and west, from the beginning corner to the sea; the beginning corner was in the middle of the highway, about a quarter of a mile west of the railroad.

*Quest.* How long had that fence stood there along the ditch, and how long had that ditch been there before you say you showed them to the complainant?

*Ans.* I know them to have been there for twenty-five years at least, but how much longer I can't say.

*Quest.* What land did you show the complainant at the time you say you were with him in his carriage, when you say that he requested you to have a power of attorney written?

*Ans.* The land that lies north of the line above stated; I rode with the complainant as far north as Bush Point, about a mile and a half, I think, from the beginning line above stated, and until he said he had gone far enough, that he was satisfied that there was as much land as he wanted; we then turned around and drove back to the farm-house; he went through the house; Mrs. Edward Wardell went through the house with him; he then went, and I went with him, out and around the out buildings; and we from thence drove back home to my own house, after showing him the various stones, corners, and lines; there were several high stones that we sat and looked at as we went along and sat in the carriage; those stones indicated the corners of the lands that I was selling; I had known those stones to be there for the last thirty years; I showed him those stones, and called his attention to them, as the corners of the land that he was about to buy.

*Quest.* Was this ditch, which you say you showed him, one continuous ditch from the sea to what you say you showed him as the beginning corner; please describe it?

*Ans.* It was a continuous ditch from the side of the road, at the middle of which we began, to the railroad; the railroad had filled up a portion of it, and they had built the railroad over it; it was pretty much beach sand from the railroad to the sea.

*Quest.* Did you show the complainant any land laying to the southward of that ditch as belonging to the farm or embraced in the subject matter of the sale? [Objected to.]

*Ans.* I did not.

*Quest.* From the end of the ditch to the sea how did you designate to the complainant the line of the land proposed to be sold to him?

*Ans.* That that was the south boundary of the land from the sea on a straight line to the beginning stone in the road.

*Quest.* How did you designate to the complainant where the straight line you speak of ended at the sea?

*Ans.* At low water mark.

*Quest.* What monument or prominent object did you show the complainant that that southern boundary was a straight line with?

*Ans.* The ditch and the fences.

*Quest.* Was there any reference made to the middle or side of the ditch?

*Ans.* There was not.

10

*Quest.* Where were you when you say you showed the complainant the ditch and fence referred to?

*Ans.* We were in the middle of the road at the beginning corner, and then we drove around the road and through the field to the end of the ditch next to the railroad; we sat in the wagon at both ends of the ditch.

*Quest.* On which side of the ditch were you when you drove from the beginning corner as you say around through the field to the railroad end of the ditch?

*Ans.* We were on the north side of the ditch, and on the 20 land which he was about to buy.

*Quest.* When you were at the railroad end of the ditch and sat in the wagon, could you see the sea as you sat in the wagon?

*Ans.* We could.

*Quest.* How far, in your judgment, is the railroad end of the ditch from the sea?

*Ans.* I should think about a hundred and fifty yards, but I don't know certainly.

*Quest.* Did the complainant at that time in any way refer 30 to any of the land lying to the southward of the straight line you have spoken of as being considered in any part of his purchase? [Objected to.]

*Ans.* He did not.

*Quest.* After driving around to the railroad end of the ditch where did you and the defendant then go?

*Ans.* We then, as above stated, drove down the beach to Bush Point.

The road I have spoken of, in which is the beginning corner runs from Long Branch boarding-houses to Fresh Pond— 40

it is the same road that leads from Lane's End to Raccoon Island.

The beginning corner was, I should think, about forty yards from the Fresh Pond district school-house as it then stood; Doct. Conover since then has moved the school-house; the land on which the school-house stood belonged to the land I sold, and the house to the school district; Doct. Arthur V. Conover has since purchased it at a public sale by the trustees of the school district, and has moved it north  
10 some distance from where it stood; I think he bought the school-house in the fall after the spring that he first moved there; the school-house and lot lay northward of the straight line I have spoken of before the complainant purchased the school-house.

*Quest.* What first led you to show the complainant any of the property?

*Ans.* By his solicitation; he wanted to look at it and have me go with him.

The complainant came to the Branch and asked me if I  
20 had a farm for sale; he said he had sold his, and was ready to buy one; I told him I had this one to sell, and I got right in the wagon and went with him to see it; he did not come to see me; I met him in the road; I think he was staying at the Mansion House for a day or two.

*Quest.* Do you know if the complainant before then had been in the habit of buying and disposing of land in Monmouth county? [Objected to.]

*Ans.* He told me he had.

*Quest.* Did the complainant, at the time you say you  
30 showed him the ditch and straight line, inquire of you if the land lying northward of the ditch and straight line was all the land that Henry Wardell, deceased, owned? [Objected to.]

*Ans.* I think he did.

*Quest.* Did the complainant at that time inquire of you of the number of acres lying northward of this straight line? [Objected to.]

*Ans.* I think he did.

[*Exhibit B*, on the part of the complainant, shown to witness]—The handwriting of the body of that exhibit is mine;  
40

between the time the power of attorney was signed and the time the agreement was signed, I saw the complainant several times at the mansion-house and my house; none of the heirs of Henry Wardell was with him; Arthur V. Conover, Elizabeth Wardell, Edward Wardell, Henry H. Wardell, Henry Howland, William H. Slocum, Josephine D. Wardell, and others, I think, were present while I was writing the agreement marked *Exhibit B*; I wrote it at Elizabeth Wardell's house, in the village of Long Branch; I read it over twice or three times; Doct. Conover also read it over, and 10 Judge Slocum read it over before it was signed; the road mentioned in *Exhibit B* is the same road I have before spoken of; I do not know whether the complainant had been on the premises after the signing of the power of attorney and the time of signing that agreement; he told me he had; I mean by Doct. Conover, Doct. Arthur V. Conover, the complainant.

The \$300 receipt endorsed on *Exhibit B* is in the handwriting of Wm. H. Slocum; the signature to that receipt is mine; the \$300 mentioned in that receipt was paid at the 20 date of the receipt, by Doct. Conover himself.

*Quest.* What property is meant by the Ocean House lot, in *Exhibit B*?

*Ans.* The land on which the Ocean House formerly stood; in some papers it is called Riell's property.

I do not know by whom those stones were planted, which I showed Arthur V. Conover as the corners of the land.

*Quest.* Why did you use the expression in *Exhibit B*, "supposed to contain five hundred acres?" [Objected to.]

*Ans.* Because the family told me they thought there was 30 not much over that, if any.

*Quest.* State, as near as you can, the extent of beach along the sea northward from the straight line you have spoken of?

*Ans.* I don't know exactly, but I should think it ought to be about three miles to the south side of the Ocean House lot, or Riell property.

*Quest.* What effect does the sea and elements have on a part of the land lying between the straight line spoken of and the Ocean House, or Riell property? [Objected to.]

*Ans.* The beach is often washed away considerably, and 40

breaches made between the sand hills, and the sand is often washed on the meadows and covers the grass.

Job West's line is the northwestern boundary of the land which the complainant purchased; the land which the complainant bought touches the river at the northeast corner of Job West's land; I should judge the land complainant bought bounds on the river for near three miles; it is a branch of South Shrewsbury river, but is called Beach channel; I never saw the complainant examine any of the title  
 10 deeds or papers relating to the property, except what I gave him at Long Branch, except in Mr. Ryall's office in Freehold; I showed him a map of a part of the farm and some of the old deeds which the family had given to me at Long Branch; the papers I showed him at Long Branch were some old deeds which the family had given me; I showed them to him after the power of attorney was signed, and before the agreement was signed; it was at the mansion-house —at Samuel Laird's; he read them himself; I can't remember the parties they were from; I showed him the map at  
 20 the same time, and he told me to bring all the papers I had up to Freehold with me the day the deed was delivered, and I did so, and gave them to him.

*Quest.* What part of the property did the map you speak of refer to? [Objected to.]

*Ans.* A part of the beach property.

That map is in the complainan't possession, I expect; I gave it to him, and also another which I had made for him; this last map was one that he ordered me to get for him; he ordered me to get a survey and map of the north part of the  
 30 farm, and I did so, and gave it to him; Wm. R. Maps made the survey and map.

*Quest.* What do you mean by the north part of the farm? [Objected to.]

*Ans.* He ordered me to begin at the beginning corner in the middle of the road near the school-house, and run the line to the sea, as we had looked it over; and thence down the beach, north to the north side of Sassafra's Island. (Hold on, that would be the south part of the farm instead of the north part.) He wanted all the tillable land in, and  
 40 have it mapped.

*Quest.* Repeated. What do you mean by the north part of the farm?

*Ans.* I mis-spoke—that's all—I meant the south part of the farm is what he meant that he wanted me to have surveyed and mapped; he only wanted the good land, the tillable land, surveyed and mapped.

*Quest.* Did the complainant want a survey or map of any land southward of the straight line and ditch you have spoken of? [Objected to.]

*Ans.* He did not.

And thereupon the further examination of this witness was adjourned until Thursday, October 31st, 1867, at ten o'clock A. M.

Thursday, October 31st, 1867. The examination of Jacob W. Morris was resumed, in the presence of the counsel for the respective parties, at my office in Freehold, pursuant to adjournment, and the witness says—

There was no survey of the property, that I know of, before the deed was made to the doctor; there was no map made of the property before the deed was made, that I know of; Elizabeth Wardell, the widow, had possession of the title deed before the deed was made to Arthur V. Conover; I first saw the title deeds after the writing of the power of attorney; I saw the title deeds before the writing of the article of agreement (marked *Exhibit B*); Mrs. Wardell then gave them to me at her own house, at Long Branch; I disremember whether I showed Doct. Conover the title deeds before I brought them to Mr. Ryall's office in Freehold, or not; he there saw them, and it is my impression that he looked them over before that; the reason I have that impression is, that, I think, he looked over some of the papers at the mansion-house, at Long Branch; but I gave him all the papers in Mr. Ryall's office, in Freehold, on the morning that the deed was made, and that he looked over them before the deed was made; he told me to bring all the papers to Freehold, and I did so, and gave them to him; it was before the agreement was written that I showed him some of the papers at the mansion-house at Long Branch; the papers which the complainant looked at, were deeds from various parties that

covered the real estate that had been bought at various times; I could not say the number of days before the writing of the agreement I speak of, that the complainant examined these papers, but, I should think, a week before; the complainant, after he had examined the papers I speak of, at that time, handed them all back to me, and told me to bring them to the office of Messrs. Ryall & Vredenburgh, at Freehold; he did not hand them back to me immediately—he took his time to examine them; I brought them to the office of Ryall  
 10 & Vredenburgh the day the deed was delivered; I refer to the deed for the land; (*Exhibit D*, shown to witness.) I believe that is the deed which I last refer to; the handwriting of the body of that deed is Philip J. Ryall's; Elizabeth Wardell, Jacob Herbert, Arthur V. Conover, and myself, besides Mr. P. J. Ryall, were present when this deed (*Exhibit D*,) was written.

The title deeds I have spoken of were in the possession of Mr. Ryall when that deed was written; I know it because I saw them; he looked at them and read them over; I can't  
 20 say that he read all of them over; there were some of those deeds that covered land inside of the outside boundaries; I disremember the day that the deed to the complainant was delivered, but it was delivered the day that it was written, in Mr. Ryall's office, if I mistake not.

*Quest.* Look at the date of the deed and the date of the acknowledgments, and explain whether the deed was delivered the day it was written or not?

*Ans.* I do not know.

[*Exhibit E*, on the part of the complainant, shown to witness]—The handwriting of the body of that paper is Philip  
 30 J. Ryall's, I believe, sir; that paper was not written the same day that *Exhibit D* was; I think that Mr. P. J. Ryall and Mr. Wm. Vredenburgh were all that were present when *Exhibit E* was signed; Mr. Philip J. Ryall suggested that *Exhibit E* be written; I can't say at what time he suggested that *Exhibit E* be written, but think it was some months afterwards.

*Quest.* Look at the dates of the deeds *Exhibits D* and *E*, and the dates of the acknowledgments, and see as to the  
 40 months you speak of?

*Ans.* They corroborate as to the dates of the two deeds, and as to the dates of the acknowledgments; as to the dates of the two acknowledgments they do not—they are a month apart; I was under the impression they were longer apart than that.

*Quest.* Do you know from what papers the descriptions in *Exhibit E* were taken?

*Ans.* I do not.

*Quest.* Do you know if the widow or heirs of Henry Wardell, deceased, knew of your executing *Exhibit E* at or before the time you signed it?

*Ans.* Not to my knowledge; as I said before, I was under the impression that it was some months after the first deed was made when I made the deed marked *Exhibit E*; I was up to Freehold, and Mr. Ryall spoke to me in the street and asked me if I would make such a deed, and said I had not yet conveyed away my right under the power of attorney; I think I did not sign *Exhibit E* the first time that Mr. Ryall spoke to me about it; the second time he spoke to me about it I did sign the deed that day; it was ready—written, I think—the second time he spoke to me about it; I think he said he had the deed written, all ready to sign; at the time I signed *Exhibit E* I did not compare the description in the deed with any other title deeds.

*Quest.* Did you yourself read the description written or contained in *Exhibit E*?

*Ans.* I did not; Mr. Ryall read it over himself.

*Quest.* Had the complainant himself at any time requested you to sign or execute *Exhibit E*?

*Ans.* I think he had spoke to me about it at Long Branch; he asked me one day at Long Branch, and asked me if I had executed a deed for Phil.; I told him I had not, but was willing at any time to do so, if another deed was needed, and would do any thing that was right, and then he said when you are at Freehold, step in and see Phil. and have it fixed, and I did so; I did not receive *Exhibit D* at all after it was written; I left Mrs. Wardell, Mr. Herbert, and Doct. Conover and Mr. Ryall in Mr. Ryall's office; I had a sale at Shark river that day, and had to leave, and Mr. Ryall was writing the mortgages when I left.

*Quest.* How did you get the deed, *Exhibit D*, to sign the certificate of acknowledgment by you on it—who did you get it from?

*Ans.* Mr. Ryall gave me the deed, and I signed my name before I left; hold on—this thing comes in another place; I can't tell, if I was to be hung, who gave *Exhibit D* to me, but I think Doct. Conover or Mrs. Wardell gave it to me, but am not certain; I can't tell any thing about it—I may have got it by the mail; Doct. Arthur V. Conover spoke to  
10 me in the first instance, and said he thought that the papers had better all be written by Mr. Ryall, at Freehold.

*Quest.* At the time *Exhibit D* was written, or the acknowledgements you have spoken of were taken, was anything said in reference to having any deed executed by you concerning the property?

*Ans.* No, sir.

After the deed marked *Exhibit D* was written the old title deeds I have spoken of were all left in Mr. Ryall's office at Freehold; there was an old map with those title deeds;  
20 that map came from Mrs. Wardell with the papers to me; (map marked *Ehibit No. 1*, on the part of the defendant shown to witness, he says)—This is one of the maps; there was another one; this map came to-day from the possession of the solicitor of the complainant; this map, I am told, was made by Annaniah Gifford, and the other one by Francis Brinley; the complainant had the map (marked *Exhibit No. 1* on the part of the defendants) at the Mansion House on the occasion before spoken of; I had a map made by Mr. William R. Maps, for the doctor, of the Wardell farm after  
30 he bought, for the south part of the Wardell farm; it was made before either of the *Exhibits D* or *E* on the part of the complainant was written; William R. Maps was a practical surveyor; William R. Maps went with me and surveyed all that we did survey for Anthur V. Conover; we had two chain-bearers, and they were all that were present besides ourselves all the time; we had several visitors off and on; Mr. Maps was only one day surveying; he delivered the map I have spoken of to me, and I delivered it at once to the complainant. (*Exhibit H* shown to witness).

That is not the map I speak of; I have seen the map which I say Mr. Maps made and which I delivered to the complainant; since I delivered it to the complainant I saw it at my house; the complainant brought it to my house before deeds *Exhibit D* and *E* were written; he brought it for the purpose of having a certain piece on the south part of the farm laid off; he wanted to know how much there was in a certain piece; I did it, and sent it to the complainant at the Mansion House; I mean by the south part of the farm that I have spoken of, the tillable land south of the house, 10 between the road that leads to the house and the original south line is what he wanted to know; the line that I sold from.

*Quest.* What relation had that line that you have spoken of to the fence and ditch that has been mentioned?

*Ans.* The fence and the ditch I considered the south line of the whole farm, and that is what I sold from. [Objected to.]

*Quest.* I asked you what relation that line had to the fence and ditch that has been mentioned? 20

*Ans.* It is the south boundary of the land I sold or the land they sold, or that we sold to the complainant.

*Quest.* Since the time you say you sent that map to the complainant have you seen it?

*Ans.* No, sir.

