

NOTICE OF APPEAL.

(Filed Jan. 30, 1919.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill for Specific Performance. Notice of Appeal.	10
REUBEN B. HALL,			
<i>Complainant,</i>			
and			
FRANCIS C. ELY, <i>et al.</i> ,	}		
<i>Defendants.</i>			

Defendant hereby appeals from so much of the final decree made in this Court in the above stated cause as declares: 20

1. That the complainant is entitled to specific performance of the contract or agreement in writing without any compensation or adjustment from said purchase price for the value of the tract of land described in the bill of complaint as tract No. 2, for which complainant has no title.

2. That the defendant, Francis C. Ely be required to pay to the complainant the full purchase price as set forth in the contract for the tract of land described in the bill of complaint as tract No. 1. 30

3. That the defendant, Francis C. Ely, pay to the complainant the full amount of said purchase price with interest thereon from May 25, 1916, as provided in said decree.

4. That the defendant, Francis C. Ely be required to execute, acknowledge and deliver a bond and mortgage, conveying said lands and premises mentioned in the bill of complaint, to the complainant to secure the sum of \$500, said mortgage being an installment mortgage with payments of \$50 each to be paid on the twenty-fifth day of April, July, October and January of each year, with interest thereon at the rate of six per centum, per annum, clear of taxes, and that in case the said quarterly installments remain unpaid for the space of thirty days, then the whole principal sum shall become due and payable.

5. That requires the defendant, Francis C. Ely, to reimburse the complainant for interest paid on prior mortgages and also for taxes paid.

6. That the defendant, Francis C. Ely, pay to the complainant the costs, amounting to \$253.62.

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

Dated at Camden, N. J., January 29, 1919.

OSCAR B. REDROW,

*Solicitor for and of
Counsel with defendant
Francis C. Ely.*

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

OSCAR B. REDROW,

*Of Counsel with defendant
Francis C. Ely.*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

(Filed Feb. 17, 1919.)

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

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The petition of Francis C. Ely, the appellant in the above stated cause respectfully shows, that your petitioner finds himself aggrieved by final decree made in the Court of Chancery by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, bearing date the third day of January, nineteen hundred and nineteen, in a cause therein pending wherein Reuben B. Hall was complainant and Francis C. Ely and others were defendants, in this respect, to wit:

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The said decree adjudges that the said Reuben B. Hall, execute a warranty deed to the said Francis C. Ely, for a certain tract of land, known as tract No. 1 and described in the bill of complaint and that the said Francis C. Ely, accept the said deed of conveyance and pay to the said Reuben B. Hall, the full consideration, to wit \$4500 as provided in a certain agreement in writing whereby the said Reuben B. Hall agreed to convey to the said Francis C. Ely, two certain tracts of land for the consideration of \$4500.

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The said decree also adjudges that the said Francis C. Ely shall pay to the complainant his costs of suit amounting to \$253.62.

And your petitioner humbly appeals from that part of the decree of the Chancellor which adjudges:

1. That the said Francis C. Ely, shall pay the full consideration price of \$4500 for a part of the land agreed to be conveyed by a certain written agreement, whereby the said Reuben B. Hall was required to convey to the said Francis C. Ely, two tracts of land for the consideration of \$4500.

2. That alters the terms of the written contract by parol testimony.

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3. That alters the terms of the written contract by parol evidence of matters and conversations between the parties previous to the execution of the written contract.

4. That provides for the partial performance of a written contract for the sale of land by specific performance without compensation for that part of the land, the title to which was defective.

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5. That the said Francis C. Ely, agreed to purchase the one tract of land for \$4500.

6. That allows costs of the suit Reuben B. Hall.

Your petitioner, therefore, prays that said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden.

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And that your petitioner may have such other relief in the premises as to the Honorable Court shall seem meet.

OSCAR B. REDROW,
Solicitor of Appellant.
OSCAR B. REDROW,
Of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

The answer of the above respondent, Reuben B. Hall, to the petition of appeal of the above named appellant, Francis C. Ely.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless says and admits that a decree was on the Third day of January, 1919, made and entered in the Court of Chancery, in the above cause providing that Reuben B. Hall execute a warrantee deed to the said Francis C. Ely, his heirs or assigns for a certain tract of land known as tract No. 1, and that the said Reuben B. Hall include in said conveyance all of the estate, right, title and interest of, in and to the said tract of land described in the bill of complaint as tract No. 2, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent denies that the appellant is entitled to any relief for the alleged reasons set forth in paragraphs 1, 2, 3, 4 and 5 of the petition of appeal.

And this respondent affirms that it was proper to have his costs adjudged to him and denies the right to relief as sought by the appellant in paragraph No. 6 of the petition of appeal.

And this respondent is advised and believes that the said decree is agreeable in equity and is based upon a preponderous of proof, and he prays that the same may be affirmed with the costs to be adjudged to respondent.

DAVID O. WATKINS and
GEORGE B. MARSHALL,
*Solicitors for Respondent
Reuben B. Hall.*

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

(Filed Apr. 14, 1917.)

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

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The complainant, Reuben B. Hall, of the Borough of Clayton, in the County of Gloucester and State of New Jersey, respectfully shows:

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1. That on or about the twenty-fifth day of April A. D. 1916, the complainant as owner entered into a contract and agreement in writing for the sale of certain real estate in the Township of Franklin, in the County of Gloucester and State of New Jersey, tract No. 1 containing, exclusive of lands occupied by the West Jersey and Seashore Railroad, ninety one and thirty-one hundredths acres, be the same more or less and tract No. 2 containing fourteen and forty three hundredths acres of land, be the same more or less, a more specific description of which lands is embraced in the agreement of sale above referred to, a copy of which is hereto annexed and marked Exhibit A, to which reference is made as a part of complainants' bill; that the other party to said contract, or purchaser is Francis C. Ely of the Township of Franklin, County of Gloucester and State of New Jersey; the terms of the said agreement herein set out, where that the said Reuben B. Hall for and in consideration of the sum of four thousand five hundred dollars to be paid as provided for in said agreement and also in consideration of the covenants

and agreements as provided for in said agreement, would well and sufficiently convey to the said Francis C. Ely, his heirs and assigns, by deed, duly executed free and clear from all encumbrances, with certain exceptions mentioned in the said agreement on or before the twenty-fifth day of June, A. D. 1916, both tracts of land above referred to, descriptions of which are fully set out in the agreement hereto annexed; the said Francis C. Ely agreed to pay and satisfy or cause to be paid and satisfied unto the said Reuben B. Hall the said sum of four thousand five hundred dollars, as and for the purchase price of the above described land and premises, in the following manner, to wit: the sum of one hundred dollars paid April 25, 1916, the sum of nine hundred dollars to be paid within sixty days from the within date (April 25, 1916), interest at the rate of (6) six per cent. per annum after thirty days from the within date (April 25, 1916), the sum of five hundred dollars to be secured by an instalment mortgage on the above lands and premises to be given by the said Francis C. Ely to the said Reuben B. Hall, payment on account of which to be made each and every twenty-fifth day of April, July, October and January of each and every year in sums of fifty dollars, until such payments shall equal the principal sum of five hundred dollars, together with interest thereon at the rate of six per cent. per annum, clear of taxes; it being also provided that should the said Francis C. Ely neglect any quarterly instalment, and such neglect continue for a period of thirty days, then the whole sum should become instantly due and payable; the said Francis C. Ely assumed and became responsible for the operation of a certain indenture of mortgage on the lands and premises above mentioned given by Philip F. Shafto dated January 25,

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1915, to Alice Atkinson, Mary Simon and Woodbury Trust Company, executors of the last will and testament of Warren Atkinson, deceased, in the principal sum of three thousand dollars, interest at the rate of six per cent. per annum from the within date (April 25, 1916), which mortgage is of record in the county clerk's office of Gloucester County at Woodbury, N. J., in book 112 of mortgages, page 554, etc.; it was further contained in the said agreement that

10 the said Francis C. Ely may enter upon said lands and premises on the twenty-fifth day of April, A. D. 1916; it was further provided in said agreement that for failure to perform all the covenants and agreements therein contained of either party, that said parties fix and settle as liquidated damages for such failure, the sum of one hundred dollars.

2. That the agreement above referred to was regularly signed by Reuben B. Hall, Frances P. Hall,

20 his wife and Francis C. Ely in the presence of Louis R. Leddon; that proper acknowledgments of all of the parties above named were taken before Louis R. Leddon, a commissioner of deeds for the State of New Jersey on April 25, 1916 and recorded in the Gloucester County Clerk's office at Woodbury, N. J. on April 26, 1916, in book 257 of Deeds, folio 504, etc.

3. That the said Francis C. Ely refused to comply with the agreement aforementioned at the time

30 therein specified for settlement and pay the balance of said purchase money, or \$4400.00 due thereon with interest as provided for in said agreement, and still refuses to comply with said agreement and pay the balance of said purchase price, although complainant offers himself in readiness to perform his part of the said agreement, and has frequently offered to the said Francis C. Ely to perform the same.

4. That the said Francis C. Ely entered into the said premises under the said agreement and has since retained possession of the said property, cutting or causing to be cut timber to the great loss and injury to the rights of complainant.

5. Complainant is reliably informed and believes that one Joseph Rodisill is at times and is at the present time in the actual possession of the said premises, but complainant charges the entry of the said Joseph Rodisill upon the said lands and premises has been without the consent and permission of the complainant, and his occupation of the said premises is in contravention to the rights of the complainant therein. 10

6. That complainant has repeatedly asked the said Francis C. Ely to either perform his agreement and pay the purchase price for the said premises, and receive a deed therefor, or to give up possession thereof to complainant and account for rents derived therefrom and also for the proceeds of the timber cut and sold off said premises. 20

7. All of which actings, doings, pretenses and refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of complainant in the premises.

In Tender Consideration Whereof, and for as much as complainant can only have adequate relief in a Court of Equity, where matters of this nature are properly cognizable and relievable: 30

To the end, therefore, that the said Francis C. Ely and Joseph Rodisill may, without oath, to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect an-

swer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they distinctly interrogated thereto.

Complainant is without adequate remedy in the Court of law and therefore prays:

10 (1) That the defendant, Francis C. Ely may be decreed to specifically perform the said agreement entered into with complainant as aforesaid, and to pay or cause to be paid to complainant, the sum of \$4400.00 as provided for in said agreement, the balance of the purchase price for said lands and premises, upon the tender by complainant of a good and sufficient deed therefor, this complainant being ready and willing and hereby offering specifically to perform the said agreement of sale on his part, (or)

20 That the defendant, Francis C. Ely in lieu of his failure to specifically perform his part of the contract, that he give up possession of the said premises to complainant and account for the rents derived therefrom and also for the proceeds of timber cut and sold by him.

(2) That the defendant Joseph Rodisill may by decree of this Court be ordered to vacate the said premises and deliver possession thereof to complainant.

30 (3) That a writ of subpoena may issue, commanding said defendants Francis C. Ely and Joseph Rodisill to answer this bill of complaint and to abide by such decree as the Court may make in the premises.

GEORGE B. MARSHALL and

DAVID O. WATKINS,

Solicitors for and of Counsel with Complainant.

EXHIBIT A.

ARTICLES OF AGREEMENT, made this Twenty-fifth day of April in the year of our Lord one thousand nine hundred and sixteen (A. D. 1916)

BETWEEN Reuben B. Hall of the Borough of Clayton, County of Gloucester and State of New Jersey and Frances P., his wife, party of the first part and Francis C. Ely of the Township of Franklin, County of Gloucester and State of New Jersey, party of the second part 10

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Four Thousand five hundred dollars to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, do agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed duly executed free from all incumbrance except as hereinafter described on or before the twenty-fifth day of June, A. D. 1916, all certain lots, tracts, or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Franklin in the County of Gloucester and State of New Jersey No. 1. 20

BEGINNING at an Iron Pipe in the middle line of the Road from Franklinville to Clayton, sometimes called the Road from Malaga to Glassboro, at a corner to lands now or late of James Simpson, formerly lands of Thomas N. Atkinson, and extending thence (1) according to a recent Survey made by J. Owen Carter, C. E. along lands now or late of James Simp- 30

son, formerly lands of Thomas N. Atkinson South eighty-six degrees and thirty-four minutes West, twenty-four hundred and twenty-two and two tenths feet to a stone a common corner to lands formerly of James Wilson, William Scott and one Lovejoy; thence (2) along lands now or late of William Scott North twenty-two degrees and thirteen minutes West, nine hundred and ninety six feet to a stone corner to lands now or late of James W. Nelson, formerly a corner common to lands now or late of Lawrence Cake and Benjamin Turner; thence (3) along lands now or late of James W. Nelson, formerly of Benjamin Turner, North sixty five degrees and twenty five minutes East, nine hundred and twenty eight feet to an iron pipe corner to lands formerly of Eli DuBois; thence (4) along same by the three following courses: North seventy-five degrees and thirty minutes East, five hundred and thirty nine and twenty two hundredths feet to an iron pipe; (5) North seventy two degrees and thirty minutes East, one hundred and seventy four and nine tenths feet to an iron pipe; (6) North forty seven degrees and thirty minutes East, three hundred and forty four twenty four hundredths feet, crossing the West Jersey and Seashore Railroad, to the Easterly line of right of way thereof; thence (7) along the Easterly line of right of way of said Railroad, North nine degrees and fifteen minutes West, three hundred and ten and twelve hundredths feet to a corner to lands now or late of Albert Brown; thence (8) along the same South eighty seven degrees East, nine hundred and fifty two and thirty two hundredths feet to the middle line of the road from Franklinville to Clayton aforesaid; thence (9) along the same South three degrees and twenty five minutes East, five hundred and sixty six and three tenths feet to a corner

to lands of now or late Calvin Usinger, formerly of Minerva G. Garton; thence (10) along the same South sixty three degrees and eleven minutes East, eight hundred and seventy eight and twenty nine hundredths feet to an iron pipe corner to lands now or late of Samuel Hall in the middle line of Grant Avenue; thence (11) along same South eighty-seven degrees and fifty minutes West, and passing over an iron pipe on the Easterly side of the road from Franklinville to Clayton aforesaid; seven hundred and fifty nine feet to a corner to lands now or late of Samuel Hall, in the middle line of the aforesaid Road; thence (12) along the same South three degrees and twenty five minutes East, eight hundred and fifty two and eight tenths feet to the place of beginning. 10

CONTAINING, exclusive of lands occupied by the West Jersey and Seashore Railroad, ninety one and thirty one hundredths acres, be the same more or less. 20

No. 2 BEGINNING at a stake set in the main water course of Still Run Branch, in the Westerly line of Samuel Porph's old Rubin Mill Tract, and extending thence (1) along said late Samuel Porph's line on the line of a new survey made to them dated October 8th, 1866, South twenty one degrees and thirty minutes East, twenty-nine and twenty hundredths chains crossing the old Rubin Mill Dam to a corner; thence (2) South eighty five degrees and twenty five minutes East, five and thirty hundredths chains to a corner; thence (3) North twenty one degrees and thirty minutes West, thirty six and sixty five hundredths chains to the main Water course of said Still Run Branch aforesaid; thence down said water course the several courses thereof to the place 30

of beginning, *Containing* fourteen and forty three hundredths acres of land, be the same more or less.

BEING the same land and premises which Robert Mead, Sheriff of the County of Gloucester in the State of New Jersey by Deed dated the Third day of March, 1916, A. D. and recorded in the Clerk's office of Gloucester County at Woodbury, N. J. in Book 257 of Deeds, folio 292 etc. granted and conveyed to the said Reuben Hall.

- 10 AND the said Francis C. Ely party of the second part for himself, his heirs, executors and administrators, do covenant, promise and agree to and with the said party of the first part, his heirs or assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said party of the first part, the said sum of Four thousand five hundred Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:
- 20 the sum of One Hundred Dollars paid this twenty-fifth day of April, A. D. 1916, the receipt whereof is hereby acknowledged, the sum of Nine Hundred Dollars to be paid within sixty days from the within date, interest at the rate of six per-cent per-annum after thirty days from the within date, the sum of Five hundred Dollars to be secured by an installment Mortgage on the within described premises to be given by the said party of the second part to the said party of the first part, to be paid as follows: the sum
- 30 of fifty dollars to be paid each and every twenty-fifth day of April, July, October and January of each and every year until such payments shall equal the principal sum of Five Hundred Dollars together with the interest thereon at the rate of six (6%) per-cent per annum, clear of taxes, and in case the said Francis C. Ely shall neglect any quarterly install-

ment and the same shall remain unpaid for the space of thirty days then the whole principal sum shall become due and liable to be collected, the said party of the second part hereby assumes and becomes responsible for the operation of a certain indenture of Mortgage on the within described premises given by Philip F. Shafto dated January 25th, 1915, to Alice Atkinson, Mary Simon and Woodbury Trust Company Executors of the last will and testament of Warren Atkinson Deceased in the principal sum of 10
Three Thousand Dollars, interest at the rate of six (6%) per-cent per annum from the within date, recorded January 25th, 1915, in the County Clerk's office of Gloucester County at Woodbury, N. J. in Book 112 of Mortgages Page 554, etc.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs, and assigns, may enter into and upon the said land and premises on the twenty-fifth day of April A. D., 1916 and from thence take the rents, issues and profits to himself and their use 20

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of One Hundred Dollars which they hereby fix and settle as liquidated damages thereof.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals 30
the day and year first above mentioned.

Reuben B. Hall (Seal)

Frances P. Hall (Seal)

Francis C. Ely (Seal)

SIGNED, SEALED AND DELIVERED, IN THE PRESENCE OF Louis R. Leddon

STATE OF NEW JERSEY, }
 GLOUCESTER COUNTY, } ss.

BE IT REMEMBERED, That on this twenty-fifth day of April in the year of our Lord one thousand nine hundred and sixteen before me the subscriber, a commissioner of Deeds for said County and State personally appeared Reuben B. Hall, Frances P. Hall and Francis C. Ely who, I am satisfied, are the
 10 vendor mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, and the said Frances P. Hall being of full age, on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely, without any fear, threats or compulsion of her said husband. All of which is here-
 20 by certified.

Louis R. Leddon,
 Commissioner of Deeds.

ANSWER.

(Filed May 24, 1917.)

IN CHANCERY OF NEW JERSEY.

The answer of Francis C. Ely, of the Township of Franklin, County of Gloucester and State of New Jersey, says that:

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1. He admits having entered into an agreement with the complainant on or about April 25, 1916, for the purchase of two tracts of land for the sum of \$4500 and paid on account the sum of \$100. That this defendant believes that the copy of the agreement attached to complainant's bill is a true copy.

2. Tract No. 1, containing about ninety-one acres includes a certain dwelling house and outbuildings, which deponent took possession of according to the terms of the agreement. This defendant made repairs to the buildings and placed them in good habitable condition at a cost of \$500.

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3. It was represented to this defendant by complainant and complainant's agent that tract No. 2 adjoined tract No. 1 on the west, and also adjoined other lands of this defendant on the North, which would give this defendant a strip of land extending from the Malaga and Glassboro Road to the Franklinville Road.

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4. This defendant afterwards ascertained that tract No. 2 did not adjoin tract No. 1 or defendant's other land, but that this intervening land was owned

by one Wilson, which this defendant has since purchased for \$1050 to secure an outlet on both of the aforesaid roads.

5. This defendant has no knowledge of the location of tract No. 2 and has never been in possession thereof.

10 6. This defendant admits that he has been in possession of tract No. 1 since May 1, 1916. Premises No. 1 consists of farm, meadow and bush land. The business of defendant is real estate operator. This defendant has been unable to survey and lay out in lots and small tracts the premises in question on account of not having received a deed therefor, but has been put to a great expense by having to employ a caretaker to look after the premises, and occupy the buildings in order to protect the property and keep the fire insurance valid.

20 7. On or about June 23, 1916, defendant called at the office or place of business of complainant at Philadelphia, Pennsylvania, and tendered the balance of the purchase money due on said agreement and demanded a deed. The complainant refused to accept the balance of the purchase money and refused to give this defendant a deed for the premises as provided in the agreement.

30 8. This defendant denies that he has cut or caused to be cut any timber on the premises in question.

9. This defendant denies paragraph No. 6 of complainant.

10. This defendant admits that Joseph Rodisell is in possession of tract No. 1 in order to protect the same and to keep valid the insurance, and that the said Joseph Rodisell is paid by this defendant.

11. This defendant denies that he has refused to comply with the agreement of sale and now alleges, sets forth and offers himself in readiness to perform his part of the said agreement according to the terms thereof, and has frequently and always offered to comply with and perform the same. 10

12. That in the event the entire contract cannot be performed in its entirety by the complainant this defendant prays that an order may be made directing the complainant to perform the same in so far as he may be able for such compensation and on such terms as may be reasonable and just, and that this defendant may receive such further relief in the premises as may be just. 20

OSCAR B. REDROW,
*Sol'r and of Counsel with
Defendant.*

REPLY.

(Filed June 28, 1917.)

IN CHANCERY OF NEW JERSEY.

10 The reply of Reuben B. Hall, complainant, to the answer filed by the defendant, Francis C. Ely, in the above cause, says that:

(1) He denies the allegations of defendant as set forth in paragraph #2 of the answer relating to repairs made to the buildings and the cost thereof.

(2) He denies the contents of paragraph #3 of the answer.

20 (3) He denies the contents of paragraph #4 of the answer.

(4) He denies the contents of paragraph #5 of the answer.

30 (5) He denies so much of paragraph #6 as relates to the inability of defendant to survey and lay out in small lots and tracts the premises in question, and the expense alleged to have been incurred in the care of the property. Complainant alleges that defendant represented to the complainant that he desired the property in question as a home and not for speculation.

(6) He denies the contents of paragraph #7 of the answer.

(7) He denies that Joseph Rodisill is only in possession of said property to keep valid the insurance thereon as alleged in paragraph #10 of the answer.

(8) He denies the readiness of the defendant to perform his part of said agreement and further denies the allegations set forth in paragraph #11 of the answer relating to the offer of the defendant to comply to said agreement.

DAVID O. WATKINS and

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GEORGE B. MARSHALL,

Solicitors for and of Counsel with Complainant.

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HEARING.

IN CHANCERY OF NEW JERSEY.

Before his Honor, E. B. LEAMING, Vice Chancellor,
at the Chancery Chambers, Camden, New Jersey, on
10 Tuesday, December 18th, 1917.

DAVID O. WATKINS, Esq., and GEORGE B. MARSHALL,
Esq., for complainant.

OSCAR B. REDROW, Esq., for defendants.

20 (Excerpt from proceedings at hearing).

The Vice Chancellor: Gentlemen, do you claim on the part of complainant that there is no reasonable dispute touching the validity of complainant's title to tract 2?—because if it is not a marketable title you cannot enforce it.

30 Mr. Marshall: We cannot. We are able to carry the title back to the extent we have already shown to your Honor, and we are perfectly willing to do exactly as the complainant has said,—to fulfil the agreement to the extent of conveying to the defendant all that we can convey, which is the main farm of 92 acres, together with all of the right, title and interest which we have to the 14 acres, which is some title, although there may be some cloud upon

it, and we do not deem it to be of sufficient importance to scrap that out.

The Vice Chancellor: It seems to me that matters can be very much simplified here by a reference to the law as we all necessarily understand it, because it has been reiterated by the courts so much that there can be no doubt touching it, and if we can eliminate the necessity of taking a lot of testimony that will be to no purpose let us do it; I will hear 10 whatever is necessary but I do not want to hear, if it can be avoided, more than is necessary. Now, we all must concede that in an agreement for the sale of land the vendor cannot by a bill for specific performance compel the vendee to accept a title which is unmarketable. An unmarketable title is not necessarily a bad title. A title may be a valid title and yet be unmarketable. An unmarketable title is a title touching which there is so much doubt or touching which there is sufficient doubt to deter and 20 prevent its ready sale in the market. Now, I understand that complainant concedes that so far as tract number 2 is concerned the title is not clear, there is a substantial doubt about it; while he thinks it may be a valid title it is conceded, as I understand it, now that it is not free from objections, at least so far as marketability is concerned. Is that correct?

Mr. Marshall: That is correct, your Honor. 30

The Vice Chancellor: Then we can right here determine, without going further, on this concession that the defendant cannot be compelled to take the title to tract number 2. Tract number 1 is not a source of dispute. Now then, the only question is

in those circumstances what adjustment should equitably be made between the parties. There may be some difficulty in determining just what complainant's rights are, if the desires of the respective parties do not coincide, but I do not understand there is any particular dispute between the parties or variance between the desires of the parties. Am I right in my assumption that defendant wants tract number 1 and complainant wants to dispose of tract
10 number 1, aside from any question of equitable allowances? Is that correct?

Mr. Marshall: That is correct.

The Vice Chancellor: Is that correct, Mr. Redrow? Am I right in the assumption that the complainant wants to dispose of tract number 1 and defendant wants to take tract number 1, aside from
20 any question of equitable allowances?

Mr. Redrow: Yes, I understand that is true. Of course, this tract number 2 has been the whole bone of contention. We are prepared to show that tract number 2—these people had no title in it.

The Vice Chancellor: Then why should we not from this point on confine our inquiry entirely to the question of what equitable allowance should be made to the defendant for the loss of tract number
30 2? In other words, what should he pay for tract number 1—because he cannot get a marketable title to tract number 2. Now, shall we not confine our investigation to that? Doesn't it seem to you that that is right?

Mr. Marshall: It is perfectly satisfactory to us, but when your Honor speaks of equitable allowance of course it will be with the understanding that in the disposition of the case we ought to be reimbursed for the interest and taxes.

The Vice Chancellor: I am not disposing of what allowances are lawful, I am only disposing of the scope of the inquiry,—or would the parties prefer to have the agreement entirely removed and the possession to the farm restored and the question of equitable allowances determined on that basis? Which is the choice? Either of the two plans seem to be open. In other words, to call the deal off on such equitable terms as are found to exist in the matter of accounting between the parties, or to go on with the deal so far as tract number 1 is concerned and make equitable allowances, whatever they may be—which do you prefer?

Mr. Marshall: As far as complainants are concerned we prefer to follow the latter course, dispose of the tract 1 and the defendant to be entitled to some compensation for the loss in tract 2.

The Vice Chancellor: Yes, then let us see what the wish of the defendant is. Is it your choice, Mr. Redrow, on the part of the defendant to go on with the purchase of tract number 1, with equitable allowances, whatever they may be, on the adjustment of the difficulties on tract number 2, or would you prefer to give up possession of the farm, of tract number 1, and call the agreement off and have adjusted whatever the equities are on that basis?

Mr. Redrow: We have been ever since the time we signed the agreement anxious to secure posses-

sion and title to tract number 1, and I feel that that is really the reason for this suit,—we would like to get possession of it.

The Vice Chancellor: Well then, it seems that both parties would rather that course be taken.

Mr. Redrow: The matter of equitable allowances

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The Vice Chancellor: I am not undertaking now to pass on equitable allowances.

Mr. Redrow: I understand, but when that matter is taken up there are equitable allowances, it seems to me, that should be taken into consideration as far as both parties are concerned, perhaps.

20 The Vice Chancellor: That may be. I am not undertaking to pass upon that at all. I simply want to map out and have settled, if possible, at this time our future inquiry, the scope of our future inquiry. So it is understood, I understand it, that it will be the choice of both parties to have the agreement carried out as to tract number 1 under such allowances as the law makes for the inability of complainant to carry out the agreement touching tract number 2. Now, let us have no misunderstanding about that.

30

Mr. Watkins: That is the situation of complainant and always has been, as I understand it, by repeated attempts to arbitrate on the same line, the same basis.

Mr. Redrow: That is all right.

The Vice Chancellor: Very well. I think that will be all you need testify to now. Now, let us pull ourselves together on the new deal. I would suggest to counsel in determining the question of equitable allowances that my first impression would be, subject to modification and charge as counsel may enlighten me or as facts may develop, that defendant would prima facie be entitled to what is ordinarily defined as an acreage credit, that is to say, a credit proportionate to the number of acres that he gets 10 less than the number of acres that was agreed to be sold to him. That is usually the basis of calculation. Now, that calculation is always subject to a modification by proofs of the relative values of the two tracts as to their acreage value. In other words, it may be determined that the 14 acre tract is of less value per acre than the larger tract; in that case that element is entitled to be taken into account.

Mr. Watkins: That is the situation here. 20

The Vice Chancellor: That I assume to be the situation from what I understand to be the character of the land. That would be a matter of proofs. Now then, let me make this next inquiry: Isn't it a matter that can be easily ascertained by some person or persons that counsel can agree upon who is familiar with both tracts of land, who can see both tracts of land and see what they are and learn more about their value than a court can by hearing testimony of witnesses? And if that is so wouldn't it be prudent for the parties right here to determine to have this question of proportionate amount of deductions settled by such people rather than by the court? 30

Mr. Redrow: If the court please, I think that to a great extent that is true, and there is one feature of this case, it seems to me, that while there may be a great many people here today, subpoenaed on both sides, to testify before the court as to the value of a tract of land presumably at some location, I have talked to most of them and they don't know just the exact location of this land.

- 10 The Vice Chancellor: Don't you think, Mr. Redrow, that with the assistance of this map and with the guidance of Mr. English they could locate these boundaries definitely enough to ascertain? Of course the exact lines are matters of little importance unless there is a radical change in the character of the land by a slight variance.

- 20 Mr. Redrow: What I meant by that is this: This survey includes the property—as perhaps the court understood when I was trying to show it—that belonged to Wagner, perhaps half of that land belongs to him in the actual survey. Now, as to how wide it is down at the Swedesboro Road and as to the different directions it takes is all a matter that if it was pointed out to witnesses down there by stakes of surveyors, just what the lines were, that they would be better able to testify to than they would today as to the generalities of the thing.

- 30 The Vice Chancellor: I know they would, but wouldn't two or three men living in that vicinity be better able to tell what deduction defendant is entitled to by the loss of this tract—it doesn't matter now who it belongs to—than this court will on any testimony that counsel can produce? In other words, here are two tracts of land that are agreed to be

sold for a gross amount in dollars. On the assumption that the land is worth that amount if the complainant had a good title how much less is it worth when these 14 acres, comprising tract number 2, are eliminated? What percentage of the consideration price has been lost by reason of the elimination of these 14 acres, taking into account, of course, the character of the land eliminated? It may be all worthless land and may not justify a deduction of any considerable amount; it may be full of oil wells, 10
in that case there would be great deduction.

Mr. Watkins: I think your Honor has the right idea of it, because these 14 acres, even admitting what they say,—there is no distinguishable difference between them and the acreage adjoining.

The Vice Chancellor: That would be a matter I would have to determine from the testimony of the witnesses, and if you would appoint men to in effect 20
be arbitrators, or a man to determine that, that would be up to the man or men appointed. I can say this: If I go ahead with this case this morning and hear your testimony on both sides as to the quality of these 14 acres and how much of a reduction in the purchase price ought to be made by reason of their not being now conveyed, that when the witnesses get through I will be literally in the air, I won't know, it will be a guess, because, from what Mr. Redrow says, it is obvious that some of the 30
witnesses will be largely guessing now because they do not know very accurately where the land is that they are called upon to value, and I do not see how a witness can tell very much about the value of that land if he does not know pretty nearly where it is. Now, I am making these suggestions because I think

they will work out results better than results you can get here today.

Mr. Watkins: How would you think the other matter, the matter of the use of the farm, ought to be adjusted?

The Vice Chancellor: That will have to be taken into account, too, I suppose.

10

Mr. Watkins: And the matter of timber cut?

The Vice Chancellor: That is really a matter, I take it, of figures. If the arbitrators, or whatever they may be called, find that the possession of this farm has been worth less than the charges that would have accrued under the agreement they will so determine. In other words, the benefits which the defendant has had has been possession. He will
20 be charged with that, whatever it is found to be worth. The losses which the complainant has sustained are payments that should have fallen to the defendant. Now, they can balance them; it is a mere matter of bookkeeping.

Mr. Redrow: Was it your thought, Vice Chancellor, that the whole matter of the adjustments should be referred to some one else than your Honor?

30 The Vice Chancellor: I think some one else will do better with it. I am willing to go on and do it but I don't want to guess at it,

Mr. Redrow: I mean as to the income and profits off of the property. The pleadings in this case raise the point that this man owning this property here

(indicating)—and to check up the location, the Porch farm lies in this direction (indicating)—thought in buying the Porch farm and these 14 acres, which he supposed at that time was there, he could get an outlet on both the main roads.

The Vice Chancellor: Well, that does not appear in the agreement. I think you will have to take the agreement as it is. As it is now you don't get it any way.

10

Mr. Redrow: No, we have had to buy it outside. As a matter of fact, that connecting link has been bought by defendant, but there is another matter that it seems to me should be considered, and that is that at the time this man bought the farm off of the complainant it was in the knowledge of all the parties—while it does not appear in the agreement—as to the purpose for which he was buying this property, which was for the purpose of cutting it up into small tracts and disposing of it. Now, he has just been at sea for the last year and a half and been unable to do anything at all on that line with it, he has just had to keep the thing intact, he has not been able to dispose of it, sell it; he has been put to the expense of having a man on the property to maintain insurance rates.

20

The Vice Chancellor: Don't you think the parties to whom you refer it in the manner I have suggested,—call them arbitrators or referees or whatever you choose,—can handle any question of that kind quite as well as I can? I don't want to do any guesswork in determining how much credit ought to be allowed to this defendant because he does not get these 14 acres. I am willing to guess, if counsel want me to

30

do so, but I do not believe it is worth the trouble, I do not believe my guess will be worth the time it will take me to enable me to guess.

Mr. Marshall: It is your Honor's idea from now on to submit the entire controversy to arbitrators?

10 The Vice Chancellor: By stipulation, along the lines I have suggested. It is only a suggestion; I do not require it at all; but I think I see better results from that course.

Mr. Marshall: The statement made by Mr. Redrow is repudiated by us, some of them, and they would probably have to be threshed out before the arbitrators.

20 The Vice Chancellor: The parties to whom reference is made could determine that. They could hear what you have to say on that subject, or what your witnesses have to say, and pass upon it. My notion would be to have an order made staying the suit right where it is, let it stand open, if you choose, I don't know that there will be any particular benefit in letting it stand open but you may do it, if you think well of it, and you prepare an arbitrator's agreement agreeing upon one or more people, as you choose, to determine these very questions which I have already stated; I will define them for the purpose of the agreement or you can between you
30 define them; they are very simple; the questions are: What deduction should be made on the purchase price by reason of the loss of value received by the defendant by reason of the inability of complainant to make title to the 14 acre tract? That is the primary question. These other question of

adjustment of accounts are mere matters of mathematics. If there is any claim for damages by reason of the inability of the defendant to cut up the farm in lots, or delay in that, that could be submitted to them too, that would be a matter for the arbitrators to dispose of.

Mr. Watkins: We have to get this matter to a conclusion, however; because this arbitration business has been tried, as I understand it, repeatedly 10 between the parties, three times, I think. Now, if this is the conclusion that we come to, that it should be submitted to three competent arbitrators, then your Honor should appoint those arbitrators, and you should fix a time within which their report should be back in this court.

The Vice Chancellor: I am willing to do that. Of course, this matter of referring it must necessarily be based upon consent of counsel on either side, be- 20 cause I wouldn't do it without counsel were willing.

Mr. Redrow: I realize if the Court appoints them, I suppose, that the different counsel would suggest the names of them, but it just occurred to me that perhaps it would be advisable if, say, one person, a master, say, were appointed.

The Vice Chancellor: Well, how far is this below Woodbury? 30

Mr. Redrow: About sixteen miles.

The Vice Chancellor: Well now, supposing I referred it to a Woodbury master who would be agreeable to both parties, such a man, say, as

Judge Starr, or Judge Swackhammer, both of them men of very sound judgment?

Mr. Redrow: Judge Starr will be perfectly satisfactory to me.

The Vice Chancellor: Would they be willing to go down and look at this property?

10 Mr. Redrow: I think they would, both of them would.

Mr. Watkins: I think there are men sitting right in this court-room this morning that know more about the value of that land than anybody else.

20 The Vice Chancellor: I expect that is so. The only advantage of a man such as Judge Starr, or Judge Swackhammer, or others that could be named, who are counsellors, would be the fact that they would perhaps grasp a little more clearly the equitable lines of allowance than some person that we might pick out that knew the land better.

Mr. Watkins: Hasn't Judge Swackhammer represented you at times, Mr. Ely?

Mr. Ely: Yes, sir.

30 The Vice Chancellor: We don't want anybody who has represented any of the parties.

Mr. Watkins: As far as Judge Starr is concerned we will be entirely satisfied.

Mr. Redrow: I don't know a man who would suit me better than Judge Starr.

The Vice Chancellor: Will counsel consent to an order of reference to Judge Starr to determine what equitable allowances shall be made by reason of the inability of complainant to convey this land?

Mr. Marshall: Do I understand, if your Honor please, that in the submission of this matter to Judge Starr he would, to all intents and purposes, sit and hear the case exactly the same as your Honor would?

10

The Vice Chancellor: Excepting he would go down there and see the land, and I would suggest that he be allowed to make such inquiries as he wants, but if you choose you can confine him to formal testimony of witnesses. I think if the reference is made to Judge Starr I should suggest that it be made to him in a general reference to ascertain what damage, if any, the defendant has sustained by reason of the inability of complainant to make title to the 14 acre tract. Judge Starr sitting as a master will be fully 20 able to pass upon the elements of damage, what are remote and what are proximate, and will make his report in such manner that it can be excepted to if counsel thinks he has made any error in the basis of his allowance. It is practically a matter of accounting as it stands now and it ought to go to a master; my only notion of giving it to arbitrators was that may be you could utilize their information about the land. Let me dictate a stipulation which I propose, subject to your approval. If there is any 30 part of it that you do not approve of it may be modified or withdrawn.

(Stipulation dictated and previously transcribed)

STIPULATION.

(Filed Dec. 19, 1917.)

IN CHANCERY OF NEW JERSEY.

10 It having been ascertained herein, to the satisfaction of the Court and of counsel for the respective parties, that the title of the complainant, if any, to the tract described in the bill as tract number two, comprising fourteen and forty-three one hundredths acres, is not a marketable title, and that complainant is unable to confer upon defendant a marketable title to the said tract; and the respective parties herein mutually desiring that the tract described in the bill as tract number one, containing ninety-one and thirty-one one hundredths acres, be conveyed to defendant, pursuant to the stipulations contained in
20 the agreement; and it being accordingly ascertained that it is necessary that an account be taken to ascertain the benefits which will be received by defendant by a conveyance of tract number one at this time, less than such benefits as would have been received by him had both tracts been so conveyed at the price named in the contract:

30 It Is Stipulated that the matter be referred to the Hon. Lewis Starr, as a Master of this Court, to take an account between the parties by reason of the situation above recited, and, in taking said account, to ascertain what deduction, if any, should be made in the consideration price by reason of the inability of complainant to convey and make a marketable title to defendant of said tract number two; and in making said deduction said master is to adjust between the parties all matters contained in said agreement

touching the obligations of either party as such obligations would have existed had said agreement been properly performed, to the end that it may be ascertained what amount at this time shall be paid by defendant to complainant for said tract number one, so that justice and equity is done to both parties in the matter.

It Is Further Stipulated that said Master shall take such testimony as either of the parties may desire, and shall also, if deemed desirable, view the premises in order that he may better judge touching the question of equitable allowances; and that said Master report to this Court on or before February first, nineteen hundred and eighteen. 10

DAVID O. WATKINS and
GEORGE B. MARSHALL,
Sol'rs. for Complainant.
OSCAR B. REDROW,
Sol'r. deft. Francis C. Ely.

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30

ORDER OF REFERENCE TO MASTER.

A stipulation having been made in open Court by the solicitors of the respective parties herein and thereafter reduced to writing and duly executed, a copy of which stipulation is hereto annexed.

10 It Is, on this eighteenth day of December, A. D. 1917, Ordered that it be referred to the Hon. Lewis Starr, one of the Masters of this Court, to state an account between the respective parties in accordance with the stipulation hereto annexed.

E. R. WALKER,
C.

Respectfully advised:

E. B. LEAMING,
V. C.

20

DEPOSITIONS.**IN CHANCERY OF NEW JERSEY.**

30 Depositions in the above stated matter taken by agreement between counsel this 25th day of January, 1918, at two o'clock, P. M., pursuant to an order of Vice Chancellor Leaming, dated December 18, 1917, before Lewis Starr, Esq., Master in Chancery, at his office, Fourth and Market Streets, Camden, New Jersey, in the presence of David O. Watkins and George B. Marshall, Esqs., representing the plaintiff, and Oscar B. Redrow, Esq., representing the defendants.

It is agreed that the depositions be taken stenographically and the signatures of witnesses waived.

The Master: I understand it is conceded that marketable title failed as to the fourteen acre tract referred to in the bill of complaint?

Mr. Marshall: Yes.

