N. J. Court of Errors and Appeals.

Between *JOHN L. OAKEY,* *Appellant,* *and* *EDMUND B. COOK,* *Appellee.*	On Appeal from Decree.

The Complainant seeks to enforce a written contract, dated May 7, '83, in which both parties agree to exchange properties, "each party agreeing to furnish good titles satisfactory to both parties", Defendant to give Complainant $5,000 difference and half of wheat crop then growing.

Complainant, by the evidence, claims that he was ready and willing to give deed, free and clear of all encumbrances, at all times.

1. That he was prevented from carrying out the contract by delay of Defendant.

2. That he made tender of deed to the Defendant, and Defendant being unable to raise the mortgages upon the property he was to convey, solicited further time; whereupon Complainant told him it must be done before June 20, or he, Complainant, would not be ready before October to do so, because a Mr. Van Duesen, of Philadelphia, would be away, and not return before the last-named date, and he was dependent upon Mr. Van Duesen to aid him in completing the transfer.

3. That he, the Complainant, was able, through his

sister, who held the first mortgage on the Maryland property of $10,000, and Mr. Van Duesen, who held the second mortgage of $5,000, and another sister, who held the third mortgage of $1,750, to arrange as to the mortgages, so that he could give the title at any time.

The contract was an agreement to exchange properties; no time stated when it was to be carried out; but "each party agreeing to furnish good titles, satisfactory to both parties".

That possession was to be given shortly, cannot be disputed, for it was done.

The titles, however, did not then pass. Why?

The Complainant said that it was occasioned by Defendant's delay.

The Defendant denies this, and says: 1. That although, by the written agreement, there was a difference of $5,000, yet it was mutually agreed, between him and the Complainant, immediately upon signing the memorandum of agreement, that he should leave $8,000 on the Blackwell's Mills property, and the Complainat $10,000 on the Maryland property, and then, upon the Complainant clearing the Maryland property of the balance of its encumbrances, he, the Defendant, was to pay the Complainant $3,000 in money, the additional difference of $2,000 being paid by the acceptance of the Maryland property, subject to a mortgage of $10,000, instead of $8,000, and in that way the titles to pass.

2. That the agreement was changed from "clear" titles to "good and satisfactory titles", because of that mutual agreement.

3. That the Complainant asked for delay to arrange as to the balance of his mortgages on the Maryland property; by reason of the delay on the part of the Complainant the titles were not passed; that the Complainant told the Defendant that he relied upon one Van Duesen of Philadelphia to enable him to do it, he, Van Duesen, having the second mortgage of $5,000 upon the Maryland property, and if that were out of the way he could arrange as to the other.

4. That the Defendant, for a time, consented to delay,

relying upon the statements of the Complainant, but in the month of August he became alarmed and urged the Complainant to close the matter.

5. That the Maryland lands were mortgaged for $18,000, and the Defendant was afraid to expend several hundred dollars in putting in Fall crops, and he tendered his deed and money, and urged the Complainant to close the matter up then, or by September 1st, 1882, because he did not want to put in crops for the mortgagees to gather.

6. That the Complainant gave him no satisfaction, but, on the contrary, by his conduct, justified the belief that he was trifling with the Defendant as to arranging his mortgages through Van Duesen, and on the 19th of September he notified the Complainant that he considered the contract at an end.

Before considering that branch of the case, I insist,

1. No decree for specific performance can be granted upon the Complainant's own showing.

a. His claim is that the titles were to be exchanged free of all encumbrances.

b. That he was ready and willing to do it.

c. That he tendered himself ready to the Defendant to do it by offering a deed in accordance with the agreement.

II.

The contract is not such as by the law can be enforced.

1. If the titles of the respective properties were to be free and clear, why did the Complainant never arrange the matter of his mortgages—free the Maryland property of the encumbrances?

The Complainant, by his bill, and by his evidence, claims that each was to give the other free, clear titles; unencumbered.

The agreement says nothing about the encumbrances with respect to the titles, simply says "good titles, satisfactory to both parties".

The Complainant does not claim by his bill that there was to be any negotiation between them as to the mortgages.

The agreement is silent as to the mutual agreement in relation to the mortgages on the respective properties.

The Complainant denies that there ever was any mutual agreement as to the mortgages.

If the agreement was as the Complainant claims by his bill and evidence, he never was in position to comply.

He never did free his property in Maryland.

If he tried to do so he failed.

When he tendered his deed in May, if he did then tender it, as he states, he was in no situation to comply, and the Defendant was not bound to accept it.

His property was then mortgaged for $18,000. P. 43.

He had neither cleared it of the mortgages nor arranged to do so. Pp. 43, 70, lines 14, 17; p. 121.

During the period following until called upon by the Defendant, in August, when Oakey tendered him his deed and $3,000, the Complainant had done nothing to clear the Maryland property of the mortgages. P. 71.

If there was no mutual arrangement about the mortgages why didn't he take steps to clear them?

He says Van Duesen was away, and he depended upon him to help him. Although he had arranged with him to transfer the mortgages, and this was May 8th, ——— ———. P. 49.

Help him—how? By taking a mortgage upon the Blackwell's Mills property?

A property which he had never seen. P. 54.

Knew nothing about.

A property for which he, the Complainant, had no title, so that he could not make a mortgage upon it.

If his position is correct, as to no mutual arrangement as to the mortgages, then he was in no wise dependent on the Defendant—had no right to rely upon his co-operation or assistance; but was bound to tender a deed within a reasonable time, free and clear of all encumbrances, to the Defendant.

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It is not disputed but that the Defendant notified the Complainant, on the 19th of September, that he considered the contract at an end, giving his reasons why.

The Complainant, on the 17th of October, however, sends Dr. Ribble and Mr. Wilson to tender a deed, and by them says, "free of all encumbrances". P. 82.

Was it free of all encumbrances?

Not at all. The old mortgages remained then and are there still.

So that I conclude that if the Complainant claims a decree upon that position he fails.

The rule that "He who comes into a Court of Equity, must come with clean hands" is well known, and here applies.

"The maxim is applied to misconduct in regard to the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the parties and arising out of the transaction".

Vol. 1 Pom. Eq. Juris. P. 459, 399 (434).

How could the Complainant expect the Defendant to give, and what equitable right had he to demand, a deed for the mill property and the $5,000 in cash, when he, in May, or October, tendered his deed for the Maryland property?

He did not tender a deed, free of encumbrance, as he says he was bound to do, and the Defendant was not bound to accept it.

In suits by a vendor the purchaser will not be compelled to complete the contract, unless the title is free from any reasonable doubt.

Vreeland	v. Blauvelt	23	N. J.	Eq.	483.
Dobbs	v. Norcross	45	"	"	327.
Cornell	v. Andrews	35	"	"	7.

A mortgage remaining uncancelled of record is a good objection to the completion of a contract, where the agreement requires a title free of encumbrances.

Young v. Colyer, 4 Stew. Eq. 444.
5 Waite's Act. & Defenses 805.
24 Ark. 197.
Irvin v. Bleakly, 67 Penn. St. 24.

In all cases for specific performance, the contract must be accurately stated in the bill, and the proof must, in every essential particular, correspond with the terms of the contract set up. The proof must be clear and explicit, leaving no room for reasonable doubt.

5 Waite's Act. & Defenses P. 824.
Brewer v. Wilson, 17 N. J. Eq. 180, and cases there cited.

Courts will not decree specific performance unless satisfied of equitable as well as legal title of vendor.

Creigh v. Shatto 9 Watts & Lerg. 82.

The Complainant says the agreement as to "good titles satisfactory to both parties" was understood by himself and the Defendant to mean clear titles. P. 43.

That he acted upon that construction.

The evidence shows that he never was ready or able to comply with any such contract; indeed, it appears by Complainant's evidence, that he is mistaken in his position. Pp. 54, 69, lines 1–25, p. 74, 75, 76, 77.

He never interpreted in that way by his conduct.

With respect to the necessity of tender before suit, the American decisions are conflicting.

Pom. Eq. Juris., Sec. 1,407.

But, I submit, in no case would the Court permit a Complainant, after tender and notice by the Defendant and alteration of circumstances by which the interest, rights and advantages of the Defendant will be materially affected, in consequence of the failure of the Complainant to comply, failure to show that it was not

through negligence or inability to comply, to come in at the beginning of his suit, then tender himself ready by his bill, and by his evidence showing no act done, no means of compliance, no actual effort towards compliance, whereby the Defendant should be enforced to perform.

But it may be insisted that the Complainant was always ready and willing to perform, therefore, even though the argument presented on behalf of the Complainant is not satisfactory upon the grounds before taken, yet he is entitled to a decree for performance upon the claim that the Complainant was ever willing and ready to comply.

That he had arranged with the mortgagees to remove their mortgages; that his brother had agreed that he would take care of the mortgages; stood ready to do so; that he, the Complainant, was ready and willing to do so.

What arrangement had he made with the mortgagees, other than the indefinite and uncertain one stated by Van Duesen? There is no evidence showing when or how he had done anything of the kind. On the contrary, the clear weight of evidence is, that the arrangement sworn to by the Complainant was a desultory, imaginary arrangement, relying upon something to turn up to help him out rather than any act he did which appears, in order to help himself.

As to the evidence of L. D. Cook. On pages 39–40, Book 2, it clearly appears he had made no arrangement at all; he hadn't the money; but he was relying upon friends who had money to loan; and if they were satisfied with the investment, that money could be loaned there. On page 41, he says: "I would have furnished the money"; yet he says, on same page, "he had not examined the property with a view to lending any such sum upon it, and it would depend upon whose hands the deed was in, whether he would loan any such sum upon it". On page 42 he shows that he did not rely upon the property alone, but would depend somewhat upon the bond.

This evidence, I insist, is weak, viewing it from the most

favorable standpoint. The circumstances surrounding the giving of the evidence when considered, show that a brother, who had never examined the property, had no money to loan upon it, was depending upon getting friends to do it if satisfied with the investment, at a time when the brother is in litigation, brought upon the witness stand to testify in behalf of the brother, there, for the first time, says he would have aided him. Why didn't he do it before? Why have that brother waiting and waiting, after notice, too, that the contract must be concluded at a given time? This clearly shows that the Complainant never so understood that he could call upon the witness, or when confronted with the tender and the notice by the Defendant, he would have rushed to him at once for aid. If on the other hand the Complainant did know it, and did not avail himself of such information, then he was supinely backward, dilatory, not "eager, ready, willing and prompt" in his efforts to carry out the contract.

The Complainant must be in position by which he had a right to demand a deed of the Defendant, before he files his bill. He was in no such condition or position, and therefore never had such right.

2. But the contract, as it stands in the bill, is not such as the Court can enforce.

Every contract must not only be reasonably certain as to its subject matter, but also as to its stipulations, its purposes, its parties, and the circumstances under which it was made.

1 Pom. Eq. Juris., Sec. 1,405.
Nichols v. Williams, 22 N. J. Eq. 63.
Carr v. Passaic Co. " " 85.
" " " 19 " 424.
Potts v. Whitehead, 20 " 55.

The contract may be certain enough as to its subject matter; but its stipulations are uncertain, as are also its purposes; and the circumstances under which it was made, give no light, so far as by the contract appears,

which will enable the Court to ascertain what the stipulations and purposes of the contract were.

"A good title, satisfactory to both parties", means what? Does it mean clear titles?

The Court will observe here that the word "clear" was erased.

That leads to doubt as to the kind of titles which were to pass.

A title could be good, subject to a mortgage, which would seem to be implied from the fact of the erasure of the word "clear" in the agreement. That was the kind of title that was to be passed, in fact.

What kind of a decree would the Court order in this case upon the showing of the Complainant, and by his bill?

Could it be that Mr. Oakey was obliged to convey a clear title when the parties erased the word clear in their agreement, thus showing, by their stipulation, that they did not intend the titles should be clear at the time they signed it?

Would the Court decree that the Defendant should give a clear title, when, by the agreement, it appears he was not to do so?

Yet the evidence of the Complainant and his bill say "clear titles were to be exchanged, and there was no mutual agreement as to the mortgages".

And then, if the titles were not to be clear, subject to what encumbrances on each were they to be made?

The Court would be obliged to go into the domain of speculation to determine.

The contract and the evidence of the Complainant make it uncertain.

They do not agree.

Beside, it seems to me, the rule can be invoked, which is, that "when a material part of a contract remains to be settled by negotiation between the parties it will not be enforced".

Potts v. Whitehead, 5 C. E. Green 55; 8 C. E. G. 512.

McKibben v. Brown, 1 McCart. 13; 2 McC. 498.

The character of the title is a material part of the contract; the character or amount of encumbrances, subject to which the several properties should be conveyed, if conveyances were thus to be made, was a material part of the contract.

And here I insist that it is uncertain; not clear what amount of mortgages were to be left on the respective properties, so far as appears by the contract or by its support in the evidence on behalf of the Complainant, and further regulations would be required to determine it.

The contract, therefore, was not concluded; it is uncertain; ambiguous.

These elements render it incapable of being enforced.

Vol. 3 Pom. Eq. Juris. P. 447, Sec. 1,404, Note 1.

But I respectfully submit that the written agreement was changed from "clear" titles to "titles—satisfactory to both parties", by reason of a mutual agreement between the parties in relation to the mortgages. Read p. 69, line 25; pp. 74, 75, 76. What that mutual agreement was is a disputed question. The contract is silent in regard to it.

The Complainant says that is not so, yet on page 74 he says he never cleared his mortgages because Mr. Oakey didn't clear his and tender clear deed.

By this evidence, on pp. 69, 74-5-6,80, it clearly appears that Mr. Cook relied upon some arrangement with the Defendant with respect to arranging the mortgages.

Page 69, it also appears. The Complainant says the word "clear" was erased before signing, at Mr. Oakey's suggestion, and the mortgages were spoken of, "that if we saw fit, Mr. Oakey suggested, to change any mortgages, it will be our own business, and nobody else's."

This clearly shows the construction the parties put upon the change in the contract. The Complainant admits that the change was made on account of arranging the mortgages. The Defendant says the same. This, then, being so, what was the change?

If there was not some arrangement or understanding about the mortgages, what right had he to ask Mr. Oakey to meet him, as he says, with the mortgages, to arrange the mortgages?

On page 74 he says, "I understood we were to arrange the matters".

Q. What matters?

A. Our mortgages.

Q. How?

A. To come together like men, and transact our business, and exchange our mortgages.

Q. The contract says, and I understood you to say, that your interpretation of it was, that the property was to be clear of all incumbrances?

A. Yes, sir.

Q. You say you never did clear yours, so as to give him a title free from all encumbrances. Now, you say you were not to do so?

A. No, sir; I don't say so; I say that I was.

Q. When I asked you, just now, why you didn't do so, you said because the mortgages were not to be taken off; but you were to arrange it between yourselves like men?

A. I expected we would come together like men, and arrange our matters, and clear our mortgages, as we had agreed to.

Q. How did you agree to transfer it?

A. I had made arrangements to have my mortgages transferred on this property, and he was to transfer his.

Q. How had you agreed with Mr. Oakey?

A. I made no agreement with him.

* * * * *

Q. Then, I understand you to say, that you didn't clear your title for the reason that you expected to come

together with Mr. Oakey as men, and arrange about the transfer of the mortgages, so that the title could pass without that?

A. Yes, sir.

Now, I submit, by this evidence, it clearly appears that the Complainant had talked with the Defendant about the mortgages on the respective properties; that he expected Mr. Oakey to give him a deed, or at the time he tendered the Complainant a deed, then the arrangement about the adjustment of the mortgages was to take place. What arrangement was it?

The claim that the Complainant was to transfer his mortgages on the Blackwell's Mills property, and Oakey his on the Maryland property, has no foundation, although the Complainant may have thought of something of the sort, or why does he say the Defendant was to transfer his mortgages? Where was Oakey to transfer his, and how were they to be transferred? And yet he says he had made no arrangement with Mr. Oakey about it. P. 75.

If this is so, then the contract or agreement between the parties was unsettled and indefinate in relation to the arrangement of the mortgages, and the Complainant relied upon a meeting with the Defendant, and at such meeting then making some mutual arrangement in relation to the mortgages.

It must be this way. If there was not some mutual agreament, why didn't the Defendant clear his property of encumbrances, without regard to Mr. Oakey, and thus tender a full and clear deed?

Why was the word "clear" erased and "satisfactory" put in instead? Why does the Complainant say they were to meet together like men, and arrange the mortgages?

Why does he say that he had made arrangements to transfer his mortgages on the Blackwell's Mills property, and Oakey was to "transfer" his? Why was it necessary to have the mortgages there at the time of the transfer, in the opinion of the Complainant, if there was no in-

tention or understanding in regard to the arrangement of the mortgages?

How did Mr. Cook expect Mr. Oakey to transfer his mortgages?

He did not expect Mr. Oakey to bring him a deed free of mortgages, according to his statement, but at the time of the delivery of deed; then to arrange as to the mortgages.

The uncertainty hereto, in regard to the arrangement with respect to the mortgages, renders it impossible for the Court to make any decree for specific performance.

That uncertainty, beside, arises from the Complainant's own showing—his own evidence.

The Defendant, it is true, says there was an arrangement; but he and the Complainant are wide apart on the subject.

One saying there was, the other an indefinite, uncertain arrangement. What arrangement would the Court decree?

As the Defendant says? If so, it is contrary to the insistment of the Complainant as to what the contract really was.

And if the evidence of the Complainant is disregarded in this particular, what is it worth in the rest of the case?

III.

The Complainant is in laches.

The Complainant says the deeds were to be exchanged about the first of June. P. 42.

The contract is silent in that regard.

The Complainant says the deeds were not exchanged June 1st, because of the Defendant's being unable then to do so—surveying, etc.

But he insists that he told the Defendant that the deeds must be exchanged before June 20th, or they would be obliged to wait until October or September (p. 48), because Mr. Van Duesen would go away about June 20th, and not return until October or September.

The Defendant, on the other hand, denies that Cook ever told him he was ready. P. 125; also 126. Also denies that Cook told him he would be unable to close the matter up before October or September, if left until after June 20th. P. 129.

They stand diametrically opposed to one another.

There is no fact or circumstance corroborating the Complainant in his position.

In his talk with Oakey the latter part of August, when a tender of deed and $3,000 was made, p. 135, pp. 230–1, why did not Cook then say the time is not up until Mr. Van Duesen returns?

In reply to Oakey's notice, he sends a letter dated September 21, 1883, in which he says nothing about Van Duesen's return.

Why did he not *then* fall back on that arrangement, if, in fact, it was the reason for the non-fulfillment of the bargain on his part on the 21st of September?

Would he not have done so if he had been put off by reason of Oakey's negligence and delay?

No complaint is there made of any delay on the part of Oakey with respect to Van Duesen's return; but Cook says he is ready at any time to comply with the terms of the contract whenever he is paid the $5,000, and Oakey will remove the mortgages from his property; then Cook will remove mortgages from his property.

Did he *then*, as a matter of fact, expect to set up that he didn't comply because Oakey had misled him, or failed to comply before June 20th?

Did he set up that he must wait for Van Duesen's return?

That he couldn't comply until "October or September", as he had before told him, if the passing of titles was postponed until June 20th?

No; on the contrary, there was then *no* mutual agreement according to the letter.

The written contract he then relies upon.

"He is ready at any time * * * to comply with its terms".

So I dispose of the excuse of Van Duesen's absence

until "October or September", and say that Mr. Cook never, in any conversation he had with Mr. Oakey, relied upon that idea, nor entertained the thought that he was excused from the fulfillment of his contract until Van Duesen's return.

Beside, where was Van Duesen? Was he far off? Cook does not tell; but, on the contrary, when he, at sundry times, says to Oakey, Van Duesen is away, and Oakey tells him he can see him in two hours' ride, he replies he didn't want to disturb him. Cook don't deny this.

Thus showing that Mr. Cook used Mr. Van Duesen's absence as a reason for delay, but did not charge Mr. Oakey with being the cause of the delay, in that he did not close the matter up by June 20th.

In addition, Van Duesen had never seen the property prior to June 20th, nor has he seen it to this day.

Complainant had seen Van Duesen; but there is nothing in the case warranting the right to say that Van Duesen would have enabled the Complainant in any way to carry out the contract prior to June 20th, or at any time prior to October, excepting the fact that Cook had seen him, and he had assurances that, if the property was as represented, he would transfer his mortgage. P. 54.

Mr. Van Duesen is not called to say whether the property was as represented or not.

But, in addition, Mr. Van Duesen's son does not appear to have gone to any watering place, and the son, by the evidence of the Complainant, would answer this purpose. See p. 22.

Beside, the son did finally go, about the 18th of September, p. 23, and it was not until then that Cook had consummated any arrangement in relation to his mortgages.

Why didn't the son go before? P. 77.

Why didn't Cook communicate to Oakey the result of the son's visit, September 18th, if the arrangement was then completed on his part?

Why didn't he, in reply to Oakey's letter, say that Van Duesen had sent his son, and he was now ready?

Why did he wait until October 17th, a month after the notice to him from Oakey, before he sent Dr. Ribble and Mr. Wilson to offer the deed? Pp. 20, 82.

The excuse that Mr. Cook offers for waiting for Van Duesen's return fails. It is an afterthought.

IV.

But he says he was always ready to comply.

If he was always ready to comply why didn't he do it?

His excuse about Mr. Van Duesen's absence turns out to be no excuse. Van Duesen was prepared to come or send his son at any time. P. 77, lines 4–8.

The fact was, he was never ready. On page 75 he says, "I had made arrangements to have my mortgages transferred on this property, and he, Oakey, was to transfer his". "I had made no agreement with him, Oakey, about it". P. 75.

He, Cook, never got ready to clear his title, for the reason that he expected "to come together as men," and *arrange* about the transfer of the mortgages, so that the title could pass without clearing them. And that's the only reason why he didn't clear the mortgages off his property. P. 75.

He never tried to take the mortgages from the Westover property and give a free and clear deed. P. 75, lines 20–35.

It was just as Oakey claims. They were to arrange about the mortgages.

What was the arrangement?

Upon that they differ.

He never sought elsewhere to arrange about the mortgages, and I submit there is nothing in the case which shows that he could have done so elsewhere than with Van Duesen, and even there the arrangement the son speaks of was an uncertain, doubtful kind of partnership arrangement. Pages 22–23.

October 17, he says, through Dr. Ribble, he tendered a deed.

Was it a deed free from encumbrances, such as *he says* the contract required?

The mortgages were there still.

What did that tender amount to?

When a vendor comes into court he should tender a perfect, unencumbered title, or, at all events, such a title as he contracted to convey.

5 W. Actions & Defenses 805 and Cases.

But he urges that the Maryland property has depreciated, and therefore the contract should be enforced.

How has it depreciated?

The land is just as good; the buildings the same.

The loss of one year's crop; but through whose fault?

Kohn and Cook are both obliged to admit that the depreciation is only by reason of the loss of crops. P. 9.

The charge, that Oakey has had all the crops after he took possession until he surrendered, is no excuse.

Cook had the mill and mansion house, and all the benefits.

Oakey, by his answer, says he is ready to account for all the crops that he has received.

That can be settled at another time, and in another way.

It is no excuse.

But Mr. Oakey declines to carry out this contract, because he could not take the risk of so doing. P. 229–30.

The property was encumbered of record, with mortgages to the amount of $18,000.

He saw no chance for Mr. Cook to clear them, or the part above $10,000.

He made all his preparations for putting in his Winter crop, plowing 80 acres of land, purchasing fertilizer, and ready to sow.

He then sees Mr. Cook; John Oakey comes too. Pp. 230–231.

He is interested.

They say we are ready. Here is $3,000 in money and our deed.

Cook has not yet seen "*his man*". Oakey tells him he don't want to put in Winter crops at an expense of from $600 to $1,000, as long as the mortgages are there, because he is afraid he will lose the crops.

Cook says he has not yet seen "*his man*". Oakey tells him he must give definite answer by September, or the bargain will be at an end.

Cook says he will write "*his man*".

He says nothing then about $3,000 not being enough.

He says nothing then about clearing the mortgages off the mill property.

Oakey and his son leave him.

Time passes on. About 12th–14th of September they have some talk, and then Cook says "he will fall back on the original agreement". P. 54.

Why fall back upon the original agreement if there has been no mutual arrangement whereby they were to accommodate one another?

Does *he* have the right to say that the agreement *then* shall be changed? An arrangement upon which both were relying for their mutual accommodation.

Both must agree to that.

Oakey then tells him, "You do as you please, and I will do as I please".

Davis Oakey then comes home.

The notice is given. P. 257.

Read it.

Nothing is heard of Cook, although Van Duesen is home (the son has been to see the property), until October 17th, and then the deed for the land is tendered—the mortgage liens still on.

Oakey says no.

Time then was of the essence of the contract.

Mr. Oakey had waited and waited, from June until September 19th.

He visited Cook in June (p. 131). Cook asks for delay, and gives reasons. Last of July, or first of August, Oakey tells Cook he is impatient, won't pay another cent

until papers are fixed. (P. 132.) September 12 or 14 he again urges him. P. 133–4.

He could wait no longer. P. 134, 135. See John Oakey's evidence on page 229–231.

Time, as a rule, is not of the essence of a contract, unless it necessarily follows from the circumstances surrounding the contract.

See Cases in Stew. Dig. P. 998. Time.

When it is of the essence of the contract, it will be enforced, and it may be made of the essence of the contract by notice from the other party insisting upon its performance at a time fixed.

Bullock v. Adams, 5 C. E. Gr. 367.

Where a Court of Equity holds that time is not of the essence of a contract, it proceeds upon the principle that, having regard to the nature of the subject, time is immaterial to the value, and is only urged by way of pretense or evasion.

Daloret v. Rothschild, 1 Eng. Chy. Rep. X.

In this case, while there may have been no material alteration in the value of the land, intrinsically, there was an alteration in its value, its future productive worth, the yield or return it should give to the Defendant, which was determined in the Fall of 1882.

Before that time arrived the Defendant notified the Complainant that he was ready to comply, and tendered himself, with deed and money, to exchange upon the basis of their agreement, as he understood it.

The Complainant was not ready—waiting for Van Duesen; the Defendant then gave him notice that he must get ready by September, and his reasons; *that made time of the essence of the contract.*

In Seton v. Slade, 7 Vesey 265, it is laid down "*that time, by the act of the parties, may become of the essence*

of the agreement, so that if there be a default at the day, without any just excuse, and without any waiver afterwards, the Court will not interfere to help the party in default".

It may, in answer, be said that the time fixed by Oakey & Son was too short; but, in reply, the Defendant, in fact, waited until September 19th—a period of three weeks, at least.

During the Summer haste was not of such great importance. *Now the circumstances were altered;* the Complainant *had due notice of the alteration.* What steps did he take, between the latter part of August and September 19th, to get ready?

Van Duesen says he was ready to take 5-13 of a mortgage of $13,000 on the mill property, whereby Complainant would remove $5,000, the second mortgage from the Maryland property, but who was to take the 8-13? He does not know, nor does the Complainant state; this, too, was on the 13th of September, that Van Duesen was there, and thus concluded.

The circumstances were materially changed. Was the request an unreasonable one, on the part of the Defendant? He insists that he had been ready all the Summer, and insisting upon carrying out the contract.

He shows, unquestionably, and indisputably, that he made a tender, urging the completion of the contract, the latter part of August, and then gave the notice.

The Complainant did nothing to remove the encumbrances from that date—gave no assurance of safety to the Defendant, and on the 20th day of October then sends Ribble and Wilson to tender a deed, but for what? Property encumbered, as before!

In Hayes v. Caryll, 5 Viner 583 Pl. 18, it is laid down "that where one has trifled or shown a backwardness in performing his part of the agreement, equity will not decree a specific performance in his favor, especially if the circumstances are altered".

The case of Guest v. Humfrey, 5 Ves. 818, is a strong case in point. Specific performance was refused on account of the laches of the Plaintiff, who was the vendor,

Here, too, the purchaser had been put into the possession when the contract was made, but the Court said the question was, whether the Plaintiff had done enough to show he took all the pains he could to be ready to carry the agreement into effect. It failing to so appear, the bill was dismissed.

Time is always of importance in all these cases, whether embodied in the contract or whether it subsequently becomes so by the conduct of the parties or the alteration of the circumstances.

Chancellor Kent, in the last foregoing case stated, thus concludes: Time is a circumstance of decisive importance in these contracts, but it may be waived by the conduct of the party; that it is incumbent on the Plaintiff calling for specific performance to show that he has used due diligence, or if not, that his negligence arose from some just cause, or has been acquiesced in; that it is not necessary for the party resisting to show any particular injury or inconvenience; it is sufficient if he has not acquiesced in the negligence of the Plaintiff.

In the case of Colcock v. Butler, 1 Dessau 313, it was held that where a party has trifled or shown a backwardness in complying with his part of an agreement, equity will consider this a good objection to decreeing a specific execution in his favor, especially if the circumstances are altered in the meantime.

Our insistment is, the circumstances were so altered at the time the Defendant gave the notice, that it was the duty of the Complainant to show himself "ready, eager, willing, desirous, and prompt".

That he did not do this, nor has he shown by his evidence that he was ever ready to do it.

Here, both written and verbal notice was given.

This written contract was changed by the erasure of the word "clear", and the words "good and satisfactory titles to both parties" inserted by reason of their mutual agreement, to arrange the mortgages "between themselves".

The parties had a right to do that. The evidence that they did, is the fact that both say an arrangement was to

be made about the mortgages not embraced in the writing.

Neither ever understood or expected that he was to free his property of the mortgages and then tender a deed.

They were to aid each other in some way.

How, they do not agree.

That difference or disagreement now arises by reason of the alteration of the written agreement.

The carrying out of the mutual arrangement arising from the alteration, however, being now disagreed upon, is a good defense to the bill for specific performance.

McDavitt v. Pierpont, 8 C. E. Gr. 42.

True, the exchange of possession has taken place.

The agreement has been acted upon until it comes to the point of carrying out the mutual agreement, and then the parties disagree.

To enforce it now would be a material injury to the Defendant.

He has been out of possession of the Maryland property over one year.

He had his labor in preparing for another year's crop for nothing.

He gave due opportunity for arranging so that it might have been otherwise.

He was compelled to vacate the Maryland property in self-defense, to protect himself from further loss.

A parol agreement, which has been carried out, and so acted on by the parties that the written agreement cannot be enforced without injury to one party, is a good ground of defense.

Stoutenbergh v. Tompkins, 1 Stock. 332-337.

Here, however, the agreement was changed, but not by parol, and yet to be carried out by the mutual arrangement about the mortgages; that arrangement not being incorporated in the agreement; it was a parol arrangement; the parties acted upon it—extending time, etc.

The Complainant has his remedy at law. He has, by his misconduct, we insist, failed to carry out the contract, or have it carried out. It was his negligence.

The strict rule is, that a party who comes into a Court of Equity for specific performance, must come with perfect propriety of conduct; otherwise he will be left to his remedy at law.

King v. Morford, Sax. 274, 281.

Mr. Cook has his Maryland property still, with its encumbrances upon it.

He has had the use of our premises during all this period.

What has Mr. Oakey got?

Obliged to vacate the Maryland property; because the mortgages were so large he was afraid if he put in crops the mortgagees would take them.

Obliged to see Mr. Cook quietly enjoying his property, receiving the benefits and advantages of the same, and he powerless to prevent it.

Substantial justice would not be done by decreeing Mr. Oakey to take that Maryland property with all its encumbrances.

What would he have, equitably?

A decree for specific performance will never be made, unless substantial justice is done thereby.

Ely v. Perrine, 1 Gr. Chy. 396.

The consequences to Oakey by a decree in favor of Complainant.

ALVAH A. CLARK,
Of Counsel with Defendant.

N. J. Court of Errors and Appeals.

Between *JOHN L. OAKEY,* *Appellant,* *and* *EDMUND B. COOK,* *Defendant.*	On Appeal from Decree of Chancellor.

Brief of A. A. Clark in reply to Brief for Respondent.

At the time my first brief was printed I expected to argue the case orally.

It will be discovered, upon reading the evidence, that the parties do not materially differ about their meeting, their design to surrender possession to each other, or the

real agreement to exchange, so far as the respective values each put upon the different properties; the detail of the agreement is a material point of difference. While it is true that the exchange was made "upon the basis that each property was to be *considered* as free and clear of all encumbrances", yet it was only so to be considered with the view each had as to the respective valuations. That the properties were not to be free and clear, is manifest by the agreement, as modified, not orally, either, but by the writing at the time the agreement was drawn.

"Clear" was erased, and "titles satisfactory to both parties" inserted, and the reasons are given by Cook and Howell. P. 69. P. 282, lines 27–40.

Q. Just look at that paper I now hand you?

A. I erased that at the suggestion, I think, of Mr. Oakey; he said that the titles should be satisfactory.

Q. What was said at the time? * * * *What led to it?*

A. My recollection is, that both admitted having mortgages; but I don't think any amount was stated, and that the settlement of these mortgages should be satisfactory to both parties; that there might be some exchanging to be done; and my impression is Mr. Cook was to help Mr. Oakey, if he had any difficulty in getting the mortgages; some of them to remain on the property there, as it now exists, etc.

This is the man who drew the agreement—the brother-in-law of Cook, and who is no friend to Oakey in this contest.

He says he erased "*clear*" because Mr. Oakey suggested it; he said the titles should be *satisfactory*. Mark, the agreement says "titles satisfactory to both parties".

What was the agreement about the arrangement of the mortgages?—"The settlement of those mortgages should be satisfactory to both parties". How should it be made satisfactory? The agreement does not state. This is no oral agreement; it is the *written* contract, altered by the agreement of the parties for a purpose, that purpose to accommodate each other, the details of the arrangement not inserted in the agreement, but trusting to the continuance of their friendship and their mutual arranging about the mortgages. This is an appeal from the Court of Chancery, where the equities of the parties are considered. No cast-iron rule of law holds down the Court and binds the parties here, but all the facts surrounding any transaction are considered for the purpose of arriving at the true intent and meaning of the parties at the time the agreement was made. What were the details of that agreement? Cook says nothing, in one place, and again he is obliged to admit, when asked why the change in the agreement, it was because of the mortgages. Howell emphatically says the mortgages caused the change in the agreement, but no arrangement or definite understanding was then had as to *how* the mortgages were to be arranged. Oakey says there was an understanding: First, to leave $8,000 on the respective properties, and he pay Cook $5,000 difference in money, then changed to

leave $10,000 on the Maryland property, and he to pay Cook $3,000 in money, making the other $2,000 difference, by way of mortgage, upon the property he was to take.

Why the deeds were not exchanged I have fully discussed in my first brief.

I, therefore, confidently submit that, because of the uncertainty of the agreement between the parties in respect to the adjustment of the mortgages, this Complainant is not entitled to a decree for specific performance.

If a decree is to be made, the Court, in order to meet the *intention of all the parties at the time the writing was drawn, and "clear" erased and "titles satisfactory to both parties" inserted*, must define the particular way in which the arrangement in relation to the mortgages is to be carried out. To do otherwise would be putting an interpretation upon the paper which the parties themselves did not, at the time they signed, and was not their agreement.

The statement, in brief, of counsel for Cook, that the Answer admits that "each property was to be considered free and clear of all encumbrances", and thereby the Appellant acknowledged that the titles were to be clear, seems to me to be far fetched, and largely overdrawn—a play upon words; a construction that neither Oakey, his counsel, nor any one else, I think, ever heard suggested or thought of before.

The counsel of Cook is mistaken; Oakey does not claim that the written contract was modified by parol; on the contrary, the written agreement was changed, by the

erasure of "clear," and "titles satisfactory to both parties" inserted; and the reasons for the change are explained by the evidence, but the manner in which the change was to be made—the adjustment of the mortgages—is a parol arrangement. The parties do not agree as to what it was, or how the adjustment was to be made. In that the agreement is defective, I respectfully insist, and by reason of it the Court of Chancery cannot be called upon to enforce it.

The truth about this case is this: Cook was waiting for something "to turn up". He was frivolous. First, it was Van Deusen's absence; then Van Deusen's son was his authorized agent, and could at any time have arranged for his father; then he tries to put the delay off on Oakey; then, when Oakey makes tender, he makes no dispute with him as to the character of the tender, but says he hasn't seen his man; then, next, he tenders a deed. Tenders a deed! Proclaims himself ready to comply, and has done nothing to get ready. Then, when we come into court, resorts to the subterfuge of increased value of property he has received by reason of his thrifty management of the country milling business—an old mill, not adapted to the new methods of producing flour, etc., almost grown into disuse for custom service—covering his building with fish oil and yellow ochre, to put on a color of respectability whereby to induce some one to give him an additional loan upon it, and now, in the last throes, cries out that Oakey is sick and wants to get the property back. We say no; Oakey is not sick; but if Cook will do as he agreed, and pay us the damages we have suffered, by reason of his negligence, we will take the property.

Then, again, Oakey has received crops to the amount of $2,500. True; his share of them. But what has Cook had in return? The use of our property. If Cook had fulfilled his contract Oakey would have had not only the Maryland property but additional crops, whereby he would have had no ground of complaint against Cook, because he would have been financially reimbursed.

The condition of Oakey now is ruin if this decree is allowed to stand, and ruined because seduced by the blandishments of Cook, whereby induced to part with the possession of his home and take a property largely mortgaged, and upon which the mortgages remain, he (Oakey) being in fear of putting in further crops lest they should be taken by the mortgagees. Out of home, business, standing by and seeing another enjoying that which belongs to him, and such enjoyment secured through misplaced confidence, to use no severer term.

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New Jersey Court of Errors and Appeals.

Between— JOHN L. OAKEY, Appellant, *and* EDMUND B. COOK, Respondent.	On Appeal from Decree of the Chancellor.

Brief of R. V. Lindabury for Respondent.

In the Spring of 1883 the appellant, Mr. Oakey, conceived a desire to exchange his mill property at Blackwell's Mills for a farm. Hearing that the respondent, Mr. Cook, who owned and cultivated a farm in Maryland, was anxious to return to New Jersey, where he had formerly lived, Oakey caused a letter to be written to him asking if it would be convenient to have him (Oakey,) come with a friend to Maryland and see his farm. Receiving a favorable reply, Oakey went immediately to Maryland, and spent two days at Cook's residence examining his property. While there he made an offer of exchange which Cook did not accept, and thereupon he invited the latter to come to New Jersey and look at his mill property, with a view of con-

tinuing negotiations for a trade. *Testimony of Oakey, Case, page* 114.

On the 5th of May, Cook came to New Jersey and spent that day, which was Saturday, and the following Monday in negotiations with Oakey for an exchange. On the latter day the agreement in suit was reached. *Test. of Oakey, Case, page* 115, *line* 38.

At the time of the agreement, Cook's property was mortgaged to the extent of $16,750. *Case, page* 43, *line* 6. And Oakey's to the extent of $8,000. *Case, page* 121, *line* 21.

Cook testifies that in view of this it was then arranged that he and Oakey should come together with their respective mortgagees and transfer their mortgages from one property to the other at the time they exchanged deeds; and that such exchange should be made on or about the first of June following. *Case, page* 42, *line* 29; *page* 80, *line* 25; *page* 74, *line* 31.

Oakey denies this statement of Cook and says that there was no date fixed for the exchange of deeds, and that it is not true that each party was to clear his property. *Case, page* 123, *lines* 8-37. He says that it was understood before the contract was signed that each of them was to leave $8,000 of mortgages on his property, and that immediately after the signing of the contract that understanding was modified so that Cook was to leave $10,000 of mortgages on his property, and he, Oakey, was to pay $3,000 in cash instead of $5,000. *Case, page* 121, *line* 15; *page* 122, *line* 5; *page* 144, *line* 18; *page* 160, *lines* 5-24.

In his answer, however, Oakey says that the exchange was made "upon the basis that each property was to be considered as free and clear of all encumbrances." *Case, page* 304, *line* 26. That Cook then told him there were only $13,000 or $14,000 of mortgages on his property and he could easily manage and arrange to rid the property of them, and there would be no difficulty in carrying out

the contract just as they intended; that it could be done in a short time and that the whole thing would be accomplished by the first of June following; and he adds that by reason of such representations he was persuaded and induced to believe that Cook had means whereby he would *take up and release* the said mortgaged proporty from the said mortgages and that there would be no embarrassment in carrying out the contract. *Case, page* 307, *lines* 4–22. In another part of his answer Oakey says that before the contract was signed Cook told him that the mortgage on his, Cook's, property, amounted to $13,000 or $14,000, but that he could arrange that matter by reason of one of the mortgages being held by his sister, amounting to $10,000, and he could get his sister to take a mortgage on the Blackwell's Mills property; and that by such means Cook induced him to consider the advantages of an exchange, &c. *Case, page* 304, *line* 10.

Of course if Oakey understood that the mortgages on the Maryland property were only $13,000 or $14,000 in amount, and that Cook expected to transfer one of them, amounting to $10,000, to Blackwell's Mills, he could not have understood that either $8,000 or $10,000 was to be left on mortgage on the Maryland property, or that any similar amount was to be left on that at Blackwell's Mills.

As soon as the agreement was made Cook returned to Maryland, stopping on his way at Trenton and arranging with his sister, who held the $10,000 mortgage on the Maryland property, to transfer the same to Blackwell's Mills. He stopped also at Philadelphia and made the same arrangement with Van Deusen as to his mortgage of $5,000. *Case, page* 48, *line* 38; *page* 50, *line* 9; *page* 75, *line* 33; *page* 80, *line* 33.

About the same time Oakey applied to Albert Voorhees, who held a mortgage of $6,000 on the Blackwell's Mills property, to transfer the same to the Maryland farm; Voorhees refused to do it.

Testimony of Voorhees, *Case*, *page* 26, *line* 21. *Testimony of Oakey*, *Case*, *page* 149, *line* 14.

Upon his return to Maryland Cook at once settled up his farming affairs, and on the ~~second~~ 2nd day of May sold his stock and farming implements at auction. *Case*, *page* 43, *line* 32. On the 24th or 25th of May he delivered possession of his farm to Mr. Oakey's son; *Case*, *page* 44, *line* 22. And on the 28th of May came to New Jersey and took possession of the Blackwell's Mills property. *Case*, *page* 45, *line* 22.

Before leaving Maryland, Cook had a deed for his property drawn and executed, and upon his arrival at Blackwell's Mills he showed it to Oakey, and told him he was ready to exchange deeds any day he was. *Testimony of Cook*, *page* 46, *line* 1; *Testimony of Oakey*, *page* 125, *line* 6. Oakey, however, had made no preparation at all, up to this time, for the exchange. *Case*, *page* 47, *line* 3; *page* 126, *line* 11.

The time from Cook's arrival at Blackwell's Mills to the middle of June was spent in surveying Oakey's property, settling a disputed line, &c., *Case*, *page* 47, *lines* 12–38.

At the latter date Cook says that Oakey told him he had difficulty in getting his mortgages transferred to the Maryland property, and asked him if he could not arrange for $8,000 or $10,000 to remain on that property; he says that he told Oakey he was willing to help him as far as he could, but that it would set them back, and as Van Deusen was going away in a few days, to be gone until September or October, Oakey would have to take a second mortgage on the mill property for $5,000 until Van Deusen's return; he says that Oakey agreed to this. *Case*, *page* 47, *line* 38.

Oakey, on the contrary, says that he was ready, at this time, to exchange deeds, but that Cook wanted delay in order to fix up his property, with a view of obtaining a loan of $15,000 from Van Deusen. *Case*, *page* 131.

The probabilities here lie on the side of Cook. He had made his arrangements to transfer his mortgages and had no need either of a loan of $15,000 or of any delay. Oakey, however, had failed to arrange his mortgages, and had not even the $5,000 due to Cook under the contract. He expected to borrow that money, but had not done so. *Case, page* 170, *line* 13. Then, too, the story of a loan of $5,000 is inconsistent with the pretended arrangement to leave $8,000 or $10,000 on each property.

But which of the parties was responsible for this delay is a matter of minor consequence, since each claims to have acquiesced in it as a favor to the other.

No further steps were taken by either party to carry out the exchange until the 8th day of August. At this date Oakey executed his deed. He, however, did not show it to Cook or inform him of the fact of its execution until the afternoon of August 29th. He then went with his son and made a tender of the deed and $3.000 in money to Cook, and told him that the title must be fixed up by September 1st, or the thing would be at an end. *Testimony of Oakey, Case, page* 136, *line* 5. *Testimony of Son, Case, page* 232, *lines* 19–30.

Cook's account of this interview may be found on page 51, line 31.

Oakey's Son says that when the tender was made, Cook wrote to Van Dusen about his mortgage and showed him the letter. *Case, page* 247, *line* 21.

The parties did not meet again until the 12th of September. Oakey says that he then went to the mill to see whether Cook had heard from Van Dusen yet, and learning that he had not, he told him that he was tired of this, and that he, Cook, might now do what he pleased, and he, Oakey, would do what he pleased. *Case, page*, 133, *line* 37. (NOTE—The

questions of Counsel on page 134, lines 10–33, contain incorrect recitals: the testimony there referred to will be found on page 51 of this case, and was given with reference to the interview of August 29th, not the one of September 12).

Cook's account of the interview of September 12th is very different. He says that on the 12th of September he received a letter from Van Deusen's son, saying his father would be back in ten days. That letter he produced in Court. *Case, page* 274, *line* 20. He says that on the same day he received it he saw Oakey in front of the mill door and called to him, and told him of the receipt of the letter and of its contents, and that they could now go on and get their matters fixed up. *Case, page* 267, *line* 10. He says that Oakey then turned on his heel and walked away. *Case. page* 51, *line* 23.

Robert Beatty, the miller, was present at a part of this conversation and says he heard Cook call Oakey to the mill door and tell him that he had a letter, that he had heard from his man. He says he also heard Cook say to Oakey, "If you aint ready you ought to get ready." *Case, page* 275, *line* 18. Cook and Beatty made a memorandum of the conversation immediately after its occurrence and produced it in Court. *Case, page* 268, *line* 1.

On the question of whether or not, at this time, Oakey was still desirous of carrying out the exchange, as he says, it is to be noted that when he was asked on cross-examination why he did not, on receiving a letter from Mr. Bartine a week later, offering on behalf of Cook to perform his contract, notify Mr. Bartine, in reply, that he was ready, he answered: "It was not according to our last contract, *and I told him when the boys were up that September would settle this.*" *Case, page* 159, *line* 5.

Nothing more passed between the parties until September 19th. Then Oakey wrote a letter to Cook attempting to rescind the contract. This letter may be found on page 310 of the case In this

letter, and also in his answer, (*case*, *page* 312, *line* 3,) Oakey puts himself upon the ground that he could not sow the fall crops with safety while the mortgages remained on the farm. Indeed, in his answer, (*case*, *page* 311, *line* 30,) he says he would still be willing to carry out the exchange but for the loss of the wheat crop.

Mr. Bartine, however, wrote him on September 21st that . Cook was ready to perform. This letter may be found in the Vice Chancellor's opinion, (*case*, *page* 320, *line* 21. Oakey says that there was plenty of time to put in the wheat crop after the receipt of this letter. *Case*, *page* 159, *line* 14. His son says there was plenty of time after October 1st. *Case*, *page* 263, *line* 38.

On cross-examination Oakey did not pretend that the reason he refused to carry out the exchange on receipt of Mr. Bartine's letter was that it was too late to put in the crops; but said he refused because Bartine's letter was not according to the last agreement respecting the mortgages, &c. *Case*, *page* 159, *line* 5.

This last reason, however, was no better than the first. Oakey says in his answer that if Cook had ever intimated that he wanted him to take up the mortgages on his, Oakey's, property, it would have been done. *Case*, *page* 313, *line* 10. In his testimony, (*page* 144, *line* 28,) he says he could have cleared his property if he had been requested to do so.

Manifestly, if there was plenty of time for Oakey to put in the fall crops after the receipt of Mr. Bartine's letter, and he was able to clear his property, as he was therein requested to do, there was some other reason for his refusal to carry out the contract than either of those he gives.

The real reason, I think, will be found in his own evidence on page 147. While in Maryland in July, harvesting the crops, he enquired of a number of gentlemen what the farm there was worth. From their statement he came to the conclusion that it

was worth only $15,000 with the crops on. *Case, page* 147, *line* 10. His own place, he says, was worth $13,000 or 14,000. *Case, page* 153, *line* 15. With the crops off he thinks they were of about equal value. *Case, page* 157, *line* 8. He had agreed to pay $5,000.00 difference in the exchange. By that much therefore he had made a bad bargain. The crops would of course have made up this difference to the extent of $2,470.91, (the amount realized for them, *case, page* 233, *line* 5,) but not in Oakey's mind, as he had made sure of those before attempting to rescind his contract.

These facts, I think, indicate why Oakey told Cook on the afternoon of August 29th, that the first of September would settle the matter ; and also why he turned away in disgust on September 12th, when Cook told him he had heard from Van Deusen, and that if he, Oakey, was not ready he ought to get ready.

Here, too, will be found the explanation of the conflicting reasons given by Oakey for his refusal to exchange after receiving Mr. Bartine's letter of September 21st.

The above I believe are the material facts of the case upon which the Chancellor's decree rests. The appellant now insists that that decree should be reversed for the following reasons :

First.

Because the contract of exchange is not such as by law can be enforced. He insists that it is ambiguous and uncertain as to the character of the titles the parties are to exchange.

The titles are to be good and satisfactory. There is nothing uncertain about a title of that kind. It is a marketable title—a title not necessarily clear

in the absolute sense, but one free from any blemish which can ever defeat it.

But it is said that the word "clear" was erased and "satisfactory" substituted in the contract, and that, therefore, the parties could not have intended that the titles should be clear; and that, indeed, they had previously agreed that they should not be clear.

The answer to this is, I submit, that extrinsic evidence cannot be heard to render uncertain what, without it, is certain.

But even if the contract were uncertain in respect to the character of the titles to be furnished, it would not lie with the defendant to allege it. He admits in his answer (*Case*, *page* 304, *line* 28) that the contract was made upon the basis that each property was to be considered as free and clear of all encumbrances.

In *Robbins* v. *McKnight*, 1 Hal. Ch., 640, this Court held that it did not lie in the mouth of a defendant to insist that a contract lacked precision in a particular which was distinctly stated and admitted by him in his answer.

Second.

The appellant further insists that the written contract was modified by parol immediately after it was made, so that the exchange was to take place subject to $10,000 of mortgages on the Maryland property and $8,000 on that at Blackwell's Mills, and that, therefore, in respect to this, there is a fatal variance between the complainant's bill and the proofs.

The conflict between this claim of a modification of the contract and one part of the appellant's answer has been already pointed out. Another part of the answer is also opposed to it. On page 311 of the case at line 19 the answer says that a mutual agreement was

made subsequent to the making of the original agreement, by which $8,000 of mortgages was to be left on each property. The same statement is made in the letter of September 19th. Oakey was given a full opportunity on cross-examination to explain this discrepancy between his letter and answer on the one hand and his claim of an agreement to leave $10,000 on the Maryland property on the other, but entirely failed to do so. *Case, pages* 160-162.

That there was an effort on the part of Cook to accommodate in this matter there can be no doubt. Indeed he admits it. (*Case, page* 48.) But neither party, I imagine, ever dreamed of making a binding change in the contract.

Oakey, himself, at last, on cross-examination came around to exactly Cook's position in the matter. He said (*Case, page* 164, *line* 1,) that the agreement was not to leave $8,000. on each property but that the mortgages were to be arranged so as to suit. And he says he told the scrivener who drew his deed that the deeds were to be free and clear from encumbrance, but that they were to arrange the mortgages so as to suit the parties.

Third.

The appellant next insists that after the notice of August 29th time was the essence of the contract.

It is laid down that if time is not originally of the essence of the contract it can become so afterward in only one way, viz: By being engrafted upon the contract by notice from one party to the other to perform within a reasonable time. *Fry on Spec. Perf. s.*753.

Such notice must be express, distinct and unequivocal; and "the time specified must be long enough for the proper doing of the thing required to be done; if it be not so the notice will fail to engraft time into the essence of the contract."

Waterman on Spec. Perf. s. 435. *Fry on Spec. Perf. s.* 728.

I believe that no case can be found where a notice to perform within two and a half days was held, under any circumstances, to be sufficient to incorporate time into the essence of the contract.

The unreasonableness of it in this case, as well as its object, is apparent when it is considered that it required Cook to remove from his property, within two and a half days, three different mortgages held by three different persons residing in three different states; or rather to get all *these* mortgages together at Blackwell's Mills with their respective mortgages ready to be transferred the next day but one.

I submit that the notice was utterly futile.

Fourth.

Lastly, the appellant insists that the respondent was not entitled to a decree, because, when he made his tender in October, 1883, and also when he filed his bill of complaint, his property was mortgaged, and that he did not, therefore, have the good and satisfactory title which he offered to the appellant.

As to the tender, that was wholly unnecessary:

1st. Because the appellant had notified the respondent that he would not perform.

2nd. Because a tender is never necessary when time is not of the essence.

In *Bruce* v. *Tilson*, 25 *N. Y.*, 197, the Court says:

"It is sufficient if the complainant offers to perform in his bill of complaint, and is able to perform at the time of the final decree. A request made by action is sufficient, and a request before action is not necessary." The reason given is that the action in equity grows out of the contract, and not out of the breach of it.

Was it necessary for Cook to clear his title before he filed his bill?

In *Wyman* v. *Morgan*, 7 *Ves.*, 202, Lord Eldon said that where the time at which the contract was to be executed is not material, and there is no unreasonable delay, the vendor, though not having a good title at the time the contract was to be executed, nor when the bill was filed, but being able to make title at the hearing, is entitled to specific performance.

In *Hepburn* v. *Auld*, 5 *Cranch*, 262, Ch.-Justice Marshall approved this rule, and held it sufficient if the defect in title could be removed before final decree. To the same effect is *Hepburn and Dundas* v. *Dunlap and Company*, 1 *Wheat.*, 182.

In *Moss* v. *Hanson*, 17 *Penn. St.*, 382, the Court says the rule of equity is, "to decree specific performance of a contract for the sale of land on the application of the vendor, if the latter is able to make good title at any time before the decree is pronounced." "But," the Court adds, "this rule has its exceptions in cases where a contract is made in bad faith by one who knows that he has neither title nor the legal or equitable means of acquiring it."

In *Musselman's Appeal*, 65 *Penn. St.*, 486 (1870), the same principle is laid down, with the same exception.

In *Christian* v. *Cobell*, 22 *Grattan*, 103, a like rule is declared; but it is there said to be an indulgence, and one the Court will not grant where the defect to be remedied was known to the vendor at the time of the contract, and was concealed from the purchaser.

In *Lucket v. Williamson*, 27 Mo., 395, it is said: "A specific performance will be decreed though the title was not perfect when the bill was filed, if it appear that it can be perfected before the judgment or decree."

To the same effect are the New York cases. In both *Gaynett v. Mantell*, 4 *Duer*, 95, and *Rinaldo*

ads. *Houstman*, 52 *Howard*, 190; the defect in title was an outstanding mortgage encumbrance, but in each the Court held that the action could be maintained.

In the former case it decreed compensation, and in the latter it held that it was enough that the complainant had offered to remove the mortgage and had always been ready and willing to remove it whenever the defendant signified his willingness to take the title.

The proper limitation of the rule laid down in the foregoing cases is shown in *Brown v. Hoff*, 5 *Paige* 241, and *Baldwin v. Saulter*, 8 *Paige*, 474. In each of these cases the vendor applied for a *ne exeat* upon a bill for specific performance, and it appeared that the property which he had agreed to convey was encumbered by mortgages not mentioned in the contract. Chancellor Walworth held that although he might be entitled to a final decree if the mortgages were removed by the time it came to be pronounced, yet to entitle himself to a *ne exeat* he must show a present right, and therefore the application was refused.

Certainly there was no fraud or concealment practiced by Cook in this case, and manifestly, upon the foregoing authorities, he was entitled to the decree which he obtained.

But Cook, I submit, does not need to invoke the rule of indulgence laid down in the above cases. He is not in default here. The contract does not require him to perform his part until Oakey performs his. It is mutual and dependent. In such cases Courts of Equity do not require one party to perform until the other does. It is enough if the complainant offer to perform in his bill and convince the Court that he is ready and willing to do so. *Irvin* v. *Gregory*, 15 *Gray*, 218; *Stevenson* v. *Maxwell*, 2 *N. Y.*, 414.

That Cook is ready and willing to perform he abundantly proved. He testified that his sister

stands ready to transfer her mortgage to the Blackwell's Mills property. He called Van Deusen's son, who swore that he had agreed for his father to make the transfer of his mortgage. *Case, page* 22. He also called his brother, Lewis D., who swore that he would take up all the mortgages if necessary. *Case, page* 109. Indeed, the complainant said he could remove the mortgages "to-morrow," if desired. *Case, page* 76, *line* 10.

This covers all the points made by the counsel of appellant as I understand his brief.

There is one other matter to which I have not yet alluded, but which I submit should press with great force upon the consideration of this case. It is that by the voluntary act of these parties the contract now sought to be enforced is more than half performed already. The parties long ago exchanged possession of their respective properties. In the hands of Mr. Cook that which he took has increased in value, by his own industry and outlay, to the extent of $5,000, according to the testimony of several very good judges living in the neighborhood. In the hands of Mr. Oakey that which he took has depreciated to a like extent, according to the testimony of Rudolph Kohn, the only disinterested witness sworn on the subject. The only effort made on behalf of Mr. Oakey at the trial in this regard was to show that there had been no change in the value of either property. If the truth as to this does not lie wholly with Mr. Cook's witnesses, it at least lies somewhere ~~on the way~~ between them and those of Mr. Oakey. There has been increase in the value of one property and decrease in the value of the other.

In Waterman on Spec. Perf. §. 468, it is said: "Possession of land by a party under a contract of sale, especially if followed by improvements, or by a material change in the condition of the property,

will be deemed by the Court a circumstance of very considerable weight in a suit for specific performance, where there has been delay in fulfillment on either side."

Such would seem to be the rule of reason and justice. It certainly would not be equitable to allow a person who had gone into possession of a farm under a contract of exchange, and held it uncomplainingly for three months, while he stripped it of crops of the net value of $2,500, to lightly repudiate his contract at the end of that time.

This is a case largely of fact. The learned Vice Chancellor had the witnesses before him, and had an opportunity to observe their manner, and especially that of the parties, on the witness stand. His opinion shows a complete mastery of all the details of the case, and I submit that he has reached a conclusion which is unassailable and which ought not to be disturbed.

Dated December 9th, 1885.

Respectfully submitted,

R. V. Lindabury,
Of Counsel with Respondent.

In Chancery of New Jersey.

Between

EDMUND B. COOK,

Complainant,

and

JOHN L. OAKEY,

Defendant.

10

Before his Honor JOHN T. BIRD, V. C. 20

Mr. LINDABURY and Messrs. BARTINE & GRIGGS,

Counsel for Complainant.

Mr. ALVAH A. CLARK, *Counsel for Defendant.*

Transcript of short-hand report of testimony given on the trial of this cause, at Somerville, New Jersey, on Thursday, the Fifteenth day of May, A. D. 1884.

RUDOLPH S. KOHN, a witness produced on the part of the aforesaid Complainant, being duly sworn according to law, deposeth and saith: 30

Direct examination, by Mr. Bartine:

Q. Where do you reside? A. Princess Anne, Somerset County, Maryland.

Q. Are you acquainted with the Westover property formerly owned by Mr. Cook? A. I am, sir.

Q. For how long a period have you had knowledge of it? A. I have known the place for 12 or 13 years.

Q. What relation have you to it now, officially? A. I was appointed Receiver of that place by the Court of Somerset County, on application of Mortgagees. 40

Q. Are you familiar with the value of farms in that section? A. I am, to some extent.

Q. What have you to say as to the comparative value of that place when Mr. Cook left it, and now?

[Objected to, as immaterial. Objection overruled.]

A. There is quite a difference in the present value of the property to what it was one year ago, for several reasons. One is, the abandonment of the property and the abuse of it; the consequent abuse of it by the
10 community at large. Another was, by the taking off of all the crops of last year and not replacing any crops, which is one of the principal items, and I suppose there is at least a difference of five thousand dollars in the market value of the property to-day, to what it was one year ago.

Q. And that difference is ascribed to the causes you have stated? A. Yes, sir.

Q. Is there any other reason that occurs to you? If so, be kind enough to state it? A. Well, I don't know of
20 any. The property was without a tenant from January until the middle of May, and people were passing through it, carrying off fences and manure, and making a highway of it. The crops were all destroyed and the fences destroyed, and in the general appearance of the place it has made a great difference.

Q. Was there a tenant house on the farm? A. Yes—well, independent of the Mansion House?

Q. Yes. A. Yes, sir, on another part of the farm—well, there are several small tenant houses on the main
30 part of the farm; I think one has been burned down since—a small one.

Q. Since what? A. Since Mr. Oakey left it, or since it has passed out of Mr. Cook's possession; I don't remember the exact time when the tenant house burned down, but I consider the taking off of the crops and not replacing any in the place of them one of the greatest damages to the place for present revenue.

Q. What crops were the principal crops raised there? A. Do you mean last year?

40 Q. Generally; I mean what are the principal crops

raised on that farm, as a general thing? A. Wheat, grass, corn, steady crops.

Q. That's all. One moment. It is suggested by my client as to what you regard the value of that farm?

[Objected to.]

By the COURT: Yes; you can't go into that.

Cross-examined, by Mr. Clark:

Q. How near do you live to this property? A. Six miles.

Q. What is your business? A. I am in the lumber and 10 mill business, and also buy real estate occasionally.

Q. Doing what? A. In the lumber and flour mill business, and also buy real estate occasionally.

Q. Do you own any real estate now? A. I do, sir.

Q. What quantity? A. I suppose I own twelve to thirteen hundred acres of land.

Q. In Maryland? A. Yes, sir.

Q. In Princess Anne? A. Yes, sir; all my farms are in Princess Anne.

Q. Are any of them in the neighborhood of Westover? 20 A. No, sir; the nearest to Westover is five miles from it.

Q. There is a material difference in the value of the property in Princess Anne and Westover? A. Yes, sir.

Q. Princess Anne is the county seat? A. Yes, sir.

Q. Westover is a small station on the line of the road leading from Wilmington down to Christfield? A. Yes, sir.

Q. When were you appointed Receiver? A. In April.

Q. In April last? A. Yes, sir.

Q. And you have had charge of it ever since? A. Yes, 30 sir.

Q. What fences were not on the property before April —I mean to say in January—what fences were there on the property in January, 1884, which were not there when you were appointed Receiver? A. There were some log fences there that were removed.

Q. Just locate them, if you please, on the farm. What part of the farm, with respect to the buildings? A. There was a fence in front of the buildings—in front of the main buildings—a pasture fence, that was removed. 40

Q. Well, now you say in front of the buildings; what do you mean—in front of the house, or in front of the barn? A. Yes, sir. As you are driving from the westward east, or east westward, you enter the road on the west side and drive west towards the house; and in driving towards the mansion there was a fence inclosing the ground there, and I have been told that that was removed.

Q. Well, I want to know what you know about it, not
10 what you have been told? A. I know that has been done; because I went to the party that moved it, and he acknowledged that he moved it.

Q. Then all you know about it is what you were told? A. Yes, sir.

Q. You didn't see the fences there in January? A. No, sir.

Q. Nor in December? A. No, sir.

Q. And you don't know anything about whether there was any fence there or not in December or January, ex-
20 cept from what you have been told? A. Well, I have seen a fence there in driving in and out. I have seen a pasture fenced off there.

Q. But I am asking you what fences were there on the first of January, at the time Mr. Oakey gave up possession, which were not there on the first of April, when you took possession? A. I was not there the first of January.

Q. Then you don't know anything about it at all, as to what fences were there? A. I don't know the identical
30 fences.

Q. Do you know of any fence that was removed? A. I know that the logs were removed.

Q. Do you know of any fence that was removed from that property after the first of January? A. Yes, sir.

Q. Just state now where they were located on the farm? A. Well, I know that the fence, the log fence, was removed—the split rails were taken away.

Q. Do you know when that was removed? A. Since January.

40 Q. How do you know about that? A. Well, I wasn't

there when it was done; only I was told it was removed; and I went to the party that done it.

Q. Now, do you know, of your own knowledge, of any fence being removed after January first? A. I do not; only by corroboration, afterwards.

Q. When you said the property was depreciated in value, by reason of the removal of the fences, what was your estimate of the amount of depreciation by reason of the loss of fences? A. Well, by the breaking down and loss of the fences— 10

Q. Never mind the breaking down part; we will come to that after a while. What was the depreciation which you estimated by the loss of the fences? A. Well, I can only state that by the condition of the fences a year ago, when Mr. Cook parted with it, and their condition at the present time, and the general appearance of it. I could not specify the item correctly.

Q. Now, can you tell what fences there were upon the place when Mr. Cook left it a year ago, which were not there on the first of January, 1884, at the time Mr. Oakey 20 gave up possession? A. The fences that were there when Mr. Cook gave up possession which were not there when Oakey left—is that what you ask me?

Q. Yes. A. I couldn't tell you that.

Q. Were there any, that you know of? A. I couldn't state what, positively.

Q. Now, then, so far as the fences are concerned, then, they didn't enter into the matter, into the estimate of depreciation, or did they? A. They did, to some extent.

Q. To what extent? A. Well, to the extent of—taking 30 the cost of the fence into consideration—I suppose to the extent of $100 or $200.

Q. Not being able to tell what the fences were when Mr. Oakey left, in comparison with what they were there when Mr. Cook left, how are you able to form any estimate as to the difference in value, so far as the fences are concerned? A. I formed my opinion at the time Mr. Cook gave possession to Mr. Oakey, and at the time I took possession.

Q. What fences were there on the first of January, 40

which were taken away after the first of January, and before you took possession? A. I wasn't there on the first of January.

Q. Well, between the first of January and the time you took possession, what fencing was there taken away? A. A long fence, split rails; that is the only thing they hauled off.

Q. How do you know that's so? A. Because I was informed.

10 Q. What do you say? A. I was told that there were fences around a certain field, and that it was removed by certain parties.

Q. But you don't know that of your own knowledge? A. That's the only way I know it, sir.

Q. Very well; then you don't know anything about it?

By Mr. BARTINE.

Q. I understood you to say you went and saw that the fence was gone? A. I was informed that the fence was there, and I found it was not there, and I was told some

20 parties hauled it off.

Further cross:

Q. You speak of the depreciation of fences. Now, you said something about—a little while ago you said something about—that the chief item of depreciation was the taking off of the crops and not replacing them for present revenue. Now, you base your estimate of the depreciation on that ground, don't you? A. Yes, sir.

Q. If the property had been taken possession of in September last, would there have been any depreciation

30 —if Mr. Cook had taken possession on the first of October, would there have been any material depreciation? A. If the Fall crops had been put in properly, wheat, and clover seed this Spring, and the fences put in good repair, like when Mr. Cook left there, then the depreciation would not have been so marked.

Q. Did I understand you aright—that then there would have been no depreciation? A. I think so. If the property had been kept up in proper shape there would have been no depreciation.

40 Q. I understand you to say that you summarize it in

this way: If Cook had taken possession last Fall, and put in Fall crops, and sowed clover seed this Spring, and kept up the fences, there would have been no material depreciation; is that so? A. That's correct.

Q. Now, were you there in the month of September last, at all? A. I think I was—no, let me see; I think it was later.

Q. And what time were you there last Fall? A. I went to see Mr. Oakey about hauling some wood for me.

Q. Were you there after the possession was given up? 10
A. Yes, sir.

Q. What time? A. I think in was in March, sir.

Q. Not until this Spring, then? A. No, sir; I was there before Mr. Oakey left.

Q. When you took possession this Spring, had there been anything done upon it in the way of farming before you took possession? A. There was some land broke up.

Q. Has anything been done this Spring? A. No, sir.

Q. Now, hadn't there been about 80 acres of land plowed last Fall for the purpose of putting in Winter 20
grain? A. I estimated it from 60 to 70 acres.

Q. And covered with manure? A. It was not apparent, sir.

Q. Not apparent? A. No, sir; and I wasn't aware of the fact, sir.

Q. This ground which had been broken up was sufficiently broken for the purpose of sowing last Fall, so far as you could discover from examination? A. It had its first plowing, but no harrowing, nor proper pulverization.

Q. First plowing? A. Yes, sir. 30

Q. Seeding continues with you until very late, does it not? A. November—the early part of November does for cutting up corn. The wheat is put in generally in October.

Q. Then there would have been no difficulty in sowing this 60 or 70 acres, as you estimate it, of ground between the 19th of September and the first of November, would there? A. No, sir.

Q. If the Winter grain had been sowed, too, and if the

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crop had been properly put in, there would have been no material depreciation in the property, would there?

[Objected to, as having been gone over already.]

Q. Now, in reference to the grass: wasn't there more clover sod there this Spring, when you took possession, than there was last Spring, when Mr. Cook took possession? A. I think not, sir.

Q. Isn't the same quantity in? A. There are some; but I am told there are some broken up. In fact, I was
10 pointed out some clover land that was broken up.

Q. The old seed is all there? A. No, sir; not all.

Q. How much less is there, or how much more? A. I couldn't tell you the exact amount.

Q. This property lies back from the road from the highway; does it not? A. Yes, sir.

Q. You have to pass through a farm known as the Mills property before you reach this? A. You pass in front of it and the property in front of the buildings to the Westover estate.

20 Q. Mr. Westover's estate was formerly a large tract of land, and the Mills property was a part of the Westover estate? A. Yes, sir.

Q. And that was subsequently sold off? A. Yes, sir.

Q. And that Mills property fronts the Westover property, what is left of it, and you enter on the side of the Mills property, and go back to where Mr. Cook lived? A. You enter on the south front of the Mills property and drive down to the other property.

Q. There is none of the meadow land plowed, is there?
30 A. I don't think there is any meadow land there, except marsh.

Q. None of the clover sod, which was meadow last year, is plowed? A. Well, I saw one field of clover that was half of it plowed and half of it not plowed. There was clover growing on part of it. They had evidently commenced to break it up, and part of it was left.

Q. I wish you would locate that field? A. That field is located to the north of the main dwelling alongside of the said field, directly in front of that. It is opposite the
40 new ground.

Q. How many acres are there in it? A. I could not tell you that now, correctly.

Q. There were two cuts in that field—I mean the fields are divided up by cuts or ditches; they have no fences, except by ditching around the fields; is that so? A. Yes, sir.

Q. There are not 100 panels of fence on Westover, all told, and never were? A. Well, there is front fence.

Q. I mean internal fence? A. No, sir.

Q. They had cuts and ditches instead? A. Yes, sir. 10

Q. As I understand it, the tides flow even to the Mansion House at Westover? A. No; I think for a very short distance.

Q. And they are obliged to ditch their land because they lie very flat, and they are dependent on their ditching for fences, or at least they use them in that way? A. They have to put ditches there to drain the land.

Q. Now, when I speak of a cut, aren't there two cuts there, surrounded by ditches, which were in wheat last year, and not mown last year, and this year they are in 20 sod, that were not plowed—do you remember, or don't you? A. No, sir; I can't place it.

Q. Do you know at all how many acres there were in that cut which you just spoke of? A. I told you I couldn't tell you. The clover crop was this year almost exhausted. It has been in several years, and you won't get much more than half a crop there this year from any of it.

Re-direct examination:

Q. Do you know when the buildings were deserted by Mr. Oakey? A. I think Mr. Oakey left about Christmas 30 of last year—1883.

Q. Do you know how long the place was without a tenant? A. Up till the middle of last month—April.

Q. Were all of the houses unoccupied during that time? A. All of the houses on the main farm were unoccupied. There is a little place some distance off, which belongs to the property, which was occupied by a colored man.

Q. That's all.

Re-cross:

Q. You spoke about the tenant houses, and I neglected to ask you about that. Now, this tenant house that was burned down was a darkey cabin? A. Yes, sir.

Q. How large was it—can you describe it? A. I can't describe it.

Q. It was a valueless property? A. I can't describe the value of it.

Q. There are lots of them scattered all over that sec-
10 tion of country, uninhabited, are there not? A. No, sir; there are not many of them—most of them are inhabited.

