

telephone, to refuse the verdict as tendered, and required the jury to reconsider and find a different verdict. The Supreme Court held that this was error requiring a reversal. In that case, the court did not direct a verdict. The point raised at bar was not involved there.

It is unimportant that the jury did not expressly announce the verdict for the further reason that an appeal does not lie from a verdict. An appeal can only lie from a judgment. If plaintiff appeals from the judgment that is one thing, but if it appeals from a verdict, it has no standing and the appeal should be dismissed. A verdict is not such a finality from which an appeal lies.

CONCLUSION.

For the foregoing reasons, we respectfully submit that the trial court committed no error, and that the trial judge properly directed a verdict for the defendant, and that, therefore, the judgment should be affirmed.

Respectfully submitted,

Feder & Rinzier,
Attorneys of Defendants-Appellees.

Feder & Rinzier,
of Counsel.

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Notice of Appeal.

(Filed .) 10

New Jersey Supreme Court

UNION COUNTY.

WILLIARD G. WILKINSON,
Plaintiff,

v.

ORANGE MOUNTAIN LAND COMPANY,
a corporation of the State of
New Jersey, and ROCK SPRING
COUNTRY CLUB, a corporation of
the State of New Jersey,
Defendants. } Action at Law. 20

To Messrs. STAMLER, STAMLER & KOESTLER, Esqs.,
Attorneys for Plaintiff.

GENTLEMEN: 30

PLEASE TAKE NOTICE that the defendant Orange
Mountain Land Company appeals to the New Jer-
sey Supreme Court from the whole of the judg-
ment entered in this cause.

GROSSO, BRUNDAGE & ANDERSON,
Attorneys for Defendant, Orange
Mountain Land Company.

Dated November 10th, 1926. 40

Grounds of Appeal.

(Filed .)

NEW JERSEY SUPREME COURT,
UNION COUNTY.

10

WILLIARD G. WILKINSON,
Plaintiff-Appellee,

v.

ORANGE MOUNTAIN LAND COMPANY,
a corporation of the State of
New Jersey,
Defendant-Appellant.

Action at Law.

20

The appellant states the following grounds of appeal:

30

1. The Trial Court erroneously denied appellant's motion for a nonsuit, when thereunto moved, whereas, said motion should have been granted on the following grounds, urged in support thereof: "It (the contract) provides that \$2,000 is to be paid to the architect, \$250 when the plans and specifications have been furnished to the company, and \$1,750 at such time as the company shall have decided to proceed with construction of the said golf course. There is nothing in the testimony to indicate that the Orange Mountain Land Company has decided, or did decide to proceed with the construction of a golf course."

40

2. There is no evidence that the Orange Mountain Land Company constructed or decided to construct a golf course.

Grounds of Appeal.

3. The Trial Court erroneously refused to direct a verdict in favor of the defendant Orange Mountain Land Company when thereunto moved, whereas said motion should have been granted on the following grounds urged in support thereof: "There is no evidence before the jury to show that the Company decided at any time to proceed with the construction of said golf course. By the plain terms of the contract, the contract provides that for a payment of a specific amount, \$250, and the delivery of plans and specifications, which has been paid, \$1,750 at such time as the company shall have decided to proceed with the construction of the said golf course."

10

20

4. The Trial Court refused to instruct the jury as follows, when thereunto requested by counsel for defendant Orange Mountain Land Company: "If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing the contract sued on in this case, then your verdict must be such a proportion of the entire price as the fair cost of the work done bears to the fair cost of the whole work and in respect to the work not done such profits as he would have realized by doing it."

30

5. The Trial Court refused to instruct the jury as follows, when thereunto requested by counsel for defendant Orange Mountain Land Company: "If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing the contract sued on, and as there is no evidence to indicate either the value of the work performed or the profits the plaintiff would have

40

Summons.

realized if he had performed, your verdict must be limited to nominal damages."

GROSSO, BRUNDAGE & ANDERSON,
Attorneys for Defendant-Appellant.

10 A true copy,
JOSEPH B. FITZPATRICK,
Clerk.

Summons.

(Filed .)

THE STATE OF NEW JERSEY: TO ORANGE MOUNTAIN
LAND COMPANY, a corporation and the
ROCK SPRING COUNTRY CLUB, a corpo-
20 (Seal) ration.

You are summoned to answer the an-
nexed complaint of Williard G. Wil-
kinson, in an action at law, in the New
Jersey Supreme Court. AND TAKE NOTICE that un-
less you file your answer to said complaint with
the Clerk of the said New Jersey Supreme Court
at Trenton, within twenty days after service upon
you of this writ and the annexed complaint, the
30 plaintiff may proceed in said suit and judgment
may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of
our New Jersey Supreme Court at Trenton, this
Twenty-sixth day of December, Nineteen Hundred
and Twenty-five.

EDWARD J. KELLEHER,
Clerk.

STAMLER, STAMLER & KOESTLER,
Attorneys.

Complaint.

(Filed .)

NEW JERSEY SUPREME COURT,
UNION COUNTY.

WILLIARD G. WILKINSON,
Plaintiff,

10

v.

ORANGE MOUNTAIN LAND COMPANY,
a corporation, and the ROCK
SPRING COUNTRY CLUB, a corpo-
ration,
Defendants.

The plaintiff, Williard G. Wilkinson, residing in
the Borough of Fanwood, in the County of Union
and State of New Jersey, complains:

20

1. That on and before the eleventh day of Au-
gust, 1924, the plaintiff was a golf course architect.

2. That on and before the eleventh day of Au-
gust, 1924, the defendant Orange Mountain Land
Company was a corporation of the State of New
Jersey and as such was the owner and possessor
of a large tract of land known as property belong-
ing to the South Mountain Park Land Company,
upon which it desired to construct an eighteen hole
golf course.

30

3. That thereupon on the eleventh day of Au-
gust, 1924, the said Orange Mountain Land Com-
pany and the plaintiff did enter into a contract,
in writing, in and by which said architect, for a
consideration of two thousand (\$2,000.00) dollars,

40

Complaint.

10 agreed to prepare plans and specifications and to stake out all tees, fairways, greens, traps and bunkers and do other work mentioned in said agreement for which said Company agreed to pay said plaintiff said two thousand (\$2,000.00) dollars as therein provided, copy of said contract is here-
to annexed and made a part hereof as Schedule "A."

20 4. That said plaintiff did perform certain of the work as provided in said contract and did receive payment of two hundred and fifty (\$250.00) dollars on account of the same, and said plaintiff has been ready and willing to perform said contract and complete the same and has, in fact, made the entire layout of the said golf course and has prepared leaflets and booklets in reference to said course which have been submitted to and adopted by said defendants.

30 5. That after the making of said contract, Exhibit "A," the said defendant Orange Mountain Land Company caused to be incorporated another corporation known as the Rock Spring County Club and the said Orange Mountain Land Company turned over to the said defendant, Rock Spring Country Club, the matter of developing said golf course and thereafter all matters in connection with the building of said golf course and maintaining the same were conducted by the Rock Spring Country Club.

40 6. That the said defendant Rock Spring Country Club at the request of the Orange Mountain Land Company, did adopt the work, plans and drawings of the plaintiff and did use the information compiled by the plaintiff and his maps,

Complaint.

drawings and layout of said Golf Course in getting subscriptions to the membership of the said Rock Spring Country Club and did in all things adopt the contract and agreement made by and between the plaintiff and the Orange Mountain Land Company and assumed the obligation for payments therein contained, which contract is annexed here-
to as Schedule "A." 10

7. That the members and organizers of the two defendants are the same men and the two corporations are being run jointly for the purpose of building, constructing and operating said eighteen hole Golf Course.

20 8. That the said defendants decided to construct said Golf Course upon said property and have actually done work thereon and although plaintiff was ready and willing to perform all of his duties and work as provided to be done under said contract Schedule "A," the said defendants have unlawfully and improperly and without any justification breached said contract and have refused to permit plaintiff to perform any work thereon and have placed another architect in charge of said work.

30 To the damage of the plaintiff seventeen hundred and fifty (\$1750.00) dollars besides interest.

SECOND COUNT.

1. Plaintiff repeats the allegations contained in the First Count.

2. Plaintiff did, pursuant to the terms of said contract, prepare and deliver to the defendant the Orange Mountain Land Company detailed plans and specifications for the construction of said Golf 40

Complaint.

Course and did receive two hundred and fifty (\$250.00) dollars on account of said contract price as provided in said contract.

10 3. That thereafter the said defendant Orange Mountain Land Company decided to proceed with the construction of said Golf Course and had conveyed to it the land and property upon which said Golf Course was to be constructed and actually did work of constructing a portion of said Golf Course.

20 4. That the said Orange Mountain Land Company immediately upon receiving the deeds of conveyance for portions of said property, in turn, made a deed of conveyance for the same to the defendant Rock Spring Country Club and that said defendant Rock Spring Country Club thereupon assumed the obligation of the Orange Mountain Land Company contained in said contract of August 11, 1924, and did further work for and upon the construction and development of portions of said Golf Course laid out and designed by the plaintiff and used the prospective drawings and plans of the plaintiff in soliciting membership to said Golf Course.

30 5. That plaintiff has been ready and willing and able at all times to perform and complete his part of said contract, in accordance with the true intention and meaning thereof and that the defendants have refused to permit plaintiff to come upon the ground and to further supervise the erection and construction of said Golf Course and have thereby breached the terms and conditions contained in said agreement and said defendants have held out to the public that said Golf Course has

40

Complaint.

been planned and is being constructed under the supervision and direction of the plaintiff.

Judgment will be claimed against both defendants on both counts for seventeen hundred and fifty (\$1750.00) dollars, or in the alternative against either of said defendants.

10

STAMLER, STAMLER & KOESTLER,
Attorneys of Plaintiff.

SCHEDULE "A."

AGREEMENT made this 11th day of August, 1924, between the Orange Mountain Land Co., a corporation of the State of New Jersey, hereinafter called the Company, party of the first part, and Williard G. Wilkinson, hereinafter called the architect, party of the second part, witnesseth that the Company agrees to employ the said architect for the purpose of designing an 18 hole golf Course to be located on the property shown the architect, and known as property belonging to the South Mountain Park Land Company.

20

THE SAID ARCHITECT agrees, for and in consideration of the sum of \$2,000, to be paid as hereinafter stated, to prepare a plan and specifications for the erection and construction of an 18 hole golf course on the above property. Said plan is to include all of the details and landscape effects of the entire property and its available features, for golf, tennis, riding, and swimming. In addition thereto and for the same consideration, to act in an advisory capacity to the said Company in all matters pertaining to the promotion and planning of the above.

30

THE SAID ARCHITECT also agrees to personally stake out all Tees, Fairways, Greens, Traps, and Bunkers on the said property, in accordance with the plan above.

40

Complaint.

THE SAID ARCHITECT also agrees to make all necessary models of Greens to enable the constructor of said course to build the said Greens with the desired characters and undulations as indicated on the said plan.

10 THE SAID ARCHITECT also agrees to use his professional status and his best efforts to carry out the designing and construction of the said course to a successful completion.

The company agrees to pay the architect, the aforementioned sum of \$2,000 in the following manner.

\$250.00 on the delivery of details, plans and specifications.

20 \$1,750 at such time as the Company shall have decided to proceed with the construction of the said golf course.

It is further agreed between the parties, that in case the Company shall decide not to construct the golf course on the property, aforementioned, that the initial payment of \$250.00 shall be in full settlement and satisfaction, for any services which the said architect may have rendered to the said Company and shall complete the terms of this contract.

30 IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its President and attested by its Secretary, and the party of the second part has signed this agreement and

Answer.

affixed his seal hereto, the day and year first above written.

Signed, Sealed and Delivered }
in the presence of }

ORANGE MOUNTAIN LAND CO., 10
By FRANK BREWER,
President.

Attest:

ALFRED J. GROSSO,
Secretary.

W. G. WILKINSON. (L. S.)

Answer.

(Filed .) 20

NEW JERSEY SUPREME COURT,
UNION COUNTY.

WILLIARD G. WILKINSON,
Plaintiff,

v.

ORANGE MOUNTAIN LAND COMPANY,
a corporation of the State of
New Jersey, and ROCK SPRING
COUNTRY CLUB, a corporation of
the State of New Jersey,
Defendants. } Action at Law. 30

The defendant, Orange Mountain Land Company, a corporation of the State of New Jersey, with its principal office in the City of Orange, County of Essex and State of New Jersey, says:

Answer.

ANSWER TO FIRST COUNT:

- 1. It has no knowledge or information sufficient to form a belief as to the first paragraph of the complaint.
- 10 2. It denies Paragraph 2 of the complaint.
- 3. It admits Paragraph 3.
- 4. It admits Paragraph 4 in so far as the allegation therein contained of a payment of \$250, on account of the same, but denies the remainder of the said paragraph.
- 5. It denies Paragraph 5.
- 6. It denies Paragraph 6.
- 20 7. It denies Paragraph 7.
- 8. It denies Paragraph 8.

ANSWER TO SECOND COUNT:

- 1. This defendant repeats the allegations contained in the answer to the first count as its answer to Paragraph 1 of the second count of the complaint.
- 30 2. It admits that it paid to the plaintiff the sum of \$250, but denies the remainder of the said paragraph.
- 3. It denies Paragraph 3 of the said count.
- 4. It admits that it conveyed certain real estate to the Rock Spring Country Club, and denies the remainder of the said paragraph.
- 5. It denies Paragraph 5.

40
 Attorney for Defendant
 Orange Mountain Land Company.

Appearances.

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

October Term, 1926.

| | |
|------------------------------------------------------------------------------------------------------------------------------------|------|
| WILLIARD G. WILKINSON, <i>v.</i> ORANGE MOUNTAIN LAND COMPANY and THE ROCK SPRING COUNTRY CLUB, a Corporation. | } 10 |
|------------------------------------------------------------------------------------------------------------------------------------|------|

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. Peter F. Daly, Circuit Court Judge, and a Jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the third day of November, A. D. 1926, at 11:45 A. M. 20

APPEARANCES:

MESSRS. STAMLER, STAMLER & KOESTLER,
 HARRY YOUNG, Esq. (Present),
 Attorneys for the Plaintiff.

MESSRS. RIKER & RIKER,
 THEODORE McC. MARSH, Esq. (Present), 30
 Attorneys for the Defendant The Rock
 Spring Country Club.

MESSRS. GROSSO, BRUNDAGE & ANDERSON,
 ALFRED J. GROSSO, Esq. (Present),
 Attorneys for the Defendant The Orange
 Mountain Land Company.

Mr. Young opens the case for the plaintiff.

Mr. Marsh opens the case for the defendant The
 Rock Spring Country Club. 40

Alfred J. Grosso, direct.

Mr. Grosso opens the case for the defendant The Orange Mountain Land Company.

ALFRED J. GROSSO, a witness called on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

10

Direct examination by Mr. Young:

Q. You are a member of the firm of Grosso, Brundage & Anderson, in Orange, the attorneys for the Orange Mountain Land Company in this suit? A. I am.

Q. You are secretary of the Orange Mountain Land Company? A. I am.

20

Q. Were you also a member of the committee for forming the Rock Spring Country Club? A. I don't know of any committee for forming the Rock Spring Country Club.

Q. Are you secretary of the Rock Spring Country Club? A. Yes.

Q. Will you please tell me who is the chairman of the golf committee of the Rock Spring Country Club? A. Charles Robbins.

30

Q. Mr. Grosso, are all the members or incorporators of the Orange Mountain Land Company also founder members of the Rock Spring Country Club? A. Yes.

40

Q. What was the object of the Orange Mountain Land Company? A. The Orange Mountain Land Company is a corporation that was organized in the early part of the year 1924, and it purchased a large tract of land in the Orange Mountains. The original idea being to go into the real estate development business. The certificate of incorporation gives it that power. It was organized as a real estate company.

Alfred J. Grosso, cross.

Q. Has it any other powers outside of the power of a real estate company? A. Just the usual general powers.

Q. But primarily for buying and selling real estate, is that correct? A. Yes, that is correct.

Q. What, on the other hand, is the object of the Rock Spring Country Club? A. The Rock Spring Country Club's powers are purely social and recreational, and for the purpose of sports. 10

Q. Mr. Grosso, do you know at what time, you say it was some time in 1924,—that the Orange Mountain Land Company was incorporated? A. Yes.

Q. Was it July 21, would you say? A. I have the certificate of incorporation. 20

Mr. Marsh: I think these matters should be proved by the certificate of incorporation, not from the mouth of the witness. I object to the questions. 20

Mr. Young: I asked him merely as the secretary of the company, if it is within his knowledge. If it is not, it is not of such importance. I will withdraw the question. That is all, Mr. Grosso.

Cross examination by Mr. Marsh: 30

Q. Mr. Grosso, you speak of founder members of the Rock Spring Country Club; what do you mean by that term? A. Well, I took it from the question that he meant members of the Rock Spring Country Club. There are no founder members in the plan of organization of the Rock Spring Country Club.

Q. How is the membership constituted of the Rock Spring Country Club? A. As I recall it the membership is divided into three classes, certifi- 40

Alfred J. Grosso, cross.

cate members, associate members, and non-resident members.

Q. How many members are there of the certificate membership class? A. 324.

10 Q. How many persons who have any interest in the Orange Mountain Land Company are there who have any membership in the Rock Spring Country Club? A. 19.

Q. Who are the officers of the Orange Mountain Land Company as of the time in 1924 when the contract was made? A. Mr. Frank Brewer was president; John S. Francis, vice-president; and Alfred J. Grosso, secretary and treasurer.

Q. Have they held those offices from 1924 to the present time? A. They have.

20 Q. Did Mr. Brewer hold any office in the Rock Spring Country Club? A. No.

Q. Does Mr. Francis hold any office in the Rock Spring Country Club? A. No, he holds no office.

Q. Is he on the board of governors or trustee of the Rock Spring Country Club? A. No, he is not.

Q. Are either of those gentlemen? A. No. Neither of them are.

30 Q. When was the first meeting of any of the persons interested in the Rock Spring Country Club? Have you your minute book here that will tell us that fact? A. Yes, I have.

Q. Using that, will you tell us the time when that was first contemplated? A. The first meeting of members of the club was held on February 18, 1925.

40 Q. Can you tell me who the persons were who were interested at that time in the formation, pointing us as to any interrelationship between the two units of the Orange Mountain Land Com-

Alfred J. Grosso, cross.

pany and the Rock Spring Country Club? A. I didn't get that question clearly.

Q. Have you there the persons who were present at the meeting and interested in the organization of the Rock Spring Country Club? A. Yes. I have a list. 10

Q. Will you tell me how many? A. Do you mean how many are interested in the land company who were present at that meeting?

Q. How many were present altogether and how many of those who were present were interested in the land company? A. There were sixty-one persons present at the meeting. Twelve of the sixty-one are members of the Orange Mountain Land Company.

20 Q. Who were the officers of the Rock Spring Country Club and who were the members of the board of governors? A. Do you mean the officers at that time? They are the same now. The president is T. H. Powers Farr; Vice-President Charles Robbins; Secretary Alfred J. Grosso; Treasurer Clarence S. A. Williams. The board of governors are Mr. Farr, Mr. Russell Colgate, Stanley M. Babson, Clarence S. A. Williams, George O. L. Moore, T. McCurdy Marsh, Worrall F. Mountain, Dallas W. Haines, George S. Spottiswoode, Miner W. Osborn; Mr. Dolson was a governor at that time but he was succeeded by Dallas Haines. 30

Q. Of that group of officers and directors which you have mentioned, how many are there that have any relationship to the Orange Mountain Land Company? A. Two.

Q. And who are those? A. Mr. Farr and Alfred J. Grosso.

40 Q. Is there any interrelationship whatsoever between the organization known as the Orange

Williard G. Wilkinson, direct.

Mountain Land Company and the Rock Spring Country Club except the fact that in the cases in which you have mentioned individuals belonged to the two organizations? A. None.

10 Q. Have you the certificates of incorporation of the two companies with you? A. Yes, I have.

Mr. Marsh: Have you any objection to having them marked for identification?

The Court: Why don't you agree to put them in?

Mr. Young: I agree to put them in.

A. (Continued.) This is the certificate of incorporation. Here they are, both of them.

20 (Certificate of incorporation of Orange Mountain Land Company entered in evidence and marked Exhibit D-1.)

(Certificate of incorporation of Rock Spring Country Club entered in evidence and marked Exhibit D-2.)

Redirect examination by Mr. Young:

30 Q. When you speak of Alfred J. Grosso being interested you mean yourself, don't you? A. I mean myself, yes. I thought I would mention the name for the purpose of the record.

Mr. Young: That is all.

WILLIARD G. WILKINSON, the plaintiff, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Young:

Q. Mr. Wilkinson, where do you live? A. Plainfield, New Jersey.

40 Q. What is your profession? A. Golf architect.

Williard G. Wilkinson, direct.

Q. How many years have you been in that profession? A. About eleven years.

Q. Mr. Wilkinson, before the 11th day of August, 1924, did you have any conversation with an officer of the Orange Mountain Land Company in relation to drawing a contract to make a golf course? A. Yes, sir. 10

Q. Mr. Wilkinson, is this the contract, is this your signature? A. Yes, sir.

Q. And is that the contract which you entered into with the Orange Mountain Land Company? A. Yes, sir.

The Court: Is it the same as in the pleadings?

Mr. Young: Yes, sir. 20

Mr. Grosso: That is admitted.

(Contract entered in evidence and marked Exhibit P-1.)

Q. Did you make an effort to carry out the terms of this contract? A. In every way; yes, sir.

Q. What did you do? A. I first made an examination of the property, after the first conference which was held about August 2 or 3 or thereabouts. I made an examination of the property in company with Mr. Brewer and Mr. Grosso, and an employed surveyor, that is a surveyor employed by the company for the purpose of defining the boundary lines of the property upon which the golf course was to be designed. In addition that I made something like twelve visits to the property for the purpose of designing the various eighteen holes on the property. 30

Q. And from that inspection, and so forth, and examination, did you draw up a set of plans for the working plans for the course? A. Yes, sir. 40

Williard G. Wilkinson, cross.

Q. Are these the plans which you drew? A. Yes, sir. In addition to blue prints.

Mr. Young: Have you any objection to these?

10 Mr. Marsh: I would like to ask one or two questions before.

Special cross examination by Mr. Marsh:

Q. Mr. Wilkinson, in preparing these plans is this the form in which you prepared them originally, or do you prepare them on a tracing paper and blue prints? A. Of course on a tracing. It could not be put on there without a tracing.

Q. Is this in the same form as appears on your original tracing? A. Exactly.

20 Q. Have you your original tracing here? A. I have not, sir. The exact plan, however, was turned over to the club in blue print form. Not in colored form.

Q. You say turned over to the club. Who do you mean? A. The people with whom I was doing business at the time.

30 Q. Who were the individuals? A. Mr. Grosso, Mr. Schwartley, Mr. Brewer and Mr. Farr himself saw the plans and examined the plans. That is, just a colored black and white print of the original plans and blue print.

Mr. Young: Have you any objection?

Mr. Marsh: No. He says it is not the original, but it is an exact duplicate.

(Plan entered in evidence and marked Exhibit P-2.)

40 Q. What else did you do besides preparing the plans which have just been introduced? What

Williard G. Wilkinson, cross.

else did you do in carrying out the terms of your contract? A. I staked out the course as far as the tees, greens and bunkers were concerned; part of the work, such as making the models, was not done because it was understood that before—

Mr. Marsh: I object. 10

Q. Do not testify as to what was understood, Mr. Wilkinson. You say that the models, you did not do the models; why didn't you do the models? Not what you supposed. A. Because the models could not be prepared until construction work was started.

Q. Is that a usual course in your business to prepare the models after the construction has started? A. Yes, sir. 20

Q. Why is that? A. In a number of instances it is impossible to make models for the preparation of greens until such clearing has been made, in order to give me the opportunity of seeing exactly what kind of contour and work I have got to do before I can make the models.

Q. Was that the case in this particular instance? A. Yes, sir.

30 Q. Now, in your contract you agreed to act in an advisory capacity to the Orange Mountain Land Company in all matters to the promotion and planning of both. Will you kindly explain to the Court and jury any advice which you gave them regarding the organization of this golf club?

Mr. Marsh: I object until he fixes to whom and under what circumstances he gave this advice.

Mr. Young: Very well.

40 Q. Mr. Wilkinson, will you tell the Court and

Williard G. Wilkinson, cross.

jury at what time you gave the advice which I asked you in the former question, or any advice, just the time, give us the time and the place? A. The first meeting was held at the Rock Spring Inn about August 1.

10 Q. Is that the meeting Mr. Grosso testified to?
A. That was the first meeting. No, that is not the meeting Mr. Grosso referred to in which he said there were sixty-one members. This was the first meeting.

Q. By the way, were you at that meeting where the sixty-one members were? A. Yes, sir.

Q. Go ahead. This was at the Rock Spring Inn, in the Orange Mountains? A. Yes, sir; in the Orange Mountains. At that time—

20 Q. Wait a minute. Who did you speak to in regards to advice as to the planning of the club, or proposed club? A. Mr. Grosso, Mr. Schwartley, Mr. Samuel Supplee, Mr. Ralph Supplee, Mr. Francis.

Q. Mr. Grosso, he is the secretary or was the secretary of the Orange Mountain Land Company? A. Yes, sir.

Q. Who else? A. Mr. Brewer.

30 Q. What is Mr. Brewer, what capacity has he?
A. He was vice-president at the time of the Orange Mountain Land Company.

Q. Any other officer? A. I don't remember.

Q. Just tell the Court and jury what was said, what you said to them and what they said to you.

40 A. Well, it was discussed that the present gathering of men promote a country club, and I was asked to attend the meeting for the purpose of giving what advice I could about the matter, as I had had considerable experience with the promotion of a number of clubs. Various matters were

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discussed as to the means of acquiring the property and forming the club.

(Adjourned until 1:30 P. M.)

Afternoon Session 1:30 P. M.

10 Q. Mr. Wilkinson, before lunch you were testifying as to a conference had at the Rock Spring Inn. Will you tell the Court and jury just what the conversations were at that place and time?

Mr. Marsh: May I ask whether or not this conversation was before or subsequent to the making of the contract? If it was before the contract, and relates to it, it seems to me it should be excluded.

20 Q. Will you please fix a date as to the time when this meeting was held? A. About August 1.

Q. It was before the contract was drawn? A. Yes, sir.

Mr. Marsh: I object to it as the contract would be the result of the negotiations and anything prior to that time.

The Court: Objection sustained.

30 Mr. Young: In the contract itself it says that he is to act in an advisory capacity. He was in such capacity that evening, although it was before the making of the contract, it was the basis upon which the contract was drawn. It is one of the provisions of it.

The Court: He takes the position that he carried out his contract. Hasn't he sworn to that?

Mr. Young: Yes, sir.

40 The Court: He said he did everything he

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was required to do under the terms of the contract.

