

In Chancery of New Jersey.

Between

NEWARK SAVINGS INSTITUTION, complainants,

and

JOSIAH F. MUIR and ALS., defendants,

} *Bill to foreclose.*

To the Honorable HENRY W. GREEN, Chancellor of the State of New Jersey:

In Chancery, humbly complaining, sheweth unto your Honor, your orators, Newark Savings Institution, of Newark, in said state, that Josiah F. Muir, of Chatham, in the county of Morris, in said state, made his bond or obligation to your orators, in the penal sum of ten thousand dollars, and bearing date the first day of July, eighteen hundred and fifty, and became held and bound unto orators in the said sum, to be paid to your orators, or to their certain attorney, successors or assigns; for which payment, well and truly to be made, he thereby firmly bound himself, his heirs, executors and administrators, subject to a condition thereunder written, that if the said Josiah F. 10 Muir, or his heirs, executors and administrators, or any of them, should and did well and truly pay, or cause to be paid unto your orators, or to their certain attorney, successors or assigns, the just and full sum of five thousand dollars, lawful money, aforesaid, in one year from the date of the said bond, with lawful interest for the same, payable semi-annually, without any fraud or other delay, then the said obligation to be void, or else to be and remain in full force and virtue, as by the said bond, duly executed by the said Josiah F. Muir, under his hand and seal, will fully appear, and to which your orators refer.

And your orators further show that the said Josiah F. Muir, in or- 20 der more perfectly to secure the payment of the said money, made a deed of mortgage, bearing even date with the said bond, in which the said Josiah F. Muir, and Almira, his wife, were party of the first part, and your orators of the second part, and thereby for and in consideration of the sum of five thousand dollars, lawful money of the United States of America, to them in hand well and truly paid by

- your orators, at and before the sealing and delivery of the said mortgage, the receipt whereof was thereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, did give, grant, bargain, sell, alien, enfeoff, convey and confirm to your orators, and to their successors and assigns forever, all that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Chatham, in the county of Morris and State of New Jersey, beginning in the middle of the Morris turnpike road, two rods from the garden fence, a corner of
- 10 Isaac Searles' land; thence running along said Searles' land south two degrees and fifty minutes west seven chains and thirty-eight links; thence (2) along said Searles' line south fifty-two degrees twenty minutes west one chain and fifty-nine links, to an elm bush in Israel Bonnell's line; thence (3) along said Israel's line south thirty minutes west twelve chains and seventy links, to a post for a corner; thence (4) along said Israel's line south eighty-five degrees twenty minutes east five chains forty links, to a stake in the edge of the pond; thence (5) crossing the pond south eighty-four degrees thirty minutes east ten chains, more or less, to the middle of the New Providence road;
 - 20 thence (6) along said road north twenty-five degrees fifty minutes east three chains and thirty links, to lands of late Thomas Parcels, deceased; thence (7) along the line thereof north sixty-nine degrees fifty-five minutes west two chains and twenty-seven links, to a stake; thence (8) along the line thereof north sixteen degrees forty-five minutes west three chains thirty-one links, to a post in David V. Pool's line; thence (9) along his line north seventy-three degrees west one chain and fifty-five links, to the middle of Passaic river; thence (10) down the middle thereof north five degrees and twenty-five minutes west seventeen chains, to the deep hole; thence (11) north forty-four
 - 30 degrees fifty minutes west eighty links; thence (12) south eighty-two degrees forty-five minutes west two chains eight links, crossing the tail race to the corner of David Crowell's garden; thence (13) along said Crowell's line south thirteen degrees thirty-five minutes east eighty-eight links; thence (14) along his line south eight degrees forty minutes west one chain sixty-six links, to the middle of the turnpike, opposite the middle of the race bridge; thence (15) along the middle of said turnpike road north eighty-five degrees west four chains and ninety-eight links, to the place of beginning; containing twenty-five acres by estimation, more or less, excepting
 - 40 and reserving therefrom the following part of said tract, whereon a house of William H. Spencer now stands: Beginning on the southward side of the turnpike road, between the mill race and river, opposite the middle of the well, or pump of water, and

thirty links distant from the same; and running thence (1) over the middle of the said well south two degrees and five minutes west three chains and sixty links, to a stone heap, for a corner, opposite the south end of the garden fence; thence (2) with the fence on the southward end of the garden, south eighty-six degrees, east one chain and sixty-four links, more or less, to the middle of Passaic river; thence (3) down said river three chains and fifty-four links, to the southward eave of the turnpike bridge over the said river; thence (4) on the turnpike north eighty-five degrees forty-five minutes west one chain and sixty-four links, to the place of beginning, containing sixty 10 hundredths of an acre, more or less, and the same premises conveyed to the said Josiah F. Muir by the commissioners appointed by the Court of Chancery, to make sale of the estate of William Spencer, deceased, together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in any wise appertaining; also, all the estate, right, title, interest, property claim and demand of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof, to have and to hold, all and singular, the above described land and premises, with the appurtenances, unto your orators, their successors and assigns, to 20 the only proper use, benefit and behoof of your orators, their successors and assigns forever; provided, always, and it was agreed by and between the parties to the said mortgage that if the said Josiah F. Muir, his heirs, executors or administrators did and should well and truly pay, or cause to be paid to your orators, or to their certain attorney or attorneys, successors or assigns, the sum of five thousand dollars in one year from the date of said mortgage, according to the condition of the said bond, hereinbefore set forth, with lawful interest for the same, semi-annually, without any deduction or defalcation for insurance, pursuant to the covenant in said mortgage contained, or for 30 taxes, assessments or any other impositions whatsoever; that then, and from thenceforth the said mortgage and the said obligation, and everything in either contained should cease and be void, anything in either contained to the contrary, in any wise, notwithstanding; and the said Josiah F. Muir, his heirs, executors and administrators did therein covenant and grant to and with your orators, their successors and assigns, that your orators, their successors and assigns should and might from time to time, and at all times after default should be made in the performance of the proviso or condition in the said mortgage contained, peaceably and quietly enter into, have, hold, use, oc- 40 cupy, possess and enjoy, all and singular, the said granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said Josiah F. Muir, his heirs or assigns,

or any other person or persons whatsoever; and the said Josiah F. Muir, for himself, his heirs, executors administrators and assigns, did in said mortgage further covenant with your orators, their successors and assigns, that he would at all times during the continuance of the said mortgage as a subsisting one, insure the buildings then being, and thereafter to be erected on the said mortgaged premises, against loss or damage by fire, in some fire insurance company in good repute at the time, and assign and keep assigned the policy or policies in that respect effected, to your orators, their successors or assigns, as a further collateral security for the payment of the said principal and interest money; and that in case the said Josiah F. Muir, his heirs or assigns should make default in so doing, it should be lawful for your orators, their successors or assigns, to effect such policy or policies in their own name, or to renew or continue in force any such policy or policies which the said Josiah F. Muir, his heirs or assigns might have effected, and to pay the premium or premiums thereon, which should from thenceforth, with lawful interest thereon, become a charge upon said land and premises, and form part and parcel of the money secured by the said mortgage, as by the said mortgage duly executed by the said Josiah F. Muir, and Almira, his wife, under their hands and seals, will fully and at large appear, and to which your orators pray leave to refer.

And your orators further show, that on ninth day of July, in the year of our Lord eighteen hundred and fifty, before Israel Day, a commissioner to take the acknowledgment and proof of deeds for Essex county, personally appeared the said Josiah F. Muir, and Almira, his wife, who the said commissioner was satisfied were the grantors named in the said mortgage, to whom he first made known the contents thereof, and they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Almira being by said commissioner privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed, freely and without any fear, threats, or compulsion of her said husband. As by the certificate of the said commissioner endorsed upon the said mortgage will fully appear, and to which your orators refer. And the said mortgage was on the eleventh day of July eighteen hundred and fifty, lodged in the office of the clerk of the county of Morris, and registered the same day by Stansburrough, clerk of said county, in Liber X of mortgages for said county, in pages 440 and 441, as by said record, or the certificate of said clerk endorsed on said mortgage will fully appear, and to which your orators refer.

And your orators further show, that on causing a search to be made in the records of Morris county, they have discovered the record of two mortgages upon the same premises described in the mortgage of your orators, made by the said Josiah F. Muir, and wife, and subsequent to the same: one given to Abraham Brittin, dated February tenth, eighteen hundred and fifty-nine; and the other given to Mahlon Minton, dated March thirteenth, eighteen hundred and sixty-one. And your orators further show, that they are informed and believe that the said Abraham Brittin has recently departed this life, having made a will and appointed Alfred B. Brittin executor thereof. 10

And your orators further show, that the said Josiah F. Muir, by a writing under his hand and seal endorsed on said bond, did thereby agree that in consideration of the further forbearance of the payment of the money due thereon, he would pay interest on said money from and after the tenth day of January, eighteen hundred and fifty-seven, at the rate of seven per cent. per annum; as by said agreement will fully appear.

And your orators further show, that the said Josiah F. Muir has failed to perform his covenant in said mortgage, to insure and keep insured the buildings on said mortgaged premises. And yours have 20 been obliged to, and have effected a renewal of the policy which he heretofore assigned to your orators; and they have paid for that purpose on the fourteenth day of August, eighteen hundred and sixty-one, the sum of fifty dollars, and on the fifth day of October in the same year the sum of fifty-two dollars and fifty cents, which they claim as a lien on said premises, and to be paid as in said mortgage is provided.

And your orators further show, that a large part principal money mentioned in the said bond or obligation, and secured thereby, and by the said deed of mortgage, with large arrears of interest, still remains 30 due and owing to your orators, no part thereof having been paid to your orators, so that your orators are greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your orators and their successors. And your orators further show, that the said Josiah F. Muir and Almira his wife ever since the execution of your orators said mortgage, have possessed and enjoyed; and that they do still possess and enjoy the said mortgaged premises with the appurtenances, and that they have always received, and still do receive, the rents, issues and 40 profits thereof. And your orators further show and expressly charge that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to

- your orators as aforesaid, and that they, or some other person or persons for them, have frequently and in a friendly manner applied to the said Josiah F. Muir and Almira his wife, Alfred B. Brittin, executor as aforesaid, and Mahlon Minton, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys, so due to your orators on the said bond or obligation, and deed of mortgage herein before mentioned and set forth; and your orators well hoped that they would have complied with such reasonable requests of your orators, and would have paid to them the said
- 10 principal and interest moneys, so as aforesaid due to your orators on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor, that the said defendants combining and confederating together, and to, and with, divers other persons at present unknown to your orators, but whose names when discovered, they pray may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orators in the premises, and to defraud them of the said principal and interest moneys, so as aforesaid due to your orators on the
- 20 said bond or obligation and deed of mortgage, herein before mentioned, sometimes give out and pretend, that although your orators estate in the said mortgaged premises may have become absolute at law, yet that your orators cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances, prior to your orators said mortgage, but when, and to whom given, and for what consideration, they refuse to discover; whereas, your orators charge and insist, that if any such pretended encumbrances do
- 30 exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by frauds, to injure and aggrieve your orators, and ought to be delivered up to be cancelled, or declared to be of no effect against your orators, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orators. In tender consideration whereof, and forasmuch as your orators have not a complete and safe remedy in the premises, at and by the strict rules of the common law, nor can
- 40 foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys, so as aforesaid due to your orators, on said bond and obligation and deed of mortgage, without the aid and decree of this honorable court.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular, the premises as fully and particularly as if the same were here again repeated, and they, and each of them, thereto, particularly interrogated, according to the best of their respective knowledge, information, remembrance and belief, and that the said defendants, or some one of them, may be decreed to pay to your orators the said principal sum so due to them on the said bond or obligation, and deed of mortgage herein before mentioned and set forth, and all the interest money now 10 due, and to grow due thereon, together with all your orators costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and in default thereof, that the said defendants, and each of them, and all persons claiming or to claim under them, or any, or either of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orators all deeds, demises, and writings, whatever, relating to, or concerning the same, or that, all and singular, the said mortgaged premises with the appurtenances, may, by the order and de- 20 cree of this honorable court, be sold, and out of the moneys arising from the sale thereof, your orators may be paid the full amount of the said principal sum of money, so due to your orators on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orators costs and charges in this behalf sustained; and that your orators may have such further and other relief in the premises, as to your Honor may seem meet, and shall be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orators a writ, or writs of subpœna issuing out of, and under the seal of this honorable court, to 30 be directed to the said Josiah F. Muir, and Almira, his wife, Alfred B. Brittin and Mahlon Minton, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty therein to be inserted, 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 orators as in duty bound, will ever pray, &c.

A. S. HUBBELL,
Solicitor and of Counsel with complainants.

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A true copy.

BARKER GUMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants, }

and

Josiah F. Muir, et als., }

*Answer of Josiah F.
Muir and wife.**The joint and several answer of Josiah F. Muir and Almira, his wife, to the bill of complaint of Newark Savings Institution :*

These defendants, reserving to themselves all and all manner of exception that may be taken to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereto, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, they answer and say, that they admit that the said Josiah F. Muir made and executed the bond, and these defendants made and executed the mortgage to the complainant, of such date and of such tenor as in the complainants' said bill mentioned and set forth, and that said mortgage was acknowledged and recorded, as is in that behalf stated in said bill.

And these defendants, further answering, admit that they made and executed the mortgage to Abraham Brittin, and also the mortgage to Mahlon Minton, as stated in said bill ; and that the said Abraham Brittin has since departed this life, leaving a last will and testament, and that Alfred B. Brittin is the executor thereof.

And these defendants, further answering, admit that this defendant, Josiah F. Muir, executed the agreement endorsed on said bond, and that said agreement is of the purport and effect set forth in said bill.

And these defendants, further answering, say that they presume that the complainants effected a renewal of the policy of insurance on the buildings on said mortgaged premises, and paid the premiums thereon as stated in said bill, but they have no particular knowledge on the subject, and therefore leave the complainant to prove the same, according to the practice and rules of the court.

And these defendants, further answering, say that this defendant, Josiah F. Muir, prior to the loan by the complainant, and the execution of said mortgage by these defendants to them, as security therefor, applied to said complainants, through Asa Whitehead, Esquire, a counsellor at law, in the city of Newark, for a loan of four thousand dollars, and that the application was refused by the complainant; that subsequently, one William B. Mott, who was then the treasurer and one of the managers of said Newark Savings Institution, and a

member of the committee which was authorized and empowered to negotiate and make loans of the funds of said institution, sent word to this defendant to call upon him; that agreeably to such request this defendant did call upon said Mott, and was informed by him that he, this defendant, could have a loan of four thousand dollars from said Newark Savings Institution upon complying with their terms, which were a payment of two and a half per centum upon that amount; that this defendant then told said Mott that he wanted five thousand dollars, and that it was finally agreed between this defendant, Josiah F. Muir, and said William B. Mott, acting for and in behalf of the complainants, that the complainants would loan to this defendant the sum of five thousand dollars, upon condition that this defendant would pay therefore the sum of one hundred dollars. 10

And these defendants further say, that pursuant to said agreement they executed the mortgage, and this defendant, Josiah F. Muir, executed the bond to the complainants, in said bill particularly set forth; and that this defendant, Josiah F. Muir, paid at or about the time of the delivery of said bond and mortgage to said complainants, the said sum of one hundred dollars to said William B. Mott, pursuant to said agreement, and received from him a check for five thousand dollars 20 on account of the loan by the complainants, secured by said mortgage.

And these defendants further say, that in addition to said sum, they paid for drawing said bond and mortgage and the investigation of the title to said mortgaged premises.

And these defendants, further answering, say, that said bond and mortgage bear date on the first day of July, in the year one thousand eight hundred and fifty, and by the terms thereof interest is payable from that date, but that the money was not actually paid over by the complainants, or received by these defendants, until the ninth day of the said month of July. And these defendants charge that said William B. Mott was, at the time said loan was made, the treasurer and a manager of said Newark Savings Institution, and had charge of the property and funds of said institution, and gave checks for loans made by them, and was fully empowered to act for them in negotiating and making loans of money belonging to said institution. 30

And these defendants further state, that they believe that other managers of said institution had knowledge of said transaction, and knew that said William B. Mott retained a part of the money so as aforesaid agreed to be loaned to these defendants, and they charge that the complainants are responsible for the acts of said Mott in the management of the affairs of said institution. 40

And these defendants, further answering, charge that said transaction, hereinclose detailed, was a loan by the said complainants to

these defendants upon an usurious agreement, and that by the laws of this state the said mortgage, by which the said usurious loan was attempted to be secured, became null and void, and these defendants humbly insist that the said mortgage given as aforesaid, by these defendants to the said complainants, shall be declared void for usury.

And these defendants, further answering, say, that the mortgage by these defendants to Abraham Brittin, hereinbefore mentioned, was given to secure the sum of three thousand dollars; that said loan was made upon express condition that this defendant, Josiah F. Muir, 10 should take as part thereof a horse, at the price of five hundred dollars, that said horse was not worth more than two hundred and sixty dollars, and the valuation of five hundred dollars was put upon said horse to enable said Brittin, as he stated at the time, to get a "big bonus" in making said loan; that a few days before the mortgage, so as aforesaid given by these defendants to said Brittin, was executed, said Brittin told this defendant, Josiah F. Muir, that he did not care whether or not this defendant took said loan upon the terms proposed, that he could purchase a mortgage of three thousand dollars for twenty-seven hundred dollars, whereby he could do as well as by making the 20 loan to this defendant. And these defendants say that they executed and delivered said mortgage to said Brittin, and received amount attempted to be secured by said mortgage in the manner above stated.

And these defendants, further answering, charge that said last mentioned transaction was a loan by said Abraham Brittin to these defendants upon an usurious agreement, and that by the laws of this state the said mortgage, by which said usurious loan was attempted to be secured, became null and void, and ought not to be held to be a valid lien upon said mortgaged premises in this suit. And these defendants insist that no decree should be made in the suit for the pay- 30 ment and satisfaction of said mortgage by a sale of said mortgaged premises, and claim that they have a legal and equitable defence to said mortgage, and that they should be permitted to set up the same against any claim for the payment of said mortgage by the said Alfred B. Brittin, executor as aforesaid.

And these defendants deny all unlawful combination and conspiracy in the said bill charged, without this, that any other matter or thing in the said bill charged, material for these defendants to make answer, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of 40 these defendants.

All which matters and things these defendants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray that the said mortgage of the complainants may be declared void

for usury, and that no decree may be made in this cause for the payment and satisfaction of said mortgage given by these defendants to Abraham Brittin, and that these defendants may be hence dismissed, with their costs and charges in this behalf most wrongfully sustained.

State of New Jersey, ss.:

Josiah F. Muir and Almira Muir, two of the defendants named in the foregoing answer, being duly sworn according to law, on their respective oaths, severally say, that the facts, matters and things set forth in the foregoing answer, so far as they relate to their respective acts and deeds, are true, and so far as they relate to the acts and deeds 10 of others, they believe them to be true.

JOSIAH F. MUIR,
ALMIRA MUIR.

Sworn and subscribed February 15th, 1862, at Chatham, N. J., before me,

JEPHTAH B. MUNN, *M. C.*

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants,

and

Josiah F. Muir and others, defendants,

} *Answer of Alfred B.
Brittin, Ec., &c.* 20

The answer of Alfred B. Brittin, executor of the last will and testament of Abraham Brittin, deceased, to the bill of complaint of Newark Savings Institution:

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, that he admits that the said Josiah 30 F. Muir did execute the bond to said complainants, and that said Josiah F. Muir and Almira, his wife, did make and execute an indenture of mortgage to said complainants, said bond and mortgage being of such date, and of such purport and effect as in the complainants said bill mentioned, and that said mortgage was acknowledged and recorded as in said bill set forth; but whether the amount claimed in

said bill is due to the complainants on said mortgage, or what amount, if anything, is due thereon, this defendant does not know and cannot state, and prays that reference may be had to the same, and the amount due, if anything, correctly ascertained. And this defendant, further answering, says, that he has no personal knowledge of the agreement in writing, stated in said bill to have been endorsed by said Josiah F. Muir in the complainants said bond, although he believes, from the statement in said complainants said bill, that it was so endorsed, and leaves the complainants to make such proof thereof as they shall deem

10 necessary.

And this defendant, further answering, says, that the said Josiah F. Muir, having become indebted to Abraham Brittin, of the county of Morris, and State of New Jersey, in the sum of three thousand dollars, did, on or about the tenth day of February, in the year eighteen hundred and fifty-nine, make and execute, under his hand and seal, and deliver to the said Abraham Brittin a bond or obligation, bearing date the day and year last aforesaid, in the penal sum of six thousand dollars, with a condition thereunto written, that if the said Josiah F. Muir, his heirs, executors or administrators should well and truly pay
 20 or cause to be paid unto the said Abraham Brittin, his executors, administrators or assigns, the just and full sum of three thousand dollars in one year from the date thereof, with legal interest upon the same, payable half yearly from the date thereof, without fraud or further delay, then said obligation to be void and of no effect, else to remain in full force and virtue, as by the said bond, now in the possession of this defendant, ready to be produced, will more fully appear. And this defendant, further answering, says, that the said Josiah F. Muir, in order to secure the payment of the said sum of three thousand dollars to the said Abraham Brittin, did, together with Almira, his wife,
 30 make and execute, under their hands and seals, and deliver unto the said Abraham Brittin, a certain indenture of mortgage, bearing date the said tenth day of February, eighteen hundred and fifty-nine, whereby the said Josiah F. Muir and Almira, his wife, did, for the said consideration of three thousand dollars, grant, bargain, sell and convey to said Abraham Brittin, his heirs and assigns, that tract of land in the township of Chatham, in said county of Morris, therein described, being the same which was conveyed to Wm. Spencer, now deceased, by deed dated November 11th, 1818, by Sylvanus Bonnell and wife, and the same premises that were conveyed to the said Josiah
 40 F. Muir by Abraham Brittin, John W. Hancock and Jonathan C. Bonnell, commissioners, by deed dated July 9, 1850, and recorded in the Morris County Record of Deeds, book T 4, pages, 311, &c., and more particularly described by metes and bounds in said mortgage, being

the same premises in the complainants bill mentioned and described, together with all and singular the waters, water courses, dams, ponds, raceways and water privileges to said premises belonging or in any wise appertaining; also all of the fixtures and the machinery, of whatever kind or description, in the mill upon said premises; also, together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages to the same belonging or in any wise appertaining; also, all the estate, right, title, interest, property claim and demand whatsoever, of the said Josiah F. Muir and wife, of, in and to the same, and of, in and to every part and parcel thereof, 10 to have and to hold, all and singular, said lands and premises, with the appurtenances, unto the said Abraham Brittin, his heirs and assigns forever; and it was provided in said last named mortgage that if the said Josiah F. Muir, his heirs, executors or administrators, should pay or cause to be paid to the said Abraham Brittin, or to his certain attorney, heirs, executors, administrators or assigns, the sum of three thousand dollars in one year from the date of said indenture, with legal interest on the same, payable half yearly from said date, in accordance with the condition of said bond, without any deduction or defalcation for taxes, assessments or any other imposition whatsoever, 20 then and from thenceforth the said indenture and said bond, and everything therein contained, should cease and be void, everything therein contained to the contrary in any wise notwithstanding.

And this defendant says, that after the said mortgage to said Abraham Brittin was executed, and on the tenth day of February, eighteen hundred and fifty-nine, the said Josiah F. Muir and Almira, his wife, appeared before Jephthah B. Munn, one of the masters in chancery of New Jersey, and acknowledged (after said master had made known to them the contents thereof, and he being satisfied that they were the grantors named in said indenture,) that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 30 And the said Almira, being by said master privately examined, separate and apart from her said husband, further acknowledged that she signed sealed and delivered the same freely as her voluntary act and deed, without any fear, threats or compulsion of or from her said husband, as by the said indenture of mortgage and the said master's certificate endorsed thereon, now in the possession of this defendant, ready to be produced as this court shall direct, will more fully appear.

And this defendant further answering says, that the said indenture 40 of mortgage last mentioned, was on the 25th day of February in the year last mentioned recorded (or an abstract thereof was recorded,) in book D 2 of mortgages for Morris county, in the clerk's office of

said county, pages 493, &c., as by the certificate of said clerk endorsed on said mortgage, more fully appears. And this defendant, further answering says, that the said Abraham Brittin in or about the twenty ninth day of May, in the year eighteen hundred and fifty-nine, departed this life, having first made, executed, and published his last will and testament, in due form of law, and therein and thereby, did among other things nominate, constitute and appoint this defendant the executor thereof. And this defendant, further shows, that the said last will of said Abraham Brittin deceased, was afterwards to wit, 10 on the tenth day of June, in the year eighteen hundred and fifty-nine, duly proved by this defendant, the executors therein named before Frederick Dellicker, Esquire, surrogate of the said county of Morris, as by a certified copy of the same and probate thereof, now in the custody of this defendant, ready to be produced, and the record thereof, now remaining in the office of the said surrogate of the county of Morris, reference being thereunto had if necessary, will more fully appear. And this defendant, further shows, that he has taken upon himself the burthen of the administration of the estate of the said Abraham Brittin, deceased, pursuant to the said last will, and that he 20 is entitled to have and receive the moneys now due, and owing for principal and interest on the said bond and mortgage, so as aforesaid, given to the said Abraham Brittin. And this defendant, further answering shows, that no part of the principal sum of three thousand dollars, mentioned in the conditions of the bond and, in the proviso of the mortgage, so as aforesaid, given to the said Abraham Brittin in his life time, has been paid either to the said Abraham Brittin in his life time, or to this defendant since the death of the said Abraham Brittin, or to any other person to his use; and that the interest has been paid on said bond and mortgage only up to the tenth day of 30 February, in the year eighteen hundred and sixty-one, as by the endorsement on said bond, ready to be produced by this defendant will more fully appear. And this defendant, further shows, that there is now due to this defendant as executor as aforesaid, the said principal sum of three thousand dollars, together with legal interest thereon, from the tenth day of February in the year eighteen hundred and sixty-one.

And this defendant, further answering, says that he has been informed, and therefore suppose it to be true, that a mortgage on the same premises, or some part thereof, was made by the said Josiah F. 40 Muir and wife, to Mahlon Minton, of the date named in the complainants bill, but this defendant charges that the last named mortgage was dated, executed, acknowledged and recorded subsequently to the said bond and mortgage so as aforesaid given to the said Abra-

ham Brittin, and if an encumbrance at all upon the said premises, is subsequent to the said mortgage, so as aforesaid given to the said Abraham Brittin by said Josiah F. Muir and wife. And this defendant denies all unlawful combinations and confederacy in said bill charged, without this, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is 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 that a decree may 10 be made by this honorable court, for the sale of the said lands and premises, in the foregoing indentures of mortgage mentioned and set forth in the complainants' bill, and out of the moneys thence arising, that this defendant may be paid the full amount of the principal and interest moneys so due to him, as aforesaid, with all reasonable costs and charges in their behalf sustained.

ALFRED MILLS,

Solicitor for and of counsel with the defendant.

New Jersey, Morris county, ss.:

Alfred B. Brittin, executor of the last will of Abraham Brittin, 20 deceased, the above named defendant, being duly sworn, on his oath says that the matters and things set forth in the above answer, so far as relates to his own acts, are true, and as far as relates to the acts of others he believes to be true.

ALFRED B. BRITTIN.

Sworn to and subscribed, this second day of June, 1862, before me,

AUGUSTUS W. BELL, *M. C.*

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants,

and

Josiah F. Muir et al, defendants,

} On Bill, &c.

- 10 *Examination of witnesses in the above cause, on the part of the defendant, Josiah F. Muir, by the consent of the respective parties, before me, Abraham S. Jackson, a master and examiner of said court, at my office, No. 9, Exchange Place, in Jersey City, on Tuesday the 17th day of June, A. D., eighteen hundred and sixty-two, at eleven o'clock, A. M. Present James J. Scofield, Esq., of counsel for the defendant, Josiah F. Muir, Alfred Mills, Esq., of counsel for defendant, Alfred B. Brittin and Algenon S. Hubbell, Esq., of counsel for the complainants.*

Charles S. Macknet, a witness produced on the part of the defendant, Josiah F. Muir, being sworn on his oath, saith:

Question. Mr. Macknet, are you one of the managers of the Newark Savings Institution?

Answer. Yes sir.

- 20 *Q. Where is it located? where does it do its business?*

A. Newark.

Q. Do you know anything about a loan that Josiah F. Muir obtained from that institution of five thousand dollars?

A. Yes sir.

Q. State what you know about it?

- A. In the year 1850, Asa Whitehead made application on behalf of J. M. Muir, for five thousand dollars on mill property at Chatham, New Jersey; this property was the property in question in this cause; on July the third, in that year, or about that date I think,*
 30 *the money was got, in amount five thousand dollars. My impression is that the mortgage is dated the third of July; I don't know what else to say about it.*

Q. The mortgage is dated the third, is it from that that you inferred the money was got then?

A. No sir; if we make a loan on the 1st, 2d, 3d or 4th, if the party delays getting the money for a week or ten days, it is generally in consequence of the papers not being satisfactory or ready.

Q. Well, have you any more certain means of ascertaining when the money was paid to Muir, the defendant?

A. Yes sir.

Q. What?

A. Date of the check, the 10th of July.

Q. Anything else?

A. No sir, I think not.

Q. The date of the check you say was the 10th of July, could the money have been got before that date?

A. I presume not.

Q. Upon what bank was that check?

A. Upon the State Bank at Newark; I am a director in that bank. 10

Q. Who were the officers and managers of the Newark Savings Institution at that time?

A. William Wright, the president, Samuel Meeker, vice-president, William H. Mott, treasurer; there was no secretary at that time; Mr. Mott acted as secretary, I think, although I am not sure; I think, on reflection, that Doctor Goble was secretary at that time; he is dead now; the number of the managers was twenty-five; the name of one was Edward Van Antwerp, Doctor Pierson, also, John Kennedy.

Q. Was there any loaning committee at that time among the 20 managers?

A. Yes sir.

Q. Can you recollect their names?

A. Samuel Meeker, Edward Van Antwerp and myself.

Q. Was Mr. Mott, the treasurer, one of that committee at that time?

A. No sir; we never considered him as one of the committee.

Q. Can you tell us or not whether he was, ex-officio, one of that committee?

A. The by-laws say, "including the treasurer." 30

Q. At that time, in the transaction of loans, was there one, or two, or more of that committee, including the ex-officio members, that paid more attention to that matter than others of the committee?

A. Well, the three members that I have mentioned, generally done the business; Mott did not go out of the banking house to look at property.

Q. He was cashier of the bank at that time, was he not, and since dead?

A. Yes sir.

Q. Who drew the checks for loans, ordinarily; by whom were they 40 signed?

A. The treasurer.

Q. Well, did or did not the treasurer attend as much to the busi-

ness as other members of the committee, except as to examining the property?

A. No sir.

Q. Do you recollect whether any of the committee examined that property at that time?

A. I think not.

Q. Do you know anything about a premium of one hundred dollars, or any other sum being paid, as a premium for that loan?

A. No sir; except what Muir said in 1857, if that is any evidence.

10 Q. Never hear Mr. Mott say of ever receiving anything for that loan from Mr. Muir?

A. No sir.

Q. Did you ever hear him speak on the subject?

A. No sir.

Q. Did you ever hear him speak of the loan, at, or after the time it was made?

A. I think I may have heard him say, as it is common for him to report that he has the papers all right for the loan, or something like it.

Q. Nothing further than that you have heard him say about the
20 loan?

A. No sir, I think not.

Q. Did the company receive a hundred dollars, or any sum, or the benefit of that one hundred dollars?

A. No sir.

Q. You mean to say, that you never have heard anything about that hundred dollars, except what Mr. Muir said to you in 1857?

A. Yes sir.

Q. Did you have any conversation about it in 1852, with Mr. Muir?

A. No sir.

30 Q. Do you recollect about speaking to him about foreclosing the mortgage in 1852?

A. No sir, I don't recollect it.

Q. Did the committee discuss the matter of foreclosing among themselves in 1852?

A. I have no recollection of it, if the interest was paid; if the interest was not paid there might have been some discussion about it.

Q. I mean to ask if you have any recollection whether it was so or not?

A. I have no recollection of it.

40 Q. Who has charge now of the books of your company, the Newark Savings Institution?

A. Mr. Charles M. King.

Q. Is that loan entered upon the books of the company, the transaction respecting it, the account kept there?

A. The check is charged on the book, and the mortgage is credited to correspond with the check.

Q. Is there no other entry in respect to it on the books?

A. I have not looked to ascertain.

Q. Is there any entry of a hundred dollars on the books, relating in any way to that loan?

A. No sir, none that I ever saw.

Q. Do you recollect whether this application by Asa Whitehead, was for four or five thousand dollars?

A. The application was for four or five.

10

Q. Did the committee act upon that application?

A. Yes sir.

Q. This mortgage was made on that application, was it?

A. I presume it was, a month about elapsed between the application and the making the loan.

Q. What was the result of the first application made by Mr. Whitehead, was it rejected or accepted in the first place?

A. I can't recollect.

Q. You recollect, in a conversation with Mr. Muir, speaking of this one hundred dollars, what reply you made to him?

20

A. I cannot recollect what words I might have used.

Q. Do you recollect of saying anything, or to this effect, "that Mott shaved everybody?"

A. No sir.

Q. Do you recollect of saying "that the Savings Institution might lose something by what Mott had done, or by what Muir said that Mott had done, or anything to that effect?"

A. No sir, I have no recollection of it.

Q. Did the board of managers or loaning committee ever order a charge of one hundred dollars to be made against Mr. Mott, for money received of Mr. Muir, and was there ever any such charge made?

30

A. No sir, never to my knowledge.

Q. Did you tell Mr. Muir or any body else, that you knew that Mott took a hundred dollars for that loan, or to that effect?

A. No sir, I never told anybody I knew of it; I may have repeated, after Mr. Muir told me, what he said about.

Q. Did you ever urge the managers or the committee of that company, to delay the foreclosure of that mortgage on that account?

A. No sir.

40

Q. Never say anything to them on that subject?

A. I have; have told them what Mr. Muir had told me.

Q. You spoke of Jonathan M. Muir having made the application, have you it with you?

A. Mr. Whitehead made it for him; here it is. Application is in Mr. Whitehead's handwriting. [The application offered in evidence and marked exhibit M. 1. on part of defendant Muir.]

Q. Did you ever hear any body say anything about the company taking one hundred dollars for that loan, or about Mott taking it for them, except what you have stated that Mr. Muir had said. [Objected to, as too general.]

A. I may have heard of it after Mr. Muir had repeated it.

Q. Who have you heard speak of it, beside Mr. Muir?

10 A. Mr. Weeks and I, spoke of it.

Q. Anybody else?

A. I was just thinking whether I told Mr. Lewis C. Grover, or he told me; I know that we talked about it.

Q. Do you recollect any others, Mr. Macknet?

A. I believe I have mentioned our committee; I don't recollect any one else.

And being crossed examined, says:—

Q. Do you know Mr Macknet, whether the application made by Jonathan M. Muir, was made for himself or some one else?

20 A. I understood it was his brother, the defendant in this suit.

Q. Did the defendant, or Jonathan M. Muir state at the time who was the owner of the mill property, the property in question?

A. I understood from Jonathan M. Muir, that it was his brother Josiah's, the defendant in this suit.

Q. You stated, in your direct examination, that the loan was made on or about the 3d of July, 1850; is that the exact day of the loan?

A. It was on or about date; I couldn't tell exactly.

Q. Do you know why the money was not paid till the 10th of July?

A. My impression is that the papers were not ready till then.

30 Q. Whose duty is it to prepare the papers for a loan? [Objected to.]

A. Our attorney, Robert Van Arsdale, at that time.

Q. Whose duty was it to make the examination as to title of the property on which the loan was to be granted?

A. We require a certificate from the clerk of the county, by the applicant.

Q. What do you mean by preparing the papers in the above answer?

A. I mean Robert Van Arsdale examines them and certifies as to their correctness before the money is loaned.

40 Q. What was the date or the time of this loan, when granted by the Savings Institution, or when the money was paid?

A. When it was granted.

Q. If there is time between the grant of the loan and the actual payment of the money, what is the cause of the difference or delay of time?

A. In consequence of the papers not being ready; not being certified, I suppose.

Q. You mean on the part of the Savings Institution or the applicant?

A. On the applicant; as the money is always ready when granted.

Q. In this case, this loan, was the money ready to be paid to Mr. Muir, on the day the loan was granted, if he had been ready with his securities?

A. Yes, sir.

Q. Did Mr. Mott act with the funding committee of the Savings Institution in making loans?

A. I think not, generally.

Q. Did he act with the rest of the committee when this loan was made?

A. That I do not recollect.

Q. By whom are the loans made of the Savings Institution?

A. By the majority of the funding committee.

Q. Who examines the securities or the property to be given as security for loan?

A. Generally the funding committee.

20

Q. Do they not always?

A. No, sir; not always.

Q. Who examines in other cases upon what the loan is made?

A. Certificates or the knowledge of some of the committee; I mean previous knowledge.

Q. In 1857, when you had a conversation with Mr. Muir, you have spoken of in your direct examination, had he failed to pay the interest on his loan?

A. I do not recollect.

Q. Do you know whether he had been required to pay the whole or any part of the loan about that time?

A. Yes, sir; I think he was called upon to pay one or two thousand dollars of the mortgage, as we had required other parties to do the same.

Q. Had he ever said anything about this hundred dollars from the time of the loan to this period, when called on to pay this money?

A. I think not; I have no recollection of it.

Q. Did he pay any portion of the principal about that time?

A. There has been two thousand dollars paid on it, but I don't know the dates.

40

Q. Have you heard anything about the hundred dollars spoken of, from Mr. Muir, since 1857, until after the commencement of this suit?

A. No; I heard it then and not again until after the suit was commenced.

And being again examined in chief, says :

Q. How long after Mr. Whitehead's application before your committee acted upon it ?

A. About a month, a little short of it, I think.

Q. How long after you acted upon it did you communicate the result to him or Mr. Muir ?

A. That I cannot say ; I cannot answer, as Mr. Mott was apprised of it at the time.

Q. What are your regulations or rules as to the payment of the searches and papers ; does the applicant pay it or do the company ?
What are your rules on that subject ?

A. The applicant.

Q. And also the attorney's fees, who examines the papers, does he pay for that also ?

A. Yes, sir.

Q. Did Mr. Muir do that in this case, pay these expenses ?

A. I do not know ; I presume he did.

Q. Can't you state whether you at first refused this application of Mr. Whitehead's or not, or whether the company did ?

20 *A.* I cannot state positively.

Q. What is your impression, Mr. Macknet ?

A. My impression is it was not, but was delayed for examination.

C. S. MACKNET.

Taken, sworn and subscribed June 17th, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

John R. Weeks, a witness produced on the part of the defendant, Muir, being duly sworn, says :

Question. Mr. Weeks, you are acquainted with the Savings Institution of Newark and the defendant, Josiah F. Muir, here ?
30

Answer. I am acquainted with the Newark Savings Institution and have known Mr. Muir for a number of years as Mr. Muir, but never knew his name, until to-day, was Josiah F. Muir, just as I know a number of other people.

Q. Do you know anything of this loan, procured by Mr. Muir from the Savings Institution, and the bond and mortgage given for it ?

A. I should say, of legal knowledge, nothing ; nothing but what I have heard to-day ; I have heard things said about it.

Q. Were you acquainted with William H. Mott in his lifetime ?

40 *A.* Yes, sir.

Q. Was he an officer of that institution ?

A. I always understood he was treasurer about this time, and I don't know but up to the time of his death.

Q. Do you know of his having the management of the funds of the institution about this time, or at any time?

A. I think it was about this time, about the beginning of the year 1850, that I first became acquainted with Mr. Mott, and it was as treasurer of the Savings Institution that I first knew him, although I won't be positive as to the date.

Q. Do you know of his acting or participating in making the loans of the institution?

10

A. I know that in one or two cases, which I now recollect, two I think, he sent parties to me to obtain searches from me; I think I was county clerk then; it was, I think, just after my election in 1849; I did not know what searches precisely the parties wanted, and called on him in reference to them.

Q. What answer did he make to you? I don't mean any particular answer, but did he give you directions about the searches; did he act upon it?

A. He told me what the requirements of the institution were.

Q. Do you know anything about his taking one hundred dollars 20 from Mr. Muir, or some one back in the country, for a loan of five thousand dollars? [Objected to as to the form of the question, and a part of the question being irrelevant.]

A. No.

Q. Have you heard the managers of this institution say anything on that subject, or any of them?

A. My impression is that I mentioned the thing to one, and perhaps to more, of the managers of the institution, I having heard it somewhere else.

Q. About what time did you mention it?

30

A. My recollection is indistinct about it; my impression is that it was in the year 1858, that being the first time I heard of it.

Q. Which of the managers, as near as you can recollect, did you mention it to?

A. Mr. Macknet; I think Mr. Joel W. Condict; possibly Mr. Elihu Day, I have talked with him about matters of their institution, I might possibly have talked with him about it.

Q. What did you say to them, and what reply did they make?

A. I will not pretend to give the words of any conversation, being so long since; I think I told the story as I had just previously heard 40 it, that the Savings Bank or its treasurer had taken usury of some one in the country; I think Mr. Muir's name was mentioned at that time.

Q. Did you tell them how much it was, what the transaction was, as you had heard it?

A. I think I told them that I heard that Mr. Mott had taken a hundred dollars for the procurement of this loan, or for this loan; the charge was that the Savings Institution was taking usury, through their treasurer.

Q. Was it stated by you or by them, in the conversation with them how much the loan was for, for what amount of money?

A. I think it was stated by me as a part of the narration, that it
10 was for five thousand dollars.

Q. Was that all that you stated to them, as stated to you by other people?

A. All that I can now recollect.

Q. What did they answer or say, in reply to this statement, or any of them?

A. I don't distinctly remember anything that was said in reply; it was my impression that Mr. Macknet said that he had heard of it before.

Q. Did any of them deny the truth of the statement?

20 *A.* They denied that the Savings Institution had ever taken usury, and I think that one, or all of the gentlemen that I spoke with on the subject professed to disbelieve that Mr. Mott had taken anything.

Q. Did they say anything in regard to Mr. Mott, about his transactions in that way of taking usury?

A. I think nothing, sir.

Q. Did you hear them say anything about charging Mr. Mott one hundred dollars on their books, which it was represented that he had taken. [Objected to, as there being no representing?]

A. No.

30 *Q.* Did they say anything about charging one hundred dollars—they, or any of them? charging Mott with a hundred?

A. No, I never heard that idea till it was suggested to-day in the examination of Mr. Macknet.

And, being duly cross-examined, says:

Q. Mr. Weeks, in 1858, when you say you first heard of Mr. Mott's taking a hundred dollars of Mr. Muir, who did you hear it from; who first told you?

A. Theodore Runyon, Esq.

Q. Did he say who he had heard it from?

40 *A.* I don't recollect positively that he did, but I have this impression relative to that conversation: that he had heard it in some shape from Mr. Muir, directly or indirectly.

Q. Did you state to Mr. Macknet and the others to whom you mentioned it, who told it to you?

A. I think not ; I am not certain about that, however.

The whole of the examination of John R. Weeks objected to, as being hearsay testimony. Objection by Algenon S. Hubbell, of counsel for complainants.

J. R. WEEKS.

Taken, sworn and subscribed before me, June 17, 1862, at Jersey City,

A. S. JACKSON, *M. C.*

And thereupon the examination was adjourned to Wednesday, June 18, 1862, at 11 o'clock, A. M., at my office, No. 9 Exchange Place, 10 in Jersey City. On Wednesday, June 18, 1862, the examination was continued in my office, in presence of James J. Scofield, Esq., of counsel for defendant Muir, and Alfred Mills, Esq., of counsel for defendant Brittin.

Alfred B. Brittin, a witness produced on the part of the defendant, Josiah F. Muir, being duly sworn, deposes and says :—

Q. Are you the executor of your father, Abraham Brittin ?

A. Yes, sir.

Q. Did you receive a notice to bring papers here ?

A. I did.

Q. Have you the papers ?

A. Yes, sir ; the notice I received last evening, and here it is.

[The notice offered in evidence, and marked Exhibit No. 2, on part of defendant, Josiah F. Muir].

I have the care and custody of all my father's papers.

Q. Have you got any papers as respects the dealings of your father and Josiah F. Muir ?

A. Yes, sir ; the signature, at the bottom of the paper here shown me, is, I presume, in the handwriting of Josiah F. Muir ; the body of the handwriting is in my father's hand.

[The paper here is offered in evidence, and marked Exhibit No. 3, on part of defendant, Josiah F. Muir].

A check of Abraham Brittin offered in evidence, and marked Exhibit No. 4, on part of defendant, Josiah F. Muir.

These are all the papers that I ever found as respects the dealings of my father and Mr. Muir, except a bond and mortgage and policy of insurance.

The counsel for the defendant, Brittin, says that he has nothing to ask, at this stage of the case, by way of cross-examination.

A. B. BRITTIN. 40

Taken, sworn and subscribed, June 18, 1862, before me, at Jersey City.

David J. Ward, a witness produced on the part of the defendant, Josiah F. Muir, being duly sworn, deposes and says:

Question. Where do you reside, Mr. Ward?

Answer. In East Madison, Morris county, one mile direct across from Mr. Brittin.

Q. Do you know a stud colt that Mr. Muir got of Abraham Brittin, deceased? [Objected to.]

[Objection is made to taking any evidence in relation to usury, affecting the bond and mortgage given by Josiah F. Muir to
10 Abraham Brittin. Objections made by Alfred Mills, of counsel for defendant, Brittin.]

A. I never saw the colt after Mr. Muir bought it.

Q. Do you know a colt, a stud colt, that Mr. Brittin had in the latter part of 1858, and up to February 1859? State what you know on that subject? [Objected to.]

A. I saw one there on his farm a few months previous to his selling one to Mr. Muir.

Q. Describe the colt, as to his color, size and so on?

[Objection is here made to all evidence from any witness, respecting
20 the character and value of the colt.]

A. He was a bay colt, of medium size; I could'n't tell his age; I didn't look in his mouth; he told me; I don't recollect; he was coming three or four years of age the next spring; that's what he told me.

Q. Do you know whether he was a blooded colt or not?

A. Well, I didn't count him so; I didn't consider him a high-blooded horse.

Q. Do you know what horse he is out of?

A. No sir.

Q. Did you ever hear Mr. Abraham Brittin in his life say out of
30 what horse he was?

A. He told me that day, but I don't recollect now.

Q. Do you recollect or not whether he said that he was out of the Edgar horse or not; the Harpinas horse, owned by Edgar?

A. I do not recollect.

Q. Was he reputed, in the neighborhood, as a blooded horse?

A. I am not acquainted in that neighborhood, and I could'n't tell you.

Q. Was he a stud colt?

A. Yes sir, when I saw him.

40 *Q.* When did you see him, more than once?

A. I saw him twice.

Q. When?

A. I saw him once when he was a year old past, the next time in the fall previous to his parting with him.

Q. What was the cash value of the colt when you last saw him?
[Objected to.]

A. I wouldn't want to give for him as much as he was worth as a stud.

Q. Suppose you had owned him, what was the highest cash value at which you would sell him for, in your opinion for cash? [Objected to.]

A. Well, I perhaps might have got as much as one hundred and fifty dollars for him, but I didn't want to buy him even at that price myself.

Q. Would it, or would it not have been difficult to have sold him 10
for one hundred and fifty dollars in cash at that time, in your opinion?

A. I have no doubt that he would bring that to many, on account of his style, perhaps more, I don't know what he would bring.

Q. Well, how much would he bring, give us your opinion?

A. If I had him I should sell him for one hundred and fifty dollars rather than keep a stud on the place.

Q. Now was he fitted for a stud, was he a proper horse to keep as a stud? [Objected to.]

A. Some might object to him on account of the size of the horse, with others it might overcome it on account of his beauty. 20

Q. You have not yet answered whether he was a proper horse to keep as a stud?

A. I have answered that once in my estimation; some might fancy him on account of his beauty; I should not, because I prefer a larger horse, that's what I mean.

Q. Had he any defects in respect to his beauty, had he any defects that way?

A. I don't understand the question.

Q. Do you mean to say that he was perfect in beauty in every point; were there no points about him that were not beautiful? 30

A. I considered him a very handsome turned colt.

Q. I say you hav'n't answered my question; I asked you was he in every respect beautiful?

A. Yes sir, I considered him so.

Q. Was he in every point beautiful?

A. I have answered that.

Q. Did you, Mr. Ward, are you acquainted with horses, are you an owner of horses, and are you acquainted with the value of them?

A. Yes sir, to some extent.

Q. Have you dealt in them too? 40

A. Yes sir.

Q. You made it a business to any extent?

A. No sir,

Q. Did you ever talk with Mr. Abraham Brittin about getting the colt from him, trading with him, if so, when?

A. The fall previous to his selling it to Mr. Muir, or the summer previous.

Q. Did he propose the trade or you?

A. I proposed it for two others, not for that one.

Q. What did you offer in trade and what did you propose to get of him? [Objected to.]

A. Two iron gray mares for two yearling colts past of his.

10 *Q.* Well, what was said and done about this colt then?

A. We could not agree for those two; he proposed trading for this one, the stud colt.

Q. What did you value your horses at that you proposed to trade? [Objected to.]

A. Three hundred and fifty dollars.

Q. What did he value this colt at?

A. One hundred and fifty dollars he asked for him.

Q. Did he or not offer to take your horses at your price if you would allow him one hundred and fifty dollars for the colt?

20 *A.* No, sir.

Q. Did he make any offer in respect to the trade of this colt?

A. No, sir.

Q. What did he say in respect to trading?

A. He offered to trade; he would give me good trade if I would trade with him; he wanted the two mares for this reason, he wanted the two mares to put on his farm to raise colts from, that's all.

Q. Well, how much did he value the mares at?

A. We only talked about the difference in the boot, nothing was said about the price.

30 *Q.* What did he say about the price, the difference?

A. I don't recollect; we didn't agree upon the trade.

Q. What did he say about the valuation of his horse, one hundred and fifty dollars, his colt?

A. He said he was worth a great deal more money than that; he would give me a big trade if I would trade with him.

Q. Was you willing to allow him, in the trade, one hundred and fifty dollars for his colt, he taking your mares at the valuation you put upon them, three hundred and fifty dollars?

A. No, sir; I did not want the stud horse at any price.

40 On being cross-examined, says:

Q. What is your business, Mr. Ward?

A. I have been farming.

Q. When was it that you went to Mr. Brittin's and saw this horse at the time this trade was proposed?

A. In the summer previous to his parting with him.

Q. Can you tell the month, what part of the summer? was it before haying or not?

A. After haying.

Q. Where were you when this conversation took place?

A. Out in the pasture, looking at his colts.

Q. Was this stud horse there in the lot?

A. No, sir.

Q. Do you know how many stud horses Mr. Brittin had at that time?

10

A. No, sir.

Q. Did you see any stud horse there that day?

A. None but this colt.

Q. Where did you see him?

A. In the stable.

Q. For what purpose did you go to Mr. Brittin's that day?

A. At his request I went up to trade with him for the two colts that were in the field.

Q. When was it that he asked you one hundred and fifty dollars for the colt—in what part of the conversation that you then had with 20 him, I mean?

A. While we were in the cow yard.

Q. Before or after the trade for the other colts fell through with?

A. Afterwards, on my way out to my wagon; he said he would give me a big trade, if I would trade, as he wanted the mares.

Q. It was then in connection with a trade for your mares that he put this valuation on his horse, was it not, and after the remark which you have just repeated?

A. That is more than I can tell; I suppose he would sacrifice on him rather than to forfeit the mares.

30

Q. Did he or not seem very anxious to get the mares?

A. Yes, sir; we had frequent conversations about them previous to that day; he said he had owned one of them and he never would part with her, if he could get her back again.

Q. Were they a valuable pair of mares?

A. Yes, sir; for his purpose.

Q. For what purpose did he want them?

A. To do his mowing and to breed from.

Q. Mr. Ward, Mr. Brittin was a large landholder at that time, was he not?

40

A. Yes, sir; owned some 400 acres, he said, in that tract—only one tract.

Q. He kept a number of horses, did he not?

A. Yes, sir.

Q. Can you recollect, Mr. Ward, whether this colt was two years old or three years old at the time of this conversation you have spoken of?

A. I know in a short time after that he parted with it, so said, at any rate, to Mr. Muir.

Q. Do you recollect whether it was the next winter or the second winter after that that he sold it to Mr. Muir?

A. It was only a few months, after.

Q. You do not keep a stud horse, Mr. Ward, do you?

10 A. Yes, sir.

Q. Did you keep one at the time of this conversation you have spoken of?

A. No, sir.

Q. Had you been in the habit of keeping or dealing in horses of that kind, at that time?

A. I have had two or three previous to that time.

Q. Do you know the market price of stallions, at that time?

A. I do for those I own myself, previous to that time.

Q. You did not want a stallion at any price, did you?

20 A. Not at that time.

Q. Did you make any inquiry into his pedigree?

A. No, sir.

Q. If you had been going to buy a stallion, or to fix the value of one, you would have made such inquiries, would you not?

A. Yes, sir.

Q. How far was the farm, where this horse was kept, from your house?

A. Seven miles or over.

DAVID J. WARD.

30 Taken, sworn and subscribed June 18, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

Israel W. Budd, a witness produced on the part of the defendant, Josiah F. Muir, being duly sworn, deposes and says:

Q. Where do you reside?

A. Chatham, Morris county, New Jersey.

Q. What is your business, Mr. Budd?

A. Farming.

Q. Deal in horses also, to some extent?

40 A. Well, a little in them, once in a while.

Q. Do you, when called upon, alter horses, studs?

A. Yes, sir.

Q. Did Abraham Brittin, in his lifetime, call upon you to alter the stud colt which he afterwards sold to Mr. Muir; if so, at what time, as near as you can tell? [Objected to.]

A. He spoke to me about it; said he thought he would have him altered; and then he sot a time when the signs was right, and it was convenient to come up and ~~alter~~ him; it was three times he spoke to me about it; the last time before I was to go he met me in the road and told me I need not come, for he thought he would sell him as he was.