Mr. Maps did not survey the property at any other time after the doctor bought, that I know of, except the time I have spoken of.

*Quest.* Why did the complainant request that survey and map to be made at the time he told you? [Objected to.] 30

*Ans.* He told me that he might want to sell some portions of it at some time and would like to know how much there was in a certain locality.

*Quest.* Did he request you to get Mr. Maps to make the survey in question, or did he leave it to your discretion to get what surveyor you choose to survey the property? [Objected to.]

*Ans.* He said nothing about a surveyor that I remember of; he told me to have it surveyed and make a map; at the time that I handed that map I speak of to the complainant 40

he made no remarks concerning the lines; the complainant told me he had been down looking at the property; I think he told me this about a week after the power of attorney was signed; I think he was at the Mansion House at Long Branch or in his wagon in the road in front of the Mansion House; I think a number of acres of land was expressed on the map made by William R. Maps; I think I handed the map to the doctor the next day after it was made by Mr. Maps.

10 *Quest.* What part of the land did the complainant refer to when he spoke of desiring to sell, as you say?

*Ans.* A portion of the land lying between the house and the line that Mr. Maps surveyed.

He named that there was a party looking around for land to make a race course on.

*Quest.* At the time that the agreement was signed did the complainant make any remarks concerning the line, boundary, or description of the property? [Objected to as tending to vary a written agreement.]

20 *Ans.* I remember of no definite remarks.

*Quest.* At the time when the written agreement was signed or the map made by Mr. Maps taken by the complainant, did the complainant make any complaint, either as to the line, boundary, or description of the land as expressed in either the agreement or on the map? [Objected to.]

*Ans.* Not in the least.

*Quest.* Was the map which Mr. Maps made in the possession of Mr. Ryall or of the complainant while the deeds marked *Exhibit D* and *E* were being prepared or written as you know of?

*Ans.* Yes, sir.

*Quest.* Do you know whether at the time either of those deeds were being prepared or written, or at the time of the delivery of either of them the complainant made any complaint to any of the grantors respecting the line, boundary, or description of the land?

*Ans.* I do not.

*Quest.* Do you know whether the description in *Exhibit D* or of any part thereof was taken from the map made by Mr. Maps?

40

*Ans.* I do not.

*Quest.* At the time Mr. Maps made the survey you speak of, do you know whether he surveyed by compass and chain the line you have spoken of as running along the fence and ditch?

*Ans.* He did.

*Quest.* At the time that you signed *Exhibit E* was there any complaint made by the complainant or any of his agents as to the line expressed as follows:—"Beginning in the centre of the road from Lanes End to Raccoon Island and 10 near the corner of the Fresh Pond district school-house; thence along the line of William West and others, north sixty-seven degrees and fifteen minutes east, twenty-five chains, more or less, to the Atlantic ocean, at low water mark?"

*Ans.* There was not.

*Quest.* At the time that *Exhibit D* was prepared or written, was there any complaint made by the complainant concerning the last above expressed line?

*Ans.* None that I know of.

20

*Quest.* What relation does that line, so expressed in the above named deeds, bear to the lines described as follows in the power of attorney: "Beginning at or near the Fresh Pond school-house in the middle of the highway, and running easterly, as the ditch and fence now stands, to the sea or ocean?" And what relation does the same line bear to the line expressed in the article of agreement, as follows: "and begins in the middle of the road leading from Long Branch to Fresh Pond, near the corner of the Fresh Pond district school-house, and runs easterly, as the ditch and 30 fence now stands, to the sea shore?" [Objected to.]

*Ans.* It is the same line surveyed by William R. Maps, and marked on the map.

*Quest.* At the time that Mr. Maps made the survey you speak of, what papers pertaining to the property did he have and use respecting the survey?

*Ans.* None whatever.

*Quest.* How did he then know how to make the survey and map?

*Ans.* We started at the beginning corner agreed on—took 40

the course as the ditch and fence stood to the sea; thence down the sea north, as far as ordered by the complainant; thence across to a branch of the river westerly; thence up the shore of the river southerly to the northeast corner of Job West's land; he then followed the fences and roads as they were to the place of beginning.

*Quest.* What fences did he follow?

*Ans.* The line fences between the Wests' property and the Wardell estate; it is all Wests' adjoining him all the way 10 along.

*Quest.* You say we started "*at the beginning corner agreed on*"—agreed on by whom, and when agreed on?

*Ans.* My instructions from the Wardell family was to sell from the corner beginning in the middle of the road leading from Long Branch to Raccoon Island, as that was the southwest corner of their land; I rode with the complainant to the spot and showed him the beginning corner; this was before the power of attorney was signed.

*Quest.* What was before the power of attorney was signed?

20 *Ans.* That I showed the complainant the starting point.

*Quest.* Do you know whether there was any change made in the ditch or fence after you so showed the beginning corner to the complainant, up to the time of the delivery of the deeds marked D and E?

*Ans.* None whatever to my knowledge.

*Quest.* Do you know whether there was any change made in the ditch and fence from the time you showed the complainant the premises up to the time of the delivery of the deeds?

30 *Ans.* None, to my knowledge.

*Quest.* Did the complainant, at any time up to the delivery of the deeds, make any complaint respecting the quantity of the land now in his possession?

*Ans.* No, sir.

*Quest.* What do you mean when you refer to the southern part of the farm?

*Ans.* I mean from the line that was surveyed and mapped by William R. Maps to the house or buildings—that is called the southern part.

40 *Quest.* Laying from what direction from that line?

*Ans.* All north of that line.

*Quest.* What house and buildings have you last referred to?

*Ans.* The house and buildings occupied by the Wardell family and now by the complainant.

*Quest.* What part of the farm and land do you refer to when you speak of the northern part of the farm?

*Ans.* The beach and meadows that extend about three miles north of the buildings above referred to.

*Quest.* Do you know about how much river shore is connected with the farm or land occupied by the complainant?

*Ans.* I should think about four miles of shore, winding in and out.

*Quest.* What do you mean when you say that there were some deeds that covered land inside of the outside boundaries?

*Ans.* I mean deeds for pieces of meadow ground bought by the Wardells that do not adjoin the river or sea—that is inside of the outside boundaries.

*Quest.* Meadow ground situated where—which side of the 20 house or buildings?

*Ans.* Northeast from the buildings above referred to.

*Quest.* Do you remember how much you made in quantity, in a certain piece of land that you say the complainant wanted to know?

*Ans.* It was marked on the map made by William R. Maps, and if my memory serves me right there were some two hundred and five acres or thereabouts, but I am not sure; it was marked on the map made by William R. Maps.

*Quest.* If it was marked on the map made by William R. 30 Maps, what do you mean by saying that “I did it, and sent it to the complainant?”

*Ans.* I mean the complainant desired me to make, as near as I could, the number of acres between the line surveyed by Maps, from the beginning corner to the sea, and the road that runs from the Raccoon Island road to the sea.

*Quest.* What relation, as to the position, does the road running from Raccoon Island to the sea bear to the house or buildings?

*Ans.* The road running from the Raccoon Island road to- 40

wards the sea, is some two hundred yards south of the house and buildings above referred to.

*Quest.* Did you intend, in executing *Exhibit E*, thereby in any way to change the line from the line expressed in the written agreement, or in the *Exhibit D*, or alter the line of the ditch and fence above spoken of in your evidence? [Objected to, for the reason that the writings are the best evidence of intentions, and because the effect is to vary the terms of a written instrument.]

10 *Ans.* I did not.

*Quest.* Did you intend by executing *Exhibit E*, to change the line in any way, or the beginning corner, from the beginning corner and line that you say that you showed the complainant respecting the premises before the agreement was signed? [Objected to, for the reasons last above given.]

*Ans.* Not in the least.

*Quest.* Was it your intention, in the execution of *Exhibit E*, to change or alter in any way any of the boundaries of the land, different from what you showed them to the com-  
20 plainant before the signing of the agreement? [Objected to, for the same reasons as above.]

*Ans.* It was not.

Upon reading over the above evidence to the witness, he desires to correct his evidence, and says—I meant to say, there was no survey or map made of the whole property before the deed was made to the complainant, that I know of.

*Quest.* What time do you refer to when you say, “I think the complainant had all the papers at the time of making  
30 the deed?”

*Ans.* I mean from the time the agreement was signed until the papers were executed.

*Quest.* What do you mean by the making of a deed, the writing of it, or the signing of it, or the acknowledgment of it, or the delivery of it?

*Ans.* I mean the delivery of it.

*Quest.* How do you know that any of the Wardells were present when either the deed marked *D* or *Exhibit E*, was written before it was signed?

40 *Ans.* I do not, and I mis-spoke when I said she was present

at the writing of the deed; I meant she was present when the mortgages were being written, when I left.

It must have been the deed marked *E*, my deed, that was written the day the mortgages were written.

*Quest.* At the writing of which deed do you mean that Jacob Herbert was present?

*Ans.* It must have been my own deed marked *Exhibit E*, if any.

*Quest.* Before the signing of the power of attorney, and before the signing of the agreement, did the other defend- 10  
ants in this cause or some of them, inform you that the land or any part thereof lying southward of the line referred to as running along the ditch and fence, and from the beginning corner to the sea, was sold and disposed of to other persons before them? [Objected to, because it tends to vary or control the terms of written instruments in evidence, and as hear say.]

*Ans.* They did; they told me it was sold, and I thought it was so.

*Quest.* Did the other defendants, or some of them, before 20  
the signing of the power of attorney and before the signing of the agreement referred to, inform you that the three strips or parcels of land referred to in the complainant's bill were sold or disposed of before then to other persons by them—and if so, how did they inform you? [Objected to for the reasons last above assigned.]

*Ans.* They did, and in this way: Mrs. Wardell and Edward Wardell both told me, before any of the papers were signed and before I had talked with the complainant about the purchase of the farm, or he to me about it, that they 30  
had sold all east of the railroad to the railroad company, and the lots as they said laid off between the railroad and Charles H. Valentine, Stewart Cook, John Cook, and William West had been sold to the several parties last above named; I supposed all the land in the rear of each of those person's lots, and between the railroad had been sold before I negotiated with the doctor, to each of those persons respectively, as Mrs. Wardell and Edward Wardell had told me; I supposed all was right until I saw the doctor after the conveyance to him of this property, on the day of the sale of the

district school-house in the following spring, some six months afterwards.

*Quest.* Do you know whether the complainant, after the signing of the power of attorney, and before the signing of the agreement referred to, viewed or examined the premises?

*Ans.* He told me so.

*Quest.* At the time of the signing of the power of attorney, or the written agreement, or the making of any of the deeds, did the complainant make any claim to any of the said  
10 three portions, strips, or gores of land lying southward of the line, along the ditch and fence, and now claimed in this suit?

*Ans.* He did not, to my knowledge.

*Quest.* Do you know whether the complainant has exercised any control over, or taken possession of any of those three strips or gores?

*Ans.* I do not.

*Quest.* Was the complainant led or induced to believe, from your declaration or conduct at the time of the signing of the  
20 agreement, or the making of the deed, to your knowledge, that he had bought any of the three strips or gores of land referred to? [Objected to for the reason that the witness should state facts and not conclusions, and as too leading.]

*Ans.* He was not.

*Quest.* Do you know whether he was so led or induced by the language or conduct of any of the other defendants? [Objected to for the above reasons.]

*Ans.* I do not.

*Quest.* Was either of the said three strips or gores of land  
30 referred to the subject matter of purchase or sale between the complainant and defendants, to your knowledge? [Objected to for reasons that it is a conclusion of the witness, and not the statement of a fact, and because it tends to vary and control the written instruments between the parties.]

*Ans.* No, sir.

*Quest.* How did the complainant accept the survey or map, you say was made by Mr. Maps, when you say you delivered it to him?

*Ans.* He unrolled it and said that it was just what he  
40 wanted.

*Quest.* Do you know where that map is now?

*Ans.* I do not.

*Quest.* Have you heard the complainant say lately where it is or may be?

*Ans.* The complainant told me about a week ago, I think, that it must be at Francis Corlies', he thought.

*Quest.* Do you know how that map got in the possession of Francis Corlies?

*Ans.* I think the complainant told me he gave it to him.

*Quest.* Did you see the complainant at or shortly after he 10 moved on the land where he now resides?

*Ans.* I did; saw him frequently.

*Quest.* Did he, at the time of his moving there or shortly after that, claim either of the three strips or gores of land claimed in the bill?

*Ans.* He did not until I saw him at the school house sale that I have spoken of.

*Quest.* In what way did he refer to either of them, at the time of the school-house sale you speak of?

*Ans.* In no way except in a body; he made no allusions 20 to any pieces or gores, but only to the land in a body, as I remember of.

*Quest.* Was there any assertions, declarations, or conduct of the defendants, or either of them, whereby the complainant was induced to believe that the deeds D and E embraced in their description, or conveyed to him, the three strips or gores of land, or either of them? [Objected to.]

*Ans.* Not to my knowledge.

*Quest.* Were there any assertions, declarations, or conduct of the defendants, or either of them, to your knowledge, that 30 led or induced the complainant to believe that he had bought or purchased, or that the defendants, or either of them, had sold to him the strips or gores of land, or either of them? [Objected to.]

*Ans.* No, sir, not to my knowledge.

*Quest.* Do you know the month when the district school-house was sold?

*Ans.* I do not remember.

*Quest.* Did you show the complainant, or intimate to him, at the time you say you showed him the beginning corner, 40

and the line of the ditch and fence to the sea, above referred to, that any of the land lying to the southward of that line belonged to the farm, or to any of the defendants? [Objected to as leading, and because the answer would tend to vary the written instruments.]

*Ans.* I did not.

*Quest.* Did you, at any time, refer to any of the land lying to the southward of the line above referred to, or intimate in any way to the complainant, at any time, that any of that  
10 land was for sale, or in the market? [Objected to for the above reasons.]

*Ans.* I never did.

*Quest.* Did you particularly express to the complainant, at any time, that any of the land southward of that line was embraced within the boundaries of the Wardell farm? [Objected to.]

*Ans.* I did not.

And being cross-examined on the part of the complainant, says—

20 I suppose I am one of the defendants in this suit; I declare to you, I can't tell whether I was served with process in this case or not; I swore to an answer in this case.

*Quest.* Do you mean to say that the dates of the acknowledgments of *Exhibits D* and *E* of the complainants, are either of them wrong?

*Ans.* No, I don't.

*Quest.* Do you mean to say that the dates of either of those two exhibits are wrong?

*Ans.* No, sir.

30 *Quest.* You say that complainant first came to you at Long Branch and asked you if you had a farm for sale; that he said he had sold his and was ready to buy one, and that you told him that you had one to sell, and that you got right in the wagon and went with him to see it—was this Wardell farm the one you went to see? [Objected to.]

*Ans.* It was.

*Quest.* Did you, at any other time before the execution of agreement, *Exhibit B*, go with complainant to see this Wardell farm? [Objected to.]

*Ans.* I did, once.

*Quest.* How long were you and complainant gone when you went to see the farm on the occasion when you got in his wagon?

*Ans.* The complainant took me down twice; the occasion I have spoken of above when he came and asked me if I had a farm to sell, was the first time.

*Quest.* How long were you and complainant occupied in seeing the farm, on the first occasion?

*Ans.* I think not over two hours.

*Quest.* You say you went with the complainant a second time—how long after the first occasion was it?

*Ans.* I should think two or three days apart.

I should think that we were on the farm this last occasion perhaps four hours; I don't know the exact time.

*Quest.* Did you or either of you, on either of those occasions, get out of the wagon to view the farm?

*Ans.* Yes, sir; at the house we got out of the wagon and went in the house, and the complainant went through the house and then came out, and he went around the buildings, and I went with him; we walked out in the field back of the house—north of it; did not walk far, and then came back and got in the wagon and went around the field back of the barn, and then came out and came home.

*Quest.* Designate on this map, *Exhibit H*, what was the southern boundary of this Wardell farm, as you first knew it? [Objected to.]

*Ans.* This is the road I presume leading from Long Branch to Raccoon Island—I never saw this map before to-day—the southern boundary of the farm as we understood it, was the north line of William Cooper's land now; it belonged formerly to William Throckmorton.

*Quest.* What was the southeastern boundary of it? [Objected to.]

*Ans.* The ocean.

*Quest.* How long about, as near as you can tell, was the boundary of this farm on the ocean from Cooper's land north? [Objected to.]

*Ans.* I should think about four miles, or four and a quarter.

*Quest.* What was the southwestern boundary of this farm north of Cooper's land, when you first knew it? [Objected to.]

*Ans.* The Raccoon Island road.

*Quest.* Within the limits you have bounded this farm, what conveyances of any portions of this Wardell farm did you know of at the time of the execution of this agreement, *Exhibit B*? [Objected to.]