Mr. Young: Yes.

10 The Court: Why does not that stand until it is contradicted? You see when the contract refers to the duty of acting in an advisory capacity, it certainly means after the contract.

Mr. Young: May I proceed on the line of testimony of him acting in an advisory capacity after the contract was signed?

20 The Court: If you want to go into specifications he can tell all that he really did after the contract was signed, yes. The contract is admitted. He has generally stated that he did everything that he was required to do under the terms of the contract, as I remember his testimony.

Mr. Young: In my opening and also in the pleadings I am endeavoring to prove that he had this club—this new club, a separate club which they claim it is, was made and was formed at his own suggestion, and they are using his own suggestion to go back on him in this contract which he made with the Orange Mountain Land Company.

30 The Court: That was not your question. Your question was whether he acted in an advisory capacity as to the physical work that he did. What is your contention, that it was arranged to organize this club, the Rock Spring Country Club, before the contract was signed?

40 Mr. Young: Before, during, and after the contract was signed. Of course, I could bring that in in rebuttal but I would much prefer to introduce it now, if it is proper.

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The Court: Your question did not imply that that was its purpose. Your question was whether he acted in an advisory capacity. Advisory capacity with reference to the contract means an advisory capacity as to construction of the work, physical construction. 10

Mr. Young: In the contract it says: "In addition thereto and for the same consideration to act in an advisory capacity to the said company in all matters pertaining to the promotion and planning of the above." The planning would probably be physical, but the promotion is what I wish at this time to place before the Court and jury.

The Court: Ask your question. 20

Q. Mr. Wilkinson, please confine yourself to conversations had after the signing of this contract for the promotion of the golf course. A. Well, the first meeting after the drawing of the contract was held in my office.

Q. Where is that? A. At that time at 35 Cortlandt Street.

Q. And who was present? A. Mr. Grosso, Mr. Schwartley. 30

Q. Who is Mr. Schwartley? A. One of the founder members of the Rock Spring Country Club.

Q. Who else? A. Mr. Ralph Supplee.

Q. What is Mr. Ralph Supplee? A. Also one of the founder members of the Rock Spring Country Club. And Mr. Brewer.

Q. What took place at that meeting? They came to your office? A. Yes, they came there for the purpose of looking over tentative plans that 40

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I had drawn for the layout of the eighteen holes for the country club, and also to discuss generally the way to promote the club. In other words, it was discussed at that meeting that a country club be formed; that the present founder members, 10 that is the original organization committee, consisting of those gentlemen, was to interest other people in Orange and the vicinity of the Oranges in the promotion of the club.

Q. Who said that? A. Mr. Grosso.

Q. What else was said? A. The matter of drawing up a prospectus was discussed and it was suggested at that time that photographs be taken and that I complete a definite plan of the course, and that that plan be incorporated in the prospectus. 20 The prospectus also contains photographs which I did not take personally, but which I directed the photographer to take.

Q. Mr. Wilkinson, from the outcome of this meeting were you directed to furnish photographs for the prospectus which the Rock Spring Country Club was to send out to obtain membership?

Mr. Marsh: I would like to object unless he indicates who directed him.

30 Q. Yes, or no? A. Yes.

Q. Who was it that directed you to do this? A. Mr. Grosso and Mr. Brewer.

Q. Mr. Brewer is the vice-president of the Orange Mountain Land Company? A. Yes, sir.

Q. And Mr. Grosso is the secretary of the Orange Mountain Land Company? A. Yes, sir.

Q. Is this the prospectus which you speak of, Mr. Wilkinson? A. Yes, sir.

40 Q. Are those the photographs which you had taken under your supervision? A. Yes, sir.

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Q. There is a map in the back here which says, "Rock Spring Golf Course, Orange, New Jersey, by W. G. Wilkinson." Is this the plan which you drew? A. Yes, sir.

Q. And on the fourth page of the prospectus appears the following: "The golf course: A survey of the property has been made and Mr. W. G. Wilkinson, the golf architect, makes the following report about its possibility: The property is indeed one of the most interesting tracts of land it has been my pleasure to examine and plan, and certainly lends itself to a golf course of distinct character," is that your own quotations? A. Yes, sir. 10

Q. "The contour is ideal, making it possible the development of a sporty course and one of championship character. You will note in the plans that I have made good use of the interesting water space known as Cable Lake, the tenth and eighteenth holes over this beautiful stretch of water should prove to be the equal of the most picturesque that can be found anywhere. The entire eighteen holes are planned giving one a variety of play throughout; the length a little over sixty-four hundred yards, with a par of seventy-four, makes the entire circuit most interesting. I have planned also to build double and championship tees, and the yardage, of course, as mentioned, will be from the championship or back tees." Was that all which I have read put into the prospectus at your suggestion? A. No. There was another paragraph on the end of that letter which Mr. Grosso thought was not necessary to insert in the prospectus and it had to do with the construction of the course. 20 30 40

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Q. As far as this is concerned, this is directly quoted from your letter to them? A. Yes, sir.

Q. At their request? A. Yes, sir.

Q. At whose request? A. Mr. Grosso's.

10 Q. When did he make this request? A. I believe it was at Mr. Parr's house. I am not quite positive about that. The present president of the club.

Q. Do you know whether these pamphlets were sent out to prospective members, or to-be members, of the Rock Spring Country Club? A. Yes, sir.

Mr. Marsh: We will admit they were. We will admit that is a copy of the prospectus that was sent out to members who were suggested for membership in the club.

20 Mr. Young: Do you also admit they were sent out after the Rock Spring Country Club was organized and incorporated?

Mr. Marsh: Some were sent before and some were sent after.

Mr. Young: I ask this be marked in evidence, and the envelope attached, addressed to Mr. A. D. Honeyman, 26 Broadway, New York; the postmark is dated November 5, 1925. The company being incorporated in

30 (Prospectus entered in evidence and marked Exhibit P-3.)

(Envelope entered in evidence and marked Exhibit P-4.)

Q. Mr. Wilkinson, did you prepare a statement for the Rock Spring Country Club as to finances of other clubs? A. I gave some information to the president of the club for that purpose.

40 Q. And who was the president of the Rock Spring Country Club? A. Mr. T. Towers Farr.

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Q. You gave that to him? A. Yes, sir.

Q. This circular which the Rock Spring Country Club sent out, is that financial information set forth in it? A. Some of it; yes, sir.

Q. What part? A. Not all of it.

10 Q. What part? A. The Winged Foot Golf Club, Lakeville Golf Club, and the Greenbrook Country Club. And some of the information regarding the formation as to bonds.

Q. There you set forth the usual method of financing these golf and country clubs? A. Yes, sir.

Q. And the manner in which it is done? A. Yes, sir.

Mr. Young: I ask that be admitted in evidence. It being sent also with your prospectus. 20

Mr. Marsh: I will admit it was sent out by Rock Spring Country Club but that is as far as I will go.

Mr. Young: Do you also admit that was sent out after the incorporation of the Rock Spring Country Club?

Mr. Marsh: Yes, we will admit that was sent out after its incorporation, as well as before. No. Just after; not before. 30

(Circular entered in evidence and marked Exhibit P-5.)

Q. Is Mr. Brewer an officer in the Rock Spring Country Club? A. I don't know, sir.

Q. Is he an officer of the Orange Mountain Land Company? A. Yes, sir.

Q. What position does he hold? A. Vice-president. 40

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Mr. Marsh: He is president. He signed the contract as president.

Q. December 4, 1924, did you receive a letter from him? A. Yes, sir.

10 Q. Is that the letter you received? A. Yes, sir.

Mr. Marsh: No objection.

Mr. Young: The letter is: "Orange Heights Avenue, West Orange, December 4, 1924. My dear Mr. Wilkinson: Your letter of the second received. Many thanks. I am glad to tell you that the club is going along very well, the organization committee having been completed yesterday and the book is now in the printer's hands. I will mail you a copy on Tuesday next. Please let me have by return mail the names of your friends who want to get in first one hundred at \$500 each. As you will see by our sheet such men as Russell Colgate, Charles Edison, etc., it should be filled up very quickly. I have been looking for the colored plan you spoke of for a long while and I believe if you can hurry this along it may assist to our mutual advantage. I am sorry you found no one at the house. There should have been some one there all the time. Had I known you were coming over would have been glad to have met you there. Perhaps we can get together one day next week. I am now living in my house just under the brow of the mountain, at the above address, so it is easily accessible. Kind regards. Sincerely, Frank T. Brewer."

20

30

40 (Letter entered in evidence and marked Exhibit P-6.)

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Q. What else did you do as to promoting this Rock Spring Country Club beside the things you have already testified to?

Mr. Marsh: I do not think he has testified already that he is promoting the country club. If he says promoting golf course perhaps it comes under the language of the contract, but not the country club. I object to the form in which the question is now presented. 10

Mr. Young: I will withdraw that question.

Q. Mr. Wilkinson, will you explain to the Court and jury any method or methods which you proposed for the making of this golf course to any of the members of the Orange Mountain Land Company, or the Rock Spring Country Club? 20

Mr. Marsh: I object to that until he fixes it with someone in authority.

Mr. Young: He may answer yes or no.

The Court: He may answer.

A. Yes, sir.

Q. To whom and at what time was this? A. Some time in September, at my office. And another time at the home of Mr.— 30

Q. September, 1924? A. Yes, 1924. And at the home of Mr. Farr on one occasion, the president of the club. And several times at Mr. Grosso's office. And once at my own office.

Q. Take the first one that you spoke of in September, what was said there as to any methods which you proposed for the carrying out of this contract you signed?

Mr. Marsh: I object unless he indicates who sent it. 40

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Mr. Young: I am asking him the first time.

Q. Where was the first one after the signing of the contract, where was the first conversation held?

A. In my office.

10 Q. You testified before—was that the conversation you testified before that Mr. Grosso and Mr. Schwartley and Mr. Supplee were there? A. Yes, sir.

Q. What was said there as to method of promoting this golf course and carrying out that contract?

A. Well, several suggestions were given as to which was the best way to promote the country club.

Q. Did you make any suggestion as to a method to promote the country club? A. Yes.

20 Q. What was it? A. That the Orange Mountain Land Company, as a holding company, promote the club, do the primary work, such as the acquiring of the property, the making of the plans for the golf course, the drawing up of the prospectus, so that those things could be presented to men who would be financially interested in the club.

30 Q. Was all the property—do you know whether all the property at that time was in the hands of the Orange Mountain Land Company? A. I understood that it was not. I understood that they had an option on it.

Q. Was your plan adopted? A. Yes, sir.

Q. By whom? A. By Mr. Grosso.

Q. Was that carried out in the prospectus which you helped to prepare? A. Yes, sir.

Q. When was the next conversation after the one in your office? A. The next conversation was at Mr. Grosso's office.

40 Q. Mr. Grosso the secretary of both organizations? A. Yes, sir.

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Q. And what was said at that time? A. We discussed the plan of the course, and the printing matter, that is the text of the prospectus, and the photographs, before being finally accepted by the club or incorporated in the prospectus.

Q. Was that carried out? A. Yes, sir.

Q. It was adopted by the Rock Spring Country Club? A. Yes, sir.

Q. Who suggested the name of the Rock Spring Country Club? A. I suggested the name.

Q. To whom? A. Mr. Grosso and Mr. Brewer.

Q. Under what circumstances? A. We were discussing what name we should call the country club, and Mr. Brewer suggested that we call it the Rock Spring Country Club, for one reason that he owns the Rock Spring Inn, and the Rock Spring, which is adjacent to the property, and we agreed, both of us, that would be a fair name for the club.

Q. During all this time, as I understand, you were asked your opinions and your advice as to the promotion of this company—or the promotion of this club? A. Yes, sir.

Q. Have you had any experience prior to this in organizing golf courses?

Mr. Marsh: I object.

A. Yes, sir.

Mr. Young: I merely wish to show it is quite reasonable that the man's statement is true, on account of courses; I want him to testify that he has figured the finances and has promoted them in a similar manner. That was my object of the question.

The Court: I do not think it is necessary for you to go into that now. His ability in

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that direction has not been questioned, that is, his ability to do what the contract required him to do.

Mr. Young: All right. I will withdraw it.

10 Q. Mr. Wilkinson, you are familiar with the ground owned by the Orange Mountain Land Company? A. Yes, sir.

Q. According to your contract you went all over the ground and surveyed the same? A. Surveyed it for the golf course; yes, sir.

Q. I show you a circular that is entitled "Rock Spring Country Club, dated June 15, 1925, signed by T. H. Towers Farr, president," and ask you if you received that? A. Yes, sir.

20 Q. It is dated June 15, 1925, and among other things it says: "The stumps about seven hundred, have been moved from the lake, and part of the shore has been put in order for swimming, as soon as the lake fills." Is that work part of the construction of a golf course? A. Yes, sir.

Q. And from your experience as a golf architect how long would you say on this particular course it would take to remove seven hundred stumps? What length of time would it take? A. Oh, probably two or three months.

30 Q. You have seen the ground there? A. Yes, sir.

Q. So that as an expert I am asking you would you say that that work was begun before May 1 or after May 1?

Mr. Marsh: I object. I do not get the materiality of this at all.

The Court: I do not either, but I will allow it. If it is not right I will strike it out.

40 (Question repeated by stenographer.)

Williard G. Wilkinson, cross.

A. Before.

Q. In other words, before the Rock Spring Country Club was incorporated? A. Yes, sir.

(Circular entered in evidence and marked Exhibit P-7.)

By the Court:

Q. And before the contract was signed? A. No.

By Mr. Young:

Q. Was there anything else which you did in order to promote the Rock Spring Country Club?

Mr. Marsh: I object again to that use of the term "Rock Spring Country Club." It seems to me that is not under his contract.

The Court: Their claim, as I understand it, is that in the work of planning the course required by the contract, or promoting the course, that the claim is that they determined the best way to promote the course was to form a separate and distinct golf club. And the claim, as I get it, is that organization and creation of that club is the result of the work and the influence of the Orange Mountain Land Company. That is the position of his claim. And that the organization of the Rock Spring Country Club was the method that was the agency determined upon by the Orange Mountain Land Company through which they would promote the golf course that this man, the plaintiff, was to furnish plans and specifications for, and act in advisory capacity in relation thereto. It may be an unhappy use of the word to say he is asked to promote

Williard G. Wilkinson, cross.

the golf club, instead of saying golf course. However, I will not stand on any quibbles like that.

10 Q. Mr. Wilkinson, at the time in September which you speak of, the meeting in September, was it at your suggestion that this club should be formed instead of having the Orange Mountain Land Company form the golf course itself? Was that at your suggestion? A. Yes. But at that time the members of the Orange Mountain Land Company were founder members of the club and my advice at that time was that the founder members could not promote the club themselves and still be the holding company at the same time. In other words, they had to have somebody to sell, they had to have the plan, the prospectus, before they could sell it to the men who ultimately became interested in the club.

20 Q. Were you ever notified by the Orange Mountain Land Company, or this subsequent club, that your services were no longer needed or required? A. Never.

Q. Were you ever discharged by any officer or any member? A. No, sir.

30 Q. When was the first you heard of the work going on without you, according to this contract? A. Through the newspapers.

Mr. Marsh: When?

Q. At what time was that, Mr. Wilkinson? A. About a year after, I should say. I don't just remember.

40 Q. A year after what? A. After the contract. Maybe a little more than a year. I don't know exactly. I don't just remember.

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By Mr. Marsh:

Q. Do you mean around September, 1925, you heard that? A. Yes, about that. And then I received the notice that Mr. Seth Raynor had been employed by the club about the same time. 10

By Mr. Young:

Q. I show you, Mr. Wilkinson, a circular put out by the Rock Spring Country Club in which the club desires to purchase this tract of land on the Orange mountains in West Orange. Did you receive that circular? A. Yes, sir.

Q. Did you have anything to do with making up that circular? A. The same as in the other one.

Q. That is the same as the other one? A. Yes, sir. 20

Q. Did Mr. Grosso tell you that there was such a thing in the Rock Spring Country Club as founder members? A. Yes, sir.

Q. He did? A. Yes, sir.

Cross examination by Mr. Marsh:

Q. What date did you complete this plan which is Exhibit P-2? A. That particular plan for the tracing and the blue prints? 30

Q. The tracing upon which this is based? A. About the end of August, 1924.

Q. You testified that you laid out some stakes. When did you do that? A. Between the time the contract was made and the time that the plan was furnished to the club.

Q. After the time when the plan which is marked P-2 was completed what did you do, if anything, with reference to the actual construction of the 40

Williard G. Wilkinson, cross.

golf course? A. Nothing so far as the actual construction of the golf course was concerned.

Q. And all that you did beyond the plans which we have here, and the staking which you have referred to, were these various conferences with members of the Orange Mountain Land Company or Rock Spring Company Club? A. With both, yes.

Q. Conferences were all that you did further? A. I made the plan.

Q. Well, you made the plan? A. Yes.

Q. That was completed by September, 1924? A. Yes.

Q. And after the time when the plan was completed you did nothing except the conferences which you are talking about? A. Exactly.

Q. You testified to conferences in August or September, 1924, at which Mr. Grosso and Mr. Schwartley and Mr. Supplee and Mr. Brewer I think were present. Those gentlemen represented the Orange Mountain Land Company, did they not? A. To me, yes. And the club. Mr. Grosso especially.

Q. The club was not organized at that time, was it? A. No, it was not.

Q. Then these gentlemen were officers and actively interested in the Orange Mountain Land Company? A. Yes. And the promotion of the golf club.

Q. Did you ever talk to Mr. Robbins? A. Yes, sir.

Q. When was that? A. I don't quite recall the date but I believe it was in the spring of 1925.

Q. You knew he had charge of the golf work for the Rock Spring Country Club, did you not? A. Yes, sir.

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Q. And you went to see him about it? A. Yes, sir.

Q. And you asked him at that time if you could be hired to complete the course, did you not? A. No, I didn't.

Q. Did you go there to find out what your status was in connection with the golf work? A. Yes, I did.

Q. What did he tell you? A. He told me that construction work could not proceed until the club had sufficient funds to go ahead with it.

Q. Didn't he tell you when the club came to any such form they wanted to construe the golf course that they would let you know if you were the one? A. Yes, sir.

Mr. Young: I object to this question as there is—as far as the construction is concerned it is separate and apart. This is the fact, that \$2,000 does not include the construction of the golf course, it is merely as to laying out of the golf course and at the time when they were to proceed with their construction he was to get the balance. He was not to do any construction work for the \$1,750.

The Court: He was not to do any construction work, but there was a lot of work he had to do under the terms of the contract in order for the construction work to proceed.

Mr. Marsh: It says use the best efforts to carry out the construction of the course to a successful completion as part of his task.

The Court: I will allow the question.

Williard G. Wilkinson, cross.

Q. You knew then at that time that the Rock Spring Country Club was trying to secure a golf architect to perform their construction work? A. No, sir.

Q. And design the course? A. No, sir.

10 Q. You did not? A. No, sir.

Q. Did you submit an application to Mr. Robbins for the work? A. No, sir.

Q. Did he ask you for any references for what you had done? A. Yes, sir.

Q. Did you give them to him? A. Yes, sir.

Q. Mr. Robbins at no time employed you to do any work, did he? A. No construction work, no.

Q. Didn't employ you to do anything? A. No, sir.

20 Q. Did Mr. Farr ever employ you to do anything? A. No, sir.

Q. Did anyone representing the officers or the board of governors of the Rock Spring Country club employ you to perform any work? A. Yes, sir.

Q. Who? A. Mr. Grosso.

Q. Mr. Grosso was a member of the Orange Mountain Land Company, wasn't he? A. Yes, sir.

30 Q. And signed the contract with you as secretary of that company? A. Yes, sir.

Q. And he is the only person you had anything to do with from the Rock Spring Country Club, is that a fact? A. Other than go over the property with the president of the club with my plans.

Q. And when did you do that? A. It was in the Fall of 1924, late Fall.

Q. Late Fall of 1924? A. Yes, sir. Or 1925.

40 Q. When you prepared the prospectus which is offered in evidence, who did you see in connection with that? A. Well, it was the president, Mr. Brewer, and Mr. Grosso.

Williard G. Wilkinson, cross.

Q. When did you do that? A. I don't just recall the date.

Q. That was the Fall of '24 too, was it not? A. I think so but I am not positive.

Q. Well, it was shortly after the time when you completed the plans? A. Yes. 10

Q. And the time when you gave the financial report of these clubs, when was that done? A. At Mr. Farr's house.

Q. That was also shortly after the time when you completed the plans? A. Yes, sir.

Q. So that those conferences you have referred to all took place before January 1, 1925? A. I would not swear to that, sir. I don't know.

Q. Well, when did they complete themselves? When were you through with those conferences? A. Not before the Spring of the next year, the entire conferences. 20

Q. Well, what time in the Spring? A. About May.

Q. What did you do in April, 1925? A. I think I went to see Mr. Robbins in April, 1925.

Q. Did you do anything else? A. I went to the property, went to the course and that time they were taking out the stumps in the lake, draining the lake. 30

Q. You had nothing to do with that work, did you? A. I hadn't been asked to take the stumps out of the lake.

Q. You didn't have anything to do with either the taking out of the stumps or the contract under which they were taken out? A. No, sir.

Q. And you didn't plan that at all? A. Yes, sir.

Q. Where does it appear? A. On the plan.

Q. Well, in what way does it appear? A. You can see it on the plan. 40

Williard G. Wilkinson, cross.

Q. What do I see? About removing stumps? A. Maybe I misunderstood you. You said did I plan that? I didn't plan the actual taking out of the stumps.

10 Q. That is what I am referring to. A. No, I had nothing to do with taking out the stumps at all, other than the suggestions that I gave to Mr. Robbins at the time.

Q. Mr. Robbins? A. Yes, sir.

Q. When did you do that? A. About May, 1925.

Q. How many times did you see Mr. Robbins? A. Only once. I had telephone conversations with him, but I have only seen him once.

20 Q. At that conference was the time you submitted the references which you had with reference to your job work? A. No. I sent them by mail, I believe.

Q. It was following that conference? A. Yes.

Q. It was as a result of that conference you sent your references? A. Yes, sir.

Q. So far as these stumps were concerned, the removal of those stumps had nothing whatever to do with the golf course itself, had it? A. Yes, sir.

30 Q. The stumps were under the level of the surface of the water, were they not? A. No, sir; not entirely.

Q. Well, so far as the playing of golf was concerned a few stumps don't affect the golf, do they? A. Yes, sir. In that particular position very much so.

By the Court:

40 Q. The grounds were also to be arranged for tennis and swimming as well, were they not? A. Yes, sir. These stumps happened to be in a lake, your Honor.

Williard G. Wilkinson, cross.

Cross examination by Mr. Grosso:

Q. Mr. Wilkinson, you testified that you surveyed the property? A. As far as the golf course was concerned.

10 Q. What do you mean by that, that you made an actual survey of the property? A. The lines of the eighteen holes; yes, sir.

Q. You were furnished with a survey of the property, weren't you? A. The boundary line of the property only.

Q. Are you a surveyor, Mr. Wilkinson? A. No, sir.

Q. How did you survey the property if you are not a surveyor? A. With an engineer, my engineer at the time.

20 Q. Your engineer? A. Yes, sir.

Q. Weren't you furnished with a complete outline survey and topographical survey of the property by the Orange Mountain Land Company? A. Yes, sir.

Q. So that you did not survey the property? A. I surveyed the lines of the eighteen holes, which is entirely different from the contour survey.

30 Q. What stakes, if any, did you put out on the property? A. Tees, greens, and bunkers.

Q. What did they consist of? A. Just stakes with numbers.

Q. How many stakes did you put out? A. I should say about thirty-six or forty altogether. Some of the bunkering was indicated by blazing on trees; at that time we had to take care of all the trees, we could not cut any down until we went ahead with the actual construction of the course.

40 Q. You also testified, Mr. Wilkinson, that you took care of the making of the photographs that

Williard G. Wilkinson, cross.

appear in the prospectus? A. I didn't make the photographs. I directed the taking of the photographs.

Q. Who did you direct to take them? A. The photographer.

10 Q. Who was the photographer? A. I don't remember his name now.

Q. Is he a photographer that you selected? A. No.

Q. As a matter of fact, Mr. Wilkinson, the taking of the photographs was not under your direction at all, were they? A. Yes, sir. Twice. Two sets of photographs.

Q. But you don't know who the photographer was? A. I wasn't interested who he was.

20 Q. Who engaged the photographer? A. Mr. Brewer.

Q. You happened to be on the property at the time the photographer came there, is that the fact? A. No, sir.

Q. Do you mean you took the photographer around and showed him different places that you wanted photographed? A. I was asked to take the photographer around and select the places where my greens were going to be built.

30 Q. Well, do any of the photographs in this prospectus show any of the places where your greens were going to be built? A. It shows the fairways.

Q. Well, where? A. I believe it shows in one particular. It should. One photograph shows the entrance to the club house, or to the club grounds.

Q. Answer the question. You say that the photographs were photographs of the greens. Show me a photograph of one of the greens. A. It does not say that.

40

Williard G. Wilkinson, cross.

Q. So that you have no photographs of any of the greens? A. No.

Q. The photographs are general views of the property? A. Yes, sir.

Q. And property in the vicinity? A. Yes.

Q. Now, you also testified that this prospectus was drawn, prepared by you? A. In part. 10

Q. What part? A. The photographs, the plan in the back.

Q. The photographs you say were taken by a photographer that Mr. Brewer brought there? A. At my direction, yes.

Q. Under your direction? A. Yes, sir.

Q. What else was done in this prospectus by you? A. The plan and some of the copy.

Q. What part of the copy? A. Let me see it please and I can tell you. 20

Q. What part of the copy was prepared by you? A. The location was prepared by me.

Q. The what? A. The location.

Q. You prepared that paragraph? A. Yes, sir.

Q. Have you any proof of it? A. No.

Q. I mean did you make a rough proof of it? A. Of course I did, but I haven't it here now. In my own letter, and the plan in the back.

Q. As a matter of fact, Mr. Wilkinson, the only thing in this prospectus that you have anything to do with is the quotation from your letter and the copy of your sketch, isn't that a fact, Mr. Wilkinson? A. No, sir. 30

Q. You had nothing to do—do you know who prepared the prospectus? A. No, I don't.

Q. Who did you submit this information to, if you don't know who prepared it? A. To you, Mr. Brewer and Mr. Farr.

Q. You submitted it to me? A. Yes. 40

Williard G. Wilkinson, cross.

Q. Did I prepare the prospectus? A. In what way prepare? I don't know what you mean.

Q. You have testified on direct examination that you prepared this prospectus. A. Yes.

10 Q. And now you say that you didn't prepare this prospectus but you prepared certain parts of it? A. Yes.

Q. I want to know what parts you prepared? A. The text in there under location, my own letter, and also the plan in the back.