10

Q. Did you ever see the colt more than once?

A. I saw him after that.

Q. More than once after that?

A. Yes, sir; I saw him several times.

Q. Was it the same colt that Muir afterwards had?

A. Brittin told me it was.

Q. He told you this after he had sold him to Mr. Muir?

A. Yes, sir.

Q. Did he ever put a valuation on him in any conversation with you?

20

Q. Nothing more than he said he was a valuable colt and that he wanted me to buy him.

Q. Was he a blooded colt, of the thorough bred stock?

A. No, sir, I don't think he was of the thorough bred stock, but he had blood enough about him, but was not high blood.

Q. Out of what horse was he?

A. I think he told me that he was out of Harpinas.

A. Was that the one that Mr. Edgar owned?

A. Yes, sir, owned part of him.

Q. What was the price paid for the use of that horse?

30

A. I think five or six dollars, I don't know which.

Q. To insure a foal?

A. Yes sir.

Q. Was he what is called common stock or blooded; what was his reputation in that respect?

A. Well, he was counted a good horse, his pedigree I never heard boasted on, no more than he was good horse.

Q. Did you ever read or hear his pedigree?

A. I don't think I ever did.

Q. Do you know the mare this colt was out of?

40

A. Well, Mr. Abraham Brittin had a grey mare, which I don't mistake he told me this stud colt was out of.

Q. Did you ever own that mare, Mr. Budd, or have her in your possession?

A. I had her in my possession.

Q. In what way? under what arrangement?

A. He set a price on her, and that I might take her and try her, and if I didn't like her, I might bring her back; I mean Abraham Brittin.

Q. What was that price? [Objected to.]

A. Twenty-five dollars.

Q. Did you keep her or return her?

A. I returned her,

10 Q. Was she what they call blooded stock or common stock?

A. I couldn't tell; she was a good bodied mare, looked like a good traveling beast.

Q. Did you ever understand from him that she was what is called blooded stock? [Objected to.]

A. I never did hear him, no more than she was a first-rate mare in her younger days.

Q. What was the reason you returned her, Mr. Budd?

A. She was so old that she couldn't eat unless her feed was all cut for her.

20 Q. What was she worth at 7 to 10 years of age? [Objected to.]

A. Well, that I don't know; can't tell.

Q. What was the value of this colt when you saw him?

A. Well, that's more than I am able to tell what the value of him was.

Q. Well, as near as you can?

A. If I wanted to put a value on him, I should want to drive him and see what he was, but to see him standing as I seen him, I wouldn't be willing to give over one hundred and fifty dollars for him.

Q. How many times did you see him before Mr. Muir got him, and 30 how many times after that?

A. I don't really recollect of seeing him to put any value on him, before Mr. Muir got him.

Q. How long after Mr. Muir got him you first saw him?

A. I don't think it was over a week.

And, being cross-examined, says:

Q. When was it that Mr. Brittin spoke to you about altering his colt?

A. I think it was long late, when he first spoke about it, late in the spring.

40 Q. Spring of what year?

A. I don't know that I can tell the year; it was the same season that Mr. Muir bought the horse.

Q. When did Muir buy the horse?

A. It was pretty well towards spring.

Q. You did not go to see the horse that he requested you to alter, did you?

A. No sir.

Q. How far do you live from Mr. Brittin's farm?

A. I should think it was close to eight miles, that's what they call it.

Q. Did you ever examine this horse for the purpose of putting a valuation upon him?

A. I didn't, but I put a pretty good look at him.

Q. Did you ever hear Josiah F. Muir value him? if so, when? 10

A. I don't think I did.

Q. Do you know to whom Muir sold the horse?

A. No sir; he sold him in the city, that's all.

Q. New York?

A. Yes sir.

Q. Do you know what he sold him for, what price?

A. I do not.

Q. Did Muir ever tell you what price he got for him?

A. I don't think he ever did, he said that he trafficked him off, he did not sell him out and out, if I remember right. 20

Q. Did you ever try the speed of this horse or examine him, except as you have stated, while he was standing in the stable?

A. I saw Mr. Philhower or his son riding him one day.

Q. You speak about a grey mare that Mr. Brittin offered you, when was that?

A. I don't think I could tell the time, it is years ago—3 years ago I should think—I recollect the mare well.

Q. When was it that you think Mr. Brittin told you that this stallion was out of that mare?

A. It was the time when I talked of buying her. 30

Q. Was or not this stallion a very handsome horse?

A. Well, I didn't see anything so very handsome about him, I thought he was a very good looking horse.

Q. Do you know the age of this mare, at the time he offered her to you?

A. No sir.

And direct examination being resumed, says:—

Q. Do you know how many hands high this colt was when Mr. Muir got him?

A. I don't. 40

Q. What would you suppose was his height?

A. I should think he was 15 hands—guess at it, not far from that.

J. W. BUDD.

Taken, sworn and subscribed June 18, 1862, before, me at Jersey City.

A. S. JACKSON, *M. C.*

George Philhower, a witness produced on the part of the defendant, Josiah F. Muir, being duly sworn, deposes and says :

Q. Where do you reside, Mr. Philhower?

A. Milburn township, Essex county.

Q. Do you know this stud colt that Mr. Muir bought of Mr. Brittin? State your means of knowing, when and where?

10 *A.* I know the stud colt Mr. Muir bought; he fetched him, or a couple of men did, to my house, and I kept him; Mr. Muir was with the men.

Q. Do you know whether they brought him from Mr. Muir's or directly from Mr. Brittin's to your place?

A. I thought they fetched him from Mr. Brittin's.

Q. How long did you have him in your possession, and what became of him?

A. Well, it wasn't many days; he was stolen from there.

Q. How many days, as near as you can tell?

20 *A.* I don't think it was over four or five days.

Q. What was his size, color and age?

A. Well, I should think he was about fifteen hands high; I took him to be coming four years old, by the looks of his mouth; he was a bay.

Q. What was his style?

A. He was a nice style colt, I thought.

Q. Anything extraordinary?

A. Well, I don't know as it was.

Q. Was he broken to harness, saddle?

30 *A.* Not that I know of; my son rode him a few times; two or three times.

Q. What was his speed?

A. Well, I don't know as to that.

Q. What you saw of him did he indicate any extraordinary speed?

A. Well, about an ordinary traveller, I think.

Q. What was his value?

A. Well, I should think he was worth about one hundred and fifty dollars, as near as I can tell.

Q. Was he more valuable for being a stud?

40 *A.* He wouldn't be for me.

And being cross-examined, says:

Q. Do you want to keep a stud horse?

A. No, sir.

Q. The value of a horse depends upon the use for which he is wanted, does it not?

A. Yes, sir.

Q. At the time this horse was kept at your place had he shoes on or not?

A. I don't hardly think he had.

Q. You say he was stolen; where was he stolen from?

A. From my place.

Q. At what time?

A. I think it was on the 4th of March, three years ago last March. 10

Q. Was the horse brought back there?

A. Yes, sir.

Q. By Mr. Muir?

A. Mr. Muir and I went to New York and brought him back.

Q. When was he brought back?

A. On the 17th of March, St. Patrick's day, I shall never forget it.

Q. Was he stolen in the night or day time?

A. In the night, I believe.

Q. When was he found and taken possession of by Muir? 20

A. He was taken on Friday night, and I and Mr. Muir went to New York on Sunday next, and Mr. Muir told me that he had found him that Sunday night after I left New York.

Q. Why wasn't he brought home earlier?

A. He was so lame they could'nt fetch him.

Q. Had he any shoes on the time he was stolen?

A. I think not.

Q. How far is it from your house, where you lived at that time, to New York, by the road?

A. I think they call it 19 or 20 miles. 30

Q. When you first saw him after he was recovered in New York, were not his feet injured by the travel?

A. Well, I couldn't say as to that whether they were or not.

Q. Did Mr. Muir advertise the horse after he was stolen?

A. I think he told me he did; I aint sure that he did.

Q. Offer a reward for him?

A. If he advertised him, he offered a reward for him, I suppose.

Q. Did you hear Mr. Muir say what he valued him at?

A. No sir; I don't think I did.

Q. Or what he was worth?

A. No sir. 40

Q. Do you know what he sold him for, how much?

A. No sir, I couldn't tell; I think he told me, but I forget.

And being again examined in chief, says :

Q. In respect to the value of the horse for the purpose of selling, would he be worth more as a stud than an altered horse ?

A. If I wanted to buy him, I would rather have him altered ; he would be worth more to me.

Q. I want to know, not for your own views, but for the purpose of selling him, would he be worth any more as a stud for the purpose of selling him ?

A. I don't think he would.

10 And being again cross-examined, says :

Q. You are not a horse dealer, are you ?

A. I have dealt in horses a little.

Q. I mean by profession ?

A. No, sir.

And being again examined in chief, says :

Q. How many have you bought and sold in your life time, as near as you can tell ?

A. Well, as near as I can tell, not more than 5 or 6.

Q. Are you pretty well acquainted with the value of horses or not ?

20 *A.* Well, I always thought that I could suit myself better than anybody else could.

Q. Do you raise horses, Mr. Philhower ?

A. I have raised some.

GEORGE PHILHOWER.

Taken, sworn and subscribed, June 18, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

Whereupon the examination was further adjourned to Thursday, June 19, 1862, at 11 o'clock, A. M., at my office.

30 On Thursday, June 19, 1862, the examination was continued in my office, in presence of James J. Scofield, Esq., of counsel for defendant, Muir, and Algenon S. Hubbell, of counsel for complainants.

Josiah F. Muir, one of the defendants, being duly sworn, on his oath deposes and says :—

Q. You are one of the defendants in this suit.

A. Yes, sir.

Q. I want you state, of your own knowledge, in respect to the loan, and bond and mortgage given therefor, by you, to the complainants, and the circumstances and the agreements respecting them, and especially the part bearing upon the question of usury, set up in your answer.

A. Well, I called on William H. Mott, in the city of Newark, State of New Jersey, in the month of June, eighteen hundred and fifty, and asked him if he knew where I could hire four or five thousand dollars, and he said he thought I could get it of the Savings Institution (the complainants in this suit); after that I had Asa Whitehead to make an application to the Savings Institution for the loan; he notified me that they refused it; after that William H. Mott sent me word that he wanted to see me; I can't say how long after, but it was a few days after Mr. Whitehead notified me, and before the loan was made; I called and saw Mott; he said the Savings Institution had concluded 10 to let me have a loan of four thousand dollars, if I would comply with their terms, to pay two and a half per cent. on the dollar; I told him I wanted five thousand dollars; I asked him what the rates would be—what the price would be; then he said two per cent. on sums of five thousand dollars, and he said I might have it; that the amount would be one hundred dollars—I mean the amount for the loan.

Q. What reply did you make when he said he would take a hundred dollars?

A. I told him I would give it.

Q. Was that for interest or above the interest—the interest on the 20 mortgage?

A. Well, it was a hundred dollars for the loan.

Q. Was or was not the mortgage to bear interest besides that; what rate?

A. It was to bear interest at the rate of six per cent.

Q. Well, go on and state further what you done, in pursuance to that arrangement?

A. Well, the papers were made out and the morning I (witness looks at a bond and mortgage and says, “these are the papers,”) I paid him, Mr. Mott, one hundred dollars about one hour before he 30 gave a check for five thousand dollars.

Q. Did you give him the bond and mortgage, also—this bond and mortgage here?

A. Yes sir.

Q. Did you give him a check for the hundred dollars, or did you give him the money?

A. I gave him the money.

Q. Who paid the expense of making the title?

A. I paid it.

Q. Do you recollect when Mr. Whitehead first made the applica- 40 tion on your behalf, what date?

A. No, I do not know what date, it was the fore part of June.

Q. Do you recollect when it was that you went to answer Mr. Mott's request, to come and see him?

A. It was along the latter part, the middle of June.

Q. When was it that Mr. Whitehead wrote the written communication for the loan, do you know?

A. It was the fore part of June.

Q. Did you personally have any communication with any of the loaning committee or managers, except Mr. Mott, with regard to this loan and mortgage?

A. No.

Q. How came this application to be made in Jonathan M. Muir's
10 name, by Mr. Whitehead, instead of your name, can you tell?

A. No.

And being cross-examined, says:—

Q. How came you to apply to Mr. Mott, to obtain a loan of money?

A. I was doing business in the State Bank and asked him if he knew where I could get four or five thousand dollars.

Q. Did you ask him if he would try and find the money for you?

A. No.

Q. I wish you to state more particularly when you first heard
20 that the first application for the loan was refused?

A. Before the middle of June.

Q. Where did you hear it?

A. At Chatham.

Q. How?

A. By a letter from Mr. Asa Whitehead.

Q. How did Mr. Mott send word to you about coming to see him?

A. By Kellogg M. Muir.

Q. Can you state when you were informed by Mr. Kellogg M. Muir that Mr. Mott wanted to see you?

30 A. It was after the middle of June.

Q. Can you not state the time more definitely?

A. Well, it might have been half way between that and the end of the month; I can't state it more definitely.

Q. When did you see Mr. Mott, and where, after that?

A. In the State Bank at Newark, a few days after that, a few days after I was informed by Kellogg Muir.

Q. Did he, at that time, state that you could have the loan?

A. Yes.

Q. You mean the loan of four thousand dollars, or five?

40 A. Five thousand.

Q. Do you mean to say, at the first interview after he sent word to you, he stated to you that you could have the loan of five thousand dollars?

A. He first stated I could have four thousand, and afterwards stated I might have the five.

Q. Did you at that time state to him you would take five thousand dollars?

A. Yes.

Q. Did you, at that time, talk with him about the security you were to give for the loan?

A. Yes.

Q. Did he tell you then what you must do about preparing the papers and the evidence of title of the property that was to be security for the loan?

A. He knew that I had bought the property, and when I got title for it I was to give him the mortgage on it.

Q. How did he know it?

A. I don't know; he told me he knew it.

Q. Did you direct any one to prepare the papers, and an abstract of title and searches?

A. Yes.

Q. Whom did you direct to do this?

A. There was three that—I think it was Mr. Robert Van Arsdale; 20 Asa Whitehead was employed in it for me; the deed was drawn by Mr. Whelpley to me; the mortgage was made out at Robert Van Arsdale's office.

Q. Where were the papers executed, that is, the bond and mortgage?

A. They were executed in New Providence township; I mean where I and my wife signed them.

Q. When did you deliver the bond and mortgage to the Savings Institution?

A. The 10th of July.

30

Q. Was that the day you received the money?

A. Yes.

Q. How many times did you see Mr. Mott about this loan?

A. As many as twice.

Q. Did you not see him more than twice, about this loan, I mean?

A. No, until it was understood.

Q. Did you not offer Mr. Mott to pay him for his services if he obtained the loan of money for you?

A. No.

Q. At no time?

40

A. No.

Q. Did you know who were the loaning committee of the Savings Institution at that time?

A. Well, I knew part of them.

Q. Who did you know?

A. I knew William H. Mott, as the treasurer; I knew Mr. Charles S. Macknet, I knew them two; Mr. Mott told me Mr. Macknet was one, that he was another, that Samuel Meeker was one, Mr. Van Antwerp also.

Q. Did you speak either to Meeker, Macknet, or Van Antwerp about this loan, if so, which?

A. No.

10 Q. At that time the loan was made, did you inform either of those men that Mr. Mott charged you a hundred dollars?

A. No.

Q. Have you ever spoken to either of them since, on this subject of the paying the hundred dollars to Mott?

A. Yes.

Q. Who?

A. To Charles S. Macknet.

Q. Any other?

A. No, none of that committee.

20 Q. When did you first speak to Mr. Macknet on this subject?

A. It was about 1852 or 1853.

Q. What led you to speak with him then about it?

A. Their committee was about, (I mean the committee of the Savings Institution) was asking of me to pay the principal; I told Mr. Macknet that they had not ought to force the payment of it, that I paid their treasury man, Mr. Mott, one hundred dollars; well, Mr. Macknet said that he knew, or was satisfied that Mott took a hundred dollars for the loan, and he said he knew it was in my power to throw them out of it; that Mr. Mott shaved everybody.

30 Q. After this conversation, did you pay any of the principal of this loan?

A. Yes.

Q. How much, and when?

A. I got it down on my book, 1854, in July, one thousand dollars; they have got it the 10th of July, received one thousand dollars, (I read from the bond;) in 1855, January 13th, received one thousand dollars, as I read from the bond.

Q. Since the conversation you had with Mr. Macknet, respecting the hundred dollars, have you talked with any of the committee or
40 the managers on the subject?

A. No.

Q. Do you recollect how you paid Mr. Mott the hundred dollars you speak of?

A. I gave him a hundred dollar bill.

Q. Where?

A. At the State Bank.

Q. Before or after you received the five thousand dollars?

A. About one hour before.

Q. How did you receive the five thousand dollars, how was it paid to you?

A. By a check on the State Bank of Newark.

Q. Did you draw the money at the time you were there, or did you deposit it to your credit? 10

A. The check was handed over to Abraham Brittin.

Q. Why handed to Abraham Brittin? was it by your direction?

A. Yes; Abraham Brittin was a commissioner of William Spencer, deceased, of his estate, the money was going to the commissioners of said estate for my title.

Q. Do you know when Mr. Mott died?

A. Not exactly; it was the year of 1850, I think; it was soon after this loan.

Q. Did Mr. Mott tell you when the interest would commence on the loan? 20

A. He said he wanted it to commence on the first of the month—1st of July, I mean.

Q. Did he state to you that they charged interest from the time the loan was granted?

A. No.

Q. Why did he fix the 1st of July for the time for the interest to commence and the date of the bond and mortgage?

A. So that he could make up his accounts every six months from the 1st of July.

Q. Why did you not get the money at that time? 30

A. I had no title for the property at that time.

Q. You were not, then, ready with your title and papers?

A. No; I was not.

And being re-examined-in-chief, says:

Q. Is Mr. Asa Whitehead dead?

A. Yes.

Q. Did Mr. Mott say anything about having the money ready by the 1st of July?

A. I don't remember of his saying so.

Q. When was it that he told you that he wanted the bond and 40 mortgage dated the 1st of July; was it before or after the first of July?

A. He told me before the 1st of July.

Q. Did you tell him anything that you had not got your title at that time—that you had not got your deed?

A. Yes.

Q. Did you tell him when you would have your deed?

A. No.

Q. What did you tell him about that?

A. I told him it was in the hands of the court, and as soon as the commissioners could make it out I would have it.

10 Q. Did you have more than one conversation with Mr. Macknet about this loan and the hundred dollars?

A. I had no conversation with him about the loan, but had a conversation with him about the hundred dollars.

Q. Can you be certain as respects the time when that was; can you be more certain than you have been?

A. No.

And being re-cross-examined, says:

Q. When he told you before the 1st of July that he wanted the papers dated the 1st of July, did he state that they had the money
20 ready for the loan?

A. No; he made no statement that they had; didn't say that he had.

JOSIAH F. MUIR.

Taken, sworn and subscribed, June 19, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

Whereupon, the examination was further adjourned to Friday, June 20th, 1862, at 11 o'clock, A. M., at my office.

Friday, June 20th, 1862, the examination was continued in my
30 office, at 11 o'clock, A. M., in presence of James J. Scofield, of counsel for defendant, Muir, and Alfred Mills, of counsel for defendant, Brittin.

Benjamin Crane, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Question. Where do you reside, Mr. Crane?

Answer. In Morris township, Morris county.

Q. How near the farm that was Mr. Abraham Brittin's, in his life time?

A. Well, I should think, from house to house, five hundred yards;
40 the farms adjoin each other.

Q. How long have you resided there?

A. Been there ever since 1817.

Q. Did you know a colt which Mr. Brittin had on that farm, which he afterwards sold to Mr. Muir; a stud colt?

A. I did.

Q. Did Mr. Muir have that colt afterwards?

A. It was said that the colt was sold to Mr. Muir; I did not see the sale nor hear it, only from hearsay.

Q. How old was the colt when you last saw him on that farm, as near as you can tell? 10

A. Well, I think he was a coming four years old, in his fourth year.

Q. What was his color?

A. He was a bay horse.

Q. Was he a good looking horse?

A. Yes; a good looking horse.

Q. Was he fast or otherwise?

A. I couldn't say.

Q. Was he broken when you saw him last?

A. He was broken to ride with the saddle, but I don't think he was broken to harness. 20

Q. Was he lame or injured in any way when you knew him? [Ob-
jected to.]

A. Well, the colt was two years old and past; well, I know nothing that ailed the horse, till I see him one day out in the lot; I see him and he was lame.

Q. What was the matter of him?

A. Well, that is something that I can't state exactly, I see that he was lame.

Q. What appeared to be the matter to the best of your judgment?

A. Well, I supposed it to be from standing, and from being fed a 30
little too much; not having exercise enough.

Q. Well, do you think he had been foundered, or what do you think?

A. Well, it is naturally supposed that a horse overfed is foundered.

Q. How long did he continue lame?

A. Well, I can't positively answer that; he was out sometime in the lot, the best part of the summer, I think.

Q. Where and how had they kept him before the time you saw him in the lot?

A. Well, they had kept him in a stable, in a cow-house, in a stable 40
made of one end of a cow-shed.

Q. Did they feed him on grain or not?

A. It was so said, they fed him on grain.

Q. Was he or not less valuable for that lameness when Mr. Muir got him?

A. Well, when Mr. Muir got him I don't know that I saw any lameness on him at the time; I don't remember that I did.

Q. Would you or not have given as much for him, if you wanted to buy him yourself, on that account, when Mr. Muir got him?

A. Well, I should not.

Q. How lame was he Mr. Crane, when you saw him in the pasture?

A. He was a horse considerably lame, he was not able to get about 10 much, not conveniently.

Q. Was he lame in all his limbs or not?

A. He appeared to be stiffened.

Q. Well, in all his limbs or only a part? did he appear to be stiffened all over?

A. He appeared to be stiffened in his limbs; in his hind legs and fore legs.

Q. Did he ever fall down from this stiffness or lameness?

A. Well, I don't think I ever see him fall down.

Q. How fast could he move?

20 *A.* Well, he couldn't move very fast at that time, moderate; I didn't see him go over a walk.

Q. What kind of stock was he?

A. I am not positive; he was of the horse Splendid or Harpinas; I don't know which.

Q. What is your impression as to which it was?

A. Well, my impression it was the Harpinas, but I may be mistaken.

Q. What was the Harpinas stock, had it any pedigree, to your knowledge? was he anything more than of a good common stock?

30 *A.* Not that I know.

Q. What was the mare; what was her stock?

A. I do not know.

Q. What was the mare worth when you knew her?

A. Well, the mare, I should suppose, when she was young, was worth from a hundred to ninety dollars.

Q. Do you say that you owned the mare?

A. Mr. Abraham Brittin raised the mare and sold her to John Tyler Muchmore.

Q. How much did she bring?

40 *A.* Well, I think she brought something like ninety or a hundred dollars.

Q. Was that a public vendue?

A. At private sale.

Q. What was the size of this stud colt when Mr. Muir bought him?

A. Well, I should think the horse was somewhere near 15 hands—might have been a little over.

Q. What was the color of this mare he was from?

A. She was a bay mare—not grey.

Q. What was the value of this stud colt when Mr. Muir got her?

A. He might have been worth more to some than to others, but I, for my part—do you want to know what I would give for him?

Q. No; I want to know what you could get for him, if you had him for sale, representing him just what he was? 10

A. That's a positive answer; according to my opinion, I should think a hundred and fifty dollars was a fair price.

Q. Would you have been willing to have given a hundred and fifty dollars for him yourself?

A. Well, I don't think I would have given any more; if I hadn't known the horse and wanted to buy one of that description; it would have been about the price I should have been willing to give for him.

Q. Was he a suitable horse to keep for a stud?

A. Well, I don't know but what he might have been a suitable horse for a stud, from the make of the horse. 20

Q. Had he sufficient size for that purpose?

A. Just as people sees fit about that; for some purposes he was.

Q. After Mr. Brittin sold the mare, from which this colt was, did you ever hear of his selling her or offering her for sale again?

A. Mr. Brittin bought her back again, after he had sold her to Muchmore; I never know of his offering to sell her again.

Q. Do you know of her being sold by the executor, or anybody else, after that time?

A. She was sold at the sale, when the property was sold on the farm. 30

Q. By the executor, you mean?

A. I don't know whether by the executor or the man that purchased the farm.

Q. How was she sold, what did she bring, and who bought her?

A. She was sot up at the auction; she brought, as near as my memory serves me, she went up to twenty dollars; well, Mr. Johnson took the horse away—Thomas V. Johnson.

And being cross-examined, says:

Q. Mr. Crane, how long have you lived where you now reside?

A. I have lived there and right opposite ever since 1817; I was 40 away for five years, and came back in 1841.

Q. Was the colt in the habit of running in pasture in the summer time?

A. I think not, after he was one year old ; I don't think he was.

Q. Was he not put out in pasture every summer before he left there ?

A. No.

Q. Where was he pastured, Mr. Crane ; where from your house ?

A. Well, it was behind the house ; Mr. Brittin's farm house, adjoining the road ; he run in that lot and the adjoining lot, that run down to the Caldwell lot ; used to be called so, now it is the Roberts' lot.

10 Q. Did you ever go into the lot to examine the colt ?

A. I never did.

Q. Your opinion, that he was foundered, is based on the idea that he was overfed, was it not ?

A. That is what it was supposed to be, from appearance.

Q. Do you know whether or not he was overfed ?

A. I never saw the horse fed ; I have heard say—

[Counsel for Mr. Brittin says, we don't want you state what you have heard say, that is not what was asked you.]

[Counsel for Mr. Muir insists that the witness should go on with his
20 answer and state, if he has heard Mr. Brittin, or the person under him that took care of the colt, say anything about it ; this is competent evidence and pertinent to the question.]

[The Master decides that witness should not go on and state hearsay evidence, unless it is made to appear that the witness has heard Mr. Abraham Brittin or his servants speak of the colt.]

[Mr. Scofield then insists that the witness may answer the question, if it relates to anything which Mr. Brittin said.]

[To which counsel for defendant, Brittin, consents, for the purpose of hastening the examination and without waiving the objection to
30 the evidence.]

A. I did not hear that the horse was overfed from Mr. Brittin.

Q. Were you ever in Mr. Brittin's stable for the purpose of examining his colt, or did you ever examine him there ?

A. I was never in there to examine his colt, and I never examined him there.

Q. Do you, of your own knowledge, know whether he was fed any grain or not, before he was turned out to pasture, before the time you speak of ?

A. I have been in the barn and have seen him eating corn and oats
40 at different times.

Q. When ?

A. When the horse was in the stable.

Q. What year ?

A. Well, I think it was in the winter, when he was coming two years old.

Q. Did you ever see him fed too much grain?

A. I see him eating grain, whether he eat more than he wanted, I don't know.

Q. How often have you seen him eating grain?

A. Well, not often; I didn't frequently; very often I went.

Q. Ever see him after the time you see him, when he was coming two years old, eating grain?

A. I have.

10

Q. How often?

A. Well, I had occasion to go; I see often, not often.

Q. Do you know when the colt was foaled?

A. I didn't see him foaled at the time, but I saw him in the lot.

Q. Did you ever see him lame more than the one time you have spoken of?

A. I don't think I did.

Q. Can you say how long he remained lame?

A. Well, the best part of the summer.

Q. Was he out in the lot all the summer?

20

A. I think he was.

Q. Was he lame all the time he was out in the lot?

A. The horse began to improve when he was put out in the lot, and he improved all summer by degrees.

Q. Do you recollect seeing him within that summer?

A. I think not.

Q. Are you able to swear here without ever having made an examination of the horse, as to what was the cause of his lameness?

A. Well, all the examination I ever made of the horse, I was passing the road by the lot, and the horse stood near the road by the 30 fence; that's all I examined the horse, all the examination I had from appearance.

Q. Were you passing by the lot at the time?

A. I was.

Q. Riding or walking?

A. Walking.

Q. How near were you to the horse?

A. Well, he was one side of the fence and I the other.

Q. State how near?

A. I should'nt think it was further than eight feet.

40

Q. Was he in the lot beyond the barn, or in the lot towards Madison, from the barn?

A. He was in the lot towards Madison, from the barn.

Q. Was he or not a very handsome horse?

A. He was a handsome bodied horse.

Q. You say you don't think that you would have been willing to buy him for over one hundred and fifty dollars; is not that price a large price among farmers, and as much as they are willing as a general thing to give for a horse in your neighborhood?

A. That's about farming price.

Q. Would you want to give more than that for a horse of any kind?

A. Yes.

10 Q. You say this mare sold at auction for twenty dollars, do you know whether that was the price she sold for?

A. What I know is what I heard say at the time.

Q. Do you know her age at the time of sale?

A. She was twenty years old.

Q. Was she twenty five years old?

A. No.

Q. Do you know her exact age?

A. I know her age.

Q. Have you given it exactly?

20 A. As near as I know she foaled in 1841.

Q. When was the sale at Brittin's farm?

A. A year ago this last May.

Q. Were you at the sale?

A. I was.

Q. When the mare was bid off?

A. I wasn't.

BENJAMIN CRANE.

Taken, sworn and subscribed, June 20, 1862, before me, at Jersey City.

30

A. S. JACKSON, *M. C.*

Ambrose Groghegan, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Q. Where do you reside, and where is your place of business?

A. I own a farm in Westchester county, and with my partner have a place of business 58 Leonard street New York.

Q. What is your business there in New York?

A. Paper printing, I mean book paper, newspaper, bookbinding, boards and paper making stuff.

Q. Is it a wholesale or retail business?

40 A. We make the sales large when we can, but we sometimes have to retail.

Q. Did you and your partner purchase a horse of Josiah F. Muir, the defendant here? if so when?

A. My partner agreed upon a price for a horse with Mr. Muir, and I acquiesced in the bargain.

Q. What price did you pay him?

A. It was a trade.

Q. Well, what price did you allow him in the trade for that horse?

A. It was as much as two hundred and fifty, and not over two hundred and sixty dollars; I wouldn't be positive which.

Q. What was he worth in cash, at that time, to the best of your 10 opinion?

A. I should think not over one hundred and seventy-five dollars.

Q. Have you heard the evidence of Benjamin Crane read here, and did you hear the description of the horse, how did that agree with that of the horse which you got of Mr. Muir, is it the same horse or not?

A. I don't know whether it was or not; I don't think the horse we got from Mr. Muir was so tall as 15 hands high.

Q. What color was the horse you got?

A. He was a bay horse? 20

Q. Was he a stud when you got him?

A. He was.

Q. About what age and when did you get him?

A. About four years old, and about four years ago.

Q. How many hands was he?

A. He might have been 15, I thought he was only about 14½.

Q. Do you know whether it was the same horse that was stolen from Mr. Muir?

A. All I know about that Mr. Muir told us that he had a horse stolen from him, and brought me to see him. 30

Q. About what month of the season was it, that you bought the horse of Mr. Muir?

A. I am not certain; it was the last of spring or the beginning of summer, I think.

Q. Can you recollect as to the time, whether it was three or four years ago; it is now 1862.

A. By referring I could find out; I am not certain; on referring I find it was on March 21, 1859.

Q. You said he took you to see the horse; where was it—what stable?

A. I think it was in Bayard street. 40

Q. Was that the time you bought the horse, or before?

A. I believe he was in the stable when we bought him and got him from there.

Q. Do you recollect or not whether Mr. Muir, after you first saw the horse, took him home and then brought him back?

A. It was some days after I first saw him that my partner bought him; whether Mr. Muir brought him back or not I am not certain.

Q. Do you recollect, when you first saw him, whether he had been lame by riding or driving; whether he had any shoes on or not?

A. Mr. Muir pointed out to me how his feet were worn by driving without shoes; he said he would have to let him remain a few days without driving.

10 *Q.* Was there any lameness about him that injured the horse, that you knew of, at that time?

A. If there was any lameness he was better when we bought him.

Q. Well, did it injure him substantially in the sale, any lameness that you knew of then?

A. I should think not.

Q. Did you know then that he had ever been foundered when a colt?

A. No.

Q. Did you ever have him altered—you or your partner, I mean,
20 or both?

A. Yes.

Q. How long after you got him?

A. It was that summer or the next.

Q. Have you got the horse yet?

A. I gave him up to a man on trial, to see if he would buy him.

Q. How long ago was that, and did you ever see him up to that time?

A. Last Monday we considered him ours, till he was paid for, and we owned him up to that time.

30 *Q.* What price does he give you for him if he takes him?

A. One hundred and twenty-five dollars.

Q. Was he blind after you got him; if so, how long after?

A. He takes occasional blindness; I don't know how long after we first got him, that I first noticed it.

Q. Within a year?

A. I think it was within a year.

And being cross-examined, says:

Q. You say you allowed Mr. Muir as much as two hundred and fifty dollars, and not over two hundred and sixty dollars for his horse;
40 did he ask more than that, and if so, how much did he ask for him?

A. He asked more, he said he was worth three hundred dollars.

Q. What was the highest price he asked you, at or before the time when the trade was made?

A. I don't remember of his asking any specified price, but said he was worth three hundred dollars, and that he stood him in five hundred dollars and wished us to make him an offer.

Q. Did he not say he was worth five hundred dollars?

A. I think not.

Q. Are you certain about that?

A. I think I may be certain.

Q. Did he not claim that you should allow him five hundred dollars for the horse?

A. He made no such claim upon me; I don't know what he may 10 have said to my partner.

Q. By whom was the principal part of the talking done with Muir, at the time the trade was made, you or your partner?

A. I done most of the talking; I would not allow Mr. Muir as much as my partner did; he made the bargain in my absence.

Q. What is the name of your partner?

A. John H. Taylor.

Q. Where does he live?

A. I don't know.

Q. Do you know where he may be found?

A. 55 Leonard street, several times in a day as a general thing.

Q. Still your partner?

A. Yes sir.

Q. Who proposed the trade, your firm or Mr. Muir?

A. Mr. Muir.

Q. What reason did he give for wanting to dispose of the horse?

A. He said he did not want him, as he had him in New York he wished to dispose of him.

Q. Were your firm creditors of Mr. Muir at that time?

A. We dealt some together; I believe our account was nearly 30 square then.

Q. Did Mr. Muir recommend the horse highly when you bought him?

A. He said he would be a very nice horse for our business, for driving out, and wished us to buy him.

Q. Was he a fine horse?

A. Tolerably handsome looking horse.

Q. Was the price you were to allow him for the horse, in case the trade was made, fixed at the time when you first went to the stable and saw the horse, or about that time?

A. I don't know how to answer that; the price was fixed a few days after I saw him.

Q. How long after you first saw him?

A. I think not more than a few days, probably five or six.

Q. When you first saw him had he shoes on?

A. I won't be certain whether he had shoes when I first saw him; I won't be positive; when I next saw him he had shoes on his fore feet; I think, but I am not sure, on his hind feet; I didn't charge my mind with it, because I didn't think it would be called in question; when we got him he had shoes on all his feet.

Q. Was he foundered at the time you bought him or not?

A. He was to all appearance healthy.

10 Q. What was it that you traded for him?

A. Paper manufactory stuff.

Q. At what price did you put the articles that you sold him; at your regular selling rates or not?

A. I don't believe that we could have sold them for cash at that price, at that time, to him or to anybody else.

Q. Please state whether the goods sold to him in this trade were or not put at your regular selling rates?

A. We have got the price we charged him for them at times, but could not then.

20 Q. Why not?

A. The demand was not enough for the supply in the market.

And being re-examined-in-chief, says:

Q. What would you have taken in cash for the goods that you let him have for that horse, at that time; what is the lowest sum?

A. We would have taken a quarter of a cent a pound less.

Q. What was the sum you charged him; how much a pound?

A. I believe two cents; to be positive I would have to refer to my books.

30 Q. In your cross-examination you have stated what Mr. Muir said respecting this horse, and the negotiation about it. Now I want you to state the whole conversation, and particularly what he said; of whom he got the horse, and how he paid for him. [Objected to as illegal and improper.] I want you to give the whole conversation at the time?

A. I can't remember the whole conversation; he told me he borrowed, at interest, to give the lender a horse, he had to give five hundred dollars for the horse; that was the principal part of the conversation as I remember.

Q. Did he state the lender's name?

40 A. Not that I remember.

And being re-cross-examined, he says:

Q. Did you offer these goods which Mr. Muir took in the trade, to Muir for any less amount if he would pay the cash?

A. No; I knew that Mr. Muir didn't want them to buy for cash.

Q. How do you know it?

A. For the reason that he didn't ask the goods to buy at the time; he asked what goods we would let him have in the trade.

Q. Has Mr. Muir talked with you about the matter of this mortgage before you came here?

A. He did.

Q. Can you tell how often?

A. Might be four or five times.

Q. Are you now dealing with him in the paper business? 10

A. We have his name on our books; he hasn't bought anything lately.

Q. Is he indebted to your firm?

A. There is some small balance, which he says is in his favor; the books have not been balanced in some time; no account made out; we think the balance is in our favor.

AMBROSE GEOGHEGAN.

Taken, sworn and subscribed before me, June 26, 1862, at Jersey City.

A. S. JACKSON, *M. C.* 20

Abraham Crane, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Q. Where do you reside, Mr. Crane?

A. Morris county.

Q. How far from the farm of Mr. Brittin?

A. Well, about 450 yards.

Q. Did you know the stud colt that Mr. Muir got of Mr. Brittin?

A. Yes, sir; I saw him.

Q. How long since you first saw him, and how frequently did you see him until he sold him? 30

A. Most every day; I can't tell when I first seen him; I seen him after he was foaled, a little while.

Q. Was he a stud while you knew him; what was his color and age?

A. Yes, sir; he was a bay horse, four years old.

Q. Did Mr. Muir get him of Mr. Brittin—was he the same horse?

A. Yes, sir.

Q. Was he ever foundered or lame—state all you know about that—while Mr. Brittin owned him.

A. I saw him limp one day when I went by there.

Q. Well, did you see him more than once; if so, how often; tell all you know without so many questions. 40

A. Well, I suppose it was feeding him too much; I thought it was.

Q. Did you see him more than once?

A. Well, I see him most every day when I come down there.

Q. How long was he lame?

A. Well, I can't tell how long.

Q. As near as you can?

A. A part of the summer.

Q. What was the colt worth when Mr. Muir got him, in your opinion?

A. Well, one hundred and fifty dollars.

10 And being cross-examined, says:

Q. Do you know how it was that the colt became lame, of your own knowledge?

A. No; I don't.

Q. Where was it that you saw him most every day, Mr. Crane?

A. He was in the field this side of the house.

Q. Did you see him regularly in any other place?

A. No, sir.

Q. Was he in the field most every day?

A. Well, part of the days he was, in the afternoons.

20 Q. Every year?

A. No, sir.

Q. What year was it that you saw him lame?

A. Well, he was going about three years old.

ABRAHAM CRANE.

Taken, sworn and subscribed, June 20, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

And thereupon the examination was further adjourned to Wednesday, June 25, 1862, at 11 o'clock A. M., at my office in Jersey City.

30 Wednesday, June 25, 1862, the examination was continued in my office, in presence of James J. Scofield, Esq., of counsel for defendant, Muir, and Alfred J. Mills, of counsel for defendant, Brittin.

James W. Roll, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Q. Where do you reside and what is your business?

A. Near Springfield, in the township of Millburn; I am a farmer, and cart on the road some too.

Q. Did you alter a colt for Taylor & Geoghegan, in the city of New York; if so, when and what kind of a colt was he? [Objected
40 to.]

A. I had one altered or took a man to do it for him ; I mean I took the colt to the man's house to have it done ; it was done in May ; I can't tell what time ; 1859, as near as I can come at it ; it was in corn planting time ; he was a small bay horse or colt, as you are a mind to call him ; a bright bay.

Q. Where did you get him from ?

A. I got him from Taylor & Geoghegan, in New York.

Q. Who did they get him of ?

A. I think they told me that they got him of Mr. Muir. [Ob-
jected to.] 10

Q. How old was the colt at that time, as near as you can tell ?

A. Well, I think he was four years old.

Q. What was he worth ?

A. I suppose from some he was worth in the neighborhood of one hundred and fifty dollars, but I shouldn't want to give that for him ; he was neither broke nor altered when I took him.

Q. If he had been foundered badly when he was two years old, by grain, would that have diminished his value in your opinion ?

A. Yes ; it would ; that I knew nothing about, whether he was
foundered or not. 20

Q. Did you observe anything about his eyes that didn't appear to be right at the time ?

A. Yes sir, I seen him before I took him out in the country, that there was something the matter with his eyes, especially one eye ; I don't know that I could state anything more particularly ; Mr. Geoghegan said that there was a bleer over his one eye.

Q. Does foundering badly ever injure the eyes of a horse ?

A. I always heard it remarked that foundering, from eating grain, always affected the eyes more or less.

Q. Would the feeding very liberally a colt, injure him more than 30
an older horse, or less ?

A. Yes sir, I suppose it would, I have heard my father say that a colt ought to have but a small quantity of grain at a time.

Q. Have you had much to do with the management of horses in your lifetime or otherwise ?

A. Yes sir, I have had considerable to do with them ; was brought up with them ; have always owned them since I was big enough.

Q. How old are you now ?

A. Forty-six years old.

And being cross-examined, says : 40

Q. Was the horse injured in altering, that you know of ?

A. Not that I know of.

Q. Did you ever hear of his being injured in being thrown when he was altered ?

A. No sir.

Q. Or of his catching cold after he was altered ?

A. No sir.

Q. Which eye was it that was affected ?

A. That I cannot tell either.

Q. How much was it affected ? did you observe it first yourself, or was it pointed out to you ?

A. Well, I could'nt tell how much, I seen it when I first seen the horse ; I asked Mr. Geoghegan if something wasn't the matter with
10 his eyes, or one of them.

Q. That affection of the eyes lowered his value in your estimation, did it not ?

A. Yes sir, it did.

Q. Did you think at that time he was foundered ?

A. No sir, no, I didn't see nothing like that.

Q. If he had been badly foundered you would have noticed it, would you not ?

A. Well, I don't know that I should, he might have been foundered, but he had got over it, if he had been foundered.

20 Q. All you had to do with the horse was to have him altered, was it not ?

A. I had him altered and broke him to drive both single and double.

Q. You did not have him for sale, did you, or want to buy him.

A. No sir.

Q. You do not know the pedigree of the horse, do you ?

A. No sir.

Q. Had you ever seen the horse before this time Taylor and Geoghegan showed him to you in New York ?

A. I think not, to my recollection.

30 Q. Do you know the cause of the affection of his eyes ?

A. No, sir.

Q. Can you fix with certainty, the year when you got the horse ; was it 1859 or 1860 ?

A. What I go by was : I was building a barn when I got the horse, and I was building the barn in 1859.

Q. You have no other reason for thinking it was in 1859 ?

A. No, sir ; I don't think I have.

Q. Was he shod the time you took him out there ?

A. Yes, sir ; and I had him shod again ; that was his errand out
40 there.

Q. Did you begin and complete your barn in 1859 ?

A. I think I did.

Q. Have you anything here to refresh your recollection as to when the barn was built ?

A. I don't know that I have; if I was home I might have some papers.

Q. Do you, of your own knowledge, know how long it was after Taylor & Geoghegan got the horse?

A. I don't, exactly; but I guess it was two or three weeks; I know I seen him just after he fetched him to the stable; it might have been four or five weeks.

Q. Have you ever been a dealer in horses?

A. Well, I don't understand what you mean; I never bought and sold horses for a living. 10

Q. Ever owned stallions?

A. No, sir; I never did—only a two-year old, which I put to a couple of mares; he was altered then; that is the only stallion I ever owned.

And being re-examined-in-chief, says:

Q. Was this a suitable horse to keep as a stud, in your opinion; was he large enough?

A. No, sir; I didn't think he was big enough.

Q. What was his height and size?

A. Well, that I don't know; I never measured nor weighed him. 20

Q. Well, in your opinion was he over or under fifteen hands?

A. In my opinion, I think he was under.

Q. Have you seen him since the time you returned him to Taylor & Geoghegan?

A. Yes, frequently.

Q. How does his eyes appear since?

A. Well, the last time I seen him he couldn't see out of one eye, and I have since heard that he was totally blind; he is now out of the city.

Q. Do you mean blind all the time or by spells? 30

A. Well, all I know about it, Mr. Taylor's man, who took care of him, said he was blind and was sent into the country; since then, I have heard Mr. Geoghegan say that he had got over it.

JAMES W. ROLL.

Taken, sworn and subscribed June 25, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

Whereupon the examination was further adjourned to Saturday, June 28, 1862, at 10 o'clock, A. M., at my office in Jersey City.

Saturday, June 28th, 1862, the examination was further adjourned to Tuesday, July 1st, 1862, at 12 o'clock M., at my office in Jersey City.

Tuesday, July 1st, 1862, the examination was continued at my office in Jersey City, at 12 o'clock at noon, in presence of James J. Scofield, of counsel for defendant, Muir, and Alfred Mills, of counsel for defendant, Brittin.

Gilbert A. Pruden, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

10 Q. What is your age, and where do you reside?

A. I was 31 years of age the 1st of last September, and I reside at a place called Green Village.

Q. What is your business?

A. Principally to work on farm, sometimes go around the country with threshing machine.

Q. Have you had much to do with horses, the managing them, the buying and selling them?

A. I have had the managing of horses, not the buying and selling
20 of them; my father has the management of buying.

Q. You live with him?

A. Not now, but I did work the farm on shares, but not now; in the threshing machine I draw my share of the profits; my father lives in Newark and I live on the farm.

Q. What have been your opportunities of knowing the value of horses?

A. Father has bought several within the last ten or twelve years in his business of threshing.

Q. Did you know this stud colt that Mr. Abraham Brittin sold to
30 Mr. Muir?

A. Yes sir.

Q. How old was he when he was sold?

A. Well, I think he was four year old that spring, I mean coming four that spring, as near as I can remember.

Q. What was the color of the colt?

A. Bay, I think.

Q. Had he been injured do you know, according to your opinion of him, by high feeding before he was sold? [Objected to.]

A. I don't know that he was injured by high feeding.

40 Q. Do you know he was lame at any time, when you knew him? [Objected to.]

A. When they brought him to the blacksmith shop then he crimped, kind of favored his front feet, kind of lame.

Q. What time was that?

A. I think this was in the fall, or the following spring after he was three years old; I think it was the time, as near as I can remember now.

Q. What were your means of knowing the horse, and how frequently did you see him while Mr. Brittin owned him?

A. Well, father owned a farm a mile and quarter from there; we passed there frequently from the time the colt was foaled till the time he was said to be sold to Mr. Muir, and I saw him in the stable when he was two years old; Mr. Oakes called me in the stable to look at him; I saw young Henry Oakes have him out exercising him in the road up to the village; well, I couldn't exactly tell how often I saw him, sometimes a week and sometimes in two weeks and sometimes once in a good while; in the winter months I hardly ever saw him; I couldn't tell you how many times.

Q. What was he worth in your opinion, when Mr. Muir got him?

A. Well, far as I am concerned from the size of him, I think he was worth a hundred and twenty-five dollars.

Q. Was that a fair value of him according to your opinion?

A. Yes sir, I think it was. 20

Q. What was his size?

A. I never measured him and never seen him measured; I stood up by the side of him and I judged he was under fifteen hands; I couldn't tell exactly.

And being cross-examined, says:

Q. Did you ever own a horse?

A. Never but one.

Q. Ever had anything to do with breeding of horses?

A. Yes sir. 30

Q. For whom?

A. For my father.

Q. What was your fathers business?

A. Farming.

Q. What have you had to do with the breeding of horses?

A. Father kept a stock horse, several of them, within the last twelve years.

Q. You say he was brought to a blacksmith shop once, whose shop was it?

A. My fathers; he don't carry on the business, he owns the shop and rents it out; Henry Smith was the blacksmith. 40

Q. Brought there for shoeing?

A. I cannot tell you that.

Q. Was he shod there or not?

A. Not that I knowd of.

Q. Where was he shod while Mr. Brittin kept him on the farm?

A. I don't know that he ever had a shoe on him, as far as I am concerned.

Q. Who brought him there to the shop, the time you have spoken of?

A. I think it was Henry Oakes.

Q. Where does Henry Oakes live?

A. In Newark, I understand.

Q. Did he ride him there?

10 A. I think he did, I won't be positive though.

Q. Who was there at the time?

A. My brother, the blacksmith Henry Smith; there might have been others which I don't recollect.

Q. Mr. Smith still at work in Green Village?

A. Yes sir, the same place.

Q. Do you know what the horse was brought to the shop for?

A. Not particularly; pared his hoofs down, that's all I know about it.

Q. You have to-day, upon your direct examination, put a value on this horse, when did you first put that valuation upon him?

20 A. About the time Mr. Brittin sold him, or was said to sell him to Mr. Muir.

Q. Handsome animal, was he?

A. Very good looking animal, might be called handsome, yes sir. And being again examined in chief, says:

Q. Did he, after he was two years old increase in size, as much as he had before?

A. I think he was larger the first two years, grewed more accordingly the first two years, more than any other time while I knowed him.

30 Q. Was he forced in growth when he was young or not?

A. Well, he looked to me as if he had plenty to eat.

And being re-cross-examined, says:

Q. Do not all horses grow more during the first two years of their life, than in any subsequent two years?

A. They do, if they are high grained, as far as I have anything to do with the managing.

GILBERT A. PRUDEN.

Taken, sworn, and subscribed, July 1st, 1862, before me, at Jersey City.

40

A. S. JACKSON, *M. C.*

Jonathan O. Nester, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Q. What is your age, and where do you reside?

A. I was thirty-eight last September ; I reside in Chatham.

Q. Are you a judge of the value of horses, and state what are your means of judging the value?

A. Well, some folks consider me so ; Well, I generally go according to age and size.

Q. I mean, have you had anything to do with horses, and have you dealt in them to know of the value of them, or used them?

A. I have always worked around horses ; been with horses since I was seven years old ; was brought up on a farm. 10

Q. Did you know this stud colt, which Mr. Abraham Brittin sold to Mr. Muir, if you do, state how often you saw him, and what you know of him?

A. I knew the colt, I used to be down at Mr. Oakes' once in awhile ; I was acquainted with Mr. Oakes' folks, they used to stop there ; I stopped there one day ; I saw the colt turned out in a little lot, right this side of the barn, he was lame at the time ; I was looking at the colt and asked him what ailed the colt. [Objected to.] He said they didn't know rightly, they thought he had got wrenched in the stable some way. [Objected to.] 20

Q. If the colt had been sound, what was he worth, in your opinion ? [Objected to as improper.]

A. I considered him a horse worth from a hundred to a hundred and twenty-five dollars, not over that ; he was not considered a sizeable horse by anybody ; they considered him rather small.

Q. In that estimate you put upon him, do you put it upon him as sound or unsound ? [Objected to as leading.]

A. If he was a sound horse, I considered him worth that money.

Q. Do you know whether he was sound or unsound ? state what you know upon that subject ? 30

A. I considered him not a sound horse ; my uncle came to my house one day, and was speaking about the horse, [Objected to.] Him and me went to look at the horse, as he was talking about buying him ; I asked what Mr. Brittin asked him for the horse, [Objected to.] and he said that he asked him a hundred and fifty dollars ; Mr. Brittin told him that he would take less money for him than that, he wanted to sell him, he had no use for that kind of a horse and nobody to take care of him. [All this objected to.]

[The defendant, Muir, does not insist upon it as evidence, it being hearsay.] 40

Q. What was the size of this horse ?

A. I should judge him to be a horse between fourteen and fifteen hands high ; I don't think he was fifteen.

Q. Was he a fit horse to keep for a stud? would he be profitable or not?

A. I should think not, because of his size; he was too small to suit the peoples' fancy.

Q. Do you know how he was kept, whether he was fed high or not, and whether he got his growth very early?

A. I did not know anything about the feeding part of it; he always looked as if he was always well taken care of, nicely kept; I think he was as full large the fall he was three years old, as he was when Mr.

10 Muir got him; I saw him afterwards, I saw him then.

And being cross-examined, says:

Q. How old was he when Mr. Muir got him?

A. He called him four years old.

Q. What do you do for a living, John?

A. I work on the farm, drive team on the road.

Q. How do you hire, by the day or the month?

A. By the year.

Q. How long have you worked by the year, in this way?

A. Since I was twelve years old.

20 Q. Worked sometimes by the day?

A. Yes, sir.

Q. Sometimes you didn't work at all, I suppose?

A. Well, I generally put in all the time, except Sunday's and Holidays.

Q. Work on the farm all the time?

A. No sir, driving team on the road part of the time.

Q. Have you been living in the village of Chatham?

A. Yes sir; I have lived there three years this spring.

Q. Who did you work for there?

30 A. Walters F. Price.

Q. Can you tell how many different people you have worked for in the last twelve years?

A. Well, I might, if I should go back and think them up; I have worked for the last three years for Mr. Price.

Q. Did you ever own a horse, John?

A. I once owned one; yes, sir.

Q. Did you buy him?

A. Yes, sir.

Q. What did you give for him?

40 A. I gave forty-five dollars for him.

Q. How long did you have him?

A. In the neighborhood of a year—not quite—nine or ten months.

Q. Never owned a farm, did you?

A. No, sir.

Q. Do you know when it was when you had this talk with your uncle, of which you have spoken?

A. Well, don't know as I can tell exactly; 'long about the fall of the year—about hunting time.

Q. Do you know how old this horse was at that time?

A. He was three years old in the spring, as this was along in the fall.

Q. Can you write?

A. No, sir.

Q. Can you read?

10

A. Not a great deal—can some; I have always had to work for a living, ever since I was seven years old; I never had any schooling except what comes natural to me.

His
JONATHAN O. $\bowtie$ NESTER.
mark.

Taken, sworn and subscribed, July 1, 1862, before me, at Jersey City.

A. S. JACKSON, *M. C.*

Robert White, a colored man, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

20

Question. Robert, how old are you, and where do you live?

Answer. I live two miles from Green Village, at a place called Great Swamp—two miles and a half, I suppose; I will be 55 the third day of October next.

Q. Do you own a little place in the swamp that you live on?

A. Yes, sir.

Q. Have you been engaged in taking care of stud horses and putting them to mares?

A. Yes, sir.

Q. Did you know this stud colt that Mr. Brittin sold to Mr. Muir?

30

A. Yes, sir.

Q. Was he, in your opinion, or not, a profitable horse to be used and kept for a stud?

A. I should think he were not.

Q. Why?

A. He was too small.

Q. What was his size, as near as you can tell?

A. Well, I think he was under 15 hands; he might have been over; couldn't say to a certainty; I never measured him?

Q. Do you know anything about his unsoundness, or his being 40 overfed; if you do, state what you know. [Objected to.]

A. Well, I don't know anything about it; I was in there one day

and he was lame ; Mr. Oakes wanted me to look at him, to see what ailed him ; I went and looked at him, and I couldn't see if anything was the matter with his feet ; after a while I took up a little mallet that laid in the stable, about as big as your fist ; I pounded on his hoofs with this mallet ; he didn't flinch any ; I didn't consider it was there.

Q. What opinion did you form about it ; what was the matter with him ? [Objected to.]

A. Well, I told Mr. Oakes that perhaps he had given him a little too much grain, and that was what we called chest-founder ; well, he
10 wanted to know why I thought this. [All evidence of conversation with Mr. Oakes objected to.] I told him from the cause of Mr. Concklin's having one that was chest-foundered.

Q. What would that horse have been worth if he had been sound, Robert ? [Objected to.]

A. Well, sir, I am not able to tell that, but my poor judgment, as a black man, I should not have been willing to give over a hundred and fifty dollars for him ; may-be I ain't right.