Q. They are very cheap institutions? A. They are not very expensive.

Q. That's all.

LOUIS T. HOWELL, a witness produced on the part of the aforesaid Complainant, being duly sworn, testified as follows:

20 *Direct examination*, by Mr. Bartine:

Q. Where do you live? A. At East Millstone, Somerset County.

Q. Are you acquainted with the Complainant and Defendant in this case? A. Somewhat; yes, sir.

Q. Did you write a contract for them? A. I did, sir.

Q. Have you that with you? A. I have, sir.

Q. Will you be kind enough to produce it? A. (Witness did so.)

Q. Who is the subscribing witness to it? A. I believe
30 I am the person, sir.

Q. Whose signatures are those to it? A. John L. Oakey and Edmund B. Cook.

Q. Did you see them sign that paper? A. I did, sir.

Q. When? A. At the time it was written. I shall have to refer you to the date to find when that was.

Q. Well, refer to the date, then? A. May 7, 1883.

Q. Where? A. At Blackwell's Mills, so called, at the office of the mill.

Q. Who were present? A. John L. Oakey and Edmund
40 B. Cook were present at the time it was signed.

Q. And yourself? A. Myself.

Q. The contract is in whose handwriting? A. Mine.

Q. That is all for the present. Cross-examine.

Cross-examination, by Mr. Clark:

By Mr. CLARK.—You have examined him with a view of offering the contract?

By Mr. BARTINE.—Yes, sir.

Q. Were those seals put on there at the time the parties signed the paper? A. No, sir; they were not.

Q. Were they put on in the presence of the parties? 10 A. No, sir. When I drew it up there were no seals at the time there, and I supposed it was my business to see that they were there, because it was signed, sealed and delivered in my presence. Therefore, I thought it was proper that I should put on the seals, and I did so. There was an understanding that the seals should be there— (Interrupted.)

Q. You say there was an understanding—was anything said about the seals? A. There were no seals there.

Q. Was anything said about the seals? A. Yes, sir; I 20 think so. I think there were seals asked for, but there were none there.

Q. Who asked for the seals? A. I might—I am not positive.

Q. Was any direction given to you by anybody to put seals on this paper? A. No positive directions.

Q. Any directions at all? A. My understanding was that I was to put seals on.

Q. Did you have any directions from anybody to put seals on this paper? A. I don't know that I did; no, sir; 30 any more than it was my duty to do so.

Q. Well, that was a self-constituted office? A. Well, if you say so.

Q. Well, not if I say so, but if you say so. I asked you if it was? A. I put the words there "signed, sealed and delivered," and the seals were not there at the time.

Q. And I asked you if anybody gave you authority to put seals there, and you say no. Now, that is all there is about it? A. Mr. Oakey knew I put seals there.

Q. He didn't know it till the 24th day of October, 1883, 40

did he? A. I don't know. He asked me if I put the seals there, and I told him I did; I could not tell you what time it was. It was not on the day when the articles were signed.

Q. Didn't he come to you and say this: "Mr. Howell, what have you put seals on that paper for"? A. No, sir.

Q. Didn't he say anything to you of that kind? A. No, sir.

Q. Mr. Howell, was anything said about seals—is that
10 agreement as it was at the time it was signed by the parties? A. With the exception of the seals.

Q. Yes? A. Yes, sir.

Q. In all respects? A. Yes, sir.

Q. This agreement has been in your possession ever since the 7th of May, 1883? A. Not entirely; no, sir.

Q. Where else has it been? A. When the suit was commenced I gave it to Mr. Bartine.

Q. Before the suit was commenced where was it? A. In my office.

20 Q. Always? A. Yes, sir; I never allowed it to go out of my possession.

Q. Did you loose it at any time? A. Mr. Oakey came to me for a copy of it, and I could not lay my hands on it, I think, that day. I had put it away among some papers, and for the moment I forgot what I had done with it, and afterwards I gave him a copy of it.

Q. Do you know when it was you gave him a copy of it? A. No, sir; I could not tell you exactly.

Q. How long was it after the paper was signed? A.
30 Well, I think it was—I will have to guess at it; but I think it was August or September—this is guess work. I have no data to go by, but it was sometime there.

Q. (Handing witness a paper.) That is a copy, is it, Mr. Howell? A. Yes, sir; that is my writing.

Q. There were no seals to the original, at the time you made that copy, were there? A. I could not say, sir, as to that. I took no dates for these things, and I am dependent upon the date of the instrument for my memory. I made no dates as to the transaction, except on the in-
40 strument itself.

Q. I understand you to say, you think the copy was made in August or September? A. I have no recollection about it. It is all guesswork, as I say.

Q. Your best recollection is August or September? A. Yes, sir.

Q. You are a brother-in-law to Mr. Cook? A. Yes, sir.

Q. And was at the time this contract was drawn? A. Yes, sir.

Q. That's all. 10

Re-direct examination:

Q. Where was Mr. Oakey living at the time he got that copy? A. He was living where he now lives; at the same house, I think.

Q. Was Mr. Cook in possession of the mill at that time? A. Yes, sir.

Q. Was Mr. Oakey in possession of the farm? A. Yes, sir.

Q. What was said by Mr. Oakey about the deed, at that time, or at any time, when you had a conversation 20 with him, before the commencement of this suit—the first time you saw him after the contract was written—when was it? A. I don't think Mr. Oakey ever said anything to me about his deed.

Q. When next did you see him after this contract was written? A. Well, I saw Mr. Oakey at various times; I couldn't tell exactly when it was. Various times I met him. Mr. Oakey and I were always on good terms, and are to-day, as far as I know.

Q. Did you ever have any conversation with him after 30 that, and before the commencement of this suit, in relation to this exchange? A. After Mr. Oakey sent word to Mr. Cook that he wished his property back— (Interrupted.)

Q. When was that? A. I have no dates; I know it was husking-corn time. It was after the letter was sent to Mr. Cook.

By Mr. CLARK.—Which was September 19th.

By Mr. BARTINE.—Yes, sir; September 19th.

Q. Well, go on? A. I can't fix the date, but I know 40

it was while Mr. Oakey was hauling in corn; and I saw Mr. Oakey, and said to him that I understood there was a difficulty between himself and Mr. Cook, and whatever difficulties there were, to try and settle them between themselves and friends, and not go in the courts. He then said it was too late; there might have been a time to settle, but it was too late. I think he said he had got mad, and when he was mad he was mad all over.

Q. Oakey said so? A. I think he said so—that is about
10 the language he used, and he also said, I think, that it was good advice, but it was too late. I said no more to him about it from that day, I believe, to this.

Q. Do you recollect his saying anything to you about Mr. Wilson being sent to him? A. When I spoke to him about settling between his friends, he said there had been two men sent to him, but that he would not negotiate with those persons, because he thought they were not his friends, or that he wasn't on pretty good terms with them, or something of that kind.

20 Q. Well, tell us as near as you can what he said? A. Well, I think he said, these two gentlemen had called on him, but that he would not negotiate with them.

Q. Is that the word he used—negotiate? A. I can't say that he used that language, but that is the purport of it.

Q. I would like to have it, as near as you can, just what he said? A. I could not give you the precise language.

Q. Do you remember whether he stated what they came for, and if so, tell us? A. Well, when I told him he had
30 better settle it with his friends, he said that two gentlemen had been sent to him to settle the matter, but that he would not settle it with them—that he didn't think very much of those men, in a business point of view. Well, I said, "You need not have settled with them. Why didn't you name those who would be acceptable to you?" Well, he said the time had gone past for that.

Q. Do you know whether anything was said about the deed then? A. I don't know as the word deed was used, particularly.

40 Q. Now, at the time when this contract was drawn I

desire to call your attention. You were about to say that something was said, at that time, about seals—just state, according to the best of your recollection, what was said about putting seals on that paper, at the time it was executed?

By the COURT.—I understood the witness to say twice, distinctly, that nothing was said, but simply that it was his duty to put them on, because he had written the words "signed, sealed and delivered".

By Mr. BARTINE.—If that is what he said, all right. 10 I didn't so understand it.

By the WITNESS.—Yes, that was my understanding of it.

Q. There was nothing said about it, at all? A. That is what I testified to.

Re-cross examination:

Q. Mr. Oakey's two sons were in the office at the time the contract was signed, were they not? A. I don't know whether they were there at the time it was signed or not. One of them came there afterwards, while we were talk- 20 ing about the contract.

Q. You said you and Mr. Oakey had had some talk. I will ask you again about the boys. You say they were there, but don't remember whether they were in there at the time the contract was signed? A. I don't think they were. I don't think they came in while we were talking about it, or till after it was signed, and I think one of them came in. I couldn't say whether it was David or John. I don't think both of them were in there.

Q. Were they not in there during the negotiations? 30 A. There was no negotiations made there in the office, at all.

Q. Well, the talk was had at or about the mill? A. The talk was at or about the mill.

Q. Where were you, during the negotiations? A. I was in the office.

Q. Well, then, you don't know what their negotiations were? A. No, sir; they came in the office and asked me to draw it up, and I drew it, according to their dictation.

Q. Didn't both of those boys come to the office and 40

look the contract over, before it was signed? A. Not to my recollection.

Q. You said, that after Mr. Oakey had sent word to Mr. Cook to get his mill property back, then you saw Mr. Oakey, and had this conversation with him, which you went on to detail. You referred to a letter of Mr. Oakey, sent to Mr. Cook, telling him to give up possession of the property, and that he would give up possession of the Westover property on January 1st, didn't you? A. I heard it
10 said that Mr. Oakey had warned Mr. Cook off of the place on the first of January. I had reference to that.

Q. And his warning him off by a letter which he sent him? A. I don't know as to that. I had heard that he had warned him off.

Q. From whom? A. Mr. Cook, or some of his friends.

Q. Didn't he tell you he received a letter from Oakey, dated September 19th, 1883, in which Oakey gave him to the first of January to clear up and get out of the mill property, and he would get out of the Westover proper-
20 ty at or about the same time? A. What is your question?

Q. (The Stenographer read the question as above.) A. I can't say that he referred to the letter, but he told me that Mr. Oakey had warned him off, and he wanted possession of the mill on the first of January. That is about the way I understood it.

Q. Did you never see the letter which Mr. Oakey sent Mr. Cook? A. Not to my recollection.

Q. Mr. Cook did not tell you he received the word?
30 A. I think he said the Sheriff summoned him, or gave him a letter; I am not positive which.

Q. In reference to the time when you had this conversation, which you were speaking about a little while ago, about the deed, wasn't this on the 19th of September—the conversation you had with Oakey? A. I think it was. It was husking-corn time; I have no dates, but go by that.

By Mr. BARTINE.—We desire to offer that contract in evidence.

40 By Mr. CLARK.—I object to the contract, on the

ground that the affixing of the seals, after it was executed, is a material alteration.

By the COURT.—As I understand the rule of law in New Jersey, the alteration of a contract, made by a stranger, is sufficient to warrant the Court in rejecting the instrument which is offered in support of a case. If I understand, the decisions in the Supreme Court of the United States qualify that. I am not entirely satisfied as to the correctness of my understanding of the decisions, not having the cases before me, and in order that, if I 10 err, it may be on the safe side, I will admit the instrument, and while hearing counsel, during the argument of the case, on the final summing up, as to the admissability of the contract, I will not deal with the matter now.

NATHANIEL S. WILSON, a witness produced on the part of the aforesaid Complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Bartine:

Q. Are you acquainted with the parties in this case? 20 A. I am, sir.

Q. Will you state whether you had a conversation, or interview, with Mr. Oakey, and if so, when it was, and what it was about? A. It was in October, between the 15th and 20th. I don't know the exact date, and I didn't put it down.

Q. Who went with you? A. Dr. William B. Ribbell.

Q. Where was it? A. At his house—Blackwell's Mills —where he resided.

Q. Where he resided? A. Where he resided. 30

Q. Will you state to the Court what was said by you and him, at that time, in relation to this matter? A. We went up there and made a tender of the deed.

Q. Go right on—deed for what? A. For the Westover property.

Q. What was said and done? A. That was our business there. We made a tender of the deed—Dr. Ribbell tendered him the deed, in my presence, and he refused to accept it. He said it was too late for us to do anything, and I tried to talk to him quite some more in regard to 40

it, and he said he would rather have no conversation about it; so there was very little said in regard to it after that; but he refused to accept the deed.

Q. You say you tendered him the deed. When you did that, what did you say to him? A. We said we came there for the purpose of making the exchange—to receive his deed, and tender him Mr. Cook's deed for the Westover property.

Q. Was anything said about the mortgages on either
10 place? A. I don't think there was. After he said it was too late for us to make any arrangement about it, why, we didn't talk on that subject at all.

Q. What, in point of fact, did you go for? A. To make a tender of the deed.

Q. What else? A. And receive his.

Q. And what arrangement about the mortgages did you go there to make? A. I don't recollect so much about that. Dr. Ribbell had all the papers in charge. I only went along with him. He had the whole business to do.
20 Q. Do you know where that deed is that you had? A. No, sir; I don't know. I never seen it since. Dr. Ribbell had it, I suppose. I saw the deed that day, and read it.

Q. Did you have any other conversation with him? A. In regard to this?—No, sir.

Q. At any time? A. No, sir; none.

Q. That's all.

Cross-examination, by Mr. Clark:

Q. It was the evening of October 17th you and Dr. Ribbell called, wasn't it? A. Very likely it was. I don't
30 know exactly the date.

Q. About dusk? A. No; it wasn't dark yet.

Q. Well, about dusk—growing dark? A. Well, it was after three o'clock in the afternoon.

Q. Well, do you know what time it was? A. I don't; no, sir; not exactly. I don't think it was dusk, quite.

Q. You saw Mr. Oakey, you say, at the house where he lives, at Blackwell's Mills—was it in the house? A. We had the conversation partly outside, and when we told him what we came up for he invited us in the house, and
40

we went in there and talked the thing over—inside of his house.

Q. The Doctor did the talking, didn't he? A. Yes, sir—the most of it; yes, sir.

Q. And didn't the Doctor say that he had the deed from Cook, not saying what it was for—wasn't that what he said—"I have a deed from Cook for you"? A. Well, we gave Mr. Oakey to understand that it was the deed for the Westover property.

Q. Was there one word said about the Maryland property? A. I think so. 10

Q. Have you any recollection, and if so, state what was said about the Westover property at that time? A. Well, I can't hardly say what was said at the time. I didn't write it down.

Q. Well, I mean what was said about the property? A. We talked about the property, but I can't say what was said about it.

Q. Well, was the deed shown? A. Yes, sir; the deed was shown. 20

Q. Was it opened, and shown, or just taken out, folded up, in this way? (Illustrating.) A. My impression is, it was folded up in that way.

Q. Then the Doctor held it in his hand, and said, "I have got a deed for you," and Mr. Oakey said it was too late, and that was all that was said about it, substantially, wasn't it? A. Yes, sir.

Re-direct examination:

Q. I understood you to say that he refused to say anything to you about the matter? A. Yes, sir; he said it was too late, and that he didn't wish to talk to us on the subject at all; he thought we were friends of Mr. Cook's, and he didn't want to have any conversation with us. 30

Q. Was that the reason why you didn't go any further with the matter? A. Yes, sir.

GEORGE R. VAN DEUSEN, a witness produced on the part of the aforesaid Complainant, being duly sworn, according to law, testified as follows:

40

Q. Your father had a mortgage on the Westover property, didn't he? A. Yes, sir.

Q. You act as his agent? A. Yes, sir.

Q. In the transaction of this business? A. Yes, sir.

Q. What, if anything, was said to you about the transfer of that mortgage on the property at Blackwell's Mills?

By Mr. CLARK.—What are you talking about—said by whom?

10 By Mr. BARTINE.—Said by his father to him.

By Mr. CLARK.—Oh, we object to that. What his father said to him can't affect us.

[Testimony admitted, subject to objection.]

Q. You act, as I understand you to say, as your father's agent? A. Yes, sir.

Q. What did you consent to do in this matter? A. We consented to transfer the mortgage which was on the Westover farm and place it on the Blackwell's Mills property.

20 Q. Knowing that there was an $8,000 mortgage there, also? A. There was an $8,000 mortgage on the mill property—that is, there was a first mortgage of $10,000, on which, we understood, there was $8,000 due. We had a mortgage—a second mortgage—on that property of $5,000. We understood there was to be $8,000 placed on the Blackwell's Mills property also, making the total $13,000 on the property.

Q. That's all.

Cross-examination, by Mr. Clark:

30 Q. You understood there was to be $13,000 on the Blackwell's Mills property? A. Yes, sir.

Q. When you took your mortgage, it was to be a second mortgage? A. Our mortgage was to be a second mortgage?

Q. Your mortgage was to be a second mortgage on the Blackwell's Mills property for $5,000? A. No, sir; that wasn't so.

Q. That was not to be so? A. No, sir.

Q. Well, was your mortgage on the Blackwell's Mills
40 property to be a first mortgage? A. Yes, sir; we were

to be joint mortgagees to the extent of five-thirteenths of the $13,000 mortgage.

Q. Joint mortgagees? A. Yes, sir.

Q. To the extent of five-thirteenths? A. Yes, sir.

Q. Who was to be the other fellow? A. I don't know, sir.

Q. When was that arrangement, which you were just speaking of, finally consummated? A. That was some time between the 15th and 20th of September last. I think it was on the 18th, but I am not positive. 10

Q. This arrangement was an arrangement between yourself, or your father and Mr. Cook on the one side? A. I was acting for my father, and I made the arrangement with Mr. Cook.

Q. And it was never communicated to Mr. Oakey, that you know of? A. Not that I know of—I don't know whether it was or not.

Q. Well, you don't know anything about that? A. No, sir.

Q. It was not communicated to Mr. Oakey, as far as you or your father had anything to do with it? A. We did not communicate it to Mr. Oakey. Neither of us ever saw Mr. Oakey. 20

Q. Your father held a second mortgage on the Maryland property? A. Yes, sir.

Q. Of $5,000? A. Yes, sir.

Q. And holds it still? A. Yes, sir.

Q. And the first mortgage of $10,000? A. I believe so, sir. It is either $8,000 or $10,000.

Re-direct examination: 30

Q. Had you had a conversation about that before with Mr. Cook? A. I believe there were several conversations —yes, sir.

Q. Your father, I understood—is he at home during the Summer? A. No, sir; and he wasn't that Summer. He was away during the Summer. He was in the city only a few hours once or twice a week.

Q. What time did he leave home for his Summer vacation? A. About the 15th of June—15th to 20th.

40

Q. And came back, when? A. About the same time in September—about the 20th of September, I think.

Q. Had any conversation occurred about it before he left—I mean about this arrangement? A. Well, that I don't know, sir. I don't know whether there had or not.

Q. Do you know whether any attempt was made at that matter during the period of his absence? A. Yes, sir; there was numerous requests from Mr. Cook for us to come up and see the property, and asking whether we
10 would transfer the mortgage.

Q. What was the cause of the delay? A. Well, the cause of the delay was—if there was any cause for delay—it was simply my putting it off from time to time, and not going up to look at the Blackwell's Mills property—I suppose that was the cause.

Re-cross examination:

Q. Your putting it off? A. Yes, sir. My father spoke to me about going to see the property some time during the Summer.

20 Q. Did you go up and see the property, or did your father? A. I went up.

Q. Did your father go at all? A. No, sir.

Q. Through whom, or at least who were the persons to this arrangement, of which you have just spoken, about taking the mortgages on the property at Blackwell's Mills—your own for five and the other for eight thousand, making thirteen thousand dollars—you to have five-thirteenths out of the thirteen thousand dollars—who were the other parties—anybody besides you and Mr. Cook? A. No,
30 sir; we had no negotiations or arrangements with anybody except with Mr. Cook.

Q. Then, as far as you know, there was no person who was willing to join in taking the $13,000 mortgage on that property, in the way you speak of, except yourselves? A. Well, we were assured by Mr. Cook to that effect.

Q. But you had no other assurance from any other person but him? A. No, sir; we had no transaction with anyone else.

40

Re-direct examination:

Q. You know that his sister held the first mortgage, don't you? A. I believe she does—or sister-in-law, or some relation.

Q. That is what you understood? A. Yes, sir.

Re-cross examination:

Q. His sister held that mortgage? A. The first mortgage on the Maryland property—the Westover farm.

Q. But his sister had no interest in the Blackwell's Mills property, as far as you know? A. No, sir. 10

Re-direct examination:

Q. Your understanding was, that those two were to be brought up here? A. Yes, sir.

Re-cross:

Q. From whom? A. From Mr. Cook.

Re-direct:

Q. As far as you were concerned, you were willing to do it? A. Yes, sir.

ALBERT VOORHEES, a witness produced on behalf of the aforesaid Complainant, being duly sworn, testified as follows: 20

Direct examination, by Mr. Bartine:

Q. Where do you live? A. Near Millstone.

Q. Are you acquainted with these parties? A. Yes, sir.

Q. Have you a mortgage on Blackwell's Mills property? A. I have; yes, sir.

Q. How long have you had it? A. I think Mr. Oakey gave it to me in 1877. 30

Q. Do you still hold it? A. Yes, sir.

Q. It has never been removed? A. No, sir.

Q. How much is it? A. $6,000.

Q. Did you know of this exchange of properties at the time, or about the time, it occurred—did you hear of it? A. Yes, sir.

Q. Did you see Mr. Oakey in relation to that mortgage or did Mr. Oakey see you? A. I think—in fact, I know—we had a talk sometime afterwards; I don't know how long afterwards; I have no idea. 40

Q. Well, fix it as near as you can? A. It may have been within a month, or it may have been three months afterwards; I couldn't tell you. I have no idea of the time.

Q. Can you remember what you were doing? A. I was in the house, I think; they called me out, and said Oakey was there, and wanted to see me.

Q. I mean, can you remember what you were doing on your farm—what business you were carrying on—what
10 work you were doing about that time? A. No, sir; I cannot.

Q. Do you know whether it was before or after harvest? A. I think it was during the Summer, but I can't give the date at all.

Q. What did he say to you about it? A. Well, I think there was two matters talked of at that time, and this was one.

Q. This one I want to know particularly about. I don't care about the rest. Now, what did he want you to do—
20 what did he wish you to do, in reference to this matter? A. I think Mr. Oakey asked me the question whether I would be willing to transfer the mortgage from this property to the Maryland property.

Q. Well, go on? A. And I told him that I didn't think that I would. That is all the conversation in reregard to it, I think. He might have said, to think of it a little, or something of that kind, or I may have said that I would think of it; but I remember that being about the answer that I gave—that I didn't think I would
30 be willing to transfer it. It is a good while ago, and I never expected to be called on again for it, and I guess it has gone out of my mind.

Q. Has he spoken to you about the transaction since? A. I don't think he has.

Q. Nor about removing the mortgage? A. Not since that time; no, sir.

Cross-examination, by Mr. Clark:

Q. Didn't Mr. Oakey, in this conversation, first speak to you about taking up the mortgage, and ask if you
40 would consent to take the money, and didn't you decline,

and say you didn't want to lose the interest to April last? A. I think there was such a conversation, but I had forgotten it.

Q. And, finally, then, didn't Mr. Oakey, after saying that, say "Will you be willing to transfer it and put it on the Maryland property", and didn't you decline? A. Yes, sir; that was the conversation. I remember it now, but I had forgotten it.

Q. That's all.

10

HENRY S. VAN NUYS, a witness produced on the part of the aforesaid Complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Bartine:

Q. Where do you live? A. Near Millstone.

Q. What office do you hold in that township? A. I am Assessor.

Q. Were you last year? A. Yes, sir.

Q. Did you assess the Blackwell's Mills property? A. Yes, sir.

20

Q. Whom did you see in relation to that assessment? A. In relation to the assessment of it, do you mean?

Q. Yes. A. Mr. Cook.

Q. Did you see Mr. Oakey? A. Yes, sir.

Q. What did Mr. Oakey tell you about it? A. That I would have to assess the property now to Mr. Cook.

Q. Did you do so? A. I did, sir.

Q. When was that, about? A. Some time in June.

Q. Can you tell us a little nearer than that—what time in June? A. Some time in June—but I couldn't tell you what time it was. Near the fore part of it, I think it was.

30

Q. What else did he say to you about it? A. Well, I didn't say much about it. He said I would have to assess the property now to Mr. Cook.

Q. Did he make any reservation as to any part of it? A. Yes, sir; I think there were six acres, or a few acres of land were reserved that he still owned.

Q. Where were they? A. Well, it lay back of the buildings—to the west of the buildings.

40

Q. He didn't reserve any of the houses or lots? A. No, sir; I think not.

Q. That's all.

[Not cross-examined.]

GARRET C. HAGAMAN, a witness produced on the part of the aforesaid Complainant, having been duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Bartine:

10 Q. What is your business? A. Surveyor and Engineer.

Q. You are acquainted with these parties? A. Yes, sir.

Q. Did you ever survey this Blackwell's Mills property? A. I surveyed part of it.

Q. What part of it was it? A. The meadow land and mill property—all of the buildings and just a little strip of land back of the barn.

Q. At whose instance, or request? A. Mr. John L. Oakey.

20 Q. When was it? A. I surveyed it on the second day of June. I was called to settle a dispute between Vanderveer and Oakey, and to settle on the line on the seventh day of June.

Q. You mean last year? A. Yes, sir; 1883.

Q. Did you make out a deed? A. I did, sir.

Q. For what property? A. For the Blackwell's Mills property, with the exception of a few acres of land.

By Mr. CLARK.—How much property was that? A. I can't tell you.

30 *Further direct:*

Q. Do you remember about how much that was? A. I think there were thirteen acres, as near as I can remember. I can tell you by my books.

Q. Can you tell us when you made out that deed? A. I cannot tell you, sir. It was a day or two, or a week after, but I cannot tell you which.

Q. Was that deed executed? A. I don't know, sir; I understood it was.

Q. You didn't execute it? A. No, sir.

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Q. How long did it remain in your possession after it was made out? A. I cannot say whether it was a couple of days or a week.

Q. Have you any recollection about it? A. No, sir.

Q. Can you tell us about what time it went out of your possession? A. I cannot, sir.

Q. Do you know anything about it after that? A. Only by hearsay.

Q. Did Mr. Oakey say why he wanted the deed? A. It was understood that he was going to exchange prop- 10 erties, that's all. That's the way I understood it.

By the COURT.—Q. What did Mr. Oakey say about it? A. He wished me to write the deed for the property to Edmund B. Cook.

Further direct:

Q. And what did he say about his having sold it, or traded it? A. I don't know as he said anything particularly, more than had been said about it.

Q. Well, tell us what he said? A. He ordered me to do the surveying and work out the contents, and write 20 the deed. I don't know whether anything more was put into it, or not.

Q. What did he say about his having sold it? A. I understood he had traded it.

Q. Well, what did he say about having traded it? A. He never said anything to me about the trade.

Q. You know something further about that, I have just learned. Had you the deed of the Westover property in your hands? A. I did, sir; Mr. Cook handed it to me, and I carried it in my pocket, I guess, for a week. I 30 cannot say how long, but quite some time.

Q. Who handed it to you? A. Mr. Cook.

Q. Do you know how he came to do that? A. Mr. Oakey wished me to see if the number of acres were correct in the Westover property.

Q. And to examine it for him? A. Yes, sir.

Q. And so he told you to get it of Mr. Cook? A. Yes, sir.

Q. Now, how long was that after you surveyed the Blackwell's Mills property? A. I won't be positive, but 40

I think I got it the same night as I surveyed—the second of June. I won't be positive whether it was the second or seventh.

Q. How long did you keep it? A. I suppose a week.

Q. To whom did you hand it? A. I handed it to Mr. Cook.

Q. Were the courses right? A. I couldn't tell you; because there were 150 courses in it, and along the courses there was no distance given. I supposed the Surveyor
10 had it in his book at Westover.

Q. Then you couldn't tell? A. No, sir; I couldn't tell anything about it, sir.

Q. Was that deed signed and executed? A. It was signed, and, as near as I can remember, it was executed before a notary.

Q. It was executed? A. Yes, sir.

Q. And had a certificate onto it? A. I wouldn't be positive, but I think there was.

Q. Do you know where that deed is? A. I gave it to
20 Mr. Cook.

Mr. BARTINE.—Mr. Lindabury has that, and other papers, and will be here in a few minutes; therefore, you may cross-examine, Mr. Clark.

Cross-examined, by Mr. Clark:

Q. No one could tell the quantity of land in the Westover property, from the deed that you saw? A. No, sir.

Q. And the only way that they could tell would be by making a survery, or having the minutes of the survey that was actually made? A. That's the only way, sir.

30 Q. That's all.

AFTER RECESS.

RUDOLPH KOHN, re-called for further examination, by Mr. Bartine:

Q. On your examination you were asked whether there was any difference in value between lands in Princess Anne and Westover; you said there was. Now, was there a difference? A. Farming land around Westover is considered the best land we have in the county, for

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farming land commands almost double the price of other land, except property almost on the edge of the town.

Q. As compared with Princess Anne, its relative value is greater? A. Yes; except in one or two places, right on the edge of the town.

Q. What crops are on that farm? A. Wheat crop, oat crop, rye crop, and the whole corn crop was planted.

Q. Do you know how much corn there was? A. Not the exact amount—sixty to seventy acres.

Q. Do you know about its quantity? A. It was good 10 land, and gave good crops. All the corn was up at that time.

Q. And the hay? A. The crop of hay was very good.

Q. Do you know how much in acreage? A. I don't know the acreage, except what Mr. Oakey told me. He told me there was about a hundred tons.

Q. And the wheat, if you know, state what you know about that crop? A. I know that Mr. Cook was to have had half, and he told me that he received over hundred bushels. 20

Q. Well, do you know anything about the crop? A. Yes, sir; it was a good wheat crop—in the neighborhood of two thousand bushels—between nineteen hundred and two thousand bushels.

Q. Do you know how much corn there was? A. About two thousand five hundred bushels.

Q. And hay? A. A hundred tons.

Q. The clover seed is quite a crop there? A. Yes, sir; it was, last year.

Q. Do you know how much there was of that? A. I 30 am told in the neighborhood of a hundred bushels.

Q. You know of your own knowledge? A. I heard it talked about.

Q. Only from hearsay? A. That's all, sir.

Q. That was before you came there? A. Yes, sir.

Cross-examined, by Mr. Clark:

Q. Do you know that there were two thousand bushels of wheat? A. Well, I have heard it at the time. I didn't get that from Mr. Oakey at the time the wheat crop was threshed out. 40

Q. Well, that's what you heard? A. Yes, sir.

Q. You didn't see the wheat crop? A. No, sir.

Q. So that you don't know anything about it, personally, except from information? A. Just what I was told.

Q. And the corn crop in the same way? A. Yes, sir.

Q. Now, the hay crop; I understand you, Mr. Oakey told you there was about a hundred tons of hay? A. Yes, sir; Mr. Oakey, Junior—John Oakey.

Mr. CLARK.—I think the testimony is not competent, 10 if he was told by John Oakey.

The COURT.—Yes; it seems it was told to him by the son, and not by the Defendant.

Mr. BARTINE.—The son was the father's agent in charge of the farm.

The COURT.—It doesn't at present appear that he was the agent; but I will let it stand, upon the understanding that you will prove that fact. The other testimony of this witness, which was also hearsay, cannot stand. The preceding evidence, about the corn and the 20 wheat crops, must be ruled out.

Re-direct:

Q. Do you know the value of the wheat last Fall? A. Yes, sir.

Q. About how much was it worth? A. A dollar and five.

Q. And corn? A. Corn, fifty cents.

Q. Hay? A. Ten dollars for clover, and fifteen dollars to seventeen dollars for timothy.

Q. And the seed clover? A. Six dollars per bushel.

30 Q. What kind of hay was there there? A. Timothy and clover, mixed.

Q. What is that worth, mixed? A. Fourteen dollars.

Re-cross:

Q. Did you ever see this hay? A. Yes, sir.

Q. When? A. I bought some of it. I bought ten or twelve tons.

Q. When did you buy it? A. I bought it shortly after it was green—sometime last Summer, or in the early Fall.

Q. Who did you buy it of? A. Mr. John Oakey, 40 Junior.

Q. How much did you pay for it? A. I paid $10.50 for the clover.

Q. Clover and timothy, mixed, I am speaking of? A. I didn't buy any clover and timothy, mixed.

Q. Was there any hay, except such as you bought? A. I don't know, sir.

Q. Then you don't know that there was any other quantity of hay on that farm, except such as you bought? A. Yes, sir; that's all.

Q. Did you pay the market price, or more than the 10 market price, or less, for your hay? A. A little less.

Q. How did that happen? A. Because I bought a large quantity. He asked $11 for it, and I bought it for ten tons, and he took off fifty cents per ton.

Q. I understood you to say it was in November you bought it? A. No, sir; it was in the latter part of the Summer, I think.

Q. Now, when was wheat worth a dollar five there? A. I shipped my wheat directly after harvest, and it netted me a dollar six. Just as soon as I had it cut and threshed 20 immediately I shipped it, and that's what it netted me.

Q. When was corn worth fifty cents? A. It has not been worth any less with us ever since the corn has been gathered.

Q. Where did you make sale of your wheat? A. I made sale of mine in New York, and that was the net proceeds.

Mr. LINDABURY.—I would like to ask in what shape this question is, regarding the alleged alteration of this contract. I wasn't here at the time your Honor de- 30 cided the question, and if it is a question to be discussed hereafter I should like to know; or if it is just to be left to the decision of the Vice Chancellor, or shall be debated now. I would like to understand what the position of affairs is.

The COURT.—I admitted the testimony, making some observations which the Stenographer has upon his notes. I said that, as I understood the rule of law in New Jersey, an alteration, even where made by a stranger, was sufficient to warrant the Court in rejecting it, when of- 40

fered in support of a cause. But I understood the decisions in the Supreme Court of the United States qualified that, and inasmuch as I was not entirely satisfied as to the correctness of my information of the decisions, and knowing it would be better to err on the safe side, I admitted the instrument, stating that I would hear counsel during the argument of the cause, and would not deal with the case at that time.

Mr. LINDABURY.—I wanted to be sure that your
10 Honor allowed it, admitting that the alteration was made by a stranger.

The COURT.—That's the way I understand it. Mr. Bartine said, at the time, that he didn't think it made any difference, if it was made by the party himself, because it was an immaterial alteration, and he also insisted that, at all events, it was admissible, in so far as it had been admissible before the alteration; but I have stated the ground that I stand upon. I will hear counsel hereafter. It is not a matter to be lightly passed upon.

20 Mr. BARTINE.—My view of the matter is, that an alteration would not prevent the paper being offered, so far as it was of effect without the seal; and if it was good without seals, and they put seals on afterwards, it did not affect its validity to that extent.

EDMUND B. COOK, the Plaintiff herein, being duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Lindabury:

Q. How old are you? A. Fifty-one, sir.

30 Q. Where were you born? A. In New Jersey, near Trenton.

Q. Did you ever live in Maryland? A. Yes, sir.

Q. At Westover? A. I did, sir.

Q. When did you go there? A. In 1871.

Q. In 1871? A. Yes, sir.

Q. For what purpose? A. Fruit growing, and general farming purposes.

Q. Where? A. Westover, Somerset County, Maryland.

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Q. Upon what premises? A. On the tract known as Westover.

Q. Is that the premises described in the papers in this case? A. Yes, sir; a portion of it. The tract was larger when I first bought it.

Q. And did you buy it then? A. Yes, sir; I bought it shortly after I went there—in the Summer of 1871.

Q. Of whom? A. It was sold at Trustee's sale by order of the Court.

Q. And conveyed to you? A. Yes, sir; I had a lease 10 onto it at the time of the sale—a five years' lease—that I had purchased before that.

Q. Did you purchase it alone? A. No, sir; but in connection with a nephew—Henry C. Cook.

Q. How long did you and he own it together? A. About six or seven years—six years, I think, sir.

Q. What became of his interest in it? A. I purchased it of him, sir.

Q. Did you acquire title to it? A. Yes, sir.

Q. Through such purchase? A. Yes, sir. 20

Q. How? A. By deed from him and his wife.

Q. What do you say? A. By deed from him and his wife.

Q. About how long after he bought it? A. About six years, I think, sir.

Q. And was he in possession with you during the time that you owned it jointly? A. Well, we owned it jointly, but he was not there, sir, on the premises.

Q. And since his conveyance of his interest to you, who has possessed it? A. I have held possession of it 30 myself until the 23d or 24th day of last May.

Q. Are you acquainted with John L. Oakey, the Defendant in this case? A. I am, sir.

Q. When did you become acquainted with him? A. Well, sir, I have known Mr. Oakey slightly, just enough to know him—I couldn't tell how long, sir, but perhaps thirty years. Since I resided in this county, seventeen years before this, I knew Mr. Oakey as a farmer some distance from Millstone, at the time I was at Millstone.

Q. Did you have any communication with him regard- 40

ing these premises upon which he lived in Westover? A. Yes, sir.

Q. When first? Some time, sir, in the latter part of the Winter or early Spring of 1883.

Q. What was the nature of the communication you had then? A. I received a letter from Mr. Oakey, asking if—(Interrupted.)

Q. Never mind. When did you receive the letter from Mr. Oakey? A. Either in February, or March, sir, of
10 last year.

Q. Was that the first communication you had with him? A. With him direct. I had communications with regard to it from another party before.

Q. Who was that? A. Mr. Van Cleef, from Trenton.

Q. A lawyer? A. No, sir; a real estate agent.

Q. How did you communicate with him, or receive communications from him, by letter or otherwise? A. By letter.

Q. Have you that letter? A. No, sir; I have not.

20 Q. Did you reply to it? A. I did.

Q. How long was that before you received the communication you have spoken of from Mr. Oakey? A. Well, sir, I could not tell, exactly, but a few weeks—probably two to four weeks, I should say.

Q. Have you the letter that you received then from Mr. Oakey? A. No, sir; I don't think I have.

Q. What has become of it? A. Well, I suppose in clearing out, or moving out, it was probably destroyed, or lost.

30 Q. Have you looked among your papers for it? A. Yes, sir.

Q. Can you find it? A. No, sir.

Q. What did it state? A. It simply asked if I was willing to exchange my farm for this mill property, or if I would. That was the sum and substance of it.

Q. Was there any reference in that letter to the letter of Mr. Van Cleef? A. No, sir; I don't think there was.

Q. Have you ever spoken since with Mr. Oakey regarding Mr. Van Cleef's communication? A. I think I have.

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Q. Did you say on whose behalf Mr. Van Cleef wrote? A. I think he said that it was through one of the sons.

Q. Well, for whom did he say, on whose behalf, or for whom Mr. Van Cleef wrote? A. I don't know that he did.

Q. Well, did he say about what Mr. Van Cleef wrote—did he mention the subject of Mr. Van Cleef's communication? A. Yes, sir.

Q. Well, what did he say about it? A. He said, I think, that he, himself, had never placed his mill property in the hands of Mr. Van Cleef to dispose of, but one of his sons had done so. 10

Q. What was the subject of Mr. Van Cleef's communication? A. Asking me if I would exchange my farm for the Blackwell's Mill property.

Q. Well, then, you got a letter directly from Mr. Oakey? A. Yes, sir.

Q. Did you answer his letter? A. Yes, sir.

Mr. LINDABURY.—Gentlemen, have you the answer?

Mr. CLARK.—No, sir. 20

Q. What do you say?

Mr. CLARK.—We have not the letter, and have never had notice to produce it until this moment.

Q. What did you answer? A. That I would, if we could agree upon terms.

Q. Did you receive any answer from that? A. Yes, sir.

Q. Have you the answer? A. I have not.

Q. Where is it? A. It has gone with the other.

Q. Have you searched for it? A. I have. 30

Q. And have been unable to find it? A. No, sir.

Q. What was the substance of the answer? A. The substance of the answer was, that if convenient for me, that he and Mr. Hagaman would visit my place at a certain time.

Q. Where did you receive that letter? A. At Westover.

Q. How? A. By mail.

Q. About when? A. I think some time from the first

to the tenth of April. I should say it was about that, as near as I can remember.

Q. Of what year? A. 1883.

Q. Did you see Mr. Oakey soon after that? A. Yes, sir.

Q. Where? A. At Westover.

Q. And had any communication passed you and him before that time and subsequent to the writing of the letter that you mention? A. Nothing, except what I have
10 mentioned.

Q. Did Oakey come alone? A. No, sir; Garret Hagaman was with him.

Q. How long did he stay? A. Two days.

Q. How many nights? A. Two nights.

Q. What time of the day did he arrive? A. He arrived about six o'clock in the evening.

Q. What time did they leave? A. They left at six o'clock in the evening, on the same train that brought them down, only two days later.

20 Q. Then they went further on? A. Yes, sir; they didn't go back, they went on.

Q. When was that—in what month? A. In April.

Q. What did they do while there? A. Well, sir, they looked around the country. I drove them around some, and I think on the first day they walked around some, and I drove them around the country and showed them the general appearance of the country; and on the second day they started out afoot, upon their own resources, and I think, as far as I know, they walked that farm over
30 from one end to the other.

Q. Did you spend any of the second day with them? A. Well, while they were at meals, and perhaps some little time after meals, but they went out on their own hook.

Q. Did you spend all of the first day with them? A. I think perhaps I did, or a good portion of it; probably not all, but a good portion of it.

Q. When did you see Mr. Oakey again? A. On Saturday, the fifth day of May.

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Q. Tell, generally, what took place between you and Oakey on the occasion of his and Mr. Hagaman's visit there? A. Mr. Oakey, after looking over the farm, asked me the question, How I would exchange my property—my farm—for his mill property, and I answered him by saying that I thought there was $10,000 difference. It had been some time since I had seen the mill property, or knew anything about it, but that would be my judgment.

Q. I will modify that question by saying, state generally the subject of your conversation while the Defendant was there? A. Mr. Oakey asked the question, after viewing the property, How I would exchange properties for the Blackwell's Mill, and I told him I thought there was a difference of $10,000. 10

Q. Well, I don't want to know any more than that he and you discussed the subject of the exchange? A. Yes, sir; but I was going on to say that he made me an offer at the time, which brought me to New Jersey to view the mill property. 20

Q. Did you decline the offer he made you? A. No, sir; I simply said I don't know your property well enough to answer now; it has been so many years since I knew it, so that I don't know whether you have made me a fair offer, or not. So then he insisted upon my going to see it.

Q. What was his offer? A. $5,000 in cash and half of the wheat crop, he to take and deliver one-half to me at the railroad station at Westover.

Q. And the other crops? A. The other crops he was to have. 30

Q. Then, you say you came on to New Jersey to examine this property on account of that offer of his? A. Yes, sir.

Q. When did you do that? A. I left home on the fourth of May. I went up to see him on the fifth of May.

Q. Did you go alone to see him? A. No, sir; Mr. Lewis T. Howell went with me.

Q. What was your business there? A. My business was to view the mill property—to see whether I could accept his offer or not.

Q. Did you see Mr. Oakey? A. I did.

Q. Did you talk with him about the exchange? A. I did.

Q. Did you reach an agreement? A. Not on that day. That was on Saturday, the 5th, and on Monday, the 7th, we did reach an agreement.

10 Q. Where? A. At Blackwell's Mills.

Q. Who were present? A. Mr. Oakey, Lewis T. Howell, and, I think, Mr. Oakey's son, John Oakey, was present part of the time, and about the time the matter was consummated. I think the younger son, David, came home, and that was the first I had seen of him.

Q. You say you made an agreement; was it reduced to writing? A. It was.

Q. By whom? A. Lewis T. Howell.

Q. Where? A. In the office of the Blackwell's mills.

20 Q. When? A. On the 7th of May.

Q. At the time you have mentioned? A. Yes, sir.

Q. Have you seen the paper which has been produced here, and which purports to be such an agreement? A. I have seen it, but I haven't seen it to-day to examine it.

Q. I show you Exhibit C 1, which is the agreement, and ask you if that is the paper? A. Yes, sir; that is the paper.

Q. Whose names are signed to it? A. John L. Oakey, Edmund B. Cook and Lewis T. Howell, as subscribing

30 witnesses.

Q. What became of the paper after its signing? A. It was left in the office of Lewis T. Howell.

Q. How came it to be put there, by agreement, or how? A. By agreement of Oakey and myself.

Q. That is dated on the 7th of May, I see? A. Yes, sir.

Q. When did you leave Mr. Oakey, or his neighborhood, after that? A. The same day.

Q. Where did you go? A. I went directly to Trenton.

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Q. When did you return to Westover? A. On Tuesday.

Q. When? A. On Tuesday, the 8th.

Q. How long did you continue there? A. I continued there until the 25th or 26th of May. I left, either the 25th or the 26th, and I would not be positive which.

Q. And came on to Blackwell's Mills? A. Yes, sir.

Q. Did you see Mr. Oakey in the meantime? A. No, sir; I did not.

Q. Was there any talk— (Interrupted.) A. Yes; I beg your pardon, I did see Mr. Oakey in the meantime. 10

Q. When, and where? A. At Westover.

Q. When? A. Either on Wednesday or Thursday following, of the same week.

Q. You mean following the execution of this paper? A. Yes, sir; that is my recollection.

Q. This contract is silent as to the time in which it shall be performed—was there any conversation between you and Oakey, after the execution of this paper, regarding the time when the exchange of farms should be made, and the delivery of the deeds? A. Yes, sir; upon my return to New Jersey, or about the first of June, as it might be. 20

Q. You say that was the agreement? A. That was the understanding and agreement.

Q. Well, tell it all; tell what was the understanding regarding the exchange of properties and deeds, and all about it, if there was any understanding before you left for Maryland, and immediately after the signing of these papers, tell it? A. The understanding was, that Mr. Oakey should visit Maryland— (Interrupted.) 30

Q. No, no—was there any understanding before you left? A. Do you mean before I left Maryland?

Q. No; I mean before you left Blackwell's Mills—on the day you signed this paper, was there any understanding between you and Mr. Oakey, regarding when you should exchange papers? A. Yes, sir.

Q. Now, state what was the understanding, or agreement, on that day? A. On or about the first of June, not later than the first of June. Mr. Oakey was anxious 40

to get possession of the farm so as to secure the corn crops, but I would have preferred to wait until the Fall of the year before we made the exchange, so as to gather the crops myself, because I had them all planted and growing.

Q. Well, now tell me what you agreed upon? A. We agreed to make the exchange on or before the first of June, Mr. Oakey to have all the crops, except one-half of the wheat crop; that he was to gather and deliver to
10 either Westover Station or my boat.

Q. After the agreement was signed, what agreement had you, as to the time of the exchange—did you agree that you should meet again? A. Yes, sir.

Q. What was the agreement about that? A. Mr. Oakey was to come to my place on Wednesday or Thursday, of that same week, to see if we could make any agreement for an exchange of our stock. He wanted to take all my stock on my place and give me what stock he had on his place, which he did.

20 Q. You say he came down there? A. Yes, sir.

Q. You and he talked about making an agreement for the exchange of your stock; now, was there any talk about when you would exchange properties? A. Yes, sir.

Q. I mean possession? A. Yes, sir.

Q. What was it? A. We agreed to exchange on or before the first day of June.

Q. How long did Oakey remain there? A. I think he came down Wednesday and returned home Saturday.

Q. Was there any talk there, then, about when you
30 should exchange deeds? A. Yes, sir.

Q. And he should pay you $5,000? A. Yes, sir.

Q. What was that talk? A. Just as soon as I could get off the property, and come to New Jersey, he would have his papers ready, and I should have mine ready not later than the first of June, or on or about the first of June.

Q. When was it you first agreed about that? A. I think the understanding was made at the time when the paper was drawn, as to when we would do that.

40 Q. And that wasn't altered? A. No, sir.

Q. Was there any agreement or understanding between you regarding the mortgages that were on these several places? A. We were each to clear our properties. We traded them free and clear, and we were each to clear our properties with the mortgage.

Q. What mortgages were on yours? A. A mortgage of $10,000, and one of $5,000, and one of $1,750; it was originally a mortgage of $2,000, of which $250 had been paid.

Q. Did you have any talk with Mr. Oakey about the 10 mortgage on your place, at the time you signed this contract? A. I don't know, sir, whether there was any talk or not. We did have some talk in reference to it.

Q. Yes. When? A. That was the time after that was signed, when he was down in Maryland; that is my recollection.

Q. In his answer he says that you notified him that there was thirteen or fourteen thousand dollars of mortgages on your place, but you didn't notify him that there was any more—what do you say about that? A. I think 20 he is mistaken.

Q. What is the fact? A. If I informed him at all, I informed him just exactly what it was.

Q. Well, do you remember that you did actually inform him about that—have you any positive recollection of telling him about these mortgages at any time? A. Yes, sir; I am positive, at the time he was there on his last visit, that I told him exactly about that, because I told him I wanted to pay off that $1,750 before I left, and he agreed to send me $2,500 before I left Maryland, and said 30 if he didn't come himself with it he would send it by his son.

Q. Now, what was there about a sale? A. On the 23d day of May I sold all my stock and farming implements.

Q. Mr. Oakey was there, when? A. About the 9th, and I think he was there on the 10th and 11th, and left on the 12th.

Q. Then you decided to have a sale on the 23d? A. Yes, sir.

Q. Did Mr. Oakey expect to come? A. Yes, sir; he 40

expected to come himself, and if he didn't come he would send his son.

Q. Did he tell you so? A. Yes, sir.

Q. What was this agreement you spoke about in relation to $1,750? A. He agreed to pay me $2,500 before I left there.

Q. For what purpose? A. I wished to relieve that mortgage.

Q. Did he want to know what you wanted that for?
10 A. Yes, sir.

Q. And what do you say it was for? A. To relieve the $1,750 mortgage before I left.

Q. Out of what was he to pay you this $2,500, or upon account of what? A. On account of the $5,000 that he was to pay me.

Q. Didn't Mr. Oakey come down to the sale? A. No, sir.

Q. Did anybody come for him? A. His son, John.

Q. Did his son bring the money that Mr. Oakey had
20 agreed to send you, as you say? A. No, sir.

Q. Or any money? A. No, sir; not a dollar.

Q. When did you leave the premises? A. Either the 24th or 25th of May, sir.

Q. In whose possession did you leave them? A. John Oakey's.

Q. Who is that? A. The son of the old gentleman.

Q. Did he come alone? A. No, sir; his wife and child was with him.

Q. When did they come down? A. On the 22d.

30 Q. What crops were on the premises then? A. Wheat crop, oats— (Interrupted.)

Q. Just state the crops, and the value of them, as near as you can estimate them at the time you left? A. Well, I will state wheat crop, wheat and rye, that we valued, as near as I can estimate, at $2,000; oat crop, about $400; hay crop, about a thousand dollars; corn crop was worth a thousand more; then there were strawberries, peas, potatoes, etc., that were worth, I don't know what, sir; but we put them in at $200 or $300; then there was also
40 a crop of clover seed, that was gathered, which I had

from Mr. John W. Oakey himself that they gathered 98 bushels, and I was in New York with him at the time he was over, and sold it, as I understood, for $8 a bushel. That is as far as I know about the crops.

Q. When was it he sold it for $8 a bushel? A. About the first of September, or the last of August, when he and I were at New York together.

Q. You were to have half of the wheat crop? A. Yes, sir.

Q. Did you get the wheat itself, or the proceeds? A. 10 Yes, sir; I got the wheat.

Q. Do you know what the wheat crop turned out to be worth? A. I think, sir, Mr. Oakey told me that he sold his wheat, which we judged amounted to about 9,000 bushels. I can't give it to you exactly, and my recollection is that Oakey told me himself that his wheat sold for a dollar fifteen cents a bushel.

Q. Did you get from Mr. Oakey, or either of the Oakeys, what the corn crop brought? A. No, sir.

Q. Or how many bushels there were? A. No, sir; I 20 was not informed what there was.

Q. Where did you come to from Maryland? A. To Millstone.

Q. And what did you do there? A. I arrived there on Saturday evening, and stayed there all night, and over Sunday, with Lewis T. Howell, and then on Monday morning I went to Blackwell's Mills, and I moved my furniture in the house, and took possession of the mill on Monday, the 28th day of May.

Q. What mill, and what house do you mean? A. 30 Blackwell's Mill.

Q. The one mentioned in these papers? A. Yes, sir.

Q. Which you had contracted to receive from Oakey? A. Yes, sir.

Q. Where have you lived since? A. I have lived there.

Q. Ever since? A. Yes, sir.

Q. Have you operated the mill since? A. Yes, sir.

Q. And are still operating it? A. Yes, sir.

Q. Where did you see Mr. Oakey next, after you left Maryland? A. I think it was at Blackwell's Mills. 40

Q. Did you ever have a deed made for your property? A. I did, sir.

Q. Where? A. In Maryland, before I left.

Q. Did you bring it with you? A. I did.

Q. What did you do with it? A. After I reached here I showed it to Mr. Oakey and told him I was ready and prepared, at any day when he was, to fix our business up and exchange deeds.

Q. How long after you arrived here was it you showed
10 the deed to Mr. Oakey? A. I don't know, sir; probably on the 28th of May, or very soon after, I would say.

Q. You say, probably; what is your recollection as to the time that you arrived there? A. My recollection is that it was on the day, or within a day or so after I arrived, that I showed it to him.

Q. What became of it, after you showed it to Oakey? A. After I showed it to Mr. Oakey he asked me to allow Mr. Hagaman to have it and examine it, and see if it was all correct, and I either gave it to Mr. Oakey or to Mr.
20 Hagaman, and he gave it to Mr. Oakey, and I don't know which.

Q. I show you a deed from you and your wife to John L. Oakey, dated the 25th day of May, and acknowledged on that day, and ask you if you have seen it before, and what it is? A. Yes, sir; I have seen it before. It is a deed for the Westover farm that I formerly occupied, and conveyed to Mr. Oakey.

Q. What have you to say as to whether that is the one you showed Mr. Oakey? A. I say it is the same one.

30 Q. When did you see it again, after that? A. Mr. Hagaman had it in his possession for some time. I could not specify the number of days; but a week, I would say —as much as that, and perhaps more.

Q. Did you know when you made this contract that Mr. Oakey's mill was mortgaged? A. I don't know, sir, whether I did or not; I think he had told me there was a mortgage on it for about $6,000, but whether it was before or after I would not say.

Q. You think so? A. Well, he told me there was a

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mortgage on it, but I wasn't particular about that, as we were each to clear our mortgage.

Q. When you showed your deed to Oakey, and told him you were ready to perform your part of the contract, what did Oakey say, if anything, in reply to what you told him, besides that he wanted Mr. Hagaman to look at it? A. He said he thought it best to wait until I got there to have a survey made for the property, and he fixed on Saturday, which would be the 13th of June, to have Mr. Hagaman to survey the property, and he thought 10 he had better wait until I came to have the deed made.

Q. When did you see Mr. Oakey again about the matter? A. Well, sir, I saw him, I guess, nearly every day.

Q. State what conversation you had with him, that you remember of, after that? A. Well, sir, on the second day of June we had the property surveyed, and Mr. Hagaman was to draw the deed of the property; and after the survey was made I ascertained that there was a difference about the line between Mr. Oakey and Mr. Vanderveer, and I said to Mr. Oakey that I wanted that line 20 established and settled, if there was any difference, now, and Mr. Hagaman was recalled, and made a resurvey of that line, and Mr. Vanderveer was notified on the 7th day of June.

Q. Well? A. Then, after that line was established, or agreed upon between Mr. Vanderveer and myself, because Mr. Oakey and me could not settle it, Mr. Hagaman made a deed, or drew a deed, I don't know how many days before, and put it in Mr. Oakey's possession, and I saw the deed as it was drawn. It was read to me to know if it 30 was, as I thought, correct, and I was satisfied with it, and afterwards, in the course of the week, perhaps— (Interrupted.)

Q. After the 7th of June? A. Yes, sir.

Q. Well, now go on—what next occurred? A. Well, after the deed was drawn, then I insisted upon Mr. Oakey and I exchanging our deeds and fixing our matters up; that probably brought us to the 15th of June. Then Mr. Oakey said to me, "I find a difficulty in removing the mortgages I had here to Maryland, or getting the 40

parties here to take the mortgage down there, as I expected they would; can't you assist me to arrange for eight or ten thousand dollars on that property in Maryland"? I said to him, that if he had told me about this in the first place I could have done it without difficulty, but now I didn't know whether I could or not, but at any rate I would try, and I did do so. I went to Trenton and saw my sister, and she objected to doing so, and I think I went also to Philadelphia and saw Mr. Van
10 Duesen at the same time.

Q. When was this? A. That was afterwards, between the 15th and 20th of June, when I came back and reported to Mr. Oakey; he then asked me if I hadn't got some party down there that would take that ten thousand mortgage; I told him I knew a party who had offered to take it in the Spring, and was anxious to take it, and if they had the money, and hadn't invested it, I had no doubt they would take it. Then he requested me to leave it until he went to Maryland. He said he would
20 have to go to see about gathering his wheat, and that I would have to go there too, and for me to see if I couldn't arrange for some party there to take this mortgage. I agreed to do so, with this understanding with Mr. Oakey: I said, "I am willing to help you arrange these mortgages, as far as I can, but this is going to set us back so that we cannot fix up our business here we had intended to," and I said I thought Mr. Van Duesen would leave the city about the 20th of June, and if we didn't get this matter fixed up before that time—if we want him to do
30 anything, we shall have to wait until he comes back, in October or September. So I told him I would help him arrange the mortgages, with this understanding: In case we succeeded in getting a party to take the $10,000 mortgage that he should take a second mortgage on the mill property for $5,000 until Mr. Van Duesen returned; which he agreed to do, providing I succeeded in getting the $10,000 mortgage fixed for him on the farm below.

Q. Had you seen Mr. Van Duesen before that? A. I had; right after I made the trade; on my return home.
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Q. Did you arrange with him to transfer this mortgage?

[Objected to.]

Q. Did you arrange with Mr. Van Duesen to remove the mortgage from the Maryland property? A. I did, sir.

Q. When? A. I arranged with him on my return for making the exchange on the 8th of May. I returned home on that day, and saw Mr. Van Duesen on my return.

Q. Had you known him for some time? A. I had; for 10 years.

Q. What are his habits, as to his Summer travel?

[Objected to.]

Q. Did you receive information from him which you conveyed to Mr. Oakey? A. I did.

Q. Do you know whether Mr. Van Duesen went away that Summer? A. Yes, sir.

Q. Did anything occur again, respecting this matter, between you and Mr. Oakey, before harvest time? A. No, sir; Mr. Oakey left soon after that to go to Mary- 20 land to see to gathering the harvests, and I went there about the last of June, or the first of July, and I know I came back from there—I didn't stay but a very few days —I came back on the third of July; I don't remember the exact date I went down there.

Q. While you were there, did you do anything, or did you have any conversation with Mr. Oakey, regarding getting the mortgage arranged for him? A. I did.

Q. State what you did? A. I think I went to see Dr. Gale, the party who had offered to take the mortgage 30 there, and I asked him if he would take it. I am not sure whether Mr. Oakey went with me or not at that time, but I know that I introduced Mr. Oakey to Mr. Gale some time when I was there, and I know, also, that I went to Dr. Gale to try and get him to take the mortgage, but he said he had invested his money, and could not do it at that time.

Q. Did you see anybody else? A. I didn't, in reference to that matter.

Q. Did you know of anybody else who would be likely to take the mortgage? A. No, sir.

Q. Did you leave on that occasion with any understanding with Mr. Oakey—did Mr. Oakey go back with you? A. No, sir.

Q. Did you have any understanding, when you left, as to when the transfer should be made, of the title? A. No, sir.

Q. I neglected to ask you whether you had made ar-
10 rangements to remove the $10,000 mortgage your sister held on these premises? A. I did, sir; I made arrangements at the same time—after I made this exchange.

Q. Just afterwards? A. Yes, sir.

Q. How soon afterwards? A. The same day, sir. I went there and stayed over night.

Q. You testified that you stayed over night at Trenton? A. Yes, sir.

Q. With whom? A. My sister.

Q. And you arranged to remove the mortgage from the
20 Westover farm? A. Yes, sir.

Q. When did you see Mr. Oakey again, to have a talk with him about this matter? A. I think, sir, about the last of July, or the first of August; he remained down in Maryland to the latter part of July.

Q. Where did you talk with him then? A. I presume near where I lived—about the mill—there, or somewhere around there.

Q. What was your conversation—I mean that part of it that had any bearing upon the question of when you
30 should change title? A. I think I said to Mr. Oakey, on his return, that I thought my sister would consent to have eight or ten thousand dollars of her money on the farm, but she was an old lady, and wanted to see him, and have a talk with him, before she did anything positive.

Q. Well? A. Mr. Oakey said that that was all right, and he would go with me to see her, at Trenton.

Q. Was that the fact—what you stated to Mr. Oakey? A. Yes, sir.

Q. Well, what occurred next? A. He never got ready

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to go to Trenton with me, although he said he would, at different times, though he never did.

Q. Did you see her again? A. I did.

Q. When? A. About the first of September, or soon after that time, she come to my place and spent a few days—she came on Saturday. I had a boy that came home from Trenton every Saturday, and she came home with him, and, I think, remained until the following Tuesday.

Q. Did you see Mr. Oakey while she was there? A. 10 No, sir; he left, unbeknown to me, early on Monday morning, and went to Asbury Park, and didn't come back until she had left, on Tuesday night—she left on Tuesday.

Q. Did you see Mr. Oakey after she left? A. Yes, sir.

Q. What did you tell him? A. That my sister had consented to allow $8,000 to remain on the Maryland farm—the same amount as there was on the mill.

Q. Did you have any more talk about those things? A. I did; I said to him, she has consented to allow $8,- 20 000 to remain, so let us have our business fixed up now.

Q. Did he say anything? A. He did.

Q. What? A. He turned on his heel and walked away, and he said, "you may do as you please, and I will do as I please".

Q. Was anybody present? A. Yes, sir.

Q. Who? A. Mr. Beattie.

Q. The miller? A. Yes, sir.

Q. When did you see Mr. Oakey again? A. I saw him almost every day. 30

Q. I think something is said in the answer about a tender having been made to you, of money, by Mr. Oakey and his son—do you remember those occasions, or either of them? A. I remember Mr. Oakey and his son coming to me about the first of September, and saying that they were now ready, and that they had the money with them.

Q. What did you say? A. I said to them, I am ready at any day, as soon as we can get hold of Mr. Van Duesen, but, said I, he is away from the city; I have been 40

down to see him, and his son said he wouldn't be home for some time, and I have written him, and received no reply.

Q. What did Mr. Oakey say? A. I think I asked Mr. Oakey the question, and he said he was ready, and I asked him, then, whether he had got the search that he agreed to get for me from the Clerk's office here, and he said "no", he had not, but he was going to Somerville, and would get it for me that day.

10 Q. What was the agreement about the searches? A. I was to give him a search of my property down there, and he was to give me a search of his property here.

Q. Did you give him yours? A. I had it prepared, and if he had asked me for it I could have sent for it and got it; I had it ready.

Q. Do you remember whether you gave it to him? A. I did not.

Q. You had it prepared? A. Yes, sir.

Q. And he said he would get his at Somerville, that 20 day, and give it to you? A. Yes, sir.

Q. Did he give it to you? A. No, sir.

Q. Did he ever give it to you? A. No, sir.

Q. That was about the first of September? A. Yes; I couldn't fix the date, exactly; but it was about the last of August, or the first of September.

Q. When did you see Oakey again, after the time in September, when you stated that Mr. Van Duesen's son informed you his father wasn't home, and your sister had consented to leave $8,000 on the farm? A. I saw him— 30 being close together almost every day—but I don't think Mr. Oakey said anything to me until I called him to me, and until the 11th or 12th of September, and spoke to him, as I have stated.

Q. Did you refer to the search? A. Yes, sir.

Q. When, after that? A. After that I don't think we had any more talk until Mr. Oakey sent me a letter, saying that the negotiations were at an end, and he would have nothing further done.

Q. (Showing witness a paper.) There is a letter copied 40 in the answer? A. Yes, sir.

Q. Is that the one you refer to now? A. Yes, sir.

Q. When was that received? A. That I couldn't give you the date of, sir, except by seeing it there; it purports to be the 19th of September, I believe.

Q. How long after that did you receive it? A. I don't know, sir; I was sick in bed at the time it came.

Q. How was it sent to you—was it by mail? A. No, sir.

Q. By messenger? A. Yes, sir.

Q. What did you do—did you make any reply to it 10 yourself, or by any other person? A. I applied to Messrs. Bartine & Griggs.

By Mr. LINDABURY.—Gentlemen, have you a copy of that letter, or have you the letter itself—is it the one on the 21st?

[Said letter not being produced, counsel read from his copy.]

Q. You caused that letter to be written? A. Yes, sir.

Q. Did you receive any answer from that letter? A. I did not, sir. 20

Q. Do you remember when this bill was filed? A. Yes, sir; about the first of October, I think.

Q. There was no further communication between you and Mr. Oakey, on the subject? A. No, sir.

Q. There was a tender of a deed—did you cause any tender to be made? A. Yes, sir; I had a tender made to him of a deed.

Q. You were not present at the time it was tendered? A. No, sir.

Q. I will now read to you what was said in the answer 30 about there being a mutual agreement between you. (Counsel read same.) Was there a mutual agreement, such as he speaks of here—that you should leave $8,000 on the farm in Maryland, and the mortgages on the place here? A. No, sir; there was no such agreement.

Q. The facts about that are as you have stated? A. Yes, sir.

Q. You have stated all that took place between you? A. Yes, sir; it was simply about his request to assist him to arrange his mortgage on the Westover farm. 40

Q. Was there anything further said, at this interview on the 11th, further than what you have said, regarding this arranging of the mortgages? A. Yes, sir; I said to Mr. Oakey, at that time, when he abruptly turned on his heel and said, "you do as you please, and I will do as I please", I said, "very well, sir, we will fall back on our original contract—you clear your property of your original mortgages, and I will do the same on mine, and we will fix it up whenever you are ready—on any day you
10 may choose to name".

Q. Had Mr. Van Duesen seen this property at Blackwell's Mills? A. No, sir.

Q. Did he positively agree to transfer his mortgage there? A. He did agree to transfer his mortgage—that is, he said this: "If the property is as you describe and and represent it, I am perfectly willing to transfer my mortgage there".

Q. Had you any source from which to obtain the money to pay off this mortgage on the Westover farm,
20 had it been necessary to do so? A. Yes, sir.

Q. What was that? A. My brother, L. D. Cook, told me, if I had any difficulty in arranging my mortgages—(Interrupted.)

[Objected to.]

Q. I don't want your conversation; I simply want to know whether you had any arrangement with your brother, by which that money could be raised, if you needed it? A. Yes, sir.

Q. If Mr. Van Duesen had not chosen, or your sister
30 had not chosen, to leave their money? A. Yes, sir.

Q. You had arrangements made, by which you could have got it, without them? A. Yes, sir.

Q. When? A. Some time in the Summer; I couldn't fix the day.

Q. When was the arrangement for you to get it, if you needed it? A. Any time when we exchanged our deeds.

Q. Do you remember by whose hands you received back your deed for the Westover farm? A. Garret Hagaman.

40 Q. Did either he or Mr. Oakey, from that time on, until

the negotiations were ended, find any fault with the deed, as to the form or substance of it? A. No, sir; not in the least.

Q. Now, there is a subject I had forgotten entirely. Have you expended any money on the Blackwell's Mills property since you went there? A. I have, sir.

Q. How much? A. Well, I can't give the exact amount of it; but, in round numbers, $1,000. I couldn't give the exact amount, and I may be a little too high, or a little too low. 10

Q. What kind of a mill is it—what do you do—is it what is called a custom mill? A. Yes; we do what is called merchant work and grist work, both.

Q. Which, principally? A. Well, sir, it is pretty equally divided.

Q. In merchant, you buy the grain, grind it, and sell it yourself? A. Yes, sir.

Q. And the amount you do of that depends on your own will and ability? A. Yes, sir.

Q. Now, about the merchant work. How does the 20 amount of that compare now with the amount you did when you went there, as the business has run along since? A. It is very much larger now than it was at the time I took possession.

Q. I didn't mean merchant work, I meant grist work. I misspoke myself? A. It is very much larger now than it was at the time I went there.

[Objected to.]

By Mr. LINDABURY.—I desire to show that this property has increased in value since it has been in the 30 possession of complainant.

By the COURT.—I will admit the testimony.

Q. Have you any data from which you can give us anything like the exact figures, as to the increase—can you tell how much more is done a week, or month, now, than was previously, or anything like that? A. The grist work?

Q. Yes; in value, or the amount? A. I will make only this statement—that when I went there— (Interrupted.) 40

[Objected to. Objection overruled.]

The Stenographer was requested to read the answer to the witness, so far as it was given, and read as follows: "I will make only this statement—that when I went there"—

Q. Now proceed? A. When I went there we hardly ran all the day time, when I first went there, on merchant and grist work, both; but for some months past it has taken our whole capacity in the day time for grist work
10 and we have had to run nights to do our merchant work.

Q. Can you give the comparative amount of grist work you did when you first went there, and what you do now? A. It certainly has been, for some months back, five times as great as when I first went there—five times greater.

Q. By the middle of September, 1883, how much had it increased? A. Well, sir, it had doubled itself, at least, or more.

Q. When did you see the Westover property last? A.
20 I was in Maryland—I couldn't tell you the exact date, but the last of February, or the first of March—the latter part of February, or early in March.

Q. What was its condition then—don't go into general details, but what was its condition then? A. It was very much neglected, and out of repair, from the day I left it.

Q. Was anybody occupying it? A. It was not occupied.

Q. How did it compare in value with its value at the time you left? A. Well, sir, I had a gentleman with me
30 who knew the property well, and he said— (Interrupted.)

[Objected to.]

Q. Yes; you must not tell what was said by him? A. Well, sir, I think the property would readily have sold for $5,000 more on the day I left it than it would at that time.

Q. You may answer now, as to whether you could estimate as to its value while you were there? A. Yes, sir.

Q. Now, then, compare that appraisement with its value when you left? A. Well, the premises—well, there was

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from five to seven thousand dollars difference in the value of them, between those times.

[Objected to.]

Q. That is all.

Cross-examined, by Mr. Clark:

Q. Mr. Cook, what was there about the Westover property, in the month of February or March, which was so different from what it was in the preceding May—I mean with respect to its value—its intrinsic worth? A. Well, sir, the property was entirely abandoned. 10

Q. You mean, by that, that nobody occupied it? A. Yes, sir.

Q. You think that the non-occupancy is an injury? A. Just allow me, please, to say— (Interrupted.)

Q. Answer my question, if you please—was the non-occupancy of the premises, in your mind, at that time, an injury? A. No; no further, sir, than damage had actually been done by the non-occupancy—the simple fact of non-occupancy didn't enter into the damage; but there had been damage done by the non-occupancy. 20

Q. Now, you stated that the property was abandoned, and that is the reason you considered it damaged? A. Yes, sir.

Q. Now, tell me what other cause you know of besides the abandonment? A. Well, sir, for instance, the house was left entirely open, or it was open at the time I saw it. I don't know how it was left, but it was entirely open at that time.

Q. What, do you mean by that anybody could walk in and out, as they chose? A. Yes, sir; and the shutters 30 were banging about, sir, and were blown off the windows, with every pane of glass broken out by the banging of those shutters; and doors were down, and half the out-buildings, too; fences were down, gates were down, trees were blown down, and were lying scattered over the yard. Trees were valuable to me when I was there.

Q. Well, would the occupancy of the place have prevented the trees being blown down?

By Mr. LINDABURY.—One moment. You didn't allow him to finish his answer. 40

Q. Very well; finish your answer? A. Well, sir, there was one tree there which was a very valuable tree.

Q. Well, go on, and tell what things contributed to the injury? A. Well, the fences were down, and the gates were down.

Q. You told us about them; don't repeat what you have already said, but tell us of something else? A. Well, it had the general appearance of a neglected property; that was its general appearance.

10 Q. And that caused the depreciation, in your mind, to $5,000, did it? A. That, with their being no crops on it.

Q. Yes; with there being no crops on it—you mean by that, no Winter crops? A. Yes, sir.

Q. How many panels of fence were taken off that farm which were there when you left the property? A. I could not tell you.

Q. Were there $20 worth of fence taken off the property, which were there when you went there? A. I don't know what was taken off.

20 Q. What do you make the amount of damage to the property, by reason of the fences which were there when you left, not being there when you examined it in March or February? A. I presume, sir, it would require at least $5,000 to put the buildings and fences in the condition they were at the time I left.

Q. One moment; I am talking about the fence now. I will talk to you about the buildings afterwards. Tell me what amount of fence will be required to put that property in the condition it was at the time you left it—

30 would $20 be required? A. Yes, sir.

Q. Whereabouts, on that property? A. On the lane leading from the house to the county road.

Q. Where was there a fence down, there? A. There was a fence on one side of the lane.

Q. Wasn't that fence there in February or March? A. The fence was there, but a great deal of it was down.

Q. Then, it would simply want a little bit of repairing to put it into proper shape? A. I think not; I think it wanted more than a little repairing.