*Ans.* All that I knew of, was what I was told.

10 *Quest.* Did you know of William West owning a lot on this southern portion within these limits?

*Ans.* I knew that he used and occupied a lot, and was told that he owned it.

*Quest.* Did you know that John Cook, Stewart Cook, Charles H. Valentine, Edward Lippincott, and Jesse Potter, also owned lots? [Objected to.]

*Ans.* Yes, sir; I knew it, and I owned one there myself, too.

I bought a part of the Jesse Potter lot, and own it still;  
20 I was told of the conveyance to the Long Branch and Sea Shore Railroad Company.

*Quest.* Did you, at the time of the execution of *Exhibit B*, know of any other conveyances than those you have mentioned? [Objected to.]

*Ans.* None, except as I was told—I knew of none positively except as I was told.

*Quest.* Repeated.

*Ans.* No.

*Quest.* During these negotiations with the complainant for  
30 the sale of this farm, did he say to you that he wanted to buy all the land Henry Wardell died seized of, not conveyed away at that time? [Objected to.]

*Ans.* He did.

At the request of the counsel for the respective parties the further examination of this witness was then adjourned to November 7th, 1867, at ten o'clock A. M., at my office, in Freehold.

A. R. THROCKMORTON, *M. C.*

November 7th, 1867, the parties appeared by their respective counsel, pursuant to adjournment, made October 31st, 1867, and resumed the examination in this case—and Jacob W. Morris, the witness, says—

*Quest.* Are you positive that the complainant went with you twice to see this farm before the agreement was executed?

*Ans.* I went with him twice.

*Quest.* Was the time you went to the house the first or the second time? 10

*Ans.* The first time.

We did not drive out with the same horse and wagon both times; both times, I think, was with the complainant's horse, and the last time with Samuel Laird's top wagon; the first time we went was when he first came to me—the same day; I think the second time we went was about three or four days after that; I don't remember what day of the week it was when he first came down there.

*Quest.* Do you sell land as a real estate agent, upon a commission? 20

*Ans.* Yes, sir; I sold this farm upon a commission.

[Paper shown witness, marked *Exhibit R* on the part of the complainant]—This paper looks to me to be one of the old title deeds which I spoke of, that I gave to the complainant.

[Papers shown to witness, marked *Exhibits S, T, U, V,* and *W* on the part of the complainant.]

*Quest.* Are those some of the title deeds which you spoke of as having shown to the complainant?

*Ans.* I think they are.

[Papers marked *Exhibits I* and *J* shown to witness]—I think they are also two of those title deeds shown to complainant. 30

[Paper marked *Exhibit X* on the part of the complainant shown to witness]—That, I think, is the old map of all which I showed to complainant; this paper, marked *Exhibit X* on the part of the complainant, and the map, marked No. 1 on the part of the defendants, are the two maps which I showed to the complainant, before the execution of the agreement; I know of no title deeds, other than those that have been 40

offered in evidence here and shown to me, that I exhibited to the complainant before the execution of the agreement.

I do not remember exactly how long after the execution of the agreement it was that Mr. Maps made his survey—perhaps ten or twelve days; I should think it was two or three months before the deeds were delivered—I don't remember the time.

*Quest.* Were you at Freehold, in the office of P. J. Ryall, with Mrs. Wardell and Jacob Herbert, to execute this business, more than once?

*Ans.* I was not.

*Quest.* Did you sign and acknowledge *Exhibit E*, your deed, on the same day that the mortgages from the complainant to the defendants were executed? [Objected to.]

*Ans.* I might have done so, but I was under the impression that it was some time after.

*Quest.* What was some time after?

*Ans.* I was under the impression that I signed the deed some time after the mortgages were executed, but I might have done it on the same day.

*Quest.* You said in your direct-examination that neither the complainant nor his agents, during the progress of this business, made any complaint about this south straight line along the fence and ditch—did not Mr. Ryall say to you, in the presence of the complainant, that as he saw, that Henry Wardell had owned land south of this straight line, because he had sold to Charles H. Valentine and others down there; he, Ryall, wanted to know how you ascertained that this straight line was the then southern boundary of this Wardell farm, and did you not reply that the reason was, because they, the Wardells, had sold off all the land lying to the south of that straight line? [Objected to.]

*Ans.* I did; we were in Freehold when I told Mr. Ryall this; I do not know whether it was before or after the execution of the deed—I cannot remember.

*Quest.* Was it by appointment or not that you and Mrs. Wardell and Jacob Herbert met at the office of P. J. Ryall, on the day of the execution of these mortgages, &c.?

*Ans.* It was; the complainant was not present at the time

that Mr. Maps made this survey spoken of, and I handed the map to the complainant after it was made.

And being again examined on the part of the defendants, says—

*Quest.* When did you show the complainant *Exhibits R, S, T, U, V, W, and X* on the part of the complainant, and also *Exhibits I and J*, which you have spoken of? [Objected to, because it is a repetition.]

*Ans.* I handed a part of them to him at the Mansion House at Long Branch, and a part of them in Mr. Ryall's office in Freehold, brought there by Mrs. Wardell; a part of them I never saw until that day in his office; I never examined any of them—only the outside.

*Quest.* What day do you refer to in your last answer—at Mr. Ryall's office?

*Ans.* The day the mortgages were given by the complainant to the defendants.

*Quest.* To whom were any of the above named exhibits then handed, at Mr. Ryall's office?

*Ans.* To the complainant. 20

*Quest.* Who handed them to him?

*Ans.* I handed a part of them to him myself.

*Quest.* Had you, before then, read any of those papers which you say you handed to him at Mr. Ryall's office? [Objected to as immaterial.]

*Ans.* I believe not.

*Quest.* Why did you hand them to him, then? [Objected to.]

*Ans.* I handed them to him, because Mrs. Wardell brought them for him, and Mr. Ryall had been looking at them, and they lay on the table, and I took them and handed them to the complainant to look at. 30

I do not know which part of these exhibits it was that I so handed to the complainant at that time; I think that Mrs. Wardell, Jacob Herbert, and myself all went across the street together, and went into Mr. Ryall's office at the same time.

The rest of the exhibits, except those which I so handed

to the complainant in Mr. Ryall's office, were already in the possession of the complainant.

*Quest.* Did you at any one time show or deliver to the complainant all of those exhibits, at any one time?

*Ans.* No, sir.

*Quest.* At any time that you showed to the complainant or handed to him any of the exhibits referred to as you say, how did you show them to him, or hand them to him?

*Ans.* I handed him at one time two or three in a little bundle, at the Mansion House at Long Branch; the complainant untied them and casually run over them, but not to examine them closely, and then said he would hand them to Phil. and let him examine them, is the way he worded it; the balance of them I handed to him in Mr. Ryall's office in Freehold.

*Quest.* Do you remember which of the exhibits were the two or three you say you handed to him at the Mansion House?

*Ans.* One was the old beach deed from Francis Brinley to Henry Wardell, marked *Exhibit V*; another was a deed from Job W. Cook to Henry Wardell, marked *Exhibit T*; and, I think, a deed from Joseph Wardell to Benjamin Wardell, marked *Exhibit R*, was another one; I think in Mr. Ryall's office was the first that I remember of the complainant seeing the old map, marked *Exhibit X* on the part of the complainant.

*Quest.* Do you remember whether at the time you say you were with Mrs. Wardell at Mr. Ryall's office, the description of the land was written in either the deed to the complainant or in the mortgages given by him, or in any of them, before you and Mrs. Wardell came there, or what papers were written there that day?

*Ans.* The deed signed by the heirs was written before we met; the mortgages were written on the day we met.

*Quest.* What was the object of Mrs. Wardell and you coming to Mr. Ryall's office the day you speak of?

*Ans.* To deliver the deed and receive the money and mortgages in payment of the land I had sold him, or that they had sold him.

*Quest.* Mention, as near as you can, for how long before

that day the complainant had had possession of the papers—the exhibits spoken of—which you say he had had before that day?

*Ans.* I should think at least three months.

*Quest.* During that period of time which you say that he had had possession of those papers, was he occasionally at Long Branch or in the neighborhood of the premises in question? [Objected to.]

*Ans.* He was.

*Quest.* Did he, at Mr. Ryall's office, when you say he had 10 the paper there, raise any question concerning any of the boundaries of the premises?

*Ans.* Not in the least.

*Quest.* Did he, when you say he was there at Mr. Ryall's office with the papers, also, at the same time, have there the map or survey, which you say Mr. Maps made?

*Ans.* He had.

*Quest.* Do you know how long that map had been there before then at Mr. Ryall's office, and when did you first see that map there? 20

*Ans.* I do not know; I saw it there first that day.

*Quest.* Between the time you say you gave that map to the complainant at Long Branch, and at the time you say, in your last answer you saw it, had you had it in your possession?

*Ans.* I had not.

*Quest.* Do you know whether the complainant, during the negotiations, used the expression that he wanted to buy all the land that Henry Wardell died seized of?

*Ans.* He did. 30

*Quest.* Did Wm. R. Maps, when he made the map or survey you have spoken of, have to use for that survey any of the papers or exhibits referred to—and, if so, mention, if you can, which he had?

*Ans.* I think he had none.

*Quest.* What was the southern boundary line of the piece of land, which you say you laid off for the complainant on the map which you have before spoken of?

*Ans.* The line surveyed and mapped by Wm. R. Maps,

from the Fresh Pond district school-house to the sea, a straight line.

*Quest.* Did that piece extend far enough north to take in any of the buildings?

*Ans.* No, sir.

*Quest.* Do you know how long before you signed *Exhibit E*, that the description of the premises had been written in it?

*Ans.* I do not.

10 *Quest.* At the time you signed it, did you compare the description therein, or any of the recitals therein, with any other paper or deed?

*Ans.* I did not.

*Quest.* At the time you say you went with the complainant in the wagon the first or second time to look at the premises, was the weather foggy or clear?

*Ans.* The first time it was clear, and the second time it was foggy.

20 *Quest.* Was there any woodland on the premises—and, if so, on what part?

*Ans.* None, that I know of.

*Quest.* Was there any buildings or obstructions where you first went on the premises, to prevent you from seeing monuments or boundaries that you have spoken of, or to prevent a person from observing the course the boundaries took by or from those monuments?

*Ans.* Not anything in the world.

30 *Quest.* What do you mean by saying in your answer “all that I know of was what I was told,” to the question, “within the limits you have bounded this farm, what conveyances of any portions of this Wardell farm did you know of at the time of the execution of this agreement, *Exhibit B*?”

*Ans.* This has got to be the same answer; I mean that I knew of none but what I was told.

40 *Quest.* Do you mean that there was any conveyances of any portions of land to William West, or to any other persons within the boundaries that you, or the heirs of Henry Wardell, deceased, sold to the complainant? [Objected to, because it is an opinion of witness upon the point in controversy, and leading.]

*Ans.* I do not.

*Quest.* At the time you say you went with the complainant to look at the premises, did he take his leisure to satisfy himself, as far as you know, for the purpose for which he went? [Objected to as leading.]

*Ans.* He said so at the time; the first time he went he went in an open wagon, and the second time it was a top wagon, with the curtains up.

*Quest.* At the time you signed *Exhibit E*, and acknowledged the same, were there any remarks made by the complainant, or any of his agents, concerning any land lying to the southward of the straight line running along the ditch and fence, you have spoken of, to the sea?

*Ans.* Not any.

*Quest.* State, if you know, what called you to Freehold on the day of the conversation, you have spoken of, between you and Mr. Ryall, at Freehold, in the presence of the complainant, if the complainant was present, respecting lands lying south of that straight line?

*Ans.* I think I had an auction sale here that day; an auction sale of property; but I don't remember whose it was.

*Quest.* Where in Freehold was this conversation?

*Ans.* In the street, near the front of Mr. Ryall's office.

*Quest.* Did Mr. Ryall have any of the papers or exhibits in his hand, or exhibit them to you, at the time of that conversation?

*Ans.* He had not, nor did not.

*Quest.* When was it that any of the Wardells, as you say, first told you that they had sold off all the land lying to the south of that straight line?

30

*Ans.* Before any of the papers were signed.

*Quest.* What papers do you mean?

*Ans.* The power of attorney.

*Quest.* How long before then?

*Ans.* As near as I can recollect, about one month.

*Quest.* At any time that you say that you went with the complainant, before the deed was signed, to look at the premises, did you tell the complainant that the land southward of that straight line had already been sold by the Wardells? [Objected to.]

40

*Ans.* I did

*Quest.* At which of those times?

*Ans.* The first time that I went with him.

*Quest.* Do you know whether the complainant had been to examine the premises at any time before you went with him?

*Ans.* I do not.

*Quest.* During any stage of the negotiations between you and the complainant, or between the complainant and the  
10 other defendants, in your presence, was the complainant particular as to the precise quantity of land in the farm? [Objected to.]

*Ans.* Not to my knowledge.

*Quest.* Do you know about how much land lay between the northern end of that part of the piece of land you say you laid off on the map, for the complainant, and the mansion-house on the farm—state, if you know?

*Ans.* I do not.

*Quest.* Did the part you say you laid off on the map em-  
20 brace all of the tillable land?

*Ans.* Not one half of it.

*Quest.* You have spoken in your evidence of the northern part of the farm—how far did you mean that to extend?

*Ans.* I mean it to extend to the south line of the Ocean House property.

And being again cross-examined on the part of the complainant, says—

All the title deeds which I handed to the complainant at the mansion-house at Long Branch, I got from Mrs. Wardell.

30 *Quest.* Did you, during these negotiations between you and the complainant, tell him there was a piece of woodland belonging to the estate of Henry Wardell?

*Ans.* I told him I thought there was.

*Quest.* Did complainant and yourself, or either of you, speak to Benjamin White about this woodland—and if so, what was said about it? [Objected to in all its branches.]

*Ans.* The complainant spoke to him about it in my presence, and, I think, he, White, said that he had bought a part of it, or all of it, I can't say which.

This conversation was directly in front of the mansion-house of Samuel Laird, at Long Branch ; it was, during the negotiations, and I think before any of the papers were signed, but I am not sure as to that.

And being again examined on the part of the defendants, says—

*Quest.* Do you mean in your evidence, referring to your signing any of the deeds, to the signing of any acknowledgment as a master in chancery, and leaving it, or do you refer to the signing of a deed as a grantor? 10

*Ans.* I refer to signing a deed as grantor.

J. W. MORRIS.

Sworn and subscribed, at Freehold, November 7th, 1867, before me.

A. R. THROCKMORTON, *M. C.*

And thereupon the further examination of witnesses in this cause was adjourned until to-morrow morning, November 8th, 1867, at ten o'clock A. M.

A. R. THROCKMORTON, *M. C.*

Friday, November 8th, 1867, the examination of witnesses in this cause, was resumed at my office, at ten o'clock A. M., 20 in the presence of the parties and their counsel.

A. R. THROCKMORTON, *M. C.*

*William R. Maps*, of Monmouth county, a witness produced on the part of the defendants, being duly sworn, on his oath says—

I live at Long Branch, township of Ocean, in Monmouth county, New Jersey ; I live about two miles, or a little over, from where Henry Wardell formerly lived ; I have lived there near sixty years ; I am fifty-seven years old, and have lived there all my lifetime ; I am a merchant, and survey some- 30 times ; I am a practical surveyor with chain and compass ; I have been a practical surveyor for some thirty years ; I have not made that my regular business ; I have surveyed considerable property in my neighborhood within the last twenty years ; during that time, in connection with my business of surveying, I have written deeds, mortgages, &c., for persons for whom I surveyed in that neighborhood ; in connection

with that business I have furnished descriptions and surveys to parties in that neighborhood, for them to have written deeds and mortgages, &c., for property I have surveyed.

*Quest.* Have you frequently, in connection with your surveying, made maps or diagrams of the lands you so surveyed for different parties in your neighborhood?

*Ans.* Yes, sir.

*Quest.* Was you acquainted with Henry Wardell in his lifetime, and for how long did you know him?

10 *Ans.* I was acquainted with him, and knew him for twenty-five or thirty years—from my earliest recollection.

I was acquainted with the property Henry Wardell lived on; he always lived on the property where he died, I believe; he lived on the property always while I knew him.

I do not know how many acres there were in the premises he occupied; I surveyed a part of Henry Wardell's premises, at Long Branch; I never made but one survey; that was after his decease.

*Quest.* Give us the time, as near as you can, when you  
20 made the survey you speak of?

*Ans.* I think it was in the summer of 1865 that I made the survey.

*Quest.* At whose request?

*Ans.* At the request of Jacob W. Morris.

Jacob W. Morris was with me at the time I made the survey; I am not able to say who else were with us; I think we had two chain bearers and a flag man, but I am not able to give their names; I do not recollect them.