Q. Do you know what Mr. Abraham Brittin valued him at ?

A. Well, I do not know what he valued him at, but I know what
20 he and I was talking about him in the stable once.

Q. What was it, Robert ?

A. He said he wanted two hundred dollars for him.

Q. Go on, and tell us what he said.

A. He wanted to know from me whether I didn't think he was worth it ; I told him I didn't know ; couldn't judge ; I wasn't judge enough of horses to know what they ought to be worth ; he said he would like to have two hundred dollars for him, and if he couldn't get that he would have to take less.

Q. How long was this before Mr. Muir bought him ?

A. Well, I should think over a year.
30

And being cross-examined, says :

Q. Do you know your age, Robert ?

A. Yes, sir.

Q. You say you have been engaged in taking care of stud horses, and putting them to mares ; how long were you engaged at that ?

A. Three years.

Q. How long ago ?

A. Well, it must be as much as five or six years ago ; it must be as much as that ; I don't know but it is full six.

Q. For whom did you work ?
40

A. William P. Concklin.

Q. You say that you think this horse was too small to be profitable as a stud horse ; a horse must be large to be profitable for that purpose, musn't he ?

A. Well, it don't consist of that always.

Q. When does it consist of that?

A. If he is a very nice horse; a smooth got-up horse; well, there is people that will take a fancy to such horses; he does very well for a stud horse then.

Q. Was this a nice and smooth got up horse?

A. Very smooth bodied horse, nothing only his size that hurt him.

Q. Then there was no objection to him as a stud horse, except his size, was there?

A. There was not, if he had been sound.

10

Q. Did you ever see him lame more than the one season you have spoken of?

A. Only the one season.

Q. How long was that before Mr. Muir got him?

A. I don't know; it might have been a year, and it might not have been as long as that; I am not able to tell you.

Q. Who was by when you and Mr. Brittin had that talk?

A. No one at all but him and I.

Q. Did he want you to buy him?

A. No, sir.

20

Q. Was Mr. Brittin in the habit of talking with you?

A. Yes, sir; always.

Q. Very friendly, was he not, in his manner?

A. Yes, sir; Mr. Brittin was a very clever man to me.

Q. Joke with you sometimes, wouldn't he?

A. Yes, sir.

Q. Was he not in the habit of talking in a pleasant, joking way?

A. He always was to me.

Q. Never owned a horse, did you, Robert?

A. No, sir.

30

Q. Never bought or sold any?

A. No, sir.

Q. Do you remember what else Mr. Brittin talked of that day?

A. Nothing about the horse.

And being re-direct-examined, says:

Q. Was he joking to you when he said what he wanted for the horse, or not?

A. I do not know that; I can't write.

His
ROBERT  WHITE.
mark.

Taken, sworn and subscribed, July 1, 1862, before me, at Jersey 40
City.

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants,

and

Josiah F. Muir and wife and others, defendants,

} *On Bill, &c.*

Examination of witness in the cause above stated ; taken before me George F. Tuttle, a master and examiner of said court, this eleventh day of July, in the year eighteen hundred and sixty-two, in the presence of A. S. Hubbell, Esq., of counsel with the complainants, and James J. Scofield, Esq., of counsel with the defendant,

10 *Josiah F. Muir.*

Samuel Meeker, a witness produced on the part of the complainant, being duly sworn, on his oath, saith :

Q. Are you a manager and one of the funding committee of complainants ?

A. I am ; am chairman of the funding committee.

Q. How long have you been so ?

A. Since the first organization of the Institution.

Q. Are you also vice president of the board of managers ?

20 *A. Yes.*

Q. Do you recollect of a loan being made by the complainants to the defendant, Josiah F. Muir ?

A. Yes.

Q. By whom was the loan made ?

A. By the funding committee of the Savings Institution.

Q. Who were the funding committee at the time ?

A. Mr. Macknet, Mr. Van Antwerp, I think, and myself ; the treasurer was ex-officio, a member ; I think, tho' I am not sure, that he was at that time.

30 *Q. Who acted on this committee in making this loan ?*

A. I can't say positively, but I know I was consulted ; I think all the committee were present, but I am not positive about that.

Q. Do you recollect who made the application for the loan ?

A. The original application was made by Mr. Asa Whitehead in the name of Jonathan M. Muir.

Q. Who examined the property offered as security for the loan ?

A. I don't think the committee went on to the ground to examine the property, but they took it from my representation ; I knew the property well.

Q. Was this loan made by the funding committee, or by any one of them acting alone?

A. I think it was made by advice of the funding committee on my representation of the value of the property.

Q. Was any one of the funding committee authorized to make loans for the complainants?

A. I think not sir; no one of the funding committee ever was authorized to make a loan for the Institution, individually.

Q. What were the terms on which this loan was made?

A. It was made at that time, at the rate of six per cent. interest, 10 secured by bond and mortgage upon this property.

Q. Was there any agreement, express or implied, by which the defendant, Muir, was to pay to the complainants any sum for the loan more than the principal and legal interest?

A. No, sir, there was not.

Q. Who was the treasurer, at that time, of the complainants?

A. William H. Mott.

Q. Was he, at the time, cashier of the State Bank at Newark.

A. He was, at the same time, cashier of the State Bank at Newark.

Q. Did he take any active part as one of the funding committee? 20

A. Sometimes he was present with us, and sometimes not; I don't know that I could say he took an active part.

Q. Was Mr. Mott authorized by the Savings Institution or by the funding committee to take for himself or the complainants any sum for any loan, as a bonus or premium for his services, or in any way whatever? [Objected to as a leading question.]

A. He was not, sir; never.

Q. Was he authorized to take from the defendant, Muir, any sum for the loan made to him?

A. No, sir, he was not. 30

Q. Had you any knowledge, at the time the loan was made, of Mott's receiving any sum from the defendant for the loan?

A. No, sir, none at all.

Q. Did you hear at any time of the allegations of Muir, that he paid Mott extra for the loan?

A. I have heard recently, from Mr. Macknet and from Mr. King, that he had made such allegations; it was astonishing to me that he had, altogether so.

Q. If, defendant alleges, that Mott took \$100 from him for the loan, was it for the complainants, or as a private matter between them? 40 [Objected to as a leading question.]

A. It must have been a private matter between them, the institution had nothing to do with it.

Q. Did the complainants ever receive that sum, or any part of it, from the defendant, Muir, for the loan, as extra interest or as a bonus?

A. No, sir.

Q. Did any of the officers or managers of the complainants, to your knowledge, receive any part of the \$100 defendant Muir alleges he paid to Mott?

A. No, sir.

Q. Did the complainants, to your knowledge, ever take or receive any sum for a loan made by them, above the principal and legal interest?

A. No, sir; never.

Q. Do you know how soon after this loan was made Mr. Mott died?

A. I have no distinct recollection of that; I know he died in the month of August, but can't tell the year.

Q. Was Mr. Mott ever a manager of the Savings Institution?

A. No, sir.

Q. In what way was he made an ex-officio member of the funding committee?

A. My recollection is not distinct on that subject, whether he ever was; I think, though, he acted with us sometimes; my impression rather is that he was not a member ex-officio, but am not certain; I can't be positive, he might have been.

Q. Was Mr. Mott paid a salary for his services as treasurer?

A. He was paid a salary.

Q. Was he ever authorized to receive pay from parties to whom loans were made, as part of his compensation for his services as treasurer?

A. No, sir.

Q. After the loan was granted, by what authority did he give a check for the money loaned to Mr. Muir?

A. By the funding committee, sir.

Q. Was he authorized to draw a check or pay money for a loan until expressly authorized by the funding committee?

A. No, sir, he was not.

Q. When a loan is granted, from what time does it draw interest?

A. Our usage has uniformly been from the time we appropriate the money for the loan.

Q. Are you ready always to pay it at that time, if a party is ready with his securities?

A. Always.

Q. Do you ever make a loan without having the money on hand at the time?

A. No, sir.

Q. When a loan is granted do you notify the applicant of the fact?

A. Our practice is to give the parties notice, in some way, so that the information goes to them at once; not always in writing.

Q. When you grant a loan, do you set apart the money for that purpose, or so consider it in your institution?

A. We do consider it so appropriated.

Q. Do you check off that amount, or mark it off from the amount on hand, when you make a loan, as money appropriated?

A. Yes, sir.

Q. If Mr. Muir did not get the money until July 10, 1850, and the 10 bond and mortgage is dated July 1, what was the cause of the delay?

A. The cause must have been from his not having the proper papers and documents ready.

Q. When a loan is made to a party, who is to see that the papers are prepared, proper searches and abstracts of title made, and at whose expense?

A. The papers and searches have to pass the inspection and approval of our attorney; at the expense of the applicant for the loan, and the treasurer pays upon the certificate of the attorney that the papers are all right.

30

Q. Who is to see that the searches are made and the other papers prepared, to be given to the Savings Institution?

A. The treasurer of the institution gets the certificate from the attorney, and then pays the money.

Q. Who employs the parties to make the searches, necessary papers, the applicant or the institution?

A. The applicant.

Being cross-examined, witness says to the—

Q. When was this application for this loan first made, to your knowledge?

30

A. I can't say the day; I made no memorandum.

Q. To whom was the application made? when first made?

A. It was made by Mr. Whitehead; to the Savings Institution.

Q. Are the managers of the institution or the funding committee always in session, or do they have meetings, regular meetings and extraordinary meetings?

A. They are not always in session; they meet generally about once a week, unless there is an extra call, when they meet in the meantime again.

Q. Are the loans made at the regular weekly meetings, or do they have extraordinary sittings?

A. They are generally made at the weekly meetings, but sometimes there is an extraordinary call for a loan, and the treasurer will call the committee together, to consider the application.

Q. Are the applications for the loan made by the parties to the committee in meeting, or by writing and giving the application to some person who receives it on behalf of the committee?

A. It is generally made in writing and left with the treasurer.

Q. Then the treasurer is the organ of the committee in receiving the applications for loans, and in communicating the result to the applicant, is he?

A. Yes, sir.

Q. In respect to this application of Mr. Muir, did you ever see him
10 in respect to the application before it was granted?

A. I have no recollection that I did.

Q. To your knowledge, had any one of the managers, saving the treasurer, any communication with Mr. Muir, previous to the loan being granted?

A. I can't say that they did.

Q. Did the treasurer present this application of Mr. Muir's to the committee?

A. It was presented to the committee; brought before the committee; the first application by Asa Whitehead.

20 Q. Do you know whether by the treasurer?

A. I can't say whether by the treasurer or not; I recollect that it was before us.

Q. What was done with that first application, was it granted or was it rejected?

A. I think the first application was rather declined; that is my impression.

Q. Was there another application, and if so, how long after that?

A. I don't recollect distinctly about that.

Q. Don't you recollect whether there was another application or
30 not?

A. I don't recollect that there was another written application; there might have been one.

Q. Was the matter afterwards reconsidered in committee?

A. I know afterwards there was further communication; I don't recollect distinctly how; and then Mr. Josiah F. Muir's name was brought up and \$5,000 was agreed upon; more particularly on my representations about the property; I was the only one of the committee who did know about it; I think I gave such a representation that the committee were satisfied and did not visit the property; and
40 the loan was made, \$5,000, to Josiah F. Muir.

Q. Haven't you any recollection how long after the first application was made before the loan was granted?

A. I have no distinct recollection as to that.

Q. Was there a book of minutes, or record kept of the proceedings of that committee?

A. Not at that time.

Q. How was the evidence preserved that the treasurer had acted according to instructions; giving the checks, taking the loans?

A. There would be a general memorandum of the applicants and loans before us; we keep now on a book every one.

Q. Who had the care of the memorandums at that time, and of the book now, the treasurer or somebody else?

A. The treasurer.

10

Q. When did you first hear about this bonus of \$100, which Mr. Muir is said to have given to Mr. Mott?

A. I don't recollect distinctly the time; somehow back, Mr. King, our treasurer, or Mr. Macknet spoke to me about it; I think it was after this suit was commenced.

Q. When the treasurer drew this check did you make out a written order for him to draw this check?

A. I think there was no written order; there was the sanction and direction of the funding committee, but I don't think it was written.

Q. When the committee had passed upon a loan—agreed to make the loan—was the treasurer authorized to draw a check for the loan, if the attorney's certificate was correct?

20

A. Yes, sir, no doubt that was the case, that was the uniform habit.

Q. Do you mean to say that from the time you grant the loan you charge interest from that day? Is that your habit?

A. We consider, the loan granted, that then the money is ready for the applicant, and we are entitled to interest.

Q. Suppose a man makes application for a loan, and tells you he can't get his papers ready in two weeks, do you require the bond and mortgage to draw interest from the date you pass upon the loan?

30

A. When he is notified the funds is ready for him the orders is, when the money is subject to his orders we are entitled to interest.

Q. Did the company keep any private book upon which they entered sums which they received as bonuses or extra profits?

A. No, sir, never.

Q. Did you hear nothing in 1852 or 1853, or before the first payment of principal was made upon the bond and mortgage, that there was likely to be a lawsuit about this loan and usury in respect to it?

A. I think that I heard Mr. Macknet said something about Mr. Muir's complaining that they ought not to hurry him up so fast, as he paid pretty dear to Mr. Mott for it; this was after one or two payments had been made; I never heard anything of a lawsuit about it until after this suit was commenced, nor anything about usury.

40

Q. How long after these payments were made before you heard about these complaints of Mr. Muirs?

A. I can't tell; it was not a great while since; I suppose the payment had then been made a long time.

Q. Did you ever make any complaint to Mott about it in his life-time?

A. No, sir; I never knew anything about it in his lifetime, pro or con, never.

Q. Did you ever hear Mr. Van Antwerp say anything about these complaints?

10 A. No, sir, never.

Being re-examined, witness says:

Q. What was the reason that the first application made by Mr. Whitehead for Jonathan M. Muir was declined?

A. My impression is that we did not like the name of Jonathan M. Muir about it; that is my impression, but I am not positive about that.

Q. How came the loan to be finally granted, after being once rejected, to Josiah F. Muir?

A. I think the application of Josiah F. Muir, when I came to state about the property, was the reason of the change; I was very tena-
20 cious about that loan, because I knew the property was good.

Q. After the committee agreed to loan \$5,000 to defendant, did they direct the treasurer to inform him of it?

A. That was pretty much our rule, but I don't recollect about that case particularly.

Q. After this loan was granted was the treasurer authorized to make different terms with the applicant from those upon which the funding committee granted the loan?

A. Certainly not; I had no knowledge of anything of that kind.

Q. Were not entries of the loan made on the books of the com-
30 plainants?

A. Yes, sir, checks given; the treasurer drew the checks.

Q. At the time this loan was made, was not the Savings Institution in its infancy?

A. It was rather in its beginning.

Q. How long had it been in operation?

A. I don't recollect exactly.

Being re-cross-examined, witness says to the—

Q. The funds of the institution were kept in the State Bank at Newark, were they not?

40 A. Yes, sir.

SAMUEL MEEKER.

Subscribed and sworn before me, the day aforesaid.

GEORGE F. TUTTLE, M. C.

Elihu Day, a witness produced on the part of the complainants, being duly sworn, saith :

Q. Are you a manager of the Newark Savings Institution, and one of the funding committee ?

A. I am.

Q. How long have you been manager and one of the funding committee ?

I was one of the original managers, and a member of the funding committee since 1850 ; elected in eighteen hundred and fifty, I think.

Q. Were you one of the funding committee at the time this loan 10 was made ?

A. I think not.

Q. Was Mr. Mott living at the time you became a member of the funding committee ?

A. I think not ; immediately after the death of Mr. Mott, at a meeting of the board of managers, Mr. King was appointed treasurer, the funding committee increased from three to five, and I was then elected one of that five.

Q. Since that time have you taken an active part in making loans, as one of that committee ?

20

A. Perhaps no one more so.

Q. What was the practice of the institution, since you have been with it as a member of the committee, as to making loans by the institution ?

A. No verbal applications were entertained ; none but by written applications.

Q. After an application was made to the board for a loan, what was done with it ?

A. The application was first recorded in a book kept for that purpose, at the next meeting of the funding committee, if the applica- 30 tion was based upon real estate, almost invariably, with rare exceptions ; they were referred to a sub-committee of the funding committee, for their examination of the property and character of the bondsman, and to report to a subsequent meeting of the committee, at which time the committee acted "in bank" or full board of funding committee, upon the application ; the committee acted upon the report of the sub-committee, and it was accepted or rejected.

Q. If the loan is granted, at what time did it take effect ?

A. Always, if the parties were in reach, and usually they were, and I don't know but what I might say always, on the day that the 40 loan was granted ; there may be some rare exceptions, under peculiar circumstances, but that is the principle ; and the amount immediately

deducted from the available moneys of the institution; it being appropriated and set aside for that particular purpose.

Q. When was the institution ready to pay the money?

A. Immediately upon their producing the agreed upon satisfactory securities.

Q. Whose business was it to prepare the necessary papers and securities to be given for the loan?

A. The applicant for the money.

Q. State now more generally the practice of the institution in making loans?

A. I was almost always one of the sub-committee; when they entertained a loan favorably, we usually told the applicant, as he usually applied, and often told him he could get his papers ready, as the loan would be granted at a certain time, and that it would draw interest from the acceptance of the application; but rarely loans were granted when any one, or more members of the committee objected; we frequently told applicants that they must pay the expenses for searches and drawing papers, and might get their own counsel to attend to it for them, but they must be submitted to our counsel for approval.

20 *Q.* Do you know of any money being paid by any applicant, to any officer of the institution or manager, to effect a loan of the Savings Institution, by way of compensation, or as a bonus?

A. Never, under no circumstances.

Q. Do you know of the complainants ever having taken or received any extra interest or premium, or any money in any way, for a loan, above the legal interest?

A. None whatever; there is no one thing that we have been so tenacious about as that.

30 *Q.* Was any member of the Savings Institution, treasurer or any other officer or manager, authorized to make a loan upon usurious interest?

A. No, sir; they would very soon cease to be managers.

Q. Was any member of the funding committee, or the treasurer, authorized to make a loan for the Savings Institution?

A. No, sir, they were not authorized; and as far as my knowledge extends, no one ever exercised that authority; there have been cases where the funding committee have referred an application to one or more members of their body, with powers to grant or reject the application.

40 *Q.* Was that power to be exercised upon further examination of the property only?

A. It was.

Q. Had you any knowledge of the way loans were made by the complainants before you became one of the funding committee?

A. I think not.

Q. Had you any knowledge of this loan made to Mr. Muir before or at the time it was made, and were you consulted in relation to it by the committee or any of the managers?

A. I have some vague impression that I was; but it may be that I have got that impression from subsequent talk.

Q. Did you hear of the charges made by Mr. Muir, of having paid Mr. Mott \$100, and if so, when did you first hear it?

A. I did; the first I heard it was only an intimation, and the amount not specified; but it seemed to me so unlikely that I did not give it much thought; I heard it from Mr. Macknet first; my impressions are that it was about the time we put it in our attorney's hand for foreclosure; there is a possibility that I am mistaken about that, and it might have been before, but I think not.

Q. Did you know whether any part of this \$100, he charged to have paid Mr. Mott, ever was paid to the complainants, or any of the managers, or any of its officers?

A. No, sir; I never knew what the amount was until the suit commenced, and that I received from Mr. Albert P. Condit, former solicitor of Mr. Muir.

20

Being cross-examined, witness says:

Q. Did you ever hear any of the managers of the institution blame Mr. Mott for having received a bonus on this loan or any other?

A. I never did; I have been induced to ask the question since this affair, but have never been told so; I was one of the committee to examine his accounts as treasurer, since his death.

Q. Was there any account for that \$100 in his accounts?

A. There was not.

Q. Was Mr. Mott, or not, ex-officio a member of the funding committee?

30

A. Not being a member at that time, I can't speak with any personal knowledge; I have an impression that there might have been a resolution appointing him a member, but that being some time ago, I can't speak with any certainty; he never was a manager.

Q. Do you know of his acting as one of the funding committee, before you went in, being active therein?

A. I don't know as I do.

Being re-examined, witness says to the

Q. Had Mr. Mott any authority from the complainants to take more than legal interest for a loan?

40

A. Never.

Q. If Mr. Mott received \$100 from Mr. Muir, had he any authority from the complainants to take or receive it?

A. None whatever; I say so, because if he had had such authority, it would appear upon the books of the institution.

ELIHU DAY.

Subscribed and sworn, the day and year aforesaid, before me.

GEORGE F. TUTTLE, *M. C.*

Adjourned to Saturday, July 12, 1862, at 10 A. M.

Saturday, July 12, 1862, examination resumed. Present as before.

Charles M. King, a witness produced on the part of the complainants, being duly sworn, says :

10 *Question.* Are you treasurer of the Newark Savings Institution?

Answer. I am.

Q. How long have you been so?

A. Since May, 1851.

Q. Are you one of the funding committee?

A. I am, ex-officio.

Q. Do you know Josiah F. Muir, the defendant in this suit?

A. I do.

Q. Do you know of the bond and mortgage held by the complainants in question, in this suit?

20 *A.* I do. [Two papers shown].

Q. Are these the bond and mortgage in question?

A. They are.

The same were offered in evidence. The counsel for defendant, Muir, waives the formal proof of said papers, by the subscribing witness, and states that Israel Day, the said subscribing witness, is dead, and I accordingly mark the said bond and mortgage Exhibits A and B, on the part of the complainants.

Q. Have you the custody of the books of the institution?

A. I have.

30 *Q.* Is there an entry on the books of the complainants, of the loan made to Josiah F. Muir, in 1850? [Objected to unless the book is produced; whereupon complainants produces two books, the Ledger and Journal.]

The examination of the witness was here temporarily suspended, and

Edwin Van Antwerp, a witness produced on the part of the complainant, being duly sworn, says :

Question. Were you a manager of the Newark Savings Institution and a member of the funding committee in the year 1850?

Answer. I believe I was.

Q. Were you an active member of the funding committee, and did you attend to the loaning of money by the complainants?

A. I think that the loaning, that is the furnishing of money, was always done by the treasurer; when any person wanted a loan on his property he applied to the bank or funding committee, which is the same thing I suppose, for a loan; if the funding committee were satisfied it was all right, and they had the money, they authorized the treasurer to loan it to him; by "bank" I mean the Savings Institution; that was the plan then, as I suppose it is now.

10

Q. Was the treasurer authorized to loan money independent, or unless authorized by the funding committee?

A. Not that I was ever aware of.

Q. Was he authorized to make any contracts or agreements for the loaning of money, independent of the funding committee, and without their consent?

A. Not that I ever knew of; I never knew of a case.

Q. Do you recollect of a loan being made, while you was a member of the funding committee, to the defendant, Josiah F. Muir, of \$5,000?

A. No, sir; I have been trying to think, but can't remember; I 20 went to Norwalk in 1855, and was there two years, and it is six years ago since I left the institution as a member.

Q. While you was a member of the funding committee, did you ever know of a loan being made where a bonus or premium was required to be paid for the money to the complainants?

A. No, sir; I should not suppose an institution would keep an agent who would do such a thing in their employment; I never heard of such a thing.

Q. Did you know of any money being paid to the treasurer, or a manager, or any officer or member of the institution as a premium for 30 a loan of money, or for service in obtaining a loan of money from the institution?

A. No, sir.

Q. Was the treasurer, or any officer or member of the Institution, authorized to make a contract or agreement for a loan of money from the complainants, and take and receive, or receive any money for the loan or for services above the legal rate of interest, or as a compensation to the complainants or any of its officers?

A. Not that I ever knew of.

Q. Did you know William H. Mott?

40

A. I did; he was treasurer at the time I was a member of the funding committee.

Q. Did you know of his having taken one hundred dollars from Mr.

Muir, the defendant, for a loan of money from the complainants to him?

A. No sir.

Q. Did you ever hear that he had taken that amount from said defendant?

A. No sir; I don't believe any of the funding committee was aware of it, if he had done so.

Being cross-examined, witness says to the

Q. Did you never hear that Mr. Mott exacted, or received from Mr. Muir, a commission or bonus of any kind for that loan?

A. No sir.

Q. Did you never hear that Mr. Muir charged that?

A. No sir.

Q. When you acted as one of the funding committee, what was the mode of making application for money and granting it (to the institution,) to whom, or what officer was the application usually presented, and who communicated to the applicant the result of his application, and who drew the check for the money?

A. I believe in making the application, it was generally made to the treasurer, (because he was always on the spot,) and in writing always I believe, and then the treasurer at the meeting of the funding committee was admitted, and they would examine the property; and if they found it all right, authorize the loan; the check I presume, was made by the treasurer, but that I knew nothing about; after the property was found advisable, then the attorney of the company examined the title, and if it was all right the money was paid; that I think was the mode of doing business at that time.

Q. Did the applicant do all the business with the treasurer, or with the funding committee?

30 A. I believe it was with the treasurer.

EDWIN VAN ANTWERP.

Subscribed and sworn before me.

GEORGE F. TUTTLE, *M. C.*

Examination of Charles M. King resumed.

Question last put to witness repeated.

A. Under date of July 3, 1850, in the journal there is this entry:

"Bond and mortgage account, Dr. to cash for Josiah F. Muir's bond and mortgage on property at Chatham, New Jersey, 5,000," in the column of dollars.

40 Upon the ledger, under date July 3, 1850, bond and mortgage account is debited "Josiah F. Muir, 5,000," in the column of dollars;

under date July 3, 1850, cash account is credited by do. do. (under the words bond and mortgage,) 5,000 in the column of dollars.

Q. Do those books show the amount of money paid to Mr. Muir for that loan?

A. I suppose they do.

Q. Have you the check which was given to Mr. Muir for the money loaned?

A. I suppose I have.

Q. Will you produce the check?

Witness produced a check in response, which is offered in evidence 10 and marked exhibit "C," for the complainants.

Q. Is there any other entry upon the books of the complainants, relating to this loan?

A. None that I know of.

Q. Was the account of the Newark Savings Institution kept in the State Bank at Newark, at that time?

A. I believe it was.

Q. Has Mr. Muir at different times, since you have been treasurer, paid interest upon this loan, to the complainants and received by you as treasurer?

20

A. Yes.

Q. Have the payments been endorsed upon the bond, from time to time, as they have been made?

A. I think they have; I believe they have.

Q. When was the last payment of interest made by Mr. Muir upon that bond?

A. On the 26th March, 1861, as appears by the endorsement.

Q. To what time did that payment satisfy the interest?

A. To January 10, 1861, as appears by the endorsement.

Q. Has Mr. Muir paid any part of the principal of that bond; and 30 if so, when and how much?

A. On the 10th of July, 1854, Mr. Muir paid \$1,000, and on the 13th of January, 1855, Mr. Muir paid \$1,000, as appears by the endorsements upon the bond, in my handwriting.

Q. What amount is now due and unpaid upon that bond and mortgage; what amount of principal, and with interest from what time?

A. \$3,000 of principal and interest thereon, from January 10, 1861.

Q. Has the rate of interest been changed since the bond was given, by a new agreement of Mr. Muir?

A. It has.

40

Q. Is that the agreement endorsed upon the bond?

A. It is.

Q. Is that the signature of Josiah F. Muir, and were you the subscribing witness to that agreement?

A. That is the signature of Josiah F. Muir, and I was a subscribing witness to the agreement.

Q. Prior to the law authorizing seven per cent. interest in Essex county, did Mr. Muir offer to pay more than six per cent. interest upon that bond?

A. I do not know the time which the law authorized receiving seven per cent. in Essex county, but I do know that before the institution could lawfully have received seven per cent. Mr. Muir, once, certainly, and I think twice, urged me to receive seven per cent. interest,
10 or interest at that rate.

Q. What reply did you make to his proposition?

A. I replied that the institution could not lawfully receive it.

Q. When Mr. Muir at any time paid interest, or paid part of the principal of that bond, did he state that he had paid \$100, or any sum for that loan?

A. Mr. Muir on one occasion said to me that he ought not to be called upon to pay the principal, for the reason that he had paid Mr. Mott for getting him the loan.

Q. How came he to make that statement? had he been called
20 upon to pay the principal?

A. He had been called upon to pay the principal, or a part of it; I am not sure that it was all of it, but it was all or a part.

Q. Did he state that he ought not to be called upon to pay at all, or only at that time, when payment was required?

A. I understood him to mean that he ought not to be called upon to pay so soon after the loan was obtained?

Q. When was this statement made?

A. I do not recollect the time; I think five or six years ago.

Q. Do you recollect whether it was before or after one of the pay-
30 ments he did make?

A. I do not recollect.

Q. Has he, since that time, said anything to you about the payment to Mott?

A. I do not recollect that he has.

Q. Is there anything upon the books of the institution showing that the \$100, or any part of it, alleged to be paid to Mott, ever came to the complainants?

A. I have examined the books, and I find nothing to show it.

Q. Did you ever know of any money being paid to the complainants,
40 or any of its officers, as a bonus or compensation for a loan?

A. I never did.

Q. Since you have been connected with the institution, by whom are the loans made?

A. By the funding committee.

Q. Is any one of the funding committee authorized to make a loan or any contract or agreement respecting a loan by the complainants alone?

A. No.

Q. Are the loans made by the joint action of the funding committee, or by power given by them to a sub-committee?

A. The loans are generally made by the committee, but sometimes an application is referred to a sub-committee, with power to grant the loan, provided that something not satisfactory to the committee should prove satisfactory to the sub-committee appointed to inquire into the matter.

Q. How many usually compose a sub-committee?

A. Two or more.

Q. Is the treasurer ever authorized to make contracts alone, for loans?

A. That authority has never been delegated to me.

Q. From what time does a loan bear interest made by the complainants, under their rules and practice?

A. We consider the loan entitled to draw interest from the day it is granted.

Q. Do you set apart the amount of the loan as appropriated for that particular purpose?

A. The amount loaned is considered as being so appropriated.

Q. When are you ready to pay the money?

A. On the day that the loan is granted.

Q. What do you require of the applicant before you pay him the money?

A. We require his bond and mortgage, with searches, and policy of insurance, if there be any, with the certificate of the counsel of the institution that he has examined all the papers and finds them correct.

Q. At whose expense are they to be furnished.

A. The papers are furnished at the expense of the applicant for the loan.

Q. If there is difference between the date of the loan and the payment of the money, what is it caused by usually, or always?

A. It is caused by the delay in perfecting the papers.

Being cross-examined, the witness says to the

Q. Do you recollect calling on Mr. Muir, prior to his making payment of principal, to pay up part or the whole? 40

A. Mr. Muir was called upon to make payment of the principal, and, I think, of course, before any payment was made.

Q. Did you threaten to prosecute him, or take steps for that purpose, you or the company?

A. I think not.

Q. Was the claim put in a lawyer's hands before this suit was commenced?

A. I have no recollection that it was.

Q. Did Mr. Muir call upon you when you required the money to be paid—the principal, or a part of it?

A. After the call was made he called shortly after.

10 *Q.* And that was before he paid any part of it—before any payment of principal was made?

A. Upon that requisition.

Q. You say that you don't recollect that it was put in the hands of a lawyer before the last payment was made?

A. I do not recollect; I think it was not.

Q. Before the last payment was made did you inform him that he would be prosecuted if the principal, or a part it, was not paid?

A. I do not recollect that I did.

20 *Q.* At the time that you speak of, that he said he had paid Mr. Mott, did you communicate to any of the managers what he said?

A. If I did not at that time I did subsequently.

Q. How long after?

A. It is impossible for me to tell how long after, but not very long.

Q. Within three months, or any other limited time that you can give?

A. I should think within three months.

Q. Was there ever a resolution passed by the board of managers, or the funding committee, to prosecute this claim against Mr. Muir?

A. I was directed by the funding committee to place it in the hands of a lawyer, for foreclosure and collection.

30 *Q.* Was there any minute or record kept of that direction?

A. There was.

Q. What was the date of it?

A. I cannot answer without referring to the minutes.

Q. Was there ever more than one direction of that kind given by the funding committee?

A. There may have been, but I am not certain.

Q. Will you produce the minutes, for the purpose of ascertaining the date, or dates, if more than one?

A. I am willing to.

40 *A* paper being shown witness, he is asked—

Q. Is that your handwriting?

A. Yes.

Q. You sent that paper to Mr. Muir about the date of it, did you?

A. I suppose so.

Q. Can you tell pretty nearly the date of that resolution to prosecute, from that letter, or any other circumstance?

A. I cannot tell from the date of this letter; there are other circumstances by which I can tell; the minutes of the proceedings of the funding committee.

Q. Do you recollect of Mr. Muir calling upon you, in answer to a communication from you, as to its being ordered for collection, and that he wanted to get it delayed, and what reply you made to him upon that?

10

A. Mr. Muir has called upon me several different times, in relation to the payment of principal, interest and insurance.

Q. Did he want to get it delayed—to delay it longer?

A. Yes.

Q. Do you recollect of making this reply: "that the committee had ordered it prosecuted, and that was the end of the matter," or anything to that effect?

A. On one occasion Mr. Muir seemed to appeal to me for delay, and I think I told him that it was the order of the finance committee, and I had no control of the matter.

20

Q. Do you recollect that, after that a short time, within one or two months, Mr. Macknet called upon you, and told you you had better wait a short time, or anything to that effect.

A. I have no such recollection.

Q. Did he ever speak to you after that in regard to the collection?

A. He may have done so; I have been in the habit of frequent conversation with the members of the funding committee, upon the business of the institution.

Q. Do you recollect anything of Mr. Macknet saying to you that Mr. Muir had employed Asa Whitehead, or a lawyer, in respect to it?

30

A. I do not recollect Mr. Macknet saying any such thing to me—at all events not before the present foreclosure was commenced.

Q. Did you ever hear any of the managers or trustees say they would charge this \$100 to Mott, or anything to that effect?

A. No.

Q. Did you ever hear any of them say that they had a right to take this \$100, or that Mott had a right to take it?

A. No.

Q. Did you ever hear any of them say that it was best to wait, and that if they went on to prosecute it, they would lose it all, or any- 40 thing to that effect?

A. No.

Q. You have produced the journal and ledger here; is there any

other book or memorandum book of the institution in your hands as treasurer?

A. Yes.

Q. What other book or books?

A. There are deposit books, draft books, check books, blotters or day books, an expense book; there is a book which is labeled on the back of it ledger; it appears to be a sort of cash account book between Mr. Mott and the institution; it is there, though I have never considered it exactly in my possession; I have always considered it
10 more of a private book of Mr. Mott than one belonging to the institution.

Q. On that last book have you ever seen any entry of \$100, as received from Muir?

A. I have not.

Q. Will you produce that book here?

A. I will.

The book produced, and also the book of minutes, for the purpose of ascertaining the dates of the directions to foreclose.

Q. Please tell, from the book, when Muir was first notified to pay the principal?

20 A. Apparently November 16, 1854; on looking further I find another entry dated February 22, 1854, whereby he was required to pay \$1000; this book commences November 19, 1852; I know of no book of this kind earlier than this.

Examination adjourned to Monday, July 14, 1862, at 9½ A. M.

July 14, cross-examination of witness resumed, pursuant to adjournment—present as before.

Q. When Mr. Muir told you about having paid Mr. Mott, can you give us the language he used at that time, the words of it?

30 A. I cannot give the language or words any different from what I have already stated.

Q. Do you mean to say that those were the words used by him?

A. Those are the words, as nearly as I can recollect.

Being re-examined, witness says:

Q. This is the book you called the cash book or private account of Mr. Mott; the one now produced?

A. Yes.

Q. Do you find any entry in that, in relation to this loan?

A. Under the date of July 10, 1850, Mr. Mott appears to have
40 credited himself with cash paid to Mr. Muir, for his mortgage, \$5,000; I find no other entry in relation to it.

Q. How came that book in your hands, or the possession of the complainants?

A. When the books, papers and furniture belonging to the insti-

tution were removed from the State Bank, to the building subsequently occupied by the institution after the death of Mr. Mott, this book came with them.

The book is offered in evidence, and marked by me an Exhibit for the complainants.

Q. Did you receive any letters from Mr. Muir in relation to this loan?

A. I did.

Two letters being shown, witness is asked,

Q. Are those the letters?

A. These are letters from Mr. Muir.

10

Letters offered in evidence, and marked by me Exhibit for the complainants.

Q. Why did the funding committee order the mortgage of Mr. Muir to be foreclosed? [Objected to.]

A. For the reason that the interest and insurance due were not paid by Mr. Muir.

Q. Had he been notified that he must pay the interest and insurance, before the mortgage was ordered to be foreclosed, and more than once; how many times?

20

A. I think he had been so notified; I don't know if more than once.

Q. Did the company renew his policy of insurance, which he had upon the property, in order to keep the insurance alive?

A. They did.

Q. Did he let it expire by his own neglect, or was it about to expire when renewed?

A. Mr. Muir informed me that he could not raise the money to pay the premium of insurance, and it was consequently renewed by the complainants; the amount of premium paid by the complainants was 30 \$112.50.

Q. Who has the power of ordering the collection of debts owing to the Savings Institution?

A. The funding committee; there were two policies of insurance, and they have each been renewed once.

CHARLES M. KING.

Subscribed and sworn, before me.

GEORGE F. TUTTLE, *M. C.*

Adjourned to July 28th, 1862, at 9½ o'clock, A. M.

Charles S. Macknet, a witness, produced on the part of the complainants, being duly sworn, says to the question: [The defendant, Josiah F. Muir, objects to the re-examination of this witness without an order of the court for that purpose.] 40

Q. By whom and by what authority was a loan of \$5,000 made to Josiah F. Muir by the complainants? [Objected to.]

A. By the funding committee of the institution.

Q. Was the treasurer of the complainants authorized to make loans for the complainants?

A. No, sir.

[Question objected to, as witness had been previously examined.]

Q. Was the treasurer authorized, in making loans, to impose any different terms than was authorized by the funding committee?

10 A. No, sir.

[Question objected to as leading.]

Q. Did the complainants ever make loans requiring the borrower to pay two or two and a half per cent. premium for money lent by them, the complainants?

A. No, they never did while I was in the committee.

Q. Had the complainants any rules authorizing the treasurer or the funding committee, or any other person in their behalf, to lend money upon such terms, or requiring any premium, of any amount, to be paid for loans?

20 A. No, sir, no premiums; there were no such rules.

Q. If Mr. Mott took \$100 from Mr. Muir, had he any authority for it from the Savings Institution?

A. No, sir.

Q. Do you recollect of having a conversation with Mr. Muir about this loan, in 1852 or 1853? [Question objected to.]

A. I think, in my former examination, I said '52; I had a conversation with Mr. Muir about this, but the date I am not positive about; Mr. Muir called on me and said he thought it was pretty hard that the Savings Bank should call for any portion of that money; he said
30 he had to pay for getting that money; I asked him how that was; he then told me he gave Mr. Mott \$100 for getting it, which was the first I ever knew of it.

Q. Did you ever say to Mr. Muir, in 1852 or 1853, or at any other time, that you was satisfied that Mott took \$100 for this loan, and that you knew that it was in his (Muir's) power to throw the complainants out of the money, and that Mr. Mott shaved everybody?

A. No, sir, I never said so.

Q. Do you remember of the funding committee consulting upon the application for this loan?

40 A. I do.

Q. Do you recollect whether the loan was granted by the funding committee, or that they consented that it should be made on a consultation together?

A. It was agreed, on a consultation together, that it should be made.

Being cross-examined, witness says :

Q. Do you recollect, when you had a conversation with Mr. Muir about it, after the loan was granted, of saying to him, in any conversation, that he had employed Asa Whitehead to test it, or anything to that effect?

A. After Mr. Muir had told me that Mr. Mott had taken this \$100, he said Mr. Whitehead said it was usury.

Q. What reply did you make, and what else did he say? 10

A. I do not recollect what reply I made.

Q. Did you tell the funding committee, the first time they met, of this conversation with Mr. Muir—what he said about it?

A. I have no recollection that I did, but may have mentioned it to them individually, as I saw them.

Q. Had the committee any objection to making this loan to Jonathan M. Muir, instead of Josiah Muir?

A. I have no knowledge that they had.

Q. Was Mr. Meeker a more active man in making loans, at that time, than yourself or any other member of the committee? 20

A. Mr. Meeker had more knowledge of this property than either of the committee; he was no more generally active than other members of the committee; any member who knew the property offered would be the most active, and that was the case with Mr. Meeker in regard to that application.

Q. Do you (the company) ever buy notes or mortgages for less than the face of them? [Question objected to].

A. We never buy notes of hand; I have no recollection that we have ever bought a mortgage for less than the face of it; we never buy them at all; we sometimes loan by a man's giving his own bond 30 and assigning a bond and mortgage as collateral; I have been a member of the funding committee from the organization of the institution to this time.

C. S. MACKNET.

Subscribed and sworn to before me, the day and year last aforesaid.

GEORGE F. TUTTLE.

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein the Newark Savings Institution are complainants, and Josiah F. Muir and others are defendants; taken before Theodore Little, one of the masters and examiners of said court, at his office in Morristown, New Jersey, on Monday, the twenty-first day of July, in the year of our Lord, one thousand eight hundred and sixty-two, in the presence of Alfred Mills, Esquire, solicitor for Alfred B. Brittin, one of the defendants, James J. Scofield, solicitor for Josiah F. Muir. It appearing that notice of the examination had been served on A. S. Hubbell, Esquire, solicitor of the complainants, and also on Mahlon Minton, another of the defendants; notice of this examination is admitted by J. J. Scofield, Esquire, solicitor, &c.

John Tunis, of the township of Morris, in the county of Morris, a witness produced on the part of Alfred B. Brittin, one of the defendants, being duly sworn, deposeth and saith :

Question. Will you state your age, your business, and your residence ?

Answer. I was sixty-three years old the fifth of January last ; I do something at farming ; I reside at New Vernon.

Q. How long have you been a farmer ?

A. I was brought up a farmer.

Q. How much land have you owned at one time in Morris county, about ? [Objected to by Mr. Scofield.]

A. I could not tell you exactly ; I suppose in the neighborhood of five or six hundred acres, and may be more.

Q. In what township is your farm ?

A. In Morris.

Q. And how near to the farm formerly owned by Abraham Brittin, in that township ?

A. I should think somewhere about three miles from it.

Q. Were you acquainted with Abraham Brittin in his lifetime ; and are you acquainted with Josiah F. Muir ?

A. I was acquainted with Abraham Brittin ; I knew Mr. Muir when he was a boy, but have had no acquaintance with him lately.

Q. How near do you live to Mr. Muir ?

A. It is about six miles, I suppose ; I don't know that it is so far quite.

Q. Have you been in the habit of raising horses and dealing in them ?

A. Yes, sir.

Q. For how long ?

A. I suppose for forty years.

Q. How many have you generally kept at a time?

A. Well, I have kept two or three, and from that to twenty-four or five, I suppose; mules, horses and colts.

Q. Have you been in the habit of keeping stock horses and breeding mares?

A. Well, I have kept stock horses; but have not done much in that business; I have kept brood mares.

Q. Do you keep a stock horse now?

A. Yes, sir.

Q. Did you know a bay stallion which Mr. Abraham Brittin had, and afterwards sold to Mr. Muir here?

A. Well, I knew he had one, and I heard he sold him to Mr. Muir.

Q. Where was that stallion kept?

A. He was kept on Mr. Brittin's farm, in the swamp, near Green Village, the same farm I spoke of a while ago.

Q. Did you ever go there to see him? if so when?

A. I did, the summer or spring that he was three years old.

Q. Did you see him there?

A. Yes, sir.

Q. For what purpose did you go there?

A. Well, I heard he had a very nice colt, and I went to see if I could get the service of him for some of my mares.

[Mr. Scofield objects to the witness stating what he heard.]

Q. Did you examine him at that time?

A. Yes, sir.

Q. Did you put your mares to him?

A. No, sir.

Q. Why not?

A. Well, they told me Mr. Brittin would not let the colt go to no mare.

[Mr. Scofield objects to witness stating what he was told.]

Q. Why not, and who told you so? [Objected to.]

A. On account of his age; he did not consider him old enough; Mr. Oaks, the man who lived on the place, told me.

Q. Who had charge of the horse at that time?

A. Leonard Oaks.

Q. Had you seen this horse before that time?

A. I might have seen him when he was a colt; I don't remember particularly about that.

Q. Did you know the horse by reputation before you went to see him?

A. I knew Mr. Brittin had a colt out of my horse.

Q. When did you last see him?

A. I think it was along the latter part of summer or fall; I saw him at Green Village.

Q. How long before he was sold to Mr. Muir.

A. Six months, I should think; I don't know what time he sold him to Mr. Muir; it was in the spring, I think, that I heard he had sold him to him.

Q. How old was he?

A. He was three past when I saw him, and of course he would
10 have been four the next spring.

Q. Who had him at Green Village?

A. Mr. Oaks' son was on him when I saw him.

Q. Did you see him ride him?

A. Yes, sir.

Q. Was he lame or diseased in any way at any time when you saw him?

A. I did not see anything like lameness or disease.

Q. Do you know of his ever being lame, or in any way diseased, before Mr. Brittin sold him?

20 A. I do not.

Q. Describe the horse, if you please, as to color, appearance, style and action.

A. He was a bright bay, black mane and tail; he was a horse that made a very good appearance.

Q. Anything else, sir, as to his style and movement or appearance?

A. I did not see anything lacking about his movement; he appeared to be a very pretty mover—what I saw of him.

Q. By whom was he sired?

A. By Splendid.

30 Q. Who owned Splendid, and who put the mare to him?

A. I owned him, and I put the horse to the mare.

Q. Was Splendid a blooded horse or not; if so, what stock was he of?

A. He was a high-blooded horse—from some of the best stock in this country, I suppose.

Q. What was the stock, what was the general name of it?

A. Harpinus was his sire; he was a Messenger from Hambletonian; the dam and sire both were Messenger.

Q. Who owned Splendid before you did?

40 A. Colonel Solomon Boyle.

Q. What relation was he to your wife?

A. He was her father.

Q. Was she an only child?

A. Yes, sir.

Q. Did you get this horse after Colonel Boyle's death, and if so, how?

A. I did get him after his death; I took him at the appraisal.

Q. Did all the property come to your wife?

A. Yes, sir.

Q. What sort of a horse was Splendid? Describe his appearance and points.

A. He was a horse very compact—about fifteen hands and three inches high; he was a heavy made horse—about as well made as any horse you could pick up, I suppose; he was a very fast horse, and a very pleasant horse to drive.

Q. For what purpose was he kept by Colonel Boyle?

A. He was kept as a stallion.

Q. Do you know what price he was held at?

A. I guess the Colonel never put any price on him, and did not want to sell him.

Q. What was he ever offered for him?

A. I understood he was offered seven hundred dollars for him by a man from Pennsylvania; that was when he was in his teens. 20

[Before the witness gave his answer, Mr. Scofield objected to his stating anything he had heard, unless he had heard the offer made.]

Q. From whom did you understand that. [Objected to.]

A. I think from the Colonel, and his black man also.

Q. What did you, yourself, value him at?

A. I never put any valuation on him; I calculated to keep him as long as he lived.

Q. What was he worth?

A. I could'nt tell; I didn't try to do much with him after I got him, as he was old, except to use him for my own mare, and if anybody came there for him, they got the use of him. 30

Q. You say you understood Colonel Boyle was offered seven hundred dollars for him, did you think at the time, that was too much, or too little for him?

[Question objected to by Mr. Scofield.]

A. I should not have thought it any too much.

Q. What was Splendid's reputation as a stock horse?

A. He was considered one of the best foal getters, and the best stock ever got about here.

Q. Have you his pedigree; and if so, will you produce it? 40

A. I believe you have it; I handed it to you.

Q. Is this it, now shown you?

A. Yes sir.

I have marked the handbill shown the witness, exhibit B. 1, (one,) on the part of the defendant, Brittin.

Q. From whom did you get this bill?

A. From the estate of Colonel Boyle, after he died; I got bills of different horses he had.

Q. Were you his executor or administrator?

A. I was his administrator.

Q. Did you find this bill among his papers, and if so, where?

A. I think I found it at his house, though it may be a bill that he
10 handed me at some other time.

Q. What was Colonel Boyle's business?

A. He was a farmer.

Q. Was he in the habit of raising stock?

A. Yes, sir.

Q. By whom was Hambletonian got?

A. By old Messenger, I think; that bill will tell better than I can
recollect.

Q. Who owned Harpinus, the sire of Splendid?

A. Anthony Dey owned him at the time the mare was put.

20 Q. Where was Harpinus kept?

A. At Lodi, Bergen county.

Q. Was he ever kept in Morris county?

A. No sir, not that I ever knew; I am sure he was not.

Q. Did you know Splendid's dam?

A. Yes sir.

Q. By whom was she got?

A. By Expedition.

Q. Who was the sire of Expedition?

A. He was sired by old imported Expedition, I think.

30 Q. Who owned Expedition?

A. Col. Boyle.

Q. Did you know the grand dam of Splendid?

A. No, sir.

Q. Do you know by whom she was got?

A. By Hambletonian, it was said.

Q. Did you know the mother of Mr. Brittin's stallion?

A. Yes, sir.

Q. Was she a blooded mare or not?

A. Well, she was a very good blooded mare.

40 Q. What was her color?

A. Bay.

Q. What was her pedigree?

A. She was sired by the horse Edward Lindsly owned, out of
Harpinus.

Q. What Harpinus?

A. Dey's horse, of Bergen.

Q. Do you know who her grand sire was?

A. Her dam was sired by Ludlow's horse, Forrester.

Q. What Ludlow?

A. Cornelius Ludlow, of Long Hill, Morris county.

Q. By whom was Forrester sired?

A. By Bazora, an imported Arabian; that's the name I always heard it called.

Q. What was his reputation?

10

A. He was said to be the best Arabian that was ever in this country.

Q. Did you ever know a horse of this county, named Harpinus, owned by William Edgar?

A. Yes, sir.

Q. Was that the same or a different horse from the one you have been speaking of, as owned by Dey?

A. He was a different horse and a different looking horse.

Q. What was the reputation of Harpinus, owned by Anthony Dey?

A. He was considered one of the best horses there was in this state. 20

Q. Do blooded horses get their growth as early as other horses?

A. No, sir.

Q. Do they commonly get their growth as early as four years old?

A. No, sir.

Q. At what age do they generally attain their full growth?

A. They don't get their growth and fill out before they are six or seven years old.

Q. Do you know of other stallions being sold in this county, besides this one of Mr. Brittin?

A. I don't know of many; I have probably heard of several, but I 30 can't tell the prices; it is a thing I never charged my mind with; they don't sell a great many blooded horses about this part of the country.

Q. What would you think a fair market value for Mr. Brittin's horse?

A. I couldn't tell; when I heard what he sold for, I did not think i nothing extraordinary, if a man wanted a fancy horse.

Q. Judging from other sale of stallions in this part of the country, was the horse of Mr. Brittin's, in your opinion, cheaper or dearer at five hundred dollars than they were?

40

[Question objected to by Mr. Scofield, because it don't appear that he has known of any sales of his own personal knowledge.]

A. I should think he was cheaper than some that were sold.

Being cross-examined by Mr. Scofield, counsel for Mr. Muir :

Q. What would you value the Brittin colt at in cash ?

A. I should'nt consider him a dear horse at that money, if any one wanted him for a stock horse.

Q. At what money ?

A. Five hundred dollars.

Q. What would you have been willing to give for him, in cash, at the time you last saw him ?

A. I would not want a horse of that kind.

10 *Q.* Would you have given one hundred and fifty dollars for him, in cash, at that time ?

A. Yes, sir.

Q. How much more in cash ?

A. I did not want him ; I had more horses than I wanted to keep then.

Q. Would you have been willing to have bought him, under the circumstances, then, considering that you did not want him, at over one hundred and fifty dollars in cash ?

A. Well, when I don't want a thing I don't want it, and would
20 not be willing to give nothing like what he was worth.

Q. Well, I ask you again, considering that you did not want him, would you have given over one hundred and fifty dollars for him in cash ? [Objected to by Mr. Mills.]

A. My answer would be, that the horse would not be worth one-half or one quarter as much to me as to a man who wanted to keep a stud horse.

Q. I shall be compelled to repeat the question. Under the circumstances in which you were—considering that you did not want to keep a stud horse—would you have been willing to give over one hundred
30 and fifty dollars for him in cash ? [Objected to by Mr. Mills.]

A. Well, I don't know ; I did not look at the horse with any idea of buying ; I don't believe Mr. Brittin would have taken anything like that money for him, or any one else for that matter.

Q. Considering, and taking it from what you knew of the horse, and the fact that you did not want to buy, would you have given more than one hundred and fifty dollars in cash for him ?

A. That's more than I can tell ; it was a kind of stock I never wanted to be bothered with ; it was worth three times as much to some men as to me ; I never could make anything by it.

40 *Q.* If you had taken that horse when Mr. Muir took him, do you believe you could have sold him in three months for one hundred and fifty dollars ?

A. Yes ; I believe I could have sold him for a good deal more than that.

Q. How much more in cash, within three months?

A. I could'nt tell; I don't suppose I could have sold him for as much as some others could; fancy horses bring fancy prices, sometimes three times as much as they are worth.

Q. I should like you to tell how much you think you could have sold him for in cash, within three months from the time when Mr. Muir took him?

A. Well, I could'nt tell.

Q. Do you believe you could have sold him for two hundred dollars in cash, in that time?

10

A. That's a kind of guess business; I can't tell what I could do in that time; I am no great hand to sell fancy horses or any others.

Q. Did Mr. Abraham Brittin, in his lifetime, ever offer this colt to you for two hundred dollars, or less?

A. No sir.

Q. You have sold a great many colts in your lifetime, have you not?

A. Yes sir.

Q. What's the highest price you ever got for a three year old past colt, or four year old.

20

A. Two hundred dollars, I think it was.

Q. Which had you rather have, the colt you sold for two hundred dollars, or this colt; both being at the same age?

A. Mr. Brittin's was worth considerable the most, I think.

Q. How much boot would you have been willing to give him.

A. I don't know about that; it was a kind of horse I did not want to buy or trade for.

Q. Which could you have sold the quickest, putting the same price on both?

A. Well, I can't tell anything about that; you would have to find 30 a customer, and may-be one man would like one the best, and another would like the other the best.

Q. Are stud horses rather a difficult article to sell in the market?

A. Yes sir; it is not every one that wants them.

Q. You have been asked a description of this horse in every respect except as to his size; will you give us his size?

A. When I saw him, I think he was somewhere in the neighborhood of fifteen hands high; I didn't measure him.

Q. Isn't that an under size for a stud horse?

A. Well, there is a good many blooded horses no higher than that; 40 fifteen hands and an inch is the height of a good many of them; Morgan Tiger is fifteen and an inch; that was the size of Mariner.

Adjourned till 2 o'clock, P. M.