Q. To whom did you submit the text? A. You, Mr. Farr and Mr. Brewer.

Q. Was it by word of mouth? A. Yes. And some of it in written form.

20 Q. Have you any copies of any written form of text that you submitted? A. No, I have not.

Q. How many copies of the text did you submit? Did you submit it to Mr. Farr and Mr. Brewer and I jointly, or was there a letter written to me, or to Mr. Brewer or to Mr. Farr? A. That particular time there were several suggestions as to what should go in that prospectus. Mr. Hess drew up six or eight or ten pages of what should go in the prospectus. We discussed it generally.

30 Q. Be specific, please. You say you prepared part of the text of this prospectus. What part did you prepare and to whom did you submit it? A. Mr. Farr, yourself, Mr. Grosso, and Mr. Brewer.

Q. You submitted part of the text to Mr. Farr, myself and Mr. Brewer? A. Yes, sir.

Q. You also testified, Mr. Wilkinson, that there was a meeting held at your office after the signing of the contract, at which I was present? A. Yes, sir.

40 Q. Have I ever been in your office? A. Yes, sir.

Williard G. Wilkinson, cross.

Q. You are sure of that? A. Quite positive you were there with Mr. Supplee.

Q. Where is your office? A. It was at 25 Cortlandt Street at that time.

Q. And you are sure that I attended a meeting at your office? A. Yes, sir. 10

Q. Do you recall coming to my office and requesting me to invite you to a meeting of the board of governors of the Rock Spring Country Club? A. Requesting you?

Q. Yes. A. No, never.

Q. Do you recall asking me to speak to the board of governors to see if they would retain you as architect for the Rock Spring Country Club? A. No, never, sir.

20 Q. Did you ever furnish a copy, or did you ever furnish a colored sketch of the golf course to any member of the Orange Mountain Land Company or the Rock Spring Country Club? A. Yes, sir.

Q. To whom? A. You and Mr. Brewer.

30 Q. You furnished a colored sketch? A. That was the sketch which I presented to you, which you asked me to put some additional work on, which I never completed, for the reason that at that time I was under the impression that someone else was going to do the work.

Q. You say this had not been completed? A. Yes, it was complete in so far as my contract was concerned, but Mr. Brewer asked me to put on some development possibilities in the corner, which the Orange Mountain Land Company—

40 Q. Was this sketch in any form ever given to any member of the Orange Mountain Land Company or to any member of the Rock Spring Country Club? A. No, not given to them. It was presented to them.

Williard G. Wilkinson, redirect.

Q. It was presented to them? A. Yes, sir.

Q. To whom? A. To you and Mr. Brewer.

Q. Did I ever have this sketch in my possession?

A. You had it in your office. I took it away with me. You have seen that before, more than once.

10 Q. Isn't it a fact, Mr. Wilkinson, that all that you ever did for the Orange Mountain Land Company was to prepare a sketch, of which you submitted a blue print to the Orange Mountain Land Company? A. I submitted several blue prints.

Q. You mean several copies of the same tracing?

A. Same as that, only not in color.

Q. You never furnished anything else to the Orange Mountain Land Company? A. No.

20 Mr. Grosso: That is all.

Redirect examination by Mr. Young:

Q. Mr. Wilkinson, did you ever do any work or expect to do some work for B. B. Miller & Company, 215 Broad Street, Elizabeth, N. J.? A. Yes, sir.

Q. I show you a letter here and ask you—it is addressed to Mr. B. B. Miller, and ask you if that was turned over to you from Mr. Miller? A. Yes, sir.

30

Mr. Grosso: I object to the admission of this letter. It is not addressed to any of the parties. I think it is immaterial and it has no bearing on the matters in issue.

The Court: You have not proved the letter. I do not say it is immaterial, if the letter is proved in the proper way.

40 Mr. Young: Mr. Grosso the other day told me he would admit the letter was written by a stenographer. I subpoenaed his stenographer to come to court with it, and he

Alfred J. Grosso, direct.

said it was written on his stationery, he would admit that. That is the only way I can possibly bring it into evidence, by his stenographer. I asked for a subpoena duces tecum, to bring her stenographic notes for the method of testimony.

10

The Court: I do not see how you can prove it through this witness.

Mr. Young: No further questions. That is all.

ALFRED J. GROSSO, recalled.

Direct examination by Mr. Young:

Q. I show you a letter on your stationery, Alfred J. Grosso, addressed to B. B. Miller & Company, 215 Broad Street, Elizabeth, New Jersey, and ask you if you dictated that to your stenographer, and if that is your stenographer's signature? A. Yes, sir.

20

Mr. Young: At this time I ask this be offered in evidence.

Mr. Marsh: I object to it upon the ground it is immaterial.

The Court: If that is the only ground the objection is overruled. You may take an exception.

30

Mr. Young: This letter is addressed to Messrs. B. B. Miller & Company, 215 Broad Street, Elizabeth, New Jersey, it is on the stationery of Alfred J. Grosso, secretary. "Gentlemen: Re Rock Spring Country Club, your letter of the 22nd ult. addressed to the Rock Spring Golf and Country Club has been handed to me for attention. I am a member of the committee that engaged Mr.

40

Williard G. Wilkinson, direct.

Q. However, you admit writing this letter? A. Yes.

Mr. Young: That is all.

Mr. Marsh: That is all.

10 Mr. Young: I do not believe I have asked Mr. Wilkinson as to the amount due.

Mr. Marsh: You admit you got \$250 and you are suing for \$1750.

Mr. Young: Yes. But I hadn't asked him that.

The Court: Asked him what?

Mr. Young: As to the amount that was due and owing.

20 WILLIARD G. WILKINSON, recalled.

Direct examination by Mr. Young:

Q. Mr. Wilkinson, how much is there due to you on this contract? A. \$1750.

Cross examination by Mr. Marsh:

Q. You have been paid \$250? A. Yes, sir.

Q. When? A. On the signing of the contract.

Redirect examination by Mr. Young:

30 Q. Mr. Wilkinson, the Court raised a question as to \$1750. When was that to be paid to you?

Mr. Marsh: I object to the question.

The Court: The contract determines that.

Mr. Young: All right. That is all.

By Mr. Marsh:

40 Q. You say that \$250 was paid to you on the signing of the contract? A. No. I made a mistake. I meant on the presentation of the plans.

Motion for Nonsuit.

By Mr. Marsh:

Q. When was that, do you know the date? A. About the end of August, 1924.

Q. Did you ever render any bill for the \$1750?

A. Yes, sir.

Q. To whom? A. Mr. Grosso.

Q. When? A. In about May or June of the next year.

Mr. Marsh: That is all.

Mr. Grosso: That is all.

Mr. Young: That is our case.

MOTION FOR NONSUIT.

Mr. Marsh: I would like to move for a nonsuit on behalf of the Rock Spring Country Club.

The complaint alleges that the Rock Spring Country Club, as a corporate organization, has assumed the contract of the Orange Mountain Land Company. I take it that implies some contractual undertaking between the Rock Spring Country Club and the Orange Mountain Land Company, and there is no proof that that corporate organization, which is being sued as a defendant, has anything to do with any contract of Mr. Wilkinson. The Court intimated that possibly the construction might be that the Orange Mountain Land Company incorporated the Rock Spring Country Club for the purpose of constructing the golf course. If so, that would not necessarily imply that the agent was under any express or implied contractual obligation to the plaintiff. The contract still would remain with the Orange Mountain Land Company. And there being

Charles F. Robbins, direct.

no privity whatever between the plaintiff and the defendant the Rock Spring Country Club, apart from anything else, we ask for a nonsuit on that ground.

10 The Court: I will deny the motion at the present time. It may be renewed subsequently. You may take an exception.

Mr. Grosso: I would like to make a similar motion on behalf of the Orange Mountain Land Company.

20 The only evidence before the Court is the contract and Mr. Wilkinson's testimony and my testimony, and the contract is very clear and explicit. It provides that \$2,000 is to be paid to the architect, \$250 when the plans and specifications have been furnished to the company, and \$1,750 at such time as the company shall have decided to proceed with construction of the said golf course. There is nothing in the testimony to indicate that the Orange Mountain Land Company has decided or did decide to proceed with the construction of a golf course. And, therefore, under the terms of the contract, he is suing for.

30 The Court: Motion denied. You may take an exception.

DEFENDANTS' CASE.

CHARLES F. ROBBINS, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Marsh:

40 Q. Mr. Robbins, were you connected with the Rock Spring Country Club in any capacity? A. Yes.

Charles F. Robbins, direct.

Q. If so what? A. I am a member of the board of governors and vice-president and chairman of the golf committee.

Q. Have you been chairman of the golf committee since the organization of the Rock Spring Country Club? A. Yes, I have. 10

Q. All matters connected with golf have been within your charge, is that correct? A. That is correct.

Q. Will you tell us what relationship you have had with Mr. Wilkinson, if any? A. I have had none.

Q. Did you ever see him? A. Yes. Saw him once.

Q. Under what circumstances? A. He called at my office. 20

Q. And what was the conversation? A. He called to introduce himself as being the Mr. Wilkinson who had drawn a plan of a golf course, an eighteen hole course for the Orange Mountain Land Company, with which we were all familiar, to offer himself as a candidate for the job of golf architect for the Rock Spring Country Club.

Q. Did you have anything to say to him with reference to references? A. Yes, I asked him for references. As we asked all architects. 30

Mr. Young: Pardon my interrupting the testimony, but here again I claim that this is the construction which is being testified to. Mr. Robbins says that he knew nothing at all about Mr. Wilkinson until the time came to construct the course. It seems that is outside of the original intention of the parties.

The Court: Go on. 40

Charles F. Robbins, direct.

Q. Did he furnish them? A. I think he did. He has testified he did, and I don't recall, but I imagine he did.

10 Q. Has the Rock Spring Country Club at any time ever used the plans of Mr. Wilkinson in connection with its golf work? A. No.

Q. Have you ever seen him or had any interviews with him on any other occasion except the one in your office which was referred to? A. I can only answer if you mean a telephone inquiry, he called me on the telephone once. Does your question mean to cover that?

20 Q. He did call you on the telephone. When and for what purpose? A. My recollection is it was in the summer of 1925 after the lake committee had started to remove stumps from the lake. He called me to tell me that he thought that the method that was employed in removing those stumps was a mistake. I thanked him for his information. That was all. That was the interview. A telephone conversation. He called from somewhere out here in Jersey.

Q. Were the stumps removed in connection with the golf work? A. Oh, no. No relation to it. Golf work wasn't started at that time.

30 Q. That was prior to any work being done in connection with the golf course? A. Long before that.

Q. Who handled that? A. Lake committee.

Q. You are a member of the board of governors of the Rock Spring Country Club? A. Yes.

Q. Has the Rock Spring Country Club, as a board, at any time taken any action with respect to the employment of Mr. Wilkinson? A. No, never.

40 Q. Who is the architect on the golf course that

Charles F. Robbins, cross.

is now being constructed? A. Seth J. Raynor was the architect. He is since dead. His successor is Mr. Charles H. Banks.

Q. Do you know when he was engaged? A. On the seventh of May. Just a minute. May 7, 1925.

10 Q. Are the plans which he made distinct from the plans Exhibit P-2 made by Mr. Wilkinson? A. Entirely.

Mr. Marsh: That is all.

Cross examination by Mr. Young:

Q. Mr. Robbins, you are chairman of the golf committee. You say that as to these stumps in the lake, that was taken care of by another committee, the lake committee, was it not? A. Entirely.

20 Q. So you really don't know whether that was the beginning, or anything, as far as the golf course was concerned, do you? A. Yes, I do know, because a member of the board of governors, all committees report there, I am entirely familiar with the reason for the stumps being removed, and the time, and I know distinctly, as a member of the board of governors, it had no relationship whatever to the golf work.

30 Q. What was the purpose of this land here, to lay out a golf course, was it not? The purpose of acquiring this land was to lay out a golf course, was it not? A. Purely a golf course. Not solely a golf course. To furnish all facilities of a country club, it included horseback riding, tennis, and particularly the lake feature. That was the distinctive feature of it. The golf in this club was a secondary consideration.

40 Q. You say that the Rock Spring Country Club never took any action as to anything whatsoever

Charles F. Robbins, cross.

before as to Mr. Wilkinson, is that true? Never
took any action at all on Mr. Wilkinson's work?
You never took any action? Is that true? A. Why,
only in so far as we didn't—the work was aban-
10 doned by us. We didn't care to take it. We didn't
think the work was of the quality we wanted.

Q. Mr. Robbins, did you write a letter to Mr.
Wilkinson some time in February, the twenty-fifth,
1925? A. I did, if you have a letter.

Q. Is that your signature there? A. Yes.

Q. Then when you wrote this letter—

Mr. Young: Have you any objection to
this?

Mr. Marsh: If he says he signed it I do
not doubt that it is all right.

20 Q. In this letter, Mr. Robbins, where you state
that Mr. Wilkinson personally will receive every
consideration from the committee, it was just
merely to put him off, wasn't it? You testified
before that the committee never took any action
one way or the other.

The Court: You have not allowed him
to answer the question.

30 Q. When you wrote that letter to Mr. Wilkinson
it was merely for the purpose of putting him off,
as it were, is that not so?

Mr. Marsh: I object.

A. I say no, certainly not.

Q. Why was it that your committee didn't take
any action, or consider him one way or the other?

A. They did.

40 Q. Didn't you just testify before that they didn't
take any action at all in his case? A. On his work.

Charles F. Robbins, redirect.

My recollection of your question was you asked if
they took any action on his work. Not in his case.
He was considered very carefully.

Q. I was merely taking the question from your
attorney. You said in answer to his question that
you didn't take any action as to his work. Now,— 10

Mr. Young: No further questions, Mr.
Robbins.

Redirect examination by Mr. Marsh:

Q. Are you associated in any way with the
Orange Mountain Land Company? A. No.

By the Court:

Q. Mr. Robbins, at the time this corporation was
effected you were one of the incorporators, weren't
you, one of the ten who signed the certificate? A. 20
Of the Rock Spring Country Club?

Q. Yes. A. Yes.

Q. And as I understand it you were the first
chairman of the greens or golf committee, is that
right? A. That is correct.

Q. Your committee had the immediate charge
of the construction of the golf course, didn't they?
A. No. We had more than that. We had—the en- 30
tire question of golf was turned over to the golf
committe, first off, and the selection of the archi-
tect who was to draw the plans, and then follow-
ing that, of course, the complete construction of
the course.

Q. That was entirely left to the golf committee?
A. Subject to the review of the board of governors.

Q. You were also a governor? A. I was.

Q. How many governors were there? A. I think
at that time there were about fourteen. 40

Charles F. Robbins, redirect.

Q. You call them trustees, don't you? A. No. Board of governors.

Q. The certificate says the board of trustees. A. Well, then that is the proper term.

10 Q. Not less than ten nor more than fifteen? A. Yes.

Q. Those named as the first trustees to the number of ten are the same men who signed the certificate of incorporation. Does that bring that back to your mind? A. Yes, sir.

Q. And the trustees are the same officials you referred to as governors, is that right? A. Governors, yes.

Q. That number is now about fourteen, or was at that time? A. I think about fourteen.

20 Q. Can you inform the jury as to just how they got the property from the Orange Mountain Land Company? A. How the Rock Spring Club?

Q. Yes. A. They acquired it by direct purchase.

Q. Purchased it outright, without any strings? A. They had a mortgage on it, certainly.

Q. I don't mean that, but I mean so far as the Orange Mountain Land Company is concerned, it was an absolute purchase from them? A. Certainly.

30 Q. Did the Orange Mountain Land Company have any stock in the golf club? A. No, not the Orange Mountain Land Company. There was one provision, to answer the question you have given me, that the members of the Orange Mountain Land Company were to be permitted to acquire stock certificates in the club, in the first class of \$500 per certificate. The certificates are marked

40 in classes. The first one hundred are \$500. The second fifty are \$750. And one thousand dollars, \$1,250, and \$1,500, and so on to the three hun-

Charles F. Robbins, redirect.

dred, and I was permitted to get in in this \$500 class. That was the only possible qualification.

Q. How many stockholders were there of the land company, to your recollection, if you know? A. No, I do not. I think there were approximately nineteen.

10 Q. Of course we are concerned not with the exact number. A. Approximately nineteen.

Q. You knew generally about how many could do that? A. Not definitely. They were considered in the making up of the shares and the certificates of the club.

Q. How many of those kind of shares were there issued? A. Total of 324.

Q. They were entitled to a share apiece, is that right? A. At \$500. That was the privilege they got, instead of paying \$1,000.

Q. Nineteen of the three hundred? A. 324.

Q. Did they all take a share? A. Oh, yes, indeed they did.

Q. And they paid for those? A. No. They got those at no cost to themselves. It might be considered as part of the price. In other words, instead of paying them, and that is the way it is worked out, instead of giving them over, we put that in and charged them back. So that was used in figuring the price of the land we paid the Orange Mountain Land Company.

Q. Did you pay any cash for this land besides the giving, in addition to the giving of the nineteen shares of \$500 apiece? A. Yes, sir; we did.

Q. What? A. Oh, they paid cash and they took a mortgage back.

Q. Paid what? A. I think we paid \$75,000.

Q. You paid \$75,000? A. I think so. The price

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Charles F. Robbins, redirect.

was \$175,000, and I think there was \$100,000 mortgage. I may be very much mistaken in that.

Q. Then you paid in actual cash \$75,000, or approximately that, less \$13,500 that you gave them, that represented their stock, is that right? A. That
10 is approximately my understanding of it.

Mr. Marsh: He has got his figures a trifle wrong. It is \$187,000.

The Court: The question is whether the one was simply a creature of the other, or whether it was entirely an independent organization.

Mr. Marsh: I think he has got his dollars and cents wrong, not his construction. I did not want it to go in—

20 The Court: That is something nobody will dispute, the true facts, so give it to us.

Mr. Marsh: It is \$187,500 was the purchase price, and \$175,000 was to be in cash, and \$12,500 being represented by the stockholders of the Orange Mountain Land Company's shares of stock. Instead of paying \$175,000 with the \$13,000 off, it is \$187,500. So we paid cash above the mortgages of fifty
30 thousand dollars.

Q. How much land did you acquire? A. We bought from the Orange Mountain Land Company I think about one hundred and twenty or less acres. We afterwards acquired further pieces, we had bought from other individuals to round out sufficient to get the golf holes on there. We bought since then about thirty acres, I think it is, twenty-five or thirty acres.

40 Q. Did you get plans from this architect who did the work? A. From Mr. Wilkinson?

Charles F. Robbins, redirect.

Q. Yes. A. We never took any plans from him; no, sir.

Q. Not Mr. Wilkinson. The other architect, the man who died? A. Certainly.

Q. Specifications also? A. Certainly.

Q. Have you compared them at any time with the plans of Mr. Wilkinson? A. No, sir. 10

Q. You never looked at Mr. Wilkinson's plan? A. No, not after we looked at them when the club first started. After we really got down to brass tacks, and another contract was let, then we never paid any attention to his plans.

Q. You saw them before you gave the job to the other man, didn't you? A. What I mean to say is that I naturally saw those plans when they were incorporated in the prospectus that was mailed around. I have seen the plans but they were not used in any sense. 20

Mr. Marsh: Perhaps it is not legal, but I have a copy of the Raynor plans, if the Court would like to have them.

Mr. Young: Do you wish to offer your whole prospectus?

Mr. Marsh: This is a recent circular of the Rock Spring Country Club. It came out in 1926. I do not know that it is material but I have not the slightest objection to its being used, and it shows the Raynor plans for the golf. 30

Q. Do you know how many of the nineteen shareholders, Mr. Robbins, who got this founder stock, so-called, that is the \$500 shares, are included in the incorporators of your club, the ten incorporators of the club? A. The only ones, my understanding is that Mr. Farr was a member of 40

Charles F. Robbins, redirect.

the Orange Mountain Land Company, also Mr. Grosso, and Mr. Spottiswoode, he has resigned. Just the two, Mr. Farr and Mr. Grosso are the only two members of the Orange Mountain Land Company.

10

Mr. Marsh: I will tender this.

Mr. Young: I have no objection.

By Mr. Marsh:

Q. Then I can ask Mr. Robbins if that is a sketch from the copy of the Raynor plan for the golf course? A. Yes.

Q. Which is now going under construction? A. It is. Nine holes of it are.

20

(Circular entered in evidence and marked Exhibit D-3.)

Mr. Marsh: I do not know whether the Court or jury wishes to compare these sketches.

The Court: It is in evidence. Undoubtedly if it reaches the jury they will do so.

By Mr. Young:

Q. Both Mr. Farr and Mr. Grosso are president and secretary of the Rock Spring Country Club, is that so? A. That is correct.

Q. And they are also members of the Orange Mountain Land Company? A. That is my understanding.

Q. Did any of these seventeen members which you have been speaking of, or fourteen, have any of those been paid anything at all for their memberships? Have they had to pay anything in cash themselves? A. Oh, no. Because the shares were

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T. H. Towers Farr, direct.

figured in the purchase price of the land. It cost us less cash.

Q. That was figured in the purchase price of the land? A. As Mr. Marsh has pointed out. It was in lieu of cash we got the stock certificates.

By Mr. Marsh:

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Q. Mr. Robbins, on this last question what you mean is that when he refers to the members of the Orange Mountain Land Company not having paid anything for the stock, you mean that the value of that stock was deducted from the purchase price of the land, isn't that what you mean? Not that the Orange Mountain Land Company received their shares for nothing? A. That is what I am trying to say. As has been pointed out by his Honor, \$187,000 was the purchase price of the land. For that we paid \$12,500 in stock certificates, and the first one hundred class \$50,000 in cash, and the balance was on mortgage. That is the way that land was paid for.

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T. H. TOWERS FARR, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Marsh:

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Q. Mr. Farr, are you an officer of the Rock Spring Country Club? A. President.

Q. And have been since its organization? A. Yes.

Q. And are you connected with the Orange Mountain Land Company? A. I think I was the last one to have an opportunity of joining that group.

Q. Are you an officer of the Orange Mountain Land Company? A. No.

40

T. H. Towers Farr, direct.

Q. You are simply one of the members of that organization? A. Yes.

Q. Do you know Mr. Wilkinson the plaintiff in this case, golf architect? A. I have had the pleasure of meeting Mr. Wilkinson.

10 Q. When did you first have anything to do with him? A. I think it was early in 1925 that I went over the land with Mr. Wilkinson and some of the members of the Orange Mountain Land Company, and was shown the layout that Mr. Wilkinson had prepared for the Orange Mountain Land Company. Then after that Mr. Wilkinson came over to my house, I think we had a cup of tea together, and during the course of conversation Mr. Wilkinson discussed more or less some of the other clubs that had been organized, and gave me some figures on the prices at which their shares were selling, indicating that the tendency in golf shares was upwards.

20 Q. Did you have any conference with him with respect to the prospectus Exhibit P-3? A. No, I never had any conference with him on that. I spent a great many nights working that out alone. The letter, of course, was embodied in it that he wrote, and also the plan that he had prepared for the Orange Mountain Land Company. But the rest of the material I think I am responsible for. I saw the plans, the plans submitted by Mr. Hess, but that was not adopted. We reduced it very much and condensed it, as that existed. I never had any conference except that one time where we had a little talk about the price of shares of other golf clubs.

30 Q. Did Mr. Wilkinson ever submit to you any text of the prospectus, except that letter of his which is incorporated? A. No.

40

T. H. Towers Farr, cross.

Q. Has the Rock Spring Country Club ever assumed the contract of the Orange Mountain Land Company with Mr. Wilkinson? A. Never.

Q. Have you ever employed Mr. Wilkinson in any way? A. No.

Q. Has he ever done any work for you? A. No. 10

Q. Is there any understanding between the Orange Mountain Land Company and the Rock Spring Country Club with reference to this golf course? A. No. The Rock Spring Country Club were entirely free to employ its own golf architect, after investigating the various golf architects that might be available.

Q. How did the Rock Spring Country Club get in possession of this property? A. Through purchase from the Orange Mountain Land Company. 20

Q. Did that purchase carry with it any obligation with reference to the golf or the golf architect? A. None whatever.

By Mr. Grosso:

Q. Mr. Farr, was any part of the construction work in connection with the golf course done by the Orange Mountain Land Company? A. I don't think any was done by the Orange Mountain Land Company. 30

Cross examination by Mr. Young:

Q. Mr. Farr, you say there was none done by the Orange Mountain Land Company. I understand that corporation was incorporated on May 1. On June 15 a circular was sent out which speaks of removing seven hundred stumps from the lake. Would you say now that work had not been started before the Rock Spring Country Club organized? A. It may have been done in advance 40

T. H. Towers Farr, cross.

of incorporation but it was not done by the Orange Mountain Land Company. It was all paid for by the Rock Spring Country Club.

Q. Before they were incorporated? A. Yes.

10 Q. This booklet here, you got most of this up yourself, didn't you? A. Yes. That is to the best of my recollection.

Q. Did you feel that you were not fair to release Mr. Wilkinson, after having put his plan in, and also put in his photographs which were taken under his direction, and also citing him as the golf architect, did you feel free to go out and select another architect after that? A. Well, we never selected Mr. Wilkinson. He was part of the assets—his plans were part of the assets of the Orange Mountain Land Company, and they loaned them to us in our endeavor to promote this Rock Spring Country Club.

20 Q. The Orange Mountain Land Company gave you over the contract? A. No. No contract. They provided those plans which they had purchased, I think, from him.

30 Q. And you took these plans, incorporated them in that syllabus to get members—or rather in your prospectus, to get members for the Rock Spring County Club, is that true? A. That was put in with a view of showing it was possible to develop an eighteen hole course up there, but not with the idea of employing Mr. Wilkinson.

40 Q. These were sent out as much as four or five months after the incorporation of the Rock Spring Country Club? A. I think they were sent out in March they were first sent out. There may have been some others sent to members who were suggested later, but they were originally sent out in March, I think.

Frank Brewer, direct.

Q. But you continued sending them out until some time in November, 1925? A. I dare say, but they were mostly all sent out in March before the club was incorporated.

Q. There are figures on this sheet which you sent out; there are some checked here. Were they the figures that Mr. Wilkinson gave you the amount of costs of shares? A. I think probably they were. 10

Q. Did you take those down? A. Undoubtedly.

Q. And you used those in sending out? A. Yes. I got that information from him.

Mr. Young: That is all, Mr. Farr.

FRANK BREWER, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith: 20

Direct examination by Mr. Grosso:

Q. You are an officer of the Orange Mountain Land Company? A. I am president.

Q. Were you present at the first meeting that was held in August, 1924, that Mr. Wilkinson has testified about, at a meeting which he testified was held at the Rock Spring Inn?

Mr. Young: That testimony was all stricken out, as it was before the making of the contract. I believe I am correct in that. 30

The Court: Isn't that true?

Mr. Grosso: I think that is correct.

Q. Were you present at any meeting at Mr. Wilkinson's office? A. Yes.

Q. How many meetings were held at his office? A. Either one or two. I think only one.

Q. Do you recall some of the men who were at the meetings? A. Colonel Bankhead, Mr. Haines, 40

Frank Brewer, direct.