*Quest.* How long were you in making this survey?

30 *Ans.* One afternoon; on reflection, I think there were two chain bearers, and that Mr. J. W. Morris acted as flag man.

*Quest.* Did you make a map or plot of this survey on paper?

*Ans.* I think I did; I think the map was made almost immediately after the survey, perhaps in three days after, Jacob W. Morris wanted it done immediately.

*Quest.* At the time in the afternoon you say you made the survey, did you take any minutes or memoranda of your survey on the ground whilst you were surveying?

*Ans.* I did; I always do it.

*Quest.* What has become of those minutes or memoranda; have you them?

*Ans.* I do not know what became of them; I have not got them; after I make a map I generally file them away at home, but I could not say where they are to-day.

I intended to make the map correctly, according to the survey, and I am satisfied that it was correct; this map, I think, had the courses and distances designated on it; I think I delivered that map to Jacob W. Morris; he was the only person I knew in the matter; I think I remember the 10 beginning corner at which I commenced this survey; we commenced in the middle of the road leading to Fresh Pond near the school-house, in a southwesterly direction from the school-house; we then ran in a northeasterly direction, along a hedge or fence, to the sea; or a fence with a good many bushes around it; I know we had to take an off-set from that to run it; there was but one fence on that line; I think it was a post and rail fence; I could not say how much of the distance the fence took up from our starting point; I think we run but one straight course to the sea; we found no 20 monuments to designate the beginning corner; I commenced as directed by Mr. Morris, and surveyed as he directed; we ran one course to the sea, to the beginning, and then followed the shore northward, up to a point along the sea, where Mr. Morris told us to run to, where there was no monuments; this last point was a considerable distance in a northeasterly direction from the mansion-house on the premises, and northward of the station-house; the property north of this last point was property that originally belonged to Henry Wardell, but I can't say who it belonged to then, or whether it 30 had been conveyed away then by the heirs or not; we then ran across in a westerly direction, as designated by Mr. Morris; I can't say whether we ran to the creek or not; I rather think not; I rather think we stopped short of the creek at a point designated by Mr. Morris.

*Quest.* [Paper shown to witness, marked No. 3 on the part of the defendants.] Did you hear that paper read to William H. Vredenburg, the complainant's solicitor, a few moments ago?

*Ans.* I did.

*Quest.* When you say you ran westward to a point and stopped short of the creek, what course did you next run?

*Ans.* We next ran in a southwesterly direction and, it seems to me, we followed the river a short distance and, as I supposed, the westerly line of that property, and until we came to the westerly line of Job West's property; thence, following the westerly line to the private road leading into the mansion-house, on the property; thence, following the north line of that road to the middle of the aforesaid highway; thence, along the middle of said highway to the place of beginning—the place where we began.

*Quest.* How long now is it since the paper you have before referred to which is marked No. 3, on the part of the defendants, was read to Mr. Vredenburgh?

*Ans.* About two hours.

*Quest.* Has the examination been suspended for that time?

*Ans.* During that time the examination has been suspended for about one hour and twenty minutes for dinner.

*Quest.* What else, besides the fence you have mentioned, did you notice—besides the fence at or along the line you first ran?

*Ans.* I noticed considerable bushes, and shrubbery, and briars, so as to prevent our sighting over the fence.

*Quest.* What did that fence appear to stand on?

*Ans.* I noticed a slight elevation as though it might have been a ditch bank, but I did not discover any ditch on the side I was on—or on either side—but the bushes might have prevented my seeing it on the side from the one I was on.

To the best of my recollection, this fence or hedge I have spoken of occupied about half the distance from the place we started from, to the sea.

*Quest.* Where did one end of this fence or hedge start from with reference to the highway?

*Ans.* On the east side of the aforesaid highway, directly from the side of the road; this school-house referred to, was on the north side of the hedge—it was the district school-house; these bushes and shrubbery I have spoken of, were just along the fence, where it had not been plowed up; I should suppose they were about equal on each side of the fence; the land there naturally grows up with bushes and

briers where it is not plowed; the bushes and briers naturally grow up around the fences where it is not plowed.

*Quest.* On either side of the fence or hedge, you have spoken of, was there a clear view from that highway to the sea, or to the bank of the sea?

*Ans.* There was a clear view to the bank of the sea; there was no obstruction to the view.

*Quest.* Could a person in a wagon or carriage there see over this fence or hedge to the sea bank?

*Ans.* Yes, I think, they could in an ordinary one. 10

*Quest.* At the time that Jacob W. Morris employed you to make the survey you have spoken of, who did he say it was for?

*Ans.* I can't recollect that he said it was for the doctor; my impression was, that that was the object, but, I rather think, that he employed me on his own account.

*Quest.* Did you have any old map, or any papers or deeds connected with the title to the premises, when you surveyed the premises, or made the map you have spoken of?

*Ans.* I think there were none used at the time; I should 20 think that fence had been standing there ten years—perhaps longer.

*Quest.* Have you been in the habit of writing deeds for persons in that neighborhood?

*Ans.* I have; I can't say that I ever wrote any for Henry Wardell.

*Quest.* Had you noticed that fence or hedge before you went there to make this survey?

*Ans.* Not particularly.

*Quest.* Did you make any survey or map of any of the land 30 lying southward of the line you ran from the beginning point along to the sea?

*Ans.* I have surveyed some of those lots; I surveyed the lot that Jesse Potter formerly owned; that originally belonged to the Wardell property.

I surveyed those lots, I should think, some three years since; at the time I made the survey with Jacob W. Morris, spoken of, I did not survey any of the land lying south of the line along the fence to the sea; I think the Potter lot is

the only one of those lots that I recollect of surveying; I surveyed it for the heirs of Jesse Potter.

*Quest.* Do you know whether the land lying southward of the line along the fence to the sea, was, at any time, laid off in lots—and if so, when and by whom, and for what purpose? [Objected to as irrelevant.]

*Ans.* I know that lots have been sold there, and, I suppose, were sold by Henry Wardell; Charles H. Valentine, Stewart Cook, and John Cook; those three I know have lots there; 10 there are other lots there, but having no buildings on them I don't know who owns them.

*Quest.* How do you know there are other lots there?

*Ans.* I simply know there are lots enclosed along that road, but I don't know who owns them; I have seen a map of the property, made by Francis Corlies, pointing off lots there, and that's all I know about them.

It was recently that I saw this map made by Corlies; I have seen a map of it here to-day, at Freehold; I could not tell when or where I saw it first.

20 *Quest.* Do you know whether any of the property south of the line along the fence you have spoken of was advertised for sale, in lots, at any time?

*Quest.* I can't recollect.

Since I gave this map I have spoken of to Jacob W. Morris, I have since seen it, to-day in this office, laying on the table there; I don't think I have seen the map before to-day since I gave it to Mr. Morris.

And being cross-examined on the part of the complainant, says—

30 [Map shown witness, marked *Exhibit Y*, on the part of the complanant.]

That is the map I made at Mr. Morris' request; there are some pencil marks on that map that is not my work; I did not mark on that map the lines representing a street fifty feet wide to the ocean; there was no such street there at the time I made the map; the road that I have marked as the road to the dwelling on that map, leading from the Raccoon Island road, was the only road on those premises when I made the survey; the complainant was not with me at the

time I made the survey, and I did not know him in the matter; the outside lines, and the road from the Raccoon Island road to the dwelling, and the lines of the Sea Shore Railroad and Raccoon Island road, are the only lines on this map that I made.

*Quest.* You said, in your direct examination, that at the time you made the survey for Jacob W. Morris, you did not survey any of the land south of the line along the fence, &c., to the sea; why did you not? [Objected to.]

*Ans.* Because I was not requested to.

[Paper marked *Exhibit H*, shown to witness, being a map.]

10

*Quest.* You have said that you have known the Wardell farm for a long time; what was its extreme southern boundary as you first knew it? [Objected to.]

*Ans.* Well, as I understand it, it was the north line of William Cooper's land as marked on that map.

*Quest.* Is this the map, *Exhibit H*, that you have spoken of in your direct examination as having seen lots laid out on?

*Ans.* Yes, sir.

*Quest.* Commence from Cooper's line, and give us the old boundaries of this Wardell farm as you have always known them up to the time of the conveyances to Valentine, and those you have spoken of, and to the Sea Shore Railroad Company? [Objected to.]

*Ans.* Well, as I understood it—beginning at the northeast corner of William Cooper's land as marked on that map, *Exhibit H*, it ran along the sea shore northward to a point about opposite the mouth of North Shrewsbury river, north of the Ocean House—then it ran across the beach to the South Shrewsbury river; thence up the river, until it strikes the line of Job West's land; thence along the line of Job West, until it comes to a private road formerly leading to the dwelling; thence along said private road to this public road, called the Raccoon Island road, and thence along that road to William Cooper's northwest corner, as marked on this map; thence along Cooper's north line to the place of beginning—that encompasses the original farm as I first knew it; I think there is one middle fence running across this Wardell property about midway between the south line

30

I ran, and the mouth of this private road on this map, marked *Exhibit Y*, made by me.

*Quest.* Was the general character of these fences running across this Wardell property, the same with reference to their appearance at the time you made this survey?

*Ans.* They were.

*Quest.* Was this notice [marked No. 3] to produce map, read to William H. Vredenburgh, complainant's solicitor, during your examination-in-chief, this morning?

10 *Ans.* It was.

And being again examined on the part of the defendants, says—

[Paper marked *Exhibit H*, shown to witness]—I saw that map for the first time to-day; I am not certain who showed it to me; it was either the complainant or his solicitor; I had nothing to do with the making of that map, and know nothing as to the correctness of it.

[*Exhibit Y*, shown to witness]—The courses and distances of the premises, and of the private road leading to the dwelling, and quantity of land contained in the general survey, are in my handwriting on that exhibit.

20 *Quest.* Do you know how far the fence you have spoken of as standing about midway from the mouth of that private road, extended eastwardly from the Raccoon Island road?

*Ans.* I don't know; I think about opposite to the house; I am not very positive as to that matter.

*Quest.* The course and distance north 67 degrees 15 minutes east, 23 chains, on *Exhibit Y*; is that the same line that you say you ran along the fence and to the sea?

30 *Ans.* It is.

*Quest.* Do you know who, at that time, owned land next adjacent to that line, on the south side thereof, and adjacent to the Raccoon Island road?

*Ans.* I do not.

And being again cross-examined on the part of the complainant, says—

*Quest.* You speak of the fence a part way along the south line that you ran at J. W. Morris' request, as being upon a

slight elevation; was it not as if the dirt had been plowed a little, and thrown along the fence as is often done to fill up the fence underneath? [Objected to.]

*Ans.* If a ditch had been dug, and the dirt thrown up, it would make the same appearance, after a few years, similar to a couple of furrows thrown up prior to putting the fence there; but I did not examine it enough to say what it resembled, and I could not say whether it was a ditch thrown up in that way or not.

WM. R. MAPS. 10

Sworn and subscribed, at Freehold, November 8th, 1867, before me.

A. R. THROCKMORTON, *M. C.*

*Philip J. Ryall*, a witness heretofore sworn in this cause on the part of the complainant, being about to leave this state on account of his sickness, was recalled on the part of the complainant at this stage of the examination, by consent of the defendants' solicitor, and on his oath says—

The parties—namely, complainant and Jacob W. Morris, Jacob Herbert, and Mrs. Elizabeth Wardell, met in my office 20 in Freehold, on the 1st day of November, 1865, by special appointment; I staid at the office that day on account of that appointment; on that day I drew *Exhibit E* and the consideration money mortgages; of these mortgages, there were four instead of three drawn—drawn so at the request of Mrs. Wardell; when the papers were all written and compared, they were then and there duly acknowledged, and then all were actually delivered—the deeds, *Exhibits D* and *E*, to the complainant, and the mortgages delivered to one of the other parties; the way I came to insert the straight line as the 30 southern boundary of the farm was this: I saw by the deeds and maps furnished by Mr. Morris that the boundaries on the east by the sea, northerly by the Ocean House property, and westerly by the Shrewsbury river, Job West, and the Raccoon Island road, were correct, but that as I knew that Henry Wardell had owned and sold land south of that straight line to Valentine and others, I expressed the same to Mr. Morris, and asked him how he ascertained this

straight line to be the south boundary, to which he replied because they (referring to the Wardells) owned no land to the south of it, for they had sold all the land lying to the south of that line; the complainant was present during this conversation, and the same thing was repeated more than once by Mr. Morris, for he and complainant kept talking that complainant was to have all the land that Henry Wardell died seized of, except what was actually conveyed away by deed; while they were talking, Mr. Morris was informed, 10 either by complainant or myself, that there was a part of the farm contracted to be sold to complainant that they did not own, *viz.* the lot conveyed to the United States for their life saving apparatus; Mr. Morris seemed to have forgotten that, and said no, they could not convey that, for it was already sold; doctor told him in substance that as he only wanted what land they owned, and as he knew now that they did not own the United States lot, that he would except it out of the deed, although it was not excepted out of the agree- 20 ment; that is the way, and the only way, that that exception of the United States lot came to be made out of the farm; I would not have drawn the description of the farm in the papers as I did, had I not had this assurance from Mr. Morris, that the defendants did not own any part of the farm south of this straight line; the above referred to conversation and information from Mr. Morris took place before any of the papers, deeds, *Exhibits D and E*, and the four mortgages, were delivered. [The solicitor for the defendants objects to the admissibility of the conversations mentioned in the above evidence.]

30 And being cross examined on the part of the defendants, says—

*Quest.* Who was present during the conversation above referred to?

*Ans.* The complainant and Jacob W. Morris and myself, I am certain, in my office; I am not certain whether it was repeated in the presence of Mrs. Wardell and Mr. Jacob Herbert or not; the whole conversation may have taken place before Mrs. Wardell and Mr. Herbert came to the office; I cannot be mistaken about this thing, for Mr. Morris repeated

it several different times during the conversation; I do not know that he always repeated it in the same language exactly; I think I signed my name as a subscribing witness to the four mortgages and their accompanying bonds.

PHILIP J. RYALL.

Subscribed and sworn to, at Freehold, November 8th, 1867, before me.

A. R. THROCKMORTON, *M. C.*

And thereupon by consent of the counsel for the respective parties, the further examination of witnesses in this 10 cause was adjourned until Wednesday, the 8th day of January, 1868, at ten o'clock A. M., at my office in Freehold.

A. R. THROCKMORTON, *M. C.*

Wednesday, January 8, 1868. The further examination of witnesses in the cause was resumed at my office in Freehold, in the presence of the counsel for the respective parties pursuant to the last adjournment.

A. R. THROCKMORTON, *M. C.*

*Mrs. Elizabeth Wardell*, of Monmouth county, one of the defendants, produced as a witness on the part of the defen- 20 dants, being duly sworn, on her oath says—

I am the widow of Henry Wardell, deceased; I am sixty-six years old; I reside now at Long Branch village; my husband, Henry Wardell, died in December, 1851; he died on the homestead; I continued to live on the homestead for ten years after my husband's death, with my family, composed of the children of my husband, Henry Wardell, except my daughter Sarah A. Howland, wife of Henry Howland; she lived with her husband, and about two miles from the homestead; Jordan Woolley and myself were the administrators 30 of my husband's estate; as administrators of my husband, Henry Wardell, deceased, Jordan Woolley and myself sold the Ocean House property which my husband died seized of, to Henry E. Riell. This Ocean House property bounded the north line of the homestead at the time of the sale to Doct. Arthur V. Conover; this Ocean House property which

we sold to Henry E. Riell was not farming property; it was a sandy beach with a public house on it, connected with the hotel at Long Branch by stages along the beach and by steamboat that run up the North Shrewsbury river to Red Bank; the property which we sold to Riell and the property that I call the homestead was all one property before we sold to Riell; there was other real estate of my husband, Henry Wardell, deceased, that we, as administrators, advertised for sale, besides what we sold to Riell; it was the south end of  
10 the place.

*Quest.* Where was this land that you say that you as administrators advertised for sale at public auction? [Objected to as irrelevant and immaterial.]

*Ans.* I think it was about thirty acres and it lay between the West, Cook, and Valentine lots and the sea.

I don't remember the time when we advertised the property, but it was some years before the conveyance to the Sea Shore Railroad Company; I don't remember the year; I moved off of what I called the homestead six years ago this  
20 coming spring; I left my son Edward Wardell in possession of it; I don't remember how long before I moved from the homestead this land above spoken of was advertised; there are a great many old ditches and fences.

*Quest.* Was there any old ditch or fence recognized and considered as any particular boundary of the property? [Objected to.]

*Ans.* I don't know that there was.

*Quest.* In the advertisement of the sale of the property you have spoken of do you remember of any particular  
30 boundary line referred to? [Objected to.]