Q. Is your estimate of the value of this colt based on the idea that he was a sound colt?

A. Well, I supposed him to be a sound colt; I see nothing to the contrary.

Q. Was it based on the idea also, that he was out of the mare and the horse that you have described?

A. Yes, sir.

Q. You have said that blooded horses do not arrive at maturity and size until six or seven years of age; if this horse did not grow any
10 after you saw him, and is no larger now, what inference do you make from that?

A. Well, I should think he had been injured some way, if he had not grown any.

Q. Does it injure a colt to feed him high with Indian corn, when he is two years old?

A. Well, I suppose he might be fed to injure him.

Q. Continued feeding on Indian corn, when a colt is young, does it forward his growth?

A. By feeding him with corn, or anything else, you can push him
20 along faster, of course, than if not fed.

Q. Will they get their growth quicker by such feeding?

A. They may and they may not; I can't tell about that.

Q. Do you know that this colt was quite lame the summer that he was three years old?

A. I saw nothing of it; the colt was fetched out of the stable and I examined him; but I saw nothing of it.

Q. What time in the summer was it that you saw him?

A. The first time I saw him was in May or June, I think; I think likely in June.

30 Q. Had you ever seen him before that?

A. I don't know as I had, and I don't know but I had.

Q. Did you ever notice him before that?

A. Not that I know of.

Q. Did you ever see him, to notice him, after that, except the time when you saw him at Green Village?

A. I don't recollect I did.

Q. Did you hear Mr. Oakes say, or his son, at the time of the conversation you spoke of, that the horse had been foundered, or had been lame, or anything to that effect?

40 A. No, sir.

Q. Did you ever have any conversation with Mr. Abraham Brittin about the colt?

A. Well, I don't know as I did, and I don't know but I did; think

likely I did ; I saw him one day as I was going from the swamp up to Green Village.

Q. Was there anything said by him at that time about altering the colt ?

A. No, sir.

Q. Was there anything said about selling him ?

A. I don't think there was.

Q. Will high feeding, continued high feeding, when a horse is young, produce blindness ?

A. That's more than I can tell ; I never knew it ; I have seen them 10 in Ohio feeding out of a trough full of corn, and where the mare could go with the colt, and eat all they had a mind to.

Q. Did you never know high feeding, with Indian corn, to founder a horse or to blind him ?

A. I have known them to be injured by high feeding and hard driving.

Q. Did you never know them to be injured by high feeding alone ?

A. I don't know as I ever did.

Q. Did you never hear of a horse or colt being injured by high feeding alone ?

20

A. I might ; I don't know of any.

Q. Do you believe they can be injured by high feeding ?

A. I think they might be.

Q. How many colts had Mr. Brittin about the same age as this ?

A. That's more than I can tell you.

Q. Don't you know how many mares he had with foal the same spring this one was foaled ?

A. I don't know of his having any other ?

Q. How much was the price of putting the horse to mares to insure a foal ?

30

A. Seven dollars ; that's what Mr. Brittin paid me.

Q. How do you know that this colt was out of your horse ?

A. I don't know ; only Mr. Brittin brought the mare there, and she had a colt, and Mr. Brittin paid me for it.

Q. What was the size and age of the mare ?

A. That I couldn't tell.

Q. Can you give any further description of her than you have already given ?

A. I don't recollect exactly what I did say about her.

Q. Well, can you give any further description of her than that she 40 was a bay mare ?

A. No, sir ; no more than that she was a nice bay mare ; a very pretty mare.

Q. How long had you known her before that?

A. I can't tell how long; most likely I had known her when she was a colt; but I can't tell how long that was.

Q. Are you certain that you knew at all before she was brought there?

A. Yes; I think I had seen her before.

Q. How many times, according to the best of your recollection, had you seen her before she was brought there?

A. I couldn't tell anything about it; I think I saw her when she
10 was a colt, and I can't tell how many times since.

Q. Can you, then, if you saw her when she was a colt, tell within five years how old she was at that time?

A. I don't think I could.

Q. Can you within ten?

A. I can't tell anything about it, so as to be accurate about it.

Q. Who owned her when you first knew her?

A. I think likely Luther Eddy did.

Q. Can you tell what size she was?

A. No, sir.

20 *Q.* Then, I understand, all you know about that being a colt from your horse is, that he brought a bay mare to your horse, and some three or four years afterwards you saw, on his place, this colt, and from that, you infer that this was the colt from that mare and your horse; am I right?

A. Well, Mr. Oakes told me it was a colt out of old Splendid.

Q. I am not enquiring what Mr. Oakes or anybody else told you, but what you know of your own knowledge; is this all you know, of your own knowledge, about its being a colt from your horse?

A. I know the mare was fetched there, and Mr. Brittin paid me
30 for it.

Q. Anything further, of your own knowledge?

A. No, sir.

Q. What do you know of the pedigree or blood of the mare which you supposed to be the mother of this colt, of your own knowledge?

A. The Forrester mare was owned by Luke Sturgis, I think, and then Luther Eddy bought her.

Q. Do you know that of your own knowledge, or have you only heard so?

A. Only heard so.

40 *Q.* Now, all you have said about the pedigree of the mare, do you know anything but what you have heard?

A. No, sir; I know what people have told me.

Q. Would a blind horse be a good horse to keep as a stud?

A. There have been a good many blind studs that I have known of.

Q. If he was blind at times from four to seven, would he be valuable to keep as a stud horse?

A. Not as valuable as though he had his eyes.

Q. Suppose this colt altered, what would be his value?

A. That, as I said before, is a matter of fancy.

Q. Well, what would he sell for, if altered?

A. That's a thing I couldn't tell.

Q. If he had been altered at four years old, in the condition in which you supposed he was, sound, how long would it have taken you to sell him for a hundred and fifty dollars cash? 10

A. I don't think it would take me long.

Q. Well, a month?

A. It would take me till I could find a purchaser, and I don't know, how long that would be—till I could find some one that wanted him.

Q. Unless you found some one that wanted him for their own use, do you believe you could have sold him in that time for that money.

A. I can't tell anything about it; it might not have taken two days, and might have taken a month; I don't think it would have taken long to sell him for that. 20

Q. Could you have sold him for two hundred dollars in cash in four months?

A. I can't answer that; it would have been no price for any one that wanted him.

Q. Wanted him as a stud, do you mean?

A. A stud or a gelding.

Q. Could you have sold him for three hundred dollars, in four months?

A. You have to find a purchaser for anything, before you sell it.

Q. How much would you have given for him? 30

A. I have answered that question once.

Q. The horse which Col. Boyle owned in his life-time, and which you took at the appraisement, how much was he appraised at?

A. Fifty dollars.

Q. Who were the appraisers?

A. Daniel Runyon and Abraham Dunn.

Q. Were they respectable men, and men of good judgment as it regards horses?

A. They were respectable men; I don't know as to their being good judges of horses; they never dealt very much in horses. 40

Q. Were they not both owners of horses, keeping several?

A. I guess Daniel Runyon had one, and Abraham Dunn two, at that time.

Q. Is not Abraham Dunn a man in whose judgment the community would have confidence?

A. Yes, sir.

Q. Did they make oath to the appraisalment?

A. I presume they did.

Q. How long did you keep this horse, after you took him, under the appraisalment?

A. Some two years.

Q. Who was there when you went to look at the colt on the place?

50 *A.* I think Mr. Oakes was there and his son.

Q. Anybody else?

A. I think not; I don't recollect of any one else?

Q. Where was the colt, in the field, the yard, or the stable at that time?

A. In the stable.

Q. You said Mr. Brittin brought the mare there. Do you mean he brought her there himself?

A. No, sir, he sent her; one of the Oakes' boys fetched her up.

60 *Q.* Do you know a stud horse Mr. Conklin owned in the neighborhood there?

A. I did know him.

Q. Do you know what he sold for?

A. No, sir.

Q. Was he more or less valuable than this colt when he sold him?

A. I should think less valuable, for he broke down and got no colts and could not travel.

Q. Had he been foundered?

A. It was said so.

Q. Was he of the same stock of this horse?

70 *A.* He was out of old Splendid.

Q. How old was he when Conklin sold him?

A. It is more than I can say; he was in the neighborhood of ten years old; may have been more and may not have been so much; I can't tell.

Q. Are you on quite friendly terms with Alfred B. Brittin?

A. Not particular as I know of; I have not seen him but three or four times in four or five years; may-be I have oftener than that; there were several years when I didn't see him at all.

80 *Q.* Were you on particularly friendly and intimate terms with his father, Abraham Brittin?

A. Not any more than with any one else.

The handbill referred to by the witness, and marked Exhibit B 1, was offered in evidence by counsel for Mr. Brittin, and objected to by Mr. Scofield.

Q. [By Mr. Scofield.] Do you know, of your own knowledge, anything of the pedigree of this horse Splendid?

A. I know his dam, and I know they said they took her to Dey's horse, but I don't know whether it was true or not.

Q. How old was this horse when he died?

A. He was somewhere in the neighborhood of twenty years; I don't know but he was a little more than that.

Q. Do you know, of your own personal knowledge, and without stating what you have heard others say, anything more of the pedigree of this horse than you have already stated? 10

A. I don't know that I do.

Re-examined by Mr. Mills.

Q. You have said that the horse, Splendid, came to you from Col. Solomon Boyle's estate, as your wife's property; did you pay anything for him?

A. I don't know that I did; I took the property and paid the debts.

Q. Was Col. Boyle a man of property?

A. Well, he had considerable.

Q. Was or was not this appraisalment a mere matter of form?

A. I suppose it was; I so considered it at the time. 20

Q. Was the appraisalment and the oath to it, if there was any oath, in writing?

A. Yes, sir, I presume it was.

[Counsel for Mr. Brittin here objected to all evidence of the contents of the appraisalment, inasmuch as it appeared to be in writing, unless the appraisalment itself is produced.]

Q. How old was Splendid at the time you got him?

A. He was pretty close to twenty years old, and I don't know but he was twenty.

Q. You have stated, in your cross-examination, that you once sold 30 a colt for \$200, how much did the colt sell for after that?

A. I understood that the man was offered \$900 for the pair, and he would not take it, but asked \$1,000, and a man came from New York to Monmouth to take them at \$1,000, but the one who owned them had turned them out, and one of them had run and got hurt, and he lost the sale of them.

[Mr. Scofield, during this answer, objected to all hearsay, and all that the witness had heard from other persons.]

Q. Do you know what the colt did sell for?

A. No, I don't. 40

Q. Do you think he was worth more than two hundred dollars at the time you sold him.

A. I thought he was.

Q. You remarked, when the master was reading to you your cross-

examination, that you had seen this stallion of Mr. Brittin's twice before you saw him in the fall at Green Village, state when, if you please?

A. I think likely it was in June I saw him first, and July I saw him the second time, before I saw him at Green Village in the fall.

Q. Where was he at both those times, June and July?

A. In the stable at Mr. Brittin's farm; they fetched him out once to show him to me, and perhaps at both times; I think they were getting their hay when I saw him last on the farm; that would be in August, or not far from it.

Q. Who showed him to you?

A. Mr. Oakes' son, the oldest one at home at that time; the father was there once, and perhaps both times.

Q. Do you know what the son's christian name was?

A. I don't know as I do; I think it was the oldest one of his last wife's children.

Q. Did you get or hear the pedigree of the Forrester mare, from her owner?

20 A. No, I did not; all I know is, there were several of her colts in the neighborhood, and they were always called Forrester colts when they were broke.

Q. Was that her reputation in your neighborhood, that she came from Forrester?

A. Yes, sir; I am not certain whether Luke Sturges, or George Baird owned her; there is not much trouble to tell a Forrester colt; they all look a good deal alike.

Q. You say they told you that the dam of Splendid was taken to Harpinus and got with foal by him, did you hear that from Colonel
30 Boyle? [Objected to by Mr. Scofield.]

A. Yes, sir.

Q. At the time he owned Splendid?

A. Yes, sir.

Q. Did he always own him, till his death?

A. Yes, sir.

Q. Did you hear him state Splendid's pedigree, as you have stated it here? [Objected to by Mr. Scofield.]

A. I have heard him tell the pedigree, and have examined it after it was printed, at different times, and I could not tell anything particular about it, except what he said, and what was on the bill;
40 I have no doubt that bill is correct. [The latter part of the answer objected to by Mr. Scofield.]

Q. In your cross-examination, you have been asked some questions about what was said by Abraham Brittin, in regard to this horse one

day, as you were going from the swamp to Green Village; state all that was said in that conversation, by Mr. Brittin, about the horse, as nearly as you can?

[Mr. Scofield objects to the question, on the ground that the witness stated nothing in answer to his question.]

A. I can't recollect of anything being said about the horse, but think likely there was.

Second cross-examination by Mr. Scofield.

Q. When you saw the colt at the farm, in June and July, how old was he; was he two or three years old? 10

A. He was three past, I suppose.

Q. Can you be certain about that?

A. I am pretty certain about it.

Q. In answering questions, as to the pedigree of these horses, you have stated some things to be of your own personal knowledge, and others as what you had heard from others; have you stated above, all you know of your own personal knowledge?

A. I don't know but I have.

Second re-examination by Mr. Mills.

Q. When you saw him at the farm, was it or not the next summer 20 before he was sold to Muir?

A. It was the summer before I heard he was sold to him.

Q. Was this horse, Splendid, kept by Col. Boyle as a breeding or stock horse? [Objected to as principal examination.]

A. Yes, sir.

Q. Was the pedigree that you have given the one he was reputed to have in that neighborhood? [Objected to by Mr. Scofield.]

A. Yes, sir; I never knew or heard of any other.

Q. Have you often heard it talked about in that neighborhood? [Objected to by Mr. Scofield.] 30

A. I don't know as I ever heard it talked about much; I never heard it disputed.

[Mr. Scofield objected to all this examination, because it should have been given on the principal examination, or on the re-examination of the witness.]

Cross-examination by Mr. Scofield.

Q. Who did you ever hear speak of the pedigree of the horses you have mentioned here, except Col. Boyle?

A. I have heard others, but I can't name any of them as I know of; people often speak of the pedigree of a horse. 40

Q. Did you ever hear anybody give the pedigree of Splendid, as it is on the paper, (Exhibit B. 1,) except Col. Boyle?

A. I don't know that I ever did.

Re-examination by Mr. Mills.

Q. Do you mean as fully as it is stated on that paper?

A. I don't think I ever heard any one else give it as fully as it is stated on that paper.

Cross-examined by Mr. Scofield.

Q. Did you ever hear any one but Col. Boyle give any part of the pedigree as stated on that paper?

A. I don't know as I did; I have heard the Colonel talk about the pedigree with others; no one would know his pedigree as well as the Colonel, as he raised the horse and the mare?

10

JOHN TUNIS.

Sworn and examined this 21st day of July, A. D. 1862, before me.

THEO. LITTLE, *M. C.*

Reuben W. Beebe, of the city of New York, in the State of New York, a witness produced on the part of the defendant, Alfred B. Brittin, being duly sworn, deposeth and saith:

Q. What is your age, what your business, and where do you reside?

A. I am fifty-six years old to-day; I buy and sell horses on commission; I reside on the south-west corner of Twenty-fourth street and Third avenue, New York.

20 *Q.* How long have you been engaged in that business, and where do you carry it on?

A. Five years last spring; I carry it on at number seventy-nine East Twenty-fourth street; Langworthy & Abrams keep the stable.

Q. Near Bull's Head hotel?

A. Yes, sir; the fourth door west from that hotel.

Q. Have you been conversant with horses before you went into this business?

A. Yes, sir, since eighteen hundred and twenty-five.

Q. In what way, what business were you engaged in?

30 *A.* I have drove stage in former years, kept stable, and been agent for four lines of stages in Philadelphia.

Q. How many horses about do you buy and sell in the course of a year?

A. That would be hard to answer exactly; a hundred or two; one year I guess I sold as many as three hundred; that was this last year, and included some government stock.

Q. Did you ever go with Mr. Josiah F. Muir, the defendant here, to see a bay stallion in Bayard street, in the city of New York; if so, state when, and the circumstances that led to your going there?

40 *A.* I did go with this gentleman here (pointing to Mr. Muir), to the corner of Bayard and Elizabeth streets, in the city of New York, to see

a bay stallion; I think it was two years ago last spring, but am not positive whether it is two or three years; I saw Mr. Muir on Sunday in Twenty-fourth street, going through the stables; I supposed he wanted to buy a horse; it was along about four or five o'clock, I should think; he came by the stable where I was, and I asked him if he was looking for a horse; wanted to buy; he asked me if I knew of a stud horse, I think a three year old stud; I told him I knew where there were two three year olds; one was a gray one, belonging to Mr. Durkey, in Thirty-ninth street, and the other was a very fine bay three years old, that I had never seen, and he said, "that is the horse I am looking 10 after," and he said "he was stolen from me on Friday night, taken out of his stable;" I told him I could show him the horse in half an hour if he would go with me, as I knew where the horse was; so we got into the cars, and went down to Walker street; I told him we had better get out there, and go around the block and get into the stables the back way, for fear the thieves or them that had the horse might be on the corner and discover us; we went round to the stable and found the horse, and he said, "that is my horse," and wanted to know where the men were that brought him there; the man told him he did not know, they had gone out riding; I told him the better way was 20 to get a policeman and lay for them, and catch them when they came home; I got two detective officers, Jordon and Woolridge; they came up there and stayed till the two men, Donelly and French got there, and then, as they termed it, they nipped them and put them in the station-house; I went down to that stable and saw the horse twice after that.

Q. How did you know where the horse was?

A. This French and Donelly came up to Bulls' Head on Saturday night, about eight o'clock; I was acquainted with French some years ago, when he was a boy, and he recognized me, but I did not him in the 30 first place, till he introduced himself; then he introduced me to his friend "Uncle John," as he called him, I did not know his other name at that time, and says, "Uncle John has a very fine three years old stud colt, that he would like to sell;" he said I would like to have you come down to-morrow morning and look at him, for you can buy him at a great bargain, for the old man is poor and wants money; I asked him where the horse was, and he said at Butts' stable, corner of Bayard and Elizabeth street; I told him I thought I would be down in the morning and look at him; as I was not very well next morning, I did not go to see the horse; it was in the evening of Saturday that 40 French and Donelly came to Bulls' Head, and I saw them, and on the next day, in the afternoon (Sunday,) that Mr. Muir came there.

Q. Do you remember the month in the spring that this took place?

A. I do not ; they had not taken down their stove yet ; there was fire in the stove, and I was sitting by it when they came in.

Q. Describe this horse, if you please ?

A. He was a bay horse, what we call a mahogany bay, black mane and tail, legs black above the gamble, with a small star in his forehead, about as big as a ten cent piece or a little larger, and about fifteen hands high.

Q. How was he as to his form, his head and general appearance ?

A. He had good length of neck ; set up well on the withers ; a 10 small head and ear, what we call a fine head ; very heavy through the jawl, and he was a very smooth horse behind, with a great length of hip ; he denoted a well-bred horse, and one that ought to be a good trotter ; he was as near the fashion of Ethan Allen as I ever saw ; I told this gentleman he resembled him very much, and I should not wonder if he was an Ethan Allen colt.

Q. Did you see him after that time ?

A. I went down there with Mr. Bibb, from Alabama, to look after him three or four days after that ; I told him he was very lame from driving over the road, but in another year he would make a good stock 20 horse for him.

[Mr. Scofield objects to any conversation between the witness and other persons in the absence of Mr. Muir.]

Q. Did you examine the horse at that time ?

A. Yes, sir.

Q. Did you see him again after that ?

A. No, I did not see him after I was there with Mr. Bibb to see him.

Q. Who told you how he became lame ?

A. I found that out by examining him ; all the soles of his feet 30 were worn off, bringing him over the road.

Q. Did Mr. Muir tell you about his being stolen from him ?

A. Yes, sir.

Q. Had the horse any shoes on at that time ?

A. No, sir.

Q. Was there any defect or unsoundness about the horse at that time, that you saw, except this lameness ?

A. No sir, nothing that you could discover.

Q. Did you hear the testimony of the late witness, John Tunis ?

A. Part of it.

40 Q. Did you hear it all read over by the master, after Mr. Tunis had closed his testimony ?

A. Yes, sir.

Q. From what you saw of the horse, and from his pedigree, as stated

by the last witness, what do you think he would have been worth at the time you saw him, if he had not been lamed in the manner you state?

[Question objected to by Mr. Scofield, on the ground that the witness, Tunis, has not given the pedigree of the colt, of his own knowledge.]

[Question waived by counsel for Mr. Brittin, for the present.]

Q. Did the horse have the appearance of being a blooded horse?

A. Yes sir; he had the appearance of being a well bred horse.

Q. Did he have the marks by which a thorough bred horse is generally known?

A. No sir, I don't think he did of a thorough bred; he had some of them and some he didn't have.

Q. From your examination of the horse, state what in your opinion he would have been worth, if he had not been lamed, as you stated?

A. If I had owned him myself and wanted to sell him, I should have got something for him; but to buy him, I don't know exactly; he ought to have been worth from four hundred to a thousand dollars, depending on his pedigree; it was evident he was safe for a stock horse; there was no doubt about that.

20

Q. From your examination of him, would you have thought five hundred dollars a high price for him, if he had not been lamed?

[Objected to by Mr. Scofield, as leading.]

A. He was worth that for a saddle horse for some gentleman, whether he had been a gelding or a stallion, made no difference.

Q. Do you think he would have brought that?

A. I don't think it would have been very hard work to have sold him for that price; I sold one, not so nice the other day, for four hundred and fifty dollars, and a mare at that, and in these hard times.

Q. Have you, or not, sold inferior horses to that one, for a higher price than five hundred dollars?

[Objected to by Mr. Scofield, first as leading, and second as improper in itself and irrelevant.]

A. I have sold horses that did not look so well for higher prices, on account of their speed; if this horse had the speed of one I sold the other day, and a good pedigree, he would have been worth two thousand dollars; but he was an untried horse; you couldn't tell about his speed.

Q. Was he, or not, so lame you could not try him at that time?

A. He was so lame you couldn't get him out of the stable; the last time I saw him he was not near so lame, but was not fit to try him in the street.

Q. Was he, or not, a very handsome horse?

A. I thought he was about the finest three year old I ever saw.

Q. With such a pedigree as was given him by Mr. Tunis, in his direct examination, what do you think that horse would have brought as a stock horse?

[Objected to by Mr. Scofield, on the ground that Mr. Tunis has given no pedigree, except of his father and mother.]

A. He ought to have brought five or six hundred dollars; if I had owned him, I should have asked eight or nine hundred and got what I could; we ask a pretty good price sometimes, and take less; it is 10 difficult to put a price on him.

Q. Did you know old Hambletonian by reputation?

A. Yes, sir.

Q. How is his stock reputed among horsemen?

[Objected to by Mr. Scofield.]

A. He stands next to number one.

Q. Were you in New Jersey, attending the trial of either French or Donnelly, for stealing this horse? and if so, where was the court held?

A. I was at the trial of both French and Donnelly, at Elizabeth 20 City; they were tried together.

Q. Were you there as a witness?

A. Yes, sir.

Q. Was Mr. Muir, the defendant, there as a witness?

A. He was.

Q. Did he give evidence there, as a witness on that trial?

A. Yes, sir.

Q. What did he value the horse at in his testimony?

A. I think he said he gave six hundred dollars for him; that was my impression till I heard the testimony to-day, that he gave five 30 hundred dollars.

Q. Did you hear him put any valuation on the horse while he was in New York?

A. I don't know that I could tell; he said he was a very valuable horse, but whether he put any value on him or not I can't say.

Being cross-examined:

Q. Which one of the two men who stole the horse was it that you had been acquainted with so long?

A. I believe there was but one man who stole him, and him I didn't know; the man who was in company with him I had been acquainted with from a boy.

Q. How frequently have you been in the habit of seeing him since 40 he was a boy?

A. I was in the habit of seeing him at least three or four times a

day for several years, when he boarded with me and worked for his brother down town.

Q. How long ago was it that he ceased to board with you, about what year?

A. His brother died with the cholera in 1849, and after that I lost track of this young man, and had never seen him from that time till I saw him with the man who had this horse.

Q. How much did Mr. Muir tell you he gave for the horse when he bought him?

A. I was under the impression it was six hundred dollars, but I 10 may have been mistaken about it; it was something I did not impress upon my mind; it may have been five hundred.

Q. Did he or not tell you that he bought the horse for the purpose of giving a bonus in borrowing money on a mortgage, or anything to that effect?

A. I think I told him I thought he had paid pretty well for the horse when he spoke of what he paid for him, and he said he bought him of a man he had borrowed some money of, or was about borrowing some money of, and perhaps he had paid more than he was worth; I can't word it as he said it, but that was the effect of it. 20

Q. Well, was or was not the effect or substance of what he told you, that he had given more for the horse than he was worth, for the sake of getting the money?

A. I couldn't answer it any better than I answered it above there; I could draw no other inference from it.

Q. Did he use the word bonus in that conversation in reference to the loan?

A. Well, I don't think he did, though he might.

Q. Did he offer to sell you the horse?

A. He said he wanted to sell him; did not offer to sell him to me 30 in particular; he asked me what I thought he was worth, and I told him I did not want to buy him.

Q. Did you tell him what you thought the value of the horse was, or what he would bring?

A. Well, he was in a pretty bad state; I did not think he would fetch over a couple of hundred dollars.

Q. Would you have given him two hundred dollars for the horse as he was at that time?

A. Well, I think I would have given him that for him as he was, and have taken the chances, if I had any place to keep him, but I had 40 no place without paying sixty-five cents a day for keeping, and a lame horse soon gets very dear at that rate.

Q. Well, now, taking him lame as he was, would you have given

him two hundred dollars for him, having no place, as you say, to keep him?

A. No sir, I would not have bought him at all, unless I had a place to keep him.

Q. How was this lameness occasioned? Was there any lameness which you observed other than that caused by driving him to New York barefooted?

A. Nothing perceptible; no blemishes.

Q. How long before he got over that lameness?

10

A. I can't say a word about it; I don't know anything about it; I went there about a week after with Mr. Bibb, for the purpose of showing him the horse and selling him to him; I thought if he had got so this man could travel him, I might see Mr. Muir and sell him and make a dollar; that was my object in going there.

Q. How long, judging from the appearance of his feet, would it take for him to recover and get over his lameness?

A. I will answer the best way I can; if he had not got any gravel worked in his feet, he might get over it in five or six weeks; if he had, it would take longer, and might spoil him forever; it was a risky
20 thing to take hold of any way.

Q. Knowing what you did of the horse then and from what Mr. Muir said of him, supposing he had had no lameness from driving, what would you have been willing to give for the horse at that time, not knowing his speed or his pedigree, any more than what you then knew?

A. I would have been willing to pay pretty well for him, if I had had a customer; but if I had had no customer I would have bought him as cheap as I could.

Q. To what extent would you have gone without a customer; you
30 would have given fifty dollars for him, wouldn't you, and how much more?

A. If the horse had been sound, and I had seen him let out and drove, then I could have told you now what I would have given for him, but, under the circumstances, I cannot answer the question any further; we never buy a pig in a poke there; he was a horse that would stand very well to manufacture a pedigree; he would stand Ethan Allen or Hambletonian; it is the pedigree that sells them.

Q. Well then, your first estimate of the value of this horse was founded on the idea that he was sound, other than the temporary
40 lameness occasioned by the driving, and that he was a fast horse, was it?

A. It was founded on the pedigree we had stated here to-day by Mr. Tunis.

Q. Suppose a horse, having that pedigree, should be an indifferent riding horse, unsound, foundered by grain, blind occasionally, would that reduce him, in your estimation, any?

A. I should call him a five dollar horse.

Q. Then its the pedigree of the horse, in your estimation, that sells him, provided he is sound and has no very bad qualities otherwise?

A. Yes, sir; that's what sells a horse for a big price.

Q. What difference would it make, in the value of that horse, between having a good pedigree as represented here, and having no pedigree, beyond that of common, ordinary stock? 10

A. A common horse, of his appearance, a man could sell, perhaps, for from two to three hundred dollars, for a fancy saddle horse; but, if he had the pedigree of Patchen, Hambletonian, New Jersey, Toronto Chief, or some of those horses, perhaps he might fetch two thousand dollars; that's going to the two extremes.

Q. To get from two to three hundred dollars for him, as a common horse, or a good riding horse, must he have other qualities, as some speed, or isn't that required?

A. Speed is not required for a saddle horse at all, they want style and action; the more style they have, the better price you can get for 20 them.

Q. Does it require gait or training to get that price for a horse of common stock?

A. Yes, sir; they put them in the riding school, and try them, and then if they are right, they buy them and put them there for training; there's not a dozen horses that come from the country to Bull's Head in a year that are saddle horses when they come there; they all have to be broke; they sometimes break them to a gallop, and sometimes a trot, and sometimes a single foot; that is a gait between a trot and a walk. 30

Q. Is there any portion, that are sent there, which, under the circumstances you have mentioned, do not answer the purpose; if so, what proportion?

A. I don't know as I can answer that question, for I don't know all the horses that are sent there; but I know that they frequently do not answer, and are sent back; at the stable where I am, we have sent not over four this summer, and they have all stayed.

Q. If they are sent back, they are not worth as much as they, as if they succeed?

A. Not to that customer; but there may be another customer, who 40 will pay more for them; almost every one differs as to the gait of a horse; what will suit one will not suit another.

Q. Do you mean to say they will be worth as much, without any

gait for riding as they would with it ; a horse of that size and description as the horse in question ?

A. I mean to say, there is a customer for every horse ; it makes no odds what his gait is ; some men will not give one hundred dollars for a horse, and another will come right along and give two for him.

Q. If this horse had no pedigree, what is the highest price you suppose you could get for him, in New York ?

A. I suppose I might get two hundred dollars for him ; or I might get three hundred, or five, or perhaps six hundred, or a thousand, if I
10 made a pedigree for him, for he was a horse that would stand a pedigree.

Q. Suppose you dealt fairly with a man and said you knew nothing about his pedigree, what would he bring ?

A. I could tell you better after I tried it ; I can't answer that question.

Q. Suppose the horse to be as sound now as he was then, without that lameness you have spoken of, and so much older, what would you be willing to give for him ?

A. I could tell better when I see the horse and try him.

20 Q. Without seeing him or trying him, but having him in every respect the same, except that temporary lameness, would you give a hundred and fifty dollars for him ?

A. I would not buy him at all, sir.

Q. You would'nt give ten dollars for him, would you ?

A. I said I would'nt buy him at all, and I believe that answers the question ; oh, I did not understand the previous question ; I would say as I said before, if I had a place to keep him I would give so much more for him, but I would not buy him without having a place to keep him.

30 Q. Don't you keep other horses ?

A. Yes, sir ; when I buy a horse I put him at livery ; I don't buy them unless they are sound, and I can buy them cheap, and they are pretty sure of a ready sale ; there is a difference between sixty-five cents a day, which they charge, and twenty cents, which it costs, when you keep them yourself.

Q. In the estimates which you have made of the value of this horse, are they based on the selling prices of dealers in the city, or the prices they are purchased at as they come from the country ?

A. That would be hard to answer, because such various prices are
40 paid for horses from the country, from sixty-five dollars to twelve and fourteen hundred dollars, according to their value.

Q. The selling of horses in the city is a good deal a matter of luck and skill, isn't it ?

A. Yes, sir.

Q. It's a good market for good horses with good blood, is it not?

A. Yes; it is the best market in the world, I suppose, for good horses; it has been until the last year.

Q. What would be the difference between a man from the country, a farmer, going to the city to sell a horse, and a man selling him who is acquainted with the business there? How much more would a city dealer get for him?

A. Pretty hard to answer; if a man should come there with a couple of pairs of horses he would not carry much away with him; they would eat themselves up by the time he sold them, if he stayed a few 10 weeks.

Q. If a man had a single horse to sell from the country, a farmer, how much would it be his interest to give a regular dealer to sell him for him rather than go there himself?

A. Give him half what he could get for the horse, and let him sell him quick.

Q. Do you recollect whether Mr. Muir requested you to sell the horse for him for two hundred and fifty dollars. [Objected to by Mr. Mills.]

A. I don't know that I could answer that correctly; I think he told 20 me he would take three hundred for him, but I am not positive.

Q. Dy you recollect the landlord's name at the house where the colt was when you went to see him?

A. I don't know whether it was Morse or Husted; Husted keeps the house now; Morse did keep it; I don't know which kept it then.

Q. Do you recollect of telling Husted or Morse then, or about that time, that two hundred or two hundred and fifty dollars was the highest price such a horse would bring in the proper season for selling such a horse, or anything to that effect?

A. I might have told them so, and I might not; I may have told 30 them less or more; I don't generally put the highest value on a horse, if I want to buy him; I may have told him he was not worth a hundred dollars; I don't know what I did say to them.

Q. Do you recollect what price you put on him, on your oath before the court at Elizabeth, when that trial was?

A. I don't recollect I put any price on him; don't think I said anything about the price of him; I didn't know as much about the value of him then as I do now, since I have heard his pedigree; only Mr. Muir told me he was a very valuable horse, and he paid a good deal of money for him. 40

Q. Don't you recollect that, on that occasion, you swore that the value of the horse was about two hundred dollars?

A. I do not.

Q. Do you recollect what were the names of the lawyers who defended these men who were tried?

A. No sir, I only knew one, that was John Joseph Chetwood, who was prosecuting attorney.

Q. Do you recollect of stating to the lawyers, who were employed by the defendants, before the trial was through, out of court, that the value of the horse was about two hundred dollars, or anything to that effect?

A. I don't think I had any conversation with them at all; I never
10 saw the men before.

Q. Do you recollect that Mr. Muir, in his evidence, told the court and jury that the horse was worth about two hundred and sixty dollars, or anything to that effect?

A. I do not; I can't say I heard his testimony at all; If I did, I don't remember anything about it; I may have been in, and may not, when he was giving his testimony.

Q. Had Mr. Muir sold the horse, when that trial came on?

A. Not that I know of; I don't know anything about the horse after they took him away from New York.

20 *Q.* How long was it after you first him, that he was taken away?

A. I don't know; the last I knew of him was when I went with Mr. Bibb to see him, as I stated.

Q. You came here as a witness from New York, voluntarily, without any subpoena being served on you, did you not?

A. No sir, I think not; I received a paper which I supposed was a subpoena.

Q. When, and where, was that paper served on you?

A. At my hotel in New York; I think it was served the fore part or middle of last week.

30 *Q.* Did you suppose that subpoena would compel you to come from the city of New York into the State of New Jersey, to testify?

A. I don't know why it should'nt, I don't know anything about law; if I was subpoenaed I supposed I was obliged to come; I went twice to Elizabethtown and that was out of the state.

Q. Don't you know that process, issued out of a court in New Jersey, don't bind a man to come out of New York; out of his own state?

A. I don't know anything about it; I have never been sued nor sued any one; I have made up my mind never to disobey a subpoena again, for I did it once to show a pair of horses, and was sent to the
40 tombs and kept there over night by justice Conolly; I sent for my friend judge Talmage, to get me out, and he said he could'nt do it that night, and I must make myself as comfortable as I could till morning.

Q. How much has Mr. Brittin paid for you coming out here?

A. I think he gave me five dollars for my trouble, besides my expenses.

Q. How much more is he to give you?

A. Nothing.

Q. Is there no understanding he is to give you any more?

A. No, sir; I had my pocket picked of the money on my way here, or lost the money.

Q. Is there any understanding he is to make up your loss?

A. No, sir; I told him I would have to borrow money of him to go back.

10

Q. Is there any understanding he is to give you money to go back with?

A. I met him on the platform, and he said you have got here, have you, and I said yes, but came pretty near not coming, for some one had helped himself to my money, and I had to borrow money at the ferry to come on with, and I would have to look to him for money to get home with, and he said he would see I had money to go back with.

Q. Did he give you this subpoena with the five dollars, or did some one else give it to you?

A. He gave me the subpoena with seven dollars, five for my trouble 20 and two dollars for my expenses.

Q. How many times did he call to see you to talk about this matter before you came out as a witness?

A. He was there once before.

Q. Did he tell you anything about the case?

A. No, sir, not in particular; he asked me if my name was Beebe, and I told him it was; he asked me if I knew a certain horse, and I told him I did, and he said he did not know but he would want to use me as a witness in this case; I was busy hitching up a team, and I said very well; I had no time to talk with him at the time.

30

Re-examined by Mr. Mills.

Q. At the time this money was handed to you in New York, was there any agreement between you and Mr. Brittin, express or implied, that you were to have any more money?

A. Nothing of the kind, in no shape or manner.

Q. Did you ask for any more, or expect to get any more?

A. No, sir.

Q. State, if you please, the condition of the frogs and hoofs of that horse's feet when you first saw them. [Objected to as principal examination.]

40

A. I don't know as I can state any more than I have; the frog can't be injured except by striking it or bruising it with a stone on the side; the soles of the hoof were worn off so thin you could dent it with your thumb; the blood had come through in some places.

Cross-examined.

Q. How long before the horse could be shod?

A. They could have tacked shoes or tips on him then; that would not interfere with the sole.

Q. How long before he could travel well with a shoe put on in that way?

A. It would be some time; the shoes would merely be put on to protect the sole of the foot while it grew out; on the stones he would be as bad off as without shoes; could not travel well till his feet got
10 well, and I can't form any opinion how long that would be; it would depend on what kind of treatment he had.

R. W. BEEBE.

Sworn and examined this 21st day of July, A. D. 1862, before me.

THEO. LITTLE, *M. C.*

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants,

v.

Josiah F. Muir and others, defendants,

*On Bill to fore-
close, &c.*

20 July 23d, 1862, Alfred B. Brittin and Josiah F. Muir, defendants in the above stated case, appeared before me, and consented to proceed with the examination of witnesses, which had been begun before Theodore Little, Esq., Master, &c.

V. DALRIMPLE, *M. C.*

Leonard Oaks, of the city of Newark, in the county of Essex, a witness produced and sworn and examined on the part of said defendant, Alfred B. Brittin, deposes and saith:

Q. What is your age, and where do you reside?

A. My age is seventy-two the fifth day of next August coming; I
30 reside in the city of Newark, Essex county.

Q. How long have you lived in Newark?

A. Two years this last April.

Q. Where did you live before you went to Newark?

A. I lived in Morris township, on Abraham Brittin's farm, and moved from there to Newark; I lived on that farm twenty years.

Q. How large was it?

A. Three hundred and forty-three acres.

Q. Did you have charge of the farm while you lived there?

A. Yes, the whole charge of the farm; Mr. Abraham Brittin was the owner of it?

Q. What kind of a farm was it, a grass or grain farm?

A. Both; oats, corn and buckwheat were raised upon it.

Q. What was your principal business?

A. It was to take care of his horses and cattle, that I raised there.

Q. Was or not, much cattle and stock raised there? 10

A. Yes, sir.

Q. Was or not, the raising of stock and cattle the principal use to which the farm was put? [Objected to as leading.]

A. Yes, sir.

Q. About how much stock was generally sold a year off the farm?

A. Some years a great deal more than others.

Q. How much did you ever sell in the course of a year, off the farm?

A. There has been fourteen hundred dollars worth sold off the farm in a year.

Q. How many horses and colts did you usually sell off the farm in 20 a year?

A. That's more than I can tell.

Q. About how many was the average?

A. From two to three; there have been times when he has sold from four to five; and I don't know but more; full as much as that sometimes.

Q. Was the stallion that Mr. Abraham Brittin sold to Josiah F. Muir in the winter of 1859, foaled on the farm?

A. Yes, sir, when I was there.

Q. Who was the stallion sired by? 30

A. By a horse that was called the Splendid horse, Old Splendid, as we called him—the horse that Col. Solomon Boyle owned.

Q. Where was Splendid kept at the time he was put to the mare?

A. At John Tunis'; Col. Boyle was then dead, I think.

Q. Where was the horse, Splendid, put to the mare; at what place?

A. At John Tunis's place; my son, Henry, took the mare over to John Tunis's for that purpose.

Q. Was the dam of the stallion that Mr. Muir got of Mr. Brittin owned by Mr. Brittin?

A. Yes, sir; he had owned her from the time she was six months 40 old; he got her of Luther Eddy.

Q. What kind of a mare was she?

A. She was a bay mare; a very nice one; a bright bay.

Q. Did you know Splendid?

A. Yes, sir.

Q. How did this horse which Muir bought compare with Splendid, as to beauty, spirit and good points generally?

A. He was a handsomer horse, a good deal; a rather brighter bay.

Q. Did he resemble him, or not?

A. He did, some; in some respects.

Q. What was the color, form and general appearance of this stallion which Muir bought?

10 A. He was a bright bay, well-carried horse, up-headed.

Q. What kind of form of body and legs had he?

A. He was a round-bodied horse; good legs—good, sound, straight legs.

Q. How were his head and eye, as to appearance?

A. Nice head and eye.

Q. How as to movement and speed?

A. He was a square-moving horse; he moved square off; he was a smart horse; good goer.

Q. How was he as to spirit and beauty?

20 A. He was a good, spirited horse; as to beauty, very good.

Q. Was he, or not, a handsome horse?

A. I called him so; all other people who came round there said he was a handsome horse. [Last clause of this answer objected to by counsel of Mr. Muir.]

Q. Was he a blooded horse?

A. I was told so by them who undertook to know.

Q. Who took care of him?

A. I took care of him.

Q. Was he, or not, kept on that farm until he was sold to Muir?

30 A. Yes, sir; he was kept on the farm until he was sold to Muir.

Q. Who fed him?

A. I fed him, myself.

Q. Who rode him?

A. My son, Henry Oakes.

Q. Where was he kept, with respect to the other horses; where was his stable?

A. After he became two years old there was a stable put at the other end of the barn for him.

Q. How far was that from where the other horses were kept?

40 A. Some thirty feet, as near as I could tell.

Q. Before that stable was built for him, where was he kept?

A. He was kept in the same stable with the others; it was all one stable, except there was a partition put through the stable to keep him away from the other horses.

Q. Did that make a separate room for him—separate from the other horses?

A. Yes, sir.

Q. At what time in the day were you in the habit of feeding him?

A. We were in the habit of feeding him in the morning as soon as it was light enough to see to feed him, and in the evening.

Q. What sort of food did you give him?

A. Oats, some of the time, and some of the time cut feed; I gave him hay, too.

Q. State how much feed you were in the habit of giving him? 10

A. When he was first put in the stable, the first winter, I fed him about a quart of oats a day; and as he grew older, the next winter, I fed him a little more; and so I kept on giving him more every year, as he grew older.

Q. How much did you feed him the third winter?

A. It would not average six quarts a day the third winter.

Q. How much the fourth?

A. I was just thinking whether I fed him the fourth winter at all; I guess he was not four years old when he was sold.

Q. What time of the year was it when he was sold to Muir? 20

A. I can't tell you whether it was February or March; I kept no account of it, and can't tell you.

Q. How much were you in the habit of feeding him that winter?

A. I fed him no more than I did the third winter.

Q. Did you ever feed him Indian corn?

A. I have fed him corn in the ear in the winter; sometimes threw it in to him.

Q. How much of Indian corn did you ever feed him at a time?

A. I don't know; perhaps seven or eight ears at a time when I did throw it in to him. 30

Q. Ever more than that at a time?

A. I don't think I did.

Q. Did you ever allow any one else to feed him but yourself?

A. I allowed nobody to feed him but myself; if I did, there was a measure in the house, up stairs, so that I could see what amount there was before it was taken out by the boy to the horse.

Q. Where was the feed kept, what place?

A. It was kept up in the kitchen garret, in the bins.

Q. Did you or not pay particular attention to feeding the horse?
[Objected to as leading.] 40

A. I did.

Q. Had you or not particular instructions from Mr. Brittin to pay particular attention to it? [Objected to as leading, and the question ought to be what his instructions were.] Question waived.

Q. What were your instructions from Mr. Brittin as to the care of the horse?

A. There were none; I used my own judgment about taking care of his horses and cattle and everything else that was there.

Q. What was your habit as to taking care of him in regard to the amount of care you gave to him?

A. I always had him kept clean and nice; if I did not do it myself, I had my son to do it.

Q. How long have you been in the habit of taking care of horses?

10 A. Something like sixty years—in the neighborhood of that.

Q. Was this horse ever overfed while he was kept there on the farm?

A. No, sir, not to my knowledge.

Q. Was he ever injured in any way by over-feeding while there?

A. Not that I knew anything about at the time—not that I knew anything about; I never knew that he was.

Q. Did you ever hear or suspect that he had ever been injured by over-feeding while he was there upon that farm?

A. No.

Q. How often did you see him?

20 A. Some two or three times a day—every day.

Q. Was he ever foundered while he was on the farm?

A. No.

Q. Could he have been foundered while there without your knowing it?

A. No, sir.

Q. What was your habit in the summer time? where did you keep him?

A. In the stable; after he was two years old he was kept in the stable all the time.

30 Q. Did you ever turn him out to pasture?

A. I turned him out a few days when he was about two years old, and then put him back again; I could not keep him.

Q. Did you shut him up at night at that time?

A. No; what few days I had him out I did not shut him up till I shut him up for good.

Q. What time of year was that? spring, or summer, or when?

A. It was in the spring after grass come, about the time he was two years old; he was foaled in the spring.

Q. About how long did he remain out at pasture at that time?

40 A. Well, I can't tell how long it was—how many days—but I was forced to put him up, because I could not keep him there.

Q. Why couldn't you keep him out?

A. Because he was jumping over the fence and getting off.

Q. While he was out in pasture, in what way, what means, did you take to keep him in the pasture field?

A. I put a pair of hobbles or shackles on him; they were wooden, made out of hickory; these were two bows, and a stick fastened by pins to the bows; they were put on one fore foot and one hind foot, and to keep him from jumping; that interfered with his jumping and running.

Q. Would or not a horse, shackled in that way and moving about in the field, be likely to seem lame to a person looking at him from a distance? [Objected to as leading.] 10

A. They would, unless they knew he was hobbled; they would think he was lame, or something was the matter with him.

Q. Is the movement of a horse, shackled in that way, natural or unnatural?

A. It's unnatural for them to move in that way?

Q. Was that horse ever lame, while he was on the farm?

A. Not to my knowledge.

Q. Was he ever lame so that he could not go over a walk?

A. Not that I ever knew anything about.

Q. Did he ever have the distemper, and if so, when? 20

A. At the time I turned him out to pasture; as I have spoken of, he had a little touch of the distemper; he did not have it bad at all.

Q. What was his condition when he was turned out to pasture at that time?

A. He was in good order; he was dull like in spirits when he had the distemper.

Q. What was the reason of your turning him out at that time?

A. For the sake of his getting some green grass to physic him—to help him.

Q. Did that help him? 30

A. Yes, sir.

Q. Did he recover entirely from the distemper?

A. Yes, sir.

Q. How long before he recovered?

A. Well, I could not tell; it was but a few days.

Q. Was he ridden at that time, during that spring and summer, and if so, by whom?

A. No, sir.

Q. Did he ever have any other disease than the one you have just mentioned, while he was upon that farm? 40

A. Not that I know of.

Q. Was he ever chest foundered while there?

- A. Not if I know anything about a horse, he was not.
- Q. Was he ever lamed by being wrenched in the stable?
- A. Not to my knowledge.
- Q. Do you know Jonathan O. Nesty?
- A. Yes, sir, I know him; I did know him.
- Q. Did you ever see him at Mr. Brittin's farm, looking at this horse?
- A. No, sir.
- Q. Was he ever there with you, in a lot, when the colt was there
- 10 turned out in a lot?
- A. Not that I know of.
- Q. Did he ever ask you what ailed the colt, what made him lame, or anything to that effect?
- A. No, sir; he did not ask me such questions as that; he would not come nigh enough to me on the place to ask me such questions as that.
- Q. Did you ever tell him that you thought the horse had got wrenched in the stable some way?
- A. No, sir.
- 20 Q. Did you ever talk with him at any time or any place, about this horse?
- A. Not to my knowledge.
- Q. Do you know Robert White, a colored man?
- A. I do.
- Q. Did you ever ask him to look and see what ailed this horse?
- A. Not to my knowledge.
- Q. Did you ever go with him to the stable to examine the horse and see what ailed him?
- A. Not to my knowledge.
- 30 Q. Did you ever see him try the horse's feet with a mallet, and tell you what he thought was the matter with him?
- A. No, sir.
- Q. Did he ever do anything of the kind in your presence?
- A. Not to my knowledge, he didn't.
- Q. Did you ever see this horse crimp in his fore feet, or favor his fore feet?
- A. No, sir; I didn't.
- Q. Did you ever know this horse have any other disease besides the distemper, which you have spoken of?
- 40 A. No; I never did.
- Q. Was the horse sound or unsound at the time he was sold to Mr. Muir?
- A. The horse was sound in every way, to the best of my knowledge, when the horse left the premises.

Q. Do you know Mr. Josiah F. Muir, the defendant?

A. Yes, sir; I know the man by sight; I have seen him; I have no particular acquaintance with him.

Q. Was Mr. Muir at the farm to examine the horse before he bought him?

A. Yes, sir.

Q. How often did you see him there?

A. I think twice, but I am not actually sure it was twice.

Q. Did he examine him when he was there?

A. He did, sir.

10

Q. After the horse was bought and took away, who took him away to Mr. Muir?

A. Henry Oakes, my son.

Q. Was Mr. Abraham Brittin there frequently, or not?

A. Yes, sir; he was there a great deal; very often.

Q. Did he ever come to see this horse?

A. I always thought he came to see him, for he would always go to the stable the first thing when he came.

Q. When he went to the stable was the horse brought out?

A. Generally brought out; he hardly ever came there that he was 20 not brought out?

Q. Did he generally come alone or with others?

A. Sometimes he would be alone, and sometimes he would have others with him.

Q. Were there other people in the habit of coming to see this horse besides Mr. Brittin?

A. Yes, sir; they were very frequently there.

Q. Did Mr. Brittin bring people there to look at the horse?

A. There were people who came with him; it appeared that was all they looked at after they came; I could not tell whether they came 30 on purpose for that or not.

Q. Did he or not have any pet horse on the farm, and if so, what one was it? [Objected to.]

A. Yes, sir; it was this horse that he sold to Muir.

Q. Did you often talk with him about this horse, or not? [Objected to.]

A. Yes, sir; often talked to him about it.

Q. What was this horse worth, in your opinion, at the time he was sold to Muir?

A. I told my son at the time if we had the money he should not 40 have him for the \$500, that we should have him ourselves. [Answer objected to.]

Q. What would you have been willing to give for him?

A. I would have given \$500 for him if I had had that to give.

Q. Was he or not, in your opinion, worth that amount at that time?

A. He was; that was my opinion of him, that he was worth that, and more too.

Q. For what purpose was he most valuable in your opinion?

A. To keep as a stallion.

Q. Did you at any time have thoughts of buying him, and speak with Mr. Abraham Brittin about his price for him? [The defendant's counsel objects to witness testifying to anything Mr. Brittin said.]

10 A. I spoke to him and asked him, as near as I can recollect, what would he take for the horse, and he did not answer; I says, "is he worth \$400;" something to that purpose; his answer was to me, "I would not take it, I must have more money for that horse if I sell him."

Q. When was this?

A. It was the same winter he sold him.

Q. About how long before he sold him?

A. I could not tell; it might be a month, or more or less; I could not tell you.

20 Q. Had you heard anything before that talk was had about his selling him to Muir?

A. I had not heard of his undertaking to sell him to Muir at all before that,

Q. When was this colt weaned?

A. I could not tell the month; there would not be anything but guess work about it; the first part of the winter we generally wean them.

Q. When you first began to feed him, how much was he fed?

A. We generally made it a *pint* to feed him about a pint a day.

30 Q. When did you first allow him to be ridden?

A. When three years old; it might have been a little before or a little after.

Q. Did you allow the horse to be put to mares while he was upon the farm?

A. No, sir.

Q. Why not?

A. Because Mr. Brittin forbid it.

Q. On what account?

A. On account that he said he supposed the horse would not be so
40 good for it till he got older. [Objected to.]

Q. Do you recollect Mr. John Tunis being there to see the horse the summer he was three years old?

A. He was about that age when Mr. Tunis called to see him.

Q. Where was Col. Solomon Boyle's farm on which he lived and died?

A. It was on the other side of Long Hill from Mr. Brittin's farm ; it was from three to four or five miles from where I lived to Colonel Boyle's.

Witness being cross-examined by counsel of defendant, Muir, he further saith :

Q. What was the size of this colt ?

A. That I do not exactly know.

Q. Was he as high as fourteen hands ?

10

A. I should judge he was over that ; I could not tell how much over.

Q. Over fourteen and an inch ?

A. I can't say for that ; I never measured his height.

Q. I want you to say, at this time, how high the horse was, to the best of your knowledge and belief, when Mr. Muir got him ?

A. Well, he was over fourteen I think, but how much more I can't tell.

Q. Did you ever stand by the side of him to ascertain his height, compared with yours ?

20

A. Well, I don't know as I have as to undertake to measure him in any way at all ; I do not know as I have.

Q. Was he as high as your chin ?

A. It is so long since the horse is gone that I do not recollect anything about it.

Q. I want to know whether he was as high as your chin or not?

A. How would I know without measuring ; I have told once or twice that I never measured him.

Q. Was he a small or large horse ?

A. Neither a small or large one ; he was a middling sized horse. 30

Q. Do you think he was fifteen hands high ?

A. I don't know ; I won't think a thing when I never measured him, and don't know anything about it ; he might have been fifteen and might have been fourteen and a half hands high.

Q. What was the color of the mare that he was from ?

A. A bay.

Q. What was she worth ?

A. She was sold a little more than a year before the horse was for \$100, and bought back for \$105 ; Henry Hedges bought her of Mr. Brittin ; he lives at Columbia ; he is a Methodist minister. 40

Q. What was she sold at the vendue ?

A. I don't know anything about that ; I was not here.

Q. What sort of a body had this horse ?

A. A decent sized bodied horse ; not too full or drawn up.

Q. How did he compare in size with Splendid?

A. I do not think he was as big a horse as Splendid; he was a handsomer horse than ever Splendid was.

Q. In what other respects did he resemble Splendid?

A. In shape in part, and in part he didn't; I do not recollect any other resemblance.

Q. Did you see this mare put to Splendid yourself?

A. No, sir.

Q. Then all you know about her being put to Splendid is your
10 son said he took her there?

A. Yes, I sent him there with her.

Q. Have you ever kept stud horses yourself?

A. No; I never owned one.

Q. What induced you to want to get the horse for the purpose of keeping him as a stud horse?

A. Because I thought I could make money out of him by it.

Q. What would you value him at as a gelding, suppose he had been altered?

A. Such a horse as him ought to have sold for \$400 or \$500 after
20 he was altered; poorer horses than him sell every day in Newark for as much as that; you see them selling for that pretty much every day.

Q. I want you to tell me all the horses you know of, in your lifetime, which were sold for \$500 or over, naming the horses and the men who bought them?