Mr. Peckham, Mr. Swartley was there, and myself. That was all.

Q. Did you or any member of the company at any of the meetings you attended ever request advice from Mr. Wilkinson regarding the purchase of the land? A. No. 10

Q. Did you have anything to do with the preparing of the prospectus that was done by the Rock Spring Country Club? A. Why, I made several of them and Mr. Hess made several. Then finally Mr. Farr completed it and it is practically all of his work.

Q. Did you have anything to do with the photographs? A. I did.

Q. In what capacity? A. I took a photographer up there, a local man, I have been trying to think of his name but I can't think of it, and took several pictures. I showed them to Mr. Wilkinson and he said, well, much better ones than that could be taken; and he said that he would be up there the next morning, or the next fine day and he would show the man where there were better vistas than what we had; so he went up there, and the only ones that were taken were the entrance from Northfield Road, and one at the lake that happened to catch a couple of ladies on horseback up there. 20 30

Q. But he wasn't retained to take photographs of the property? A. Not at all.

Q. Do you know who named the club? A. Gordon, my son, named the club.

Q. Gordon, your son? A. Yes.

Q. Did Mr. Wilkinson have anything to do with naming the club? A. Absolutely nothing that I know of. Gordon suggested the name, because he 40

Frank Brewer, cross.

is the originator of the Rock Spring Water Company. And we wanted to perpetuate that name.

Q. The name was suggested by your son Gordon? A. Absolutely.

Q. Do you know of any work that Mr. Wilkinson did for the Orange Mountain Land Company with the exception of the preparation of the plan of the golf course shown by the blue print which is in evidence? A. That is all that I have ever seen. I have never seen any specifications. And personally I have never seen any stakes. 10

Cross examination by Mr. Young:

Q. Mr. Brewer, you said that Mr. Wilkinson said these pictures you took first were not as good vistas as you say as might be taken. Is that so? A. Yes. 20

Q. So you had him come with the photographer up there and take others, is that so? A. Well, he suggested he would be up there and meet us up there.

Q. They were the ones that were finally adopted, is that correct? A. Not all of them.

Q. What one was adopted? A. This one here was the entrance to our private way. Stood down here and took a picture there. We already had one of that, but this was a little bit clearer because it—the other one showed a couple of telegraph poles and he thought that would be better. 30

Q. He thought this one would be better than the one with the telegraph poles? A. Yes. This is an old established one we have owned for years, this Rock Spring, and he had absolutely nothing to do with it.

Q. How about the view showing part of Cable Lake? A. We had taken several of Cable Lake, 40

Frank Brewer, redirect.

but the day we happened to be up there with the photographer these ladies came along horseback riding and we thought—we asked them to stay and pose.

Q. That was when Mr. Wilkinson was with you?

10 A. Mr. Wilkinson was with us, yes.

Q. Those were put in the prospectus, those ones I spoke of? A. Yes, sir.

Q. Is your son Gordon in court today? A. No, sir.

Q. How did he propose the name of the country club? A. Well, because he—

Q. When did he do this? A. At the time we had lunch at the Rock Spring Inn. That was in, I think, in July, 1924.

20 Q. Didn't you say to Mr. Wilkinson, when he spoke to the governors, it would mean a whole lot to yourself if the club was named the same as the Rock Spring Inn, and so forth, didn't you say that to Mr. Wilkinson it would mean a whole lot to you if the name was Rock Spring Country Club?

Mr. Grosso: I object to that question.

A. No.

30 Mr. Young: That is all.

By Mr. Marsh:

Q. Mr. Brewer, did the Orange Mountain Land Company sell this land to the Rock Spring Country Club? A. Yes.

Q. Do they still retain other lands in that vicinity? A. Yes.

Q. This was only part of the tract? A. Only part of the tract.

40 Q. At the time of that sale did the Rock Spring Country Club ever assume or take over this archi-

Frank Brewer, redirect.

tect's contract from the Orange Mountain Land Company? A. No.

By the Court:

Q. Were you one of the owners of the Orange Mountain Land Company? A. It was the original 10 one to get the option on it.

Q. And you were one of its incorporators? A. I was.

Q. You bought that at the time that you were incorporated as the Orange Mountain Land Company? A. We incorporated shortly after I had the option.

Q. How many acres? A. There were one hundred and twenty acres, I think it was.

Q. How many were there at the time that you 20 sold to the Rock Spring Golf Club? A. We sold them one hundred acres, retaining twenty, thinking we might have golf under the brow.

Q. Now, you entered into a contract with the plaintiff to map out a golf course for you on this ground and wanted to make the ground also available for tennis and riding and swimming, didn't you? A. Yes, sir.

Q. What were you going to do with it after you 30 had the golf course? How were you going to get your money back? A. Why, it is organized under an ownership plan.

Q. I know, but were you going to run it under the management of the real estate corporation that had the ownership of all the land, the Orange Mountain? A. No. We were going to run it—to sell it out to the Rock Spring Country Club.

Q. Did you know that at the time that you 40 bought it? A. No. When we originally had the option on it there were a number of real estate

Frank Brewer, redirect.

people after it at the time, and I thought it would be a much better proposition to have a club up there. It was near my own property and I thought it would protect us all.

10 Q. Then when you got this option and when this realty company was incorporated you bought it for the purpose of making a golf club of it, did you, or a golf course out of it? A. After we had bought it; yes, sir.

Q. After you bought it? A. Well, after we had organized the Orange Mountain Land Company we at once proceeded to organize a golf club.

Q. When you got the option and when you incorporated as a real estate corporation these lands of about 125 acres? A. Yes.

20 Q. Your purpose in getting that option and your purpose in incorporating this land company was to use these lands, or as much of the lands as was necessary, for a golf course, and to make it available for landscape features and otherwise as the contract says for tennis, driving, swimming, is that right? A. Yes, sir.

30 Q. Well, now, what I have asked you before was, and I now again ask you, how did you intend to carry out the purposes for which you say you got the option on that land? Was it in your mind at the time, and in the minds of the other incorporators that they would have a golf club or country club organized? A. If it were possible. Those things you have to have a lot of interviews with people and find out whether such a thing is needed, and whether it can be carried through.

Q. Who started this golf club? A. Well, I had the original option. I was really the—

40 Q. I am talking about the club now. A. The

Frank Brewer, redirect.

club was started by the Orange Mountain Land Company.

The Court: That is all I have.

By Mr. Grosso:

10 Q. Mr. Brewer, might it have been possible for the Orange Mountain Land Company to sell the land as a real estate development to better advantage than if it was sold to the club? A. Yes.

Q. It could have been sold for more money? A. More money.

Mr. Young: I object to that, what might have been.

By the Court:

20 Q. Why didn't you? A. Well, we wanted a golf links.

Q. In other words, you bought it in the first place to organize a golf club, didn't you? A. I thought a golf club would be much better than having small development.

30 Q. That is what you got your option for? You admitted that in the first place, to buy these lands and then form a golf club, and let the golf club use the land? A. If it were possible. If not, we could fall back on real estate.

Q. If it was not possible then you would try to use it in a general realty development and get your money back, is that right? A. Yes, sir.

By Mr. Young:

40 Q. In other words, you wanted to get as much as you could get out of it, is that so? A. No. We would rather have—

Case.

The Court: No, he has not said so. He has explained it.

Mr. Young: That is all.

(Adjourned until tomorrow, Thursday, November 4, 1926, at 9.30 A. M.)

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NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

October Term, 1926.

WILLIARD G. WILKINSON

v.

20

ORANGE MOUNTAIN LAND COMPANY and the ROCK SPRING COUNTRY CLUB, a Corporation.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. Peter F. Daly, Circuit Court Judge, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the fourth day of November, A. D. 1926, at 9:30 A. M.

30

APPEARANCES:

Messrs. STAMLER, STAMLER & KOESTER, HARRY YOUNG, Esq. (Present), Attorneys for the Plaintiff.

Messrs. RIKER & RIKER, THEODORE McC. MARSH, Esq. (Present), Attorneys for the Defendant The Rock Spring Country Club.

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Messrs. GROSSO, BRUNDAGE & ANDERSON, ALFRED J. GROSSO, Esq. (Present), Attorneys for the Defendant the Orange Mountain Land Company.

Frank Brewer, direct.

FRANK BREWER, recalled.

By the Court:

Q. Do you know when these prospectus were first issued? A. I think it was in the early part of 1925.

10

The Court: What is the date of the incorporation of the country club?

Mr. Young: The date of the incorporation of the country club was May 1, 19—

Mr. Marsh: April 28, 1925, was the date of the certificate.

The Court: Filed in the County Clerk's office on May 1. In the Secretary of State's office on May 2.

20

Q. Were these prospectus published and circulated before the incorporation of the Rock Spring Country Club May 1? A. I am not sure, your Honor.

Mr. Marsh: That was covered in the evidence before by a statement that both before and after it was used. It was published before.

The Court: I was not certain about that. That is all I want to know.

30

Mr. Marsh: I think, by agreement of counsel, that was stated. It was published before and used both before and after.

By Mr. Marsh:

Q. Mr. Brewer, in answer to one of the Court's questions at the end of the day, yesterday, you stated that the Orange Mountain Land Company had some idea of forming a golf club. Is that correct? A. Yes.

40

Frank Brewer, direct.

Q. What, if anything, did the Orange Mountain Land Company do to carry out that idea? A. Well, we had it determined whether it was practical to lay out a links there, and made the contract with Mr. Wilkinson to prepare the drawing.

10 Q. What, if anything, did the Orange Mountain Land Company do with reference to the Rock Spring Country Club, which was the organization that later developed? A. The Orange Mountain Land Company was the holding company, and we sold the idea of a country club to a group of men that had looked over the situation and saw that it would make a good golf course, and we sold part of the land to them, retaining what was not necessary for our own profit.

20 Q. And the group of men to whom you have referred to as having sold the idea, is that the list which was termed as the organization committee in the front of this prospectus, Exhibit P-3? A. Yes.

Q. Of that list of the organization committee, consisting of nine names, who, if any, are associated with the Orange Mountain Land Company in any capacity? A. Mr. T. H. Towers Farr and Mr. Alfred J. Grosso.

30 Q. Was the organization of the Rock Spring Country Club in any way controlled by the Orange Mountain Land Company? A. No.

By the Court:

Q. When you sold this idea to this group of gentlemen, in selling the idea did you embrace a sale of the plans and specifications made by Mr. Wilkinson? A. Only—no, there was nothing mentioned of that.

40 Q. Oh, I know not specifically of passing over

Frank Brewer, direct.

plans and specifications, but when you went to these gentlemen it was your plan to turn over to them certain part of your land, you to reserve, as you say, the balance for your own profit; in order to show them that it was available for a golf course, did you submit to these gentlemen and turn over to them the plans and specifications that Mr. Wilkinson had made, in order to show them that it was available for a golf course? A. Yes, your Honor, we turned over the plan, but we had no specifications. 10

Q. But the plans themselves and whatever specifications are on the plans you turned that over, didn't you? A. Yes.

Q. And that was used in a prospectus prepared by whom, before ever there was an incorporation of a golf club? A. By the Orange Mountain Land Company. 20

Q. In other words, that prospectus was prepared by the Orange Mountain Land Company, was it? A. Why, it was prepared by Mr. Farr, practically the wording, the actual wording of it.

Q. Mr. Farr, was he connected with the land company? A. Yes, sir.

Q. He was also connected with the new club, wasn't he? A. Yes, sir. 30

Q. And Mr. Grosso, the secretary of the land company, was also secretary of the new club, wasn't he? A. Yes.

The Court: That is all I have.

Mr. Young: I have no further questions.

By Mr. Grosso:

Q. Mr. Brewer, did the Orange Mountain Land Company furnish Mr. Wilkinson with a survey of the property? A. They did. 40

Frank Brewer, direct.

Q. And paid for it? A. Yes.

Q. Do you remember who surveyed the property? A. Vincent Freeman.

Q. Do you know how much the Orange Mountain Land Company paid for that survey? A. \$500.

10 Q. I show you a check of the Orange Mountain Land Company dated November 8, 1924, to the order of Freeman & Winston, in the sum of \$500, and ask you if that is the check that was given to Freeman & Winston for the survey? A. It is.

Mr. Young: I do not see where this is material or evidential at all.

20 The Court: I do not know. It may be. Mr. Wilkinson does not claim that he made a survey of the general contour of the land.

Mr. Grosso: I offer that check in evidence.

The Court: It is admitted.

(Check entered in evidence and marked Exhibit D-3.)

Q. You testified that you had the photographs made? A. I did.

30 Q. That are used in the prospectus. Were they made under your direction? A. They were.

Q. And paid for by the Orange Mountain Land Company? A. They were.

Q. Do you remember who the photographer was? A. Harrison of Orange.

Q. I show you check dated December 29, 1924, for \$32 to the order of G. L. Harrison and ask you if that is in payment of the photographs? A. It is.

40 Mr. Grosso: I offer that in evidence.

Frank Brewer, direct.

(Check entered in evidence and marked Exhibit D-4.)

Q. Was the engraving of the photographs paid for by the Orange Mountain Land Company? A. It was.

10 Q. I show you a check to the order of Moss Photo-Engraving Company, for \$81.76 dated January 6, 1925, and ask you if that is in payment for the engraving of the photographs? A. It is.

Mr. Grosso: I offer that.

(Check entered in evidence and marked Exhibit D-5.)

Q. Was the printing of the prospectus paid for by the Orange Mountain Land Company? A. It was.

20 Q. I show you a check to the order of the Essex Press, in the sum of \$254.36 and ask you if that check was given in payment of the printing of the prospectus? A. It was.

(Check entered in evidence and marked Exhibit D-6.)

Mr. Grosso: I also wish to offer in evidence a check to the order of Mr. Wilkinson for \$250, which he has already admitted.

30 Mr. Young: That is admitted in the pleadings.

Mr. Grosso: Dated October 23, 1924.

(Check entered in evidence and marked Exhibit D-7.)

Q. Mr. Brewer, did Mr. Wilkinson furnish anything to the Orange Mountain Land Company besides the plan? A. He only furnished a blue print. I saw that plan at one meeting. I didn't have it in my hand but I saw he had it with him, but

40

Alfred J. Grosso, direct.

that is the first time I have ever seen the colored plan, which he agreed to deliver us. We were to have a picture for the money we paid him, but we never got it.

10 Mr. Young: I object to any evidence of this sort. They are all extras, things which do not appear in the contract. This promise certainly would have been put in the contract.

The Court: It is agreed in the contract that he was to furnish plans and specifications, and any explanation as to what kind of plans and specifications is entirely proper.

20 Q. Did Mr. Wilkinson ever ask you to see what you could do to have him engaged as architect for the Rock Spring Country Club? A. No, he did not.

Mr. Grosso: That is all.

The Court: Anything else?

Mr. Young: No further questions.

The Court: That is all.

30 ALFRED J. GROSSO, recalled.

Direct examination by Mr. Marsh:

Q. Mr. Grosso, did you deal with Mr. Wilkinson in connection with the making of the contract which is being sued upon? A. I did.

Q. And did you have transactions with him subsequent to the date of it in reference to his performance?

40 Mr. Young: I object to anything that happened subsequent to the contract. I believe

Alfred J. Grosso, direct.

that was earlier in my direct examination. The contract speaks for itself.

The Court: No. The ruling was to the effect, what the Court had in mind was that anything said before the contract could not be testified to, because the contract spoke for itself. 10

Mr. Marsh: What the question specifically limited itself to was with respect to the performance under that contract.

The Court: I will allow it.

A. Yes.

Q. Well, now, will you tell just what you did in that connection and what you had to do with Mr. Wilkinson? A. Mr. Wilkinson came to my office. 20

Q. Please fix the time. A. I would like to go back a little ways. I met Mr. Wilkinson August, 1924, at a meeting that was held of some of the members of the Orange Mountain Land Company. We had met for the purpose of going over the land.

Mr. Young: That is exactly the same testimony that Mr. Wilkinson was trying to testify to on direct examination, this meeting at the Rock Spring Inn, and he was not permitted to. 30

The Court: If he insists on it then I will allow Mr. Wilkinson to come back on the stand and give his story of it. Of course, I have explained it before.

Mr. Marsh: I did not understand the witness was going back prior to that time, because that has been eliminated by the Court already. 40

Alfred J. Grosso, direct.

Q. I do not think you want conversations prior to the making of the contract, Mr. Grosso. See if you can take the history of this matter on from the time the contract was made. A. Well, the contract was made, it is dated August 11, 1924. Mr. Wilkinson came to my office on that date and the contract was drawn for the purpose of reducing to writing substantially what had been our oral agreement. After that time I saw Mr. Wilkinson on a number of occasions. He came to my office while he was working on the plan and subsequently delivered a blueprint of the plan which he has submitted in evidence, which is colored, and he was paid \$250.

Q. When did he deliver the plan, do you know?
A. I don't remember the exact date, but the check is dated, I believe, in October, and it must have been around that date.

Q. What else did he do prior to the time when he delivered the plans in performance of the contract? A. The only thing that he ever did in performance of the contract was to make the plan of the golf course.

Q. Well, now, how about the staking out tees, fairways, greens, traps, and bunkers as required by the contract? A. I visited the property very frequently, being secretary of the Orange Mountain Land Company, I visited the property very frequently and I never saw a single stake, outside of the stakes that were placed there by Freeman & Winston, the surveyors who had made the outline survey of the property.

Q. The agreement calls for a plan to include all of the details and landscape effects of the entire property and its available features for golf, tennis, riding and swimming.

Alfred J. Grosso, direct.

Q. Was anything furnished to you other than this plan having to do with tennis, riding and swimming? A. No.

Q. Now, following the delivery of the plans what happened so far as Mr. Wilkinson was concerned?
A. Following the delivery of the plans an organization committee had been formed for the purpose of promoting a club and from then on the organization committee worked among different people to see whether it was feasible to start a club.

Q. That organization committee that you refer to is the one mentioned on the first page of the circular, Exhibit P-3, is that correct? A. Yes.

Q. Will you look at it? A. Yes. That is the organization committee.

Q. All right. Now I ask you what your relations with Mr. Wilkinson were and connected with the performance of the contract? I will come back to the organization of the club. A. Well, I was secretary of the company and as I have stated before the only work which was performed by Mr. Wilkinson in connection with that contract was the preparation of the plan of which we were given a blueprint.

Q. Mr. Wilkinson testified to the fact that he met you at various times, with and without other members of the Orange Mountain Land Company, and gave you certain advice in connection with the promotion of the golf course. Did you meet him and if so when, and under what circumstances?
A. I can't recall the number of times I saw Mr. Wilkinson, but they were very infrequent. He came to my office several times. I was at one meeting in New York City, held at Mr. Farr's office, and Mr. Wilkinson was not present at that meet-

Alfred J. Grosso, direct.

ing—I don't remember whether he was present. I was at one meeting at the Rock Spring Inn that Mr. Wilkinson attended, and he came to my office several times. He never gave me, or the Orange Mountain Land Company, any advice with regard
 10 either to the acquisition of the property, or to the promotion of a club. The property had been acquired when we first met Wilkinson.

Q. The contract says that he shall act in an advisory capacity to the said company in all matters pertaining to its promotion and the planning of the above. Did he ever perform or do anything which comes within that language of the contract? A. No, he did not. The club was promoted by the organization committee that is
 20 named on that folder. The Orange Mountain Land Company did not need promotion. It was a corporation already in existence when we first met Mr. Wilkinson.

Q. Did the Orange Mountain Land Company control in any way the organization committee? A. No. The Orange Mountain Land Company was originally created for the purpose of purchasing a tract of land which had just come into the
 30 market. It was known as the South Mountain Park land tract. Mr. Brewer had obtained an option on this large tract of land and he induced a number of his friends to form a corporation for the purpose of acquiring that land. There were nineteen all told, who made up the Orange Mountain Land Company. The land was purchased primarily for real estate development. A number of projects were submitted to the Orange Mountain Land Company and entertained. For instance, at one time the company seriously entertained a proposition from the American Telephone
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Alfred J. Grosso, direct.

and Telegraph Company of selling a portion of this land.

Mr. Young: Does your Honor feel this is material?

Mr. Marsh: The question I raised was as to whether or not the Orange Mountain Land Company controlled in any way the
 10 organization committee, and I thought he was answering that question by explaining the Orange Mountain Land Company's relation, if any, with that. I think he went back a little too far.

A. I may have gone back a little too far but I wanted to explain the thing thoroughly. When it was finally decided by the Orange Mountain Land Company that it might be advisable to sell this
 20 property for the purpose of a club, there was no—it was not unanimous by any means among the members of the Orange Mountain Land Company. Some of them favored selling this property for the purpose of creating a club, and others favored going ahead with the original idea and developing it. It was then decided that the Orange Mountain Land Company could not itself create a club and
 30 deal with the club which it was creating. A number of people were approached who had evinced interest in the formation of a club in that locality, and they were asked if they would form an organization committee and feel out sentiment in the neighborhood in the Oranges, so that that organization committee was sort of a self-appointed committee. The Orange Mountain Land Company in turn agreed to assist the organization committee in every way possible. For instance, in the mat-
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Alfred J. Grosso, direct.

ter of defraying the expense incident to the preparation of the prospectus, and so forth.

10 Q. Did the Orange Mountain Land Company in any way control the operations of the organization committee, or the Rock Spring Country Club, after it was formed? A. No, it did not. After the organization committee was formed the Orange Mountain Land Company was in the background. The organization committee had frequent meetings, I was a member of that organization committee, at Mr. Farr's house, and we discussed various ways and means of promoting a club. We went to see friends of ours, and the Orange Mountain Land Company had nothing to do with it whatever. It was a separate and distinct organization, not controlled in any way by the Orange Mountain Land Company.

20 Q. In connection with the preparation of this prospectus, which is marked Exhibit P-3, what can you tell us as to the circumstances of that? A. The prospectus was prepared by Mr. Farr. It was submitted to the organization committee for their approval. We met at Mr. Farr's house one Sunday afternoon and he read the prospectus which he had prepared in his own handwriting.

30 Q. What, if anything, did Mr. Wilkinson have to do with it? A. He had nothing to do with it whatever, except that a quotation was taken from a letter which he had written to the Orange Mountain Land Company regarding the availability of the property for golf purposes.

40 Q. I show you Exhibit P-5. What, if anything, did Mr. Wilkinson have to do with that? A. As I recall it this circular was prepared also by Mr. Farr, but he has testified he received the information with regard to the cost of the shares of the

Alfred J. Grosso, direct.

Lakeville, and Winged Foot Club from Mr. Wilkinson.

By the Court:

Q. Was this Exhibit P-5 circulated before the prospectus? A. No. It was circulated afterwards. 10

Q. After the organization of the club, or before? A. Before. All of this work was done before the organization of the club. The organization committee was functioning and working hard to see if they could induce enough people to take an interest in the club to warrant forming a club.

By Mr. Marsh:

Q. Mr. Grosso, you were shown a letter yesterday written to B. B. Miller & Company, which is known as Exhibit P-8. Have you refreshed your recollection at all with reference to that letter? A. Yes, I have. 20

Q. What have you to say about it? A. After leaving the court yesterday afternoon I examined my files and I found that I had received a letter from this concern, B. B. Miller & Company, in which they requested certain information regarding Mr. Wilkinson; they wanted to know as to his qualifications as a golf architect. The letter had been addressed to the Rock Spring Golf and Country Club, and was referred to me by the—it was brought to my office by the letter carrier. 30

Q. Is that the letter referred to? A. Yes. The letter was addressed to the Rock Spring Golf and Country Club, and I had a file which I kept for the Rock Spring Country Club, and it was filed in that file, and that was the reason for the caption on my reply, "Rock Spring Country Club," so that it 40

Alfred J. Grosso, cross.

would be filed along with the original letter which I received from Miller.

Mr. Marsh: I would like to have that letter marked. The witness has referred to it.

10 (Letter of B. B. Miller & Company entered in evidence and marked Exhibit D-8.)

Q. There has been some testimony with reference to Exhibit P-7, concerning the removal of the stumps from the lake. Was that done in any way in connection with the improvement of the golf?

20 A. No. The Rock Spring Country Club, in addition to the building of a golf course, desired to make that lake available for swimming. There were some seven hundred stumps in the lake entirely covered over by water, but they felt that it would be dangerous to swim in the lake as long as the stumps were there. A committee was appointed, of which I was the chairman, and the stumps were removed from the lake; but it had nothing to do with the construction of the golf course, and was charged up to a different—under a different heading “clearing of lake.”

30 Q. Did Mr. Wilkinson have anything whatever to do with that work? A. Nothing whatever. I never consulted Mr. Wilkinson, I never spoke to him about the clearing of the lake. I engaged a contractor and supervised the work myself. I went to the property sometimes three times a day while that work was in progress. I never saw Mr. Wilkinson from the time the work started until it was finished. He had nothing to do whatever with it.

Cross examination by Mr. Young:

40 Q. Mr. Grosso, you told the Court in answer to

Alfred J. Grosso, cross.

a question whether or not this pamphlet Rock Spring Country Club was sent out before or after, I understood you to say it was sent out before the organization committee? A. No. I said after. I said it was sent after.

Q. After the organization committee? A. No. 10

Mr. Marsh: The question was whether it arose after the organization of the Rock Spring as a corporation. That was the question.

The Witness: As I understood the question it was whether or not this circular was sent out before or after the sending out of the prospectus. That is the way I understood it. 20

By the Court:

Q. That was the first one, and then you said both the prospectus and that were all sent out before the actual incorporation of the club, didn't you? A. Yes.

Mr. Marsh: That is what I understood the question to be.

By Mr. Young:

30 Q. How would you account then, on the back of this sheet it has a membership list, one hundred and twenty members of the Rock Spring Country Club? A. The organization committee solicited membership to a proposed corporation long before the certificate of incorporation was filed, long before the corporation was organized. As a matter of fact, the original organization meeting of these gentlemen, some of whose names appear on the back of that circular, was held in Febru- 40

Alfred J. Grosso, cross.

ary, as I recall it from the meeting, which was before the certificate of incorporation was filed. We had actually secured memberships to a proposed club before the corporation was organized.

10 Q. Mr. Grosso, you also, in explaining Exhibit P-8, say that this quotation, "Re Rock Spring Country Club," was most likely because of it being in the same file, you had all your papers in that file, and you captioned it for that reason? A. Yes.

20 Q. How do you explain in your letter where you say, "I am a member of the committee that engaged Mr. Wilkinson to lay out the proposed golf course for the club"? Why didn't you mention the Orange Mountain Land Company? Was that also in there? A. Because at the time, Mr. Young, the Orange Mountain Land Company was in being and while the club had not been organized we were working very hard to form a club and we were securing memberships to a proposed club, and I had two different files, I kept two files in my office, one entitled, "In re Orange Mountain Land Company," and the other entitled, "In re Rock Spring Country Club." That was in answer to a letter which was sent to me addressed, "Rock Spring Golf and Country Club," and I filed that letter in the 30 Rock Spring file and entitled the reply, "In re Rock Spring Country Club," so that it would be in the same file.