*Ans.* I don't know that there was; we were going to sell this off in lots and run the lots to suit purchasers.

*Quest.* Do you know of any ditch or fence extending from what is called the railroad to the sea and by what is called the William West lot?

*Ans.* Yes, sir; there is a fence and ditch there.

I don't know that I can tell how long I have known them, for it is so far from the house; I know it was there before we sold the tract to Doct. Conover; I suppose I have known  
40 it ever since it stood there, but I could not give a definite

answer to that question; I remember very well that it stood there when we authorized Mr. Morris to sell the land to Doct. Conover; I refer to the power of attorney; I think I may safely say that I remember that the fence and ditch stood there for ten years before that.

*Quest.* At the time you say you authorized Mr. Morris to sell the property, the course "beginning at or near the Fresh Pond district school-house in the middle of the highway and running easterly as the ditch and fence now stands to the sea or ocean," as expressed in the power of attorney— 10  
what does it refer to and what does it mean? [Objected to as irrelevant and tending to vary the language and terms of the written instrument.]

*Ans.* It means the ditch and fence that I have last spoken of; it is the south boundary line of the tract of land we conveyed to Doct. Conover.

[Four mortgages, given by Doct. Arthur V. Conover to Elizabeth Wardell, Eliza L. Conover, and Josephine D. Wardell, respectively, and marked *Exhibits No. 4, 5, 6, and 7* on the part of the defendants, being shown to witness, she says] 20  
—I was present when those mortgages were executed, in Philip J. Ryall's office, in Freehold; those mortgages were given in part payment of this tract of land which we sold to Doct. Arthur V. Conover; Mr. Jacob W. Morris, Jacob Herbert, Doct. A. V. Conover and his wife, Mr. Ryall and myself, were present when they were executed and delivered; there was one more mortgage given besides those three.

*Quest.* Was the deed for the tract of land you have spoken of given to Arthur V. Conover at the time the four mortgages were given? 30

*Ans.* It was; I have no recollection that there were any other deeds, or any map referred to at the time the deeds and mortgages were given; I can't exactly say how long before the mortgages were given that the deed was signed, but I think a fortnight, for I had to take it around among the children to have it signed, and had to send it to Philadelphia; I do not remember who first brought the deed to me; I think it must have been Mr. Morris.

*Quest.* Did you give any directions concerning the boundary expressed in the deed? 40

*Ans.* Certainly.

*Quest.* What were those directions, and to whom given?

*Ans.* The directions given were to begin at the district school-house, and follow that ditch and fence to the sea, and then to take the rest of the courses from the old deeds; I mean the courses running north up the beach, and west and south; I think I must have given the directions to Mr. Morris before the article of agreement.

*Quest.* Was there any objection made on the part of Ar-  
10 thur V. Conover, to the boundary line, at the time the deed was delivered?

*Ans.* I did not hear of any; I was present when the deed was delivered.

The complainant, at the time of the delivery of the deed, made no claim to any of the land southward of the ditch and fence that I have spoken of; I saw and conversed with the complainant before the deed was delivered; I don't know that the complainant had been down to look at any of  
20 the property then, but I heard that he had been down to look at the property with Mr. Morris, and alone; I saw and conversed with complainant the day the article of agreement was signed, and also afterwards.

*Quest.* Did he, at either of those times, make claim to, or refer to any of the land southward of the ditch and fence you have last spoken of?

*Ans.* No.

*Quest.* Have you, or the heirs of Henry Wardell, advertised or offered for sale any of the lands southward of that ditch and fence, except as administrators? [Objected to.]

30 *Ans.* Part of that land we considered as sold; the writings were not delivered; the other part of it was offered for sale; Wm. West had the refusal of it, about a year, as nearly as I can remember, before we sold to Doct. A. V. Conover.

*Quest.* Who drafted the deed that was signed by you and the heirs to Doct. A. V. Conover, and at whose request was it written?

*Ans.* Doct. A. V. Conover asked me who I was going to get to write the deed, and I told him that, as Mr. Morris had done the business, I supposed it would be him; he replied  
40 that he always preferred a lawyer to do such business for

him; I told him it made no difference to us, and I presume Mr. Ryall wrote it; I suppose he selected the lawyer, I didn't.

*Quest.* Was you consulted concerning the phraseology of the deed before it was drafted?

*Ans.* No, sir.

[*Exhibit E* on the part of the complainant shown to witness]—I was not consulted respecting that deed at any time before it was signed; I did not authorize it to be executed.

Up to the time of our contract with Doct. A. V. Conover for the property, Edward Wardell had the general management of the property.

*Quest.* Who did you consider the land sold to, that you have spoken of southward of the ditch and fence? [Objected to as immaterial and irrelevant.]

*Ans.* We considered it sold to Charles Valentine, Stewart Cook, and Wm. West; it was not actually sold to Wm. West at that time, but he had the refusal of it.

And being cross-examined on the part of the complainant, says—

*Quest.* Did you or the other heirs of Henry Wardell, to 20 your knowledge, ever sign an article or agreement in writing to sell to West, or Valentine, or Cook, any of the land south of the ditch and fence you have referred to?

*Ans.* No; it was a verbal agreement altogether.

*Quest.* Have you or the heirs of Henry Wardell ever conveyed by deed up to the present time any of that land south of that ditch and fence, to either West, or Cook, or Valentine?

*Ans.* No, sir; we could not while it was in litigation.

We have not conveyed away, up to the present time, the 30 land south of that ditch and fence, and we consider that we still own it.

*Quest.* Was that tract, at the time that you conveyed to Doct. A. V. Conover, and before that, as long as you have known it, a part or not of the homestead farm of Henry Wardell? [Objected to.]

*Ans.* As much a part as the other lots that we sold there adjoining, to Valentine, West, and Cook.

*Quest.* What was the extreme southern boundary of the

homestead farm, as long as you have known it, up to the time of the conveyance to the Sea Shore Railroad Company? [Objected to.]

10 *Ans.* It joined Wm. Cooper's lot—the northern boundary of Wm. Cooper's lot—formerly owned by Wm Throckmorton; from Wm. Cooper's north boundary, it extended north along the beach to Henry Riell's line, and then it went across to the river, and from that point up the river to Job West's line, and thence southerly and southwesterly until it struck the Raccoon Island road; thence down the Raccoon Island road to the northwest corner or boundary of Wm. Cooper's lot; I mean these were the original boundaries of this homestead farm before the conveyances to West, Cook, Valentine, and the Sea Shore Railroad and Lippincott and Potter; at the time the complainant paid off the three mortgages, he made no objections to the quantity or boundaries of the land. [The last answer objected to as immaterial, because this suit was then in progress.]

ELIZABETH WARDELL.

20 Sworn and subscribed, at Freehold, January 8th, 1868, before me.

A. R. THROCKMORTON, *M. C.*

*Sophia H. Wardell*, of Monmouth county, a witness produced on the part of the defendants, being duly sworn, on her oath says—

I am the wife of Edward Wardell, and am twenty-eight years old; I am acquainted with Doct. A. V. Conover; I lived on what was called the homestead farm of Henry Wardell, deceased, for about six years; I lived there at the time of the sale of the property; Doct. A. V. Conover was there at the house several times; he was there in June next preceding the execution of the deed, and several times during the summer; the first time he came there to the house he was with Jacob W. Morris; he came to look at the property—to look at the house; I suppose he came to look at the property, as he was with Mr. Morris; they were there in the morning, and went home some time during the forenoon; it was a clear day—a very pleasant day; Doct. Cono-

ver told me at that time that he thought something of buying the place; I think he went through the house; I showed him through the lower part of the house; he went into the garden, but I don't know that he looked at any of the other buildings; I did not go out of the house; I don't remember exactly what part of June this was, but think it was the latter part of June; I don't remember of seeing him there at any other time with Mr. Morris in that month; he was there with Mr. Morris in the morning, and he was there again alone in the afternoon of that same day; he went then into one of the upper fields in the upper part of the farm, called the Campbell field, and then drove down to what is called the Island; it was northeast of the house a little way; he stopped at the house as he came back.

I do not know what his errand was there in the afternoon; he drove down in the field and drove up again to the house, and stopped in the house; I think I showed him the cellar; I don't remember that he then said anything particularly about buying the property; before I signed the deed he was there several times, and looked at the property; at one time he was there and brought Mrs. Conover and Mrs. Ryall; at another time he was there with his son Doct. William A. Conover; at one time he brought some gentleman there, and they drove down in the field on the place north of the house; I remember that distinctly; he was there at one time with a carpenter; all these times that I have referred to were before the deed was signed.

SOPHIA H. WARDELL.

Sworn and subscribed, at Freehold, January 8th, 1868,  
before me.

A. R. THROCKMORTON, *M. C.*

30

The examination was then adjourned until to-morrow morning, January 9th, 1868, at 9 o'clock, at my office, in Freehold.

A. R. THROCKMORTON, *M. C.*

Thursday morning, January 9th, 1868, the examination of witnesses was resumed at my office, in Freehold, in the pres-

ence of the counsel of the respective parties, pursuant to adjournment, made yesterday.

A. R. THROCKMORTON, *M. C.*

*Edward Wardell*, one of the defendants, produced as a witness on the part of the defendants, being duly sworn, on his oath says—

I am aged forty-one, and am one of the children and heirs of Henry Wardell, deceased.

[*Exhibit No. 1*, on the part of defendants, shown to witness]—he says—I am acquainted with the property referred to in that exhibit, and have known it since my earliest recollection.

*Quest.* The expression in *Exhibit No. 1*, “beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly, as the ditch and fence now stands to the sea or ocean;” what course or line does that refer to in the deed marked *Exhibit D*, on the part of the complainant? [Objected to, because it embodies a conclusion of the witness, and tends to vary the terms of the written instruments.]

*Ans.* It refers to the course or line which reads as follows, in that deed—“beginning in the centre of the road from Lane’s End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence (1) along the line of William West and others north sixty-seven degrees and fifteen minutes east, twenty-five chains, more or less, to the Atlantic ocean, at low water mark.”

*Quest.* When did you first know that ditch and fence, above referred to?

*Ans.* Since my first recollection of the farm; I suppose I can recollect it thirty years ago.

I have done work on that fence and ditch during that time; I have had the ditch cleaned out twice, and have had the fence re-set once; the course of the ditch and fence have not been altered since I have known them, to my knowledge; there was a ditch and fence when I first knew it from the main road to the sea; the fence stands on the south side of the ditch bank; it has never been changed to my knowledge; it stood so at the time the power of attorney was

signed; the building of the railroad took off the east end of the ditch and fence; before the power of attorney was signed, that ditch was, I should think, about four feet on the top and two at the bottom; there were some bushes, briars, elders, &c., along the ditch besides the fence; the briars, bushes, &c., were on both sides of the ditch, and took up about two feet on either side; I should think this ditch and fence were about a quarter of a mile from the mansion-house of Henry Wardell, deceased; there were two fences, before the power of attorney was signed, between the ditch and 10 fence above mentioned and that mansion-house, and running parallel with the ditch and fence; those fences did not extend to the sea.

They run easterly from the main road, a little more than half way, I should think, towards the sea; I lived in the mansion-house all my life, except while I was at school; before the sale, I lived on the property at the time the power of attorney was signed; I saw the complainant on the property as much as twice before the power of attorney was signed; it was in June, 1865; I think it was in the latter 20 part of June, but won't be certain; I think Mr. Jacob W. Morris was with him once; I was not very close to him; I would not like to swear positive who was with him; I was in my wagon, riding along the road, and the complainant was on the east part of the farm, to the southward of the house; I don't know how long he was there at that time; I saw him drive down on the lower part of the farm once, northward of the mansion-house, a short time before the power of attorney was signed, in company with some persons who were strangers to me; I don't know how long he 30 was there at that time; I saw him there after the power of attorney was signed, and before the deed was given, several times, and rode with him once on the north part of the farm, north of the house; this was after the power of attorney was signed, and before the deed was signed.

*Quest.* State what fences on the property, if any, run to the sea?

*Ans.* I don't think there are any that run to the sea.

*Quest.* State how they did run, before the power of attorney was signed?

*Ans.* The fence running from near the school-house run to the railroad, and before the railroad was built it run to the edge of the sea bank; the other two fences that ran parallel with this fence run to another fence that led northerly, towards the mansion-house.

*Quest.* What in reference to the ditch?

*Ans.* There was a ditch along the middle line of fence, that run easterly about half the length from the main road to the fence that ran northerly, and a small ditch that run  
10 along the road that led into the house.

*Quest.* How long did you till any of the land that is embraced in the complainant's deed?

*Ans.* About fifteen years.

*Quest.* Who tilled, or was in possession of the land that lays southerly of the ditch and fence first spoken of, running from the school-house, easterly, to the sea, at and before the signing of the power of attorney?

*Ans.* Charles H. Valentine, Stewart Cook, and myself.

*Quest.* Which part of it did you till?

20 *Ans.* The north part.

*Quest.* How long before the power of attorney had Charles H. Valentine tilled it?

*Ans.* I think about a year.

*Quest.* How long prior to the signing of the power of attorney was it that your mother ceased to live on the place?

*Ans.* About five years.

*Quest.* Who lived with you at the mansion-house on the place?

*Ans.* My brother, Jacob H. Wardell.

30 *Quest.* Did the fence first spoken of ever run to the sea—and if so, at what period of time?

*Ans.* I think the fence ran to the sea about fifteen years ago—that is, to where the sea is now.

*Quest.* Why was not the fence maintained from the sea bank to the sea?

*Ans.* Because the sea would wash it away.

*Quest.* How far is Samuel Laird's place of residence from the mansion-house you have spoken of?

*Ans.* About two miles.

40 *Quest.* At the time of the signing of the power of attor-

ney, was there any fence from the line of the railroad to the sea bank, on the ditch and fence line first spoken of?

*Ans.* No, sir.

*Quest.* Had there been before then?

*Ans.* There had.

*Quest.* How long before that?

*Ans.* From the time I first knew it until the railroad was built; the railroad was built about two years before the power of attorney was signed.

*Quest.* At the time of the signing of the power of attorney, 10 what kind of a fence, if any, was there along the northward side of the Wm. West lot?

*Ans.* A post and rail fence.

*Quest.* Who placed that fence there, and how long had it been there?

*Ans.* My father placed it there I suppose, but it was before my recollection.

*Quest.* How did it connect with the ditch and fence line first spoken of?

*Ans.* It was a straight line. 20

*Quest.* How, in appearance, did that fence compare with the fence along the ditch you have first spoken of—was it the same kind of a fence or not?

*Ans.* It was the same kind of a fence, only it had been reset from William West's corner to the sea bank.

*Quest.* Do you know whether there was any stone to designate the William West corner?

*Ans.* I have seen one there at his corner at the main road.

*Quest.* When?

*Ans.* About four years ago. 30

*Quest.* What, if anything, was there to designate or show on the land the parts you say Valentine and Cook tilled?

*Ans.* There was nothing.

*Quest.* Did you see or was you with William R. Maps when he surveyed any part of the premises?

*Ans.* No, sir.

*Quest.* Was any part of the land to the southward of the fence and ditch you have first spoken of ever advertised for sale at public auction, and if so, when?

*Ans.* Yes, sir, there was; it was about four years after father's death, I think.

*Quest.* Who by?

*Ans.* The administrators.

*Quest.* Was any of it at that time sold?

*Ans.* No, sir.

*Quest.* Has any of it been offered for sale in lots since that time and before the signing of the power of attorney by the heirs of Henry Wardell, deceased?

10 *Ans.* It has at private sale.

*Quest.* What part of it?

*Ans.* The whole of it.

*Quest.* How long before the signing of the power of attorney?

*Ans.* About a year.

*Quest.* What progress was made in such offer of sale?

*Ans.* Mr. Charles H. Valentine agreed to take one lot and Stewart Cook agreed to take one, and William West had the refusal of a lot.

20 *Quest.* What do you mean by the middle line fence?

*Ans.* I mean the fence running easterly to the sea between the fence and ditch running easterly to the sea from the school house, and the fence along the road running easterly to the Mansion House, as appears upon the map marked *Exhibit H*, on the part of the complainant.

*Quest.* What object, if any, was there in describing the course or boundary in the power of attorney above referred to and recited? [Objected to as leading and as tending to vary and control the terms of the written instruments  
30 between the parties.]

*Ans.* To designate the southern line that we wished to sell by.

*Quest.* Was the ditch and fence line therein mentioned talked of before the power of attorney was written, and if so, by whom and between what parties? [Objected to for the reasons last above given.]

*Ans.* It was between the heirs and Jacob W. Morris.

*Quest.* How long before the signing of the power of attorney?

40 *Ans.* Probably a month.