A. The Fleetwood horse was sold for \$800, to Isaac Hendershot; Isaac Hendershot told me so, but I did not hear the bargain made; the Bonnets O'Blue Mr. Gibbons told me he paid \$3,200 for; Colonel and Ludlow Day told me they paid \$1,000 for the Defiance horse; there
30 are plenty more; I do not now recollect the names of the men or horses.

Q. You were telling what horses sold for in Newark, tell me what you know yourself, and not what other people told you, of the horses sold for \$500 or upwards in Newark?

A. I do not know as I was by to see any of them sold.

Q. Have any horses sold there, since you have been in Newark, for \$500, or over?

A. I have heard people tell of it, is all I know of it; men of business, who buy and sell fast horses.

Q. Do you know any horse in Newark which is said to have cost
40 \$500?

A. I do not know as I do; I know the faces of the people, but I don't know their names, and I am forgetful.

Q. How many horses that have sold for that, or over, in Newark?

A. I do not know anything about the number.

Q. As many as two or three?

A. I can't tell.

Q. You were speaking about what Mr. Gibbons said he paid for Bonnets o' Blue; did you know his celebrated horse, Mariner?

A. Was he a black horse? I knew he had a black stud horse, but don't know what his name was.

Q. Do you know what that horse sold for at his sale?

A. I don't; I was not there.

Q. I understood you to say, that the first winter you fed that colt 10 you fed him a quart of oats a day, and then again you fed him, a part of that time, a pint a day; what shall we understand from these two different statements?

A. I said about a pint; I did not mean any stated quantity; I was no ways particular about it; I meant a small quantity.

Q. Did you measure it when you fed it to him the first winter?

A. No, sir.

Q. Did you feed him once or twice a day that first season?

A. Twice a day.

Q. Did you feed him any Indian corn or cut feed the first winter? 20

A. I might have fed him a few ears of corn, but I hardly think I did the first winter; I might have done it.

Q. The second winter, that is, when he was a year old past, how much did you feed him?

A. I can't be particular; a little more than the first winter; I know I fed him a little cut feed, and might have fed him a little corn through the winter, but oats was the chief.

Q. Did you measure the feed that winter?

A. No, sir; I made it a *pint* to feed him twice a day, from the time I commenced feeding him till he was sold, while he was in the stable; 30 I might have fed him, sometimes, three times, but I don't recollect.

Q. The third winter, when he was two years old past, did you measure the feed for him?

A. No, I did not measure the feed for him; I had a wooden measure; I did not measure it, but gave it to him according to my own judgment; I made very little increase that winter in his feed, if there was any.

Q. Did you give him more cut feed than you gave him before?

A. I think the last winter I gave him more cut feed than I did before; that is, I fed him oftener on cut feed; I did not feed him much 40 Indian corn, more than to keep his lampers down; I occasionally threw him in a few ears of Indian corn; he looked well and kept in fine condition on this feed.

Q. Did you ever observe any blindness in him, occasionally, before Mr. Muir got him?

A. No, sir.

Q. I want to know this, whether you did not regard this horse as rather small, and did not want to feed him well so as to make him grow fast?

A. I thought nothing of that.

Q. Did he grow as fast in proportion, the third year, as he had the first and second years?

10 *A.* Yes, sir, I think more.

Q. What do you know about this bargain between Mr. Muir and Mr. Brittin?

A. Nothing more than that Mr. Brittin told me he had sold the horse to Mr. Muir, and to send the horse there.

Q. Did you know that Mr. Brittin, about that time, or before, was loaning, or was about to loan, money to Mr. Muir, on bond and mortgage?

A. I didn't; Mr. Brittin told me he got \$500 for the horse.

Q. Did he tell you how he was to get his pay for it?

20 *A.* No, sir.

Q. Do you know anything about Mr. Brittin offering to sell or trade this horse to David J. Ward, the fall before he sold him to Mr. Muir?

A. I don't; I have seen Mr. Ward there a number of times; I can't tell whether he came to look at the cattle or the horse; I think, when he has been there, he has seen the colt; I am very sure he did.

Q. Did he and Mr. Brittin go to the stable to look at him together?

A. I can't say that he did, or he didn't; they were about the barn there where the horse was; but I can't say I saw him go in the stable.

Q. Did Mr. Brittin say anything to you about making, or expecting
30 to make, a bargain with Mr. Muir for the horse, before he sent for him?

A. Mr. Brittin told me he had made a sale of that horse to Mr. Muir, and that he wanted me to send him down such a day, naming the day; he had never said anything to me about selling the horse to Mr. Muir before that.

Q. Had he ever given you any directions as to what you should say to purchasers, if they came there to look at him?

A. None at all.

Q. Had he made considerable effort, before that, to sell this colt?

40 *A.* Not to my knowledge; if he did I knew nothing about it.

Q. What business does Mr. Muir pursue, do you know?

A. Nothing only what I have heard say; I heard he had the mill at Chatham; I took it to be a grist mill.

Q. Was this colt ever sent to the blacksmith's shop on account of his lameness?

A. No, sir; but we had one, at the same time, that was sent, that Henry Baker now owns; I suppose he owns him yet, he did a spell ago; that was not a stud colt.

Q. Did you ever send this colt, that Mr. Muir got, to the blacksmith shop?

A. Yes, sir; we sent him and got shoes put on him; that was along in the winter, as he was sold in the same spring, as you may say.

Q. What was the color and age of this other colt that you sent to 10 the blacksmith shop on account of his lameness?

A. He was something like six or seven years old, and was a little darker bay than the stud colt, not so bright a bay.

Q. How many colts did Mr. Brittin— (Waived.)

Q. How many mares did he, Mr. Brittin, put to horse the season that he put this bay mare?

A. I don't recollect more than one; I don't recollect just how we were situated for horses then.

Q. When were you first applied to by Mr. Brittin, or any one on his behalf, as a witness in this cause, or to see what you knew on the 20 subject?

A. There was nobody that applied to me as a witness, till I was subpoenaed, that I know of.

Q. Have you had anybody inquiring of you about this colt, since the first of January last?

A. I think I have.

Q. Who were they?

A. I think Jonathan Muir was one; Shened Frost was another; no one else that I know of.

Q. Have you talked with no one else about the horse, except 30 Shened Frost and Jonathan M. Muir until since you came here at this place, this office, as a witness?

A. Not that I know of.

Q. Wouldn't you know if you had?

A. I should think I would.

Q. When did you come from Newark into this county?

A. On Monday evening last; I came to Chatham.

Q. Where have you been from that time till to-day, when you came here?

A. I have been around the Swamp, and all over Song Hill and to 40 Chatham, and from Chatham up here this morning.

Q. Who went round the Swamp with you?

A. Mr. Brittin; he said he was going and I told him I would like to go down.

Q. Where was you stopping at, at that time?

A. I had come up from Chatham, and was standing talking with Colonel Brittin at his house, and Mr. Alfred Brittin came up to where we were; he said he would carry me to the Swamp, and I went with him; it was somewhere about eight o'clock when I first see him.

Q. What time did you start to the Swamp?

A. I do not know exactly what time; I do not know whether it
10 had got to be nine o'clock before we started or not; I had no time piece and did not look; we got back somewhere not far from one.

Q. Did Mr. Brittin say anything to you, or you to him, about your being here as a witness during that ride, or before or after?

A. I recollect he said he would take me up and I need not be spending money, riding up in the cars; I do not recollect that he said much else about it.

Q. Was there nothing said between you and him how you had fed the horse?

A. No, not that I know of; he never asked me how I had fed him,
20 as I know of.

Q. Was there anything said between you and him about the value of the horse?

A. Well, he was saying something or other about it; I do not recollect exactly what he said; whether it was his father said he was worth so much, or he said he was worth so much; I can't say or tell head or tail to it now.

Q. What did you say about the value, if anything?

A. I do not know as I said anything about what he was worth.

Q. Was there anything said about the lameness of the colt?

A. No; not between Mr. Brittin and me.
30

Q. Anything said about the colt being foundered between you and him?

A. I don't think him and I talked anything about that; I think very likely he was by when others told me of it.

Q. Who were those others?

A. I recollect there were such persons, but I can't name who they they were.

Q. Is your memory impaired?

A. My memory is very queer; a very little sets my head upside
40 down, and has been so ever since I was sun-struck; I can't remember a man's name five minutes.

Q. Don't you know that Mr. Brittin let Mr. Muir have this horse at \$500, as a bonus for the loan of money to Mr. Muir, on bond and mortgage?

A. I didn't know it, till Jonathan Muir told me.

Q. Haven't you told anybody that you knew, at the time, that Mr. Muir took the horse, at a high price, as a bonus on the loan of money on bond and mortgage, or anything to that or the like effect?

A. No sir, I told no man so, for I didn't know anything about it.

Q. Did Mr. Brittin ever say anything about altering that colt, or getting him altered, before he sold him to Mr. Muir?

A. He never said anything to me about it, nor I never heard anything said about it.

His
LEONARD  OAKES. 10
mark.

Sworn and subscribed before me, July 23d, 1862.

V. DALRIMPLE, M. C.

Examination resumed July 24, 1862.

Josiah S. Ward, of the township of Chatham, in the county of Morris, a witness produced and sworn on the part of the defendant, Alfred B. Brittin, deposeth and saith:

Q. Where do you live, and what public office do you hold?

A. I live in Chatham, and am a justice of the peace.

Q. Do you know the defendant, Josiah F. Muir?

A. Yes, sir.

Q. Do you recollect of his purchasing a stallion of Abraham Brittin in the winter or spring of 1859?

A. I have no knowledge of it sir, only from common reports—what I have heard from others.

Q. Had he in Chatham, at that time, a stallion, and if so, where was he kept?

A. Well, I have understood from others that he had a horse, and I think he kept him at one of the taverns over the river; can't tell which tavern it was; Mr. Phillower kept one; I don't know who kept the other. [Mr. Scofield objected to the evidence.]

Q. Was that horse stolen?

A. I don't know any further than from what I heard.

Q. How near do you live to Mr. Muir?

A. It may be between a half and three quarters of a mile.

Q. Did you frequently see him at that time or not?

A. Yes, sir; I used to see him pretty frequently and often.

Q. Did you hear him speak about this horse being stolen at that time?

A. Yes, sir, I heard him talk about it.

Q. Do you know whether he made any effort to catch the thief from what he said to you; if so, state what he said?

A. I could not speak positively as to any efforts he made; I don't know that he made any efforts himself, personally.

Q. Did he talk with you, or did you hear him talk about the thief or thieves being caught?

A. I have heard him talk about the thieves and their being caught.

Q. Did he tell you what was being done to secure them; state, if you please, what he said to you, or what you heard him say on that subject?

A. I couldn't bring to mind nothing in particular that he said about
10 it, as to catching the thieves or what he had done.

Q. If he said anything about the horse, or about his being stolen, please state to us what he said as near as you can?

A. I have heard him mention and talk about the horse being stolen, and the thieves being found and the horse secured; but as to any particulars in regard to it I can't bring them to my mind.

Q. Did he put any valuation on the horse when you heard him talk?

A. I never heard him put any valuation on him.

Q. In these conversations you have referred to, did you hear him say anything about the value of the horse?

20 A. I never heard Mr. Muir fix any definite value or positive value to the horse, as I recollect.

Q. Go on and state what he said on that subject, if anything.

A. From the conversation I heard between Mr. Muir and others, when he was talking in company with others, my mind is that he considered him a valuable horse.

Q. Have you stated all that he said on that subject, as near as you can recollect?

A. No, sir, I don't know that I have.

Q. Please state it, then?

30 A. In the conversation, my mind is impressed that he held out the idea that the horse was worth what he gave for him—though I never heard him say what he did give for him; that is my impression.

[Mr. Scofield, while this answer was being given, and when the witness commenced giving the impression upon his mind, objected to his stating his impressions, or that Mr. Muir held out any idea.]

Q. How often did you hear him talk on this subject at that time, the time he was said to be stolen?

A. Well, I couldn't state distinctly; I heard him talk on the subject several times, can't say how many.

George Linabery, of the township of Chatham, in said county of Morris, a witness produced and sworn, on the part of the defendant, Alfred B. Brittin, deposeth and saith :

Question. Where did you live and what was your business, in the winter and spring of 1859 ?

Answer. I lived in Chatham ; I was making paste-boards and some paper, I think, for Mr. Josiah F. Muir, and tending grist mill.

Q. Did you, in that winter or spring, have a conversation with Josiah F. Muir, about his buying a stallion, before the stallion was brought to Chatham ? if so, state what was said in that conversation ? 10

A. I heard him say he had a stallion up in the swamp, a very nice colt, as nice a one as he ever saw.

Q. Did he put any valuation on him, or say what he was worth ?

A. I believe he did.

Q. State what he said ?

A. He said he was worth six hundred dollars.

Q. Do you know of his purchasing or having more than one stallion that year ?

A. I never knowed him to have but the one.

Cross-examined by Mr. Scofield.

20

Q. Who was by when he said he was worth six hundred dollars ? on what occasion was it ?

A. I don't know ; I don't remember any one's being by ; I think we was in the mill door, or in part of the mill close by the door, when we was talking about it.

Q. What induced that statement by him at that time ?

A. Well, I don't know as I can tell you exactly ; he was talking about the horse, and I rather think I asked him what he was worth, or something to that effect.

Q. Where was the horse at that time ?

30

A. He hadn't brought him home then, yet.

Q. Did he want to sell him at that time ?

A. He said he was for sale, I believe.

Q. Did he tell you what he gave for him ?

A. I don't think he did.

Q. Did he tell you who he got him of ?

A. Yes, sir.

Q. Who ?

A. Mr. Abraham Brittin.

Q. Did he say anything about borrowing money of Mr. Brittin, in 40 that conversation ?

A. No, sir ; I think not.

Q. Did he say anything about giving Mr. Brittin a bonus for the loan of money ?

A. Not that I have any knowledge of.

Q. Well, is that all he said in that conversation?

A. There was something more said about the horse but I can't remember the particulars about it.

Q. What was Mr. Muir's business at that time?

A. He was driving on the mills there.

Q. What kind of mills are they?

A. Grist mill and paper mill.

Q. How long has he been employed in that business—paper mill
10 and grist mill, or either of them?

A. I can't tell how long he has been in the paper business; he was in that when I first went to Chatham—I believe in the mill above, where he is now; I have been in Chatham, I believe, sixteen or seventeen years.

Q. Has he been in any other business, since you knew him, besides the paper mill and grist mill, as a business, I mean?

A. Not that I can remember of.

Q. Since you first knew him has he been the owner of any horse, or horses, except this one; if so, how many? [Objected to by Mr.
20 Mills, as irrelevant.]

A. I don't remember of his ever owning any but this stallion, that I heard him speak of.

Q. Why did he buy him? [Objected to by Mr. Mills.]

A. I do not know, sir.

Q. Had he any use for him to your knowledge. [Objected to by Mr. Mills.]

A. I do not know that—that he had any use for him; that would be best known to himself.

Q. Did you see this horse after he got him?

30 A. I saw him once.

Q. What was he worth. [Objected to as improper, on cross-examination of this witness.]

A. I am not able to tell you, sir.

Q. Did you never express an opinion of his value.

A. Not that I remember of.

Q. Did you know what Mr. Muir done with him? [Objected to by Mr. Mills.]

A. Only what he told me.

Q. Have you not said that the paper stock Mr. Muir got for the
40 horse was worth more than the horse. [Objected to by Mr. Mills.]

A. Not that I have any knowledge of.

Q. Haven't you said he made a good bargain, or anything to that effect? [Objected to by Mr. Mills.]

A. Not that I remember of.

Q. Haven't you said that Mr. Muir gave a big bonus to Mr. Brittin for the money that he borrowed of him?

A. I don't know but what I said he had given him a bonus.

Q. Was that horse worth three hundred dollars?

A. I cannot tell you what he was worth, for I don't know.

Q. Can't you say, from your knowledge, that he was not worth three hundred dollars?

A. I cannot, sir, for I do not know the value of him; I know nothing about the value of any horse.

Q. Haven't you told anybody that he wasn't worth one hundred and fifty dollars?

10

A. Not that I remember of.

Q. Was his value considerably talked about in that neighborhood, about that time, and after he got him? [Objected to by Mr. Mills.]

A. I think I heard some talk about it after he was stolen.

Q. What was his estimated value in the neighborhood? [Objected to by Mr. Mills.] Question waived.

Q. (Repeated.) What was his estimated value in the neighborhood? [Objection renewed by Mr. Mills.]

20

A. I don't know that I can tell you, sir.

Re-examined by Mr. Mills.

Q. You have said that you saw this horse once; when was it that you saw him?

A. He was over the river, in a stable which formerly belonged to Col. Day, when I saw him; Mr. Philhower had charge of the stable.

Q. How did you get into the stable?

A. I crept in at the window; the door was locked.

Q. Was it light or dark there?

A. It was middling dark.

30

Q. Did you make any particular examination of the horse there?

A. No, sir.

Q. You have said, in your cross-examination, "I don't know but what I've said he had given a bonus;" do you know of yourself, or did you know when you said that, (if you said it,) that he had given a bonus?

A. I don't know positively that he did; I heard Mr. Muir say, before he got the money of Mr. Brittin, that if any man would raise him three or four thousand dollars, he would pay them a bonus.

[During the giving of the latter part of this answer, Mr. Mills objected to it as not responsive to the question.]

Q. The question is, do you know of your own knowledge, whether or not Mr. Muir paid a bonus in this case?

A. No, sir, I don't, I believe.

GEORGE LINABERY.

Sworn and examined before me, this 24th July, A. D. 1862.

THEODORE LITTLE, *M. C.*

Christopher Mulford, of the township of Chatham, a witness produced and sworn, on the part of the defendant, Alfred B. Arittin, deposeseth and saith :

Question. How old are you ? what is your business ? and where do you reside ?

10 *Answer.* I am in my sixty-fourth year ; I reside in Chatham township, about half way between Madison and Mr. Brittin's farm ; I am a farmer by occupation.

Q. Do you own a farm there ?

A. Yes, sir.

Q. How long have you owned it and lived there ?

A. I think something like fourteen years.

Q. Did you know Abraham Brittin in his lifetime ?

A. Yes, sir.

Q. And how far was your house from his farm ?

20 *A.* About two miles.

Q. Were you, from 1854 to to 1859 inclusive, in the habit of passing his farm ?

A. Yes, sir.

Q. Before you lived where you now do, where did you live and what was your business ?

A. I lived at a place called Hanover Neck, in Hanover township, and I was a farmer by occupation.

Q. Are you acquainted with horses, and do you consider yourself a judge of them ?

30 *A.* Well, sir, I profess to know a good horse from a poor one, and I should be satisfied with my own selection.

Q. Have you had opportunities of seeing good horses, and of becoming acquainted with their appearance and movement ; if so, when and where ?

A. I have been traveling more or less on Long Island, where they have had a great deal of pleasure riding, between Brooklyn and Jamaica, and I have stopped when they have had trotting at the circuits or race courses.

Q. Did you know a bay stallion which Abraham Brittin had on his 40 farm, and which was sold to Josiah F. Muir in the winter of 1859 ?

A. Indeed I don't know who he sold him to ; I never knew, but I

was at the farm, and Mr. Brittin and I were looking at the horse; the horse was there alone in a stable by himself; I took quite a notion to the horse, that is, I pronounced him to be a good horse, and asked Mr. Brittin how he came in possession of so nice a horse; he then went on and delineated the pedigree of the horse, but I have forgotten the whole of it; I couldn't give no account of it at all.

Q. When was this?

A. I think this was along in the fall, as the horse was three past.

Q. When did you first hear of his being sold?

A. Well, I couldn't set any particular time; I think it was along 10 after the middle of winter—along towards spring.

Q. Describe the horse?

A. He was a bay horse, well proportioned, and for a horse of his age very well filled out for a stud horse; the legs and tail, especially the lower part of his legs, were a little darker than his body, and I think his feet were colored; I am not positive as to the color of his feet, but I think they were dark; think none of them were white.

Q. What was the form of his body and legs?

A. Well, I think they were well proportioned; I should say he was not very light or very heavy; about right for a horse of his age; 20 about the right weight for a horse of his height.

Q. Give us his general appearance as to beauty?

A. I should think he was a well made horse; his neck was well set on, and his general description was pleasing.

Q. How did he compare, in appearance, with other horses you had seen in this state?

A. Well, I considered him a better horse than I had seen—better than any young horse I had seen.

Q. Did he have the appearance of being a blooded horse or not?

A. Well, I thought so.

30

Q. What, in your opinion, was he worth at that time, as a stallion?

A. As it respects that, it would depend on the use that was made of him, and the circumstances a man was placed in that wanted him.

Q. What, in your opinion, would be a fair estimate of his value at that time, to a man who wanted such a stallion?

A. I am unprepared to answer such a question; it is a kind of property I couldn't estimate.

Q. Give us an estimate, if you please, as nearly as you can?

A. How much difference there ought to be made between a stud horse and a gelding—that I am unprepared to say.

40

Q. You misapprehen my question, I think; what, in your opinion, was he worth at that time as a stallion?

A. Well, as I before observed, it depends wholly on circumstances;

I couldn't estimate what that kind of property would be worth to a man who should make it his business to make use of that kind of a horse.

Q. Was he or not, in your opinion, worth five hundred dollars?

A. Well now, as it respects that, I am not capable of judging on that kind of property; the only estimate I could make on that horse, would be to compare him with other horses—fast horses on the Island that I have fallen in with—and then I am not prepared to give the difference between a stallion and a gelding.

10 *Q.* Had you seen that horse before?

A. No, sir; that is the first time I ever saw him.

Q. Did you ever see him at other times besides the one you have spoken of; if so, when?

A. Yes, sir; Mr. Oakes' son was passing by, and I was out in the street, and as he came up I wished him to halt, and I looked round the horse; I wished him to ride him as straight as he could, right in the centre of the road, so I could look right behind him; I liked the manner in which the horse picked up his feet; he didn't appear to be a paddler.

20 *Q.* What was his movement?

A. I liked his movement, though the boy didn't ride very fast, did not put him out, did not put on the speed he might have done, I suppose.

Q. Did you see him at any other time?

A. I saw Oakes' son riding by several times; I couldn't say how many.

Q. From your knowledge and observation of the horse, what would you think him worth in the winter, before he came four years old?

A. Well, I am unprepared to put an estimate on the horse; it would depend wholly on his kindness, his natural kindness and his

30 speed.

Q. What estimate did you put on him?

A. I didn't put any on him; I observed to Mr. Brittin, either at the stable or his house, when something was said about the horse, that I supposed he would want from two to three hundred dollars for him; I didn't design by a remark of this kind to put an estimate on the horse at all; Mr. Brittin replied that he had already been offered four hundred dollars for the horse, and wouldn't take it. [While the foregoing answer was being given, Mr. Scofield objected to the witness stating any conversation between himself and Mr. Brittin.]

40 Being cross-examined by Mr. Scofield:

Q. Did you know anything about that colt having been lame?

A. No, sir, I never knew or heard of his being lame.

Q. You never heard of his being blind either, I suppose?

A. No, sir.

Q. Ever hear of his being foundered or fed too much when he was a colt.

A. No, sir.

Q. Havn't you dealt considerably in horses?

A. Yes sir, I have, in the former part of my life.

Q. Did you ever own a stud horse?

A. No, sir.

Q. What would you have given for this horse at that time, when you saw him last, provided he was a horse of ordinary speed?

A. Well, I don't know as I am prepared to answer a question of 10 that kind; I have come to the conclusion never to buy anything without I want it; if I had wanted to buy that horse I should either have depended on the recommendation of him, or I should have had the trial of him; as a boy once asked when he got on to a horse to ride, whether he should ride to sell or to buy; I should, in the first place, become satisfied I wanted such a kind of horse, and then I should have bought him as low as I could; I've gone so far as to say that, from the appearance of the horse, and the prices they have attached to their fast horses on the Island, he was worth the money that he brought; but here is the condition on which the value would be attached to the 20 horse: the speed and character of the horse would determine his value; I've never had acquaintance enough with that horse to attach a value to him, only on conditions; I liked the appearance of him.

Q. How much speed must he have had to have brought that?

A. Well, he must trot a mile within three minutes, and do it easy.

Q. Well, if he couldn't trot a mile in four minutes, how much would that lessen his value?

A. Well, as for me, as an individual, it would make but a small variation; it would reduce his saleable value from a hundred and fifty to two hundred dollars. 30

Q. Suppose he couldn't trot a mile under five minutes, how much would that reduce his value?

A. Well, the speed would determine the value down to a business horse; I am not attaching any value to him as a stallion; I can't do it.

Q. What would he be worth as a business horse, then, taking him, with the expectation of altering and breaking him, except as he was broke?

A. Well, I should suppose about from two hundred to two hundred fifty dollars; I then allow that he is a good square moving horse, and what he does he does comfortable and easy. 40

Q. How long would it have taken you, if you had had the horse for sale, to sell him for two hundred and fifty dollars, do you think?

A. Well, now, I'm a very poor salesman; some men would sell the

horse for half as much again as I would ; I couldn't answer any such question ; I would then have property to sell which everybody who wants a horse—what would please one wouldn't another.

Q. Do you believe you could have sold him at all for two hundred and fifty dollars, if he was only of moderate speed, and unbroken and unaltered ?

A. Well, one man would attach more risk on that horse than another ; for my part, I wouldn't buy a horse under those circumstances, unbroken and unaltered ; for, if he had to be broken and altered, I wouldn't run the risk.

Q. The question is, whether you think, if you had that horse for sale, you could sell him for two hundred and fifty dollars, cash, just as he was when you saw him last ?

A. From the acquaintance I had with the horse, which was very limited, I should think he would be very cheap to anybody who wanted him, to remain as he was.

Q. Do you mean with his being fast ?

A. No, sir ; I mean allowing that he should prove to be such a horse as he appeared ; he appeared to be a horse of speed ; that is, ordinary speed.

Q. Do you know anything particularly about the value of stud horses ?

A. No, sir, not at all ; I am simply supposing that the horse should prove to be kind and of ordinary speed, such as he indicated ; if anybody wanted such a horse, he would be worth more as a stallion than if altered.

Q. Can you tell his size, his height ?

A. I never measured him, but I should suppose between fifteen and sixteen hands ; he may not have been over fifteen.

Q. Is it or not, very important in stud horses that they should be of good size, in order to make them profitable, especially when they are not thorough bred ?

A. Yes, sir ; and I considered, attaching the age of the horse, and his size, that he was of ordinary size ; but I'll here attach a condition : one horse will grow a year or eighteen months longer than another, and a person has got to run the risk.

Q. Isn't it thorough bred horses that reach their growth at a later period than common horses ?

A. I'm not able to answer the question.

Q. Would you or would you not consider fifteen hands too small a horse to be profitable as a stud, unless he was thorough bred ?

A. I should ; but when you attach three, past, as he was when I last saw him, and he's got the remainder of his years to grow in, that

would give him size enough; the horse I now drive grew till he was seven years old, for I measured him.

Q. If that colt, living now, measured only fifteen hands, what would be the inference you would draw from it?

A. My inference is that he had either had a very bad master or I had been disappointed in the growth of the horse.

Q. Might not another inference be drawn from it; that is to say, that he had been forced in his early growth?

A. My experimental knowledge wouldn't be sufficient to decide upon the subject; I've never had anything of the kind. 10

Being re-examined by Mr. Mills:

Q. You have said that you have said that, from the appearance of the horse, and from the prices that fast horses brought on the Island, he was worth the money that he brought; when did you first say that; how soon after you first heard he was sold for five hundred dollars? [Objected to by Mr. Scofield.]

A. I think my son informed me at the table that Mr. Brittin had sold his horse for five hundred dollars, and my reply was: it was a great deal of money to put in one animal; but if he was as good as he appeared, he was worth the money. 20

Q. Was that your opinion at the time?

A. Yes, sir; but there were conditions to be attached to the horse, in point of speed and kindness, and everything corresponding with the appearance of the horse.

Cross-examined by Mr. Scofield:

Q. Do you mean that the horse must have been as good as he looked and have been a fast horse?

A. Yes, sir.

CHRISTOPHER MULFORD.

Sworn and examined before me, this 24th July, A. D. 1862. 30

THEO. LITTLE, *M. C.*

Luke Parsons, of the township of Chatham, a witness produced, and sworn, and examined on the part of the defendant, Alfred B. Brittin, deposeth and saith:

Question. Please state your age, your residence and your occupation, and how far you reside from Mr. Brittin's farm?

Answer. I was sixty-two the twenty-second day of May last; I reside at Long Hill, Chatham township, Morris county; to go the road from my house to Mr. Brittin's farm, it is about five miles, but to go across the swamp, as we sometimes do in winter, it is about three 40 miles; my occupation is farming.

Q. Have you been in the habit of raising, dealing in and managing horses; and if so, for how long a time?

A. Well, I suppose ever since I have been a farmer, and that is forty years.

Q. Have you bought and sold horses?

A. Yes, sir.

Q. Did you know Mr. Abraham Brittin in his lifetime.

A. Yes, sir.

Q. Were you in the habit, during his lifetime, of passing frequently by his farm?

A. No, sir.

10 Q. Is it not on the direct road, then, from your place to Morris-town?

A. No, sir.

Q. Have you been at his farm, and who had charge of it?

A. Yes, sir; Leonard Oakes had charge of it.

Q. Was he in the habit of raising stock on that farm?

A. Yes, sir.

Q. Did you know a bay stallion which Mr. Brittin had on that farm, and afterwards sold to Mr. Muir.

A. Yes, sir.

20 Q. How often did you see him while Mr. Brittin owned him, as near as you can tell.

A. Well, I think about five times, as nigh as my recollection serves me; it might have been once or twice more.

Q. Where did you see him?

A. On the farm.

Q. Did you ever go there for the purpose of seeing him?

A. Yes, sir.

Q. When and with whom?

A. The first time I did not go to see the colts; I had other business, but I did see them; they were then coming two years old; there were three colts there together in the lot.

Q. When did you next see him?

A. In the fall of the same year, when he was coming two years old; I saw him again the next winter.

Q. Did you see him again the next season, when he was two years old past.

A. Yes, sir.

Q. At what time of the year and how often?

A. I think I saw him about May or June, I can't decide exactly; 40 they didn't turn him out; he was in the stable and the others out in pasture; he was two years old that spring.

Q. Who was there when you saw him at that time?

A. Mr. Oakes and his son.

Q. When did you next see him?

A. Well, I think it was Thanksgiving, day in the afternoon, as he was coming three years old the next spring.

Q. Who was with you the last time?

A. Mr. Brittin; I took dinner with him that day, and in the afternoon we went over to the farm to see some stock.

Q. How long was this before the horse was sold to Muir?

A. I do not know; I don't know when he was sold, but I saw the horse once after that.

Q. When was that?

10

A. That was in sleighing time; I went over in a sleigh, me and my workman; it was pretty much the first sleighing we had; it was not a great while after Thanksgiving, I presume; may have been a month or six weeks or something like that.

Q. Was that the last time you saw him?

A. Yes, sir, I think it is.

Q. Were you at the farm after that?

A. I don't remember of being there, I think not.

Q. Was the horse sold the winter you were there last or a year from that time?

20

A. I couldn't answer that question; I don't seem to know about that.

Q. What was the appearance of the horse as to his color, form and movement?

A. Well, his color was a bay, with black mane and tail; from the time I first saw that colt, when he was first turned out as a yearling, I thought he improved very much every time I saw him; I thought he was going to make something very promising, very nice, from the appearance of him; as he grew older, his points come out, and I thought he was going to make something very nice; and he was a very pretty horse, that's certain.

30

Q. State, if you please, what took place there on Thanksgiving day, when you went to see him?

A. Well, what called me over there on Thanksgiving day was, Mr. Brittin expected Mr. Bonnell there to buy some fat cattle, and asked me to go with him; he went to the farm and Mr. Bonnell wasn't there, and we had the colt fetched out in the yard.

[Before this question was fully answered, the question was objected to by Mr. Scofield.]

Q. Did you examine him at that time?

A. Yes, I did.

40

Q. Did you see him ridden?

A. No, sir; I never saw anybody on his back; he was only exercised around the yard a little with the bridle; the boy had him.

Q. How old was he at that time?

A. He was coming three, if I mistake not.

Q. From your knowledge and observation of that horse, what would have been a fair valuation for him, when he was coming four years old. [Question objected to by Mr. Scofield.]

A. Well, to be kept for a stock horse, I should think he wasn't dear at five hundred dollars.

Q. Do you know whether Mr. Brittin had any offers for the horse before he sold him?

A. Only by hearsay.

10 Q. Did you hear of any offers? and if so, from whom? [Question objected to by Mr. Scofield.]

A. From Mr. Oakes; I heard Mr. Brittin say he valued his horse at from four to five hundred dollars; the way it came was, I was laughing at him a little, and said to him, I suppose you will ask more for your colt than I do for mine? and he said he wouldn't take less than four or five hundred dollars for his.

[As the witness commenced to state what Mr. Brittin said, Mr. Scofield objected to the statement of anything said by Mr. Brittin in the absence of Mr. Muir.]

20 Q. When did you hear him say that?

A. Thanksgiving day, the day we were over there.

Q. At any time when you saw the horse, did you ever see any appearance of lameness in him, or ever know of his being lame?

A. No, sir.

Q. Did you ever see any symptom of disease in him of any kind?

A. I never did, when I saw him.

Q. How large a farm do you own?

A. I have between one hundred and fifty and sixty acres.

Q. How long have you lived on it?

30 A. From the time I was ten years old; it belonged to my father, and from him came to me.

Being cross-examined by Mr. Scofield.

Q. What was the height and size of this colt when you saw him on Thanksgiving day?

A. I called him fifteen hands, as nigh as I could measure him.

Q. Did you measure him?

A. No other ways than by walking up to him and laying my chin on him.

Q. How was he filled out—proportionally or not?

40 A. Well, I thought he was filled out very well; he was still growing and had improved very finely every time I seen him.

Q. Was he in fine condition as to flesh?

A. Well, he was in good condition enough for a growing horse; he was not what you may call a real hog-fat horse.

Q. What would you have given for the colt at the time you saw him on Thanksgiving day?

A. Well, that's a thing I did not want to buy, of course.

Q. Well, considering that you did not want to buy him, give us the extent you would have given for him in cash?

A. As for a stock horse, if I had wanted one, I would not have supposed he was a dear horse at four hundred dollars, at that age, with the pedigree he had.

Q. At what age?

A. Three years old.

10

Q. Three years old, past, do you mean?

A. I mean he would be three years old the next spring.

Q. You misunderstood my question; I did not ask what you would have given for him, supposing you wanted him, but I asked what you would have given for him, supposing you didn't want him? [Question objected to by Mr. Mills, as irrelevant.]

A. I don't think because I didn't want that horse it would depreciate his value at all, nor but what he was worth the money.

Q. I asked you, in the first place, what you would have given for that horse, and you replied that you didn't want him; I then asked 20 you what you would have given for him, admitting you did not want him; then you gave an answer, but not an answer to my question; will you now answer what you would have then given on Thanksgiving day, in cash, for that colt, considering you didn't want him.

A. It appears to me that's forcing a man into a thing he doesn't want.

Q. Are you unwilling to give a direct answer to that question?

A. No, sir; I am not unwilling.

Q. Then be kind enough to reply to it?

A. Well, I believe myself the horse was worth the money, and that 30 I could have made money on him at that.

Q. Do you mean by your last answer to say you would have been willing, on Thanksgiving day, to have given Mr. Brittin five hundred dollars, in cash, for that colt?

A. No, sir.

Q. Now, then, be kind enough to tell me how much you would have been willing to have given, in cash?

A. I can't tell how much I would have been willing to give for him?

Q. Would you have been willing to have given him fifty dollars, in cash, for him, considering you did not want him?

40

A. Yes, sir.

Q. Would you have been willing to have given him a hundred dollars in cash for him, considering you did not want him?

A. Yes, sir.

Q. Would you have been willing to have given one hundred and fifty dollars in cash for him, considering you did not want him?

A. Yes, sir.

Q. Would you have been willing to have given two hundred dollars for him in cash, at that time, considering you did not want him?

A. Yes, sir.

Q. Would you have been willing to have given two hundred and fifty dollars in cash for him at that time, considering you did not
10 want him?

A. Yes, sir, and glad of the opportunity.

Q. Would you have been willing to have given three hundred dollars in cash for him, at that time, considering you did not want him?

A. Yes, sir; such a horse isn't picked up every day; there was money to be made on him at that.

Q. Would you have given three hundred and fifty dollars for him in cash, at that time, considering you did not want?

A. No, sir.

Q. Did you know the horse, Mariner, that Mr. Gibbons owned?

20 A. No, sir.

Q. Do you know what he sold for at vendue?

A. No, sir.

Q. What could you have done with this horse to have realized your money out of him, paying, at that time, when he was two years old past, three hundred dollars for him?

A. I should have kept him for a stock horse.

Q. Did you ever keep any stock horses?

A. No, sir, not a great while at once; not to say a regular stock horse.

30 Q. Do you know that stock horses, unless they are thorough-bred, are very difficult to sell or dispose of?

A. Well, they are at times, I believe; there are some sales for them; the calculation was that this was a blooded horse.

Q. A thorough-bred, do you mean?

A. Well, I don't know as he was a thorough-bred, but his pedigree was about as good as you could scare up here, and he was as promising a colt as you could find in a day's ride.

Q. What was the price that Splendid was held at for mares?

A. I think Colonel Boyle asked me fifteen dollars.

40 Q. What is the price for the best thorough-bred horses in the country?

A. John Van Kirk asked twenty-five dollars for his, and he allowed he had a thorough-bred horse, and I suppose he was.

Q. What is the price for Patchen and horses of that character?

A. I don't know.

Q. Do you know what the price of Ethan Allen is?

A. No, sir.

Q. Has'nt the demand for common bred horses very much decreased since the introduction of thorough-breds into the country?

A. I am not able to answer that question; I don't think it has.

Q. Did Mr. Abraham Brittin, in his lifetime, ever tell you that he was about to let, or had let, Mr. Muir have this horse?

A. No, sir. 10

Q. You spoke about Mr. Brittin having a large stock on his farm, what was it, horned cattle or horses mostly?

A. I didn't say he had a large stock; I said I went to see stock; he had horned cattle and horses too; he had in the neighborhood of thirty or forty fat steers; Mr. Bonnell bought in the neighborhood of five and twenty or thirty, I guess, that afternoon.

Q. What was the ordinary price for colts, two years old, at that time, such as Mr. Brittin had there, the other two?

A. Well, that depended altogether on what kind it was; one of them was a brown mare, a very nice one; he valued her at something 20 like one hundred and fifty dollars.

Q. Did he keep the same brooding mares generally, or did he change every year?

A. I don't know; I think he had the mother of this stud colt for three or four years.

Q. Had he colts from her from Splendid, before this one?

A. I can't answer.

Q. Were you related to Abraham Brittin in any way?

A. He was an uncle to my wife.

Being re-examined. 30

Q. Whom was this horse sired by? [Objected to as principal examination.]

A. Col. Boyle's horse, Splendid.

Q. Did you know Splendid?

A. I saw him while Col. Boyle had him; I did not see him while Mr. Tunis had him.

Q. What was his reputation? [Objected to by Mr. Scofield.]

A. He stood very high as a stock horse.

Q. Was he or not reputed to be a blooded horse? [Objected to by Mr. Scofield.] 40

A. He was.

Q. What stock was he of? [Objected to by Mr. Scofield.]

A. He was from Harpinus, I believe.

Q. Who owned Harpinus ?

A. I understood Dey owned him ; I am not *thoroughly* acquainted.

Q. What Dey, what was his first name ?

A. Anthony Dey, I believe his name was.

Cross-examined by Mr. Scofield.

Q. Did you ever know or hear of two horses by the name of Harpinus ?

A. Yes, sir.

Q. Who owned the other Harpinus ?

10 A. Well, he was bred by Isaac Crane, but I believe William Edgar owned him last, what they called Harpinus ; I think, though, he was the third generation.

Q. Third generation from what ?

A. From Old Harpinus.

Q. What was the character of that horse, Harpinus owned or kept by Mr. Edgar ?

A. Very good ; as good a horse as they could scare up, and has got as many good colts in the country.

Q. What did Edgar charge for a foal from that horse ?

20 A. Six dollars, I think ; I think that is what I paid him for a couple.

Q. What did that horse Harpinus sell for ? do you know of his being sold more than once ?

A. I think Mr. Crane sold him for — ; I don't know as I can answer that question ; I don't know the price accurately.

Q. Was it over eighty dollars ?

A. I think it was two hundred and sixty dollars ; over two hundred and fifty anyhow Mr. Crane sold him for.

Q. How old was he then ?

A. I am inclined to think he was five years old, but I won't be cer-
30 tain.

Q. Was he sold after that.

A. I don't know.

Q. Before that, do you know of his being sold for less than a hundred dollars ?

A. He never was sold till he was sold then ; Mr. Crane raised him next door to me, and he wouldn't have been sold then, I suppose, if he could have managed him.

Q. When he was on the turf, had Old Harpinus, the Anthony Dey horse, been dead some time ?

40 A. I do not know.

Re-examined by Mr. Mills.

Q. About what year was it that Mr. Isaac Crane sold this horse ?

A. I don't know ; so long ago I can't tell.

LUKE PARSONS.

Sworn and examined before me this 24th July, A. D. 1862.

THEO. LITTLE, *M. C.*

Adjourned till to-morrow morning at 10 o'clock.

Friday, June 25, 1862.

William L. Eddy, of the township of Morris, in the county of Morris, a witness produced, sworn and examined on the part of the defendant, Alfred B. Brittin, deposeth and saith :

Q. Are you a native of this county, where were you brought up, ¹⁰ where do you live, and what is your business and age ?

A. I am a native of this county ; I was brought up in Green Village, in the township of Morris, and live at the same place now ; I was thirty-two years of age last April, and my business is a turner of wood.

Q. How far do you live from a farm formerly owned by Abraham Brittin, in Morris township ?

A. Well, it is a mile, or about as near that as can be.

Q. Are you acquainted with horses, and have you been in the habit of managing them ? ²⁰

A. I have been in the habit of managing them ever since I have been old enough.

Q. Did your father keep horses ?

A. Yes, sir, he kept a horse.

Q. Who took care of him ?

A. I always took care of him till I left home.

Q. Have you or not been in the habit of noticing horses ?

A. I have always been in the habit of noticing them, and always liked the looks of a nice horse.

Q. Did you know the stallion which Mr. Abraham Brittin sold to ³⁰ Josiah F. Muir ?

A. Yes, sir.

Q. How often were you in the habit of seeing him, during the latter part of the time he was on the farm ?

A. I couldn't say positively, but I see him frequently, as often as once a fortnight any way, and I think sometimes oftener.

Q. Where did you generally see him ?

A. He passed the shop where I was at work ; and I have seen him stop there ; and I have walked round him and examined him, times and times.

Q. Who would be riding him ?

A. Henry Oakes.

Q. What was his color ?

A. Bay.

Q. What was the color of his mane and tail ?

A. Dark.

Q. What was the appearance of the horse, as to his make and beauty ?

A. I considered him very nice, and that he made a good appearance ; a nice breast.

10 Q. How was he as to movement ?

A. He moved well enough whenever I see him ; I always thought he moved first rate ; he moved good.

Q. How was he as to beauty, compared with other horses in that part of the county ?

A. Well, I considered him better looking than the generality of horses, any way ; I considered him a very nice made horse, and a handsome horse.

Q. Did you know his sire ?

A. I never see him as I know of, to remember the horse, but I knew 20 of him and his stock.

Q. Who owned him, and what was his name ?

A. Mr. John Tunis owned him, and his name was Splendid.

Q. Do you know his reputation as a stock horse ?

A. He was considered one of the best horses, as a stock horse, that there was about there.

Q. Who owned the mother of the mother of Mr. Brittin's stallion ?

A. My father, Luther Eddy.

Q. Where was the mother of Mr. Brittin's stallion foaled ?

A. There at Luther Eddy's.

30 Q. What sort of an animal was this mother of Mr. Brittin's mare ?

A. Why, she was as good a beast as could be ; rather a short, tough animal ; she was a good beast any way, first rate.

Q. How was she for driving ?

A. As good a beast as I would wish to drive.

Q. Have you driven her ?

A. Yes, sir ; I drove her for about four years.

Q. What, in your opinion, was this stallion of Mr. Brittin's worth, as a stallion, at the time he was sold to Muir ?

A. I didn't think he was sold for any more than he was worth, at 40 the time Mr. Brittin sold him ; I considered him worth more to be kept in that way, than as a common horse ; I considered him very handsome, any way.

Q. Did you hear what he was sold for ?

A. Yes, sir.

Q. How much?

A. I heard he was sold for five hundred dollars.

Cross-examined.

Q. How much more was he worth, as a stallion, than as a common horse?

A. I don't know as I could say how much more he was worth; I consider such a horse worth more a great deal.

Q. Had he been broken any way, except under the saddle?

A. Not that I know of.

Q. Well, give us your opinion what he was worth as a horse altered? 10

A. That is a mere matter of opinion and fancy, too; I don't hardly know what to say to such a question.

Q. Was he worth two hundred dollars?

A. Yes, sir; he was worth that for any use.

Q. Was he worth two hundred and fifty dollars?

A. I should say, as I said before, about that; there is a great many horses sold for that price, that are not as good looking as he was, and don't look to be worth as much.

Q. Was he of small size or large?

A. He was just an ordinary sized horse. 20

Q. How much would you value him less, being unaltered and unbroken, suppose you wanted to buy him for a horse to use?

A. Well, I should value him less, but I think a horse of that kind is worth more; I always thought so.

Q. What kind?

A. A stallion; one kept for a seed horse.

Q. Would you have given, or do you believe you could have sold that horse for two hundred dollars, you taking the risk of altering and breaking him?

A. I believe he could have been sold for it; I don't know what I 30 would have given.

Q. I mean altered, to be used as a horse and not as a stud?

A. Yes, I believe he was worth that.

Q. Would that be a fair valuation for him, under such circumstances?

A. Well, I say as I said before, it is mere fancy; a horse as good looking as he was would generally fetch more money than a common horse; I have always seen it to be the case.

Q. Well, I don't ask you to say exactly what he was worth, but as near as you can tell? 40

A. Well, the horse was not broken at the time, and there was a risk to run in the breaking, of course; I shouldn't consider that two hundred dollars was a very large price, for a horse of that kind, in any respect, even if he was altered to use.

Q. Well, do you think that would be a fair price?

A. Well, it wouldn't be anything more than fair, the way horses sell—a colt so.

Q. Well, would it be beyond the extent of what he was really worth at the time?

A. I set the price on the horse as he was; I have done that once; I couldn't say what the difference would be between a road horse and a horse of that kind.

Q. Well, you have been called here to value this horse; you have
10 answered the question, on your principal examination; now you are called on to value that horse, altered, for the purpose of using as a horse; you are just as much bound, on cross-examination, to give your evidence as to what the horse is worth, as you were to give evidence, on your principal examination, of his value as he was; will you now tell us your opinion, honestly, what that horse would be worth if he was altered? [This question objected to by Mr. Mills.]

A. I don't think he would be worth any less than two hundred dollars.

Q. Was he worth any more?

20 *A.* It is a mere matter of fancy; the horse was better looking than most of horses; he was a handsome horse.

Q. Was he worth any more as he was—taking him unaltered and unbroken?

A. I have answered that question once—that he was worth more as he was.

Q. How much more did you say he was worth?

A. I told you some time ago how much I thought he was worth as a stallion.

Q. Now tell us, if you please, how much more he was worth as an-
30 other horse, altered?

A. I don't know as I can answer that question; for a man to take the horse and alter him, and run the risk, to tell how much he was worth would puzzle anybody.

Q. Well, considering that, are you prepared to say he was worth anything more than two hundred?

A. I ain't prepared to say anything about that at all, and run the risk of the horse.

Q. Well, now, you have given an estimate of the value of this horse as a stud—did you ever keep stud horses or own one?

40 *A.* No, sir.

Q. How many horses have you ever owned yourself?

A. I have owned two, myself.

Q. What price were they worth?

A. I sold one for one hundred and fifteen, and I paid one hundred and twenty-five for the one I have now.

Q. You spoke of your father, Luther Eddy, keeping horses; how many horses did he own?

A. I don't know how to get along with such a question?

Q. How many did he own at one time—the most.

A. Two at one time was the most.

Q. Well, now, do you undertake to put a valuation on a stud horse from the limited knowledge you have, accurately.

A. Well, I don't know as I can undertake to put a valuation on any 10 horse, accurately, but I am like other people, I can judge what a horse is worth, and when I see a beast of any kind which is very nice, I believe I know it—I pretend to think so at any rate.

Q. What price would you have been willing to have given for the horse, in cash, when Mr. Muir got him?

A. Well, I didn't want no such kind of a horse; I would not have been willing to have bought him at all for my own use.

Q. Do you know of anybody that would want him?

A. I don't know that I do.

Q. Well, would you have given two hundred and fifty dollars for 20 him, in cash, at that time?

A. I answered that question a few minutes ago.

Q. I mean just as he was—as a stud.

A. I say, for my own particular use, I would not buy no such horse.

Q. Would you have given for that horse fifty dollars, as he was at that time.

A. I have said all that is sufficient on that head, all that there is any need of saying.

Q. I desire you to answer that question? [Question repeated to the witness.] 30

A. For my own use I would not have given it; that's all I can say; I don't know what else to say.

Q. Have you ever had anything to do with stud horses; any mares to put to horse?

A. I have put mares; I put one this spring, but it was for my father.

Q. Did you ever have one of your own?

A. I never raised anything of the kind of my own.

Q. How many did your father ever put to horse, to your knowledge?

A. I can't tell exactly; four or five; I think it is five. 40

Q. How many years has that been since he first put one?

A. I couldn't say; I can recollect back fifteen years, and the first one was before that, I recollect it, but don't recollect the time.

Q. How much, in your opinion, could you have sold this stud horse for, when Mr. Muir took him?

A. I couldn't say how much.

Q. Could you have sold him for two hundred and fifty dollars?

A. I couldn't say that I could or that I couldn't, anything about it.

Q. Do you know the stud horse that Mr. Conklin owned—William Conklin?

A. Yes, sir.

Q. Was he out of the same horse as this one?

10 *A.* That's what Mr. Conklin and all say, because he was named after him; I couldn't say he was, only from hearsay.

Q. Was that his general reputation in the neighborhood? [Objected to as irrelevant.]

A. Yes, sir.

Q. What price did he sell for? [Objected to by Mr. Mills.]

A. I don't know as I can answer the question; he was sold after he was altered.

Q. How old was he then, when he was altered?

A. I couldn't say.

20 *Q.* Can you tell within five years?

A. I don't know but I can; I think he was not over ten or eleven when he was altered.

Q. Have you seen Mr. Brittin (Alfred B. Brittin,) to talk with him about this colt since the first of January last?

A. I have seen him several times; two or three times, I think.

Q. What was said on the subject, between you and him?

A. He asked me if I knew the horse, if I had ever seen the horse, &c.; I don't know hardly what was said.

Q. How long did he talk with you each time when he saw you?

30 *A.* I couldn't say; it was a few minutes; he merely called as he was going past with his carriage.

Q. Did he ask you to put a price on him?

A. No, sir.

Q. Did he tell you what he was sold for?

A. No, sir.

Re-examined by Mr. Mills.

Q. Did you ever know this horse to be lame, or foundered, or blind, or diseased in any way? did you ever see any appearance of these defects, or of any other defects in him? was he a sound horse or not?

40 *A.* I never see anything of the kind about him; I considered him as sound a horse as there was amongst us.

Q. Has Mr. Muir been to see you to get you as a witness, or any one in his behalf?

A. No, sir.

Q. Have you seen Mr. Muir in your neighborhood lately?

A. No, sir.

WILLIAM L. EDDY.

Sworn and examined this 25th day of July, A. D., 1862, before me,

THEO. LITTLE, *M. C.*

Henry C. Oakes, of the city of Newark, in the county of Essex, a witness produced, sworn and examined, on the part of the defendant, Alfred B. Brittin, deposeth and saith :

Question. How old are you, and what is your father's name ? 10

Answer. I will be twenty-three years old next month ; my father's name is Leonard Oakes.

Q. How old was you when your father moved on to Abraham Brittin's farm, in Morris township.

A. They say I was six month's old.

Q. Did you live there with him ; and if so, how long ?

A. I lived there with him as long as he lived on the property.

Q. When did he move away, and where have you lived since he moved away, and where do you now live ?

A. He moved away two years ago last spring ; I have lived, since 20 he moved away, in Newark, New Jersey, and live there now.

Q. Did you know the mother of the stallion which Mr. Abraham Brittin sold to Josiah F. Muir in the winter of 1859 ?

A. Yes, sir.

Q. What color was she ?

A. Bay.

Q. Who owned her ?

A. Abraham Brittin.

Q. Did he ever sell that mare ; and if so, to whom ; and also state if he ever bought her back ? 30

A. He sold her to Henry Hedges, of Columbia, and then he bought her back again.

Q. Did he sell her to any one else, or did any one else have her ?

A. Well, he bought her of John Tyler Muchmore, but I don't know whether he sold her to him first or not.

Q. Did you know this stallion which Mr. Brittin sold to Mr. Muir ?

A. I did.

Q. Where was he foaled ?

A. On Mr. Brittin's farm.

Q. Whom was he sired by ?

A. Old Splendid. 40

Q. Who took the mare to the horse, when he was put to the mare ?

- A. I did.
- Q. By whose directions?
- A. Mr. Brittin directed my father, and my father directed me to do it.
- Q. Where was it that Splendid was put to the mare, on whose farm?
- A. John Tunis'.
- Q. Who was there at the time?
- A. John Tunis.
- Q. Were you there?
- 10 A. Yes, sir.
- Q. Who brought the mare back to Mr. Brittin's farm?
- A. I did.
- Q. Did this mare have a colt the next season?
- A. She did.
- Q. Was or not that the colt which was sold to Mr. Muir?
- A. It was the colt.
- Q. What was its color?
- A. Bay.
- Q. How was the colt as to beauty?
- 20 A. Well, he was a beautiful horse.
- Q. How often did you see him?
- A. I saw him every day, till he was sold.
- Q. How near to the house was the place where he was kept?
- A. It was about a hundred yards from it.
- Q. Who fed the colt?
- A. My father.
- Q. Was he ever ridden; if so, who rode him, and when was he first ridden?
- A. Yes, sir, he was rode; I rode him; he was coming three in the
- 30 spring as I rode him in the winter.
- Q. After that how often did you ride him?
- A. Not over three times a week.
- Q. What was his movement?
- A. He moved very nice.
- Q. Did you ever trot him?
- A. I did.
- Q. How fast could he trot?
- A. I never timed him.
- Q. Did he go fast or slow?
- 40 A. Sometimes I would ride him slow, and sometimes fast.
- Q. How was he in his movemet, quick or slow?
- A. He was quick.
- Q. More or less so than ordinary horses?