The Master: And the question to be determined by the Master is what deduction, if any, should be made from the purchase price mentioned in the agreement by reason of the inability of the complainant to convey a marketable title to the fourteen acre tract? 10

Mr. Marshall: Yes. I understood from Vice Chancellor Leaming, too, the whole matter was submitted to you. For instance, the plaintiff has paid taxes and interest on a mortgage; in other words, the entire situation is put up to you to determine what disposition should be made of the matter under the agreement. 20

The Master: Is that right?

Mr. Redrow: Yes, according to whatever legal situation may arise.

The Master: Then the question is the deduction from the contract price and the stating of an account between the parties?

30

Mr. Marshall: The stating of an account.

The Master: I understand; very well, produce your proofs.

REUBEN B. HALL, SWORN.

By Mr. Marshall:

Q. Mr. Hall, you are the complainant, are you, in this case?

A. Yes.

10 Q. And you are the party who entered into an agreement with Francis C. Ely for the sale of certain lands in Franklin Township mentioned in that agreement? (Showing witness paper.)

A. Yes.

Mr. Marshall: Said agreement dated April 25, 1916, is offered in evidence and marked Exhibit C1, 12-18-1917.

20 Q. Did you, Mr. Hall, yourself, or any agent for you make arrangements with Mr. Ely for the sale of this land?

Mr. Redrow: I object; the agreement speaks for itself; any agreement made before that time is not part of the ——

The Master: What is the purpose, Mr. Marshall?

30 Mr. Marshall: The purpose of that is, of course, to show some sort of understanding that had been had between the complainant and Mr. Ely with relation to some of the tracts embraced in this agreement.

Mr. Redrow: It seems to me it is absolutely immaterial after they had entered into the agreement.

The Master: Well, is your purpose to offer testimony to show a situation contrary to the conditions of this agreement?

Mr. Marshall: The understanding that was existing between the complainant and the defendant with relation particularly to the fourteen acre tract. We expect to show there was an arrangement between the complainant and the defendant whereby the defendant knew of this defect in title at the time he took the property and the fourteen acres were not supposed to be compensated for. We will further submit proofs showing that the defendant at the time of the execution of that agreement held a deed for the major part of it. 10

Mr. Redrow: They are bound by this agreement as to just what took place at that time and they cannot go back of it and say that there was some other arrangement made prior to that time. 20

The Master: I will do this, I will permit the testimony to come in subject to Mr. Redrow's objection, and determine later as to whether it will have any effect upon the determination of the matters which were referred to me under this order of reference. In view of the fact that the testimony anyhow will have to go to the Vice Chancellor or Chancellor in case exceptions are filed to the Master's report, the whole case ought to be before him; but I am frank to admit that it seems to me that any testimony with reference to any prior negotiations which would show a situation inconsistent with the contract as finally signed between the parties is not admissible. It certainly would not be admissible to vary or alter the terms of the contract; whether it is admissible upon 30

the question of accounting or the deduction from the contract price I am not prepared to say, but I will permit the testimony to come in subject to Mr. Redrow's objection.

(Question repeated.)

Mr. Redrow: I object to the question whether any agent for him made it; that can only be answered by
10 the man who made it not by him.

The Master: That may be answered yes or no; just state whether you had negotiations personally, or were the negotiations with your agent?

The Witness: With the agent.

Q. Entirely?

A. Well, I talked with Mr. Ely before the agree-
20 ment was signed.

Q. Before the agreement was signed?

A. Yes.

Q. In other words, you made some negotiations yourself in addition with the negotiations made by your agent?

A. Yes.

Q. Now, did you during the course of your conversation with Mr. Ely refer to the tract of fourteen acres embodied in this agreement?

30 A. Yes.

Q. Now, what did you tell him about that, about the marketable title?

The Master: That testimony is taken subject to Mr. Redrow's objection stated before.

Mr. Redrow: When was this, George—let's find out. When did you have the conversation with him, on or about what time?

A. Prior to the signing of the agreement.

Q. Some time prior to April 25, 1916?

A. Yes.

Q. Can you fix the time?

A. Well, I don't think it was long prior to the signing, many days before the signing of the agree- 10
ment. I called at Mr. Ely's house in Philadelphia.

Q. That is, before the agreement was signed?

A. Before the agreement was signed.

Q. And was the title to this fourteen acres or the marketability of it discussed between you and Mr. Ely at that time?

A. Yes.

Q. Now, what was said about the marketability of that title?

A. The object of my visit ——— 20

Mr. Redrow: Never mind what the object was.

The Master: No, the question is what was said.

Q. What was said with relation to the fourteen acres?

A. Mr. Ely was very insistent upon obtaining or being assured by me that we would give him a deed for the fourteen acres, that our agreement of sale 30
would include those fourteen acres. At the time we discussed ———

Mr. Redrow: When you say "we," Mr. Hall, who do you mean?

The Witness: Mr. Ely and myself,—this fourteen acres as regards the title that we had to them. At the Sheriff's sale at a prior date —

Mr. Redrow: Never mind; I object.

Mr. Marshall: Well, this is a part of the conversation, is it?

10 The Master: Only state what the conversation was.

Q. Just tell what took place, what was said at that time with relation to the fourteen acres?

The Master: Don't detail anything foreign to the conversation.

A. He told me that the Wilsons claimed ownership of the fourteen acres in addition to myself, that
20 there was a dispute as to the possession of them, as to the good title to them.

Q. Did he mention which Wilson he meant?

A. Either Tom Wilson or Robert Wilson.

Q. Now, what else was said, if anything?

A. He said that, "You will give me a good deed for those fourteen acres," and I told him I would.

Q. For the fourteen acres?

A. For the fourteen acres; of course, that was
30 included in the entire place.

Q. You said you would give him a good deed for it; what did you mean by giving him a good deed for it?

(Objected to.)

The Master: The objection is sustained.

Q. You understood you had not a marketable title, though, didn't you?

(Objected to.)

The Master: I will sustain that objection, too; you may detail what was said between you and Mr. Ely.

Q. What did Mr. Ely say, if anything, about himself holding title to part of that? 10

A. I don't recall.

Q. You don't recall his saying anything?

A. No.

Q. Well, did you at any time later give Mr. Ely a deed for the fourteen acres or offer to give him a deed for the fourteen acres?

Mr. Redrow: George, does this refer to before the signing of the agreement or afterwards? 20

Mr. Marshall: Afterward.

Mr. Redrow: After the signing of the agreement?

Mr. Marshall: Yes.

Q. Now, did you have any further conversation with Mr. Ely about the fourteen acres or giving him title to it or your ability to give him title to it?

A. No, that was the substance of our conversation 30 as I have already given it.

Q. Do you recall the circumstances at the time the property was sold by Robert Mead, Sheriff, to yourself?

A. Yes.

Mr. Redrow: I object to any further examination on that line of what took place.

The Master: The question is answered now.

10 Mr. Marshall: This of course is all in line with my former proposition of showing the negotiations had between this man and the defendant pertaining to this fourteen acres which came to the complainant through the Sheriff's deed about a month before the agreement.

The Master: Ask the question and I will rule on it. That question was answered and it is not harmful one way or another.

20 Q. Now, what negotiations did you have with Mr. Ely, if any, in connection with Mr. Rogers, Alexander L. Rogers, at or about the time the Sheriff's deed was given to you from Robert Mead on March 3, 1916?

A. With Mr. Ely?

Q. Yes.

A. Oh, none; I had no—I don't recall having any negotiations with Mr. Ely at that time.

Q. Well, were there any negotiations made at that time with relation to giving to anybody other than Mr. Ely a deed of any kind for those fourteen acres?

30 Mr. Redrow: I object to that.

The Master: I don't understand that; the witness said he never had any negotiations. Now, was this after the contract was executed?

Mr. Marshall: No, this was before the contract was executed, at the time of the Sheriff's deed.

The Master: What is the question?

(Question repeated.)

The Master: Do you understand that that question refers to negotiations with Mr. Ely?

The Witness: No, I understood the question concerned any relation I might have had with another person.

10

The Master: If that is the purpose of the question I will sustain the objection.

Q. At the time you entered into this agreement, Mr. Hall, did you know the location of the fourteen acres?

A. No.

Q. You did not?

A. No.

20

Q. When did you learn the location of the fourteen acres?

A. After—I did not learn the location of the fourteen acres until—it must have been in the fall of 1916, at the time that Sheppard English surveyed it.

Q. Did you go upon the tract of land with the surveyor at the time the survey was made?

A. Yes, the same day the survey was made.

Q. And have you been all over the tract of land that purports to be the fourteen acres in question?

A. Yes.

Q. Can you tell us what character of ground it is?

A. There is possibly three acres of it cleared ground, sandy soil.

Q. Yes.

A. And the balance of it is low land, a stream of water, and is covered with underbrush.

Q. I show the witness a map and ask him whether or not that appears to you to be the tract of land over which you walked with the surveyor, Mr. English?

A. Yes.

Q. Now, will you show us what part of that tract of land as you recall it contains the so-called cleared
10 ground?

A. This section, starting in possibly here and running something like this, as I recall it. (Indicating on plan.)

Q. Are you going north and south on that map now?

A. Yes, this is a road, that is the Monroeville road, and the cleared ground started in possibly back from the road, back in here, and it ran in something like this, just the edge of this line, this boundary line.
20

Mr. Marshall: The witness indicates that the cleared ground is a strip up there like that (indicating on plan).

Q. Now, what is this part of the land up around here, the balance?

A. It is all lowland.

Q. All low land?

A. Principally.
30

Q. This is the water course of Still Run branch?

A. That is the stream.

Q. Does any part of this tract of land contain any large wood land?

A. No.

Q. Any large wood?

A. No.

By the Master :

Q. Any improvements on it?

A. No.

By Mr. Marshall:

Q. You have been paying taxes on that, haven't you?

A. Yes.

10

Q. In other words, you were paying taxes on something you didn't know where it was?

A. It seems to be.

Q. Who went over that ground with you beside Mr. English?

A. Mr. Leddon.

Q. Since the execution of this agreement you paid the interest on the three thousand dollar mortgage which covered this fourteen acres together with the main farm, didn't you?

20

A. Yes.

Q. Held by the Atkinson Estate?

A. Yes.

Q. I show the witness an Exhibit marked C5 and ask him what that is?

A. That covers the interest on the mortgage held by the Woodbury Trust Company and is a receipt showing the payment of this interest up to April 25, 1916, which is the date of the agreement.

Q. I show you Exhibits marked 3 and 4 and ask you whether they are receipts for interest which you have paid on that mortgage?

30

A. Receipts showing that the interest on the Woodbury Trust Company mortgage was paid by me up to April 25, 1917.

Q. Amounting in all to \$180?

A. Yes, \$180.

Q. I show you a tax receipt for 1916; did you pay those taxes?

A. Yes.

Q. You haven't paid the 1917 taxes, have you?

A. No.

Cross-examination.

By Mr. Redrow:

10

Q. Mr. Hall, this, as you say, is the road from Reuben's mill dam across to Franklinville?

A. That is the Monroeville road, yes.

Q. The road takes a bend when it gets up here and goes into Franklinville, doesn't it? In other words, the road here leads up this way, the Swedesboro road comes here and this road goes in it?

A. Goes in to the Franklinville station.

20 Q. Do you mean to say this land over here is covered with wood land south of the road,—isn't that all cleared ground?

A. No.

Q. You are sure of that?

A. Not all of it.

Q. How much of it is cleared?

A. It is only a small plot.

Q. How much do you call a small plot?

A. I don't know, possibly —

30 Q. Do you know how many acres of ground in there?

A. I understand there are possibly two or three acres of ground in that side.

Q. This whole thing represents fourteen and forty-three one-hundredths acres, doesn't it?

A. Yes.

Q. And you say there are only two or three acres of ground on this side?

A. I would judge that.

Q. How much of it is cleared ground in your estimation?

A. There is only a very small portion of it is cleared ground.

Q. How much, what percentage—half of it?

A. Oh, no, not a quarter of it.

Q. You say the line runs along here where you drew the pencil marks from the road coming in here up to here, is that the idea?

10

A. Yes.

Q. And that this is all low land back here, is all low land and brush; is that your theory?

A. Well, a good part of it is, yes.

Q. Now, as a matter of fact, isn't all the low land back here along Still Run Branch—isn't that so?

A. No.

Q. Well, the low land don't extend up on this property, does it?

A. It extends up on the fourteen acres, yes.

20

Q. Only where it cuts through, isn't that right?

A. No, the low land is all in through here. (Indicating on plan.)

Q. This is all low land?

A. And up here; you can't walk across that northern boundary unless you have boots.

Q. In other words, all of this in here is low land regardless of where the ditch is located, is that true?

A. A good part of it is, yes.

Q. Now, you say you paid taxes on that; have you got that tax receipt for the taxes you paid there?

30

A. That is right there.

Q. Does the tax receipt show you paid taxes on this property?

A. It shows I paid taxes on 106 acres of ground.

Q. But it doesn't show you paid taxes on this particular piece of ground, does it?

A. It doesn't show I paid taxes on the farm there; it doesn't describe the property; the tax receipt does not describe any particular property.

Q. And only shows you paid taxes on 106 acres?

A. On 106 acres.

Q. Now, then, Mr. Hall, after this agreement of sale was made you had some conversation with Mr. Ely and went down on the ground, didn't you, back of your farm, and looked at the piece of ground which you thought at that time belonged to you?

10 A. No, not that I thought belonged to me. Mr. Ely said that he thought that the fourteen acres were the piece of ground in question.

Q. He told you that he thought the fourteen acres was immediately back of the 91 acres, is that true?

A. Well, on one side, not immediately back; on the westerly side of the larger tract, of the 91 acres, south, I think it was.

Q. On the southwesterly corner then?

20 A. Yes, possibly.

Q. Now, did you know where the fourteen acres were at that time?

A. No.

Q. Why did you tell Mr. Ely then that you would give him a good deed for it if you didn't know anything about where they were?

A. Well, I told him I would give him a good deed for the whole place.

30 Q. And that is what you agreed to give him, wasn't it?

A. The agreement of sale ——

The Master: Let me ask, it is conceded—Well, you have already said that the title failed to the fourteen acres. Who has the title to that now?

Mr. Marshall: I imagine Mr. Ely owns the major part of that title; he got it several years ago.

Mr. Redrow: I suppose eight or ten different people; there is five or six that I know of.

Mr. Marshall: But Mr. Ely has the major part of it.

The Master: That answers the question; I 10 thought Mr. Hall, maybe or Mr. Ely had gathered in the title.

Q. Who else was present, Mr. Hall, when Mr. English made the survey?

A. When we went around?

Q. Yes.

A. Mr. Leddon.

Q. Is that all? Any one else?

A. Well, except English was there; he went with 20 us.

Q. Any one else?

A. I don't think so.

Q. Did you notify Mr. Ely at that time that he was going to make a survey of it and you would show him where the property was?

A. Well, Mr. Ely knew that we intended to survey it, because it was at his suggestion, I think, that it was done.

Q. I say, did you tell Mr. Ely that you were going 30 down there to make a survey?

A. I didn't tell him, no.

By Mr. Marshall:

Q. I want to ask you one more question: Was Mr. Ely ever present at this tract of land which you now

know to be the fourteen acres with you—has he ever been down to this tract of land with you?

A. No, he has never been down with me.

Q. Have you ever been down there at all with him on the Porch farm?

A. Oh, yes.

Q. Is this tract of land which is indicated on this map the piece of ground which he supposed he was getting?

10 A. Say that again.

Q. Did Mr. Ely indicate to you that the strip of land shown on this map was the piece of land which he supposed he was to get under the agreement?

A. I don't think he told me it was.

Q. My question is whether or not he indicated to you while down there whether the strip of land he was to get under the agreement was this piece of land or whether it was the strip up here or down here or where it was, or can't you answer the question?

20

A. No, I can't answer that.

By Mr. Redrow:

Q. Mr. Hall, as a matter of fact, you say you didn't know where this land was at all, that is true, isn't it?

A. Yes.

Q. Then you had some conversation with Ely and he told you that his best information was it was just to the west or southwest of the larger tract of ninety-one acres—that is what he told you, wasn't it, where he thought the land was?

30

A. Well, I don't know; he said it laid up in there somewhere.

Q. Then you got Mr. English, a surveyor, to take

your deed or take a description and go down there and survey the piece of ground upon the description contained in this sheriff's deed, and this piece of ground of which Mr. English made the survey is the piece of ground which English surveyed that day, is that right?

A. Oh, yes.

10

LOUIS R. LEDDON, SWORN.

By Mr. Marshall:

Q. Mr. Leddon, what is your business?

A. At the present time?

Q. At the present time.

A. Real estate and insurance, general insurance.

Q. Did you handle for Mr. Hall the matter of the sale of the farm in Franklin township known as the Dr. Porch farm? 20

A. I did.

Q. With whom did you negotiate for the sale of that property?

A. Who for?

Q. No, with whom?

A. Mr. Ely.

Q. Did you ever have any conversations as the agent of Mr. Hall with Mr. Ely with relation to the marketability of the fourteen acres described as tract No. 2 in the agreement? 30

(Objected to.)

Q. Just say yes or no.

A. Ask me again, please?

(Question repeated.)

A. I talked with Mr. Ely about that.

Mr. Redrow: Just a minute; yes or no.

The Master: Yes or no, Mr. Leddon. The question is, did you have any negotiations with him?

10 The Witness: Yes.

Q. Did you have these conversations with him prior to the signing of this agreement which was dated April 25, 1916?

A. I did.

Q. Now, will you tell us what conversations you had with him with relation to the marketability of the fourteen acres?

20 Mr. Redrow: I object to that, if the Court please, not only on the ground I mentioned before, but also on the ground that the complainant has already testified in this case that he told the defendant before the deed was turned over, "I told him I would give him good title for the fourteen acres." Now, whatever conversation he had about that with the agent is certainly incompetent.

The Master: I will let the testimony in subject to
30 your objection. I don't know that it will have any bearing but in view of the fact that the entire record will have to go to the Vice Chancellor for confirmation of the report, he ought to have the testimony.

A. Ask that question again, please.

(Question repeated.)

A. I talked with Mr. Ely.

Mr. Redrow: When?

The Witness: Before the agreement of sale was signed, between the time that Mr. Hall received the sheriff's deed and the agreement of sale being signed, I spoke to Mr. Ely and told him there was some defect in the title to the fourteen acres; we would sell him the ninety-two acres for \$4500.00 and would give him the fourteen acres; if he ever had any trouble with it it didn't cost him anything; if he didn't have any trouble with it it was his. I had that conversation with him more than once. 10

Q. Did you at the time you had the conversations with him or at the time of the execution of the agreement know the location of the fourteen acres described in the agreement?

A. I did not; I did not consider it of any value and never paid any attention to it. 20

Q. On how many different occasions did you converse with Mr. Ely with relation to either the location or the marketability of the fourteen acres?

A. I never knew where it was.

Q. No, but I say, on how many different occasions did you have ——

A. More than once.

Q. Well, twice, do you mean?

A. I think so. 30

Mr. Redrow: The question is answered substantially.

Mr. Marshall: I don't think so; he hasn't answered it.

The Witness: I was up at Mr. Ely's house looking at some maps and we talked about it I think more than twice.

Q. What was the conversation you had with him at his home when you were looking over the maps?

A. He wanted me or wanted to show me where it might be. He had plotted out two or three—made two or three maps. "Now," he said, "I can't tell
10 where that particular piece of fourteen acres is, because it might be right in here or it might lay here or might lay around here; I can't tell," and up to the time that the agreement of sale was signed I had no idea where it was and he claimed that he didn't.

Q. Did you ever go down to the tract of land known as the Porch farm with Mr. Ely?

A. Mr. Hall and I met Mr. Ely down there.

Q. Do you remember about what time that was?

A. I do not.

20 Q. Well, was that before or after the execution of the agreement?

A. I think that was after the execution of the agreement.

Q. What was your purpose in going down there with him?

A. He wanted to show us where he thought the fourteen acres was.

Q. And where did he show you he thought it was with relation to this map which was prepared by
30 Mr. English?

A. The fourteen acres that he thought, or the position where he thought it was or told us he thought it was, was the cedar timber southwest of the main farm, of ninety-two acres.

Q. In which direction did that run? Did it come out to the Swedesboro road?

A. It was nowhere near that.

Q. Or did it come out to the Monroeville road?

A. It had no connection with that piece at all.

Q. I know, but with relation to this map, on which side did it lay, the piece which he indicated as being the fourteen acres?

A. That was evidently away up in here (indicating on map).

Q. Running which way?

A. Running—well, as near as I can tell, north and south. It had no connection with this. 10

Q. Were you down on the Porch farm on the day this survey was made by Mr. English?

A. We went down, Mr. English made the survey; I can't tell you exactly what day Mr. English made that survey, but Mr. English met Mr. Hall there a Saturday afternoon; he might have worked there that morning, I don't know.

Q. Yes, I know, but my question was, were you down in Franklin Township with Mr. English at the time he made this survey? 20

A. He walked around the survey with us and showed us where it was.

Q. Showed where the line was?

A. Yes.

Q. And did you go all over the entire tract of land?

A. As near as we could; there was some water there and we could not get over some of it.

Q. Now, what character of ground was it, Mr. Leddon? 30

A. There was a stream over one end of it; the majority of it—there was about three acres that is white sand, that is cleared.

Q. Is that the strip along the easterly side of the tract?

A. Yes, along that side, and the balance of it is small bush land, a little cedar on it.

Q. Now, this part lying in here, is this high land or low land?

A. Lying here? That is low land there.

Q. How far does that stretch of low land run from the top of the map down, how far?

A. Well, the time that we went over it, it was so wet that we had trouble in getting through a great
10 deal of it.

Q. What part?

A. All through here (indicating on map).

Q. You mean along the westerly boundary of the tract?

A. Yes, right in about what would appear to be about in the center of that tract.

Q. You had difficulty in getting around there because —

A. I had my gum boots on, yes.

20 Q. A stream as shown on the map runs out on the westerly edge of the tract?

A. Yes.

Q. But does it continue or not to be marsh throughout over into the land in question?

A. Yes, it continues to be marsh here, this side of the stream, a great deal of it.

Q. Now, have you bought and sold land in Franklin Township?

A. Very little in Franklin Township.

30 Q. Where have you found most of your sales?

A. In Clayton.

Q. In the Borough of Clayton?

A. Yes.

Q. Well, how many farms or pieces of land would you say you had sold in Franklin Township, if any?

A. Probably not over three or four, I don't think.

Q. Not over three or four in Franklin Township?

A. Yes.

Q. Have you bought and sold land, farm land of similar character to the Dr. Porch farm?

A. I never bought any farms myself.

Q. Well, I don't mean bought yourself; I mean been the agent for the sale?

A. I have sold farms similar to the ninety-two acre portion of it, things like that.

Q. Are you acquainted with the value of land of 10 this character as embraced in this fourteen acres?

A. Well, I can't for myself—I have never sold any land like that and I can't see any value to it, and when we talk ——

Mr. Redrow: I think the question is answered.

Mr. Marshall: Well, I want to hear what the witness has to say, unless the Court objects, of course.

20

The Master: What is the question?

(Question and answer repeated.)

The Master: The question is, are you acquainted with the value of lands similar to that?

A. I am.

Q. What portion of this fourteen acres, from your examination of it and your observation of it, is 30 cleared ground?

A. About three acres.

Q. What is the character of that part of the ground which is cleared?

A. Sand.

Q. What in your opinion would be the value of those fourteen acres?

A. I can't imagine anybody could buy that piece of land and use it for any purpose.

(Objected to.)

Q. Just answer the question; you can answer it shorter than that.

The Master: The question is, In your opinion
10 what is the value?

A. That land has sold for very ——

(Objected to.)

The Witness: All right; I will say twelve dollars an acre.

Q. Do you know in connection with this transaction of any outstanding claims to this title to the
20 fourteen acres?

Mr. Redrow: I object; that matter has all been disposed of.

The Master: What is the purpose, Mr. Marshall?

Mr. Marshall: The purpose of that is to follow
30 it up and show that there was negotiations between Mr. Leddon and Mr. Wilson who owned or claimed to own rather this fourteen acres, whereby a quit-claim deed for that tract of ground was to be given by the plaintiff in this case to Mr. Wilson and from Mr. Wilson to Mr. Ely.

Mr. Redrow: If your Honor please, I think that is entirely irrelevant as far as this defendant is concerned.

The Master: Was it ever done?

Mr. Marshall: It was attempted to be done.

The Master: Was it ever done?

10

Mr. Marshall: It never was done.

The Master: What difference does it make? Everybody concedes there is a defect in the title, and if the transaction was not consummated by which the title was perfected, I do not see that it has any relevancy.

Cross-Examination.

20

By Mr. Redrow:

Q. That sand you spoke of, Mr. Leddon, who does that belong to, do you know?

A. There is about three acres of it included in this fourteen acres.

Q. Does that belong to a man by the name of Wagner?

A. Well, Wagner has some adjoining that.

Q. Well, as a matter of fact that belongs to Wagner, doesn't it? 30

A. Which is this, this fourteen acres?

Q. Yes.

A. I don't know.

Q. You don't know who it belongs to?

A. No.

Q. You don't know whether that three acres that you spoke of is moulding sand or not do you?

A. It is never used for that purpose, never been used for that purpose.

Q. You don't know whether it is moulding sand or not, do you?

A. No.

Q. You don't know whether sand is ever used for commercial purposes or not?

10 A. That sand never has been.

Q. Do you know whether it is suitable for use for commercial purposes?

A. I do not.

Q. When you say three acres of ground, do you mean the ground immediately east of the line which Mr. Marshall showed you on the map as being up in here, the three acres you speak of?

20 A. I took that from the stakes that Mr. Sheppard English placed there; that is approximately three acres.

Q. And it is north of the road leading to Franklinville?

A. It is right in here (indicating on plan).

Q. Well, that is north of the road, isn't it, according to the plan?

A. This is north, north of the road.

Q. Leading from Franklinville across to Monroe-

ville?

A. Yes.

30 Q. Now, you did not take into consideration any land lying south of the road, did you? What value would you place on that?

A. Five dollars an acre.

Q. Five dollars an acre?

A. Yes.

Q. Do you know how many acres there were there?

A. I went over that as much as we could with Mr. English, and I should think there is three to three and a half acres there.

Q. Now, then, how far distant is the Franklinville station from this line here, the easterly line of this land?

A. From the bridge?

Q. From the bridge, we will say; the bridge is down here, but from the easterly line, how far would you say the Franklinville station is away? 10

A. Half a mile.

Q. And it is built up right out to it, isn't it, within a hundred yards or so of the mill dam?

A. About that.

Q. It is built up clear out to within three hundred feet of this mill dam here? You mean by the dam where the road crosses the bridge?

A. Yes.

Q. Did you follow down the lines of this stream, Mr. Leddon, of the Still Run Branch? 20

A. You mean other than what was on this fourteen acres?

Q. Yes.

A. No, sir.

Q. As a matter of fact, the lines of the stream itself run across one end, don't they, and then they cut across a portion of it, down at the southerly end, don't they?

A. The same as the map; that gives a very good description of it. 30

Q. So as a matter of fact the stream, the actual stream, only cuts across down here right near the road, doesn't it, the actual stream?

A. Yes.

The Master: Evidently that map shows the stream at the northerly boundary of the entire tract, doesn't it?

Mr. Redrow: Yes, the northerly boundary.

Q. Now, then, Mr. Leddon, I understand you had a conversation with Mr. Ely in which you told him that you could not tell him where the fourteen acres
10 was, and he claimed he did not know where it was. Didn't Mr. Ely on March 5, 1916, write you a letter in which he said that he would not be interested in the Dr. Porch farm unless he could get the fourteen acres he was speaking about?

A. Yes, sir.

Q. And as a result of that letter you drew up and had executed by Mr. Hall and his wife and by Mr. Ely this agreement whereby they intended to convey him the property in question including the
20 fourteen acres, didn't you,— didn't you draw up this agreement?

A. I drew up the agreement.

Q. And you had this agreement acknowledged, didn't you?

A. Yes.

Q. You acknowledged the agreement?

A. Yes.

Q. And placed the agreement on record in Woodbury, didn't you?

30 A. Yes.

The Master: Do you claim, Mr. Marshall, that by reason of any conversation which occurred between these parties or their representatives before the contract was actually signed, that Mr. Ely is not entitled to a deduction from the contract price of the value of the fourteen acre tract?

Mr. Marshall: I do, providing it is shown to the Court's satisfaction that he at the time of entering into this agreement knew that these people did not have title, and that he himself did have title there to the whole tract or to the major part of it.

Q. Now, on March 5, also he wrote and told you—or did he write you a letter of this nature: "I would not be interested in the Dr. Porch property unless I would get the fourteen acres we were speaking about, as this would give me an outlet to the other road, the Elmer road from the rear of the property?"

10

A. I don't know, he might have written me that letter. If I saw the letter I could tell.

Mr. Marshall: I think I have the letter.

Q. Is this the letter which you received from him?

A. I think I received that from him.

20

Q. Now, this letter states, "I would not be interested in the Dr. Porch farm unless I would get the fourteen acres we were speaking about, as this would give me an outlet to the other road, the Elmer road from the rear of my property." Is that correct?

A. That is what is in the letter.

Q. Now, then, Mr. Leddon, as a matter of fact, you never had any dealings in property of this nature anywhere, did you, before this one?

30

A. At the time that Mr. Ely purchased this property I was in the Moore Brothers Glass Company's office.

Q. I am referring now to fixing the value of this property, Mr. Leddon.

A. Just a moment—I was in Moore Brothers and

had been there all my life, but I occasionally sold a property.

Q. But you never sold property so situated as this appears to be?

A. I never sold a property situated like that, no.

Q. Either for yourself or any one else?

A. I never had any for myself and I never sold any; I have sold small farms and sold mostly town properties.

10 Q. And you never bought any property of the nature of this property before, or had any dealings in it whatever?

A. Well, I have done a limited amount of business on farms, but not of this nature, because there was never any question in regard to them.

20 WILSON T. JONES, SWORN.

By Mr. Marshall:

Q. Sheriff, you live in Franklinville, as we all know?

A. Yes.

Q. And have you had any experience, Sheriff, in buying and selling property in Franklinville Township?

A. I have sold property, but not bought any.

30 Q. Are you acquainted with the value of property in Franklin Township?

A. Somewhat, yes, sir.

Q. Do you know the location of this fourteen acres that we have been talking about, known as the tract of land along Reuben's mill dam?

A. I know of it by hearing different ones say this is the tract of land, but personally I don't know that it is.

Q. By that you mean you personally don't know the location of the particular tract?

A. I know where they say the location of it is.

Q. Have you seen that tract of land, Sheriff?

A. Yes.

Q. What in your opinion would be the value of that tract of land? 10

A. Well, that is a pretty hard proposition to get at. To a real estate dealer it would be worth more than it would to an individual, because he could develop it into a value. Now, I don't know how much land there is; I would like to look at the map if you have no objection. I know in here, in by the run it seems to be an island there that if it was cleared off it would make a very pretty place for a bungalow, This, of course, is light soil on the outside next to Wagner's, and this piece on the west side of the Swedesboro road is all cleared off, cut off. 20

Q. All of it?

A. Yes.

Q. How far back?

A. Why, it is cleared down to my line.

Q. Now, irrespective of the purpose for which it might be bought by real estate dealers, what would be the value of the ground to an ordinary person?

A. I should say, take the whole thing as it stands, \$20 an acre. 30

Cross-Examination.

By Mr. Redrow:

Q. Mr. Jones, what would the three acres of land there belonging to Mr. Wagner be worth?

A. Well, the land Mr. Wagner purchased of Mr. Wilson, I understood, \$100 an acre.

Mr. Marshall: I ask that that be stricken out.

Mr. Redrow: Wait a minute; it is a portion of this land.

The Master: Well, the answer is hardly in ac-
10 cord with the question; the question was what the land was worth, and the witness answers it was sold for a certain price. Now, if he affirms that to be the value of the land, of course he answers in that way.

The Witness: I should think not.

The Master: The question is, What would the Wagner land be worth?

20 The Witness: Three acres?

Mr. Redrow: Yes.

A. That is a matter a person would have to figure on; the swamp part of it, the upland, too?

Q. No, this is all upland, Wilson, three acres of the upland?

A. That of course is worth more than twenty dol-
30 lars an acre, because there is an outlet to it that comes out into the Swedesboro road, and I guess it is wide enough to put a bungalow or house on it.

Q. As a matter of fact, it does come clear out to the Swedesboro road.

Mr. Marshall: Well, does the witness know that or is that your question?

Mr. Redrow: I am asking him to put a value on certain land.

Mr. Marshall: I know, but your last question—

The Witness: How much front has that got on the Swedesboro road, Mr. Marshall, do you know?

Mr. Marshall: Three chains and ninety-five links, about, whatever that would be. 10

The Master: Four chains would be about two hundred and fifty feet.

The Witness: I should put a value of \$40 an acre.

Q. Now, what value would you place, Mr. Jones, on the property owned by Lucaston on the other side, how much an acre?

A. On the opposite side I should say about twelve and a half to fifteen dollars an acre. Of course, if it was filled in it would be a pretty valuable lot. 20

Q. Do you know what it sold for?

A. No.

Q. Now, Mr. Jones, how far is it from the Franklinville station to this land in question?

A. Between a quarter and a half a mile.

Q. Now, is it or is it not built up most all the way out to where this land is?

A. Yes. 30

Q. Is this land or any part of it suitable for building lots of any kind?

A. This piece on the east side of the road would make an elegant building lot, providing it was filled up. It is low ground; there is no water stands on it.

Q. On the east side of the Swedesboro road, you mean, it is low ground?

A. Yes, on the south side, rather.

Q. Now, as a matter of fact, the east side would be the Wagner ground, wouldn't it?

A. Yes.

Q. And that is not low ground?

A. No.

Q. Have you bought and sold real estate between
10 the station and this land recently?

A. No, sir.

Q. Did you ever buy any there?

A. No, sir, I owned considerable in there, some swamp land that joins up nearly to this piece.

Q. Have you sold any land between the station and this particular property at any time which goes out on the road?

A. No, sir.

Q. Mr. Jones, do you base the value which you
20 have just stated as to the value of this land in any way by referring to what land between the station and this land has been sold for?

A. Land along there from the station to the Swedesboro road has been selling from \$135 to \$175 an acre, I believe, Mr. Wilson's place; I understand that.

Q. And regardless of what it is selling for you say now it would not be worth that much, is that true?

A. I don't think it would at the present time, un-
30 der war conditions; there is no sale for property.

The Master: When was this contract made?

Mr. Marshall: 1916, April 25th.

Q. What would you consider, Mr. Jones, a fair

price for the sale of a lot of land out of this land in question, the best lot in it?

(Objected to; objection over-ruled).

A. Why, of course, the piece of upland would be the best part.

Q. How much would that lot be worth, say half an acre lot?

A. When you take a half an acre you are taking—of course you might as well take the whole thing, because it wouldn't be no frontage for the other fellow; if you sold off half an acre the whole three acres is gone, because there is no value attached to the back part of it whatever. 10

Q. If it appeared, Mr. Jones, that this land in question was a connecting link or ran out to the turnpike road leading from Franklinville to Clayton, would there be any increased value attached to it?

A. I should imagine so, yes, sir.

Q. How much increased value would that give to this land? 20

Mr. Marshall: I object to that as based on facts that are not in the evidence, asking him to suppose various facts and then place a value on it.

Mr. Redrow: I think that Mr. Marshall is willing to admit we own clear up to this man now.

Mr. Marshall: That who owns up to it, you? 30

Mr. Redrow: Yes, it is a question of bringing Mr. Jones back again, that is all.

Mr. Marshall. I don't know that he does.

The Master: I will sustain the objection then.

By Mr. Marshall:

Q. But your figure, however, Sheriff, the twenty dollars an acre that you gave was on the basis that you figured upon the tract of land taking into consideration the high ground together with the low ground?

A. The whole of it, yes, that is right.

10

ROBERT J. WILSON, SWORN.

By Mr. Marshall:

Q. Mr. Wilson, you live in Franklinville, don't you?

A. I do.

20 Q. And you have owned and have sold considerable real estate, haven't you, in Franklin Township?

A. I have, that is, my father's estate and mother's estate, which I have had power of attorney and so on.

Q. Now, do you know the location of the tract of land formerly known as the Reuben mill tract in Franklin Township?

A. Yes, sir, very well.

Q. Did you dispose of any tract of land running along the Reuben's mill dam to Mr. Ely?

30 A. I did.

Q. On or about April 12, 1912?

A. I sold the land to Mr. Ely; I don't remember the exact date.

Q. Do you remember the number of acres that you sold to him?

A. A little over fourteen, fourteen acres and some

few hundredths, forty hundredths or forty-two or three or something.

Q. The witness is shown protraction of deed from himself and others as attorneys for the heirs of Ellen J. Wilson to Francis C. Ely dated April 12, 1912, and recorded in Book 238 of Deeds, Folio 107. Now, is that the tract of land that you sold to Mr. Ely?

A. Yes, sir, that runs up here until it strikes this stream; the stream runs through here more, but when it gets there it strikes the stream and runs up the stream and then comes across. 10

Q. In other words, this is one of your boundaries here on the northwesterly side?

A. The northwesterly side, yes, this is our boundary.

Q. I ask the witness to refer to the map marked Exhibit C. 9 and ask you whether or not any part of the tract of land which you sold to Mr. Ely in 1912 is embraced in that survey?

A. A part of it is. 20

Q. How much of it would you say was embraced in that?

Mr. Redrow: I think that is unfair to ask the witness that question.

Mr. Marshall: Well, if he can't answer it, all right.

The Master: What is the date of the deed of the Wilson heirs to Ely? 30

Mr. Marshall: 1912.

The Master: That is prior to the time the contract of sale was made?

Mr. Marshall: Yes.

The Witness: Probably half of it.

Q. And your land here did not run on the southerly side of the Swedesboro road, did it?

A. Not that I sold Ely, but what we sold other parties did.

Q. And this one ran to the Swedesboro road?

A. It ran to the Swedesboro road.

Q. What was the consideration for that tract of
10 land which you sold to Mr. Ely?

A. Including this swamp here and pond ten dollars an acre at that time.

Q. That made \$144.44, is that correct?

A. About that.

Q. Do you know the location altogether of this tract of land which is embraced in that through there?

The Master: Indicate which survey it is.

20

Mr. Marshall: Indicated on map marked Exhibit C. 9.

A. This land here is all high ground practically here, that is running along part of it along the easterly side, on the easterly side which I sold to a man by the name of Wagner, up to somewhere along here, and up here belongs to my brother. (Indicating on plan.)

30 Q. Toward the back?

A. Yes, on the east side.

Q. Now, what in your opinion would be the value of that tract of land—can you place a value on it?

A. Well, the north end of Wagner's property he bought—

The Master: No, that is not the question; the question is, What value would you put upon the land shown by that tracing?

The Witness: It sold for forty dollars; I think that was a fair value up there, and this down here, a little piece of it, was a hundred dollars an acre.

Q. Further down near the road?

A. Yes, right at the corner, a small piece. 10

Q. Take the tract as a whole, including the swamp land and the high ground, the location and everything, would you be able to place a value on it?

A. I think twenty dollars would be a fair price for the whole business.

Q. Taken as a whole?

A. Yes, as a whole.

Cross-Examination.

20

By Mr. Redrow:

Q. Mr. Wilson, you say you sold to Wagner some of the tract for forty dollars and some near the road for a hundred dollars an acre?

A. Yes.

Q. Is that right?

A. Yes, that is right.

Q. Now, as a matter of fact, the portion of that land you sold to Mr. Ely, you reserved in that deed, didn't you, or intended to reserve the timber, on a certain portion of it? 30

A. On the north end, yes, that I got fifty dollars for.

Q. Now, Mr. Ely later paid you fifty dollars for that timber?

A. Yes, for that timber.

Q. So that the fourteen acres really cost \$190; the land you sold to Ely was \$194.44 instead of \$144, wasn't it?

A. Counting the cedar along the north end, about a small half acre, yes.

Q. Well, the cedar was sold to Mr. Ely, wasn't it?

A. Yes.

10 Q. You also reserved the right in that deed to keep open a drain, didn't you, across that property?

A. I did; I think it is in the deed there.

By Mr. Marshall:

Q. Mr. Wilson, wasn't a later deed executed for this same tract of land to Mr. Ely?

A. Yes, I believe there was.

Q. That included the timber on the ground?

A. Yes.

Q. And without the timber it was worth \$144?

20 A. Yes.

Q. And there is no timber on this tract of land here, is there, of any size, similar to the timber which you sold to Mr. Ely?