40 Q. How much would it take to repair that fence lead-

ing from the Westover road on to the place? A. Fifty dollars, in my judgment.

Q. What—from Mr. Mills's property? A. Yes, sir; $50.

Q. Do you mean to say, you think it would cost $50? A. Yes, sir; because the fences, and the gates, etc., would want repairing, all the way up.

Q. But, recollect, I am speaking of from Mills's line to the house along that road—how far is it? A. A good half-mile.

Q. Now, tell me where else any fence was taken away? 10 A. From the building across to the Archibald place; there was a lane there, with a fence on our side of it, and that was all down, almost, when I was there in February or March.

Q. Did you go over to the Archibald place? A. I did.

Q. How far is it from the house to the Archibald place? A. Less than a half a mile, but over a quarter.

Q. Well, that fence only ran down to the slough? A. Yes, sir.

Q. So that that was only a very short piece of fence? 20 A. No, sir; that had a line of fence on each side, and the two sides will make a half a mile of fencing altogether, or nearly so.

Q. What kind of fence was there on the side of the road leading from the Mills place to your building? A. A board fence.

Q. Well, the boards were all there, were they not? A. I think not, sir.

Q. Did you make an examination, to see? A. I didn't get out and examine; no, sir. 30

Q. Was the falling down of this fence any more than the natural decay of the fence, during the Winter and Spring, which all farmers have to repair in Spring time? A. Yes, sir.

Q. Well, do you think it was more than that? A. Yes, sir.

Q. What had been done to the fences, by means of which they were in the state they were? A. Well, sir, it looked to me as if people had gone through there and knocked down and torn things, regardless. 40

Q. Did you see any evidence of that at all? A. Yes, sir.

Q. Whereabouts? A. Around the buildings. I didn't go any further. I just simply drove through, as I presume you did.

Q. As you presume I did? A. Yes, sir.

Q. Well, are you presuming now, or are you talking about what you know? A. Well, I have had it from pretty good authority that you were there recently.

10 Q. I am asking you what you know about the destruction of the fences, and not what you presume or have on pretty good authority? A. All right, sir.

Q. Now, how much injury is done to the house? A. I don't know, sir.

Q. Can't you make any estimate at all, of the injury done to the barn buildings? A. Well, the doors and windows are down; but I didn't go into the barn.

Q. Describe what kind of barn buildings there were on that property? A. The barn buildings are of moderate

20 size.

Q. Well, describe what they were—there is one little barn, is there not? A. There is one barn, and a good hay house.

Q. A hay barn? A. Yes, sir.

Q. Which consists of four uprights, and boards up and down, and the roof on it, with an open ground? A. No, sir; there are more uprights than that.

Q. And there was no roof on that, at all, when you left it, was there? A. Yes, sir.

30 Q. Well, there was not a whole roof? A. Yes, sir; there was.

Q. There was? A. Yes, sir.

Q. Well, there was a board roof on it? A. I don't think it was perfectly tight.

Q. There wasn't a whole roof, was there? A. Yes, sir; there was.

Q. And the sides were boarded up? A. Yes, sir; but one end wasn't.

Q. Now, that is all the outbuildings there were, so far

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as the barns were concerned? A. Yes, sir; but there was a wagon house, and a corn house, etc.

Q. Now, these buildings themselves, the outbuildings, were valueless, almost—worth very little? A. No, sir; they were very valuable to the place—they were to me.

Q. How much would it cost to build two such buildings as those were, and put them in the condition they were when you left? A. I don't know.

Q. Would it have cost $250? A. Yes, sir; a thousand dollars. 10

Q. Is building material very dear down there? A. No, sir; not very.

Q. Is not pine lumber sawn right there in the woods, close by? A. Not in the woods; it is sawed within three miles of the place.

Q. Can you tell anything about the amount of damage to the buildings, by reason of their being left unoccupied? A. I can't tell the exact damage; no, sir.

Q. Then, the damages you have now spoken of are damages to fences and buildings, by reason of being left 20 unoccupied; now, is there anything else? A. Yes, sir; there is, in my mind, Mr. Clark.

Q. What is it? A. There is a very heavy damage in the general appearance of the place, and its neglect. I think there is to everyone who looks at that property, with a view of buying it, there is an appearance of general carelessness and neglect.

Q. The farm, for all practical purposes, is just as good to go on and farm this Spring, so far as the land was concerned, as it ever was? A. So far as I know. 30

Q. There is no depreciation, then, in the value of the land? A. There may not have been, only what depreciation was caused by the crops being taken off—there would not be a heavy depreciation of the land itself.

Q. Well, I am talking about the depreciation in the value of the real estate—the land itself? A. And that is what I am talking about.

Q. Well, now, as I understand, you place the depreciation of $5,000 simply because the property was neg-

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lected between the first of January to the middle of February, or the first of March? A. Yes, sir.

Q. One or two months' neglect. Now, then, we will go on with the next thing—you talked about the grist work in your mill—do you know anything about the quantity of grist work Mr. Oakey did? A. I do not.

Q. Or the merchant work he did? A. No, sir.

Q. All you know about the increase of the work, or the difference in the work, is the increase between the time
10 you went there and the time you now report? A. Yes, sir.

Q. Of your own knowledge? A. That is all I know—the rest is hearsay.

Q. Now, you spoke about the improvements in the property, which you say amounts to a thousand dollars. I wish you would explain to the Court what the improvements are which you made? A. Yes, sir; I will. I put a new roof on the house.

Q. What did it cost? A. I think, sir, that some little work, I can't give you the exact figures, but that some
20 other little work, which Mr. Burdine did—he did the work—I think I paid him for that, and some other little work, in the neighborhood of $350.

Q. Haven't you his bill? A. I have it, sir; but not here.

Q. You knew you were going to be asked about these improvements to-day, didn't you? A. No; how did I know—I knew I might be asked in a general way about these things.

Q. You have been claiming all along that you made
30 valuable improvements to this real estate? A. I have made them.

Q. Well, you claimed that all along? A. I haven't made any special claim.

Q. Didn't you, in your petition to the Court, to restrain Mr. Oakey from proceeding to eject you, set up that you had made valuable improvements to the property? A. Yes, sir.

Q. So that you knew it would be inquired into? A. Yes, sir; I didn't know whether it would or not; I am
40 perfectly willing it should be.

Q. Yes, I suppose so, now; but you didn't think it important to bring them with you? A. No, sir.

Q. You have a bill for it? A. Yes, sir.

Q. You can't tell any nearer than that it is about $350? A. Yes, sir; $325 to $330.

Q. What does that $325 include besides a roof on the house? A. I believe there was some other little work around—fixing up around the place—repairing the wagon house, or the wagon house doors, and things of that kind. 10

Q. Well, what else—what other improvements did you make? A. I spent considerable money in overhauling the pipe that leads the water from the spring to the house and the barn. I put new pipes in the house and one to the barn.

Q. The pipe carrying the water to the house and the barn? A. Yes, sir.

Q. What did that cost you? A. $50, I think.

Q. Have you got a bill of it? A. No, sir; I hired the digging done. 20

Q. When did you do the repairs to the house and the other work, amounting to about $350? A. In the latter part of August, I think, sir.

Q. When did you do the work of carrying the water from one place to another by pipe? A. That was done last August, or the first of September.

Q. Now, you were going on to say something about the pipes you put in—when did you put in the pipes? A. About the same time.

Q. How many did you put in, and how much did it 30 cost you? A. I put new pipes in the house, and one from the house to the barn.

Q. Did you put in two or three? A. I put a new pipe in the house, and put the old pipe from the house in the barn.

Q, Then, you only put in one? A. Yes, sir.

Q. Don't you know how much that pipe cost you? A. No, sir; but I know that the plumber's bill for fixing pipe and pump was about $30, as near as I can recollect.

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Q. I understood you to say you carried the water up from the spring? A. Yes, sir.

Q. And that cost about $50? A. Yes, sir.

Q. Did that include the plumber's bill? A. Yes, sir.

Q. Then, you mean that the digging and putting down the pipe, and the plumber's bill, and the whole business, cost you about $50? A. Yes, sir.

Q. What other repairs did you do? A. I put new bolting cloths on the bolts in the mill.

10 Q. How much did that cost you? A. About $50.

Q. Can't you give it to us any nearer? A. No, sir.

Q. What else did you do? A. I repaired the dam.

Q. When did you do that? A. In June, or July, when the water was low.

Q. How much did that cost? A. I can't tell you now, sir.

Q. Have you no idea? A. No, sir; I could not give you the amount.

Q. How many days were the masons there? A. I had 20 two masons there, and they were there—I don't know, sir—two or four days, both of them.

Q. Well, will that cover about the expense? A. Well, that will cover the expense of the mason work for the labor.

Q. Was there anything else—any other expense? A. Yes, sir.

Q. Well, what else? A. I put on new timber on the dam.

Q. What did it cost? A. I can't tell you.

30 Q. Can't you tell—haven't you any idea at all, what the expenses were upon the dam? A. Yes, sir; I have given it you.

Q. Yes; you said there were two masons at work two days, at the dam, but you haven't told us anything else, except that you put on timber on the dam, and you say you can't tell what that cost? A. I cannot, because it was done in that other work—the timber cost about $10.

Q. And this timber was put on the dam about the same time as the mason work was done? A. Yes, sir; some- 40 where near the same time, when the water was low.

Q. What other repairs have you done to the property? A. We repaired a portion of the forebay, and we put in a new grating.

Q. A wooden grating? A. Yes, sir.

Q. Go on—tell me all you did—everything you did? A. I could not do it, sir; there have been numerous things done there that it is impossible for me to tell now in the way of small repairs. I repaired the fence—altered the fence and repaired the machinery, that I could not give you the details of. 10

Q. You have paid the bills for all those things? A. No, sir; not for all of them, because I hired men there by the day's work, and paid them.

Q. Did you put more than one piece of timber on the dam? A. No, sir; I think not; that was a very large piece of timber—a long string-piece on the dam.

Q. Did your expenses on the dam amount to more than $20, all told? A. I think they did.

Q. Would they amount to $30? A. Yes, sir.

Q. Well, give me some idea of what they did amount 20 to? A. Well, call them $50, if you please.

Q. It is not what I please, it is what you please? A. Well.

Q. Well, is that a fair estimate? A. I could not give it to you; I know I used several barrels of cement there, but, Mr. Clark, I can't tell you.

Q. You knew you hadn't the title of this property, and didn't absolutely know whether you would get title, and yet you went on making these expenses, and not keeping any account of them? A. I didn't have title, but I didn't 30 know that I was going to have any difficulty in getting the title; I didn't suppose I was, and I done these expenses as they actually occurred. I can go and hunt up the bills, and figure up the workmen's time which I haven't kept, if necessary. I have got some of the bills, and can produce the others that I haven't.

Q. You say the repairs to the dam, you think, cost $50—do you think $50 would cover it all? Now, what were the repairs to the forebay and the new grating—what

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amount of expenses did you incur by reason of that? A. $50 more.

Q. Where did you get it? A. I bought the material for the grating of Mr. Oakey, and paid for it.

Q. What were the expenses to the machinery—did you put in any new machinery? A. Well, I don't know as you would call it new machinery; machinery that had worn out like steps, etc., in the mill, what the journals run on, and they have been replaced by new ones.

10 Q. And that was repairing the machinery? A. Yes, sir.

Q. What amount of money have you expended for the purpose of repairing the machinery? A. I don't know, sir; I suppose $25 to $50.

Q. Is there anything else? A. Nothing that I think of just now, except what I have mentioned.

Q. When did you put the bolt cloths in? A. Soon after I went there, sir; I could not tell you the exact date, June, or July, or August, or somewhere along there.

Q. Have you possession of all the property that you 20 agreed for with Mr. Oakey? A. Yes, sir; I have possession of it all except a small house, occupied by him, by my consent.

Q. Does he rent it of you? A. I expect him to pay rent for it; he was to.

Q. Is there any agreement between you and him, as to rent? A. No, sir.

Q. Have you ever demanded possession of that house? A. Yes, sir.

Q. When? A. I sent him a written agreement.

30 Q. Have you ever demanded possession of that house? A. I sent him a written notice by another party.

Q. You sent him a written notice? A. Yes, sir.

Q. When did you do that? A. Last February, I think —February, or March—February, I should think; perhaps, in January; I don't know which—I don't know the date of it.

Q. I want, now, to ask you about the conversation that passed between you and Mr. Oakey, at the time the contract was entered into at Blackwell's Mills—how long 40 were you and Mr. Oakey together at Blackwell's

Mills, on the 7th day of May, before the contract was drawn? A. Not very long, sir; over an hour; probably not that—an hour or two, at the outside.

Q. Was there anybody present with you and Mr. Oakey, during your conversation at that time, and before the contract was signed—before the contract was drawn? A. I don't know as there was anybody present that heard our conversation; Mr. John W. Oakey was there, or about there; I saw him.

Q. You were talking with him about the details of your agreement—you and he, together—you hadn't finally agreed as to how you would exchange? A. Mr. Oakey had made me an offer on Saturday—he had made me an offer when he was at Westover first—he had made an offer at Westover. 10

Q. Yes; I understood you to say that he offered you $5,000 in the exchange of properties? A. Yes, sir.

Q. And the understanding was, I suppose, that both properties were to be clear, and you were to have $5,000 difference? A. Yes, sir. 20

Q, Then, you and he were debating that offer at Blackwell's Mills? A. No, sir; I don't think there was much debating about it. I was up there on Saturday, the 5th of May, and spent the day. I went up there sometime on Saturday forenoon, 9, 10 or 11 o'clock, I can't tell you the exact time, and spent a portion of the day there with Oakey, and I know he took me down to Millstone in the afternoon.

Q. Did you agree on the Saturday preceding the Monday? A. We didn't close the contract. 30

Q. Did you agree upon the terms of the contract? A. Yes, sir; I think so; that is, we talked about how we would trade, if we traded, and it was left open until Monday morning, when it was closed up.

Q. Why was it left open? A. Well, I didn't feel exactly satisfied to close on his offer on Saturday, and I told him I would give him a positive answer on Monday morning, which I did.

Q. On Monday morning you talked about an hour, before closing it? A. We talked a little while, and closed 40

it up pretty soon, because I wanted to get part of the way home that day.

Q. In that conversation didn't Oakey ask you if there was any incumbrance on your property? A. I don't recollect that he did.

Q. Do you recollect that he didn't? A. I don't think he did.

Q. Didn't you say to him, "There is about ten or twelve thousand dollars on my property"? A. I did not.

10 Q. Nothing of the kind? A. No, sir; the only recollection I have of his asking me about the encumbrances on the property is on his first visit to Maryland.

Q. Yes; I haven't come to that yet. Now, didn't Oakey tell you that there was $8,000 of encumbrance on his property—that one person held the mortgage of $6,000 then, and another person held one of $2,000? A. He did, at some time.

Q. At this conversation? A. I think not, at that time; I don't recollect.

20 Q. Didn't Oakey tell you that he knew nothing about your property—that he knew nothing about the records, whatever, and would have to rely upon your statement to him with respect to the mortgages on the property and as to the record? A. Nothing of the kind.

Q. Didn't he say he was at Blackwell's Mills, and your property was in Maryland, and the records were there, and he would have to take your word for it? A. No, sir.

Q. Was anything, at all, said about searches? A. Not at that time; no, sir.

30 Q. The agreement was, that each of you were to make your properties clear? A. Yes, sir.

Q. You were to have a clear title, and you were to give Oakey a clear title, and Oakey was to give you a clear title? A. Yes, sir.

Q. And $5,000? A. Yes, sir.

Q. You read this contract over before you signed it? A. Yes, sir; I think so.

Q. (Handing witness paper.) On the second line, up there, do you see an erasure? A. Yes, sir.

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Q, That was erased before it was signed, I suppose? A. Yes, sir.

Q. Why was that erased? A. That was erased—my recollection is, by the suggestion of Mr. Oakey.

Q. Then, the title wasn't to be clear? A. The word clear was erased at Mr. Oakey's suggestion, and the word satisfactory placed there.

Q. Then, the titles were not to be clear titles? A. Well, sir, the word, satisfactory title, was to be in there; you can call it what you please. 10

Q. Well, I want to know about this; the words "clear and" were erased before the paper was signed, at Mr. Oakey's suggestion, and the words "good titles satisfactory to both parties" supplied there—is that the fact?

Mr. LINDABURY.—Well, is there any difference?

Mr. CLARK.—Well, I just want to ask him why it was done.

Q. When that was done, was there anything said about the mortgages? A. I think there was—that if we saw fit, Mr. Oakey suggested, to exchange any mortgages, it will 20 be our own business, and nobody else's. Perhaps there was something of that kind said.

Q. At that time wasn't the $8,000 mortgage on Mr. Oakey's place spoken of? A. I don't recollect that it was; I understood that it was $6,000.

Q. And wasn't it talked about, that it could be fixed so that $8,000 could be left on each property? A. No, sir.

Q. You never heard of any agreement by which $8,000 could be left on each property? A. There never was any agreement of that kind made, sir, with me. 30

Q. I understand you to say, immediately after you made the exchange, or immediately after you entered in this agreement, you went back to Maryland, and Mr. Oakey came down there? A. Yes, sir.

Q. And did you have any conversation with him, then, about the mortgages? A. My recollection is, sir, that all the conversation took place about the mortgages, or the most of it, on his first visit to Maryland. I think we had some on the second, but the most of it was on the first; we had some conversation on the second visit. 40

Q. Now, Mr. Cook, wasn't this the agreement, in one of your conversations, that $5,000, the difference, was to be counted off in this way: that instead of $8,000 on the Maryland property, $10,000 was to be left on that property, and Mr. Oakey was to pay you $3,000 in cash? A. Do you ask me whether that was agreed upon in one of our conversations?

Q. Yes? A. No, sir; never.

Q. Never, at any time? A. No, sir; if Mr. Oakey had
10 asked me to arrange to leave $10,000 mortgage I would have put it in that way; I would have agreed to do it if I could, but I didn't agree to it; I agreed to render him all the assistance I could to do it.

Q. These mortgages on the Maryland property are there yet, and have been ever since you made the agreement? A. Yes, sir.

Q. They have never been removed? A. No, sir.

Q. Do you remember a visit to you, in the month of August, by John Oakey? A. A visit to me?

20 Q. Yes; he called to see you? A. I remember his being home in August, or September; yes, sir.

Q. Didn't he come with his father to your place, on his return from Westover, in the month of August? A. They were there, and I went to New York with Mr. John Oakey.

Q. I want to call your attention to what passed at Blackwell's Mills when Mr. Oakey was there—didn't he tell you, in substance, that he had come on from Maryland for the purpose of seeing whether the business between you and his father had been closed? A. No, sir.

30 Q. And didn't he say he wanted to know whether the business could be settled up, or not? A. No, sir; he talked with me about it, as I told you. In my evidence there, I said that they did come there, and said they were ready, but hadn't their search, and would get it, and Mr. John Oakey talked to me about it, and said he would like to have the thing fixed up as soon as possible, and I told him, and I wrote a letter while he was there— (Interrupted.)

[Objected to, as not responsive.]

40 Q. Now, Mr. Cook, did not John Oakey, with his father,

come to the mill one morning, after returning from Maryland, and say to you, "Now, we are ready, and have the money in our pockets to fix the business up", and did not Mr. Oakey have the money in his hands, and say he was ready to fix the matter up, and did not you say you were not ready, that you had not seen the man who was to take the mortgage on the property, so that you couldn't arrange it—did you say that, or not? A. Mr. Oakey— (Interrupted.)

Q. No, no—did you say that, or not? A. Well, yes; to 10 a portion of that I could say "yes", and to the rest of it I would say "no".

Q. What portion do you say "yes" to? A. Mr. Oakey and his son did come to the mill door and say that they had the money, and was ready to fix the matter up. I said, in reply, that I was ready just as soon as we could find Mr. Van Deusen; that I had been to Philadelphia to see him, and had written to him, and had received no reply, but just as soon as we could find him I was ready; and I then asked them if they had got a search. 20

Q. Did you not say that the man lived in Philadelphia, and had been to a watering place since June—did you, or not, say that? A. I don't know whether I said that or not; I said he was away from home.

Q. Did Mr. Oakey say, if you wanted to see him, to go where he was to see him? A. I had been to see him before that.

Q. And didn't you reply, "Oh, no, Mr. Oakey, you know that moneyed men don't want to be bothered in that way when they are off on their vacation"? A. I did not, sir. 30

Q. Didn't John say to you, or ask you, if this man had ever seen this place, to know whether he would take the mortgage, to which you replied "no"? A. No, sir; he didn't say anything of the kind to me.

Q. Did Mr. Oakey then say he was ready to fix up his part, and it must be done now? A. He did not.

Q. And offer you the papers and the money? A. He did not.

Q. Did not he show you the money and the deed? A. He did not; he never tendered me the deed. 40

Q. Didn't you then say, "This is the first time you have been ready"? A. I did not.

Q. Did Mr. Oakey then say, "You know better than that; I have been ready since the first of June, and the money has been in the bank ever since"? A. He did not, sir.

Q. Didn't John then say to you, "Mr. Cook, if this is fixed up by the time I return to Maryland, or September first, it is all right, but if it is not, it is all wrong"? A. 10 He did not.

Q. Didn't he say, "I am not going to put seven or eight hundred dollars worth of expenses on this farm, in raising crops, and not know who is going to reap it"? A. He didn't.

Q. Nothing of the sort? A. No, sir.

Q. Did you have any conversation with John Oakey on the 24th day of May last, on the road leading from Westover to Princess Anne? A. I don't recollect it, sir, if I did.

20 Q. Didn't he ask you on the 24th day of May, on the road leading from Westover to Princess Anne, whether it was satisfactory to you to leave $10,000 on the Maryland property, to which you replied "yes"? A. Which John do you refer to?

Q. I am talking about the son? A. No, sir; John Oakey nor I were not on the road on that day from Westover to Princess Anne.

Q. Well, about that time, then? A. No, sir.

Q. And wasn't it the arrangement that you and John 30 Oakey talked over, at that time, that $10,000 should be left on the property at Westover, and Mr. Oakey should pay you $3,000 in cash and $8,000 was to be left on the property at Blackwell's Mills? A. I never had any conversation with either of the sons in regard to the financial matters in this case, to the best of my knowledge.

Q. Do you mean, by that, that there was no such conversation as I have suggested? A. I do, sir.

Q. Didn't Mr. Oakey say, on the day of the agreement, that he had a great deal of money due him on books, 40 which he couldn't collect under six months or a year, and

therefore he would have to leave $10,000 on the place for one year—the Westover place? A. Not to my knowledge.

Q. Do you say that he didn't say so? A. I do—not to me.

Q. Nor in your presence? A. No, sir.

Q. Do you remember the return of David Oakey from Maryland, on or about the 17th day of September? A. I remember his return at some time; he was there in August. 10

Q. No, not John; I am talking about David? A. Well, David was home in August, I know.

Q. And September, also? A. I think so.

Q. In the month of September, just the day before he returned, didn't Mr. Oakey have a conversation with you in reference to the title—I mean in reference to passing the titles, a day or two before? A. I don't know what day he returned, sir.

Q. Well, about the 17th day of September he returned? A. Mr. Oakey and I had a conversation about this matter about the 10th or 12th, as I have stated, of September. 20

Q. Didn't Mr. Oakey then urge you to fix the matter up, because his boys wanted to know whether to put in a Winter crop or not? A. He did not.

Q. Did he claim that if the matter wasn't fixed up it would be unsafe in going on and putting in a Winter crop, which would cost a great deal of money, because, by reason of the mortgage on the property, he didn't know whether he would be able to reap the crops? A. No, sir; he didn't utter a word of that kind. 30

Q. Nor John, in his presence? A. No, sir.

Q. Was nothing of that kind ever said to you? A. No, sir.

Q. The first intimation you had of anything of that sort was the 19th of September? A. Yes, sir.

Q. And the arrangement, I understand you to say, about the $10,000, was an arrangement that you were trying to make for Mr. Oakey's benefit? A. About the $10,000 mortgage on the farm? 40

Q. Yes? A. That was by his request.

Q. You were always ready to clear off the mortgages? A. I was ready to clear off the mortgages.

Q. Why didn't you do it? A. I would, at any time he was prepared.

Q. Why didn't you clear off the mortgages and send him a clear deed? A. Because, he never cleared them off his, and tendered me a clear deed.

Q. Didn't you fail to do it because you couldn't do it?
10 A. No, sir; I could have cleared the mortgages if he had demanded it, but Mr. Oakey never came to me and said, "You clear those mortgages off and I will give you a clear title to this property".

Q. Why didn't you take the mortgage off the Maryland property and tender him a title clear of incumbrance? A. From the simple fact, that if I had removed these mortgages, I had no guarantee for my $5,000.

Q. What difference did that make to you about that? A. That made a big difference.

20 Q. What had that to do with it? A. What had it to do with it?

Q. Yes. What had the guarantee of the $5,000 to do with the removal of the mortgage? If you had removed the mortgages from the property, or had had the title cleared, you could have tendered Mr. Oakey a deed in accordance with the terms of the contract, and that you never did? A. No, sir.

Q. You never did tender him a deed, in accordance with the terms of the contract? A. I would have tender-
30 ed him a deed for it at any time he gave me a deed.

Q. You understood, that by the terms of the contract, you were to tender him a deed free of all incumbrances? A. No, sir; I understood we were to arrange those matters.

Q. What matters? A. Our mortgages.

Q. How? A. To come together, like men, and transact our business, and exchange our mortgages.

Q. The contract says, and I have understood you to say, that your interpretation of it was, that the property
40 was to be clear of all incumbrances? A. Yes, sir.

Q. You say you never did clear yours so as to give him a title free from all incumbrances—now, do you say you were not to do so? A. No, sir; I don't say so; I say that I was.

Q. When I asked you, just now, why you didn't do so, you said, because the mortgages were not to be taken off, but you were to arrange it between yourselves, like men? A. I expected we would come together, like men, and arrange our matters, and clear our mortgages, as we had agreed to. 10

Q. How did you agree to transfer it? A. I had made arrangements to have my mortgages transferred on this property, and he was to transfer his.

Q. How had you agreed with Mr. Oakey? A. I made no agreement with him.

Q. Then, what do you mean by saying that you were to come together, like men, and transfer the mortgages as you had agreed? A. I meant to say, as business men would transact business of that kind.

Q. Do you mean to say, that by the terms of the contract, you were to give each other a clear title? Do I misunderstand you in that? A. No, sir. 20

Q. Then, I understand you to say, that you didn't clear off your title, for the reason that you expected to come together with Mr. Oakey, as men, and arrange about the transfer of the mortgages, so that the title could pass without that? A. Yes; because Mr. Oakey never got ready to come up to me, and say, we will meet on such and such a day, and fix matters up.

Q. Is that the reason, and the only reason, why you didn't take the mortgages off the property? A. That is my only reason. 30

Q. Did you ever try to take the mortgages off the Westover property, so that you could tender Oakey a deed free and clear of all incumbrances? A. I didn't; I had told Mr. Oakey that I expected to transfer this mortgage to this property here.

Q. What mortgage? A. On the Westover farm to the Blackwell's Mills property.

Q. You told him that? A. Yes, sir. 40

Q. But you never had done it? A. No, sir. How could I, until he gave me a deed?

Q. Wasn't it the fact, that you couldn't transfer the Westover property, clear of all incumbrances, until Mr. Oakey transferred his property to you? A. I believe I could have cleared those mortgages if it was necessary, if you want to put it on that ground.

Q. You believe you could? A. Yes, sir; if you put it on that ground.

10 Q. Well, I don't put it on that ground. I want to know what ground you put it on? A. Well, I will put it on that ground, and I will do it to-morrow.

Q. Do what? A. I will clear off the mortgages to-morrow, or as soon as I can reach the parties.

Q. Yes; but you never offered to do that to Mr. Oakey? A. I have never been asked to do it.

Q. Did you ever offer to do it? A. I never was asked to do it.

Q. Do you understand my question? A. Yes, sir.

20 Q. Well, I asked you if you ever offered to Mr. Oakey to do that? A. No, sir; I didn't know that it was required.

Q. And you never tried to do it? A. No, sir.

Q. You think you can do it? A. Yes, sir.

Q. You were talking about the sale of your personal property down in Maryland—was that your personal property? A. Yes, sir; it was.

Q. Did you sell it as yours? A. I did.

Q. Didn't you tell Mr. Oakey repeatedly, during the 30 months of June, July and August, that you were not able to transfer the title, because you hadn't been able to see Mr. Van Deusen, who had the second mortgage on the property in Maryland of $5,000, and that you didn't know until you saw him what arrangements you could make? A. No, sir.

Q. You never said anything of that sort? A. No, sir; I never said anything of the kind.

Q. Wasn't it the fact, that the want of ability on your part, or the delay on your part, during those months, 40 was occasioned by your not seeing Mr. Van Deusen, and

didn't you tell Mr. Oakey that you hadn't seen him? A. I was ready at any time before the 20th of June to transfer the mortgages.

Q. Mr. Van Deusen hadn't seen the Blackwell's Mills property before the 20th of June? A. No, sir; but he was prepared to come, or to send his son at any time I named.

Q. Didn't you ask for delay yourself, saying that you wanted to make a different appearance in the property and to fix it up so that when Mr. Van Deusen saw it it 10 would present a good appearance, and might favorably impress Mr. Van Deusen? A. I never did.

Q. So that you would be better able to get a large loan from him? A. No, sir.

Q. Didn't you afterwards ask Mr. Oakey to take a second mortgage of $5,000 on the property himself, which he declined to do? A. No, sir; I never did until he asked me to place the $10,000 mortgage for him, and then I told him that it would carry me past the 20th of June, and if I did that he would have to take a $5,000 mortgage, so 20 that we could fix it up until Mr. Van Deusen returned.

Q. You received this notice on or about the 19th of September, telling you that Mr. Oakey considered the contract at an end. You took no means after that to look after the property, did you? A. Which property?

Q. At Westover, Maryland? A. No, sir.

Q. And you never have from that day to this? A. No, sir.

Q. You went there and saw it in February? A. Yes, sir. 30

Q. Did you go over the whole property on foot? A. I just simply drove through; I went in one way and out another.

Q. Could you tell, by driving through, what property had been plowed for the purpose of putting in Winter grain? A. No, sir; I might not.

Q. You received all your share of the crops, according to your agreement, didn't you? A. I received half of the wheat crop.

Q. You say Mr. Oakey agreed to give you $2,500, or 40

send you down $2,500 by his son at the time of your sale. Now, didn't Mr. Oakey positively decline to do that unless you would give him some obligation that would secure him for that amount of money? A. No, sir; he agreed to send it to me, and the only reason he didn't send it, according to his letter, was, that he hadn't got his grain off, as he expected, but when I got here he would have the whole $5,000 ready for me.

Q. Didn't he say to you, that if Mr. Howell would be
10 security for the $2,500 he would let you have it? A. No, sir; not at that time.

Q. Or at any time? A. No, sir; I don't know; no, sir; I think he did say at the time he drew up the agreement that if Mr. Howell would be security, if I wanted to, he would give the whole $5,000, but I didn't ask Mr. Howell to do so.

Q. Then, he offered to pay you the whole $5,000 if Mr. Howell would go security? A. I don't know whether he did or not, but there was something said about it; but I
20 wouldn't be positive.

Q. Wasn't the $2,500 talk entirely before the papers were drawn? A. I think not, sir; I think it was after the papers were drawn, and when he was down in Maryland, although I am not sure.

Q. Wasn't it when Mr. Oakey was down there at your place, looking matters over, and didn't you say that you wanted $2,500 to clear up matters down there? A. I think that was the time.

Q. And the contract was signed? A. No, sir; it was
30 afterwards; Mr. Oakey was there once before and once afterwards.

Q. Well, it was on one of those occasions? A. Yes, sir; it was on the after one.

Q. You think it was the after one? A. Yes, sir.

Q. You are sure that on one of those occasions Mr. Oakey did say that if Mr. Howell would go your security he would let you have $2,500? A. No, sir; he didn't say anything of the kind; he promised to send me $2,500 before I left there.

40 Q. Now, in the month of June, you solicited Mr. Oak-

ey to go to Trenton with you to pay the interest on your sister's mortgage? A. No, sir.

Q. About the first of August—the first of August didn't you solicit him to go to Trenton to pay the interest on your sister's mortgage? A. I did not, sir.

Q. Didn't you then say that the interest was due on your sister's mortgage and you wanted him to go down and pay her? A. The interest was due, on her mortgage, on the 20th of August, according to my recollection, and I said to Mr. Oakey, at that time when I asked 10 him if he would pay the interest on that mortgage, and I should pay the interest on this, and he told me to pay the interest on this mortgage, and said he, "I will pay the interest on this, and we will have a settlement soon".

Q. Did not Mr. Oakey positively decline to pay any interest until the matter was fixed up? A. He did not.

Q. Why didn't he go and pay the interest? A. Ask him, sir; I don't know.

Q. What excuse did he give you for refusing to go to Trenton and pay the interest? A. He didn't give me 20 any.

Q. You and Mr. Oakey have been, or rather you are not on friendly terms, are you, and haven't been for some months past? A. It is not supposed we are very friendly.

Q. Notwithstanding these differences, it has made other differences between you, and you are very unfriendly towards one another? A. There are no other differences, that I know of.

Q. No others, at all? A. Not that I know of.

Q. Then your relations to each other are all pleasant 30 and agreeable, with the exception of this little lawsuit? A. Entirely agreeable to me, as far as I am concerned; that is, we have no connection, whatever.

Q. And have been so, since what time? A. I don't think Mr. Oakey has recognized me since he wrote that letter, to say the least.

Q. That is all, I believe.

Re-direct:

Q. You were asked about the repairs that were made—did you state them all? A. I don't think I have. 40

Q. Did you do any painting? A. I did; I painted the mill, sir; I didn't mention that—I knew there were some things that I had forgotten.

Q. At what expense? A. $100 that cost me.

Q. Do you think of anything else now? A. No, sir; I don't think of anything else, but I have done numerous repairs in a small way around there, to help improve the property, which don't occur to me now.

Q. You were asked about the agreement between you
10 and Mr. Oakey about the transfer of the mortgage, and your answer wasn't very clear, and I think it was understood by Mr. Clark that you were to come together and exchange the properties, leaving the mortgages on—I think he understood it in that way? A. No, sir.

Q. I want to know what you mean to say about that? A. I mean to say that I told Mr. Oakey, in our conversation at one time, "Your property has mortgage on, and my property has mortgage on, we can't come together and give our deeds, and give a clear title, without notifying
20 those parties, and I want to notify Mr. Van Duesen and my sister-in-law for them to bring their mortgages there and we will get together, and I would give him a deed for the property— (Interrupted.)

[Objected to.]

WITNESS.—Well, I told Oakey he had a mortgage on his property, and there was a mortgage on mine, and at any time he would name, so that we could have our mortgagees come together, we would meet together, and transfer our deeds any day that he would name. I told him
30 so at first, and I told him it must be done before the 20th of June, and I was ready at that time.

Q. What did you say about the transfer of the mortgages—what was the agreement, or understanding? A. I told him that I had arranged to have the mortgage of my sister and the mortgage of Mr. Van Duesen transferred from there to this property, and the other one I expected to pay.

Re-cross:

Q. When was it you told Mr. Oakey that he had mort-
40 gages on his property, and you had mortgages on your

property, and any time he would name, so that you could get the mortgagees together, you would fix it up in exchanging titles? A. Frequently.

Q. Tell me a single time? A. Well, sir, on or about the 28th of May, or the first of June was the first time.

Q. Who was by? A. I don't know as there was anyone by.

Q. Where did you tell him that? A. At Blackwell's Mills.

Q. What do you mean—whereabouts at Blackwell's 10 Mills? A. Well, probably near the mill.

Q. Have you any definite recollection as to the time, or place, in respect to the conversation you have related? A. Yes, sir; it was soon after I arrived there and got moved into the house, because I wanted to have our business fixed up.

Q. And that being so, you can't tell where the conversation took place? A. I can tell you; it took place right in front of the mill, or in the mill, but I could not tell you the exact spot. 20

Q. What did Mr. Oakey say to that? A. He thought it was best to leave having the survey of the property until I got there, and would have it done on Saturday, which was the second day of June.

Q. Well, you did have a survey made in a few days? A. Yes, sir.

Q. Now, having the survey made in a few days, did you again say to him what you had said before? A. I did.

Q. What did he say then? A. Well, then he was very busy getting his grain out and getting his son shipped off 30 to Maryland.

Q. Did you repeat it to him again? A. I did.

Q. How soon afterwards? A. Well, I repeated it several times; we were there together almost every day, and I repeated it to him.

Q. What did he say when you repeated it? A. I could not tell you, until finally he wanted me to arrange $10,000 on the Maryland property, because he could not get the money taken here; that was about the 15th or 18th of June. 40

Mr. LINDABURY.—I desire to offer the deed that was shown Mr. Cook to Mr. Oakey. (Marked Exhibit 2 C.) I also desire to offer the letter of Mr. Bartine, December 21st. (Marked Exhibit 3 C.)

DR. WILLIAM R. RIBBLE, a witness produced on the part of the aforesaid Complainant, having been duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Bartine:

10 Q. Where do you live? A. Millstone, East.

Q. Are you acquainted with the parties to this suit—the Complainant and the Defendant? A. I am.

Q. (Handing witness Exhibit 2 C.) Did you ever see that paper before? A. I have seen this paper, or the duplicate copy of it, but I think this is the original paper.

Q. When did you see it? A. On the 17th of October.

Q. Under what circumstances? A. Mr. Cook came to me and wanted me to go down and attend to this deed to Mr. Oakey.

20 Q. Was anybody with you? A. Mr. N. S. Wilson.

Q. What other instruction did you get? A. Our instructions were— (Interrupted.)

[Objected to.]

Q. What did you do on that occasion? A. We went down and called on Mr. Oakey, and went in the house.

Q. State what occurred—what was said by yourself? A. I told him I was instructed to say that we were ready to comply with the articles of agreement—to exchange deeds, and each property to be free and clear of incum-
30 brances, and to comply with the arrangement, as it was written, and as I had seen.

Q. What answer did he give you? A. He answered me that he supposed we were Mr. Cook's friends, and, by instructions of his lawyer, he would prefer to say nothing; he didn't wish to talk about it.

Q. Was there nothing further said on that subject? A. There may have been something else said, but that was about the sum and substance of it.

Q. That was at his house? A. Yes, sir.

40

Q. That is all.

[Not cross-examined.]

CHARLES H. BROACH, a witness produced on the part of the aforesaid Complainant, having been duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Bartine:

Q. Where do you live? A. Blackwell's Mills.

Q. How long have you lived there? A. About 30 years.

Q. What business are you engaged in there? A. Keeping grocery store. 10

Q. And post office? A. Yes, sir.

Q. How far from the mill? A. About 100 to 125 feet.

Q. What do you know about the repairs that have been made on the mill? A. I have seen it being painted and fixed around the dam; I know they were busy in the mill, but I don't know what they done.

Q. What can you say about the business, as compared with what it was before the change of possession? A. Well, there is from five to ten times as much—at least from five to ten times as much. 20

Q. In what way? A. Especially on the grist work and retail that they retail out of the mill.

Q. In what way do you know that? A. From the general appearance of the business around.

Q. What have you to say, in your judgment, as to the value of the property since it has been in the charge of Mr. Cook, as compared with what it was on the day he took possession? A. Well, what with the repairs, and the increased business, it would enhance the value of the property at least $5,000, as a business place. 30

Q. What improvement, in the business, was there compared with when he took possession of it in the middle of September? A. Very much; it began to improve pretty soon after Mr. Cook came. I think in the second month he was there, from appearances, there came there as much business as there was three months before he came and it still increased.

Q. Then, to what extent—how many degrees had it increased, according to your judgment, by the middle of 40

September? A. Well, at least five times, if not more—five and a half.

Q. Had the repairs been put upon the mill by that time? A. They had—the most of them.

Q. Then, what have you to say, as to the value, or amount of its increase in value, up to that time? A. The value, up to that time, would be very much more—four to five thousand dollars more.

Cross-examination:

10 Q. What did you know about Mr. Oakey's business before Mr. Cook came there? A. Well, from the general appearance of what I seen coming to the mill, there was very little stir around the mill to what there was afterwards.

Q. Are you speaking now of the custom work? A. Yes, sir.

Q. If Mr. Oakey ran his business as a merchant mill then you could not tell anything about the character of that business compared with the business of Mr. Cook?

20 A. Well, I could see that he didn't buy much grain.

Q. How do you know? A. I could see when the wagons came there.

Q, But you don't know what purchases he made? A. Well, I could see what came.

Q. Do you know anything about the cargoes of grain from New York? A. I know about some.

Q. You and Mr. Oakey have not been friends for a long while? A. Not very good.

Q. You never went in his mill while he was in business

30 there? A. No, sir; not for the last two years.

Q. So you don't know anything about what business Mr. Oakey was doing, except from seeing the wagons come and go there? A. Yes, sir; from hearing, of course.

Q. You never knew what quantity of grain Mr. Oakey was carrying in this mill for merchant work? A. No, sir.

Q. So that your information is entirely based on what you see outside? A. Yes, sir.

Q. How much more would this property bring in the market, independent of the repairs, and supposing none

40 had been made, how much more would the property sell

for to-day, or how much more would it have sold for in September than in May? A. I think it would have sold for $5,000 more.

Q. Did you ever hear of anybody who was willing to give more money for it? A. No, sir; but I don't estimate it that way. A good many men used to say that the mill was worn out, and that he could not make good work —that the mill was good for nothing.

Q. It is a small mill, with 14 acres of land, and a house? A. Well, something close to that. 10

Q. What was a fair market value of the mill at the time Mr. Oakey owned it? A. That I don't know; I suppose from twelve to fifteen thousand dollars.

Q. Now, you think it is worth eighteen to twenty thousand dollars? A. Yes, sir; if a man wants that business.

Q. And it has increased in that value by reason of the skill Mr. Cook has displayed in running the business? A. In building up the business.

Q. Well, that is his skill, ain't it? A. Yes, sir; I sup- 20 pose so.

Q. Then, is the intrinsic value of the property which makes up this $5,000, the business he has built up there? A. Yes, sir.

Q. Well, then, take away the business and put it where it was before, and the property is worth about just as much as it was before? A. Yes, sir; taking off a little for improvements.

Q. Then, if it was offered in a public market, and a man should buy it, who had not the business skill of Mr. Cook, 30 he would be a loser of about $5,000—is that your way of reasoning? A. Yes, sir; if a man didn't do any business it would throw the value of the property back.

Re-direct examination:

Q. Can you see the front of the mill from your store? A. Yes, sir.

Q. Right in plain view? A. Yes, sir.

Q. That is all.

Adjourned until Friday, the 6th day of June, 1884, at the Court House, Somerville, New Jersey, at the hour of 10 o'clock in the forenoon, and to be from thence continued until the next day.

FRIDAY, June 6th, 1884.

Continuation of Case, Pursuant to Adjournment.

10 *ROBERT BEATTY*, a witness produced on behalf of the aforesaid Complainant, having been duly sworn, testified as follows:

Direct examination, by Mr. Bartine:

Q. Where do you live? A. Blackwell's Mills, at present.

Q. How long have you been there? A. About fifteen months.

Q. Were you in the employ of Mr. Oakey before he left that mill? A. Yes, sir.

20 Q. State how long? A. About three months.

Q. When? A. March, April and May, I think, 1883.

Q. Immediately preceding his leaving the mill? A. Yes, sir.

Q. When did he leave it? A. He left it somewheres about the first of June; it might be three or four days one way or the other—the 28th of May, or the first of June.

Q. After that, in whose employ were you? A. Edmund A. Cook's.

30 Q. At what business? A. Milling.

Q. And where? A. At the same place—Blackwell's Mills.

Q. Now, what was the condition of the business at the time Mr. Oakey left it? A. Well, he was doing a moderate business—slowly along.

Q. What do you mean by that? A. Well, he was not doing a heavy business.

Q. After Mr. Cook took possession, what then became the condition of the business? A. Well, the business

40

under Mr. Cook's management increased after the first month.

Q. State particularly about the amount of business Mr. Oakey was doing per month, at the time he closed the business? A. What do you mean—the amount of dollars per month?

Q. Yes. A. That I could not say.

Q. Well, you can express it in any way you please; I suppose, it would mean, how much the mill had earned per month, as near as you can tell it? A. Well, I should judge, from the way the business was then, it was earning, probably, $100, or over, per month. 10

Q. Now, state what the change was, when it began, and how great it was, in the business? A. Well, after the first month the business increased over what Mr. Oakey's business was then—about four times as much.

Q. After the first? A. Yes, sir.

Q. Well, comparatively speaking, how great is it now? A. Well, it has been all along the same, or a little more, up to within the last ten days. 20

Q. What is the matter now? A. Well, we are short of water, and haven't got the power.

Q. What have you to say of the condition of the property, so far as improvements are concerned? A. Well, Mr. Cook has made a great many improvements—he has put a new roof on the house.

Q. What kind of roof? A. Slate roof.

Q. What kind of roof was on it before? A. Shingle.

Q. What was its condition? A. It was in a bad condition. 30

Q. Well, and the other improvements? A. Well, he put new cloths on the reels—bolts, two new cloths, and had the steps repaired that revolve the two wheat stones, and done repairs on the dam, and painted the outside of the mill.

Q. What size is it? A. The mill?

Q. Yes. A. I never measured; I should judge the building was 60 or 70 feet long.

Q. And how wide? A. About 25 or 30 feet.

Q. How high? A. It is three and a half stories. 40

Q. Anything done to the dam? A. Yes, sir; he repaired the dam.

Q. What was the condition before the mill, and behind it, immediately before it, and behind it? A. Well, he put in a new rack in front of the mill, where the water leads into the cistern in the mill.

Q. Has any other improvement been made about the mill so as to add to its appearance? A. Yes, sir; he had it painted, and he had it fixed up around—different little
10 odds and ends around.

By the COURT.—Is this new rack you speak of, in the race way? A. Yes, sir; in front of the mill, to prevent sticks or anything going through into the wheel.

Further direct:

Q. When did Mr. Cook take possession of that mill? A. Somewheres about the first of June, a day or two—I think it was the 28th of May, or somewhere about there.

Q. Do you remember, at that time, of hearing Mr. Oakey—was Mr. Oakey there? A. Yes, sir; he was there.

20 Q. Saying anything to Mr. Cook about it? A. No, sir; nothing particularly—that is, he said he handed the mill over to him now—he gave him possession of it.

Q. Possession of what? A. The mill property there—Blackwell's Mills.

Q. Did he take possession of the whole of it? A. Yes, sir.

Q. You know of no reservation made in the mill property at all? A. I don't know of any; no, sir.

Q. Did he say anything about Snedaker moving, and
30 if so, what? A. Mr. Oakey said he would rather live over in that big house if he could get it.

Q. What do you mean by the big house? A. The house on the farm adjoining the property, or right close by there.

Q. Then occupied by Snedaker? A. Yes, sir.

Q. Well, if he could get it? A. Yes, sir; Snedaker was there, and he could not move there.

Q. Did Snedaker remain there? A. Yes, sir.

Q. What, if anything, did Mr. Oakey get you to do in
40 that transaction? A. Nothing, particularly, more than

he said that he did not know whether Snedaker would let him have it or not, and I told him I would ask him; so I asked Mr. Snedaker, and he said that house where Mr. Oakey was going in, or was in, was too small for him, and his wife would not move anyhow.

Q. Was there any offer of any consideration if he would move? A. I think Mr. Oakey said it would not cost him any rent if he moved.

Q. Did he do it? A. No, sir.

Q. And Mr. Oakey continued to live where? A. In 10 one of the small houses on this mill property.

Q. He lives there now, doesn't he? A. Yes, sir.

Q. Mr. Oakey had not lived there before? A. No, sir.

Q. He had been living in the big house, had he not? A. Yes, sir.

Q. And he moved out of that and moved into the other? A. Yes, sir.

Q. I understand you to say, then, that the purpose was to get Mr. Snedaker to move out of that house of Mr. Oakey's so that he could move off of the mill property 20 into it? A. Yes, sir; he said he would rather live on his own property over there.

Q. Where did Mr. Oakey live before this exchange was made? A. He lived in the largest house on the mill property.

Q. Now occupied by whom? A. Mr. Cook.

Q. Known as the homestead, isn't it—the Mansion House? A. The Mansion House; yes, sir.

Q. Northwest of the mill? A. Yes, sir.

Q. What, if anything, did Mr. Oakey tell you in rela- 30 tion to the publicity of this exchange before it had actually taken place? A. He said he was about changing his property, and did not care to have anyone know anything about his business, and did not care for me to say anything about it, and so I never did.

Q. Until what time? A. I never said anything about it until after the exchange was made.

Q. How long did he wish you to keep quiet about it? A. He said until after the exchange was made.

Q. Did he state any reason? A. Yes, sir; he said—I 40

think he said he had some enemies around there—around Blackwell's Mills, and they might injure him some way.

Q. Injure the trade, do you mean? A. Yes, sir.

[Objected to, by Defendant's counsel.]

By the COURT.—Let him tell what he said.

[Question withdrawn.]

Q. State, as near as you can, what he said? A. I don't remember exactly.

Q. The substance of it, then? A. The substance of it
10 was, that he thought he had some enemies there, and he did not care for anybody to know his business.

Q. Did he say anything to you about the property having run down in that connection? A. He said, I think, that he was not doing as large a business as he had done; something that way; and they might say something that would interfere with it. He said he had some enemies there he thought would work against him.

Q. That is all.

Cross-examined, by Mr. Clark:

20 Q. How long have you been engaged in the milling business? A. About 12 years, sir.

Q. Do you dress stones? A. Yes, sir.

Q. Wheat burs—so that they do good work? A. I do; yes, sir.

Q. Your business is in charge of a mill—to keep it in good and workmanlike order? A. Yes, sir.

Q. Is your mill now in that condition? A. It is.

Q. Your wheat stones are now in good order? A. Yes, sir.

30 Q. And do first-class work? A. They do good work; yes, sir.

Q. As good as they should do? A. As good work as the burs themselves should do; they don't perform all the work in making good flour.

Q. The burs themselves? A. Yes, sir; the burs work good themselves.

Q. Is there any defect in the working of the burs, or the working of the machinery of the mill, with respect to its practical operation there now? A. No, sir.

40 Q. And has there been any change made in them since

Mr. Cook took possession, in any way? A. With the stones?

Q. Yes. A. Nothing, except the feed stones.

Q. I am now talking about the wheat burs? A. No, sir.

Q. Have you been dressing the stones yourself? A. Yes, sir.

Q. How often have you had the picks sharpened? A. I have had them sharpened once.

Q. Since you have been there—Mr. Oakey and two other gentlemen were in the mill, a day or two since, with a view of examining it, were they not? A. Yes, sir. 10

Q. You went about to show them the property? A. I went about with them; yes, sir.

Q. At Mr. Cook's suggestion? A. Yes, sir.

Q. And they wished to see the flour burs, did they not? A. They did not ask to see the flour burs; no, sir.

Q. The wheat burs? A. No, sir.

Q. Didn't they ask to see those stones? A. No, sir; they asked to see a stone taken up; they did not say which stone. 20

Q. You understood the wheat burs, didn't you? A. I didn't understand which they meant.

Q. You declined to take the stone up for them? A. My employer told me not to, it was too much work, we had not time to bother with it.

Q. Are the furrows in those stones—the wheat burs—the same as when you took possession? A. Yes, sir; they are all there.

Q. Didn't you say to Mr. Oakey, and those gentlemen who were with him, one or more, that the furrows were all out of the stones, all worn down? A. No, sir. 30

Q. You didn't? A. I didn't.

Q. Nothing of that sort? A. No, sir.

Q. Now, you say the business now is about four times as much as it was when Mr. Cook took possession? A. It has been all along, until the last ten days, after the first month.

Q. Well, previous to the last ten days, after the first month, it has been all the time four times as much as 40

when Mr. Oakey left, and Mr. Cook took possession of it? A. Yes, sir.

Q. How many millers are employed—anyone beside yourself? A. No, sir.

Q. How much time are you occupied in running the mill? A. I am in there night and day.

Q. Have you been running the mill all night after the first month of Mr. Cook's taking possession, until ten days ago? A. Not every night; no, sir.

10 Q. Well, what proportion of the time? A. Well, three-fourths of the time, with the exception of Sundays.

Q. How many burs did you run when the mill run that way? A. Always run the wheat burs until 10 or 11 o'clock at night, and then I would run the feed stones all night.

Q. Now, in the day time, how many burs would you run? A. I mostly run four.

Q. Four burs in the day time? A. Yes, sir.

Q. Would you be able to run four burs now with the 20 decrease in power? A. No, sir.

Q. How long since the power has decreased? A. Well, it has been a week or ten days.

Q. What is the occasion of the decrease in power? A. Well, the water is lower, and there is a leakage in the mill.

Q. What has occasioned the leakage under the mill? A. Well, that I cannot say; it is covered by water.

Q. When did you know this mill before the month of March, 1883, ever? A. Never.

30 Q. And during the month of March, 1883, what do you know about the stone wall on the back part of the mill, next to the feed stones? A. There was a stone wall there.

Q. Is that stone wall there still? A. No, sir.

Q. That was there when Mr. Oakey left possession, wasn't it? A. Yes, sir.

Q. How high was it then? A. Well, I should judge it was about two feet; it might have been a little higher, and it might not have been quite so high.

Q. You mean two feet above the surface of the water? 40 A. Yes, sir.

Q. That kept back the wash from the forebay? A. That isn't the forebay, it is the tail race.

By Mr. BARTINE.—Q. Is there any flume there? A. No, sir.

By the COURT.—Q. Let the witness state the distance of the dam from the mill, and how the water is conducted from the dam to the mill? A. The dam starts from about the middle of the mill and runs across the river, and under about one-third of the end of the mill this cistern is built, and there is a rack built in front of this 10 cistern in order to keep any obstacle from going into the wheel; and this cistern is built up to hold the water there, and throw it upon the wheels, and furnish the power; and this wall is a short wall next to the side of the cistern, that the wheel sits in, that drives the feed mill; it was built there, I suppose, in order to keep the embankment back of that from washing down and interfering with the power of that wheel.

By the COURT.—Mr. Clark, what is the object of this inquiry? Suppose, for example, that Mr. Cook, when he 20 went into possession, had torn down the mill; suppose he had taken the stones off and sold them?

By Mr. CLARK.—I have another object, if the Court please, which I will explain in a few moments.

By the COURT.—It looks very much to me as though if this suit did not move for specific performance, and Mr. Cook had violated any contract, expressed or implied, that that is a matter for future consideration, and in another form.

By Mr. CLARK.—Your Honor is right in that, but this 30 is for another purpose.

Q. How long has that wall been down?

By Mr. LINDABURY.—If it is for some other purpose, which I don't know, I want to know what it is, and I object to this as no cross-examination.

By the COURT.—If you put it on that ground I shall have to rule it out.

By Mr. CLARK.—I decline to show my hand at present, and will show your Honor, presently, that it is a proper cross-examination. 40

By Mr. LINDABURY.—I think it is no cross-examination, and I object on that ground.

By the COURT.—A witness has stated, Mr. Lindabury, that the property has been improved; he further stated the particulars in which he thought it had been improved. If, upon the other hand, Mr. Cook had, in what he considered improvements, effected what others, competent to judge, might regard as waste, it ought to be shown. This man being an expert, and having spoken of the im-
10 provements, I will allow it to go on under the objections that have been made, but if it is for the other purpose I suggested, I would at once rule it out.

Q. How long has that wall been down? A. I think the first I noticed of it was sometime in February.

Q. Last? A. Yes, sir.

Q. You say that at the time Mr. Cook took possession of the mill, Mr. Oakey's business had only been earning about $100 a month? A. Somewheres about that, I should judge, although I would not say for certain.

20 Q. What do you mean by that? A. Just what I say.

Q. In what way had it been earning $100 a month? A. By running the mill.

Q. Now, suppose Mr. Oakey was doing merchant work, and had run upon merchant work alone? A. I am speaking of the business all together.

Q. How do you estimate the merchant work that Mr. Oakey was doing at that time, as a matter of profit to him, in estimating the $100 per month—what proportion of it was merchant work? A. Well, I should judge, two-
30 thirds of it.

Q. Then, what proportion of it was actual grain ground, and what proportion grain sold? A. I am not speaking of grain shipped or sold; that is not milling business; grain that is shipped has never been milled.

Q. No; but the mill is used as the repository, often times purchase of grain, and in that way connected with the milling business. You mean, then, grain actually ground? A. I am answering the question you asked me, what the mill earned—nothing to do with the grain sold.

40 Q. I am only trying to understand what you mean, that

is all. Now, then, before that time—before, say, the month of April, what was Mr. Oakey's business, about? A. Before the month of April?

Q. Yes; take it before the month of April—the month of March—you say you went there in March, I understand you? A. Yes, sir; about the first of March.

Q. What was the business worth in March? A. The month of March, I think, was worth a little more than other months with him; there was more to work—more farmers bringing in grist. 10

Q. Then, the grist work depends largely upon the season? A. Yes, sir.

Q. Some seasons—the Spring of the year it is heavier than in the Summer? A. It depends upon the time of the year; there is more business in the Spring and Fall than in the Summer and Winter.

Q. Did Mr. Oakey—was it his want of material to do business with? A. No, sir.

Q. Would not the mill earn more than $100 in merchant work? A. It would; the capacity of the mill 20 was there; it would, if made to do it.

Q. Well, during the months of March and April, wasn't that mill of sufficient capacity to earn more than $100 a month in merchant work? A. It was; yes, sir.

Q. Did not Mr. Oakey, at that time, have plenty of material on hand to keep the mill occupied and at work day and night? A. Yes, sir.

Q. And, at the time of giving Mr. Cook possession, he sold large quantities—thousands of dollars worth of grain, did he not, in order to get the mill free to give posses- 30 sion? A. He sold a great deal; it would not get up into the thousands, though.

Q. Well, as much as 5,000? A. No, sir.

Q. Not as much as 5,000 bushels of grain, all told? A. No, sir; he had 1,700 bushels of wheat, and 1,700 were sold to , New York, and some 500 to A. B. Cook.

Q. He had some corn? A. He had corn.

Q. What quantity of corn? A. I could not tell, exactly; I should think he must have had over 2,000 bushels. 40

Q. Was there a time during the months of March, April and May that he did not have that quantity of corn and wheat on hand? A. There might have been, that he had not quite that much, and might have been he had more.

Q. So, it is safe to say it averaged that? A. Yes, sir.

Q. Now, then, you spoke about repairs a moment ago; had you examined the shingle roof on the house before it was repaired with a slate roof? A. Nothing more than
10 what I could see in front of the mill, on the road, and around the house; I never went up by it.

Q. This roof covered both sides of the house—that is, both sides of the roof? A. Yes, sir—that is, the main building.

Q. The matter of bolts, that you spoke of—do you know what the roof cost? A. I don't exactly; no, sir.

Q. The matter of cloths—bolting cloths, of which you spoke—different millers have different views, in reference to the character of cloths required in a mill, do they not?
20 A. Yes, sir.

Q. And what would suit one would not suit others, and they would make changes to suit their views in reference to the work they had on hand? A. Some do; but these — (Interrupted.)

Q. I am not asking you about these now; I am asking you about the general rule? A. Yes, sir; they do.

Q. And some want finer cloths, and some coarser? A. Yes, sir.

Q. These that you put in—were they finer or coarser
30 than what Mr. Oakey put there? A. The same number.

Q. Bolting cloths are no permanent repairs—they have to be repaired according as they are worn? A. Yes, sir.

Q. Now, you spoke about the steps a moment ago—that is no permanent repair, either, is it? A. No, sir; they were not.

Q. The step is the step on which the upright spindle runs that runs the bur, I understand? A. Yes, sir.

Q. If that heats it will wear out very quickly? A. Yes, sir.

40 Q. It has to be watched and oiled? A. Yes, sir.

Q. Do you know anything about the material which was used to paint this mill with? A. No, sir.

Q. Do you know who did the painting? A. There was a stranger there painting, said his name was Thompson; he had another man working for him; he had a man by the name of Galagher, and another man by the name of Cruser.

Q. Now, you spoke of the rack in front of the mill, where the water runs in the cistern—how long is that rack, about, Mr. Beatty? A. Somewhere in the neigh- 10 borhood of 20 feet.

Q. Did he put in a new rack, or only some new slats? A. He put in a new rack—that is, what I call a rack—the slats that you put all the way across, that is the rack; the rest part of it is not called the rack.

Q. I understand what you call the rack. I want to know whether he put in a whole new rack, or simply where some of the slats were broken? A. He put them in new.

Q. What in new? A. The slats. 20

Q. Did he put in new slats all the way across? A. I think he did; I am not positive; but I am under the impression they were all new.

Q. Are you willing to say he put in 30 new slats? A. Yes, sir; over 30.

Q. How many slats do you think there are in the rack? A. I could not say, exactly; there might be 40 or 50, maybe, owing to how close they are placed together.

Q. Tell me what repairs he did to the dam, between the mill and the stone dam, at the end of the wooden 30 part? A. He put a stick of timber on there.

Q. What was the size of the stick of timber? A. I don't know, exactly.

Q. What was the length of it? A. That I don't know; when it came there it was a very long stick; but they did did not use all of it.

Q. I am talking of the length of the stick they put on the dam? A. That I could not tell, exactly.

Q. Tell me as near as you can? A. It might be 8 or 10 feet—10 feet; somewhere along there. 40

Q. And how thick? A. It might be six inches, or it might be an inch or two either way.

Q. That part of the dam, where this stick of timber is put upon, rises higher than any other part of the dam? A. I think it is a little higher.

Q. As much as how many inches higher? A. I never examined it closely; it might be an inch or two.

Q. How wide is that stick on the dam? A. That I could not say; it might be a foot, and it might be a little
10 less, or a little more.

Q. Is that the repair to the dam of which you spoke when you said the dam had been repaired? A. That is not all.

Q. Now, you mean the repairs to the end of the dam, by building up stone work there? A. Yes, sir.

Q. That proved, however, to be insufficient, and washed down? A. I see some of it is down; yes, sir.

Q. That is how long a piece of stone work, about? A. It ran in a sort of curve, maybe 15 feet.

20 Q. And how high? A. Well, two or three feet; somewhere along there, in some places; some places are not so high as others.

Q. No; it is the end of the dam where it runs up into the bank where the water is low? A. Yes, sir.

Q. Now, then, you spoke a little while ago about the business being four times as much as Mr. Oakey's business—how much of the time did Mr. Oakey run his mill while you were there in March, and April, and May? A. He used to run along through the day; one week I was
30 home—a week the mill did not run.

Q. Well, you ran all day—now, did you run at night? A. I ran the feed stone along, some nights, until eight or nine o'clock—bed-time.

Q. What would be the average time you would stop at night? A. Well, probably it would average eight, or half-past eight; there was lots of days we did not run the feed stone at all.

Q. You said Mr. Snedaker was to move, and it would not cost him anything—where was he to move to? A.
40 Into this house, where Mr. Oakey now lives.

Q. Mr. Snedaker was the man who was farming Mr. Oakey's place? A. He worked for Mr. Oakey on the farm for wages, I think.

Q. That is all.

Re-direct examination:

Q. Can you tell us when that wall disappeared? A. Disappeared?

Q. Yes; when it was destroyed? A. Well, I cannot tell, exactly; the first I noticed it was going down was sometime in February. 10

Q. What did it? A. I think it was on account of so much high water—soaked the ground loose all around it —there was a great deal of high water this Spring.

Q. Has there been any time since when it should be repaired? A. Well, it could be repaired, I suppose, within the last week or two—since the water got warm—fit to go in.

Q. It is necessary, then, to have low water—it required going in the water to do? A. Yes, sir; you would have to go in the water. 20

Q. Now, you spoke of the wheat and corn that Mr. Oakey had on hand—what is the reason he did not grind more wheat? A. I don't know why; he was boss; I went under his directions.

Q. Then, it was under his directions that you did not grind any more? A. It was not particularly under his directions that I did not grind any more, but I was not hurried, and I ran the material along.

Q. How many stones did you run—burs? A. Mostly ran one. 30

Q. And how long did you run it—how much of the 24 hours? A. Well, I should think an average of about 10 hours a day.

Q. And the feed stone—how long did you run that, or them? A. Some days I would not run it at all.

Q. Why? A. Well, I would not have anything to grind, particularly; that is, I would have feed ahead, and would not have any cause to grind, and I would let it stand.

Q. How was it with the flour—did you have any of that ahead? A. Yes, sir. 40

Q. Did you keep it ahead all the time? A. I generally kept it ahead all the time.

Q. Then, the reason you did not grind much was because you had flour on hand?

[Objected to.]

By the COURT.—That appears on the face of it.

Q. Were you ever urged, during that month, to grind more than you did? A. No, sir.

Q. Now, how much flour had you on hand?

10 By the COURT.—What is the use of pursuing this any further?

By Mr. BARTINE.—It is simply a rebuttal of the position taken by counsel—that the wheat and corn was there, and ought to be ground. We wish to show that he had no occasion to grind it.

By the COURT.—So far as that is concerned, it was Mr. Oakey's own mill, and he had charge of it.

Q. Where, at that time, was the flour and feed marketed? A. Mostly at New Brunswick.

20 Q. Was any sent to New York at that time? A. They sent some white meal to New York at that time; yes, sir.

Q. Any flour, or feed? A. No, sir.

Q. Did you have market, to your knowledge, for any more than you ground? A. Not that I know of.

Q. That is all.

Re-cross examination:

Q. It is not customary, or usual, to run the flour stones at night, is it? A. No, sir; there is not many that runs, unless they are shoved, that is, have work to do.

30 Q. That is not your practice since you have been with Mr. Cook? A. That has been all owing to how the business was; if the business required it I done it.

Q. You couldn't run your flour stone all night unless you had help? A. Not many nights; I might do it for three or four nights.

Q. That is all.

Further re-direct:

Q. Were you away because the mill was closed? A. I was home, sick.

40 By the COURT.—Q. Was the mill closed because you

were sick? A. No, sir; it was not closed, but they didn't run their flour stone.

Further re-direct:

Q. Was it closed at any other time? A. No, sir.

By Mr. CLARK.—Q. Did the feed stones run while you were away? A. I think Mr. Oakey did say he ground some feed while I was away; the feed stone was running when I came back.

FREDERICK V. L. VOORHEES, a witness produced on behalf of the aforesaid Complainant, having been duly sworn, testified as follows: 10

Direct examination, by Mr. Bartine:

Q. Where do you reside? A. I reside at Blackwell's Mills.

Q. How far from the mill? A. Between four and five hundred yards.

Q. For how long have you lived there? A. 38 years.

Q. Where did you get your mail? A. I generally got it there. 20

Q. Your post office is Blackwell's Mills, then? A. Yes, sir.

Q. And how frequently did you go there? A. Oh, well, maybe three or four times a day; maybe, sometimes not as much.

Q. Do you recollect the time when Mr. Oakey left the mill? A. Oh, yes.

Q. And immediately preceding it? A. Certainly.

Q. What was the condition of his business—milling business, at that time? A. Oh, well, I couldn't answer 30 that question definitely; I never examined his books.

Q. Well, could you tell? A. Oh, I could tell that he wasn't doing the business he had heretofore done.

Q. How long had he been there? A. He had been there, I think, some 10 or 11 years.

Q. For how long a period before he left it had it been running down? A. Oh, well, probably two years.

Q. Two what extent, comparatively, had it been reduced from what it was years before? A. Oh, well, I couldn't tell, exactly. 40

Q. As near as you can tell? A. But he hadn't—wasn't doing—there wasn't the people coming to the mill that had been used to coming.

Q. Since Mr. Oakey has left, and Mr. Cook has taken possession, what have you to say about the business of the mill? A. Well, the business has increased; for a month or two Mr. Cook didn't do a great deal more than Mr. Oakey, as I could see; after awhile it began to increase. Mr. Cook took that mill at a time of the year
10 when it is generally poor milling season; it always is so; most of the farmers, like me, turn their horses out, and would not feed any grain.

Q. Now, were you familiar with the condition of the property at that time? A. Oh, I can't tell anything about the mill property.

Q. I mean the external appearance of the whole property, as a mill property? A. Oh, yes; certainly.

Q. What have you to say about it, at the time Mr. Oakey left—in what condition was it? A. Well, Mr. Cook
20 helped the looks of the property, and, if he had done as I told him to do, he would have helped it more; he put a new roof on his house.

Q. Did it need it? A. Well, he must have thought so.

Q. I mean, in your judgment? A. I dare say it did.

Q. What kind of a job is it now? A. Well, he had a good man to do the business, and I suppose it is done good.

Q. And the mill, has that improved in appearance? A. Well, yes, somewhat; he has painted it.

30 Q. Then, what have you to say as to whether the value has been increased since—not how much; but has it increased, in value, under the care of Mr. Cook? A. Well, that is according to the times, a little, and according to people's pocket; if a man wants to buy that property for cash, why, I don't think it is worth a great deal more than it was a year ago, any more than what little is put onto it.

Q. Then, you think it is improved to the extent of what has been put on it? A. Oh, yes; it is in better
40 trading order.

Q. Would it be in better selling order, too? A. Well, I suppose it would; but you don't find people nowadays buying, they go trading.

Q. Did you have a conversation with Mr. Oakey in May last—May, 1883, I mean? A. Yes, sir.

Q. In relation to this exchange? A. Well, about the time of Mr. Cook's vendue, I forget just what time that was, I said to him, "How comes it you ain't going to the sale"?

Q. What sale? A. Mr. Cook's sale. 10

Q. In Maryland? A. Yes, sir; he said he could not go very well, he had bought 20 head of cattle of Mr. Cook, and wanted some horses, but his son John was going down, and he had instructed him what to buy, and how to buy; I suppose, what to pay for them.

Q. Did you see him again, after harvest? A. After he went down there; yes, sir; I saw him when he came back.

Q. What did he say about the hay he had gathered down there? A. Oh, he said he had a fine crop; he had gathered from 160 to 170 load, and got tired of gather- 20 ing.

Q. What did he say about the wheat, if anything? A. The wheat was splendid.

Q. Did he tell you how much he had? A. Not just then, but shortly after he said they had threshed 1,300 bushels.

Q. About the rye? A. A couple of hundred bushels of rye.

Q. And clover seed? A. He said they threshed 98 bushels of clover seed within two days, but I didn't be- 30 lieve that; but I saw the samples, and it was the handsomest seed I most ever saw.

Q. Tell us, as near as you can, the time of these conversations? A. Well, he came home, and went to drawing in wheat on his own farm; it was cut and shucked the next day, I think.

Q. That must have been in July, then? A. July is harvest here. And then they threshed the wheat sometime after; I don't know how long after.

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Q. Sometime before the first of August, however, was it not? A. I presume it was.

Q. The conversation, I understand you to say, was soon after he had threshed his wheat? A. Yes, sir.

Q. Now, did you have any conversation with him in which he spoke of what Mr. Cook was doing at the mill? A. I came along there, one evening, and he was sitting out on the stoop; I often stopped to talk to him, and he made the remark, says he, "Cook is doing quite some
10 business here"; "Oh, yes", says I. I hadn't been there that day, and it appears there had been several wagons there bringing grain and one thing and another. "Well", says he, "I hope he will do well; I hope he will do well", he says.

Q. The conversation, in relation to the clover seed, can you tell me, about, when that was? A. Well, his son came here with the sample, and, I guess, went to New York the next day with it, to get market for it.

Q. Yes; but can you tell us when it was? A. Well, it
20 must have been in September; I understood him to say it was the first clover seed that had been offered in the city of New York—the first new seed.

Q. Can you tell us about when the conversation was, about the hay? A. Well, that is when he came back after harvest—gathering the harvest there in Maryland.

Q. And before the harvest was gathered here? A. Yes; he came back here; his harvest was out, and so was mine, and he went to drawing his harvest.

Q. You think that was in July? A. I think it was; I
30 know it made the old man sweat considerable.

Cross-examined, by Mr. Clark:

Q. How long had Mr. Oakey been running the mill before Mr. Cook took possession of it? A. I guess 10 or 12 years—10 or 11 years.

Q. Just reflect? A. Well, it would be 9 years—9 or 10 years—Mr. Oakey knows.

Q. Now, didn't Mr. Oakey rent the mill out? A. Oh, I don't know what they did; I guess he is boss, if he did rent it out.

40 Q. Didn't Mr. Oakey rent the mill out over a year, so

that he had nothing to do with it, at all? A. Oh, I don't know anything about that.