A. He was quicker than some horses.

Q. Do you know how fast he ever trotted when you were on him ; if so, state as near as you can ?

A. No, sir, I don't ; but he was a very fast traveller.

Q. In running, how was his speed ?

A. I don't know.

Q. Did you ever see him run in the pasture ?

A. Yes, sir.

Q. How was his running then, fast or slow ?

A. He was running fast when I see him there, running loose. 10

Q. When you rode him did you ever put him on a run ?

A. Not to my knowledge.

Q. Did you ever know of that colt being sick ; if so, what was the matter with him, and when was it ?

A. Well, when he was coming two years old, he had just a touch of the distemper.

Q. Was he ever lame, to your knowledge ?

A. No, sir.

Q. Was he ever foundered while he was on the farm ?

A. No, sir. 20

Q. Was he ever blind while he was there ?

A. No, sir.

Q. Was he lame in the spring or summer of the year in which he was two years old ?

A. No, sir.

Q. Did you ever tell anybody that he was ?

A. No, sir.

Q. Did you ever tell Oliver Nesty that he was ?

A. No, sir.

Q. Did you, while he was on the farm, ever hear, or know, or suspect, that he was lame ?

A. No, sir.

Q. Could he have been lame or foundered without your knowing it ?

A. No, sir.

Q. Was he turned out to grass when he was two past ?

A. I think it was when he was coming two that he was turned out.

Q. Do you recollect whether it was before or after he had the distemper ?

A. Well, it was when he first commenced to have it.

Q. Do you know whether any shackles were put on him at that 40 time ?

A. I believe hobbles were put on him.

Q. Was he ever shod ?

A. He was ; only his front feet.

Q. How old was he when he was shod ?

A. I think it was in the winter, as he was coming three years old in the spring.

Q. Did you ever take him to Henry Smith's blackshop, when he was lame, or favored his fore feet, or was affected in any way in his feet, to have his hoofs pared, or for any other purpose ?

A. Nothing, only to get him shod.

Q. Did you ever take him there when he was lame or favored in 10 his fore feet, or was affected in his feet in any way, either diseased or injured ?

A. No, sir.

Q. Do you know of his ever being diseased or injured in any of his feet ?

A. No, sir.

Q. Was he or not, a sound horse ?

A. He was, as far as I knew.

Q. Did you ever take any horse that was lame to Henry Smith's blacksmithshop, in Green Village ? if so, for what purpose did you 20 take him ?

A. I did, for to get his feet pared down ?

Q. Whose horse was it, and what color was he ?

A. Abraham Brittin's ; he was a bay.

Q. When did Mr. Brittin have that horse on the farm ?

A. That horse was foaled on the farm before the stallion was ; I can't tell you how long ago it was.

Q. Was he kept on the farm while the stallion was kept there ?

A. He was.

Q. How often did you take that lame horse to Mr. Smith's black- 30 smith shop ?

A. I can't tell you.

Q. More than once ?

A. I did.

Q. Where were the horses which were kept on Mr. Brittin's farm shod ?

A. To Henry Smith ; the Green Village blacksmith shop.

Q. Do you know the height of the stallion which was sold to Muir ?

A. I think it was fifteen hands and a half.

Q. Did you ever measure him ?

40 A. I did not.

Q. Did you ever see him measured ?

A. I did.

Q. Do you remember by whom ?

A. I think, but I wouldn't be sure, it was Harvey Pruden, one day in Henry Smith's blacksmith shop.

Q. What has been your business since you have been in Newark?

A. My business has been expressman, carman and moving houses.

Q. Have you had charge of horses since you have been there?

A. I have.

Q. Taking care of them?

A. Yes, sir.

Q. How does this stallion, which was sold to Mr. Muir, compare with other horses which you have seen, as to form, appearance and 10 beauty?

A. I haven't seen his like since we sold him.

Q. How did he compare with horses in this county that you saw, while you were living on the farm?

A. I never saw a prettier horse than he was.

Q. What, in your opinion, was he worth at the time he was sold to Mr. Muir?

A. Well, I don't know; if I had had the money I would have given five hundred dollars for him.

Q. In your opinion, was or not five hundred dollars a fair and rea- 20 sonable price for that horse at the time he was sold to Muir?

A. I don't think it was any too much.

Q. How often was Abraham Brittin in the habit of being at the farm? tell as nearly as you can?

A. Sometimes he would not come over once a week, sometimes two or three times a week, and sometimes would come every day; that's as near as I can tell.

Q. Do you know whether he had any pet horse on the farm?

A. None but this stallion and his mother; not to my knowledge.

Q. What makes you think this stallion was a pet horse of his? 30

A. Because he was a prettier horse than the common run of horses.

Q. Did you ever see Mr. Brittin show this horse to any one?

A. I did.

Q. Did you ever see him bring any persons there to look at the horse?

A. There were men come with him and looked at the horse; whether they came on purpose or not I don't know.

Q. Where was the horse usually kept after he was two years old?

A. On the farm.

Q. In the stable or out in pasture? 40

A. In the stable, after he was two years old, I believe.

Q. Where was his stable; where from the place where the other horses were kept?

A. The stable was built on purpose for him; right by the short cow house; thirty feet, perhaps, from the other stables.

Q. Was the horse brought out when Mr. Brittin came down there; what was his habit about that?

A. Well, I used to lead the horse out when he came down there.

Q. Was that a general habit or not?

A. It was whenever he wanted to see him outside, and when he didn't I didn't take him out.

Q. Did he generally go to look at the horse when he came down?

10 A. I can't tell whether he did every time or not.

Q. What was his usual habit in that respect?

A. His usual habit was to go and look at the horse.

Q. Who took the horse to Chatham, when he was sold to Mr. Muir?

A. Me and my brother.

Q. How was the horse as to disposition—kind or vicious?

A. Kind.

Being cross-examined.

Q. Have you ever dealt in stud horses?

A. None but that one.

20 Q. What one is that?

A. The one Mr. Abraham Brittin sold to Mr. Muir.

Q. Are there many horses in the country here, or did you ever know of a horse about here, that was worth five hundred dollars?

A. I don't know as I know of any but him; I know I would have been willing to give that for him, if I had had the money.

Q. How old was you at that time?

A. Between eighteen and twenty.

Q. Had you any money to buy a horse with at that time?

A. I did not.

30 Q. How much is the highest price, except this one, that Mr. Brittin ever sold a colt for from his farm?

A. I don't know how much he got for his horses; there is only one that I know what he got—at least I heard what he got—that was a hundred and ten dollars.

Q. Did you hear of his selling any for more than that?

A. I can't tell.

Q. Was that colt out of the same mare and the same horse?

A. It was out of a gray mare.

Q. What horse?

40 A. I forgot the horse's name; William Bedell owned him?

Q. How long did you live there on Mr. Brittin's farm with your father?

A. Somewhere about nineteen years—nineteen or twenty, I can't tell which.

Q. Did this mare ever have any other colt there on the farm?

A. She did.

Q. How many?

A. I think it was three.

Q. Any other from this same horse, Splendid.

A. I believe not.

Q. Were the other two colts before or after this one?

A. One was before and two after this one.

Q. The two after this—what did they sell for?

A. I don't know.

10

Q. Did you never hear him say?

A. I never did.

Q. Who were they sold to?

A. One to Halsey Roberts, at Green Village, and I don't know where the other was sold.

Q. Why didn't he put the mare to the same horse the next time?

A. The horse died.

Q. Do you mean the horse died before the time arrived for putting him to the mare for the next colt?

A. I believe he did.

20

Q. Why didn't he put her to the same horse before that?

A. I can't tell you.

Q. What business did you expect to put the horse to if you had bought him, as you say, for \$500?

A. I was going to keep him for a stock horse.

Q. Do you know anything about the prospect of his success in putting him to mares?

A. All I know is that the sire of him was a good horse; that's all I know about the prospect.

Q. What would the horse have been worth, provided you had concluded to alter him, running the risk of alteration and breaking him?

A. I can't tell you.

Q. What do you suppose; would he have been worth two hundred dollars?

A. I don't know how horses was then.

Q. Well, taking it that horses were as high as you ever knew them, would he have been worth two hundred dollars?

A. I don't know; I never bought a horse or sold one.

Q. Then your estimate of the value of this horse, or what you would give for him, is based upon the idea that he was to be kept as a stud, 40 is it?

A. Yes.

Q. Do you know anything about Mr. Brittin's making up his mind to alter that colt, before he was taken away?

A. No, sir.

Q. Did you never hear anything from him about that?

A. No, sir.

Q. You have been inquired a good deal about what Mr. Brittin done about this colt, about his coming to see him; was there anything very extraordinary about that?

A. Nothing, no more than he was a pet horse; that's all it was.

10 Q. Isn't it a very common thing for a man who has got a horse that he likes the looks of pretty well, to come to see him when he has nothing else to do?

A. It is, if he don't have the horse to the place where he lives, or live close to him.

Q. After this mare was foaled with this horse, did he seem to come there oftener than he used to before?

A. I don't know as he did.

Q. What did he have to do when he came down there?

A. I don't know; I didn't know his business.

20 Q. Had he any?

A. That's another thing I can't tell.

Q. Did you see him do any?

A. No more than I see him go around on the farm and look at things.

Q. How did your father work that farm?

A. I think by the year.

Q. Did he rent it, or was he paid for working it?

A. He was paid for working it.

Q. Well, did it surprise you at all that Mr. Brittin should come
30 down there and look at the colt under such circumstances?

A. No, it didn't surprise me any.

Q. Had he any other business that you know of?

A. He had business all over.

Q. Didn't you ever hear your father say that Brittin had let Muir have money, and that's the way he come to get the price for it, or anything to that effect? [Objected to by Mr. Mills.]

A. I can't say as I did.

Q. Can you say he did not?

A. No, I can't.

40 Q. Did Mr. Brittin ever say that he had loaned money to Mr. Muir, or anything to that effect?

A. He never told me; but I heard he did..

Q. Who did you understand he told that to? [Question objected to by Mr. Mills.]

- A. I can't tell the man's name now; I can't think of it.
- Q. Did you ever hear him, or your father say, Mr. Muir had given him a bonus for the loan of money?
- A. I did not.
- Q. Did you take this horse down to Mr. Muir's?
- A. Me and my brother did.
- Q. What sort of accommodations had he there for a horse?
- A. I don't know; I didn't take no notice.
- Q. Did you put him in a stable?
- A. My brother did. 10
- Q. What stable?
- A. I don't know whose it was.
- Q. Was it his?
- A. I don't know.
- Q. Whereabouts was the stable?
- A. I am not acquainted with the place, and can't tell you where it was; somewhere in Chatham, though.
- Q. How far from the house?
- A. I can't tell.
- Q. Tell as near as you can? 20
- A. I don't know where Mr. Muir lived.
- Q. How did you find out, then?
- A. Think it was by the mill that we found out.
- Q. Did you enquire there if that was Mr. Muir's house; and what did they tell you?
- A. I've forgot whether we did or not.
- Q. Well, how do you know, then, that you took him to Mr. Muir's?
- A. Mr. Muir was there, I think.
- Q. How long after you came there?
- A. I've forgotten. 30
- Q. Tell as near as you can?
- A. We were about to put the horse in one place, and then took him out and put him in another.
- Q. Isn't there a bridge close by the mill there?
- A. There are bridges there; I don't know how close?
- Q. Did you take him across two bridges and put him in a stable there?
- Q. I don't know whether we took him across two bridges or not; can't say.
- Q. Did you take him across one? 40
- A. I can't say; I never was at the place but that once, and have never been there since; I've forgotten.
- Q. Was there two taverns near there?

A. There was one tavern; I don't know whether there were two or not.

Q. Did you leave him at the tavern stable?

A. I don't know now who owned the stables at all; I don't know whether it was the tavern stable or not.

Q. Did you take him below the house there by the mill, opposite which is a tavern?

A. I can't tell nothing about it; I tell you I've forgotten the place.

Q. Why didn't you leave him there when you had first got him
10 there?

A. I don't know; but I think the stall wasn't good enough.

Q. What stalls were these, the stalls at the tavern you have before spoken of?

A. I believe they was tavern stalls; I am not sure though.

HENRY C. OAKES.

Sworn and examined before me, July 25th, 1862.

THEO. LITTLE, *M. C.*

Adjourned till to-morrow, July 26, 1862, at eleven o'clock.

Saturday, July 26, 1862.

20 *Thomas V. Johnson*, of the township of Hanover, in the county of Morris, a witness produced and sworn on the part of the defendant, Alfred B. Brittin, deposeth and saith:

Question. State your age and residence, if you please?

Answer. My age is fifty-two, and my residence at Littleton, in Hanover township, Morris county.

Q. Were you acquainted with Abraham Brittin, in his lifetime?

A. Yes, sir, I was.

Q. Were you ever upon his farm, in the township of Morris, with him; and, if so, state when it was?

30 A. I was there with him in February, eighteen hundred and fifty-eight, and once afterwards in the spring of eighteen hundred and fifty-eight; I don't remember exactly the month.

Q. At either of those times did you see a bay stallion there coming three years old; if so, where was he and describe his appearance?

A. I did see a bay stallion there in March, I think it was; Mr. Brittin said he was three years old that spring; he was in the stable; Mr. Brittin had him taken out for the purpose of showing him to me, by the man in attendance; I don't know who it was; he appeared to be a well-formed horse, and about of a medium size of his age; I
40 should think he was a dark bay; it strikes me so; my impression is he

was rather inclined to a brown ; he seemed to be active and well-proportioned ; he said he was going to keep him for a stallion ?

Q. Did you price him at that time ?

A. I did ask him what he valued him at. [Mr. Scofield here objected to anything which Mr. Brittin said.] My impressions are he said he had a customer for him, and he supposed he should get about four hundred dollars for him ; he named one or two individuals that had been talking of purchasing him.

Q. Were you at the vendue of stock which took place on that farm in the spring of 1861 ; and, if so, did you purchase or did any one purchase for you a bay mare, which was said to be the mother of this stallion ?

A. I was at the vendue ; my brother Henry purchased the mare for me ; I am not exactly certain as to the price, but my impression is it was thirty or thirty-two dollars.

Q. How old was she ?

A. I don't know precisely her age, but I should judge about twenty to twenty-two years old ; she was said to be about that age.

Q. Did you sell her after that, and if so, how long after, and what did you get for her ?

20

A. About two months after that I sold her for sixty dollars.

Being cross-examined by Mr. Scofield.

Q. Who were these men he said he expected to sell this horse to ?

A. I cannot remember their names ; he mentioned them at the time, but I am not able now to call them.

Q. Was the mare you bought with foal ?

A. She was.

THOS. V. JOHNSON.

Sworn and examined before me, this 26th July, A. D. 1862.

THEODORE LITTLE, *M. C.* 30

John Baldus, of the township of Morris, in the county of Morris, a witness produced, sworn and examined on the part of Alfred B. Brittin, one of the defendants, deposeth and saith.

Question. Did you ever live on Mr. Abraham Brittin's farm, in Morris township, and if so, when and how long did you live there ?

Answer. Yes, sir ; I did live there in 1858, from the first of April till along in October, I think.

Q. Where was the house you lived in—how far from that which Mr. Oakes lived in ?

A. The house was on the same side of the road as the one Mr. Oakes lived in, and about a hundred and twenty-five or thirty panels of fence off, I guess.

Q. Do you recollect a bay stallion that Mr. Brittin had there, and if so, how often were you in the habit of seeing him?

A. Yes, sir; I seen a bay stallion there most every day, or every week three or four times, while I lived on the place.

Q. Did you work on the place?

A. I did, sir.

Q. Describe the appearance of the stallion?

A. Well, I think he was a very nice looking colt, well formed and had a pretty good movement.

10 *Q.* Did you ever see any lameness in him while you were there?

A. No, sir.

Q. While you were there did you ever know or hear of his being lame or diseased, or injured in any way?

A. No, sir.

Q. Who fed him and took care of him?

A. Mr. Oakes did, and his son rode him out at noon, three or four times a week; his son's name was Henry Oaks.

Being cross-examined by Mr. Scofield.

Q. Did you ever see them feed him?

20 *A.* I seen Mr. Oakes feed him, but I don't know how he did feed him.

JOHN BALDUS.

Sworn and examined this 26th day of July, A. D. 1862, before me.

THEODORE LITTLE, *M. C.*

August 5th, 1862, examination resumed pursuant to adjournment.

Bliker Whitenack, of the township of Morris, a witness produced, sworn and examined, on the part of the defendant, Alfred B. Brittin, deposeth and saith:

Question. State your age, where you live, and what your business is?

30 *Answer.* I am seventy-two years old; I live close to Green Village, and my business is farming, what little I do.

Q. About how far do you live from Abraham Brittin's farm?

A. Not over two miles.

Q. Did you know a bay stallion which Abraham Brittin sold to Muir?

A. I knowed him when he was two years old, and when he came there.

Q. Did you work on the farm?

A. I worked there two summers; I worked there fifty days each
40 summer.

Q. How old was the colt the first summer you worked there?

A. Well, he was a yearling past.

Q. How old was he the second summer you worked there?

A. Well, he was coming three the last summer.

Q. Did you often see the colt?

A. I used to see him once in a while, out with a lame horse they had; he used to be out back of the house when I seen him.

Q. Did you see him out in pasture the summer he was two years old?

A. Yes, sir; I seen him once in a while; two or three hours out in a day. 10

Q. What color was the lame horse that was with him, and who did he belong to?

A. He was a very dark horse; dark bay you would call him, I suppose; he belonged to Abraham Brittin.

Q. What was the color and general appearance of the horse that Muir got?

A. He was a bright bay, with black mane, and tail and legs.

Q. How was he as to form and movement?

A. I thought he moved pretty nice for a colt whenever I see him; I don't know about his being trained up to the farm. 20

Q. Describe his general appearance, his make, his beauty, if he had any.

A. He was a very handsome appearing horse to me, good shape and build.

Q. Did you ever have any talk with Abraham Brittin about him?

A. Yes, sir; I told him he ought to have him altered for a carriage horse; but he said he wouldn't; he wouldn't take less than four or five hundred dollars for him.

[Mr. Scofield objected to any conversation between the witness and Abraham Brittin.] 30

Q. When was this talk; how old was the horse at that time?

A. He was two past.

Q. Where was it that the talk took place? [Objected to by Mr. Scofield.]

A. It was on the farm there in the meadow.

Q. Did you ever know or hear of the horse being lame or diseased, in any way, while he was on the farm?

A. No, sir, I never did.

Q. Was he or not a sound horse?

A. I should call him a sound horse. 40

Q. What, in your opinion, was he worth in the winter that he was coming four years old; what would be a fair price for him?

A. That is more than I can tell you what price such a horse is worth;

every man has a right to price his own cattle and horses, and that's what he told me, that he wouldn't take less than four or five hundred dollars for him.

Q. Was that or not a reasonable price for him, in your opinion?

A. Why, I don't think it was out of the way for him.

Q. Do you know the sire of this horse, and if so, what was his name, and who owned him?

A. Yes; old Splendid; Col. Boyle owned him.

Q. What sort of a horse was old Splendid?

10 *A.* He was a fine looking horse and fine blooded.

Q. What was his reputation as a stock horse?

A. He was of a good stock of horses, a fine one.

Q. How long have you been acquainted with horses?

A. I was always acquainted with horses; was brought up amongst them; I was acquainted with old Splendid for fifteen or twenty years. Being cross-examined by Mr. Scofield.

Q. Do you own any horses now?

A. I own one.

Q. What kind of a horse is he; how much is he worth?

20 *A.* The one I own now is not worth a great deal; she is old and worn out; hardly worth wintering.

Q. How much is she worth?

A. She is not worth much; I only gave ten dollars for her.

Q. How long have you had her?

A. I had her last summer only.

Q. Have you owned any horse before her?

A. Yes, sir.

Q. How many; can you tell?

A. No, I can't tell how many I have owned; I have owned some
30 good ones and some poor ones.

Q. Have you always been in the habit of keeping a horse or horses; if so, how many at a time?

A. I never kept more than one; I have been in the habit of keeping one.

Q. Have you at any time been without a horse?

A. Yes; I was on Col. Brittin's place eight years, and he found me a horse then; but I kept one of my own then, all but the last two years.

Q. How high a priced horse did you ever own; what is the most
40 you ever gave for one?

A. I never paid a very high price for any, but I sold one for one hundred and fifty dollars.

Q. What's the highest price you ever paid?

A. Well, I paid fifty dollars.

Q. What would you have given for this horse?

A. I didn't want such a horse; but if I had owned him, I wouldn't take less than Abraham Brittin was to have for him.

Q. Well, take it for granted you didn't want him, what would you have given for him? [Objected to.]

A. Well, I shouldn't want to put the price on any man's horse; I wouldn't give anything for a thing I didn't want.

Q. Well, now, you said you wouldn't have given anything for what you didn't want; wouldn't you have given as much as you could have sold him for, or nearly that?

A. I never buy anything to speculate on; I can't tell anything about the price; but if I want to buy, I can tell the price.

Q. Well, now, if a man should offer you a horse for two hundred dollars, and you knew you could sell him for three hundred, wouldn't you buy him and sell him?

A. I don't know as I should; I shouldn't; I shouldn't buy anything I didn't want.

Q. Well, now, I should like you to tell me how you could manage to get four or five hundred dollars out of this horse; what way would you go to work to make him worth that?

A. Well, if anybody would come and give it to me, he would be worth it.

Q. Well, suppose they wouldn't come; they wouldn't be very likely to come, would they? then what would you do?

A. I would have to keep him then.

Q. It would be rather a poor speculation, wouldn't it?

A. I never keep anything for speculation.

Q. How many horses, that you know, have brought four hundred dollars?

30

A. I have known a good many bring more than that.

Q. How much did old Splendid bring?

A. I don't know; he died of old age.

Q. What did Col. Boyle give for him?

A. I can't tell you what he paid for him.

Q. I should like for you to tell me the horses that you know have been sold for four or five hundred dollars; all of them; just recollect all you can?

A. I know one, not so big as this, that sold for four hundred in Madison; it was David L. Miller's mare; I don't recollect of any others; I have told you all I know about the horses.

Q. Well, just try and recollect any more, if you can, that sold for four hundred dollars and upwards, that you know?

A. I don't know of any more.

Q. Well, this mare of Mr. Miller's, that sold for four hundred dollars, who did he sell her to?

A. He sold her to an Irishman in New York; so he told me himself.

Q. Do you know whether he traded her or not?

A. I guess he sold her for the money.

Q. How fast was she, do you know?

A. It was said she could make a mile in less than three minutes.

Q. Well, how fast was this horse?

10 A. I can't tell you, for I never seen him tried.

Q. Could he go a mile in six minutes?

A. Less than that, if he had been trained; he was a very smart moving colt.

Q. How often were you in the habit of seeing the colt, when he was two years old past?

A. I seen him, in the summer season, pretty near every day.

Q. Did you ever own the mother of this colt?

A. No, sir, John Tyler Muchmore did own her, and Abraham Brittin bought her of him.

20 Q. Did you have her in your possession?

A. No, sir, never.

Q. What prices did Mr. Brittin get for his other colts that he sold from his farm?

A. One, a mare, of the age of this one, he sold for one hundred and twenty-five dollars.

Q. Is that the highest price you ever knowed him to get for a colt from his farm, except this one?

A. I dont know anything about his other colts that he sold—what prices he got; I know he got that price for that one.

30 Q. Did you ever hear of Mr. Brittin's letting Mr. Muir have money on bond and mortgage?

A. No, sir, I know nothing about that.

Q. Did you ever hear Leonard Oakes say anything to that effect?

A. No, sir, I never did.

Q. Did you ever know this colt hopped?

A. No, sir; I never seen him hopped.

Being re-examined by Mr. Mills.

Q. You say you once sold a horse for a hundred and fifty dollars; did you buy that horse or raise him?

40 A. I raised her.

Q. Did you get for her as much as she was worth or not?

A. No, sir, I could have got more for her in Newark; I took her to Newark and was offered a hundred pounds for her there, but I had sold her, and when I sell a thing I never back out.

Q. What did she bring after that ?

A. I understood she brought twelve hundred dollars. [Mr. Scofield objects to his stating what he was told by other persons.]

Q. Where was it that she was sold for twelve hundred dollars, at what place ?

A. In New York, and I understood she went to California.

Q. Where was it that you worked on the farm the last summer you were there ; what work was you doing ?

A. Mowing and getting hay.

Cross-examined by Mr. Scofield.

10

Q. If this horse had been hopped that summer would you have been likely to have known it ?

A. I should have thought I would, I never seen him hopped though.

Q. Who told you that your mare brought twelve hundred dollars ?

A. It was the man that was with the fellow that bought her at first.

Q. Who was that man ?

A. I forgot his name ; he told me himself ; he told me in Madison.

Q. What was it that made this mare bring so much money ; had she any great speed ?

A. She was a blooded mare and had great speed.

20

Q. How fast was she ?

A. I drove her from Newark to Col. Brittin's farm, in the swamp, with two hundred shad, in five minutes less than two hours.

Q. Well, what her speed rated at ?

A. I can't tell you, I never drove her to her speed myself.

BLIKER WHITENACK.

Sworn and examined, before me, this fifth day of August, A. D. 1862.

THEO. LITTLE, *M. C.* 30

Abner C. Green, a witness produced, sworn and examined on the part of the defendant, *Alfred B. Brittin*, deposes and saith :

Question. How far do you live from the Abraham Brittin farm, in this township ?

Answer. I should think it was about a mile and a half ; it may be a little over that, taking the road.

Q. Did you ever see the bay stallion that Mr. Brittin sold to Mr. Muir ?

A. I did.

Q. Can you tell how often ?

40

A. No, sir, I cannot.

Q. Did you ever go to Mr. Brittin's farm to see him ?

A. I did.

Q. Just state your purpose in going, and what took place there?

A. I went there for the purpose of looking at the horse, and satisfying myself whether it would pay for me to breed from him or not; I examined the horse and was satisfied that he was good enough for me to undertake to get a colt from, provided I could get a chance; and they told me that Mr. Brittin had given orders to not let the horse go to any mares.

Q. Why not?

A. Because he thought he was young, I suppose, and he did not
10 want him to go to them.

Q. How old was the horse at that time?

A. He was coming three.

Q. What part of the year was it that you were there?

A. I was there in the spring; he might have been three; it was the spring they said he was three years old.

Q. Describe the appearance of the horse, as to his color, make and beauty?

A. He was a bay horse; black legs, mane and tail; I considered he stood well on his limbs; in fact, I thought he was a very handsome built colt; and, knowing something about the stock, I was satisfied he was the right kind of a horse, and a horse that it would pay
20 well to breed from.

Q. What led you to go and see the horse, to get your mares put to him?

Q. Because I had already obtained a colt from that stock of horses.

Q. What was the stock?

A. Splendid, it was called.

Q. Who owned Splendid, and what reputation had he as a stock horse?

A. I don't know his owner; Mr. Tunis had him in charge when I
30 knew the horse; I supposed him to be the owner; his reputation was very good, as far as he was known.

Q. How did this horse of Mr. Brittin compare, in appearance, with old Splendid?

A. When I knew the old horse the colt had a much finer appearance.

Q. What was the reputation of this horse, Splendid, as a stock horse, compared with other stallions in your neighborhood?

A. He was considered the most durable stock we ever had amongst us, the best disposition and always ready and willing to work.

Q. Did or not the appearance of this horse of Mr. Brittin denote
40 speed?

A. Well, as far as I know about that, he was a very active colt, and did not appear like anything lacking; lasiness or anything like that; as to his speed I can't tell; he was no slouch.

Q. Did you ever know or hear while this horse was on Mr. Brittin's farm, of his being lame or unsound, in any way?

A. I did not.

Q. What's your business and what is your age?

A. My business is farming, connected with butchering, and my age is forty-six.

Being cross-examined by Mr. Scofield.

Q. Did you ever hear of Mr. Brittin's intending to alter that horse?

[This question objected to by Mr. Mills.]

A. I did not.

10

Q. What was his height, as near as you can tell, when you saw him?

A. I suppose he was about fourteen hands; might have varied a little one way or the other.

Q. Did you ever hear what price Mr. Brittin held him at?

A. I did not; not to my recollection.

Q. What was your colt worth out of the Splendid horse; what did you get for him?

A. I never sold her yet; I hold her at two hundred dollars.

Q. How old is she now?

20

A. I believe she is eight years old; in fact I know she is.

Q. You never wanted to sell her?

A. I considered her too good a horse to sell; in fact, for my business I couldn't get nothing, hardly, to take her place.

Q. What would you have given for to put your mare to that horse, when you went there for that purpose?

A. I should have had to give their price, I suppose; I don't know what that was.

Q. How much would you have stood? [This question objected to by Mr. Mills.]

30

A. I suppose, being a young colt, I would have been willing to stand from five to ten dollars; you may say five dollars; it is not generally considered that a young horse is worth as much as one that has been tried.

A. C. GREEN.

Sworn and examined this fifth day of August, A. D. 1862, before me.

THEODORE LITTLE, *M. C.*

Amos S. Miller, of the township of Westfield, in the county of Union, a witness produced, sworn and examined on the part of the 40 defendant, Alfred B. Brittin, deposeth and saith:

Question. State, if you please, what is your age, what is your business and where you live?

Answer. I was thirty-five years old the twelfth day of last January ; I was brought up to farming and am now a farmer ; I live in Westfield township, Union county.

Q. Have you a farm there, and if so, how large is it ?

A. I own a farm of forty-two acres and a half.

Q. Are you anything of a horseman ?

A. Well, I have doctored horses and know something about them.

Q. Have you or not been in the habit of taking care of, managing, and buying and selling horses ?

10 *A.* Yes, sir, I have.

Q. Do you own horses now ?

A. Yes, sir ; I own two good horses.

Q. Any more ?

A. I have a colt that is a little over three months old, and one a year and a half old.

Q. When did you first have anything to do with raising horses ?

A. That was about twenty years ago, when I was living home with my father.

Q. Where does your father live, and what is his business ?

20 *A.* He lives in Westfield township, Union county ; he is a farmer and keeps horses.

Q. How large a farm did he have ; how much land did he own ?

A. He has about a hundred and seventy-five acres now.

Q. How much did he own at the time you speak of ?

A. I bought my forty-two acres of him, and that leaves him about a hundred and seventy-five acres.

Q. Was he in the habit of raising horses ?

A. Yes, sir.

30 *Q.* State what you had to do with the raising of horses while you lived with him ?

A. He had a couple of large breeding mares, and he said he would give me half of the colts I could raise from them, and those I had I sold myself.

Q. How many years were you engaged in that business ?

A. It was five years before I left home.

Q. About how many horses have you owned altogether ?

A. I have owned in the neighborhood of a hundred horses.

Q. Did you know Abraham Brittin, in his lifetime ?

A. I have been acquainted with him fifteen years.

40 *Q.* Did you ever purchase horses of him ?

A. Yes, sir ; I bought one horse of him.

Q. Did you ever see a bay stallion of his, which he had on his farm in Morris township, and which he sold to Mr. Muir in the winter of 1859 ? if so, when did you see him, and how old was the stallion ?

A. I saw him four years ago this last Janiary, over at the farm ; the stallion was coming four that next spring as I saw him in January.

Q. How long was it before he was sold, about ?

A. This was about the first of January I was there, and I think he was sold the next month, February.

Q. Did you hear of the sale at or about the time it was made ?

A. Yes, sir ; he sent me word.

Q. To whom did he say he had sold him ?

A. He didn't say who bought him ; I didn't understand who bought the horse.

10

Q. Do you know how long it was after that that Mr. Brittin died ?

A. He died the next May if I am not mistaken.

Q. Who went with you to see the horse at this time you speak of, and where did you see him ?

A. Mr. Abraham Brittin went with me ; he saw him on his farm in the swamp.

Q. For what purpose did you go with Mr. Brittin over to the farm ?

A. Well, I went over to look at the horse, to examine him ; I was about taking the horse.

Q. Did you examine him ?

20

A. Yes, sir, I examined him.

Q. Where, and in what way did you examine him ?

A. I examined his front legs to see if he had any splints on them, and found he hadn't ; I found he hadn't the ring-bone and had no spavin marks on him ; his limbs were perfectly clean.

Q. Give us the appearance of the horse, as to make, style and beauty ?

A. He was a horse very closely made up ; ribbed up closely ; smooth, round hip ; short on the back and a very handsome neck and head.

Q. Did you price him ?

30

A. Yes, sir ; he asked me five hundred dollars for him. [Mr. Scofield objects to what Mr. Brittin said about him.]

Q. Did you make any agreement with Mr. Brittin about the horse at that time ?

A. Yes, sir, the agreement betwix't him and me was that if he didn't sell the horse for five hundred dollars I was to take him and have one half I could make off of him.

Q. For what purpose were you to keep him ?

A. I was to keep him for to stand for mares.

Q. What, in your opinion, was that horse worth at that time ?

40

A. Well, I made my mind up that the horse was worth five hundred dollars to any man that wanted him.

Q. Do you or not think that was a fair estimate of his value at that time ?

A. Yes, sir.

Q. Had you seen the horse before that, and if so how old was he?

A. I saw the horse when he was about two years and a half old, I suppose.

Q. When you were examining the horse, at the time you have spoken of, did you see any indications of his being lame or diseased in any way, or of his having been so?

A. No, sir, I did not; I saw the young man who lived there—the son of the man on the farm, I suppose—ride him, and I did not see
10 any signs of lameness whatever; he seemed to be perfectly sound in every way.

Q. Did you examine his eyes?

A. Yes, sir.

Q. What kind of an eye had he?

A. He had a very full, clear, bright eye.

Q. At the time you were there, in January, do you mean to say it was four years ago last January or next January?

A. It was four years ago last January, and will be five years next January if my memory serves me right.

20 Q. It was in Mr. Abraham Brittin's lifetime?

A. Yes, sir.

Q. And the winter before he died?

Q. Yes, sir, it was the winter before he died.

Q. Did you speak with Mr. Brittin at any other time about buying that horse?

A. No, sir, only at that time.

Q. Would you have taken the horse in the manner you have stated if he had not been sold?

A. Yes, sir.

30 Q. Could you have made it profitable in your opinion?

A. Yes, sir.

Being cross-examined by Mr. Scofield:

Q. Were you related to Mr. Brittin in any way?

A. Yes, sir, by marriage only.

Q. How was that?

A. I married his niece.

Q. How long ago was that you married her?

A. Fifteen years ago last winter.

Q. Did you know him before that?

40 A. Only by sight; I hadn't any acquaintance with him.

Q. Have you been pretty intimate with him since that?

A. No, sir, only on business, not very intimate; I have sold him cattle.

Q. Did he tell you he was selling that horse to Mr. Muir at that time when you were there to see him?

A. No, sir, he did not.

Q. Was there nothing said about his selling him to somebody, and about your appraising him?

A. No, sir, nothing was said about me appraising him.

Q. Did you hear nothing about a loan that he was going to make at that time to a man?

A. No, sir, he never mentioned it to me; I knew nothing about it.

Q. Did he say anything about the man that he had let have the 10 horse; or that he was to let have him, taking him down there to your place?

A. No, sir.

Q. When did you first learn that he had sold the horse?

A. It was in February, 1859.

Q. How long after he sold it did you learn it?

A. It wasn't but a few days that I got the word from Mr. Baker; he was up there and he sent me word that he had sold the horse.

Q. Who is Mr. Baker?

A. He is my wife's father.

20

Q. Was or was not his object, at that time, to get a price set on the horse, so that he could put him in at a large price?

A. That was his price that he asked for him, was five hundred dollars.

Q. Do you know that he had offered him for less than that, before that?

A. No, sir, I do not; I never heard any other price set on him by him but five hundred dollars.

Q. What sized horse was he?

A. The horse was fifteen hands high when I saw him; I measured 30 him by the rule, as I have always understood it from horsemen, and by that rule he was to grow still a hand, making him sixteen hands; that was the rule as laid down and practised by horsemen.

Q. Well, suppose now he was measured to-day and didn't measure fifteen hands, how would you account for it?

A. Well, I should account for it in this way, that the horse hadn't been properly taken care of.

Q. Well, will the neglect or want of care of a horse make him grow down?

A. It will make him grow down, in one sense of the word—make 40 him grow poor.

Q. Well, will he be less tall than he was before?

A. I think not.

Q. Then, if he doesn't measure fifteen hands now, you must have been mistaken, musn't you? [*Objected*—This question objected to by Mr. Mills, because there is no evidence he doesn't measure fifteen hands.]

A. I think not, sir; I think he measured fifteen hands the day I measured him.

Q. How did you measure him?

A. I measured him with a stick, lying level across the withers, and took the height of the stick from the ground.

10 *Q.* Did you have a measure there with you?

A. Only my hands; I measured by my hands—the width of my hand.

Q. You have valued him at five hundred dollars; what would you have given for him, at that time, yourself?

A. I shouldn't have hesitated paying five hundred dollars for him at that time; the horse was worth it.

Q. What was he worth it for?

A. He was worth it for to keep for a stud horse—a stallion; I could have taken that horse and paid for him in two years.

20 *Q.* Well, let's see how; what price would you have asked for that horse?

A. I should, if I had had the horse; I would have put him at five dollars a single leap, and ten dollars to insure.

Q. How many mares would you have put to him in a season?

A. Well, if you had put the mares for the season—if you had put fifty mares, it would have been five hundred dollars; and if twenty-five, it would have been two hundred and fifty dollars.

Q. Well, how many would you have put to him?

A. Well, if I had had the horse, I think I could have got fifty
30 mares; there are a good many round where I live; most every farmer has a mare to put to a horse.

Q. Well, wouldn't that have been too much for the good of the horse?

A. No, sir; I know of a young horse in our neighborhood, only five years old, and he has had eighty-five mares this spring and summer.

Q. How much do they charge for him?

A. They charge five dollars for a single leap, and ten for the season—to insure a colt.

40 *Q.* How many of these mares that he had are insured to be with foal?

A. I don't know.

Q. Did you ever hear Mr. Brittin talk about having that colt altered?

A. No, sir.

Q. Your calculations of the value of that horse are all based on the idea that he would be sixteen hands high, are they not?

A. No, sir; not at five hundred dollars.

Q. Well, then, how high?

A. The horse was worth five hundred dollars at the height he was the day I saw him.

Q. Then the one hand you supposed he would grow didn't add anything, in your estimation, to his value?

A. Yes, sir; if the horse had been sixteen hands high the day I saw him, he would have been worth two hundred dollars more. 10

Q. You say your father and you have raised horses, a great many; what is the highest price you ever got for a colt?

A. Well, we sold them from one hundred and fifty to two hundred dollars; but they were geldings and mares; we never had any seed horse; I have a mare colt home now only three months old, which you couldn't buy for a hundred dollars; it is out of one of the finest mares that goes the road.

Q. This was an untried horse; how much more would he be worth if he was tried and found to be a good foal-getter and good stock of horses; would that add anything to his value? 20

A. Yes sir, I think it would.

Q. How much?

A. It might add from four to five hundred dollars; I know of a black stallion, that I have it from the man's lips, he was offered five thousand dollars for, and he wouldn't take it.

Q. How many horses do you know of that have sold for five hundred dollars?

A. I know of a horse; the man's name is Ward; he bought a colt of my brother for two hundred and fifty dollars, and he sold him for one thousand dollars; I sold a horse in New York for two hundred and fifty dollars, and the man I sold him to sold him for five hundred dollars; I know of another that my uncle sold for fifteen hundred dollars; I could name a good many others. 30

Q. Now this horse that you sold for two hundred and fifty dollars, and was afterwards sold for five hundred dollars, do you know that of your own knowledge; were you present when the sale was made?

A. No, sir; but I had it from the man's mouth.

Q. Then you don't know anything about it yourself, only that he told you so?

A. Yes, sir. 40

Q. Now the other one; how do you know that the man who bought him of your brother sold him for a thousand dollars?

A. All I know it by is what my brother told me; that he got a thousand dollars for the horse.

Q. Now the other one, which your uncle sold; how do you know he sold him for fifteen hundred dollars?

A. He told me so.

Q. Well, you have had too much experience in horses to believe all that people tell you about them, haven't you?

A. Well I believe this that my uncle told me; for he is a man that wouldn't tell anything else than the truth.

Q. What kind of horses were these?

A. These were trotting horses; fast horses.

10 *Q.* How fast was the horse here; this colt?

A. I do not know; I never timed him to see how fast he was.

Q. Would he go a mile in six minutes?

A. I do not know.

Q. What are the prices of horses around your neighborhood?

A. Well, there are different prices.

Q. From ten dollars up to how much?

A. Well, I know of one horse there that the man has been offered five hundred dollars for, and would not take it.

Q. How fast was that horse?

20 *A.* Well, he could go inside of three minutes; he done it over on the Island; Hiram Woodruff had him there when he was a colt, and broke him.

Q. Did you know Gibbon's stock of horses?

A. No, sir.

Q. Did you ever hear of Mariner, half brother of Fashion?

A. I might, but I don't seem to recollect now.

Q. Do you know what he sold for at vendue?

A. I do not.

Q. If this horse was so valuable, why didn't you buy him?

30 *A.* Well, I had some money, six hundred dollars, to pay on my farm, and I thought I wouldn't run in debt for him; but if I could get him on shares, I would rather have him that way than to buy him, under the present circumstances.

Q. You said you had owned a hundred horses; what did you do with them?

A. One laid down last winter and died; another, that cost me a hundred and fifty dollars, fell with me and broke his neck; the others I have sold and trafficked away in one way and another.

Re-examined by Mr. Mills.

40 *Q.* You say you married a neice of Mr. Brittin; is your wife related by blood to Mr. Brittin or to Mrs. Brittin?

A. To Mrs. Britton; she is her aunt.

AMOS S. MILLER.

Sworn and examined before me, this 5th day of August, A. D. 1862.

THEO. LITTLE, *M. C.*

Robert Woodruff, of the county of Union, a witness produced, sworn and examined in behalf of the defendant, Alfred B. Brittin, deposeth and saith:

Question. State, if you please, your age, your occupation and your residence.

Answer. I will be thirty-five years old day after to-morrow; I am a farmer; my residence is at Westfield, Union county.

Q. Do you own a farm there, and if so, how large is it? 10

A. I own a farm of seventy-five acres.

Q. Have you been in the habit of managing, raising and dealing in horses?

A. Yes, sir.

Q. For what time?

A. About fifteen years.

Q. Did you ever keep a stallion for breeding?

A. Yes, sir.

Q. Did you know Abraham Brittin, of Morris county, in his lifetime? 20

A. Yes, sir.

Q. Do you know of his having a bay stallion in 1858?

A. Yes, sir.

Q. Did you ever go to see Mr. Brittin with reference to buying that horse; and, if so, where did you see him, and what took place when you saw him, and when was it?

A. At one time I came up to see about buying the horse in the month of August, 1858; I saw Mr. Brittin at his house in Madison; he was talking about the stallion. [Mr. Scofield here objects to the witness stating what Mr. Brittin said.] And after I had got information as far as I wanted about the horse, I asked him his price for him; he told me he was worth eight hundred dollars, but he would let me have him for seven hundred; after I had found out his price I made up my mind it was too much money for me to put into a horse, and so I wouldn't go and look at him at the farm; I wouldn't give seven hundred for him, or couldn't. 30

Q. Did you ever see the mare that was this stallion's dam, and, if you saw her, where did you see her?

A. I saw her over on the farm in the swamp; I wanted to buy her, and Mr. Brittin wouldn't sell her to me.

Q. Why not? 40

A. On account of her being so valuable for a brood mare.

Q. What kind of an animal was she?

A. She was a very nice bright bay, very pretty limbs, and what I call good made.

Q. Have you a colt out of her?

A. I have a mare that I am driving, that is out of that mare.

Q. How old is your mare?

A. Twelve years old last spring.

Q. What is she worth?

A. She is worth to me a hundred and fifty dollars.

10 Being cross-examined by Mr. Scofield.

Q. How do you know that this colt was out of that same mare that your mare was out of?

A. I expect I might prove it, if you will give us time; I didn't see her foal the colt.

Q. Did you see her put to the horse?

A. No, sir.

Q. What relation are you to Abraham Brittin's family; any?

A. I don't know.

Q. Are you any relation by marriage?

20 A. Folks say I married his neice.

Re-examined by Mr. Mills.

Q. Do you know of any other colt of this mare of Abraham Brittin, in Westfield township? [This question objected to by Mr. Scofield as principal examination.]

A. Folks say there is one down there foaled by this mare.

Q. What kind of an animal is that?

A. It is getting pretty old now; he is a very durable horse, whatever I have seen of him, and I have seen him every week most.

Q. How long have you known him and how old is he?

30 A. I think he is about eighteen years old; I have known him over twelve years.

Q. Was he or not a valuable animal?

A. In his young days he was valuable for a farm horse.

Cross-examined by Mr. Scofield.

Q. How much did you give Mr. Brittin for the mare which you say was from the same mare?

A. I give him a young horse that was six years old, kind and sound.

Q. What did the other horse, the eighteen year old horse, sell for?

A. I don't recollect.

40

ROBERT WOODRUFF.

Sworn and examined before me, this fifth August, A. D. 1862.

THEO. LITTLE. M. C.

Examination adjourned, by consent, till to-morrow morning, August 6, 1862, at eleven o'clock A. M.

Wednesday, August 6th, 1862, examination resumed.

Robert Lang, of the city of Newark, in the county of Essex, a witness produced, sworn and examined on the part of the defendant, Alfred B. Brittin, deposeth and saith :

Question. Where do you reside, and what is your business ?

Answer. I reside in Newark, and act as a constable ; have been an officer eleven years last February ; constable five or six years past.

Q. Did you ever see the defendant here, Josiah F. Muir, and if so, 10 where did you first see him ?

A. Well, sir, I think the first time I ever saw him was in New York, at the tombs.

Q. State what business you and he had there ?

A. I was there in company with Mr. Benjamin here, another officer, to arrest or to bring out a couple of parties that had been arrested in New York, and were then confined in the tombs.

Q. For what had they been arrested ?

A. They were arrested on a charge of stealing a horse belonging to Mr. Muir. 20

Q. When was this ; state the year and month ?

A. It was in March, 1859.

Q. Did you see the horse with Mr. Muir, and if so, where ?

A. I went with Mr. Muir, and in company with a New York officer, to the stable where the horse was at that time, at the corner of the Bowery and Bayard street.

Q. What did Mr. Muir say to you about the horse, if anything ?

A. I don't recollect that he said anything more at that time than that the horse was nearly ruined, and he wouldn't be able to get him away from there for some two or three weeks to come. 30

Q. Did he say how he had been injured ; what did he say about it ?

A. By being taken away by these parties, and driven or led over the hubs with his bare feet.

Q. Did he say anything about the state of the roads at the time the horse was taken ?

A. He said the roads were very rough and hubby.

Q. Have you any recollection yourself as to the state of the roads at that time ?

A. I recollect it was warm ; thawed through the day and froze at night ; it was at the breaking up of winter. 40

Q. Do you know whether the horse had shoes on or not ?

A. He had not at the time I saw him ; Muir said he would have to

leave him there till his feet got well enough to put shoes on him, so he could get him home.

Q. Did you after that time hear Mr. Muir speak about this horse as to his value, blood or stock; and if so, what did he say?

A. I heard him say, in Squire Sanford's office, that he was a fine blooded horse, of good stock; he said he was a valuable horse, worth five or six hundred dollars, "very valuable horse," I think was the words he used.

Q. Do you recollect what day of March it was that you saw Mr. 10 Muir in New York, and brought these persons out?

A. I am not certain, sir, whether it was the eighth or ninth. Being cross-examined by Mr. Scofield.

Q. Who was by at that conversation in Squire Sanford's office which you mentioned?

A. Squire Sanford and Mr. Benjamin that is now present.

Q. Anybody else?

A. There may have been, but I don't recollect.

Q. For what purpose were you there?

A. That is our head-quarters, at his office; Mr. Muir came in there 20 and wanted to have these parties brought out of New York, or called to see if they had been brought out; I am not certain whether he called to see about bringing them out, or what was done with them after they were brought out.

Q. Did he make any affidavit there at that time?

A. I think not, sir.

Q. Are you sure that he said it was a horse worth five hundred dol- lars?

A. Five or six hundred was the words he used.

Q. Did he say anything about who he got him of, or how much he 30 paid for him?

A. I don't recollect that he did.

Q. Can't you recollect the whole conversation?

A. I don't remember his saying who he bought him of, or what he paid for him.

Q. Can you recollect the whole conversation?

A. I think I can, sir.

Q. How long was he there?

A. That's more than I can say; it might have been fifteen minutes and might have been half an hour.

40 Q. While he was there was he talking pretty much all the time?

A. He was, sir.

Q. Well, state the other part of the conversation?

A. He was telling, sir, about the course he took to find out where the horse was, to get track of him.

ROBERT LANG.

Sworn and examined before me this sixth August, A. D. 1862.

THEO. LITTLE, *M. C.*

Charles W. Benjamin, of the county of Essex, a witness produced, sworn and examined on the part of the defendant, Alfred B. Brittin deposeseth and saith :

Question. Where do you reside, what is your business, and how long have you been engaged in the business you now follow? 10

Answer. I reside in the city of Newark, in the county of Essex ; one branch of my business is that of a constable, and has been since 1852.

Q. Did you ever see the defendant, Josiah F. Muir, and if so, where and when did you first see him?

A. I have saw him frequently in the city of Newark ; I think the first I ever saw him was at Cortland Parker's office, or Parker and Keasbey ; should think it was five or six years ago ; I can't state the time.

Q. Did you ever see him in reference to a horse that had been stolen from him ; if so, when and where did you first see him about that? 20

A. I saw him in reference to a horse he had had stolen—I think the first time was in New York, but I am not positive about that ; I also saw him in Squire Sanford's office, in Newark ; I thing it was on the ninth day of March, 1859, that I saw him in New York.

Q. Did you hear him speak about this horse that had been stolen ; and if so, how often, about as near as you can tell?

A. I heard him speak about the horse, I think, some three or four times. 30

Q. State, if you please, what you heard him say about the horse?

A. I heard him say he was a valuable horse, and I also heard him say the horse had been abused, jammed to pieces by the parties who had stolen him, in taking him from Chatham (I think he called it) to New York ; that they had hurried him through, and had injured his feet, so that he was unable to get him home ; I saw him about two weeks after that in Market street, and asked him if he had got the horse yet, and he said he had not—he couldn't bring him out yet.

Q. Did he say anything about the condition of the roads at the time the horse was stolen? 40

A. I do not recollect that he did.

Q. Do you remember the condition of the roads at that time?

A. It was at the time of year when it was freezing nights and thawing in the daytime.

Q. Did he say anything about the amount of injury that had been done to the horse?

A. I do not recollect his naming any sum.

Q. Did he say anything in reference to that—I mean about his being injured—if so, please state what he said?

A. I recollect nothing that he said, except about his feet being jammed up badly.

Q. Did you hear him say anything about the value, or blood, or stock of this horse; if so, state what he said.

A. He said he was a valuable young horse, worth from five to six hundred dollars; some had, he said, valued him as high as a thousand dollars, but he didn't go so high as that; I don't think he used the word blood or stock; he might, but I don't recollect that.

Q. Was you with Lang in New York, when he brought French and Donnelly out, as he stated here?

A. I was.

20 Being cross-examined by Mr. Scofield.

Q. Is this conversation about the value of the horse the same one Mr. Lang has spoken of here; was that the same time or another time?

A. It was in Squire Sanford's office, and I presume it was the same time.

Q. Are you sure he said he was worth five or six hundred dollars?

A. I am.

Re-examined by Mr. Mills.

Q. How often did you hear him speak of it in Squire Sanford's office?

30 *A.* I think he was in there two or three times speaking about the horse; I don't know that he used the value of the horse, except that once.

C. W. BENJAMIN.

Sworn and examined this 6th day of August, A. D. 1862, before me.

THEO. LITTLE, *M. C.*

Garret Sanford, of the city of Newark, in the county of Essex, a witness produced, sworn and examined in behalf of the defendant, Alfred B. Brittin, deposeth and saith:

Question. Are you a justice of the peace, residing in the city of Newark, in Essex county?

Answer. I am.

Q. Were you one in March, 1859?

A. Yes, sir, I was.

Q. Do you recollect Josiah F. Muir, the defendant now here, being at your office in March, 1859?

A. I do.

Q. On what business was he there; or business in reference to what?

A. He was there in reference to a horse that had been stolen from him, as he alleged, at Chatham, I think.

Q. Did he say where the horse had been taken to?

10

A. To New York.

Q. Did he say anything to you about the horse being injured; if so, state what he said?

A. He said, in my presence, that the horse had been badly injured in his feet, having been driven from Chatham to New York over the rough ground, without any shoes on his feet, so much so, that he couldn't get him out from New York till his feet had a chance to recover some, and he had a chance to get him shod.

Q. Did you hear him say anything about the value of the horse, or about his blood, or stock; if so, state what he said?

20

A. I heard him say he was a valuable young stud horse; he said something about the stock, but I don't recollect what it was; he either said that he, himself, valued him at a thousand dollars, or that other people had valued him at that.

Q. Did you hear him put any valuation on him further than what you have said?

A. I don't recollect that I did, sir; I would say that this conversation was in my office and was mostly directed to the officers; I was busy at other matters most of the time.

G. SANFORD. 30

Sworn, examined and subscribed before me, this 6th of August, A. D. 1862.

THEO. LITTLE, *M. C.*

Alfred Mills, of the township of Morris, a witness produced and sworn in behalf of the defendant, Alfred B. Brittin, deposeth and saith:

This bond and mortgage, bearing date the tenth of February, A. D. eighteen hundred and fifty-nine, were drawn by me, and the bond was executed by Josiah F. Muir in my presence, and he acknowledged that he signed, sealed and delivered it as his voluntary act and deed.

ALFRED MILLS. 40

Sworn and examined before me August 6, 1862.

THEO. LITTLE, *M. C.*

The bond and mortgage, made by Josiah F. Muir to Abraham Brittin, dated tenth of February, A. D. 1859, were here presented by the counsel for the defendant, Alfred B. Brittin, and offered in evidence.

The execution of them was admitted by the counsel for the defendant, Josiah F. Muir.

I have marked the bond and mortgage Exhibits B 2, and B 3, on the part of said defendant, Brittin.

THEO. LITTLE, *M. C.*

Col. William Brittin, of the township of Chatham, in the county of Morris, a witness produced and sworn on the part of the defendant, Alfred B. Brittin, deposeseth and saith :

Question. Are you a brother of Abraham Brittin, deceased ?

Answer. I am, sir.