A. No.

By Mr. Redrow:

Q. There was timber on it at that time, wasn't there, Mr. Wilson?

A. I think not, only that piece of land.

30 Q. Yes, the piece you owned, the timber was there when you sold it to Mr. Ely?

A. Yes.

Q. You sold him the ground and timber both and got \$194.44, didn't you?

A. I did for the ground and timber, \$50 extra on that other timber that was reserved.

THOMAS ROBINSON, SWORN.

By Mr. Marshall:

Q. Mr. Robinson, you are a farmer, aren't you, living in Franklin Township?

A. Yes, sir.

Q. You own, don't you, a piece of land which borders on the westerly side of this tract of land shown on survey marked Exhibit C. 9? 10

A. Yes, sir.

Q. Does your line run up to that line, as far as you know?

A. Runs up to that line.

Q. Are you acquainted with the character of land shown on that survey marked Exhibit C. 9?

A. Well, I don't know exactly where the land is, only the line that adjoins me; I know where that line is. 20

Q. Are you acquainted with the tract of land embraced in the survey—in other words, have you been over that tract?

A. Yes, hundreds of times.

Q. What is included in the tract, in other words, what character of soil or ground is embraced in it?

A. Well, it is light sand, white sand, brush, a few maple, sour gum, green briars.

Q. Is there any timber on that tract of land?

A. Yes, there is some few cedars there that would make bean poles, probably, and a few that would make fence, now standing back of my house. 30

By the Master:

Q. Is this tract of land the bed of an old pond?

A. Partly, yes.

Q. Is there a mill dam there?

A. There has been a dam there.

Q. How long ago?

A. There is a dam there now, the road, the Monroeville road crosses the lower end of it.

Q. Was there a mill there at one time?

A. Well, they say there was.

Mr. Marshall: I guess there was years and years
10 ago.

The Witness: Before my time.

By Mr. Marshall:

Q. Can you tell us in acres about how much of that tract of land would be high ground, if any?

A. What, of this tract here?

Q. Yes, if any?

20 A. No, I can't; I don't know exactly where the line is, the east line.

Q. You don't know exactly where that east line is?

A. No, I know about where it is; I know there is not much of it, just a narrow strip running along the edge of the woods there.

Q. How far east of that tract does it continue to be marshy adjoining you on the rear?

A. How far east of the tract?

30 Q. Yes, in other words, continuing east from the rear of your tract, how far does that continue in a marshy condition across this tract in question?

A. Well, it is all the way across on part of it, that is from here across from one side to the other on part of it, and then there is parts of it that it isn't.

Q. Are you acquainted with the values of land in and around there?

A. Well, I know what I paid, and Mr. Ely, I wanted to buy off him one time, but I didn't put the value very high; I told him it wasn't worth anything, this back part, and what I wanted to buy I told him I wouldn't give him enough for it to buy a bag of feed.

Q. What in your opinion would be the value of the tract of land that is shown on the survey marked Exhibit C. 9?

A. Well, now, I couldn't put any value on any piece of land, but I know what I would give for it. 10

Q. What would you give for it?

(Objected to).

A. I wouldn't give anything for it.

The Master: No, the question is what the value of it is.

The Witness: I can place what value it had; it wouldn't be worth anything, the swamp land that I own. If there is any runs out on the Swedesboro and Monroeville road, facing the road there, of course it has got more value to it. 20

Q. Taking all of that into consideration, some parts of course being high ground and a lot of it being marshy and low ground, can you give us the figure which you say was the value of the tract of land including all those features? 30

A. That is including all of it?

Q. Yes.

A. Well, how much of it runs out on the Monroeville road? There is none of it faces the Swedesboro road.

Q. I think the testimony is three acres.

A. Facing the Monroeville road?

Q. Taking into consideration the three acres of high ground along in here (indicating)?

A. Well, this runs along Wagner's field.

Q. Between Wagner and the swamp, yes, taking the whole tract, considering that, the location of it and also the swamp, the low portion of the balance of the tract, what would you say the whole tract might be worth?

A. Well, I wouldn't put any value on it myself; I don't think it is worth anything, and for this place here, this sand place that runs along the edge of the swamp, it is no good to anybody; the swamp would be no good to anybody.

Q. In other words, do you claim then that the land is valueless?

A. Well, yes, I would.

Q. And the wood or timber that is on there, does that have any commercial value at all?

A. Well, a man wouldn't get it off of there—I don't know anybody that would get it off of there for it; I wouldn't go in there and get it off, that is, clear it up for it. What I mean, of course, the wood would have some value if you had it off of there, but it would cost more than it is worth to get it off.

Cross-Examination.

30 By Mr. Redrow:

Q. Mr. Robinson, your children go across to the Franklinville school, do they?

A. Yes.

Q. They walk across this tract every day, don't they?

A. No, sir.

Q. Go around the road?

A. Not every day; some times they go across there; sometimes I go across there. There is a path goes across through the woods there.

Q. Goes right straight across through this marshy ground that you are speaking about?

A. Well, it is not all marshy ground there; there is what we call the island, a sand knoll in there.

Q. It goes right straight across the stream, I mean? 10

A. I have a bridge I own across that stream; I own land on both sides of that stream.

Q. And you have a little bridge across the stream?

A. I have a bridge I built there myself.

Q. Then you walk right across this stream—right across this tract and come right out there to the road and go into Franklinville?

A. Yes.

Q. And you do it and your children do it?

A. At different times I do. 20

Q. What is the value of your ground, Mr. Robinson?

A. That land along there that adjoins Mr. Ely I don't think is worth anything.

Q. What did you pay for that along the Swedesboro road?

A. I paid two hundred and forty dollars for it, but the back end of it isn't worth anything.

Q. \$240 an acre?

A. No, \$240 for the piece. 30

Q. How much is in the piece?

A. Two acres, and I don't know, forty or sixty hundredths, something like that, about two acres and a half.

Q. Still you paid \$240 for two and a half acres, this part?

A. On the corner, this is the corner of the Swedesboro and Monroeville road.

Q. A portion of that ground you say isn't worth anything?

A. The back part of it.

Q. That you bought?

A. Yes.

Q. And that adjoins Ely?

A. That adjoins Ely; it is nothing but meadow,
10 marsh; you can't get in there with gum boots on most of the time.

SAMUEL McCURDY, sworn.

By Mr. Marshall:

Q. You are the Justice of the Peace, aren't you,
20 down at Franklinville?

A. Yes, sir.

Q. Are you acquainted with the tract of land along the Swedesboro road or Monroeville road, rather, known as the Reuben's mill tract?

A. Yes.

Q. I show the witness Exhibit marked C. 9 showing map of the tract, and ask him if he can identify that as the tract known as the Reuben's mill tract?

A. I own right across here on the other side.

Q. On which side?

30 A. On the west side.

Q. You have got it up side down, 'Squire.

A. This is it, now; I own here; right here.

Mr. Redrow: You own over there?

The Witness: Yes, right across here (indicating on plan.)

Q. You own over on this side?

A. Yes.

Q. Have you walked all around that tract of ground, Mr. McCurdy?

A. Yes, I was up on this piece here (indicating).

Q. What character of soil is embraced in that fourteen acres shown on that Exhibit? 10

A. Well, this is low land; this is the piece where Wilson sold, you know, sold to me; I went and looked at it up here; he told me he would give me fifty feet more—

Mr. Redrow: I object; this is what he agreed to do with Wilson; that has got nothing to do with the case.

Q. No, my last question was, have you been over the entire tract of the fourteen acres so as to be acquainted with what it embraces? 20

A. Yes, I have.

Q. Well, what character of soil is it?

A. Well, this is loose land here; there is a little island right in here. Now, here is the upland here (indicating on map). There is about—I think there must be about three acres comes out here to the Swedesboro road here.

Q. Now, have you bought and sold land in Franklin Township during the course of your experience there? 30

A. Yes.

Q. What in your opinion would be the value of that tract of land shown on that Exhibit C. 9?

A. What do you mean, wholesale or retail?

Q. Well, the market value?

A. I should consider this upland here at \$50 an acre.

Q. What about the low land?

A. The low land at \$10.

Cross-Examination.

By Mr. Redrow:

10

Q. You own some and adjoining that, Mr. McCurdy?

A. Yes, right across from it.

Q. How much is that worth an acre?

A. There is a house on that.

Q. How much is the land worth an acre?

A. Well, I value that land at about \$200.

Q. I beg pardon?

A. \$200 for that.

20

Q. \$200 an acre?

A. For the land; there is a house on it.

Q. How many acres have you there?

A. An acre and a quarter.

Q. You have an acre and a quarter?

A. Yes.

Q. Does that adjoin this land?

A. Yes, right across there.

Q. Adjoins this land, and that is worth \$200 an acre without the house?

30

A. Yes, there is some apple trees on, fruit on it. That is on the Swedesboro road.

Q. But it adjoins this land on the map?

A. It runs across the creek.

By Mr. Marshall:

Q. You consider the back part of that tract of land which touches the tract of land shown on Exhibit marked C. 9 worth the same value proportionately as the whole tract?

A. No, it ain't worth as much where it comes in here as that, but I ask for the acre and a quarter a value of \$200.

10

THOMAS S. DOWNS, SWORN.

By Mr. Marshall:

Q. Mr. Downs, you live in Franklinville, don't you?

A. Yes.

Q. What is your business there?

20

A. Saw mill.

Q. Saw mill and lumber business?

A. Yes.

Q. Have you bought and sold land in Franklin Township?

A. Yes.

Q. During the time you lived there?

A. Yes.

Q. You know the location of the tract known as the Reuben mill tract which is shown on Exhibit C. 9?

30

A. Yes.

Q. Have you been on that tract of land?

A. Yes, sir.

Q. What character of soil is it and what does it embrace?

A. Well, I should say there is about an acre and

a half of it and pretty nearly in the center of it what they call the island; I have crossed it several times, crossed the stream over on the Swedesboro road. I should say there was about an acre and a half to the island which is white sand, and it is surrounded on either side with low, swampy, briary, brushy land.

Q. Well, you mean the balance of the tract would be all briars excepting for this small piece?

10 A. Yes.

Q. You are acquainted, are you, with the value of land, bought and sold land in Franklin Township?

A. Well, I don't know; I have got considerable of it myself.

Q. Now, what in your opinion would this tract of land shown on Exhibit marked C. 9 be worth?

20 A. Well, that out on the Swedesboro road, that is a nice piece of land out there, it is a fine piece of land. If you take that away the rest of it isn't practically worth very much. I should say perhaps ten dollars an acre for the low part of it, and that out next to the road could be rated fifty dollars along the road, the Swedesboro road.

Q. Now, show me on the map, what you mean. This is the Swedesboro road. (Indicating).

The Master: That has been called the Monroeville road; is that the same road?

30 Mr. Marshall: No.

The Witness: I mean all of this on the line of this toward Franklinville, on the north side, all the land there is on that road from Franklinville down to the swamp, I should say that is worth fifty dollars an acre.

Q. How many acres of that, about?

A. I don't know how many there is of it.

Q. I don't quite understand how you mean—the land on the south?

A. I mean the land on the north side of what we call the Monroeville and Franklinville road, on the north side, but it faces the Franklinville road. I don't know how many feet there is, some two hundred feet.

Q. You mean so much of that would be worth fifty 10 dollars an acre?

A. Yes, it ought to be worth that for building purposes.

Cross-Examination.

By Mr. Redrow:

Q. Mr. Downs, your idea then is that all the upland there, all the high ground on that side, no matter 20 how much there may be, ought to be worth about fifty dollars an acre?

A. If you sell the front of that out next to the road—

Q. Averaging it all together?

A. I wouldn't give fifty dollars and take it clear away back, an acre, but I say all that faces this road I would be willing to pay fifty dollars an acre.

By Mr. Marshall:

30

Q. I understand you to say the high ground which would be running back further would not have the same value as the high ground which fronts the road?

A. Next to the road, yes.

By Mr. Redrow:

Q. Mr. Downs, you buy land, don't you, for timber purposes?

A. Yes.

Q. Buy swamps and things of that kind?

A. Yes.

Q. Do you buy land to be developed into building lots or anything of that kind?

10 A. Not very much; I do some times.

Q. Have you bought any land which you have developed into lots for building purposes?

A. Some times; I have some of that kind.

Q. Where?

A. Well, a quarter of a mile perhaps; I have got some fifteen or twenty acres, within half mile of it.

Q. Which way?

20 A. South, nearly a south course, southwest course, just about such land.

Q. How much do you value that an acre?

A. I will take ten dollars an acre if you take it all.

Q. What road is that on, the Porchtown road?

A. It is on the Monroeville road; that is, it really isn't on any road, it is back from the road probably about an eighth of a mile.

Q. Oh, I see, it don't come out on any road?

A. It don't come out on any road.

30 Q. You say the value you would place on it is what you would give; is that the real value of that property?

A. Out on the road I say I will give fifty dollars an acre for that facing the road; for instance, building lots in there, running back a square acre, I will give fifty dollars.

Q. You say, regardless of your buying it for fifty dollars an acre, you would give fifty dollars an acre, was that all it would be worth?

A. All it would be worth to me.

Q. It might be worth more to some other people?

A. Certainly, a man who was in the real estate business it might be.

Q. But you are basing your value on it what you would be willing to give for it?

A. I am basing my value on it what I would be 10 will to give for it.

By Mr. Marshall:

Q. The ground that is back of the high ground that fronts on the Monroeville road, what valuation would you place on that?

A. That is, that would be west of this, you mean?

Q. You told me how much the land would be worth, the high ground that fronts on the road; how much would that high ground be worth which does not front the road but is further back on the tract? 20

A. It ought to be worth about twenty dollars.

Q. Twenty dollars?

A. Yes, in other words, I should say twenty dollars an acre, would be a fair price for the whole of it.

Q. Taking the whole tract?

A. Taking the whole tract.

By Mr. Redrow:

30

Q. Would twenty dollars an acre pay for that ground on the south of the road owned by a man by the name of Lucaston?

A. Would it do what?

Q. Would that be the value of the ground on the

south of the road owned by a man by the name of Lucaston?

A. It would not be worth any more to me than the other; I would as soon have this as that.

Q. All those values are the value to you, what you would be able to get on the outside?

A. It is what it would be worth to me, yes.

Q. What could you sell for?

A. I don't know.

10 Q. If you paid fifty dollars an acre for this land, how much would you sell for?

Mr. Marshall: I object; the witness said he didn't know.

20 The Master: Mr. Downs, the question they want to get from you is this: The criterion is not what you would give us for it for speculative purposes or what it could be sold for; the question is what is it worth in the market; that means if it was owned by a person who did not have to sell but was willing to sell and purchased by a man who was not obliged to buy but was willing to buy, what would be the fair market value of the property?

The Witness: I presume, take a man like Mr. Ely, he would get a hundred dollars an acre for that, a man that is in the business.

30 The Master: Still that is not the question; the question is if it were put up and sold at public sale, not a forced sale but a public sale, and was sold for the market value—that is the criterion of value which will have to be determined in this case for the whole tract, good, bad and indifferent, all together.

The Witness: Well, I will tell you, brother, if it was mine, I owned it, I would take, as I say, I would take twenty dollars an acre for the whole thing, if it was mine.

The Master: And you consider that would be a fair market price?

The Witness: That would be a fair market for me; that is what I would consider, that is all I would give for it, twenty dollars an acre, take it all. 10

The Master: If you owned it would you be willing to sell it for that?

The Witness: If I wanted to part with it, yes.

By Mr. Redrow:

Q. How about the timber on it—did you take into consideration in figuring that amount the timber? 20

A. Yes, that timber on there, the young cedar, is worth forty dollars, I would give forty dollars for what little cedar is on it.

By Mr. Marshall:

Q. But your figure of twenty dollars an acre includes the price of the cedar, does it?

A. That includes everything as it is now. 30

THOMAS C. WILSON, SWORN.

By Mr. Marshall:

Q. Mr. Wilson, you are a brother, aren't you, of Robert J. Wilson who was sworn?

A. Yes.

Q. And you live in Franklin Township, don't you?

A. Yes.

10 Q. Are you familiar with the tract of land in question known as the Reuben mill tract, shown on Exhibit C9?

A. Somewhat, yes, sir.

Q. Have you been on that tract of land?

A. Quite a little, yes.

Q. Are you acquainted in any sense of the word with the value of land in Franklin Township?

A. Not much; I haven't been in the business at all.

Q. You are not in the business?

20 A. No.

Q. But are you acquainted with the values of land—I don't mean as an agent?

A. Well, not so very much; I haven't sold much myself and never bought any.

Q. Never bought any land?

A. No.

Q. You have sold some, haven't you?

A. Yes, I sold a piece of cedar.

30 Q. Have you been over that tract of land to such an extent as to be able to tell us what character of soil it embraces?

A. Yes, I think so.

Q. Well, just tell us?

A. Well, it embraces an old pond, I guess, and it has that little island in there, and then this side is high land, high sandy land some of it. I see these

lines—they run, I should imagine that that runs through the swamp probably, two hundred yards before it comes out in my field.

Q. Runs through swamp?

A. Yes.

Q. Two hundred yards?

A. I should imagine it did; it takes off a little corner of my asparagus, then runs down through Wagner's piece.

Q. Would you be able to tell us what in your opinion that piece of land would be worth? 10

A. I shouldn't think it would be worth so very much—of course I don't know—to a real estate man.

Q. I don't mean a real estate man, I mean the average man as Judge Starr intimated, a man who owned a tract of land and was willing to sell but didn't have to sell, and the man who bought didn't have to buy, but willing to buy—what would that tract of land in your opinion be worth?

A. Well, in my opinion fifteen or twenty dollars 20 taking the high land and all an acre.

Q. Fifteen or twenty dollars an acre?

A. Yes.

Cross-examination.

By Mr. Redrow:

Q. Did you sell Lucaston his land?

A. No, I did not.

Q. You sold Ely some land, didn't you, above there? 30

A. I sold Mr. Finger some land and made the deed to Mr. Ely; Mr. Finger paid the money.

Q. Did that land adjoin this piece there?

A. It comes right down to this upper corner, the north corner.

Q. The land that you sold Mr. Ely comes down to the upper corner of that?

A. Yes.

Q. Is that the deed that you gave Mr. Ely for it?

A. Yes, sir, I believe so.

Mr. Redrow: I would like to have it marked for identification.

10 (Said paper is marked Exhibit D1 for identification.)

Q. What did Mr. Finger and Mr. Ely pay you for giving this deed, Mr. Wilson?

A. \$1050.00.

Q. And how many acres were there?

A. I think over twelve, weren't there?

Q. Containing twelve acres and thirty-eight one-hundredths?

20 A. That is right.

By Mr. Marshall:

Q. This deed, Mr. Wilson, from yourself and wife, to Francis C. Ely was for a piece of land which is along the north of the tract shown on Exhibit C9, isn't it?

A. Yes, that Dr. Porch farm and my farm—I mean the southwest corner is the northeast corner of that.

30 Q. Of Exhibit D1?

A. Yes.

Q. Now, did you make the sale of this ground to Mr. Ely or did you make the sale of the ground to Mr. Finger?

Mr. Redrow: I object; the deed speaks for itself, whatever it is; Mr. Ely holds title to it.

Mr. Marshall: There is no question about that, but there is little more embraced in that deed other than the land itself as I think I am abundantly able to prove.

The Master: I will overrule that objection.

10

Mr. Redrow: I will take an exception.

The Master: You are not entitled to an exception; you have the benefit of the objection without an exception.

A. I sold to Mr. Finger.

Q. You sold the ground to Mr. Finger?

A. Yes.

Q. Which included what, Mr. Wilson?

20

A. The cedar.

Q. Included the cedar, didn't it?

A. Yes.

Q. Then what later negotiations were made of your own knowledge?

A. Well, Mr. Finger told me —

(Objected to.)

Q. No, not that, not what Mr. Finger told you, but what did Mr. Finger do; do you know what Mr. Finger did of your own knowledge? 30

Mr. Redrow: I object; it is irrelevant what Mr. Finger did.

Mr. Marshall: Well, I have got to connect it up with this deed.

The Master: Why don't you find out in this way, in order to compare the relative values of the two properties, what this property consisted of that was sold.

Mr. Marshall: That is what I was trying to do,
10 what Mr. Finger did with it.

The Master: Well, what the condition of the property was at the time the conveyance was made.

Q. The condition of the property embraced in this deed sold by you and your wife to Mr. Finger embraced the land together with the cedar, didn't it?

Mr. Redrow: I object to the question and the fact
20 that the deed shows it was made all alike.

The Master: That question is objectionable on the ground that it was leading.

Q. What was the condition of the property when you made the contract to sell to Finger?

A. It had cedar on it.

Q. And what had been done with the cedar if anything before the conveyance was made? Had the
30 cedar been cut off before you conveyed it to Ely?

A. No, I don't think so.

Q. Then the cedar was on it when you made this conveyance to Ely, is that the idea?

A. I made the deed, yes, as soon as the property was conveyed.

Q. So that the land that was conveyed by this deed

which you say you sold to Finger had on it cedar at the time it was conveyed to Ely?

A. Yes.

Q. Now, answer this question: Why did you make the deed out to Francis C. Ely when you sold to Mr. Finger?

Mr. Redrow: I object.

The Master: I don't think that is material. 10

Mr. Marshall: Now, if your Honor please, I want to make myself clear on this. I subpoenaed a man yesterday by the name of Henry Finger who is in bed with pneumonia and called him here for the purpose of showing the situation which caused this deed to be executed, in other words, that the cedar on there belongs to Mr. Finger, that is his cedar, and the proposition was sold by Mr. Wilson to Mr. Finger. 20

The Master: That can't make any difference.

Mr. Marshall: I know, but they are endeavoring to show the value of this piece of land is \$1050.00.

The Master: That doesn't make any difference at all. That deed would be used or attempted to be used to discredit Mr. Wilson's testimony in view of the fact that he sold the twelve adjoining acres for \$1050.00. Now, you are privileged to show that the condition with regard to that property is entirely different from what it is with the property under investigation, but it does not make any difference whether the conveyance was made to Finger or to Ely; the question is whether or not the two prop- 30

erties are so situated relatively that one would be of substantially the same value as the other.

Q. The tract of land there which was sold to Mr. Ely embraces a lot of timber, doesn't it?

Mr. Redrow: I object; this is his own witness; it seems to me he ought to ask him —

10 The Master: He has already answered the question, that it covered the cedar.

Q. Does the tract of land embraced in the Exhibit marked C9 embrace any cedar similar to the timber on that tract?

A. No, sir.

Q. What in your opinion would the tract of land embraced in this deed without the timber be worth?

20 (Objected to; objection overruled.)

A. Not as much as this piece.

Q. Not as much as that piece?

A. No.

30 Mr. Redrow: In addition to that Mr. Wilson has already testified that this is the only piece of ground he sold there. Now, it doesn't seem to me he is competent to testify as to what the value is as to this property.

The Master: I am inclined to think myself there is some doubt as to the qualification of this witness to testify as an expert, but both counsel up to date have assumed that he is qualified. If you intend to use this deed for the purpose of discrediting or con-

tradicting this witness' testimony, he has the privilege of explaining and showing the difference in the value of the two pieces.

(Last question and answer repeated.)

Q. Do you mean by that, Mr. Wilson, the piece of land on Exhibit D1 you consider would not be worth as much as the tract of land embraced in Exhibit C9?

10

A. No, sir, it would not.

By Mr. Redrow:

Q. Now, Mr. Wilson, as a matter of fact, you made all arrangements with Mr. Ely to sell him this land and afterward gave him this deed, didn't you, and the only thing that Mr. Finger had to do with it, he just paid you the money?

A. No, sir.

20

Q. You never made any arrangement with Mr. Ely?

A. Never made any arrangement with Mr. Ely about selling that at all; Mr. Finger bought the property from me. Mr. Ely was there and saw me once or twice about it, but Mr. Finger set the price; I fixed the price with Mr. Finger and sold it to him.

Q. What price did you ask Mr. Ely for it?

(Objected to; objection overruled.)

30

Mr. Marshall: Do you mean the tract with the cedar?

Q. What price did you ask Mr. Ely for it?

A. I said I wouldn't sell it for less than a thousand dollars.

Q. How much is the cedar worth on that property?

A. Well, there is no cedar on it now.

Q. How much was the cedar worth?

A. I am not prepared to say.

Q. You don't know?

A. No.

Q. How much is the cedar worth on the property there on Exhibit C9, all together?

10 A. There is very little cedar on there, that is, there is very little value, I think.

By Mr. Marshall:

Q. Who paid you the consideration mentioned in that deed of \$1050.00?

Mr. Redrow: I object.

20 The Master: The objection is sustained; I don't think it makes a particle of difference.

FRANCIS C. ELY, sworn.

By Mr. Redrow:

Q. Mr. Ely, you are the defendant in this suit?

30 A. Yes, sir.

Q. Do you remember making this contract with Mr. Hall?

A. With Mr. Leddon.

Q. Now, where did you understand the tract of fourteen acres to be at the time this agreement of sale was executed?

A. I didn't know where it was.

Q. You didn't know where it was?

A. No.

Q. Did you make any attempt to find out?

A. After the agreement was signed.

Q. Where did you find it to be?

A. I don't know today where it is except the testimony here that English has located it.

Q. Did you go down with Mr. Hall on this property down there?

A. Yes. 10

Q. And what were you shown then? When was that, Mr. Ely?

A. Well, that was some time before the expiration of the time of payment of the agreement; I judge it was in April. I took Mr. Hall and Mr. Leddon to the back part of the farm and showed them the piece I have since purchased from Wilson.

Q. From Tom Wilson?

A. From Tom Wilson; and said, "That is the piece that I think goes with the farm; if it does, it is worth so much money," and that has been reputed as the piece for some years. 20

Mr. Marshall: I ask that that be stricken out.

The Master: Now, is there any question about the fact that the fourteen acre tract described in the agreement is the land which is shown on this tracing?

Mr. Redrow: There is as far as Mr. English is concerned. Mr. English drew this map, and he isn't absolutely certain right now that that is the same tract. 30

Mr. Marshall: He told me it was.

The Master: It seems to me you are wasting a lot of time and energy unless you can establish that that is the same tract.

Mr. Marshall: There are articles of agreement and arbitration in which it was agreed that that was the tract. I understood that that was the tract of land in question.

Q. If this agreement was consummated, would
10 that mean that you would have an outlet to this land both on the Franklinville and Clayton road and on the road leading from Franklinville to Millyville?

A. Yes, sir, that was the idea in getting that tract.

Q. What value do you place on this piece of land that you have just identified here as C9?

A. This piece? (indicating.)

Mr. Redrow: Do you want me to prove this man
20 is an expert down there? He has bought and sold down in Franklinville.

Mr. Marshall: No, let him go ahead.

The Witness: This piece (indicating)?

The Master: That is the tracing, C9.

A. Well, I have bought and sold—a good deal of it I can develop into lots and get \$100 to \$150 for a
30 piece twenty-five by a hundred.

Q. That is not the question; how much is the value of it as it stands now?

Mr. Redrow: Without regard to cutting it up into lots, what is that property worth?

The Master: Take it as a whole, good and bad.

The Witness: Fifty dollars an acre.

By Mr. Redrow:

Q. Mr. Ely, the land adjoining there, what would you say the land on the east of that owned by Wagner would be worth?

A. A hundred dollars an acre.

Q. How much land have you east or west of Franklinville, how many acres? 10

A. West?

Q. Yes, I mean in the vicinity there?

A. I have to think of several little tracts; I have several there, ninety acres.

Q. And how much land have you immediately east of Franklinville or right near Franklinville on the easterly side?

A. East?

Q. Yes.

A. Oh, I suppose I have left maybe six hundred, 20 between five and six hundred acres.

Q. Now, how much of this land, Mr. Ely, would be suitable for building purposes?

(Objected to.)

A. Of this?

Q. Yes.

Mr. Marshall: I don't see where that can enter 30 into the issue. The question as I understand it should be what would this land be worth in its present condition, what would the market value of that be, not so much of the purpose it is going to be put to.

The Master: Are you willing to agree to his valuation of \$50 an acre?

Mr. Marshall: No.

The Master: Then the testimony is admissible to show that some of it is more valuable than the other. The objection is overruled.

10 A. Of course, it depends entirely on what it is used for.

Q. Just answer the question.

Q. What is the question again?

(Question repeated.)

A. Well, I judge ten acres of it—maybe four acres that you couldn't erect a house, the frontage.

20 Q. Would any one be able to utilize the other four acres, would you say, for any purpose?

A. Yes, the other four acres would face on the Swedesboro road for boat house and bungalow purposes, something of that kind, which I have done down there.

Q. Now, then, Mr. Ely, do you recall calling at the place of employment of the plaintiff in this case some time in June, 1916?

A. The place of Mr. Hall?

Q. Mr. Hall, yes.

30 A. Yes, I called at the bank.

Q. What did you call there for?

A. To tender him money and ask for the deed to the property.

Q. Did you tender him any money at that time?

A. Yes.

Mr. Marshall: Oh, I object to that; I don't see where that comes into this issue.

Q. What did you tender him?

Mr. Marshall: I object; reference has been made to you; it is not a question now of tender on the part of myself or a tender on the part of the other side.

The Master: Does the answer admit that Mr. Ely 10
is willing to take this property and specifically perform the contract if he is allowed a deduction for the value of that portion to which title has failed?

Mr. Marshall: Including an accounting as to whatever expense the plaintiff has been put to.

The Master: In other words, Mr. Ely is willing to take title to the property and pay the purchase price less what the Court may find that purchase price ought to be reduced by reason of the deficiency 20
in title and the accounting, is that right?

Mr. Redrow: Yes.

The Master: Then what is the purpose of this examination?

Mr. Redrow: The complainant has introduced in evidence certain interest receipts for interest and for taxes. Under the line of cases, as I understand them, if the complainant was ready at the time specified in the agreement to complete this contract he can be relieved from the payment of interest until such time as the complainant has perfected the title and is able to turn it over. 30

The Master: On that ground I will admit the question.

Mr. Marshall: Now, if your Honor please, that being the case we would be up against the further proposition of us being entitled to offset for the rental value of it; he has had possession of the farm.

The Master: Isn't that a matter that I am obliged
10 to —

Mr. Marshall: Yes, but under my understanding of this agreement before Vice Chancellor Leaming the matter was simply submitted, and we agreed upon the proposition for the purpose of arriving at the value of this part of the tract which we could not give title to. When it comes to the matter of rent, I have not subpoenaed people here to meet that question, and it only means another day for another
20 hearing.

The Master: When did you go into possession of this property?

The Witness: A few days after the signing of the agreement.

By the Master:

30 Q. And you continued in possession up to the present time?

A. I judge so; there was no one on it, but I had some things there holding possession.

The Master: I am in a quandary about that; I don't know whether that would have any bearing on

the question of accounting or not. (After argument.) Subject to your objection I will permit Mr. Ely to testify to the tender.

(Question repeated.)

A. Currency.

By the Master:

10

Q. How much?

A. \$900.00.

Q. Was that the balance due on the contract?

A. Yes.

Q. What did you say to him?

A. I said, "I am ready to tender you this money and take title if you will give me a good deed for the property."

Q. What did he say?

A. He said, "I can't give you a good deed but if you will give me a writing that you won't hold me to it, I will give you a deed." I said, "That don't go; I want a regular bona fide title to the property or I don't want it." 20

Q. You said the whole property?

A. We spoke as a whole; there was no mention at that time except he would allow, he said, "I will throw off a hundred dollars," I think, or "\$150, if you will take it."

30

By Mr. Redrow:

Q. Was that within the time specified in the contract for the performance of the contract?

A. Yes, within the specified time at his place of business on Chestnut Street, Philadelphia.

Cross-examination.

By Mr. Marshall:

Q. That was not all you were required to do, was it, pay \$900? That didn't close it up, did it?

A. It would have closed it up if I had signed notes.

Q. Did you offer yourself in readiness—did you tender yourself ready to do that?

10 A. No notes were prepared.

Q. Well, \$900 would not close up the purchase price of the property, would it?

A. No.

Q. You did not make any tender of the complete purchase price of the property, did you?

A. I tendered him \$900 in currency.

Q. I ask you whether you made a full tender of the purchase price of that property?

A. That is all I tendered him, \$900.

20 Q. And that is not the full purchase price of the property?

A. That is all up to the agreement; I don't know what the agreement is, here.

Q. Don't you remember what the agreement provided for?

A. I do not; I think there was some notes to be given payable at certain specified times but I was not to prepare them; they were to be prepared for me and executed; I did not prepare any notes.

30 Q. Just \$900 was all the tender you made?

A. Yes.

Q. Can you tell me the date you made the offer?

A. I think it was the 23rd.

Q. Did you have that \$900 in cash?

A. Yes.

Q. Did you hand it to him?

A. No; I didn't hand it to him; I had it like this (indicating).

Q. Did you ever go to him more than once and tell him you had the money and wanted to settle?

A. No, only the once.

Q. And you didn't tell him at that time, "If you don't take this I will get off of the property," or anything like that, did you?

A. No.

Q. When he told you he could not give you title to the place, you continued to stay there just the same, didn't you? 10

A. Yes.

Q. Enjoyed the rents and benefits of it?

A. No rents, haven't received any rent.

Q. You enjoyed the occupation of the property?

A. I haven't occupied it personally.

Q. You had a man occupy the property for you?

A. Yes.

Q. In other words, you have had physical occupation of the property since that time? 20

A. Yes.

Q. And you hold it yet?

A. I suppose so; I have some goods on it. I haven't been down there since the Vice Chancellor meeting; I don't know what is on there.

Q. Did you farm it?

A. I had a man on it.

Q. Some one you put on it to farm it?

A. I put a man on it, a caretaker.

Q. When I say you, I mean somebody under you? 30

A. Yes.

Q. You claim that this fourteen acres is worth fifty dollars an acre?

A. Worth a lot more to me.

Q. Does that include—do you mean fifty dollars for only the high land or fifty dollars an acre for the whole thing?

A. No, for the whole thing to me.

Q. How much did you pay for the whole place?

A. Which?

Q. The whole farm?

A. \$4500 was the price agreed on.

10 Q. In other words, the value of that fourteen acres there would be worth more to you than the per acre value of the whole tract including the farms and buildings, wouldn't it?

A. No, there is some of it along the main road, would be worth as much if not more than that, and there is parts that would not be worth as much.

Q. I know, but at the rate of fifty dollars per acre for over a hundred acres, one hundred and six acres, would have made the consideration price for the whole farm over five thousand dollars?

20 A. Yes, sir.

Q. Do you consider that this is part of the best ground you have on it?

A. Part of the best?

Q. Part of the best land in the whole one hundred and six acres?

A. Yes, that is for my purposes, not for farming purposes.

Q. Where is the worst part of the tract of land?

30 A. Directly across the railroad, between the back of this particular piece and the railroad; there is no outlet to that.

Q. Is that swamp?

A. No, you wouldn't call it swamp.

Q. It is all high, isn't it?

A. No, not all high, there is what they call spungs.

Q. Isn't this low ground like that?

A. No.

Q. This is practically all low ground isn't it?

A. No, it is not; there is not over three or four acres low ground on this.

Q. Only three or four acres of it low land?

A. Yes.

Q. Well, you got a mighty cheap place, then, didn't you?

A. I haven't got it; I don't know what it is going to cost me yet.

Q. You say you didn't know where the tract of land was at the time you entered into that agreement with Mr. Hall? 10

A. I did not.

Q. Didn't know where the tract of land was located that you bought from Mr. Wilson in 1912?

A. Oh, yes.

Q. You knew where that was?

A. Yes.

Q. Did you read the description contained in the agreement between him and Mr. Hall? 20

A. Yes.

Q. From a careful reading of that description couldn't you see that that property bounded along that road?

A. No, sir, no other living man.

Q. You claim you wanted to buy this fourteen acres from Mr. Hall so it would give you an outlet to the road of part of the property. Will you indicate on that map ——

A. Well, this will show the Porch property, but understand, we never knew that this was the identical property until now. 30

Q. But you know now that that is the identical property, don't you?

A. I know your witnesses say so.

Q. Well, aren't you satisfied it is?

A. No, I am not satisfied; I have no absolute knowledge where this piece of property is.

Q. Aren't you fairly well satisfied that is the location of that tract of land?

A. No, I am not.

Q. Where do you claim it is?

A. I don't know.

Q. You don't know where it is?

A. I do not.

10 Q. And you claim now to have bought a piece of ground up in here?

A. Adjoining my piece, the Porch piece; I bought twelve acres to make a connecting —

Q. To link that up?

A. Yes.

Q. What did you pay for that?

A. The consideration was \$1050.

Q. No, what did you pay for it?

20 Mr. Redrow: That is what he paid for it.

Mr. Marshall: If he says he paid \$1050, I would like to have that in the record. Is that the answer?

A. I don't know whether you would call it that I paid it or not; that was the bargain price for the property, \$1050. Just a minute; I will explain this thoroughly. I went to Mr. Finger then and asked him what he would pay for the cedar, and he and I
30 together made up the \$1050, and he paid Mr. Wilson.

Q. The question is still unanswered; how much did you contribute toward that \$1050?

A. \$250, my recollection.

Q. In other words, that \$250 which you paid represents what the ground is worth, doesn't it, without the cedar?

(Objected to; objection overruled.)

A. Well, I wouldn't sell it for that; I bought it for that.

Q. And you are not entitled to any of the cedar on it, are you?

A. No, I sold the cedar.

Q. That belongs to Mr. Henry Finger, doesn't it?

A. I sold the cedar after buying it.

Q. Is that what you mean in your answer when 10
you say: "This defendant afterward ascertained that tract No. 2 did not adjoin tract No. 1 or defendant's other land, but that this intervening land was owned by one Wilson which this defendant has since purchased for \$1050 to secure an outlet on both of the aforesaid roads"?

A. That is the piece of ground that I have in mind.

Q. Now, that is not all true, is it?

A. Certainly. 20

Q. You did not pay \$1050 for it?

A. I agreed to pay \$1050; I sold the cedar to Finger for \$800 and took his money that he paid Wilson.

Q. You did not sell the cedar?

A. Why, yes, I sold the cedar to Mr. Finger. Mr. Wilson knows about that.

Q. Did you buy the land from Mr. Wilson?

A. Verbally agreed to buy it.

Q. Did you buy it?

A. Yes, verbally agreed to buy the ground from 30
Mr. Wilson.

Q. Mr. Wilson is not telling the truth then, is he?

The Master: That is hardly a fair question.

A. When I got a price on it from Mr. Wilson, I went to Mr. Finger to see what he would give for the cedar; then I paid Mr. Finger, and he dealt then with Mr. Wilson, had the deed made directly to me. I had no use for the cedar; I wanted an outlet, glad to sell the cedar; in fact, I didn't have money enough to buy both.

10 Q. Do you own any other ground in and around Franklinville which has the low conditions surrounding it that this tract of land does?

A. Not identically; I have ground around there that is low adjoining other streams.

Q. What is that worth per acre?

A. Well, I have sold it for a hundred dollars an acre.

The Master: That is not the question, Mr. Ely; the question is what it is worth.

20 The Witness: It is so hard to tell what it is worth; what I get for it is what it is worth to me.

The Master: There is no use testifying to any matter except the market value of the property; the question is, What is it worth in the market?

The Witness: I don't know.

30 Q. You claim that there are ten acres of ground of that fourteen which are suitable for building purposes?

A. Yes.

Q. Kindly show me on the map where it is located?

A. I can run an avenue from this point along this line, run it back to here and build on any of that

front, excepting a few acres right at this point (indicating on map).

Q. You mean to say then if the land was developed with avenues run through here and cleared off —

A. Not necessarily cleared off.

Q. That there would be ten acres of that ground which would be suitable for building purposes and would be worth fifty dollars an acre, is that it?

A. No, for building purposes it is worth a hundred dollars for a lot twenty-five by a hundred and fifty. 10

Q. No, the proposition I want to get at is this; what is that piece of land worth in its present condition?

A. I testified a while ago about \$50 an acre.

REUBEN B. HALL, recalled.

20

By Mr. Marshall:

Q. Mr. Hall, it has been testified that a tender was made to you by Mr. Ely; will you tell us whether or not the tender of any money was made to you?

A. I didn't see any money.

Q. What conversation did you have with Mr. Ely at that time that he called to see you at the bank?

A. Mr. Ely called at the bank and wanted to know what I proposed to do about giving him a deed for the farm. He said that it was about time for the agreement to expire and he wanted to know what I proposed to do in regard to the fourteen acres. Prior to that time we had had conversations in regard to our inability to give him a warranty deed or a good deed for the fourteen acres. Mr. Ely at that time knew that there was a dispute as to the ownership. 30

Q. Then what did you tell him?

A. I told him, I said, "Mr. Ely, you know this, that I can't give you a good deed for the fourteen acres." "Well," he said, "what are you going to do about it?" I told him that I was willing to pay what was fair, I was willing to make a deduction from the purchase price or the price that I agreed to sell him the place on account of my inability to give him a good deed, and he said, "Well, what will you do?" I said, "I will allow you a hundred dollars." "Oh, no, no, wouldn't listen to it." I said, "Well, what do you think?" He said, "Five hundred dollars; if you will give me a reduction of five hundred dollars," he says, "I will make settlement and accept your deed." I said, "I wouldn't listen to it, Mr. Ely." We had already hashed this thing over several times before.