Q. In other words, you had separate files for the Orange Mountain Land Company and for the Rock Spring Country Club? A. Yes.

40 Q. But as far as was concerned in your mind, one was the same as the other, isn't that so? A. No, one was not the same as the other.

Q. As an attorney, wouldn't you have been likely

Alfred J. Grosso, cross.

to notice such an error as that? A. Well, I dictated quite a few letters in a day, Mr. Young, and you probably do the same. I in no way intended by this letter to mean that I was on the golf committee of the club.

10 Q. You don't say that either, do you, here? You don't say that you are on the golf committee in your letter? A. I don't remember just exactly what I do say in the letter, but I say that I was on the original committee that engaged Mr. Wilkinson to lay out the proposed golf course for the club, and I was on that committee.

Q. You say nothing about the Orange Mountain Land Company? A. No.

20 Q. You were a member of the organization committee of the Rock Spring Country Club? A. Yes, I was.

Q. I believe you testified on direct examination that this prospectus was turned over to you and that all it contained was a letter which Mr. Wilkinson wrote to yourself, or a member of the club, is that so? A. A letter and a copy of the map.

30 Q. Now, Mr. Grosso, according to the contract Mr. Wilkinson was supposed to lay out places for tennis, riding and so forth; did you mean to testify that that is not on this plan? A. I didn't testify as to what was on the plan. If I remember the question Mr. Marsh asked me was whether or not Mr. Wilkinson had made any plans in connection with the tennis, swimming and riding, and I said he had not, that the only work he had done was to prepare this sketch which we have here in evidence.

40 Q. Here is a plan which is connected, or partly connected to the prospectus.

Mr. Marsh: It was originally connected.

Alfred J. Grosso, cross.

Mr. Young: It was originally connected.
It is getting a little off.

10 Q. And I show you here up in the left-hand corner of this plan, it says "Riding clubs"; do you recognize that? A. Yes.

Q. And I show you down here in the lower center "Tennis"? A. Yes.

Q. And I show you the club house is also marked on there, the position of the club house? A. Yes. They are all tentative locations.

20 Q. That is what his work was to do, make tentative locations? It would not have been permanent until you accepted it. A. I understood he was to do more work than just merely suggest locations of things. The building of a tennis court, for instance, requires more than a mere location of the court.

Q. You heard Mr. Brewer say that the Orange Mountain Land Company was really a holding company for the golf club, didn't you? A. Yes.

Q. And he is president of the—

Mr. Marsh: What was that question? That the Orange Mountain Land Company was a holding company for what?

30 Mr. Young: For the purpose of having a golf club.

Mr. Marsh: There is no such testimony.

The Court: Mr. Grosso says yes, he heard him say that. He did use the expression "holding company."

Mr. Marsh: A holding company. Well, all right, go ahead and ask the question.

40 Q. Mr. Grosso, do you know anything about golf clubs, about the preparing plans for golf clubs? A. No.

Alfred J. Grosso, cross.

Q. You spoke of there not being any—you never saw any staking on the ground and so forth? A. Yes.

10 Q. Would you say that it was possible to draw a plan of the course without having made the stakes and the blazing of trees and so forth at the time? A. I am not sufficiently versed in golf architecture to answer that question.

Q. But as far as you were concerned— A. As far as I was concerned I never saw stakes. I walked over the ground frequently. I never saw any stakes except the stakes that were placed on the property by Freeman & Winston the surveyors whom we engaged.

20 Q. Then there was more in this prospectus than just the conversation. There was also this plan of the Rock Spring Golf Club with Mr. Wilkinson's name on it? A. Yes.

Q. You realized you must pay him something to send out a prospectus to members, after your club is formed, with his map and his name in there, didn't you?

The Court: That is argumentative.

30 A. Mr. Young, I realized—shall I answer the question?

The Court: It is argumentative.

Mr. Young: I will withdraw the question.

Q. You are secretary of the Rock Spring Country Club? A. I am secretary of the Rock Spring Country Club.

40 Q. Don't you know, as a matter of fact, that at the proposed time of taking over the land that the Orange Mountain Land Company had still some further land to buy in order to close the deal? A.

Alfred J. Grosso, cross.

No. The Orange Mountain Land Company had acquired all of the land necessary for the golf course. Subsequently the Rock Spring Country Club engaged another architect, and the plan which he made of the golf course was entirely different from the plan which had been made by Mr. Wilkinson, and that necessitated the purchase of other lands, which were purchased by the Rock Spring Country Club. But at the time the Orange Mountain Land Company sold to the Rock Spring Country Club they sold all of the land that the club needed for that purpose.

By the Court:

Q. Does the plan that shows on that prospectus, Mr. Grosso, substantially harmonize with the blueprint that had been submitted to you by Mr. Wilkinson? A. It is the same, your Honor. It was reduced photographically. It is the same plan.

By Mr. Young:

Q. Mr. Grosso, of course, between Mr. Wilkinson and the Orange Mountain Land Company, did you not? A. Mr. Wilkinson drew a contract. He came to my office with it and he did not—

Q. I am asking you the question. A. You asked me if I drew the contract and I am answering that question. Mr. Wilkinson drew a contract which was intended to carry out our agreement. It did not carry out our agreement. There was one thing that was specifically understood and that was that he was to get \$250, and that was to be in full settlement of any work he did for the company, unless the company proceeded with the erection of the golf course, and I drew the contract,

Samuel G. Supplee, direct.

and I was very methodic about putting that clause in the contract.

Q. Now, Mr. Grosso, the reason you did not adopt the other contract was because it also embodied provisions for the construction of the course, isn't that so? A. It did not embody provisions for the construction of the course. I have it here, Mr. Young, if you would like to see it. It did not embody any provisions for the construction of the course. Do you want to see it?

Mr. Young: I understood that there probably was. If there is not, it does not matter one way or the other.

The Court: Mr. Grosso says that there is not.

Mr. Young: All right.

Mr. Marsh: Do you want that contract?

Mr. Young: No.

Mr. Marsh: That is all.

SAMUEL G. SUPPLEE, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Grosso:

Q. Mr. Supplee, are you a member of the Orange Mountain Land Company? A. I am.

Q. Were you a member at the time the land company was organized? A. I was.

Q. Do you know Mr. Wilkinson? A. I do.

Q. How long have you known Mr. Wilkinson? A. Oh, a number of years.

Q. Do you know whether any of the members of the Orange Mountain Land Company knew Mr. Wilkinson prior to August, 1924? A. Not that I know of, excepting my own brother—

Samuel G. Supplee, direct.

Mr. Young: I object to that question whether any of the members knew it. How does he know?

The Court: It does not amount to very much.

10 Mr. Young: All right.

Q. Did you introduce Mr. Wilkinson to the members of the Orange Mountain Land Company? A. I did.

Q. For what purpose? A. For the purpose of persuading them to let him become interested in laying out a golf club.

20 Mr. Young: I object to what his purpose was. I do not see where any of this is material.

The Court: I do not know what it will lead up to. Go on.

Q. Did you know anything about the contract that was made between the Orange Mountain Land Company and Mr. Wilkinson? A. I do, I know something of it.

Q. You are familiar with the provisions of the contract? A. I am.

30 Q. Did you ever have any conversation with Mr. Wilkinson subsequent to the making of that contract? A. I did.

Q. Regarding it? A. Yes, sir.

Q. What was the nature of that conversation?

Mr. Young: I object to that unless Mr. Supplee was there at the making of the contract in the presence of Mr. Wilkinson, it certainly is not binding upon him, any conversations which he had beforehand.

40 The Court: That is after the making of it.

Samuel G. Supplee, direct.

Mr. Grosso: With Mr. Wilkinson.

Mr. Young: That is all right.

The Witness: Your Honor, in answering that question may I include a little previous history so as to tie it up close?

The Court: All right, go ahead. 10

A. In my bringing of Mr. Wilkinson and introducing him to the golf club, Mr. Wilkinson did not want to accept any fee for the work he had done, as a personal courtesy to myself and my brother. Later on he performed some assistance to the members in helping them, and they wanted to pay him something for his trouble. He did not want it, because he felt that he could sell himself to the entire organization. Later on they insisted on paying him something for the work that he had already done. He thoroughly understood that he was not being employed to go further, excepting as far as the Orange Mountain Land Company felt that they could go, and for that reason the contract was made and it was embodied in that contract that they wanted to pay him for the work he had done. Farther than that they owed him nothing, but Mr. Wilkinson, in his conversation with me, told me specifically, Mr. Supplee, he says, I want to go on and sell myself to this other board of directors. 20 30

By the Court:

Q. Was this before or after the contract? A. After the contract. I believe that I can sell myself to this other group, because I know that it is a different organization; and I asked him if he realized what was in that.

Q. When and where did he say that? A. In a 40

Samuel G. Supplee, direct.

conversation, I can't recall the exact date, but Mr. Wilkinson and I had several conversations.

Q. About when did he say it, and where did he say it, and who was present when he said it? A. I believe my brother was present at one time. I can't fix the date. 10

Q. Where? A. At one time he called in my house. And we discussed it.

Q. About when? A. It was in the fall of 1924.

The Court: Proceed.

By Mr. Grosso:

Q. Go ahead, Mr. Supplee. A. I had a later conversation with Mr. Wilkinson, I can't fix the date, but I again reminded him— 20

Mr. Young: All of this testimony—the plaintiff cannot meet any of this testimony, it is so indefinite, and it surely is—it has not happened so long ago it certainly should be easy enough to fix a time.

A. (Continued.)—I felt a moral obligation to the Orange Mountain Land Company and to Mr. Wilkinson and wanted to have the matters perfectly clear. 30

Q. Will you answer the questions, please, instead of rambling along? In a conversation which you had with Mr. Wilkinson subsequent to the making of this contract, did you discuss the payment of the \$250 which had been paid Mr. Wilkinson? A. I knew that it had been paid to him.

Q. Did you discuss that feature of the contract with him? A. I don't know as we discussed it, but it was mentioned, that question, and I knew— 40

The Court: Never mind what you knew.

Samuel G. Supplee, direct.

You were asked what was said and done. That is in his mind.

A. (Continued.) It was mentioned, yes.

Q. Was anything said by you or Mr. Wilkinson about \$250 being payment in full for the work which he had rendered to the Orange Mountain Land Company? A. I don't recall it at that time. 10

Q. At any time after the making of the contract? A. I can't recall definitely to fix a date. I would have to make an indefinite statement again because it was thoroughly understood that was in payment for all he had done.

The Court: Strike out that last statement as to what was thoroughly understood.

Q. Did you ever speak to him about the amount of work he was doing for the club? A. I did. 20

Q. Or for the company? A. I did.

Q. Was that after the making of the contract? A. Yes.

Q. What was his comment or his reply, if any, with regard to that?

Mr. Young: What did he say? What was the question put to him? I would like to have the conversation rather than just a general statement. Make it a little more definite, it would be much easier for us to meet the issues. 30

(Testimony read by stenographer.)

A. His reply was to the effect that he was willing to take his chances on getting the new board of directors or organizers of the Rock Spring Country Club to employ him to carry out their plans.

Mr. Grosso: That was after the making of the contract. 40

Samuel G. Supplee, cross.

The Court: When and where?

Q. Where was that and about when was it? A. I would have to refresh my memory at the time. I know it was discussed twice, once at the time he was in my house, and another time that I saw him in my office. He was in my office I think once or twice when we discussed the matter. 10

Q. That was after the making of the contract?

A. I believe so.

Q. How long after the making of the contract?

Mr. Young: I object to what the witness believes, Mr. Grosso.

The Court: That is his best recollection.

A. It sure was after the making of the contract. 20

Mr. Grosso: That is all.

Cross examination by Mr. Young:

Q. Mr. Supplee, do you mean to say that Mr. Wilkinson here was going around doing work gratuitously, and that all of a sudden the Rock Spring Country Club or the Orange Mountain Land Company decided to be a good Samaritan and pay him? 30

Mr. Grosso: I object to that question unless he defines whether he is talking about the Orange Mountain Land Company or the Rock Spring Country Club.

The Court: Objection sustained.

Q. Well, I will ask you as to the Orange Mountain Land Company, is that so?

The Court: The form of the question is wrong, Mr. Young. Any further questions? 40

Mr. Young: No further questions.

John S. Francis, direct.

JOHN S. FRANCIS, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Grosso:

Q. Mr. Francis, are you connected with the Orange Mountain Land Company in any capacity? 10

A. Yes.

Q. In what capacity? A. Vice-president.

Q. Are you also on the board of directors of the company? A. Yes.

Q. Do you know the contract between the Orange Mountain Land Company and Mr. Wilkinson?

A. Yes.

Q. Do you know what work was performed by Mr. Wilkinson under that contract? A. I do. 20

Q. What work was performed by him? A. The blueprint was turned over to the company showing an outlay of the golf course.

Q. Did you ever visit the property after that blueprint—before or after the blueprint was submitted to the Orange Mountain Land Company?

A. A great many times.

Q. Did you ever see any stakes that were put out by Mr. Wilkinson? A. I never did.

Q. Did you visit the property frequently? A. A great many times. 30

Mr. Grosso: That is all.

By Mr. Marsh:

Q. Did he do anything else, Mr. Francis, except to submit the blueprint? A. Not that I know of.

Q. Were you in a position to know? A. As a rule. Yes, I was. 40

John S. Francis, cross.

Cross examination by Mr. Young:

Q. Mr. Francis, how many times have you seen Mr. Wilkinson, not just immediately, but I mean at that time? A. I met Mr. Wilkinson twice.

10 Q. Two different times? A. Yes.

Q. You say Mr. Wilkinson submitted a plan to the Rock Spring Country Club?

Mr. Young: Make that to the Orange Mountain Land Company.

A. Yes.

Q. The Rock Spring Country Club adopted a plan prepared by Mr. Wilkinson in their prospectus?

20 Mr. Grosso: I object to the form of the question.

The Court: Of course. There was not any Rock Spring Country Club at that time.

Q. After the Rock Spring Country Club was organized was this prospectus used in getting members for the club?

Mr. Marsh: I object.

30 The Court: He is not a member of that club, as far as the evidence goes. Besides, it is admitted that they did.

Q. Do you know what size this tract or land is, how many acres? A. Do you mean that is owned now?

The Court: No, originally. It has already been testified it was about 125 acres and they sold about one hundred acres off.

40

Williard G. Wilkinson, direct.

By the Court:

Q. Is that what it is approximately? A. Yes, approximately.

By Mr. Young:

10 Q. Have you gone over that acreage very carefully looking for these stakes? A. I have walked over the acreage a great many times.

Q. Were you looking for stakes? A. No.

Q. Do you know how a golf course is staked? A. I don't.

Mr. Young: That is all.

Mr. Grosso: That is all.

Mr. Marsh: No questions.

Mr. Marsh: The defendant The Rock Spring Country Club rests. 20

Mr. Grosso: The defendant The Orange Mountain Land Company rests.

PLAINTIFF'S REBUTTAL TESTIMONY.

WILLIARD G. WILKINSON, recalled:

Mr. Young: Do you admit Mr. Wilkinson's qualifications as an architect? If not, I will prove them. 30

Mr. Marsh: I do not quite see how it is rebuttal.

Mr. Young: Yes, to the question they claim there were no stakes or anything on the course.

Mr. Marsh: That is a matter of fact, not of his qualifications.

The Court: Ask your question and I will pass on it.

Q. Mr. Wilkinson, did you stake out all the dif- 40

Motion for Direction of Verdict.

ferent tees on this plan which you submitted to the Orange Mountain Land Company? A. Yes, sir.

Q. Could you have drawn that plan without staking out all the different tees? A. No, sir.

10 Mr. Marsh: I object as not rebuttal.

Mr. Young: I think it is proper.

The Court: I will allow that to stand.

Q. Did you do all the work that was required under the terms of the contract?

Mr. Marsh: I object.

A. Absolutely in every detail.

20 The Court: That objection is sustained and the answer is stricken out.

Mr. Young: No further questions.

Mr. Marsh: No questions.

Mr. Young: Plaintiff rests.

Motion for Direction of a Verdict.

30 Mr. Marsh: I would like to move for a directed verdict on behalf of the Rock Spring Country Club, the grounds being the same as on the motion for nonsuit, on the ground which I then indicated that the Rock Spring Country Club is a corporation which was organized on or about the first of May, 1925. That that corporation May 1, 1925, or at no time, ever assumed any obligations which arise under the contract which is marked Schedule A, which is the contract sued upon. The allegation of the complaint is that there is a distinct assumption of the obligations of that contract by the Rock Spring Country Club as a corporation; and so far as I can see the evidence is entirely barren
40 of any such proof of a contractual assumption of

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the obligation, and in the absence of that I fail to see how the Rock Spring Country Club is chargeable for any money due, or claimed to be due to Mr. Wilkinson. That is the basis of the motion.

Mr. Young: As to the Rock Spring Country Club, there is evidence introduced in Exhibit P-8, 10 which the secretary of the Rock Spring Country Club admits, he says, "I am a member of the committee that engaged Mr. Wilkinson to lay out the proposed golf course for the club." (Argument in reply to the motion.)

The Court: The Court is constrained to the conclusion that there has no such evidence been presented in this case as would show a contractual relationship between the country club and this plaintiff. The country club was a distinct corporation, and while it is true that its organization was inspired by the activities of the land company, yet the gentlemen who were in there, who were not members of the land company, went into this corporation without assuming any obligation of the land company. There were ten of them; two of them were members of the land company. The golf club was a distinct legal entity. After it was organized it was free and independent, so far as its legal powers were concerned, free and independent of the land company. There must be a contractual relationship, in a case like this, before the plaintiff can hold a defendant for a breach of a contract, or a failure to perform a contract. There never was a contract between this distinct corporation, the golf and country club, and Mr. Wilkinson. The motion for a directed verdict is granted. You may have an exception. 30

Mr. Grosso: I would like to again move at this 40

Motion for Direction of Verdict.

time that a verdict be directed in favor of the defendant, The Orange Mountain Land Company, for the reason "that there is no evidence before the jury to show that the company decided at any time to proceed with the construction of the said golf course. By the plain terms of the contract, the contract provides that for a payment of a specific amount, \$250, and the delivery of plans and specifications, which has been paid, \$1,750 at such time as the company shall have decided to proceed with the construction of the said golf course."

The Court: Didn't they decide to proceed with the construction of a golf course?

Mr. Grosso: There is no testimony.

The Court: What is the difference whether they decided to proceed in their own name or decided to proceed through a company that they inspired and encouraged, and really brought about its organization? What is the difference?

Mr. Grosso: I think there is a lot of difference according to the terms of the contract.

The Court: Here is the situation, Mr. Grosso: According to the undisputed testimony, including your own testimony, Mr. Brewer is the man who got the option for the 125 acres of land in the first place; he says on the witness stand that the main purpose of getting that option was because they felt it was available for the development of a country club, and that in case it would not develop as a country club, then they would have to rely upon its general development for general real estate purposes. That is his evidence. Now, then, he had this option, and this land company was organized, and right from his testimony there is but the one inference that it was organized

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for the purpose of developing the land along the line of country club purposes, golf, tennis, riding, swimming, and the like; and this land company is organized on July 21, that is, its incorporation is filed in the County Clerk's office then, and in the Secretary of State's office two days later, and when it was filed in the Secretary of State's office it was a complete corporation. What do they do? As you said in your testimony, as early as February membership for a country club was being solicited, and then as early as May 1 the Rock Spring Country Club was incorporated. That is in a period of about nine months and a half after the incorporation of the land company, the land company succeeded in effecting a corporation for club purposes. And what do they do in the meantime? What do they do as a preliminary to this? They take the plans that Mr. Wilkinson prepared and they constantly used that plan in the encouragement of the incorporation of this club, of which you, as the secretary, and one of the other members say, one of the so-called charter members or incorporator, founder members, some call it; and you get up a prospectus, two distinct prospectus, and you take Mr. Wilkinson's plan, have it reduced in size, photographed and printed upon that prospectus, and you use his plan all the way through, before there is any incorporation of the country club. You decided to go ahead with the erection of a golf course as far back as February, and you had it in your minds, according to the man who had gotten the option and was really the inception of this land company itself, that it was for the purpose of developing it for golf purposes, and the like. I cannot see how, from all the evidence in the case,

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you can evade the conclusion that this company, the land company, did decide to proceed with the construction of the golf course. Because what practical difference is it whether they did it in their own name, or whether they were responsible for the doing of it through something which their own acts created? Of course, that cannot bind that corporation that resulted from their efforts, because there were other men in that, and it was a distinct corporation. Surely it is at least a question of fact for the jury. Besides that, and assuming we could not conclude that the company, according to the terms of the contract, decided to proceed, aren't they responsible anyway? What was this man Mr. Wilkinson to do? According to the contract the company agreed to employ him as an architect for the purpose of designing an eighteen hole golf course to be located on the property shown, and for that he was to get \$2,000. The contract says: "Said architect agrees for and in consideration of the sum of \$2,000 to be paid as hereinafter stated to prepare the plans and specifications for the erection and construction of an eighteen hole golf course on the above property; said plan is to include all of the details and landscape effects of the entire property and its available features for golf, tennis, riding and swimming. In addition thereto, and for the same consideration, to act in an advisory capacity to the said company in all matters pertaining to the promotion and planning of the above." He not only prepared the plan but he did act in an advisory capacity for the promotion of a club. His letter appears in one of the prospectus, it is advertised and circulated by your company for the purpose of effecting this organization of a golf or

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country club, and his plan is put upon that prospectus. What is that but promotion and acting in an advisory capacity? Of course, there were other things he was to do; he was to stake out the fairways, greens, traps and bunkers. He says he did. He says further no plan could be made unless those stakes had been placed, and he says he placed from thirty-six to forty stakes. Then he was also to make all necessary models of greens to enable the constructor of said course to build the said greens with the desired characters and undulations as indicated on said plans; and I got from the evidence in the case that particular kind of work, the preparation of models, is something which comes along when the actual construction has started, and it is not something that can be definitely prepared before the construction starts. He was to use his professional status and his best efforts to carry out the designing and construction of the said course to a successful completion. Was his professional status so used? It surely was when that letter was included in the prospectus, when his plan was included in the prospectus, and according to his evidence, and there is other evidence, that in his interviews he was using his best efforts to bring a golf course to completion in an effective and proper manner.

There are many cases, for example, along the line of architectural building, where an architect enters into an agreement and he is to be paid a total sum for the plans and for his work during the erection and construction of the building, and if the owner decides and concludes not to build the building, then there is a figure for the plans alone. Suppose that owner decided not to erect the building and says to the architect, well, I have

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got your plans, and that is all I need you for, and he turns around the next day and employs another architect. He cannot do it. The plans and specifications had been prepared according to the contract, and the owner of that building has to give the rest of the job to somebody else? No. Because we know, as a matter of common knowledge, that these architects, when they prepare these plans and specifications upon the basis of so much for plans and specifications and so much for the work that goes along with the actual construction of the work, that they work on the plans and specifications on the basis of a figure that is to encourage them to get what is the real velvet or money in the job. That is common knowledge. So, in this case, once those plans and specifications were used by your company for the promotion of this general job, even though they were used by somebody else, as long as you were responsible for the use, since this man was willing to do all that he agreed to do, then you cannot take part of his work and simply say, because he did not physically do it all, when you stopped him from doing it, you cannot stop him from the balance of the money, as I look at it. However, I will listen to you about it.

Mr. Grosso: May I have an exception?

The Court: There may be some questions of fact. I am only giving you the kind of conclusions I feel that the jury might be entitled to draw from the evidence in this case. I refuse, of course, your motion for a directed verdict.

(Mr. Grosso sums up the case for the defendant The Orange Mountain Land Company.)

(Mr. Young sums up the case for the plaintiff.)

**Request to Charge by the Defendant
Orange Mountain Land Company.**

(1)

"If the jury shall find that the defendant Orange Mountain Land Company decided not to construct the golf course on the property then the sum of \$250 paid by the defendant Orange Mountain Land Company to the plaintiff completes the terms of the contract and is in full satisfaction thereof."

(1)

"If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing the contract sued on in this case, then your verdict must be such a proportion of the entire price as the fair cost of the work done bears to the fair cost of the whole work and in respect to the work not done such profits as he would have realized by doing it."

(2)

"If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing the contract sued on, and as there is no evidence to indicate either the value of the work performed or the profits the plaintiff would have realized if he had performed, your verdict must be limited to nominal damages."

Charge.

Court's Charge to the Jury by Honorable PETER F. DALY, Circuit Court Judge, is as follows :

Members of the Jury: I have been requested to charge by the counsel for the defendant:

Charge.

10 "1. If the jury shall find that the defendant Orange Mountain Land Company decided not to construct the golf course on the property then the sum of \$250 paid by the defendant Orange Mountain Land Company to the plaintiff completes the terms of the contract and is in full satisfaction thereof."

That is true, provided, however, you also find from the evidence in the case that the company did not prevent, improperly prevent, the defendant from doing the work which would have entitled him to the balance of the \$2,000.

Number two I refuse to charge.

20 The Orange Mountain Land Company was a "Real Estate" corporation incorporated on July 21, and according to the evidence in the case it was incorporated for the purpose of taking over about one hundred twenty acres of land, and the purpose behind the purchase, so far as the development of the land was concerned, was primarily to convert it into country club purposes, golf and the like. That did not, of course, limit them in case they could not to their satisfaction so successfully develop the land, or sell the land for that purpose, and that purpose alone. They were the owners of the land and could use it for whatever purposes they pleased, under the terms of incorporation, any purpose they pleased that was within the law generally. But, it is undoubtedly the fact, from the evidence in this case and from their own admissions, that that was why they bought the land, feeling that it could be developed for country club purposes. That is shown, for example, that although it was incorporated on July 21 or 23, that

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Charge.

nineteen days afterward, on August 11, this company entered into a contract with Mr. Wilkinson to lay out a golf course; that in February following, long before there was a golf club incorporated, the land company was endeavoring to interest men in the formation of a golf club to whom they might sell the whole or part of the lands they had acquired.

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Under this contract what was Mr. Wilkinson to do for the \$2,000, in order to be entitled to the \$2,000? In consideration of that he was to design an eighteen hole golf course, and he was to prepare plans and specifications for such a course as that, and also one that would show up the available features of the land and the landscape effects, so far as golf, swimming, riding and tennis were concerned. He was also to stake the tees, and the greens, and the like, and he was also to make models for the greens to enable the construction of said course in accordance with the desired characters and undulations, as indicated on the plan; and he was to use his professional status and his best efforts to carry out the designing and construction of the course to a successful completion. He was to be paid \$250 on the delivery of the details, plans and specifications. That he has been paid. And he was to be paid \$1,750 at such time as the club decided to proceed with the construction of the said golf course. It has been argued that this company, after they paid him the \$250, could do as they pleased with the plans and specifications. They could do with those plans and specifications what the contract and the law, under the contract, authorized them to do.