Q. Don't you know, as a fact, the year Mr. Oakey went to the Legislature that he didn't run the mill? A. No; I don't know anything about that; there was a man there by the name of Rittenhouse.

Q. Didn't Rittenhouse and John Oakey run the mill that year? A. Well, they said they did, but I guess the old man was head boss.

Q. What makes you think so? A. Well, I thought he 10 ought to be, if he wasn't; I know I would have been, if I had such men running it.

Q. How long did Rittenhouse and John Oakey run it? A. I can't tell you?

Q. Did you ever see the mill being run by the Defendant, Mr. John L. Oakey, during the time that Rittenhouse and John Oakey had charge? A. I don't know; I presume it was under Mr. Oakey's thumb; if I took anything there I looked to him for the money.

Q. Well, do you know, of your own knowledge, how 20 the mill was being run? A. No.

Q. You don't know anything about it, at all? A. No.

Q. Now, then, could you fix the time when it was that John Oakey and Rittenhouse run the mill? A. I could, but I can't just now; I suppose it might have been three or four years ago.

Q. Mr. Oakey took possession about the middle of June, 1882, did he not—he took charge again—Mr. John L. Oakey? A. Well, now, maybe he did, and maybe—I don't know; I have forgot about that. 30

Q. Do you know what the condition of the mill was at the time Mr. Oakey took possession of it? A. No, sir.

Q. Do you know anything about his commencing to repair, and doing considerable repairs, during the Summer of 1882, shutting the mill substantially down? A. He done that when he first came there.

Q. Do you remember anything about the freshet in September, 1882? A. I think I ought to know.

Q. Washing away the bridges, right opposite Black-

40

well's Mills, and preventing travel for some months in that way? A. Yes, sir.

Q. And also doing damage to the mill? A. Well, I presume it did.

Q. Do you know what the damage was? A. I wasn't in the mill; I would be around sometimes, but I didn't interfere with the miller's business.

Q. You did't concern yourself with Mr. Oakey's business? A. No, sir.

10 Q. And didn't look to see what he was doing, or wasn't doing, in order to know what kind of trade he was doing there, or wasn't doing? A. No.

Q. You gave no attention to his business, at all, so as to form any estimate as to the character of the business he was doing, or the kind of business he was doing, or anything about it? A. No; I never looked to know whether they were making money, or losing money.

Q. Now, before Mr. Oakey leased the mill to Rittenhouse and John Oakey, Mr. Oakey did a very large grain 20 business there, did he not? A. Yes; he bought a good deal of grain, and sold grain in bulk, and ground a good deal of grain.

Q. That is all.

LOUIS D. COOK, a witness produced on behalf of the Complainant, being duly sworn, testifies:

Direct examination, by Mr. Lindabury:

Q. Where do you live? A. Bound Brook.

Q. What relation are you to the Complainant? A. I 30 am a brother of the Complainant.

Q. Did you see him during the Spring or Summer of 1883? A. Yes, sir.

Q. More than once? A. Yes, sir.

Q. Where do you live, or did you say Bound Brook? Did you have any conversation with him about the agreement between him and Mr. Oakey, with reference to exchange of property? A. Yes, sir.

By the COURT.—Q. Is that with the Complainant?

By Mr. LINDABURY.—With the Complainant; yes, 40 sir.

Q. Did you have any conversation with reference to mortgages upon his Maryland property? A. I did.

Q. Did you come to any agreement with him, regarding the removal of these mortgages? A. I told him that I would arrange the one due my sister, for about $1,700, and that I would furnish him, or had friends that would furnish him, ten or twelve thousand dollars on the mill property, if he wanted it.

Q. The Oakey mill property? A. Yes, sir.

Q. When did you tell him that? A. Well, sometime in 10 the Summer of 1883; I couldn't name the date—June, July or August; somewhere along there—in those three months; I could not remember the time.

Q. Well, what understanding, if any, existed from that time on till September, regarding that matter between you and him?

By Mr. CLARK.—I don't think that is competent, if the Court please.

By the COURT.—I suppose, from what has passed already, both in the direct and cross-examination of wit- 20 nesses, it is proper for the Complainant to show that he made arrangements for the purpose of carrying out this agreement. The witness may, therefore, state, as he has stated, what he agreed to do; but I think the counsel is right, taking exception as to what passed between them; the details of the interview, I don't think, will be competent; the other side may have it as a test of what passed.

By Mr. LINDABURY.—I will change the form of the question.

Q. What agreement, if any, in respect to this matter, 30 existed between you and the Complainant, from that time on to September? A. I said, let me know a few days before it was wanted; that is all.

Q. No; not what you told him—what was the agreement between you—what were you to do, and what was he to do? A. Just as I have told you.

Q. How—what? A. In regard to the $1,700; that I would take care of that for him, and would furnish a friend to take a mortgage on the property, whenever he had the deed—whenever he was ready. 40

Q. That agreement existed during the intervening time I have mentioned? A. Yes, sir.

Q. That is all.

Cross-examined, by Mr. Clark:

Q. What intervening time do you understand counsel to mean? A. Well, I suppose that the thing— (Interrupted.)

Q. You said "yes". What intervening time do you understand counsel to mean? A. I don't know where the
10 interval would come in, exactly.

Q. I understood you to say you told your brother you would take care of the $1,700, and would furnish a friend to take a mortgage on the mill property whenever he was ready, and that was in June, July or August; now, was there anything more than that, between you and your brother? A. No, sir.

Q. That was the agreement? A. That was the agreement.

Q. Now, you are not able to state when that was, any
20 more distinctly than you have—June, July or August? A. No, sir; I can't.

Q. Now, do you mean to say that you would have furnished ten or twelve thousand dollars yourself, and taken a mortgage on that mill property? A. No, sir; I had friends— (Interrupted.)

Q. No; I am asking you—you say "no"? A. Not myself; no.

Q. Had you made any arrangements with any friends so that you could pledge yourself that ten or twelve
30 thousand dollars would be taken on that mill property, at that time? A. Yes, sir; I had friends who were looking for that kind of a mortgage.

Q. Had you made any arrangement? A. No, sir; I hadn't gone to them.

Q. Then, what you were relying on, was the fact that you had friends who had money to loan, and if they were satisfied with the investment, that money could be loaned there? A. Yes, sir.

Q. If they were satisfied with that security—that is it,
40 I understand? A. Yes, sir.

Q. That is all.

Re-direct examination:

Q. Could you have furnished the money, if your friends would not? A. I could.

Q. Would you? A. I suppose I should.

Q. That is all.

Re-cross examination:

Q. You say you suppose you should? A. Yes, sir.

Q. Had you examined the property? A. I had looked at the property. 10

Q. Had you examined the property with a view to you, yourself, loaning upon it ten or twelve thousand dollars? A. Not myself; no.

Q. Had you ever come to any conclusion that you would loan ten or twelve thousand dollars upon that property yourself? A. No, sir.

Q. Do you now say that you would then have loaned ten or twelve thousand dollars upon that property? A. I would have furnished the money—ten or twelve thousand dollars upon that property—yes; I do say so. 20

Q. You say you would have done it? A. Yes, sir.

Q. Will you loan ten or twelve thousand dollars now on that property? A. It depends upon whose hands the deed is in.

Q. I mean to anybody, upon bond and mortgage? A. I will furnish the money as soon as the deeds are— (Interrupted.)

Q. I mean, will you furnish the money to anyone—ten or twelve thousand dollars? A. Not to anyone; no, sir.

Q. Then, it is because of your relationship to your 30 brother, and to help him along, that you would be willing to loan it to him, and not to others? A. Well, I would distinguish between a loan very much as to whom the bondsman was, and who the party was.

Q. Precisely. So you would not be willing to loan Mr. Oakey ten or twelve thousand dollars on that property? A. I haven't any special interest in Mr. Oakey, at all.

Q. As a matter of investment, having the money to loan? A. I would think it was safe investment.

Q. You think it was a safe investment? A. Yes, sir. 40

Q. Do you want to buy a mill property—or that mill property? A. No, sir; I am not in that business.

Q. Then, I understand you to say, in order that there may be no misapprehension, that you would have loaned ten or twelve thousand dollars upon that property, without any other security? A. I would have taken a bond, of course.

Q. The bond given by your brother, and the mortgage —no other security? A. Yes; I thought it good se-
10 curity.

Q. That is all.

JOHN L. OAKEY, the Defendant herein, being duly sworn on his own behalf, testified as follows:

Direct examination, by Mr. Clark:

Q. What is your age, Mr. Oakey? A. About 63.

Q. How long have you lived at Blackwell's Mills? A. Between 10 and 11 years.

Q. Ever since you owned the Blackwell's Mills prop-
20 erty? A. Yes, sir.

Q. And how long have you been engaged in the milling business? A. I was engaged in it about nine years; well, all the time I owned it, except one year.

Q. When was it that you were not engaged in the milling business? A. That Winter that I was in the Legislature, and the next year I rented it to Mr. Rittenhouse and my son John.

Q. What year was it you rented it out to Rittenhouse and John? A. 1882.

30 Q. You rented it out in 1882? A. Yes, sir.

Q. Did you take possession again in 1882? A. I took possession again the following Spring—maybe I got that wrong; I took possession the following Spring, on the 14th of June.

Q. What year was it you took possession? A. The year before Mr. Cook took possession.

Q. Then, you rented it out in the Spring of 1881? A. Yes, sir.

Q. What time, in the Spring of 1881? A. June 14th—
40 oh, in 1881?

Q. Yes. A. June 14th.

Q. From June 14th, 1881, to June 14th, 1882? A. Yes, sir.

Q. Who did you rent it to? A. Rittenhouse and John.

Q. What interest did you have in the business? A. I had no interest in the business, except as adviser—I lent them so much money.

Q. Now, Mr. Oakey, what was the character of your business when you took possession of the mill there—what was the character of the milling business there? 10 A. I always had all I could attend to.

Q. When you took possession 9 or 10 years ago? A. When I first went there—well, I bought a great deal of grain and did a very large business; that is, for that capacity of mill.

Q. How many run of stone were there? A. Three run; that is, what we call a "pony" stone, to grind millings—there is now; there wasn't that time—there were four run of stone at that time.

Q. Now, just state what kind of business you did from 20 the time you took possession until the time you rented it to your son John and Mr. Rittenhouse, in 1881? A. Well, I done as much business as the mill would allow me to do—that is, we went full capacity the first year; we ground up to 10 or 11 o'clock at night, the first two years, and afterwards I hired two millers and run it both night and day; and I found, when I done that, it weakened the power in the day time, and it was best for the mill to rest two hours at night; it ran the power down so that it didn't give us water enough in the day time; and our 30 grain capacity, for buying, is often so great that I don't know where to put it, or what to do with it—so much wheat, and rye, and corn came there, and was offered us to buy, that I didn't know where to put it; I ran on merchant work and grist work, both.

Q. And how did you attend to the running of your mill up until the possession was changed to your son and Rittenhouse? A. I had two millers to within, I think, three, four or five months—towards the last I had one.

Q. And how many hours a day did you run your mill 40

then? A. Night and day, except after this one miller left, then I did not.

Q. Then, you not only were engaged in grinding flour and feed, keeping your mill running that way, but also in the business of buying grain? A. Yes, sir; I bought a great deal of grain.

Q. Shipping—then you rented out in June, 1881, and had nothing to do with it again until June, 1882, then you took possession? A. Yes, sir.

10 Q. Now, when you took possession of the mill, did you commence milling right away, or what did you do with it? A. We commenced getting the stones—the stones was very much out of order, and I had them all taken out and hung over, and balanced over, and dressed over; I put a new dressing on one wheat stone.

Q. How long were you engaged in repairs to the mill after you took possession in June, 1882? A. Well, we kept part of the mill running; we dressed one stone and then another, and in that way was engaged about two 20 months; we worked more to get the mill in shape; I told my son— (Interrupted.)

Q. Never mind what you told your son. Now, then, how long was it before the mill was in proper shape to do business again? A. Well, we was about getting the stones in shape when the freshet came.

Q. That was in September? A. September.

Q. September, 1882? A. Yes, sir.

Q. Now, what damage did the freshet do you? A. As near as I can judge, between $700 and $1,000.

30 Q. How? A. It injured all the stock we had in the mill down to a certain floor, and cut off our supply from Brunswick; the bridges were down.

Q. How long a time was that supply cut off? A. Until they got the bridges up; I think it was in November.

Q. And did it do any damage to your mill—any part of the mill? A. Well, not what you would call a permanent damage; it injured some of the things; some of the stones was mouldy.

Q. Now, how long was it before you were in shape to do

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business again? A. About December—along in December.

Q. After the first of December you commenced to do milling work again, and how was your business from that time on, until you exchanged, or agreed to exchange, with Mr. Cook? A. The month of December I bought a great deal of grain, and the business then increased; otherwise our trade had all run down then, on account of the bridges being down; our trade was pretty much gone, and then we started, and gradually went up, and bought 10 a great deal of grain in December.

Q. You mean, you commenced to rebuild your business after the first of December? A. Yes.

Q. Well, now, go on. A. It kept increasing, and got a great deal better, and I thought we were doing quite a nice little business by Spring; not as much as I formerly had done.

Q. Well, now, what did you do about supplying your mill with grain at that time—in the Spring? A. Well, we stopped buying the last month, I think. 20

Q. What kind of grain did you have on hand at the time you stopped buying? A. Well, I think I sold—we commenced shipping; I think I sold for Mr. Bonnell a few bags of Indian meal—the Indian meal and all amounts to $6,000; I think we shipped him 3,200 bushels of wheat at one time, and some more, at another time; I sold quite a lot of grain, and sold quite a lot of oats, then I stopped the grain from coming, to any extent.

Q. Now, this was about the first of—that was just before the agreement to exchange, or just about the time of 30 the agreement to exchange—before you made your agreement with Mr. Cook—you were still buying, and going on with your business? A. Yes.

Q. Tell when you did sell the grain you are speaking of, with reference to the agreement made with Mr. Cook, before, or after, the agreement was made? A. I think most of it; not all of it; but, I think, with the exception of one shipment, it was all after; the reason I cannot tell that date, I sent for a bill of it, and he did not mark the date. 40

Q. Do you know where this man Rittenhouse now is, Mr. Oakey? A. I don't.

Q. Have you made inquiry for him? A. No, sir.

Q. You haven't? A. No, sir.

Q. You don't know where he lives? A. No, sir.

Q. What did you first know in relation to the Cook property, in Maryland? I mean by that, what you first heard about it which led your attention to be called to it?

A. I was negotiating at Washington for some property,
10 and met a man by the name of McFeely, and he sent Mr. Main on to our place to view our place, and he stayed there two or three days; and then they wished me to come on there and see what I could do with them; I kept receiving letters, and I went on at one time, and came back, and still they kept writing and making offers; and also from Richmond; I forget the man's name from Richmond; he wished to exchange; and I kept showing these pamphlets and things to Mr. Garret Hagaman, and asked him to go on and take a trip with me—he was the survey-
20 or; we appointed a time, and then he did not get ready, and Mr. F Voorhees says to me, "Why don't you go and look at Mr. Cook's property, he wants to get back"; and Mr. Rulef Van Syckle talked to me.

Q. Your attention was thus called to it; now, go on, and tell what next was done about it? A. I got my son to write a letter to Mr. Cook, wanting to know whether it would be convenient for us to stop on our way down, and we got a letter from him, saying it would.

Q. Did you receive a reply to that letter? A. Yes,
30 sir.

Q. Have you the reply? A. Not with me.

Q. Have you it, at all? A. I don't know.

Q. Go on—what did you do next? A. Well, then, I made arrangements with Mr. Hagaman, and went down there, and called at Mr. Cook's; we got there sometime in the evening; as near as I can tell, about 6 o'clock, and went to his place, and stayed there two days, I think, and two nights.

Q. Well, now, what did you do in the first place? A.
40 We walked around, and rode around; he took us around

the second day, and Mr. Hagaman and I walked around most of the place, and in the afternoon—I most forget what we did do; and in the evening we talked about the property.

Q. The evening of the first day? A. The second day.

Q. Go on; tell what was done? A. Well, then we talked about bargaining for the property; how we would exchange; and, I think, I offered him $3,000.

Q. Mr. Cook says you offered him $5,000. A. I don't remember that, sir. 10

By Mr. LINDABURY.—Q. You think it was $3,000? A. I think it was $3,000.

Further direct:

Q. Well? A. He said he had not seen the mill in a good while; he did not know the conditions of it, and he might come up and see it.

Q. Well? A. That went on— (Interrupted.)

Q. Was there any arrangement, at that time, made with reference to seeing further about the exchange, or did you leave with the purpose— (Interrupted.) 20

A. We left with a view of going into Richmond.

Q. For what purpose? A. To see whether I could exchange there for some property; to see whether I could see some property there to suit me. We went on down there, and viewed different properties; we did not make an exchange, and came home.

Q. How soon after that did you come in contact with Mr. Cook again, or hear from him? A. He came to our place—I cannot tell what time it was.

Q. Well? A. He came on a Saturday, I think it was, 30 to our place.

Q. On a Saturday? A. Yes.

Q. Had any communication passed between you and Mr. Cook, between the time of your return from Richmond and the time he visited your place on that Saturday, that you remember? A. I don't remember just now.

Q. Well, Mr. Cook then came to your place? A. Yes, sir.

Q. What took place now on this Saturday? A. Well, 40

I showed him the property; he said he found the mill in better condition than he supposed it was; I took him around, and gave him all the information I could about it, and we talked the price over, and I think I took him over to Mr. Howell's after dinner; he came there in the morning, and went away sometime in the afternoon; I could not tell the hour.

Q. Had you agreed upon any conditions that day, at all? A. We had not settled it; we talked about it; I
10 don't think it was concluded that day.

Q. Did you make any offer, at all, that day—a condition of exchange? A. I think I did.

Q. Do you remember what? A. We talked about $5,000; but I did not finally conclude to give it to him that day, I don't think; but that is what we talked about.

Q. Is that the amount he asked? A. He asked—yes, sir; he asked more than that at one time, but he came down to $5,000.

Q. Do you remember that you made him any offer that
20 day, at all? A. I don't remember.

Q. Now, then, nothing was done on that day; Mr. Cook says that you offered him $5,000 that day? A. No; I only kind of felt him; I asked him if so much money would do it; I did not make up my mind, fully, to give it that day.

Q. Now, he says you met again on Monday morning—what time did Mr. Cook come there? A. I cannot tell the hour, exactly.

Q. Well, you were at home? A. Yes, sir.

30 Q. And met him? A. Yes, sir.

Q. Where did you converse with him then? A. In the office.

Q. Well, now, just state, if you please, all that transpired between you and Mr. Cook, that day? A. Well, he brought Mr. Howell around with him, and Mr. Cook and myself walked around; and when we commenced to talk about the business Mr. Howell walked out of the office, and I then concluded that day to give him $5,000.

Q. Now, then, what were you to have, and what was he
40 to have—just state what was said—you said $5,000 then?

A. I was to have the Maryland farm, with all the crops on, except what was excepted; he was to have half of the wheat, and I was to have the rest; at that time, my understanding was, I was to have all of the wheat; and afterwards, there was a conversation about it, and he said he was to have half of all the wheat, because he put on the manure; and then he said, except a piece of corn he put out to Spencer, and a piece to Sand, and a piece to John Terpin— (Interrupted.)

By Mr. LINDABURY.—I do not care to interrupt the 10 examination, but the agreement is embodied in a paper that is put in evidence.

By the COURT.—Mr. Clark, what do you offer this for?

By Mr. CLARK.—Simply showing all the circumstances surrounding the agreement—this is a conversation preceding the agreement.

By the COURT.—If there is any independent matter that comes into the controversy, and it be alleged in Bill or Answer, then, the question arises, whether it is such 20 independent and collateral matter as can be shown independent of the written agreement; I think that is now very well settled by all the cases. Then, if there is a question of fraud, which enters as an element in the case, and would affect the mind of the Court, that should be alleged, in order that it may be proved; then, of course, it is competent to prove any element of fraud that may have entered into the construction, and affected the rights of the parties; but, if neither of those things occur in the pleadings; if the agreement is plain upon its face— 30 intelligible—I think the Courts are obliged to be governed by the agreement. Now, the witnesses for the Complainant went on and spoke of the fact that Mr. Oakey and his son were there—that they viewed the property; they detailed it about as Mr. Oakey now has. Then, they spoke also of the grain—not in the connection in which Mr. Oakey has spoken of it—they spoke of the results; that is, what grain was produced. Now, the tenor of this evidence seems to be to show that there was some little diversity as to what they really did agree upon. I do not know, 40

Mr. Clark, how we can go into that, since there is a written agreement.

By Mr. CLARK.—I do not propose, if the Court please, to offer the evidence with the view of altering the original agreement at all; it is simply for the purpose of showing the correctness of Mr. Oakey's position. It is only leading up to the agreement; it is simply the circumstances attending upon the agreement, not with the view of altering the agreement, in any respect, and I do not offer it
10 with that view, at all.

By the COURT.—We now have what was in the mind of Mr. Cook, and also Mr. Oakey, up to the time of their meeting at Mr. Oakey's mill on the Monday. I think that covers all that is essential.

By Mr. CLARK.—Well, I will not take the time if the Court does not desire to hear anything further in that direction.

Q. Now, the contract you have seen here, this contract was signed by you, was it, Mr. Oakey? A. Yes, sir.
20 Q. The seals were not on, Mr. Howell says, when you signed it? A. No, sir; they were not.

Q. Now, where was it signed? A. In the office.

Q. Who were present? A. Mr. Cook, Mr. Howell, Mr. John Oakey and Mr. David Oakey.

Q. What was said at the time it was signed, in relation to the contract itself?

By Mr. LINDABURY.—I object to that. If there were a denial here of the contract, or an allegation of fraud respecting the procurement of it, I can see such an
30 examination would be competent; but the contract is set forth in the Bill, and is admitted in the Answer, save that the answer says there were no seals on it; that matter the witness has just been asked about, and has spoken about; and, indeed, there is no controversy, and, saving as to that, the making of the contract is admitted, as set forth in the Bill of Complaint.

By the COURT.—I haven't any doubt, Mr. Clark; but we must be confined to the written agreement. If the agreement, as written, doesn't set forth the real agree-
40 ment of the parties, then the pleadings are not sufficient to

enable us to get at anything more. If the written agreement is imperfect—if it is incomplete—I don't think there is any allegation to that effect in the answer; I don't remember that there is, and don't see anything in it, in looking over the answer. If counsel can point out any special grounds that would warrant what took place at that time, prior to or at the time of the execution of that agreement, I will hear him, of course. This matter was all talked over, and thereupon the agreement was made; the testimony was gone into very fully, as I have said, upon examination 10 and cross-examination, and I think very properly gone into for the purpose of showing one reason for the delay, and as far as that is concerned, I shall allow this examination to go on. What transpired respecting the mortgages, I will say to counsel for the Defendant, it is perhaps due to the other side, as well as to the Defendant, that whatever did transpire between the parties respecting these mortgages, should be fully expressed; that if the case goes beyond the mere trial court the Court above may know the occasion of the delay. I think it is an ele- 20 ment that may properly be considered; that is, this question of delay, so far as it is material with respect to the contract. Does the Complainant promise to furnish a good title satisfactory to both parties? He promised to, and so did the Defendant. Of course, that includes all the mortgages, and it is a provision that in the absence of fraud is supposed to wipe out a multitude of sins. But I think counsel for the Defendant is right in wanting to get the exact status of the mortgage business, and I will allow it, in order that all that transpired afterwards 30 may have a proper connection and be made intelligible. You may go on, Mr. Clark, with respect to what was said about mortgages, and put it upon the ground that the answer has made some allegation in regard to mortgages, and notwithstanding the agreement, that a good title should be given which would be satisfactory to both parties; and in view of the fact that the other side has attempted to account for the delay on account of these mortgages, you have a right to answer that, and go back to the origin of the mortgage question and show whatever 40

is in it; and if there is anything in it for the benefit of the Defendant, he is entitled to it. I say we ought to be limited to that, because you apprise the other party by your allegation that you intend to raise that question.

Q. What was said upon the question of mortgages before the contract was drawn, between yourself and Mr. Cook, before you came into the mill? A. He said at one time, to me, that there was a large amount— (Interrupted.)

10 By Mr. LINDABURY.—Tell, when, if you know, as you go along.

By the COURT.—He said it was before he went into the mill, and it don't make any difference if it was a conversation about this farm; they only had two or three at the most.

WITNESS.—(Continuing.) He said that the mortgage would have to be arranged; it couldn't be done immediately.

Further direct:

20 Q. Did he say anything about what amount? A. Yes; he said that there was about thirteen or fourteen thousand dollars on it.

Q. Who was by when he said that? A. I think John.

Q. Where was that said, do you remember? A. I think somewhere between the wagon house and the mill.

Q. Did John make any remark at that time? A. He said he would like to know, before he went down, what was onto it.

30 Q. That was before the contract was signed—before it was drawn—was it before the contract was drawn? A. I don't remember whether it was or not.

Q. Very well. Now, then, you say John was present—do you recollect, exactly, where the conversation took place? A. Between the wagon house and the mill.

Q. On what day? A. The same day the agreement was signed.

Q. Was that before—do you remember whether you went into the mill after that and drew the agreement, or

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whether the agreement had been drawn before. A. I do not.

Q. You don't remember about that? A. No, sir.

Q. In the mill—you say your sons David and John were present when the contract was signed? A. Yes, sir.

[It is admitted that there appears upon the record mortgages for ten thousand, five thousand and two thousand dollars—liens upon the Westover property—which were in existence at the time of the agreement, and, so far as the record appears, still continue to be in existence.] 10

AFTER RECESS.

Q. Now, Mr. Oakey, at the time of the adjournment, we were talking about what was said in relation to the mortgages between yourself and Mr. Cook, at or about the time the agreement was signed; I don't know whether it was before or after the agreement was signed that we were talking about at the time of the adjournment, 20 but go on and state all that was said? A. I talked with Mr. Cook in regard to the mortgage; I told him I had $8,000 on it, and I desired $8,000 left.

Q. What did Mr. Cook say to that? A. He said it could be arranged—this was before the agreement was signed.

Q. Now, was there anything further said about the mortgages before the agreement was signed? A. Not that I recollect of, before the agreement was signed.

Q. You say the agreement was signed in your office and 30 your sons were there? A. Yes, sir.

Q. Do you know whether they read that agreement or not? A. They did; both of them.

Q. Before it was signed—now, after it was signed, how did the payment come to be made? A. How, sir?

Q. After it was signed, how did there come to be a payment of $20 made? A. John said it wasn't worth the paper it was written on unless there was something given, and I ordered David to get the money and give it to him, and he gave it to Mr. Cook, and took his receipt. 40

Q. Who drew the receipt? A. Well, I don't remember who drew it; I received it.

Q. Have you the receipt? A. I have at home; I haven't it with me.

Q. Now, then, did you have any further talk that day with Mr. Cook, about the mortgages, after the contract was signed? A. After the contract was signed I said to him, I have got a good deal of money on the books, and I would like, maybe, $10,000 left on the place.

10 Q. Go on. A. And he said that it could be arranged.

Q. Was there anything said about the length of time? A. I told him I only wanted it for one year, until I could get in shape.

Q. What further conversation took place then in reference to the mortgages, if any—anything further, at that time, that you know of—that you now think of? A. Not that I think of, at present.

Q. Was there anything said, at that time, of any alteration in the amount of money to be paid? A. I said to 20 him that would leave $3,000, and I would pay him the $3,000.

Q. Well, what did Mr. Cook say to that? A. That that would be all right.

Q. Now, then, what was said at that time, Mr. Oakey, in reference to the change of possession? A. We talked about the exchange—I may get the time a little wrong—I won't say that I am exact about the time, but we talked about it, and he wanted me to come down and see if I couldn't buy his stock, and it would make the exchange 30 sooner.

Q. Mr. Cook says that you were anxious to make the exchange—you urged the exchange—what do you say to that? A. I didn't.

Q. What did he say about the importance to you of getting there? A. He said it was important for me to get there, and it was important for him to get here.

Q. Now, when was the exchange to be made, Mr. Oakey—that is, the exchange of possession? A. I don't understand that.

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Q. When was the exchange of possession to be made—I mean, what was the agreement— (Interrupted.)

A. Well, that was to be agreed on—provided I bought his stock we was to make it immediately, if we could.

Q. Well, if you didn't buy his stock, what then? A. Well, as soon as we could bring it about; he said he wanted a little time then, to make a vendue.

Q. Now, what was said, at that time, in relation to the time when the papers should be exchanged—the deeds? A. He said that I could get mine fixed up, and he would 10 get his fixed up, and get them in shape, or get them all ready.

Q. Mr. Cook says that on or about the first day of June, not later than the first of June, the understanding was, that the papers were to be exchanged? A. I don't remember his making the date—I don't remember his stating the time; he said it was a considerable amount of money, and it took a little time to arrange it—as soon as we could come together and arrange it; that is the way I understood him to say, and what he did say. 20

Q. He says it was agreed you should exchange possession on or before the first day of June? A. Oh, possession?

Q. Yes. What have you to say about that? A. He wanted time to make a vendue, and then he said we would make it immediately afterwards—somewheres near that time.

Q. Now, he says as soon as he could get off the property, and come to New Jersey, he would have the papers ready, and you should have your papers ready, and on or 30 about the first day of June you should make the exchange—was there any understanding about that? A. Not exactly; he said we could get the papers ready, and as soon as he could come on we could arrange it.

Q. He says you were each to clear your properties—to trade the properties clear and free—each to clear your properties of mortgages—was that so? A. No, sir.

Q. When did you first know the exact amount of mortgages which were upon this property in Maryland? A. I got a letter from one of my sons saying— (Interrupted.) 40

Q. You need not tell what your son told you; but when was it you learned the amount, about? A. Somewheres about the last of June, or the first of July.

Q. What did you understand the amount then to be? A. $17,000.

Q. He says he told you, when you were down in Maryland, after the agreement was signed, exactly what the mortgages were, and that he wanted to pay off $1,750 before he left, and you agreed to send him $2,500, so he
10 could do it—did he tell you, when you were in Maryland, what the mortgages were? A. No, sir.

Q. Did he tell you he wanted $2,500, so he could pay off the $1,750? A. No, sir.

Q. Did you agree to send him $2,500 before you left Maryland; and if you did not send it, you would send it by your sons? A. No, sir; he asked me if I could let him have $2,500 to clear up, or pay up, and I thought over it a little, and I told him, if Mr. Howell became responsible I might; well, he said he thought maybe he
20 would.

Q. Did you know of a mortgage of $1,750 upon the property at that time? A. I didn't—you mean, now, the time I was down there?

Q. Yes; the time you were down there first—after the agreement was signed? A. Yes; that is all right.

Q. Mr. Oakey, do you know anything more about the amount of crops raised upon this place than what your sons have told you—that is to say, the aggregate amount, the bulk—you relied upon their statements? A. Yes; I
30 relied upon their statements of the receipts.

Q. Did you receive any information—any letter from Mr. Cook, after you returned home from Maryland, with a request to send him any sum of money? A. Yes, sir.

Q. Have you the letter? A. I haven't.

Q. It is lost or destroyed? A. Well, I haven't looked for it; I couldn't say whether it is destroyed or not; I haven't looked over my letters, and I don't know whether I have got it or not.

Q. Very well; then I can't ask you about it now. Mr.
40 Cook says that after he came here—that is, upon his ar-

rival here from Maryland, after the agreement had been signed—after you had been there, and when he came here for the purpose of taking possession, he showed you his deed, and told you he was ready, and prepared at any day, whenever your were, to fix up, and exchange possession? A. He showed me his deed, but he never said he was ready and prepared.

Q. Did you and he have any talk about his deed—how the courses ran, etc., and if so, just explain what was said? A. He showed me the deed, and showed me the 10 courses, and I wanted Mr. Hagaman to take it and see whether there was the right number of acres.

Q. Did he say anything, at that time, about the number of acres that the deed gave you, instead of a certain number of acres which was given you? A. He said first, there were 700 acres, and then, when he showed me the deed, he said 698.

Q. How did he explain that difference? A. He said there was two acres that adjoined—that ran somewheres, that he had sold to— (Interrupted.) 20

By Mr. LINDABURY.—I object to that; it has no object; no issue is made about that in the bill.

By Mr. CLARK.—I am simply calling Mr. Oakey's attention to a conversation which Mr. Cook says took place between them.

By the COURT.—The question is, how far we shall go. If it is material, then it is a matter which is open for contradiction. Of course, it is my duty to limit all these interviews to that which goes to make clear or plain the issues which have been raised by the pleadings; if we go 30 beyond that it is endless, always. I don't see as a matter of this kind can throw the slightest light upon the subject; you had better not pursue it any further.

Q. Now, then, was there any search shown you, at that time, of the Maryland property? A. There was not.

Q. Have you ever had a search of the Maryland property from Mr. Cook? A. I have never seen any—from him.

Q. What else did he show you, at the time he showed you the deed, in relation to this property? A. A map. 40

Q. Did you say anything to him about the quantity of woodland on this property, at that time? A. I asked him what quantity of marsh and what quantity of woodland there was, and he pointed it out.

Q. Mr. Cook says, that when he showed you his deed, and told you that he was ready to perform his part of the contract, that you said you thought it was best to wait until he (Cook) could get there to have his survey made of the property, and you fixed on Saturday, which would
10 be the 15th of June, to have Mr. Hagaman survey the property? A. He asked me something about the survey, and I told him I thought it was best for him to see the survey, so he would know what it was; there was a little dispute about one line they sold to me, and Mr. Vanderveer thought it was in one place, and I thought it was in another.

Q. On the second of June you had the property surveyed, I understand? A. Yes, sir.

Q. Was there anything said on that day about the ex-
20 change of deeds? A. Not that I remember of.

Q. Well, did Mr. Cook, on that day, tender himself ready to exchange deeds? A. He did not.

Q. Did you ever have the Cook deed in your custody? A. I never did.

Q. What had the survey of the property to do with the postponement of the exchange of deeds, so far as you were concerned? A. Nothing, at all, only to that day I thought it was best for Mr. Cook to see these lines.

Q. Mr. Cook says, that after you talked with him about
30 the survey, that he spoke to you nearly every day, asking you to exchange—to fix up the deeds? A. He didn't—not every day; he spoke to me once about $5,000—leaving $5,000 on it.

Q. I am asking you now about his being ready to perform his part of the contract? A. He never said to me he was ready.

Q. After the farm was surveyed, did you have a talk with Mr. Cook in relation to—and the deed was drawn by Mr. Hagaman—did you have any talk with Mr. Cook
40

about the survey, in relation to a spring? A. I did; yes, sir.

Q. Now, just state, if you please, what was said?

[Objected to, by Complainant's counsel.]

By Mr. CLARK.—I wish to show, if the Court please, that there was talk about a spring, which was reserved, or some reservation in the deed about the rights which should be had to the spring, and that Mr. Cook and he then talked this matter over, and made a certain arrangement about that, or agreed about that, which was em- 10 braced in the deed, and the deed was so arranged to correspond with their views—to show that at that time Mr. Cook knew that Mr. Oakey was ready with his deed.

By the COURT.—If that was embodied in the deed, that had better be the proof.

By Mr. CLARK.—I want to show that was done by reason of this conversation between Mr. Oakey and Mr. Cook, as I understand the fact to be.

By the COURT.—There is this about it, Mr. Lindabury: the testimony already presented by the Complainant 20 shows that after this agreement was signed, the parties did talk, and they did make an effort to relieve and accommodate each other, and I think that is part of the case, and I will allow this in.

Q. Go on, and state what was done now, Mr. Oakey? A. There was a spring that supplied the barn, and partially the house, and the line cut it off from that part, and Mr. Cook wanted to know if I would let him have the use of it, and I agreed to let him do so, provided he kept it well covered, and so on; and when they put it in first in 30 the deed they put it in that I was to give him the privilege of driving on with carts and carriages, and I can't tell what all, and I objected to have so much in—just merely enough to work at the spring, in cases of necessity, from the nearest point; and that was agreed on, and the deed was made according to that agreement; he was willing to have the alteration made.

Q. At that time, was there anything said by him about his being ready to comply? A. There was not.

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Q. After the alteration was made, did Mr. Cook see the deed? A. He did.

Q. And what did he say, with reference to being satisfied with it? A. He said it was satisfactory to him.

Q. He says, after Mr. Hagaman had drawn the deed, sometime after the 7th of June, he insisted upon you exchanging your deeds—upon you and him exchanging your deeds and fixing up your matters, which brought you to about the 15th of June, and then you said to him, 10 "I find a difficulty in removing the mortgages I had here to Maryland, or getting parties here to take the mortgages down there, as I expected they would, can't you assist me to arrange for eight or ten thousand dollars on that property in Maryland"—was there any such conversation as that? A. There never was a word of such conversation said between us.

Q. Did he, at that time, insist, on or about the 15th day of June, on exchanging deeds and fixing matters up? A. He didn't.

20 Q. He says he told you if you had told him about this in the first place he could have done it without difficulty, but now he didn't know whether he could or not, but at any rate he would try—did he say a word of that kind to you? A. He did not.

Q. He says he went to Trenton and saw his sister? A. I didn't know anything about it.

Q. When did you first know he had gone to Trenton on any such business as that, or that he claimed to have done so, to arrange mortgages for you? A. Never, until 30 here in court.

Q. He says that between the 15th and 20th of June he came back and reported to you what he had heard at Trenton—what have you to say about that? A. I never heard a word of it.

Q. He says he came back on the 15th or 20th of June from Trenton, and says he reported to you that his sister objected to taking that mortgage for fifteen or twenty thousand dollars on the property in Maryland? A. I never heard a word of it.

40 Q. Did he ever tell you that conversation he had with

his sister about taking the mortgage on the property in Maryland? A. We had a conversation that he thought his sister would; he never reported to me that she would not; he never reported that he had gone to Trenton for the purpose of seeing her about it.

Q. He says that you then, upon his reporting to you that he couldn't get his sister to take a mortgage of eight or ten thousand dollars, you then asked him if he hadn't some party down in Maryland who would take that eight or ten thousand dollars—did you ever ask him that? A. 10 I never did.

Q. He says he told you a party had offered to take it in the Spring, and was anxious to take it? A. He never reported it to me.

Q. He says then you requested him to leave it until you went to Maryland; you said you would have to go to see about gathering your wheat, and that he would have to go there too, and for him to see if he couldn't arrange it for some party there to take this mortgage? A. We talked about going down—about crops, but never a word 20 about mortgages.

Q. He says he agreed to do it, "I am willing to help you arrange these mortgages, as far as I can, but this is going to set us back so we cannot fix up our business here as I intended", and he thought Mr. Van Duesen would leave the city about the 20th of June, and if he didn't get this matter fixed up by that time he would have to wait until he came back in October or September—was there anything of that kind said? A. Not a word.

Q. He says he told you he would help you arrange the 30 mortgages, with this understanding, that in case you both succeeded in getting a party to take the $10,000 mortgage that you should take a second mortgage on the mill property, for $5,000, until Mr. Van Duesen returned, which you agreed to do, provided he succeeded in getting the $10,000 mortgage fixed for you on the farm? A. There was no such agreement.

Q. What did you know about his having seen Mr. Van Duesen before that time, with reference to arranging the mortgages? A. I didn't know anything. 40

Q. Did you know that he had made any arrangement, at all, with Mr. Van Duesen about arranging the mortgages? A. I did not.

Q. When did you first hear that he had made any arrangement with Mr. Van Duesen, about arranging the mortgages? A. When I heard it in court.

Q. What do you know about Mr. Cook's going to see Dr. Gale, in Maryland, for the purpose of arranging the mortgages? A. I didn't know anything about it until I
10 heard it in court; that is the first I heard about it.

Q. You got your deed from Mr. Hagaman about the middle of June, as I understand you, Mr. Oakey, or somewheres about that time? A. Somewheres in that neighborhood; I don't remember the date exactly; I think it was a little before that; but I am not positive about the date.

Q. Did you have any talk between the time that your deed was prepared by Mr. Hagaman, the Surveyor, and the 8th of August, the day your deed was executed, with
20 Mr. Cook, in relation to arranging these matters? A. I did.

Q. Where? A. Around the mill.

Q. Now, what was said? A. Well, the first time that he ever intimated to me about—ask me the question again?

Q. I ask you if you had a talk between the middle of June and the 8th of August—the reason I fix the 8th of August is that your deed was acknowledged that day—and the middle of June; the reason I fix that day is that
30 your deed was prepared that day, as I understand it—now, between that date and the 8th of August, when the deed was executed, did you have any conversation with Mr. Cook in relation to fixing up the titles? A. I had several.

Q. State what was said between you, on any one occasion? A. The first occasion, he was in the office one day and he undertook to tell me then something about how much he had on his place; he said, I will talk to you just like I would a brother; I have been unfortunate in a
40 lease, and unfortunate in sending my berries to market,

and some other difficulty with his nephew, and that was a family matter; and he said there was a good deal more on his place than there ought to be; and then he gave me somewheres about the history; he didn't get definite then; and then, after that, sometime, I can't give you the dates this transpired, because we saw each other there almost every day, but I said to him, one time, that I was ready and prepared any time, and he said he wanted to fix up his property a little, and would like to paint it, and wanted a man by the name of Van Duesen to come 10 out and look at it, and he would like to get a loan of about $15,000 on the mill, and said if he could get it at one place it would make less per cent., and he wanted Mr. Van Duesen to come out and look at it, and he gave that as a reason for a little delay; and before I went down—I went down on the 16th or 17th of June—one of those dates; it was on Saturday I went to Maryland—before that we had had a conversation, and he wished me to pay off that—the last mortgage that was down there—and I thought at that time I would do it, so I went prepared 20 for to do it when I went down. That is up to that time that you want to know.

Q. Well, go on; what other conversations passed between you? A. That was all, until we got down there.

Q. Did you have any further conversations with him after you got down there? A. I had no conversation with him after I got down there.

Q. Did you pay the mortgage off? A. I didn't pay the mortgage; I went down and took legal advice about it.

Q. By reason of legal advice you didn't pay? A. No, 30 sir; I didn't.

Q. Now, did you see Mr. Cook after that time? A. I seen him down at Westover after the 16th or 17th, whatever it was.

Q. How soon after that time? A. Well, it was shortly after that time I saw him at Westover.

Q. Well, what conversation passed between you then? A. Nothing to do with the mortgages—more about the crops then—about getting the wheat threshed, and who to get, and where to ship it. 40

Q. Did you have any talk with him upon your return from Maryland, and before you had your deed enchanged, in which he asked you to take a second mortgage? A. He asked me twice to take a second mortgage, once before and once afterwards, and I refused, telling him I would not take a second mortgage, because it would put us in such a bad light down there, to leave so much on the property. He wanted first to put $10,000, and then he wanted me to take a second mortgage for $5,000.

10 Q. When did you first know that Mr. Cook had made arrangement to remove the $10,000 which his sister held on this property? A. When I heard it here in court.

Q. He says that he made an arrangement to have the $10,000 mortgage removed from his premises, and then he saw you and told you that he thought his sister would want to have eight or ten thousand dollars of her money remain on the farm, but she was an old lady, and wanted to see and have a talk with you before she did anything positive? A. When did you say this was?

20 Q. About the last of July or the first of August. A. Mr. Cook came to me about the first of August and said to me: "The interest is now due on my sister's mortgage". I said to him, "It is a singular time of the year for interest to came due, I would rather have it come due every six months, that is, the first of October"; and he wanted me to go down with him to Trenton and pay. I told him I would never pay another cent until the papers were fixed.

Q. What did he say then? A. I don't remember what 30 he said; he might have made a reply, but if he did I don't remember.

Q. (The previous question was then read to witness, as follows): He says that he made an arrangement to have the $10,000 mortgage removed from his premises, and then he saw you and told you that he thought his sister would want to have eight or ten thousand dollars of her money remain on the farm, but she is an old lady, and wanted to see and have a talk with you before she did anything positive? A. When did you say this was?

40 Q. About the last of July or the first of August. (To

this counsel added.) Was anything of that kind said to you? A. Sometime in that conversation, but not at that time—sometime in the conversation he said she was an old lady, but I don't know when, and something about she would like to have her interest money, and I told him, whenever he did not pay his interest money it should be foreclosed; but it was not about the first of August.

Q. At that time, or about that time, do you remember his saying anything about his sister leaving eight or ten thousand dollars on the property in Maryland? A. Not 10 that I remember.

Q. About the first of September he says that his sister came to his house and spent a few days—when did you first know that she had been there to spend those days? A. Not until after she had gone away.

Q. And she came, I understand, on Saturday, and remained until Tuesday morning—do you remember where you were, after she came there, until she went away? A. I was home on Saturday evening, and I saw a strange lady there, and I was home Sunday and seen her there, 20 and I was home until Monday, somewhere until 8 o'clock.

Q. When did you go away? A. On Monday, about 8 o'clock.

Q. And when did you return? A. On Tuesday night.

Q. He says that after his sister had gone away, he saw you and told you that his sister had consented to allow $8,000 to remain on the Maryland farm—the same amount that there was on the mill? A. We had no conversation until somewhere about the 12th or 14th.

Q. The 12th or 14th of what? A. Oh, hold on. 30

Q. (Question repeated.) A. I don't remember when he told me his sister had been there, and he meant me to see her, or something, and she was gone.

Q. He says that at that time you turned on your heels and walked away, and said: "You may do as you please, and I will do as I please"? A. Between the 12th and 14th of September I went to him at the mill, and sat there in the door, and talked to him about fixing up this arrangement of ours; I had been ready, and wanted to

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know whether he had heard yet from Mr. Van Duesen. That is the substance of it, not the exact words.

By Mr. LINDABURY.—Q. You say that was between the 12th and 14th? A. Yes, sir; I think it was about the 13th or 14th, but I won't be positive; it was somewhere between the 12th and 14th.

By the COURT.—Go on, Mr. Oakey.

A. He said he hadn't seen his man yet.

Further direct:

10 Q. Well. A. I told him I was tired of this; and then he said something about his sister being there, or something; I did not get that very clear—all what he said; but I was a little vexed, and I said, now you can do what you please, and I will do what I please, after this.

Q. He said he told you, at that time, that he was ready at any day, as soon as he could get hold of Mr. Van Duesen, but he was away from the city, and he had been down to see him, and his son said he would not be home for sometime, and he had written him and had received no reply?

20 A. He said he had written him and received no reply, and I told him it was the same old story, and I was tired of it.

Q. Did he say he was ready? A. No.

Q. He says that you said you were ready, and then he asked you whether you had got the search that you had agreed to get for him from the Clerk's office, and you said "no". You had agreed to get him a search? A. No; I had never agreed to get him a search, but I had one at that time.

30 Q. He said that he was to give you a search of his property down there, and you were to give him a search of your property here—is that so? A. He never asked me for it until I tendered the money.

By the COURT.—That is not the question.

A. Just read the question?

[Question read.]

A. I don't remember about that.

Further direct:

Q. Why did you ask him if he had made his arrange-

40 ment with Van Duesen? A. Because the last conversa-

tion was that he had written to Mr. Van Duesen, and he expected a reply from him.

Q. How often had he given the reason, that he hadn't seen Mr. Van Duesen, for not closing up the title? A. I should think four or five different times.

Q. Did you go to see him before the first of September for the purpose of exchanging titles? A. Yes, sir.

Q. When? A. Somewheres near the 28th of August.

Q. Who accompanied you? A. John.

Q. Just tell, if you please, what passed? A. We went 10 in the mill, and I told him I had come to tender him the deed and the money, and wished to have the deed, and the mortgages removed.

Q. (Showing witness a deed.) Was that the deed that you tendered him? A. That is the deed, sir.

Q. Is that the deed for the Blackwell's Mills property, which is described in the bill, or only that part of it that you were to convey to him? A. Only the part I was to convey to him.

Q. And is that the deed that Mr. Cook saw? A. That 20 is the deed that Mr. Cook saw.

Q. How much money did you tender him at that time? A. $3,000.

Q. What objections did he make to the deed, or to the money? A. He said it was the first time that I had been ready.

Q. Did he make any objections to the deed, or to the money? A. He did not make any objections; he only said it was the first time I had been ready.

Q. What did he say, then, was the reason he was not 30 ready? A. He hadn't seen his man.

Q. What further passed between Mr. Cook and yourself, or Mr. Cook and your son, on that occasion, in relation to this matter? A. My son said that this matter must be fixed up.

Q. Where was your son then living? A. In Maryland.

Q. And what was he doing there? A. Farming.

Q. Farming this place? A. Yes; the Westover farm.

Q. Go on, and state what your son said to him? A. Well, he said it was time to put in the wheat crop, and 40

he wanted to get the corn off, so as to make arrangements to sow the wheat crop; and he did not propose to spend four or five hundred dollars to fertilize it, or get it ready, until he knew about it.

Q. Was anything said about the length of time in which Mr. Cook should get ready? A. He said he gave him until the first of September, and then, if he did not, this thing would be at an end.

Q. Did Mr. Cook make any reply to that? A. I think
10 he said—I am not positive—that he would write a letter to Mr. Van Duesen. I heard him say that; but whether it was right then or not, I am not positive.

Q. Did you have any talk with Mr. Cook after that date? A. Not but this once I was telling you of, between the 12th and 14th of September.

Q. Did you then go to his place of business—Mr. Cook's place of business? A. No, sir; only at that time—the 14th I did.

Q. What for? A. For the express purpose of seeing
20 if he was ready; the boys said they wanted to know.

Q. No, no; what was the necessity for it—that is all? A. In order that they might put in the wheat crop.

Q. What amount of wheat crop was to be put in, in acres? A. They wanted to put in from 100 to 125 acres.

Q. After you had seen him on the 14th of September, did you go to see him again? A. No, sir.

Q. What next did you do? A. Served him a notice.

Q. That notice, which has been read to you in the Answer, is a correct copy of what you sent him? A.
30 Yes, sir.

Q. You sent it by one of your sons? A. I sent it by David.

Q. Mr. Cook says that on the day when you said "You may do as you please, and I will do as I please", that he said "Very well, we will fall back on our original contract —you clear your property of your mortgages, and I will clear mine of my mortgages"? A. I heard him say something as I turned, but I could not get clearly what he said. I heard something about the original contract, but
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I could not give it as he said it; I had turned on my heels before that.

Q. You were vexed, you say? A. Well, I was vexed, and did not care what he said after that.

Q. When did you first know that Mr. Van Duesen had agreed to transfer his mortgages to the Blackwell's Mills property? A. When I heard it here.

Q. When did you first hear that Mr. L. D. Cook was willing to aid his brother? A. I never heard it before I heard it in this room. 10

Q. Now, Mr. Oakey, what have you to say about the improvements which Mr. Cook has put on the mill property? In the first place, he says he has put a new roof upon the house—he has done that—a slate roof? A Yes, sir.

Q. Were you consulted about that before it was done? A. Well, he asked me who would be a proper person to get to put it on, if you call that consulting. He did not ask me anything about whether he could do it, or anything of that kind. 20

Q. Your consent was not asked, then? A. No.

Q. About improvements in the mill—was your consent asked to those things? A. No, sir.

Q. State what the character of the improvements are to the mill. He says the painting is a very great improvement—what do you say about that? A. Well, it would not be any improvement to me; it is not much more than whitewash—it is going off very fast.

Q. He says that the dam is improved very much; that he expended $50 on that—what have you to say 30 about that? A. It is not in as good condition now as when I left it; he put one stick on, which is worth $1.50, or $1.75, or $1.80—something like that; it is placed on the far end of the dam, and is larger than necessary.

Q. How many feet long is it, about? A. I have to guess a little; it is something between 15 and 19 feet; it is not longer than 19 feet, maybe shorter.

Q. What would be the actual expense incurred in getting that stick and fitting it on the dam? A. I used to get them and put them on; I put the other one on, and 40

I should say it cost from two to three dollars for the other stick. This is longer than that.

Q. Now, the improvement to the end of the dam, the stone work, where it has fallen down? A. It is not as good as it was when he got it; he had the masons there a day or two; but the dam is not as good now as it was before.

Q. Were the stones there before you left the property, so that no stones had to be gotten? A. Yes, sir.

10 Q. He says he put in a new rack before the forebay—what do you say about that? A. I sold him some slats that he put in there.

Q. How many; do you remember? A. I don't; I did know; but I don't remember; they cost me $5, I think; and I think he has put in a few; it looks like some he had taken off the corn crib and put there; I don't know whether he did or not.

Q. Now, what have you to say about the condition of the water power, the cistern—that is, the forebay which 20 furnishes the power to the mill, in comparison with what it was when you left it? A. There is not near the power —I think this dirt obstructs the water; it gets in a passageway and gives it less power; I mean where this foundation has fallen down; it was there when I came there; I don't know who put it there; there was enough passage way there for the water, and we were working there several days with wedges, and one thing and another, and got it out, and threw it up, so as to give more vent.

30 Q. What have you to say about the mill, in other respects, being in as good condition as it was when you left it? A. Well, where they took out the fly-wheel there seems to be a leakage—the casing is not tight, the water runs out whether the mill is shut or not; that gives less power, and I am not able to judge about the stones; they forbid me to look at the stones.

Q. When were you there? A. Either yesterday or the day before—yesterday, I think, or the day before—the day before I went there in company with Mr. Kugler and 40 Mr. Hagaman.

Q. Did you ask to look at the stones? A. Yes, sir; one of the men asked.

Q. And you were refused? A. Yes, sir. About the condition of the stones in this mill, if they are not kept in proper order it is not possible to make good flour.

Q. Did Mr. Beatty say anything about the power? A. Not much.

Q. What did he say—were you by? A. I was by.

Q. Tell what he said? A. I did not hear all; I guess Mr. Kugler can tell about that. 10

Q. What is the condition of the property in other respects? A. Do you mean the general property?

Q. The general property, the whole property, as compared with its condition at the time you left it? A. Take the house: the roof is worth all it cost—that is, if I understand what it cost, and I think I do; but outside of that the property has depreciated in value. The house: the dooryard, in front—the fence is left hanging everywhere, the wires is broken, and there has been a general going out of the whole thing. There has not 20 been anything done to it, and I think the mill has depreciated. All mills do, unless you repair them.

Q. What will be the average depreciation to the water wheels that are not properly repaired annually? A. Well, it has cost us to fix up—but that includes, besides water wheels, the cistern, and so on.

Q. On an average, what is the annual cost to keep a mill properly in repair? A. It costs me from three to six and seven hundred dollars every year, sometimes more.

Q. Do you mean by that, no year less than $300? A. 30 Yes, sir.

Q. Now, what is the condition of the outbuildings? I call your attention to the cattle barn, compared with its condition at the time you left? A. Well, they have gone down very much; the boards are off everywhere; the doors are down everywhere, and in the cattle yard the boards were off everywhere, when I last looked at it.

Q. When did you last see it? A. I looked at it last week.

Q. What day, the 30th of May? A. Sir? 40

Q. The 30th of May? A. Well, maybe it was; and then I looked at it once or twice since.

Q. Have you been able to look at the inside of the barn buildings? A. No, sir; they always locked them up. I went one day to examine them and they locked the door on me. I asked to be permitted to go in. I saw the colored man in Mr. Cook's employ, and his response was, his orders were to lock it, and not let me in.

Mr. LINDABURY.—That is not competent.

10 Q. Now, this property is located on Blackwell's Mills—how far below Millstone? A. About two miles, they call it, I believe.

Q. What is the character of the country surrounding this property? A. A farming country.

Q. Is the land valuable? A. Well, it is as valuable there as most anywhere around the country.

Q. And how is the house located, with respect to commanding appearance on the highway? A. What house do you mean; the mill?

20 Q. The mansion house? A. It is located so as to have a view over the bridge and both roads.

The COURT.—I don't know that that can throw any light upon the subject.

Q. Can you form any approximate amount of the cost of the improvements which Mr. Cook has put upon the property? A. Well, tell me what improvements you mean?

Q. You heard Mr. Cook's statement—he said he put a new roof on the house, and painted the mill, and put in a 30 new rack, and put in new steps? A. Oh, steps are a thing you can put in at any time; they will wear out sometimes in half a day. He put in a new rack in the forebay.

Q. If you know what the improvements are, can you tell, about, what they cost? A. Most of them.

Q. State what the fair cost of them is? A. The house, and all, you mean?

Q. Yes. A. The house, and the work done by Mr. Van Dine, fixing up other things, about three hundred and 40 twelve dollars and some cents.

By the COURT.—Q. That is, everything, you mean? A. Done by the carpenter, yes, sir; fixing up, and everything; he found everything except a few boards, and they came out of the mill. He said the two coats of paint cost forty-five dollars and some cents; I don't remember the cents. I heard Mr. Cook say that he agreed with the painter to pay $35 to paint the mill two coats.

Q. Did he paint two coats or one? A. One coat, to experiment on; and he paid him half for that.

Q. Go on. A. Now, what the yellow ochre cost, I don't 10 know—what they painted the sides with. The front, they painted something else.

Q. You lived right there, close by the mill property? A. Within 25 yards.

Q. And how much of your time have you spent there since last September—at home, I mean? A. Since last September I have been home, with the exception of odd days, most of the time.

Q. And what have you to say about the milling business there—the increase of his milling business over what 20 business you did? A. I don't think there has been half the grain handled—maybe not over half that there was when I was there.

Q. What do you say about the running of the mill? A. I think they sold more feed than I did.

Q. How about the flour? A. Well, on the start, they seemed to be doing quite a business; I don't think in the latter part their trade was any more than mine was, that I had in the weakest time. When a person first goes to a new place they do more trade than I did. 30

By Mr. LINDABURY.—Q. When they got acquainted with you they dropped off? A. The last part of his milling I don't think they had any more, if as much.

Further direct:

Q. Mr. Cook says that you did not tell him that you knew nothing about his property down in Maryland; that you knew nothing about the record, and would have to rely upon his statement with respect to the mortgages on the property—what have you to say about that, Mr. Oakey? A. I say that I did tell him so. 40

Q. He says that you told him that the mortgages on your mill property was $6,000, and not $8,000—is that so, or not? A. I told him it was $8,000—six to one, and two the other.

Q. He said there was no arrangement by which $8,000 should be left on each property?

Mr. LINDABURY.—You have gone over this with this witness, and got the story.

Q. Answer my question, Mr. Oakey.

10 The COURT.—This last question, I think, he has answered.

Mr. CLARK.—I don't wish to take up the time unnecessarily.

Q. Mr. Cook says there was no agreement in your conversation, that $5,000 difference was to be changed in this way: instead of $8,000 on the Maryland property, that ten thousand should be left on that property, and three thousand in cash?

[Objected to by Complainant's counsel, as leading.]

20 The COURT.—Well, what the conversation was is the proper rule. I think, Mr. Clark, that the rule is to call the witness's attention to the conversation, and ask him if he recollects what was said upon that subject; and after he gives what he recollects what was said upon that subject (if he recollects anything), then to pursue the course you have pursued. You are permitted to put the question precisely as you do, but you first test the recollection of the witness as to the different subject.

Q. Very well, Mr. Oakey, first state what was said be-
30 tween you and Mr. Cook, about changing the arrangement, instead of making the mortgage $8,000, $10,000 on the Maryland property, and instead of your paying him $5,000, you were to pay him $3,000?

[Objected to, as already answered. Objection sustained.]

Q. Mr. Oakey, in the conversation you held with Mr. Cook, at the time you made him the tender of the deed, in the presence of your son John, did you say anything to him about having been ready since the first of June,

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and having the money in the bank? A. I did; I told him I had been ready, and had the money in the bank.

Q. Was that the fact? A. Yes, sir; I had the money at any time to pay. I had other sources besides the bank; I had people who owed me.

Q. Was there anything said by your son at the time, not only about it costing a great deal to put in the crops, but also he did not know whether it would be safe, because he might not be able to reap them? A. Yes, sir.

Q. State what was said? A. He said he did not know 10 whether it would be safe, because he did not know whether he would be able to reap them.

Q. Go on. A. He had been told by people down there that it would not be safe.

Q. What did he say to Mr. Cook—I mean about the mortgages? A. He said he did not want to put them in until these things were fixed.

Q. Mr. Cook says that he did not tell you repeatedly, between the months of July and August, that he was not able to transfer the title because he had not seen his man 20 Van Duesen, who had the second mortgage on the Maryland property for $5,000, and he did not know what arrangement he could make—what have you to say about that?

[Objected to, as leading.]

The COURT.—The witness has spoken about that matter.

Q. Did you have any conversation of that sort, in which he spoke in that way, and if so, what was said? A. Yes, sir; we had three or four conversations in that way; and 30 he told me Mr. Van Duesen had gone to a watering place, and he did not wish to disturb him; and I made the remark that he was not far, and he could go and see him; and then he told me, at different times, that he had not heard from him, and hadn't seen him yet.

Q. What was the reason that the title was not passed? A. Because Mr. Cook never came up to it; I was ready and willing any time he was ready, according to our last agreement, and could have done the other way if he had set right out. 40

Q. When did you first hear that the property—I think I have asked you the question—when both properties were to be clear of mortgages. I will ask you again, for safety. When did you hear that both properties were to be clear of all encumbrances? A. Here, in the court.

Q. Mr. Cook says that he told you he had a mortgage on his property, and there was a mortgage on yours, and any time you named, so as to have the mortgagees come together, you would meet together and transfer your 10 deeds at any time you named; and he also told you that was to be done on or before the 20th of June—did he tell you anything of that kind? A. He did not.

By the COURT.—Q. You say, Mr. Oakey, that the title was not passed because Mr. Cook did not come up to it, and that you were ready, according to your last agreement, and could have been ready, according to your first agreement, if he had said so. By the first agreement, you mean the writing? A. First, before the writing, we thought that we would leave $8,000 on it, and then, after- 20 wards, I told him I had a little money on the books, and needed a little to buy things, and wanted to know if I could make an arrangement for $10,000, and he said I could.

Q. And so the second agreement was with the understanding that you were to leave $10,000 on, instead of $8,000? A. Yes, sir.

Further direct:

Q. Could you have removed the $8,000 from the property if you had been requested to do so? A. He said so. 30 Mr. LINDABURY.—No; he said he could have carried out the first one; he evidently means he could have left $8,000 on.

Q. Could you have cleared your property, if it had been in the agreement to do so? A. I could have.

Q. Why did you decline to carry out the exchange after the 17th of September, or on the 17th of September? A. Because I did not get any more satisfaction then than I had in the first about the settlement, and I did not feel safe, and go on and let these men put this wheat in, un- 40 der the circumstances, and not knowing who should reap

it—whether our boys should reap it, or whether the mortgagees should reap it.

Q. Mr. Cook says that he frequently told you that he had a mortgage on his property, and you had a mortgage on yours, and any time you would name, so as to get the mortgagees together, you would fix it up so as to exchange titles—did he ever call your attention in that way? A. He did not.

Q. He says, that after repeatedly calling your attention to the matter in that way, you finally wanted him to arrange the $10,000 on the Maryland property, because you could not get the money here—was there anything of that kind said? A. There was not.

Q. When you were down in Maryland, in July, did you make any preparation for future farming? A. I did.

Q. What arrangement did you make for continuing on the farm? A. I made arrangements with the boys to carry out what we would do; I told them certain pieces of woodland I wanted left, and some I wanted cleared off, so as to get it in shape to straighten it up in the Spring; and I told them what improvements we must make, and made arrangements of that kind; they was to work it out.

Q. Why did you refuse to give Mr. Cook money, from time to time, as he requested? A. You mean the three different times that he asked?

Q. Yes. A. In the first place, I did not feel disposed to let him have $2,500, unless somebody would be responsible for it; and the second time, I made up my mind I would not do it; and one morning he came in before breakfast, and said, "Give me your check for $500"; and I told him I had a note to pay in the bank.

Q. When last have you seen the Maryland property—about when; within a couple of months? A. Yes.

Q. Since the Receiver was appointed? A. Yes; since the Receiver was appointed.

Q. Was it then being farmed? A. Yes, sir; it was then being farmed.

Q. Well, now, what was the condition of the property then, with reference to the fences, as compared with its

condition when you had it? A. I could not see much difference, unless where John had taken up a fence to make a corn crib, which had been on the place, which was on the place right above the other that we had taken down.

Q. Were the buildings in any worse condition than they were when you left? A. Two doors had blown off the wagon house pretty much, and that was all; and this fence, some of it, was up in the hog yard.

10 Q. What kind of buildings were the outbuildings there? A. Miserable; the barn, the wall in one end was out, and it was not fit to put anything in, and we had to straighten it up; and we put a new roof on it, and boarded it up, and got it in better shape; and the other barn, where the horses were, got the manure out of the yard, so as to let the water off, so that the horses could stand in a dry place.

Q. What was the actual value of the whole outbuildings—state how much, in your judgment? A. Well, I 20 would not give for my use, if I wanted them—I would not give $800 for all the buildings on the place, except the house.

Q. What is the value of all the fences on the place when you went there? A. Well, I would not give $50 for them; maybe not $40.

Q. What kind of a fence was it? A. It was made out of pine, yellow pine, that grows in the woods.

Q. What was the condition of the timber, with reference to age? A. Sir?

30 Q. What was its condition? A. The fence?

Q. Yes; old or new timber? A. Old timber.

Q. Were the fields separated by fences, or only by ditches? A. There was a fence—a picket fence that surrounded the kitchen—that was pretty good; that enclosed the garden, that was pretty fair; but in regard to the worm fences, as we called them—they call them log fences down there—I will not give very much for all of them.

Q. Are you able to state what is a fair price and valuation of that Maryland property at the time you re- 40 ceived it?

The COURT.—Q. What advantage is there in that to this controversy?

Mr. CLARK.—Simply to show, if the Court please, that unless the mortgages were removed there was no equity in the property, and therefore I would not be justified in going and making the exchange until the mortgages were removed, so that he could receive something from the property—some equity.

The COURT.—Go on, and answer the question.

Q. Are you able to state what is the fair price and valuation of that Maryland property, at the time you received it—what would it bring; that is what I mean? A. A number of gentlemen stated to me what the property was worth while I was there. 10

The COURT.—Not what was told you; if you have any judgment about it you can give that.

A. $15,000 would be the outside mark for everything that is on it.

By Mr. LINDABURY.—Q. When you took it? A. Yes, sir. 20

Further direct:

Q. Dr. Ribble says that he came and tendered you a deed for the property—when was that, Mr. Oakey? A. Sometime in October—somewhere near the 17th or 18th—that is as near as I can get at it.

Q. State what passed between you? A. There was a knock at the door, and I came out, and Mr. Williamson and Dr. Ribble were there; and they said they came to see whether they could not make some kind of an arrangement with me about this matter. And I supposed, 30 from what I knew of the men, that they was maybe going to get a referee, or something; and I asked them in; and they came in, and sat down; and Dr. Ribble asked me some questions about it, and I said I did not wish to talk about it now, it was too late—the time had gone by; and I had also been advised not to say anything about it; and he sat over in one corner of the room, and I sat on the opposite side, quite a ways apart; and he said, "I have got the deed here that Mr. Cook wanted me to tender you, do you want to see it? It is the deed; do you 40

want to see it?" And he did not come towards me; he got up on his feet, and then he sat down, and put it in his pocket.

Q. That was at what time? A. Somewhere between the 17th and 20th of October.

Q. He says he told you that he was instructed to tell you that they were ready to comply with the articles of agreement to exchange the deeds. He said that each property was to be free and clear of encumbrances, and
10 to comply with the arrangement as it was originally, and as he had signed it? A. That I did not hear.

Q. You say you did not understand from Dr. Ribble that the properties were to be free and clear from encumbrances, at that time? A. No, sir; he said that he was ready to comply.

By the COURT.—Q. Did you then say that you did not wish to talk about it? A. Well, it was too late; I told him I did not wish to talk about it.

Further direct:

20 Q. I want to call your attention to the conversation had with Mr. Albert Voorhees. Just state why you went to Mr. Voorhees, and what you said to him, after you went to see him? A. Mr. Cook went to Mr. Voorhees and asked him whether that was a dower—the mortgage on the mill property—whether it was a dower, and whether it would be taken off.

Q. What else did he want you to ask him? A. He wanted to know whether it could be taken off, or not.

Q. Well? A. Well, do you want to know the conversa-
30 tion?

Q. Go on, and state what you did by reason of that? A. I had been to see Mr. Albert Voorhees before, once—when we bought the property of Vansant; and I went to Mr. Albert Voorhees; I said, "I—

Mr. LINDABURY.—Wait: I object to that; he has no right to state the conversation.

The COURT.—Mr. Voorhees was a witness, and has given his version of the conversation.

A. (Continuing.) Mr. Voorhees said "No, it was no
40 dower, it was his own"; and then I asked him, how would

you like to exchange? I had asked him that question before, and he said "No"; and then I asked him if he would accept the money now for the mortgage, and he said "No, not unless they paid the interest up to the first of April".

Q. Well? A. Well, that was about pretty much all.

By the COURT.—Q. Did you state when this was? A. I can't remember the time exactly.

Further direct:

Q. Mr. Voorhees said you asked him to transfer the 10 mortgage and put it in the Maryland property. Did you have a conversation of that sort? A. I asked him the question, whether he would exchange the mortgage. I don't know whether I used the word "Maryland".

Q. Did you want him to exchange the mortgage on the Maryland property? A. No, sir, I did not, and never asked any other person to put it on the Maryland property.

Q. Did the mortgages on the Maryland property have anything to do with this visit to Mr. Albert Voorhees? 20 A. No, sir; it did not.

Q. That was not your purpose or object? A. That was not my purpose, at all.

Q. Did you know, until Mr. Howell told you, that the seals had been put upon that instrument? A. I did not.

Q. When was that, Mr. Oakey? A. On the 25th day of October Mr. Howell came up to the cornfield, and said to me, "You and Mr. Cook cannot settle, come down and settle with me". I told him I had been down, and he was not at home. He said no, he went to get a coachman 30 from New York. Well, he said, you ought to arrange it, and not be paying out money without getting any compensation, or something. And I said, that is good advice; and he said, if you want to, there can be $15,000 left on the Maryland property. I told him I did not want any more left on it than there was to be left, and I asked him, when did you put those seals on, they were not on when I signed it? He said that day, after I got home.

Q. Now, the house that Mr. Kohn speaks about, as being burned down, what kind of a house is that? A. It was 40

a cheap cabin—boards straight up and down. It is a very common-looking house. I never went inside of it, and don't know much about it. Sometimes I opened the door and looked if Sam was there. It was a very common, cheap arrangement.

Q. Was that burned down before you left possession of the property, or not? A. Well, we had the property.

Q. Do you know anything about any more clover sod being plowed now than there was when you took posses-
10 sion? A. Well, the old sod is just the same, and there are two or three cuts of new sod that have never been mowed, that comes in mowing for another year.

Cross-examined, by Mr. Lindabury:

Q. Mr. Oakey, what kind of property was it that you went to Richmond to look at? A. It was farms lying along the James River.

Q. Had you advertised your property? A. No, sir; I had not.

Q. Had you, or your son, put it in the hands of a real
20 estate agent at Trenton or New Brunswick? A. I never put it in anybody's hands.

Q. Please answer the question? A. I don't know what my son did, but I did not.

Q. Did you know of its being put in the hands of a real estate agent? A. I never knew it until I received a letter from the real estate agent, saying that some one had left it in his hands.

Q. Who was the real estate agent? A. Van Fleet of Trenton.

30 Q. Did you ascertain then that your son had done it? A. I asked him if he had done it, and he said he never put it in his hands, any more than he gave him—I forget the answer he gave me.

Q. You had become anxious to exchange the mill property for the farm? A. I had talked of it, because my son wanted to go farming.

Q. Which one? A. John.

Q. So it was for John that you desired to get the farm? A. Yes, sir.

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Q. Had he had any experience in farming? A. Yes, sir.

Q. How long before had he farmed? A. He had farmed all his lifetime, until he came to the mill, and he did, part of the time, there.

Q. Did he come to the mill with you? A. He came to the mill with me, and after he got married he took my farm.

Q. How long did he farm your farm at Blackwell's Mills? A. He had it for one year all the year, and he had 10 agreed for it for another year.

Q. Besides that, had he done any farming during the 10 years that he lived there? A. He helped me farm on my farm.

Q. That is the amount of experience he had had? A. Yes, sir.

Q. How old is he? A. I should think he was 25. I might miss it.

Q. Then the amount of farming he had done when you lived at Blackwell's Mills was not great? A. No, sir; but 20 he had plowed.