Q. On this occasion did he make a tender to you of the currency which he alleges, of the \$900?

20 A. I did not see any money.

Q. Did he say, "Here is \$900"?

A. I don't think he did; I don't recall him saying, "Here is \$900," or anything about it; he called to see me and said, "What are you going to do about making settlement?"

Q. Has he continued to have the possession of the property from that time to the present time?

A. His representative has.

Q. In other words, you don't have it, do you?

30 A. No, I certainly haven't; I wish I had.

Cross-examination.

By Mr. Redrow:

Q. Now, Mr. Hall, you say you told Mr. Ely at that time that you could not get him a deed for this property, the fourteen acres?

A. Mr. Ely already knew that.

Q. I say, you told him at that time?

A. I told him at that time? I don't think I said—now, wait one minute.

Q. Go ahead.

A. I said, "You know yourself, Mr. Ely, I can't give you a good deed for it." He admitted that and admitted that he knew it.

Q. And you told him at that time that you could not give him a good deed for it? 10

A. Yes.

Q. Then when you were testifying before the Vice Chancellor in this case, didn't you tell the Court that as far as you knew the title to all of this property was good?

A. I had been assured by one attorney that our title was good although there is a dispute.

Q. But didn't you so testify before the Vice Chancellor? 20

Mr. Marshall: Let him finish his answer, I suggest.

A. I was told by an attorney——

Q. Never mind what you were told by an attorney.

The Master: The question is whether or not you did not know. 30

A. I knew that there was a dispute as to the ownership of the fourteen acres, although I felt, and I still feel that our title is good to the fourteen acres, but in view of any doubt whatever, I would not give a warranty deed.

Q. Now, then, at that time when Mr. Ely came over to your place of business didn't you suggest

to him that you would give him a deed providing he would give you a guarantee or something to that effect that he would not hold you for the title to the fourteen acres?

A. Not at that time.

Q. Well, what time was it then?

A. I think it was later than that.

Q. Did you make such a proposition?

10 A. I recall having said something to that effect at one time; now, I am pretty sure it was later, because we were very anxious to get the thing settled.

Q. You said you would give him a deed providing he would give you some sort of guarantee that he would not hold you on the fourteen acres?

A. I told him I would give him a deed providing—yes, a similar statement; I don't think they were the exact words.

20

LOUIS R. LEDDON, recalled.

By Mr. Marshall:

Q. Mr. Leddon, did you have any conversation with Mr. Ely after the consummation of this agreement with relation to any allowance that should be made for these fourteen acres?

30 A. I had a conversation with him in regard to the dispute to the title to the fourteen acres, yes.

Q. Now, what did he say at that time, if anything, as to what he was going to pay for the property?

Mr. Redrow: I would like to know when this was.

Q. Where was it?

A. Mr. Ely and I went down to talk with Dr. Poreh and his wife in regard to that fourteen acres, and talking with Dr. Poreh and Mrs. Poreh in regard to it, he says, "Now, Mrs. Poreh, don't think there is anything the matter with the title to that property, that title is all right; don't think I have come here to talk about that; I have simply come down here to talk with you and ask where it was." We walked up to the office, and on our way up to the office, he said, "Leddon, you know as well as you know you are alive that you can't give me a clear title to that property, for that fourteen acres. I told you I wouldn't pay but \$4,000 for that property and I never intend to." 10

Cross-examination.

By Mr. Redrow:

Q. Did you know that? 20

A. What?

Q. Did you know that what he said was true or not? Did you know whether you could give him a good title or not?

A. I told Mr. Ely on two or three occasions that there was a dispute in the title.

Q. Did you know that you could not give him good title?

A. We had Mr. Rogers to make a search on it; 30 he said "Your property——

Q. I ask you if you know yourself?

A. No, I do not.

Q. You don't know a thing about it?

A. No, I don't know anything about the title to the property.

Q. And never did know anything about the title to the property, did you, Mr. Leddon?

A. Only what Dr. Poreh told me in regard to it; he said there was simply a dispute.

Q. And is this story now you are telling about what you told Ely wasn't anything that you know at all, was it—all this story about the defects in this title which you say some time ago you told Mr. Ely about?

10 A. I told Mr. Ely there was a dispute in the title; what it was I didn't know.

Q. You didn't know anything at all about it?

A. Certainly not.

Q. Who was present when Mr. Ely told you this about the four thousand dollars?

A. We were walking to the office.

Q. And he had been down to Mr. Poreh's at that time, hadn't he, to find out where the land was located?

20 A. Where it was, yes.

Q. When was it—what day was it?

A. Well, it was probably—may have been a month after the agreement of sale was signed.

Q. A month after it was signed?

A. Might have been, might have been two weeks, might have been two months; it was after.

Q. Did you ever sell this place before?

A. Yes, sir.

Q. Who did you sell it to?

30 A. Mr. Philip Shafto.

Q. And who did you sell it for then?

Mr. Marshall: I object to all of this.

The Master: What is the materiality?

Mr. Redrow: Just to test the witness, is all.

The Master: I will sustain the objection, if that is all there is to it.

Q. Now, didn't you tell Mr. Ely that day or some other time about that time that Mr. Carter at Woodbury could locate that ground for Mr. Ely and would show him where it was?

A. I never did; I never had such a conversation.

Q. Do you know whether or not Mr. Carter ever 10 did try to locate it?

A. I do not.

Q. Did you ever employ him to go down there and locate it?

A. I did not.

Q. Did you ever talk to Mr. Carter about it?

A. Not to my knowledge.

Q. Do you know Mr. William Carter at Wood-
bury?

A. Is that father or son? 20

Q. Father.

A. I know him.

Q. You know the son?

A. No, I do not; I have seen him in the office but to know him, I don't know him.

Q. But you never discussed with him where this property was located?

A. I did not.

Q. Did Mr. Ely ever tell you that he had discussed it with him? 30

A. No, sir.

Q. Did Mr. Ely tell you the day that you and Mr. Hall went down to look over the property that he had discussed it with Carter and tried to find out from Carter where it was located?

A. I haven't any recollection of that conversation.

The Master: I want you to state on the record what you claim to be proper items of deduction from the contract price so that I may have your claim in reference to that; then I will get Mr. Marshall to state what he thinks is the right way to get at it.

10 Mr. Redrow: I would say the first claim is to determine the value of this property or determine what deduction ought to be made from the purchase price in order to ascertain how much the defendant should pay the plaintiff in carrying out this agreement. I say that should be determined first from the pro rata value of this property compared with the other value, and second as to the value of the land in question, and on the determination of that some value be fixed which would be a fair value.

20 The Master: Then you claim that there should be a deduction from the entire contract price in excess of the market value of the fourteen acres, or is it limited to the market value of the fourteen acres?

Mr. Redrow: Well, I say that the deduction for the fourteen acres should be some value best determined by the Court, ascertained by you. The testimony has been very little of it as to market value; most of it has been to the value to the individual.

30 The Master: You do not seem to understand my question, whether you claim there are two elements of deduction, first for the market value of the fourteen acres title to which has failed——

Mr. Redrow: Yes.

The Master: You claim that?

Mr. Redrow: Yes.

The Master: Do you claim any other deduction than the market price?

Mr. Redrow: I claim in arriving at the deduction to be made consideration should be taken of the pro-rata value of the entire property under the contract price. 10

The Master: Do you mean to say that the deductions should be based upon the average value of the area in accordance with the contract price, and then take from the contract price the average value of the fourteen acres?

Mr. Redrow: I say that that is to be considered in arriving at that value. 20

The Master: Well, which plan do you think ought to be adopted?

Mr. Redrow: Both of them have to be adopted.

The Master: How can they be both? You are not entitled to a double deduction, are you?

Mr. Redrow: No. 30

The Master: Well, which do you think is the proper way to get at it, the market value of the fourteen acres, or the value of the fourteen acres as compared with the whole tract upon the average value per acre?

Mr. Redrow: My understanding of the cases on that is this, that you must consider both ways, the Courts have held, as I understand it that the pro rata is the proper method, but where there is some reason why that method should not be considered, that then you consider the actual value of the property itself.

The Master: Now, included in the entire contract
10 were how many acres?

Mr. Redrow: One hundred and six.

The Master: Did that include the fourteen acres?

Mr. Redrow: Yes.

The Master: The consideration price was \$4500?

20 Mr. Redrow: Yes.

The Master: How much would that be an acre?

Mr. Redrow: \$42.40.

The Master: Forty-two dollars and some cents
an acre?

Mr. Redrow: Yes.

30 The Master: Then your contention is that there
ought to be a deduction from the contract price of
—

Mr. Redrow: \$614.80.

The Master: Based upon the calculation in that way?

Mr. Redrow: Yes.

The Master: All right; I understand that. What is your contention, Mr. Marshall?

Mr. Marshall: My contention is the other way.

The Master: Your contention is that it must be the market value of the fourteen acres? 10

Mr. Marshall: Yes, and the fourteen acres here is wholly unlike the balance.

The Master: Does it adjoin?

Mr. Marshall: It does not.

The Master: Is it contiguous? 20

Mr. Marshall: It does not adjoin.

The Master: Is that conceded that the fourteen acres and the balance of the tract is not contiguous?

Mr. Redrow: Oh, that is shown by Mr. Wilson's testimony; he located it specifically.

The Master: And how far apart is it? 30

Mr. Marshall: It is the distance of this land here apart, the distance of the land he said he had to buy in order to get an outlet to the other road.

The Master: Then the Wilson tract on which the cedar is involved is located between the main farm and the fourteen acre tract, is that right?

Mr. Marshall: That is my idea of it. My idea is to follow that up first with the valuation of this fourteen acres as something that can be ascertained; it is not necessary to confine ourselves to the market value or value of the entire tract of 106 acres, because it would be absolutely unfair. This tract is
10 wholly unlike all the balance of it, so it would not be a fair method, I do not think, to estimate the valuation of this piece of land and deduct that from the purchase price. Now, in addition to that, I think we are entitled, in view of the fact that this man has had the occupation and benefits of the property from the date of the agreement to the present time,—if he has decided to take what portion of the property we can give him, he ought to make com-
20 pensation for it as though compensation had been made at the time of the expiration of the agreement; in other words, he has had the benefit of everything and we have been kept out of everything.

The Master: And you claim you are entitled to the interest paid on the mortgage and taxes?

Mr. Marshall: We claim we are entitled first to the \$900 with interest on that from the time that
30 was payable under the agreement;—the five hundred dollars—I think that was the mortgage; that was to have been an installment mortgage with interest on that from June 25th, the date provided for in the agreement, and also for the interest we have paid on the three thousand dollar mortgage together with taxes, less any deduction which your

Honor feels should be made under the circumstances.

The Master: What have you to say as to the interest charge and taxes?

Mr. Redrow: I think under the cases we are not obliged to pay them.

10

At this point the matter was adjourned until Tuesday afternoon, January 29, 1918, at 3 o'clock P. M.

DEPOSITIONS.

IN CHANCERY OF NEW JERSEY.

20

Camden, New Jersey, January 29, 1918.

Hearing of the above matter resumed at two o'clock, P. M. pursuant to adjournment, in the presence of Counsel for the respective parties.

SHEPPARD ENGLISH, SWORN.

By Mr. Redrow:

30

Q. You are a surveyor, aren't you, Mr. English?

A. Yes.

Q. You made a survey of this fourteen and forty-three-hundredths acres for Mr. Hall, didn't you?

A. Yes, sir.

Q. Now, Mr. English, how much of that is upland or cleared ground?

A. Well, there is about three acres and a half of cleared ground, cleared upland.

Q. Now, how much land is there, Mr. English, on this side, on the south of the road?

A. Well, I should think there is about four acres, I should think.

Q. About four acres—south of the road?

10 A. South of the road, yes.

Q. Now, the survey that you made was protracted, wasn't it, south of the road?

A. Yes.

Q. On account that the man who owned the property wouldn't let you on there?

A. Yes.

Q. In referring to Exhibit C.9, Mr. English, will you just state where the low land is?

20 A. Well, it is on each end. This is south of the road in here and on this. (Indicating.)

The Master: Now, that don't tell us anything.

Q. On the upper end, would you say?

A. Yes, on the upper end and on both sides of the road on the south end.

Q. Mr. English, would you say now that the low land was adjoining the stream on the north?

A. Yes.

30 Q. Also along the stream where it crosses the road on the south?

A. Yes.

Q. What would you say as to relative to being low land or high land of the piece of ground in the middle?

A. Well, this seemed to be high land—you could

go clear across on the high land into this line, and this was high land along—well, I should think probably half way over that line was high land.

Q. And that line you refer to is the westerly line of the piece of land, isn't it, the westerly line of the property?

A. Yes, the westerly line, yes, sir.

Cross-examination.

10

By Mr. Marshall:

Q. Do you mean to say that half way over the westerly boundary—you mean between the westerly boundary and the stream?

A. No, what I intend to say was probably about half of this line was along the upland here. Taking the length of the strip, about half of it is low and about half high. Where we run this line was upland; where the line run, about half the length of it, I should think. 20

The Master: Was that where they called the island?

The Witness: Yes.

Q. What is this here?

A. Swamp.

Q. That is all swamp up in there?

30

A. Yes.

Q. The low land is along where? Where is the low land—indicate that?

A. This is swamp here; this is low ground through here, swamp here. (Indicating.)

Q. Where is the strip then of high ground, right along in here (indicating)?

A. Yes.

Q. Along the westerly boundary?

A. Yes.

Q. And you say altogether there is about three and a half acres of high land in the whole strip?

A. No, there are three and a half acres of cleared ground.

Q. Oh, cleared land?

A. Cleared land.

10 Q. And you do not mean then by cleared land high land, do you?

A. Yes, it was high land and cleared land, too; but it was cleared, been farmed, got no stumps in it, nothing like that.

Q. It had been farmed?

A. Yes.

Q. What part was that?

A. It was right here. (Indicating.)

Q. That had been farmed?

20 A. Yes.

Q. That is along the easterly line, isn't it?

A. Yes.

Q. There is no question in your mind about that being the location of that tract of land, is it?

A. No.

Q. That is positively it?

A. Yes, I am positive.

Q. You are acquainted with the location of the Reuben's mill dam?

30 A. Yes.

Q. Do you know anything about the valuation of properties in Franklin Township?

Mr. Redrow: He wasn't ask to prove that, George.

The Master: It is not cross-examination.

Mr. Marshall: It would not be competent, I suppose, if objected to.

A. I am not a very good judge of that.

By Mr. Redrow:

Q. Mr. English, in order that it may be clear, how many acres of land would you say in the whole tract, whether it is cleared or not, is high land, and how many acres low land? 10

Mr. Marshall: I object; this witness has already answered the question by stating three and a half acres of it high land.

The Master: I will permit it to be straightened out if there is any question about it.

A. I would say probably about six acres of upland in the whole thing. 20

Q. Six acres of upland?

A. Yes.

Q. And there is three acres and a half, about, of upland that has been tilled?

A. Yes, cleared and farmed, no stumps in it.

Q. Then a little less than three acres you think is upland that has not been tilled?

A. Yes.

Q. That is covered by underbrush, is it? 30

A. Yes.

By Mr. Marshall:

Q. When you state that six acres of it has been tilled, do you know who has farmed it?

Mr. Redrow: He didn't say that, three acres.

A. About three and a half.

Q. Three and a half of it has been farmed?

A. Yes.

Q. And where is that, on the easterly line of the survey?

A. Yes, middle way of the easterly line.

Q. About three and a half of it is tillable, as I
10 understand you?

A. Yes.

Q. And about three acres or two and a half acres is cleared ground but is not tillable?

A. It is upland, but not cleared.

Q. Upland but not cleared?

A. Yes.

Q. Where was that?

A. That is along the middle here, in here. (Indicating.)

20 Q. That is surrounded by swamp, isn't it? That is surrounded by swamp or marsh, isn't it?

A. No, you can go across from the upland; there is a place where you can go across, keep on the upland all the way through.

Q. Can you tell us who has farmed the three acres—you said three and a half acres of it had been farmed?

A. Yes.

Q. Do you know who had farmed it?

30 A. Why, Wilsons, Thomas Wilson.

Q. Do you know when?

A. Well, they are farming some of it now and have been all the time.

Q. Wilsons have been farming some the last year or so?

A. Yes.

Q. Are you sure of that?

A. Yes, they have an asparagus bed on part of it; it goes through the asparagus bed.

Q. Do you know where Mr. Wilson's land is there aside from this? Does Mr. Wilson own any land adjoining that?

A. Thomas Wilson owns around the upper part, up here.

Q. Now, the asparagus bed is on Tom Wilson's land, isn't it? 10

A. Yes.

Q. It is not on this?

A. No. Well, yes, it is on this; it runs through the asparagus.

Q. Do you know that piece of ground to the north of this tract shown on Exhibit C.9 which embraces considerable high timber?

A. Which piece do you mean?

Q. A tract bounding this strip of land shown on Exhibit C.9 on the north running out to the Swedes- 20
boro Road? Do you remember or recall a strip of cedar to the north of this strip?

A. Northeast of this, yes, sir.

Q. Do you know who owns that?

A. Mr. Ely, I think.

Q. Do you know who did own it before he did?

A. Thomas Wilson.

Q. Now, isn't it on a piece of that ground that the asparagus bed is located?

A. A piece of that ground? 30

Q. Yes.

A. Well, it was sold in two different parts to Thomas Wilson. That all belonged to Mrs. Wilson, Ellen Jane Wilson.

Q. How much of this land up in here do you say is actually under cultivation and has been farmed within the last year or two?

A. That I don't know exactly how much has been farmed as lately as that. This there is included in the three and a half, this asparagus bed I spoke of, and that has been farmed recently, but on below it has not been farmed for four or five years.

Q. In other words, would you put it this way, that taking the whole tract as a whole, that here is about three and one half acres of land which is tillable and which is possible to be tilled, is that
10 correct?

A. Yes, it has been farmed, it is cleared.

Q. And that is about all the land in connection with this strip, Exhibit C.9, which is actually tillable, isn't it?

A. Yes, unless it was cleared.

Q. And even if it were cleared, it wouldn't be really tillable, would it?

A. Yes, the high ground would be tillable.

Q. That is, the high ground over in here?

20 A. Yes.

Q. Isn't that the island you speak of?

A. Yes.

Q. That is the island that you speak of?

A. Yes.

FRANK X. WAGNER, SWORN.

30 By Mr. Redrow:

Q. Where do you live?

A. Franklinville.

Q. What road do you live on in Franklinville?

A. I think they call it the Monroeville Road or Swedesboro Road, I think.

Q. Do you own any land on the north side of the Swedesboro Road?

A. Yes, I do.

Q. Is that in the corner here where the road bends around to go to Swedesboro, on this side of the road? This is the railroad here; your house is somewhere down here on the south side, where you live?

A. Yes, I am over here.

Q. Now, does your land go clear down to this corner of the land or practically so? 10

A. Yes, all but about fifteen or twenty feet, as near as I can judge.

Q. Who did you buy that land off of?

A. Robert Wilson.

Q. How much did you pay for that land?

(Objected to.)

The Master: When was it and all about it?

Q. When did you buy it, Mr. Wagner? 20

A. When?

Q. Yes.

A. Well, exactly, I couldn't say.

Q. As near as you can tell?

A. I think six or seven years, partly.

The Master: The question is how much you paid for it; the objection is sustained.

A. Well, I will tell you how we bought that. 30

Mr. Watkins: Well, the objection is sustained.

Q. Mr. Wagner, have you bought and sold real estate other than this in Franklinville or adjoining there?

A. No.

WILLIAM CRAMER, SWORN.

By Mr. Redrow:

Q. Mr. Cramer, where do you live?

A. Camden.

Q. What is your business?

A. Real estate.

10 Q. Have you bought and sold real estate in New Jersey recently? What real estate have you bought and sold in New Jersey recently?

A. Why, bought at Woodbury, in Cape May and Atlantic Counties, Cumberland County.

Q. Have you bought any in Gloucester County?

A. At Woodbury.

Q. How many acres did you buy there?

A. 172.

Q. Has that land been sold?

A. Yes.

20 Q. Have you seen the land at Franklinville which is set out on Exhibit C. 9, the map, as lying about half a mile west of the station?

A. Yes.

Q. How far is that situated from the station, would you say?

A. About four squares.

Q. About four squares from the station?

A. From three to four.

Q. Is it built up or not?

30 A. Up nearly to the property.

Q. Did you go over this property?

A. I did, not all of it, part of it.

Q. You saw that a portion of it, or it was pointed out to you that a portion of it was south of the road?

A. Yes.

Q. What is the value of that property in your opinion?

Mr. Marshall: I object; I don't think this witness so far has shown himself to be a capable witness to pass upon the value of land in Franklin Township.

By the Master:

Q. What is your business?

A. Real estate, buying and selling land.

Q. How long have you been in that business?

A. Ten years, and development.

10

Q. And your activity has been confined to what places?

A. Millville, Tuckahoe, near May's Landing, and 172 acres at North Woodbury, known as the Ladd tract.

Q. Have you bought or sold any real estate of the same character as this land in the neighborhood of the land?

A. Not in the neighborhood of the land, but I have bought land of the same character.

20

Q. Where?

A. Bought most all kind of land.

Q. Where?

A. In Millville, and some of that North Woodbury land is some of the same character.

The Master: What do you think about it, Mr. Redrow? It seems to me this witness is not qualified.

30

Mr. Redrow: It seems to me that a man who is buying and selling real estate in the vicinity—and certainly Woodbury is not so many miles away from it; it is in Gloucester County,—he has developed similar land to this, he has purchased land at May's Landing and Millville—he certainly ought to know the value of the land.

Q. Well, do you know the value of land in this locality?

A. I know what other people has paid for the land.

Q. No, that is not the question; the question is do you know the market value of it?

A. To my own opinion.

The Master: Well, I will let it in.

10

Mr. Marshall: I do not believe it is competent testimony.

The Master: I myself believe his qualifications are not great, but the man is in the real estate business and to a certain extent he would have knowledge of the value of lands in various localities. While the testimony, I do not think, in opposition to anybody that may have knowledge of a particular locality can be given much weight, yet I cannot say it is not admissible. I will permit the testimony over your objection.

20

(Question repeated.)

A. The property as a whole or the good and bad combined?

By Mr. Redrow:

30

Q. Take the property as a whole first?

A. Taking it as a whole, I would say it was worth from seventy-five to eighty dollars.

The Master: An acre?

The Witness: Yes, sir.

Q. Now, it was called to your attention, I understand, that some of the land is on the south amounting to about four acres?

Mr. Marshall: I object; he hasn't testified to how many acres on the south.

The Master: He said there was some land on the south; he didn't say how much it was.

Q. It has been testified to by the engineer who made the survey that there was four acres of land on the south of the road. What in your opinion would be the value per acre of that land? 10

A. I should judge that land to be worth somewhere around about forty dollars an acre.

Q. Now, what value, Mr. Cramer, would you place on the upland north of the road?

A. On the land that has been cultivated?

Q. Yes, the upland? 20

A. Why, in that location it ought to be worth \$150 an acre.

Q. Now, how about the other land, Mr. Cramer, the land that is lowland next to the stream?

A. Well, there is some good high land in there if it was cleared, and then there is some that is very low.

Q. Well, taking all of the low land together, how much or what value would you place on that per acre? 30

A. Well, of course, that is if a man would buy it to develop it, a man would use it all together; if he was going to buy and use it as bungalow sites and let the rear of the lots run into the stream, it would make a combination very valuable. Oftentimes a man appreciates water adjoining his prop-

erty very much; I have found it so in selling land all around. Some people won't desire it.

Q. What value would you place on that land, Mr. Cramer?

A. Well, I should think that back land there with the upland attached would be worth at least sixty dollars an acre.

Cross-examination.

10

By Mr. Marshall:

Q. When did you see this land, Mr. Cramer?

A. Today for the last time.

Q. When did you see it for the first time?

A. About two years ago I was by there.

Q. Was that before Mr. Ely bought it?

A. I don't know when Mr. Ely bought it; he never told me.

20 Q. You mean you went by there two years ago?

A. Yes, looking at land.

Q. You did not stop there and travel over that strip, did you, shown on survey C. 9?

A. No, not clear over.

Q. At that time you did not know anything about any dispute, did you?

A. None whatever.

Q. And at that time you did not take notice to any high land or low land?

30 A. Yes, that is my business.

Q. Just show me on that map what part of that land you found to be high land and what part low land two years ago?

A. I want a little information about the map here, about this stream.

Q. There is the map; it speaks for itself.

A. I was going through here, and I was down here, with Mr. D. B. Frazer & Company in his machine.

Q. Wait a minute; what was the last question?

(Question repeated)

A. All this through here for Mr. Frazer.

Q. All through where?

A. Through here, and this stream, we stopped 10 the machine on the bridge and looked up and down there and saw the stream.

Q. Did you walk over the tract?

A. No, I didn't walk over the tract.

Q. Did you go off the road?

A. No.

Q. Didn't you go over the tract at all?

A. No, not whatever.

Q. When did you?

A. Today.

20

Q. You say that through the snow you walked up through that tract of land?

A. Clear up to here.

Q. How did you get into the back of the tract, from whose land?

A. Walked over through here on this and up here to there (indicating on map); up to the upper end of it, the northwest end, I guess you call it.

Q. All covered with snow, I guess, today?

A. Yes.

30

Q. And ice?

A. No, sir.

Q. No ice at all?

A. No.

Q. Did you notice the stream today, the course of the stream?

A. Why, sure, was all over it.

Q. Was that covered with ice?

A. No, sir.

Q. Did you ever know any land in Gloucester County to sell for \$150 an acre?

A. Yes.

Q. Where?

A. Around Woodbury.

10 Q. Did you ever know any land in Franklin Township to sell for \$150 an acre?

A. No, sir, only what I have been told; I was told today they gave as high as \$350 an acre within a square of this property.

Mr. Marshall: I ask that that be stricken out as not responsive to the question.

The Master: It is not responsive.

20 Q. Then according to your estimate, that piece of ground which you looked at to-day and which you saw two years ago, you think would be worth over a thousand dollars?

A. Yes.

Q. In its present condition?

A. If a man was buying it for development purposes.

30 Q. I mean its present market value; I don't mean what a man will make out of it, but what will be the present market value of the land?

A. That is what I have sworn to.

Q. And the nearest ground which you have ever sold in this State to this tract of land which you have indicated on Exhibit C. 9 is land at Woodbury?

A. Yes.

Q. The City of Woodbury?

A. Right up against the negro settlement; I sold some for \$350 an acre right up against negro neighbors.

Mr. Marshall: I ask that that be stricken out.

The Master: The balance of that answer will be stricken out as not responsive.

10

Q. Who went over that land with you today, Mr. Cramer?

A. Mr. Ely and Mr. Miller.

Q. Now, can you tell me what part of that tract appeared to be land which had been cleared, if any?

A. Yes, around through here. (Indicating.)

Q. That appeared to have been cultivated?

A. It did not appear; it had been.

By the Master:

20

Q. How could you tell whether it was cultivated with snow on it?

A. I had been there before and the stubble and stuff will show the effect on the land itself, and the corn shocks was right up against it, which was the same land which was adjoining it; there was no brush or nothing, on the cleared land.

Q. Was there corn stubble along this land?

A. Corn shocks, I meant to say—no, adjoining it. 30

Q. On this land was there any corn shocks or stubble?

A. No, I couldn't see no stubble, for it was covered with snow.

By Mr. Marshall:

Q. How could you tell if the land had been cultivated or not?

A. Why the natural appearance of it; it was an open field. I couldn't say whether it was cultivated; the field had been cleared to be cultivated.

Q. That is what you mean then, it was land which had been cleared; you can't say whether it was cultivated?
10

A. Yes, I would say if the snow hadn't been there, to my best judgment—

Q. No, that is not it; you are testifying from your observation of it?

A. I would say land that has been cultivated.

Q. How do you know it has been cultivated?

A. From my observation.

Q. What did you see?

A. No brush, no stumps, no nothing; when we
20 were walking over the snow we didn't feel no stumps, no underbrush.

Q. From that you think the land had been cultivated?

A. Yes.

Q. Could you see anything there, any asparagus beds or anything?

A. No, it was covered up.

Q. And you couldn't tell whether it was cultivated or not?

30 A. Well, taking my natural judgment, I would say it was.

Q. You are located now in Camden, aren't you?

A. Yes.

Q. Do you know Mr. Ely?

A. Only just within a couple or three months.

Q. He is also in the real estate business, isn't he?

A. I understand he is a developer.

Q. Have you ever been associated with him in any respect at all with relation to the development of real estate or buying real estate?

A. No, not with him.

Q. Or any one for him?

A. No.

Q. When did he first speak to you about the value of this land?

A. I think probably about four weeks ago, and then Mr. Hewitt asked me yesterday if I would go down there. 10

Mr. Marshall: I object to anything Mr. Hewitt may have said.

Q. About four weeks ago?

A. Yes.

Q. You have bought nor sold no land whatever in Franklin Township? 20

A. No, sir, none whatever.

By Mr. Redrow:

Q. Mr. Cramer, you saw this property down there two years ago?

A. Yes.

Q. Was it cultivated at that time?

A. At the time I was there, that was in the fall of the year; of course, there was no crops on it, but it was cleared land; I couldn't say whether it had been cultivated or not because it was only from the road there. It was tillable land, understand. 30

Q. Has the value of that kind of land, Mr. Cramer, increased or diminished since May, 1916?

(Objected to.)

The Master: The witness has not shown any qualification as far as that is concerned.

Mr. Watkins: I say he has been allowed to give his testimony as an expert, although he is not at all qualified.

10 The Master: I think myself there is some doubt about his qualification; there was other testimony permitted to come in that was in somewhat the same class. It is a difficult matter to fix any rigid rule with reference to qualification.

Q. When you went down with Mr. Frazer, did you go down with the idea of buying property or looking over property?

(Objected to.)

20 A. I did not.

FRANK X. WAGNER, recalled.

By Mr. Redrow:

Q. Mr. Wagner, you own that land adjoining Mr. Ely?

A. Yes.

30 Q. Is that farm cultivated by you or not?

A. Well, yes, our place is, but not steady, not every year.

Q. Did you raise anything there last year?

(Objected to.)

The Master: What is the purpose?

Mr. Redrow: The purpose is to show that a portion of this land which is in question was under cultivation.

The Master: That is, a portion of the land in question?

Mr. Redrow: Yes.

10

The Master: All right, I will admit it.

Mr. Marshall: This is owned by this man Wagner.

Mr. Redrow: No, I am speaking about the fourteen acre tract.

Mr. Marshall: He has not shown this man claims to own any part of the fourteen acres yet.

20

Mr. Redrow: If your Honor please, it has been shown in the testimony that the premises in question are owned by Tom Wilson, by Ely, by this man Wagner; this man Wagner's line comes up adjoining Ely's property, testified by both Mr. English and Tom Wilson. I propose to show that all this man's land clear up to Ely's line is under cultivation.

30

The Master: Is it a portion of the fourteen acre tract?

Mr. Redrow: Yes, it is a portion of the fourteen acre tract.

The Master: Well, if it is a portion of the fourteen acre tract it is admissible.

Mr. Marshall: Well, that is not in the testimony so far, as I understand it.

Mr. Redrow: If there is any question about it, Mr. English can prove it.

10 The Master: It is admitted for the purpose of showing the character of the land, if this witness knows it is part of the fourteen acre tract, though.

Q. Now, Mr. Wagner, the land immediately adjoining Mr. Ely on the west, clear up to Mr. Ely's line, has that land been cultivated by you clear up to Mr. Ely's line?

A. Yes.

20 Mr. Marshall: I object to that unless he knows where Mr. Ely's line is.

Q. Do you know where Mr. Ely's line is?

(Objected to.)

A. Right next to mine.

The Master: Prove by this witness first if he
30 has cultivated a portion of the fourteen acre tract, if he knows where the fourteen acre tract is. It won't help us a bit to have testimony showing that some other land was cultivated.

Mr. Redrow: I don't think the Court understands exactly what I mean by the situation.

The Master: Well, maybe I don't.

Mr. Marshall: That is a different survey, too.

Mr. Redrow: It is in the testimony that Ely purchased about fourteen acres of land from Bob Wilson, and that was introduced as showing this plan. The testimony and evidence now is that this land here from Tom Wilson—by referring to the testimony it can be ascertained that the land im- 10
mediately on the west here belonged to Wagner, that Ely owned this land; now, then, the fourteen acres runs across this tract like that, something, in somewhat that position, in other words beginning at a line down here and running up this way, up to here, and running from here down here. (Indicating on plan.)

The Master: Now, ask this witness whether he knows the location of the fourteen acre tract in 20
dispute here, because that is the important thing to know, whether he knows the location of that.

The Witness: Yes, I know Mr. Ely's ground or that line is in line with mine, as near as I know.

The Master: Well, that may or may not be the question. Look at that map.

The Witness: This here one or this? 30

The Master: No, the other map, the tracing. According to the testimony the fourteen acre tract in dispute is shown on that map—that is right, isn't it?

Mr. Redrow: Yes, but you understand by point, that it is already in the testimony that Mr. Wagner regardless of this survey, owns clear up to here, he has got title to it. Now, then, a portion of this land, the testimony shows, belongs to Mr. Wagner. Now, I ask this witness if all his land clear up to and adjoining Ely's land and shown on this plan has been cultivated, and it seems to me that is a proper question when the testimony shows that
10 Wagner does own clear up to Ely's actual line. Now, this piece of land here, as a matter of fact, is really non-existent as far as title conditions are concerned.

The Master: Well, is that the situation, Mr. Marshall, as you understand it?

Mr. Marshall: Well, the situation is in sort of a haze there as far as I can view it and I cannot
20 see the relevancy of it. I know that Wagner owns some land east of this tract of land in question; I know he has farmed some of it. That is all I know, but we are willing to admit——

Mr. Redrow: As a matter of fact, George, you know that Wagner owns a portion of this fourteen acres.

Mr. Marshall: No, I don't.

30

Q. Mr. Wagner, look at that tracing and see whether or not you know the location, that is the physical location on the ground of the land which is shown on that map?

A. Well, gentlemen, this here one here, I can go on below that.

The Master: No, the testimony is the land on the tracing is the land that is involved here. Can you locate that—do you know where it is physically on the ground?

The Witness: Why, I would know if this here line is perfectly parallel, because by piece of ground here shapes the same as this one.

Mr. Marshall: I don't think he is competent to testify at all. 10

The Master: You will have to establish in some way that this gentleman has knowledge of the fact of the physical location of the land in dispute here, not some other land.

Mr. Redrow: That is the very thing that I am bringing him to the point of. I don't know whether I am dense or am unable to bring it to the Court's attention, but the testimony in this case shows that this piece of land includes the piece of land here that Ely has; it includes the strip of land up here belonging to Wagner, the strip up here belonging to Tom Wilson. 20

The Master: Now, is that conceded, Mr. Marshall?

Mr. Marshall: I don't know anything about that; I know he owns some land east of the land shown on the blue print; I don't know anything about the situation here except that is a protraction of the deed from the Wilsons to Mr. Ely and embraces some part of the land. 30

The Master: Well, you had better prove that is a fact then in the testimony.

(Witness withdrawn.)

SHEPPARD ENGLISH, recalled.

10 By Mr. Redrow:

Q. Mr. English, you made this survey, C. 9?

A. Yes.

Q. Now, whose land was included in this survey, if you know?

A. Well, this—what is the man that keeps the store there, Mr. Ely?

Mr. Redrow: Lucaston?

20

The Witness: Yes, this is Lucaston.

Q. The land lying south of the road belongs to Mr. Lucaston?

A. Yes.

Q. How about the land lying north of the road?

A. This here belongs to Mr. Ely and this in here—now, that would be Thomas Wilson's there; there is where the asparagus is, and this here I am not

30 sure about.

Q. Does or does not that belong to Wagner?

A. This belongs to Wagner here, I think up there, and this to some one else. (Indicating on map.)

Q. About three years ago, Mr. English, didn't you make a survey of that for me for a man by the name of Wagner?

A. I wouldn't wonder; I think I did, yes. Yes, I think it was Wagner that got that.

Q. Is this Exhibit C. 20 a portion of that belonging to C. 9?

A. What is that?

Q. Is this Exhibit C. 20 a part of C. 9?

A. Yes, this line and that line is all one.

Q. The westerly line of Exhibit C. 9 and the westerly line of Exhibit C. 20 are on the same line?

A. The same line, yes.

10

Mr. Redrow: I can show by Mr. Wagner that all of his land up to Mr. Ely's line has been cultivated; that is my offer, George, by this witness.

The Master: Well, put Mr. Wagner on the stand and ask him the question.

FRANK X. WAGNER, recalled.

20

By Mr. Redrow:

Q. Mr. Wagner, has all of your land north of the road up to the line of Mr. Ely's land been under cultivation?

Mr. Marshall: I object to that unless he knows where the line of Mr. Ely's land is.

30

The Master: Do you know where Ely's line is? You can answer that yes or no, can't you, Mr. Wagner?

The Witness: As much as I know, yes.

The Master: All right.

Mr. Redrow: Go ahead.

A. This light land has all been cultivated about—close on to sixteen acres there has all been cultivated. I have got about $15\frac{5}{8}$ acres.

Q. Is there any fence there between you and Ely?

A. No, sir, a part, maybe about a hundred feet
10 in the back, and that is part of Wilson's fence left.

Cross-examination.

By Mr. Marshall:

Q. But you cannot definitely say where your line begins and Mr. Ely begins can you?

A. From that tracing, yes.

Q. You can?

20 A. From my own tracing. What I mean is this

Q. No, confine yourself to the map.

A. This map here?

Q. You can't tell?

The Master: Is that C. 9?

Mr. Marshal: Exhibit C. 9—You can't tell definitely where your line begins and Mr. Ely's ends,
30 can you?

A. I can't make out with this map at all. I can make out better with this. (Indicating another map.)

Q. What you mean to say is, as far as you know, all the sixteen acres which you own you have cultivated?

A. Yes.

Q. And you don't know where his line begins?

A. No, I know where my land lays exactly, of course.

CHARLES P. HALYBURTON, SWORN.

By Mr. Redrow:

10

Q. What is your business, Mr. Halyburton?

A. Real estate operator.

Q. How long have you been engaged in that business?

A. About eight or nine years.

Q. Have you bought and sold any land in Gloucester County?

A. Yes.

Q. What other counties have you been dealing in real estate?

A. Camden County, Ocean County—I don't know whether there is any other counties or not.

Q. Did you ever buy or sell any land in Franklin Township?

A. No, I haven't bought any in Franklin Township.

Q. Did you ever buy anywhere in the vicinity of Franklinville or Clayton or in that neighborhood?

A. I have bought in Clayton.

30

Q. Are you acquainted with the value of real estate in Franklin Township and vicinity?

A. Fairly well, yes, sir.

Q. Have you looked at this piece of land as shown on Exhibit C. 9?

A. There is another map I was looking at; if I had that other map I could identify this then.

(Witness is shown another map.)

The Witness: Where is the road from Franklinville to Millville?

Q. It comes in here. (Indicating on map.)

A. I see.

Q. And this just shows the road across the dam there.

10 A. This road comes up here?

Q. That is right; have you seen that piece of ground?

A. Yes.

Q. On both sides of the road?

A. Yes.

Q. What in your opinion, Mr. Halyburton, would be the value of that property?

20 Mr. Watkins: I object because the witness has not qualified himself at all as an expert on land in this locality, this kind of land.

The Master: I will take it for what it is worth; you can cross-examine him on that point if you want to.

Mr. Watkins: No, I am satisfied to let it go as it is on the objection made.

30 (Question repeated.)

Q. What in your opinion, Mr. Halyburton, would be the value of this property containing 14-43/100 acres?

A. Well, I can't—I will have to answer that in my own way.

Q. All right.

A. I saw this property this morning, and I have been along there before; I have a pretty fair idea of the land around there. If a man were selling that property to me, if I wanted to buy property there, if I could buy that property for fifty dollars an acre I would consider I was buying it at a pretty reasonable figure, but if I was in Mr. Ely's position there and owning this land he does all along there, you could not buy it from me for—— 10

Mr. Watkins: I object to that.

The Master: No, the question, Mr. Halyburton, is the market value of the property; that means the value that would be put upon it by a man that was not obliged to sell but was willing to sell and a man that was not obliged to buy but was willing to buy. 20

The Witness: Considering its location and all there, Judge, I would make a value of fifty dollars an acre on it.

Cross-examination.