And being cross-examined on the part of the complainant, says—

*Quest.* How long had Henry Wardell, your father, been in possession of the tracts and pieces of land in dispute in this suit previous to his death? [Objected to.]

*Ans.* Always in possession of them while I knew it, up to his death.

*Quest.* Have the heirs of Henry Wardell conveyed away those tracts or pieces of land in dispute in this suit or either or any one of them up to this time? [Objected to.] 10

*Ans.* Not to my knowledge; myself and the other heirs still own them.

*Quest.* You have said that you saw the complainant twice before the power of attorney was signed on this property, and that you saw him the first time with Jacob W. Morris; how long after that was it that you saw him the second time?

*Ans.* I don't recollect the precise time, but it was a short time.

*Quest.* How many days? 20

*Ans.* Probably four or five days.

*Quest.* What time in the day?

*Ans.* I think it was in the afternoon; there were two or three probably with him—I don't recollect the number; they were in a wagon when I saw them, and the complainant was with them; it was a two horse, two seated barouche; I saw them pass the house and drive down on the lower end of the place; I was, maybe, three hundred yards from them; north-erly of the house, in the field; it was the field directly north of the house; it was in grass at that time; the grass was 30 not cut at that time; I was going to sell the grass, and I was out in the field, going to survey it to see how I could cut it up in lots; no one was with me; the grass was not ready to cut then.

*Quest.* Are you sure this was three or four days after you say you saw Jacob W. Morris on the place?

*Ans.* I am not sure that it was three or four days.

*Quest.* Might it have been a week from the first time you say you saw the complainant there with Morris?

*Ans.* I don't think it could have been as long as that. 40

*Quest.* Why don't you think so?

*Ans.* My impression is, that it was not as long as that; I have no other reason to give.

*Quest.* Have you any memoranda that enables you to come correctly at the time, or to arrive at the probable time of this second occasion you speak of?

*Ans.* I have no written one, but I am positive it was before the power of attorney was signed, because I had not signed any papers at the time I saw him there the second 10 time.

And being again examined on the part of the defendants, says—

The usual way of getting from Long Branch village, or the boarding-houses at Long Branch, to the mansion-house on that place, was by the Raccoon Island road by the school-house.

EDWARD WARDELL.

Sworn and subscribed, at Freehold, January 9th, 1868, before me.

20

A. R. THROCKMORTON, *M. C.*

*Jacob Herbert Wardell*, one of the defendants, produced as a witness, on the part of the defendants, being duly sworn, on his oath says—

I am aged twenty-nine years; I lived in the house of Henry Wardell, deceased, ever since I lived anywhere, up to the time of the deed to complainant, in this suit; I did not see the complainant on the property before the power of attorney was ssgned, but I did see him there before the deed was signed from the heirs to him, and I rode over the north 30 portion of the place with him; I did not ride over the place with him but once, but I saw him there more than once before the deed from the heirs was signed; I saw him there once with Samuel Laird, before the deed was signed—he was on the north part of the place with Samuel Laird then; at the time that he was there in company with me, he did not refer to, or speak of, the ditch and fence mentioned in the power of attorney.

*Quest.* Before the power of attorney was signed was the ditch and fence, referred to in the power of attorney, talked of among the heirs of Henry Wardell—and if so, when and how, and in what way? [Objected to.]

*Ans.* It was, before the power of attorney was given when we first talked of selling the property, and before we gave the power of attorney to Jacob W. Morris to sell it; we had it understood among ourselves, to strike that ditch and fence as the southern boundary of the farm, for the purpose of fulfilling our agreement with Valentine, Cook, and West. 10

*Quest.* What agreement do you refer to with Valentine, Cook, and West? [Objected to.]

*Ans.* The agreement we had made with them to sell them the land in the rear of their respective lots, and south of the ditch and fence mentioned in the power of attorney.

*Quest.* Was it a written or verbal agreement?

*Ans.* It was a verbal agreement.

*Quest.* When was that verbal agreement made with them?

*Ans.* I should think some sixteen or eighteen months before the power of attorney was signed. 20

*Quest.* Did either Valentine or Cook or West take possession of that piece of land you refer to, after the making of that verbal agreement? [Objected to.]

*Ans.* Valentine and Cook did.

*Quest.* How long have you known the ditch and fence referred to in the power of attorney, as they stood at the time it was signed?

*Ans.* About twenty years, I should think.

*Quest.* From what, and to what did that ditch and fence extend before the power of attorney was signed? 30

*Ans.* It extended from the main road running by the school-house to Raccoon Island, to the sea bank.

*Quest.* Do you know of any fence ever extending from the sea bank to the sea, in connection with this fence?

*Ans.* I do not.

*Quest.* The expression, in the power of attorney, “beginning at or near the Fresh Pond school-house, in the middle of the highway, and running easterly to the ditch and fence, now stands to the sea or ocean;” what boundary is the above described boundary identical with, in the description 40

in the deed marked *Exhibit D*? [Objected to, as leading, and as embodying an opinion of the witness upon the questions in controversy.]

*Ans.* With the boundary in the deed, reading as follows: "beginning in the centre of the road from Lane's End to Raccoon Island, and near the corner of the Fresh Pond district school-house; thence (1) along the line of William West and others, sixty-seven degrees and fifteen minutes east, and others, twenty-five chains, more or less, to the Atlantic ocean, at  
10 low water mark."

[*Exhibit E*, on the part of the complainant, shown to witness]—

*Quest.* Was you present when that deed was signed by Jacob W. Morris?

*Ans.* I was not.

*Quest.* Did you know of, or did you authorize the execution of that paper, or were you consulted about it in any way?

*Ans.* I was not.

20 *Quest.* Was the piece of land southward of the ditch and fence you have spoken of, advertised to be sold in lots or parcels at any time before the signing of the power of attorney, and if so, when and by whom? [Objected to.]

*Ans.* It was—about four years after Henry Wardell's death, by his administrators; I am one of the heirs of Henry Wardell, deceased; I was not present when the survey was made by William R. Maps; I was present when the complainant paid some of the purchase money mentioned in *Exhibit D*; I was present when he paid the \$300 receipted on  
30 the agreement marked *Exhibit B*, on the part of the complainant; I was not present when any other money was paid by the complainant.

*Quest.* What other fence or ditch connected with the premises, was there before the signing of the power of attorney besides the fence and ditch you have spoken of?

*Ans.* There were two other fences besides that fence and ditch—between it and the house running parallel with it.

*Quest.* From where and to where did they run?

*Ans.* From the Raccoon Island road to the fence running  
40 northerly towards the house; neither of those two other

fences run to the sea bank; on the middle fence, there was a ditch run from the Raccoon Island road, a little more than half way to the fence that ran northerly, or towards the house; there was a ditch also that ran along the fence, along the road that went to the house; there was no other ditch running to the sea bank, except the one first spoken of; there was a post and rail fence along the northward side of William West's lot; it had been there as long as I can remember; it was there at the time of signing the power of attorney; that fence, and the fence running along the ditch 10 to the sea bank, was one continuous fence.

There was a stone at the corner of Wm. West's lot, next to the road; it was at his northwest corner; I think I saw that stone there as long as five years ago; I do not know whether it was there at the time the power of attorney was signed or not; the school-house referred to in the exhibits was on the north side of this ditch and fence last spoken of at the time of signing the power of attorney; it had been there some eighteen years, I think, and probably longer; it was there at the time the deed was signed; it stood about 20 twenty-five feet northward of this ditch and fence; there were elder bushes and briars on both sides of this ditch, bank, and fence last spoken of, running from Raccoon Island road to the railroad; in some places they were about four feet high, and extended out about two feet on either side; the usual way of going from Long Branch village or from Samuel Laird's boarding-house to the mansion-house on the place was by the school-house; the property called the Ocean House property belonged to the tract of land my father owned at the time of his death; this Ocean House 30 property sold to Riell and the property described in the deed to Arthur V. Conover in *Exhibit D*, on the part of the complainant, was all one property at the time of my father's death.

*Quest.* When you say that we had it understand among ourselves that the ditch and fence should be the southern boundary was it understood among you, in any way, to deceive or mislead the complainant in any way concerning the boundary line of the property? [Objected to.]

*Ans.* It was not.

*Quest.* Before the power of attorney was signed did you and your co-heirs call Jacob W. Morris' attention as to what was, or was to be, the boundary line of the property, and if so what? [Objected to.]

*Ans.* We did; the ditch and fence mentioned in the power of attorney was to be the line; this was understood before we knew who the property was going to be sold to.

And being cross-examined on the part of the complainants, says—

10 This ditch and fence I have spoken of as the southern boundary runs up to the railroad property as marked on *Exhibit H* on the part of the complainant. [Question and answer objected to.]

*Quest.* Have you or your co-heirs of Henry Wardell conveyed away the property in dispute in this suit? [Objected to.]

*Ans.* We have not.

*Quest.* Was the property in dispute in this suit owned by your father in his lifetime?

20 *Ans.* It was.

*Quest.* Was it a part of his homestead? [Objected to.]

*Ans.* It was.

*Quest.* Have either Valentine or West or Cook, that you have spoken of, paid any money to the heirs for this property in dispute? [Objected to.]

*Ans.* They have not.

*Quest.* Who tilled this gore of seven acres and seventy hundredths of an acre in dispute this last year?

30 *Ans.* Captain Brown tilled it, except what is in the rear of Valentine and Cook's lot, and they tilled the part in the rear of their respective lots, between the rear of their lots and the railroad.

Captain Brown tilled it on shares for the heirs.

And being again examined on the part of the defendants, says—

Before the railroad was built the ditch and fence ran to the sea bank, and the building of the railroad broke the connection of the fence, and after the railroad was built we

took the fence up between the railroad and the sea, and it was never replaced.

J. HERBERT WARDELL.

Sworn and subscribed at Freehold, January 9th, 1868, before me.

A. R. THROCKMORTON, *M. C.*

The solicitor for the defendants then offered in evidence a map, endorsed "A copy of beach," referred to in the evidence of Jacob W. Morris, and which I have marked *Exhibit No. 1* on the part of the defendants in this cause. 10

Also, a power of attorney, dated June 26th, 1865, executed by Elizabeth Wardell and others to Jacob W. Morris; recorded in the clerk's office of Monmouth county, June 28th, 1865, in Book 182 of Deeds, and which I have marked *Exhibit No. 2* on the part of the defendants in this cause.

Also, a notice to Arthur V. Conover, or to his solicitor, William H. Vredenburgh, dated November 8th, 1867, which I have marked *Exhibit No. 3* on the part of the defendants in this cause.

Also, a mortgage, bearing date November 1st, 1865, made 20 and executed by Arthur V. Conover and wife to Elizabeth Wardell for \$9000; recorded in the clerk's office of Monmouth county, November 1st, 1865, which I have marked *Exhibit No. 4* on the part of the defendants in this cause.

Also, a mortgage, bearing date November 1st, 1865, made and executed by Arthur V. Conover and wife to Elizabeth Wardell for \$1240; recorded in the clerk's office aforesaid, November 1st, 1865, which I have marked *Exhibit No. 5* on the part of the defendants in this cause.

Also, a mortgage, bearing date November 1st, 1865, made 30 and executed by Arthur V. Conover and wife to Eliza L. Conover, wife of James W. Conover, for \$2000; recorded in the clerk's office aforesaid, November 1st, 1865, and which I have marked *Exhibit No. 6* on the part of the defendants in this cause.

Also, a mortgage made and executed by Arthur V. Conover to Josephine D. Wardell, bearing date November 1st, 1865, for \$2000; recorded November 1st, 1865, in the clerk's

office aforesaid, and which I have marked *Exhibit No. 7* on the part of the defendants in this cause.

The solicitor for the defendants then declared that the testimony on the part of the defendants was concluded.

January 9th, 1868.

A. R. THROCKMORTON, *M. C.*

*Arthur V. Conover*, the complainant, recalled on the part of the complainant, says—

The first farm I owned my father gave me at Black's Mills; I owned that farm about fifteen years; I then sold that; for about five years after I sold it I owned no real estate; I next purchased the Bowne farm at Freehold; I owned and farmed that land about fifteen years; I sold that farm; the next farm I bought was this Wardell farm; I bought a house and lot in Freehold after I sold the Bowne farm; I had never been within a mile of this Wardell farm previous to the day when I went with Jacob W. Morris to look at it; that was the only day I was on the farm previous to the execution of the power of attorney and the agreement; that day was Friday, the 23d day of June 1865; I know it, because that was the first day I recorded my name in the registry at the Mansion Hotel of Samuel Laird, at Long Branch; since my last examination I have refreshed my memory by examining that registry, and find that that was the day; I went on that Friday afternoon back to Freehold, and went down, according to my agreement with Mr. Morris, the next Monday, in the stage to Long Branch, and that Monday it stormed and I did not go out on the farm, and on the next day the agreement was executed at Mrs. Wardell's residence, at the village of Long Branch; I was not out on the farm on either of those days, Monday and Tuesday.

*Quest.* Were there any exceptions made by the heirs or by Jacob W. Morris, either verbally or in writing, of any portions out of this Wardell farm? [Objected to.]

*Ans.* Yes, sir; the railroad property and the Ocean House property were excepted only.

*Quest.* Did you, at the time that it has been stated that

Wm. R. Maps made the map, suppose that there had been any reservation from this Wardell farm? [Objected to.]

*Ans.* I did not.

*Quest.* Had the heirs or Jacob W. Morris, previous to the commencement of this suit, informed you or intimated to you that any exceptions or reservations were made by them out of this Wardell farm? [Objected to.]

*Ans.* They had not.

*Quest.* At the time of the execution and delivery of the deeds to you, marked *D* and *E*, did you suppose that there was any land south of the southern boundary, as described in said deeds still belonging to the Wardells and not conveyed thereby to you? [Objected to.]

*Ans.* I did not.

*Quest.* State, if you please, why you supposed there was no land south of the southern boundary, as described in said deeds still belonging to the Wardells, and not conveyed by those deeds? [Objected to.]

*Ans.* Jacob W. Morris said he would bind me by my neighbors—Wm. West and others—and that was his direction to Mr. Ryall, and it was so written in the deed, and, as I stated in my former examination, I did not discover until March, 1866, that they had not conveyed to me these tracts or parcels in dispute, which still belong to them.

I have never seen any monuments or corner stones on this farm up to this date; when I went with Jacob W. Morris to look at the farm, at the time he speaks of, before the agreement spoken of was executed, we did not get out of the wagon except at the mansion-house on the farm, and we drove nowhere outside of the road, as shown on the map, marked *Exhibit H*, except we drove through the barnyard, and talked about the sale of the manure and rails, if I bought the farm; then drove back by the house, and got out at the house, and went in; then came out and drove back directly south to the bars, at the end of the road, before it turns into the mansion-house, and then drove east towards the railroad about one hundred and fifty yards; I did not drive near to the ditch and fence—the alleged southern boundary; we then turned around, drove back to the bars where we entered, without going into any other field, and

then followed the road back to Samuel Laird's, where we started from; fences on the southern portion of the farm were all of the same general character—they were all post and rail fences, with ditch banks thrown up from each side, and the fence on the ridge; they were dry ditches. [All the above evidence, since the last question and answer, objected to.]

*Quest.* Please state what conversation you had with Jacob W. Morris with reference to buying the woodland spoken of  
10 by him, and when it took place?

*Ans.* On our way to Laird's Hotel, after looking at the farm as above stated, Jacob W. Morris told me that there were ten or fifteen acres of woodland belonging to the farm; and on Tuesday morning before the agreement was signed—the day it was signed—as we were standing on the front piazza at Mr. Laird's hotel, Morris called to some person that was going by, and said that he had understood that he had bought this tract of woodland; the man said he had, and that he had a deed for it; that ended the talk about the  
20 woodland, and there was nothing more said about it.

*Quest.* What was your conversation on the day you first visited the farm with Morris, about the purchase of this property as to the quantity of it? [Objected to.]

*Ans.* He said there was about seven hundred acres of all the land that was not sold; he said he would convey to me all the lands that Harry Wardell died seized of, that was not conveyed away by deed, on record that day.

*Quest.* How did it happen that this particular language was used between you?

30 *Ans.* It was because I know nothing at all about the lines or boundaries of the farm, and did not expect to see them.

*Quest.* Had you been at that time up to the northern boundaries of the farm?

*Ans.* I had not.

This farm I should judge was about four miles long—along the beach from William West's north line, to the Shrewsbury river; the length of the farm is about a mile, I should judge.