Q. About how large was your farm at Blackwell's Mills? A. Somewhere between 80 and 90 acres, I suppose.

Q. And you say that one year he had the control of it—the whole control of it? A. Yes, sir.

Q. What year was that? A. Well, I could not tell you what year it was.

Q. Was it before the year he was in the mill, or after? A. Before.

Q. How long? A. Not very long; probably a year be- 30 fore.

Q. He and Rittenhouse did not succeed well in the mill? A. I think not.

Q. They succeeded very badly? A. I think they did.

Q. You haven't any doubt of it, have you? A. Not much.

Q. It was when they went there, that Mr. Van says it began to run down. I think he says about two years before you exchanged. It ran down fast during the year they were there, didn't it? A. Not so very fast. 40

Q. You thought he had better go to farming again? A. Well, I don't know; he wished to go farming.

Q. He thought so? A. He thought so.

Q. How much did the custom work of the mill run down during the year John and Rittenhouse had it? A. That is more than I am able to tell.

Q. One-half? A. I don't think it did.

Q. How much, about? A. I could not tell, because I did not keep any account of it; I used to keep an ac-
10 count of all the work that came into the mill before that.

Q. The mill was in bad repair? A. The stones was a little out of order.

Q. It seems to have taken you from the time they gave it up until the freshet came, to get it in working order again? A. Well, sir, I did not work at it all the time; I would take up one stone, and then I would take up another; it would not do to take them all up at one time.

Q. In making your arrangement with Mr. Cook, at what did you estimate your place? A. What did I ask, do you
20 mean?

Q. Yes. A. I asked $20,000.

Q. And did you exchange on that basis? A. We did not exchange on any basis; I just merely said what I would give.

Q. And what valuation—you said you asked him $20,-000? A. Yes, sir.

Q. What was your idea of the value, in your own mind? A. Well, I don't know that I formed any opinion.

Q. Did you put it, in your own mind, at $15,000? A.
30 At no particular price.

Q. What did you think it was worth? A. All I could get for it; I don't know what, exactly.

Q. You had some idea of what it was worth? A. I had an idea of what it was worth to me.

Q. What? A. Well, I had no particular price, only I made up my mind what was the difference in the property, what it was worth to myself, or somebody else.

Q. Did you think it was worth $18,000? A. I said it had cost me $20,000, and it had cost me that.

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Q. Did you think it was worth $18,000? A. I would not have wanted to pay it.

Q. Did you think it was worth $15,000? A. I did not form any calculation of what it was worth.

Q. Did you have no opinion of its value? A. I would have had if I wanted to buy it.

The COURT.—It is a fair question, Mr. Oakey, and you are a good judge, and they have a right to know; give your best judgment.

Q. I will repeat the question. Did you have any opin- 10
ion of its value—what do you say? A. Well, I think it ought to be worth $18,000 or $20,000; that is, I thought I ought to get that, because it cost me that; but I did not think it was worth that.

Q. What did you think it was worth, Mr. Oakey? A. $13,000 or $14,000.

Q. You thought it worth that? A. Yes, sir.

Q. Do you still think so? A. I do; it may not be worth $15,000, but that is my judgment at the present time; property has depreciated. 20

Q. When did you first make up your mind that the property in Maryland was worth $15,000 only? A. Well, I made it up while I was in Maryland.

Q. Then, in giving $5,000, did you make up your mind that you had made a bad bargain? A. I did not say that.

Q. Didn't you? A. Is that a fair question?

The COURT.—I think it is, Mr. Oakey.

Q. (Question read.) A. I thought at the time it was about fair. 30

Q. What time? A. At the time we traded.

Q. I ask you what you thought when you made up your mind that it was not worth $15,000, with all the crops on it? A. You asked me about the Maryland property, with the crops—do you mean the crops and all? I meant the farm and lands—the farm, as we generally buy it.

Q. You testified not half an hour ago that the farm was worth but $15,000, with everything on it—that is the answer you meant to give, is it not? A. Well, with the

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wheat crop on, you might say $16,000; but all the rest $15,000.

Q. Then, what do you mean by saying a little while ago that $15,000 was the outside mark, with everything on it? A. I meant to say that if it was set up for sale it would not bring any more.

Q. You have a petition down there in circulation at the present time, have you not, for signatures, which reads something like this: (Council read from said petition.)
10 Have you such a petition circulating down there for signatures? A. I am not aware of it, particularly; I heard there was something like that.

Q. Who got that up?

Mr. CLARK.—Ask him what he knows about it.

Mr. LINDABURY.—Let me ask the questions.

Q. Who got that up?

Mr. CLARK.—Does he know anything about it?

The COURT.—He is a party, and this question goes to the extent of his interest, therefore it is a proper ques-
20 tion.

Q. What do you say? A. Ask it again?

Q. Who got up that petition? A. I don't know as I can tell who got it up.

Q. Didn't your counsel? A. I don't know that he did.

Q. Have you not heard of it from him? A. I heard them talk something about it, but I did not know that he had done it.

Q. He advised you to do it, didn't he? A. We talked about it.

30 Q. And does it not go on to state that the property would not bring more than $10,000 or $12,000 in cash?

Mr. CLARK.—He has never seen the petition, and how is he to state?

A. I have never seen no petition of that kind.

Q. Don't you understand this petition to have a value mentioned in it? A. I did not understand that there was a petition out.

Q. You said you talked with your counsel about getting up such a petition? A. There was something spoken
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of about getting one awhile ago, but I did not know that it had been done.

Q. Is it your present judgment now that the property would not bring more than ten or twelve thousand dollars cash? A. I don't know what it would bring now.

Q. Is that your judgment? A. I think it would bring probably a little more.

Q. How much? A. I think thirteen or fourteen thousand dollars.

Q. So, it is not worth more than your property? A. I can't tell anything about it. 10

Q. You don't think it is—come, give your judgment? I don't care a cent what the truth is, I want your judgment? A. You don't want the truth?

Q. Yes; but I want your opinion of it. I ask you if you think it is worth more than the mill property? A. I don't know.

Q. Don't you know what you think? A. I know what I think.

The COURT.—If you have any judgment, tell about it, Mr. Oakey—give your best judgment, and we will go on. 20

A. It might be worth a little more.

Q. How much—may it be worth a thousand dollars more? A. Yes.

Q. Do you think it is? A. I think it is.

Q. Then, if you made an exchange, you would be $4,000 out, would you not? A. I don't know whether I would or not.

Q. You were to pay $5,000 difference, were you not? A. I got the crops; there ain't no wheat on it now. 30

Q. Then, Mr. Cook would be $4,000 out if he did not make the exchange, would he not? A. I don't know anything about Mr. Cook.

Q. How much did you get out of the crops, then, $4,000? A. No, sir.

Q. How much? A. Do you mean net?

Q. No, sir; any way you please, only give me an answer? A. I don't know anything about it, any more than I have seen the receipts. 40

Q. What do you understand the farm turned you? A. About $2,500; that is, without taking any out for the labor.

Q. Nothing out for the labor? A.

Q. Was that true about the 98 bushels of clover seed, that you understood you got—98 bushels of clover seed off of it?

Mr. CLARK.—If the Court please, we object to that.

[Objection overruled.]

10 A. My son told me there was 98 bushels; but I want to know whether that includes everything?

Q. Did you understand that you got 1,800 bushels of wheat? A. No, sir.

Q. How many did you understand you got? A. If you will allow me to give you the receipts—I don't know anything about the bushels of wheat in the receipts.

Q. Can you remember how many bushels there were? A. There were 1,600; I can't give you the odd bushels.

Q. How many bushels of rye do you understand you 20 got? A. I never knew.

Q. About how many? A. I don't know; I only know what they said.

Q. Did you cart hay down there until you got tired? A. Yes, sir; and got tired pretty soon, sometimes.

Q. Did you get 160 loads, or tons? A. No, sir.

Q. How many? A. I don't know how many loads; I heard the boy say something about 100.

Q. Well, $2,500 worth of crops—when you got those off, the farm was not worth any more than your mill 30 property, was it? In the Fall, after the crops were all off, the farm was not worth any more than your mill property? A. I don't consider it so; when I traded for it, with the crops on, I considered it was worth more.

Q. Will you answer my question? When you got the crops off, in the Fall, and wanted to give up the trade, the property was not worth, in your judgment, any more than your mill property, was it? A. If I had got possession of it, and put in the wheat crop, it would have been.

40 Q. You say it was worth fifteen or sixteen thousand

dollars, at the most, when you went there. Now you say $16,000; awhile ago you said fifteen or sixteen thousand, with the crops; now, taking off $2,500 that you got for the crops, it was not worth but $13,500, and that is about the price you put the mill property at; so I say you consider it was not worth any more than your mill property, after you got the crops off, don't you? A. Do you want me to say that I think one property is worth as much as the other?

Q. Not unless you do think so after the crops were off? 10
A. I don't know; there was not much difference in the valuation, as near as I can get at it at the present time.

Q. You did not give the notice in September until you had gotten every crop off the place that was on it? A. The corn was on it, sir.

Q. When was the corn cut? A. It was cut, but it was not husked; it was on the place, and a little hay was on it.

Q. You hired a lot of men to cut it and throw it down, didn't you? A. I don't know how they did it. 20

Q. Didn't you understand it so? A. No, sir.

Q. When did you understand the cutting of the corn was finished? A. I don't know.

Q. Don't you know that it was finished only a day or so before you gave this notice? A. I don't know anything about it.

Q. You never heard anything about that? A. No, sir; I never heard anything about it.

Q. Didn't your son come from Maryland the very day you gave this notice? A. No, sir; not the very day. 30

Q. When did he come? A. He came two or three days before.

Q. What day did he arrive? A. I think it was somewheres about the 14th.

Q. Well, now, do you think so? A. I am pretty sure; he is here, and can speak for himself.

Q. You say he did not come on the 17th? A. Well, I say he did not, because in my mind—he came very near the 14th, because I know he came home and asked me

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about it; it might have been the 14th, or 15th, or 17th; I can't tell you the day.

Q. Didn't your son write the notice? A. No, sir; he did not.

Q. Who did write it? A. Hold on; I recollect that.

Q. Well, did he write it? A. I ain't sure but what he did, come to think about it; I can tell by seeing the writing.

Q. Now, just think and see if he did not come back
10 that same day? A. No; I don't think he came back the same day—no, sir; he did not come back the same day.

Q. You would not be positive he did not? A. Well, I think he did not.

Q. You think he did not? A. Yes, sir—somewhere between the 14th and the 19th, I think he came back; but I could not tell the day.

Q. I suppose he did; this was on the 17th? A. Yes.

Q. Yes; this is the 19th; you say he came home between— A. Yes; he did not come home on that day.

20 Q. You say in that notice, I think, that Mr. Cook may put in the wheat crop, I believe; that is my recollection. Was there time enough to put in the wheat crop after that? A. Yes, sir.

Q. Plenty of it? A. Yes, sir.

Q. Plenty of time? A. Yes, sir.

Q. Well, how much? A. Well, I don't know how many acres there were; there were 70 or 80 acres that was plowed.

Q. Do you think Mr. Cook would not have needed more
30 time than that notice gave him to put in the crops? A. No, sir; I think not.

Q. To put in all the wheat there? A. All that was plowed.

Q. It would take him a couple of weeks to get down there and get it in shape? A. I don't know how long it would take.

Q. If it had, would he have had time enough? A. I know there was plenty of time.

Q. Mr. Bartine wrote you on the 21st of September a
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letter from Mr. Cook, didn't he, two days after the notice was served? A. Yes, sir.

[Counsel read the said letter.]

Mr. CLARK.—That letter was received.

Q. What did you reply to that? A. I did not reply anything.

Q. Why didn't you notify him that you were ready to do this? A. Because it was not according to our last contract, and I told him when the boys were up that September would settle this. 10

Q. But on the 17th, Mr. Oakey, you thought that the time had come for having a decision? A. I thought before that, but I wrote that the 19th.

Q. You say Mr. Cook would have ample time to put in the wheat crop after that, with no horse, or anything, down there? A. That would give him all the time that was necessary, and that was according to our agreement.

Q. If there was time enough for Mr. Cook, with no teams or anything down there to put in his wheat, after the 19th of September, there must have been time enough 20 for you, with all your teams there, to put it in after the 21st? A. Yes, sir; those 70 acres.

Q. Yes, and all the rest there was to be put in? A. Yes, sir.

Q. Plenty of time. Then you took no harm from the delay, did you?

Mr. CLARK.—That is a matter of argument.

Q. This delay put you to no inconvenience? A. Yes; our boys had been out twice and stopped their work; they would not cut the corn; they wanted me to give a 30 decision one way or the other; and I told them the first time they were at home—John was there until—

Q. Stop, I don't want your conversation with the boys. They did cut the corn, didn't they? A. Yes, sir.

Q. What time did you finally cut corn? A. I don't know.

Q. Didn't you cut that down earlier than anybody else did in Westover? A. I don't know.

Q. You don't know anything about it? A. No, sir.

Q. There was time enough to put in all this wheat crop 40

after that time, and therefore I asked you what inconvenience came to you from this delay?

The COURT.—He answered that; he said there was no inconvenience, because the boys had been out twice, and wanted to fix this thing up.

Q. What was the second contract you have just referred to, which you say this letter was contrary to? A. We agreed to leave $10,000 on the place.

Q. Now, that agreement—do I recollect aright—you
10 say that agreement was made the day you say the contract was made? A. Yes; he thought that could be easily arranged.

Q. Was whatever agreement that existed between you made that day? A. Yes, sir.

Q. From that day on did you understand that that was to be arranged? A. I did.

Q. That he was to leave $10,000 there? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Was it not to be $8,000? A. No, sir—$8,000?

20 Q. You say it was to be $8,000 before the agreement? A. Yes, sir.

Q. But when you made the agreement—after you had made the agreement you changed it and made it $10,000? A. Yes, sir.

Q. I read your letter of Sept. 19th—"Blackwell's Mills, N. J., September 19, 1883. To E. B. Cook, Esq. Dear Sir: The contract of exchange requires each of us to furnish a good title, satisfactory to each of us. Your farm is mortgaged for about $17,000, and by the mutual
30 agreement between us, you were to remove the $17,000 of mortgages, except the $8,000, which was to remain, and I was to leave the $8,000 on my mill". How do you reconcile that with your statement that the agreement was to be $10,000? A. That was our first agreement.

Q. Is that the only answer you can make to the question of how you reconcile this statement in the letter with your testimony that from the day the contract was made the agreement was for $10,000 to remain? A. That is the notice that we sent?

40 Q. Yes. A. Is that the notice, or the letter?

Q. Oh, the letter; I will read it again. (Counsel reads as above.) I ask you how you reconcile that statement in your letter with your statement now—that the contract from the first day was for $10,000 to remain on that farm? A. The agreement—we talked about it up there by the wagon house and down by the lane; and he arranged it so as to leave $10,000; and I would only pay $3,000; and I always made my arrangements on that understanding.

Q. If that is so, why did you say $8,000 here, that is 10 what I am asking—if the agreement was for $10,000 why do you say it was for $8,000 in your letter? A. Because the contract first was for $8,000.

Q. Is that the only reason? A. The only reason I remember at present.

Q. Now, I read a part of your answer: "That at the time, and subsequent to the making of the agreement, there were several conversations between this Defendant and the Complainant in relation to the mortgages upon the respective properties. There being, as stated, in the 20 foregoing notices, mortgages upon the mill property to the amount of $8,000, and it was mutually agreed that the titles for the respective properties would be exchanged and received with mortgage claims upon each of said properties to the amount of $8,000, as in the foregoing notice expressed". Is that true, as stated there? A. I don't seem to be clear on that thing.

Q. You read this answer? A. Now, you mean?

Q. No; it was read over to you when it was put in, was it not? A. I don't remember; it may have been. 30

Q. Don't you remember that the answer was read to you before it was filed—you knew what answer Mr. Clark put in for you? A. I suppose I did at the time.

Q. You told him about this, did't you? A. Just read that again.

Q. (Counsel read as above, and added: And you were always ready to do it that way, and you say Mr. Cook was not.) You told this to Mr. Cook, didn't you? A. I believe I did.

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Q. So that he put it in because you told him so? A. We had several conversations; but the conversation at that time—he agreed to do, leaving $10,000 on the property.

Q. You don't mention that anywhere in your answer. I showed you this letter of the 19th of September—whose writing is it? A. It looks like Davis's; it ain't mine.

Q. It looks like your son Davis's? A. Yes, sir.

10 Q. Do you remember the occasion of his writing it; it is this one, you know, of September 19th? A. Is this the one of the 19th? I can't read it on account of my glasses being dull.

Q. This is the one in which you told Mr. Cook that you considered the contract off, or something like that. When was it written, Mr. Oakey? A. When was the first written?

Q. Yes. A. I think he wrote this at our house. It was first written in Somerville.

20 Q. By whom—in Mr. Clark's office? A. No, sir.

Q. Or Mr. Gaston? A. I think Mr. Gaston.

Q. Who got him to do it? A. I did, myself.

Q. Did you tell him what to put in it? A. I told him.

Q. And took it with you? A. I did.

Q. And then your son Davis copied it? A. I believe he did.

Q. Who gave it to Mr. Cook? A. I sent it to Mr. Cook by Davis, my son; I don't know who gave it to Mr. Cook.

30 Q. Why did you ask Mr. Voorhees if he would transfer his mortgage of $6,000 to Westover? A. Because I had asked him that same question before, and I just thought I would see what he would say.

Q. When did you first ask him? A. Only that time—the time I got the mill from Van Duesen and the mortgage was transferred.

A. You had then asked him to transfer it? A. I had asked him to take the same mortgage on this mill of Van Duesen, and he done it—Albert Voorhees.

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Q. Did Albert Voorhees have it on the property when you took it? A. Yes, sir.

Q. And when you exchanged it was left there? A. Yes, sir; it was left there; the same amount was left there.

Q. Then you did not ask Mr. Voorhees at that time to exchange the mortgage? A. The Van Duesen, or this mortgage?

Q. You didn't ask Mr. Voorhees on that prior occasion to transfer his mortgage? A. No, sir; I asked him to 10 leave it.

Q. And this time you asked him to transfer it? A. Yes, sir.

Q. And he said he would not? A. He said no.

Q. And then what did you ask him? A. I asked him if it was a dower.

Q. And then what did he say? A. No; it was his.

Q. What next? A. I asked him if he would accept the money for it.

Q. The first thing you asked him, then, was if he would 20 transfer this to Westover? A. I think that was the first question.

Q. And he said he would not? A. Yes, sir.

Q. When was that? A. I could not tell you.

Q. How soon after you and Mr. Cook made the agreement? A. I could not say.

Q. A week? A. I could not say.

Q. A month? A. I can't tell, exactly.

Q. Was it before you had your deed written—you had your deed written, as I understand, as you finally agreed 30 upon, about the middle of June? A. We agreed before that.

Q. Well, before the middle of June. Now, if it was the agreement, at as early a time as this deed was written, that $8,000 should remain on this, why was not the deed made subject to that? A. They asked me what amount to put in—merely nominal.

Q. That was the consideration? A. Yes.

Q. But here you want the property to be free from all encumbrances? A. Yes, sir; we were to make it in a 40

new shape; but there was to be $8,000 on each, and we were to arrange the mortgages afterwards.

Q. $8,000 on each? A. No; so as to suit; that was the condition; and it was talked of a great many times; we were to arrange the mortgages so as to suit; but—(Witness stopped.)

Q. Go on—but what? The arrangement had first was that the deeds should be free and clear? A. All clear; yes, sir.

10 Q. That was your first understanding? A. Yes, sir.

Q. Was that the reason that you made your deed that way? A. I did not order them to make it that way, as I know of.

Q. That was written by Garry Hagaman? A. Yes, sir; that man, Garry Hagaman, wrote it.

Q. He wrote it upon instructions you gave him? A. He wrote it and brought it to us.

Q. You did not tell him that there was $8,000 to remain on the property—at the time you told him to write 20 it, you told him it was to be free and clear? A. I told him that the deeds were to be free and clear from encumbrance, but we were to arrange the mortgages to suit the parties.

Q. He had Mr. Cook's deed at the same time? A. He said he did.

Q. And you saw it; that was just the same way, was it not? A. I seen it while Mr. Cook had it, but I did not see it when Mr. Hagaman had it.

Q. Do you remember that there was no exeeption of 30 any mortgage on the property, don't you? A. I did not charge my memory with it; I don't know.

Q. I understood you to say that you suppose it was that way? A. I have no recollection of it.

Q. One way or another? A. No, sir.

Q. Well, that deed of yours, you were familiar with, I understand you? A. I only read it over twice in my life.

Q. I think you said it was altered once in respect to a spring? A. A spring; that was all; I read it over, and

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there was too much spring, and I made an objection to that.

Q. And you wanted some of the spring taken out of it? A. Yes.

Q. Now, I call your attention to another part of your answer, since you say it was read over to you. (It is not paged, or numbered, so I cannot refer you to the part.) "The Defendant", you say, "was continually put off from time to time, and the completion of the contract deferred, much against the wish of this Defendant, but solely on the 10 solicitation and request of the Complainant, the Defendant being induced to believe, by the statement of the Complainant, that there would be no difficulty in carrying out the agreement upon the return to Philadelphia of the said Van Duesen". Is that so; did he lead you to believe that he would have no trouble in carrying out this agreement when Van Duesen returned to Philadelphia? A. Well, first off I did; and afterwards I did not.

Q. First off, he induced you to believe that there would be no difficulty in carrying out the agreement after Van 20 Duesen's return? A. Yes, sir.

Q. Now, you say, on this account, and at his solicitation, it was put off; is that so? A. Yes, sir.

Q. So it was not put off by your consent—at his request, though, until Mr. Van Duesen got back from Philadelphia? A. No consent of mine; he made that an excuse.

Q. Didn't you consent to it? A. No; I did not consent to it.

Q. You say it was put off against your wishes, but at 30 the solicitation of the Complainant. The matter was put off upon his inducing you to believe that it could be done when Mr. Van Duesen got back? A. Not when he got back, but that he would consent to it.

Q. You say here he induced you to believe that he could do it when Mr. Van Duesen got back to Philadelphia. Is that the fact—did he induce you to believe that? A. He induced me to think that he would do it; but after awhile I did not believe it.

Q. Was there any time when he induced you to believe 40

that this could be done when Mr. Van Duesen got back to Philadelphia? A. First off I did.

Q. Now, when was that? A. I can't tell you; sometime in June it might have been; I don't remember whether it was or not.

Q. Now, did he induce you to believe that? A. He said he could, and I thought I would wait and see what he done.

Q. Now, do you know when Mr. Van Duesen did get
10 back? A. No; I don't.

Q. Why didn't you wait and see when he did get back? A. I don't know anything about when he got back.

Q. Didn't Mr. Cook have a letter in his hand when you were there on the 14th of September, from Mr. Van Duesen's son, which he read to you? A. No, sir; he did not read me anything.

Q. And which says—I will read it to you. It is dated the 11th of September: "Yours of the 6th instant to Mr. Van Duesen has been received by me. He is still absent
20 from the city. If you will send me directions how to reach B. M. from Philadelphia, I will run on and look at the property and report to him so that he can decide in relation to it immediately upon his return to the city, in about ten days". A. I never heard the letter read.

Q. Well, did he tell you that Mr. Van Duesen would be back in 10 days? A. I don't think he did.

Q. On the 14th? A. I don't think he did.

Q. Didn't he have that letter in his hands? A. No, sir.

30 Q. Didn't he tell you he had a letter from Mr. Van Duesen's son? A. Not a word of it.

Q. Can you tell me now why you did not wait until Mr. Van Duesen got back? A. Because we had several conversations about it, and he was always the same, and I got tired of it; and he did not say that he was coming back, as I know of, and I understood he was writing to him.

Q. Did you ask him when Mr. Van Duesen would get back? A. I don't think I did. I asked him when, and
40 he said every time he would write to him about it; and

so I let it go, and supposed he would, until I got back from Westover.

Q. Now, when Mr. Cook led you to believe that he could fix this up when Mr. Van Duesen got back, did he tell you when Mr. Van Duesen would get back? A. No, he did not; he said Mr. Van Duesen was on his Summer vacation, and I said, "Can't you go down and see him, and have this thing fixed up"? Well, he said he did not want to bother him, and I said, "Well, it ain't far off", I said, "to the watering place, and I did not suppose he would 10 be away long—"

Q. But you never asked the time? A. No; because he was all the time giving me to understand that he would soon be back, the way he talked.

Adjourned until Saturday, the 7th day of June, 1884, at the hour of 10:25 o'clock a. m.

SATURDAY, June 7th, 1884. 20

Continuation of Case, Pursuant to Adjournment.

Appearances as heretofore.

JOHN L. OAKEY.—Cross-examination continued, by Mr. Lindabury:

Q. Mr. Oakey, have you the bill of the grain you sold about the time of your contract with Mr. Cook, which you said amounted in value to about $6,000? A. I have part of the bill.

Q. Let me have the part you have? A. That is the Bonnell bill. (Handing same to counsel.) 30

Q. The paper which you have produced is a letter from A. Bonnell, under date of May 4th, 1884, to you, is it not? A. Yes, sir.

Q. Purporting to give the amount and price of wheat and meal sold at a time not stated? A. No, sir; I asked him to put the dates on; that is the reason I said it was one of those; but I could not say about the date.

Q. The first item is 464 bushels of wheat, and 3,229 bushels, and 65 bags of meal—no, my question is wrong; I see that the first item of 464 bushels of wheat stands 40

alone—do you know when that was sent, Mr. Oakey? A. I don't remember the date; that is the reason I made the remark yesterday.

Q. The next two items seem to have been sent together—how soon after were they sent, so nearly as you can recollect? A. After the first, do you mean?

Q. Yes. A. I don't know.

Q. Was it within a few days, or weeks, or months? What is your judgment about it? A. Well, my judg-
10 ment is, it was sometime afterwards, but I could not tell, exactly.

Q. By that, would you have us infer a month? A. Yes, or a few weeks; three weeks, or so; three or four; I could not give the exact time; I could not give no dates.

Q. Well, there appear to be two shipments of meal, small amounts, and then one of 1,141 bushels of wheat, and 50 bags of meal together—about how long after was that? A. I could not tell.

Q. Were these last two, which are the large ones, after
20 the contract with Cook? A. I could not state, particularly.

Q. You think they were? A. I think they were somewhere about that time; I could not say; after the exchange—not after we moved—it was before.

Q. Not after you moved, but after the agreement? A. I think it was in—well, I don't know whether they were or not.

Q. $6,058.22 is the amount in value of these sales? A. Yes, sir.

30 Q. At the end of this, did they owe you that amount? A. Not the full amount.

Q. How much did they owe you? A. I could not tell.

Q. Tell as nearly as you can? A. I could not tell, at all.

Q. Now, wasn't it about $1,200? A. I don't know, sir.

Q. Who does know? A. I suppose Mr. Bonnell knows.

Q. Who got the money? A. I suppose I got it; but I have no way of getting the date now.

By the COURT.—Q. You did not give him credit for
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the amount you got—the last payment? A. No, sir.

Further cross:

Q. Cannot you tell whether it was nearer to $1,200 than to $6,000? A. Well, it was not the full amount.

Q. Was it $3,000? A. I don't remember the amount, I tell you.

Q. Was it $4,000? A. I don't know.

Q. Answer. Do you think it was $4,000? A. I don't know the exact amount.

Q. Do you think it was as much as $4,000? A. I don't 10 hardly think it was.

Q. Do you think it was as much as $2,000? A. I could not tell you.

Q. Do you think it was as much as $1,500? A. I tell you I don't know.

Q. Had not Mr. Bonnell advanced money to you to buy wheat—to buy some of this wheat? A. I think he advanced me a little money on one of those shipments; I don't know which shipment it was, sir.

Q. How much? A. That I don't know now; I did 20 know at the time.

Q. Tell, as near as you can estimate? A. I could not tell.

Q. Did he advance you $1,000? A. He might, but I doubt it; I would give you the answer if I could give it to you right, but I have no way by which I could tell.

Q. I want you to give me your best judgment? A. My best judgment is—I don't know exactly what I did give.

Q. You say that you told Mr. Cook, after this contract was made, that you had a good deal on book, and on that 30 account it would not be convenient for you to raise the $5,000, and you would consequently prefer that $16,000 should remain on the farm down there, so you would have but $3,000 to raise; that is so, is it? A. Yes, sir.

Q. Had you a good deal on book? A. I had quite a good deal on book around.

Q. How much, Mr. Oakey? A. Well, I don't know, exactly.

Q. Give me your best estimate? A. I don't know

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whether I could give it to you, for I did not keep the book.

Q. When you said you had a good deal on book, you must have some amount in mind; now, please tell us what you thought you had on book? A. Well, I don't believe I could give you the exact amount, for I don't know.

The COURT.—Q. Not the exact amount, of course not; you have not the books here, but your best recollection
10 of what it was then? A. Somewhere between $1,500 and $2,500; it might have been more, or it might have been less.

Further cross:

Q. Well, how much money had you then in hand? A. Well, if I had my bank book here I could tell you; sometimes I had in bank— (Interrupted.)

Q. Not what you sometimes had—how much money had you then on hand, so nearly as you can recollect or estimate?

20 By Mr. CLARK.—When did you mean, Mr. Lindabury?

By Mr. LINDABURY.—The time when he said this to Mr. Cook.

A. When was the time?

By the COURT.—You have said it was after the agreement was made, Mr. Oakey, you remember. A. Yes, sir. Well, between three and five hundred dollars.

Further cross:

Q. What source of getting money had you besides your
30 books? A. Well, I had three different sources.

Q. Name them? A. Well, this man, at Millstone.

Q. Who was he? A. I got something there from the distillery; I think between $500 and $600.

Q. They owed it to you? A. Yes, sir; about that time; and I don't know whether Van Cleef had paid me for his oats, and Eugene Wilson owed me some, and I had a sister who had $1,500, if I wanted it.

Q. Well, that is all, is it? A. Well, I had other sources if I wanted it; I had a sister-in-law who told me if I
40 wanted any money I could come to her.

Q. Well, any more? A. I don't remember any more.

Q. Now, you evidently had your mind on this subject, Mr. Oakey, and I hope you will be able to answer up promptly. How did the distillery men come to owe you anything? A. I sold some corn there.

Q. When? A. Just before the—it must have been in May.

Q. Was it before, or after the trade? A. Before.

Q. I mean now, by trade, the making of the agreement, was it before that? A. The time Mr. Cook was there; I think I was carting some corn; I forget whether it was before or afterwards. 10

Q. Was it at a time when you let Mr. Cook have some corn? A. That was when I was carting it.

Q. Then, that must have been after Mr. Cook came on there from Maryland, and took possession of the place? A. Well, he was there, and he wanted some corn; so much corn I let him have.

Q. Well, he didn't buy corn when he was there the first time, did he? A. No, sir. 20

Q. How much did the bill amount to, of the distillery men? A. I think it amounted to $546.67 and $26.

Q. When did you get that money? A. I can't tell you; I have not got the date when I received it.

Q. You have got a memorandum from which you are giving these names and amounts, and all the facts to which you are now testifying, have you not? A. Of the distillery account.

Q. And have you not also a memorandum of these other accounts? A. No, sir; I have not. 30

Q. Only the distillery account? A. Only the distillery account.

Q. Then, cannot you tell me when you got the money from that? A. I cannot.

Q. Tell me, as nearly as you can? A. I don't think I can.

Q. Did you get it that Summer? A. Yes; before that, I guess; let us see—May, June, I might have got it in the first part of June, or last of May.

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Q. Well, did you get it before you went to Maryland to harvest? A. Yes, sir.

Q. Vreeland & Van Cleef, what did they owe you for? A. Oats.

Q. When did you sell them oats? A. About the time I was trying to get the grain out of the mill, but I can't remember the dates.

Q. How much did they owe you? A. I don't know what their bill amounted to; I could not give the amount
10 of the bill; it might have been 300 bushel, and it might have been 350, and it might have been 250.

Q. Well, was it from 250 to 350, in your judgment? A. Thereabouts.

Q. How much did you get per bushel for it? A. Fifty cents.

Q. When did you get that money? A. I have no recollection.

Q. Before you went to Maryland to harvest? A. Yes, sir; that is my judgment about it.

20 Q. Did anybody else owe you any money? A. John Watson owed me for oats he bought for himself and brother.

Q. How much? A. Well, it was between $60 and $100, somewhere.

Q. When did you get that? A. Well, I got that different times; I got some of it, I think, before I went.

Q. Did anybody else owe you anything? A. Yes; there was several owed me on book, but I could not tell who they were.

30 Q. You have given us the amount of your book account, so nearly as you could recollect it; did that include these you have just told about—Vreeland & Van Cleef? A. No; it did not include these, nor the distillery.

Q. Did it include the Watson bill? A. I am not clear about that.

Q. Then there was owing you, on book account, the sum you have estimated, besides these bills you have given us. Have you your bank book here? A. I have not.

Q. What bank did you have that money in? A. Some-

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times in the New Brunswick bank, and sometimes I had some money in the Somerville bank.

Q. In what bank had you money at this time? A. Which time?

Q. I am talking of the time you say the contract was made?

By Mr. CLARK.—The day the contract was made; the 7th of May.

Q. I mean the time the contract was made, what bank had you money in? A. I had some in the Brunswick 10 bank; but I forget whether I had any in here or not.

Q. Which bank in Brunswick? A. The National Bank; there isn't but one bank in New Brunswick.

Q. What other bank, if any, had you money in then? A. If I had any in the bank it was in the Somerville bank.

Q. Which bank at Somerville? A. The National.

Q. Have you kept any money since in any other bank than those two? A. No, sir.

Q. You do not think you had any money at that time 20 in the First National Bank of Somerville? A. I hardly think I had; I am not positive.

Q. And how much do you think you had at that time in the New Brunswick bank? A. I could not tell, exactly.

Q. Did you have as much as $300? A. Yes; more than that.

Q. Do you think you had as much as $500? A. I could not give you the amount.

Q. How much had you on the first day of June in the 30 New Brunswick bank? A. I would rather fetch my bank book and let you look at it, because, if I was to undertake to give it to you, I would probably give it to you wrong.

Q. Mr. Oakey, tell me your best judgment; if you go wrong we will not charge you with having stated a thing positively that you do not say positive. In your judgment, how much did you have? A. I cannot tell at that time, but I have had sometimes— (Interrupted.)

Q. Now, hold on; at that time; not other times. Do 40

you think you had $1,000? A. I had from $1,000 up to $3,600 to June and July.

Q. What was your average balance there through the month of June? A. I could not tell you.

Q. Did it average $1,000? A. I should think it did; more too.

Q. You made large deposits, and drew on them right away, sometimes, didn't you? A. Well, I cannot give you the bank account.

10 Q. You told Mr. Cook that you had $3,000 in the bank ever since the first of June; now, you ought to have known, when you said that, whether it was true or not? A. I had $3,000 in, but I did not say all the time.

Q. You told him, when you tendered him that $3,000, on the 28th of August, that you had the money there, and it had been in the bank ever since the first of June? A. I don't remember saying in the bank; I said I had been ready; I had not had it in the bank since the first of June.

20 Q. A good deal of the time you didn't have $500, did you? A. I don't remember whether it got as low as that, or not; but still it might have been.

Q. It took quite a good deal of this money you collected to stock up the farm in Maryland, didn't it? A. Most of that I bought of Mr. Cook, and paid him in grain and stock, what I had here.

Q. But how much remained that you had to furnish cash for? A. I have no account of it.

Q. Well, cannot you give an estimate? A. No.

30 Q. $1,000? A. No, sir; it did not take as much as that.

Q. $800? A. Well, I would have to consider; I could not tell, exactly.

Q. Well, about, Mr. Oakey? A. We sent our own horses down, and those things; we bought a new binder.

Q. I do not want the details. A. I did not buy any other stock beside what I bought of Mr. Cook, and sent ourselves.

Q. Well, you spent $700 or $800 down there, in money,
40 did you not? A. No; I don't think I did.

Q. Who are these persons you say of whom you could have gotten money if you wanted it; one, I think you said, was your sister-in-law? A. Yes, sir.

Q. What is her name? A. Mrs. Oakey.

Q. Whose wife is she? A. Peter B. Oakey's. She lives in Springfield, Long Island.

Q. How much could you have gotten of her? A. Well, I could have gotten $1,000, or $1,500, if I wanted it.

Q. Without security? A. Yes, sir.

Q. Without any security? A. Well, I—yes; I did 10 have of her $1,000, and I let her have it back again, and she did not ask for no security on that.

Q. Did you make arrangements to get it of her? A. No further than this: if I wanted it I could have it.

Q. When did she say that? A. She said so in a previous conversation.

Q. When? A. I don't remember the date.

Q. Before this agreement was made? A. Yes, sir.

Q. After that, did you talk with her about it? A. I talked with her frequently about going down in order to 20 purchase land; I asked her if she had any money, and she said she had.

Q. Did you speak to her with a view of letting you have it to use in this transaction? A. I did.

Q. When? A. I cannot tell the time.

Q. Who else did you say would let you have money if you wanted it? A. My sister, Mrs. Webb, in Bound Brook.

Q. When did you speak to her about letting you have that? A. Different times. 30

Q. After this contract with Mr. Cook was made? A. I think I did; about that time.

Q. Did she agree to let you have it? A. Yes; she wanted me to take it now.

Q. Did she agree to let you have it without security? A. Yes; she said she would let me have it, and if I could fix it any time afterwards on the place, it would be all right. I told her I would.

Q. Had you any security to give for it, Mr. Oakey? A. 40

I could give her security, if she wanted it, on the place down there—the Maryland place.

Q. You have a farm at Blackwell's Mills, have you not? A. Yes, sir.

Q. Is that mortgaged? A. Yes, sir.

Q. Is there more than one mortgage on it? A. There are two mortgages on it at this time.

Q. You have put another one on since, have you not? A. When?

10 Q. Did you not put another on last Fall for $1,500, or a little more? A. Yes, sir.

Q. Did you get the money for that mortgage? A. I did.

Q. Was it not given to secure an old debt? A. It was not.

Q. Then, without paying this $5,000 to Mr. Cook, at all, and after getting the $2,500 for crops in Maryland, you still had need of $1,500 more? A. Put that question again?

20 Q. You got that money on that mortgage of $1,500—who did you give it to? A. I kept it.

Q. Who did you give the mortgage to? A. This woman.

Q. What woman? A. Mr. Oakey's wife, at Springfield.

Q. Then you did get the $1,500 of her? A. Yes.

Q. When you gave that mortgage, it was given because you needed money, wasn't it?

Q. Do you remember the time of that mortgage? A. No, sir; I don't; it was last Fall.

30 Q. You did not get that money with the expectation of using it in the Cook transaction? A. I thought I would use it for anything I wanted to.

Q. Did you think you wanted it in the Cook transaction? A. I did not know whether I would or not.

Q. Was not it after the 19th of September? A. I could not tell you now.

By the COURT.—The record will show.

Q. Mr. Oakey, after collecting in these moneys on the books—I did not ask you if you had collected these mon-

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eys on your books through the Summer? A. Some had been collected.

Q. How much? A. I don't know how much.

Q. Half of them? A. Yes; I suppose so.

Q. Three-fourths of them? A. Yes; I suppose so.

Q. Very well, after collecting these moneys, and after getting the money for the crops, and getting the money from the distillery, and from Van Cleef, you still had need to borrow $1,500, although you had not paid Mr. Cook anything at all of this $5,000, did you? A. Well, I got it 10 with a view if I wanted to use it—I did not get it to spend; I got it to use if I wanted to use it; if I did not want to use it I could hand it back.

Q. You said, Mr. Oakey, that you could have taken up that $8,000 on your mill property at any time, if it had been necessary to do it—how could you have done that? A. Well, I could have got, I suppose, money enough to take it up.

Q. Where? A. Well, I thought I had money enough, with what I could get around, and what I could get from 20 these women.

Q. $8,000, eh? A. $6,000. I suppose, at least, one of these mortgages.

Q. Well, $6,000, and pay Mr. Cook $5,000? A. Well, I did not say anything about the $5,000.

Q. Mr. Clark asked you if you could clear your property of these $8,000 mortgages? A. I think I could.

Q. Well, how? A. I think I could have got money enough, with what I had in the bank, and I think I could have got a little more meney if I wanted it; I did not try. 30

Q. Now, Mr. Oakey, do you say you were ready all through that Summer to raise the difference that you were to pay Mr. Cook, and exchange your property? A. $3,000?

Q. Well, we will say $3,000? A. Yes; I could at any time have got $3,000, and paid on the place, and I was ready at any time through that Summer—could have got ready at any time; and if I had not the $3,000 in the bank I could have raised it.

Q. And you were desirous of doing it? A. Yes; I was 40

desirous, and wanted to do it; I never thought of anything else but doing it; no other thought came in my mind all the Summer but paying that $3,000.

Q. I know; but I want to know whether you were anxious to do it, and part with your money? A. I was anxious; yes, sir.

Q. Well, whenever you got money you deposited it in the bank— (Interrupted.) A. No; I did not always deposit it in the bank.

10 Q. What did you do with it, then? A. Well, sometimes I carried it with me; I don't think all them little details is necessary; but if you want me to tell what I done with it, I can tell some things; but I don't think all them little details is necessary; I will tell some of them, if you want me to; if you want me to tell some of them, I will tell you one right away.

Q. You may do as you choose; what I want to know is, whether your bank account, through that Summer, correctly shows the cash you had on hand; you may an-
20 swer that question any way you choose? A. I went down to the bank and got $2,800, and drew it out of the bank, and asked George to come and see that deed tendered; and that money, I had it in my hand; and I told him I was anxious to pay that money; he came there with the view of seeing me tender it to Mr. Cook; I said, "Look at these bills; I want you to see them"; he said, "Don't carry that money; it is too much"— (Interrupted.)

Q. What I want to know particularly about is, how it stood between the first of June and that time—what you
30 had done with your money between the first of June and the 28th of August? A. I went to my sister, and said, "I may get in a little tight place; have you any money that I can have"? and she says, "I have; I can help you most any time".

Q. What kind of a tight place did you anticipate? A. I did not know as I would get in any tight place; but in case of an emergency.

Q. When was that? A. I had talks with her several times; we always talked business then together, and I
40 put her money out for her.

Q. Did you get Mrs. Webb's money in your possession, or have it in your possession during this period between June first and September first? A. I did not have it in my possession; but I could at any time; I could go down to-day and get it; and, another thing—well, you don't want me to tell you.

Q. Mr. Oakey, was not the bulk of this grain, which you shipped to Bonnell, shipped in March, in order to get the money for it in order to pay the farmers of whom you had bought it? A. No, sir; the object was, Mr. Bonnell of- 10 fered me 20 cents a bushel more than I gave for it; the object was to make money out of it; and if I wanted to buy fifteen or twenty thousand bushels of grain, he would advance me the money on it; he gave me that privilege; he told me if I was buying grain at any time, if I wanted to draw on him, I could do it.

Q. All I asked you was, whether or not you did not send this grain, in March, to New York, to get the money to pay the farmers with of whom you bought the grain—didn't you buy the most of the grain that you sent to Bon- 20 nell of farmers who brought it to the mill? A. I did.

Q. Did you pay for it when you got it? A. Mostly; I bought two weeks— (Interrupted.)

By the COURT.—(To the witness.) It will be better for the case, altogether, if you will answer his questions.

Q. How came you to get only $2,800 out of the bank when you made this tender? A. Because, I had some money in my pocket.

Q. Did you get a note discounted? A. Not to do that with. 30

Q. Did you get a note discounted about that time? A. I don't think I did; I had a note in bank; but I think I paid it, or had it renewed; something of that kind.

Q. I want to know whether you got a note discounted to get the $2,800? A. No, sir; I did not; I did not get any note discounted of $2,800; I never had a note as big as that.

Q. Now, you say, when Mr. Cook told you that there was a mortgage on his place for $13,000, or $15,000, that John was by—your son, John. John said he wanted to 40

know, because he wanted to know when he went down there, did he? A. That is the way I understood him.

Q. Is that the reason the question was asked of Mr. Cook—because John wanted to know before he went down? A. Yes; he wanted to know, because he was going to be interested.

Q. Well, he said he wanted to know before he went down there; how soon was he going down after that? A. I don't know.

10 Q. Where were you when he asked that? A. I was close by him.

Q. Where were you all? A. I think we were coming from the wagon house to the mill.

Q. Was that the time you made the $3,000 agreement? A. About the time.

Q. Was Jonn by to hear that? A. I think he was.

Q. Was it the same conversation? A. I think it was.

Q. Did not you say, yesterday, the representation about the mortgages was before you made the contract? A. I 20 don't know that I did; it was talked of before the agreement.

Q. Did not you say yesterday that Mr. Cook represented that there were only $13,000 or $15,000 of mortgages on there, in the presence of your son John, and in answer to your son John's question, and that was before the contract was made? A. I said it was either before or afterwards, and after thinking the matter over I thought it was afterwards.

Q. It was afterwards, wasn't it? A. I think it was.

30 Q. Then it did not have anything to do with making the contract, did it—the statement of what mortgages were on it? A. No, sir; it had nothing to do with making the contract.

Q. Very well; now let us see what you say in your answer. Listen to this part: (Counsel read from answer, as follows.) "This Defendant requested the Complainant to state the amount thereof—that is, of the mortgages—and at first the Complainant hesitated about stating, whereupon this Defendant insisted upon knowing, he 40 being at this time at Blackwell's Mills and having no

means of ascertaining the situation of the title to the Maryland property, and the Complainant then said the mortgages amounted to thirteen or fourteen thousand dollars, but he could arrange that by reason of one of the mortgages being held by his sister, amounting to $10,000, and he could change, and get his sister to take a mortgage on the Blackwell's Mills property which this Defendant was about to exchange to him, the Complainant, and by such means induced the Defendant to consider the advantages to be derived by the exchange, among 10 other things, the taking of the possession thereof forthwith; that this Defendant, also, by means thereof, was induced to consider the propriety of giving up the possession of his, the Defendant's, property agreed to be exchanged, so that the Complainant could at once enter into and enjoy the same, in anticipation of the completion of the contract about to be entered into; that, finally, after considerable conversation, between the Complainant and this Defendant, they consented to exchange", and then, it says that your agreement was reduced to writing. 20 Now, then, that is not correct, is it, if this conversation about the mortgages on the place was had in the afternoon, or after the agreement was signed—the conversation that occurred between the barn and the house—why, then your statement here is not correct, is it?

[Objected to by Defendant's counsel for the reason that it is a conclusion to be drawn from the facts already developed. Objection overruled.]

By the COURT.—Let the question be read, and let the witness see if he understands it; if he does not, he can 30 say so; he ought to be set right about it in his own mind.

[The Stenographer read the question as above.]

Q. If you understand it, answer it; if you don't I will put it in another way? A. Well, put it the way you want it.

Q. Well, would you rather I would put the whole question over? A. Yes; I don't know as I understand it.

By the COURT.—There need be no trouble about it; he has heard it read once; read it again.

[Question read, as above.] 40

A. I don't know as I can give a very clear answer to that; I will give the best I can, if that will be satisfactory.

Q. I mean, Mr. Oakey, your statement in your answer, that the Complainant, by means of his representations as to the amount of his mortgages, and as to his ability to arrange them with his sister, induced you to consider the advantages of an exchange—that is not correct, is it? Now, wait, and let it be read again; I think I have made it as clear as possible? A. My answer was, it was be-
10 fore, or after; what was my answer?

Q. I cannot help your any more.

By the COURT.—(To the witness.) You said this morning it was after? A. My impression is, it was before; it ain't as distinctly clear as I would like to have it; that is the best I can make it.

Q. You went down to Maryland a few days after this contract was made, didn't you? A. I did, sir.

Q. You went to the County Clerk's office at Princess Anne, didn't you? A. I did, sir—let's see—no; I didn't;
20 I don't think I did at that time.

Q. Were not you introduced there to the County Clerk? A. It was afterwards, I think; when I went down the next time.

Q. Who was with you? A. I don't seem to remember the first time I went down; and I might have been introduced there, but I don't know; I thought you was—go on—I don't know whether Mr. Cook took me down there or not; but go on, now; ask me what you are a mind too.

Q. Now, Mr. Cook did take you there the time you
30 went down, two or three days after this contract was signed, introduced you to the County Clerk, and left you there in the office two or three hours alone, didn't he? A. Not two or three hours; I went around the corner to see a machine.

Q. Mr. Cook was there, having a bill struck for his sale, was not he? A. Yes, sir.

Q. How long were you in town? A. I don't know exactly the time; we were in there a while, and stayed a while in the office where he was getting his bill struck.

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Q. Didn't you look, then, at the records, to see what mortgages were on? A. I think not.

Q. Are you sure? A. Yes, sir; I am sure; I think it was the next time I was down.

By the COURT.—Q. That would be the third time? A. Yes, sir.

Further cross:

Q. Then you went in and looked over the records? A. Yes; I had heard there was so much on, and I went in then and asked what was on the records. 10

Q. When was the third time? A. It was in June; about the 16th or 17th of June.

Q. Then it was the third time—it was when you went down to harvest? A. Yes, sir.

Q. You say that Mr. Cook told you, after the mortgage was signed, that there were a good many mortgages to exchange, or did you say large mortgages; I have forgotten just your expression? A. You mean the first conversation about it?

Q. No; you say Mr. Cook told you, after the contract 20 was signed, that there were large mortgages, or a good many mortgages to exchange, and therefore considerable time would be needed; am I right in my statement? A. He said to me that there was a good deal—it was a large exchange, and a good many mortgages, and it would take some time.

Q. When did he say that? A. I could not tell the date.

Q. Was it the same day the contract was signed? A. I don't think it was the same day. 30

Q. A few days after? A. I think it was before that, some time, when I had see him.

Q. No; I mean the day that this contract for an exchange was signed? A. He did not say it that day; that is what you asked me just now.

Q. I understood you, yesterday, to say it was the same day, and after you signed the contract? A. No; he said about $13,000 or $14,000; but this other one he did not say that day, I don't think.

Q. I think you do not understand the question; you 40

say that he made this statement as a reason why considerable time would be needed to make the exchange; when did he say that? A. I say I don't remember the date he made that statement to me; he said it would take some time.

Q. Was it the day the contract was signed? A. I don't think it was.

Q. Was it when you were in Maryland, a few days after? A. I think we had one such conversation in Mary-
10 land, but my memory about it is very poor.

Q. I ask you when the conversation was, to that effect, which you testify now; do you mean that one was in Maryland? A. I think it was; but I will not be positive.

Q. He said there were a good many mortgages to exchange—he used that expression, did he? A. He said—I don't know as he said "a good many"; he said quite a good deal of money, or mortgages—mortgages, I think it was, to exchange; and it would take sometime to arrange it.

20 Q. Did he say something about getting the mortgages together when you made the exchange? A. I never remember hearing of that before I heard it in court here.

Q. Now, Mr. Oakey, if the arrangement was that you were to furnish money enough to pay off the third mortgage, and the first was to remain, there wasn't but one mortgage to remain? A. I don't remember any arrangement of that kind—that I was to pay off the third mortgae; he asked me to pay it off.

By the COURT.—When you speak of the third, do you
30 mean the $2,000? A. Yes, sir; he asked me, when I went down in June, to pay that $2,000 off.

Further cross:

Q. He asked you when you went down, in June, to pay that $2,000 off? A. Yes, sir.

Q. But he had told you about the Van Duesen mortgage before that, hadn't he? A. I think he had.

Q. And he told you his sister held $10,000, didn't he? A. Yes, sir.

Q. If he told you about the Van Duesen mortgage, and
40 wanted you to pay $2,000 off, and said his sister held

$10,000, you did not need much information about the mortgage, did you? A. Well, he told me after this arrangement.

Q. Now, Mr. Oakey, you say that you did not urge the exchange of the possession, but that Mr. Cook did; I mean now, not the trade, but the exchange of the properties; is that so? A. Mr. Cook said it was necessary we should each one get possession as soon as possible.

Q. Well, do I understand you you were not in favor? A. I did not say whether I was in favor or not. 10

Q. Well, what was the fact?

By the COURT.—What difference does it make whether he was or not—the fact is, that they did?

By Mr. LINDABUY.—I think it is important, as characterizing the whole testimony of this witness.

Q. What do you say; were you anxious, or not, to have the exchange of possession? A. I don't know as I was, one way or the other, particularly.

Q. Did not Mr. Cook want to leave the exchange until the Fall, on account of the crop? A. He might remarked 20 something of that kind, but did not say he wanted it; but it was talked of.

Q. Did not you want to make the exchange as soon as possible, to secure those crops? A. I said, if I give the money to boot, to get the crops, it would be necessary for us to move, but I did not want to be hurried too much, because I could not get the grain out of the mill.

Q. But Mr. Cook wanted to put it off till Fall, didn't he? A. Well, I don't know about the Fall; he spoke of it once. 30

Q. You say Mr. Cook never gave you a search of the Maryland property? A. I don't remember of it.

Q. Had he agreed to? A. I don't know whether he did; he said he would; I think he said he had one ready; I don't know whether he said he would, or not; he said he had one, or would get one; something of that kind; I cannot remember the conversation, word for word.

Q. When did Mr. Cook tell you that his sister would leave eight or ten thousand dollars on the Maryland prop-

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erty? A. That was talked of, repeatedly, the different in conversations.

Q. Didn't he tell you his sister wanted to see you? A. He did, in August.

Q. Why didn't you go to see her? A. Because, after I had been down there, I made up my mind it was not worth while to go and see her until I had the papers fixed; he said there was some interest to pay, and I did not propose to pay the interest until I knew what was
10 going to be done.

Q. You say, when you went to Mr. Cook, you told him, or your son did, that he must fix it by the first of September, didn't you? A. I think we did.

Q. Did you hear that he looked to his brother of Bound Brook? A. No, sir.

Q. You knew Van Duesen was away yet, didn't you? A. I didn't know anything but what I heard from Mr. Cook.

Q. And that somebody held a $2,000 mortgage in Mary-
20 land—Mrs. Newton lives in Maryland, don't she? A. I don't know where she lives.

Q. And that his sister, in Trenton, held one? You knew that he could not get those two off in two days, didn't you? A. I thought, the way he talked, he was ready any time; I thought he could be ready at any time, from what he talked.

Q. You said awhile ago, you thought about this time, or from then on, that he could not get rid of the Van Duesen mortgage at all? A. Yes; I did not think he could,
30 to be honest about it.

Q. Who was at the mill with you day before yesterday? A. John.

Q. Mr. Kugler? A. Mr. Kugler was there one day, but it wasn't day before yesterday I don't think; Mr. Kugler and Mr. Hagaman was there; I don't know whether you have reference to that day or not.

Q. When were you down to Maryland last, did you say? A. Well, to give it in a large scope, say two months.

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Q. Didn't you see Mr. Cohn? A. We did not see Mr. Cohn at all, as I know of.

Q. I want to know if you went to see those who you understood to be our witnesses? A. I don't know who was your witnesses; I never heard who were your witnesses.

Q. That is all.

Re-direct examination:

By Mr. CLARK.—I want this deed and these four abstracts marked as Exhibits in the case, on behalf of the 10 Defendants.

By Mr. LINDABURY.—I object to the abstracts; it was consented yesterday that there were certain mortgages, and the Stenographer took the fact on his notes.

By Mr. CLARK.—They are both copies; they are not certified copies.

[Deed from John L. Oakey and wife to Edmund B. Cook, dated August 8th, 1883, marked Exhibit O 1, for Defendants.]

Q. Mr. Oakey, you were asked what means you had of 20 raising money on the 7th of May—what was the value of the grain, which you had in your mill, on the 7th of May? A. Well, it must have been—I don't know as I can give you the exact figures; well, in May—let me see—we gave possession in May, didn't we?

Q. The 7th of May was the day the contract was written between you and Mr. Cook; that day I am talking about now? A. Well, I don't know as I can tell, exactly.

Q. Well, the best you can? A. I should say at that 30 date there was three or four thousand dollars worth—from two to four thousand.

Q. From two to four thousand? A. Yes; I put it that way because I am not clear, exactly, how much there was; I can tell when I get home.

Q. When this deed was shown you, did you know there had been anything in a deed showing that it was sold subject to a mortgage; did you know it had to have any writing of that kind or not? In other words, did you know that a deed ought to show that the property was 40

conveyed subject to any incumbrance or not? A. I did not.

Q. Are you accustomed to writing deeds, or anything of that sort? A. I never wrote them in my life.

Q. You always had someone else write your papers? A. Yes, sir.

Q. At the time you bought the property from Mr. Vansant, did you buy it with the mortgages upon it? A. I did.

10 Q. These same mortgages? A. The $6,000 mortgage.

Q. Was this the deed you received from Vansant? A. Yes, sir.

[Said deed offered in evidence.]

[Objected to.]

By the COURT.—There is no question about your title; they do not raise any question on that.

By Mr. CLARK.—No, sir; I simply wish to show from whom he derived title, that is all.

By the COURT.—I would not lumber up the case.

20 By Mr. CLARK.—I also desire to show, if the Court please, that the property he bought from Vansant, and property he was going to convey, were two properties; not one and the same property.

By the COURT.—The deed does not show that. Then, if you propose to follow it up, and make proof that the title which they seek to recover by their bill of specific performance is not the property that was agreed to be conveyed, of course the deed is competent.

By Mr. LINDABURY.—It is admitted in the answer.

30 By the CLARK.—No, it is not; it directly states the contrary.

[Counsel read from answer.]

By Mr. LINDABURY.—We ask to amend the bill to make the description conform with the answer; not to get rid of this offer, but because we ought to do it.

By the COURT.—I suppose there is no trouble about the amendment?

By Mr. CLARK.—I still think, if the Court please, that I have a right to offer the deed.

40 By the COURT.—I will admit it for the present; I

confess I do not see how it is going to throw any light upon the case, whatever.

Q. Mr. Oakey, when was it that you and George Suydam went to Mr. Cook's for the purpose of making a tender of that deed—when was it, with reference to the date on the deed? The date on the deed is the 8th of August. A. It was this way: I left it in the afternoon, and the tender was made the next morning; and he said he would finish it up that day, and bring it around the next day; so it was the day after the deed was made that I went to make 10 the tender.

Q. You said you were down in Maryland, with Mr. Cook, at the time he went there to get his bills struck at Princess Anne—you were with him at Princess Anne? A. Yes, sir.

Q. And around the Clerk's office? A. Yes, sir.

Q. Do you remember now why you did not go in the Clerk's office to examine the records? You have told us about the machine; was there another reason why you did not go to the record? A. I did not like to go to the 20 record, seeing he was with me; I thought I would like to go some other time.

Q. You were shown yesterday, Mr. Oakey, a letter which Mr. Bartine wrote you, dated the 21st of September; why did not you pay any attention to that letter of Mr. Bartine's? A. Because he denied the first part of it, in which it was agreed here; he says it was never made, or something like that.

Q. Well, what have you to say? A. And that was the first time; and it was contrary to all our other arrange- 30 ments; and it had been made.

Q. The mutual agreement had been made? A. Yes, sir; and the reason was this other part; the lower part of it was no part of the agreement at all.

Q. Now, that letter was not received by you until after you had sent him your note of the 19th or 17th? A. 19th; this came to our place; it was dated the 21st; I don't think we got it the 21st.

Q. You had sent this the 19th; before that date? A. Yes, sir; the 19th; before that. 40

Q. I want to call your attention, Mr. Oakey, to the conversation Mr. Lindabury asked you about a moment ago, in relation to the mortgages. I understood you to say yesterday that you saw Mr. Cook at the wagon house, and walked from the wagon house to the mill, and your son John was with you? A. Yes, sir.

Q. Now, was that conversation that you had at that time before the contract was drawn, or after the contract was drawn? In other words, do you know when you
10 went to the wagon house with reference to the writing of the contract—before the contract was drawn, or afterwards? A. We came from the wagon house to the mill.

Q. That was before or after the contract was drawn? A. It strikes me it was before.

Q. Well, was this conversation that you speak of, about the mortgage, during that walk? A. Yes, sir; about the thirteen or fourteen thousand dollars, you mean?

Q. Yes, sir. A. Yes, sir.

Q. During that walk. Now, Mr. Oakey, you were asked
20 yesterday afternoon why you did not tell Mr. Gaston the arrangement in relation to the $10,000 mortgage on the farm, instead of $8,000, and have him write about the mortgages in that way—$10,000, instead of $8,000—have you anything further to say, or any explanation to make, as to that conversation that you had with Mr. Gaston in relation to what you told him? A. If you will permit me I will tell you the whole conversation with Mr. Gaston at two different times.

By Mr. LINDABURY.—I don't think the witness
30 ought to do that.

By Mr. CLARK.—I only want the witness to put himself right as to that conversation, that is all.

By the COURT.—I do not see, Mr. Clark, how he can detail everything that passed there.

Q. Tell me, then, how you came to speak to Mr. Gaston about the $8,000? A. Well, I had called there to ask him something about this thing; that is all I went to see about there; I had asked him about this, and he wanted me to get a copy of the agreement.

40 Q. Well, what did you do then? A. I produced the

copy, and then he asked me about the first arrangement, and I told him the first arrangement was $8,000; and then I told him that that had been— (Interrupted.)

By Mr. LINDABURY.—I must object to this; it don't seem to me it is competent.

By the COURT.—I have said to Mr. Clark that I can scarcely see how it is possible for the witness to go into what passed between him and his counsel on this occasion.

By Mr. CLARK.—Your Honor will see that the cross-examination leaves the witness in a very unfair position. Counsel asks the witness if his counsel did not write in that letter as he told him to, and the witness is obliged to answer yes or no. 10

By the COURT.—I allowed the counsel to go on after Mr. Lindabury's first objection, and I will allow him to ask this question, and that is what I had in view—"What passed between you and Mr. Gaston, with respect to this $8,000, if anything"? and I will allow it to be put in that way, but it must be limited to that. The witness, I think, has a right to that in this court. I am very doubtful whether a court of law would allow it; I will allow that much, but no further, Mr. Clark. 20

Q. Mr. Oakey, just state what was said at the time you went to get Mr. Gaston to write the agreement, in relation to the $8,000 mortgage on the property? A. I brought him this copy, which has been here presented, and he asked me—I told him we had talked about $8,000.

Q. What about $8,000? A. That we had agreed upon leaving $8,000 upon each place; then I said something about there being $10,000 talked of— (Interrupted.) 30

Q. What was said about $8,000?

By Mr. LINDABURY.—Just let him finish

Q. Go on? A. And then he took the copy and drew it up himself—that is, Davis wrote it up; he dictated it. Is that all you want?

Q. Was that all you said? A. There was some little conversation; I don't know whether that would be allowed in or not.

By the COURT.—The question is about the $8,000? 40

A. That was about all about the $8,000; and then he wrote it himself.

Q. Is that the paper which we understand your son copied? A. My son wrote it, and he dictated it.

Q. Then it wasn't copied at all; your son wrote it there? A. Yes, sir.

Q. And that was the very paper that was sent? A. Yes.

Further re-direct:

10 Q. Then, as I understand it, at the time you presented the paper to him—that is, the agreement—you told him that the agreement between you at that time was, that $8,000 should remain upon the property? A. Yes.

Q. Now, what have you to say about the agreement with respect to the amount of money that was to be allowed to remain on the property, at the time you signed the contract?

[Objected to.]

By the COURT.—You have a right to call his attention 20 to the particular discrepancy; you may do that.

Q. What was the agreement as to the amount that was to remain on the property at the time the contract was signed?

[Objected to.]

A. $8,000.

By the COURT.—That is the question you asked him yesterday, and the other side cross-examined him on that point; now you say there was some discrepancy.

By Mr. CLARK.—I said I thought the cross-exam- 30 inaation had made some obscurity upon that subject.

By the COURT.—Wherever there is an obscurity you have a right to present the obscurity to the mind of the witness.

Q. Now, you were asked yesterday, why you didn't tell me, at the time I drew your answer, or at the time I read the answer to you, that the arrangement was, that $10,000 was to be left on the Maryland property and $3,000 paid in money, instead of $8,000 on each property and $5,000 in money; have you anything to state further than you have 40 said, as to what you told me about it, and why you told

me what you did? A. I told you at the time about it, and when you read the answer to me I told you it was wrong, and you said that was your mistake, and you would correct it.

Q. What did you state to me, at the time you gave me the facts to draw the answer, with respect to the amount of money which was to be paid at the time the contract was drawn? A. I said to you about the $10,000 that was agreed—is that what you mean?

Q. Do you understand the question? A. I don't know 10 whether I do or not.

Q. Well, I will try to make it so you do understand it. At the time you came to see me to give me the facts from which I could prepare an answer, what amount of money did you state to me was the amount agreed upon to be left upon the respective properties at the time the contract was written? A. $8,000.

Q. When did you discover that the answer was a mistake, with respect to the $8,000 being the agreed sum which was finally to be left upon the property? A. 20 When you read it to me.

Q. And when was that, with reference to the— (Interrupted.)

A. At the time—you mean what time was it?

Q. Yes; how long was it before we commenced this trial? A. Well, it was some time before, but I can't give you the dates.

Q. Was it before the answer was filed, or after the answer was filed, or don't you know about that? A. I think it was after the answer was filed; I don't know—I 30 have no knowledge.

Q. Do you remember when it was, with respect to our getting ready for trial; that is what I mean? Do you remember the occasion of it—who was in the office at the time—wasn't it the time you and your sons were there? A. Yes.

Q. How long ago was it, with reference to preparing for trial? A. I am so poor on dates; I can't seem to get the dates and time.

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Q. Now, then, you were asked in relation to some petition in Maryland?

By Mr. CLARK.—I believe you read a portion, and it is partly in evidence; I would like to see it, gentlemen.

By Mr. LINDABURY.—You haven't seen it, I suppose.

By Mr. CLARK.—I have not.

By Mr. LINDABURY.—You cannnot know any more about it than you do from me.

10 By Mr. CLARK.—Do you decline to let me see it?

By Mr. LINDABURY.—I haven't said I have the paper.

By Mr. CLARK.—I ask for the paper. You can do as you please about producing it. The witness has been asked about the petition, and I would like to see the petition and ask him whether he ever saw it.

By the COURT.—There was no petition shown him.

By Mr. CLARK.—It was read from, however.

By the COURT.—The Court does not know that;
20 whether the matter was repeated from the paper or from memory the Court cannot know; it wasn't shown him.

By Mr. CLARK.—Very well, I will give you all notice to produce it, gentlemen, if you want it.

Q. Mr. Oakey, I will ask you this question in that connection: what do you know about any such petition having been sent to Maryland? In the first place, did you send any such petition to Maryland? A. I did not.

Q. You did not direct any such petition to be sent to Maryland? A. I did not.

30 Q. Did you know that any such paper had been sent to Maryland? A. I did not.

Q. Was it sent at your suggestion? A. It was not.

Q. Was it sent in your behalf? A. It was not sent in my behalf, as far as I know.

Q. Were you requested to send such a paper for any person? A. I was.

Q. Where was that request made to you? A. Down in Westover.

Q. When you were there at Maryland on your last
40 visit? A. Yes, sir.

Q. Did you pay any attention to the request? A. I did not.

Q. Did you direct any attention to be paid to the request?

[Objected to, by Mr. Lindabury.]

By the COURT.—I think he has answered it very fully.

Q. Now, then, the personal property on the farm, at the time your sons moved there, who did it belong to? A. It belonged to them.

Q. Did any of it belong to you? A. Not after I parted with it. It belonged to me before, but after they took possession it was in their hands, and belonged to them. 10

Q. It was said yesterday that your sons were farming for you? A. Farming for themselves on shares. I wasn't connected with them in any other way than advising them; they farmed for me for halves.

Q. Had you ever given any consideration to the market price of this property before you were asked the question yesterday—I mean the cash value of this property? A. Please say it again, and speak it a little louder? 20

[Question repeated.]

A. I had not.

Q. Now, had you at any time taken into consideration the advantages or disadvantages of the exchange, to form an opinion on it—a conclusion? A. Had I at any time taken into consideration—I wish you would read it to me, please.

Q. I will put the question in another shape. Had you, at any time, consulted, and come to a conclusion as to the disadvantages or advantages of the trade? A. I did at one time in June; when I was down there, in June, the boys and I had talked it over together. 30

Q. What was your conclusion, with reference to the exchange? A. The conclusion was— (Interrupted.)

By Mr. LINDABURY.—I object.

By the COURT.—Can that make any difference? Can you introduce the state of his mind after the contract had been entered into—whether it was profitable, or otherwise?

By Mr. CLARK.—It seems to me, in this point of view, 40

it is admissible. It was attempted to show that the Defendant kept the possession of the property as long as he could reap the advantages from it, and then gave it up; that his whole object and purpose was to keep possession of the property during the season; that will be the argument that will be made, and that argument is based on his statement here yesterday; the object of the cross-examination yesterday evidently was to show the motive of the witness with reference to the benefits on his part.

10 By the COURT.—I don't think that a party is ever permitted to make testimony for himself in that way. We take it for granted that Mr. Oakey went there and did everything that he did do in good faith, and if he were to reaffirm it a dozen times, under oath, on the witness stand, it could not change what I regard to be one of the well-settled rules of law, that a party, in what he does, acts honestly till the contrary is made to appear. The effort now made is to make it appear that, in June, after the first crops had been harvested, he and his sons talked the 20 matter over, and they thought they had a good thing of it; it must be that, or the counsel is giving his case away.

By Mr. CLARK.—We want to show that he came to a conclusion, as to the closing up of the contract, and acted upon it.

By the COURT.—I have no doubt but that is so; but if the rule of law can be departed from, that a party can, in this way, separate his case, I think one of the very best rules of law would be broken, and all that a party to a suit would have to do, by way of anticipation, would be 30 to provide for a coming suit with his friends, and then establish it upon the witness stand, that he had anticipated. I think that the rule of law ought not to be departed from, Mr. Clark, and as I said, the safety is in what the Court is bound to do—to take a man's acts in good faith till the contrary appears.

By Mr. CLARK.—I desire to have my objection entered to the ruling of your Honor, and I desire to ask one other question in that connection, which you need not answer, Mr. Oakey.

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Q. Did you do anything in consequence of that conclusion with reference to this exchange?

By the COURT.—If he did anything with Mr. Cook, that he can answer.

By Mr. CLARK.—It wasn't with Mr. Cook, if the Court please—for the purpose of furthering the exchange.

By the COURT.—If he did anything with reference to effecting the exchange.

By Mr. LINDABURY.—We admit that he did not come to a conclusion until the 28th of June, as to wheth- 10 er he would carry out the agreement at all.

By the COURT.—That does not follow, at all. It does not make that impression upon the mind of the Court. You may answer it, Mr. Oakey.

Q. (Question repeated.) A. Well, talking over with my son—what do you want?

By the COURT.—What you did with reference to the exchange?

A. We made up our minds— (Interrupted.)

Further direct: 20

Q. That you have told us about.

By Mr. LINDABURY.—Let him go on and tell what he made up his mind to.

Q. Did you do anything, Mr. Oakey?

By Mr. LINDABURY.—Hold on; I object.

By the COURT.—It must be a specific act; we have admitted it.

Q. Did you do anything in consequence of that conclusion?

By Mr. LINDABURY.—It puts the testimony in a 30 very strange way, if he is allowed to tell something he did.

Q. Do you remember, Mr. Oakey? A. I remember what transpired in regard to these things we talked about, and the result; that is all. I don't know what particular thing you refer to.

Q. Now, Mr. Oakey, you said a little while ago, you were troubled, or made use of some such expression? A. I have been suffering with nervousness for the last two or three weeks, and one week I didn't sleep a night out of 40

the whole week, and I have been sick—kind of out of order for some time.

Q. Where is the Post Office at Blackwell's Mills—at the mills, or at the store? A. At (Broch's) store.

Q. Now, Mr. Voorhees said that he had a conversation with you, in which you told him—he said that you told him that you carted hay till you got tired, and so forth, and the crops were so large—just tell what you did say to him, if you remember, and why you talked to him the
10 way you did?

By Mr. LINDABURY.—I object to the latter part of the question.

By the COURT.—Well, if the witness talked to him in joke, or in a jocose way, he has a right to show that.

Q. Well, the manner in which you talked to him; that is what I want? A. Mr. Voorhees was one of the inhabitants of Blackwell's Mills who like to get a laugh on everybody, and he asks a great many questions, and if I told him the truth about anything it is because I don't
20 know it, because he reports it all over.

Q. Does he understand that you treat him that way? A. Well, I guess he understands it; it is only when I don't mean to, if I do.

By the COURT.—Then, must I understand, from the witness, whether the statements he made were true or not? A. They were not true; it was only to make them appear large.

Q. He says that you told him you gathered 1,800 bushels of wheat? A. I said there were 1,680 on one place.
30 Q. Well, was he much out of the way, on the clover seed? A. There were 98 bushels of clover seed before it was cleaned; that was all.