By Mr. Marshall:

Q. You saw the land this morning, Mr. Halyburton? 30

A. Yes.

Q. Did you ever see this particular land before?

A. I have seen it before, but never looked at it.

Q. Never examined it before?

A. No.

Q. When you say you have seen it before you

mean you have passed it, I suppose, along that road?

A. Yes.

Q. And you couldn't see much of it today with the snow on it?

A. No, that is a fact.

Q. It puts you in a situation where you really couldn't pass upon it and give a fair opinion, doesn't it?

10 A. No, I think I have a pretty fair opinion of what land is worth. I have been down that way before looking at properties, not buying them, putting mortgages on them, all that sort of thing, right down there.

Q. But you have never bought or sold any land whatever in Franklin Township?

A. No, but I have inspected a good many properties down there with the idea of taking mortgages and all that sort of thing.

20 Q. Do I understand you have appraised the value of property in Franklin Township without buying or selling?

A. Yes, I have gone down, looked at different properties there.

Q. For the purpose of placing mortgages?

A. Placing mortgages, yes.

Q. And some in the vicinity of this property?

A. I have been down there a half dozen times—I can't remember—I think the last time I was down
30 there——

Mr. Watkins: Answer the question.

Q. Were some of the properties which you inspected or appraised in the vicinity of this property?

A. The nearest one I can remember is about a mile from there. It was not on that road; it wasn't as good a property as this, that is, it wasn't as well located.

Q. How far is this located from the station?

A. I should say about a quarter of a mile.

LEMUEL MCGEE, sworn.

10

By Mr. Redrow:

Q. Mr. McGee, where do you live?

A. Franklinville.

Q. How long have you lived there?

A. All my life, you might say; I have been there where I am, I moved there in the spring of 1881.

Q. Are you acquainted with the Dr. Porch farm?

A. I am, sir.

20

Q. Where is the Dr. Porch farm?

A. Well, it lays on the State Road between Franklinville and Clayton.

Q. How far back does it extend?

A. Well, that I couldn't tell you.

Q. You don't know whether it comes out on the Franklinville road or not?

A. It comes out, yes, on the Franklinville road.

Q. Well, I mean on the road leading from Franklinville to Monroeville?

30

A. Well, no, I could not say to that.

No cross-examination.

FRANCIS C. ELY, recalled.

By Mr. Redrow:

10 Q. Mr. Ely, it was testified to by Mr. Leddon that you made this statement some time after you had purchased the property from Mr. Hall: "You know as well as you are alive that you can't give me good title to the fourteen acres, and that I intended to buy this property for four thousand dollars and that is all I intend to pay you for it"? Did you make that statement to Mr. Leddon or not?

A. No, sir.

Q. Did you have any conversation with him—

A. After I signed this agreement?

Q. In which you said that four thousand dollars was all that you were going to pay?

A. No, sir.

20 Q. Did you have any conversation or make any agreement with him about four thousand dollars?

A. After the signing of the agreement?

Q. Yes.

30 A. I had Mr. Leddon and Mr. Hall down to look at the piece of property at the back end of this farm that according to my idea was the piece I was to get, and I told him if that was not worth a thousand dollars it wasn't worth a cent, but I was willing to settle at that time by holding back five hundred dollars until the title was proven or disputed on that piece of ground.

Q. So that you did not make any statement such as Mr. Leddon said, or any similar statement as I understand?

A. No, sir, that I was willing to settle at that time before the expiration of the agreement by holding

back five hundred dollars until the title was either perfected or disputed on this fourteen acres which we went to see, which I told him was worth a thousand dollars and afterward paid \$1050 for it.

Cross-examination.

By Mr. Marshall:

Q. In other words, the piece of ground that you 10
were on was not the piece shown on the map but was
a piece lying to the north of it?

A. That is true.

Q. The piece of land you thought you were getting
under the agreement you say you had to pay \$1050
for?

A. Yes.

Q. But you didn't pay \$1050 for it?

A. Yes.

Q. You yourself paid \$1050? 20

A. Mr. Finger and I.

Q. Well, you did pay \$1050 for it?

A. Now, do you want me to——

Q. I want your answer yes or no.

A. I went to Mr. Finger——

Q. No, answer that yes or no,—did you pay \$1050
for it?

A. The consideration of the deed is \$1050.

The Master: No, answer the question. 30

The Witness: No, \$250 cash.

The Master: The question is did you pay \$1050
for it? Now, you answer yes or no—did you?

The Witness: No.

Q. In other words, your statement that you paid that for it is not true, is it?

A. Well, if you put that version on it.

By Mr. Redrow:

Q. Just state to the Court what that transaction was.

10 The Master: You have already gone into this with Mr. Finger; he made a deal by which he was to get the land and Finger the cedar.

The Witness: That is not quite it, your Honor.

The Master: You want to make a further explanation as to that?

The Witness: Yes.

20 The Master: All right; go ahead.

The Witness: I went to Mr. Wilson to buy this ground, and he said he wouldn't sell——

Mr. Marshall: I object to anything Mr. Wilson told you.

30 The Witness: He testified the other day the price was one thousand dollars. Well, I went to buy the ground from Mr. Wilson; the price was fixed at one thousand dollars.

Mr. Marshall: I object to any negotiations you may have had with Mr. Wilson.

The Master: The objection is overruled.

The Witness: That is more money than I had and I went to Mr. Finger and asked him what he would give for the cedar.

Mr. Marshall: I object to any conversation with Mr. Finger.

The Witness: He told me what he would give for the cedar; I went back to Wilson and asked him if he would not take less and he said no. 10

Mr. Marshall: I object.

The Master: It is taken subject to your objection.

The Witness: Then I told Finger, "You go buy this piece of ground, make the best bargain you can, you get the cedar, and I will take the ground so I can get an outlet." 20

The Master: That is exactly what you said before.

By Mr. Redrow:

Q. Mr. Ely, at the time this agreement of sale was made on April 25, 1916, was the cedar on that piece of property or not?

A. Yes.

Q. When did you buy the land back there off 30 of Tom Wilson?

A. I think it was August 1916, after I found that the title was good.

DEFENDANTS REST.

COMPLAINANT'S REBUTTAL.

LEWIS R. LEDDON, recalled.

By Mr. Marshall:

Q. You are acquainted with the Dr. Porch farm?

A. Yes.

10 Q. Are you acquainted with the rental values of farms in Franklin Township and vicinity?

A. Yes.

Q. What in your opinion would be the rental value of the Dr. Porch farm per year?

A. There is part of that farm that can't be cultivated, of course, because it is timber, but the portion that is is worth \$275.

Q. A year?

A. A year.

20 Q. And Mr. Ely has occupied the farm from the date of the agreement until the present time?

A. Yes.

Cross-examination.

By Mr. Redrow:

Q. Did you ever rent this farm?

A. That farm? No, sir, not that farm.

30 Q. Did you ever rent the farm adjoining it?

A. No, I have not.

Q. Did you rent the farm next to that one toward Clayton?

A. I have not.

Q. Have you rented any between that farm and Clayton?

A. The farm——

Q. I asked you whether you rented any between that farm and Clayton?

A. I have not.

Q. Have you rented any between that farm and Franklinville?

A. No, I have not. I know the rental value of farms.

Q. Just answer the question, Mr. Leddon. How many acres of that farm is under cultivation?

A. About fifty. 10

Q. And the rest of it is not under cultivation?

A. The rest of it is not.

Q. What is the nearest farm to this one that you have rented in Franklin Township?

A. I haven't rented any farms in Franklin Township.

Q. Oh, you haven't rented any farms?

A. Not any farms in Franklin Township.

Q. How many farms have you rented since January 1st, this year? 20

A. I haven't rented any within the last month.

Q. Did you rent any in December of last year?

A. Of 1917?

Q. Yes.

A. No, I did not.

Q. Did you rent any in November?

A. I don't remember that I did.

Q. Did you rent any in October?

A. I don't know.

Q. In September? 30

A. I don't know whether I did or not; I can't tell you.

Q. How many farms have you rented since January 1, 1917?

A. I don't know.

Q. Have you rented any?

A. I wouldn't say that I had.

Q. Did you rent any farms in the year 1916?

A. I don't know.

Q. Did you rent any in 1915?

A. I couldn't answer you that.

Q. How about 1914?

A. I don't know; I haven't my memoranda here.

Q. As a matter of fact you never rented any farm, did you?

A. Yes.

10 Q. Whose farm was it?

A. I haven't rented any farms in Franklin Township; I have two farms in Franklin Township to rent at the present time, but I haven't rented any farms in Franklin Township, because I have done very little business in farm land, either renting or selling in Franklin Township.

(Question repeated.)

20 The Master: Strike the answer out and answer the question.

Q. Whose farm was it—can you answer the question?

A. I cannot.

Q. When you say you can't tell me whose farm it was, do you mean you don't remember any or that you refuse to answer the question?

30 A. I don't remember any; I kept very few memoranda of the business that I had.

Q. Now, Mr. Leddon, do you want us to believe now that you have rented lots of farms, but that you just don't have the memoranda here?

A. No, I don't want to lead you to that idea. Around Clayton—I have done the majority of my business in Clayton.

- Q. Right in the town itself?
- A. Yes; there isn't any farms in Clayton, or there is very seldom a farm in Clayton for rent. When a farm does rent they count it about six dollars an acre, between five and six dollars an acre.
- Q. That is, around Clayton?
- A. According to the location of it.
- Q. That is around Clayton, isn't it?
- A. Yes, Clayton and vicinity.
- Q. That depends quite a little bit on the character of the soil, doesn't it? 10
- A. Well, a renting farm is never very good.
- Q. Was this farm occupied last year?
- A. Which is that?
- Q. Or the year before it was sold, I mean, during 1915?
- A. This farm in question, the Dr. Porch farm?
- Q. Yes.
- A. Yes.
- Q. Who lived on there before it was sold? 20
- A. Stokes Chew, John Stokes Chew.
- Q. Do you know whether he paid any rent?
- A. I do not; I don't know the arrangement between him and the owner at all.
- Q. Was he a tenant, John Stokes Chew?
- A. No, he occupied the property and ran it for the owner; what their arrangement was, I don't know.
- Q. Well, who lived on there before John Stokes Chew lived there? 30
- A. I don't remember.
- Q. How long did John Stokes Chew live on the property?
- A. I should think a year, about that.
- Q. Did you have charge of the property during that time?
- A. I did not.

Q. When did you first assume charge of the property?

A. I haven't assumed charge of the property.

Q. Did you ever have charge of this property?

A. No, sir.

Q. I mean, the Porch property?

A. No, I have not.

Q. So that you never rented any farms in Franklin Township—as a matter of fact, you don't ever
10 remember renting any farms yet you place a value of \$275 on this farm as the rental value per year?

Mr. Marshall: I object to that because that was not his testimony.

(Question repeated.)

The Master: That is hardly in accordance with the testimony.

20

Mr. Marshall: He said he had rented some farms.

The Master: That is what I understood him to say.

Q. You have rented farms?

A. I have two farms for rent in Franklin Township now.

Q. I asked you whether you ever rented any
30 farms?

A. Not in Franklin Township.

Q. Did you ever rent any farms anywhere?

A. I have negotiated——

Q. I ask you, did you ever rent any farms anywhere?

A. Not directly.

Q. So that the question I just asked you in making the statement that you had never rented any farms is true, isn't it?

A. It is according to what you would call a farm. Now, some people will call a two acre place a farm; other people consider a ten acre place a farm; other people wouldn't consider a farm if it is under twenty acres; it is just according to the point—

The Master: You answer the question according 10
to your own notion of what a farm is.

The Witness: The point of a farm, what constitutes a farm between a small farm and a large farm is an open question that has never been thoroughly settled; I haven't heard it settled even in fire insurance matters. There is a good many people rent what they call a farm even if it is only two acres.

Q. Mr. Leddon, how many farms over ten acres 20
have you ever rented?

A. I have never rented any farm over ten acres.

Q. So that having never rented any farm of over ten acres in Franklin Township or anywhere else, you say now that the rental value of this property, the Porch property, comprising fifty acres, according to your own testimony, of cleared ground or tillable soil, is \$275 a year?

A. I think it is.

Q. And you base that on your— 30

A. I base that on what other farms rent for, about between five and six dollars an acre, and I was counting this five dollars and a half.

Q. You say you base this upon five dollars and a half an acre, is it, for fifty acres?

A. Yes.

By the Master:

Q. Are there any buildings on the property, farm buildings?

A. Oh, yes, house and crib-house and barn.

By Mr. Redrow:

Q. And they have been repaired, haven't they,
10 since Mr. Ely bought it?

A. Very little.

Q. He put a new roof on the crib-house, didn't he?

A. Partly.

Q. All over?

A. I don't think so.

By Mr. Marshall:

20 Q. Now, Mr. Leddon, have you rented any farms in and around Clayton of less acreage than ten acres?

A. Yes.

Q. And you arrive at this figure——

A. We rent—the majority of those places we rent by the month. I rent a four acre place now for fifteen dollars a month.

Q. You arrive at this figure then of \$5.50 an acre or \$6 an acre in accord with the rental values of the
30 farms which you have rented in and around Clayton?

A. Not that I have rented, but the farmland rents around there.

(Objected to.)

(Question repeated.)

A. The farms that have been rented around there

Mr. Redrow: That calls for an answer yes or no, that he has rented.

Q. In other words, do you base your valuation entirely upon the farms, the rental value of the farms which you have rented? 10

A. No, I do not; I base that on the rental value of—

Mr. Redrow: I object if it is some other proposition.

The Witness: Of the farms that rent around Clayton.

Q. Together with the rental value of farms which you have rented? 20

A. No.

Mr. Redrow: If your Honor please, this is Mr. Marshall's witness, and it seems to me—

The Master: The question is leading, there is no doubt about that.

By the Master:

30

Q. How do you arrive at the rental value of \$5.50 an acre for this property?

A. Farmland has been renting around Clayton for \$5 an acre in the past, and some of it is renting for \$6 an acre.

Q. Now, you have answered that question; does that apply to Franklin Township in this locality, too?

A. Sure.

By Mr. Marshall:

Q. How far is this Poreh farm from Clayton?

A. A mile and a half.

10 Q. About a mile and a half from Clayton?

A. Yes.

By Mr. Redrow:

Q. Now, Mr. Leddon, you said you did rent some farms of less than ten acres; who did you rent them to and whose farms were they and where were they located?

A. Well, I rented a four acre farm.

20 Q. Where is it located?

A. On North Central Avenue, for fifteen dollars a month.

Q. North Central Avenue, Clayton?

A. Yes.

Q. Who is the owner of the farm?

A. William Cochran.

Q. What else is there on the four acres beside the farm?

A. There is a dwelling.

30 Q. How many rooms in the dwelling house?

A. Seven rooms and a bath.

Q. Has it hot and cold water?

A. Yes.

Q. Electric lights?

A. No.

Q. Gas?

A. No, there is no electric light.

Q. Does it have gas?

A. I don't know.

Mr. Marshall: I object to that unless the relevancy is shown; it is simply piling up testimony.

The Master: I suppose it is to test this witness' qualification and his testimony as to the value.

Q. It has gas, you say?

10

A. I don't know.

Q. Now, what other property did you rent of less than ten acres in and around Clayton, a farm, as you call them?

A. I rented a six acre place, about five acres—the deed calls for seven acres but that takes to the middle of the road; that would be about four acres, four acres and a half net, in the square, in the farm.

20

Q. Where is that?

A. That is opposite the cemetery.

Q. In Clayton?

A. Yes.

Q. How far is that from the station?

A. Six squares.

Q. What sort of house and building is there on that?

A. No buildings at all.

Q. What did you rent that for?

30

A. Thirty-five dollars.

Q. Thirty-five dollars what?

A. A year.

Q. Who owns that property?

A. Dr. Moore, the Estate of John M. Moore.

Q. That is in the Borough of Clayton, isn't it?

A. Yes.

Q. I understood you to say there is about seven acres of that?

A. Taking the road all the way around it; that is, the deed of that calls for seven acres, but that is the entire square.

Q. Is it a perfectly square piece of ground?

A. Yes, just a square plot and the deed calls for the road all the way around that, so that would leave about four acres farmable or tillable land.

10 Q. How wide are the streets there?

A. Sixty feet.

Q. So you say that thirty feet around a square block amounts to three acres of land?

A. No, I don't say so; I say the deed calls for about seven acres.

Q. Yes, and you say that thirty feet around the outside of that would comprise three acres, is that right?

20 A. The party that rents it told me there was about four acres and a half of tillable land there in that square.

Q. And now you say that the streets on that particular property belonging to John M. Moore take up at least three acres in the street, is that right?

A. Well, approximately, I don't know; I have never measured it.

Q. Do you know whether or not it would be two acres?

A. No.

30 Q. You don't know whether it would be four?

A. No, all I know is what the farmer——

Q. What somebody else told you; you never measured it, did you?

A. Sure not.

Q. Now, what other farms did you rent down in Clayton?

A. I rented another piece of property about the same as that to the same party.

Q. Belonging to whom?

A. The estate of John M. Moore.

Q. How much did you get for that?

A. Thirty-five dollars.

Q. Who did you rent that to?

A. Clarence Misskelly.

Q. How far is that from the station?

A. About the same distance as the other. 10

Q. You mean the first four acre tract or the seven acres?

A. Well, I rent him the two plots, the two pieces.

Q. Do they run in together, adjoin?

A. Only at the end.

Q. They adjoin each other at the end?

A. Well, just across the street.

Q. What other properties do you rent? Is there any buildings on that property?

A. Neither of those properties, no. 20

Q. Any other property you rent down there?

A. I rent a great many dwellings with small pieces of land.

Q. Do you rent any other farms in Clayton?

A. No.

LEMUEL MCGEE, recalled.

30

By Mr. Redrow:

Q. Mr. McGee, you said you were acquainted with the Porch farm?

A. Yes.

Q. Are you acquainted with other farms in the vicinity there of Franklinville?

A. I have farmed all my life.

Q. Do you rent farms down in Franklinville or have you rented farms there?

A. Well, no, I haven't rented none; I have been on my own since the spring of 1881.

Q. Did you rent of any one else?

A. The farm that I was on was rented—there was eighty some or ninety acres in it—it rented for \$125.

10 Q. How far was that from the Porch farm?

A. Why it is closer in to the town than what Mr. Porch's place is.

Q. Nearer to Franklinville?

A. Closer to Franklinville.

Mr. Marshall: Is that the farm you are on?

The Witness: The farm that I am on.

20 By the Master:

Q. When did you say that was?

A. Well, I moved there the spring of 1881, and it rented for a hundred and a hundred and twenty-five dollars, and there were nearly ninety or a hundred acres in the whole thing; I couldn't tell you exactly how much.

Q. That was in 1881?

A. Yes.

30

By Mr. Redrow:

Q. Are you acquainted with the rental values of any other farms around Franklinville?

A. Yes.

Q. Which farms are you acquainted with the value of?

A. I am acquainted with all of them up the line.

Q. On the road leading from Franklinville to Clayton—do you know the rental value of the farms there?

A. I know them all. This man had to take that

Q. What do they rent for?

Mr. Marshall: I object; he is not in the business.

10

The Master: I suppose a farmer that was engaged in that business there would have some knowledge what farms are worth.

A. A man that paid, on the road from Franklinville to Clayton, if he paid over a hundred dollars or a hundred and twenty-five dollars a year, he is paying a big rent for that.

Q. What size farm would you mean?

A. Well, from a hundred acres.

20

Q. With reference to the Dr. Porch farm, which the testimony shows contains a hundred acres, and fifty acres under cultivation, what would you say would be a fair rental value of that property?

A. Well, if you paid a hundred or a hundred and twenty-five dollars he is paying big rent for it, to make a living there.

Cross-examination.

30

By Mr. Marshall:

Q. The buiding there is a nice, large dwelling, isn't it, Mr. McGee?

A. Wel, the building is like all the rest of them on the line; they need repairing.

Q. The Porch farm is on the main road, isn't it?

A. On the main road.

Q. And do you know how many acres of cleared ground it has, tillable soil?

A. Well, no, I wouldn't say.

Q. Well, your estimate of the rental value of it was based upon that, wasn't it?

A. Sure.

Q. Now, how many acres of cleared ground are
10 you estimating when you fix that rental value at a
hundred or hundred and twenty-five dollars?

A. I don't believe on the Dr. Porch farm he has
got over sixty acres, if he has that cleared.

Q. Cleared?

A. No, I don't believe he has.

Q. Now, if there are sixty acres of cleared ground
there or even fifty acres of cleared ground there, to-
gether with the dwelling house and all the build-
ings, don't you think that would be worth over a
20 hundred or a hundred and twenty-five dollars a
year?

A. No, sir, I wouldn't give it if I had all kinds
of money.

Q. Do you know of any other farms around there
that rent for more than that a year?

A. No, sir, I do not.

Q. You say you don't know of any?

A. I do not.

Q. What business are you in?

30 A. I am a farmer.

Q. Don't you also have a machine shop?

A. I have a garage on my place.

Q. You operate that, too, don't you?

A. No, sir.

Q. Who does?

A. My son-in-law.

Q. And you give your whole time to farming, do you?

A. I do.

Q. You don't make it a point to go around and inquire what the neighbors are paying as rent for their farms, do you?

A. No, sir, I know what they are worth.

Q. But you are estimating upon what they are worth, what you think they are worth?

A. I know what they are worth, because I till the 10 ground, I know what is in it.

Q. In other words, that is what you base your figure of a hundred or a hundred and twenty-five dollars on, is upon what you yourself would give for it?

A. I would not give for any farm today, and I am farming between Clayton and Franklinville, \$125—I would say I was paying a big rent for it.

The Master: Regardless of the number of acres? 20

The Witness: Yes.

The Master: It wouldn't make any difference how many acres there were?

The Witness: Not a bit of it.

By Mr. Redrow:

30

Q. Mr. McGee, you helped farm up there just below this farm last year, didn't you?

A. I have farmed all up and down the road there for other people that has been on the farms, and I know pretty near what they made.

Q. Do you know whether there is cedar down there belonging to this farm or not?

Mr. Marshall: I object; it is not shown what cedar he means.

A. Well, they told me, Dr. Porch told me at one time——

Mr. Marshall: Wait; what is the significance of this?

10 Mr. Redrow: To show if he knows the exact location of this farm so as to know what it consists of.

Mr. Marshall: He says he knows the Dr. Porch farm; I am willing to admit he knows where the farm is.

Mr. Redrow: I will ask the question then this way: What does the Dr. Porch farm consist of in
20 your estimation?

Mr. Marshall: I object to that; it has already been answered both on the direct examination and cross-examination. I am willing to admit what the farm consists of.

Mr. Redrow: Well, it is the kind of ground on it.

30 The Master: Is that what you mean?

Q. Is there any woodland on it?

A. There has been fire through it; there is some timber standing there, but it is mighty poor, it is no good. The fire burned over all the back part of it and the timber is no good whatever. I don't think

there is over sixty acres of cleared ground on it. There may be a little more, but I doubt there being that much.

By Mr. Marshall:

Q. There is some wood on the back of it, isn't it?

A. On the back.

Q. You bought some of that from Mr. Ely, didn't you?

10

(Objected to.)

The Master: That is immaterial.

BOTH SIDES REST.

It is stipulated that the time agreed upon for the filing of the Master's report be extended until the 20th of February.

30

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

George B. Marshall and David O. Watkins,
Solicitors for Complainant.

Oscar B. Redrow, Solicitor of Defendants.

Lewis Starr, Master.

10

On April 25, 1916, the complainant and his wife agreed, in writing, for the consideration of \$4500.00, to sell and convey to the defendant two tracts of land in Franklin Township, one containing approximately ninety-one acres and the second containing fourteen acres, both tracts being acquired by the complainant, by Sheriff's deed dated March 3, 1916. At the time the agreement of sale was made, the complainant did not have a marketable title to the
20 fourteen acre tract. This is one of the facts in the case admitted by all concerned.

Within a few days after the signing of the agreement, the defendant assumed possession of the lands contracted to be sold and has continued in possession of the same ever since.

The agreement of sale provided for the conveyance of the premises on or before June 25, 1916. A \$3,000 mortgage existed on the property described in the contract, subject to which the same was to be sold.
30 \$100 of the consideration was paid at the time of the execution of the contract, which also provided that \$900 of the balance should be paid within sixty days from the date of the contract, with interest at the rate of six per cent after thirty days from said date, and the balance, to wit: \$500, was to be secured by an installment mortgage given when

the premises were conveyed, to bear interest at six per cent, clear of taxes.

The defendant was not willing to complete the purchase because he knew, or had reason to believe that the complainant's title to the fourteen acre tract was not marketable.

Subsequently, the complainant filed his bill to compel the defendants to specifically perform the contract, which bill prayed that the defendants may be decreed to specifically perform the agreement, 10
or, upon the failure so to do, the defendants be required to surrender possession of the premises sold and account for the rents derived therefrom.

The defendants' answer avers a willingness at all times on the part of the defendants to perform, but alleges that the complainant has been unable to convey a marketable title to Tract No. 2. The answer prays that in the event the entire contract cannot be performed by the complainant, an order be made directing the latter to perform the same, in 20
so far as he may be able, for such compensation and on such terms as may be reasonable and just.

When the case came on to be heard before the learned Vice Chancellor, it was conceded that the complainant's title to the fourteen acre tract was not marketable. Thereupon, a stipulation was entered into by the parties, whereby it was referred to the Master to take an account between the parties by reason of the situation above recited, and, in taking said account, to ascertain what deduction, if any, 30
should be made in the consideration price by reason of the inability of complainant to convey and make a marketable title to defendant of said Tract No. 2; and in making said deduction said Master is to adjust between the parties all matters contained in said agreement touching the obligations of either

party as such obligations would have existed had said agreement been properly performed, to the end that it may be ascertained what amount at this time shall be paid by defendant to complainant for said tract No. 1, so that justice and equity is done to both parties in the matter.

10 It was further stipulated that said Master shall take such testimony as either of the parties may desire, and shall also, if deemed desirable, view the premises in order that he may better judge touching the question of equitable allowances; and that said Master report to this Court on or before February first, nineteen hundred and eighteen.

Upon such stipulation an order of reference was made.

20 It is contended by the complainant that the defendant knew, or had reason to believe, at the time the agreement was made, that the complainant would be unable to perform his contract to the extent of conveying a marketable title to the second tract; therefore, it would be inequitable to allow the defendant any abatement from the contract price upon that ground.

The question of specific performance, with compensation for deficiency, is dealt with by Vice Chancellor Pitney in *Van Blarcum vs Hopkins*, 63 Eq. 466, and reference is therein made to Section 434 of Pomeroy on Specific Performance.

30 Three alternatives are presented in case of a deficiency in quantity, quality or value. First, to refuse the remedy entirely; second, to enforce the contract without any regard to the partial failure, compelling the purchaser to take what there is to give and to pay the full price agreed; or, third, to decree a conveyance of the vendor's actual interest and allow to the vendee a pecuniary compensation or abatement on the price.

The defendant contends that the second of these alternatives should not be adopted, because it has never been enforced, except in those cases where the vendee demands specific performance. His argument being that the rule should not be applied here because the application for relief was initiated by the vendor.

The case under consideration is peculiar in the respect, that both parties are anxious to have the contract performed, to the extent that it is possible, 10 with such abatement of consideration as may be equitable and just.

Peeler vs. Levy, 26 Eq. 330, is another case on this point in New Jersey, and in which Vice Chancellor VanFleet uses the following language in discussing the question of allowing an abatement from the consideration price, upon the specific performance of a contract to convey lands:

“Compensation is to be awarded, when it appears from a view of all the circumstances of 20
“the particular case, it will subserve the ends
“of justice; and it will be denied, when, upon a
“like view, it appears it will produce hardship
“or injustice to either of the parties. No in-
“flexible rule can be adopted applicable to all
“cases, but each case must be decided on its own
“special facts. Generally, it will be denied
“where the party asking it had notice at the
“time the contract was made, that the vendor
“was agreeing for more than he could give or 30
“convey, and it appears the vendee has not, in
“consequence of the contract, placed himself in
“a situation from which he cannot extricate him-
“self without loss. This rule has the support of
“the clearest dictates of justice. It is uncon-
“scionable for one man to take the promise of

10 “another to do a particular thing which the
“promisee knows, at the time the promise was
“made, the promisor cannot perform, except by
“the consent or concurrence of a third person,
“and then, when consent or concurrence is re-
“fused by the third person in good faith, to
“demand a strict and literal fulfillment of the
“promise. He contracts with full notice of the
“uncertainty or hazard attending the promisor’s
“ability to perform, and has no right, therefore,
“to ask the extraordinary aid of a court of
“conscience in repairing the loss he has
“sustained by the non-fulfillment of the contract.
“He must be content with his ordinary legal
remedy.”

20 Where both parties desire specific performance of
the contract in question to be decreed, the only ques-
tion being whether or not the vendee is entitled,
upon equitable terms, to an abatement, by reason of
the defect of title to a portion of the lands agreed to
be sold, it seems to me that the above recited prin-
ciple of equity, applicable to such case, should be
applied. Therefore, the primary question to be
determined is this, whether the defendant knew that
a defect existed with reference to the complainant’s
title, with reference to the fourteen acre tract and
he purchased with that knowledge.

30 Upon this point, I find as a fact that he did have
such knowledge and base my conclusion upon the
uncontradicted testimony of the witness, Leddon,
who was the agent of the complainant for the sale
of the premises.

The testimony of Mr. Leddon is as follows:

“Before the agreement of sale was signed,
“between the time that Mr. Hall received the

“Sheriff’s deed and the agreement of sale being signed, I spoke to Mr. Ely and told him there
“was some defect in the title to the fourteen
“acres; we would sell him the ninety-two acres
“for \$4500.00, and would give him the fourteen
“acres; if he ever had any trouble with it it
“didn’t cost him anything; if he didn’t have any
“trouble with it it was his. I had that conver-
“sation with him more than once.”

10

This evidence stands undenied. Therefore, predicated upon the fact of knowledge, which I must consider proven in the case, and based upon the desire of both parties to have the contract specifically performed, upon such terms that equity and justice will be done to each, I am constrained to find that the defendant is not entitled to any abatement in the contract price.

Inasmuch as the order of reference in this matter permitted the Master to make a personal inspection 20
of the fourteen acre tract, I deem it my duty to report my conclusions as to the market value of the same. I find that the tract of land, at the time the premises were to be conveyed, was reasonably worth the sum of \$280.

In arriving at this valuation, I have considered the value of the fourteen acre tract independently of the rest of the property to be conveyed, inasmuch as the two tracts are not contiguous, but entirely separate and distinct. Neither one have any re- 30
lation, so far as value is concerned, to the other.

Assuming that the defendant knew of the defect to the title to the fourteen acre tract, and based upon the fact that he was willing to buy the whole with this knowledge and is now willing to accept conveyance for the premises agreed to be sold, with

such abatement as may be equitable and just, he was undoubtedly required, by the terms of the contract, to make settlement as provided therein, and, in view of the surrender, by the vendor, of possession of the premises agreed to be sold, the defendant should be charged with interest, upon the balance of the consideration price from the day he received possession, which was a short time only after the conveyance should have been delivered.

- 10 Therefore, I find that the defendant should be charged with interest on \$3,000, the amount of the mortgage, subject to which the property was to be conveyed, from June 25, 1916; also the interest on \$900 from May 25, 1916, and interest on \$500 from June 25, 1916 to the date when a conveyance is made, pursuant to the terms of any decree made in this case, at which time the \$900, balance of the purchase money should be paid and the installment mortgage for \$500 executed, as provided in the
- 20 contract.

I am also of the opinion that the complainant is entitled to be reimbursed for taxes paid by him since the date when the conveyance should have been accepted by the defendant.

MASTER'S FEES:

Complainant—	
Making report	\$ 4.00
Drawing same, 25 fol.	7.50
30 Taking depositions, 222 fol.	44.40
1 day's attendance	4.00
Swearing 8 witnesses96
Marking 7 exhibits70
	<hr/>
	\$61.56

Defendant—

Taking depositions, 243 fol.	\$ 48.60
1 day's attendance	4.00
Swearing 6 witnesses72
Marking exhibit20
	<hr/>
	\$53.52

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MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY

In pursuance of the stipulation entered into between the parties above-named, and an order of reference made thereon, dated the 18th of December, 1917, whereby it was referred to me, the subscriber,
10 one of the Masters of this Court, to state an account between the respective parties, in accordance with the said stipulation.

I report that I have been attended by the solicitors of the complainant and the solicitor of the defendants, and, in the presence of the respective parties attending before me, I have considered the matters referred to me.

And I further report that testimony was produced before me on behalf of the respective parties, which
20 testimony is attached hereto and returned herewith, and I personally made an inspection of the lands and premises involved in the cause.

I do find and report that the defendant is not entitled to any deduction from the consideration price, which he agreed to pay for the lands and premises described in the bill of complaint in this cause, by reason of the inability of the complainant to convey and make a marketable title to Tract No. 2.

I also find and report that the defendant should
30 be charged with interest on \$3000, the amount of the mortgage, subject to which the lands and premises were to be conveyed, to run from June 25, 1916; also interest on \$900 to run from May 25, 1916; and interest on \$500 to run from June 25, 1916 to the date when conveyance may be made from the complainant to the defendant, pursuant to the

terms of any decree made in this cause, at which time the defendant should give a purchase money installment mortgage, as provided in the contract, and pay \$900 and interest, as aforesaid.

I also find and report that the complainant should be reimbursed for taxes paid by him since the time when the conveyance should have been accepted by the defendant, in accordance with the terms of said contract.

And I do further certify and report that the 10 reasons for making this report are set forth in my conclusions attached hereto and forming part hereof.

All of which is respectfully submitted this Eighth day of May, 1918.

LEWIS STARR,
Master in Chancery.

20

30

**PETITION TO TAKE ADDITIONAL
TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

The petition of Francis C. Ely respectfully shows:

1. That he is the defendant in the above entitled
10 cause.

2. That during the taking of testimony before the
Master in the above cause, on page 4 of the testi-
mony, the Master stated: "I will do this, I will
permit the testimony to go in subject to Mr. Red-
row's objection, and determine later as to whether
it will have any effect upon the determination of the
matters which were referred to him under this order
of reference. In view of the fact that the testimony
20 anyhow will have to go to the Vice Chancellor or
the Chancellor in case exceptions are filed to the
Master's report, the whole case should be before
him; but I am frank to admit that it seems to me
that any testimony with reference to any prior ne-
gotiations which show a situation inconsistent with
the contract as finally signed between the parties as
not admissible."

3. On page 28 of the testimony the Master made
30 the following remarks: "Everybody conceives there
is a defect in the title and if the transaction was
not consummated by which the title was perfected
I do not see that (testimony of negotiations prior
to the execution of the contract) has any relevancy."

4. The contention of the complainant before the
Master, as stated by Mr. Marshall on page 75 of

the testimony, was as follows: "Before Vice Chancellor Leaming the matter was simply submitted and we agreed upon an order of reference to the Master for the purpose of arriving at the value of this part of the contract which we cannot give title to."

5. That after the statement made by the Master, that he would determine later as to whether or not any evidence offered tending to show what took place prior to the execution of the contract would have any effect upon the determination of the matters referred to him, he was advised by his attorney that the Master would determine before he filed his report whether or not the evidence of transactions occurring prior to the execution of the agreement would be accepted in evidence, and that upon the receipt of such information from the Master the defendant would know whether or not it would be necessary to show all the transactions occurring prior to the execution of the agreement. 10

6. That defendant nor his attorney were not advised by the Master at any time prior to the filing of his report as to whether or not such testimony would be considered in deciding the matters referred to him. 20

7. That the said Master's report shows that the Master must have accepted such testimony in arriving at his conclusions, whereby the said defendant is greatly prejudiced in that the entire facts of all the transactions prior to the execution of the agreement are not in the record. 30

8. That this defendant is able to produce testimony of all the facts concerning the transactions between

the complainant and defendant or their agents, prior to the execution of the agreement.

9. Defendant further says that he has ascertained that the complainant gave notice to defendant's agent on January 29, 1917 notifying him that he was trespassing on the premises owned by the complainant and demanded that he remove from the house, building and premises of the complainant at
10 once, said premises being the premises described in the bill of complaint.

Defendant therefore prays that an order may be made by this Honorable Court referring the matter to the said Lewis Starr, Master, for the purpose of taking additional testimony to cover the facts herein recited.

OSCAR B. REDROW,
Solicitor for and of Counsel with Def't.

20

STATE OF NEW JERSEY }
CAMDEN COUNTY } ss:

Francis C. Ely being duly sworn on his oath deposes and says, that Lewis Starr, the Master before whom the testimony in the above entitled cause was taken, made the statements as set forth in the petition hereto annexed; that Mr. Marshall, solicitor
30 of the complainant, made the statements set forth in the petition; that after the statements had been made by the Master deponent was advised by his solicitor that the Master would decide or determine later as to whether or not the evidence offered by the complainant as to transactions which took place prior

to the execution of the contract would be accepted, and if the Master determined to accept such evidence that the defendant would be given an opportunity to meet it; that deponent has never been advised by the Master or his solicitor that the Master would receive any evidence of the transactions prior to the execution of the agreement. This deponent, the defendant in the above entitled cause is able to produce evidence concerning the transactions between the complainant and defendant or their agents prior to the execution of the agreement. 10

Deponent further says that he has received notice on or about January 29, 1917, that complainant notified Joseph Rodisill who was occupying a portion of the premises in question that he was a trespasser on the premises of complainant and demanded that he remove from the house, buildings and premises at once.

FRANCIS C. ELY

20

Subscribed and sworn before me this 29th day of May, A. D. 1918.

MARION B. WALLS,
Commissioner of Deeds of N. J.

30

CONCLUSIONS.

(Filed June 24, 1918.)

On Bill for Specific Performance.

On Exceptions to Master's Report.

IN CHANCERY OF NEW JERSEY.

10

OSCAR B. REDROW, Esq., for defendant-Exceptant.
GEORGE B. MARSHALL, Esq., for complainant.

LEAMING, V. C. (Orally):

I do not want the case to be decided in the absence
of testimony that ought to be heard, and I think the
20 only proper way is for me to advise an order re-
referring the matter to Judge Starr, to the end that
he may take such further testimony as is offered
before him touching transactions prior to the con-
tract, and report the testimony, together with his
conclusions as to whether such additional testimony
in any way modifies, and, if so, to what extent, the
report he has already made. My aim is to give all
parties the benefit of all the testimony that may be
found valuable and to hear any exceptions that may
30 be filed to the master's report only upon testimony
that has been before the master. Should I hear the
present exceptions to the master's report and include
in a consideration of that report testimony that had
not been heard by the master, it would practically
destroy all the value to me of his report. I think
the course suggested would be a proper practice

under the peculiar circumstances of this case. The order may provide that this be done at once. There is no use delaying the matter. If it can be done promptly I will hear the exceptions next Monday week, July 8th.

Mr. Marshall: Would your Honor stipulate that in the order,—that the testimony be taken this week and the report filed by next Monday?

10

The Vice Chancellor: Yes, if Judge Starr can do it.

Heard and Determined: June 24, 1918.

ORDER OF RE-REFERENCE TO MASTER.

20

30

ORDER OF RE-REFERENCE TO MASTER.

(Filed Dec. 26, 1918.)

IN CHANCERY OF NEW JERSEY.

10 This matter coming on to be heard on petition to take additional testimony, in the presence of Oscar B. Redrow, Solicitor of the defendant, and George B. Marshall, Solicitor of the complainant, and it appearing that the defendant has additional testimony to offer concerning transactions and all matters occurring prior to the execution of a certain agreement to convey real estate, and that such testimony has not already been taken;

20 It is thereupon on this 24th day of June A. D. 1918, ordered that the matter be re-referred to the Hon. Lewis Starr, one of the Masters of this court, to take such additional testimony of matters occurring prior to the execution of said agreement, as may be offered on behalf of the complainant or the defendant.

It is further ordered that said Master after taking such testimony, file with this court such additional report as may be necessary, on or before the 8th day of July, 1918.

E. R. WALKER.

Respectfully advised.

30 E. B. LEAMING, V. C.

DEPOSITIONS.

IN CHANCERY OF NEW JERSEY.

Depositions taken in the above stated matter, pursuant to order made by Vice-Chancellor Leaming on June 24th, 1918, before Lewis Starr, Esq., Master in Chancery, at his office, Fourth and Market Street, Camden, New Jersey, on Monday, July 8, 1918, at four o'clock P. M. Present, for the Complainant, George B. Marshall, Esq.; for the Defendant, Oscar B. Redrow, Esq. 10

It is agreed that the testimony shall be taken stenographically and the signatures of the witnesses waived.

FRANCIS C. ELY, recalled.

By Mr. Redrow: 20

Q. Mr. Ely, when was the first time that you found out that this Hall property was for sale by Mr. Leddon?

A. The 27th of February, I think, an advertisement in the "Sunday Inquirer."

Q. Did you answer the advertisement?

A. No, I had Mr. Engstrom answer it at my dictation. 30

Mr. Marshall: I object to the introduction of that letter on the ground that I do not see how it can be identified with the testimony of the defendant, a letter addressed by the defendant's agent, an entirely different party.