I was in the office of P. J. Ryall when the deed, marked  
40 *D*, was drawn; it was drawn by P. J. Ryall, under the di-

rection of Jacob W. Morris; Mr. Morris directed Mr. Ryall to make the southern boundary line twenty-five chains, instead of the distance given on the map, marked Y, because the distance given on the map only went, he thought, to the sea bank instead of low water mark; Mr. Ryall took the southern boundary from Mr. Morris, and from the map, marked Y, and the western boundary he took from that map until he came to the Shrewsbury river, and then he took Mr. Morris' directions entirely about it; Mr. Morris was in the office directing Mr. Ryall all the time during the drawing of the deed, marked *Exhibit D*, and I was in the office there, also, at the same time.

And being cross-examined on the part of the defendants, says—

I do not know exactly where the northern boundary of the farm or land is, and I have not had it surveyed yet.

*Quest.* Running from the northern extremity of the property, what does the western boundary of the property include?

*Ans.* I know the line from Job West's northwest corner down to the Raccoon Island road, and the rest of that western boundary, running from the northern boundary, I do not know.

*Quest.* From the northern extremity of what was the Wardell property next to the Riell property, what do the western boundaries of your property include down to Job West's northwest corner that you have spoken of?

*Ans.* I don't know; I don't know where the lines run.

*Quest.* What lines do you refer to?

*Ans.* I refer to the lines in the deeds; they are water lines entirely, I suppose.

*Quest.* Do the western boundaries you speak of include meadows, or what do they include, as far as you know?

*Ans.* Meadow lands along the river and a number of small islands out in the river, disconnected with the main land.

*Quest.* Can you give an idea of, or do you know the number of acres the meadow lands and islands you speak of, contain?

*Ans.* No, sir; I have not the remotest idea.

*Quest.* What is the character of the northern extremity of the land towards what is called the Riell property ?

*Ans.* Sand hills, and beach and sandy land.

ARTHUR V. CONOVER.

Sworn and subscribed, at Freehold, January 9th, 1868, before me.

A. R. THROCKMORTON, *M. C.*

The solicitor for the complainant then declared the rebutting testimony on the part of the complainant closed.

10 The following exhibits were offered by the solicitor for the complainant, but were omitted by the master, to be entered in their proper order in the progress of the testimony, *viz.*

A copy of a deed, dated February 14th, 1846, from Henry Wardell and wife to John Cook; certified by Holmes W. Murphy, clerk of Monmouth county, under his seal of office, which I have marked *Exhibit L*, on the part of complainant.

20 A copy of a deed, dated February 14th, 1846, from Henry Wardell and wife to Jesse Potter; certified by the clerk of the county of Monmouth, under his hand and seal of office, which I have marked *Exhibit M*, on the part of the complainant.

A copy of a deed dated November 24th, 1846, from Henry Wardell and wife to Steward Cook, certified by the clerk of the county of Monmouth, under his hand and seal of office, which I have marked *Exhibit N* on the part of the complainant.

30 A copy of a deed dated February 14th, 1846, from Henry Wardell and wife to Charles Henry Valentine, certified by the clerk of the county of Monmouth, under his hand and seal of office, which I have marked *Exhibit O* on the part of the complainant.

A copy of a deed dated February 14th, 1846, from Henry Wardell and wife to Edward Lippincott, certified by the clerk of the county of Monmouth, under his hand and seal of office, which I have marked *Exhibit P* on the part of the complainant.

A copy of a deed dated February 16th, 1848, from Henry

Wardell and wife to William West, certified by the clerk of the county of Monmouth, under his hand and seal of office, and which I have marked *Exhibit Q* on the part of the complainant.

A deed dated June 27th, 1800, from Joseph Wardell to Benjamin Wardell, recorded in the clerk's office of Monmouth county, in Book X of Deeds, page 724, &c., and which I have marked *Exhibit R* on the part of the complainant.

A deed dated March 29th, 1820, from Joseph McKnight 10 and wife to Henry Wardell, recorded in the clerk's office of Monmouth county, in Book C 2 of Deeds, page 604, &c., and which I have marked *Exhibit S* on the part of the complainant.

A deed bearing date December 24th, 1835, from Job W. Cook to Henry Wardell, recorded in the clerk's office of Monmouth county, in Book L 3 of Deeds, page 120, &c., and which I have marked *Exhibit T* on the part of the complainant.

A deed from Job West to Henry Wardell, bearing date 20 October 10th, 1835, recorded in the clerk's office of Monmouth county, in Book L 3 of Deeds, page 410, &c., and which I have marked *Exhibit U* on the part of the complainant.

A deed from Francis W. Brindley to Henry Wardell, bearing date October 24th, 1837, recorded in the clerk's office of Monmouth county, in Book P 3 of Deeds, page 540, &c., and which I have marked *Exhibit V* on the part of the complainant.

A deed bearing date May 10th, 1855, from Henry H. War- 30 dell and wife to Elizabeth Wardell, recorded in the clerk's office of Monmouth county, in Book I 6 of Deeds, page 608, &c., and which I have marked *Exhibit W* on the part of the complainant.

An old map, referred to in the testimony of Jacob W. Morris, and which I have marked *Exhibit X* on the part of the complainant.

Also, a map made by William R. Maps, and referred to in his testimony, which I have marked *Exhibit Y* on the part of the complainant.

Also, a copy of a letter from Ryall and Vredenburg to Jacob W. Morris, dated May 15th, 1866, and which I have marked *Exhibit Z* on the part of the complainant.

A. R. THROCKMORTON, *M. C.*

January 9th, 1868.

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### Decree of Dismissal.

[Filed February 11, 1870.]

This cause coming on to be heard before the Chancellor, upon bill, answer, replication, and proofs, in the presence of  
 10 W. H. Vredenburg, of counsel with the complainant, and of R. Allen, jun., of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainant is not entitled to the relief prayed in his said bill—

It is, on this eleventh day of February, A. D. eighteen hundred and seventy, ordered, adjudged, and decreed that the bill of complaint in this cause be and the same is hereby dismissed out of this court, and that the said complainant do  
 20 pay to the said defendants, or their solicitor, the costs of the said defendants in this cause to be taxed, within thirty days after service upon his solicitor of a copy of this decree, and of the taxed bill of said costs.

A. O. ZABRISKIE, *C.*

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### Order of Revivor.

[Filed December 8, 1868.]

It appearing to the court by affidavit that Eliza L. Conover, wife of James W. Conover, one of the defendants to the said suit, has departed this life, and that, by the death of the said Eliza L. Conover, Henry Conover, Sarah W. Conover,

and Idah Conover, who are the heirs-at-law of the said Eliza L. Conover, deceased, have become interested in this suit, and that the cause of action doth not survive, and that the complainant chooses to make them parties defendants hereto—

It is, on motion of William H. Vredenburgh, of counsel with the complainant, ordered that the said suit stand revived, and that the said Henry Conover, Sarah W. Conover, and Idah Conover, heirs-at-law of the said Eliza L. Conover, deceased, be made defendants thereto, in the place and stead of 10 the said Eliza L. Conover, deceased. And it is further ordered, that the said Henry Conover, Sarah W. Conover, and Idah Conover appear and put in their answer, or signify their disclaimer of this suit and the matters in controversy therein, or consent that the answer of the said Eliza L. Conover heretofore put in be deemed and taken as and for the answer of the said Henry Conover, Sarah W. Conover, and Idah Conover, at or before the next term of this court, and in case they fail so to do, that the complainant may cause their appearance to be entered, and the answer of the said Eliza 20 L. Conover heretofore put in be deemed and taken as and for the answer of her said heirs-at-law; and the complainant shall cause a true copy of this order to be served personally on the said Henry Conover, Sarah W. Conover, and Idah Conover, defendants as aforesaid, within thirty days from the date hereof.

A. O. ZABRISKIE, C.

## Appeal.

[Filed March 2, 1870.]

IN CHANCERY OF NEW JERSEY.

Between

Arthur V. Conover, complainant,  
*and*

Elizabeth Wardell, et al. defendants.

} *Appeal.*

10 Arthur V. Conover, the complainant in this cause, hereby appeals from the final decree made in this court, in the above stated cause, by which said decree it was, on the eleventh day of February, A. D. eighteen hundred and seventy, ordered, adjudged, and decreed that the bill of complaint in this cause be and the same is hereby dismissed out of this court, and the said complainant do pay to the said defendants, or to their solicitor, the costs of the said defendants in this cause to be taxed, within thirty days after service upon his solicitor of a copy of this decree and of the taxed bill of said costs, to the Court of Errors and Appeals in the last resort in all causes of law.

20

WM. H. VREDENBURGH,  
*Solicitor of complainant.*

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

WM. H. VREDENBURGH,  
*Of counsel with complainant.*

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# N. J. Court of Errors and Appeals.

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*Between*

*ARTHUR V. CONOVER,*

*Appellant,*

*and*

*ELIZABETH WARDELL et als.,*

*Appellees.*

} On bill for  
Specific Per-  
formance.

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## Points of Appellant.

Bill filed to compel specific performance of agreement to convey land; prayer of bill is that defendants convey to complainant the "Wardell Farm," situate in Long Branch, N. J., of which defendants or any of them were seized at the execution of agreement, embracing several portions of the said "Wardell Farm," particularly described in said bill. [See map, *Exhibit H*, and copies.]

1. Complainant's right to relief depends upon construction of agreement to sell and convey, dated June 26th, 1865, 10 (see case, page 24), executed by defendants' agent with complainant.

The agreement should be construed in the light of the contemporaneous power of attorney, dated June 26th, 1865, (see case, page 20), executed by defendants to their agent, empowering him to sell, &c.

The construction of the terms of those instruments must determine complainant's right to parcels of land in question.

The rule is well settled that their terms cannot be controlled or varied by *extrinsic* evidence.

*Stoutenburgh v. Tompkins*, 1 Stockt. C. R. 332.

No fraud, accident, mistake, or surprise is alleged by defendants to exempt those instruments from the above rule of construction.

The language of the power of attorney upon which a construction must be placed is, (see case, page 20), defendants authorize their agent to sell and convey, &c., *all our "Homestead Farm on Fresh Pond":* Beginning at or near the Fresh Pond school house in the middle of the highway, and running easterly as the ditch and fence now stands to the sea or ocean," &c.

The language of the agreement is

"All that tract or parcel of land lying and being on Fresh Pond, in Ocean township, county and state aforesaid, and known as the *Wardell Farm*, and begins in the middle of the road leading from Long Branch to Fresh Pond, near the corner of the Fresh Pond district school house, and runs easterly, as the ditch and fence now stands, to the sea shore; thence," &c.

The defendants failed to convey to complainant certain parcels of land of which they were seized and possessed at the time of the agreement and are now, and which *adjoined to and were parts* of their "Homestead or Wardell Farm" on Fresh Pond.

The defendants claim that they have conveyed all they were bound to convey by giving complainant a deed which, by courses and distances, describes a tract *less* than the Homestead or Wardell Farm, (as it then existed), and leaves out the portions in question.

The defendants say that all of the Wardell Farm *south* of the ditch and fence referred to in power of attorney and agreement, still belongs to them, and they have a right to retain it.

The rule is that the purchaser is entitled to have the contract specifically performed as far as the vendor can perform it.

See 1 *Story's Eq. Jur.*, § 779.

The case stands thus:

If the defendants were bound to convey to complainant all of *The Wardell Farm*, which they then owned, then the complainant is entitled to relief.

If they can fulfill the terms of their agreement by making their south boundary in accordance with the course of the ditch and fence, and *not* in accordance with their *true* south line, then the complainant is not entitled to relief.

The first rule of construction is,

That the deed be taken most strongly against him that is agent or contractor, and in favor of the other party. 10

*2 Black. Com., p. 307.*

*Verba fortius accipiuntur contra proferentem.*

The words of an instrument shall be taken most strongly against the party employing them.

*Co. Litt. 36 a.*

The second rule of construction which complainant invokes is,

That words used as an *additional* description will not vitiate anything sufficiently described before.

*Goodlittle v. Paul, 2 Burr. 1089.*

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*Mason v. White, 11 Barb. 173.*

“My farm at Bovington means all my farm at Bovington.”

The mistake in the power of attorney and agreement was the mistake of *defendants*, not *ours*.

The defendants gave a *false description* of “*all our Homestead farm on Fresh Pond.*”

That mistake, contradiction, and falsity in the instruments were *theirs*, not the *complainant's*, and ought not to injure complainant.

It was the defendants' *falsa demonstratio* of what they had 30 before sufficiently described.

The complainant had a right to believe the *monumental* description in gross, which could be most readily understood by him.

The complainant paid for the *whole* farm, not a *part* of it.

No reservation or exception was made by defendants of any part of that “Wardell Farm” for themselves, and yet defendants claim now the right to reserve a part of said farm for themselves.

The expression used by defendants in power of attorney 40

“supposed to contain seven hundred (700) acres,” was calculated also to deceive complainant.

The principle laid down in *2 Black. Com.* 380, applies that “doubtful words and provisions in a deed are to be taken most strongly against the grantor, he being supposed to select the words which are used in the instrument.”

See also *2 Bac. Abr., Grant* 1.

*Dunn v. English*, 3 *Zab.* 126.

10 The defendants, by attaching a faulty description to what was sufficiently described before, could not thus impair prior grant.

The ditch and fence line cuts off and leaves for defendants a part of “The Wardell Farm,” as it is now and was then owned by defendants.

Under the authorities, the defendants are bound to convey to complainant all of that “Homestead” or “Wardell Farm” which they *then owned*; their subsequent description was false, repugnant, and contradictory to the first.

See cases of

20 *Cate v. Thayer*, 3 *Greenl.* 71.

*Keith v. Reynolds*, 3 *Greenl.* 393.

*Lodge v. Lee*, 6 *Cranch* 237.

*Eliot v. Thatcher*, 2 *Metc.* 44.

*Worthington et al., exr's. v. Hylyer.*, 4 *Mass.* 195.

*Wheeler v. Randall*, 6 *Metc.* 529-532.

*Black v. Grant*, 50 *Maine* 364.

*Spiller v. Scribner*, 36 *Vt.* 245.

*Cutler v. Lafts*, 3 *Pick.* 277.

*Ela v. Cord*, 2 *N. H.* 115.

30 *Abbot v. Pike*, 33 *Maine* 204.

*Drinkwater v. Sawyer*, 7 *Maine* 366.

*Marr v. Hobson*, 22 *Maine*

*Pike v. Monroe*, 36 *Maine* 309.

Again, where two descriptions of land are conveyed, one by *name*, and the other by *metes and bounds*, or *courses and distances*, the grant will operate to pass the land according to that description which is *most beneficial to the grantee*.

*Hawkins v. Hanson*, 1 *Harris and McHenry* 523.

*Vance v. Fore*, 24 *Cal.* 435.

40 *Hall v. Gittings*, 2 *Har. & John.* 112.

The complainant asks that power of attorney and agreement be construed so as to be most beneficial to him.

Another rule. Where there are two clauses in a deed of which the latter is contradictory to the former, then *the former shall stand*.

See *Gruise Dig.*, title "Deeds," chap. 20, § 8.

*Am. Jurist*, Vol. 23, p. 279.

Another rule, governing the construction of deeds containing conflicting descriptions, is that the description the least likely to be affected with mistakes is to be adopted. 10

*Vance v. Fore*, 24 Cal. 435.

The description, "*All our Homestead Farm on Fresh Pond*," is capable of *no mistake*. But the description, "*Beg. at, or near F. P. school house, &c., and running easterly, as the ditch and fence now stands, to the sea or ocean,*" &c., is capable of mistakes.

Because, the word "*near*" is *indefinite*. It might mean one yard or fifty off from F. P. school house.

Because, the word *easterly* is indefinite, and permits the course to run as complainant claims it. 20

Because, the words "*ditch and fence*" are indefinite. They did not extend, by *one hundred and fifty yards*, to the sea. (See case, page 71, line 25, &c.)

There were many other ditches and fences there such as these. *They* might take in the portions in dispute.

The case must be determined upon the *writings* between the parties.

Parol evidence that, at the time of the bargain, the parties were on the land, and that the defendants designated points upon alleged boundary line, is inadmissible. 30

See case of *Peaslee v. Gee*, 19 N. H. 273.

Also all parol evidence as to the directions defendants gave Morris about what land he should sell, was clearly incompetent.

The defendants cannot contradict their power of attorney in that way.

They cannot come in court to show they had a different *intention* from that expressed in their deed of authority to Morris.