Q. Where do you live ; how near to where Abraham Brittin lived and died ?

A. I live in Madison, about a stone's throw from where my brother lived.

Q. How long have you lived there ?

A. I have lived in Madison since 1801.

20 *Q.* Do you own a farm adjoining your brother's, in Morris township, and if so, how long have you owned it ?

A. I do own a farm adjoining my brother's ; I have owned it, I suppose, twenty years.

Q. Have you been in the habit of dealing, raising, and buying and selling horses ?

A. I have, sir.

Q. Did you know the bay stallion which your brother sold to Mr. Muir, in February, 1859 ?

A. I did.

30 *Q.* Describe him, if you please ?

A. He was a fine looking animal ; had a fine appearance ; he had a fine head and neck ; very prominent eye, very large and prominent ; his body was of pretty good length, round made ; good share of bone and sinew.

Q. How was he as to beauty ?

A. I think he was a very handsome horse.

Q. Did his make denote speed or not ?

A. I think it had a very good share of it.

Q. When did you first see the colt ?

40 *A.* I think he was about two weeks old when I first saw him.

Q. About how frequently did you see him after that time, before he was sold to Muir ?

A. I suppose, perhaps, half a dozen times through the summer season, and nearly as many in the winter.

Q. Do you mean each season?

A. Each season.

Q. How frequently were you in the habit of being at your farm adjoining this?

A. Perhaps every week, and sometimes twice a week.

Q. Did you ever know or hear of the horse being lame or diseased in any way, while your brother had him?

A. I never did, sir. 10

Q. Did you ever go over to that farm with your brother, or meet him over there?

A. I have oftentimes, sir.

Q. Did you ever look at this horse with him; if so, how often?

A. I used to look at this horse almost every time I went there.

Q. Was he a blooded animal?

A. I think he was, sir.

Q. By whom was he sired?

A. By Col. Boyle's Splendid, I always understood.

Q. Did you know Splendid, and what stock was he of? 20

A. I knew Splendid very well, he was from Harpinus, a horse that was kept by Anthony Dey, at Lodi, in Bergen county.

Q. Who was Harpinus sired by?

A. By a horse that was—I forget his name—he was of the Messenger stock.

Q. Was it Hambletonian?

A. I think it was; I could not recollect the name.

Q. Whom was he got by?

A. I have always understood he was got by the old Messenger.

Q. Did you ever see Harpinus; and if so, for what purpose did you go where he was? 30

A. I have seen Harpinus, and put a mare to him.

Q. How did you come to go there for that purpose?

A. I was in company with Col. Solomon Boyle, of Long Hill; he asked me whether I was going to breed any colts that spring; I told him I was; he says to me: "I know of a horse going to be at Lodi, that is called the Harpinus; I think he is the best horse that I know of."

Q. Did you and he go there to Lodi, and have Harpinus put to your mare? 40

A. We both of us agreed to go there; I did go and put a mare, and I understood Col. Boyle afterwards that he put a mare the same spring that I put mine. [Mr. Scofield objected to the witness stating anything that Col. Boyle had told him.]

Q. When, after that, was Splendid foaled?

A. I don't recollect the year; he was foaled the next season after that conversation.

Q. Did you see Splendid when he was a colt?

A. I saw him when he was about two years old, I think.

Q. Did you see him after that; and if so, how frequently about?

A. I saw him oftentimes after that; I can't recollect how many times.

Q. Where was he kept?

10 A. At Long Hill, on the farm where Solomon Boyle lived.

Q. Were you at that farm of Col. Boyle frequently, or not?

A. I was.

Q. Did you ever use this horse Splendid to your mare?

A. I did.

Q. Do you know of his pedigree on the mother's side?

A. Yes, sir, I knew the mare very well—Splendid's dam.

Q. Who was she sired by?

A. She was sired by—I don't recollect at this time.

Q. Who owned the horse that she was sired by?

20 A. Col. Solomon Boyle, so I understood; I think the mare was an Expedition.

Q. What kind of a horse was Harpinus; describe him, if you please?

A. He was a dark bay horse, about sixteen hands high, square built, fine neck and head; a very prominent eye, very large; thick through the shoulder and heart; very heavy quartered; the thick of the thigh running down pretty well to the ham joint; a good share of bone and sinew; round made, low hiped.

Q. Did you see Anthony Dey when you were there?

A. I did once, and talked with him.

30 Q. From whom did you learn his pedigree?

A. From Anthony Dey; he told me he was from the old Messenger stock.

Q. Did you hear it from any one else?

A. I did not.

Q. What is the reputation of that Messenger stock.

A. It has been very good, in my opinion; it has been the best stock I have known, in my day, in this country.

Q. Have you had horses of that stock?

A. I have.

40 Q. Did you know the mother of this stallion which Muir purchased of your brother; if so, what sort of an animal was she?

A. I did know her very well; she was a very nice animal, very smooth made, kind and pleasant.

A. How did she travel?

A. Pretty fair.

Q. What stock was she of?

A. I think she was from the Forrester stock—the Arabian stock.

Q. Who owned Forrester?

A. Cornelius Ludlow, at Long Hill.

Q. Did you ever see Forrester?

A. I have, a number of times.

Q. What sort of a horse was he, a blooded horse or not?

A. He was so considered, a blooded horse.

10

Q. How was he as to beauty?

A. A very handsome animal.

Q. What was his reputation in that neighborhood?

A. A very handsome animal, and quick, active.

Q. What was the reputation of Splendid as a stock horse?

A. Very good.

Q. Who had charge of this stallion of your brother?

A. Leonard Oakes.

Q. What reputation had he as a horseman? [Mr. Scofield objects to this question.]

20

A. He was a very good hand to take care of a horse.

Q. When did he leave the farm, before or after your brother's death?

A. After my brother's death.

Q. Was there any difficulty at that time between him and the defendant, Alfred B. Brittin? [Mr. Scofield objects to this question.]

A. I understood there were.

Q. Did you know a horse, known as, or called Harpinus, kept by Edgar, of this county?

A. I did.

30

Q. Was that the same or a different horse from the one of that name you have spoken of?

A. A different horse altogether.

Q. In your opinion, was or was not five hundred dollars a fair and reasonable price for your brother's horse, at the time he was sold to Muir? [Objected—Mr. Scofield objected to this question as leading.]

A. I don't think it was a very extravagant price.

Q. Do you know whether or not your brother valued him highly? [Objected—Mr. Scofield objects to this question.]

A. I believe he did, sir; he always told me he valued him high.

40

Q. Do you or not think he got an extravagant price for him? [Mr. Scofield objected to this question.]

A. I thought, at that time, he got about the worth of the horse, as horses sell.

Being cross-examined by Mr. Scofield.

Q. Did you know a horse by the name of Expedition?

A. I did.

Q. What stock was he?

A. He was got by a horse that was called Expedition.

Q. Well, what kind of stock was it?

A. Very good.

Q. As good as the other, Harpinus?

A. I don't think he was quite as good.

10 Q. Did you ever hear your brother say anything about letting Mr. Muir have this horse in connection with money?

A. I don't recollect as I ever did.

Q. When did you first know that he loaned him money?

A. Not till after the horse was sold.

Q. Did you ever hear your brother say anything about altering this colt?

A. I did, when he was young.

Q. How old was he then?

A. Perhaps betwixt one and two.

20 Q. What did he say about altering him?

A. He said if he kept him he was afraid he would be troublesome.

Q. Did you ever hear him speak of it after that?

A. I did.

Q. How old was he then?

A. He might have been, perhaps, betwixt one and two years old, when the whole conversation took place; he talked about it different times.

Q. Do you know that a short time before he agreed to sell him to Mr. Muir, he made up his mind to have him altered?

30 A. He had made up his mind, he told me, to keep him as a stud horse, he growed so much better and nicer than he expected.

Q. What would you have given for him when Mr. Muir bought him?

A. Oh, I don't know what I should have given for him; I never made up no opinion about it.

Q. Would you have given a hundred dollars for him?

A. Certainly I would.

Q. Would you have given two hundred for him?

A. I would.

Q. Would you have given three hundred for him?

40 A. Oh, I didn't want him; I had plenty of horses, and I don't know what I would have given for him.

Q. Well, I take it on the supposition that you didn't want him; what would you have given for him? [Question objected to by Mr. Mills as irrelevant.]

A. I would have given more than two hundred for him.

Q. Well, would you or not have given as much as three hundred, considering you didn't want him? [Question objected to by Mr. Mills as irrelevant.]

A. Well, I don't know; I might and I might not; I never made up my mind about it.

Q. Would you have given three hundred and fifty for him, considering you didn't want him. [Question objected to by Mr. Mills.]

A. I never made up my opinion about what I would give for him; I had horses plenty and never thought of buying him. 10

Q. What would you have done with that horse at five hundred dollars to get the money out of him?

A. I would have put him out.

Q. Do you believe that, if you had had that horse, you could have sold him for four hundred dollars, in six months, for cash?

A. That I can't say, what I could have sold him for; it might have been more and might have been less.

Q. How many hands high was he?

A. I should judge from his appearance he was about fifteen hands.

Q. Is that an under size or a full size for a stud horse? 20

A. Pretty fair size for a three year old, coming four.

Q. Do you know of Abraham Brittin's talking of buying a bond and mortgage of a man for three thousand dollars at or about the time he let this money to Mr. Muir? [This question objected to by Mr. Mills.]

A. I do not, sir.

Q. Do you know of any bond and mortgage for three thousand dollars for sale at that time, and offered for a less amount? [This question objected to by Mr. Mills.]

A. I do not. 30

Q. Do you know of his ever offering this colt for a hundred and fifty dollars?

A. I do not.

Q. Do you know of his offering him for three hundred or under?

A. I do not.

Q. Did he ever say to you that he would sell this colt for under five hundred dollars?

A. He did not.

Q. Did Alfred Brittin ever tell you that this transaction with Muir was usury in his father, or anything to that effect? 40

A. He never did.

Q. Who owned the Expedition horse?

A. Solomon Boyle.

Q. Was that at the same time he owned Splendid?

A. It was not; it was previous to that time.

Q. What's the highest price you ever sold a colt for, coming four years old?

A. I don't recollect that I ever sold one for over one hundred and fifty or sixty dollars.

Q. What did Mariner bring at Mr. Gibbons' vendue sale?

A. I do not know, sir.

Q. This stock of horses you raised were as good as any other, were they not, Colonel.

A. They were very good stock; I never took much pains with them.

Q. Did you ever own a horse that you valued at three hundred dollars?

A. Yes, and a considerable more money.

Q. Did you ever own more than one?

A. I don't know that I did.

Q. What horse was that that you valued over three hundred dollars?

A. A stud horse.

20 *Q.* What was his name?

A. Morris Eclipse.

Q. The old Eclipse stock, was it?

A. He was from the old American Eclipse.

Being re-examined by Mr. Mills.

Q. Was that the Messenger stock?

A. That was the Messenger; old American Eclipse was a Messenger.

Q. How much did you value that horse at?

A. I never set any price on him; I suppose, probably, I might have
30 taken seven or eight hundred dollars for him, and may-be more.

Cross-examined by Mr. Scofield.

Q. What became of him?

A. I sold him.

Q. What did you get for him?

A. I only got three hundred and fifty dollars for him, after the season was over.

Q. How many hands high was he?

A. He was about sixteen—a little scant, if anything.

Q. Was he a fast horse, regarded so, at the time?

40 *A.* He never was tried; I don't know whether he was a fast horse or not.

Re-examined by Mr. Mills.

Q. Was he foundered before you sold him?

A. He was a foundered horse—foundered both in the feet and in the breast.

Q. Did you make any difference in the price of him on that account?

A. It made a very great difference.

WILLIAM BRITTIN.

Sworn and examined, this 6th day of August, 1862.

THEO. LITTLE, M. C.

The further examination of witnesses was adjourned, by consent of counsel, until Friday, the 15th August, instant, at 10 o'clock in the 10 forenoon.

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainants,

and

Josiah F. Muir and als., defendants,

} On Bill, &c.

*Examination of witnesses in the above cause, taken before me, a Master and Examiner in the Court of Chancery of New Jersey, on this sixteenth day of August, eighteen hundred and sixty-two, at the office of Vancleve Dalrimple, Esq., a Master and Examiner in said court, in the presence of James J. Scofield, solicitor of Josiah F. Muir, one of the defendants, and Alfred Mills, Esq., solicitor of the defendant, Alfred B. Brittin, A. Mills, Esq., admitting service of notice thereof, duly served on him August sixth, 1862, by endorsement on a copy of the same, which notice and said endorsement I have marked Exhibit A on the part of the defendant, Muir; and, as to the service thereof on A. S. Hubbell, Esq., solicitor of the complainant, due proof having been made before me, on oath of James J. Scofield, Esq., of due and lawful service on him of a notice of which the said paper, marked Exhibit A, is a true copy— 20
no person appearing for the complainants. 30*

L. A. CHANDLER, M. C.

Council for the defendant, Brittin, before commencing this examination, objects to the taking of any further evidence on the part of the defendant, Muir, unless it is strictly rebutting testimony.

L. A. CHANDLER, M. C.

George Philhower, a witness produced on the part of the defendant, Muir, having been before duly sworn and examined, deposes and says:

[Council for defendant, Brittin, here objects to the further examination of this witness on the ground that he has been before examined as a witness on the part of the defendant, Muir.]

Question. Have you been to see this horse since your examination before? [Objected to by the counsel of Muir.]

Answer. Yes, sir.

Q. Where did you find him?

10 *A.* Up above New York, at Tremont.

Q. In whose possession was he?

A. The gentleman's name was Alexander.

Q. Who did he get him from?

A. I forget the gentleman's name.

Q. Was it Taylor and Geoghegan? [Objected to on the part of defendant, Brittin.]

A. I think that was the name.

Q. Did you measure the height of the horse?

A. I did.

20 *Q.* Was it done with accuracy, and how did you do it?

A. I think so; the way I have always seen the measurement of a horse; I did it with two sticks, one on each side of him, then laid a stick across and measured that, then measured these upright sticks with a rule and a tape-line.

Q. What part of the horse did you measure?

A. The front part of the body, over the withers.

Q. What height did you find him to be? [Objected to by counsel of Brittin.]

A. He was fourteen hands, two inches and three-quarters high.

30 *Q.* Did you measure him around his body? [Objected to by counsel of Brittin.]

A. Yes, sir;

Q. How much did he measure? [Objected to by counsel of Brittin.]

A. Sixty-four inches.

Q. When was this done?

A. One week ago to-day, the 9th of August.

Q. How many inches high was he?

A. Fifty-eight and three-quarters.

40 *Q.* Did you measure him at the proper place, where horses are generally measured for the purpose of ascertaining their height?

A. Yes, sir; I measured him on a plank floor.

Q. Over the highest part of the neck, or over the withers, or fore shoulders? [Objected to by counsel of Brittin.]

A. The highest part of the neck and fore shoulders.

Q. Had he his shoes on at that time?

A. Yes, sir.

Q. Did you measure the shoes then? [Objected to by counsel of Brittin.]

A. I measured him from the floor all the way up, of course I measured the shoes.

This witness, being cross-examined by counsel for defendant, Brittin, says, as follows:

Q. Who employed you to go and measure that horse? 10

A. Josiah F. Muir, the defendant.

Q. How much did he give you for it?

A. He has paid me for it.

Q. How much did he pay you for it?

A. Two dollars.

Q. Did he give you anything else?

A. Nothing more than that he bore my expenses.

Q. Did he promise you anything else, or are you to have anything else?

A. No, sir, he did not. 20

Q. How much were your expenses?

A. I never counted them up for my part.

Q. Can you give any idea how much they were?

A. I might count them up pretty near.

Q. Let us know how much they were?

A. I don't think they were over two dollars and a half.

Q. Who paid the expenses?

A. Mr. Muir.

Q. Who bought your tickets?

A. Mr. Muir. 30

Q. How long were you gone?

A. I went down on the seven o'clock morning train and came back on the five.

Q. Who was present when you measured the horse?

A. Mr. Muir and another boy.

Q. Where did you get the tape line and the rule with which you measured the horse?

A. I saw him buy the tape line, and I saw him take the rule out of his pocket; I mean Mr. Muir.

Q. Do you know whether either the rule or the line was correct or 40 not?

A. They looked so, they measured alike.

Q. Do you know whether they were correct or not?

- A. I couldn't say as to that correctly.
- Q. Who assisted you in measuring the horse?
- A. I and Mr. Muir done it.
- Q. What did Mr. Muir do; what part of the measuring?
- Q. He helped hold the sticks.
- Q. Whether the measurement was correct or not, would depend upon whether Muir did his part right or not, wouldn't it?
- A. Yes, sir.
- Q. What sort of sticks were those that you used?
- 10 A. They were two little pieces of narrow board; might have been an inch or an inch and a quarter wide, and might have been an inch thick; they were straight.
- Q. How long were they?
- A. We didn't measure the length of them, any more than the height of the horse.
- Q. Give us the length of them, as near as you can?
- A. They might have run up a foot more than the height of the horse; may be not so high.
- Q. How many sticks did you have?
- 20 A. We had three sticks; one on each side, and one across, that made three altogether.
- Q. Have you ever measured a horse before?
- A. No, sir.
- Q. Who directed you how to measure this one?
- A. Nobody at all, sir.
- Q. Was the horse tied when you measured him?
- A. No, sir.
- Q. Where was he, in what place?
- A. We took him out of his stall, in where the carriages stood; in
- 30 where the carriages stood; took one carriage out.
- Q. Who held the horse at the time?
- A. A boy had hold of him.
- Q. Where did you girth him, what part of the body?
- A. Behind the fore leg, right about where we girth a horse and put the saddle on.
- Q. Who did the measuring around the body, you or Mr. Muir?
- A. We both did it together.
- Q. Who held the tape line?
- A. I had hold of it; Mr. Muir too.
- 40 Q. Who made the calculation, how much the measurement was?
- A. We both see it, and made the calculation.
- Q. Who added it up—who said first how much it was?
- A. Mr. Muir added it up, I believe.

Q. Whe made the calculation as to the height of the horse—who added it up?

A. I added up the number of hands.

Q. Who added up the inches?

A. We did it together, betwixt us.

Q. Who added it up first?

A. I couldn't say as to that.

Q. Do you know whether this was the same horse that Mr. Muir got of Mr. Brittin?

A. It was the same horse that was at my place, that was taken 10 away from there.

Q. Do you know, of your own knowledge, where the man, who had him at Tremont, got him?

A. I don't know, except what they said, that they sold him to Mr. Alexander.

Q. Has Mr. Muir talked with you a good deal about this case?

A. No, sir.

Q. Did he talk with you about it the day you went up to Tremont?

A. Not that I remember of; not but a little, if anything.

Q. Has he ever talked with you about it at any time? 20

A. Oh, sometimes he has, yes sir.

Q. How often?

A. I can't tell how often.

Q. Twenty times?

A. I don't know as he has.

Q. Has he twelve times?

A. I don't know as he has.

Q. Has he six times?

A. He might have talked to me five or six times.

Q. Did you go with him to Jersey City as a witness in his behalf? 30

A. Yes, sir.

Q. Have you taken any part in getting any evidence for him in this case?

A. No, sir.

Q. Have you spoken to any other persons about this case, except Mr. Muir?

A. No, sir.

Q. How near do you live to Mr. Muir?

A. I guess we are three or four hundred yards apart.

Q. How often is Mr. Muir in your tavern? 40

A. Sometimes he isn't in in three months, sometimes in a shorter time than that.

Q. How often has he been there since the first of January last?

A. He might have been there four or five times now within a month or two; before that he hadn't been there in a good while.

Q. Has he been there fifty times within a month or two?

A. No, sir, he hasn't.

Q. Has he been in the habit, during that time, of coming to your tavern and talking about this suit frequently?

A. Not without he wanted me to go as a witness.

Q. Has he ever talked with you about it, except when he wanted you to go as a witness?

10 A. I don't know as he has.

Q. Has he asked you to go as a witness five or six times?

A. No, sir, I don't think he has.

Q. Did you ever talk with Smith Muchmore about this suit?

A. I don't remember as I ever did.

Q. Did you ever talk with George Linaberry about this suit?

A. Yes, sir, there was something said about it betwixt him and me, but I can't remember much about it.

Q. Did you ever talk with Flavel W. Day about this suit?

A. Yes, there was something passed between us about it, but I for-
20 get.

Q. Did you ever talk with Oscar Brokaw about this suit, or with Mahlon Minton about it?

A. I think I have talked a little with Mr. Minton about it, but I don't remember ever talking with Oscar Brokaw about it.

Q. Ever talk with Jonathan M. Muir or Caleb Muir, or either of them, about this suit?

A. No, sir.

The witness, being re-examined by counsel of J. F. Muir, says:

Q. In measuring the height of this horse, was it done fairly, ac-
30 cording to your ideas?

A. Yes, sir, I think it was.

Q. From the part you took in it, could there have been any deception or unfair practice in doing it, on the part of Mr. Muir, without your knowing it?

A. No, sir.

Q. Did Mr. Muir request you to do all the measuring, so as to be sure of it? [Objected to by counsel of Brittin as leading.]

A. Yes, sir.

Q. Who did the measuring, so far as holding the uprights and meas-
40 uring them, after you had ascertained the height of the horse.

A. Why, Mr. Muir helped hold up the uprights and measure them. Being further cross-examined, witness says:

Q. Can you swear that Mr. Muir practised no deception in the

measuring of that horse, or is all that you can say, that you meant to be honest in the matter?

A. I meant to be honest in the affair, and I measured him as honest as I ever measured a horse.

Q. You haven't answered my question.

A. I couldn't see that Mr. Muir practised any deception; all he did was fair, as far as I saw.

Witness, being further examined, says:

Q. Did you measure the horse yourself, or did you trust anything to him. [Objected to as improper at this stage of the examination of this witness.] 10

A. We both measured him; I didn't trust anything to his measuring; I could see that it was done right.

GEORGE PHILHOWER.

Taken, subscribed, and sworn before me, this 16th day of August, A. D. 1862.

L. A. CHANDLER, M. C.

Samuel Parsons, a witness produced on the part of the defendant, Muir, being duly sworn, deposes and says:

Question. How old are you, and where do you reside?

Answer. I am thirty-three years old, and reside in Chatham town- 20
ship in this county.

Q. Did you ever know this stud colt, which Abraham Brittin sold to Josiah F. Muir?

A. Only from hearsay.

Q. From hearsay, what was he reputed to be worth? [Witness here asks Mr. Scofield: "At what time do you mean." Mr. Scofield here adds to his question] I mean when he was coming four, when Mr. Brittin sold him to Mr. Muir? [Objected to by counsel of Mr. Brittin, as improper and illegal.]

A. I heard that he offered to sell him for one hundred and fifty 30
dollars.

Q. To more than one man? [Objected to by counsel of Brittin.]

A. No, sir.

Q. Who was it? [Objected to by Mr. Mills.]

A. I don't remember who he was.

Q. Who told you this? [Objected to by Mr. Mills.]

A. Well, there was two or three of us together at the time.

Q. Who were they? [Objected to by Mr. Mills.]

A. I don't remember them all; Mr. Clark was one; I don't remem- 40
ber any more; I didn't keep it on my mind; I have forgotten.

This examination was here adjourned to the office of L. A. Chandler, Master, in Morristown, at 2½ o'clock P. M., by consent of counsel present for the defendants, Muir and Brittin.

L. A. CHANDLER, *M. C.*

Q. How long was this before the horse was sold? [Objected to by Mr. Mills, as leading.]

A. I don't know, only it was before Mr. Muir bought him; I can't tell how long.

Q. Do you recollect at any time of any person's saying to you that
10 Mr. Brittin had offered him for one hundred and fifty dollars, or for any other sum? [Objected to by Mr. Mills.]

A. None but the time I have spoken of.

(This witness was not cross-examined by counsel opposed.)

SAMUEL PARSONS.

Taken, subscribed and sworn this 16th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

William High, a witness produced on the part of defendant, Muir, being duly sworn, says:

20 *Question.* What is your name, age, place of residence and business?

Answer. My name is William High, am 45 years old the 20th of this month, live in Union county, in New Providence township, and I drive a team for Charles P. Edwards.

Q. Did you ever live near Mr. Brittin's farm in the swamp?

A. Yes, sir.

Q. Did you ever know a stud colt he had there—he sold him to Mr. Muir? [Objected to by Mr. Mills.]

A. Yes, sir; I knew the colt.

Q. How often have you seen him?

20 *A.* Before Mr. Brittin sold him, I saw the colt a number of times, up till he was three years of age.

Q. What were your opportunities for seeing him and knowing him? [Objected to by Mr. Mills.]

A. Well, I lived in the neighborhood, and I noticed the colt several times.

Q. Pass there often?

A. Yes, sir, I passed by there often.

Q. Do you know whether he was lame at any time he was there? [Objected to by Mr. Mills.]

40 *A.* Yes, sir, I seen him lame.

Q. When was it, and how long was he lame, and what was the character of his lameness? [Objected to by Mr. Mills.]

A. I saw him lame four years ago this last spring; I didn't see him from spring till fall, from March till latter part of September; he was lame in the spring and he was lame in the fall, and when I saw him then was turned out in the meadow; in the spring he was in the stable when I saw him; from the appearance of the colt I should judge he was, what I consider chest foundered, from the feed of grain.

Q. Have you seen him fed a great deal of grain at any time? [Objected to by Mr. Mills as leading, and question waived by Mr. Scofield.]

Q. What do you know about his feeding? 10

A. Well, sir, I never was in the stable but once to my recollection, then I saw a considerable of corn and corn cobs, more than the horse had made use of. [This evidence objected to after it was given by Mr. Mills.]

Q. How much grain, would you judge was there, more than he had eaten at the time? [Objected to by Mr. Mills.]

A. I should think there was a number of ears that had been partly eaten up; should judge ten to a dozen ears that he had not eaten.

Q. Did he appear to have eaten all he wanted at that time? [Objected to by Mr. Mills.] 20

A. He was not eating while I was there.

Q. What time was that when you saw him? [Objected to by Mr. Mills.]

A. It was along in March; along in March, four years ago last March.

Q. Was that the first time you called to see him, or that you saw him that year?

A. That was all the time I ever saw him in the barn; I saw him often as I was passing and repassing.

Q. Who was there at the time? 30

A. I think it was Mr. Oakes' son; think Mr. Oakes was not at home.

Q. Which son was it?

A. Henry Oakes.

Q. When you saw him in the field that fall, had he any hobbles on him?

A. No, sir.

Q. Was he lame then? [Objected to by Mr. Mills.]

A. Yes, sir, he was lame.

Q. Were you near enough to be certain whether he had any hobbles on? [Objected to by Mr. Mills.] 40

A. Yes, sir.

Q. Do you know of Robert White being called upon by Mr. Oakes,

or any of his family, to come and see the horse, on account of his lameness? [Objected to by Mr. Mills.]

A. I heard Mr. White say [counsel of Brittin objects to this answer.] that Mr. Oakes called on him to come there and examine the colt.

Q. What about his lameness? [Objected to by Mr. Mills.]

A. Yes, sir.

Q. Did you ever hear Oakes say anything about it; did you ever say anything to Oakes about this conversation with White? [Objected to by Mr. Mills.]

A. I never said anything to Oakes about my talk with White; never heard Oakes say anything about his being called on to see the horse about his lameness.

Q. What was the value of that horse, with the lameness on him you have described? [Objected to by Mr. Mills.]

A. I suppose you want to know what I would give for him, with his lameness on him. Mr Scofield replies to witness:

Q. Yes, or what he would bring, selling him for a lame horse, as he was? [Objected to by Mr. Mills.]

20 Q. I would not have been willing to give for him over one hundred and twenty or twenty-five dollars; there are different opinions about what he would have brought, by different people.

Q. What was he worth, had he been sound? [Objected to by Mr. Mills.]

A. Well, I should think from one hundred and fifty to sixty or sixty-five dollars, had he been sound; that is as much as I would have been willing to give for him.

Q. Would that have been a fair valuation, according to your estimate of his value? [Objected to by Mr. Mills.]

30 A. Yes, sir, I think so.

Witness being cross-examined by Mr. Mills, says:

Q. When did you move out of this county?

A. Four years ago last spring.

Q. Where have you lived since that time?

A. Two years after I moved out in Union county, in Springfield township; the third year in Morris county, in Chatham township; the fourth year in New Providence township, in Union county.

Q. When you lived in Morris township, how near did you live to Mr. Brittin's farm?

40 A. In the neighborhood of a mile.

Q. With whom did you live?

A. On the place which formerly belonged to my father.

Q. What year of our Lord was it when you saw the horse in the stable, as you have stated?

A. Four years ago last spring ; I can't name the year.

Q. Was it in 1857?

A. I won't say that neither, because you have got my head a little bit bothered ; I know it was four years ago last spring, because it was just before I moved away, in March, as I moved in April.

Q. Was it in 1855?

A. I have stated that thing once, I believe, as nearly as I can.

Q. Can't you tell whether or not it was in the year 1855?

A. It was four years ago last March.

Q. I repeat the last question?

16

A. I cannot, at present.

Q. Can you now tell whether or not it was in the year 1854?

A. I cannot ; it was four years ago last spring, as I said before.

Q. Where was the stable, in which the horse was?

A. In Mr. Brittin's barn.

Q. In what part of the barn?

A. In the stable.

Q. In what part of the barn was this stable?

A. On the right hand side of the barn as you go eastwardly from the road.

20

Q. Was it under the mow?

A. There was a hay loft over head ; I can't say if there was any hay there then or not.

Q. Was there a bay of hay on the other side?

A. There was.

Q. Where was this from the cow house?

A. The cow house was still east from the stable where the horse was standing ; there was another cow house which was on the west end of the barn.

Q. How many other horses were there in the barn at this time? 30

A. I don't recollect of there being any in that stable ; Mr. Oakes, the boy said, had gone away with the pair of working horses.

Q. How came you to go into the stable at that time?

A. I went there to look at the colt, sir.

Q. How did you come to go and examine the colt?

A. I heard Mr. White speaking about his lameness.

Q. Did Mr. White request you to examine him?

A. No, sir.

Q. How long were you there in the stable?

A. Well, perhaps twenty minutes.

40

Q. What examination did you make of the colt?

A. Nothing more, sir, than that I stood one side of the manger, and the horse the other.

Q. In front of the horse?

A. In front and partly by the side of him, as he stood one side of the manger and I the other.

Q. Did you get over the manger to examine him?

A. No, sir, I did not.

Q. How many mangers were there in that stable?

A. I can't say how many apartments there were for horses; I did not often go into that stable; some three or four, as near as I can judge; I can't say certainly.

10 *Q.* Did you touch the horse?

A. I don't think I laid my hands on him; I took him by the halter and led him up, and backed him, as he stood in the stall.

Q. Could you make a fair examination of a horse in that way?

A. No, sir, I could not.

Q. Did you intend to do it at the time?

A. I did not go there for the purpose of examining the horse with the intention of buying him, at all.

Q. If the horse was lame would that be a fair examination, to tell what was the matter with him?

20 *A.* Well, if I had gone there to make an examination of the horse, with the intention of buying the horse, I should have taken him out of the stable and examined him closely.

Q. Suppose you had gone there for the purpose of examining the horse, and seeing what was the matter with him, what would you have done?

A. I should have taken him out of the stable, where I should have had a chance.

Q. If you had done that in this case, your opinion might have been worth something, might it not?

30 *A.* Well I could see, from what I saw with my own eyes, that the horse was lame.

Q. Could you tell what was the matter with him?

A. I considered him chest-foundered.

Q. What is "chest-foundered."

A. Well, it comes by over-feeding or over-watering a horse; something similar to the gout.

Q. Where is the disease?

A. In the front part of the horse.

Q. Is it in the nose?

40 *A.* No, sir; I don't consider it is in the nose, or in the ears, or in the eyes.

Q. State, if you please, where it is.

A. Well, what I consider "chest-founder" is in his chest, and falls

into his fore legs, feet and joints; he becomes stiff in his fore legs, and his feet contract.

Q. What signs of "chest-founder" did you see in this horse?

A. I saw by the actions of the horse—by his stepping and moving—what I considered a chest-foundered horse.

Q. State any signs you saw of a "chest-founder."

A. Well, the horse was quite lame both in the spring and in the fall; he was stiffer, I think, in the fall than in the spring.

Q. Why did you think this horse was lame from "chest-founder?"
[Objected to by Mr. Scofield, because the witness has already answered the question two or three times.]

A. I have seen a number of chest-foundered horses, and have owned several.

Q. Was there any reason for thinking so, that you saw, except that, as you say, he was lame?

A. Yes, sir; he had the motion and appearance of a chest-foundered horse, as I said before.

Q. How is the motion and appearance of a chest-foundered horse different from those of a horse lame from some other cause?

A. The horse stands very uneasy; stepping about, is uneasy; don't appear to be contented to stand still.

Q. Where did you see this horse in the fall; in what lot was he, and where were you?

A. It was along the road leading from Green Village to Baskingridge, in the lot west of Mr. Brittin's buildings; I mean the lot in which stands the house Patrick Kerns once lived in; I was going along the road; I was riding on horseback.

Q. How near were you to the horse?

A. I was within some two or three lengths of fence, near the road; the horse ran along by the fence. 30

Q. Were there any other horses with him?

A. No, sir.

Q. Did you stop to examine him?

A. No, sir.

Q. How old was the horse at this time?

A. He was three years old in the previous spring, as this was in the fall.

Q. Did you see the horse ridden that summer?

A. I don't recollect that I did.

Q. Do you know when the horse was foaled? 40

A. I saw him a few days after he was foaled.

Q. State when it was—the month and year?

A. I think it was some time in May; I won't swear positively; I say, as I said before, I don't recollect the year.

Q. When you rode along the road there, where were you living—where was your home?

A. I lived in Union county, sir, in Springfield township.

Q. You say you often saw the horse when passing and repassing; where was he when you saw him, and how old was he when you saw him, at the different times?

A. The first time I saw him he was running with the mare; he run out till he was two years old, in the lots, with the other horses and colts.

10 *Q.* Did you see him after he was two years old, except at the time you have designated?

A. I did, sir; I saw them leading him to water, along in January or February, before I saw him in March.

Q. When you were in the stable, at the time you have spoken of, did you count the cobs that were in the manger?

A. I did not, sir.

Q. Do you know how much the horse had eaten?

A. I do not—no more than I saw corn lying by him that he had not eaten.

20 *Q.* Can you say whether or not there were six cobs in his manger?

A. To the best of my recollection there was the biggest part of a half bushel of cobs, and of corn that had not been eaten off the cobs, in the box, in the stall where the horse stood.

Q. How many ears of corn were there that had not been eaten—were there six?

A. I don't say there were any, some part of which had not been eaten; I think they had all been eaten more or less.

Q. Were there as much as six ears of uneaten corn?

A. Yes, sir; more, too.

30 *Q.* Did you make any minute of the number?

A. No, sir; I did not, at the time.

Q. What difference do you make in the value of a horse that is chest-foundered and one that is not?

A. Some horses are chest-foundered a great deal worse than others.

Q. Can you answer the last question?

A. I say there is a great deal of difference in horses, some being worse foundered than others.

Q. How much, in your opinion, was the value of this horse lessened by being chest-foundered, if, as you say, he was?

40 *A.* I should think from fifty to seventy-five dollars.

Q. You have given your opinion as to the value of this horse, putting him at from one hundred and fifty to one hundred and seventy-five dollars; do you base your valuation upon what you have got for horses?

A. Yes, sir.

Q. How much did you ever get for a horse?

A. I have got from one hundred and fifty to one hundred and seventy-five dollars.

Here this examination was adjourned, by consent, to Monday, August 28th, at nine o'clock A. M.

L. A. CHANDLER, M. C.

The witness being re-called and further cross-examined, says, (according to adjournment):

Q. For whose horse did you get that?

10

A. My own.

Q. To whom did you sell him?

A. A man in Pennsylvania.

Q. When you saw the horse in September, when you say he was lame, how lame was he?

A. Lame enough to be easily discovered.

Q. Where was he lame?

A. In his fore feet and front legs.

Q. Was he so he could walk?

A. Yes, sir, I believe he could.

20

Q. Was he lame in both feet or in one?

A. I considered him lame in both feet.

Q. Was he very lame?

A. I have stated once, I believe, that his lameness could be easily discovered.

Q. I repeat the last question? [Mr. Scofield objects because the same question has been answered.]

A. I don't know what your meaning is; I have repeated it once that it was easily discovered.

Q. Was he lame a little or very much lame? [Objected to by Mr. Scofield.] 30

A. I considered him a considerably lame horse.

Q. Was he so that he could travel?

A. He was so that he was crippling about; hobbling about the lot.

Q. Was he so that he could be ridden?

A. I don't know whether he was ridden at that time or not.

Q. Was he so lame or not, at that time, that he could have been ridden?

A. Yes, sir, I think he could have been ridden.

Q. Do you know whether he was ridden at that time or not? [Objected to.] 40

A. I said I don't know whether he was or not.

Q. Was he or not so lame that it would have been improper to ride him?

A. I should not have liked to ride him myself.

Q. How often have you talked with Mr. Muir about this case?

A. I think it was near eight or ten days ago, was the time Mr. Muir first spoke to me about it.

Q. Well, you have not answered the question, Mr. High?

A. I think it has been twice or three times; not more than that.

Q. Where you subpoenaed to attend, as a witness here; if so, by whom?

A. I was, by Mr. Muir.

Q. Were you paid for coming here; if so, how much were you paid, and how much are you to be paid?

A. Yes, sir, I was; he gave me two dollars; he has not said anything about paying me anything more.

Q. Did you go home on Saturday last?

A. I did, and returned this morning.

Being further examined in chief, witness says:

Q. How far do you live from here?

20 A. They call it seven miles to Chatham.

Q. Do you live in Union county?

A. Yes, sir.

Q. You have been here two days?

A. Yes, sir.

Q. When did Mr. Muir first know of your evidence?

A. Some eight or ten days ago; I was in Chatham.

Q. Do you know that Mr. Brittin, at the time you saw this one, had another bay horse that was lame? [Objected to as principal evidence.]

30 A. Yes, sir, I do.

Q. Was this a stud colt which you have been giving your evidence about?

A. Yes, sir.

Q. The other that was lame, what was he?

A. He was a gelding.

Q. What was the height of this stud colt?

A. I should think he was between fourteen and fifteen hands high; I never measured him.

WILLIAM HIGH.

40 Taken, subscribed and sworn, this eighteenth day of August, 1862, before me.

L. A. CHANDLER, M. C.

John Kutscher, a witness produced on the part of defendant, Muir, being duly sworn, says :

(The witness being a German, and unable to speak or understand the English language, *Samuel Tanner* was duly sworn by me, as an interpreter for said examination of the witness, and was thus examined by the aid of the interpreter.)

Question. How old are you, and where do you reside?

Answer. Will be, next spring, forty-nine; live at Myersville, in this county.

Q. How far from the farm of Abraham Brittin, that used to be? 10

A. I think near a mile from farm house.

Q. Did you know Henry C. Oakes, who lived on Mr. Brittin's farm?

A. Yes.

Q. Did you have a conversation with him about a stud colt that was on Mr. Brittin's farm, in the year 1858, or about that time. [Objected to by Mr. Mills.]

A. I have had a conversation with him about it, but I don't remember the year.

Q. How long was it before he was sold to Mr. Muir?

A. I don't know when he was sold; I can't tell whether it was in 20 the summer or in the fall.

Q. How old was the colt at the time you had this conversation?

A. I did not ask how old he was; I don't know whether he was two years old or three years old.

Q. What was the conversation? [Objected to.]

A. Mr. Oakes asked me what I thought the colt was worth; I said I didn't know; Mr. Oakes said he was worth three hundred dollars; this was all the conversation we had about the colt.

This witness, being cross-examined, says;

Q. What language did Mr. Oaks talk in to you. [This question 30 was put in English to the witness by Mr. Mills.] Do you understand me?

A. No, sir.

The same question put by the interpreter.

A. He spoke to me in English? Henry couldn't speak German.

This witness being further examined on behalf of Muir says:

Q. Do you understand English partly?

A. A little; all I understood was that he valued the horse at three hundred dollars.

Q. Is it possible you are mistaken as to the price at which he valued the horse? 40

A. I am positive the price named was three hundred dollars, and what I am sure of I will tell as it was.

JOHN KUTSCHER.

Subscribed and sworn this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Samuel Tanner, a witness on the part of defendant, Muir, being duly sworn, says:

Question. Where do you reside, and what is your business?

Answer. In Madison, and keep a livery stable.

Q. Did you go down to the swamp, to see this colt, in company with another man, the year he was sold to Mr. Muir, or in the year before. [Objected to by Mills.]

10 *A.* No, sir, not to my recollection.

Q. Did you ever see the colt. [Objected to.]

A. I believe not.

Q. Did you ever hear Abraham Brittin put a price upon him before Muir bought him?

A. No, sir, not as I recollect; the horse we talked about was another one, a black horse.

Q. Did you ever make inquiry there for a stud horse, for the purpose of buying, or anyone else buying?

A. No, sir, not to my recollection.

20 This witness, being cross-examined, says:

Q. At the time this horse was stolen did you hear Mr. Muir put a valuation on him; if so, how much did he value him at?

A. No, sir, I don't recollect anything that Mr. Muir said, only that it was a valuable horse, when I sent a telegraphic message to the police of Newark about his being stolen.

Q. Do you recollect that at that time he valued him at a thousand dollars, or that he said he was worth a thousand dollars?

A. No, sir, I do not positively.

SAMUEL TANNER.

30 Subscribed and sworn, this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Timothy H. Pruden, Jr., produced on behalf of defendant, Muir, being duly sworn, says:

Question. What is your age, place of residence and business?

Answer. Twenty-nine years old the 26th of last November, reside in 114 Market street, Newark, New Jerrey, I am a fruit dealer.

Q. Have you ever resided in this township, near the farm of Abraham Brittin; and how far from it; and when?

40 *A.* I have; about a mile and a quarter; I moved away from there two years this fall; I lived there two years, and since then have lived in Newark.

Q. Did you know a stud colt Mr. Brittin sold to Josiah Muir?

A. Yes, sir.

Q. Did you know Henry C. Oakes?

A. Yes, sir.

Q. Did you ever measure that colt with him?

A. No, sir.

Q. Did you ever measure him or attempt to measure him?

A. No, sir.

Q. Was you ever present when he measured him or attempted to measure him?

A. No, sir.

10

Q. Have you seen Oakes with the colt before now?

A. Yes, sir.

Q. How often were you in the habit of seeing Oakes with the colt while you were there? [Objected to by Mr. Mills.]

A. I used to see him generally when I went to the village; sometimes riding him; sometimes standing; I used to go to the village once, sometimes twice a week.

Q. What was he worth, in your opinion, when you last saw him? [Objected to.]

A. I couldn't say exactly; one hundred dollars or one hundred and 20 fifty.

Q. Put the highest sum you supposed you could get for him, if you had him at that time? [Objected to by Mills.]

A. I don't suppose I could have got over one hundred and fifty dollars.

Q. How old was he when you saw him last?

A. I couldn't say positively to his age.

Q. How long was it before Brittin sold him?

A. I couldn't tell you exactly as regards that.

Q. What was he; a small, under sized horse, or a middle sized 30 horse? [Objected to.]

A. A small horse.

Q. Was he so small as to injure him for sale as a stallion, in your opinion? [Objected to.]

A. Yes, sir.

Q. How high was he, as near as you can tell? [Objected to.]

A. I should think he was from fourteen to fourteen and a half hands high.

Q. Tell us, if you can, more particularly, as to the time when you last saw him?

40

A. I think I saw him inside of a month before he was sold.

Being cross-examined, witness says:

Q. Where does your father live, and what is his name?

A. At Green Village; but he lives in Newark now; he lives part

of the time at one place, and part of the time at the other ; his home is in Newark ; his name is Timothy H. Pruden.

Q. Were you ever present when this horse was measured ?

A. I never was.

Q. Do you know of his ever being measured ?

A. No, sir.

Q. Did you ever tell Henry C. Oakes that you did, or anything to that effect ?

A. No, sir.

10 *Q.* Did you ever own a horse ?

A. No, sir.

Q. Did you ever sell one ?

A. No, sir.

Q. How much is a hand, how many inches ?

A. Four inches, I believe.

This witness being further examined in chief, says :

Q. When did Mr. Muir first know of your evidence ? [Objected to by Mills.]

A. It is near two weeks, I guess ; I can't tell exactly what day it was.

20 *Q.* Was that the first, according to your knowledge ?

A. Yes, sir.

TIMOTHY H. PRUDEN, JR.

Sworn and subscribed this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Abraham G. Yearance, a witness on the part of defendant, Muir, being duly sworn, says :

Question. What is your age, residence and business ?

Answer. I am thirty-five years of age ; I live at Stone House Plains, in Essex county ; I am a farmer.

30 *Q.* Was Mr. Muir, about the year 1858 or 1859, owing you money ? [Objected to.]

A. Yes, sir.

Q. How much, and what was your security, and when was it payable ? [Objected to by Mr. Mills.]

A. Three hundred and fifty dollars ; I held his notes for it in one two, three, and four years.

Q. Had Mr. Muir a bay stud colt, when you held those notes, that he got of Mr. Brittin ?

A. Yes, sir.

40 *Q.* Did he want you to trade with him for that colt, the notes for the colt ; if so, on what terms, and what did you do ? [Objected to by Mr. Mills.]

A. He did want me to trade the notes for the colt ; he offered to

let me have the notes for the colt ; he wanted to know if I would take the colt for the notes I held against him ; I rejected the offer.

Q. He made you that offer, did he? [Objected to by Mills.]

A. Yes, sir.

Q. Did you make him any offer in reply?

A. No, sir.

Q. Did you take any person along with you, at the time, to judge of the value of the colt? [Objected to by Mills.]

A. Mr. F. W. Price went along with me to see the colt.

Q. How came he to go along with you? [Objected to.]

10

A. I asked him to go with me.

Q. Why did you want him to go with you?

A. To see what he thought the horse was worth.

Q. Would you have taken him if he had been worth the face of the notes, or any less? [Objected to by Mr. Mills.]

A. Well, I shouldn't have taken him had he been worth any less than the face of the notes.

Q. How much was he worth, in your opinion? [Objected to by Mr. Mills.]

A. I wouldn't have been willing to give over one hundred and fifty 20 or seventy-five dollars.

Q. Did you go to look at the horse with the other man, and where did you go?

A. Yes, sir, we went over the river, to a stable owned by Mr. Day.

Q. How long after Mr. Muir got him, and before he was stolen, or was it between those times?

A. It was between those times; it was but a short time after Muir got him; only a few days; I can't tell exactly.

Q. Did Muir appear to be quite anxious to make that trade you have spoken of? [Objected to by Mills.]

30

A. Yes, sir.

Being cross-examined, witness says:

Q. Where is Stone House Plains; how far from Chatham?

A. About eighteen miles from Chatham, in Essex county.

Q. What year was this?

A. I think it was four years ago last spring.

Q. What month was it?

A. I don't remember the month; it was in the spring.

Q. Was it in the spring or winter?

A. I think it was in the spring.

40

Q. Was it in April, or earlier or later than that month?

A. It was before April.

Q. How long before April?

- A. I don't know.
 Q. Was it ten days before April?
 A. I can't tell.
 Q. Was it five days before April?
 A. Well, if I couldn't tell ten, I couldn't tell five.
 Q. Was it three days before April?
 A. I can't tell.
 Q. Was it in the first part, middle part, or the latter part of March?
 A. I don't know when it was; I know it was along in the spring.
- 10 Q. Is that as near as you can locate the time, that is, along in the spring?
 A. Yes, sir.
 Q. Are you sure it was four years ago?
 A. No, sir, I am not sure it was four years ago, or three; I can't tell exactly.
 Q. Do you know whether or not the horse had been stolen or not; can you swear that he had never been stolen?
 A. I understood, at the time, the horse had been stolen; that is all I know about that.
- 20 Q. How long had those notes been running then?
 A. I can't tell exactly; I think about a year.
 Q. Did you ever own a stud horse?
 A. No, sir.
 Q. Did you ever price one?
 A. Yes, sir.
 Q. How many?
 A. One.
 Q. What one was that?
 A. One that Halsey owned; I think it was Halsey—over here at
- 30 Hanover.
 Q. Did you ever buy one, or sell one?
 A. No, sir; neither.
 Q. Are you acquainted with their market price?
 A. No, sir.
 This witness being further examined in chief, says:
 Q. Was the man who went with you acquainted with their value?
 [Objected to.]
 A. He understands horses pretty well, I believe.
 Q. Was this horse too small for a stud horse, or not? [Objected to.]
- 40 A. Yes, sir, I think he was.
 Q. Are you not mistaken, as respects the horse having been stolen, when you went to look at him. [Objected to.]
 A. I think not.

Q. Was he ever brought back here, after he was stolen?

A. Not to my recollection.

Q. You know nothing about his being stolen, or about his being brought back, of your own knowledge, do you?

A. No, sir.

Q. Do you recollect of Mr. Muir's asking you to go and look at the horse, while he was on Brittin's farm. [Objected to.]

A. No, sir.

Q. Did he speak to you to trade with him before he got the horse? [Objected to.]

10

A. I don't recollect whether it was before or after.

Q. How long had he had him, when the trade was proposed? [Objected to.]

A. I think it was but a few days.

Being further cross-examined, witness says:

Q. How large must a horse be to be serviceable as a stud horse?

A. I don't know.

A. G. YEARANCE.

Sworn and subscribed this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.* 20

Elias Ward, produced for Muir, defendant, being duly sworn, says:

Question. What is your age, residence and business?

Answer. I was seventy-four last October; I live about two miles below Green Village, close by the Brittin farm, within about forty rods, I think, of the farm house; I generally follow farming; have done considerable carting on this road, till this Southern trouble came on.

Q. Do you know this stud colt?

A. I did know him, and saw him about every day in the course of the summer.

Q. Was he lame? [Objected to.]

30

A. I considered he was lame; one day as Harry Oakes was leading him by, I asked him, [Mr. Mills here objects to any conversation the witness had with Oakes,] what made the horse lame; if he didn't limp, and wasn't he lame; he said it come from the horse standing on a hard floor.

Q. Anything further said at that time?

A. Nothing, sir, that I recollect of.

Q. Did you ever see him lame more than once? [Objected to.]

A. I never noticed his limping, so as to injure him, more than once.

Q. Did he, at any other time, appear to be tender in his fore feet? [Objected to as illegal.]

40

A. He did.

Q. Did they ever keep him hopped?

A. Not to my knowledge.

Q. Wouldn't you have been likely to have seen him, if they ever kept him hopped?

A. I think its likely I should.

Q. What was that colt worth? [Objected to.]

A. You'll have to ask somebody older than I be; I am not a proper judge.

10 Q. Was he worth as much as one hundred and fifty dollars? [Objected to.]

A. Well, I should think he was worth as much as that.

Q. Any more; how much more? [Objected to.]

A. Well, I am not a proper judge.

Q. Would have you been willing to give two hundred dollars for him? [Objected to.]

A. Well, it wouldn't have been any use for me to have bought him for I didn't want him.

The defendant, Muir, rested the examination of this witness.

20 This examination here adjourned to 2½ o'clock P. M. this day, for dinner.

L. A. CHANDLER, M. C.

The examination of this witness was, at 2½ o'clock, on meeting pursuant to adjournment, further continued by Mr. Scofield.

Q. After we adjourned to-day did Mr. Brittin, now here, give you any money?

A. No, sir.

Q. Did he give you anything?

A. No, sir.

30 Witness being cross-examined, says:

Q. Where was it that you were in the habit of seeing this horse; I mean, where was the horse when you were in the habit of seeing him, out at pasture, or where?

A. He was generally along the road when I saw him—in the road with Henry Oakes leading him.

Q. You never saw him limp but once?

A. Well, he acted sometimes as if he was a little tender-footed.

Q. How old was he at this time?

A. I think he was three, coming four.

40 Q. Wasn't it the spring he was two years old?

A. I think Mr. Brittin sold him when he was four; I think this was the year before he sold him.

Q. Have you seen him in pasture?

A. I saw him in pasture within a few rods of our house.

Q. Where was he pastured, which side of the barn?

A. This side of the barn, towards Madison.

Q. Was he pastured with the other horses?

A. No, sir; never saw any other horses with him.

Q. Was he ever pastured on the other side of the barn, the side the Patrick Kerns house was?

A. Not to my knowledge—he might have been.

Q. You never saw him there, did you?

A. No, sir.

Q. If he had been pastured there, you would have been likely to see him there, would you not?

A. Why, I think I should have likely seen him.

Q. Did they have to put riders on the fence where this horse was, to keep him in the lot?

A. They did put riders on; whether they had to or not, I can't say.

Q. Do you know what those were put on for?

A. I don't know, but I mistrust it was out of fear the horse would get out.

Q. Was he very active in his movements?

A. The horse appeared to be tolerably active.

Q. Was he handsome; the horse I mean?

A. He wasn't a bad looking horse.

Q. Did you ever hear Abraham Brittin value the horse?

A. Well, yes, I did.

Q. At what did he value him? [Objected to.]

A. He said he meant to have a thousand dollars for him.

Q. When was that?

A. It was, I think, when he was two years old, coming three.

Q. It is common for a horse to get a little stiff, is it not, from standing in the stable?

A. Well, I have known young horses to do it frequently.

Q. Did you ever know this horse to be lame, so as to injure him any?

A. I could not tell, unless I had had the breaking and driving of him.

Witness being further examined, says: [By Mr. Scofield.]

Q. You say it is common for a young horse to get stiff standing in the stable; is it not more particularly so, when he is fed more Indian corn than he can eat? [Objected to.]

A. To be sure it is.

Being further cross-examined, witness says:

Q. Do you know what he was fed?

A. I don't know anything about their feed.

Being further re-examined, witness says:

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Q. When he told you he expected to get a thousand dollars for him, did you believe him?

A. He was a smart man for a trade; I didn't know but he might do such a thing.

ELIAS WARD.

Sworn and subscribed this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Ira A. Pruden, a witness on the part of the defendant, Muir, being duly sworn, says:

10 *Question.* What is your age, business and residence?

Answer. I was thirty-four years old the ninth of last May; I am a farmer; I reside in Green Village.

Q. How often were you in the habit of seeing this stud colt, which Abraham Brittin sold to Josiah F. Muir. [Objected to.]

A. I used to see Henry Oakes leading him up and down the road, and riding him.

Q. How often was that?

A. Well, sometimes once or twice a week.

Q. Was he lame? [Objected to.]

20 *A.* He appeared to favor his shoulders; he seemed to be a little stiff in his shoulders.

Q. What was he worth? [Objected to.]

A. Well, about one hundred and twenty-five dollars.

Q. Any more than that?

A. It was as much as I would be willing to give for him.

Q. Did you know the horse called "Old Splendid," once owned by Col. Boyle?

A. Yes, sir.

Q. What did they charge for putting him to mares?

30 *A.* Six dollars, I believe.