Q. How did you know that this was the Hall property which was for sale, Mr. Ely?

A. After I had Mr. Engstrom write the letter Mr. Hall called at the house to see Mr. Engstrom.

Q. Did you see the letter which Mr. Leddon wrote to your brother-in-law, Mr. Engstrom?

A. Yes, sir.

Q. Did you see that letter before Mr. Hall called at your house?

10 A. Yes.

By the Master:

Q. Well, this Mr. Engstrom, I understand, was making the inquiry in your behalf?

A. In my behalf.

The Master: The letter will be admitted.

20 By Mr. Redrow:

Q. Now, was anyone with Mr. Hall when he called?

A. I didn't see Mr. Hall when he called personally.

Q. Oh, you didn't see him?

A. No.

Q. When was the next time you saw Mr. Hall or Mr. Leddon——

30

The Witness: I called——

Q. When was the first time you saw Mr. Hall or Mr. Leddon?

A. I am trying to fix dates; sometime in the latter part of February or the first of March, between the first and the seventh.

Q. Where did you see him?

A. I saw Mr. Leddon at the Moore Brothers Glass Factory at Clayton.

Q. What time of day was it?

A. To my recollection it was about mid-day; it may have been afternoon or morning; I don't recall the hour.

Q. Did you talk with him that day?

A. Yes.

Q. Was anybody present?

10

A. Not that I know of.

Q. Anybody else in the office that you saw?

A. Not that I recall, no.

Q. Nobody went with you?

A. No.

Q. What was said by Mr. Leddon that day to you in regard to this tract of land known as the Hall property?

A. A general conversation about he wished to sell it and I wished to buy if we could come to terms. He suggested it was a very valuable piece along the road front, suitable for cutting up into small farms, as I remember. My proposition was that the back of the land, the part on the other side of the railroad was very desirable for my purpose. He said there was something like two thousand feet along the road that would cut up to a great advantage.

Q. What did he say, if anything, about going into the proposition with you?

30

A. He said he thought he could sell it—

Mr. Marshall: I object until after the question is asked; I don't know what the question is yet.

The Master: That is all right; that is responsive.

The Witness: In small farms, also suggested that we buy the Nathan Farm and cut it up.

Q. Was your conversation that day definite as to this particular farm?

A. No, nothing definite; that was general.

Q. When you say "general," what do you mean?

A. About other properties, real estate in general. I was trying to get information in regard to the Dr. Porch farm and any other farms. Mr. Leddon and
10 I have been acquainted for some time.

Q. Was there anything said about any other property that Dr. Porch had for sale?

A. I don't know; I think so; there was something said about a piece——

Mr. Marshall: I object to that; I can't see where it would have any bearing on this issue as to any other property Dr. Porch might have for sale.

20 The Master: What is the relevancy as to that feature, Mr. Redrow?

Mr. Redrow: I want to show exactly what took place at this time.

The Master: I suppose you are entitled to show the conversation.

The Witness: I told Mr. Leddon that Dr. Porch
30 had a little piece of property down on the Porch-town Road, a couple of acres that I would buy if I could get it cheap enough.

Q. Now, then, on that day—you say it was some-time between the first and seventh day of March—did Mr. Leddon say to you that the title to the

fourteen acre tract was not good and that they would sell you the farm of 91 or 92 acres and give you the 14 acres?

A. No, sir.

Mr. Marshall: I object to that as leading; you should ask him what was said.

The Master: I know, but he is proving a negative; that is the proper way to do it.

10

Q. Now, was anything said by Mr. Leddon when you were down at the Moore's Glass Works at Clayton that would lead you to believe, or that would tell you that the title to the 14 acres was bad?

A. No, sir.

Q. Do you remember what time you left Clayton that day?

A. No, I do not.

Q. When did you next see Mr. Leddon?

20

A. The next time I seen Mr. Leddon was when he called at my house.

Q. When was that?

A. That was sometime in April.

Q. Sometime in April?

A. I think it was sometime in April after my return—I had been away then from about the 7th of March until the 21st or 22nd.

Q. Where did you go on or about the 7th of March?

30

A. I went to Florida; Fort Myers, Florida, and different places.

Q. That is about the 7th of March, 1916?

A. The 7th or 8th.

Q. Now, do you remember what time you got back from Florida?

A. About the 20th, the 22nd, along there.

Q. Now, can you fix the date when Mr. Leddon called at your house?

A. No, but it was a few days before the agreement was prepared. That was where we talked over the purchase of the Hall farm at that time at the house, or the Porch farm; it was always known as the Porch farm to me. I imagine that was the 21st or 22nd of April, along there, a few days, I remember.

Q. The agreement was signed two or three days
10 later?

A. Yes, it was later than that the agreement was signed.

Q. Now, where did you see Mr. Leddon that day?

A. Which, the day of the agreement?

Q. No, the day he called to see you in Philadelphia?

A. At my house.

Q. Where is that?

A. 4117 Pine Street, Philadelphia.

20 Q. Had you seen Mr. Leddon at all between the 7th of March and the day that he called at your house, which you say was about the 21st or 22nd of April?

A. Not to my knowledge or recollection; I have no recollection of seeing him between those dates.

Q. You did not see him at all?

A. No.

Q. Now, was there anyone with him when he
called?

30 A. Mrs. Leddon.

Q. Was anyone at your house beside yourself?

A. Oh, yes, my family, my wife.

Q. Was Mrs. Ely there?

A. Yes, I believe—

Q. What time of day did he call?

A. It was evening, it was dark; I don't believe

I was home when they first called; I met them in the parlor.

Q. Were they there when you arrived home, do you think?

A. Yes.

Q. Now, you had some conversation with him at that time about the Hall farm or the Porch farm?

A. Yes, after passing a few words in the parlor Mr. Leddon and I went in the sitting room and we talked over the— 10

Q. Now, just a minute, Mr. Ely. I show you a letter bearing date April 12, 1916, and signed by L. R. Leddon, and ask you if you received that letter?

A. Yes, sir.

Q. Did you do anything in response to that letter?

A. No, sir, I don't remember doing anything.

Q. But about April 21st or 22nd, Mr. Leddon and his wife called at your house one evening? 20

A. One evening.

Mr. Redrow: I will offer this letter.

(Said letter is marked Exhibit D2).

Q. Now, between the time that you saw Mr. Leddon at Clayton at the Moore Glass Plant and the evening that they called, had you any conversation whatever with Mr. Leddon in regard to this Hall or Dr. Porch farm? 30

A. Not that I recall.

Q. Now, when you called that evening, where did you go? Where were you, all in the same room?

A. No, Mr. and Mrs. Leddon were in the parlor, and I took Mr. Leddon back into the sitting room

and we started to talk business in reference to the farm.

Q. Was anybody else back in the sitting room where you and Mr. Leddon were?

A. No.

Q. Was there anything said by Mr. Leddon at that time concerning the title to the 14 acres?

A. No, sir.

Q. Did he or did he not at that time say that they
10 would sell you the main farm, about ninety-some
acres and give you the fourteen acres?

A. No, sir.

Q. When did you next see Mr. Leddon?

A. Well, I suppose that is the 24th, isn't it, the
night the agreement was signed was the next time.
I had a letter from him to call, I think it was Tues-
day; he had the agreement prepared.

Q. I show you a copy of a letter sent from Mr.
Leddon, dated April 21, 1916, and ask you if you
20 received that letter?

A. Yes, sir, I received this letter.

Q. Is that a copy of your answer to the letter?

A. That is a copy of the answer to the letter.

Mr. Redrow: I will offer both of these.

(Said letters are marked Exhibits D3 and D4.)

Q. I show you a letter dated April 24th of Mr.
30 Leddon?

A. I received that.

Mr. Redrow: I offer in evidence letter bearing
date April 25th from Leddon to Mr. Ely.

(Said paper is marked Exhibit D6, 7/8/18.)

Q. Where did you see Mr. Leddon then when you went?

A. At his house at Clayton, his residence.

Q. At Clayton?

A. At Clayton.

Q. Was there anything said by Mr. Leddon at that time concerning the 14 acre tract?

A. Nothing specific about the fourteen acres.

Q. Did he say anything about the title to the 14 acre tract?

10

A. No, sir.

Q. Did he say whether it was good or bad or anything of the kind?

A. No, sir.

Q. Did he say to you at that time that he would sell you the main farm and give you the 14 acre tract?

A. No, sir.

Q. Now, between the date that you received the first letter or the first indication that this property was to be sold, about February 25th, 1916, or February 26th, did Mr Leddon at any time at any place say to you that they would sell you the main farm of ninety-some acres and give you the 14 acres?

20

A. No, sir.

Q. Did he say to you at any time that the title to the fourteen acres was bad and that he could not give you a good title for it?

A. No, sir.

Q. Now, I understand your answer, Mr. Ely, includes up from the time you first knew of it in February up until after the agreement was signed?

30

A. There never was a question about title.

Q. I mean, up until that time?

A. At no time.

Q. Until April, say the 25th or 24th?

A. Yes, sir.

Q. That is the time you called at Mr. Leddon's house in Cayton?

A. And signed the agreement.

Q. Now, during the same time, from February up until the time this agreement was signed, did you have any other dealings with Mr. Leddon in regard to any other land which he had for sale?

Mr. Marshall: I object to that as not relevant to this issue.
10

The Master: What is the purpose?

Mr. Redrow: The purpose is to show practically an abandonment of the purchase of this property as indicated here by these letters, and that the letters from Mr. Leddon to Mr. Ely concerning other tracts of land would indicate that that was true.

The Master: The witness has not said yet that he had abandoned the idea.
20

Mr. Redrow: I do not understand the witness says that; the testimony will show, I think, that that is the case; that is our contention.

The Master: I suppose there is no substantial objection to having all the correspondence between Mr. Leddon as the agent of Mr. Hall, go in evidence. I fail to see, however, that it has very much relevancy, but I will permit the letters to go in evidence. The Vice-Chancellor may feel that they are pertinent.
30

(Question repeated.)

A. I had conversations with him in reference to other land that he had for sale.

Q. I show you a letter dated March 7th, 1916, and another letter dated March 24, 1916, and ask you if you received those letters from Mr. Leddon?

A. Yes, sir, I received them.

Q. What was your situation concerning the Hall property when you left for Florida about the 7th of March, 1916?

A. When I left for Florida I had given up the idea of the Porch farm; but my recollection is that I received a letter right as I got at Green Cold Springs, Florida, from Mr. Leddon renewing the deal; the conversation in which I wrote him and told him that I would not consider the farm unless I got all that I was entitled to, and I think I gave up the idea, was going to stay in Florida, had no idea of getting it until after I got back and Mr. Leddon called. 10

Mr. Marshall: Just a minute; is that in the letter you say you wrote to him? 20

The Witness: I wrote him a letter at Green Cold Springs, Florida, in answer to the letter I received from him while in Florida.

Mr. Marshall: I call for the production of the letter. I would like to have it; we served notice on you two or three times, but never have been able to get it. 30

Mr. Redrow: I produced it at the last time; if you refer to the testimony you will see it.

Mr. Marshall: The letter is in the testimony?

Mr. Redrow: The letter is in the testimony.

By Mr. Marshall:

Q. You only received one letter from him while in Florida?

A. Yes.

Q. And you only wrote him one letter?

A. Only one letter.

Q. Wasn't that the forepart of March?

A. Yes, sometime the fore part of March, I judge
10 about the 17th of March; I was at Green Cold Springs, Mohawk Hotel.

Mr. Marshall: In the scuffle getting out of here, the letter was mislaid, but a portion of that, I think, is referred to in the testimony.

(Last two letters produced are marked Exhibits D7 and D8.)

20 By Mr. Redrow:

Q. What did you do in Florida that showed that you abandoned this property in any way, the purchase of it?

Mr. Marshall: I object to that.

(Objection sustained.)

30 Q. What had been your attitude concerning this Hall property?

Mr. Marshall: I object to that.

The Master: Well, his attitude as disclosed to Mr. Leddon it competent, but what he may have thought independently of that, of course, would not be competent.

Q. As I recall that letter, you stated that you would not be interested in the farm unless you could get title to the 14 acres, is that it?

A. Not title, included; unless the 14 acres were included.

Q. And that was the last that you heard from Mr. Leddon concerning the Hall property or the Porch farm, whatever you wish to call it, until you received his letter of April 12th, Exhibit D2?

A. To the best of my knowledge, yes, sir; I don't 10 remember any between then.

Q. Now, Mr. Ely, the contract or agreement which you signed is dated April 25th and appears to be acknowledged by you as of that date. Do you recall whether that is the date or not?

A. I judged it was that date; I have no reason to dispute it. I don't know of any other date, it was night, it was quite late.

Q. Now, did you know anything about the title to the 14 acres the night that you signed this agree- 20 ment?

A. No, sir.

Q. Did you know whether it was good or bad or anything of that kind?

A. No, sir.

Cross-examination.

By Mr. Marshall:

30

Q. Whatever occasioned you to write such a letter to Mr. Leddon from Florida, that you would not want the Hall farm unless you were sure you were going to get the 14 acres?

A. There was a report that he was going to sell or deed part of that ground to someone else.

Q. Who was going to deed it to someone else?

A. Mr. Leddon or Mr. Hall.

Q. Who was he going to deed it to?

A. Robert Wilson.

Q. Did Wilson hold any interest in that land at that time?

A. Not that I know of.

Q. You say it had been reported; had you likewise heard the report that Wilson had some interest
10 in that land?

A. No, sir.

Q. Then you were aware of some cloud on the title?

A. No, sir, no cloud on the title at all.

Q. You mean to say you didn't want to be up against the proposition of having Hall convey to you ninety acres and have Hall convey the 14 acres to some other person; is that the idea?

A. Yes, I wanted it all or none, all the property
20 that belonged to the Dr. Porch farm.

Q. And you never had any notice either from Hall or from Leddon or anyone else by which you were notified that the title was in any sense what would be called questionable?

A. No, sir.

Q. Did you have any conversation with Mr. Leddon with relation to the giving to Robert Wilson by Mr. Hall of a quit-claim deed for the interest
30 which they had in that land?

A. Not until lately, not until after the agreement.

Q. I mean, prior to the signing of the agreement?

A. No, sir.

Q. Now, when you were at Clayton on this first occasion, you were at the store the whole time?

A. As far as I remember, Mr. Leddon and I just—you mean while I was with Mr. Leddon?

Q. Yes.

A. Yes.

Q. Did you at any time go to Mr. Leddon's house?

A. Oh, later.

Q. That is, on that day?

A. No, not that day.

Q. Well, you did sometime between the time of the first——

A. I called at Mr. Leddon's house to see Mr. Leddon. Mrs. Leddon called him on the telephone one time; I didn't see him, though. 10

Q. You had not see him at the house from the time you first knew this property was for sale to the time of the execution of the agreement, at the time it was signed?

A. No, sir, not that I recall.

Q. Will you say that you were not?

A. No.

Q. Your answer is then that you don't remember? 20

A. No, I don't remember the date.

Q. You have testified you had only two conversations with Mr. Leddon about this—that was at Clayton——

A. At Clayton.

Q. And the second time was at your place in Philadelphia?

A. At my place in Philadelphia.

Q. Only on two occasions?

A. Only on two occasions.

Q. You said in your direct examination that that was correct as far as you knew? 30

A. Yes.

Q. But that likewise there might have been other instances where you had other conversations with him, mightn't there have been?

A. There might have been.

Q. And might some of those conversations have referred to the 14 acres—they might, mightn't they?

A. Hardly likely.

Q. Will you say that nothing was said about the 14 acres during the whole time?

A. Nothing about title to the 14 acres.

Q. What was said about the 14 acres then?

A. The location of the 14 acres was in question at one time; whether it was prior to the signing of
10 the agreement or not, I don't remember. Mr. Leddon told me if I would see Owen Carter he could locate it for me.

Q. Who told you this?

A. Mr. Leddon.

Q. There was some question at that time as to the location of it?

A. Yes, sir.

Q. Of course, if they were not able to locate the land they would be unable to convey it to you,
20 wouldn't they?

A. I don't know.

Q. That would be true, wouldn't it?

A. Hardly, because there was a chain of title to that land that I was familiar with.

Q. You mean to say then that while you probably were not aware that there was any defect in the title, you were, however, aware of the fact that Mr. Hall or Mr. Leddon didn't know exactly where it was located?

30 A. That is true.

Q. And you did not know where it was located either?

A. No, sir.

Q. And both Mr. Hall and Mr. Leddon told you that they did not know where the land was, didn't they?

A. I don't know that Mr. Hall did, but Mr. Leddon did.

Q. He didn't even have an idea where it was, did he?

A. I don't know his idea; he told me to see Owen Carter and he would locate it for me.

Q. Did Mr. Leddon attempt to tell you where it was?

A. No.

Q. He showed you the main farm of ninety-some 10 odd acres, didn't he?

A. No.

Q. Didn't you ever visit that farm before you bought it, with Mr. Leddon?

A. No, I knew where the farm was; I have known it for years.

Q. But you are confident, however, that before the agreement was signed that you were aware of the fact that Mr. Leddon had told you that they did not know where 14 acres was? 20

A. Yes, I believe so, that is, if the conversation came up at all, they didn't know where the 14 acres were, no one knew.

Q. And you were willing to sign an agreement to take the land, the same land which you knew at that time that they did not know where it was located?

A. Yes.

Q. You were perfectly willing to take it at that time? 30

A. Yes.

Q. Now, did you ever see Mrs. Leddon at Mr. Leddon's house at any time you called there?

A. Yes.

Q. Did you ever at any time when you called at Mr. Leddon's house go upstairs in his study or office?

A. Yes, and the agreement was signed upstairs.

Q. And can you recall at this time—I want you to think about it a minute—can you recall at this time having been up there at any time prior to the date that you went there for the purpose of signing the agreement?

A. Not that I recall.

Q. You won't say that you were not, though, will you?

10 A. No, I may have called at Mr. Leddon's at different times; I don't recall.

Q. When was it that Mr. Leddon called at your house for the purpose of looking at the maps—was that before the agreement or after the signing of the agreement?

A. I don't know Mr. Leddon's purpose in calling at the house.

Q. Did he ever stop at your house with the idea of you showing him on some map which you had
20 where you thought the land was located?

Mr. Redrow: I object to that.

The Master: Well, that, of course, is objectionable if you mean to convey by the question the idea in Mr. Leddon's mind. If he disclosed to Mr. Ely the purpose of his going there, it would be competent.

30 Q. Well, you recall Mr. Leddon having called there, don't you?

A. Yes.

Q. And do you recall at any time when he called at your place going over with him the question of the location of the land on certain maps which you had?

A. I have no maps.

Q. You have no maps of the land whatever?

A. No.

The Master: That is not the question, Mr. Ely.

(Question repeated.)

A. I never had any question of going over the location of the land with Mr. Leddon on any maps that I had.

10

Q. Either before or after the signing of the agreement?

A. Oh, after the agreement we tried to locate it.

Q. You did afterward?

A. We tried to locate it.

Q. That is what I was asking you in the first place; I only wanted to find out whether that conversation you had was before or after the signing of the agreement?

A. After the agreement we tried to locate the land, Mr. Leddon, Mr. Hall and myself went down on the property with another gentleman.

20

Q. This Mr. Engstrom that you referred to; he was the one who answered the ad, was he, in the first place?

A. Yes.

Q. At your instance?

A. At my instance.

Q. And replied to Mr. Leddon, did he?

A. Yes.

30

Q. And at the time that Mr. Hall called at your house prior to the signing of the agreement, was anybody present?

A. Not that I recall.

Q. You recall Mr. Hall having called at your place?

A. Yes, he was there.

By the Master:

Q. Mr. Ely, when was there any conversation between you and Mr. Leddon with reference to the 14 acre tract as distinguished from the entire premises which you had purchased?

A. I don't recall the conversation; prior to the signing of the agreement there was a report that Robert Wilson had gone to Woodbury to stop the
10 sale of that property by the Sheriff, and at that time I called on Alec Rogers, who was supposed to represent the Hall interests, or I mean, that is where I got this information. I called on Alec Rogers and he was away; I called him on the 'phone and he referred me to Bob Wilson of Franklinville.

Q. When was that?

A. Oh that was sometime in February or March.

Q. Was it before or after you had the first conversation with Mr. Leddon?

20 A. Why, I imagine that was before I ever met Mr. Leddon in reference to the farm; I think so, because I wrote to Shafto——

Q. What was your object in asking Rogers about the 14 acre tract?

A. No, not the 14 acres, that was never brought up.

Q. My question was this: When was there any conversation between you and Mr. Leddon with reference to the 14 acre tract as distinguished from
30 the entire premises which you were to buy?

A. When the agreement was shown to me there were two tracts in the agreement, one of 14 and one of another number.

Q. That was the first time you knew there was a 14 acre tract involved?

A. No, I don't think it was.

Q. When were you advised first that there was a 14 acre tract?

A. Because in looking up the title to property I bought from Langley, I found where Langley sold a tract—

Q. When was that?

A. I can tell by the deed; it was several years ago.

Q. Then you had that knowledge when you first had the dealings with Mr. Leddon about this prop- 10
erty?

A. Yes, then I also had it at that time in 1867 or about that time where William Porch sold to Albert Porch another tract of 40 acres.

Q. Still you haven't answered my question; when was it you first discussed with Mr. Leddon the question of this 14 acre tract as having some significance aside from the rest of the premises?

A. It must have been the first conversation.

Q. All right, now, what was said? 20

A. I don't recall there was anything particularly said, except that Bob Wilson had gone to Woodbury to stop the sale, that he had no right to stop the sale, that they owned it. That came up at the same time.

Q. Now, was that the first conversation?

A. I only remember two, and it was not the second, I know, so it must have been the first.

Q. Then you did have this conversation about the 14 acre tract on the first occasion? 30

A. It must have been on the first occasion.

Q. Now, what else was said about it?

A. If I recall it, that Wilson had no title to it and he could not come in to stop it. Well, my information was that the title was good, the best way to put it.

Q. What was said between you and Mr. Leddon about it?

A. Well, I recall it, that he said, "We own it and we will sell it; Bob Wilson has no interest in it."

Q. Is that all that was said about the 14 acre tract?

A. As far as I can remember.

Q. Who first broached the question of the 14 acre tract, you or Mr. Leddon?

10 A. That I don't remember.

Q. What?

A. I don't remember.

Q. Did you ask him about the 14 acre tract or did he volunteer the information?

A. I must have asked him, because I seen Bob Wilson immediately after seeing Rogers, I went to see Wilson about the Porch farm. Wilson told me that he was going to stop the sale on account of some property that he had an interest in.

20 Q. All right; did Wilson tell you that he had any interest in this property, in this 14 acre tract?

A. Not in these 14 acres, in a piece of property.

Q. Did he tell you he had an interest in a 14 acre tract?

A. Yes, I told Wilson at that time, I said, "It is not this property because Mr. Redrow made title to me and I know the title is perfectly good; it must be some other tract."

30 Q. And at that time you were considering the purchase of the Porch tract?

A. The Porch farm.

Q. Now, having that in mind, did you go to see Wilson about it?

A. Not about the fourteen acres; I only saw Wilson about the farm.

Q. About the Porch tract generally?

A. Yes, about the farm; my information was that Wilson had bought the farm at a Sheriff's sale.

Q. So that the sequence of events is that after you had had a letter from Leddon or rather Mr. Engstrom—

A. No, this was before I got in touch with Leddon at all.

Q. Was this before Engstrom got in touch with him?

10

A. Yes, before it was advertised.

Q. How was it you were inquiring about the purchase of the Porch property before it was advertised?

A. I wrote to Shafto.

Q. Did you know it was in the market?

A. No, I knew Shafto was in difficulties and it was likely to be sold, and I went to see if I could get it at Sheriff's sale.

Q. This was before there was any advertisement of the property?

20

A. Yes.

Q. Have you detailed all that was said between you and Mr. Leddon upon the first occasion?

A. As far as I can remember now.

Q. That was all that was said?

A. Yes.

Q. Now, did you do anything in reference to that, make any investigation of the title?

A. No, sir.

30

Q. Did you make any inquiry from any source whatever?

A. No, not until after I brought up to Mr. Leddon—

Q. You didn't see Mr. Leddon again until two or three days before the contract was actually signed, and that was at your place in Philadelphia?

A. Yes.

Q. Now, was there anything said about the 14-acre tract on that occasion as distinctive from the rest of the property?

A. Not that I know of.

Q. There was nothing else said about it?

A. If there was anything said it was just that under no consideration—that I wouldn't do without the 14 acres because that was to make a connection with other property that I owned.

10 Q. That was said about it, was it?

A. If it was; it might have been.

Q. Well, did you tell him that?

A. I wrote him from Florida that I had no intention of buying the property without the 14 acres being included.

Q. The next occasion before the contract was actually signed was when it was executed at Mr. Leddon's residence in Clayton?

20 A. Yes.

Q. Was there anything said about the 14 acre tract on that occasion?

A. No, sir, not at that time; there was a question about the insurance.

30 Q. Mr. Leddon has testified substantially that before the agreement of sale was signed, between the time that Mr. Hall received the Sheriff's deed and the agreement of sale being signed, "I spoke to Mr. Ely, told him that there was some defect to the title to the 14 acres; we would sell him the 92 acres for \$4500.00 and would give him the 14 acres; if he ever had any trouble with it, it didn't cost him anything; if he didn't have any trouble with it, it would be his." Now, did that conversation occur between you and Mr. Leddon?

A. No.

Q. Or anything like it?

A. No, sir.

Q. Or any portion of it?

A. As to the title, no, sir.

Q. Any portion of it?

A. No, sir, not that conversation or any part of it, or anything like it, no, sir; absolutely not.

Q. Or anything like it?

A. Nothing like it.

10

By Mr. Marshall:

Q. Mr. Ely, then at the time that you first made your negotiations with Mr. Leddon, you were not only aware of the fact that the location of the land was in question, but likewise the title, is that it?

A. No, sir, for I could show the chain of title to that 14 acres. I went to Burlington,—a deed from Langley of all his right, title and interest to certain ground along Still Run Branch, and in getting from the Surveyor General at Burlington, I followed that chain down and found where Langley had sold some 17 acres to William Porch. 20

Q. Did you make all this examination before you signed the agreement?

A. Oh, yes, that was years ago, before I had any idea I would ever get the Porch farm or anything to do with it. Then I found that William Porch had sold it—the Executrix, Abbigail Porch, I think to Albert Porch, and Albert Porch to Phillip Shafto. 30 Then, of course, since then I found where the sheriff had sold it from Shafto to Hall, the same piece of ground now in the title. Thinking, of course, that the title was good, I was getting all the Langley interest—

By the Master:

Q. Do you remember the date of the deed from the Sheriff to Hall?

A. No, it is there, but I don't know that. Now, that is why I was insisting on getting that piece of land.

By Mr. Marshall:

10 Q. Tell me why you went to see Mr. Wilson about the farm if you at the same time had made an examination and knew that the title was all right?

A. I wanted to see Mr. Robert Wilson about buying the Porch farm; I didn't know that Hall had bought the farm at that time.

Q. Who did you suppose owned it at that time?

A. At that time? Bob Wilson; I went to Alec Rogers, and Rogers told me to see Bob Wilson. My
20 intention in seeing Rogers was to buy the farm.

Q. Bob Wilson didn't own the farm?

A. I found he didn't, but that is what Alec Rogers told me, to see him.

Q. When you went to see Bob Wilson he told you about his owning 14 acres or that he had an interest in it?

A. He said he was going to stop the sale or something.

Q. Stop the sale of what?

30 A. This Sheriff's sale of the Porch farm to Hall.

Q. Did he tell you why he was going to stop the sale?

A. No.

Q. Didn't he say to you it was because he owned the 14 acres that was advertised?

A. No, he said there might be some trouble.

Q. Didn't you inquire of him why he was going to stop the sale?

A. No, because I had the title.

Q. You were sure you were right about it?

A. Yes.

Q. Although he claimed he had some reason for stopping the sale?

A. He claimed he was going to stop the sale and left the money there to pay for it. I didn't pay much attention to it.

10

Q. You later learned that Wilson did have an interest in that 14 acres?

A. No, I didn't know where the 14 acres was then.

Q. No, but on this particular 14 acres, you later learned that Wilson did have an interest in it, didn't you?

A. No, I don't know that I did; I don't know anything about his interest in it.

The Master: The Sheriff's deed is dated March 3, 1916; the sale was made on the 18th of February, 1916, and the deed was recorded on the 4th of March, 1916.

By Mr. Redrow:

Q. Mr. Ely, I understood you to say under cross-examination that you were advised by Mr. Rogers or by someone that Mr. Wilson had bought the property at Sheriff's sale?

30

A. No, I didn't say that he had bought it; I went to Woodbury to get information in reference to this Porch farm. I tried to buy it years ago from Dr. Porch, talked with him about it years ago, seven years ago. Then I understood it was sold to a man by the name of Shafto. Shafto's personal property was sold at Sheriff's sale——

Q. Now, I am not asking you that.

A. Well, I want to lead up to it. I called in Webster Buckley's office in Woodbury and asked him if he knew anything about the Porch farm, the Shafto farm then. He said, "You see Alec Rogers; he will know about it." So I walked down to Rogers' office and he wasn't in, and the young man in the office called him on the 'phone. He wanted to know what I wanted; I said I wanted to know something about the Porch farm. He said, "You see Robert Wilson at Franklinville." I took from that that he owned it. A few days later I met him and asked him about the Porch farm at Franklinville. He said, no, he didn't buy it; there was some question about a piece of it; he was going to stop the sale. I said, "That is all right, I know all about that." He went on about the Langley piece of 17 acres. On which side of the stream is that piece, on Still Run Branch, east or west branch?

20 Q. The Langley ground took in both sides of the stream, 10 acres on one side and 17 on the other.

Mr. Redrow: I want to offer at this time a letter from Mr. Leddon dated July 21, 1916, after the date of the agreement, for the purpose of meeting the examination of Mr. Ely by Mr. Marshall, showing when the appointment was made for Mr. Leddon and Mr. Hall and Mr. Ely to go down and see the farm.

30 Mr. Marshall: That is not responsive to any question of mine; I object to it.

The Master: The letter is not admissible upon that ground. If you want to contradict Mr. Leddon you can use the letter for that purpose, but merely to fix a date that is not in dispute, the letter is not admissible.

JOSEPHINE C. ELY, SWORN.

By Mr. Redrow:

Q. Mrs. Ely, where do you live?

A. 4117 Pine Street.

Q. And how long have you lived there?

A. Five years.

Q. Were you living there in March, April, May 10 and June of 1916?

A. Yes, sir.

Q. Do you recall Mr. Leddon calling at the house at any time?

A. Yes, sir, he called on one occasion.

Q. When did he call, do you know?

A. I can't tell you exactly; I think it was in April, sometime; it was a holiday, as near as I can remember.

Q. And would you say whether or not it was 20 Easter Friday or Good Friday?

A. That is as close as I can remember.

Q. Was it warm or not?

A. Yes, Mrs. Leddon was very warm, she took off her coat. She had been in town for some occasion, I don't know; that is the only way I can recollect it was a holiday.

Q. About what time was it?

A. In the evening; I don't know whether it was 30 six or seven or less than that.

Q. Was there anyone else with them except Mr. and Mrs. Leddon?

A. No, sir.

Q. Was Mr. Ely home when they came, do you remember?

A. I can't remember exactly, I don't believe he was.

Q. Did you hear any of the conversation between Mr. Ely and Mr. Leddon concerning the 14 acre tract?

A. No, sir.

Q. Where did they go when they came in the house? Were you sitting in the front room?

A. As far as I can remember, I took them in the parlor, yes, in the front room, and I don't know whether Mr. Ely came in or was in the house; I
10 can't tell you exactly. After he came, I know I left, and he brought me back and introduced me and had a conversation. Mr. Leddon and Mr. Ely went in the back room.

Q. While Mr. Ely and Mr. Leddon were in the sitting room, were you talking with Mrs. Leddon?

A. Yes.

Q. Were you talking with her continuously on up until they went away?

A. Yes.

20 Q. Do you remember your husband going to Florida that year?

A. 1916, yes.

Q. Do you know about when he went?

A. About the 7th or 8th of March.

Q. Do you remember when he came back?

A. As near as I can recollect it was about the 20th, I think, the 21st or 22nd.

30 Q. Did you ever see Mr. Leddon at your house or Mrs. Leddon, Mr. and Mrs. Leddon or either of them, at your house at any other time except this day that they called at April which you say was a holiday?

A. No, sir.

Q. Do you remember what day Good Friday was in the year 1916—do you know, have you looked it up?

A. No, sir, not exactly.

Q. It was the 24th, I believe, wasn't it?

A. No, I don't think it was quite that late.

Q. What plans did you have, if any, Mrs. Ely, between you and your husband about going to Clayton or Franklinville or Florida or any other place during the spring of 1916?

(Objected to; objection sustained.)

Q. Did you make any plans to go to Florida in 10 the spring of 1916?

A. Yes, sir, Mr. Ely planned to go to Florida.

Q. For the purpose of making a permanent home or not?

A. Yes; he expected to make a permanent home.

Cross-examination.

By Mr. Marshall:

20

Q. You changed your mind about it, though.

A. I changed my mind, yes; I don't know that Mr. Ely changed his mind.

Q. He is liable to go even now?

A. Yes, he is liable to go any moment.

Q. You don't go with him each and every day when he is out on his business affairs, do you?

A. No, indeed.

Q. And I suppose, as far as you are concerned he may have had a great number of conversations 30 with Mr. Leddon and Hall, either somewhere in Philadelphia or Clayton or Franklinville that you don't know anything about, isn't that true?

A. Yes, he discussed it with me on more than one occasion, but not in detail.

Q. But as far as these gentlemen were concerned,

Mr. Hall and Mr. Leddon, you only recall one occasion?

A. Mr. Leddon was only at my house on one occasion but Mr. Hall was there more than once.

By Mr. Redrow:

Q. You fix the date, I understand, by these letters and postcards which were sent to you from
10 Florida?

A. Yes, Mr. Ely has been in Florida on numerous occasions.

REUBEN B. HALL, recalled.

By Mr. Marshall:

20 Q. Mr. Hall, you have already been sworn in this matter. Did you have any conversations with Mr. Ely with relation to the location or title of the 14 acres prior to the signing of the agreement, and if so, where?

A. A few days previous to the signing of the agreement.

Q. And where was that conversation had?

A. At Mr. Ely's home in Pine Street, Philadelphia.

30 Q. Was anyone with you at that time?

A. No.

Q. Was Mrs. Ely there?

A. I didn't see her.

Q. Mr. Leddon was not with you?

A. No.

Q. Now, was that the first time that you had any conversation with him as to the 14 acres?

A. Yes, as far as I can remember.

Q. That was just a few days before the signing of the agreement in April?

A. Yes.

Q. Now, what was that conversation?

A. I called at Mr. Ely's house for the purpose of arranging terms of payment for the \$500.00, the balance of \$500.00 which Mr. Ely wanted——

Q. That was an installment matter, wasn't it?

A. An installment, which was later developed in 10 him offering the first payment, an installment mortgage.

Q. Now, what resulted?

A. During our conversation the 14 acres was referred to.

Q. Who referred to it?

A. Mr. Ely.

Q. What did he say?

A. Mr. Ely said this: "You will give us a good deed for the 14 acres?" and I said, "Yes." Mr. 20 Ely also said, "Robert Wilson claims ownership of this 14 acres; how can you give us a good deed?" I told him that I had been advised by Rogers, an attorney in Woodbury, that our paper title to the 14 acres was as good as anybody else's, and for that reason I felt justified in telling Mr. Ely that we would give him a good deed, or rather a warranty deed for the 14 acres, along with the entire farm.

Q. Now, what did Mr. Ely say at that time, if anything, about purchasing any interest, any out- 30 standing interest in that tract by quitclaim deed or otherwise?

A. He said nothing about a quitclaim deed. He referred to the fact that Robert Wilson claimed ownership of the 14 acres which he was trying to buy from us.

Q. He had no such conversation as that with you about any quitclaim deed, did he?

A. I don't recall.

Q. Were you ever present with Mr. Leddon when he had any such conversation as that with him?

A. No.

Q. Now, what further was said, if anything, at that time about the 14 acres—what did Mr. Ely say after you told him you would give him a deed for
10 the whole tract?

A. Well, he seemed surprised that we were willing to give him a deed; he seemed——

Mr. Redrow: I object; what did he say?

Q. Just tell us what he said, Mr. Hall?

The Master: You are not permitted to testify to what appeared to you to be his attitude, but what
20 he said or did.

A. He said, "You are sure you will give us a good deed for the 14 acres?" I said, "Certainly." He said, "Now, I understand Robert Wilson claims ownership of this 14 acres." I said, "It don't make any difference what Robert Wilson claims, whether he does claim title to the 14 acres; we will give you a deed for it."

Q. What did he say after that, after you told him
30 that?

A. Well, he seemed satisfied with the fact that I told him that we would give him a deed for that.

Q. But he advised you clearly, did he——

(Objected to.)

The Master: The question is leading and inadmissible.

Q. Now, who first mentioned the fact that there was an outstanding interest in that 14 acres?

Mr. Redrow: I has not been mentioned yet except by Mr. Marshall; this witness testifies there was nothing said about any outstanding title.

The Master: This witness said that Ely stated to him that Bob Wilson claimed to own the property. 10

Mr. Marshall: My question was, who first mentioned that?

The Witness: Mr. Ely.

Q. And upon what were you relying in making your assertions to Mr. Ely?

A. Upon the advice received by me from Alec Rogers. 20

Q. As to the paper title?

A. As to our paper title.

Q. Did you ever have any other conversations with Mr. Ely prior to the signing of the agreement?

A. No, I don't recall.

Q. How about the night the agreement was signed, was anything said that night?

A. No, I wasn't with Mr. Ely when he signed the agreement. 30

Q. Did you sign it first?

A. No, I signed it later.

Q. Then you were not present?

A. No.

Cross-examination.

By Mr. Redrow:

Q. Mr. Hall, what had happened at the time you bought the property—was there any complaint made when you bought it in, at the Sheriff's sale, about the title or anything?

A. At the Sheriff's sale?

10 Q. Yes.

A. Yes, Robert Wilson threatened to stop the Sheriff's sale of the ground.

Q. Was he there, was he at the sale?

A. Yes.

Q. Were you there?

A. Oh, yes.

Q. You never owned the property before that day, did you, yourself?

A. No.

20 Q. It belonged to your wife's father—the mortgage that was being foreclosed was your wife's father's, wasn't it?

A. No, it belonged to Shafto.

Q. Th property, but the mortgage was held by your wife's father?

A. Yes, Mrs. Hall's father had a mortgage against the farm and he foreclosed the mortgage.

Q. And it was sold at Sheriff's sale?

A. It was in my father-in-law's interest that I
30 bought it in.

Q. Now, what took place after the Sheriff's sale in regard to the 14 acres as between you and Mr. Wilson—did anything take place? Did you give him a deed for it or was there any complaint about it?

A. No, Alexander Rogers about half made ar-

rangements with Robert Wilson that I gave a quit-claim deed to Robert Wilson.

Q. And when was that?

A. That was at the Sheriff's sale that Rogers told Robert Wilson that we would do it, although Alexander Rogers at that time had no authority to make such an assertion, for the reason that I had not bought it.

Q. Well, what arrangement was made, what did you do to further that arrangement? Did you carry 10 that agreement that Mr. Rogers made into effect?

A. The agreement was not completed, no.

Q. What did Mr. Rogers tell you about the 14 acres after the sale and before the signing of this agreement?

A. Mr. Rogers said that our paper title was all right.

Q. And did he tell you not to pay Mr. Wilson or give Mr. Wilson the deed for the 14 acres?

A. Well, I don't know that he ever told us not 20 to; I don't think he ever insisted one way or the other.

Q. Well, why didn't you carry out the agreement then that he made at the day of the sale?

A. At the day of the sale?

Q. Yes.

A. Well, Alexander Rogers was not very sure of his position either way; he contradicted himself; he told us that, or he led us to believe that Robert Wilson could stop the Sheriff's sale; then later on 30 he told us that it was impossible for him to.

Q. And when did he tell you it was impossible for him to, after the Sheriff's sale or before?

A. No, before the Sheriff's sale, during the walk to the Court House.

Q. And he always told you after that that the

title to this fourteen acres was good, as I understand it?

A. As I remember, he told us that our paper title was good.

Q. And basing your opinion on that you told Ely that you would give him a good deed for the 14 acres when he asked you about it?

A. Yes.

10 Q. And did you tell Mr. Ely——

Mr. Marshall: Let the witness finish his answer.