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A proper interpretation of this contract is to the effect that those plans and specifications could be

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Charge.

used by this company for the purpose of their determining as to whether or not they were to proceed with the erection and the construction of this course. They could not take those plans and specifications, for example, and give them to Tom, Dick and Harry, for the purpose of Tom, Dick and Harry. When a man arranges to erect a house, or has that in his mind, and he engages an architect, and the architect is to get so much for the plans, and then if the work goes on he is to get so much for supervision, and the agreement is so framed in language that one is connected with the other, you cannot say to the architect after you have accepted the plans and specifications, "Well, I will use and follow these plans and specifications but I will direct and supervise the construction of this building in my own way and simply pay you for your plans and specifications, and nothing for supervision." But, of course, in such a case, if you, as an owner, decide not to build, then the payment of the plans and specifications is all the claim that the architect would successfully have against you. That is rather crudely illustrating this. Mr. Wilkinson was to prepare these plans and specifications, and if this company decided not to build, that is all he was entitled to. But the question is did they decide not to build. There is no substantial difference, as far as their obligation is concerned, whether they decided to build and to actually do that work themselves, or whether they decided to build and get somebody else to do that work. Did they decide to build this course and in accordance with the plans and specifications of Mr. Wilkinson? Were they to do it themselves, as the corporation known as the land company, or were they to see that it was done, leaving it to a sepa-

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Charge.

rate, distinct and new corporation to do it? Did they decide to see that this golf course was built, according to this contract and according to these plans and specifications, either by their decision to do that themselves, or by their decision to bring into being some other corporation that was to do this? If they did decide, according to the terms of this contract, to have that course built, then, since there is nothing to show that they ever objected to these plans, or that they were not done satisfactorily according to the terms of the contract, Mr. Wilkinson would be entitled to that \$1,750, because the contract says so. Did they decide to do it? They never did this work as a land company; but, what did they do, according to the undisputed testimony? As I have already told you, nineteen days after they were incorporated they entered into this contract to have a golf course built, or that expressed desire to have a golf course built, and as early as February following the incorporation, they were engaged in trying to induce gentlemen to get together and form a separate, distinct country club corporation. This they did, they admit they did; ten men incorporated themselves. But before the incorporation there was a prospectus prepared by them and a prospective list effected of some one hundred and nineteen names, or some number about that, showing that they had been engaged practically from the start of their incorporation to see that a golf course was built, not through themselves directly, as a separate, distinct corporation, but through a corporation of a country club which they were encouraging and which they were endeavoring to create, and which they succeeded in creating. They succeeded in inducing men to get together and form this country

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Charge.

club to take over part of their lands for the purposes of a country club generally. What did they do in their efforts to secure the incorporation, to secure the consent of other men to get together and form a distinct country club corporation to take over these lands?

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As I have already stated, among the things that Mr. Wilkinson was to do was to give his professional status to this, and to assist in the promotion of the course. Did he? Did they use his plans for that purpose? Or did they limit the use of his plans to decide simply whether or not they should have a golf course? They took his letter, which went into detail, as you will see from a reading of this prospectus, in which he puts out over his name that this land was available for a golf course, that it had superior attractions in certain respects for a golf course, and they took his plan and printed the plan upon this prospectus that they were using, in order to get together enough men to effectively incorporate a successful golf club to take over this land for the building of a golf course. The building of a golf course how? The building of a golf course, it seems to me, but that is for you to pass upon, according to the promotion advocated by the architect, Mr. Wilkinson, according to that letter, as to its attractiveness and its availability, and according to his plan which is printed upon the prospectus.

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Of course, like any other contract, if you or I enter into a contract, any one of you gentlemen, for a completed job, and the man we enter into the contract with honestly does his work up to a certain point, and he is ready and able and willing to go on with it to the finish, and through our act we improperly prevent him from finishing that

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Exhibits.

contract, then, he is entitled to whatever profits he has lost by our wrongful act in preventing him from completing that contract; or whatever he would have been entitled to if the contract had been completed. Was that this case? If it was then, if Mr. Wilkinson did not complete his contract because he was improperly prevented by the other parties to the contract from doing so, he is entitled to whatever you determine he lost as a result, actually lost, as a result of that,—not of course, exceeding the amount he would have earned if the contract had been completed.

10

In this case, like in any other case when a party comes in and looks for money from another party, the burden of proving that he is entitled to it rests upon him, according to law. He has to show, through a preponderance of the evidence, the claim that he makes is a proper one.

20

You may take the case, remembering that the only defendant in this case now is the land company.

Mr. Grosso: Will you note an exception to the refusal to charge on the two requests of the defendant, the land company?

Exhibit P-1.

30

AGREEMENT made this 11th day of August, 1924, between the Orange Mountain Land Co., a Corporation of the State of New Jersey, hereinafter called the Company, party of the first part, and Williard G. Wilkinson, hereinafter called the architect, party of the second part, witnesseth that the Company agrees to employ the said architect for the purpose of designing an 18 hole golf course, to be located on the property shown the architect,

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Exhibits.

and known as property belonging to the South Mountain Park Land Company.

10 THE SAID ARCHITECT agrees, for and in consideration of the sum of \$2,000, to be paid as hereinafter stated, to prepare a plan and specifications for the erection and construction of an 18 hole golf course on the above property. Said plan is to include all of the details and landscape effects of the entire property and its available features, for golf, tennis, riding and swimming. In addition thereto and for the same consideration, to act in an advisory capacity to the said Company in all matters pertaining to the promotion and planning of the above.

20 THE SAID ARCHITECT also agrees to personally stake out all Tees, Fareways, Greens, Traps, and Bunkers on the said property, in accordance with the plan above.

THE SAID ARCHITECT also agrees to make all necessary models of Greens to enable the constructor of said course to build the said Greens with the desired characters and undulations as indicated on the said plan.

30 THE SAID ARCHITECT also agrees to use his professional status and his best efforts to carry out the designing and construction of the said course to a successful completion.

The Company agrees to pay the architect, the aforementioned sum of \$2,000 in the following manner:—

\$250.00 on the delivery of details, plans, and specifications.

40 \$1,750 at such time as the Company shall have

Exhibits.

decided to proceed with the construction of the said golf course.

It is further agreed between the parties, that in case the Company shall decide not to construct the golf course on the property, aforementioned, that the initial payment of \$250.00 shall be in full settlement and satisfaction, for any services which the said architect may have rendered to the said Company and shall complete the terms of this contract. 10

IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its President and attested by its Secretary, and the party of the second part has signed this agreement and affixed his seal hereto, the day and year first above written. 20

Signed, Sealed and Delivered
in the presence of

ORANGE MOUNTAIN LAND CO.
By FRANK BREWER
President.

Attest:
ALFRED J. SIMMS.
Secretary.

W. G. WILKINSON 30

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Exhibit P-2.

Plan of Golf Course. - *See page 132 A*

Exhibit P-3.

Prospectus. - *Attached*

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Exhibit P-4.

Exhibit P-4 was an envelope, stamped Rock Spring Country Club, 282 Main St., Orange, N. J., and mailed to Mr. A. D. Honeyman, 26 Broadway, N. Y. C. The envelope is postmarked as follows: "Orange, N. J.; Nov. 5, 1925; 10:30.

Exhibit P-5.

Circular.

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Exhibit P-6.

Orange Heights Avenue,
West Orange, N. J.
Dec. 4/24

Tel. Orange 909 J.

My dear Mr. Wilkinson:—

Your letter of the 2nd inst. rec'd. Many thanks. I am glad to tell you the Club is going along well, the Organization Committee having been completed yesterday & the book is now in the printers hands. I will mail you a copy on Monday next. Please let me have by return mail the names of your friends who want to get in the first 100 at \$500.00 as you will see by our Committee, with such men as Russell Colgate, Charles Edison, etc., it should be filled up very quickly. I have been looking for the Colover plan you spoke of for a long while and I believe if you can hurry this

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Exhibits.

along, it may assist to our mutual advantage. I am sorry you found no one in at the bottling house, there should be some one there all the time and had I have known you were coming over, would have been glad to have met you there. Perhaps we can get together one day next week. I am now living in my home just under the brow of the mountain at above address, so am easily accessible.

10

With kind regards, believe me

Yours sincerely,

FRANK BREWER.

Exhibit P-7.

ROCK SPRING COUNTRY CLUB

20

On July 1st, the Rock Spring Country Club will take title to the property on payment of \$22,500 (\$2,500 having already been paid on the signing of the Contract). On September 1st, an additional payment must be made of \$10,000 and the Governors have authorized the Treasurer to call for a payment of 30% of subscriptions to the Membership Shares.

The stumps (about 700) have been moved from the Lake and part of the Shore has been put in order for swimming as soon as the Lake fills.

30

Mr. Seth Raynor, the golf architect, is actively at work on the plans for the course and Mr. Clifford C. Wendhack has prepared plans for the Club House.

The enlarged stables are in commission and horses can now be kept or hired on the Club property. Those interested should communicate with Mr. Holden of East Orange.

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Exhibits.

The Governors are pushing the work as rapidly as possible, consistent with the careful determination of all the questions involved.

T. H. POWERS FARR,
President.

10 June 15th, 1925

Exhibit P-8.

December 3rd, 1924.

Messrs. B. B. Miller & Co.,
215 Broad Street,
Elizabeth, N. J.

Gentlemen:— *Re: Rock Spring Country Club.*

20 Your letter of the 22nd ult., addressed to the Rock Spring Golf and Country Club has been handed to me for attention. I am a member of the Committee that engaged Mr. Wilkinson to lay out the proposed golf course for the Club. We have carefully investigated his qualifications and feel that he has had considerable experience in golf course construction and that he thoroughly understands his business.

30 Very truly yours,

AJG:R

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Exhibit D-1.

CERTIFICATE OF INCORPORATION
OF
ORANGE MOUNTAIN LAND COMPANY.

THIS IS TO CERTIFY that we, Frank Brewer, John S. Francis and Alfred J. Grosso, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations, (Revision of 1896,)" and the several supplements thereto and acts amendatory thereof and do severally agree to take the number of shares of capital stock set opposite our respective names.

10

1. The name of the corporation is "Orange Mountain Land Company."

20

2. The location of the principal office in this State is at #282 Main Street, in the City of Orange, County of Essex. The name of the agent therein and in charge thereof, upon whom process against this Corporation may be served is Alfred J. Grosso.

3. The objects for which this corporation is formed are: To purchase, hold, own, take over, maintain, develop, sell, lease, have, improve and to deal in real estate and real property; or any interest and rights therein, without limit as to amount; to purchase, hold, own, take over, sell or lease, mortgage, pledge chattels and chattels real without limit as to amount. To acquire by purchase, lease or exchange, hire or otherwise, lands or any interest therein; to erect, construct, maintain and improve houses, buildings, sewers, drains

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Exhibits.

or works of other kinds, on any lands of the Company, or upon any other lands and to rebuild and improve existing houses and buildings thereon; to convert any of the lands so acquired, into roads, streets or other public places or conveniences and to generally improve the property of the Company.

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4. The Company shall also have power to conduct its business in all its branches, have one or more offices and unlimitedly to hold, purchase, mortgage and convey land and personal property in any State, Territory or Colony of the United States and in any part or place.

20

5. The total authorized capital stock of this corporation is \$100,000., divided into 2,000 shares of the par value of \$50., each.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which \$1200., is the amount of the capital stock with which the Company will commence business are as follows:

| | NAME | POST-OFFICE ADDRESS | NUMBER OF SHARES |
|----|-------------------|---------------------|------------------|
| 30 | Frank Brewer, | West Orange, N. J. | 8 |
| | John S. Francis, | Orange, N. J. | 8 |
| | Alfred J. Grosso, | West Orange, N. J. | 8 |

7. The period of existence of this Corporation is unlimited.

IN WITNESS WHEREOF, we have hereto set our

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Exhibits.

hands and seals the Fifteenth day of July, A. D. 1924

FRANK BREWER, (SEAL)
JOHN S. FRANCIS, (SEAL)
ALFRED J. GROSSO, (SEAL)

Signed, Sealed and Delivered
in the presence of:
WM. A. CALHOUN.

10

State of New Jersey, }
County of Essex, }ss.:

BE IT REMEMBERED that on this 15th day of July, A. D. 1924, before me, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared Frank Brewer and Alfred J. Grosso, who, I am satisfied, are two of the persons named in and who executed the foregoing Certificate of Incorporation, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

20

WILLIAM A. CALHOUN,
M. C. C. OF N. J.

State of New Jersey, }
County of Monmouth, }ss.:

30

BE IT REMEMBERED that on this 17th day of July, A. D. 1924, before me, a Notary Public of N. J. personally appeared John S. Francis, who, I am satisfied is one of the persons named in and who executed the foregoing Certificate of Incorporation and I having first made known to him the contents thereof, he did acknowledge that he

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Exhibits.

signed, sealed and delivered the same as his voluntary act and deed.

HORATIO CLAYTON,
Notary Public of N. J.

(Seal)

10 ENDORSED:

"Received in the clerk's office of the county of Essex, on the 21 day of July A. D. 1924 and recorded in book 90 of Buss. for said county, page

JOHN H. SCOTT
Clerk
Per Ch."

"FILED AND RECORDED
Jul 23, 1924

20 Thomas F. Martin
Secretary of State."

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

30 I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of "ORANGE MOUNTAIN LAND COMPANY," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-third day of July, A. D. 1924, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-third day of July, A. D. 1924.

40 (Seal) THOMAS F. MARTIN,
Secretary of State.

Exhibit D-2.

CERTIFICATE OF INCORPORATION

OF

ROCK SPRING COUNTRY CLUB.

The undersigned, persons desiring to associate themselves into a corporation pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate associations not for pecuniary profit," approved April 21, 1898, and the amendments thereto, do hereby certify:— 10

I. That the name by which such corporation is to be known by law is "Rock Spring Country Club."

II. That the purpose for which it is formed is to furnish athletic and recreational facilities for its members, to promote social intercourse among its members and to maintain a club house for the use of its members. 20

III. The principal office of the corporation is to be located at #282 Main Street, Orange, New Jersey, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is Alfred J. Grosso.

IV. The number of trustees shall be not less than ten or more than fifteen and the names of the trustees selected for the first year are: 30

Exhibits.

| | NAMES. | RESIDENCES. |
|----|-------------------------|-----------------------------------------|
| | T. H. Powers Farr | Orange Mountain, West Orange, N. J. |
| | Alfred J. Grosso | Walker Road, West Orange, N. J. |
| 10 | Stanley M. Babson | 230 Harvord Terrace, West Orange, N. J. |
| | Russell Colgate | Llewellyn Park, West Orange, N. J. |
| | Charles Edison | Llewellyn Park, West Orange, N. J. |
| | Clarence S. A. Williams | 27 Glenside Road, South Orange, N. J. |
| | W. Miner Osborn | 477 Vose Avenue, South Orange, N. J. |
| | Charles F. Robbins, | 170 Prospect Street, East Orange, N. J. |
| 20 | Farnum Yardley | Llewellyn Park, West Orange, N. J. |
| | Theodore McC. Marsh | 20 E. Highland Ave., East Orange, N. J. |

V. The corporation may have an office outside of the State of New Jersey for the convenience of its officers and trustees, and where meetings of the trustees may be held.

30 IN WITNESS WHEREOF, we have hereunto set our hands the 28th day of April, Nineteen hundred and Twenty-five.

| | | |
|----|-------------------------|------|
| | T. H. POWERS FARR | (LS) |
| | ALFRED J. GROSSO | (LS) |
| | STANLEY M. BABSON | (LS) |
| | RUSSELL COLGATE | (LS) |
| | CHARLES EDISON | (LS) |
| | CLARENCE S. A. WILLIAMS | (LS) |
| | W. M. OSBORN | (LS) |
| 40 | CHARLES F. ROBBINS | (LS) |
| | FARNUM YARDLEY | (LS) |
| | THEODORE McC. MARSH | (LS) |

Exhibits.

State of New Jersey }
County of Essex } ss.:

BE IT REMEMBERED, that on this 28th day of April 1925, before me, A Notary Public, Theodore McC. Marsh personally appeared, W. Miner Osborn, Charles F. Robbins and who I am satisfied are three of the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

10

EDWARD D. SMITH

Notary Public of New Jersey
Comm. expires Aug. 30th, 1928 SEAL

20

State of New Jersey }
County of Essex } ss.:

BE IT REMEMBERED, that on this 28th day of April, 1925, before me a Notary Public of the County of Essex, in the State of New Jersey, personally appeared, T. H. Powers Farr, Alfred J. Grosso, Stanley M. Babson, Russell Colegate, Charles Edison, Clarence S. A. Williams and Farnham Yardley, who I am satisfied are seven of the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

30

EDWARD D. SMITH

Notary Public of New Jersey
Comm. expires Aug. 30th, 1928 SEAL

ENDORSED:

"Received in the Clerk's Office of the County of

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Exhibits.

Essex on the first day of May A. D. 1925 and recorded in Book Y of Mis for said County, page

JOHN H. SCOTT
Clerk
Per J. H."

10

"FILED AND RECORDED
May 2 1925
THOMAS F. MARTIN
Secretary of State."

STATE OF NEW JERSEY
DEPARTMENT OF STATE

20 I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, Do HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of "ROCK SPRING COUNTRY CLUB," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Second day of May, A. D. 1925, and now remaining on file and of record therein.

30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Second day of May, A. D. 1925.

THOS. F. MARTIN,
Secretary of State.

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Exhibit P-2

132 A

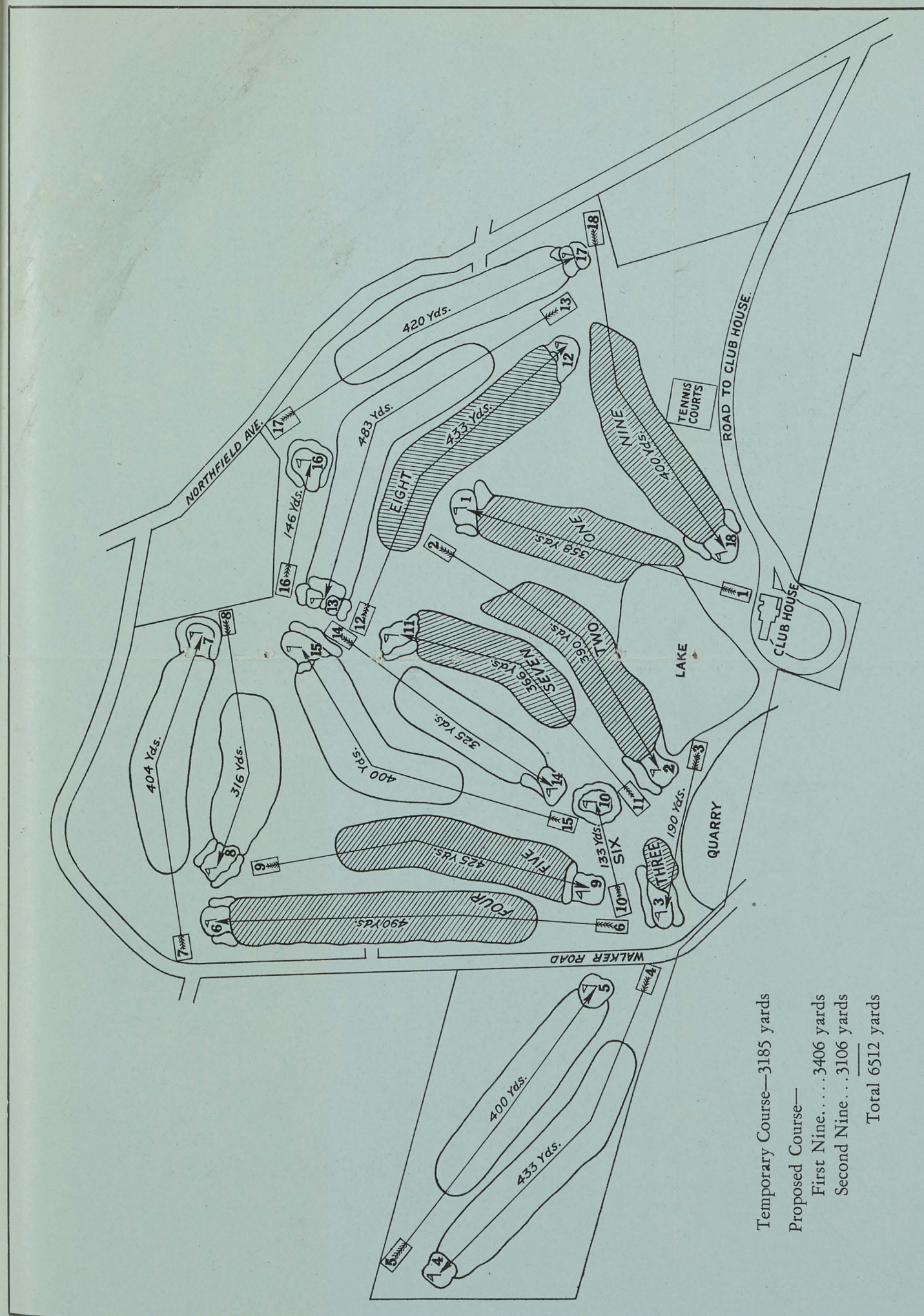


Exhibit D-3.

DIAGRAM SHOWS LAYOUT OF THE PROPOSED 18-HOLE COURSE. HOLES FOR THE TEMPORARY COURSE ARE SHADED.

Exhibits D-4-7.

Checks.

Exhibit D-8.

B. B. MILLER & COMPANY
GENERAL INSURANCE
215 Broad Street
ELIZABETH, NEW JERSEY

10

November 22, 1924

Rock Spring Golf & Country Club,
Orange, N. J.

Gentlemen:

We are about to build a golf course, and Mr. Willard G. Wilkinson has made application as golf architect.

20

I would very much appreciate any information which you think would be of value to us. We are having a meeting next Wednesday night, and I would like very much to hear from you by that time.

Very truly yours,

B. B. MILLER
Chairman,
Construction Committee.

30

BBM:K

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Due to the expected limitation of membership to 325 golf members all congestion of the golf course should be avoided. A clock golf course will be located close to the clubhouse near the first tee and ninth and eighteenth greens.

Four clay tennis courts of exceptional size and merit are being constructed alongside the club private road about 200 yards from the clubhouse. These courts are most advantageously situated with ideal backgrounds of trees and are amply protected from winds. If sufficient interest is created for tennis, there is available ample space for additional courts.

A stable consisting of carriage house, nine box stalls and thirty-two single stalls is expected to be completed by October 15th this fall, and preference will be given to members for the stabling of their horses and for the hire of horses.

A large paddock and ring will afford ideal conditions for riding instruction and for jumping. The stable will be located a little south of the clubhouse near the club private entrance to the thirteen miles of bridle path of the Orange Mountain Reservation. An annual horse show is contemplated as a club activity of special attraction.

and will be available for play in the summer of 1928.

| REGULAR COURSE | | | TEMPORARY COURSE | | |
|----------------|-------|-----|------------------|-------|-----|
| Holes | Yards | Par | Holes | Yards | Par |
| 1. | 358 | 4 | 10. | 133 | 3 |
| 2. | 390 | 4 | 11. | 366 | 4 |
| 3. | 190 | 3 | 12. | 433 | 4 |
| 4. | 433 | 4 | 13. | 483 | 5 |
| 5. | 400 | 4 | 14. | 325 | 4 |
| 6. | 490 | 5 | 15. | 400 | 4 |
| 7. | 404 | 4 | 16. | 146 | 3 |
| 8. | 316 | 4 | 17. | 420 | 4 |
| 9. | 425 | 4 | 18. | 400 | 4 |
| 3406 36 | | | 3106 35 | | |
| | | | 3185 35 | | |

The Golf Architect, the late Mr. Seth J. Raynor, designed among other important golf courses, the following: Shinnecock Hills, Piping Rock, Sleepy Hollow, Oakland, Lido, Blind Brook, Links Club, Nassau, North Shore, Morris County, Rumson, White Sulphur, Everglades (Palm Beach) and Mid-Ocean (Bermuda).

Members will find the attached map a helpful guide for inspection of the golf course and other club property. The location of the tees and greens are clearly marked and numbered flags indicate the respective greens. Members will be greatly interested in walking around the golf course to see the wonderful progress that is being made from week to week.

112 FEB. T. 1927

NEW JERSEY
COURT OF ERRORS AND APPEALS

WILLIARD G. WILKINSON,
Plaintiff-respondent

vs.

ORANGE MOUNTAIN LAND COM-
PANY,
Defendant-appellant.

On Appeal

BRIEF FOR WILKINSON

The plaintiff, Willard G. Wilkinson, a golf architect, on the 11th day of August, 1924, entered into a contract, in writing, with the appellant, Orange Mountain Land Company, to design an eighteen hole golf course. It seems that the Land Company had an option to purchase the property which comprised approximately one hundred and twenty acres and they had not made up their minds whether they were going to develop it for building purposes or use it for the construction of a golf course. They did not want to go to a great expense in designing a golf course, unless they were actually to construct a golf course.

Therefore, they entered into the contract on which this suit is based, which in our opinion, is an alternative one and provides for the payment of a consideration of \$250.00 on the one hand and of \$2,000.00 on the other hand. The Land Company was to pay Wilkinson only \$250.00 in the event it was determined not to build a golf course, but were

to pay him \$2,000.00 if it were determined to build a golf course.

Now there were necessarily many conferences regarding this matter and Wilkinson prepared a colored diagram and plan giving the lay-out of the entire eighteen hole golf course on which he indicated by a legend the location of the tees, fairways, greens, traps and bunkers in detail and showed the landscape effects of the property and its available features, all of which is delineated in miniature form on the photographic copy of his plan annexed to Exhibit P-3 (See separate addenda of the entire prospectus with Wilkinson's map annexed following Page 132 of the case.)

The contract provides

"The company agreed to pay the architect the aforementioned sum of \$2,000.00 in the following manner: \$250.00 on the delivery of details, plans and specifications, \$1,750 at such time as the company shall have decided to proceed with the construction of the said golf course." (Case Page 9).

It is a conceded fact that Wilkinson delivered a detailed plan to the Land Company and received \$250.00. Thereafter, the Land Company, through the men who were interested in it, held meeting after meeting with Wilkinson and finally determined that the golf course should be built, but that it would be best to organize an independent club to do it and subsequently such a club was incorporated, but prior to the formation or incorporation of that club, these men, who were the controlling factors and agents of the Land Company, and the Land Company itself, adopted Wilkinson's scheme and lay-out and printed up a prospectus for the pur-

pose of soliciting members for the proposed club and finally sallied forth on the venture of the building of a golf course under the name of Rock Spring Country Club.