Further re-direct:

Q. You talked to him in a joke, did you, Mr. Oakey? A. Yes; I most always do; I hardly ever get down to facts with him.

Q. That is all.

Re-cross examination:

Q. Have you got in any such habit, Mr. Oakey, of not
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telling the truth, if you know it? A. It is according to whom I am talking to.

JACOB KUGLER, a witness produced on behalf of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you reside? A. Trenton, New Jersey.

Q. What is your business? A. Millwright—mill building. 10

Q. How long have you been engaged in that business? A. Well, ever since I was 18 years old, probably.

Q. Do you know the mill at Blackwell's Mills? A. Yes, sir.

Q. And have you been engaged there as millwright for several years past? A. Yes, sir.

Q. How long were you engaged there during the Summer and Fall of 1882? A. Well, we were working there for several months; I think we commenced somewhere along in August, and finished up in December. 20

Q. And when did you work there again after that? A. February, 1883, was the last work I did there for Mr. Oakey.

Q. Has there been any repairs done to the mill since that time? I will premise that with another question—have you been to the mill lately? A. I was there on Wednesday, this week.

Q. Did you examine it? A. Yes, sir.

Q. Have any repairs been done to the mill since you were there in February till this time? A. I done some 30 for Mr. Cook.

Q. Were there any other repairs? A. I could not see that there had been any. There had been some little jobs, I suppose. There may have been under water; that I could not see.

Q. As far as you could see, nothing had been done? A. No, sir.

Q. What amount of money would be required now to put the mill in first-class order?

[Objected to.] 40

By the COURT.—I don't see that it raises an issue; but if counsel insists upon it, then, in order to make it of any service to the Court, it would be necessary to establish its exact condition when Mr Cook took it.

Q. Did you examine the water wheels the other day? A. No, sir; not particularly; they are under water, entirely. The flume appeared to be leaking somewhat; it has been in there a number of years anyway.

Q. Were you there when Mr. Cook took possession?
10 A. No, sir; I was there before, and I was there in August, after he had taken possession.

Q. Can you state, as a millwright, from your knowledge of that mill, what would be the actual cost of keeping the mill in proper repair? A. Well, I could not, further than stating what my bills have been there.

Q. That is only your bill; I am speaking now of the whole thing—everything; I don't mean your bill—everything? A. If you take the flume, and the water wheels, and everything into consideration, they would wear out
20 in about 15 years, and to put in that kind of a wheel—they have got five wheels; one is not in use now, but there are five wheels in there, and to replace them, I suppose it would cost some two thousand or twenty-five hundred dollars.

Q. What I was anxious to get at, was the average annual sum of money which would be expended to keep it in repair—if you can give an estimate, taking all these things into consideration? A. Well, it would be kind of guess-work; if you was to allow that forebay and the
30 wheels to be repaired every 15 years, which I suppose would be about the length of time for them, it would cost from two thousand to twenty-five hundred dollars, and the other repairs in the mill, I suppose, would cost $100 a year, or $125.

Q. Now, then, that is your best answer, I suppose; we can draw our own average? A. Yes, sir.

Q. What examination of the stones did you make the other day? A. I didn't see the face of the stones.

Q. Why didn't you examine the stones? A. The
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stones were not up, and of course I could not see the face of them.

By the COURT.—The witness who was produced by the Complainant said he was directed not to show that—not to stop the mill.

Q. The mill was stopped, was it not? A. Yes, sir; the mill was stopped.

Cross-examined, by Mr. Lindabury:

Q. What happened about showing the stones? A. Well, the miller informed us that Mr. Cook was not willing to have the stones taken up; that is all the information I had on the subject. 10

Q. There would be considerable time and labor required to take up the stones, is there not? A. Well, it would take an hour, I suppose, to take them all up and put them back again.

Q. That is all.

Re-direct examination:

Q. What amount of grain was there in the mill, if you observed? 20

[Objected to.]

By the COURT.—There is this distinction: Mr. Oakey, it seems, had not only merchant and grist work proper, as a miller, but did also a large amount of grain business. I understand Mr. Cook to say, and his witnesses, that his business has been distinguished from Mr. Oakey's, in that he devoted all the energies of the mill to merchant and grist work exclusively, and nothing to the grain business. I conceive a mill might be doing that sort of business exclusively, and having its supplies 30 brought in every day, or several times a day, and at no one particular time have any large amount of grain on hand; that would be my reasoning about it.

Q. That is all.

JACOB B. HIGGINS, a witness produced on behalf of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. What is your business? A. Milling. 40

Q. How long have you been engaged in that business? A. About 12 years.

Q. Are you related to Mr. Oakey? A. Yes, sir.

Q. In what way? A. I married his daughter.

Q. How long have you been familiar with this business—the milling business? A. Well, ever since he has been in the milling business.

Q. How long—since you have been in that family, about? A. Well— (Interrupted.)

10 Q. Before he went to Blackwell's Mills? A. Yes, sir.

By the COURT.—Q. Are you a miller, yourself, Mr. Higgins? A. Not a practical miller, but in the milling business—I never learned the trade; that is what I mean.

Further direct:

Q. Now, what do you know about Mr. Oakey using his mill to its capacity during the time he was engaged in bnsiness there?

By Mr. LINDABURY.—There is no testimony on our side, except during the last two years, and the testimony 20 seems to explain that pretty well.

By Mr. CLARK.—If you do not press that I shall be glad not to take any time on it.

Q. Now, then, were you in the mill the other day with Mr. Kugler? A. I was.

Q. Did you have a talk with Mr. Cook about examining the mill? A. I did; yes, sir.

Q. Just please state what was said about what—what was done? A. Well, in the first place, I handed him the letter.

30 Q. What letter? A. The letter Mr. Oakey gave me.

Q. Mr. Oakey gave you a letter to Mr. Cook? A. Yes, sir.

Q. Well? A. And then, after dinner, we went over to the miil to go through, and had a little conversation with him—that is, he said he would like to speak to me a few minutes before we went through.

Q. Who was that? A. Mr. Cook.

Q. Go on, and state what passed? A. Well, he thought it was rather unfair for us to go there, as he ought 40 to have had an opportunity of having somebody there

to go through with us, as experts, he says; and I told him that I did not profess to be an expert, and that he had the privilege, I should think, at any time, of taking anyone through it any day, and that we were there that day and would like to go through, and I didn't think we would come again, or I would not, to go through.

Q. Well, go on? A. Well, then he— (Interrupted.)

Q. Who else was with you, Mr. Higgins? A. Mr. Kugler.

Q. Who else? A. Mr. Oakey. 10

Q. Who else? A. Davis Oakey. He objected to Davis Oakey going through, and also myself going through, as I had been with Mr. Oakey, and I told him it didn't make any difference to me whether I went through with them or with him or alone; so he said I could go with him, and Mr. Oakey and Mr. Kugler could go together.

Q. Well, then, did you go that way? A. Well, part of the way through that way.

Q. Now, did you have any talk with Mr. Cook about the condition of the mill, in any respect? A. Not that I 20 remember of.

Q. Was anything said about the stones? A. At that time?

Q. Well, I don't know what time—anything between you that day with Mr. Cook? A. Oh, Mr. Cook; I thought you meant Mr. Kugler; oh, yes; I asked him if he would take the stones up, so we could see the face of the stones, and he declined to do it; I told him I thought it would not be much trouble, the mill was standing still —the stones—and he said he didn't intend to go to any 30 trouble; I told him I thought we would ask the privilege.

Q. How many run of stone are there? A. Three run, with the pony, as they call it.

Q. Well, would that make three run in all, or four run in all? A. Four run in all.

Q. Did he say anything about the condition of the stones? A. Yes, sir; he said they were in bad condition —that they were worn down—the bars were pretty well worn out, and I forget whether I asked him why they were allowed to run out that way, or whether he said 40

that the picks were delayed, or something in that respect.

Q. What do you say about the condition of the water wheels? A. Well, from the appearance, and the leakage, they must have been pretty much worn out, and one wheel wasn't being used; I noticed there were several whirlpools in the surface of the water in the flume, which would be caused by suction in holes through the wheel, or through the casing of the flume, and also outside of the wheel; I think there was two or three outside of the
10 wheel—these whirlpools—and then I could see the water boil up outside—under—outside of the flume, below.

Q. When was that wheel taken out, do you know, from what Mr. Cook told you, or of your own knowledge? A. The water wheel?

Q. Yes. A. The water wheel itself is in, and I suppose the casing is broken around the wheel; that is the casing which prevents the water from flowing on the wheel.

Q. The spur wheel is on top of that? A. The spur
20 wheel, I think, is off—nothing but the spindle and the water wheel is standing.

Q. Taking the spur wheel off, does that make it more dangerous to the other wheel? A. There may have been damage done in taking it off.

Q. I do not mean in taking off, I mean as to damage by running it without the spur wheel? A. You can't run it without the spur wheel.

By the COURT.—Q. Do you know how long this particular wheel to which you refer had been in the mill, and
30 in use? A. I can't tell.

Further direct:

Q. What else did you discover? A. Let's see; I think I can tell, that is, pretty near; that is, the time it has been in, but how long before that I couldn't tell; the Kugler wheels were the next wheels to those.

Q. Do you mean next before these? A. This was in the end of the flume, and the Kugler wheels came on next, or second from that, I ain't sure which—I mean the Slocum wheels, and that wheel has been in, I think, since
40 I can remember; I think about nine years, and this other

wheel has been in still longer—the wheel that was standing still.

By the COURT.—Q. That is the one you thought was worn, as you saw the air-holes in the water? A. Yes, sir.

Further direct:

Q. Now, you were about to state something else in relation to the condition of the mill; what was it; please go on, and state it? A. Well, if you want to know about the waste of water. 10

Q. What occasions the waste of the water? A. The worn wheels, and the holes in the plank in the bottom or sides of the flume, and so forth.

Q. Well, should those holes be there if the mill is properly kept up? A. They should not; there is where the foundation of the business is—in the power—and a miller's business is all based on his water power, and if his power is running away it would affect the machines of the mill to the same proportion.

Q. Well, what did you discover about the cistern further than you have stated—anything further? A. Well, my judgment would be, that there was one-third of the water escaping and coming down the stream the day I was there; that is, the gates were all shut down on the wheels, the mill stopped, and one-third of the water passing down the stream, escaping. 20

Q. Well, did you observe any obstructions to any of the wheels—I mean of power? A. This wheel that has been spoken of was an obstruction to the wheel that ran the feed mill, and that was caved over, and it must shut off the escape water on one side of the wheel—shut off the discharge water on one side of that wheel—that is, very near all of it, and this escape water, in my judgment, would diminish the power of the mill about one-half. 30

Cross-examined, by Mr. Lindabury:

Q. The escape of one-third of the water would diminish the power one-half, would it? A. Yes, sir.

Q. Was the feed stone running? A. The feed stone was running on cracked corn.

40

Q. Didn't that take some of the water? A. Well, cracking corn takes very little.

Q. Well, it took some of this one-third that was escaping, didn't it? A. Well, the water was all escaping when the mill was running.

Q. You said the gates were all down, didn't you?

By the COURT.—No; he didn't put it that way; he made it as a proposition, shutting down the gates and stopping the mill.

10 Q. You said you were not a practical miller; Mr. Kugler is an expert in all these things, is he not? A. I could not tell you.

Q. Wasn't he around there; didn't he see all these things? A. He was there.

Q. He looked it all over, and saw all these things? A. I was not with him.

Q. You saw him about the mill, didn't you? A. Yes, sir.

Q. The water wheels were all out, weren't they? A.
20 Yes, sir.

Q. And wanted repairs? A. Yes, sir.

Q. When do you do that, when the weather is warm and the water low? A. You can fix in a flume any time.

Q. Don't you generally leave those repairs for the Summer? A. No, sir; not in the flume; you could shut down the headgates and shut the water off, and go down on your wheels.

Q. Why did Mr. Cook object to your going through? A. Well, I think he made it a point that the letter said
30 "one".

Q. The letter was from Mr. Clark; wasn't it written pursuant to the arrangements between you and me? I show you a letter from him dated June 3d, 1884. Is that the one? A. It looks like it.

Q. It asks the privilege of Mr. Oakey going there with a gentleman to examine the mill? A. Yes, sir.

Q. And Mr. Cook said he was willing for Mr. Oakey and a gentleman to go through?

Q. At a time? A. Yes, sir.

40 Q. That's all.

[Said letter offered in evidence, same being dated June 3d, 1884, and marked Exhibit C. 4.]

Re-direct examination:

Q. Can you tell, Mr. Higgins, from your experience and your knowledge of this mill, what would be the annual cost of repairs to this property to keep it in proper order?

[Objected to.]

By the COURT.—I don't think he would help much, Mr. Clark, on that account; if you think it valuable it ought to appear that this witness has had such experience in the milling business. 10

Q. How long were you engaged in the milling business, Mr. Higgins? A. About 12 years.

Q. In what way are you engaged in it? A. I am one of the proprietors.

Q. What do you have to do with the repairs put upon your mill? A. Well, I have to see that the work is done.

Q. Well, what do you have to do with respect to seeing that the work is properly done; do you trust to your own judgment with reference to having the work done, or do you trust to somebody else's judgment with respect to what needs to be done? A. Well, in part; we take in a millwright's judgment; they are always under the control, of course, of the proprietor; that is, if they advance any opinions, of course they will be sanctioned before acted upon. 20

Q. Now, go on, and tell, if you are able to from your knowledge and experience, what would be the annual cost of repairs to this property to keep it in proper order? A. Well, somewhere between three and five hundred dollars, as near as I can estimate, in my judgment. 30

By the COURT.—Mr. Higgins, how does this mill compare with yours, in size and in machinery? A. Well, the mill, in size, I think, is as large as ours, perhaps a little larger; I don't think there is any difference.

Q. How about the machinery; is it as well stocked—as well provided? A. No, sir.

Q. That's all.

40

JACOB KUGLER recalled.

Further examination, by Mr. Lindabury:

Q. What is the time of year for repairing water wheels and flumes, and works about a mill, that are under water? A. We generally try to do it in warm weather; it is a disagreeable job, unless we have to do it.

Q. You have spoken of certain things, and I asked you whether the mill didn't need those things when you saw it last, before Mr. Oakey went away? A. I could not say
10 it did, because they were under water; I didn't notice the leaks.

Q. These things that you spoke of are nothing that has arisen from misuse during the past year? A. Natural wear and tear, I should judge.

Q. Nothing else, is there? A. No, sir.

By the COURT.—Q. Does not the time of making repairs depend somewhat upon necessity? A. Sometimes; in case of a break-down we repair as soon as we can, but as a general thing we take opportunity to repair in warm
20 weather.

By Mr. LINDABURY.—Can this repair be done very well at any other time, except in warm weather? A. You would have to keep the water out, which could be done at any time.

By Mr. CLARK.—Q. How do you know that these repairs that you speak of are only from natural wear and tear? A. I should judge so.

Q. Now, you speak of making repairs; is not the old maxim, an ounce of prevention is worth a pound of cure,
30 applicable to mill repairs? A. Yes, sir.

Q. Did you ever make repairs there for Mr. Cook, except in warm weather—about the water wheels, I mean? A. No, sir; not the water wheels.

Q. Or under the water? A. No, sir; I never did; before I went there, a year or so, there was new wheels put in; I first went there in 1877—August, I think.

CHARLES DIXON, a witness produced on the part of the aforesaid Defendant, being duly sworn according
40 to law, testified as follows:

Direct examination, by Mr. Clark:

Q. You are a miller? A. Yes, sir.

Q. And engaged in the milling business now? A. Yes, sir.

Q. How long have you been? A. About 16 years.

Q. You learned your trade in this mill? A. Blackwell's mill.

Q. Have you known this property ever since? A. Yes, sir.

Q. How its business has been, and its capacity? A. I have known it ever since as a mill. 10

Q. Were you here in court when Mr. Beatty testified in respect to its value? A. Yes, sir.

Q. Its increased value? A. Yes, sir.

Q. What have you to say with reference to the property being worth any more in value now than it was in September last, or after Mr. Cook took possession of it; what is your information about it? A. Well, I don't think it is worth any more money, with the mere exception of what I heard in reference to the pleadings; as far as the mill is concerned I would not consider it worth any more. 20

Cross-examined, by Mr. Lindabury:

Q. The value of a mill depends a good deal on the good will of it, does it not? A. Somewhat.

Q. The larger the custom of the mill the more it is worth? A. If the custom is permanent.

Q. If the custom of this mill has quadrupled since Mr. Cook has had it would that increase its value? A. It would, if the party taking hold of it could hold it. 30

Q. For selling purposes, I mean. If the custom of this mill has quadrupled since Mr. Cook got it, would it not sell for more than if it remained as it was? I do not ask you if it has quadrupled, but suppose it has. Would not that fact affect the price it would bring? A. What kind of business—merchant business, or grist business?

Q. Grist business. A. Grist?

Q. Yes; and merchant, both? A. Well, I consider a mill property more valuable, as it is doing more business, as the business is profitable. 40

Q. I should think you would be able to answer my question yes or no? A. I could not answer it yes or no that way.

Q. You could not, eh—because you don't want to? A. My knowledge of the milling business is, you don't know whether it is always profitable or not.

Q. I told you—now, if it has quadrupled since Mr. Cook got it, would not that fact affect its selling price? A. Yes; I think it would.

10 Q. That's all.

Re-direct examination:

Q. Would not that depend upon whether the quadruple was a profitable business, or attended with a loss? A. It would with me—to buy it.

Q. Wouldn't it for anybody? A. I suppose so.

Q. What is the condition of the market with respect to mills of this character now in comparison with new process mills?

By the COURT.—Is not the answer to that question, 20 let it be yes or no, the same to both parties? I will not allow that question to be answered, because it does not help the Court at all.

Q. That's all.

GARRET NEVIUS, a witness produced on behalf of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you live? A. I live in Franklin town- 30 ship.

Q. How far from Blackwell's Mills? A. Three and a half miles to Blackwell's Mills.

Q. Is that the mill to which you go, or did go, when Mr. Oakey was engaged in the business? A. It is.

Q. Do you still patronize that mill? A. I haven't lately; no, sir.

Q. How long have you known this mill property? A. For the last four years.

Q. You have lived where you do now for that length of 40 time? A. Yes, sir.

Q. Well, you speak now of the mill property—I mean the machine house, the mill property, and the buildings? A. Yes, sir; the whole thing.

Q. Were you here the other day when Mr. Beatty was sworn, and gave his opinion as to the increase of value in that property? A. I was.

Q. What is your opinion in regard to that? A. I can see no difference in the condition of the property since Mr. Cook took it and this time.

Q. Would it, in your judgment, bring any more in the market now than formerly? A. I don't think it would. 10

Q. There has been something said about the business being increased materially under Mr. Cook; do you know anything about its increase under Mr. Cook? A. I do not; I was in there once.

Cross-examination, by Mr. Lindabury:

Q. Would not the value depend upon the question of the business largely? A. Oh, yes.

Q. That you know nothing about? A. Nothing, personally. 20

Q. That's all? A. I had reference to the buildings; Mr. Clark asked me the market value.

Q. The market value of the buildings, you mean? A. Yes, sir; and the property.

Q. What do you say? A. The buildings, and the whole property.

By the COURT.—I think the witness is very clear. He says he speaks of the buildings, and you ask him about the business, and he says he knows nothing about it.

Re-direct examination: 30

Q. If the property is put into market to-day, at public sale, in your opinion would it bring any more than it would one year ago? A. I don't think it would.

Q. That's all.

Re-cross:

Q. Mr. Nevius, if one year ago the mill earned $100 a month, and is now earning $400 a month, would that fact, if known to bidders, affect the price of it? A. If they thought that was so it would, I suppose.

Q. That's all. 40

JACOB W. VEGHTE, a witness produced on the part of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you reside? A. Franklin township. About two miles from this property.

Q. What is your business? A. Farming.

Q. How long have you lived where you do now? A. All my lifetime.

10 Q Did you attend Mr. Oakey's mill when he was engaged in business there? A. Yes.

Q. Do you go there now to mill? A. I do, when I have necessity to go; I go there when I want to go to mill.

Q. Do you know this mill property—the dwelling house, and the outbuildings—the whole property? A. I have been in them both.

Q. Did you hear Mr. Brooks's testimony, when he was sworn, as to its value? A. I did.

20 Q. You are an owner of real estate, I understand? A. Yes.

Q. And own two farms? A. Yes.

Q. What have you to say in reference to that property having increased in value since Mr. Cook has taken charge of it—has it, or not, in your judgment? A. I haven't been off of the road, around the buildings, since Mr. Cook has been there. I saw there was a new roof on the mansion house, and I saw paint on the mill. I saw painters painting it when they were there, and it 30 helped the appearance of the property, from the outside view, materially, and, no doubt, the house, inside of it.

Q. I asked you a question? A. I am telling that.

Q. Well, tell it, then? A. That's all. You said the appearance of the property, didn't you?

Q. No; I said, what, in your opinion, in respect to increase in value of the property since Mr. Cook took it—would it bring any more in the market, if offered for sale to-day than it would when Mr. Oakey left it? A. I don't 40 think it would.

Cross-examined, by Mr. Lindabury:

Q. Would not the fact depend upon the amount of business? A. To a certain extent it would.

Q. That you know nothing about? A. No.

Q. That's all.

Re-direct examination:

Q. Bidders would have to be satisfied that the business was bona fide? A. Yes; I should think so; I would, if I was going to buy the mill.

Q. That's all. 10

Re-cross:

Q. That is the best you can say about it?

By the COURT.—Well, that is all, Mr. Veghte.

ABRAHAM V. D. POLHEMUS, a witness produced on behalf of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you reside? A. Near Franklin Park; about half way between Franklin Park and Blackwell's 20 Mills.

Q. What is your business? A. Farmer.

Q. Do you own any property? A. I do not.

Q. You are a son-in-law of Mr. Garret Nevius? A. Yes, sir.

Q. You know the Blackwell's Mills property—when I speak of the property I mean the whole property which Mr. Oakey agreed to convey to Mr. Cook? A. Yes, sir.

Q. How long have you known it? A. I have known it since I was a boy. 30

Q. Mr. Beatty testified the property had increased in value five per cent. since Mr. Cook had taken possession of it; in your opinion, would or would not the property, at public sale, bring any more than it would when Mr. Cook took hold of it? A. I don't think it would.

Q. Tell your reasons why? A. The appearance of the property is not any better; only the roof on the house; and as I noticed this morning, I don't think I ever saw the waste of water in the bay as it shows now; they are not using the mill, and I should think they ought to have 40

water plenty; I think the dam is bare; and the outbuildings, you can see from the outside, are not near as good as they were a year ago.

Cross-examined, by Mr. Lindabury:

Q. You don't know anything about the comparative amount of business done there now? A. No, sir.

Q. You have never bought and sold mill property, have you? A. No, sir.

Q. You do not know how much the value of property
10 depends upon the good will, or custom of the mill, do you? A. Well, I suppose the more a man is doing the more valuable a property is.

Q. You do know it depends very largely on that, don't you? A. I should think it would.

Q. That's all.

Re-direct examination:

Q. It would depend upon the character of the business he did, would it not? A. It would have to be profitable. Bidders would have to know it was profitable when they
20 bid upon the property.

Q. That's all.

THEODORE LEIGHTON, a witness produced on the part of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. You reside near Blackwell's Mills? A. About a quarter of a mile, I suppose.

Q. And are often at the mill, or near there? A. Well,
30 I go by there often.

Q. What is your business? A. Farmer; I own a property there.

Q. How long have you lived there? A. I have lived there in that neighborhood—not just where I live now; I lived close by the mill one time—I have lived there over 30 years.

Q. In your opinion, would or would not, the Blackwell's Mills property bring any more in the market to-day than it would at the time Mr. Cook took possession of it?
40 A. I don't hardly know; the house has been fixed up

some; it has had a new roof on, and some other little improvements. I suppose the entire wear and tear of the other buildings, one would balance the other; I don't suppose it would fetch very much more.

Cross-examination, by Mr. Lindabury:

Q. Do you know anything about the amount of business being done there now, compared with what was being done there at the time Mr. Oakey was there? A. Nothing, particular.

Re-direct: 10

Q. You have not been able to ascertain that Mr. Cook was doing an immense business, larger than Mr. Oakey was doing? A. I don't know anything, particular, about the business.

Q. You base your opinion, then, upon the knowledge of the property and the business, as you understand it? A. Yes; I don't know, particular, about the business; I don't know what business Mr. Oakey done, nor what Mr. Cook has done; I could not tell about their business.

Q. That's all. 20

ABRAHAM VOORHIES, a witness produced on the part of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you live? A. Franklin township.

Q. How near to this property? A. About two miles.

Q. How long have you lived there? A. Since last Spring a year ago.

Q. Before that, where did you live? A. Blackwell's 30 Mills—near by.

Q. You are a son of Mr. Frederick V. L. Voorhies, the gentleman who was a witness here yesterday? A. Yes.

Q. You have known this property how long? A. All my life.

Q. What have you to say, with reference to the market value of this property to-day, compared with the time Mr. Cook took possession of it; has it, or not, increased? A. It has not, to my knowledge.

Q. That's all. 40

Cross-examination, by Mr. Lindabury:

Q. Do you know anything about the amount of business done there now? A. No, sir.

Q. Do you know anything about the amount Mr. Oakey did the last year or two? A. No, sir; not the amount.

Q. You don't know whether it has increased or not, and if so, how much? A. Whether Mr. Cook's business has increased over Mr. Oakey's?

Q. Yes. A. I am unable to say; I don't think, from
10 my knowledge of the business of the two men, that Mr. Cook's business has increased over Mr. Oakey's, unless it was the two last years. He, perhaps, is doing more business than Mr. Oakey did for the last two years; but when he first came there, for the first six or eight years, I think Mr. Oakey did as much business as Mr. Cook does.

Q. Do you know how much Mr. Cook does? A. I do not know how much Mr. Cook does, only from appearances; I judge from the material that is taken away from the mill now, and when Mr. Oakey had it.

20 Q. How close do you live to the mill? A. About two miles.

Q. You see the material taken away now? A. I do.

Q. All of it? A. I don't say that.

Q. How much do you see? A. A great deal of it.

Q. How can you? A. How can I?—with my eyes.

Q. Do you farm? A. I do.

Q. How many roads lead away from Blackwell's Mills? A. One.

Q. You attend to your business at home? A. I do.

30 Q. And you see most of the stuff carted away from the mill? A. See most of it?

Q. Yes. A. Did I say so?

Q. Well, I have no more questions.

Re-direct:

Q. You were asked if you knew about the business Mr. Oakey did, and you said till the last two years? A. Yes, sir.

Q. Did Mr. Oakey, during the last two years of his ownership, carry on the business of milling there, or was
40 it carried on by somebody else? A. No, sir.

[Objected to.]

Q. Do you mean Mr. Oakey was carrying on the business the last two years, or the business that was carried on there at the mill? A. I mean the business carried on at the mill.

Q. That's all.

Re-cross examination:

Q. Where did you live those last two years, where you do now? A. No, sir.

Q. That's all. 10

By the COURT.—He said he moved there a year ago last Spring.

JOHN SPERLING, a witness produced on the part of the aforesaid Defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Clark:

Q. Where do you live? A. I live near Blackwell's Mills—about four or five hundred yards from this property. 20

Q. What is your business? A. Farming.

Q. How long have you been engaged in farming? A. Over four years.

Q. How long have you known this Blackwell's Mills property? A. 18 years.

Q. Do you know the character of the business Mr. Oakey did at the time he was engaged in the milling business himself? A. No more than what an outsider would judge from general appearances.

Q. What have you to say about the market value of 30 this property to-day in comparison with its market value at the time Mr. Cook took possession of it; has it, or not, increased in value? A. From what I know of it, and my judgment, I don't think it has.

Q. Well, what do you know of it? A. No more than an outsider would from general appearances; I can't say that there is any more business done there—that is, general milling business—than there was when Mr. Oakey had it; not as much, in some respects.

Q. Now, speaking of the repairs which have been done 40

there, just tell us, if you please, what the improvements are to the mill? Mr. Cook says he has painted the mill; state what kind of material was used, and what kind of a job it is? A. Well, the job ain't very extra.

Q. Well, just explain to the Court? A. Part of the material on one part of the mill was white lead and fish oil, and on the rest of the mill it is crude petroleum and yellow ochre.

Q. Well, now then, if you please, is that crude pe-
10 troleum cheap or expensive material? A. Well, it is bought in the market from eight to fifteen cents a gallon, according to fluctuations of the market; it is all painted with this, except the front gable end.

Q. What is the effect of painting the mill with that sort of material? A. The crude petroleum itself is a benefit to the boards—to any wooden material; the boards will absorb it; but to mix it with the color the crude petroleum will go in and the color will stay outside; consequently the color will wash off.

20 Q. Now, what have you to say in connection with the use of this fish oil in connection with the white lead in front? A. Fish oil I don't know much about, but I notice the front is scaling off some; at the sides, more or less; but as to the benefit of the fish oil I could not say what it is.

Q. Did you have any conversation with Mr. Cook, about the time this job was being done, about the character of the material that was being used? A. No, sir; I did not.

30 Q. When was this work done? A. Somewheres about the first of August.

By the COURT.—Q. Last year? A. Yes, sir.

Further direct:

Q. Who was the contractor? A. Charles Thompson.

Q. Did you hear any talk between the contractor and Mr. Cook, about the character of the material? A. I remember I heard the contractor complain two or three times that he could not do a good job with the poor material.

40

Q. To Mr. Cook? A. Yes, sir; to Mr. Cook, on one occasion.

Q. What did he say? A. The material, he says, was too poor, he could not make a good job of it.

Q. Do you know what the cost was of the work on the mill? A. No, sir; I do not.

Q. Was it by contract, or by the day? A. Contract.

Q. Do you know what the contract price was? A. I understood it was— (Interrupted.)

Q. How did you understand it? A. I was told by— 10 (Interrupted.)

By the COURT.—Q. By Mr. Cook? A. Mr. Cook, after the job was done, told me he had contracted with Mr. Thompson to do the job, two coats, for $35.

Further direct:

Q. Did you do the work? A. I did part of it.

Q. Did you give it two coats? A. No, sir.

Q. How much? A. We gave part of it three coats— the front gable end, with the exception of a part that has been built on. That we gave two, and the rest of the 20 mill we gave but one, of the yellow ochre.

Q. Well, do you know from what he said, whether he paid for more than one coat? A. That I could not say, positive.

Q. I mean from what Mr. Cook told you about it? A. I can't remember that, positive.

Cross-examination, by Mr. Lindabury:

Q. Didn't Mr. Cook find the material for painting? A. I understood so.

Q. What do you mean, then, that he contracted for 30 $35? A. To do the work.

Q. The work only? A. Yes, sir.

Q. Do you know what that crude petroleum, and something else you spoke of, cost?

By the COURT.—He gave the price.

A. From eight to fifteen cents, as the market fluctuates.

Q. I show you the bill; you have seen it, haven't you? A. I have not.

40

Q. I show it to you—45 cents? A. That is what we put on the front, Mr. Lindabury.

Q. Has that white lead in it—imperial oil? A. It is mixed with white lead; we don't use any prepared paint.

Q. Look at that—"52 galls. of imperial oil, 40 cents a gallon". That is prepared paint? A. No, sir; it is not; it is imperial oil.

Q. What kind of oil is it? A. Just as it says here.

By the COURT.—Q. Is that the material that is used?
10 A. Painters call it fish oil.

Q. What do you say fish oil costs? A. About 40 cents a gallon; the crude petroleum is a different thing.

Q. Do you find that on the bill? Look and see if you find anything there that you call crude petroleum? A. I do not, but nevertheless we used it.

Q. What do you do, Mr. Sperling—did you say you farmed? A. I am a farmer.

Q. How much of a farm have you? A. I farm a farm of 75 acres.

20 Q. A few hundred yards from the mill? A. Yes, sir.

Q. Is it in full sight of the mill? A. Yes, sir.

Q. Every part of it? A. Not the side that is opposite the front side of the mill; the front towards Mr. Cook's is not, the other part is.

Q. Can you look, or can you see from your house, what is being done at that mill? A. Not when I am in the barn, or at the house, but when I am on the premises I can.

Q. Have you any definite idea how much business was
30 done there during the year? A. Nothing more than an outsider would in going by and living close by, usually seeing it every day.

Q. Well, that's all.

Adjourned till Friday, September 5th, 1884.

FRIDAY, September 5th, 1884.

[Mr. Lindabury stated that he had carefully ex-
40 amined the evidence of the last meeting and

found that he had omitted to ask Mr. Cook certain questions which he thought important, and asked leave of the Court to ask them now. No objection being made, counsel was given permission to ask the questions, after the Defendants closed.]

JOHN OAKEY, a witness produced on the part of the Defendant, being duly sworn according to law, deposeth and saith: 10

Direct examination, by Mr. Clark:

Mr. Lindabury asked permission to recall John L. Oakey for further cross-examination in regard to his bank account at New Brunswick. The Court granted the request, and called

JOHN L. OAKEY. (Recalled for cross-examination by Mr. Lindabury.)

Q. Did you bring with you your New Brunswick bank book? A. I did, sir. 20

Q. Will you open it at that part which contains your account for the year 1883, from May to August? A. (Witness opens the bank book on the National Bank of New Jersey, at New Brunswick.)

Q. It appears by your bank book that your balance—by an entry in that book, it would appear that, on May 5th, 1883, there was a balance—can you tell by that book what balance you had on the 1st of May, 1883? A. No; I cannot.

Q. Can you tell by that what deposits you made during 30 the months of May, June, or July, in that bank? A. I can't, only by reference to this book.

Q. Why is it, that the first is balanced July 28th, and the second opened July 12th; do you know? A. The second was a private account until July 27th.

Q. The first was the book of J. L. Oakey & Son? A. Yes, sir.

Q. And the second was J. L. Oakey, from July 12th, 1882, to July 27th, 1883? A. Yes, sir.

Q. And then it began to contain the account of J. L. 40

Oakey & Son? A. Yes, sir; them three was private accounts; after that it was J. L. Oakey; it was money I had put in the bank.

Q. Did you keep any other account in that bank except the ones contained in these two books? A. No, sir.

Q. Now, Mr. Oakey, I show you what purports to be a transcript of the ledger of the bank at New Brunswick. You will observe that you are shown to have a balance on the 1st of May of $37.58? A. I observed that.

10 Q. Now, the next deposit which you are credited here with having made, is on the 27th of July. That wheat crop is something put in by somebody else. You see, you are shown to have a balance of $37.58 on the 1st of May, and the next deposit you are credited with is July 27th—$907.87. How do those figures accord with your recollection? Look at your books as long as you wish. A. I will explain this. Here, July 28th, balance, $2,616.85, and that was carried here. Now, then, this account—I think, John Rittenhouse—I took his part of it; and this 20 is balanced to me. This is a private account that I had besides that, and the bank told me now that it would have to transfer it all into one account.

Q. Then, before the 27th of July, you had a private account? A. Let's see; 27th of July, was it?

Q. That is the date here—28th, if you please. Before the 28th of July you had a private account, and the balance of that account, on the first of May, was $37.58? A. You say so; I don't say anything about it.

Q. Look at your own books; here, July 27th, 1883, you 30 made a deposit of $907.87? A. Yes, sir.

Q. Was that your share of the wheat crop? A. No, sir.

Q. Why was it not? A. Because it was not given to me that date.

Q. July 27th? A. I don't think it was, because I did not leave there until July, sometime, and then they had sent it off, and I did not have the money to deposit it there. I don't think it was.

Q. What do you think it was? A. I can't remember; 40 I can't tell you what any of it was.

Q. How much did your share of the wheat crop amount to? A. I could not tell you.

Q. Can't you come within two or three hundred dollars? A. There is no use.

Q. You know whether it was five thousand dollars, or one? A. No; it was not five thousand, nor one.

Q. Tell me, as near as you can? A. We have got the receipt; I don't know what my share was, exactly.

Q. Was it not about $900? A. I don't think that was the wheat crop. 10

Q. Was it not about $907? A. It don't strike me that it was.

Q. What do you think it was? A. I don't know.

Q. Was it more, or less, do you think? A. I don't remember; as I say, I can't tell you, because I don't think I had it; I think that Davis gave it to me, sometime.

Q. Did you get the money for it all at once? A. I got my money; I could not answer that now; I haven't charged my memory with it.

Q. What did you do with the money when you did get 20 it? A. I used some for one thing, and some for another.

Q. Didn't you put it in the bank? A. Not all of it.

Q. How much did you put in the bank? A. I don't remember.

Q. Where was the wheat sold—in Baltimore, or New York? A. In Baltimore.

Q. Didn't you get a check for it, Mr. Oakey? A. I may have got a check.

Q. Didn't you get a check for it? A. I think there was a check sent for it, I am not positive; but I think 30 there was.

Q. And you deposited that check in the New Brunswick bank, didn't you? A. If I did, I don't remember; I don't remember all these little details.

Q. There are some things that it is your duty to remember. A. And there are some things that it ain't.

Q. Your idea of your duty is somewhat different from my idea of it? A. My idea is to tell the truth.

Q. You said that you did have a check? A. I said, I think I did. 40

Q. Where did you deposit it? A. If I had one I deposited it in some bank.

Q. What bank? A. Very likely the National Bank of New Brunswick.

Q. What other bank could it be? A. I deposited money here.

Q. Did you deposit any here at that time? A. I don't know that I did.

Q. You did not deposit any money in any bank except
10 the National Bank at New Brunswick and the bank here? A. No, sir.

Q. Then, if it is not in this one, it is in that? A. I have no doubt but that it was deposited in the Brunswick bank.

Q. Was not that item of $907.84 the check? A. I could not swear positively to it, at all.

Q. "John L. Oakey & Son"—whose account did you say that was? A. We formed an account together, and I left that account running together, although it was
20 my money; we had two books, and then I turned it over into this account. When John was home in the mill we had two accounts, and I left it running on that way.

Q. Whose was this account of J. L. Oakey & Son, during the year preceding May 1st, 1883? A. It must have been my son Davis's and mine; Davis and I were together running the mill.

Q. So, the account in that bank of J. L. Oakey & Son, during that last year, belonged to your son Davis and you? A. Yes, sir.

30 Q. And, besides that, you had a private account? A. I had them to keep an account—

Q. Listen to my question. Commencing July 12th, 1882, the bank book of which you produce here? A. Yes, sir.

Q. What balances you had in the account of May, June or July, in the account of J. L Oakey & Son, you don't know? A. The money all was mine.

Q. I asked you about the balances? A. I don't know what the balances were any more than those books show.
40

Re-direct examination, by Mr. Clark:

Q. If I understand you now, the John L. Oakey & Son account was the account of J. L. Oakey and Davis Oakey? A. And Davis Oakey.

Q. John L. Oakey and Davis Oakey, the son? A. The bank account?

Q. The first book?

By the COURT.—Q. Don't they speak for themselves on the face? A. It was Peter Davis Oakey's account and myself; we were in partnership. 10

Q. You say that the money in that account was yours? A. Yes, sir.

Q. And that bank book shows what amount of money you had to your credit during the months of May, June and July? A. Yes, sir.

Q. What control did you have of the money? A. All the control.

Q. To do with as you pleased? A. Yes, sir.

Q. And then you say, after they went away, you transferred the account to your individual account? A. Yes, 20 sir.

Q. You mean after the boys went to Maryland? A. Yes, sir; I said something to Mr. Hill one day—

Q. Never mind that; you stated that you transferred the account. You have been asked whether $907.84 was not the correct amount of the check which you received for wheat; you stated you could not answer? A. No, sir.

Q. From whom did you receive a check—do you remember of receiving a check, at all? A. I don't remem- 30 ber, yet I can't say that I did not; if I did remember it I would say it right out, but I don't remember it; it seems to me that I did see a check from Cox, but I don't know whether it was for corn or wheat; that is what bothers me.

Q. Who had charge of that matter—who had charge of the sales, by means of which definite information can be ascertained? A. John and Davis had charge of it.

Q. There is a question I want to ask, Mr. Oakey; I will ask it now, if there is no objection. I notice, in the ex- 40

amination of your testimony, that you were asked about the mortgages—what Mr. Cook said about mortgages. You said he had to raise a great deal of mortgages or money; then you talked about exchanging mortgages, and I want to call your attention—no, Mr. Lindabury asked you a question about it; it was on cross-examination. I want to call your attention to that conversation, if I can, and ask what was said, if anything, about exchanging mortgages—what you meant by
10 that, and what was said about it? A. Mr. Cook said it was a good deal of money; it was a large transaction, and to arrange the mortgages it would take a good deal of time. He talked about the Mr. Van Duesen's mortgage. He asked me two different times about exchanging—about myself taking $5,000 mortgage.

Q. That has been talked about. A. There was nothing talked about our exchanging our mortgages, any more than he said, at this conversation, that it was a great deal of money, and to arrange the mortgage it would take a
20 good deal of time.

JOHN OAKEY.

Direct examination, by Mr. Clark:

Q. You are the son of John L. Oakey? A. I am.

Q. How old are you? A. I was born in 1856.

Q. What was your business before you went to Maryland—you are the son who went to Maryland? A. Yes, sir; first.

Q. What was your business before you went to Mary-
30 land? A. Farming, part of the time, sir.

Q. And before that? A. I had farmed for probably two years; I was in the mill one year after I was married, and farmed two years; one or two years, I won't be positive about that, before.

Q. Were you present at any conversation between Mr. Cook and your father, in relation to this exchange, before the contract was drawn? A. I was, on the same day that the contract was drawn, yes, sir.

Q. Where did you first see your father and Mr. Cook?
40

A. I saw them sitting on the woodpile, up by the wagon house, where we kept our large mill wagon.

Q. That is at Blackwell's Mills? A. Yes, sir.

Q. And if any conversation passed between them, in your presence, or that you heard, in relation to this matter, just state what was said? A. Well, they were talking there about the trade when I came up; I came from the field there, and saw them together, and felt interested, and, of course, went up to them; and at the time when I first came up they were talking about making 10 some arrangement to exchange stock, and they talked for awhile about that, but came to no conclusion; and then we got up and walked a little ways, and I believe my father and he had come to a final conclusion.

Q. About what? A. About the trade, exchange—agreement to exchange.

[Objected to.]

Q. What was said?

Mr. LINDABURY.—I believe the rule adopted at a previous meeting undoubtedly is correct; this testi- 20 mony ought to be confined to the mortgages. The agreement stands for itself and cannot be altered, but it is competent to give testimony in regard to the mortgages.

Q. Where did your father and Mr. Cook then go? A. To the mill.

Q. What was said on the way from the house to the mill? A. Right in front of the carriage house there was something said about mortgages; I don't know who broached the subject. My father said, "I have $8,000 on here; I would like to know how much you have down 30 there"? Mr. Cook hesitated. I said, "Mr. Cook, if I am going to move down there I would like to know much mortgages there is on the place. We have no facility here for finding out the record in Maryland; I would like to know". He said there was $13,000 or $14,000. "I have more than I want down there, on account of some family troubles", which have been related here, and other difficulties. That was the answer that he made at that time.

40

Q. Then, from there, where did you go? A. We went from there to the mill.

Q. Was that about all that was said? A. Yes, sir; all that I remember, of any importance.

Q. Then you went from there to the mill? A. Yes, sir.

Q. What was next done? A. We went to the mill, to the office; the office in the mill. Mr. Lewis T. Howell was there. The agreement was reduced to writing, and
10 he drew the writing.

Q. Go on? A. After the writing was drawn up we all read it. My brother made a suggestion that there was nothing said where the wheat should be delivered.

Q. Davis? A. Davis; and proposed that there should be something definite put in about it—where Mr. Cook's half of the wheat should be delivered. Then I told him that the contract was worth nothing unless there was something paid on it; and there was a little money paid, and a receipt taken. Mr. Howell then said, "If you are
20 through with your business, let us go home", and started out of the mill.

Q. Who was then left in the mill—the rest remaining in the mill? A. Yes, sir; I think so.

Q. What next was said and done? A. My father said, "Mr. Cook, I have considerable money on the book; it may take me some time to collect it all; I think, probably, I could leave $10,000 on the place for a year". Mr. Cook said "that would be all right, and easily arranged", and Mr. Cook talked about the change of possession—said it
30 was important for us to get there, and him to get here, just as soon as possible, so that each could take care and look after their interests, and repeated that several times; and they started out, and Mr. Cook forgot to take the money, and my brother called him back and asked him if he would not take the twenty dollars, or twenty-five, whichever it was, paid on it.

Q. Go on? A. And my father and I started across the road with him, and asked him if that would be satisfactory, being that he had the books, and did not know
40 if he could get it all collected right away—should leave

$10,000 on the place, and then he could suit himself; he said, "Yes, there would be no trouble about that." That was while I was going across the road, and Mr. Cook went on, and went home.

Q. You proceeded to exchange possession? A. Yes, sir; after a short time; as soon as we could get ready.

Q. And who went to Maryland? A. I did.

Q. Who else—you and Davis? A. I moved there, and Davis came on shortly afterwards.

Q. You went there with your family? A. Yes, sir. 10

Q. And you and Davis farmed the place, you stated? A. Yes, sir.

Q. And you remained there until what time? A. Well, just before the 1st of January; I forget the exact date—the last of December, when I came back.

Q. How were you farming the place? A. My brother and I were farming it for the halves.

Q. Did you return home at any time before the first of January? A. I did; yes, sir.

Q. Had your coming home anything to do with refer- 20 ence to the contract or exchange of the properties? A. Yes, sir; everything to do with it.

Q. When did you come home? A. In the latter part of August.

Q. What had your coming home, then, to do with the continuance of the contract, or the carrying out of the contract? A. I don't exactly understand the question.

Q. What had your coming home in August have to do with the carrying out of the contract? A. I was anxious to find out whether this contract could be carried out— 30 to see whether Mr. Cook was ready to carry out his part of the agreement.

Q. Why? A. Because my brother and I were dissatisfied and unwilling to go on any further unless we knew we could get title to this farm.

Q. What were you dissatisfied about? A. Because the mortgages were so great that if we went on there we did not know if we would reap, or somebody else would.

Q. What would be the cost and expense of your sowing your wheat crop? A. The expense of putting in 40

what we expected to put in, as near as I can estimate, would be from $700 to $1,000.

Q. What had you done, before coming home, with reference to putting in the Fall crop—anything, at all? A. We had carted the manure.

Q. How many loads? A. Between five and six hundred loads of manure, and plowed part of the ground.

Q. Do you know what proportion you had plowed at that time? A. I think, probably, half.

10 Q. How many acres, in all, had you intended to plow? A. 125 acres we expected to put in.

Q. Had you made any preparation in the way of seed and fertilizer? A. We had fertilizer on hand and engaged.

Q. When you say on hand, you mean on the farm? A. Yes, sir.

Q. After you returned, in August—when you returned to Blackwell's Mills, in August, for the purpose of ascertaining about the title, what did you do, with a view of 20 seeing about this matter? A. I came home—talked with my father.

Q. Then, what next was done? A. I went to New Brunswick and drew the money—$2,800; the balance we had in our pocket; after I came back my father and I went to see Mr. Cook.

Q. State what passed between your father and Mr. Cook and yourself, in his presence? A. We went there in the morning, and asked Mr. Cook if he was ready to fix this matter up; he said he was not; he hadn't seen 30 his man from Philadelphia yet, or the man hadn't seen this place, I forget which were just his words; and my father said, "Mr. Cook, it is time this is fixed up; I would like to get this fixed up now as soon as possible; I have the money and the papers here with me"; and he took the money out and showed it to him.

Q. How much money did he show him? A. $3,000.

Q. What did he say to him in reference to the amount? A. He told him there was $3,000 and the papers.

Q. What papers did he show him? A. He showed 40 him the deed; I forget whether he had the search then,

or not; I know he did have them while I was at home, but I know he had the deed.

Q. You remember him showing the money, the $3,000? A. Yes, sir.

Q. What was said? A. Mr. Cook said, "This is the first time you have been ready, is it not"? Father said, "You know, Mr. Cook, that is not so; I have been ready all Summer, at any time".

Q. Go on; what else was said? A. He said the man had been off to a watering place, and he had not been 10 able to see him. I said, "Mr. Cook, if you want to see that man it is not but a two hours' ride to the watering place to see him; that this matter must be fixed up; I want you to understand that I am not going to put $700 in in Winter grain and truck unless I know who is going to have title". He said he would write. That is all the satisfaction we got. I told him if he would fix this matter up by September, by the time I went home, it would be all right, and if he did not, it would be all wrong.

Q. When your father told Mr. Cook he had the deed, 20 and $3,000, did Mr. Cook make any objections to the amount of money—$3,000? A. Not a bit.

Q. Did you have any conversation with Mr. Cook, afterwards, in relation to the title, after the first of August—did you have any further conversation? A. This was in the latter part of August.

Q. About what time?

By Mr. LINDABURY.—The 28th of August, his father said.

A. Thereabouts; yes, sir. 30

By Mr. LINDABURY.—The bank book shows that; let us fix the date now.

Q. Just look at any paper or bank book, and see if you can tell, with any degree of certainty, when it was? A. It was either on the 28th or 29th, I won't be positive which, for this reason. I will give my reason: I don't know whether I went to New Brunswick or whether I drew it in the afternoon. I came back and went to Mr. Cook's the next day; I can't say, positively, about it.

By Mr. LINDABURY.—Q. I understand the witness 40

to say that he is not sure whether he went to Mr. Cook's the same day they drew the check or the next day? A. That is it.

Further direct:

Q. How far is it from your place to New Brunswick? A. Eight miles.

Q. Did you drive? A. I went on the cars.

Q. What time can you go and return, in the morning? A. I can go at 7 and 8:40, I think were the times; that is
10 what they used to be.

Q. What time can you return? A. Not before—after the bank opens—half-past two, I think, or one o'clock, or somewhere about there; I forget what time trains run on that road.

Q. You said, a moment ago, that you were not sure that you drew the money the same day you tendered it, or your father tendered it, or the next day? A. No, sir; I am not sure; I can tell what day I drew it.

Q. What day? A. Wednesday. I think that is exact-
20 ly right; 1883.

Mr. LINDABURY.—August 29th, this year, was on a Friday.

Mr. CLARK.—This year was a leap year, and there are two days' difference.

Mr. LINDABURY.—That would be on the 29th. This date, 29th, is undoubtedly right.

Mr. CLARK.—Then, he tendered the money in the afternoon, after he returned from New Brunswick?

Q. At any rate, it was on Wednesday, the 29th of
30 August, 1883, that you made the tender? A. Yes, sir.

Q. Now, then, at that time, did you have any talk with Mr. Cook, between that date and the first of January, when you gave up possession of the farm? A. He came the morning I went home, and spoke to me about some wood.

Q. Anything in relation to the exchange? A. No, sir.

Q. Just state, now, what was done upon the farm?

Mr. LINDABURY.—Has the stenographer taken down that the witness stands by the tender, but he is not cer-
40 tain whether it was in the afternoon?

A. I won't be positive that it was in the morning or afternoon.

Q. But you know you made the tender on Wednesday? A. Yes, sir; on account of my coming home.

Q. You and your brother farmed the place together the entire time you were there? A. Yes, sir.

Q. And sold crops? A. Yes, sir.

Q. And received the proceeds of the sales? A. Yes, sir.

Q. If you please, just state what crops you sold, and 10 what proceeds of sales you received? A. We sold wheat, corn, clover seed, hay, oats and rye.

Q. Give me the amount of wheat you sold? A. The thrashers made it 1,754 or 1,764 bushels of wheat; I have the thrashers' receipt here to show; we sold our half, and delivered the other half at Westover, according to their measurement. We have bills here to show what wheat we sold, except very little, where I sold it at Rouark's mill. I have no receipt for that; didn't get any at the time. 20

Q. What amount of money did your father receive for the sale of wheat, as his share? A. I could not tell you; we sent him the whole check; half of it belonged to us; but that, of course, was other matters.

By Mr. LINDABURY.—Q. That is the whole check for your half, not Mr. Cook's? A. Yes, sir; for our half of the wheat.

Further direct:

Q. What was the amount that he received from the sale of the wheat on the place—the net amount that he 30 received? A. I have it down; if you will allow me to refresh my memory.

The COURT.—Q. Refer to anything you have. Was that memorandum made at the time? A. No, sir; it was taken from the bills afterwards.

Q. Give it to us? A. The net amount he received was $831.61.

Q. Do you know the amount of the check you sent him? A. No; I don't know the exact amount; the bills will tell. 40

Q. Do you mean these bills? A. Yes, sir; that is the check we got from Mr. Rouark.

Q. What is the amount of the bills? A. $429.45 and $478.39.

Q. That was the amount for which you sent a check? A. Yes, sir.

Q. Can you tell when you sent that check? A. I can't tell when it was without going to my book.

Q. Have you the book? A. I have the bills; I haven't
10 the book.

Q. Have you the bills which will show when the check was given? Are the dates of the bills any certainty as to the date of the check? A. Yes, sir; they have something to do with the date of the check, but nothing to do with when we sent it to our father.

By Mr. LINDABURY.—Q. Tell us about when it was? A. July 13th, 1883, probably; it was a week or two afterwards we sent the check to our father.

Q. Now, you say, the net amount was $831.61? A.
20 Yes, sir; that is the whole net amount, with the threshers' bill and freight deducted.

Q. Give the corn? A. 1,900 bushels of shell corn sold.

Q. What did it bring? A. It brought from—I had four loads of corn, and they brought different prices.

By the COURT.—Give the total, if you have it? A. The corn netted us $730.52.

Q. Go on? A. I think that is correct; as near as I can tell, there are the bills, exactly.

Q. You say it netted you—what was deducted? A.
30 Freight and thrashing bills.

Q. What were they? A. Freight bills on the corn were—I haven't the net amount; I can give it to you on the bills.

Q. You mean, you haven't the gross amount? A. One car load is $55; another car load is $60.28; two car loads, shipped to A. Barnell, Jersey City, $108.

Q. Threshing bills? A. About $30; I haven't the exact figures; I think they charged us two cents a bushel for thrashing.

40 Q. Any other corn? A. This is the corn that was sold

in the ear, and all, sir. This is all the corn I remember of; there may have been a bushel or so given to the hands.

Q. Mr. Lindabury suggests that some was sold in the ear? A. One car load was sold in the ear.

Q. And that is included in the bill that you rendered? A. It would reduce the shelled corn on this bill.

Mr. LINDABURY.—The prices included the corn in the ear, too.

Q. You sold corn in the ear, reducing the shell corn in 10 price? A. 318—weighing 339.13—bushels, at 50 cents a bushel.

Q. Well, clover seed? A 98 bushel of clover, thrashers' measure. It netted us $434.47.

Q. You sold some hay? A. Yes, sir.

Q. How much? A. I can't tell you how much of hay; we sold a great deal of it; we netted $342.59; that is as near as I can get at it from the books, and which is all that was sold, and more, I am certain.

Q. Was anything else sold? A. Yes, sir; oats. 20

Q. Go on? A. We sold $50.39 worth of oats.

Q. Anything else? A. Rye; we sold $80.33 of rye.

Q. Was anything else sold, besides the rye, and the things you mention? A. Yes, sir; berries and peas.

By the COURT.—Q. What did you get from berries? A. As near as I can get at it, we were $30 or $40 out of pocket.

Further direct:

Q. On the berries and peas? A. Yes, sir.

Q. Then you did not realize; you lost? When did 30 you give up possession? Was there anything further in respect to selling property? A. No more than there was sold some little odds and ends, that I have no account of, at all; some little trifles—bundles of straw, and something like that; nothing of any amount.

Q. Can you estimate the little odds and ends? A. $100 would cover everything; that is a very large estimate, too.

Q. Who did you sell it to, the work hands? A. Some

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to the work hands, and some to the neighbors—fodder, as they called it.

Q. How much did you sell to persons, for which labor was not the pay, as near as you can tell? A. Not over $30.

Q. Then, when I understand you to say that you sold $100 odds and ends, $70 was for labor done on the farm, and $30 was net? A. Yes, sir.

Q. Did you have any conversation with Mr. Cook be-
10 fore the month of August, in relation to this exchange? A. I did; yes, sir.

Q. Where? A. In Maryland.

Q. What time was it? A. On the road between Westover and Princess Anne; I was taking him up to Mrs. Chapman—just before he moved; I asked him—

Q. I asked you what time it was? A. It was the second day after his sale—if you have the date of his sale—next day he moved; and next day I took him to Princess Anne; I asked him if it was all right to leave $10,000 on
20 the place; he said that it was—that it would be all right; I told him that we would have to do that now, we could not collect all the money we expected to.

By the COURT.—Q. Anything else? A. Not at that time; no, sir.

Further direct:

Q. Mr. Cook has said something about money which he expected to receive from your father, through you, at the time of the sale of his personal property—did you go from there with any money from your father? A. Yes,
30 sir; I had some money.

Q. How much? A. About a thousand dollars; very close to that: I don't think it was quite that.

Q. That was when you went to Maryland? A. Yes, sir.

Q. Did you have any conversation in relation to that money? A. Mr. Cook asked me if I brought him any money; I told him, "No, sir; I hadn't".

Q. State what was said? A. I told him I had some money, but I wanted security before he could have it.

40 Q. Did you lend him any money? A. No, sir.

Q. Did Mr. Cook, at that time, say anything about your father having promised him any money? A. He said my father had promised to send him some money, and he would like to have it very much—talked something about letting him have some money.

Q. What do you know about your father's ability to raise money at that time? A. I know that he could have raised $3,000 at any time, upon a day's notice, after we had changed possession, from that time on until we gave up possession. 10

Q. When did you conclude to surrender up possession of the property—not when you did surrender it, but when did you conclude to do so? A. In September.

[Mr. Lindabury stated that he did not think the question previous to the last, in regard to the father's ability to pay money, a competent question, as it was a mere matter of opinion, and moved to strike it out.]

The COURT.—I will allow it to stand if he shows how he knows it. 20

Q. State, if you please, how you knew that your father could have raised $3,000 at any time during the Summer? A. I know, because my brother and he were in partnership, and when Davis came down he told me how much money he had collected, and how much they had.

Q. You know, then, because your brother told you? A. Yes, sir.

Q. What do you know, of your own knowledge, how much money he had on hand? A. I know if I take money out of the bank how much it is, and I know how 30 much we have in our possession at any time.

Q. How much money had you on hand for the purpose of aiding your father, at any time? A. We had from $500 to $1,000 all the time during our stay in Westover in ready money by us.

Mr. LINDABURY.—It seems to me that the reason the witness gives for his opinion demonstrates the incompetency of the whole thing. It is opinion, and then argument.

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The COURT.—He knows, when he gets a certain amount of money out of the bank, how much it is.

The WITNESS.—It was $2,800 that I took out of the bank.

The COURT.—And he says that, at all times, he had from $500 to $1,000 on hand. He does not say how long. It is perfectly clear that his father may have used that money.

Mr. LINDABURY.—I won't insist; there is no jury,
10 and the Court can use it for what it is worth.

Q. You say you concluded to surrender in the month of September? A. Yes, sir.

The COURT.—I can't possibly see of what value this is; he and his brother may have concluded to surrender, but that has no more effect upon the merits of the case than if I or you had concluded to do it; they were there under the father, and evidently they had no relation to this controversy, except they may come as witnesses.

Mr. CLARK.—My view of the matter was this: That
20 they occupied a little different attitude, as they are sons of the Defendant; and, secondly, they are tenants there, who had been to see Mr. Cook, personally, and urge upon him the necessity of exchanging the title. I make the offer; if your Honor don't think it important I won't insist upon it.

The COURT.—No; I don't think it is important to the issue; it would become endless, if we would go into such matters.

Q. In that connection I want to ask one more question:
30 Why they surrendered possession?

[The question was overruled.]

Mr. CLARK.—I merely make the offer; let it appear to be made and overruled, so that I may have the benefit of it.

Q. Something was said about this corn crop being cut off before it was ripe. Just state how the business at that time was conducted? A. The corn was cut as it became ripe and fit to cut, and done in a workmanlike manner, as near as I could get it done; there was none of it

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cut and thrown down; and about one-third of this corn was fast when this paper was served upon Mr. Cook.

Mr. LINDABURY.—By fast, you mean uncut?

The WITNESS.—Yes, sir.

Q. You returned the first of January, you said—about the first of January last? A. Yes, sir.

Q. Where did you remain during the Winter? A. At my father's.

Q. That is next to the mill? A. Yes, sir; right by.

Q. What do you know about the kind of business that 10 was done at the mill during the Winter? Have you any means of telling that? A. I watched it pretty close; I heard that Mr. Cook was doing such an enormous business; that made me watch it closer than I would; I cannot say that he was doing a very heavy business; not near as much work was going on as there had been before, when I was acquainted with the mill, under my father.

Q. What have you to say about the condition of the premises, as compared with the time Mr. Cook took pos- 20 session? A. In my opinion, it is not worth to-day as much by $1,500 as it was when Mr. Cook took possession.

Q. You say in your opinion; state what your reasons are? A. My reasons for that depreciation: The buildings, outside of the house that Mr. Cook lives in, has depreciated in every conceivable way and shape; they have gone down. Then, he has hurt the trade; the best trade that we used to have is all gone, or very nearly all. We never had to run around the country to buy grain when 30 we were there.

Q. When you say outbuildings, what outbuildings do you refer to? A. All the outbuildings, except the building he lives in—the mill, the barn, the crib, the house, etc.

Q. Have you any particular thing to mention about the buildings? A. There is a barn building there that was in good order when we were there; it is all down now, or partly down—falling down; the fences are going to decay, all the trade gone, and the machinery must be worn a great deal; I know it cost us a thousand dollars to keep 40

the machinery in repair; I know they have not spent that much.

Q. Mr. Cook said that he spent a great deal of money to repair the dam? A. He made some repairs in the dam.

Q. Are you a practical miller? A. No; I have some knowledge of the milling business.

Q. Has he made any repairs to the dam? A. Yes, sir.

Q. What have you to say about that? A. He put a
10 short stick to the dam, and fixed a short stone wall; that is all I saw.

Q. What is the cost of the stick, and the putting it on? A. I could not tell, exactly; I could make an estimate.

Q. State your estimate? A. I should not think it cost them $5 to put it there.

Q. Now, the repairs at the end of the dam, the stone wall? A. Probably $10, work and material; the stones are there.

Q. Did you state what quantity of ground you had
20 plowed before you left? I don't think you did. You said you had plowed about one-half? A. I had no facilities to measure.

Q. You plowed about one-half, at the time you came up, in August. Tell us, if you please, what amount of wheat ground you plowed, in all? A. I had no facility for measuring, but according to Mr. Cook's estimate we plowed between 70 and 80 acres—had that plowed at the time we gave up.

Q. At the time you quit? A. Yes, sir.

30 Q. What did you do, by way of repairs, to the buildings there? A. I put sticks in; put in the end of a hovel—put a roof on it; repaired the fences, cut the bush on the whole place—hired it done at considerable expense—clear up to the top bank.

Q. These "cuts", as you call them, are divided off by ditches? A. Yes, sir; the same as fields are fenced here.

Q. How many ditches are there? A. A great many.

Q. Open ditches? A. Yes, sir; all open ditches.

Q. Can you form an estimate of the length of the
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ditches? A. No; I could not tell you the length of them; I can tell what it cost to clear them up.

Cross-examination, by Mr. Lindabury:

Q. You are the young man who was in the business with Mr. Rittenhouse at Blackwell's Mills? A. Yes, sir.

Q. How long did you have the mill, you and Rittenhouse? A. From the 13th of May, or June, I won't say which, until the next first of April.

Q. Was the trade that you collected there as good as it is now? A. In my judgment it was as good as it is 10 there now.

Q. So you think that, when you quit, the trade there was as good as it is now? A. Of course, I can't tell, exactly, but that is my judgment.

Q. You have given your judgment as to the way it is now? A. Yes, sir.

Q. Your father swore that it had all gone to pieces after you quit? A. I guess it had gone down some.

Q. And you think, now, that it has all gone to pieces? A. Yes, sir; as near as I can get at it. 20

Q. And the good trade is driven away? A. A great part of it.

Q. I understood you to say all? A. A great part of it.

Q. How do you account for it? A. I can't tell the various ways they drive trade from the mill.

Q. What is your opinion—how do you account for it? A. By working poor material, and not paying people promptly.

Q. Have you understood that Mr. Cook makes poor material? A. Yes, sir. 30

Q. Who from? A. Different men.

Q. Tell me their names? A. One was Edward McMann, of New Brunswick.

Q. When did he tell you? A. Last Winter.

Q. Who else? A. I don't remember, exactly, who else; I asked three or four of the old customers how they liked the goods that came from the mill now.

Q. Who are they? A. I can't tell, exactly, who they were; they may have been—

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Q. No, no; don't tell who they may have been? A. I can't tell you now.

Q. Not one of them? A. Several, I know.

Q. Tell me one of them? A. I don't know.

The COURT.—He says he don't know.

Q. How do you know he don't pay for his grain? A. I don't know it; I said that might be a cause.

Q. Did you ever hear that he did not? A. I heard that he was asking for considerable time.

10 Q. Who told you? A. Several men.

Q. Tell me one? A. John Brocaw.

Q. He said that he was asking for time? A. Yes, sir.

Q. Anybody else? A. I think there has been.

Q. Who? A. I don't know who they were.

Q. Have you heard of his selling poor stuff? A. Yes, sir.

Q. Who from? A. I cannot tell you; it has been talked all around.

Q. Who have you heard tell it—it has been talked all 20 around? A. The neighbors down there, last Winter; I can't tell you the names; I might get them wrong, just as well as right; it was the general impression and talk.

Q. If it was the general impression and common talk, tell me the name of one person who talked so—that is what I want? A. I don't know; I won't give you any names; I may just as likely be wrong; if I knew you were going into that I could have given you the names.

Q. You are acquainted all around there? A. Yes, sir.

Q. And knew this has been talked of? A. Yes, sir.

30 Q. Who have you heard talk about it? A. Neighbors.

Q. Who? A. I don't know now, who they were.

Q. Tell me one; if it is common talk you ought to be able to tell me one man who has talked it? A. I won't say now who.

Q. Do you know how much business there was when Mr. Cook first went there? A. I don't know.

Q. When you left? A. When I left they were doing a nice business.

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Q. Very much more than they were doing when you quit, a year before? A. I can't tell about that.

Q. Considerable more? A. Yes, sir.

Q. Some of the witnesses said it increased ten times as much when Mr. Cook went there? A. Yes, sir.

Q. You said it fell, though? A. Yes, sir.

Q. What is your reason for saying that? A. Because, I know it is a fact; last Winter there was not nearly the grain handled that we used to handle.

Q. How do you know it? A. Because, it was not 10 brought there and taken away, and I watched day after day, when I hadn't anything to do.

Q. How much of the time were you idle? A. The greater part of the time.

Q. And you watched the mill? A. Yes, sir.

Q. What time did you do this plowing for wheat in Maryland? A. I could not tell exactly the day, but it was in August and September; we may have done a little in July.

Q. You say, now, that you did, or may have plowed 20 some in September? A. May have.

Q. What do you think about it—in September? A. I think they were plowing when I went home.

Q. You went home, so as to make this tender, on the 29th of August? A. When I went back, sir.

Q. When did you get back? A. It was the first week in September.

Q. Do you know what part of the first week? A. Monday or Tuesday, after I made the tender; one of those days. 30

Q. That must have been the second or third. They were plowing when you got down there? A. Yes, sir.

Q. Did you stop the plowing? A. No, sir; I don't think I did.

Q. Did you plow sod or stubble? A. Oats stubble and wheat stubble.

Q. Did you follow oats with wheat? A. Yes, sir; to get in the clover.

Q. When did you begin to cut corn? A. I think they had a little cut when I got back then; one cut was very 40

ripe, and I told them if it did not rain to cut the corn off.

Q. You seem only to have 1,900 bushels of corn? A. Yes, sir.

Q. How large an acreage had you planted? A. I could not tell you.

Q. You did not plant the corn? A. I replanted it, nearly all that was plowed and mussed over when I got it.

Q. How many acres do you say? A. I can't tell you.

Q. As near as you can? A. I should judge close to a
10 hundred.

Q. How many acres of wheat? A. Mr. Cook said there was about 90.

Q. Is that your judgment? A. Yes, sir; as near as I can judge; I can't tell, exactly.

Q. Did you leave to come home again in September? A. No, sir; I think not.

Q. Did your brother? A. He did.

Q. When did he leave? A. Well, I should judge two weeks after I went back; I could not tell, exactly.

20 Q. The corn had not been cut then yet? A. Not all of it.

Q. How much was left? A. Probably half.

Q. What date did you finish? A. We did not get in all of it: one-third we never cut; it was in until the frost —just left standing.

Q. Did you continue husking corn after you gave this notice that you would give us the farm? A. Yes, sir.

Q. You took off one-third of the corn crop after you gave that notice? A. We husked it all after that.

30 Q. You hadn't cut it then yet? A. Not one-third.

Q. It was attached to the freehold? A. Yes, sir.

Q. And that you took off afterwards? A. Yes, sir; that stood there until cold weather.

Q. Didn't the tenants have something to do with some of the corn crop? A. Yes, sir; it was put out in various shapes and forms.

Q. Was not this one-third the corn that had been put out by them? A. Some of it was; part of it was not.

Q. How much was not? A. Not a great deal; one
40 large cut.

Q. How many acres were under your sole control? A. I could not tell you.

Q. As near as you can, of that one-third that remained? A. I should judge 12 or 15 acres; something like that.

Q. How many men did you employ to get your corn? A. We did not have very many men; had quite some women and children.

Q. How many? A. That is pretty hard to tell.

Q. As near as you can? A. Towards the last, after the 10 corn began to get riper, I had, probably, 10 or 15 one or two days.

Q. How many, when you went cutting, did you have at work? A. Six or seven men, I think.

Q. Had anybody begun to cut corn in the neighborhood besides? A. Yes, sir; Mr. Smith, opposite me, had half of his cut.

Q. Anybody else? A. They were stripping their corn; very few cut corn there. They were stripping their corn in Delaware and down in Maryland—all over. 20

Q. Didn't you employ 19 persons to cut corn the last week before your brother came away? A. We may have.

Q. Did you employ Noah Barnes? A. Yes, sir.

Q. William Barnes? A. Yes, sir.

Q. Noah Barnes, Jr.? A. Yes, sir.

Q. Eva Miles? A. Yes, sir.

Q. John Turpin? A. Yes, sir.

Q. Jim Jones? A. I don't think I did; he did not cut any corn for me.

Q. James Jones? A. I think he went off; I tried to 30 get him; I ain't certain about that.

Q. Ad. Ballard? A. Yes, sir; two days.

Q. Laura Ballard? A. Yes, sir.

Q. William Ballard? A. Yes, sir.

Q. Fred Fountain? A. Yes, sir.

Q. Spencer Millburn? A. Yes, sir.

Q. James Harvey? A. Yes, sir.

Q. George Harvey—Levi Kenny? A. No, sir.

Q. You did not employ Levi Kenny? A. No, sir.

Q. Sam Robertson? A. Yes, sir. 40

Q. Charles Turpin? A. I think not, sir.

Q. John Handy? A. No, sir.

Q. James Wilson? A. No, sir.

Q. Did not employ any of them? A. No, sir; not to my knowledge.

Q. What did you employ so many for that week, just before your brother came away? A. I don't know that it was the week; I think it was after he came home; I won't be positive what week it was; I had those men
10 during corn time.

Q. Was it after your brother came home? A. I don't know.

Q. It was the last week that you cut corn? A. I don't know whether it was or not; I can't have any faculty for recollecting, at all.

Q. I wish you could have. You have no faculty for recollecting, at all? A. No, sir; I hired those men when I got them.

Q. Didn't you have 17 men, women and children all at
20 work in there during the last week? A. No, sir; I don't think I did.

Q. How many did you have the last week? A. I can't tell you, exactly; may have had 12 or 13, more or less.

Q. You may have had 1,000; how many did you have, as near as you can tell? A. I know I had all I could get sometimes.

A. The last week? A. And before the last week, and afterwards.

Q. What did you have them after the last week for?
30 A. To husk, and help do other things.

By the COURT.—You say, "and do other things". What had you to do, besides the corn? A. We had a big time there, clearing up; we had a very heavy wind, which came just after we cut corn; threw the corn in every direction; fences and trees were blown down, and I had all the men I could hire.

Q. When was that? A. Just after we cut corn, or about finishing.

Q. But you had those men we were talking of before

that? A. Not all at one time; I had them along at different times.