Q. Go ahead; if there is anything else you wish to say.

A. Well, I had understood that Mr. Ely had purchased this same ground. Robert Wilson was particularly anxious to get a deed from us to protect himself from Mr. Ely, because he had sold this ground to Mr. Ely.

20 Mr. Marshall: The 14 acres, you mean?

The Witness: Yes, the fourteen acres.

Q. Do you remember testifying before in this case?

A. Yes.

Q. Do you remember testifying about the 14 acres before?

30 A. I think I did.

Q. Do you remember where you said the 14 acres was located before, about?

A. I never knew where they were located.

Q. So then when you say you understand that Bob Wilson wanted to buy some of these 14 acres, you didn't know anything about it, did you?

A. No, I didn't know where the 14 acres were.

Q. You are not certain of it yet, are you?

A. Well, I will take a surveyor's word, that is all; that is all anybody will do, I guess.

Q. And after you told Mr. Ely that you would give him a deed for the 14 acres, after, as you say, he questioned you two or three times, he apparently was satisfied, is that right?

A. I don't know what his feelings were, I am sure.

Q. Well, he said all right then, didn't he, and this was just two or three days before the execution 10 of the agreement?

A. It was prior to the execution of the agreement.

Q. Just a few days?

A. I think it was a few days, it must have been a few days.

Q. And you assured him at that time that you would absolutely give him a good deed for this 14 acres together with the other ground?

A. Yes.

20

LOUIS R. LEDDON, recalled.

By Mr. Marshall:

Q. Mr. Leddon, did you ever have any conversation with Mr. Ely prior to the signing of the agreement with relation to any interest that any other person other than Dr. Porch might have had in the 30 14 acre tract?

A. I did.

Q. Will you tell us about when you had that conversation with him?

A. Shortly before or at the time the property was sold at Sheriff's sale at Woodbury, Robert Wil-

son made a claim on me for the 14 acres, and he said the reason—he told Mr. Rogers and I that the reason that he wanted——

(Objected to.)

The Master: No, that is not responsive at all; you are now detailing a conversation between Mr. Rogers and Bob Wilson, and this is a question as
10 to conversation with Mr. Ely.

The Witness: I told Mr. Ely that Robert Wilson wanted us to give him a deed, a quit-claim deed for the fourteen acres, because he had sold part of it to Mr. Ely, and he wanted to keep himself straight with Mr. Ely.

Q. That is, you told this to Mr. Ely?

A. Yes.

20 Q. Which was a conversation which you had with Wilson?

A. Yes, sir.

Q. And what did Mr. Ely say about that?

A. I also told Mr. Ely——

Mr. Redrow: I object; there is a question pending.

30 Mr. Marshall: Go ahead and tell us—I will withdraw the question—what else did you tell him?

A. I asked Mr. Ely if he wanted Bob Wilson to have a quit-claim deed for that fourteen acres, and he said, “By all means, no.”

Q. Then you nor Mr. Hall never gave to Wilsons, never conveyed to them the fourteen acres or your interest in that land, did you?

A. Oh, no, no.

Q. And why didn't you?

A. I had no authority to do it, and Mr. Rogers said——

Mr. Redrow: I object to that unless Mr. Ely was present at this.

The Master: I don't think it is admissible; I think you are far afield from the question. 10

Q. Tell us, if you can, why a quit-claim deed was not given to Mr. Wilson by either you as agent or by Mr. Hall?

Mr. Redrow: I object; this man is agent for Mr. Hall.

The Master: That testimony is not admissible unless the reason for it was disclosed to Mr. Ely. 20
If you can prove that, I think it is admissible.

Mr. Marshall: You mean, the reason for——

The Master: The reason for the refusal; unless Mr. Ely was notified, whatever reason these men might have secreted in their minds would not be admissible against Mr. Ely.

Q. What did Mr. Ely say to you, if anything, 30
then about the giving of a quit-claim deed to Robert Wilson for the fourteen acres?

A. He didn't want him to have it.

Q. Is that the reason why you people did not do it?

(Objected to.)

(Objection sustained.)

Q. Did you or Mr. Hall at that time assure Mr. Ely that you would not give him a conveyance, or a quit-claim deed, rather?

(Objected to.)

10 The Master: The objection is sustained; it is leading.

Q. Do you recall when Mr. Ely first came to Clayton to see you about the Porch farm?

A. He came to the office after I received a postal card from Mr. Engstrom. I received a postal from Mr. Engstrom in regard to the place, in regard to the farm, and I immediately telephoned to Mr. Hall and asked him to go out and see Mr. Engstrom. At that time I did not know that that was Mr. Ely's residence.

20 Q. Now, on how many occasions, if you can recall, did Mr. Ely ever see you at Clayton about this Porch farm—can you tell us?

A. I had two, if not more than three conversations with Mr. Ely at Clayton in regard to the farm; I think more than that.

Q. Can you tell us where those conversations were had, whether they were had at the house or at the office or where?

A. Well, at Moore Bros.' Office.

30 Q. This was prior to the signing of the agreement?

A. Oh, yes.

Q. Did you ever have any conversations with them at your house?

A. After the agreement was signed, I did.

Q. On how many different occasions?

A. I don't think that Mr. Ely was ever at my house but one night; that was the night that he signed the agreement of sale.

Q. Did Mrs. Ely come down with him that night?

A. She did not.

Q. Now, what proposition did you have with Mr. Ely the first time about either the location or any defect in the title to the fourteen acres?

A. Well, I don't know whether I told him the first time or second time or third time; I was very careful to explain to Mr. Ely in regard to the reflection on the fourteen acres, and he was very conversant with it and understood all about it.

Q. What do you mean when you say he understood all about it?

A. He understood——

Mr. Redrow: I object, unless you say what Mr. Ely said.

20

Q. What did he tell you?

A. I told him that there was a reflection on the fourteen acres, and if he purchased the farm we would give him the fourteen acres, as I testified in my former testimony.

Q. Did you have any such conversation as this at the house with Mr. Ely, reading the witness' testimony given at the prior hearing: "I spoke to Mr. Ely and told him there was some defect in the title to the fourteen acres; we would agree to sell him ninety-two acres for \$4,500, and would give him the fourteen acres; if he ever had any trouble with it, it didn't cost him anything; if he didn't have any trouble with it, it was his?"

30

A. I had that conversation with him more than once.

Q. Will you tell us whether or not you had any such conversation as that with Mr. Ely at your house?

A. I did.

Q. Who was present at the time you had the conversation?

A. My wife was in the house at the time.

Q. And when was this, in the afternoon or morning?

10 A. This was in the evening.

Q. And you say you had that same conversation with him more than once?

A. I did, yes.

Q. Can you tell us any other time you had a like conversation with him?

A. I had that conversation with him at the office.

Q. You mean, at the store?

A. At Moore Bros.' office.

20 Q. And did you ever tell him about it at his home in Philadelphia?

A. Ever tell him what?

A. Ever tell him the same thing, or words to that same effect at his home in Philadelphia?

A. I was not at his home—my recollection is that I was at his home after the agreement was signed.

Q. But not before?

A. Not before.

30 Cross-examination.

By Mr. Redrow:

Q. Mr. Leddon, what were you asking for the farm when you first saw Mr. Ely?

A. We were asking \$4,500.

Q. The first time you saw Mr. Ely, you were asking \$4,500, were you?

A. The price was never changed.

Q. So when you wrote to Mr. Engstrom on February 25th and told him that the property would not be sold for less than six thousand dollars, you did not mean that?

A. \$6,000?

Q. Yes.

A. I don't remember that I wrote that letter. 10

Q. You don't ever remember writing a letter in which—

A. I remember the parties asking at the first start six thousand dollars for the place, but I don't remember asking—With Engstrom, I never thought that amounted to anything, and I did not remember that I had asked Mr. Engstrom, or mentioned that in that letter, \$6,000. I knew that the farm would never bring that, and the price was talked of, \$4,500, right nearly from the start. I was satisfied that we would never get \$6,000 for the farm. 20

Q. Will you testify now that at the time Mr. Ely called at Moore Bros.' plant at Clayton and saw you, somewhere about between the first and seventh of March, 1916, that you told him at that time that you would sell the farm for \$4,500?

A. That was my recollection of it.

Q. You say now that that is your recollection?

A. That is my recollection that I did.

Q. Regardless of whether you wrote and told Engstrom that you wanted \$6,000 for it? 30

A. I didn't remember that I had written to Mr. Engstrom at that time about six thousand dollars.

Q. Now, then, what did you say to Mr. Ely when he called at the Moore Bros.' glass plant about the fourteen acres that led you to say that you would

give it to him, or what did he say about it at that time that would lead you to make that statement?

A. Simply because when I first took the farm for sale Dr. Porch told me that there was a reflection on the fourteen acres and that he wouldn't—

Q. Just a minute; was that when Dr. Porch owned the farm?

A. That was when Dr. Porch owned it.

Q. And that had been several years before, hadn't it, and Dr. Porch sold it in the meantime to a party
10 by the name of Shafto, didn't he?

A. Well, the same statement was made to Mr. Shafto.

Q. I mean, what you are testifying to now is what happened between you and Dr. Porch some two or three years before this agreement was made?

A. Probably a year and a half.

Q. I see; go ahead.

A. Dr. Porch told me that when he asked me to
20 sell the farm; he said there was a reflection on the fourteen acres; he had paid taxes on it, it was in the mortgages that he had placed on the farm, but there seemed to be a reflection on it, and he said, "You sell the 92 acres and we will give anybody the 14 acres."

Q. That is what Dr. Porch told you?

A. That is what Dr. Porch told me.

Q. And that is when he owned the farm?

A. That is when he owned the farm.

30 Q. Do you know whether or not Dr. Porch gave Mr. Shafto a warranty deed for this property?

(Objected to; objection sustained.)

Q. How many times did you see Mr. Ely in regard to this Hall property between, say, February 25, 1916, and April 24, 1916?

A. It would be impossible for me to state; I don't know.

Q. Don't know how many times you saw him?

A. No.

Q. You don't ever recall calling at his house until after the agreement was signed?

A. No.

Q. And you saw him once at the Moore Bros. office at Clayton?

A. I saw him more than once. 10

Q. How many times, would you say?

A. I don't know; people were running in there all the time, by the hundreds and thousands; I couldn't remember. My thought in the matter is that he was there more than twice.

Q. Did you attend the Sheriff's sale at Woodbury when the property was sold?

A. I did.

Q. Were you present when the agreement was made between Mr. Hall and Mr. Rogers concerning the fourteen acre tract? 20

A. Mr. Hall did not make any arrangements with Mr. Rogers about it.

Q. He didn't make any?

A. No.

Q. Not that day while he was there?

A. No.

Q. Where was the conversation with Mr. Ely when you spoke about the quit-claim deed to Mr. Wilson? 30

A. I would naturally think that it was at the office, although I don't remember.

Q. Well, when would you say that was, about when, as near as you can, Mr. Leddon?

A. That was shortly after Mr. Ely began talking about it. I can't remember just when because I

am talking with a great many people, and I kept no memorandum of the conversations that I had with anybody.

Q. Well, it was sometime after the Sheriff's sale, wasn't it?

A. Oh, it was after the Sheriff's sale.

Q. Sometime after the deed, wasn't it?

A. Sometime what?

Q. Sometime after you had gotten a deed for the
10 property?

A. Who got a deed for the property?

Q. It was sometime after March 3rd, wasn't it, the date of the deed?

A. Sometime after Mr. Hall got the deed for the property?

Q. Yes, that you were talking to Mr. Ely?

A. I had no way of knowing the exact date when Mr. Hall did get the deed from him.

Q. It was sometime after March 3rd, wasn't it?

20 A. I should think so.

Q. Now, all this controversy about the quit-claim deed to Mr. Wilson was at the time of the Sheriff's sale, wasn't it?

A. That was the only time that I talked with Robert Wilson about it, at that time.

Q. And you never talked to him about it later, did you?

A. Not for months after that, several months, I think, after that before it was ever mentioned be-
30 tween Robert Wilson and I again.

Q. And you were never on this farm after the agreement was signed by Mr. Ely, were you?

A. On the 92 acre farm?

Q. Yes, or any portion of it?

A. I don't think so.

Q. Would you say that that is about the time,

or shortly after that when you and Mr. Hall and Mr. Ely went down there?

A. Well, we visited the farm; Mr. Hall and I went down there, I don't know the exact date; I don't know whether that date was kept, that is, whether that developed into us going down there; I don't remember about that.

Q. That was after the agreement was signed, too, wasn't it?

A. Oh, yes, that was later.

10

MRS. ANNA E. LEDDON, SWORN.

By Mr. Marshall:

Q. Mrs. Leddon, you are the wife, are you, of Louis R. Leddon?

A. Yes.

20

Q. Who was just on the stand?

A. Yes.

Q. And you reside in Clayton, don't you?

A. I do.

Q. Do you know Mr. Ely, Francis C. Ely?

A. Well, I only saw him the night or really ever talked to him the first time was the night he signed the agreement. He came to our house and Mr. Leddon had someone upstairs and I talked to him a few minutes before Mr. Leddon came down.

30

Q. How many times would you say, if you can recall, that Mr. Ely was at your house?

A. That was the only time.

Q. Now when he came to your house, where did he and Mr. Leddon go?

A. They talked a few minutes downstairs, then they went upstairs in Mr. Leddon's office.

Q. How is his office and the room beneath it or rooms beneath it situated—are they open or are they all closed?

A. They are open; his office door is exactly at the head of the stairs; the living room where I was in was in the hall downstairs; I can hear anything just naturally without trying.

Q. That is, if the doors are open?

A. If the doors are open, certainly.

10 Q. Do you recall the night Mr. Ely did call to see Mr. Leddon and went upstairs with him?

A. I do.

Q. What were you doing?

A. Well, when he came in I was wiping dishes and I talked to him, and I came into the dining room with the dishes. There were other people there. He was waiting to see Mr. Leddon.

Q. Then after he went upstairs, where did you go?

20 A. I was right there in the living room, had my crocheting by the library table, which is near the door.

Q. What conversation did you hear between Mr. Leddon and Mr. Hall at that time with relation to the sale of the farm?

A. Between Mr. Ely?

Q. Mr. Ely and Mr. Leddon.

30 A. I heard him say to Mr. Ely that Mr. Shafto had taken out title insurance in the Camden Company for ninety-two acres, but that there was a reflection on the fourteen acres.

Q. Who said that?

A. Mr. Leddon told Mr. Ely this. He said, "If you don't have any trouble with that fourteen acres, it is yours; if you do," he said, "it won't cost you anything, you won't lose anything."

Q. What did Mr. Ely say, do you recall?

A. No, I don't just remember; I know he said something about wanting the fourteen acres for an outlet.

Q. But you do recall Mr. Leddon telling him that the fourteen acres, if he didn't have any trouble with it—

A. It was his, and if he did, it didn't cost him anything.

Q. Did you hear at that time anything said between Mr. Leddon and Mr. Ely as to the purchase 10 price of the farm?

A. He said the 92 acres would cost him \$4,500, and they considered they were giving him the fourteen acres.

Q. Not considered, but what did he say? Is that what he said?

A. Yes, that is what he said.

Q. Said that the 92 acres was \$4,500?

A. Yes.

Q. And what else? 20

A. And he considered, if he didn't have any trouble with the fourteen acres, it was his; if he did, it didn't cost him anything.

Q. And is that the only time that you can recall having heard or overheard any conversation of that kind between Mr. Leddon and Mr. Ely?

A. It was the only time except the evening we called at his house in Philadelphia, which was later.

Q. That was after the signing of the agreement, wasn't it? 30

A. No, that night I heard Mr. Leddon say to him, "I am going to get you to sign this agreement," he said, "I am going to have you and Poreh sign this agreement, and I am going to have it recorded in Woodbury." Mr. Ely said, "Oh, no, no, that is not worth while," he said, "there won't be any trouble about this."

Mr. Redrow:- Where did this conversation take place?

Q. This was in Philadelphia, wasn't it?

A. No, in our home at Clayton.

Q. When was that, prior to the signing of the agreement?

A. That was this night he came there and signed the agreement; that was the only time I ever heard
10 any conversation, and the first time, about it.

Cross-examination.

By Mr. Redrow:

Q. Mrs. Leddon, how do you fix the time when Mr. Ely called?

A. Why, because the night he signed the agreement, my husband, after Mr. Ely had gone, rushed
20 right over to Mr. Hall's house and had him sign it on the same date.

Q. And you were downstairs knitting you say?

A. I was right in the living room, yes, crocheting.

Q. That was the first time you saw Mr. Ely?

A. That was the first time I ever talked to him.

Q. You hadn't seen him any time before that?

A. Oh, I had seen him in his automobile a number of times; in fact, one Sunday a year or two before
30 that he came to our front porch to see Mr. Leddon about renting a house in Clayton, but I was not introduced to him.

Q. The other time, before, did he not call at your house and ask for Mr. Leddon?

A. Well, he might have come to the door; he wasn't in our house, I don't think.

Q. Didn't you telephone to Mr. Leddon for him?

A. Yes, I do think I remember that, I telephoned for Mr. Leddon.

Q. When was that?

A. I can't tell you when that was.

Q. You say Mr. Leddon had several people calling to see him at nights?

A. Oh, yes.

Q. Does he have——

A. Yes, but they had gone out before Mr. Ely 10
went upstairs.

Q. He does have every night?

A. Yes.

Q. Always some one in to see him?

A. Well, not always, but some evenings he is very busy.

Q. And when he is busy, does he always keep the door open?

A. Yes, it is very seldom that he ever closes the door. 20

Q. And you always sit down at the foot of the stairs to note or hear what he says?

A. No, not by myself, I don't always, but I sit there by the electric light if I am doing any fancy work or anything of that kind.

Q. Anyone else downstairs every night?

A. No, there is no one else in the house at all.

Q. Now, who had been there previously—had anyone been there previously in regard to this property, that is, that same evening? 30

A. I don't think so; I don't ever remember anything of anyone being there.

Q. What did Mr. Ely say to Mr. Leddon about the fourteen acres?

A. He said he wanted it for an outlet.

Q. An outlet to what?

A. I don't know; I asked Mr. Leddon,—well, he spoke that same way the night we were at his house; he said—he took them upstairs and showed him these maps and said to him, "I want the fourteen acres; I must have it for an outlet." After we came out, I asked Mr. Leddon what he meant by an outlet.

The Master: No, she can't testify to that; that
10 would not be competent at all.

Q. That was what Mr. Leddon told you after you got home; it wasn't what you heard Mr. Ely say?

A. Yes, I heard Mr. Ely say he wanted that fourteen acres for an outlet.

Q. Now, do you know whether the agreement was drawn up when he came down, Mr. Ely came down and signed it?

A. I can't say because I wasn't in the room.

20 Q. How long was Mr. Ely there?

A. I think he came on the half past seven train.

Q. Half past seven?

A. Yes.

Q. What time did he leave?

A. Well, he couldn't leave before nine o'clock; he either had to leave at nine or eleven, and I couldn't tell you which it was, but I think it was quite late when he called on Mr. Hall that same evening; he went right after Mr. Ely left.

30 Q. He was there an hour or so, was he?

A. Yes.

Q. Does Mr. Leddon have a typewriter in the house?

A. He does.

Q. And does his own typewriting?

A. I help him with it.

Q. Did you prepare this agreement?

A. I did not.

Q. Did you hear any typewriting that night?

A. No, I don't think so; I couldn't say as to that because we both use the typewriter so much.

Q. But you are quite sure you heard Mr. Leddon say that night that he would sell him the 92 acres for \$4,500?

A. Yes.

Q. And that Mr. Shafto had taken out title insurance?

A. Yes.

Q. Was any other figure mentioned except \$4,500?

A. I don't recall that there was.

Q. Anything said about a mortgage?

A. I don't recall anything about any mortgage.

Q. Anything said about any payment being made on it that night?

A. He was to pay \$100., I think.

Q. Well, was anything said about it?

20

A. Yes, I think he paid \$100. on it.

Q. Well, anything said about the hundred dollars? Do you know whether he paid it or not?

A. I can't tell you anything about it.

Q. All that you remember of the conversation that you heard while Mr. Leddon and he was upstairs was that Mr. Leddon told him that they would sell him the 92 acres for \$4,500?

A. I really think he told him that before they went upstairs; they talked a little bit before they went upstairs. 30

Q. Well, are you certain where you heard this now, whether it was downstairs or upstairs?

A. Well, they started the conversation downstairs; I heard it, but I am not positive just how much was said downstairs and just how much upstairs.

Q. Didn't you say Mr. Leddon was upstairs with someone else?

A. Yes, and came down and they went out, and my recollection is he came down and took Mr. Ely upstairs later.

Q. And they talked about this farm downstairs in your presence for a while?

A. Yes, for a while.

Q. And you don't know whether this agreement
10 was prepared or not when he came down and signed it?

A. I think it was prepared before, because I don't think he was upstairs long enough for that agreement to be prepared at that time.

LOUIS R. LEDDON, recalled.

20 By Mr. Marshall:

Q. Did you have, between March 7th and the time of the execution of this agreement any other dealings with Mr. Ely for the sale of land?

A. On one of the times that Mr. Ely called at the office, he said Dr. Porch owned some flat-iron piece of land down in Franklinville Township, undertook to tell me where it was; I didn't know where it was. He said, "I will give so much for it," and
30 I said, "I will ask Dr. Porch about it."

Q. Don't narrate so much conversation; you did have——

A. Well, I asked Dr. Porch about it and Dr. Porch said——

The Master: No, that is not competent.

Q. But you had dealings with him for the sale of other land other than this Porch property?

A. That was all; the Doctor said he wouldn't consider it; that is all there was to it. I told Mr. Ely and that was the end of it.

Q. Had Mr. Ely at any time told you that he had given up the purchase of the Porch farm?

A. Mr. Ely, at one of our conversations—he wanted the farm for \$4,000. I said, “The farm cannot and will not be sold for less than \$4,500.” 10

He said, “All right, then there is no use, then we will drop it.” I said, “All right; that is the end of it.” After he went to Florida I received a letter from him reviving the subject.

Q. He did not assign any defect in the title or anything of that sort as a reason for abandoning the proposition?

A. No, sir.

Cross-examination.

20

By Mr. Redrow:

Q. Mr. Leddon, wasn't this letter the reason for taking up the proposition again by Mr. Ely, Exhibit D2?

A. When Mr. Ely went to Florida——

Q. Just a minute.

A. I don't know that.

Q Didn't you take up, during this same interim 30 that Mr. Marshall speaks of, the question of selling Mr. Ely the Nathan farm?

A. Which does he call the Nathan farm? There are two farms that could be construed as the Nathan farm.

The Master: Well, either of them.

Q. Either one of them?

A. I am not sure about that because I am talking with so many people about so many farms, so many properties, I don't know.

FRANCIS C. ELY, recalled.

10 By Mr. Redrow:

Q. The night that this agreement was signed, April 25, 1916, in Mr. Leddon's house, did Mr. Leddon make any statement to you that Shafto had taken out title insurance on the 92 acres and that the fourteen acres, there is some reflection against it?

A. No, sir.

20 Q. Did he say to you that night that he would sell you the 92 acre tract for \$4,500 and give you the rest of it, if you didn't have any trouble with it, all right?

A. No, sir.

(Objected to as having been already asked several times.)

The Master: It is easier to let him ask it than to hear the objection.

30

SUPPLEMENTAL MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

MASTER'S FEES.

Share of complainant:	
Making report.....	\$ 4.00
Drawing same, 5 fols.....	1.50 10
Taking 96 fols. testimony.....	19.20
Swearing 1 witness.....	.12
	<hr/>
	\$24.82
Defendant's share:	
Taking 107 fols. testimony.....	\$21.40
Swearing 1 witness.....	.12
One day's attendance.....	4.00
Marking 4 exhibits.....	.30
	<hr/>
	\$25.82 20

In pursuance of an order made in the above entitled cause, dated June 24, 1918, whereby the above cause was referred to the subscriber to take such additional testimony of matter occurring prior to the execution of the agreement referred to in the bill of complaint in said cause, as might be offered on behalf of either of the parties, I respectfully report to the Chancellor that the parties hereto, by their respective counsel, appeared before me and additional depositions were taken, a copy of which depositions is hereto attached and form part hereof and to which reference is hereby made; said depositions being taken by consent by a stenographer and the signatures of the witnesses waived.

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3

And I certify and report that the facts disclosed by said additional depositions are not sufficient in my judgment to cause me to change or alter, in any way, the conclusions heretofore reached, with respect to the matters considered under the original order of reference and stated in the original Master's report and the findings of fact and law attached thereto.

10 I do further certify and report that I am still of the belief that before the defendant, Ely, executed the agreement to purchase, he was advised that either the complainant had no title to the fourteen acre tract in dispute, or the complainant's title thereto was defective, and that the same did not materially enter into the transaction, which resulted in the execution of the contract of sale, except that Ely was desirous of obtaining from the complainant whatever title or interest the latter possessed therein.

20 I further certify and report that the consideration agreed to be paid by Ely, referred to the premises sold independently of the fourteen acre tract, and the value of the latter did not form a part of such consideration.

30 And I do further certify and report, therefore, that in these circumstances and under the stipulation agreed to by the parties, it would be inequitable, under the theory that there was a failure of title in the complainant, as to a portion of the premises to be conveyed, to compel him to accept, for the conveyance of the premises in question, a sum less than that specified in the contract.

Respectfully submitted this third day of October, nineteen hundred eighteen.

LEWIS STARR,
Master in Chancery.

EXCEPTION TO MASTER'S REPORT.

(Filed Dec. 26, 1918.)

IN CHANCERY OF NEW JERSEY.

The following exceptions are hereby taken by Francis C. Ely, one of the defendants in the above cause, to the Master's report filed in the above stated cause by Lewis Starr, one of the Masters of this court. 10

First Exception—For that the said Master has reported as follows:—

“I do find and report that the defendant is not entitled to any deduction from the consideration, which he agreed to pay for the lands and premises described in the bill of complaint in this cause, by reason of the inability of the complainant to convey and make a remarkable title to tract No. 2.” 20

The defendant insists that from the evidence in the case, that an order should be made, allowing the defendant compensation for that portion of the land and premises described in the bill of complaint which the complainant is unable to convey to defendant.

The defendant also insists that from the application of the law in the premises an order should be made allowing the defendant compensation for that portion of the lands and premises described in the bill of complaint which the complainant is unable to convey to defendant. 30

Second Exception—For that said Master has therefore reported as follows:—

“I also find and report that the defendant should be charged with interest on \$3000., the amount of the mortgage, subject to which the lands and premises were to be conveyed, to run from June 25, 1916; also interest on \$900. to run from May 25, 1916; and interest on \$500. to run from June 25, 1916 to the date when conveyance may be made from the complainant to the defendant, pursuant to the terms of any decree made in this cause, at which
10 time the defendant should give a purchase money installment mortgage, as provided in the contract, and pay \$900. and interest, as aforesaid.”

The Defendant insists that from all the evidence in the case, that an order should be made allowing the defendant compensation for that portion of the land and premises described in the bill of complaint which the complainant is unable to convey to defendant. The defendant also insists that from the
20 application of the law in the premises an order should be made allowing the defendant compensation for that portion of the lands and premises described in the bill of complaint which the complainant is unable to convey to defendant.

By reason of such evidence and law no order should be made allowing the complainant any interest on any sum. The allowance of interest is contrary both to law and equity.

Third Exception—For that said Master has therefore reported as follows:—
30

“I also find and report that the complainant should be reimbursed for taxes paid by him since the time when the conveyance should have been accepted by the defendant, in accordance with the terms of said contract.”

The defendant insists that from all the evidence

in the case, that no order should be made allowing any reimbursement for taxes paid on any part of the premises.

The defendant also insists that from the application of the law in the premises, no order should be made allowing any reimbursement for taxes paid on any part of the premises.

Fourth Exception—For that said Master has further reported as follows:— 10

“I find that the tract of land at the time the premises were to be conveyed was reasonably worth the sum of \$280.00. The defendant insists that the value of the said tract of land, as ascertained from the testimony in this case and from personal inspection should pay the sum of \$700.00.”

The defendant insists that the Master's report is contrary both to law and equity for as much as the said Master permitted the complainant to offer testimony as to transactions happening prior to the execution of the agreement in question in a proviso, that said Master would determine later as to whether or not it would have any effect upon the determination of the matters referred to him. That no determination as to the admission of such testimony was made by the Master prior to the filing of his report. The Master's report assumes the question of such evidence has been determined but defendant was unable to offer any testimony concerning such transaction pending the determination by the said Master of the admissibility of such evidences. 20 30

Whereas the said Lewis Starr, Master as aforesaid, has not reported properly, or in accordance with the terms of the order of reference, or with

The defendant insists that from the evidence in the case, that he was not advised that the complainant had no title to the fourteen acres or that the complainant's title thereto was defective and that the evidence in the case was that the fourteen acre tract did materially enter into the transaction which resulted in the contract of sale.

Second Exception—For that the said Master has reported as follows:— 10

“I further certify and report that the consideration agreed to be paid by Ely, referred to the premises sold independently of the fourteen acre tract, and the value of the latter did not form a part of such consideration.”

The Defendant insists that from the evidence of the case, that the consideration agreed to, referred to the whole of the premises and that the value of the fourteen acres did form a part of such consideration. 20

Third Exception—For that the said Master has reported as follows:—

“And I do further certify and report, therefore, that in these circumstances and under the stipulation agreed to by the parties, it would be inequitable, under the theory that there was a failure of title in the complainant, as to a portion of the premises to be conveyed, to compel him to accept, for the conveyance of the premises in question, a sum less than that specified in the contract.” 30

The defendant insists that from the evidence produced and the law applicable, that the Master should have found that there was a failure of title in the complainant as to a portion of the premises

to be conveyed and that it would be only equitable for compensation to be awarded for that part of the premises, in which there was a failure of title and that it would be inequitable to compel the defendant to accept the premises mentioned in the contract of sale less the fourteen acres without compensation as provided in the stipulation agreed to in this court.

In which several matters and respects this ex-
10 ceptant prays a judgment in this court.

OSCAR B. REDROW,
Solicitor and of counsel
with the defendants.

I consent to the filing of the within
exceptions.

George R. Marshall
Solicitor of Complainants.

20

CONCLUSIONS.

(Filed Dec. 10, 1918.)

IN CHANCERY OF NEW JERSEY.

George B. Marshall, Esq., for complainant.
Oscar B. Redrow, Esq., for defendants

30

LEAMING, V. C.:

It seems impossible to escape the conclusion from the testimony in this case that defendant at all times during the negotiations, and up to the very moment

the contract was signed, in fact knew more about the title and location of the 14-acre tract than anyone else connected with the negotiations, and knew full well that a good title could not be made to him by his vendor for that tract. The testimony also adequately discloses that the negotiations and the agreement, so far as the element of price was concerned, were in fact for the farm, and that the 14-acre floating tract, with its well recognized defects of title, was not at any time regarded by any of the parties as forming a substantial element in the valuation agreed upon. 10

The testimony of complainant to the effect that a few days before the contract was signed he told defendant, in response to defendant's statement that Robert Wilson claimed ownership of the 14-acre tract, that he had been advised by Attorney Rogers that his "paper title to the 14-acre tract was as good as anybody else's" and that he would accordingly give him a good deed or warranty deed for it, standing alone, measurably repels the idea that the sale was in reality a sale of the farm at the price agreed upon and that the 14-acre tract, with its uncertainty of location and title, was merely thrown in and formed no part of the agreed consideration. But that testimony must be read and understood in its relation to the other testimony in the case which discloses defendant's knowledge touching that tract and the attitude of complainant with reference to it in the prior and subsequent negotiations. It appears by the testimony that later—so late as the evening on which the contract was signed—defendant was expressly reminded that the sale price of the farm was \$4,500 and that if defendant didn't have any trouble with the 14-acre tract, it was his, and if he did it didn't cost him 20 30

anything. That, I am convinced, was the real nature of the contract between the parties and in that view it would be obviously inequitable to now allow to defendant a credit by reason of the failure of title of the 14 acres.

I concur fully in all the views expressed by the Master in both his first and supplemental reports, and will advise a decree in accordance with his determination.

10

Submitted: December 5, 1918.

Determined: December 9, 1918.

ORDER CONFIRMING MASTER'S REPORT.

(Filed Jan. 6, 1919.)

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IN CHANCERY OF NEW JERSEY.

It appearing to the Court that the above matter was referred on December 18th, 1917, to Hon. Lewis Starr, one of the Masters of this Court to take an account and decide what deduction, if any should be allowed to defendant by reason of the inability of complainant to convey a marketable title to the tract of 14-43 acres embraced in the cause; that the said Master filed his report thereon refusing
30 to allow any deduction; and that on June 24, 1918, an order was made by this Court re-referring the cause to the said Master to take such additional testimony of matters occurring prior to the execution of the agreement referred to in the bill of complaint, as might be offered by either of the parties thereto; and it appearing that the said Master

filed his supplemental report thereon and that exceptions were filed by the defendant Francis C. Ely to the confirmation of the said original and supplemental reports and that a hearing on said exceptions was duly noticed before this Court on October 21, 1918, and adjourned to October 28, 1918, at which time the cause was submitted to this Court upon brief by counsel for the complainant and defendants:—

It is on this 3rd day of January, A. D. 1919, on 10 motion of David O. Watkins and George B. Marshall, Solicitors for and of counsel with complainant ordered, adjudged and decreed that the exceptions filed by the defendant, Francis C. Ely to the confirmation of the Master's report are overruled, with costs to the complainant to be taxed and that the Master's Report, both original and supplemental stand ratified and confirmed in all matters therein set out as referred and that a final decree be entered therein in favor of the said complainant in accordance with his determination. 20

And that a copy of this order be served upon the defendant Francis C. Ely or his solicitor Oscar B. Redrow, within three days from the date hereof which order need not be certified.

E. R. WALKER

Respectfully advised:

E. B. LEAMING, V. C.

FINAL DECREE.

(Filed Jan. 6, 1919.)

IN CHANCERY OF NEW JERSEY.

This cause coming on to be heard in the presence of David O. Watkins and George B. Marshall, solicitors for and of counsel with complainants, and Oscar B. Redrow, Solicitor for and of counsel with defendant Francis C. Ely; and it satisfactorily appearing to the Court that by virtue of an agreement in writing, duly made and executed between Reuben B. Hall, the complainant and Francis P. Hall his wife of the first part and Francis C. Ely, defendant, of the second part, the said complainant agreed to convey to the said defendant on or before June 25, 1916, a certain farm and tract of land, in the said bill mentioned and described as follows, to wit:

ALL certain lots, tracts, or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Franklin in the County of Gloucester and State of New Jersey No. 1.

BEGINNING at an Iron Pipe in the middle line of the Road from Franklinville to Clayton, sometimes called the Road from Malaga to Glassboro, at a corner to lands now or late of James Simpson, formerly lands of Thomas N. Atkinson, and extending thence (1) according to a recent Survey made by J. Owen Carter, C. E. along lands now or late of James Simpson, formerly lands of Thomas N. Atkinson South eighty- six degrees and thirty-four minutes West, twenty-four hundred and twenty-two and two tenths feet to a stone a common cor-

ner to lands formerly of James Wilson, William Scott and one Lovejoy; thence (2) along lands now or late of William Scott North twenty-two degrees and thirteen minutes West, nine hundred and ninety-six feet to a stone corner to lands now or late of James W. Nelson, formerly a corner common to lands now or late of Lawrence Cake and Benjamin Turner; thence (3) along lands now or late of James W. Nelson, formerly of Benjamin Turner, North 10
sixty-five degrees and twenty-five minutes East, nine hundred and twenty-eight feet to an iron pipe corner to lands formerly of Eli DuBois; thence (4) along same by the three following courses; North seventy-five degrees and thirty minutes East, five hundred and thirty-nine and twenty-two hundredths feet to an iron pipe; (5) North seventy-two degrees and thirty minutes East, one hundred and seventy-four and nine tenths feet to an iron pipe; (6) North 20
forty-seven degrees and thirty minutes East, three hundred and forty-four and twenty-four hundredths feet, crossing the West Jersey and Seashore Railroad, to the Easterly line of right of way thereof, thence (7) along the Easterly line of right of way of said Railroad, North nine degrees and fifteen minutes West, three hundred and ten and twelve hundredths feet to a corner to lands now or late of Albert Brown; thence (8) along the same South 30
eighty-seven degrees East, nine hundred and fifty-two and thirty-two hundredths feet to the middle line of the road from Franklinville to Clayton aforesaid; thence (9) along the same South three degrees and twenty-five minutes East, five hundred and sixty-six and three tenths feet to a corner to land now or late of Calvin Usinger, formerly of Minerva G. Carton; thence (10) along the same South sixty-three degrees and eleven minutes East,

eight hundred and seventy-eight and twenty-nine hundredths feet to an iron pipe corner to lands now or late of Samuel Hall in the middle line of Grant Avenue; thence (11) along same South eighty-seven degrees and fifty minutes West, and passing over an iron pipe on the Easterly side of the road from Franklinville to Clayton aforesaid; seven hundred and fifty-nine feet to a corner to lands now or late of Samuel Hall, in the middle line of the aforesaid road; thence (12) along the same South three degrees and twenty-five minutes East, eight hundred and fifty-two and eight tenths feet to the place of beginning.

CONTAINING, exclusive of lands occupied by the West Jersey and Seashore Railroad, ninety-one and thirty-one hundredths acres, be the same more or less.

No. 2. BEGINNING at a stake set in the main water course of Still Run Branch, in the Westerly line of Samuel Porch's old Rubin Mill Tract, and extending thence (1) along said late Samuel Porch's line on the line of a new survey made to them dated October 8th, 1866, South twenty-one degrees and thirty minutes East, twenty-nine and twenty hundredths chains crossing the old Rubin Mill Dam to a corner; thence (2) South eighty-five degrees and twenty-five minutes East, five and thirty hundredths chains to a corner; thence (3) North twenty-one degrees and thirty minutes West, thirty-six and sixty-five hundredths chains to the main water course of said Still Run Branch aforesaid; thence down said water course the several courses thereof to the place of beginning, Containing fourteen and forty-three hundredths acres of land, be the same more or less.

BEING the same lands and premises which Robert Mead, Sheriff of the County of Gloucester in the State of New Jersey by Deed dated the Third day of March 1916 A. D. and recorded in the Clerk's office of Gloucester County at Woodbury, N. J. in Book 257 of Deeds, folio 292, etc. granted and conveyed to the said Reuben Hall.