This prospectus contained the pictures which were made under the direction of Wilkinson it contained Wilkinson's letter describing the golf course and its advantages and also contained a photographic copy of Wilkinson's plan or lay-out of the entire golf course, and prior to the incorporation of the Rock Spring Country Club, many booklets were sent to prospective members (Case Page 28 Lines 15 and 22; Case Page 77, Lines 10, 28 and 32).

Wilkinson testified that he did everything that was required of him to be done under the contract, except the making of the small models for the greens, and that he could not do this until there was sufficient work progressed upon the ground to permit of his making them and that before that time arrived another architect was put on the job of the actual construction of the golf course (Case Page 21).

It is pertinent to notice that the contract (Exhibit P-1) does not provide that Wilkinson shall act as a contractor or constructor in the construction of the golf course, nor that he shall supervise the construction of the golf course. He was merely to use his professional status and to act in an advisory capacity and was to stake out the tees, fairways, greens etc. Wilkinson testified that he did all this (Case Page 21), and you will find in the testimony of the several witnesses produced by the defendant corroboration of this.

Frank Brewer testified he was the president of the Orange Mountain Land Company (Case Page 6 Line 22); Wilkinson came up one morning to assist in taking pictures (Case Page 70, Line 20); Wilkinson's picture was a little clearer than the one

they had before (Case Page 71, Line 30) and he was the one who obtained the original option for the land (Case Page 73, Line 10). At page 74, Line 18, he says "After we had organized the Orange Mountain Land Company we at once proceeded to organize a golf club." At page 75 he testified that the land could have been sold for more money but that they wanted a golf links and they thought a golf club would be much better than having small developments; prospectus was published and mailed out before the incorporation of the Rock Spring Country Club (Case Page 77, Line 28); at the bottom of page 77 he says that the Orange Mountain Land Company had some idea of forming a golf club;

"Q. What is anything did the Orange Mountain Land Co. do to carry out that idea? A. Well, we had it determined whether it was practical to lay out a links there and made the contract with Mr. Wilkinson to prepare the drawing. The Orange Mountain Land Company was the holding company and we sold the idea of a country club to a group of men that had looked over the situation and saw that it would make a good golf course, and we sold part of the land to them, retaining what was not necessary for our profit." (Case Page 79, Line 20.)

Mr. Farr prepared practically the wording, he was connected with the Land Company and also the club (Case Page 79, Line 28); Orange Mountain Land Company paid photographer for the photographs by check dated December 29, 1924 for \$32.00 (Case Page 80, Line 38) and the engraving of the photographs was paid by the Orange Mountain Land Company by check dated January 6, 1925 for \$81.76 (Case Page 81 Line 10); the printing of prospectus was paid for by the Orange Mountain Land Company by check to the order of Essex Press for \$254.36 (Case Page 81, Line 22).

Plaintiff, Wilkinson testified that he made an examination of the property with Mr. Brewer and Mr. Grosso and a surveyor and in addition made something like twelve visits to the property for the purpose of designing the various eighteen holes on the property (Case Page 19, Line 36) and he had dealings with Mr. Grosso, Mr. Schwartley, Mr. Brewer and Mr. Farr (Case Page 20, Line 28); in addition to preparing the plans, he staked out the course as far as the tees, greens and bunkers were concerned; that he could not make the models until construction work was started and until clearings were made, he could not tell exactly what kind of contour there would be (Case Page 21); that Brewer was the Vice President of the Orange Mountain Land Company (Case Page 22, Line 30); that the gentlemen named and others came to his office in Cortlandt Street, N. Y. (Case Page 25) and discussed the way to promote the club; that the matter of drawing up the prospectus was discussed and he completed a definite plan of the course which was incorporated in the prospectus, together with photographs taken under his directions; that he was directed to do this by Mr. Grosso and Mr. Brewer. The witness identified the prospectus offered as Exhibit 3 (Case Page 26).

According to the testimony of Wilkinson the map in the prospectus is a copy of his plan and the printed matter in the prospectus as quoted on Case 27, is also his own language; Wilkinson called Brewer the Vice President of the club but Mr. Marsh corrected this and at the top of page 30 admits Brewer is the President and signed the contract as the President; letter dated December 4th, 1924 from Mr. Brewer to Wilkinson shows that the club is going along well and that the book is in the printer's hands (Case Page 30). This evidently relates to the prospectus which was printed by the

Orange Mountain Land Company and paid for by the Orange Mountain Land Company.

Wilkinson further testified that his suggestion was that the Orange Mountain Land Company, as a holding company, promote the club, do the primary work such as acquiring the property, make the plans for the golf course and draw up the prospectus, and that this plan was adopted and carried out in the prospectus (Case Page 32).

Wilkinson further testified that he received the circular letter of June 15, 1925, and that the clearing of the lake was part of the construction of the golf course (Case Page 34); that he was not discharged, but he read in the newspaper that Mr. Seth Raynor had been employed. (Case Pages 36 and 37); that his tracings, and blue prints were ready about the end of August, 1924 (Case Page 38, Line 32) and that he laid out the stakes and furnished them with the plan; that the gentlemen with whom he had conferences represented the Orange Mountain Land Company and the club and that these gentlemen were officers actively interested in the Orange Mountain Land Company (Case Page 38, Lines 22 to 34); that in connection with the preparation of the prospectus he saw the President, Mr. Brewer and Mr. Grosso (Case Page 40, Line 40*); that in April of 1925 they were draining the lake and taking out the stumps which was a part of his plan (Case Page 41); that the position of the stumps affected the playing of golf which made it necessary for removing them (Case Page 42).

That he staked the tees, greens and bunkers, putting in about thirty-six or forty; some of the bunkering was indicated by blazing on trees (Case Page 43); that he rendered a bill to Mr. Grosso for \$1,750 in the month of May or June, 1925 (Case Page 53, Line 11).

This suit was brought against two defendant cor-

porations, one, Orange Mountain Land Company and the other the Rock Spring Country Club. At the conclusion of the plaintiff's case, a motion was made on behalf of each defendant for a non-suit, which was reserved (Case page 54). The motion was renewed at the conclusion of the case in the nature of a motion for a directed verdict on behalf of each defendant and such motion was granted for the defendant, Rock Spring Country Club but denied for the appellant (Case Page 107, 112). The case went to the jury which rendered the verdict upon which judgment was entered from which this appeal is taken.

The only exceptions taken or objections entered upon the record by the appellant are three in number; exception to the refusal to non-suit, exception to the refusal to direct a verdict and the exception to the refusal to charge one request.

POINT I

THERE WAS EVIDENCE TO SUSTAIN PLAINTIFF'S CASE

The evidence of the plaintiff was that he had performed all of the contract as required by him, except the making of the models for the greens and that said work could not be done by him until the work of the actual construction had sufficiently progressed upon the ground, and that before that time arrived another architect was employed in his place and stead (Case Page 37). The story as to what he did and how it was decided to go ahead with the construction of the golf course is told by various witnesses produced by the defendant as above stated (Case Pages 69, 74, 75, 77, 78, 79, 80 and 81).

It will be observed that, although the defendant made motion for a non-suit at the conclusion of the plaintiff's case, this was refused by the Court and thereafter additional evidence was put in from which the jury could find that the defendant, Orange Land Company, had decided to proceed with the construction of the golf course. This determination to proceed with the construction of the golf course was the crux of the whole case and the one point that plaintiff had to prove in order to recover the \$1,750.00.

It is true that there was no resolution formally adopted at a stated meeting of the directors and stockholders of the Land Company and the minute book of the Land Company was not produced in evidence to show that they held such meeting, but these men who were the moving spirits and agents and officers of the Land Company performed certain actions which are susceptible of no other conclusion than that the Land Company, or these people acting as its agents, determined that the land in question should be used for a golf course.

It is well settled that although this evidence may have been supplied on the defendant's case, the refusal of a non-suit for failure of proofs was not a ground for reversal. *Dennery vs. Great Atlantic & Pacific Tea Co.*, 82 N. J. L. 517; *Van Ness vs. North Jersey St. Ry. Co.*, 77 N. J. L. 551; *Farnsworth vs. Miller*, 60 Atl. 1100; *Lewis vs. National Cash Register Co.*, 87 Atl. 345; *Benoliel vs. Homack*, 87 N. J. L. 375, and *Sefler vs. Vanderbeek*, 88 N. J. L. 636.

POINT II

MOTION FOR DIRECTED VERDICT WAS PROPERLY REFUSED

Upon the same grounds as covered by Point 1, the motion for directed verdict was properly refused, because at the conclusion of the entire testimony there was sufficient evidence before the jury from which it could be determined that there was a decision by the Orange Mountain Land Company to go through with the construction of the golf course. In other words, the plaintiff had demonstrated that the land was of practical utility for the construction of a golf course and pointed out to the gentlemen interested in the Land Company how a golf course could be successfully constructed and operated on the property, and that they then prepared and paid for the printing of a prospectus and performed other actions which were conclusive evidence to any jury that there was a determination to utilize the land in question for the construction of a golf course.

"A directed verdict cannot be granted where the facts and inferences to be drawn therefrom are in dispute." *Jones vs. Public Service Railroad Co.*, 86 N. J. L. 646.

"A verdict will not be directed where there is a fair conflict of testimony on a fundamental issue." *Carton vs. Trenton & Mercer Corp.*, 90 N. J. L. 311; *Jerolaman vs. Belleville*, 90 N. J. L. 206.

"In passing on motion for directed verdict, all evidence against movant must be taken as true, and the adverse party must be given the benefit of all legitimate inferences reas-

onably deductible therefrom." *Andre vs. Mertens*, 88 N. J. L. 626; *Selfer vs. Vanderbeek, supra*, and *Hoff vs. Public Service Railroad Co.*, 90 N. J. L. 386.

POINT III

THE REQUEST TO CHARGE

The request to charge made by the defendant and which was refused by the court relates to the measure of damages which the plaintiff was entitled to recover on a verdict in his favor. The jury rendered to the plaintiff a verdict for the full amount of the balance of the contract price, plus interest.

The appellant in support of his claim that error was committed relies upon the doctrine which is firmly established by the well known line of cases of *Kehoe vs. Rutherford*, 56 N. J. L. 23; *Sullivan vs. Moffatt*, 70 N. J. L. 40 and *Wilson vs. Borden*, 68 N. J. L. 627 and other cases which have since followed the same doctrine. That doctrine is so well established that we do not for a moment attempt to controvert it and the only question is whether the doctrine has any application to a case such as is now submitted.

The case of *Kehoe vs. Rutherford, supra* arose on a contract for doing actual work of excavating, filling and grading a street. *Sullivan vs. Moffatt, supra* was likewise based upon a contract to supply and set the marble in a new banking house. Both of these cases came before the Supreme Court on a Rule to Show Cause where the question of measure of damages was properly considered. *Wilson vs. Borden* arose on a building contract where the contractor was put off the job, alleged improperly, and was permitted to recover the costs of the work he

had done and the materials he had furnished. There was offered as a defense evidence to prove the cost to finish the contract work and this Honorable Court held that there was error in over-ruling this offer.

Appellant also cites the cases of *Harrison vs. Clark*, 78, N. J. L. 234; *Kitchell vs. Krossby*, 90 N. J. L. 574 and *Sullivan vs. Magnolia Construction Co.*, 96 N. J. L. 214.

Harrison vs. Clark was a contract to make some oil paintings for an entire price of \$300.00. Before the work was anywhere near completed, there was an attempt to cancel the contract by the defendant. It was held that recovery of the contract price was contrary to the rule adopted in the *Kehoe* case.

In *Kitchell vs. Krossby supra*, an architect was to be paid for his services in designing and supervising the construction of a building and after settling a dispute, a price was agreed upon which was to be paid in partial payments, the first payment on completion of the plans, the second payment when the building was half completed and the third payment on completion of the building. The first payment was made. Defendant, however, never constructed the building at all so that the times mentioned in the contract for the second and third payments never, in fact, arrived. Therefore it was held that the doctrine in the *Kehoe* case was applicable. The reason for the reversal in the *Kitchell* case was that judgment was rendered on the theory that *Kitchell's* written contract of settlement was not controlling and that he was entitled to recover on a quantum meruit irrespective of the price written in the contract of settlement.

In *Sullivan vs. Magnolia Construction Co., supra* there was an agreement to procure a mortgage, to draw contracts and to supervise the erection of the

building for the consideration of \$660.00 to be paid to plaintiff out of the moneys to be received from the mortgage. The mortgage moneys were never received so that there again the time specified for payment did not arrive and for that reason the case fell within the Kehoe case.

In the instant case the contract provides a specified time for the payment of \$1,750.00 and the plaintiff contends that the time had arrived, as disclosed by the evidence, and, therefore, as the time as mentioned in the contract had arrived, it was the duty of the defendant to pay plaintiff the \$1,750.00 unless the defendant on its own case showed a good reason for not doing so.

In *Feeney vs. Bardsley* 66 N. J. L. 239, it was held that if there was a substantial performance of the contract, the contract price may be recovered less a fair allowance to owner to make good defects, and in commenting upon that rule the court said in *Dyer vs. Lintz*, 76 N. J. L. 204, "What this allowance should be it was the duty of the defendant to establish." *Cited with approval by this Court in Swannwick vs. Second, 94 N. J. L. 195.*

It is apparent from the entire testimony that nothing was left undone by the plaintiff, except the making of the models showing the character and undulation of the greens and which the plaintiff testified could not be made by him until the work of the construction was underway and before that time arrived, he was supplanted by another architect.

The defendant did not attempt to offer any evidence as to the cost that might be involved in the making of these models and, therefore, waived the right of the jury to consider such a reduction. For that reason there was no error in the charge of the Court to the jury because there was no evidence of any detail or circumstance submitted, from which the jury could have determined what reduction to

make from the contract, and in the absence of any such evidence, the jury, on its findings as a verdict that the defendant, Orange Mountain Land Company, had determined to construct the golf course, the time arrived when the plaintiff was entitled to collect his \$1,750.00. Therefore, the verdict was proper and the judgment below should be affirmed.

It will be observed by an examination of the printed case that the defendant, Orange Mountain Land Company, by its answer merely made denial of the allegations of the complaint, except formal parts, which were admitted and did not file any set off or recoupment so, therefore, the sole issue of determination was whether the time specified in the contract for the payment of \$1,750.00 ever arrived.

The exact language of the contract is:

"\$1,750 at such time as the company shall have decided to proceed with the construction of the said golf course."

The company in order to be obligated to pay Wilkinson \$1,750.00 need do nothing but make a decision. The Company did not have to award a contract for the construction of the golf course, or do any actual work of construction. When the company by its officers or agents came to determination, decision or conclusion to build a golf course, then the time arrived when Wilkinson might step in and demand his \$1,750.00.

It follows from this that the charge of the trial judge was correct. The question which he submitted to the jury was whether the corporation known as the Orange Mountain Land Company decided to have a golf course built. There was no exception taken or objection entered to the charge of the judge; the only exception was to the refusal to charge.

The second request to charge (Case Page 113, Line 20) was based upon the rule laid down in *Kehoe vs Rutherford, supra*, but as above outlined in reading from all of the cases following *Kehoe vs. Rutherford* and including *Kehoe vs Rutherford*, in each and every one of these cases there was certain definite construction work to be done and the time for payment, as provided for in the contract, never arrived. In some instances payment was to be made upon the completion or partial completion of the specified work, or upon the happening of an event which never occurred. Therefore, the rule was that the measure of damages should be fixed not in accordance with the value of the work performed, but based upon the contract price.

There is a distinction between those cases and the instant case in that here Wilkinson was promised to be paid the \$1,750.00 at a certain time, to-wit, when defendant *decided to proceed*, and the whole question, therefore narrows itself in determining was there any evidence from which the jury could determine that the defendant had *decided to proceed*.

Wilkinson himself testified that the people with whom he was doing business being representatives of the Orange Mountain Land Company, determined to proceed; that he advised the manner in which the golf course should be constructed and his suggestions were adopted. In addition to which we have the testimony of Mr. Brewer, the President of the Orange Mountain Land Company, that the scheme was adopted by them and that although they could get more money on development of the land, they determined that they wanted a golf links. They went so far as to adopt Wilkinson's plan, printed up photographs, had them engraved and the Orange Mountain Land Company paid for all of this as well as for the printing and distribution of

the prospectus; all of which was done before the Rock Spring Country Club was incorporated.

A chronology of events is as follows: (Case Page 128) July 23rd, 1924. Orange Mountain Land Company was incorporated. (Case Page 119) August 11th, 1924, contract of hiring Wilkinson and in September, 1924, Wilkinson delivered the plans (Case Page 38 Line 16). October 23, 1924, \$250.00 was paid to Wilkinson (Case Page 81), December 29th, 1924, photographer paid \$32.00 (Case Page 80 Line 38), January 6, 1925 \$81.76 paid to engraving company (Case Page 81 Line 10) shortly thereafter \$254.36 paid for printing prospectus (Case Page 81, Line 21); May 1, 1925 Certificate of Incorporation of Rock Spring Country Club filed (Case Page 132).

Thus it is apparent that everything that was done working toward the construction of the golf course, was performed by the men, who in fact, were the active authorities of the Orange Mountain Land Company long before the Rock Spring Country Club was incorporated; that all the mass of testimony shows a decision by these controlling factors of the Orange Mountain Land Company to devote the land to the construction of the golf course.

CONCLUSION

There being in the case sufficient facts and evidence from which any jury could conclude or draw an inference that the Orange Mountain Land Company had *decided to proceed*, the case became one where the jury might justifiably give a verdict to the plaintiff for \$1,750.00 and interest.

Under the 1912 Practice Act, Section 13 set forth in Sheen's Practice Act as Section 273, defendant may set up a partial failure of consideration. De-

defendant's pleadings does not do so; but the argument is directed to a partial failure of consideration in the incompleting contract. This was a question on which the evidence was wholly and solely within the control of the defendant and it did not deem it proper to set forth that evidence. Defendant knew how much it cost to make these small models of the greens and offered no evidence.

The question of damages cannot be considered upon this appeal excepting in connection with the request to charge and inasmuch as the instant case does not follow squarely within the rule of *Kehoe vs. Rutherford*, there is really nothing before this Court to determine on the appeal, excepting whether we are correct or not in contending that the case is not squarely within *Kehoe vs. Rutherford*, for the reason that we advance that the contract contains a specific time or instant when \$1,750.00 is payable to Wilkinson, to wit, a *decision to proceed* and the decision to proceed having been found to have been made by the jury, that is all there is to the case.

The Orange Mountain Land Company having decided to proceed was, thereupon, bound to pay Wilkinson \$1,750.00 and Wilkinson was at that time entitled to have and possess the \$1,750.00 and if he thereafter breached his contract, the Orange Mountain Land Company would have had a cause of action against him.

Inasmuch as the Orange Mountain Land Company did not pay the money, in lieu of their action for an alleged breach, they could have recouped damages for so much of the contract as was in fact unperformed by Wilkinson at a subsequent time to the time fixed for the payment of the \$1,750.00.

Under all the circumstances of the case, the verdict of the jury is sustained by the evidence and there is no error and, therefore, we respectfully sub-

mit that the judgment below should be affirmed in all things with costs.

Respectfully submitted,

STAMLER, STAMLER & KOESTLER,

Of Counsel for Williard G. Wilkinson

[2253]

112 FEB. T. 1927

New Jersey Court of Errors and Appeals

WILLIARD G. WILKINSON,
Plaintiff-Appellee,

v.

ORANGE MOUNTAIN LAND COM-
PANY, a corporation of the
State of New Jersey,
Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT.

Statement of Facts.

The Orange Mountain Land Company, a corporation of this State, received its charter on July 23rd, 1924 (p. 128, lines 25-40). The object of the corporation was to purchase and develop real estate. Shortly after its incorporation, the company purchased a tract of land of about one hundred and twenty acres in the Orange Mountains in the Town of West Orange (p. 14, lines 30-40).

Plaintiff was a golf course architect. On the eleventh day of August, 1924, the land company entered into an agreement with plaintiff by which, in consideration of the sum of Two Thousand (\$2,000) Dollars, to be paid by the land company, plaintiff agreed to prepare plans and specifications for the construction of an eighteen hole golf course on the tract of land recently acquired by the land company, and also to stake out the tees, fairways, greens, traps and bunkers on the property, and to make all necessary models of the greens to enable

the contractor constructing the course to build the greens with the desired characters and undulations; and to use his professional status and his best efforts to carry out the designing and construction of the said course to a successful completion. The agreement provided that the consideration of Two Thousand (\$2,000) Dollars was to be paid in the following manner: \$250 on the delivery of details, plans and specifications, and \$1,750 "at such time as the Company should decide to proceed with the construction of the said golf course." The agreement contained a further provision that: "It is further agreed between the parties hereto that in case the Company shall decide not to construct the said golf course on the property aforementioned, that the initial payment of \$250 shall be in full settlement for any services which the said architect may have rendered to the said Company and shall complete the terms of this contract" (p. 119, lines 30 *et seq.*).

Shortly after the execution of this contract, plaintiff prepared a plan of the golf course, showing the location of the tees, greens, bunkers, etc., and also of the tennis courts and riding stables; he testified he also staked out on the ground the location of the tees, greens, bunkers, etc., but this was contradicted by witnesses called by defendant. He did not, moreover, furnish specifications of the golf course, nor did he make the models of the greens, or use his professional status and his best efforts to carry out the designing and construction of the golf course to a successful conclusion, as provided for in the agreement (p. 37, lines 30-40; p. 40, lines 1-20).

At the time of the formation of the land company, several of its members were of the opinion that the land might be advantageously used as a golf course; accordingly, they made inquiry among

their friends to ascertain if it were possible to form a golf club. An organization committee, the membership of which included some of the members of the land company, as well as non-members, was formed and prepared a prospectus of the golf course, to which was given the name of Rock Spring Country Club (p. 87, lines 18-38). The organization committee was successful in obtaining a number of persons who were willing to become members of the proposed club with the result that on the second day of May, 1925, the Rock Spring Country Club was incorporated under the laws of this State (p. 119). Shortly thereafter, the Country Club purchased of the land company, about one hundred acres; and from that time the construction of the golf course was handled exclusively by the Country Club, who employed its own architect to prepare plans for the same. Plaintiff received the sum of \$250.00 when he delivered the plans to the land company. He brought his suit against the Orange Mountain Land Company and the Rock Spring Country Club, to recover the balance of the consideration of \$1,750, alleging that the members and organizers of the two defendants were the same men and the two corporations were being run jointly for the purpose of building, constructing and operating an eighteen hole golf course and that said defendants unlawfully and improperly breached their contract (p. 6, lines 25-40; p. 7, lines 1-20). At the conclusion of the whole case, the Court directed a verdict in favor of the defendant Rock Spring Country Club. The contention of the land company was that it had not built nor did it ever decide to build, the golf course, within the meaning of the agreement (p. , lines). The jury found for the plaintiff and against defendant, Orange Mountain Land Company, in the sum of \$1,907.50.

BRIEF OF THE ARGUMENT.

POINT I.

The Trial Court erroneously denied the motion for a nonsuit, when thereunto moved by counsel for the defendant, Orange Mountain Land Company.

At the conclusion of the plaintiff's case, counsel for the land company moved for a nonsuit on the ground that:

"It (the contract) provides that \$2,000 is to be paid to the architect,—\$250 when the plans, specifications, etc. have been furnished to the company, and \$1,750 at such time as the company shall have decided to proceed with the construction of the golf course and there is nothing in the testimony to indicate that the Orange Mountain Land Company had decided or did decide to proceed with the construction of the said golf course."

This motion was denied and an exception was taken to the ruling of the Court (p. 54, lines 10-30).

The testimony shows that the defendant company was organized for the purpose of acquiring and developing a tract of land of approximately one hundred and twenty acres in the Orange Mountains, in the Town of West Orange. The company received its charter on the twenty-first day of July, 1924. The officers of the company were: Frank Brewer, President, John S. Francis, Vice-President, Alfred J. Grosso, Secretary and Treasurer. There are at least nineteen stockholders in the company (p. 14, lines 30-40; p. 16, lines 12-18).

Plaintiff is a golf course architect (p. 18, line 40). Within less than a month after the incor-

poration of the land company,—on August 11th, 1924,—the land company entered into a contract with plaintiff wherein plaintiff agreed, in consideration of the sum of \$2,000, to prepare a plan and specifications for the construction of an eighteen hole golf course on the land company's property; and to do certain other things as therein provided. The consideration of \$2,000, it was agreed, was to be paid in the following manner: \$250, on the delivery of details, plans and specifications, and \$1,750 at such time as the company shall have decided to proceed with the construction of the said golf course. The contract specifically provided:

"It is further agreed between the parties that in case the company shall decide not to construct the said golf course on the property aforementioned, that the initial payment of \$250, shall be in full settlement and satisfaction for any services which the said architect may have rendered to the said company and shall complete the terms of this contract" (p. 119, lines 30 *et seq.*).

Plaintiff, in accordance with his contract, prepared and delivered a plan of the golf course, but no specifications of the same as called for by the contract. After the execution of the contract, several conferences were held by individuals of the land company, with plaintiff, regarding the possibilities of the land for a golf course. It is clear, however, from the testimony that at the time of the execution of the contract, the land company had not yet come to a decision as to whether it would construct a golf course on its land, or would use the land for purposes of real estate development. According to plaintiff's testimony, for some time after the execution of the agreement, it had not been decided whether the

land company should construct the course, or whether a club should be formed to which the land company might convey the land and the construction of the golf course to be undertaken by the club. In this connection, the plaintiff testified as follows (p. 32, lines 1-28):

"By Mr. Young:

"Q. Where was the first one after the signing of the contract, where was the first conversation held? A. In my office.

"Q. You testified before—was that the conversation you testified before that Mr. Grosso and Mr. Schwartley and Mr. Supplee were there? A. Yes, sir.

"Q. What was said there as to method of promoting this golf course and carrying out the contract? A. Well, several suggestions were given as to which was the best way to promote the Country Club.

"Q. Did you make any suggestion as to a method to promote the Country Club? A. Yes.

"Q. What was it? A. That the Orange Mountain Land Company as a holding company, promote the club, do the primary work, such as the acquiring of the property, the making of the plans for the golf course, the drawing up of the prospectus, so that those things could be presented to men who would be financially interested in the club."

Subsequently, an organization committee was formed, consisting of certain members of the land company, as well as non-members. On February 18th, 1925, a meeting was held to discuss the possibilities of the Country Club, at which sixty-one persons attended, among whom were only twelve members of the land company (p. 217, lines 8-20). On May 2nd, 1925, the Rock Spring Country Club was incorporated and thereafter undertook the construction of the golf course.

There is no evidence that the Country Club took

over the contract of the land company with plaintiff. Membership in the club is divided into three classes: certificate, associate and non-resident. There are three hundred and twenty-four certificate members, of whom only nineteen were stockholders of the land company (p. 16, line 212). Of the officers and board of governors of the Country Club, only two had any relation to the land company (p. 17, lines 20-38). The testimony is undisputed that there is no interrelationship between the Orange Mountain Land Company and the Rock Spring Country Club (p. 17, lines 38-40; p. 18, lines 1-8).