Q. Ever know him to go for less?

A. No, sir.

Q. When did Mr. Muir first know that you knew anything about this case? [Objected to.]

A. It is three weeks, I should think.

This witness being cross-examined, says:

Q. When was this that you say the horse appeared to be a little stiff in his shoulders?

40 *A.* It was in the summer and fall, before Mr. Muir bought him, as near as I can tell.

Q. What year was it?

A. I don't remember about the year.

Q. Can you tell whether it was in the year 1857 or in the year 1858.

A. I don't know as I could.

Q. Can you tell whether it was in the year 1856 or in the year 1857.

A. No, sir, it was along in the summer or fall, the year before Mr. Brittin sold him.

Q. Was he ridden at that time?

A. I saw him rid that fall; I am certain I saw Henry Oakes ride him.

Q. Did you make any examination of the horse at that time?

A. I looked at him as he was traveling along; my brother was 10 with me, and I told him that horse was lame and stiff in the shoulders. [The latter part of this answer is objected to by Mr. Mills, as not responsive to the question.]

Q. That is all the examination you made of him?

A. Well, I had noticed him frequently, I thought, favor his shoulders.

Q. Did you ever own a horse; if so, state how many?

A. Yes, sir, I have owned two different ones.

Q. Is that all you ever owned?

A. Yes, sir.

20

Q. Did you ever own a stallion?

A. No, sir.

Witness being further examined in chief, says:

Q. What have been your opportunities for knowing about horses; had your father owned them, and you tended them? State any other circumstance which goes to show your knowledge.

A. My father has owned some five or six horses of late years, and I tended them until some three years past.

Q. What was the height of this horse, judging from what you saw of him. [Objected to.]

30

A. I should judge he was about fourteen hands high.

Witness, being further cross-examined, says:

Q. How do you know the price charged for old Splendid?

A. Dan McVickar peddled him at that time.

Q. At what time; when was it?

A. I don't remember the date—the year he peddled him.

A. Tell, as near as you can.

A. I can't tell, as I know of, within two or three years of it.

Q. I repeat the question.

A. Well, I couldn't tell the year; my brother was with me when 40 McVickar had him, and came along.

Q. Can't you tell within ten years?

A. Well, it wasn't ten years when McVickar had him; it might have been, too, and might have been longer.

Q. Did you put him to any mare, or have him put to one?

A. He wanted to put him to both of ours; my brother was along; I did not put him, nor have him put, to any mare.

Q. Who owned him at that time?

A. Colonel Boyle, I believe.

Q. Do you know if that was the regular price for him?

A. I don't know what was the regular price; he offered to put him to ours for that price.

IRA O. PRUDEN.

10 Sworn and subscribed this 18th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

John O. Crane, produced on the part of the defendant, Muir, being duly sworn, says:

Q. What is your age and place of residence with reference to Abraham Brittin's farm?

A. I was 36 last May; I live in Spring Valley, three miles from the Brittin farm.

Q. Did you live nearer to his farm before this, and at what time?

A. Yes, sir; I moved from the farm adjoining Mr. Brittin's in the 20 year 1859.

Q. Did you frequently see this stud colt he sold to Mr. Muir, when you lived there?

A. Yes, sir.

Q. Was he lame? [Objected to.]

A. Yes, sir; I saw he was lame.

Q. Do you know what produced his lameness? [Objected to.]

A. No, sir.

Q. What time was he lame? how long?

A. I should think from five to six days.

30 *Q.* How high was he; [Objected to.]

A. About fourteen hands.

Q. What was he worth? [Objected to.]

Witness asks Mr. Scofield, "Do you mean when he was lame?"

Mr. Scofield replies, "No; at any time afterwards; when Brittin sold him to Muir."

A. I should think he was worth one hundred and fifty dollars.

Q. Any more than that? [Objected to.]

A. It was all I would have wanted to give for him.

Q. Was he too small for a stud? [Objected to.]

40 *A.* I think he was under size.

Q. When did Mr. Muir first know you knew anything about this case? [Objected to.]

A. About a week ago.

Q. Did you ever see any hobbles on this horse?

A. No, sir.

Q. If they kept him hobbled, would you have been likely to know it?

A. Yes, sir.

Q. What are your means of knowing the value of horses?

A. The size and quality of them.

Q. What were your opportunities for knowing the value of horses, did you own them or have anything to do with them?

A. I have bought and sold horses.

10

The witness being cross-examined, says:

Q. Where was this horse pastured—in what lot?

A. In front of the farm house.

Q. West of the barn, towards Madison, or east of the barn towards Green Village?

A. East of the barn, towards Madison.

Q. Did you ever see him fastened in the lot, where Patrick Kerns formerly lived?

A. No, sir.

Q. If he had been fastened there, would you not have seen him?

20

A. Yes, sir.

Q. Were there any riders put on the fence of the lot in which he was pastured, to prevent his jumping out?

A. There were riders there, but I don't know what they were put there for.

Q. When was it; specify the time when you saw him lame?

A. I think it was in 1857, as nigh as I can recollect.

Q. What season of the year was it?

A. Betwixt April and June I saw him there.

Q. Was he in pasture at that time?

30

A. He was then, in that lot.

Q. Do you remember how old he was when he was lame, as you say?

A. I think he was two, past.

Q. How lame was he; tell us the character of his lameness?

A. He was stiff, so that he could not move around very lively.

Q. Did you ever see him lame after that?

A. No, sir.

Q. If he had been lame after that time, would you not have probably known it, or have seen it?

40

A. Yes, sir.

Q. Did you frequently see the horse after that?

A. Yes, sir.

Q. Did you see him ridden ?

A. Yes, sir.

Q. Did you live between Mr. Brittin's farm house and Green Village ?

A. Yes, sir.

Q. Did Henry Oakes pass there, when he rode him to Green Village ?

A. Yes, sir ; sometimes he passed by where I lived, and sometimes he went down the road.

10 Q. Did you frequently notice the horse when he was passing ?

A. Yes, sir.

Q. Could he have been lame for any length of time, or to any serious degree, without your knowing it ?

A. I never saw him lame but the one time ; if he had been lame I should have known it ; I saw him pass almost every day.

Q. Did you see anything like his being stiff in the shoulders, when he was being led or ridden past ?

A. The horse went well enough, so far as I saw ; I never saw any lameness but that one time, for four or five days.

20 Q. Was he not, in your opinion, a perfectly sound horse, at the time he was sold to Muir ?

A. I can't tell that.

Q. What is your opinion ?

A. I saw no lameness in the horse ; I saw him almost every day.

Q. If he had not been sound, would you not probably have known it ?

A. I could not tell his other qualities.

Q. You never examined him, did you, for the purpose of buying him or putting a valuation upon him ?

30 A. No, sir.

Q. Did you ever measure his height ?

A. No, sir.

Q. You did not want to buy a stallion, did you ?

A. No, sir.

Q. Your valuation of that horse is made, then, taking the fact into account that you didn't want him at any price, is it not ?

A. He was not such a horse as I wanted, if had wanted to buy one.

Q. Would you be willing to say how much he would be worth to somebody else ?

40 A. I wouldn't want to say that.

Q. Is there not a great difference in the judgment of different men as to the valuation of horses ?

A. Yes, sir.

Q. Do you mean to say that this horse was not worth, to any one, more than \$150?

A. I can't say that.

Q. You don't know what he would be worth to others, do you; or what others would be willing to give for him?

A. No, sir, neither.

Q. Did you ever own a stallion?

A. No, sir, I never bought nor sold one.

Q. Up to the time this horse was sold to Muir, how many horses had you owned? 10

A. Five, and they were all mares but one.

This examination is here adjourned to Tuesday morning, at 9 o'clock, by consent.

L. A. CHANDLER, *M. C.*

Morristown, August 19, 1862, at my office, at 9 o'clock, A. M., parties met pursuant to adjournment; same counsel present.

L. A. CHANDLER, *M. C.*

John O. Crane, the last witness, being further cross-examined, says:

Question. You are a son of Mr. Benjamin Crane, who has been examined as a witness in this case, are you not? 20

Answer. Yes, sir.

Q. You lived with your father, on his farm, next to Mr. Brittin's farm, the time this colt was foaled until he was sold, did you not?

A. Yes, sir.

Q. Have you been at home this summer—that is, you have not been out of the state or out of the country, have you?

A. I haven't been away this summer.

Q. Did Mr. Muir come and see you, to get you to be a witness in this case?

A. Yes, sir. 30

Q. Where did he find you?

A. At my father's; I was there getting hay.

Q. When you saw Henry Oakes riding the horse past your place, did he ride him at different gaits?

A. I saw him walking and I saw him trotting.

Q. Ever see him galloping?

A. No, sir.

This witness, being further examined in chief, says:

Q. Was this horse any more valuable for being a stud, in your opinion? 40

A. He wouldn't be for my use.

Q. Would it be a very difficult matter, in your opinion, to sell him as a stud? [Objected to.]

A. I don't think he was a saleable horse for a stud.

Q. What would you have been willing to give for this horse, as a stud, or otherwise, for the purpose of selling him and making money out of him; what is the highest price? [Objected to.]

A. Not over one hundred and fifty dollars.

Being further cross-examined, this witness says:

Q. Where was the stable in which this horse was kept after he was 10 two years old? [Objected to.]

A. Under the cow house; there was a stable there built on purpose for him.

Q. Separate from the rest of the stable?

A. Yes, sir.

Being further re-examined, witness says:

Q. Do you know whether he was kept uniformly, at all times, in one place or not?

A. I think he was in with the horses the first year; he was not in one place all the time.

20 Being further cross-examined, witness says:

Q. It was only after he was two years old, then, that he was kept in this stable that was built for him, was it?

A. I know the first year he was in with the horses; I can't tell whether he was two years old when the stable was built for him or not; I know the stable was built for him.

Q. After the stable was built for him, he was kept in that was he not?

A. Yes, sir.

Being further re-examined, he says:

Q. How often did you go to the stable after the new stable was built?

30 A. I was there when they were building it, and can't tell how often I was there after it was built.

Q. As often as once a month?

A. No, sir.

Q. Then all you know about his being kept in that stable is, that when you were there he was in it, is it not? [Objected to.]

A. That is all; I saw him in the stable.

Being further cross-examined, he says:

Q. After that stable was built, did you ever see him in the stable with the other horses?

40 A. No, sir.

JOHN O. CRANE.

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Samuel D. Wilkinson, produced on the part of defendant, Muir, being duly sworn, says:

Question. What is your age, residence and business?

Answer. I live in New Providence township, Union county; I am an old batchelor, and don't remember when I was born; I farm a little.

Q. Did you ever see this horse—stud colt—that Mr. Muir bought of Abraham Brittin?

A. I saw a stud colt Mr. Muir had, got by him of Abraham Brittin.

Q. For what purpose did you see him and look at him? [Objected to.] 10

A. I rode from Newark up, with Muir and Mr. Philhower, and this horse was led behind.

Q. Did you offer to buy this horse of him? [Objected to.]

A. Yes, sir; I offered to buy him?

Q. Did you want to buy him? [Objected to.]

A. I asked him, with a view to buy him.

Q. What did he offer him for? [Objected to.]

A. Two hundred dollars.

Q. Would you give it to him? [Objected to.]

A. No, sir. 20

Q. Why not? [Objected to.]

A. I didn't want him at that price.

Q. Do you recollect what time that was in the spring?

A. It was in the month of March; I understood from those who rode with me that they were bringing him back, after he had been stolen, and that they had trouble to get through New York with him, as it was St. Patrick's day, on account of the Catholics.

Q. What day is St. Patrick's day?

A. The 16th or 17th March, I believe.

Q. Was the horse lame then, apparently from driving? [Objected 30 to.]

A. Oh, the horse wasn't lame then; he was a turned horse, and travelled well.

Q. Did you understand that he had been lame, from driving him down to New York? [Objected to, as leading and otherwise illegal.]

A. No, I did not; never heard of his being lame at all.

Being cross-examined, witness says:

Q. How many horses did you have to the wagon you and the others were riding in?

A. Mr. Philhower's two horses—his team. 40

Q. How far did you ride with these men?

A. I rode from Newark to Philhower's tavern—over the river from Chatham.

Q. Were you in search of a horse, at that time, to purchase?

A. No, I wasn't in search of a horse; I wanted to get one; I had been, the fall before, at the stables in New York to get one.

Q. Did Mr. Philhower drive from Newark fast or slow?

A. He drove pretty fast, a pretty good gait; the road was not very bad.

Q. Are you very deaf?

A. No, I hear the Master plain.

Q. Can you hear me; (asked by Mr. Mills of witness) do you hear what I say?

10 *A.* I hear what you say now; if you were near to me, I could hear you well enough.

Q. What kind of a horse was it that you wanted, a stallion?

A. No, if I had had him, I shouldn't have kept him for a stallion; I should have had him altered

Q. You did not want a stallion, then?

A. No; my object in asking Mr. Muir the price of his horse was, as Mr. Philhower kept a public house, I thought of buying him with Mr. Philhower and taking one-half the proceeds of his use, and Philhower the other half; but I never went to see Mr. Philhower about it.

20

SAM'L D. WILKINSON.

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Theodore Runyon, Esq., counsellor at law, being duly sworn for defendant, Muir, says:

Question. What is your age, residence, and business?

Answer. I am 39—city of Newark—counsellor at law.

Q. Were you present and counsel in the trial of an indictment for stealing Josiah F. Muir's horse?

A. I was present, and was counsel for the prisoner, Daniel French,
30 on a trial on indictment for grand larceny, for stealing a stallion of Josiah F. Muir; the trial to which I refer took place in the Union county Oyer and Terminer, and commenced on the 9th May, 1859.

Q. What did Mr. Muir testify to on that trial, as to the value of the horse, what he gave for him, and what he sold him for? [Objected to.]

A. In answer to the question of John J. Chetwood, Esq., who was prosecutor, and tried cause for the state, "What did you give for the horse?" he answered, "I allowed five hundred dollars for him;" he said, in the same direct examination, that he sold the horse for two hundred and sixty dollars; being cross-examined by me, he said, on the
40 same subject, that he got the horse from Abraham Brittin; that the horse was in good trim, when he sold him, and that he did not take any less for him, by reason of his feet being tender. [This evidence objected to.]

Q. Did he say he was sold for money, or that he traded him?

A. I don't remember that he said.

Being cross-examined, he says:

Q. You are counsel for Mr. Muir in this cause, are you not, General?

A. I am not, to my knowledge.

THEODORE RUNYON.

Sworn and subscribed this 19th day of August, 1862, before me,

L. A. CHANDLER, *M. C.*

Martin S. Tappen, produced for defendant, Muir, being duly sworn, 10
says:

Q. What is your age, place of residence and business?

A. I am thirty-three years old; I reside in Chatham, this county;
I manufacture essential oils at Chatham; make sales where I can.

Q. Are you acquainted with Amos S. Miller?

A. Yes, sir; Amos S. Miller of Westfield.

Q. What are your opportunities of knowing him—his general character. [Objected to.]

A. I was born and brought up right close by him; he is a cousin of mine.

Q. What is his general character for truth and veracity, good or bad? 20

A. It is bad.

Q. From what you know of his general character for truth and veracity, would you believe him under oath?

A. That is rather a hard question for me to answer; I have heard people say they wouldn't believe him under oath. [This part of the answer objected to.]

Q. I want an answer to the last question?

A. I would not, if it was anything that concerned him to any amount.

Q. How many horses did he ever own? 30

A. Perhaps fifteen or twenty.

Q. How many horses did his father ever own, as near as you can tell?

A. He has never been much of a horseman, and never has owned many horses since I knew him; he has delt more in cattle than in horses.

Q. After Miller was large enough to know about horses, how many did his father own?

A. I can't recollect more than four or five since I have known him, and Amos is about my age; have lived close by him.

Q. Has his character for truth and veracity been very much questioned in that neighborhood; has he been charged with perjury, and so on? [Objected to.] 40

A. Well, I have heard people say that they believed he had perjured himself.

Q. Have you heard anything said against his moral character in other respects; has he been charged with forgery or any other crime? [Objected to.]

A. I heard his brother say that he had stolen a can of oil of worm-wood from him.

Being cross-examined, witness says as follows:

Q. How long have you been at Chatham?

10 A. I moved there last November.

Q. What was your business before that?

A. The same that it has been since, the essential oil business.

Q. How long have you been engaged in that business?

A. I have been engaged in it ever since I was big enough to do business for myself, I was in it before that; I worked for my uncle.

Q. Well, about how long have you been engaged it?

A. I can't tell the exact time unless I go back; I have papers to show it; I should think from twelve to fourteen years.

Q. Has Mr. Amos Miller done something at that business too?

20 A. Yes, sir.

Q. For how long a time has he, about?

A. He has not done quite so much as his brothers; has done something at it; he has been doing for himself since he got married, perhaps about as long as myself; before that he was employed for his father in it.

Q. How near to him did you live in Westfield township?

A. Well, before he was married I suppose about eighty rods; after he got married he moved to another house, but about the same distance from his father's, and double the distance from me.

30 Q. When did you first have a quarrel with him?

A. We used to quarrel some when we were school boys, as all boys did.

Q. Did you have trouble with him about your business?

A. The only trouble I ever had with him was to get my money of him that he owed me.

Q. You had trouble, then, with him, about money matters?

A. Yes, sir; sometimes he wouldn't pay me, as he agreed to, and we had a few words; nothing very hard.

Q. How long were you on ill terms with him?

40 A. I have never been on ill terms with him, anything more than to have words to-day, and to-morrow speak to him, and he to me.

Q. You don't feel very kindly towards him now, do you?

A. I have nothing against him.

Q. Do you feel kindly towards him?

A. I feel this way, that if I wanted to buy an oil of him to-day, I would go and buy it of him and pay him the money for it, as soon as I would of any other man.

Q. How often did you have quarrels with him about money matters?

A. Oh, I can't answer that question.

Q. Whom have you heard say anything against his character for truth a veracity?

A. I have heard Samuel Richards for one; he lives in Springfield 10 township, about two miles towards Westfield; I have heard William H. Little; he lives at the Branch Mills, in Union county; I do not now recollect of any others now; there are several that have mentioned his name, in that respect, but I can't remember their names; they have slipped my mind.

Q. Did Mr. Richards tell you he wouldn't believe him under oath?

A. I think I have heard him say that.

Q. When?

A. I can't tell the exact time.

Q. Can you tell the time, or about the time? 20

A. I have heard him speak frequently about it, but I can't tell the exact time.

Q. How long ago was it that you heard him say that; was it five years ago?

A. No, sir; it is inside of five years.

Q. Is it three years ago?

A. Yes, sir; I think I heard him make some such a remark last fall.

Q. Where?

A. At his place.

Q. Who was there?

A. I can't recollect now who was there; I know I was there for one. 30

Q. How did the conversation commence; how did he happen to say that?

A. I can't recollect how the conversation began.

Q. What were you talking about at the time?

A. I think, but I will not be certain, that Miller had promised to come up there and plant corn, or do something in the corn, and hadn't come, and Richards made the remark above mentioned, I think.

Q. Give Richards' words, as near as you recollect them? 40

A. Well, I think he was mad at the time, and said he wouldn't believe him under oath, or something of that kind.

Q. Was he vexed about the corn, as you understand it?

A. Well, I suppose that his not coming, as he promised, was what made him say it.

Q. Did the conversation end there?

A. Yes, sir; that was all I heard of conversation about him.

Q. You have stated, then, the whole conversation that took place, at that time, about Mr. Miller?

A. Yes, sir.

Q. What day was that; can you fix the day or month?

A. I cannot fix either.

10 Q. You are certain it was in the fall?

A. Yes, sir; the fore part of the fall; in September or October, I can't recollect which.

Q. Did you ever hear William H. Little say he would not believe Amos S. Miller under oath; if so, when and where was it, and who was present?

A. I have heard him speak about it frequently; I don't recollect that I ever heard him say that; he might have said it.

Q. Did you ever hear Samuel Richards, at any other time than the one you have mentioned, say he wouldn't believe Amos S. Miller
20 under oath?

A. Not that I can recollect of now.

Q. Did you ever hear any one, except as you have stated about Samuel Richards, say that he would not believe Amos S. Miller under oath; if so, state who it was, when it was, and where it was?

A. No one that I can recollect of now.

Q. I wish you to recollect if you have ever heard any one say so?

A. I cannot recollect anything of the kind; it has slipped my mind.

Q. Then your statement that his general character for truth and veracity is bad is based on what you heard Samuel Richards say, is it
30 not?

A. Well, I have heard Mr. Parker, who keeps the grist mill there, say he would come there and buy groceries, and promise to fetch corn to pay for them, and wouldn't do it.

Q. Then your statement as to his general character for truth and veracity, is based upon what Mr. Richards said and what Mr. Parker said, is it?

A. Well, I have heard others speak about him in different ways, but I can't recollect what was said; I have never carried it in my mind.

40 Q. Whom, then, have you heard speak of his general character for truth and veracity; tell everybody that you have heard speak of it?

A. I have heard Mr. Parker say he wouldn't do as he promised by him; I have heard George M. Tingley, the other miller, say he

wouldn't trust him—that he didn't do by him as he promised to do—that is all I can recollect at present.

Q. Whom did you ever hear charge him with perjury?

A. Well, I heard William H. Little say that he (Little) was at a trial at Westfield, and he thought there that Miller swore to things that were not so.

Q. When did he tell you that?

A. It might be two years ago; it was not a great many.

Q. Where did he tell you that, and how long after the trial?

A. I think it was at my house one evening; I can't tell how long 10
it was after the trial.

Q. Was Mr. Little a party in that trial?

A. Not that I know of.

Q. Between what parties was the trial?

A. I don't know, sir.

Q. What caused Mr. Little to go to the trial, do you know?

A. I don't know.

Q. Do you know about what the trial was?

A. I don't.

Q. Who introduced the conversation at the time? 20

A. I think he did, sir.

Q. Was it shortly after the trial?

A. It was about two years ago; I can't tell you when the trial was.

Q. Can you tell whether the trial was within a year before the conversation or not?

A. I can't tell when the trial was; I was not particular to ask him that question.

Q. How long was it, before that conversation, that you had had a quarrel with him. [Objected to by Mr. Scofield, because there is no such case proved as yet.] 30

A. I don't know that I've ever had a quarrel with him, except about business matters.

Q. Who else did you hear say that he had perjured himself?

A. I have answered that question two or three times.

Q. You have stated, then, all you have heard about that, have you?

A. I have, sir.

Q. Whom did you ever hear say that he had been guilty of forgery?

A. I never heard any body say that.

Q. With what other crimes did you ever hear him charged?

A. I heard his brother say that he had taken a can of wormwood 40
from him.

Q. What brother was that?

A. William H. Miller, who lives about two miles of Rahway, between Westfield and Rahway.

Q. When was it, where was it, and to whom did you hear him say it?

A. It was somewhere about two or three years ago; it was on board the cars going to New York; he said it to me.

Q. Have you just given his words, as near as you can recollect them?

A. I will tell you what he said to me, word for word, if you'll let me do it.

10 Q. I want you to state his words about Amos S. Miller taking his can of oil, as near as you can recollect them?

A. He said Amos came there to borrow his wagon; he took the can of oil, put it under the seat, wrapped the buffalo skin around it, and took it home with him.

Q. Were those his words?

A. As near as I can recollect.

Q. Do you, of your own knowledge, know whose can of oil it was?

A. I do not.

Q. Where did you sell your oils?

20 A. I sell oils at Boston, Providence, Philadelphia and New York.

Q. Did Mr. Miller sell his in the same markets?

A. I suppose he did.

Q. Was William H. Miller in the same business?

A. He was.

Q. Were he and his brothers in the habit of dealing together?

A. I think they dealt together sometimes.

Q. How near to each other did they live?

A. A scant quarter of a mile apart, at that time.

Q. You have stated that Amos S. Miller perhaps owned, altogether,
30 fifteen or twenty horses; can you tell, under oath here, that he has not owned more than that?

A. I cannot; I should judge he has owned fifteen to twenty or twenty-five horses.

Q. How many does he own now?

A. Two, I think.

Q. What are they? [Objected to as irrelevant.]

A. One is a mare; the other I can't tell if it is a mare or a horse; if it is the one he had last fall, when I left, it is a horse.

Q. Is that all he owns now?

40 A. I think it is; unless he has got very lately.

Q. Does he own any colts?

A. He bought a colt; owns none now, that I know of.

Q. Has he owned any this year? [Objected to as irrelevant.]

A. I never knowed him to own but one colt; that he bought.

Q. How many horses did he own last year?

A. He had three at one time; that is all through the year, that I know of.

Q. How many did he own in 1860?

A. Two.

Q. How many in the year 1859?

A. The same two, I think, he owned in 1860.

Q. How many in 1858?

A. Well, he has never owned more than three horses at one time since I have known him; in 1858, he owned a mare he has yet, and 10 has had her ten or twelve years, I think.

Q. What other horses did he own in 1858?

A. He owned a big brown horse; no others.

Q. Did you make any minute of the horses he has owned; have you any memorandum of it, or did you ever do it?

A. I have not; didn't make any; but if he had a strange horse, I always note it.

Q. Was he in the habit of consulting you when he bought or sold a horse?

A. Well, he has asked my opinion about horses, when he wanted 20 trade, occasionally.

Q. Did he do this as a general thing?

A. No, sir.

Q. How many horses have you known him to trade?

A. Three or four times.

Q. Do you know when he first owned or had an interest in a horse?

A. I do, sir.

Q. When was it?

A. When he was a young man and lived with his father.

Q. How old was he?

A. I should judge he was seventeen or eighteen years old.

Q. Has he been in the habit of owning horses from that time to this?

A. He had owned horses since he was married; until he was married I don't know of his having owned but that one.

Q. Has he bought, sold and traded them?

A. Not a great deal; only for his farming and doing his own work; that is about all he has had to do with horses.

Q. Do you keep an oversight and account of the horses bought and sold by your neighbors?

A. I don't keep a regular account; but if there is a horse comes 40 into the neighborhood, a strange one, I generally know it, and what his stock is.

Q. Your knowledge then, of what horses your neighbors buy and sell, is confined to those that you happen to see them have, is it not?

A. If a man buys a horse and tells me what he pays for him, and his age, I can generally judge what he is worth, and what he is; my knowledge as to this matter I get of my neighbors.

Q. Did Amos Miller ever tell you how many horses he had bought or sold, or owned, during his life?

A. He never has told me how many he has owned, nor how many he has bought and sold.

Q. Did Amos Miller's father ever tell you how many horses he had owned, or how many he had bought and sold?

10 A. No, sir.

Examination here adjourned to 2 o'clock P. M., by consent.

L. A. CHANDLER, *M. C.*

This witness, being recalled at the hour of adjournment, and being further cross-examined, says:

Q. Can you swear here, positively, that Amos S. Miller never owned fifty horses?

A. I can not, positively.

Q. Can you swear here, positively, that he never owned one hundred horses?

20 A. I can't; I should say that he didn't.

Q. Is Mr. Amos S. Miller a member of the church at Westfield; if so, of what church?

A. I know nothing but by hearsay, and by that of the Presbyterian church at Westfield.

Q. Has he ever been disciplined, to your knowledge in that church?

A. Not that I know of.

Q. Did you ever know Amos S. Miller to swear to an untruth?

A. No, sir.

Being further examined by Mr. Scofield, says:

30 Q. Have you never heard of his being sued in a case of thirteen dollars and upwards, in which he was charged with altering a receipt for three dollars to thirteen, for the purpose of covering the opposing claim? [Objected to as leading and improper.]

This question is waived by Mr. Scofield.

Q. Did you ever hear of his altering a receipt? [Objected to.]

A. I would rather not answer that question.

Q. I wish you to answer it?

A. I have.

Being further cross-examined, he says:

40 Q. When did you hear that?

A. Something over a year ago; can't tell the exact time.

Q. From whom?

A. From Thomas English, I think his name was; a man that worked for him.

Q. Where is he?

A. I don't know where he is now; he did live with his father, below Westfield.

Q. Where did he tell you that?

A. At my place.

Q. Do you know anything about the fact?

A. Nothing more than what he told me.

Q. Who were parties to the suit?

10

A. I don't know, sir.

Q. Was English a party to the suit or did he say he was?

A. English was the party that he owed; he didn't say he was a party to the suit.

Q. Did he say he had sued on the note?

A. I don't recollect that he did.

Q. When did he say the alteration was made?

A. I don't recollect that he said when it was made; he said it had been made from a three to a thirteen.

Q. Was there a trial about it?

20

A. I think there was, sir.

Q. Do you know what the judgment was?

A. No, sir.

Q. Do you know whether the judgment sustained English's charge or disproved it.

A. I heard some other parties say that English was right; not any one that had anything to do with the trial?

Q. Who was it that said that?

A. I don't remember the person.

Q. At the time of this conversation was English working for Miller?

A. I think not.

Q. Had he been discharged by Miller?

A. That I can't say.

Q. Do you not know there had been difficulty between Miller and English?

A. Not that I know of.

Q. Did English speak as if he was angry against Miller?

A. No, sir, he said all he wanted was his ten dollars.

M. L. TAPPEN. 40

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, M. C.

Theodore Runyon, being recalled, says:

Since my examination in this case, I have inquired of Mr. Muir as to my having been retained in this case, and I am informed by him that he paid me a fee in this case, which I do not recollect, and did not when under examination.

THEODORE RUNYON.

Subscribed and sworn before me this 19th day of August, 1862.

L. A. CHANDLER, *M. C.*

Ambrose Geoghegan, on the part of the defendant, Muir, being recalled, says: [Counsel for defendant, Brittin, here objects to the further examination of this witness, because he has already been examined in the case on the part of the defendant, Muir, and cannot be further examined, according to the rules of the court.]

Question. Have you lately measured the stud colt you before testified about; if so, how much did he measure? [Objected to.]

A. I have; fourteen and a half hands high, and a half an inch.

Q. Was he measured accurately and particularly?

A. He was.

Q. How long ago was this done?

20 *A.* On Saturday last.

Being cross-examined, witness says:

Q. Where was it done?

A. At 55 Leonard street, New York city.

Q. Who did it?

A. I did it.

Q. Did any one assist you?

A. No.

Q. Did you ever measure a horse before?

A. No.

30 *Q.* How did you measure this one?

A. I brought him to a level part of the floor; I had two pieces of two-inch plank; I put a straight-edged board across his weather-lock—his highest part—or shoulder; I cut with a knife a notch under the board, on each plank; I measured each plank, and found it to be as I have already stated, fourteen and a half hands and half an inch high.

Q. Was the cross-pieces put on top of the side-pieces?

A. No.

Q. Did it rest on the back of the horse?

A. On the shoulder.

40 *Q.* To what was the horse tied while the measuring was done?

A. Nothing; he was standing loose.

Q. Did any body hold him ?

A. No.

Q. Did he stand perfectly still ?

A. Yes.

Q. What was the floor ?

A. A plank floor.

Q. Did he stand on one plank or more of the floor ?

A. He might have stood on two ; all the planks in that part of the floor are level.

Q. Was his head the same way the planks run, or the other way ? 10

A. He stood as the planks run.

Q. Is the horse kept in New York ?

A. No.

AMBROSE GEOGHEGAN.

Sworn, and examined, and subscribed, this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Isaac Crane, produced on behalf of Muir, defendant, being duly sworn, says :

Question. What is your age, residence and occupation ? 20

Answer. My age is seventy-one ; I am a farmer ; I live at Long Hill, in Chatham township.

Q. Have you had an acquaintance with horses ?

A. Yes, sir ; I have raised horses and have had horses.

Q. Did you ever own " Harpinus ?" [Objected to as irrelevant.]

A. No, sir ; I raised him.

Q. To whom did you sell him, and for what ? [Objected to.]

A. I sold him to William Edgar and William Bedell, for one hundred and seventy dollars.

Q. How old was he when you sold him ? [Objected to.] 30

A. Six years old.

Q. How many hands high was he ? [Objected to.]

A. He was called sixteen hands and an inch.

Q. Did you know this Brittin colt ? [Objected to.]

A. Well, I saw him.

Q. How high was he, as you suppose ? [Objected to.]

A. I took him to be about fourteen and a half hands.

Q. Was he large enough to keep as a stud horse with profit. [Objected to.]

A. Well, every one to their notion ; he might suit some persons ; 40 he was a smaller horse than I should have wanted to breed from.

Q. How old was this colt when you last saw him?

A. I think he was coming four, as I saw him in the winter.

Q. What was he worth at that time? [Objected to.]

A. For me, I should not have wanted to give more than one hundred and twenty-five dollars for him.

Q. Was that a fair valuation for him? [Objected to.]

A. It would have been for me, sir.

Q. What relation was "Harpinus" to "Splendid?" I mean "Old Splendid," that Col. Boyle owned. [Objected to.]

10 A. "Old Splendid" was got by "Old Harpinus;" "Young Harpinus" was got by "Duroc."

Q. Both by the same mare?

A. No, sir; "Duroc" was got by "Old Harpinus," same as Col. Boyle's horse.

Being cross-examined, witness says:

Q. Your horse you called "Young Harpinus," then?

A. Yes, sir.

Q. "Old Harpinus" was a different horse entirely, was he?

A. Why, he was the sire of "Duroc," and "Duroc" was the sire
20 of my horse.

Q. Was "Old Harpinus" considered good stock?

A. He was, sir.

Q. Was he said to be a blooded horse?

A. It was so said, sir.

Q. Was he of the "Messenger" stock?

A. I can't say as he was, sir, and can't say but he was.

Q. Who owned "Old Harpinus?"

A. I can't tell you; he was owned in New York.

Q. Did you ever measure this horse of Mr. Brittin?

30 A. No, sir; only I looked at him, as he passed by.

Q. Did you ever know him to be lame?

A. I don't know as I ever heard nothing of it.

Q. Did you see him frequently?

A. No, sir, I did not.

Q. How near did you live to Mr. Brittin's farm?

A. To go round from my house it was over four miles, so called.

Q. How frequently did you see this horse?

A. I did not see him very often.

Q. About how frequently, once a month?

40 A. No, sir, I saw him when he was coming three years old; I was up there; I own a farm adjoining that farm; I saw him that spring; Mr. Oakes was leading him out along the road, exercising him.

Q. What time was it?

A. I can't tell; it was in the spring or along that fall—can't say exactly when.

Q. How often did you see him after that?

A. I never saw him again until the spring he sold him.

Q. What time was it when you first saw him; was it in the winter or early part of the spring, as he was coming three?

A. It might have been in February, I think it was; I can't tell exactly; Mr. Oakes had him, for I was often up there, and heard a good deal about him.

Q. When did you see him the last time?

10

A. I can't tell you exactly; it was along towards spring; Oakes' son then had him; I understood that, as he was passing along with him, they were going to deliver him, as they had sold him.

ISAAC CRANE.

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Jonathan M. Muir, produced on the part of defendant, Muir, being duly sworn, says as follows:

Question. Are you the brother of Josiah F. Muir, and what is your age and business?

20

Answer. I am; I am fifty-one years of age; I am a farmer; I reside in New Providence, Union county.

Q. Did you know your brother's horse that he got of Abraham Brittin? [Objected to.]

A. I saw him once.

Q. Tell what you know about the bargain for him, and what you and your brother thought him worth when he took him? [Objected to.]

A. It is some three years ago; my brother was endeavoring to obtain a loan of money; he said that Mr. Abraham Brittin [Counsel for 30 Brittin objects to anything Josiah F. Muir said, unless Mr. Abraham Brittin was present] would let him have three thousand dollars if he would take the stud colt at five hundred, that he, Mr. Muir, valued at one hundred and fifty, and said not to exceed one hundred and fifty; he was to allow Brittin five hundred for him, the balance was to be made up by some notes Mr. Brittin held against some parties, and the balance in money; I saw Muir (it seems he didn't get the money at that time, there was some little delay at that time) a few days after that; he said that Mr. Brittin then told him that he could buy a bond and mortgage of three thousand dollars for twenty-seven hundred dol- 40 lars, and remarked that, "You see I can do as well as to let you have

my money;" Muir then said that he had agreed to take it upon the terms I have named; at that time I had not seen the horse; I had no opinion as to the value of the horse at the time my brother took him, only from his description; we came to the conclusion that the horse was not worth more than one hundred and fifty dollars, and he so considered it; I afterwards saw the horse, shortly afterwards, and I thought that one hundred and fifty was more than his value. [All this evidence objected to.]

Q. Had Mr. Muir owned a horse before that?

10 A. I believe he had.

Q. How long before that?

A. I should think the last horse I knew him to own, he owned fifteen years before that.

Q. Has he ever owned one since? [Objected to.]

A. Well, since this colt, none to my knowledge.

Q. Has he, at any time during his life, been in the habit of dealing in horses?

A. I never knew him to own but two, before this stud colt.

Q. Does the business he carries on, require the use of horses or stud
20 colts. [Objected to.]

A. Well, I should say not stud colts; as to other horses I can't say; he is in the paper business.

Q. Well, the business he is in, if he was going to buy a horse, would or not this be an appropriate horse for him to buy for his business? [Objected to.]

A. It would not.

Q. Could you select one more inappropriate? [Objected to.]

A. I don't think I could.

Being cross-examined, witness says:

30 Q. You have taken a good deal of interest in this suit for your brother, have you not, Mr. Muir?

A. Well, I have done but very little; I have subpoenaed but one witness; I did take but very little interest in it; I mean by that, by assisting him in procuring evidence in this case.

Q. Haven't you taken a good deal of interest in the progress of the case, in behalf of your brother?

A. I should say, comparatively, but a very little.

Q. Did you attend at Jersey City, at the examination of witnesses on behalf of your brother, in this case?

40 A. I was there the day Mr. Macknet was on the stand, that was all.

Q. You attended there one day, then?

A. I was there a part of a day; I stopped in then, that was all.

Q. Have you frequently conversed with your brother Josiah about the case?

A. I have talked with him about it several times.

Q. Has he told you it was very important for him to win the case, or anything to that effect?

A. No, sir.

Q. Has he told you that if he succeeded in his defence of usury, in this case, he would get rid of the mortgage, or anything to that effect?

A. I have no recollection of his ever making any such remark.

Q. Do you know that if the defence of usury is successful your brother Josiah will be able to get rid of the mortgages which he gave to the Newark Savings Institution and to Mr. Brittin? 10

A. I have always understood that usury invalidated a claim; I have no further answer to make.

Q. Do you suppose that that would be the result if the defence of usury is successful in this case?

A. I do suppose so.

Q. Are you to have any portion of the moneys which your brother will gain by getting rid of his liabilities in this case?

A. No, sir.

Q. Have you been with Josiah to Morristown since he has been here, having witnesses examined in this cause, before to-day? 20

A. He requested me to come up on Saturday, as a witness, to give in my testimony; that was the only time before to-day; I did not come with him then; he rode back with me.

Q. Have you expressed any opinion as to what the result of this case would be?

A. I have no recollection of ever having expressed any, to him or any one else.

Q. Have you not said you thought your brother would succeed, or be successful in this case, or words to that effect?

A. I have no recollection of it; dont think I ever have; I have 30 said but very little about it.

Q. Have you not said so in the Morris and Essex Railroad car, in going down or coming up the railroad?

A. I have no recollection of saying anything in the car about it.

Q. Did you ever go down with your brother in the car, or come up in it with him, since this case began?

A. I think I went down with him once, the day he went to Jersey City.

Q. What was he going to Jersey City for, at the time?

A. I understood him he was going down to the examination of 40 witnesses in this case.

Q. Did he tell you so?

A. I understood him so.

Q. Did you talk about the case while you were going down?

A. I can't say whether we did or not ; I don't remember ?

Q. Can you say whether, at that time, you said to him that you thought he would succeed, or would gain the suit, or words to that effect ?

A. As I said before, I have no recollection, the most distant, of talking with him at all, at that time, about the case.

Q. Did you ever talk with Isaac Meeker about the case ?

A. I think not, never.

Q. Did you with Nathaniel Bonnell ?

10 A. No, sir.

Q. Or Caleb M. Muir ?

A. I may have talked with him about it ; I think I have.

Q. Have you expressed to him your opinion as to the result of the suit ?

A. I have not.

Q. You have had some experience in litigation, have you not ?

A. Well, yes sir.

Q. How much ; how long a case did you ever have ?

A. I was engaged in a suit, the celebrated "Meeker will case,"
20 about eight years.

Q. Hasn't your brother advised with you, from time to time, about this suit ?

A. He has talked about it.

Q. Did you advise him to put in this defence ?

A. No, sir.

Q. Your brother Josiah has a paper mill and a grist mill, hasn't he ?

A. Yes, sir.

Q. These mortgages are on that mill property ?

A. I believe they are ; I understood so.

30 Q. Can you give us any idea how often you have talked with your brother Josiah about this case ?

A. I cannot ; I should say not very often, though.

Q. Is he indebted to you any way ?

A. We have got an unsettled account between us.

Q. Has he borrowed money of you lately ?

A. No, sir.

Q. How lately ?

A. There has been no borrowing or lending between us lately ; I have heretofore borrowed money of him, and he of me.

40 Q. Has he stated to you what it was he wanted you to testify to in this suit ; has he talked it over with you ?

A. He hasn't stated to me what he wanted to prove by me in this suit ; nor do I think any one would that knows me ; I told him

what I have stated before, what was said to me by him, what I have stated before.

Q. Where was it that you had the conversation with your brother, you have testified to in your principal examination?

A. That being so long since, I don't remember.

Q. Can't you remember the place, as well as the words of the conversation?

A. No, sir; one part I distinctly recollect, the other I don't; I recollect the conversation, where it was I don't.

Q. Had he made the agreement with Mr. Brittin before he spoke to you about it?

A. As I stated before, in the conversation, (the first conversation I had with Muir,) he told me Mr. Brittin agreed to let him have the money on the terms I have stated; then, after he finally took it, I had a second interview with Muir, and, in that, Muir told me he had taken the money, and the conditions, as I have stated before.

Q. Was the delay caused by paying certain debts of Muir, which were incumbrances on the property, and which had to be removed before the matter could be completed?

A. That I don't know anything about.

20

Q. Were there not certain judgments which were on this property, paid off by the money received from Mr. Brittin?

A. I know nothing about that.

Q. Have you endorsed Josiah's paper lately?

A. I endorsed one note of one hundred dollars; that, I understand, is paid.

Q. Was the money raised on that note for the purposes of this suit; for paying expenses or counsel fees?

A. The note was given to Richard Fleet to take up another note, I believe; it is due and past due, and I have heard nothing from it; I presume it is paid.

Q. Have you endorsed any other note for him lately?

A. No, sir.

Being further re-examined, he says:

Q. At the time you went to Jersey City with Josiah, did you go down to attend to the business of this suit; if so, was it with reference to the Newark Savings Institution's claim, or the claim of Mr. Brittin, or neither?

A. I went more out of curiosity than anything else.

Q. What was going on; was the evidence being taken in regard to the claim of the Newark Savings Institution, or the claim of Mr. Brittin?

A. It was the claim of the Newark Savings Institution.

JONATHAN M. MUIR.

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Lemuel Magtha produced for Muir, defendant, being duly sworn, says as follows :

Question. What is your age, residence, and business?

A. Thirty-six ; I live in Millburn township ; I work on a farm.

Q. Did you see this stud colt that Mr. Muir got, in the presence of several persons from Sussex, or from up country, who were carting grain down just after Mr. Muir got him ? [Objected to.]

10 *A.* Yes, sir.

Q. How many of them were there ?

A. Three.

Q. Did they examine him ? [Objected to.]

A. Yes, sir ; they took him out of the stable.

Q. What was said by them in respect to the value of him ? [Objected to.]

A. They said that a hundred dollars, they thought, was a fair price for him.

Q. Did they say anything about the size of him, or about cutting
20 him if they had him ? [Objected to.]

A. They said he was rather small to keep for a stallion ; they said if he was theirs they would cut him, and would never keep him for a stallion.

Q. Did they understand how much Muir had given for him ? [Objected to.]

A. Mr. Phillhower told them how much Muir gave for him.

Q. What did they say to that ? [Objected to.]

A. They said they thought he must have wanted a horse pretty bad to give that price.

30 *Q.* Did they say anything about their being able to sell better colts for \$100 ? [Objected to.]

A. They said they had better colts they would sell for \$100.

Q. What price did Phillhower say Muir had given for him ? [Objected to.]

A. Five hundred dollars.

Q. Did you ever hear Mr. George Linaberry say what the horse was worth ? [Objected to.]

A. Yes, sir.

Q. How much did he say ? [Objected to.]

40 *A.* I was drawing the same stock he got for the horse, and, as I was unloading it, I asked Mr. Linaberry if this was all the stock Muir got

for the horse, he said it was ; I asked him if he had took the money, how much money it would have took to buy the same stock, he said about one hundred and twenty-five dollars. [While this evidence was being given, counsel for Brittin objected to it.] Then, said I, he didn't get much for his high-priced horse, he said he got a damned sight more than he was worth ; he said no more than I have stated.

Q. What do you consider that horse was worth at that time ?

A. I should think a hundred dollars was a good price for him.

Q. Was this before the horse was stolen ?

A. Yes.

10

Being cross-examined, he says :

Q. You are sure this was before the horse was stolen, are you ?

A. I am.

Q. Are you as sure of that as you are of anything you have stated here ?

A. Yes, sir.

Q. Can't you be mistaken about that ?

A. No, sir.

Q. If that isn't true, nothing else you have stated is true, is it ?

A. I am sure it was before the horse was stole.

20

Q. Did you ever own a horse ?

A. Yes, sir.

Q. How many ?

A. I couldn't tell rightly how many.

Q. What was your business at the time you have spoken of, your talk with Linaberry ?

A. I wasn't doing much at that time ; I had been butchering.

Witness, being re-examined, says :

[The witness here connects his evidence on cross-examination, and says : "In speaking about my business, I didn't mean at the time of my talk with Linaberry—I meant the time I was talking of, when these men spoke about the colt."]

Q. This conversation with Linaberry took place long after, did it not ; and after the horse had been stolen, and after he had been sold, and the stock came back, didn't it ?

A. Yes, sir.

Q. The conversation of these men, having teams, about the value of the horse, occurred before the horse was stolen, did it not ?

A. Yes, sir.

Being further cross-examined, this witness says :

40

Q. What year was this, and in what month—the first conversation you have spoken of ?

A. The conversation of these men was in 1859, I believe ; it was the first of March—along about the first of March.

Q. Did you make a memorandum of it?

A. I did not; the way I remember it is, they were on their way back, on Tuesday or Wednesday, and the horse was stolen on the following Friday, which was the fourth of March.

LEMUEL MAGTHA.

Sworn and subscribed this 16th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

Silas Wonderly, produced on the part of defendant, Muir, being duly sworn, says:

10 Q. What is your age, occupation, and residence?

A. I am fifty years old; my occupation is almost anything, from a farmer down to a lawyer, or anything you have a mind to put me to; I reside in New Providence.

Q. Did you know a colt Mr. Muir got of Abraham Brittin—where did you see him, and when? [Objected to.]

A. I saw a colt that, it was said, Muir got of Mr. Brittin; I saw him in Philhower's stable; I should think it was about three years ago last spring, according to the best of my knowledge and ability.

Q. Did you meet a company of teamsters there, from Sussex or up
20 the country? [Objected to.]

A. Yes, sir.

Q. How many of them were there?

A. I should think some three or four.

Q. Was there a conversation about the value of the horse, and was he examined? [Objected to.]

A. There was a conversation about his value, but he wasn't particularly examined.

Q. What occasioned the conversation? [Objected to.]

A. It was reported that Mr. Muir had a \$500 colt that had been
30 stolen.

Q. Do you mean, that had been stolen, or that had been bought?

A. I mean that had been stolen, sir; I didn't say anything about that had been bought.

Q. Was the conversation you speak of, after the colt had been brought back from New York?

A. Yes, sir—or wherever he was got; I don't know where he was got.

Q. Then it was not the same conversation that has been testified to by the other witnesses here? [Objected to as leading.]

A. No, sir; I will guarantee to that.

40 Q. What was the conversation, and what value was put upon the horse? [Objected to.]

A. I had the conversation ; I didn't hear it ; well, I said I wouldn't give a hundred and twenty dollars for the horse.

Q. What did they reply, anything? [Objected to.]

A. Yes, there were different replies made ; some thought he was a very nice little horse ; I said, I thought if he was gelded and trained to a saddle, he might make somebody a very nice little saddle horse, and bring a big price ; I have stated all that conversation that I recollect of—all that was said at that time.

Q. Did any of the others there express an opinion as to his value?

A. I don't think they did, as to his definite value.

Q. Did they express any opinion as to whether he was of fit size for a stud horse? [Objected to.] 10

A. Yes, sir.

Q. Well, what was that opinion? [Objected to.]

A. That he was too small.

Q. What, in your opinion, was he worth at that time? [Objected to.]

A. I should think that one hundred and twenty-five dollars was the extent of the horse's value.

Q. How high was he?

A. I never measured him.

Q. When did Mr. Muir first know that you knew anything about the case? 20

A. Don't know, sir.

Being cross-examined, witness says :

Q. Who got you to come here as a witness?

A. Josiah F. Muir.

Q. Who first talked with you about the case?

A. He did—the man who stands by the stove—do you mind him?

Q. Did Jonathan M. Muir ever talk with you about the case?

A. No, sir.

Q. Did you examine this horse for the purpose of buying him? 30

A. No, sir.

Q. Did you examine him at all?

A. I looked at him, that's all.

Q. Was McGatha there at that time?

A. No, sir.

SILAS WONDERLY.

Sworn and subscribed this 19th day of August, 1862, before me.

L. A. CHANDLER, *M. C.*

EXHIBIT M 3.

Mr. Josiah F. Muir.		To Abraham Brittin, Dr.	
1859, February.			
To my check on Morris County Bank this day,			\$2,000.00
To Charles Lums's note, 3 July, 1858.....		\$125.00	
Interest on Charles Lums's note to 10 Feb. 1859.		4.52	
			129.52
To Samuel Roberts, jr.'s, note, 1 Sept. 1858....		200.00	
Interest on S. Roberts, jr.'s note to 10 Feb. 1859.		5.25	
			205.25
10	To Charles A. Bruen's note, 1 Sept. 1858.....		200.00
	To interest on Bruen's note to 10 Feb. 1859....		5.25
			205.25
	To 1 bay four year old stud colt next grass....		500.00
			\$3,040.02
	Credit by Josiah F. Muir's note at 4 months...		\$40.02
	10 Feb., by Josiah F. Muir's bond and mort-		
	gage at 1 year, 10 Feb. 1859.....		3,000.00
20			\$3,040.02

Received, February 7th, 1859, from Abraham Brittin, three thousand and forty dollars and two cents, this day, as above stated, for which I have made and executed my bond and mortgage to him on my mill property, late the property of William Spencer, deceased, in Chatham, for three thousand dollars and interest, payable in one year; also, my note for forty dollars and two cents, in full, for the above.

\$3,040.02.

JOSIAH F. MUIR.

EXHIBIT M 4.

30 \$2,000.

Cashier Morris County Bank:

Pay to the order of Josiah F. Muir two thousand dollars, and charge to account.

ABRAHAM BRITTIN.

Madison, February 7, 1859.

IN CHANCERY OF NEW JERSEY.

Between

Newark Savings Institution, complainant, }

*and*Josiah F. Muir, and Almira, his wife, Alfred
B. Brittin, executor of Abraham Brittin,
deceased, and Mahlon Minturn, defendants. }*On Bill,
Interlocutory
Decree.*

'This cause coming on to be heard before this court, in the presence of the counsel of the complainants, and of the defendants, Josiah F. Muir and wife and Alfred B. Brittin, upon the bill, answers, and evidence taken in this cause; and the said evidence having been read 10 and inspected, and the arguments of counsel heard, and the court having duly considered the same, and it appearing that process of subpoena for the appearance of the said defendant, Mahlon Minturn, was duly issued and returned served upon him, and that the said defendant has not filed any plea, demurrer, or answer to said bill within the time limited by law, but has failed and neglected so to do, and the Chancellor being of the opinion that the allegation of the answer of the defendant, Josiah F. Muir, are not answered, and that the complainants are entitled to the relief prayed in their bill; it is thereupon, on this nineteenth day of February, in the year of our Lord one thou- 20 sand eight hundred and sixty-three, ordered, adjudged, and decreed that the said bill be taken as confessed as against the said Mahlon Minturn; and that it be referred to David A. Hayes, Esquire, one of the masters of this court, to ascertain and report the amount due to the said complainants for principal and interest upon the mortgage held by them upon the premises mentioned and described in the said bill of complaint; and also the amount due to the said Alfred B. Brittin, executor of Abraham Brittin, deceased, upon his mortgage; and also the amount due, if anything, to the said Mahlon Minturn upon his mortgage, and to report accordingly; and also to ascertain and 30 report the order and priority of the said several mortgages, and whether they all embrace the same premises; and whether the whole or a part, and what part of the said mortgaged premises should be sold for the payment and satisfaction of the said claims; and that the said master do make his report thereon with all convenient speed; and all further equity is reserved until the coming in of the said master's report.

HENRY W. GREEN, C.

Filed February 19, 1863.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

Josiah F. Muir, appellant,

and

The Newark Savings Institution and Alfred
B. Brittin, executor of Abraham Brittin,
deceased, respondents.} *On Bill, &c., Petition of Appeal.**To the Honorable the Court of Errors and Appeals of the State of New Jersey:*

- 10 The petition of Josiah F. Muir, the appellant in the above stated cause, respectfully sheweth:

That your petitioners is aggrieved by an interlocutory decree made in the Court of Chancery by the Honorable Henry W. Green, chancellor of this state, bearing date the 18th day of February, 1863, wherein the said the Newark Savings Institution was complainants, and this respondent, with Alfred B. Brittin, executor of Abraham Brittin, deceased, and others, were defendants, in this respect, that said decree declares that the allegations of the answer of this appellant were not sustained, and that the complainants were entitled to

- 20 the relief prayed for in their bill; and from so much as orders that it be referred to a master to ascertain and report the amounts due to the complainants for principal and interest on their mortgage, and also the amount due to the defendant, Alfred B. Brittin, executor of Abraham Brittain, deceased, upon his mortgage, and in that said decree does not adjudge and decree that said two mortgages are void.

- And your petitioner appeals from those parts of said decree of the chancellor which decrees as aforesaid, on the ground that it appears by the evidence in the cause, that said two mortgages, and each of them, were usurious and void, and are not valid encumbrances on the
- 30 mortgaged premises.

Your petitioner therefore prays that the said decree of the chancellor may, in the particulars aforesaid, be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court will seem meet.

A. O. ZABRISKIE & SON,
Solicitors for appellant.

A. O. ZABRISKIE & SON,
of Counsel with appellant.

Answers filed by respondents, the Newark Savings Institution and Alfred B. Brittin.