Q. Were there any buildings destroyed by that wind? A. Yes, sir; some cow sheds blown down; one came on top of me, as I came in from the field—trees were destroyed.

Q. You told Mr. Cook, on the 29th of August, "If you fix this matter up by the first of September, that it would be all right, or before you went home; if not, it would be all wrong". Did you tell him when you were going home? 10 A. I told him that I was going to stay out about a week.

Q. You did not tell him how long? A. No, sir.

Q. Did you go and tell him when you went away? A. He came out and saw me—

Q. No; answer my question? (Question read.) A. No, sir.

By the COURT.—Do you mean that Mr. Cook came to see you before you went away? A. He watched me, and came to see me—wanted me to see a man about some wood. 20

Q. As you were going away? A. Yes, sir.

Further cross:

Q. That was on Monday? A. I won't say; Monday or Tuesday; one or the other.

Q. Following this tender? A. Yes, sir.

Q. Did Mr. Cook write the letter, while you were there, to Mr. Van Duesen? A. Yes, sir; I think he did; he said he did.

Q. Did he show it to you? A. Yes, sir; he showed me a letter; he called me in the mill, and said, "Look 30 here, I am going to write to that man".

Q. What did the letter read? A. I did not read it.

Q. You understood that it was a letter inquiring when he would return? A. No, sir; I understood it was a letter to him; something about the matter; I don't understand what the contents were.

Q. That's all.

Re-direct:

Q. I understood you to say, that you did not read the letter, and did not hear it read; all you know was that 40

he was about to write to Mr. Van Duesen? A. Yes, sir; he had the letter there, and showed it to me.

Q. What do you mean by "showed it to me"? A. All I saw was the heading—directed to Mr. Van Duesen.

Q. The Vice Chancellor asked you what wood it was that Mr. Cook was asking for an arrangement about? A. Mr. Cook saw me, and asked if I was going away, and I said "Yes"; father had made arrangement to take me to the depot; Mr. Cook came over and asked me to see some
10 man about some wood of Mr. Cook's.

Q. Who did he want you to make the arrangement with? A. Noah Barnes.

Q. Where was he living? A. In Maryland, on a part of the Westover estate.

Further cross:

Q. Was that Monday morning, or afternoon? A. It was in the morning, I think; I started away from there in the morning; I won't say whether it was Monday, or Tuesday.

20 Q. You said Monday, awhile ago? A. I said Monday or Tuesday; if I did not, I meant to.

Q. Do you know Dennis Van Liew, near Neshanic? A. Yes, sir.

Q. Have you told him, at any time since your return, that Mr. Cook cheated the old man—meaning your father —in the trade, like the very devil? A. No, sir; I never told him that, nor any other man.

Recess.

AFTER RECESS.

30

Mr. CLARK.—Mr. John Oakey spoke to me, a moment ago, in relation to a question asked by Mr. Lindabury, and wanted to know if he could speak to the Vice Chancellor about it. He said he could give you some names, upon a moment's reflection, and he will give some names, if he has an opportunity to do so; I don't know whether it is very material.

The COURT.—If you desire, you may let the witness
40 go back on the stand.

JOHN OAKEY, recalled.

Direct examination, by Mr. Clark:

Q. As I remember, Mr. Lindabury's question was, who you ever heard say anything against the character of Mr. Cook's business, or who you heard had spoken of it; not only whom you heard, personally, but also whom you heard had said anything against it?

Mr. LINDABURY.—No; I want something you can hold the witness to—whom he heard speak of it.

Mr. CLARK.—He has already said that he has heard 10 talk about it, but could not mention names; now, he says, he can mention the names of some persons; and I also understand that he can mention the names of some persons of whom he has heard.

The COURT.—I think the question was, what persons he had heard.

Q. Can you remember the names of any persons whom you remember to have spoken to? A. Yes, sir; Charles Dixon, from Kingston, said that Mr.—

Q. Never mind what was said. Who else? A. Jacob 20 Higgins, miller at Three Bridges.

Q. Tell what was said? A. Mr. Dixon said—

Mr. LINDABURY.—I don't see what that has to do with it.

The COURT.—I don't suppose that would have anything to do with it; he has already said that he heard them speak unfavorably; that, I think, was proper; and now he gives the names of the persons he heard; the details, I don't think, you would be entitled to; the other side might. 30

Cross-examination, by Mr. Lindabury:

Q. Those are all? A. Those are all who spoke to me, in person, about it.

Q. They are both competing millers, are they not? A. Yes, sir.

Q. What relation is Higgins to you? A. Brother-in-law.

Q. How far is Three Bridges from Blackwell's Mills? A. I should judge, 15 miles; I don't know.

Q. How far is Kingston? A. About four. 40

Q. Your testimony was, that the neighbors, all around, talked about it? A. Yes, sir; I have heard a great deal that the neighbors have said.

Q. Have you any names further to give of them? A. Not that have told me direct—told other persons.

Q. I want to know what you heard? A. I heard it from other people, what they said.

Q. Who did you hear it from? A. From my father.

A. I don't want to know what you heard from your
10 father, or your brother, I want to know who you heard talk about it? A. I have heard those two that I mentioned; then, I have heard Mr. Spurling say that the stuff did not give satisfaction, at all.

Q. Mr. Spurling; what is his first name? A. John.

Q. Anybody else? A. Not in person, that told me.

Q. Had your father purchased any stock of Mr. Cook before you went down to Maryland? A. He had; yes, sir.

Q. How much, in value? A. I could not tell you the
20 exact value.

Q. Eleven hundred dollars worth, hadn't he? A. I could not say; I don't know.

Q. Well, somewhere about there? A. It may have been that, or more, or less.

Q. Was it somewhere about that? A. I don't know.

Q. Was it $100? A. Yes, sir; more.

Q. Was it $600? A. Yes, sir; I should think it was over that.

Q. Was it not over $900? A. I say I don't know, sir.

30 Q. I want to know how far you can judge. Did you purchase any while you were down there? A. Yes, sir.

Q. First, did you go down there in reference to the sale? A. The evening before.

Q. Did you purchase anything that evening? A. I don't know but what I did.

Q. You purchased quite a great deal, at private sale, before the auction? A. Nothing but what was in the house.

Q. Quite a great deal in value, was it not? A. Well,
40 no; not a great deal, I don't think.

Q. You purchased considerable, at the auction? A. Yes, sir; I purchased about $700, as near as I can recollect.

Q. How much did the whole purchase of yourself and your father—I suppose it was all purchased on one account? A. Yes, sir.

Q. How much did the whole purchase amount to? A. I can't tell you.

Q. Was it not over $2,500—over $2,000—was it not between $2,000 and $2,500? A. It might have been; I 10 can't tell you the figures.

By the COURT.—Give your best judgment what it might have been? A. My judgment is, it was about $2,200, but I can't say positively.

Further cross:

Q. And that was all purchased, either before, or on the day of the auction? A. Yes, sir.

Q. How soon did Mr. Cook come away after that? A. The second day, I think, after the auction.

Q. When was it Mr. Cook spoke to you about $1,000, 20 which your father was to send? A. That morning, at the auction.

Q. Before, or after? A. Before.

Q. Did your father pay for the things he bought there? A. I don't think he did.

Q. Did you pay that day for what was purchased? A. No, sir.

Q. They were not paid for until Mr. Cook came up here? A. I think the things we purchased we had at six months' credit. 30

Q. Why did you want security from Mr. Cook, when you owed him over $2,000? A. Because he had bought things at the mill.

Q. He hadn't bought things at the mill? A. As good as bought them.

Further direct, by Mr. Clark:

Q. Do you know what amount Mr. Cook traded out upon this $2,200 auction bill? A. I think he traded it all out but $400, if I recollect right; that is my best judgment. 40

Q. Who was that $400 due to, Mr. Cook or to your father? A. I think, to Mr. Cook.

Q. How did your father account for that; do you know? A. How he paid for it?

Q. Yes. A. He gave him a note in the bank, three months, instead of six.

Q. (Handing witness a paper.) Do you know that handwriting? A. I do; yes, sir.

Q. Has that anything to do with this exchange? A. (After examining the paper.) That is a receipt taken, sir.

Q. Does it relate to that? A. Yes, sir.

[The receipt, dated June 9th, 1883, at Somerville, was offered in evidence, and the same was marked Exhibit for Complainants.]

Q. Does that receipt refer to that note which you have just spoken of? A. Yes, sir.

Further cross:

Q. Mr. Cook did not buy anything of your father until after he came back here, after the sale, did he? A. I could not say whether he did or not.

Q. Why is it that your recollection is so much better when Mr. Clark asks you than when I do? A. If I am in doubt about anything I won't say.

Further direct:

Q. You were asked whether Mr. Cook bought anything; I don't know what the question relates to, whether it means stock or goods, before he moved up here—do you refer to stock or goods?

Mr. LINDABURY.—Either.

Q. Do you know anything about any arrangement between Mr. Cook and your father, for the sale of stock, before your father went from here—before you moved from here to Maryland? A. Yes, sir; I do.

Q. State what it was? A. I know that they exchanged stock.

Q. What did they exchange? A. Cattle, hogs, wagons—I can't tell whether anything else or not, that I know of.

Further cross:

Q. I hope your recollection will continue as good. At

what value did he take them? A. I can't tell you what was the exact value.

Q. I ask you for some of them, about as near as you can tell. What amount, in value, did Mr. Cook take of your father, before you went down to Maryland—these hogs, and things, you told about so readily? A. I could tell you, exactly, what the things were, but what value they had I can't tell you.

Q. What were they? A. Two cows, and a mill wagon, buggy wagon, sleigh, and some seven or eight, yes, I 10 guess, fourteen hogs—lots of pigs and hogs; think that was all.

Q. What were they worth then, if you don't remember what Mr. Cook took them at? A. The hogs were worth from 80 to 90.

Q. Just the whole thing, were they worth $300? A. Yes, sir.

Q. Were they worth $500? A. Yes, sir; I should think so, although I don't know.

Q. Were they worth $1,000? A. No. 20

Q. Then, there was $1,200 left yet? A. I guess not; not before I went to Maryland.

Further direct:

Q. Any yearlings? A. Yes; two yearling cattle.

Q. Any bob sleighs? A. Yes; a good many things; I can't remember everything.

Q. I understand, Mr. Cook asked, in the morning before the sale, for this money? A. Yes, sir.

Further cross:

Q. These things hadn't been delivered to Mr. Cook yet 30 when you went to Maryland—these things which he had agreed to take of your father still remained in your possession? A. He could not deliver them until Mr. Cook got here.

DAVIS OAKEY, a witness produced on the part of the Defendant, being duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Clark:

40

Q. You are the son of John L. Oakey, the Defendant? A. I am.

Q. How old are you? A. 24.

Q. Did you reside with your father at the time he made the agreement for an exchange with Mr. Cook? A. I did, sir.

Q. Where were you on the day the contract was drawn? A. I came here to Somerville that morning, and I got home just before the contract was reduced to
10 writing.

Q. And where did you first see your father and Mr. Cook? A. Up at the wagon house; between the two wagon houses.

Q. Did you accompany them from the wagon house to the mill? A. I did not.

Q. Did you hear any conversation at the wagon house between them? A. Nothing of importance; I learned there—

[Objected to.]

20 The COURT.—He can state generally that he learned they were talking about the exchange.

A. I learned that they had about made an arrangement to exchange property.

Q. Did you learn it from them? A. Yes, sir.

Q. Where next did you see them? A. In the mill office.

Q. What were they doing in the mill office? A. They just got into the mill office, and Mr. Howell was about ready to draw up the written contract.

30 Q. State what passed between them? A. They told Mr. Cook and my father how the exchange was to be made, and Mr. Howell drew it up accordingly; and after it was drawn we all of us read the contract over, and there was no place designated as to where Mr. Cook's wheat was to be delivered, and I said that was very indefinite, and proposed that they should make some definite place, and suggested Westover, which was put in; then, my brother said the contract was not worth the paper it was written on, unless some money was paid as
40 a bonus on it; and Mr. Cook said, in a very pompous way,

well, make it $10,000; but it was finally agreed that the payment should be $20; and I drew up the receipt, which Mr. Cook got; and then Mr. Howell suggested that we should go home, and I think he went out of the mill; at any rate, while the other parties were out of the mill I heard my father and Mr. Cook talk about the mortgages. I heard my father say that it might not be convenient for him to raise $5,000 at the time, that he had considerable money on the books, and perhaps it would be better for him to have $10,000 remain on the farm, and Mr. Cook 10 said that that will be all right, we will arrange that. They then went out of the mill, and I had this $20 in my hand, and I called Mr. Cook back and asked him if he was not going to take the money, and he took it.

Q. Did you accompany them from the mill? A. No, sir.

Q. Then you heard no further conversation that day? A. No, sir.

Q. Was there anything said in the mill, before Mr. Cook and your father went out, about exchanging pos- 20 session? A. Yes, sir; Mr. Cook said that he thought it was very important for both parties, he thought, to exchange possession immediately; it was very important that he should get there, and very important that we should get South; to the suggestion my father made no reply, either way; he said that over several times.

Q. Did you see Mr. Cook at any time until you moved to Maryland? A. Oh, yes, sir.

Q. Was there any further talk, at any time, and before you moved to Maryland, between Mr. Cook and your 30 father, in your presence, in relation to this contract? A. No, sir; I think not.

Q. You moved to Maryland, when? A. I went to Maryland, I think, the 3d of June, 1883.

Q. Your brother had just preceded you? A. Yes, sir.

Q. Were you there at the time of the sale of Mr. Cook's personal property? A. I was not.

Q. That had taken place before? A. Yes, sir.

Q. You and your brother farmed the place together, as I understand, on shares? A. Yes, sir. 40

Q. Did you return from Maryland at any time before the first of September? A. I did.

Q. When did you return? A. I think I returned on the 25th of July, if I am not mistaken; on or about that.

Q. Did you see Mr. Cook? A. Yes, sir; I saw him several times while I was at home.

Q. Did you have any conversation with him at that time? A. No, sir; I did not.

Q. I understand that you had no conversation with
10 Mr. Cook during that visit? A. Not in relation to this business.

Q. When did you return? A. I think I stayed at home about two weeks; I don't know the exact date.

Q. Sometime about the first week in August? Yes, sir; sometime about the first week in August.

Q. When did you return, after that? A. On or about the 14th of September.

Q. Why did you come back then? A. I came back for the express purpose, and for that purpose alone, of
20 getting at some conclusion in regard to the arrangement or fulfillment of this contract.

Q. Had you had correspondence about it? A. Yes, sir.

Q. You and your brother had conferred about it also? A. Yes, sir.

Q. And your conclusion and his were alike?

[Objected to.]

Q. State, if you please?

The COURT.—I don't see how conferences with the
30 brothers can affect this matter. You can offer it, but it is so foreign that I don't see that it will have any effect.

Mr. CLARK.—I propose to show what they did by reason of their conference.

Q. Why did you come here to see about it, Mr. Oakey?

[Objected to. Allowed.]

Q. Just state what you did upon your return home? A. I went to see my father first.

Q. What did you do next? A. I did not go to see Mr. Cook; my father said he had been there the day before.
40

Q. You need not state what was said; you learned that the contract had not been completed? A. Yes, sir.

Q. What next did you do? A. Come on here to Somerville, to Mr. Gaston's office, and that letter I wrote at his dictation, that Mr. Cook got on the 19th of September.

Q. How did he get it? A. I gave it to his son; he was sick at the time; I went to see him and he was sick, so I gave it to his son.

Q. What had you done with reference to the crops— 10 what were you doing, with reference to the crops, when you left Maryland; for instance, the corn crop? A. The last time?

Q. In September? A. Well, we were cutting corn, I think, at the time; we had cut considerable, but I think there was quite some yet to cut, if I remember rightly.

Q. Was the corn fit, or not, to cut, at the time you were cutting it? A. It was, perfectly.

Q. Did you hasten, or not, the cutting of the crop, by reason of this letter? A. We did not hasten at all. 20

Q. Something has been said about cutting the corn and throwing it down so as to get clear use of the ground. Did you get any corn that way? A. We did not.

Q. What amount of ground had you prepared for the Winter crop? A. As near as I can tell, about 80 acres.

Q. How much of that was prepared before you came here; I mean in September? A. I don't remember, exactly; I think the greater part of it was.

Q. How much manure was carted out? A. About 600 loads. 30

Q. Had you any fertilizer for the balance of the ground? A. Yes, sir; we had fertilizer.

Q. Did you use the fertilizer upon the ground? A. We did not.

Q. Why not? A. Because, we did not sow any grain.

Q. Did you keep an account of the crop which you raised, or was it your brother? A. My brother kept the account, generally, of that.

Q. You have a statement of the return of the crops, and so on? A. Yes, sir. 40

Q. Have you any knowledge of whether yours agrees with his? A. We both took them from the bills, and consequently they are both alike.

Q. You left on the first of January? A. I left, I think, a little before my brother; I think, somewhere about the 20th of December.

Q. Have you been there recently? A. Yes, sir.

Q. How long since? A. I was there last Tuesday.

Q. Something has been said about the fences being different upon the property than at the time you left it—some of the fences having been removed? A. Some of the fences have been removed, but not from the farm; they are still on the farm.

Q. What was done with them? A. They have been taken from one part to the other: there was a tenant on one part of the farm that took this fence; it was merely a pasture lot; and he put them on his part of the farm, and they are still there.

Q. What do you say in respect to the outbuildings, their condition, now, as compared with their condition at the time you left? A. Well, sir, the wagon house doors are off, and the gates, one or two, are down, and all they want to do, they are there, is to hang them on again; if you hang them on the hinges they are just as good as they used to be; and in regard to the fences, I took a good look at them; went there for that business; I think that one good man, with a hammer and nails, could put the fences and outbuildings in just as good shape as they were when we left there, in one day's time; the fences are all there; some were very rotten when we went there, and the sticks have fallen out, and have gone down to the ground, and that is all there is about it; they are all there, they have not been stolen, or anything of that kind.

Q. How much fencing was there on the farm, all told? A. That is a very hard question to answer; there was very little there, and what was there was very poor; it was whitewashed up, so that it would look nice from the distance.

Q. Something has been said about the house being in-

jured—lights being out? A. I looked to see them, but could not; I saw there was a pane or two were out, but nothing more than there was when we were there; when this wind came the trees knocked against the house and knocked some of the lights out; that is all I can say.

Q. How long is seeding continued in Maryland? A. They seed there right on up to December, I believe.

Q. What do you say about any of the old sod having been plowed on this farm? A. It has not.

Q. I understood Mr. Cook to say, on the witness stand, 10 that some of the old sod had been plowed? A. It is not so.

Q. What is the condition of the farm in reference to the sod now, for the purpose of mowing? A. There are three more cuts now than when we went there.

Q. To mow now? A. Yes, sir.

By the COURT.—Q. What do you mean by cuts? A. Fields.

Further direct:

Q. What use has been made of the ground, and the 20 manure spread upon it? A. Corn planted upon it.

Q. Before you went to Maryland, what was your business? A. I was engaged in the milling business with my father.

Q. How long a time had you been in the milling business? A. I have never been in any other business.

Q. What was the character of the milling business which you and your father carried on? A. Well, sir, since the great September freshet we had not done a very large business, not as large as previously; but we were 30 doing a very nice business; and I know that I made the remark to my father several times—

Mr. LINDABURY.—Hold on.

A. Then, I will say it just now—that we were making a little money; that is what I said.

Q. Where have you been residing since you were in Maryland? A. With my father.

Q. What opportunity have you had to see the character of the business carried on? A. As much an opportunity as anybody could have from outside observation. 40

Q. What have you to say, with reference to the business carried on, compared with formerly? A. You mean the business that my father and I had, or before that?

Q. Mr. Cook claims to have built up so that it was one-tenth as much as when he went there?

Mr. LINDABURY.—No; ten times.

Q. I understood the effect of it was, that he was doing ten times as much business as you and your father did? A. That is impossible.

10 Mr. LINDBURY.—He says five times.

Q. He says now, five times? A. From what I can judge, and I think I ought to be as good a judge as anybody, having a thorough knowledge of the business, being there all the time, and seeing it, I don't think he is doing as much as my father did.

Q. What kind of business did your father do? A. He bought grain, flour and feed, the same as Mr. Cook is doing.

Q. Did your father solicit grain, or did it come to the 20 mill, and offered to him? A. Always come to the mill, and offered to him.

Mr. LINDABURY.—I think that is going too far.

The COURT.—I don't think it is important; some men adopt one method of establishing a business and some another.

Q. That's all.

Cross-examination, by Mr. Bartine:

Q. I want to call your attention to the first interview at the mill—who were at the wagon house when you saw 30 them there? A. Father, brother, and Mr. Cook.

Q. I understand that you did not hear any of that conversation? A. Well, I—they were talking while I was there.

Q. You came there just as they were leaving? A. No; they were sitting down when I got there; I did not stay there very long.

Q. You remember none of that conversation? A. I say that I learned, while there, from their conversation, that they had exchanged.

40 Q. Made a bargain? A. Yes, sir.

Q. But you did not know what that bargain was? A. Yes, sir; I knew from that conversation how the bargain was.

Q. Then, you went from there to the mill? A. They did; I went to the house first; I did not go with them; I proceeded then to the house, and they went on, and I followed them to the mill.

Q. And in the mill the contract made was written out by Mr. Howell? A. Yes, sir.

Q. And it was read over by all of you? A. Yes, sir. 10

Q. Each read the contract over particularly? A. Each walked to the desk and read it over.

Q. And it was in accordance with the contract made at the wagon house? A. Yes, sir.

Q. When they went to the mill, who went together—did they go together? A. They did.

Q. Which ones walked together to the mill? A. I think—I won't be positive; I think all three went together.

Q. You went to the house, you say? A. Yes, sir. 20

Q. You went to the house before they left the wagon house? A. Yes, sir.

Q. Then you don't know about that, do you? A. No, sir; I went there immediately; they were all there.

Q. And, in the mill, the contract was reduced to writing in the terms, and read over by all of you; and I understand you, that after it was read over, that your father said it would not, perhaps, be convenient for him to raise $5,000, and that he would like to have Mr. Cook leave $10,000 on the Maryland farm? A. Yes, sir. 30

Q. What did the $5,000 refer to? A. The difference in money—boot money.

Q. Then, there had been an arrangement—it was that Mr. Cook was to receive $5,000? A. Yes, sir.

Q. When was that made? A. I suppose it was made—

Q. Never mind what you suppose; do you know? A. Well, I heard them say that he was to give $5,000 difference; I suppose I know it.

Q. Where did you hear that said? A. At the wagon house. 40

Q. Then, you understood first, before your father asked Mr. Cook to change it to three thousand, that it was to be five thousand that was to be paid? A. Yes, sir.

Q. You went to Maryland, you say? A. I did, sir.

Q. On about the third of June? A. On about the third of June.

Q. And the first thing you did down there was, to gather your crop of wheat? A. No; the first thing we did was to plant over the corn.

10 Q. You gathered your wheat about the first of July? A. Yes, sir—let's see.

Q. You gathered your oats crop that had been sold? A. Yes, sir.

Q. You gathered your corn? A. Yes, sir.

Q. You gathered all the crops that were growing? A. Yes, sir; we did not let them go to waste.

Q. Will you tell us when it was that your father had given up this idea of trading? A. It was on the day, or evening, rather, that I came home from Maryland in Sep-
20 tember.

Q. On the 14th of September? A. Yes, sir.

Q. You knew then that your father did not intend to carry out the contract? A. I did, sir.

Q. On the 14th of September? A. The 14th or 15th.

Q. You went on after that and gathered the corn? A. Certainly we did.

Q. Marketed it? A. Yes, sir.

Q. And sold it, and got the money? A. Yes, sir.

Q. And put it in your pocket? A. Maybe put it in
30 our pocketbook.

Q. You went on after that and sold the crop of clover seed? A. I guess not, sir.

Q. When did you sell it? A. Before it.

Q. Had you sold it before that? A. Yes, sir; and pocketed the money.

Q. Why, after you learned that your father was not going to carry this contract out, did you go on and gather the crops that had been put in there by Mr. Cook? A. Why did I?

40

Q. Yes. A. Why, I supposed it was our place to gather them.

Q. Did you think that the crop of corn was in danger of suffering on the 14th of September, in consequence of not being gathered? A. It was in danger in consequence of not being cut.

Q. How much of corn was there in that section of Delaware that was not cut? A. It was not in Delaware.

Q. In Maryland? A. There was considerable that was not cut. 10

Q. That was cut? A. There was considerable; yes, sir.

Q. Did you want to cut that to put wheat on it? A. Yes, sir.

Q. You say that sowing time runs on until December? A. Yes, sir; they sow on till December.

Q. And they begin about the first of October, do they not? A. Yes, sir; sometimes about that time, sometimes later, and some earlier.

Q. By the 14th you had one-half of your wheat ground 20 prepared for sowing? A. Over half; a great deal more than half.

Q. You had also your manure all carted out? A. Yes, sir.

Q. And you had phosphate and your seed ready? A. Yes, sir.

Q. How long would it have taken you, after the 22d of September, to have finished getting ready for the balance of your sowing? A. Not very long.

Q. A very little while, with your preparation? A. Of 30 course, it would not have taken as long as if we hadn't made any preparations.

Q. You had plenty of time between the 21st of September and the 1st of October for the balance of your sowing? A. It would take long after that.

Q. How much longer? A. A week or two.

Q. The month of October you would have time? A. Yes, sir.

Q. Or even if you had got notice on the first of Octo-

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ber you would have time to finish this sowing time? A. Oh, yes.

Q. Was there any time after the first of October for you to gather the corn without it suffering any danger or injury there? A. Not after they cut it; when corn gets ripe it wants to be cut.

Q. You left part? A. It had done growing after that.

Q. Is it not the custom there for a farmer to leave a great deal of his corn standing, and just husk it? A.
10 Yes, sir.

Q. Then, the corn would have received no harm to have been left standing? A. It would not if we had taken the tops off; we could not do that and put wheat on that.

Q. But, supposing you did not intend, after the 14th, to put wheat on, you could have done it then? A. Yes, sir.

Q. You gathered the crop, but did not sow wheat? A. Yes, sir.

20 Q. And did nothing after the 14th of September? A. I don't think we did.

Q. Am I right in understanding you that you had 80 acres of this ground prepared at that time? A. About that.

Q. How much of that was corn stubble? A. None of it.

Q. What was it? A. Wheat and oats stubble.

Q. How much more did you intend to put in? A. 45 acres more, about.

30 Q. Then, all you had to do, after that time, the 14th of September, was to plow and put in the 45 acres on the corn? A. Yes, sir; and harrow, and put in the other, on the other 80.

Q. I understand that, too; I mean in relation to that? A. Yes, sir.

Q. Didn't you tell Robert Beatty, before you returned in August, to Maryland, that in fact you hadn't been ready to make the exchange yet yourself? A. I never did, nor anybody else.

40 Mr. CLARK.—Is that competent?

The COURT.—I will exclude that on the same ground that I did the other expressions, unless you insist that you offer it to show his interest as a witness, but it cannot come in on any other ground but for the purpose of impeaching him as a witness.

Mr. LINDABURY.—Then, the question and answer remain.

Mr. CLARK.—You stated, as I understood it, in answer to Mr. Bartine, that you hadn't made up your mind to give up the contract until the same night you came 10 home, that is, the 14th of September? A. I don't think I said so.

The COURT.—I think he said his father.

A. That is the first that I learned that my father had made up his mind.

Q. You learned that from your father? A. I did.

Q. And how long a talk did you have with him in relation to this matter, when he gave you that as his conclusion? A. I can't state the time; we talked the whole evening about it; I got home about seven o'clock and 20 talked till bedtime about the subject.

Q. You said you came home expressly upon this business? A. I did; yes, sir.

Q. Did he announce at once, as soon as you came home, that he was going to give up that contract?

[Objected to.]

Mr. CLARK.—I propose simply to ask this question: Whether or not the conclusion which was reached by the father, was after hearing the son's story in relation to the condition of things, or was a conclusion which he an- 30 nounced before they commenced talking about the thing in detail.

Mr. LINDABURY.—In other words, if the father was influenced by what the son told him.

[Question overruled.]

Q. I will ask this question: If you know, state the facts which induced your father to conclude, on the evening of the 14th of September, that he would not further continue the contract?

[Objected to. Offer overruled.] 40

Mr. CLARK.—I now move to strike out the question and answer relating to the conversation between the son and the father, in which the father announced the determination to rescind the contract.

The COURT.—I overrule the motion. I shall allow the question to stand for the reasons I have given. The witness was on the stand and allowed to say what he came home for; he was a party to the matter to that extent; the father accepted his agency, sent him to Mr. 10 Gaston. That we must take for granted that he sent him, because the father acted upon what he did.

Q. How soon after your father made up his mind to give up the contract did you take steps, or did he take steps, to notify Mr. Cook? A. The next morning.

Mr. LINDABURY.—I object to that, because this witness can't know that his father made up his mind except by hearsay.

The COURT.—He can tell what he did; I will let the question stand.

20 Q. What did you do the next morning? A. Went to Somerville.

Q. To see Mr. Gaston? A. Yes, sir.

Q. How soon after the letter was written at Mr. Gaston's was it delivered to Mr. Cook? A. I think it was on the following morning; that is, it was written here in the afternoon and delivered the next morning; I think so; I am not positive about that; it may have been the night before; I think it was the next morning; that can be told from the date of the letter.

30 Mr. LINDABURY.—I think the letter is dated the 19th.

Q. Was that letter truly dated as to the time of its writing? A. I think it was.

Q. Now, then, do you mean to say that you waited from the 14th to the 19th, when your father announced to you his conclusion to give up the contract on the evening of the 14th, and you waited until the 19th before the letter was written? A. No, sir; there is some mistake in the date somewhere; I am not clear as to the day of the 40 month I came home precisely; but the next morning I

went to Somerville and had the letter drawn, and the letter was given to Mr. Cook that day or the following morning.

By the COURT.—Q. You are not sure that you came home on the 14th? A. I am not.

By Mr. CLARK.—The letter was written immediately after your father announced his conclusion? A. Yes, sir.

Q. And delivered as soon as it could be done? A. Yes, sir.

DEFENDANT RESTS. 10

EDMUND B. COOK, a witness called on the part of the Complainant, in rebuttal, having previously been duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Lindabury:

Q. Do you remember seeing Mr. Oakey at your mill on or about the 12th or 14th of September, 1883? A. I do; yes, sir.

Q. How came you to talk with him? A. I had received a letter from Mr. Van Duesen's son, at that time, 20 stating what time his father would be at home.

Q. Never mind what you said? A. That letter stated; the time—

Q. Never mind. How came you to talk with Mr. Oakey—where did you see him? A. Right in front of the mill door.

Q. How did you come to get together? A. I called Mr. Oakey, and said to him that I had received a letter from Mr. Van Duesen's son, that his father would be home in about 10 days, and we could go then and get 30 this matter fixed up, and if he was not ready, that we could have the matter fixed up as soon as Mr. Van Duesen returned.

Q. Did you say anything else? A. Yes, sir; I told him, at the same time, that my sister had been there and had agreed, or would agree, to leave $8,000 on the farm.

Q. That you told us all on the other examination? A. Yes, sir.

Q. It was all the same occasion? A. Yes, sir.

Q. Have you anything by which your recollection is 40

assured of what you state, Mr. Cook? A. I have a letter in my hand that I had, or something that I wrote at that time, and had it signed.

Q. When did you write it? A. On the 12th of September, 1883.

Q. When, with reference to this conversation? A. I wrote it immediately after this conversation; I stepped right into the office and wrote it.

Q. Was anybody present? A. Yes, sir; Robert Beat-
10 ty, the miller.

Q. Do you know whether he made any memorandum, or signed any? A. Yes, sir; he signed this.

Q. Then? A. Yes, sir.

Q. Who wrote it? A. I wrote it, signed it, and he signed it as a witness; he witnessed the conversation and witnessed the writing.

Q. That is all on that subject. Another subject, in rebuttal, and I suppose I may as well go on. Mr. Cook, you have heard the testimony of Mr. Oakey and his sons,
20 regarding the alleged arrangement made immediately after the written contract, by which you were to leave $10,000 on the farm, and Mr. Oakey was, in consequence, to pay you only $3,000; is your recollection refreshed, or not, on that subject, as given on your cross-examination? A. My recollection is the same as on cross-examination.

Q. Was any such arrangement made? A. No, sir.

Q. Was any $10,000 spoken of in that conversation? A. Just before Mr. Oakey went to Maryland; I think it was about the 15th of June; maybe a few days one way
30 or the other.

Q. That is what you told us before? A. Yes, sir.

Q. You heard the testimony in regard to your representation that the mortgages were $14,000, how is your recollection now? A. I never made any such representations.

Q. Did you make any statement of that kind, at all? A. No, sir.

Q. Do you remember whether you went out of the mill with Mr. Oakey, after the paper was signed, and was fol-
40 lowed by one of his boys with the $20? A. No, sir; my

recollection is, that the $20 was paid to me in the office of the mill.

Q. How did you go away from there? A. With Lewis T. Howell.

Q. Did you go outside and have another conversation with Mr. Oakey, after the paper was signed? A. I don't remember, sir, that we did.

Q. How much, in value, did you purchase of Mr. Oakey before you went to Maryland, in the way of stock or grain? A. I purchased of Mr. Oakey not anything before I went to Maryland, after this exchange. 10

Q. Did you make any such agreement in regard to this property? A. No, sir; Mr. Oakey showed me it one time while I was there: five heads of cattle and 10 or 15 heads of hogs, big and little, and a wagon or two, that we did exchange; but there was no exchange made until we came to Maryland.

Q. How much did Oakey buy of you, if anything, before the boys came to you, in value? A. I think, sir, about $1,500. 20

Q. Where was it when he bought? A. In Maryland.

Q. It was on the occasion of his visit there, immediately after the contract was signed? A. Yes, sir.

Q. Did he pay for it? A. He did not.

Q. How much did the boys purchase—how much the night before the sale? A. I believe John purchased a hundred, or nearly, before the sale.

Q. And at the sale? A. About a hundred more, as near as I can tell.

Q. When was that paid for? A. Not until after I came to New Jersey; Mr. Oakey and I made a settlement; I bought some corn and wheat of him. 30

Q. What did you buy? A. Some corn and wheat that he had.

Q. Any stock? A. I agreed with him, when he was in Maryland, to take this stock, this cattle and hog stock.

Q. What was the value of this cattle and hog stock that you took from him in Maryland? A. The value of this cattle and hog stock would be about four or five hundred, all told. 40

Q. Is it true, that you asked John Oakey for the sum of $1,000, and that he refused to give it to you without security—is there any truth about that, at all? A. Not a word.

Q. Do you remember—I don't know whether this was gone into or not—after you gave this information to Mr. Oakey, on the 12th or 14th of September, about the letter you received—do you remember how soon after Mr. Van Duesen's son came up there? A. No, sir; it was
10 just as soon as I could write to him and get a reply.

Q. It was about the 15th or 16th? A. It was about the 15th or 16th; it was before I received this letter from Mr. Oakey.

Q. Had Mr. Oakey tendered himself ready to perform his contract any time before the 29th of August? A. No, sir; never.

Q. Was any money shown you on the 29th, while you and John Oakey and his father were there? A. There was a roll of money in this way, shown me, and he said:
20 "I carried this money just as long as I want to, and I want this matter settled up". It was a roll of money like that.

Q. Was the amount mentioned, in any way? A. It was not.

Q. Had you ever made any agreement to leave $10,000 and accept three from Mr. Oakey? A. I had not.

Q. Mr. Oakey says that you never told him what time Mr. Van Duesen would be back? A. I told Mr. Oakey, at the start, in June, that Mr. Van Duesen would leave
30 on the 20th of June, and would not be back until in September or October.

Q. I believe you testified to that before. When we had an examination, a month ago, there was quite some talk about a wall that needed to be fixed in warm weather—has it been fixed? A. Yes, sir.

Q. What was it? A. There was some leaks around the water wheel, and there was some wall that had been thrown down by the freshet that we left till warm weather to be repaired; these repairs have all been made, sir.
40 Q. Mr. Bartine tells me that some one of the boys said

that some barn was torn down? A. The stable barn, the roof has caved in, and thrown out part one side; the building has a heavy slate roof, and the building was never strong enough to hold it.

Q. When was it that come down? A. Last Thursday, a week ago—a week ago, yesterday.

Q. Have the buildings run down since you were there? A. No, sir; I think not.

Cross-examination, by Mr. Clark:

Q. After you had signed the agreement for the exchange here, at Blackwell's Mills, and before you returned from Maryland, you looked at some property which Mr. Oakey and you talked about exchanging—you looked at some property here, at Blackwell's Mills? A. I think I looked at some cattle and some wagons; my recollection is, that that thing was looked after on Saturday; we had but a little time there on Monday, the day the contract was completed. 10

Q. And you formed, in your own mind, a value which you attached to each of these articles? A. Yes, sir. 20

Q. So, that when you subsequently met Mr. Oakey in Maryland, you were able to agree with him upon the character of the exchange you were to make? A. Yes, sir.

Q. Do you remember the amount of property which Mr. Oakey exchanged with you—the amount of property at Blackwell's Mills? A. I stated it as about four or five hundred dollars; I have the exact figures at home; I did not think they would be required.

Q. Do you remember about the amount of property which Mr. Oakey received from you before the sale in Maryland? A. I think it was some fifteen or sixteen hundred dollars, as near as I can tell you, the amount that he had agreed to take from me, sir. 30

Q. You mean fifteen or sixteen hundred after the credit was deducted? A. No; I mean that I got $500 from him, and he agreed to take about fifteen or sixteen hundred dollars' worth of property from me.

Q. At private sale? A. Yes, sir.

Q. Before the public sale? A. Yes, sir. 40

Q. And before John came there? A. Yes, sir.

Q. Was that agreement carried out? A. It was.

Q. Or was this stock all set up, and sold at public sale? A. No, sir; the agreement was carried out.

Q. Was not this put up at public sale? A. Some of it was, and Mr. Oakey took it at the price agreed upon.

Q. And that was a part of the contract—that Mr. Oakey should receive credit at the sale for the amount of the personal property you had received from him. A. No, sir; there was no agreement of that kind made.

Q. But that was the way in which it was carried out? A. We made a settlement just exactly as they stated here; we made a settlement, and he gave me a note for the balance.

Q. Didn't Mr. Oakey, at that time, say to you, that the note was not due, or rather that he did not owe you the money at the time the note fell due, but he would give you the note, and you said to him, when the note came due you would renew it? A. Very likely; he was entitled to the amount of the credit on the amount that he bought at the vendue.

Q. Then, the $400 due was all the difference there was due you in the exchange of personal property? A. No, sir; there was more than that due me.

Q. I mean after you got from Mr. Oakey the personal property that you bought of him, and after he got all that he wanted to buy of you, the difference in value was $400 due you, for which the note was given? A. For instance—

Q. Is that a fact? A. No, sir; the $400 was not all that was due; you can see, at a glance—

Q. Why did not he give you a note for a larger amount? A. Because, I took grain in payment for the difference.

Q. You took the grain from him at a certain price? A. I did.

Q. And then you counted to him for all the personal property you received of him, and he, for all he received of you, and there was $400 difference? A. Yes, sir; precisely.

Q. And that was paid by note? A. Yes, sir.

Q. You say you saw Mr. Oakey on the 12th of September, in front of the mill, and had this talk in regard to Mr. Van Duesen's letter? A. Yes, sir.

Q. There had been a coldness between you before that time? A. No, sir.

Q. Hadn't there been trouble during the Summer between you, and a coolness had arisen? A. Not a word; not to my knowledge.

Q. Had your relations been perfectly friendly up to the 12th of September? A. They had, sir. 10

Q. No difference between you, at all? A. Not to my knowledge.

Q. At the time Mr. Oakey was down he said you could do as you pleased, and he would do as he pleased? A. Yes, sir; that was his remark.

Q. You knew of no reason why he should act in that way towards you? A. No, sir.

Q. And you were taken by surprise, by reason of it? A. Yes, sir. 20

Q. You said, I think, before that, you depended upon Mr. Van Duesen to enable you to carry out this contract —that is what you were waiting for—is, or not, that a fact? A. It is not a fact that I was dependent upon him; I had expected to advance money.

Q. Were you not waiting for Mr. Van Duesen to enable you to carry out the contract? A. Yes, sir.

Q. And you made no effort, without Mr. Van Duesen, to carry out the transfer? A. I was ready to carry out the contract without that. 30

Q. You didn't tell Mr. Oakey that you could carry out the contract with Mr. Van Duesen? A. I don't know that I did.

Q. You always told him that you were waiting for Mr. Van Duesen? A. I did; yes, sir; I told him I was waiting for Mr. Van Duesen.

Q. Did you show him this letter which Mr. Van Duesen had written to you? A. I think I did, sir.

Q. On the 12th of September? A. Yes, sir; I think so.

Q. That's all. 40

Re-direct:

Q. Mr. Oakey says, in his answer, that he was induced to believe by you that you could arrange the matter when Mr. Van Duesen returned; did you have any conversation with him during July or August, in which you informed him of that fact? A. I informed him, yes, sir; I think in August.

Q. What did you say? A. He said that he was going to be ready; he had the deed signed, as near as I can
10 recollect, about the 15th of August, and he handed it to me and said that he had made a little alteration, and asked if I objected to it; and he said, "I will be ready in a few days to fix this, how soon can you be ready"? "Just as soon as Mr. Van Duesen returned to the city"; and upon the strength of that I went to the city to see if Mr. Van Duesen could be found.

Q. What did Mr. Oakey say in reply to that statement? A. He simply said, get ready, and we will have this matter fixed up.

20 Q. Did you, in fact, receive a letter from Mr. Van Duesen's son? A. I did, sir.

Q. And you said you had it in your hand at the time? A. Yes, sir.

Q. Can you produce the letter? A. (Indicating.) That is it, sir.

Q. Is it enclosed in an envelope? A. Yes, sir.

Q. What one?

Mr. CLARK.—Is that competent?

Q. When did you receive it? A. On the 12th of Sep-
30 tember.

Mr. LINDABURY.—I desire to offer it in evidence; I think it is competent.

The COURT.—He said that he had received it; I think that is competent; but the contents of such a letter are not.

Mr. LINDABURY.—Very well, let the Stenographer's notes show that he has the letter, and produced it.

Mr. CLARK.—I understand that all that appears there is that it was received.

40

The COURT.—The letter is offered in evidence, and the offer is overruled by the Court.

Q. You said you had it there in the original envelope? A. Yes, sir.

By Mr. CLARK.—This letter which you received was after you had seen Mr. Oakey, in August, and told him you would be ready as soon as Mr. Van Duesen returned to the city? A. Yes, sir.

ROBERT BEATTY, a witness produced on the part of the Complainant, in rebuttal, being duly sworn according to law, deposeth and saith: 10

Direct examination, by Mr. Lindabury:

Q. Were you in the mill of Mr. Cook's on the 12th of September? A. Yes, sir.

Q. Did you see Mr. Oakey there? A. Yes, sir; right in front of the mill.

Q. Did he come in the mill, at all? A. No, sir.

Q. Do you remember who first spoke to the other, he or Mr. Cook? A. Mr. Cook said, "Here comes Oakey, I want to see him", and he called him up to the mill door; he had a letter there; I did not hear all the conversation, but I heard him say he had a letter; he heard from his man, and they talked a little while, and Mr. Oakey said, "You do as you please, and I will do as I please"; and he wheeled around and started off, and I heard Mr. Cook say, "If you ain't ready you ought to get ready". 20

Q. Did you sign any memorandum of what was said on that occasion? A. Yes, sir; I did.

Mr. CLARK.—Before counsel shows him the memorandum, I think he ought to give his recollection of the conversation. 30

Mr. LINDABURY.—No; I don't think so.

The COURT.—He may refer to it to refresh his recollection, if he wishes to do so. That is the practice, unless he remembers what was said without the memorandum.

A. There is no uncertainty; Mr. Cook wrote that, and he said, "Now, I want you to sign this, to show what was said". 40

Q. Did you hear all the conversation that was set down in the memorandum? A. I don't think I heard all that was said.

Q. Did you hear all you subscribed to? A. Yes, sir.

Q. Do you recollect all that? A. Yes, sir; I think I do.

Q. Do you feel sure, or would your recollection be refreshed by referring to the paper?

Mr. CLARK.—That is pretty fresh.

10 A. I will tell as near as I can what was said there.

Q. Do you think you can tell what was said there? A. Yes, sir; Mr. Cook said he would like to see Mr. Oakey, and he was coming along the road, and he called him to the mill door and told him he had received a letter from Van Duesen, and I could not hear all that was said; but I did hear Mr. Oakey tell him that he would do as he pleased, and he could do as he pleased, and Mr. Cook said, if you aint ready you had better get ready; that is all I can remember of it.

20 Q. Do you think that is all there is in the paper? A. There might be some other; I don't know as it is every word.

Q. Have you told all that you heard? A. That is all I heard of that conversation, that I can remember of.

Q. I want to know if you remember all you heard? A. Yes, sir; I think that is all I heard.

Q. You think you haven't forgotten any of it? A. I don't think I have.

Q. And the memorandum would not refresh your re-
30 collection as to any of it? A. I don't know that it would.

Q. Did you have any conversation with Davis Oakey, in August, before he returned to Maryland, in regard to exchanging? A. Yes, sir.

Q. Did he, in any such conversation, tell you in substance, or effect, that they hadn't been ready themselves yet to make the exchange? A. Yes, sir; he did; I will tell what was said between him and myself.

Q. That is all I ask; and we have no right to ask any further. Were you present when the alleged tender of
40 $3,000 was made on the 29th of August? A. All I know

about it, I saw Mr. Oakey and John come there in front of the mill; they came in the side of the mill; that is all I know; I saw them come there; I did not see them—I saw Mr. Oakey have something in his hand; I don't know whether it was paper or not.

Q. Were you in there—did you hear the conversation? A. I did not.

Cross-examination, by Mr. Clark:

Q. Where did you have this conversation with Mr. Oakey? A. Between where I lived, in the middle, there, 10 and where they now reside; on the fence, one Sunday morning.

Q. When was that? A. Some time, I can't remember more than it was in the oats harvest; some time in the forepart of August.

Q. It was oats harvest, you are sure? A. Yes, sir.

Q. Are you sure that the wheat had been gathered? A. Yes, sir; I think it had all been gathered.

Q. What makes you think it had? A. The reason was, Mr. Oakey had oats down below the mill, and I 20 know they had just got them together.

Q. This is Davis Oakey, I understand you? A. Yes, sir.

Q. What time in the morning was it? A. Along 8 or 9 o'clock.

Q. What time in August? A. I could not tell; it was in the forepart; I think the first week, or maybe four or five days in August; the forepart of August.

Q. How long had Davis Oakey been home? A. I don't remember about that; I think he had been at home 30 but a very few days; I think that is the first conversation I had with him.

Q. Was it the first time that he came home? A. I think it was; I ain't certain; but I think it was.

Q. Who was by? A. No one.

Q. Who did you tell this conversation to first, anybody, before to-day? A. Yes, sir; I told it before.

Q. When did you tell it? A. Right away.

Q. Who to? A. I told Mr. Cook, I think.

Q. Had there been any dispute at that time, in relation 40

to the completion of the contract? A. Not that I heard of; no more than what Davis told me then.

Q. Did he tell you that there was any dispute about carrying out the contract? A. He said he thought there would be.

Q. You told Mr. Cook right away? A. I don't remember whether it was right away; it may be a week or so.

Q. Are you sure that you told Mr. Cook before the trial? A. Yes, sir; I am sure that I did.

10 Q. Who else did you tell besides Mr. Cook? A. Fox Voorhees.

Q. Do you remember of anybody else? A. No; I don't remember of anybody else.

Q. You remembered it when you were here at the trial before? A. Yes, sir.

Q. You were not asked about it? A. No, sir.

Q. Did you tell any of the counsel, at that time, about this? A. I don't remember now—yes; I was talking about that that morning.

20 Q. How long were you talking there together? A. A quarter of an hour, or more.

Q. Now, if you please, tell me what was first said? A. Well, Davis came out there, and we were talking.

Q. What were you talking about? A. We were talking about the property there, and how the business was going on, and Davis said he thought there was going to be trouble, and I asked him "Why"? and he said he did not believe that Cook intended to hold the property; I said: "He must be, he is fixing up here". Well, he said,

30 that property was mortgaged down there for $18,000, and he did not believe that he would, or could, come up to the contract. He said he only paid $15,000 for the farm, and now it was mortgaged for $18,000; and I thought it was strange that he would go and do this repairing if he did not intend to keep the property. Well, he said, he would see, "In fact, we have not been ready until this week, but we are going to be ready and he has got to do something".

Q. Those were the words he used: "We have not been

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ready until this week, but now he has got to do something"?

Mr. LINDABURY.—"But now that we are ready"?

Mr. CLARK.—I am asking a question.

A. Yes, sir.

Q. Now, tell me what he did say? A. He said: "In fact, we have not been ready until this week, but we are going to be ready this week, and then he has got to do something".

Q. What else passed between you at that time? A. 10 We were talking about other matters that hadn't anything to do with this matter.

Q. What other matters were you talking about at that time? A. I don't just remember; I asked him how he liked it down there, etc.

Q. You remember asking him that? A. Yes, sir.

Q. What else? A. I can't remember our conversation in every little particular.

Q. How long were you talking? A. Probably we were talking a quarter of an hour; maybe more; maybe not 20 quite so much.

Q. You are still working for Mr. Cook? A. Yes, sir.

Re-direct:

Q. Did you ever sell any grain to this man in New Brunswick—McMann? A. Never, to my knowledge, since Mr. Cook has got the mill.

Q. Did you ever solicit him to purchase, or did he ever come to you? A. No, sir.

Further direct:

Q. You don't do the carting, do you? A. No, sir. 30

Q. You simply attend to the mill? A. Yes, sir.

Q. And your mill is some nine miles from New Brunswick? A. I believe they call it eight or nine.

Further cross:

Q. You keep the books? A. I keep them mostly.

Q. Do you know, as a fact, whether he bought any flour or feed? A. I know that he never bought any from Mr. Cook.

Q. Why not? A. Because, Mr. Cook—

Mr. CLARK.—Is that competent? 40

The COURT.—I don't think the witness can tell what passed between him and Mr. Cook.

A. He is not responsible.

Q. How do you know? A. Mr. Oakey said so; I heard him say that he owed him over $200, and he would have to take it out in trade.

Q. When did he say that? A. I heard him say that.

Further cross:

Q. Do you know that the driver did not sell him any
10 goods? A. I am supposed to know what goods are on the wagon.

Q. I ask you if you know that the driver did not sell him any goods? A. I don't know whether he did or did not.

Further direct:

Q. Are sales reported to you? A. Yes, sir.

Q. Were any such reported? A. No, sir.

Q. John Oakey said, you have to go out and buy grain? A. We have gone out and got some; we use a great deal;
20 we bought some in New York.

Q. I thought yours was a custom mill? A. Yes, sir.

Q. I thought you run on custom work entirely? A. Oh, no.

Q. You have been running, then, largely as merchant mill? A. Yes, sir; and on custom work.

Q. And to do merchant work successfully you have to have a stock on hand? A. Not if you can get your supplies handy; you can have supplies brought in every day.

Q. And have enough on hand to have the hopper full?
30 A. Yes, sir.

Q. And you would have to hurry up the teams sometimes, otherwise you would be out before the teams got back? A. We never have been as bad as that; we have been down pretty low sometimes.

EDMUND B. COOK, recalled:

Direct examination, by Mr. Lindabury:

Q. Did you ever sell any flour or feed to this gentleman in New Brunswick—McMann? A. No, sir.

40 Q. Was there any reason for not doing so? A. Yes.

Q. What was it? A. Mr. Oakey said that he owed him several hundred dollars, and that he was not good; I asked him to give me a list at the time I took possession of the mill.

Cross-examination, by Mr. Clark:

Q. Did you try to sell it to him? A. No.

Q. How do you know? A. I do my own selling and my own collecting, and I ought to know.

Q. Your man never does anything of that kind? A. No, sir. 10

Q. Never makes any sales? A. No, sir.

LEWIS T. HOWELL, a witness called on the part of the Complainant, in rebuttal, being duly sworn according to law, deposeth and saith:

Direct examination, by Mr. Bartine:

Q. You are the person who drew the contract in this case? A. I am, sir.

Q. You remember where you drew it? A. It was drawn in the office of the mill. 20

Q. Who were in there when it was drawn? A. Mr. Cook, Mr. Oakey, and I think one of the boys—I can't swear which—and myself.

Q. Do you remember how long you were in there? A. We were in there not over 15 or 20 minutes, drawing up this article of agreement, and talking over it.

Q. Who left first? A. I think, after the article of agreement was signed, and talked over, one of the Oakeys, I think it was Davis—and he paid him the money in the office—said it was not binding unless there was some 30 money paid, and he paid him the money; and after talking a few minutes I went to get him, and I said, Mr. Cook, if you are through with your business, let us go home; he said he believed he was through; and we went out, and got in a wagon, and went home.

Q. Then, I understand you to say that Mr. Cook and you left together? A. Yes, sir.

Q. Were you in the office all the time while Mr. Cook was there—from the time that paper was being drawn until you left? A. Yes, sir. 40

Q. Was there anything said, in that office, at that time, between Mr. Cook and Mr. Oakey, in relation to leaving $10,000 on the Maryland property? A. There was nothing said about mortgages, in my presence, at any time, to my recollection.

Q. Were you in their presence all the time while you were in there, until you left? A. In the office; yes, sir; but not alone; they were talking over their business.

Q. I mean after you drew the paper? A. Yes, sir; I
10 was there.

Q. How large a room is that office? A. Why, I should think it is about eight by ten; but a desk in there.

Q. And no such conversation happened there without you hearing it? A. I think not.

Q. I think I have already asked you whether Mr. Cook and Mr. Oakey went out of your presence—out of that office, at any time after you drew the article, before you left? A. I think not; I don't think they went out together after the article of agreement was drawn.

20 Q. Do you know? A. I am pretty positive about that—that they did not go out; the whole thing was done then, and signed, and I proposed that we go home, because I was in a hurry to get home; I think we went out together.

Q. You say, you think? A. I am pretty positive about it; I don't think any other ways; there is no doubt about it, sir.

Q. Just look at that paper I now hand you? A. I erased that at the suggestion of, I think, Mr. Oakey; he
30 said that the title should be satisfactory.

Q. What was said at that time? Just think, and state all that you can recollect—everything that was said in relation to making that change—what led to it? A. My recollection is, that both admitted having mortgages; but I don't think there was any amount stated, and that the settlement of those mortgages should be satisfactory to both parties; that there might be some exchanging to be done; and my impression is, that Mr. Cook was to help Mr. Oakey, if he had any difficulty in getting the mort-
40 gages, some of them, to remain there on the property, as

it now exists; that is my impression; but there was no amount stated of mortgages, in my hearing, at any time.

Q. On either property? A. On either property.

Cross-examination, by Mr. Clark:

Q. Without having looked at the paper, and having your attention called to the erasure, would you have remembered the conversation in relation to the mortgages? In other words, did not that refresh your recollection in respect to the mortgages? A. No, sir; that did not refresh my mind at this time. 10

Q. You did not testify about that before, however? A. I was not asked; now, if the Court will allow me, I will tell why that is positive upon my mind?

Q. I was going to ask you another question. When you and Mr. Cook left the mill together, do you mean to say that is the best recollection you have, or is it a positive fact? A. It is pretty hard to say an absolute fact, but I am pretty positive of it; I have no doubt of it.

Q. Mr. Oakey said that you and Mr. Cook left the mill together—seemed to be anxious to go; in that respect 20 you agree. You were anxious to get away as soon as the contract was completed? Mr. Oakey said, that after you went out of the mill, Mr. Cook did not at once go; and he says that he then had a conversation with Mr. Cook, at which you were not present, after the contract was signed, in relation to the mortgage—amount of money paid, etc. Do you say that he did not have any such conversation there that day? A. He hadn't, before me.

Q. But, do you mean to say that he hadn't such a conversation? A. I can't say what they said when they were 30 not in my presence.

Q. Do you say that they did not have any such conversation? A. Not in my presence.

Q. Do you say that there could not have been such a conversation in the office, after you had gone out, and before Mr. Cook came out? A. I think not, because I think we went out together.

Q. I ask you whether that is an impression or a fact? A. It is a fact, as near as I can get at it; you can't tell, always. 40

Q. I can tell that I am here. A. If your bed sets in the middle of the room, you can't tell which side you got out this morning, unless you got out on one side altogether.

Q. But I am here, and I know that is a fact. Now, is it a fact, or an impression on your mind, that Mr. Cook went out with you? A. It is a fact, as near as I can get at it.

Q. What do you mean by "as near as I can get at it"?
10 A. Ain't we all impressed by that?

Q. What is your conclusion, I am not arguing it? A. My conclusion is, that I and Mr. Cook went out together.

Q. A little while ago you qualified that by saying that is what you thought? A. If you want me to put it the other way. In all things there is a bare possibility of a man being mistaken.

Q. Then, do you say there is any possibility of your being mistaken in respect to Mr. Cook going out of the
20 office with you? A. I don't think there is.

Q. Yet you would not be willing to say that there was not a possibility? A. I think there are a great many things possible; you would like to have me say just what you want.

Q. No; I want you to answer my question. I ask you if you are willing to say that there is not a possibility of mistake with respect to the impression that Mr. Cook went with you out of the office? A. I consider I am under oath, and I am very careful what I say, and that
30 is the reason I answer you as I do.

Q. Can you answer any differently? A. I can say that Mr. Cook and myself went out of the office together, that is all; now, you want me to say something else, and you keep asking me other questions.

Q. Didn't Mr. Cook walk across to the mill, before he went out of the door? A. Not that I recollect.

Q. After the contract was signed, didn't he walk across to the mill? A. We walked half way across to the mill, and then walked out of the door.

40 Q. I mean, didn't he go out to the mill, out of the way

of the door, before he went out of the door? A. I think not.

Q. Do you remember? A. I do not.

Q. What fact or circumstance is there, by means of which your recollection is fixed, with respect to the going out of the office with Mr. Cook? A. Because I was in a hurry to get home, and I urged upon him to go, and he was ready, and we went out together.

Q. Did Mr. Cook talk to Mr. Beatty after he went out of the mill, that day, after the contract was signed? A. 10 I did not see him.

Q. But you say you walked with Mr. Cook from the office to the mill. Now, I ask you if he did not talk with Mr. Beatty outside of the office, after the contract was signed? A. I don't recollect seeing him.

Q. Would you be willing to say, as a fact, that he did not? A. No, sir; because I started on and Mr. Cook started after me.

Q. Mr. Oakey has sworn that he did have a conversation—and Mr. J. L. Oakey, also—that he did have a con- 20 versation with Mr. Cook in relation to the mortgages left on the Westover property. They say, upon their oath, that that conversation took place with Mr. Cook after you left the office, and after the contract was signed—do you say that is not true? A. I tell you I don't remember.

Q. That may be true; I am asking you if you say it is not true? A. I haven't seen anything to confirm me in the opinion that it is true. Now, some of Mr. Oakey—

The COURT.—If Mr. Clark puts a question to you it 30 is your duty to answer yes or no, if you can; if you are in doubt, say so.

Q. (Question read.) Do you say that it is not true? A. I say—

The COURT.—If you know, you can say one way or the other.

A. I do not know.

Q. Is your recollection any better to-day than it was when you were examined in this case before? A. I think it is, in some respects, because my memory has been re- 40

freshed somewhat, and I have had more time to reflect upon it and study it as to the facts.

Q. You say Mr. Davis Oakey handed Mr. Cook the $20 in the office—or $25, I don't know which—do you say that Mr. Cook put that in his pocket in the office? A. I don't know.

Q. Do you know whether he laid the money down in the office, or put it in his pocket? A. No, sir.

Q. You saw it handed to him? A. Yes, sir.

10 Q. You don't know whether Mr. Cook left the office without the money, and Mr. Davis Oakey afterwards called to him and paid it to him? A. I know he did not pay it to him in that way, in my presence.

Q. What is your recollection to-day, with respect to the persons present in the office—any different from what it was the day you were here before? A. I answered that question after refreshing my memory, if that is what you want to get; I think I said in my first examination that there was one of the boys present, and I could not 20 tell which; since that time I have thought over the matter, and I am satisfied that before the thing was concluded both of them were there.

By the COURT.—That is what you say to-day? A. That is what I say to-day; my impression is, that before we got it signed that both were there, and we read it over.

Re-direct:

Q. You were just going to answer the counsel why this fact was fastened on your mind, and he interrupted you 30 by asking you another question. Can you tell now why the fact that Mr. Cook left with you was fastened on your mind? A. That was not it.

Q. Oh, yes; about the alteration of the agreement; can you state now what you wanted to state then? A. What fastened it upon my mind then was, I was afraid that an alteration there would alter or vitiate the contract, from the fact that it was erased, and it worried me a little to think that there had been an erasure, and brought up everything fresh in my mind; I recollect, 40 also, talking to Mr. Oakey, what one of the boys swore

to-day that they said that it was in order to clear that and get an attorney to draw up the paper—that the contract was not worth the paper it was written on, and Davis said, especially when no money is paid on it; and then the $25 or $20 was paid over on it; but, as with one mind, they said, both said, that it was good enough for them.

Q. Who were both? A. Mr. Cook and Mr. Oakey.

Q. How long, about, was it, after the contract was signed and read over by the parties, before you left the office? A. It was a very few minutes after; probably 10 or 15. 10

Q. Was there any opportunity, during that interval, after the finishing of the contract and the time you left, for the conversation sworn to by John Oakey to have occurred in there between Mr. Oakey and Mr. Cook? A. Was there time?

Q. Without you hearing it? A. Oh, no; not without my hearing it.

Q. Mr. Cook was staying with you? A. Yes, sir. 20

Q. He was staying with you, and your anxiety was to get home? A. Yes, sir.

Q. And that is what impressed that fact upon your mind, about his going with you? A. Yes, sir; I considered the trade virtually made on Saturday, and carried out on Monday.

Further cross:

Q. You are a brother-in-law of Mr. Cook's? A. Yes, sir.

Q. Do you remember where your horse was tied—was not the horse tied up at the wagon house? A. I think it was. 30

Q. And you did not both go after the horse? A. I don't know about that.

Q. You got in at the wagon house? A. Yes, sir.

Q. You don't know where Mr. Cook got in? A. I don't recollect where he got in.

Q. That's all.

COMPLAINANT RESTS.

40

DAVIS OAKEY, being recalled in the part of the Defendant, in rebuttal, testified further, as follows:

Direct examination, by Mr. Clark:

Q. Mr. Beatty states that he had a conversation with you some time in August, on Sunday morning, between 8 and 9 o'clock—is that so? A. Yes, sir.

Q. And he says, as to that conversation, that he thinks it was the first time you came home; that you talked to him about the property; that you stated that you thought
10 there was going to be trouble, and Cook would not be able to take the property—would not be able to arrange to do so, because of so much mortgage on the Maryland property? A. I think I said that.

Q. Your attention was called to this question, as to whether or not you had not said, at that time, that you hadn't been ready until now to make the exchange, and that Mr. Cook has got to do something. Has anything occurred, by which your recollection has been refreshed, or that your opinion is altered, in respect to that conver-
20 sation? A. No, sir; my opinion is not altered; I never said any such thing, because it would have been untrue.

Q. You mean that you never said that your father was not ready? A. No, sir.

Cross-examination, by Mr. Lindabury:

Q. Was your father's deed executed then? A. I don't know.

JOHN L. OAKEY, being recalled, on rebuttal, on the part of the Defendant, tessified further, as follows:

30 *Direct examination*, by Mr. Clark:

Q. Your attention was called to the conversation which Mr. Cook says he had with you about the 12th of September last, in relation to the Van Duesen letter, when you were on the witness stand before—in which conversation you said, you can do as you please, and Mr. Cook can do as he pleases, and you said then that you did not hear Mr. Cook say that Mr. Van Duesen would be on in a few days? A. I said I did not hear anything about that.

40 Q. He said, in a previous examination, that he would

fall back on the original agreement—you clear your place, and he his? A. Yes, sir.

Q. Mr. Cook now says that he also told you, in that conversation, that he received a letter from Mr. Van Duesen, and he says he read you the letter?

Mr. LINDABURY.—No; he did not say that.

Q. That he showed you the letter from Van Duesen, telling you, in fact, that Mr. Van Duesen would be on in a short time and he would arrange it. When was the first you heard of it? A. That he had received a letter from 10 Mr. Van Duesen?

Q. Yes. A. I never heard the first word; he never said to me that he had received a letter from Van Duesen, or that he would be ready in ten days, so help me God.

Cross-examination, by Mr. Lindabury:

Q. Has your recollection improved any since you were on the stand before? A. I don't know; you can try it.

Q. Has your nervousness improved? A. Yes, sir; a little bit.

Q. Did Mr. Cook say anything about Mr. Van Duesen? 20 A. Not that I know of; I asked him about Mr. Van Duesen, and he said he had not heard from Van Duesen; I understood him to say that.

Q. Are you sure? A. That is the way I understood him; I walked from the house there to know something about it, and met him right in front of the mill door, and I understood him to say that he hadn't heard from his man yet; and then this conversation occurred; and then he said something or other about turning back to the original agreement, and I turned on my heels with "you can 30 do as you please, and I will do as I please".

Q. You said you were greatly hurried, and did not hear very much of what he said? A. He said that; I remember that he said that.

REST ALL.

10 **In Chancery of New Jersey.**

Between *EDMUND B. COOK,* *Complainant,* *and* *JOHN L. OAKEY,* *Defendant.*	On Bill, Etc.

20

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, showeth unto your Honor, your orator, Edmund B. Cook, of the Township of Hillsborough, in the County of Somerset, and State of New Jersey, that on the seventh day of May, eighteen hundred and eighty-three, your orator, being seized, or well entitled, in fee simple, of and to a certain farm or tract of
30 land, with the appurtenances, situate, lying and being in the County of Somerset and State of Maryland, called "Westover", fully and particularly described in the plat and certificate made and signed by Levin P. Bowland, Surveyor, November 22, 1873, excepting therefrom the small parcel containing about four acres, which lies on the North side of the County road to Raccoon Point, two acres conveyed to James Jones, and four acres adjoining, contracted to be conveyed to and now in the possession of John Turpin, which two last named parcels are in or
40 near to the angle formed by the fifth and sixth courses of

the said plot. The balance of said plot, after deducting said exceptions, containing six hundred and ninety-eight acres of land, more or less, subject, however, to a certain right of way across the same, and one John L. Oakey, of the village of Blackwell's Mills, in the County of Somerset and State of New Jersey, on the day aforesaid, as your orator believes, being entitled in fee simple of and to a certain mill property, with the appurtenances, known as the Blackwell's Mills property, situate in the County and State last aforesaid and shortly described as follows: 10 Situate in Hillsborough and Franklin Townships, bounded on the east by lands of Abraham S. Vanderveer, on the south by public road and lands of C. H. Broach and others, on the west by lands of John L. Oakey, and on the north by lands of F. V. L. Voorhees and Abraham G. Vanderveer, containing about fourteen acres of land, being part of the premises conveyed to John L. Oakey by Augustus Van Zandt and wife by deed dated January 13, 1884, and your orator and the said John L. Oakey being on the day aforesaid desirous to ex- 20 change said properties above described, the one for the other, upon the terms hereinafter mentioned, did, on said day, enter into and sign and seal a memorandum of agreement respecting the said sale and exchange in the words and to the purport and effect following, that is to say:

"Blackwell's Mills, May 7, 1883.

"This article is to certify that John L. Oakey, of the County of Somerset and State of New Jersey, and Edmund B. Cook, of the County of Somerset and State of 30 Maryland, have this day exchanged properties, the exchange to be as follows: The said John L. Oakey to take the property in Maryland, now occupied by Edmund B. Cook, and the said Edmund B. Cook to take the property known as Blackwell's Mills, now occupied by the said John L. Oakey, each party agreeing to furnish good titles satisfactory to both parties. Said John L. Oakey agreeing to give said Cook five thousand dollars, also to gather the wheat crop now in the ground, thresh and deliver one-half to shipping station, not further than depot 40

at Weston, Cook furnishing bags for his part, without expense to said Cook for delivering at said station.

"John L. Oakey is to have the manure in both places, E. B. Cook to have the cord wood now cut on the premises.

"JOHN L. OAKEY, [L. S.]
"ED. B. COOK, [L. S.]

"Signed, sealed and delivered in presence of Lewis T. Howell".

10 As by the said memorandum of agreement, now in the possession of your orator, and ready to be produced and proved at such time and in such manner as your Honor shall direct, and to which, for greater certainty, your orator begs leave to refer your Honor.

And your orator further shows that the said John L. Oakey paid to him the sum of twenty or twenty-five dollars (which of said sums your orator does not now distinctly recall), as part of the said sum of five thousand dollars mentioned in said agreement at the time of the
20 signing thereof as aforesaid.

And your orator further shows that, on or about the twenty-fifth day of May, eighteen hundred and eighty-three, in pursuance of said agreement, the said John L. Oakey took full possession of your orator's said farm in Maryland, and has ever since remained, and still is in full possession of the same, and from thence has received, and is still receiving, the rents, issues and profits thereof.

And your orator further shows that, on said last mentioned day, he (your orator), together with his wife, made,
30 executed and acknowledged, in due form of law, a good, valid and sufficient deed of conveyance to the said John L. Oakey, his heirs, assigns forever, of and for all and singular the said farm and premises of six hundred and ninety-eight acres of land, subject to said right of way, in Maryland, aforesaid, described in said agreement as "the property in Maryland, now occupied by Edmund B. Cook", that said deed of conveyance contains the usual covenants of seizing, right to convey, quiet enjoyment and warranty; that on or about the twenty-eighth day of May
40 aforesaid your orator tendered said deed to the said John

L. Oakey, and offered to furnish him a good and satisfactory title, and told him at the same time that he (your orator) would be ready at any time that the said John L. Oakey might fix to carry out the said agreement and deliver the papers in accordance therewith; that said Oakey then and there informed your orator that he was not ready to do so then, but that your orator might have immediate possession of his (Oakey) said property known as Blackwell's Mills aforesaid; that your orator then, or very soon after, took and received full possession of said 10 Blackwell's Mills property, and has ever since remained in full possession thereof; that on said last mentioned day the said John L. Oakey took the said deed of your orator, and, after retaining the same four or five days, returned it to your orator, and said to your orator, then and there, he was not ready to exchange the papers, but would do so as soon as he could.

And your orator further shows that the said John L. Oakey has neglected and refused to pay to your orator the balance of the said sum of five thousand dollars men- 20 tioned in said agreement, or any part thereof, and to deliver a deed for his said property known as Blackwell's Mills, as aforesaid, as by said agreement he was required so to do.

And your orator further shows that on the seventeenth day of October, eighteen hundred and eighty-three, he again tendered his said deed of conveyance to the said John L. Oakey and demanded of said Oakey that he should then and there perform his said part of the said agreement, and that he, the said Oakey, then and there re- 30 fused to accept said deed and to perform his part of said agreement.

And your orator further shows that he has always been ready, willing and anxious to perform his part of the said agreement, and on being paid the said five thousand dollars and the delivery of a good and sufficient deed of conveyance from the said Blackwell's Mills property, to convey his said farm in Maryland to the said John L. Oakey and his heirs, and to do and perform whatever else may be required of him by the said agree- 40

ment; and your orator hoped that the said John L. Oakey would have performed the said agreement on his part as in practice and equity he ought to have done.

All which actings and doings of the said Defendant are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

But so it is, may it please your Honor, that the said John L. Oakey, under one pretense and another, has al-
10 ways neglected and refused, and still neglects and absolutely refuses to specifically perform his said agreement at this, as your orator charges, and insists he is able to do so if he shall think proper.

In tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said John L. Oakey may, without oath,
20 to the best and utmost of his knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and be distinctly interrogated thereto; and that the said John L. Oakey may be compelled by the decree of this Honorable Court specifically to perform the said agreement with your orator and to pay to him the balance of the said sum of five thousand dollars mentioned in said agreement as aforesaid, and to execute and deliver to your
30 orator a good, sufficient and satisfactory deed of conveyance of and for all and singular the said property known as Blackwell's Mills property, with the appurtenances, with a good and satisfactory title thereto, your orator being willing and hereby offering specifically to perform the said agreement on his part, and on being paid the balance of the said five thousand dollars, and on receiving a good, sufficient and satisfactory deed of conveyance of and for all and singular the said property known as the Blackwell's Mills property, with the appur-
40 tenances, with a good and satisfactory title thereto, to

deliver to said John L. Oakey his said good, sufficient and satisfactory deed of conveyance of and for his said farm in Maryland, known as "Westover", with a good and satisfactory title thereto, and that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpœna issuing out of and under the seal of this Honorable Court, to be 10 directed to the said John L. Oakey, commanding him, by a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

BARTINE & GRIGGS, 20
Solicitors for Complainant.
J. D. BARTINE,
Of Counsel with Complainant.