With these facts, how can it be said that the land company constructed or decided to construct a golf course within the meaning of the contract? It has been seen that at the time of the execution of the contract, the land company had not yet decided how it would use the land, whether for real estate development or a golf course; we have also seen that at the time of the execution of the contract and for some time thereafter no definite plan had been decided upon as to whether the land company would construct a golf course or whether it would sell the land to the country club, which would undertake the construction of the golf course. Certain individual members of the land company were members of the organization committee and assisted in the organization of the country club. There is nothing in the testimony to show that they were acting pursuant to any authority given by the land company. The country club had its own officers and board of governors. Of the three hundred and twenty-four members of the country club, only nineteen were members of the land company, and of the officers of the country club only two were in any way related to the land company. These facts are undisputed, and clearly

demonstrate that the land company and the country club were two separate, distinct organizations. In no sense can it be said that the country club was the *alter ego* of the land company. The construction of the golf course by the country club was, we think, clear from the testimony, not the construction of the course by the land company.

POINT II.

The Trial Court erroneously denied the motion of the defendant Orange Mountain Land Company for a direction of verdict.

At the conclusion of the whole case, counsel for the land company moved for a direction of verdict on the ground that:

“There is no evidence before the jury to show that the Company decided at any time to proceed with the construction of the said golf course, by the plain terms of the contract, the contract provides for a payment of a specific amount, \$250, and the delivery of plans and specifications, which said sum has been paid; and \$1,750 at such time as the Company shall decide to proceed with the construction of the said golf course.”

Exception was duly taken to the Court's refusal to direct a verdict in favor of the land company (p. 107, line 40; p. 108, lines 1-20; p. 112, line 31).

The testimony of the defendant's witness shows more distinctly the uncertainty that prevailed at the time of the formation of the land company as to what use the land would be devoted. Mr. Brewer testified that at the time the land was purchased, he was personally of the opinion that it would be advisable to construct a golf course upon it. Mr. Grosso's testimony was that:

“Mr. Brewer had obtained an option on this large tract of land and he induced a number of his friends to form a corporation for the purpose of acquiring that land. They were nineteen, all told, who made up the Orange Mountain Land Company, which land was purchased primarily for real estate development. A number of projects were submitted to the Orange Mountain Land Company and entertained. For instance, at one time, the company seriously entertained a proposition from the American Telephone and Telegraph Company of selling a portion of this land.
* * * * *

“When it was finally decided by the Orange Mountain Land Company that it might be advisable to sell part of this property for the purpose of a club, there was no—it was not unanimous by any means among the members of the Orange Mountain Land Company, some of them favored selling this property for the purpose of creating a club and others favored the idea of going through with the original idea and developing the property. It was then decided that the Orange Mountain Land Company could not itself, create a club and deal with the club which it was creating. A number of people were approached who had evinced interest in the formation of a club in that locality and they were asked if they would form an organization committee and feel out sentiment in the neighborhood in the Oranges, so that that organization committee was a sort of self-appointed committee” (p. 86, lines 23-40; p. 87, lines 1-40).

The Orange Mountain Land Company in turn, agreed to assist the organization committee in every possible way.

There is an abundance of testimony that the land company did not in any way control the organization or operation of the Rock Spring Country Club after it was formed. On the con-

trary, after the organization committee was formed, the land company was in the background. Frequent meetings of the organization committee were held to discuss ways and means of promoting the club. Mr. Grosso testified:

"We went to see friends of ours and the Orange Mountain Land Company had nothing to do with it whatever. It was a separate and distinct organization not controlled in any way by the Orange Mountain Land Company" (p. 88, lines 2-22).

The contract was drawn by Mr. Grosso and he says that he took pains to provide that in the event the course was not constructed by the land company, plaintiff's compensation was to be only \$250 (p. 96, lines 30-40).

According to the testimony of a witness, Samuel G. Supplee, who introduced the plaintiff to the land company, the plaintiff understood that in the event the Rock Spring Country Club was formed, he would receive nothing further from the land company under his contract. The uncontradicted testimony of Mr. Supplee is as follows:

"The Court: All right, go ahead.

"A. In my bringing of Mr. Wilkinson and introducing him to the golf club, Mr. Wilkinson did not want to accept any fee for the work he had done, as a personal courtesy to myself and my brother. Later on he performed some assistance to the members in helping them, and they wanted to pay him something for his trouble. He did not want it, because he felt that he could sell himself to the entire organization. Later on they insisted on paying him something for the work that he had already done. He thoroughly understood that he was not being employed to go further, excepting as far as the Orange Mountain Land Company felt that they could go, and for that reason the contract was made

and it was embodied in that contract that they wanted to pay him for the work he had done. Farther than that they owed him nothing, but Mr. Wilkinson, in his conversation with me, told me specifically, Mr. Supplee, he says, I want to go on and sell myself to this other board of directors" (p. 96, lines 10-30).

And further as follows:

"A. His reply was to the effect that he was willing to take his chances on getting a new board of directors or organizers of the Rock Spring Country Club to employ him to carry out their plans" (p. 101, lines 35-40).

The argument under Point I is equally applicable here. The construction of the golf course was never undertaken by the land company. The Rock Spring Country Club was a separate and distinct corporation, having its separate board of directors, only two of whom had any connection with the land company; only nineteen of its three hundred and twenty-five resident members were members of the land company. It had a separate golf committee, the chairman of which was not a member of the land company. In view of these facts, it is respectfully urged that the evidence shows that the land company did not build or ever decide to build a golf course within the meaning of the agreement; and hence, the Trial Court should have directed a verdict in favor of this defendant when thereunto moved.

POINT III.

The Trial Court refused to charge two of the requests submitted by counsel for the land company; exception to the Court's refusal to charge these requests was duly taken.

The first request to charge was:

"If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing his contract sued on in this case, then your verdict must be such a proportion of the entire price as the fair cost of the work done bears to the fair cost of the whole work and in respect to the work not done, such profits as he would have realized by doing it" (p. 113, lines 12-23).

Assuming there was a breach of the contract on the part of this defendant and that plaintiff was entitled to recover damages for the same, he is, however, not entitled under the evidence in this case to the balance of the whole consideration of \$1,750. The testimony is undisputed that plaintiff did not fully perform all of his obligations required of him by the contract. Plaintiff did not, as required by the contract, (1) make all necessary models of greens, (2) prepare specifications for the erection and construction of the golf course, (3) act in an advisory capacity to the land company in matters pertaining to the planning of the course, (4) use his professional status and best efforts to carry out the designing and construction of the course to a successful completion (p. 21, lines 10-18; p. 37, lines 28-40; p. 38, lines 1-12; p. 48, lines 10-20). Indeed, plaintiff did not perform all that was required of him by the agreement as a condition precedent to the payment of the first sum of

\$250; this sum, by the agreement, was to be paid by the defendant, upon the delivery of details, plans and specifications of the golf course, and no specifications of the course were ever made or delivered. There is no testimony in the whole case to show what profits plaintiff would have realized in respect to the work done.

Under this situation, the measure of damages applicable is that set forth in the case of *Kehoe v. Rutherford*, 56 N. J. L. page 23, wherein it was held that where, in a contract to perform a specified work for a specified price, plaintiff has done part and has been prevented from performing completely, through the fault of the defendant, the legal measure of plaintiff's damages, generally for the work done is such a proportion of the entire price as the fair cost of the work bears to the fair cost of the whole work and in respect to the work not done, such profits as he would have realized by doing it. To the same effect are the following cases: *Wilson v. Borden*, 68 N. J. L. 627; *Sullivan v. Moffet*, 70 N. J. L. 4; *Harrison v. Clark*, 78 N. J. L. 236; *Kitchell v. Crossley*, 90 N. J. L. 574. The situation presented in this case is that although plaintiff performed but only a small part of the contract, he asks to be reimbursed to the same extent as though he had fully performed. The same situation was presented in the case of *Harrison v. Clark*, *supra*, where the Court said at page 238:

"But that the plaintiff without proof to show his loss should be awarded a recovery under a contract not performed, or only partially performed, of the same amount as he would be entitled to upon the full performance, would be to permit what in *Kehoe v. Rutherford*, *supra*, was rejected because 'The absurdity of the result condemns the application of such a rule.' This leads to a reversal of the judgment."

The Trial Court also refused to charge: If the jury shall find that the Orange Mountain Land Company prevented the plaintiff from performing his contract sued on and if there is no evidence to indicate either the value of the work performed or the benefits that plaintiff would have realized if he had performed, your verdict must be limited to nominal damages (p. 113, lines 23-32).

There is no testimony in the whole case which relates to the value of the work performed by the plaintiff or to the profits plaintiff would have realized if he had performed the whole contract. The only testimony relating in any way to the damage sustained by plaintiff is as follows:

"Q. Mr. Wilkinson, how much is there due you on this contract? A. \$1,750.

"Cross examination by Mr. Marsh:

"Q. You have been paid \$250.00? A. Yes, sir.

"Q. When? A. On the signing of the contract.

"Redirect examination by Mr. Young:

"Q. Mr. Wilkinson, the court raised a question as to \$1,750—when was that to be paid to you?

"Mr. Marsh: I object.

"The Court: The contract determines that.

"Mr. Young: All right, that is all.

"By Mr. Marsh:

"Q. You say that \$250 was paid to you on the signing of the contract? A. No, I made a mistake, I meant on the presentation of the plans.

"Q. Did you ever render a bill for the \$1,750? A. Yes, sir.

"Q. To whom? A. Mr. Grosso.

"Q. When? A. In about May or June of the next year" (p. 52, lines 20-40; p. 53, lines 1-12).

In the case of *Sullivan v. Magnolia Construction Company*, 96 N. J. L. 214, BERGEN, J., speaking for the Court of Errors and Appeals, said (p. 217):

"The opinion of Mr. Justice PARKER for this Court, clearly demonstrates that *Kehoe v. Rutherford*, *supra*, is applicable to the point in controversy and therefore in the case under review, the trial court was right in holding that plaintiff in order to recover for partial performance of the contract, although prevented by the defendant, must show the value of the work done as one of the factors necessary to establish the proportion it would bear to the contract price; as there was no legal evidence of the value of the work done by plaintiff, the jury had no basis on which to ascertain what proportion its value was of the work contracted to be performed by the plaintiff. It may be doubtful whether there was not error under the proof, to direct a verdict for plaintiff, even for nominal damages, but if so, plaintiff was not injured and defendant has not appealed."

See also,

Kitchell v. Crossley, *supra*.

The jury returned a verdict in favor of the plaintiff against the defendant Orange Mountain Land Company, in the sum of \$1,907.50, which represents the balance of the \$1,750 due under the contract, with interest. In the absence of testimony to establish the value of the work performed by plaintiff, or the profits he would have realized with respect to the work not performed, it is manifest from the above cases that plaintiff was entitled to recover only nominal damages. The Court's refusal to charge each of the above requests worked a hardship on defendant Orange Mountain Land Company.

CONCLUSION.

For the reason given above, it is respectfully submitted that the judgment against Orange Mountain Land Company be set aside and a new trial ordered.

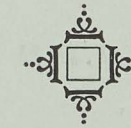
GROSSO, BRUNDAGE & ANDERSON,
Attorneys for Defendant.

NORMAN L. BRUNDAGE,
Of Counsel.

ROCK SPRING COUNTRY CLUB

ON TOP OF THE ORANGE MOUNTAIN

WEST ORANGE, N. J.



Organization Committee

T. H. POWERS FARR, *Chairman*

STANLEY BABSON

RUSSELL COLGATE

CHARLES EDISON

W. MINER OSBORN

CHARLES F. ROBBINS

C. S. A. WILLIAMS

FARNHAM YARDLEY

ALFRED J. GROSSO, *Secretary*

ADDRESS ALL COMMUNICATIONS TO THE SECRETARY
AT 282 MAIN STREET, ORANGE, N. J.



PRIVATE ROAD AT LEFT RUNNING FROM NORTHFIELD ROAD ALONG BROW OF MOUNTAIN
TO WALKER ROAD

Location

ON the top of the Orange Mountain, between Northfield Road and Walker Road, and reached by a private road running along the brow of the mountain. The property consists of about 125 acres, 610 feet above sea-level, 50 minutes from New York, 5 minutes from the Orange Station and 10 minutes from any of the Oranges, and directly at the north entrance of the South Mountain Reservation.



ROCK SPRING

*The Club is named for the famous Spring on Northfield
Road directly across from the Club property*



VIEW SHOWING PART OF CABLE LAKE

The Lake

Generally known as Cable Lake, is a beautiful sheet of water of 6½ acres, fed by springs and is stocked with bass and other fish. It is of sufficient depth for diving and water sports and large enough for boating and canoeing as well as for skating and winter sports, and will be an ideal resort for members and their families. No other Club within the New Jersey Metropolitan District can offer such a combination of attractions for the amusement of its members at all seasons.



VIEW FROM BROW OF PROPOSED CLUB HOUSE

The site commands a view of Manhattan and Staten Islands and the intervening cities and country. The view from the Orange Mountain is famous for including a greater population than from any other place in the world. At night the myriads of electric lights suggest the "heavens reversed" and must be seen to be appreciated.

On account of the elevation the temperature averages many degrees lower than in the valley and the daylight lasts about 20 minutes longer.

The property is surrounded by old forest trees and many delightful walks may be taken in all directions.



PART OF CLEARED PORTION OF PROPERTY

The Golf Course

A survey of the property has been made and Mr. W. G. WILKINSON, the golf architect, makes the following report about its possibilities:

"The property is indeed one of the most interesting tracts of land it has been my pleasure to examine and plan, and certainly lends itself to a Golf Course of distinct character.

"The contour is ideal; undulating enough to make possible the development of a sporty Course and one of championship character.



PART OF CLEARED PORTION OF PROPERTY

The Golf Course (continued)

"You will note on the plans that I have made good use of the interesting water situation known as Cable Lake. The 10th and 18th holes over this beautiful stretch of water should prove to be not only two excellent tests for golf but equal to the most picturesque that can be found anywhere.

"The entire 18 holes are well planned, giving one a variety of play throughout; the length a little over 6400 yards with a par of 74, makes the entire circuit most interesting.

"I have planned also to build double or championship tees and the yardage, of course, as mentioned, will be from the championship or back tees."



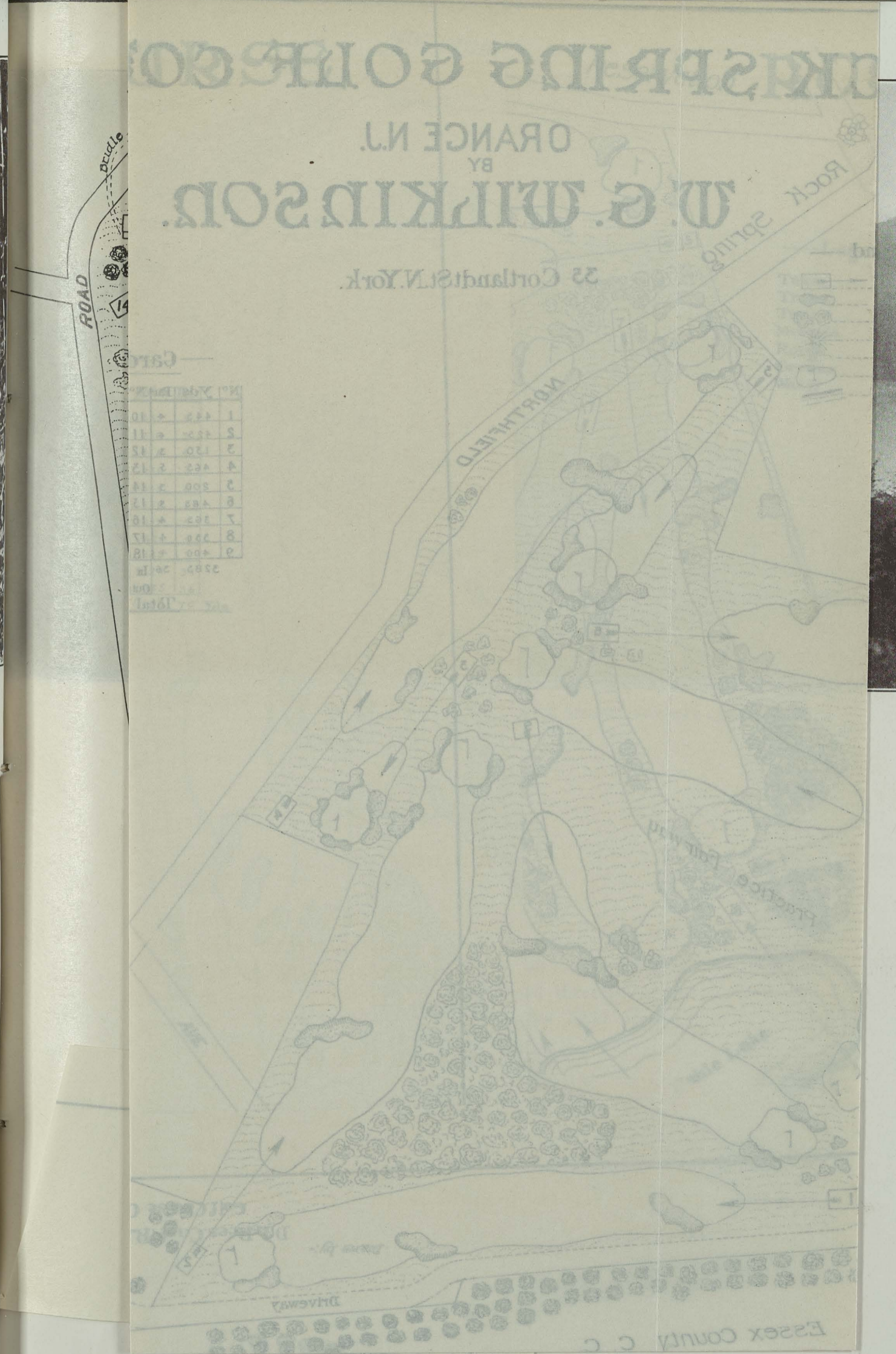
VIEW SHOWING BRIDLE PATH ENTRANCE TO SOUTH MOUNTAIN RESERVATION OPPOSITE CLUB GROUNDS

Riding

No place in this section offers such a delightful opportunity for Riding as does the South Mountain Reservation with its 13 miles of Bridle Paths through fascinating woods, the entrance to which is directly opposite the club grounds.

This is a feature that no other Club in the vicinity can offer its members.

Arrangements will doubtless be made for stabling accommodations for the horses of members and also for the hiring of good saddle horses so that members will be able to ride free from the danger of hard roads and automobiles.





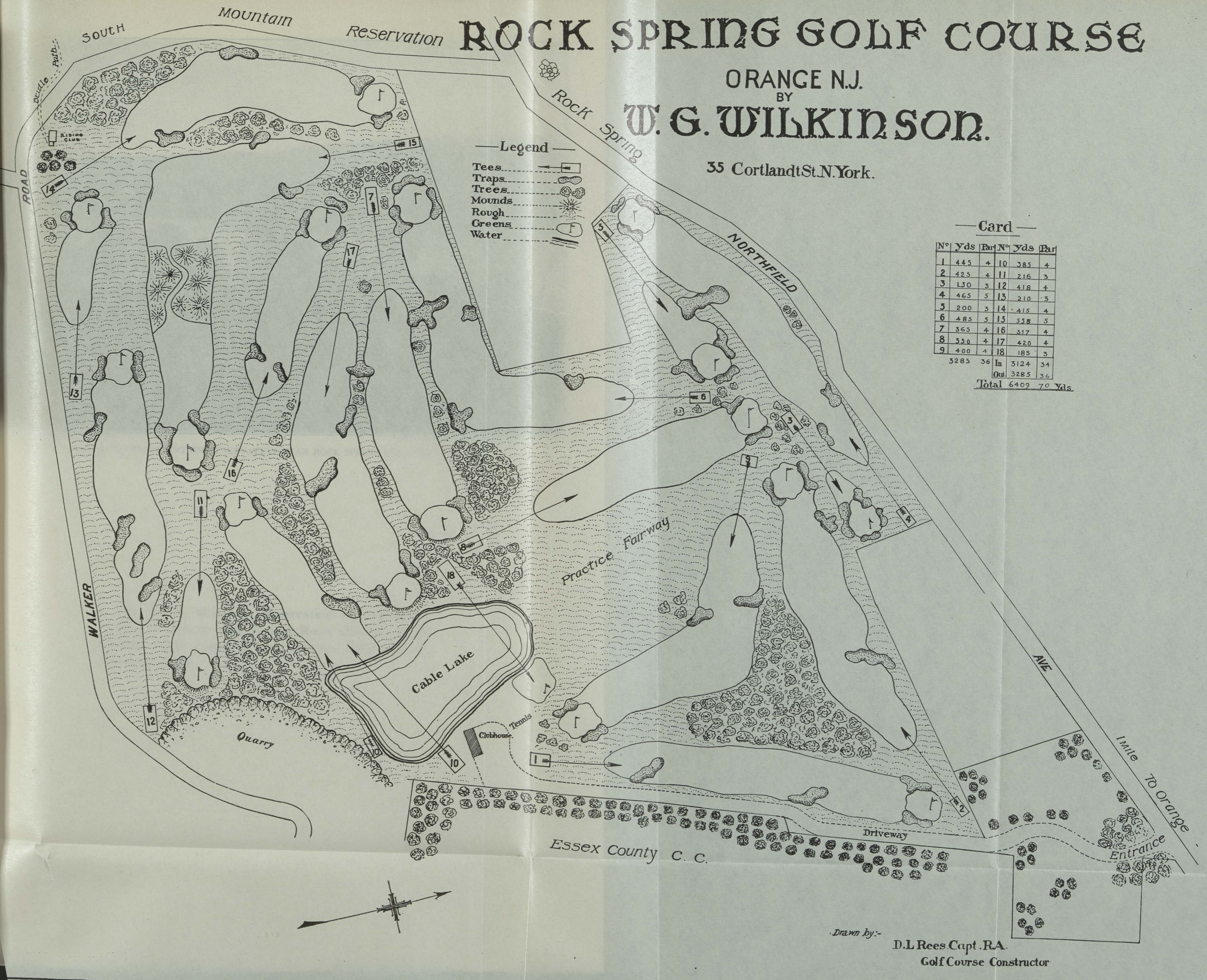
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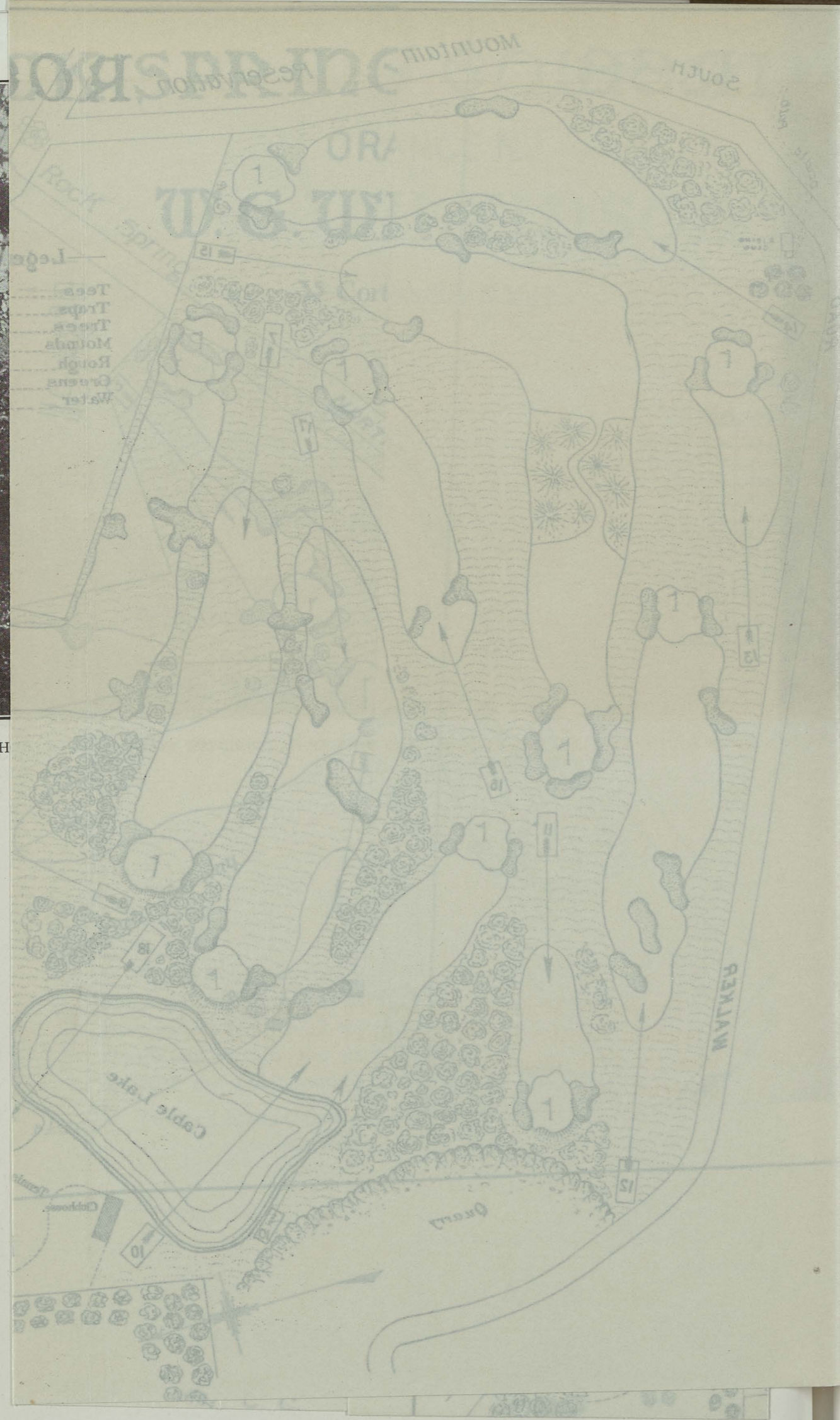
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VIEW SH



VIEW IN SOUTH MOUNTAIN RESERVATION NEAR ROCK SPRING COUNTRY CLUB

The South Mountain Reservation commences at Northfield Avenue and Walker Road directly across from the Club property, and contains 2000 acres of protected parks.

TENNIS, SQUASH, BOWLING, CLAY PIGEON SHOOTING, etc., will be given special consideration.

It is hoped to make the ROCK SPRING COUNTRY CLUB the leading all-round Sports Club in this section.

CLUB HOUSE. While the location of the Club House has not yet been determined, it will be on the shore of the Lake and near enough to the brow to command a view of the valley in all directions, which will be a source of never-ending pleasure and entertainment to members.

While sports of all kinds are being emphasized, due attention will be given to the social side of Club Life.

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