If the parol testimony is admissible in the construction of these instruments, then we submit that the evidence shows the complainant agreed with Morris to buy "*all the land H. Wardell died seized of, not conveyed away at that time.*"

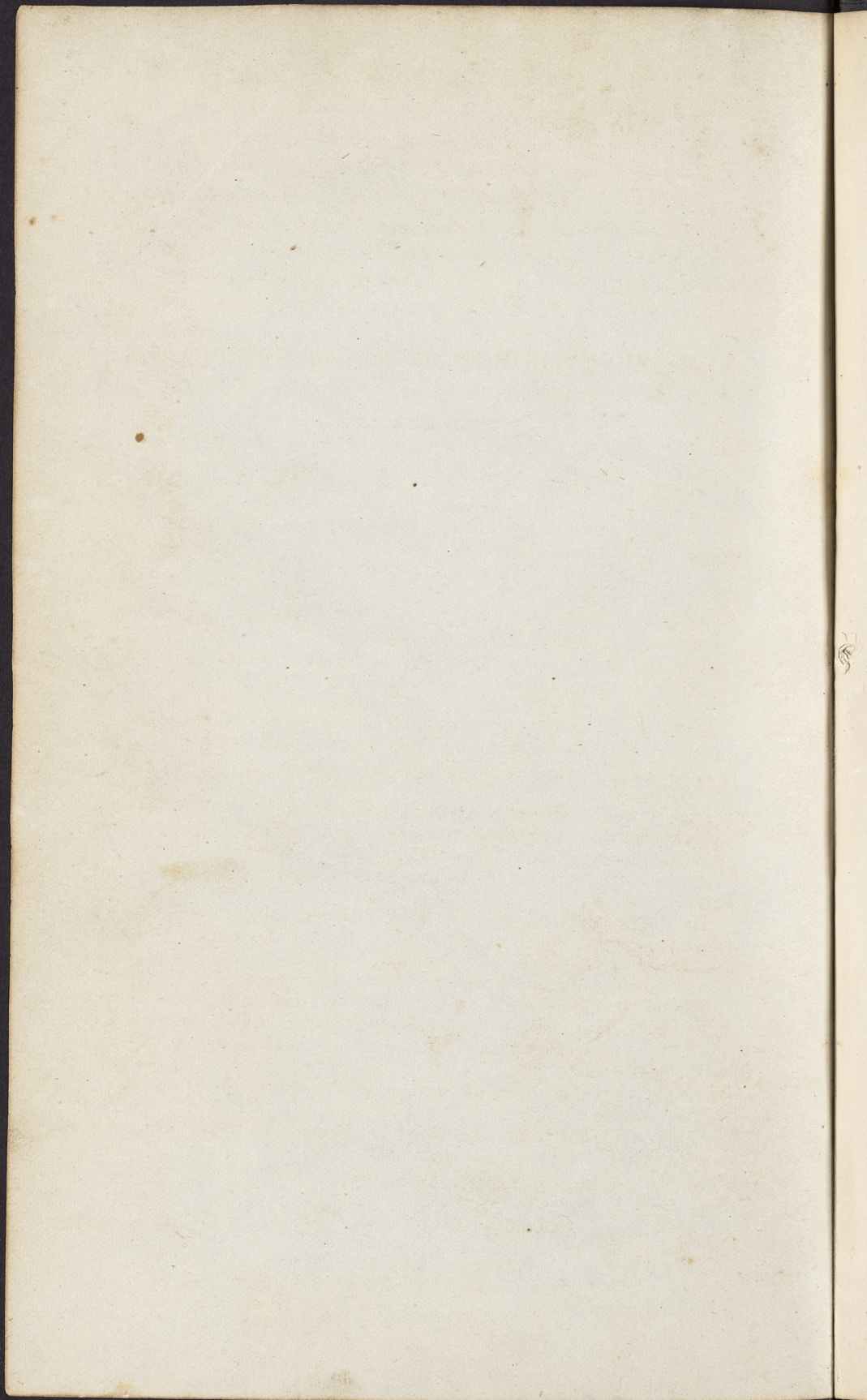
See complainant's and Morris' testimony.

The extrinsic facts and circumstances show that complainant is entitled to the relief prayed for in his bill of complaint.

WM. H. VREDENBURG,  
*Solicitor of complainant.*

If the party testifies in substance to the facts of the case, then we admit that the evidence shows the complaint agreed with those to be all the facts. It is not a question of the extent of the facts. See complaint and Mr. [Name] testimony. The circumstances and circumstances show that complaint was made to the relief prayer for in his bill of complaint.

WM. B. VERDENBERG  
Attorney at Law



## NEW JERSEY COURT OF ERRORS & APPEALS.

ARTHUR V. CONOVER, Appellant, } *On Appeal from Chancery.*  
AND } *On Bill, &c.*  
MRS. WARDELL, and Als., } *Answer and Proofs.*  
Appellees.

Defendant's answer denies all fraud, either directly or indirectly, and denies complainant's demand.

J. W. Morris resided at Long Branch for many years.

Arthur V. Conover made Morris his own agent.

Spoke to him to find him (Conover) a place.

Saying I have sold my place at Freehold, have you (Morris) one for me? Conover went with Morris and examined the Wardell place—land boundaries, buildings, &c.,—before he began written negotiation.

Conover and Morris went in company from Long Branch to the place in question, and therefore came to and viewed and passed over or through the South boundary line and Southward part of the premises before arriving at the buildings or other part of the premises.

The boundary line, namely, "the *ditch and fence*," shown then to Conover, as the Southward boundary line of the farm. Only the land North of that *Ditch and Fence line*, that Conover then saw and had pointed out to him was intended to be sold to Conover.

Morris, the agent, sold to Conover only the land North of that line. Defendants did not sell him any other land. Conover and Morris were together viewing the premises, and returned together to Long Branch.

Then Conover dictated the writing of the Power of Attorney.

Told Morris to write it.

Conover read it before it was signed by the Wardell's.

Approved of it; accepted it.

See evidence of Morris and Wardell.

Afterwards, agreement was written and signed by Morris and Conover.



The evidence shows that Conover again went from Long Branch and examined the premises at other times, either alone or with others, before Deed was executed by Wardell's and after power of attorney was signed.

The Parol evidence positively shows that Conover did not buy any land South of the straight base line—what he went to look at—and what was shown to him.

And on that show and examination Conover dictated the writing of the power of attorney and Deed.

The power of attorney and agreement were both made and framed on that show and examination.

Not with reference to *all* what Harry Wardell died seized of. Not with reference to what all the Wardell farm was 40 years ago, or originally; not with reference to any other parcel. Harry Wardell in his life time sold off lots to Mr. West, and Valentine and others, South of the base line referred to; which line Morris in his evidence says he first and always pointed out to Conover as the extent or South boundary of the land which Conover negotiated for and bought.

The lots of Messrs. West, and Valentine, and Cook, &c., are situated South of that base line.

The lots so sold off were enclosed by fences; some had dwellings on them occupied by other persons—plain, visible monuments to Conover, and to all other persons, when they first approach the property—and sufficient to show any one, that they were not at the time of view and examination or purchase by Conover, then, a part of the Wardell land.

A sufficient circumstance to indicate immediately to any one that the boundary starting from the beginning corner, was a straight line along ditch and fence to the Sea, and did not include, and was not intended to include any land South of the "ditch and fence," or in the rear of any of those lots or between any of the lots, or otherwise than north of said base line, unless expressly stipulated for and specified particularly in the negotiations and agreement.

The evidence shows that no allusion was made by any of the parties to include in the purchase any of the South land, but only the land North of that straight base line to the sea.

*Morris did not know* that the Wardell's owned any other land.

Parol evidence not admissible to support demand, but only admissible to resist recovery.

Wood, *vs.* Lee, 5, *Monroe*, 57.



Written agreement ; best evidence.

Jarvis, *vs.* Palmer, 11, *Paige*, 569.

Miller, *vs.* Chetwood, 1, *Green*, Ch. 199.

Hunt, *vs.* Gest, 2, *Har.*, and *Johnson*, 498.

A conveyance, or contract for sale of land, is to be construed by its distinct, and visible boundaries and monuments in preference to quantity.

Allerton, *vs.* Solomon, 3, *Sand*, Ch. R.,  
72 ; 2, *Mass.*, 380.

Parol evidence as to boundary and monuments, and location of monuments.  
Brown, *vs.* Herdon, 3, *Fairfield*, *Rep.*, 164.

Parol evidence must be *clear*, as to mistake or fraud.  
Gillespie, *vs.* Moon, 2, *Johnson*, Ch., 585.

When a deed is of doubtful construction. The construction given by the acts of the parties, is the true one ; unless the contrary be *clearly* proven.  
Gum, *vs.* Clark, 1, *Met. R.p.*, 378.

Conover before making of deed, and after view of the premises by him, procured survey and maps to be made, according to the show made to him, and according to the agreement. The map and survey so made, was adopted by him, without objection. The same boundary line, called the South Base line of the land, was designated the same on the map and survey by him and his surveyor.

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The evidence shows that he, Conover, the complainant, suggested the preparation of deed, executed by Wardell's. The description of the land, as written in the deed, was also adopted, and used by Conover in the mortgages he gave to Wardell's.

A boundary in a deed may be rejected, when it is manifest from circumstances it was inadvertently inserted.

2, *Metc. Rep.*, 41.

A boundary line run part way by fixed monuments, is to be continued straight to the end.

16, *Pickering*, 435.

The end in this case is "———" to, or at the sea. The evidence shows that the ditch in question had been filled up partially by the railroad, &c. Fence not continuous all the way from the *beginning corner to the sea*. But the boundary line in the power of attorney, agreement and deed, by the written expression in all those papers, is one continuous straight line from beginning corner to the sea. The fence had, with the ditch, been before, for many years, continuous straight to the sea bank.

Where a description is *without ambiguity*, and followed by a clause repugnant. The second clause must be rejected.

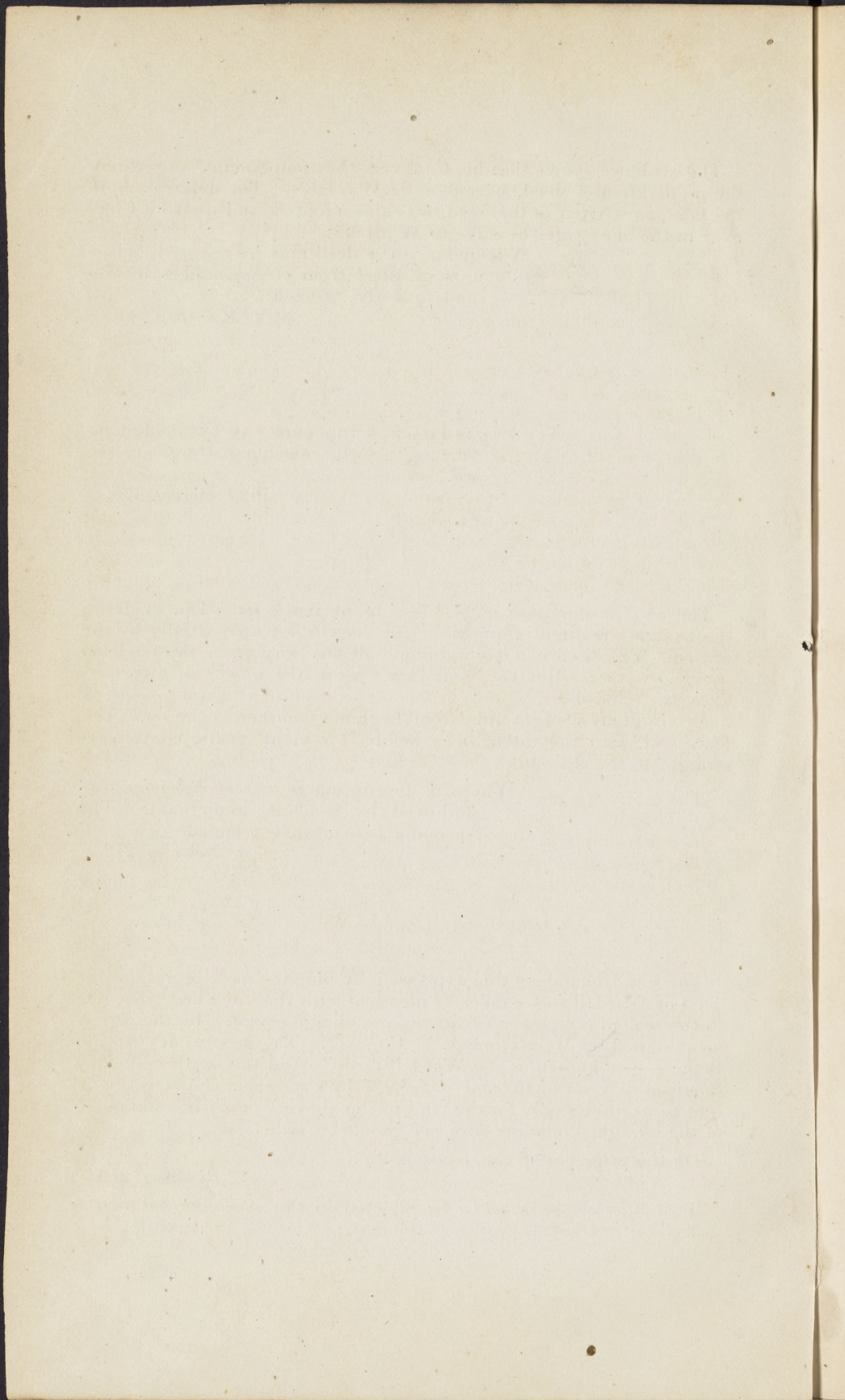
3, *Pickering*, 272.

The south boundary line expressed by minutes and degrees in the deed of Wardell to Conover, is identical with the ditch and fence line to the sea, in the power of attorney and agreement. In the agreement signed by Morris and A. V. Conover. The general description is the — "known as the Wardell farm." And the south boundary line is clearly set forth, and *is followed* by expression showing the intent to negotiate only for the land in the above boundaries, and north of the straight line *along ditch and fence to the sea*.

On the principle of the decision of.

3, *Pickering*, 272.

That latter clause is *not* to be rejected in the agreement, but *directly controls the general description* in the first part of the agreement.



Whilst in the deed made by J. W. Morris, the metes, and bounds, and courses, and distances, are *first* clearly set out. In the deed signed by Mrs. Wardell, they are also clearly set out; but in the deed signed by J. W. Morris, the metes and bounds are *followed* by a general description or reference. "Wardell farm," &c.

In the Mrs. Wardell deed, they are *not followed* by such general description or reference.

On the principle of decision of.

3, *Pickering*, 272.

This last general reference in the J. W. Morris deed, *does not* govern nor rule, the deed, or the transaction, because the *first* description in the same paper is clear and without ambiguity.

Conover had every circumstance to show him, at and before the time he bought, that the Wardell farm 40 years ago, was not the Wardell farm of the day of Conover's visits to the premises, or of the day of negotiation of Conover with Morris and the defendants.

The change of society, of business, the increase of population, and of improvements in the neighborhood (Long Branch) the sale of building lots by Harry Wardell in his life time. South of the base line ditch and fence were circumstances, and the existence of buildings and fences on the lots so sold by Harry Wardell, were visible monuments to Conover, at the time of his view of the premises with Morris, which he could not well mistake, and which forbid of the existence of any surprise or fraud on him, if the defendant even desired to mislead him.

If the complainant's evidence and map made by F. Corlies, Surveyor, show that the original south boundary line of the original tract, was south of these lots so sold off by Wardell to Mr. West, and Cook, and Valentine.

The lots were plotted on the Corlies' map; made an exhibit by complainant.

The map made by William R. Maps, Surveyor, also an exhibit.

The evidence proves that land of Wardell had been offered for sale in lots, some sold south of the fence and ditch many years before Conover negotiated. Other land there offered by Wardell—also by his heirs—for sale, long before Conover came. The nearness of the strips of land referred to in complainant's bill to lots so sold off, and occupied and fenced in by former purchasers.

Show that the circumstances repel every presumption in favor of complainant.

The positive testimony. The circumstantial evidence. The complainant's own acts and conduct prove that the lands attempted to be claimed by him, was never a subject matter of negotiation with him and the defendants, and were not intended to be included by the parties in any of the writings, contracts, or deeds.

The lapse of time (some months) between the time of the execution of the said power of attorney, and the execution of said deed by Mrs. Wardell, and the execution of the mortgages by the complainant afforded complainant full opportunity to know the boundaries.

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and nature of all the premises. Yet he accepted the specific south boundary line and deed without any objection.

If the complainant, at the time of the negotiation, had a private feeling or opinion that he bought the parcels of land claimed in his bill, he did not during all the time give any expression of any such opinion to the parties.

Why not? Unless he knew that such parcels were not a part of the *Res Gestæ*; unless he feared that such expression would put defendants on their guard to except such parcels in writing.

The defendants insist that such private opinion so withheld, and mental reservation on the part of Complainant, and his acts and conduct, as shown by the evidence, amount to the suppression of the truth—to constructive fraud on his part—and that all the evidence forbids the Complainant from successfully asking, either in equity or law, for any of the relief sought after in his bill or proceedings.

R. ALLEN, JR., *Solicitor,*  
*And of Counsel of Defendants.*