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

Edmund B. Cook, of full age, being duly sworn, upon his oath saith, that the foregoing bill of complaint, in which deponent is the Complainant, has been read to him, that he knows the contents thereof, and that the same is 30 true of his own knowledge, except as to the matters therein stated to be on his information or belief, and as to those matters he believes them to be true.

EDMUND B. COOK.

Sworn and subscribed before me, Oct. 18, 1883.

E. VAN SYCKLE, JR.,
M. C. C.

40

10 # In Chancery of New Jersey.

Between *EDMUND B. COOK,* *Complainant,* *and* *JOHN L. OAKEY,* *Defendant.*	On Bill, Etc. Amendment.

20

The Complainant hereby amends the stating part of his bill by inserting after the words "Levin P. Bowland, Surveyor, November 22, 1873", the following, which runs as follows, viz:

Beginning at a stone set up at the north end of the mill dam of Mr. Tule's mill, and is designated on the plot as the letter A; thence running north 57 east 6¼ perches to a large pine, a bounder of a tract of land called Bev-
30 erly; thence with said tract and with a ditch north 5 west 118¼ perches to post at the end of said ditch; thence north 5 west 128½ perches to a locust post; thence south 87 degrees 15 minutes west 99 perches to a post; thence north 68 west 7½ perches to the County road leading from Princess Anne to Back Creek Bridge; thence by and with said County road the 8 following courses, viz: South 11 deg. 30 min. east 38 perches; thence south 23 east 16 perches; thence south 14 deg. east 14 perches; thence south 10 deg. 30 min. west 52 perches; thence
40 south 8 deg. east 19 perches; thence south 13 deg. 30

min. east 32 perches; thence south 7 deg. east 24 perches; thence south 3 deg. 30 min. east 56 perches to the north side of the private road leading up to the Westover dwelling house; thence by and with the north side of said private road the following courses, viz: South 62 deg. 30 min. west 8 perches; thence south 58 deg. 30 min. west 17 perches; thence south 59 deg. west 55 perches; thence south 27 deg. 45 min. west 37 2-5 perches to a marked cedar tree; thence south 79 deg. 30 min. west 60 perches to a marked cedar tree; thence south 86 deg. 30 min. west 18¾ perches to 10 a stone set up on the north side of said private road, it being the first bounder of that part of said tract called Westover, sold by Messrs. Cooks to Mr. Mills; thence with said Mills's line north 2 deg. 30 min. west 76 perches to a ditch; thence with said ditch north 2 deg. 30 min. west 50¾ perches; thence north 2 deg. 30 min. west 59½ perches to a post at the woods; thence north 2 deg. 30 min. west 212¼ perches to a post set up on the outline of said Westover; thence with the outline of said tract north 66 deg. 45 min. west 73¾ perches to a 20 locust post; thence south 32 deg. 30 min. west 20½ perches to a locust post on the north side of the County road leading to Raccoon Point; thence south 0¾ pole to said County road; thence with said road north 84 deg. 15 min. west 44 perches to a private road; thence with said road south 6 deg. east 56¼ perches to an iron ore bounder; thence south 2 deg. west 69½ perches to a white gum stump; thence south 1 deg. 30 min. east 2½ perches to a ditch; thence south 27 deg. 30 min. west 16 perches to a fence; thence with said fence south 25 deg. west 11 30 perches; thence south 20 deg. east 4½ perches; thence south 24 deg. west 6 perches; thence south 17 deg. west 8 perches; thence south 44 deg. west 12 1-2 perches; thence south 45 deg. west 14 perches; thence south 40 deg. 30 min. west 8 perches; thence south 17 deg. 30 min. west 10 perches; thence south 51 deg. west 31 perches; thence south 19 deg. 30 min. east 19 perches; thence south 24 deg. east 12 perches; thence south 3 deg. east 6 perches; thence south 4 deg. west 4 perches to the middle of a branch; thence down the middle of said branch 40

south 50 deg. west 78 perches; then south 64 deg. west 8 perches to the mouth of a gap at Back Creek; thence up by and with Back Creek and bounded thereby to the mill dam of Mr. Tule; thence with said mill dam to the beginning, and containing 708 acres of land, more or less.

And the Complainant further amends the stating part of his said bill by inserting after the words "by deed dated January 13, 1874", the following:

And being described by metes and bounds as follows, viz: The first tract is situate in Hillsborough, and is the one upon which the dwelling house, three tenant houses and the mill are upon, and is bounded as follows, to wit: Beginning at a corner of F. V. L. Voorhees's land on the west bank of the Millstone River; thence along his land south eighty-nine and one-half degrees west twenty-one chains and fifty-six links; (2) thence south twelve and one-half degrees west two chains and forty-two links to lands formerly belonging to Jacob Wilson; (3) thence by said lands of C. H. Broach south eighty-one degrees east twenty-one chains and seventeen links to the road; (4) thence north seventy-seven and one-half degrees east one chain to the river bank; (5) thence south forty-five and three-quarter degrees east across the river four chains and sixty-eight links to a large ash tree on the east bank of the river; (6) thence north nine degrees east two chains and twelve links to the middle of the road; (7) thence north twenty-two and one-half degrees west four chains and sixty-five links to a birch tree on the bank of the river; (8) thence across the river north fifty-two and one-half degrees west two chains and ninety-three links to the place of beginning, containing (including the river) eleven acres, more or less.

The second lot lies in Franklin Township, and joins the first, and begins at birch tree on the east bank of the Millstone River, a line of the first tract; thence (1) along the same south twenty-two and one-half degrees east four chains and sixty-five links to the middle of the road leading from the mill to canal; (2) thence along the middle of said road north eighty-five and a quarter degrees east thirteen chains to the west line of the Delaware and

Raritan Canal; (3) thence along said line north thirteen degrees west three chains and eighty-one links; (4) thence north twenty-five and one-half degrees west two chains and fifty links to a stone corner of Abram S. Vanderveer's meadow; (5) thence with his land north seventy-one and one-half degrees west thirteen chains and fifteen links to the east bank of the river; (6) thence up the river its several courses to the place of beginning, containing eleven acres and seventy-three hundredths of an acre, more or less, excepting thereout of the two lots above described so much thereof as the said John L. Oakey has conveyed away, and leaving about fourteen acres, as above stated.

And the Complainant further amends his said bill by inserting in the charging part thereof immediately preceding the words "all which actings and doings", etc., the following: But so it is, may it please your Honor, that the said John L. Oakey, under one pretense or another, has always neglected and refused, and still neglects and absolutely refuses to specifically perform his said agreement, although, as your orator charges and insists, he is able to do so if he shall think proper.

BARTINE & GRIGGS,
Solicitors for Complainant.
J. D. BARTINE,
Of Counsel with Complainant.

10

In Chancery of New Jersey.

Between *EDMUND B. COOK,* *Complainant,* *and* 20 *JOHN L. OAKEY,* *Defendant.*	On Bill, Etc.

The answer of John L. Oakey, the Defendant, to the bill of complaint of the Complainant:

The said Defendant, for answer unto the bill of the Complainant, or unto so much and such parts thereof as he deems it advisable for him to make answer unto, answers and says that, so far as he knows and believes, he, 30 the Complainant, was seized of that certain tract of land in Maryland, described in the original and amended bill of complaint, on the seventh day of May, A. D. 1883, and he, the Defendant, was also on the said seventh day of May seized of all the lands and premises described in the amendment to the Complainant's bill of complaint. And this Defendant admits that at that time there was some conversation in relation to a trade or exchange between himself and the Complainant, the Defendant being willing to exchange not the lands and premises described in 40 the bill of complaint, but only a certain portion thereof,

being the mill property and about fourteen acres of land surrounding the same, and particularly designated and described as follows, viz:

"All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in Townships of Hillsborough and Franklin, in the County of Somerset and State of New Jersey, 'on which lands are erected a dwelling house, two tenement houses, several outhouses, a flour and feed mill, said premises being known as Blackwell's Mills property'. 10

"Beginning at a stone monument standing on the west bank of the Millstone River (about feet from the water edge of said river) and agreed upon by party of the first part and F. V. L. Voorhees as being in line between said party of the first part and Mrs. F. V. L. Voorhees's lands; thence with said Voorhees's line of lands according to the magnetic meridian, as surveyed by Garretson Hageman June 2d, 1883, north eighty-nine and a half degrees west seven chains and thirty-nine links to a stone intended to be set in said Voorhees's line of lands; 20 thence with other lands of party of first part south one-half degree east four chains and seventy-four links to a stone set and agreed upon by G. H. Broach, at his most northwest corner; thence with said Broach's line of lands south eighty degrees east six chains and thirty-five links to an ash tree standing on west side of public road leading from Millstone to Griggstown; thence diagonally across said road and the Millstone River south sixty-three and a quarter degrees east five chains and fifty-one links to a large ash tree standing on east bank of Millstone River (the former being lands in the Hillsborough Township, and hereinafter described being lands in Franklin Township); thence along line of lands of George Howard north six and a half degrees east two chains and six links, more or less, to middle of road (in crossway) leading from Blackwell's Mills to Middlebush road; thence in the centre of said road north eighty-six and a quarter degrees east five chains and seven links, more or less, to corner of Abraham S. Vanderveer's meadow lands; thence with said Vanderveer's line of lands, first, 40 30

north one-half degree east eight chains and eighty links, more or less, to a stone; thence continuing with his line of lands, second, north seventy and a half degrees west seven chains and ninety links, more or less, to the centre of the Millstone River; thence up the centre of said river the several courses and distances thereof to a point in the centre of said river, opposite to where the first course being reversed (south eighty-nine and a half degrees east) from the beginning point would strike the centre of said
10 river; thence from said point north eighty-nine and a half degrees west one chain and fifty links, more or less, to the place of beginning, containing thirteen acres and forty-five hundredths of an acre, be the same more or less, the same being part of the said lands and premises conveyed to party of the first part by warranty deed of Augustus Van Zandt and Mary S., his wife, as will more fully appear by record in the Clerk's Office of the County of Somerset, in Book R. No. 4 of Deeds, page 103, etc., and also a strip of land lying between the line made by
20 running from the ash tree standing on west side of public road and the ash tree standing on the east bank of the Millstone River above referred to, in lands herein conveyed, and the lands conveyed to party of the first part by A. Van Zandt and wife, being part of the said lands and premises conveyed to party of the first part by , as will more fully appear by record in above-referred to Clerk's Office, in Book of Deeds, pages , etc., and also all the waters of a certain spring-run or stream
30 of water situate on the lands of John L. Oakey, adjoining the lot above described and conveyed, located forty feet, more or less, from a point in second course of land above conveyed (running from lands of Mrs. F. V. L. Voorhees to G. H. Broach's northwest corner), and being about two chains and thirty-eight links on said course from the line of Mrs. F. V. L. Voorhees's line of lands, to be led and conveyed therefrom through and along a drain or pipe to the lot above described and conveyed for use in the houses, barns and buildings thereon erect-
40 ed, or to be erected, together with free ingress, regress

and egress to and for the said party of the second part, his heirs and assigns, and his and their workmen and servants, with horses, carts and carriages, at all convenient times and seasons, through the land of the said John L. Oakey, his heirs and assigns, to and from the said spring-run or stream of water, from the nearest point of the lands hereby conveyed to the said Edmund B. Cook to said spring and along said drain and pipe for the amending, cleaning and repairing the same, with liberty and privileges for that purpose to dig and open the soil of 10 said drain; to have and to hold the same free and clear from all diminution or alteration thereof on the part of the said John L. Oakey, his heirs and assigns, 'said spring to be kept securely covered by the said party of the second part, his heirs and assigns'".

And the said Complainant, representing himself as the owner of the lands in Maryland, particularly described in the amended bill of complaint, they, the Complainant and Defendant, bargained and agreed to make an exchange and entered into a memorandum of agreement, 20 but, as this Defendant insists, not the agreement as set forth in the bill of complaint.

That the agreement, to which the Complainant and this Defendant subscribed their names, had no scrolls or seals attached to the signatures, nor was there anything in the agreement which this Defendant signed by which he agreed or contemplated to bind himself under seal, and if there are seals or scrolls attached to such signatures now, as represented by the agreement, said to be copied in the bill of complaint, such scrolls or seals have been 30 placed there since the same was executed, without the knowledge or consent of this Defendant; that at the time of the execution of the agreement, and after the same, it was mutually agreed that it should be placed in the hands of one Lewis T. Howell and held by him, and if the same is now in the custody of the Complainant it was so placed without the knowledge or consent of this Defendant.

And this Defendant says that the said Complainant represented himself not only as the owner of the property real estate in Maryland, but that the same was not 40

encumbered by any liens which would embarrass or prevent the exchange; that he could give a good title to the Defendant therefor; that something being said about mortgages being upon the lands of the Complainant in Maryland, this Defendant requested the Complainant to state the amount thereof, and at first the Complainant hesitated about stating, whereupon this Defendant insisted upon knowing, he being at this time at Blackwell's Mills, and having no means of ascertaining the situation
10 of the title to the Maryland property; and the Complainant then said the mortgages amounted to thirteen or fourteen thousand dollars, but he could arrange that by reason of one of the mortages being held by his sister, amounting to ten thousand dollars, and he could change, and get his sister to take a mortgage on the Blackwell's Mills property, which this Defendant was about to exchange to him, the Complainant, and by such means induced the Defendant to consider the advantages to be derived by the exchange, among other things, the taking
20 of the possession thereof forthwith; that this Defendant also, by means thereof, was induced to consider the propriety of giving up the possession of his, the Defendant's, property agreed to be exchanged, so that the Complainant could at once enter into and enjoy the same in anticipation of the completion of the contract about to be entered into; that, finally, after considerable conversation between the Complainant and this Defendant, they consented to exchange upon the basis that each property was to be considered as free and clear of all encum-
30 brances, then the Defendant to pay the Complainant the sum of five thousand dollars, upon receiving a good and satisfactory title, to this Defendant, for the said real estate of the Complainant in Maryland, as aforesaid; and having so agreed, it was suggested that some memorandum of agreement be made thereof, and thereupon a writing was drawn, the substance of which this Defendant has stated, and signed by the respective parties.

And this Defendant admits that, at the time of the signing of such paper, some remark being made about
40 paying something as a deposit on the agreement, there-

upon this Defendant asking whether it was necessary, being told it was best, at once paid twenty dollars.

That this transaction took place at Blackwell's Mills, on the premises of this Defendant, in the County of Somerset, New Jersey, and all the Defendant knew about the title of the property of the Complainant in Maryland was what the Complainant told him.

That, confiding and trusting to the statements of the said Complainant, with reference to the title to the said Maryland property, his ability to give this Defendant a 10 good and satisfactory title to this Defendant therefor, he was induced to enter into an agreement for an exchange.

And the Defendant admits that, subsequently, this Defendant entered into the possession of the Maryland property, and the Complainant took possession of a certain portion of the Blackwell's Mills property, under an agreement as to what part he, the Complainant, should take the possession of, but this Defendant never surrendered the possession of the whole of the property he agreed to exchange, but only the mill and the dwelling 20 house occupied by the Complainant.

And this Defendant, in taking possession of the Maryland property, did so upon the agreement that he should receive the benefit of the oats and corn crops, which were then sown and planted, and gather the wheat crops, and deliver the one-half to the Complainant, all of which was done; that the Complainant should take the possession of the Blackwell's Mills property, being a mill property, on the Millstone River, about two miles below Millstone, located in good grain-raising settlement, being a good 30 property for the carrying on of the milling business, and a dwelling house, being the mansion house formerly belonging to the Blackwell estate, the property being valuable because of its eligible location, both for business and its desirability as a residence, and he, the Complainant, was to enjoy the benefits and advantages to be derived by carrying on the milling business, and living in said mansion house; that this change of possession took place on or about the day of May, A. D. 1883.

But this Defendant denies that the said Complainant 40

ever tendered him a good, valid and sufficient deed or title for said farm and premises—the Maryland property—on the twenty-fifth day of May, A. D. 1883, or any other day, or that the Complainant then, or any time since, could tender and deliver good and sufficient conveyance or title for the said Maryland property; that the said Maryland real estate, on the seventh day of May, A. D. 1883, was encumbered with mortgages as follows, viz: By a mortgage bearing date August 19th, 1871, made by Ed-
10 mund B. Cook and Sarah D. Cook, his wife, and Harry Cook, to Mrs. Prudence Tomlinson, of Trenton, New Jersey, to secure the sum of ten thousand dollars, with interest payable semi-annually, duly acknowledged and recorded August 19th, 1871, in the office of the Clerk of the County of Somerset, in Liber L. W. No. 13, folios 100 and 101. Also by a mortgage dated October 2d, 1871, from Edmund B. Cook and Sarah D. Cook, his wife, and Harry Cook, to Jessie N. Cook, to secure the sum of five thousand dollars, with interest payable semi-annually,
20 duly acknowledged and recorded October 19th, 1871, in the office of the Clerk of the said County of Somerset, in Maryland, in Liber L. W. No. 13 of Mortgages, folios 135, 136 and 137. Also by a mortgage from Edmund S. Cook and wife to Sarah A. Newton, to secure the sum of two thousand dollars, dated October 10th, 1881, duly acknowledged and recorded December 28th, 1881, in Liber B. F. L. No. 4, folios 323, etc., for the County of Somerset, Maryland, aforesaid, as by reference to the said records of the County of Somerset, in the State of Mary-
30 land, will more fully appear, and to which, for greater certainty, your orator begs leave to refer, if it be necessary so to do. That one of such mortgages has been assigned, as appears by the said record of Somerset County, by assignment, dated July 1, 1872, to Joseph B. Van Duesen, being the mortgage of five thousand dollars; that all of such mortgages were then, and ever since have been, and are now, or were at the time of the filing of the bill of complaint, liens upon and encumbrances against said property; that the Complainant knew of the
40 same, although at the time of the procuring of the signa-

ture of this Defendant to the agreement as aforesaid, he did not inform this Defendant thereof; by means thereof this Defendant was deceived; that the Complainant misrepresented the mortgage indebtedness to this Defendant, saying that it was only thirteen or fourteen thousand dollars, also saying that he could easily manage and arrange to rid the property of these mortgages, and there would be no difficulty in carrying out the contract just as the parties to it originally intended; that it could be done in a short time, and that the Defendant would be 10 perfectly safe in giving the Complainant possession of the premises agreed to be conveyed to the Complainant, and he, the Defendant, could take the possession of the Maryland property, and within a very short time the titles would be exchanged, and the fulfillment of the contracts completed; that the whole thing would be accomplished by the first of June next following; by reason of such representations this Defendent was persuaded and induced to believe that the Complainant had means whereby he could take up and release the said Maryland 20 property of the said mortgages, and that there would be no embarrassment in carrying out the contract; and consequently this Defendant was likewise induced to surrender possession of a certain portion of the premises to the Complainant and take possession of the Maryland property; that such change in possession was made on or about the day of , as aforesaid; that immediately after taking possession of said Maryland property by this Defendant and the Complainant taking possession of a portion of the property 30 of the Defendant as aforesaid, the Complainant commenced making divers excuses in order to defer the completion of the agreement, among other things saying to this Defendant that the Complainant was not able to arrange the mortgages on the Maryland property as he at first had intended, so that the exchange of titles could take place at once, because the person holding the second mortgage of five thousand dollars, viz: one Joseph B. Van Duesen, of Philadelphia, was absent, and it could not be arranged without seeing him, and subse- 40

quently that said Van Duesen had gone to a watering place, and while he was absent no arrangement could be made because his Van Duesen papers were in Philadelphia, and he, Van Duesen, would not trouble himself so as to make any change in the said mortgage until his return, and thus this Defendant was continually put off from time to time and the completion of the contract deferred, much against the wish of this Defendant, but solely at the solicitation and request of the Complain-
10 ant, the Defendant being induced to believe, by the statements of the Complainant, that there would be no difficulty in carrying out the agreement upon the return to Philadelphia of the said Van Duesen.

And this Defendant says that, although the possession of the Maryland property was given to him, yet he did not personally go and occupy it, but sent his two sons, young men, he, the Defendant, remaining in possession of a certain portion of the premises agreed to be exchanged, and occupying it with his family, such as were at home;
20 that subsequently to the taking possession of said Maryland property by the sons of this Defendant, the Defendant was informed that the Maryland property was encumbered, by way of mortgages, for seventeen thousand dollars, instead of thirteen or fourteen thousand dollars, and that such mortgage claims equalled the value of the said property, so that he, the Complainant, had no equity whatever in said Maryland property, being encumbered for all it was worth; that the Defendant was dissatisfied, and in fear of trouble, and at once told Complainant he,
30 the Defendant, had been deceived, and solicited him, the Complainant, to tell this Defendant in what manner he, the Complainant, was going to arrange the mortgages thereon, this Defendant not desiring to be obliged to assume any such encumbrances, and being advised and believing that such mortgages, if the money was demanded, would take the property, and so telling the Complainant; that the Complainant then asked this Defendant to exchange titles and assume the mortgages upon the Maryland property, and allow the Complainant to make a first
40 mortgage upon the mill property in New Jersey for ten

thousand dollars to some other person, and he, the Defendant, take a second mortgage upon the same premises for the sum of five thousand dollars, and thereby enable the Complainant to carry out the exchange, thus mortgaging the said mill property for fifteen thousand dollars, the Complainant, at that time, stating to the Defendant that he, the Complainant, wanted to improve the appearances of the mill, by painting it, before said Van Duesen should come, so that it would make a good appearance, and thereby enable him to procure a larger loan upon said 10 property than otherwise; this Defendant thereupon peremptorily declined to entertain any such proposition, and insisted upon the Complainant making some arrangement which was reasonable, if he, the Complainant, wished or intended to carry out the exchange, to which the Complainant made no favorable response; that continually, after that, the Defendant saw the Complainant, and told him if he intended to carry out the exchange he must make his arrangements and do it, as he, the Defendant, was getting uneasy, that the Maryland property was 20 mortgaged for all it was worth, there was no equity therein for the Complainant or this Defendant, if he accepted a deed subject to all those mortgages; to all of which the Complainant replied, saying that the persons holding such mortgages were his relatives and friends, and he, the Complainant, could and would arrange it, and thus the Defendant was continually put off—the carrying out of the exchange of titles postponed; that these continual delays and postponements carried the exchange along until toward the Fall of 1883, when ar- 30 rangements must necessarily be made to farm the place for the ensuing year; that the sons of this Defendant, who were upon the said Maryland property, became dissatisfied by reason of the delay and uncertainty of procuring a title to this Defendant, and or about the day of , of said year, one of the Defendant's sons came on from Maryland, and he and this Defendant waited upon the Complainant, and then and there this Defendant made a formal tender of the deed for the said Blackwell's Mills premises to the Complianant, and the 40

Defendant, also, at the time aforesaid, tendered himself ready and willing to carry out the exchange, this Defendant then telling the Complainant that he, the Defendant, then had the money with him to carry out to completion the said agreement of exchange; that on this occasion also, the Defendant, or his son, told the Complainant that the time was rapidly advancing when the farm in Maryland would require a vast amount of labor in plowing and sowing of wheat, and they, on behalf of the Defend-
10 ant, wanted to know what they could rely upon; that thereupon the said Complainant pretended that it was the first that the Defendant had tendered himself as ready to carry out the exchange, but gave no encouragement as to when the exchange would be carried out, only deferring by repeating the old story about arranging the mortgages with his relatives and friends; that the Defendant thereupon told the Complainant that if he, the Complainant, made his arrangements so that the exchange could be carried out by the first of September it
20 would be all right, if not, the delay would no longer be tolerated, and that they, the Defendant and his son, would understand that he, the Complainant, could not, or would not, carry out the same; that no satisfactory assurance was given that the exchange would be carried out by the Complainant, and the parties separated.

That, accordingly, this Defendant waited until the nineteenth of September following, when, receiving no information from the Complainant, other than hereinbefore stated, he caused a written notice to be given the
30 Complainant, of which the following is a copy:

"BLACKWELL'S MILLS, N. J., Sept. 19, '83.

"*To E. B. Cook, Esq.*

"DEAR SIR: The contract of exchange requires each of us to furnish a good title, satisfactory to each of us.

"Your farm is mortgaged for about $17,000, and by the mutual agreement between us, you were to remove the $17,000 of mortgages, except the $8,000, which was to remain, and I was to leave the $3,000 on my mill. I took possession of your farm and gave you possession of my
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Amend the answer by adding to line 28, p. 311, as follows: Immediately after the signing of such agreement by the Complainant and this Defendant, the Defendant suggested that he had a large amount of money due him, which he might not be able to raise conveniently, and if the Complainant would consent to leave ten thousand dollars on the Westover property in Maryland, instead of eight thousand dollars; thereby, this Defendant, upon the making of such exchange, would only have to pay three thousand dollars in money, instead of five thousand dollars, to the Complainant; and the said Complainant acquiesced in such proposition—said it would be all right; and this Defendant supposed that the sum of three thousand dollars, in money, would be all the money he would be obliged to raise, the mortgages being arranged, as this Defendant thus understood it; and that he would have eight thousand dollars upon the mill property at Blackwell's Mills, and the Complainant ten thousand dollars on the Maryland property.

mill, believing that you could and would perform, and you have not. I consider the exchange at an end.

"You may put in the Winter grain on the farm at once, and on the first day of January next I will require of you the possession of my mill and give you full possession of the farm. The time I have fixed so that you can work off your grain and I can dispose of my crops and stock without injury.

"My sons, as you know, are working the farm on shares, and they decline to go to the expense of putting 10 in the Winter grain, the mortgages being unpaid, and a foreclosure of which would sweep away the crops. Therefore, in consequence of the non-fulfillment of your promises, they have failed to make preparations for seeding the Winter grain.

"Very truly yours,

"J. L. OAKEY.

"SON".

That, at the time, and subsequently to the making of the agreement, there were several conversations between 20 this Defendant and the Complainant in relation to the mortgages upon the respective properties, there being, as stated in the foregoing notice, mortgages upon the mill property to the amount of eight thousand dollars, and it was mutually agreed that the titles for the respective properties would be exchanged and received with mortgage claims upon each of said properties to the amount of eight thousand dollars, as in the foregoing notice expressed, and this Defendant was always ready and willing to carry out such agreement, and would still be ready to carry 30 out such agreement if he could be placed in such attitude that no loss would ensue to him by reason of the failure to have a wheat crop, as he otherwise might, and would have had reasonable hope to expect, if the contract had been carried out as the Complainant promised repeatedly to do, and which was not carried out by reason of the negligence or inability, or want of desire on on the part of the Complainant; also, if he, Defendant, could be made whole as to all damages and loss he has suffered by reason of removing his sons, sale of proper- 40

ty, etc.,etc., incident to breaking up of farming the said Maryland property.

That the wheat crop is a very important crop, the quantity of land which should have been plowed, in the estimate of this Defendant, upon such farm, being about 125 acres, and the seed required being about 160 bushels; that only by reason of the refusal and failure, on the part of the Complainant, did this Defendant decline to put on the labor and grain, which would other-
10 wise have been done if the exchange had been completed.

And this Defendant says that from the time of the service of such notice as aforesaid, upon the Complainant, the Complainant has done nothing, nor offered to do anything, towards the completion of said contract, so far as this Defendant knows or believes, all charges in the Complainant's bill of complaint to the contrary notwithstanding.

And this Defendant charges that he has been ready
20 and willing, at all times, from the time the agreement was made, up to and until the said seventeenth day of September, to carry out to completion the said agreement; that he would still be willing to do so, excepting further reasons herein stated; that the Complainant never tendered him a title which he, the Defendant, could accept or was in reason bound to accept in accordance with the agreement, or the mutual understanding between them; that he has repeatedly tendered himself ready and anxious to the Complainant to carry out the exchange as
30 they had contracted, mutually agreed, and well hoped the Complainant would have done so, and only abandoned all such hope when he found that the Complainant could not, or would not, do so, and thereupon caused the notice as aforesaid to be given; that in accordance with such notice this Defendant has quit the possession of the said Maryland property, that he is ready and willing to account for all the receipts, profits, benefits and advantages derived therefrom while occupying the same in return for a like accounting on behalf of the
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Complainant for the use, occupation and enjoyment of the premises of this Defendant by the Complainant.

And this Defendant denies that the Complainant has ever been ready, or at any time tendered to this Defendant, any title for the said Maryland property, in accordance with the terms of their agreement, or their mutual agreement, as aforesaid; that if the Complainant had ever intimated that he wanted this Defendant to take up and satisfy the mortgages on the property of this Defendant it would have been done, but no such demand or claim was ever pretended or made, but, on the contrary, the said Complainant requested that the mortgages on the mill property should remain, and by their mutual agreement, under the original contract, they were to remain, and therefore this Defendant never removed the same.

That the said Complainant still occupies the premises of this Defendant as aforesaid, in divers ways treating this Defendant in the most indecent and unreasonable manner, resorting to the most petty annoyances, evidently with the view to exasperate this Defendant, but this Defendant has sought his redress through the remedies provided by law, to recover the possession thereof, and awaits the results of such proceedings.

And this Defendant charges that the Complainant is incapable of carrying out the contract; that he has no means, money or property from which money can be produced within himself, and the object and purpose of keeping such possession is with a view to injure and damage this Defendant and make all that he, the Complainant, can before being obliged to give up the possession thereof.

And this Defendant denies all and unlawful combination and confederacy wherewith he is by said bill charged, without that, that any other matter or thing in said Complainant's said bill of complaint contained material or necessary for this Ddefendant to make answer unto and not herein and hereby well and sufficiently answered, confessed or avowed, traversed or denied as true, to the knowledge or belief of this Defendant; all which matters

and things this Defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable cost and charges in this behalf most wrongfully sustained.

ALVAH A. CLARK,
Solicitor and of Counsel with Defendant.

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CONCLUSIONS.

BIRD, V. C.

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This bill is for the specific performance of a contract for the exchange of lands. The Complainant, Cook, owned a tract of land in Maryland; the Defendant, Oakey, a mill property in New Jersey. In the Spring of the year 1883, O., in company with a trusted neighbor, visited C., with the view of examining his farm; spent two days with him visiting the neighborhood and carefully inspecting the premises. They had a conversation about an exchange. In a few days, C. visited O. in 20 New Jersey, spent two days, at least, in the vicinity, and, on May 7th, 1883, they entered into an agreement to exchange. I copy the agreement, namely:

BLACKWELL'S MILLS, May 7th, 1883.

This article is to certify that John L. Oakey, of the County of Somerset and State of New Jersey, and Edmund B. Cook, of the County of Somerset and State of Maryland, have this day exchanged properties, the exchange to be as follows: the said John L. Oakey to take the property in Maryland, now occupied by Edmund B. 30 Cook, and the said Edmund B. Cook to take the property known as Blackwell's Mills, now occupied by said John L. Oakey, each party agreeing to furnish good titles satisfactory to both parties.

Said John L. Oakey agreeing to give said Cook five thousand dollars, also to gather the wheat crop now in the ground, thrash and deliver one-half to shipping station, not farther than depot at Westover, Cook furnishing bags for his part, without expense to said Cook, for delivering at said station. 40

John L. Oakey is to have the manure on both places, E. B. Cook to have the cord wood now cut on the premises.

JOHN L. OAKEY. [L. S.]
ED. B. COOK. [L. S.]

Signed, sealed and delivered in presence of
LEWIS T. HOWELL.

Both premises were heavily mortgaged; C.'s with $17,000, O.'s $8,000. Very soon after the execution of the agreement, as well, perhaps, as before, the disposition of the mortgages became a subject of conversation, although it is not clear with what precise intent; but I think with the design of enabling each party to transfer the liabilities from their respective properties, as held before the exchange, to the properties, as held after the exchange. The fact that these interviews took place, and the uncertainty of them, as to intent and results, should be kept in mind; not that the agreement was thereby altered or modified, or any new rights created, but that they assist in coming to an understanding of the subsequent action of the parties. As the agreement was signed May 7th, O. went to Maryland May 9th, and was there until the 12th, on the farm with C. While he was there C. decided that he would make sale of his personal property on May 23d. One of O.'s sons attended that sale; the next day, or the second day after the sale, C. left Maryland with his family, and surrendered the possession of the farm to the son of O., came to New Jersey, and by O. was put in possession of the mill property May 28th, 1883. Thus, within three weeks after the execution of the agreement, the parties thereto had exchanged full and complete possession of the premises referred to in the agreement. O., by his son, commenced at once the cultivation of the farm, and C., in person, the running of the mill, a very large amount of work being done thereon by each.

The crops named in the agreement, as being on the farm, were all gathered and sold by O. The gross market value was over $4,000. Cook received one-half of the proceeds of the wheat, according to the terms of the

agreement. The wheat, less expenses, amounted to $1,-663.22; the corn, $730.52; the clover seed, $434.47; the hay, $342.59; the oats, $50.39; the rye, $80.33, and other products, $100. These values are thus presented to show that O. did a large amount of work, and that to have done it he must have been in good faith, and must have intended to proceed with the contract on his part. C., on his part, did a large amount of work towards the actual improvement and increase of the value of the mill premises, which would seem to establish equally good 10 faith on his part.

There being no time named in the contract for the exchange of titles, C. says it was understood that this was to be effected about June the first; O. says he did not exactly so understand it, but that it was to be done as soon as it could be so arranged. Evidently, then, time was not of the essence of the contract. According to O.'s understanding, there was to be a mutual accommodation; C. had a deed prepared and executed by himself and wife for his farm to O. before he left Maryland, and upon 20 his arrival in New Jersey he showed it to C. In the month of June O. had his mill property surveyed. He then had a deed prepared, but did not have it executed until August the 8th; C. living all the time on the mill property and O. living on the adjoining premises, they saw each other, and met frequently; O. says that between June 1st and August 8th, the day when he executed his deed, he had several interviews with C. about fixing up the titles; he says they saw each other almost every day, and that on one of these occasions he said to 30 C.: "I was ready and prepared at any time, and he said he wanted to fix up his property (the mill) a little, and would like to paint it, and wanted a man by the name of Van Dusen to come out and look at it, and he would like to get a loan of about $1,500 on the mill, and said if he could get it at one place it would make a less per cent., and gave that as a reason for a little delay; and before I went down—I went down on the 16th or 17th of June—I went to Maryland, and before that we had a conversation, and he wished me to pay off that, the last mortgage 40

that was down there, and I thought that at that time I would do it; so I went prepared to do it when I went down"; but he, O., did not pay off the last mortgage; he says, "I took legal advice about it"; O. complains that C. concealed from him the existence of this last mortgage. It is important to remember that he learned of it from him before June the 16th, and promised to discharge it. It is urged that in this there was fraud on the part of C., but it does not appear that O. attempted to get rid
10 of the contract, on that account, until long afterwards. Evidently, if he intended to rescind, he should have decided so to do immediately. The reasonableness of the law on this subject commends itself to every one.

Bigelow on Fraud, 184.

Laurence v. Dale, 3 Johns. C. 23.

While O. was on the farm in Maryland, C. went there; they met, and O. says they had no talk about the mortgages, but did talk about gathering the crops; O. says C. came to him about the 1st of August and asked him
20 to pay the interest on one of the encumbrances, and that he told him he "would never pay another cent until the papers were fixed". This is the first intimation of any special haste or desire for passing the title that appears in the case. It is doubtful, however, if Mr. O. is correct as to the time, for it was some days after the 1st of August before he had his deed prepared and executed; and there is no evidence of any special haste or desire upon the part of either party, after O. had his deed prepared and executed, until the 29th day of August,
30 when O. took steps looking to the complete exchange of titles.

O.'s son John returned from Maryland, on a visit to his father, and on August 29th he and his father called on C. In his testimony, John says: "We asked Mr. Cook if he was ready to fix this matter up; he said he was not, he hadn't seen his man from Philadelphia yet, or the man hadn't seen this place, I forget which were just his words, and my father said, 'Mr. Cook, it is time this is fixed up; I would like to get this fixed up now as soon as possible, I
40 have the money and papers here with me'; and he took

the money out and showed it to him". He showed him $3,000 and the deed. C. said: "This is the first time you have been ready, is it not"? O. said: "You know, Mr. Cook, that is not so, I have been ready all Summer at any time". The son says: "He (C.) said his man had been off to a watering place, and he had not been able to see him. I said: 'Mr. Cook, if you want to see that man it is not but a two hours' ride to the watering place to see him; this matter must be fixed up; I want you to understand I am not going to put $700 in in 10 Winter grain and truck unless I know who is going to have title'. He said he would write; that is all the satisfaction we got. I told him if he would fix this matter up by September, by the time I went home, it would be all right, and if not, it would be all wrong". C. says that O. and his son were there, and that they said they would like to have it fixed up, but says, also, that they hadn't their searches, but would have them in a few days, but denies that the manner was at all positive, and says that O. never tendered him a deed. He denies that John said 20 it must be fixed before he returned to Maryland.

After the interview, C. and O. met at the mill again about September 13th; O. says he went to C. and talked to him about fixing up this arrangement of ours; I had been ready, and wanted to know whether he had heard yet from Mr. Van Duesen. He said he hadn't seen him yet. I told him I was tired of this; and then he said something about his sister being there, or something, I did not get that very clear, all what he said; but I was a little vexed, and I said, now you can do what you please, 30 and I will do what I please after this. He said he had written to Mr. Van Duesen and had received no reply; and I told him it was the same old story, and I was tired of it. He says he asked him if he had made his arrangements with Van Duesen, "because the last conversation was that he had written to Mr. Van Duesen, and he expected a reply from him". Six days after this, September the 19th, O. sent a letter to C., which I copy:

"*To E. B. Cook, Esq.*

"DEAR SIR: The contract of exchange requires each 40

of us to furnish a good title, satisfactory to each of us. Your farm is mortgaged for about $17,000, and by the mutual agreement between us you were to remove the $17,000 of mortgages, except the $8,000, which was to remain, and I was to leave the $8,000 on my mill. I took possession of your farm and gave you possession of my mill, believing that you could, you would perform, and you have not. I consider the exchange at an end.

"You may put in the Winter grain on the farm at once, 10 and on the 1st day of January next I will require of you the possession of my mill and give you full possession of the farm. The time I have fixed so that you can work off your grain and I can dispose of my crops and stock without injury. My sons, as you know, are working the farm on shares, and they decline to go to the expense of putting in the Winter grain, the mortgages being unpaid, and a foreclosure of which would sweep away the crops. Therefore, in consequence of the non-fulfillment of your promises, they have failed to make preparations for seed- 20 ing the Winter grain".

To this letter, C., by his Counsel, two days after, Sept. 21st, replied. After acknowledging the receipt of O.'s letter he says: "The mutual agreement, spoken of in your letter, he says, never was made. By the written contract each property is to be clear, and you are to pay him $5,000. He is ready at any time you are to comply with its terms. Whenever you are ready to pay $5,000, and remove your mortgage, he will remove the mortgage on your place".

Cook says that he prepared a deed of conveyance for 30 his farm from himself to O., and showed it to O., and tendered himself ready to carry out the contract immediately after the contract was executed, and O. said he was not ready. Again, October 17th, he handed his deed to Dr. Ribble and sent him and another to O. to tender the deed to O. They went and made known to O. the object of their visit, telling him that they had a deed to tender to him, and asking him if he wished to look at it, when he told them it was too late, he didn't wish to talk about it. Two days after this the Complainant filed his 40 bill.

The testimony discloses the fact that while the agreement bound each party to give to the other a "good and satisfactory" deed of conveyance, after the execution of the agreement they had several interviews respecting the disposition of the mortgages. I think it matters not to what precise end the interviews tended; certainly, they showed mutual indulgence. Each seemed willing to try and help, or accommodate the other. These things are sustained by the allegation of the answer and by the testimony of both parties. Indeed, I can discover nothing but the mortgages on the one side or the other that at all hindered the exchange of titles, as well as of possession. The greater delay was occasioned by the greater difficulty which C. encountered in providing for the mortgages on his farm. This difficulty was occasioned by the absence of a personal friend, on whom he relied for aid, which fact was made known to O., and was fully understood by him.

The bill alleges that C. was ready and willing, October 17th, to carry out the contract, and so declared himself, when O. said "it was too late". The bill also alleges that C. is still ready and willing to complete the contract.

The answer says that O. was ready and anxious to complete the contract Sept. 19th, when he undertook to rescind it, because he was satisfied that C. was unable to complete it on his part.

O. and his son called on C. August 29th, and said he was ready and wanted C. to be ready before the son returned to Maryland. O. called again about Sept. 13th, and expressed his anxiety to have the contract carried out. Sept. 18th he gave notice of his recision of the contract. Sept. 21st C.'s Counsel wrote to O. and offered to perform the contract.

Oct. 17th C. tendered his deed to O., and declared his readiness to complete the contract, when O. said "it was too late". On the 19th of October C. filed his bill.

After a very careful consideration of the able arguments of Counsel on both sides, and a patient review of the facts, as detailed in the testimony, I am impressed with the conviction that this contract ought to be en-

forced, unless it appears that C. is himself shown to be seriously at fault.

It should be remembered that both parties are vendors and both purchasers. It should also be remembered that each has surrendered possession of the property which he sold, and taken possession of the property purchased. Under the agreement above set forth, nothing remains to be done except the exchange of the conveyance of title.

The first ground of resistance to this bill is the alleged
10 inability of C. to complete the contract. It is said that, although he sets out a contract which requires each to give to the other a title good and satisfactory, and then alleges a tender and present readiness, yet the fact is, as is shown in the case, that there are $17,000 worth of encumbrances on C.'s farm. It is urged that this fact is a complete answer to the demands of C., and must certainly defeat his suit. The reason urged is, that the contract requires a good and satisfactory title, which, it is claimed, is impossible with the mortgages named resting on the
20 land; since, as is also claimed, C. cannot remove them. The well-settled doctrine, that equity will not compel a purchaser to take a doubtful title, is relied on, citing

Vreeland v. Blauvelt, 8 C. E. G. 483.
Cornell v. Andrews, 8 Stew. 7.
Dobbs v. Narcross, 9 C. E. G. 327.

I think it will be observed that in each of these cases the defect which supported the defense was a flaw in the Complainant's own title; a flaw which antedated his own title, and over which he had no control, and was not
30 an encumbrance created by himself, and which he could remove or discharge by any action of his own, as could be done in this case by the non-payment of the mortgages.

But the Defendant meets this resort and cites authorities showing that a mortgage uncanceled of record is a good objection.

Young v. Collyer, 4 Stew. 444.

This case, however, scarcely seems to be fully in point, since, although the mortgage which was uncanceled of
40 record had evidently been paid, and the taxes which were

unpaid at the time were not named as a cause of resistance when the tender was made; the defense, consequently, failing on both grounds. The general principle announced in this case none will dispute. The general doctrine, that a clouded or encumbered title will not be forced upon a purchaser, is admitted in its broadest scope; but the insistment is that it has no application to this particular case.

C. urges that the rights and obligations between him and O. were mutual and dependent, and that it was and 10 is enough for him to tender his deed and offer to fulfill his covenants when O. should do so also. That in this respect the obligations of the parties are dependent, and cannot be questioned; I think every case in which the subject has been discussed goes upon this principle. But the material inquiry is, how far can C. support himself under all the circumstances of the case? What are the letter and spirit of the agreement? That each will convey by a good and satisfactory title, is the letter; that each will remove the encumbrances at the time of the 20 conveyance, and not before, is plainly the spirit. From the commencement of their negotiations until the 13th of September there does not seem to have transpired a single thing between them that did not imply this. Indeed, O., most evidently, so understood his own obligations, for at no time did he remove the mortgages from the mill property; and when he tendered his deed and the $3,000 the mill property was encumbered to the extent of $8,000. And what is more, whether O. understood that the mortgage was to remain or to be discharged 30 by him, it appears that some time before he made his tender he endeavored to negotiate the transfer thereof to the Maryland farm.

It will not be out of place, in this connection, to consider the condition of the title at the time the agreement was executed. So far as has been developed, each had the title to his premises in fee simple, unencumbered by any prior lien, and unaffected by any prior or superior claim or interest, at the date of the conveyance under which he held; but each had encumbered his title by 40

mortgages, the existence of which was a serious impediment to a complete and speedy exchange from the very inception of the negotiations. Perhaps there was nothing else whatever in the path to an exchange of conveyances on the day that the agrrement was delivered, unless it was that O. did not have the $5,000 which he agreed to pay. But so certain were they of a mutual accommodation that they made their ageeement as though no mortgage beclouded either property, and in a few days
10 surrendered the absolute and unqualified possession, each to the other; each beginning and carrying forward extensive operations incident to the particular avocation in which he thus became engaged, as though every thought or conception in connection with their agreement had been realized. To effect this, and to advance their mutual interests, as they were then regarded, C. sold all his stock and farming utensils in Maryland, and O. gave up a valuable milling business which he had been conducting for years. I repeat, that all this was done before
20 the deeds were tendered and in the face of the fact that both titles were heavily encumbered.

These considerations are of great importance in determining how far C. can be protected by the principle that in the case of dependent covenants neither party is obliged to perform until the other does.

These considerations are also of great importance in determining to what extent time should be allowed to protect O. from fulfilling his obligations.

Equity regards the situation and circumstances in
30 which parties mutually and voluntarily place themselves. In this case each encouraged the other in the steps taken from time to time until thereby their rights and interests were very materially changed. Each saw and understood the situation and embarrassment of the other from the first. It is true, O. says that he did not understand the extent of the encumbrances on C.'s farm, but he also says that the mortgages had nothing to do with the trade. However, he soon was fully apprised of the mortgages, and made no objections on that score until he sought to
40 avoid the completion of the contract. His failure to

stand at once on that objection would seem to close his mouth now, as I have before stated. However, it should be noted that if this put the case in a serious light as to the Complainant, before it can prevail against him that he in any sense misled the Defendant, the allegation must be clearly proved. The burden is on Defendant (Park v. Johnson, 4 Allen 259), which requirement I think he has not met. C. says, if he told him anything with respect to the amount of mortgages, he told him the truth; and this would be most reasonable indeed, since it would 10 have a tendency to enhance the value of his property in the estimation of the purchaser, for the purchaser to know that business men were willing to take it as a security for their money to so large an amount.

But I have said the embarrassments of the parties were mutual, and that each seemed desirous to aid the other at his efforts towards relief. To effect this relief time was essential; not so much a fixed time, when, at all hazards, the contract must be performed or rescinded, but the duration of time, so that the purposes, intentions, 20 or desires of the parties might be accomplished, and thus the contract performed. Hence, it is seen that O. said to C. that he had a good many uncollected accounts on his books which he might be delayed in collecting, and that he might desire to leave $10,000 on the mill rather than $8,000, to which O. says C. replied "all right".

This and many other similar circumstances show that they waited upon each other from the first, until, at least, the 29th day of August, when O. tendered a deed and 30 $3,000, but made no provision whatever for the other $2,000, which he was to pay, either in securing it by mortgage or otherwise. After the exchange of possession not a single step was taken by either towards complying with the contract, which, in the least, increased his embarrassments, or, in the slightest degree, altered or affected the rights of either. C. prepared his deed within a few days after the contract was signed, and exhibited it to O. within a few days after he took possession of the mill, but took no other decisive steps until in October, in the 40

meantime, however, negotiating, as O. knew, for such loans as would enable him to make the title which he had sold "good and satisfactory".

At the time of the execution of the contract and of the exchange of possession, C. was uncertain as to the exact boundaries of the land which he had agreed to convey; these he ascertained by actual survey, in the month of June, soon after which his deed was prepared, but which was not executed until in August. As
10 has been seen, O. took no decisive steps until the 29th of August, when, besides the tendering his deed and offering the $3,000, his son John warned C. that he must be ready before he (the son) returned to Maryland. The next decisive or emphatic step taken by O. was three weeks later, Sept. 19th, when he wrote the letter to C., which is above copied, in which he said he considered the contract at an end.

After what has been said, I need scarcely observe that during all the time, until August 29, O. was in the same
20 plight as C. A large mortgage covered his mill property. Nor had he removed this encumbrance Aug. 29th, when he attempted to hasten affairs by a partial tender, nor yet Sept. 19th, when he declared the contract rescinded.

Hence, it is very plain that, when the contract was signed, the parties were not ready to complete the exchange. It is equally plain that, from that time until Sept. 19th, they were waiting on each other, neither being ready in the sense contemplated, not by the terms of the written agreement, but by the terms of the parol under-
30 standing that each was to accord to the other time to provide a way to discharge the mortgages, and so to become enabled to perform the written contract. And, therefore, when O. conceived that C. ought to be ready, considering the length of time which had elapsed, he tendered a deed, wholly overlooking his own mortgage, and wholly neglecting to make any provision for the $2,000 of the purchase money, and three weeks subsequently declared that he regarded himself as free from all obligations. I say Mr. O. himself took no steps in the mat-
40 ter until Aug. 29th, nearly four months after the execu-

tion of the agreement, showing that, as he understood it, it was duration of time, rather than any special limitation of it, that each gave to the other. This left the premises of each and the title thereto precisely as in the beginning. I cannot find that one was a whit more responsible for the situation than the other. The dependence was mutual, and, therefore, I find that the rights and obligations were mutual, and that nothing had occurred to create a forfeiture or warrant a recision.

But how did the attempted withdrawal of O. affect the 10 rights of the parties? O. voluntarily stepped out. Having taken that step, he had no rights, under the contract, which he could enforce affirmatively. He could bring no suit in equity.

But C. was not in such a straight. It does not always happen that a contract can be annulled at the instance of either party so as to deprive the other of every right under it. I think O. was not justified in attempting to rescind when he did; of which more hereafter. This being so, C. fully enjoyed all the legal and equitable rights 20 which he had before. Indeed, the positive refusals of O. to proceed gave C. an additional right. It gave him the unquestioned right to institute proceedings at once to compel specific performance; he need no longer make a tender; the action of O. rendered that superfluous.

Maxwell v. Pittenger, 2 Green. C. 156, 165.
Gray v. Smith, 2 N. York 60, 65.
Huster v. Daniel, 4 Hare 420, 433.
Fry on Spec. Perf., sec. 619.

And having the right to bring his suit at once, what is 30 required of him in its inception and progress? Nothing more than that he shall declare himself ready and willing to perform on his part. This seems most inevitably to result from the positive refusal of the Defendant to proceed. Why should anything more than readiness and willingness be required from the one party after the other has withdrawn from the negotiation?

3 Pam. Equ. sec. 1,407.
Huffman v. Hummer, 2 C. E. G. 263, 266.
Hepburn v. Dunlap, 1 Wheat. 179. 40

Selleck v. Tallman, 37 N. J. 106.
Fry on Spec. Perf., sec. 619.
Stevenson v. Maxwell, 2 N. Y. 408, 418.
Bruce v. Tillson, 25 N. Y. 194, 197, 202.

Ready and willing to do what? Clearly ready and willing to convey to O. a "good and satisfactory" title to the Maryland farm upon O.'s conveying to him a "good and satisfactory" title for the mill premises. It does not mean that C. was not only willing but was ready with the 10 mortgages discharged at the time of filing his bill. In cases like this the law does not require that.

And this brings me to the application of the principle invoked by C., that in case of dependent covenants, neither party is bound to perform until the other does. The reasonableness of this rule appears in almost every transaction of the business world. Farmers, merchants, bankers, and all other dealers, act on the principle involved every day. Neither parts with his wares or money until he gets an equivalent according to the terms of the 20 contract, whether the contract be made at the instant, or days or months antecedently.

Stevenson v. Maxwell, 2 N. J. 408, 414.
Irvin v. Gregory, 13 Gray 215, 218.
Bank of Columbia v. Hagner, 26 N. J. 455.

But it is claimed, on behalf of the Defendant, that the mortgages still exist against the C.'s farm, and that fact is a bar. I cannot understand that any such consequence necessarily follows. The Defendant, having refused to go on with his contract, I think 30 the law permitted C. to file his bill without a tender on his part, which, being so, it would seem to follow that all he need do is to allege himself ready and willing, as has been done in this case. And this has been shown to be the law. Nor does there seem to be a doubt but that, in every such case, if the Complainant can make title, according to the requirements of the contract at the time of the decree, the Court will aid him.

Watts v. Waddle, G. Peters 389, 396, 399, 402.
Hepburn v. Auld, 5 Cranch 262.
40 Hepburn v. Dunlap, 1 Wheat. 179.

Langford v. Pitt, 2 Peer W. 630.
Nortwick v. Butler, 10 v. 292, 315.
Coffin v. Cooper, 14 v. 205.
Seymor v. Delany, 3 Cow. 415, 519.
Pierce v. Nichols, 1 Paige 244.
Dutch Ch. 2 Mott. 7 Paige 78.
Baldwin v. Salter, 8 Paige 473.
Jenkins v. Fahy, 73 N. J. 355.
Stevenson v. Maxwell, 2 N. J. 408.

The Defendant also insists that the Court will not 10 undertake to compel specific performance of this contract because of the uncertainty of its terms. Counsel admits it is certain as to subject matter, but urges that its "stipulations" are uncertain. He says that the phrase, "a good title, satisfactory to both parties", is uncertain. It seems to me that there is no uncertainty in the word good, and that, in reason, it cannot be qualified by what follows, so as to render it possible for either party to impose or to attempt to impose anything less than a good title on the other. Counsel brings into his service the fact that the 20 word "clear" appears to have been written in the agreement and then erased, and the word good written above. He insists that this shows that the parties did not intend to convey their respective titles free from all encumbrances, and, this being so, that the Court cannot compel the Defendant to convey free from such encumbrances. It seems to me that the reasoning is unsound, because it is based on the theory that the word "clear" is one of the terms of the agreement, when, in fact, it was stricken out and repudiated, and, also, because the word "good" com- 30 prehends all that the word "clear" does. Any other word or phrase used by the parties during the negotiations for the agreement, and rejected by them, might as well be invoked in aid of an affirmation or negation.

Again, it is insisted that the contract was incomplete, something remaining yet to be done, and therefore cannot be enforced, citing

Potts v. Whitehead, 5 C. E. G. 55, 8 C. E. G. 512.
McKibben v. Brown, 1 McCar. 13, McC. 498.

The rule is quite universal, but I am unable to find the 40

evidence upon which to rest its application in this case. The written contract does not show that the parties intended to make other or additional terms. Nor, from its date to Aug. 29th, does the evidence disclose anything which, to my mind, looks as though the parties ever intended to add another term or provision to the contract. I speak with reference to the time of making the contract. I mean to say that when the written contract was signed, it was complete. There is an abundance of
10 proof to show that the parties were willing to give time to each other to make arrangements respecting the mortgages, but that any amounts to additional time, beyond what the law might adjudge as reasonable. It only implied a willingness to extend the time to carry out a bargain already completed. It in no sense signified that anything was unfinished.

But it remains to be considered whether or not the Complainant is chargeable with laches. I believe there is no pretense that he was, up to August 29. In every
20 such case, I think a good deal depends on the conduct of the party who sets up this as a defense. To my mind O. did not first place himself in a position to be so exacting of C. When he made his tender he should have removed the mortgages from his mill, and also tendered the $5,000, or, if there had been an arrangement by which the written agreement was so far modified that, say, $3,000 was to be paid in cash, he certainly should have made some provision for the security of the other $2,000. This he did not do. There was no agreement or understanding
30 that C. should trust him for that without security. O. does not, it is true, so pretend, but says there was an understanding that he should leave $10,000 on his premises, instead of $8,000. And, taking this to have been an effectual modification of the contract, O. did not, at any time, provide for it. This fact forbids that O. should declare that C. is in laches. I have looked at O.'s rights from every conceivable position, and have been unable to discover any fact or circumstance that excuses or obviates this default—a default only because of the po-
40 sition which he now assumes, not otherwise.

The last fact noticed would seem to render any further allusion to the alleged modification of the written contract as to the manner of paying the $5,000 unnecessary; but Counsel for O. relied so much on this branch of the case that I regard it as my duty to express my views more fully after no little attention thereto. The fact that this did not appear in the answer, as first filed, has great weight with me. I am quite free to say that I do not understand how a fact so conspicuous and so important should either be forgotten or overlooked. I am equally 10 free to say that this consideration induces me to believe that it never had the real prominence in the negotiations between the parties which is now claimed for it. And all this can be said without at all impeaching the statements of O. or his son, as will be seen, I think. An amendment was allowed, after the testimony was all in, against which the Counsel of Complainant protested. In this amendment such alleged change or modification of the contract was set forth.

But, looking at the proof, I think the allegation fails 20 the Defendant. I cannot come to the conclusion that the parties said or did anything on this head that was mutually binding. Taking the statement of the Defendant, in its broadest sense, it does not amount to a binding change in the terms of the contract; and for the reason, so palpable, that O. himself was not bound. He could pay or not, as he chose.

But supposing that O. stood by the contract in all its integrity, and that when he made the tender he did his work completely, and that nothing whatever can be 30 charged against him, still, I do not conclude that C. was in default in not being prepared to comply on his part August 29, nor yet within the uncertain period named by John, nor yet on the 13th of September, when O. called on C. and asked him if he had seen Van Duesen. Indeed, I think it does not anywhere appear that O. attempted to fix any certain time within which the contract was to be carried to completion. But taking it for granted that the demand of John, on Aug. 29th, was a warning that the work must all be done within a reasonable time, still, 40

I think O. was too hasty in withdrawing from his obligations. I can find no case which goes so far as his contention carries him, where one of the parties to a contract, which does not make time of the essence, attempts to make time essential, has been considered by the courts.

Crawford v. Loodgood, 13 L. R. Ch. Div. 153.
Green v. Levin, 13 L. Rep. Ch. Div. 589.
Wells v. Maxwell, 32 Beav. 408, affirmed on
10 appeal 11, W. R. 842.
Perkin v. Sharold, 16 Beav. 59.
McMury v. Spicer, 5 L. R. Equ. 527.
Wood v. Nacher, 5 Hare 158, 163.
Webb v. Hughes, 10 L. R. Eq. 281.
Waterman on Sped. Perf. sec. 465.

I will now direct attention to one phase of this case which has commanded the most serious consideration. Although I have alluded to it from the beginning, it deserves more special mention. I refer to the discussion
20 which naturally arises in the mind as to the equitable standing that C. has in this court with the proof so full and clear that all the mortgages are still resting on his property in Maryland. When this fact first appeared in the case I was impressed with the conviction that it was a very strong bar to C.'s progress, and was not surprised to find the result attained in Hinkly v. Smith, etc., 1 N. J. 21. However, upon reflection, it seems quite clear that this case is distinguishable from the one in hand, in three important particulars; first, in this there was an
30 agreement to exchange and not a mere sale for a money consideration of premises, both heavily encumbered by mortgages; and, second, that in this, from the time that the agreement was signed until August 29, there were several interviews between the parties with respect to some arrangement about the mortgages between them which should prove satisfactory to both; and, third, the Defendant in this case had not removed the mortgage incumbrance from his mill at the time he attempted to rescind the contract. These considerations place this case
40 on a totally different footing. Not that the Court will

attempt to compel O. to accept a title at all encumbered, but that it will, under the circumstances of this case, require him to accept an unencumbered title if the Complainant tenders such title at the time of and in accordance with the decree of the Court.

Hence, when I have in mind the facts that both parties are vendors and both purchasers, and that they exchanged actual possession of the lands, the title to which they agreed, in writing, should also be exchanged, and that O. sold several hundred dollars worth of grain which C. planted, the proceeds of which O. still holds, and that C. has made improvements on the mill property to the value of, at least $500, and that the conduct of each warranted the other in the belief that there was no pressing necessity for haste, and that neither put himself in an attitude to be very exacting of the other, I cannot but conclude that the Court ought to direct the specific performance of the contract.

The Defendant sought to amend his answer so that he might show a parol variation of his contract. The proposed amendment was allowed upon the ground that the parties, as it was insisted, had proceeded upon the basis of such alteration, and that such alteration had abrogated the original written agreement.

The proof does not satisfy that there was any such alteration in any of the terms of the contract. But supposing the alleged alteration to have been established, the fact of its existence would not destroy the original contract; but the contract, with the modification, would stand, and could be enforced, not indeed, it may be, at the instance of the Complainant, but upon the demand of the Defendant.

Park v. Johnson, 4 Allen 259.

I will advise a decree in accordance with the foregoing views. In such decree I will name a time when, and place where the parties shall meet to exchange their deeds of conveyance and to pay and receive the consideration money named; and as the parties live near to each other I will make the place in the office of the mill, now occupied by the Complainant, and the time the thir-

tieth day after service of a copy of the decree upon the Defendant, unless that day be Sunday, in which event, then the day before, at the hour of twelve, noon.

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In Chancery of New Jersey.

Between *EDMUND B. COOK,* *Complainant,* *and* *JOHN L. OAKEY,* *Defendant.*	On Bill, Etc. Decree.

The above stated cause, having been referred to his Honor, John T. Bird, one of the Vice Chancellors, to hear the same for the Chancellor, etc., and the same having been heard upon oral proof, and the pleadings having been read, and the arguments of Counsel considered, and it satisfactorily appearing to the Court that, by virtue of an agreement, in writing, duly made and entered into between Edmund B. Cook, the Complainant, and John L. Oakey, the Defendant, on the seventh day of May, in the year eighteen hundred and eighty-three, the said Defendant agreed to purchase of the said Complainant a certain farm or tract of land, in the said bill of complaint mentioned and described, as "situate, lying, and being in the County of Somerset, in the State of Maryland, called Westover, fully and particularly described in the plot and certificate made and signed by Levin P. Rowland, Surveyor, November 22, 1873, which runs as

follows, viz: Beginning at a stone set up at the north end of the mill dam of Mr. Tull's mill, and is designated on the plot at the letter A.; thence running N. 57 E. 6¼ perches to a large pine, a bounder of a tract of land called Beverly; thence with said tract and with a ditch N. 5 W. 118¼ perches to post at the end of said ditch; thence N. 5 W. 128½ perches to a locust post; thence S. 87 deg. 15 min. W. 99 perches to a post; thence N. 68 W. 7½ perches to the County road leading from Princess Anne
10 to Black Creek Bridge; thence by and with said County road the following courses, viz: S. 11 deg. 30 min. E. 38 perches; thence S. 23 E. 16 perches; thence S. 14 deg. E. 14 perches; thence S. 10 deg. 30 min. W. 52 perches; thence S. 8 deg. E. 19 perches; thence S. 13 deg. 30 min. E. 32 perches; thence S. 7 deg. E. 24 perches; thence S. 3 deg. 30 min. E. 56 perches to the north side of the private road leading up to the Westover dwelling house; thence by and with the north side of said private road the 6 following courses, viz: S. 62 deg. 30 min. W. 8
20 perches; thence S. 58 deg. 30 min. W. 17 perches; thence S. 59 deg. W. 55 perches; thence S. 27 deg. 45 min. W. 37 2-5 perches to a marked cedar tree; thence S. 79 deg. 30 min. W. 60 perches to a marked cedar tree; thence S. 86 deg. 30 min. W. 18¾ perches to a stone set up on the north side of said private road, it being the first bounder of that part of said tract called Westover, sold by Messrs. Cooks to Mrs. Mills; thence with said Mills's line N. 2 deg. 30 min. W. 76 perches to a ditch; thence with said ditch N. 2 deg. 30 min. W. 50¾ perches; thence N. 2
30 deg. 30 min. W. 59½ perches to post at the woods; thence N. 2 deg. 30 min. W. 212¼ perches to a post set up on the outline of said Westover; thence with the outline of said tract N. 66 deg. 45 min. W. 73 3-4 perches to locust post; thence S. 32 deg. 30 min. W. 20½ perches to a locust post on the north side of the County road leading to Raccoon Point; thence S. 0¾ pole to said County road; thence with said road N. 84 degrees 15 min. W. 44 perches to a private road; thence with said road S. 6 E. 56 1-4 perches to an iron ore bounder; thence S. 2 deg. W. 69½ perch-
40 es to a white gum stump; thence S. 1 deg. 30 min. E. 2½

perches to a ditch; thence S. 27 deg. 30 min. W. 16 perches to a fence; thence with said fence S. 25 deg. W. 11 perches; thence S. 20 deg. E. 4½ perches; thence S. 24 degrees W. 6 perches; thence S. 17 deg. W. 8 perches; thence S. 44 W. 12½ perches; thence S. 45 W. 14 perches; thence S. 40 deg. 30 min. W. 8 perches; thence S. 17 deg. 30 min. W. 10 perches; thence S. 51 deg. W. 31 perches; thence S. 19 deg. 30 min. E. 19 perches; thence S. 24 E. 12 perches; thence S. 3 E. 6 perches; thence S. 4. W. 4 perches to the middle of a branch; thence down the middle of said branch S. 50 deg. W. 78 perches; thence S. 64 W. 8 perches to the mouth of a gut at Back Creek; thence up and with Back Creek and bounded thereby to the mill dam of Mr. Tull; thence with said mill dam to the beginning, and containing 708 acres of land, more or less; excepting therefrom the small parcel containing about four acres, which lies on the north side of the County road to Raccoon Point; two acres conveyed to James Jones and four acres adjoining, contracted to be conveyed to and now in the possession of John Tutpen; which two last-named parcels are in or near the angle formed by the fifth and sixth courses of the said plot; the balance of said plot, after deducting said exceptions, containing six hundred and ninety-eight acres of land, more or less", and, as a consideration therefor, agreed to pay to the Complainant the sum of five thousand dollars ($5,000) within a reasonable time, and also to convey to him within a like reasonable time, by a good and sufficient title, free from encumbrances, all that certain mill property, with the appurtenances, known as the Blackwell's Mills property, situate in the County of Somerset and State of New Jersey, in the said amended bill mentioned and described as follows, to wit: "Situate in Hillsborough and Franklin Townships, bounded on the east by lands of Abraham S. Vanderveer, on the south by the public road and land of C. H. Broach and others, on the west by lands of John L. Oakey, and on the north by lands of F. V. L. Voorhees and Abraham S. Vanderveer, containing about fourteen acres of land, being part of the premises conveyed to John L. Oakey by Augustus Van

Zandt and wife, by deed dated January 13, 1874, and being described by metes and bounds as follows, viz: The first tract is situate in Hillsborough, and is the one upon which the dwelling house, three tenement houses and the mill is upon, and is bounded as follows, to wit: Beginning at a corner of F. V. L. Voorhees's land, on the west bank of the Millstone River; thence along his land south eighty-nine and a half degrees west twenty-one chains and fifty-six links; (2) thence south twelve and one-half degrees west two chains and forty-two links to lands formerly belonging to Jacob Wilson; (3) thence by said lands of C. H. Broach south eighty-one degrees east twenty-one chains and seventeen links to the road; (4) thence north seventy-seven and a half degrees east one chain to the river bank; (5) thence south fifty-five and three-quarter degrees east, across the river, four chains and sixty-eight links to a large ash tree on the east bank of the river; (6) thence north nine degrees east two chains and twelve links to the middle of the road; (7) thence north twenty-two and one-half degrees west four chains and sixty-five links to a birch tree on the bank of the river; (8) thence across the river north fifty-two and a half degrees west two chains and ninety-three links to the place of beginning, containing (including the river) eleven acres, more or less.

The second lot lies in Franklin Township, and joins the first, and begins at birch tree on the east bank of the Millstone River, a line of the first tract; thence (1) along the same south twenty-two and a half degrees east four chains and sixty-five links to the middle of the road leading from the mill to canal; (2) thence along the middle of said road north eighty-five and a quarter degrees east thirteen chains to the west line of the Delaware and Raritan Canal; (3) thence along said line north thirteen degrees west three chains and eighty-one links; (4) thence north twenty-five and one-half degrees west two chains and fifty links to a stone corner of Abm. S. Vanderveer's meadow; (5) thence with his land north seventy-one and a half degrees west thirteen chains and fifteen links to the east bank of the river; (6) thence up the river its

several courses to the place of beginning, containing eleven acres and seventy-three hundredths of an acre, more or less, excepting thereout of the two lots above described so much thereof as the said John L. Oakey has conveyed away, and leaving about fourteen acres, as above stated"; and that each of the said parties thereby agreed to deliver to the other the possession of their respective premises above described, within a reasonable time thereafter; and that the said Complainant, within a reasonable time, was and still is ready and willing, in all 10 things, to comply with the stipulations of the said articles of agreement on his part, and that on the twenty-third day of May, A. D. eighteen hundred and eighty-three, he delivered up the possession of the said Maryland farm to the said Defendant, and he formally tendered himself ready to perform what remained of said agreement to be performed on his part, on the 17th day of October, in the year eighteen hundred and eighty-three, and has prayed the order or decree of this Court directing the Defendant to comply with and fulfill the same, in 20 all things, on his part; and, the Court, being of opinion that the Complainant is entitled to the specific performance of the said article of agreement on the part of the Defendant, as in his bill he has prayed,

It is, therefore, on this seventeenth day of March, in the year eighteen hundred and eighty-five, on motion of Messrs. Bartine & Griggs, Solicitors of the said Complainant, ordered, adjudged and decreed that the said articles of agreement be in all things specifically performed by the said Complainant and Defendant, respect- 30 ively, and that the said Complainant and Defendant meet in the office of the mill, now occupied by the Complainant, at Blackwell's Mills, in the County of Somerset, in this State, on the thirtieth day, after service of a copy of this decree upon this Defendant, unless that day be Sunday, in which event, then, the day before, at the hour of twelve o'clock, noon, at which time and place the Complainant shall deliver to the Defendant his deed, conveying a good title, free from encumbrance, to the farm in the State of Maryland, first above described, 40

and at the same place, and concurrently therewith, the said Defendant shall deliver to the Complainant his deed conveying a good title, free from encumbrance, to the Blackwell's Mills property, above described, together with the full and complete possession thereof, and shall concurrently therewith pay to the Complainant the sum of five thousand dollars ($5,000), together with interest thereon, at the rate of six per cent. per annum, from the seventeenth day of October, eighteen hundred and eighty-
10 three, together with the costs of this suit, to be taxed.

And it is further ordered that the Complainant have leave to apply to this Court, at any time hereafter in this cause, for such additional relief as he may be entitled to, in order to secure the more full and complete performance of the said contract, and to have added to this decree and made a part hereof such further and other order, or orders, as the equities of the case may require; and to that end all further equity and direction in the premises is reserved.

20 Respectfully advised,

THEODORE RUNYON,
C.

JOHN T. BIRD,
V. C.

30

40

In Chancery of New Jersey.

10

Between *EDMUND B. COOK,* *Complainant,* *and* *JOHN L. OAKEY,* *Defendant.*	On Bill, Etc. Appeal.

20

The Defendant hereby appeals from the final decree, made in the above stated cause, on the seventeenth day of March, A. D. eighteen hundred and eighty-five, and from the whole, and every part thereof, as declares that "the (all the decree) ——— ——— ———" to the Court of Errors and Appeals, in the last resort in all causes.

ALVAH A. CLARK,
Solicitor of Defendant.

30

Dated May 20, 1885.

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

ALVAH A. CLARK,
Of Counsel with Defendant.

40

In Chancery of New Jersey.

Between *EDMUND B. COOK,* *Complainant,* *and* *JOHN L. OAKEY,* 10 *Defendant.*	On Bill. Petition.

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

The humble petition of John L. Oakey, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the seven-
20 teenth day of March, in the year eighteen hundred and eighty-five, wherein Edmund B. Cook was Complainant, and the said John L. Oakey was Defendant, in this respect, to wit: that the said decree adjudges that "the ——— ———" (all the decree).

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree should have been in favor of the Defendant, relieving and releasing him from the specific perform-
30 ance of the said article of agreement and discharging him from any and all obligation of any character or description to the Complainant, for, by reason or on account hereof, as well as the costs thereon.

Your petitioner, therefore, prays that the said decree of said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

ALVAH A. CLARK,
40 Solicitor and of Counsel with Defendant.

N. J. Court of Errors and Appeals.

Between *JOHN. L OAKEY,* *Appellant,* *and* *EDMUND B. COOK,* *Respondent.*	On Bill, &c., on Appeal.

The answer of the above named respondent to the petition of appeal of the above-named appellant:

This respondent, not acknowledging all or any of the matters which, in the said petition of appeal, are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the seventeenth day of March, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but, as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised, and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

J. D. BARTINE,
Solicitor and of Counsel with Respondent.

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