And the said defendant agreed to pay therefor the sum of \$4500.00 in the manner following:—

One hundred dollars thereof April 25, 1916; \$900 10
to be paid complainant within sixty days from
April 25, 1916 with interest therein from May 25,
1916 at the rate of 6% per anum; \$500.00 to be se-
cured by an installment mortgage on said premises
from defendant and wife to complainant to be paid
as follows, viz—\$50.00 to be paid each and every
25th day of April, July, October and January of
each and every year until such payments equal the
principal sum of \$500.00 together with interest
thereon at the rate of 6% per anum, clear of taxes; 20
and the assumption of a mortgage upon the said
described premises given by Philip F. Shafto to
Alice Atkinson, Mary Simon and Woodbury Trust
Company, executors of the last Will and Testament
of Warren Atkinson, deceased, dated January 25,
1915 in the principal sum of \$3000.00 and interest
thereon from April 25, 1916 at the rate of 6% per
annum; and upon the date of performance to wit:
June 25, 1916 upon the defendant complying there-
with the complainant was to execute and deliver 30
to the defendant, Francis C. Ely, his heirs and as-
signs a good and sufficient deed for the premises
described as tract #1 and all of his right, title
and interest of in and to premises described as
tract #2; it also appearing that possession of said
premises was given to defendant Francis C. Ely

on April 25, 1916 and he then was entitled to take the rents, issues and profits from said land to himself and his use; and it further appearing that the said Reuben B. Hall, complainant and his wife Francis P. Hall have always been, and still are, ready and willing, in all things, to comply with the stipulation of the said articles of agreement on his and their part and that the defendant Francis C. Ely, refused to comply with the said agreement but remained upon and occupied the said premises taking the rents, issues and profits therefrom; and it further appearing that because of the defendant's refusal to consummate the said contract of sale, the complainant prayed the order or decree of this court directing the said defendant Francis C. Ely be decreed specifically to perform the said agreement and to pay or cause to be paid to the complainant the sum of \$4400.00 the balance as provided for in said agreement or in lieu of his, the defendant's failure to specifically perform his part of the contract, he give up possession of the said premises to complainant and account for the rents derived therefrom; and it further appearing that upon the hearing of this cause before this court on December 18, 1917 it was ascertained by the court upon the evidence then taken and thereafter conceded by complainant that complainant's title to tract No. 2 was not marketable although they were willing to convey all their right title and interest in and to the same if any, the defendant, Francis C. Ely, elected to accept a conveyance for the lands and premises agreed to be conveyed, with abatement of the purchase price by reason of the fact that the title to tract No. 2 was not marketable, if any should be found to be due; and it further appearing that by stipulation this Court submitted the

above cause to a master of this Court to ascertain what deduction, if any, should be made from the purchase price by reason of the inability of complainant to convey and make a marketable title to defendant, Francis C. Ely of said tract No. 2, and in making said deduction the said Master to adjust between the parties all matters contained in said agreement touching the obligations of either party—as such obligations would have existed had said agreement been properly performed, to the end that 10
it may be ascertained what amount shall be paid by defendant for said tract No. 1, so that justice and equity is done to both parties; and to take an account between the parties; and it further appearing that the said Master filed his report with this Court and Supplemental Report on October 3, 1918 in which he reports that the defendant, Francis C. Ely is not entitled to any abatement of the contract price of \$4500.00 and further reported that the defendant, Francis C. Ely should be charged with interest on 20
\$3000.00 the amount of the mortgage, subject to which the property was conveyed, from June 25, 1916, also interest on \$900.00 from May 25, 1916 and interest on \$500.00 from June 25, 1916 to the date when a conveyance is made, pursuant to the terms of any decree made in this cause, at which time the \$900.00 balance of purchase money should be paid, and the installment mortgage for \$500.00 executed as provided in the contract; and also that complainant be reimbursed for taxes paid by him 30
since the date when the conveyance should have been accepted by the defendant, to wit: \$62.58; and it further appearing that the said defendant, Francis C. Ely filed certain exceptions to the confirmation of the master's original and supplemental reports which exceptions were overruled by this

Court by order dated January 3rd, 1919, with costs and said Master's report ordered ratified and confirmed and that final decree for complainant be entered in accordance therewith:—and the Chancellor being of the opinion that the complainant is entitled to the specific performance of the said articles of agreement, in accordance with the Master's report filed herein, and as in his said bill prayed:—

- 10 It is on this 3rd day of January, 1919, ordered, adjudged and decreed, that the said articles of agreement be in all things specifically performed by the said defendant, Francis C. Ely, his heirs and assigns, in accordance with the findings of the Master and of the Court in this cause, and that the complainant and his wife shall forthwith make, execute, and acknowledge, in due form of law, a good and sufficient warranty deed for said premises described in said bill of complaint as tract No. 1
- 20 and include in said deed all their right, title and interest of in and to the tract of land described in said bill of complaint as tract No. 2 and at time defendant fulfills his part of this decree, deliver the said deed so duly executed to the defendant, Francis C. Ely, who is hereby ordered, within thirty days from the date of this decree to accept the said deed of conveyance and pay or cause to be paid to the complainant for the consideration price for said lands and premises therein described and reimburse-
- 30 ment for taxes paid by complainant in the manner following, to wit:—

\$900 with interest thereon from May 25, 1916; interest on \$3000.00 the amount of the mortgage, subject to which the said property is to be conveyed from June 25, 1916; make, execute, acknowledge and deliver a bond and installment mortgage con-

veying said lands and premises herein mentioned to complainant to secure the sum of \$500.00, said mortgage to provide for the payment of the principal as follows:—

Fifty dollars to be paid each and every 25th day of April, July, October, and January of each and every year until such payments shall equal the principal sum of \$500.00 together with interest thereon at the rate of 6% per annum, clear of taxes, and in case the said defendant Francis C. Ely or his heirs and assigns shall neglect any quarterly installment and the same shall remain unpaid for the space of thirty days then the whole principal sum shall become due and liable to be collected; and interest on \$500.00 from June 25, 1916; and lastly reimburse complainant the sum of \$62.58 paid by same complainant as taxes since the date when the conveyance should have been accepted by the defendant, Francis C. Ely. 10

And it is further ordered, and decreed, that the defendant pay to the said complainant or his solicitors the costs of this suit to be taxed, and that execution issue therefore, according to the rules and practice of this Court. 20

And it is further ordered that the complainant serve a copy of this decree upon the defendant, Francis C. Ely, or his solicitor, within ten days from the date hereof, and either party is to be at liberty to apply to this Court for further directions or relief in the premises, if occasion shall require. 30

E. R. WALKER,

Respectfully advised,

E. B. LEAMING, V. C.

The first part of the report is devoted to a general
 description of the country and its resources. It
 is followed by a detailed account of the
 various industries and occupations of the
 people. The third part of the report
 contains a list of the principal towns and
 villages of the country. The fourth part
 contains a list of the principal rivers and
 streams of the country. The fifth part
 contains a list of the principal mountains and
 hills of the country. The sixth part
 contains a list of the principal lakes and
 ponds of the country. The seventh part
 contains a list of the principal forests of
 the country. The eighth part contains a
 list of the principal minerals of the
 country. The ninth part contains a list
 of the principal animals of the country.
 The tenth part contains a list of the
 principal plants of the country. The
 eleventh part contains a list of the
 principal birds of the country. The
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 principal insects of the country. The
 thirteenth part contains a list of the
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 nineteenth part contains a list of the
 principal reptiles of the country. The
 twentieth part contains a list of the
 principal mammals of the country.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between	}	On Appeal from Chancery.
FRANCIS C. ELY,		
<i>Appellant,</i>		
and		
REUBEN B. HALL,		
<i>Respondent.</i>		

BRIEF OF RESPONDENT.

The appeal in this case brings from the Court of Chancery a decree for specific performance based upon testimony given at great length, under and in pursuance of a stipulation of the parties herein that said cause be referred to a Master. A careful examination of the bill of complaint will show that it was filed for the purpose of establishing an issue and having the appellant elect whether he would carry out the contract or not, and in the event of his failure to fulfill the same that possession of said premises be delivered up by him. It was evident before the bill was filed that something would have to be done in order to cause an issue and obtain a determination of the controversy. It was anticipated that the appellant would in his answer admit the contract and upon the hearing would determine whether he would

take the premises with such deductions which might be allowed, if any, or refuse to take the same because of the defect in the title. The appellant is shown in the stipulation (Case , page 36) to have elected to take the premises and pay for the same in accordance with the contract, less deductions, if any, should be allowed. The authorities of this state authorize the filing of such a bill praying for alternative relief.

The appellant therefore agreed to take the title to the main tract of 91.31 acres and leave the question as to whether he was or was not entitled to compensation, and if so how much, to be determined by the Court. This represented the entire situation of the case. The Master taking the testimony in his conclusion (Case 184-190), decided that appellant had knowledge of the defect in the title to tract #2 of 14.43 acres and denied compensation to the appellant by reason of the failure of respondent to give a good title to tract #2 in question. Additional testimony was then taken for purpose of enabling appellant to furnish further proofs, and the Master concluded (Case 259-260), that the appellant was advised that respondent had no title to the 14.43 acre tract or that his title thereto was defective, and that the said tract did not materially enter into the transaction and that by reason thereof it would be inequitable to compel respondent to accept for the conveyance of premises in question, a sum less than specified in the contract. Exceptions to these conclusions were made and upon hearing before the Vice-Chancellor were overruled. (Case 266-268) and in which the Vice-Chancellor stated he fully concurred in all the views expressed by the Master in both reports and advised the decree from which appellant appeals.

ARGUMENT.

The case of the respondent is predicated upon the fact that at the time and prior to the execution of the contract of sale (see Case 11, Exhibit A) that the respondent had no knowledge of the location of tract #2 concerned in this cause; that he had a knowledge that the title to the said tract wherever it might be located was defective, and that other parties claimed to hold and own an interest therein. Also that the respondent's agent as shown in the later recited testimony, that he likewise did not know the location of the tract #2, was also aware of the fact that the title was in such condition that a conveyance for it could not be made, and as a result thereof informed the appellant as shown in the testimony herein referred to, that he would sell to the appellant the farm for \$4500 and that if appellant did not have any trouble with the fourteen acre tract, it was his, and if he did, it didn't cost him anything.

Respondent's case was also predicated upon the fact that the title conditions concerning the tract of fourteen acres was well known by the appellant prior and at the time of the execution of the agreement. The testimony herein recited emphatically shows that he knew all about the chain of title, the adverse claims to the land and the further particular feature that he had on April 12th, 1912, purchased from Robert J. Wilson, *et als* a tract of land which embraced almost the entire fourteen acre tract in question, thus showing that he must have known that the title to the land which he was attempting to purchase from the respondent was at that time owned by him almost in its entirety. The testimony of the appellant (Case 225, lines 13-24), shows that he at that time had a

chain of title to the fourteen acres, and knew the title conditions and yet in spite of this fact permitted the respondent to sign an agreement conveying land to him, the appellant, which he either knew or had sufficient reason for knowing never could be conveyed to him, guaranteeing any marketability of title.

Reuben B. Hall, respondent (Case 47, line 21):

“Q. When did you learn the location of the fourteen acres?”

A. After—I did not learn the location of the fourteen acres until—it must have been in the fall of 1916, at the time that Sheppard English surveyed it.”

(Case 52, line 21):

“Q. Now, did you know where the fourteen acres were at that time?”

A. No.”

(Case 54, lines 25-35):

“Q. Mr. Hall, as a matter of fact, you say you didn't know where this land was at all, that is true, isn't it?”

A. Yes.

Q. Then you had some conversation with Ely and he told you that his best information was it was just to the west or southwest of the larger tract of ninety-one acres—that is what he told you, wasn't it, where he thought the land was?”

A. Well, I don't know; he said it laid up in there somewhere.”

Louis R. Leddon, witness (Case 57, lines 5-30):

“The Witness: Before the agreement of sale was signed, between the time that Mr. Hall re-

ceived the sheriff's deed and the agreement of sale being signed, I spoke to Mr. Ely and told him there was some defect in the title to the fourteen acres; we would sell him the ninety-two acres for \$4500.00 and would give him the fourteen acres; if he ever had any trouble with, it it didn't cost him anything; if he didn't have any trouble with it it was his. I had that conversation with him more than once.

Q. Did you at the time you had the conversations with him or at the time of the execution of the agreement know the location of the fourteen acres described in the agreement?

A. I did not; I did not consider it of any value and never paid any attention to it.

Q. On how many different occasions did you converse with Mr. Ely with relation to either the location or the marketability of the fourteen acres?

A. I never knew where it was.

Q. No, but I say, on how many different occasions did you have ——

A. More than once.

Q. Well, twice, do you mean?

A. I think so."

(Case 58, lines 1-15):

"The Witness: I was up at Mr. Ely's house looking at some maps and we talked about it I think more than twice.

Q. What was the conversation you had with him at his home when you were looking over the maps?

A. He wanted me or wanted to show me where, it might be. He had plotted out two or three—made two or three maps. 'Now,' he said, 'I

can't tell where that particular piece of fourteen acres is, because it might be right in here or it might lay here or might lay around here; I can't tell,' and up to the time that the agreement of sale was signed I had no idea where it was and he claimed that he didn't."

(Case 58, lines 28-34):

"Q. And where did he show you he thought it was with relation to this map which was prepared by Mr. English?

A. The fourteen acres that he thought, or the position where he thought it was or told us he thought it was, was the cedar timber southwest of the main farm, of ninety-two acres."

Francis C. Ely, appellant (Case 113, lines 12-20):

"Q. Didn't know where the tract of land was located that you bought from Mr. Wilson in 1912?

A. Oh, yes.

Q. You knew where that was?

A. Yes.

Q. Did you read the description contained in the agreement between him and Mr. Hall?

A. Yes."

Reuben B. Hall, respondent (Case 119, lines 1-8):

"A. Mr. Ely already knew that.

Q. I say, you told him at that time?

A. I told him at that time? I don't think I said—now, wait one minute.

Q. Go ahead.

A. I said, 'You know yourself, Mr. Ely, I can't give you a good deed for it.' He admitted that and admitted that he knew it."

(Case 119, line 30):

“A. I knew that there was a dispute as to the ownership of the fourteen acres, although I felt, and I still feel that our title is good to the fourteen acres, but in view of any doubt whatever, I would not give a warranty deed.”

Louis R. Leddon, witness (Case 120, lines 26-34):

“Q. Mr. Leddon, did you have any conversation with Mr. Ely after the consummation of this agreement with relation to any allowance that should be made for these fourteen acres?”

A. I had a conversation with him in regard to the dispute to the title to the fourteen acres, yes.

Q. Now, what did he say at that time, if anything, as to what he was going to pay for the property?”

(Case 121, lines 1-15):

“Q. Where was it?”

A. Mr. Ely and I went down to talk with Dr. Poreh and his wife in regard to that fourteen acres, and talking with Mr. Poreh and Mrs. Poreh in regard to it, he says, ‘Now, Mrs. Poreh, don’t think there is anything the matter with the title to that property, that title is all right; don’t think I have come here to talk about that; I have simply come down here to talk with you and ask where it was.’ We walked up to the office, and on our way up to the office, he said, ‘Leddon, you know as well as you know you are alive that you can’t give me a clear title to that property, for that fourteen acres. I told you I wouldn’t pay but \$4,000 for that property and I never intend to.’ ”

(Case 121, lines 22-28) :

“Q. Did you know that what he said was true or not? Did you know whether you could give him a good title or not?”

A. I told Mr. Ely on two or three occasions that there was a dispute in the title.”

(Case 122, lines 1-14) :

“Q. And never did know anything about the title to the property, did you, Mr. Leddon?”

A. Only what Mr. Porch told me in regard to it; he said there was simply a dispute.

Q. And is this story now you are telling about what you told Ely wasn't anything that you know at all, was it—all this story about the defects in this title which you say some time ago you told Mr. Ely about?

A. I told Mr. Ely there was a dispute in the title; what it was I didn't know.

Q. You didn't know anything at all about it?

A. Certainly not.”

Francis C. Ely, appellant (Case 216, lines 8-36) :

“A. The location of the 14 acres was in question at one time; whether it was prior to the signing of the agreement or not, I don't remember. Mr. Leddon told me if I would see Owen Carter he could locate it for me.

Q. Who told you this?

A. Mr. Leddon.

Q. There was some question at that time as to the location of it?

A. Yes, sir.

Q. Of course, if they were not able to locate the land they would be unable to convey it to you, wouldn't they?

A. I don't know.

Q. That would be true, wouldn't it?

A. Hardly, because there was a chain of title to that land that I was familiar with.

Q. You mean to say then that while you probably were not aware that there was any defect in the title, you were, however, aware of the fact that Mr. Hall or Mr. Leddon didn't know exactly where it was located?

A. That is true.

Q. And you did not know where it was located either?

A. No, sir.

Q. And both Mr. Hall and Mr. Leddon told you that they did not know where the land was, didn't they?"

(Case 217, lines 16-30):

"Q. But you are confident, however, that before the agreement was signed that you were aware of the fact that Mr. Leddon had told you that they did not know where 14 acres was?

A. Yes, I believe so, that is, if the conversation came up at all, they didn't know where the 14 acres were, no one knew.

Q. And you were willing to sign an agreement to take the land, the same land which you knew at that time that they did not know where it was located?

A. Yes.

Q. You were perfectly willing to take it at that time?

A. Yes."

The testimony above referred to conclusively shows that at the time the appellant entered into the contract for the sale of the land in question he

was aware of the fact that the title was bad, and admits to the Master taking the testimony as shown herein, that it was brought to his attention at the time he first consulted respondent's agent concerning the sale.

Reuben B. Hall, respondent (Case 233, lines 29-36):

“Q. Now, what did Mr. Ely say at that time, if anything, about purchasing any interest, any outstanding interest in that tract by quit-claim deed or otherwise?”

A. He said nothing about a quit-claim deed. He referred to the fact that Robert Wilson claimed ownership of the 14 acres which he was trying to buy from us.”

(Case 234, line 11):

“A. Well, he seemed surprised that we were willing to give him a deed; he seemed—”

(Case 238, line 15-23):

“A. Well, I had understood that Mr. Ely had purchased this same ground. Robert Wilson was particularly anxious to get a deed from us to protect himself from Mr. Ely, because he had sold this ground to Mr. Ely.

Mr. Marshall: The 14 acres, you mean?

The Witness: Yes, the fourteen acres.”

Louis R. Leddon (Case 240, lines 12-16):

“The Witness: I told Mr. Ely that Robert Wilson wanted us to give him a deed, a quit-claim deed for the fourteen acres, because he had sold part of it to Mr. Ely, and he wanted to keep himself straight with Mr. Ely.”

(Case 240, lines 32-38):

“A. I asked Mr. Ely if he wanted Bob Wilson to have a quit-claim deed for that fourteen acres, and he said, ‘By all means, no.’ ”

The foregoing testimony shows conclusively, with relation to the parties concerned that the appellant could not have been dealing with the respondent in good faith, having a knowledge of the conditions of the title which were at that time not revealed by him to the respondent, and his conduct we contend on that ground does not place him, the appellant in a position to ask for any compensation for damages that he alleges to have sustained by reason of a situation that was of his own making.

The appellant from the testimony purchased almost this identical tract of land on April 12, 1912 from Robert J. Wilson. See Robert J. Wilson, witness (Case 74, lines 28-36) and (Case 75, lines 1-15), (Case 78, lines 12-25).

The appellant in his answer (see Case 17, line 34, paragraph 4) says:

“This defendant afterwards ascertained that tract #2 did not adjoin tract #1 or defendants’ other land, but that this intervening land was owned by one Wilson, which this defendant has since purchased for \$1050 to secure an outlet on both of the aforesaid roads.”

The following testimony shows conclusively that the appellant did not pay any such sum to obtain any adjoining strip of land and in this point he has clearly shown that he was endeavoring to set up a matter in his answer which was proven by the testimony to be absolutely false, (See Thomas C. Wilson, witness (Case 97, lines 16-18.)

“A. I sold to Mr. Finger.

Q. You sold to Mr. Finger?

A. Yes."

Francis C. Ely, appellant (Case 114, lines 31-33):

"Q. The question is still unanswered; how much did you contribute towards the \$1050?

A. \$250, my recollection."

See also testimony of same witness (Case 115, lines 10-30);

See also testimony of same witness (Case 163, lines 28-32);

(Case 164, lines 1-3):

"Q. In other words your statement that you paid that (meaning \$1050) for it is not true, is it?

A. Well, if you put that version on it."

The appellant lays considerable stress upon the fact that testimony cannot be offered to vary or contradict the terms of a written contract. The respondent recognizes the line of case supporting this law but at the same time contends that there is a line of case holding that with relation to Courts of Equity the rule is not so stringently adhered to.

In the case of *Stoutenburgh vs. Tomkins*, 9 Equity, 332, it was held among other things, that Courts of Equity have manifested much more liberality in admitting parole evidence in cases of specific performance to resist than to enforce it. Yet it seems to the respondent that there should be no reason for the application of this rule in all cases where the facts are so clearly set out showing the attitude and conduct of the parties as in this case.

In the case of *O'Brien vs. Paterson Brewing & Malting Company*, 69 Equity, 117, (page 129) the aforesaid case of *Stoutenburgh vs Tomkins* referred

to reiterates the principal that "however closely the court may be disposed to adhere to the salutary rule of law that parole evidence is not admissible to vary or contradict a written instrument, it must exercise much more liberality in admitting evidence in order to reach the equity of the case than would be allowed by a Court of law."

It must be borne in mind that the appellant has entered into a stipulation agreeing to take the premises and in that stipulation hereinbefore referred to he agrees to take whatever compensation, *if any*, should be allowed by reason of the failure in the title of the 14 acres. The respondent therefore contends that upon this question, very much like an accounting, the Courts of Equity would be doing perfect justice if they took into account all of the relations and transactions of the parties, even to the extent of admitting the parole testimony, and certainly in a case where the conduct of the appellant savors closely to fraud as in this case.

34 Cyc, page 982, the law is set forth and has been followed in this State "Relying on this authority several American Courts have refused to admit parole evidence when the writing comes within the statutes of frauds." But the great mass of authorities construe the effect of the statutes of fraud differently, and for the reformation of instruments, both in this country and England the general rule at present seems to be that parole evidence is admissible to show mistake or fraud, which has been admitted to the extent of showing what the real contract was.

The testimony of the witness Louis R. Leddon is corroborated by his wife, Annie E. Leddon. (see Case 250, lines 25-35):

"A. I heard him say to Mr. Ely that Mr. Shafto had taken out title insurance in the Cam-

den Company for ninety-two acres, but that there was a reflection on the fourteen acres.

Q. Who said that?

A. Mr. Leddon told Mr. Ely this. He said, 'If you don't have any trouble with that fourteen acres, it is yours; if you do,' he said, 'it won't cost you anything, you won't lose anything.' "

The above is very important. We contend as almost at the same time that the agreement was executed the appellant was informed that he was not being charged anything for the second tract of 14 acres, but that this land was being thrown in with the main tract. We also have the further testimony of the witness Louis R. Leddon, referring to the testimony set out in this brief of Louis R. Leddon (Case 121, lines 1-15 inclusive.)

It is shown by what the appellant said that he was taking undue advantage of the respondent and his agent, when he said "Leddon, you know as well as you know you are alive that you can't give me a clear title to that property, for that 14 acres. I told you I wouldn't pay but \$4000 for that property and I never intend to."

The respondent therefore contends that from the testimony of the entire case and particularly the testimony set out in this brief that it is shown that the appellants' conduct does not entitle him to any relief and we therefore contend that the Master nor the Vice-Chancellor has erred in its decisions upon which the decree in this case was based. It must be especially borne in mind that both of the parties to this contract desired specific performance and that this being the case the equitable rules involved must be applied.

In the case of *Van Blarcum vs. Hopkins* 63 Equity, 466 it is set forth that there may be specific performance of a contract with compensation for deficiency, and that in determining this feature there are three alternatives presented (1) to refuse the remedy entirely, (2) to enforce the contract without regard to the partial failure compelling the purchaser to take what there is to give and pay the full price agreed, or (3) to decree a conveyance of the vendor's actual interest and allow to the vendee a pecuniary compensation or abatement on the price.

The conclusion of the Special Master who took the testimony in this case (see Case 187).

Comments upon the case of *Van Blarcum vs. Hopkins*, 63 Equity, 466, and assigns as the reason for denying compensation, thereby operating under the second rule laid down in *Van Blarcum vs. Hopkins*. The case of *Peeler vs. Levy*, 26 Equity, 330, which the respondent contends is on all fours and holds in detail as follows:—

“Compensation is to be awarded, when it appears from a view of all the circumstances of the particular case, it will subserve the ends of justice; and it will be denied, when, upon a like view, it appears it will produce hardship or injustice to either of the parties. No inflexible rule can be adopted applicable to all cases, but each case must be decided on its own special facts. Generally, it will be denied where the party asking it had notice at the time the contract was made, that the vendor was agreeing for more than he could give or convey, and it appears the vendee has not, in consequence of the contract, placed himself in a situation from which he cannot extricate himself without loss. This rule has the support of the clearest dic-

tates of justice. It is unconscionable for one man to take the promise of another to do a particular thing which the promisee knows, at the time the promise was made, the promisor cannot perform, except by the consent or concurrence of a third person, and then, when consent or concurrence is refused by the third person in good faith, to demand a strict and literal fulfillment of the promise. He contracts with full notice of the uncertainty or hazard attending the promisor's ability to perform, and has no right, therefore, to ask the extraordinary aid of a court of conscience in repairing the loss he has sustained by the nonfulfillment of the contract. He must be content with his ordinary legal remedy."

The case of *Peeler vs. Levy* above referred to and *Van Blarcum vs. Hopkins*, *Planer vs. Equitable Life Insurance Society*, 37 Atlantic, 668 and 36 Cyc, 742, are the authorities among others, for the rule of law, that "if it is shown that the purchaser at the time of entering into the contract was aware of the defect in the vendor's interest or title, or deficiency in the subject-matter, he is not entitled to any compensation or abatement of purchase price.

We therefore conclude as to this proposition that the appellant being aware of the defect in the title, he comes within the rule laid down in these cases and affirmed by the Vice-Chancellor, and therefore is not entitled to any deduction from the purchase price.

Interest and Adjustment.

The respondent contends that the Court has not erred in awarding to the respondent interest on the

unpaid purchase price and in the allowance of taxes which have been paid by the respondent. From the testimony of Francis C. Ely, appellant (Case 108, lines 22-33) it is shown that the appellant entered into the possession of the property and has occupied the same down to the present time, and on account of which he has paid only the sum of \$100. See also the testimony of Francis C. Ely, (Case 111, lines 10-21). The authority for awarding interest on the unpaid purchase price is founded upon abundant law, 36 Cyc, (page 754) which holds that "a vendee in possession must pay interest on the unpaid purchase money, although the vendor is unable to make title at the time appointed, although by the terms of the contract the purchase money is not payable until the deed is made. This is by way of compensation for the profits he is receiving during the vendor's inability to make title."

In the case of *Jersey City vs. Flynn*, 70 Atlantic 497) the appellant pins his faith as to the principal that no interest can be allowed on unpaid purchase money. From an examination of this case it can be clearly seen that it does not come within the facts of this case, and therefore can in no sense control it. It was however, recited in the above-mentioned case "that the general rule is to adjust the rights of the parties so as to give to each as nearly as possible what he would have received if the contract had been performed according to its terms."

The further authorities cited by the respondent on this proposition is the case of *King vs. Rockman*, 24 Equity, 298, and the same case, page 556. Another case cited in furtherance of this is *Brown vs. Norcross*, 59 Equity, (page 427) foot of page 429.

The respondent therefore contends that there has been no error in the allowance of interest and tax adjustment by the Vice-Chancellor.

Cost.

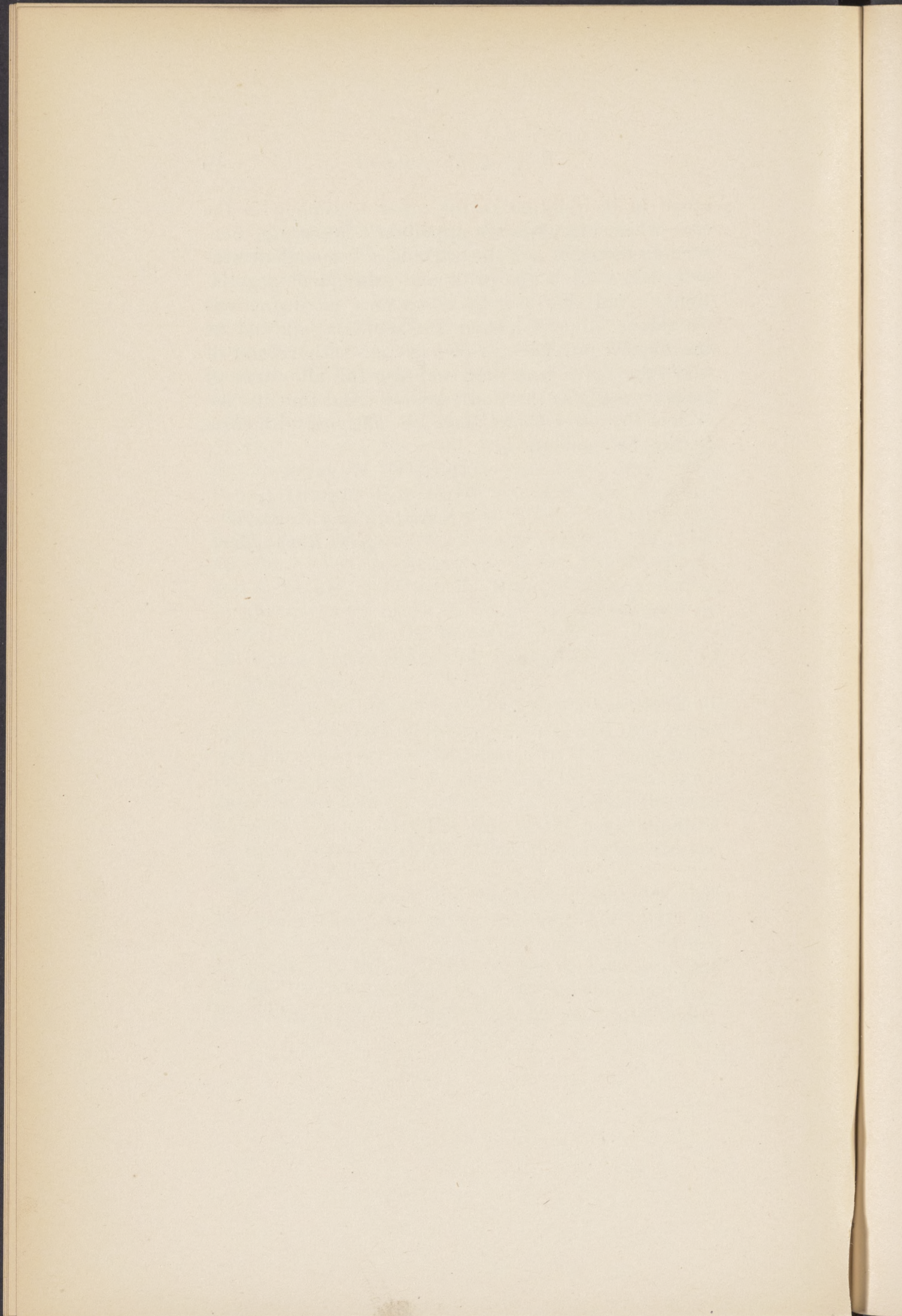
The respondent contends that there can be no error in connection with the allowance of costs as made by the Vice-Chancellor in this case. The entire matter was before him and the Master who not only heard the testimony but was able to observe the attitude of the witnesses, and especially that of the appellant. The respondent in this case was forced to the position of taking some step, otherwise the appellant would have remained in the possession of the property, taking the rents and profits and enjoying the lands as the absolute owner, having invested in it only the sum of \$100. Respondent was therefore compelled to file the bill and in which is set out in this brief there was prayed alternative relief. That the appellant elected whether he would take the premises or vacate, and when the situation was presented to him he elects as is shown by the stipulation referred to, to take the premises and take whatever the Court would allow him, *if anything*, by way of compensation.

We contend therefore, that there has been no laches on the part of the respondent and that if the suit had not been commenced by the respondent there was practically no chance of the appellant instituting the same in so far as he had held the land for over a year after the date of the consummation of the contract and all attempts to arbitrate the matter had failed.

For these reasons the respondent contends that the lower Court has made no error and that the decree allowed by the Court below should be affirmed as it stands in full, and that for the reasons as stated by the Vice-Chancellor, page 267 of the case, that the testimony as a whole must be read and under-

stood in its relation to the other testimony in the case which discloses the appellant's knowledge concerning the tract and the attitude of respondent with reference to it in the prior and subsequent negotiations. And that for these reasons no deductions should be allowed. Interest should be allowed on the unpaid purchase price together with refund of taxes that have been paid and also full allowance of costs as made in the Court below. And that the decree of the lower Court should be affirmed with costs to the respondent.

DAVID O. WATKINS,
GEORGE B. MARSHALL,
Solicitors and Counsels
with Respondent.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
FRANCIS C. ELY,
Appellant,
and
REUBEN B. HALL,
Respondent. } On Appeal from
Chancery.

BRIEF OF APPELLANT.

The appeal in this case brings from the Court of Chancery a decree for the specific performance of a contract for the sale of land, which directs that the appellant, purchaser, shall pay the full purchase price or \$4500 for 91.31 acres of land, whereas the written contract provides for the conveyance of 105.74 acres of land for the consideration of \$4500. The learned Vice-Chancellor in the opinion of the Court below finds that the appellant knew of defects in the title to 14.43 acres prior to the execution of the agreement of sale and for that reason was not entitled to any compensation by reason of the inability of the respondent to give a good title to that tract.

The final decree in the court below orders that the respondent and his wife make and execute and acknowledge in due form of law a good and sufficient

warranty deed for premises described in said bill of complaint as tract No. 1, (containing 91.31 acres) and included in said deed all their right, title and interest of in and to the tract of land described as tract #2 (containing 14.43 acres), and deliver to appellant upon the payment by appellant of the balance of the purchase price as thereafter more fully enumerated in said decree. From this decree of the lower Court, the appellant appeals.

ARGUMENT.

The terms of a written contract for the sale of land cannot be changed by oral testimony or statements made previous to the execution of said written contract.

Chetwood vs. Brittan, 4 Eq. 334;

Affirmed 5 Eq. 628;

Speer vs. Whitefield, 10 Eq. 107;

Roger vs. Colt, 21 N. J. L. 704;

VanSyckel vs. Dalrymple, 32 Eq. 233.

The statute provides that any contract for the sale of land must be in writing.

Compiled statutes 1910 pages 2610.

The bill of complaint filed by respondent (case page 10) prays that the appellant be required to pay the balance of the purchase price or \$4400 as provided for in said agreement, "Upon the tender by the complainant of a good and sufficient deed therefor, this complainant being ready and willing and hereby offering specifically to perform said agreement of sale on his part," there is nothing said in the bill of complaint about any agreement concern-

ing a 14.43 acre tract being given to the appellant, the bill specifically sets out that the respondent will give a good and sufficient deed for all the land.

The answer (case 17-19) sets out that the respondent and his agent represented to the appellant that the 14.43 acres or tract No. 2 was situated between lands owned by the respondent and the appellant and that this particular strip of land or tract No. 2 gave the appellant an outlet from the Franklinville Road to the Malaga and Glassboro Road. That some months after the execution of the contract and after the survey had been made, the appellant purchased this outlet for \$1050. The answer expresses a willingness on the part of the appellant to perform the contract and comply with its terms.

At the hearing before the Vice-Chancellor (case 22, lines 20 to 30), the respondent admitted the invalidity of the title of tract No. 2 or 14.43 acres. The primary question as defined by the Vice-Chancellor (case 32, line 32) was "what deduction should be made on the purchase price by reason of the loss of value received by defendant by reason of the inability of complainant to make title of the 14.43 acre tract?"

The Vice-Chancellor (case 267, line 10) says "That the 14.43 acres was not at any time regarded by any of the parties as forming a substantial element in the valuation agreed upon." This statement is not borne out by the testimony.

REUBEN B. HALL, respondent, (case 52, line 14):

"Q. He told you that he thought the 14 acres was immediately back of the 91 acres, is that true?"

A. Well, on one side, not immediately back; on the westerly side of the larger tract of the 91 acres, south, I think it was."

(Case 54, line 29):

“Q. Then you had some conversation with Ely and he told you that his best information was it was just to the west or southwest of the larger tract of 91 acres—that is what he told you, wasn’t it, where he thought the land was?

A. Well, I don’t know; he said it laid up there somewhere.”

LOUIS R. LEDDON, witness, (case 58, line 28):

“Q. And where did he show you he thought it was with relation to this map which was prepared by Mr. English?

A. The 14 acres that he thought, or the position where he thought it was or told us he thought it was, was the Cedar Timber southwest of the main farm, of 92 acres.”

(Case 59, line 3):

“A. It had no connection with that piece at all.”
(That piece referring to the survey made by Mr. English.)

(Case 66, line 11):

“Q. Didn’t Mr. Ely on March 5th, 1916, write you a letter in which he said he would not be interested in the Dr. Porch farm unless he could get the 14 acres he was speaking about?

A. Yes, sir.”

(Case 67, line 21):

“Q. Now, this letter states, ‘I would not be interested in the Doctor Porch farm unless I could get the 14 acres we were speaking about, as this would give me an outlet to the other road, the Elmer Road from the rear of my property.’ Is that correct?

A. That is what is in the letter.”

FRANCIS C. ELY, appellant, (case 103, line 15):

“A. After the execution of the agreement, I took Mr. Hall and Mr. Leddon to the back part of the farm and showed them the piece I have since purchased from Wilson and said ‘That is the piece that I think goes with the farm, if it does it is worth so much money,’ and that has been reputed as the piece for some years.”

(Case 114, lines 12 to 36) shows appellant purchased the connecting link for \$1050 from Robert Wilson and sold the cedar on that land for \$800.

REUBEN B. HALL, respondent, (case 232, lines 25 to 30), Hall called at Ely’s house in Philadelphia a few days previous to signing the agreement.

(Case 233, line 19):

“A. Mr. Ely said this; ‘You will give us a good deed for the 14 acres?’ and I said, ‘yes.’ ”

So that at no time did the appellant consent or agree to the purchase of the 91 acres tract without receiving a good deed for the 14.43 acres. It is apparent from all of the testimony in the case that the appellant, Ely, desired to purchase more than anything else the tract of land which was between land which he then owned and the 91 acre tract in order to give him an outlet on the Malaga Road. So that it is evident from the testimony that the 14.43 tract forms *a very substantial element in the valuation of the property as far as the appellant was concerned.* At the time Mr. Hall, the respondent, called at the home of the appellant in Philadelphia, just a few days before the signing of the contract (case 232), Hall testified at (case 233, line 23), “I told him I

had been advised by Rogers an attorney at Woodbury, that our paper title of the 14 acres was as good as anybody else's, and for that reason I felt justified in telling Mr. Ely that we would give him a good deed or rather a warranty deed for the 14 acres along with the entire farm." (Case 234, line 29.)

"Q. What did he say after you told him that?

A. Well, he seemed satisfied with the fact that I told him that we would give him a deed for that."

(Case 238):

"A. As I remember, he (Attorney Rogers) told us that our paper title was good.

Q. And basing your opinion on that you told Ely that you would give him a good deed for the 14 acres when he asked you about it?

A. Yes."

(Case 234, line 21):

"A. He said, 'You are sure you will give us a good deed for 14 acres?' I said, 'Certainly' 'It don't make any difference what Robert Wilson claims, whether he does claim title to the 14 acres we will give you a good deed for it.' "

Case 253, line 33. MRS. LEDDON, witness.

"A. He said he wanted it for an outlet.

Q. An outlet to what?

A. I don't know; I asked Mr. Leddon—Well, he spoke that same way the night we were at his house, he said—"I want the 14 acres, I must have it for an outlet." " Mr. Ely testified all through the case that as far as he knew the title to the 14 acres was good, that Hall had told him so. That Ely did not find out that the title was not good until sometime after the agreement was signed and it was then that he told Hall that a survey should be made of the 14 acres.

It is apparent therefore from the testimony that *Mr. Hall knew the title conditions of the 14.43 acres when he bought the property at Sheriff's Sale as he testifies (case 236-237), concerning some agreement he made at that time with a party by the name of Robert Wilson.* That he knew the exact conditions of the title. That with all this knowledge he told Ely he would give him a good deed for the 14.43 acres and a day or so afterward executed the agreement, (case Exhibit "A" 11) agreeing to convey the property in question free from all incumbrances.

Mr. Leddon, the real estate agent, testified that he had a conversation with the appellant on the night the agreement was executed as verified by Mrs. Leddon. (Case 251, line 11):

"A. He said the 92 acres would cost him \$4500 and they considered they were giving him the 14 acres." This does not mean anything it seems to me from the very fact that Mr. Hall, the owner of the property, had already assured the appellant that he would give him a good deed for the property and did authorize his agent to draw up an agreement which he executed to do that very thing. It may have been that Mr. Hall or his agent could have said that they would sell him the 14 acres and give him the 91 acres, or that they would sell him the land and give him the buildings, or sell him the buildings and give him the land. Such statements would not be binding upon the appellant from the very fact that he insisted that the agreement should provide for the giving him a good deed for the 14 acre tract depending on the statement made to him by Mr. Hall.

The testimony taken before the Master concerning all of the transactions as to what took place previous to the execution of the agreement was objected to by the appellant, (case 41).

And the Master made the statement "That no testimony with reference to any prior negotiations which would show a situation inconsistent with a contract as finally signed between the parties is not admissible. It certainly would not be admissible to vary or alter the terms of the contract." And the appellant urges now that this testimony as to transactions previous to the execution of the agreement was improperly admitted as being immaterial and irrelevant to the issue.

At no place in the testimony nor in the opinion of the Master nor in the opinion of the Vice-Chancellor is there any suggestion that the appellant has been guilty of fraud in any way whereby the contract could be avoided. The appellant has been charged by the Master and the Vice-Chancellor with knowledge of the condition of the title of the 14 acre tract and for that reason alone they have denied him compensation. The appellant contends that he is entitled to rely upon the representation made to him by the respondent to the effect that he would give him a good deed and that he has failed to do so, should be allowed compensation for the value of the property.

The case of *Van Blarcum vs. Hopkins*, 63 Eq. 466, Vice-Chancellor Pitney refers to Section 434 of Pomeroy in specific performance in a case of deficiency in quantity, quality or value, first to refuse the remedy entirely, that is for the Court to refuse the remedy of specific performance to either party, in which case the present bill would be dismissed. Second to enforce the contract without any regard to the partial failure compelling the purchaser to take what there is to give and to pay the full price agreed. This remedy is only adopted in cases where one of the parties has committed a fraud and not in a case like the one at issue where all of the facts

concerning the quantity or value of the land in question was known to the vendor and certainly not in a case where the vendor has filed a bill for specific performance and in the bill has failed to advise the Court of such fraud, he has claimed to own the entire tract, expressed a willingness to give a good and valid deed for all of the land, and testified before the Vice-Chancellor at the hearing of that bill that he had good title to all of the land and even insisting after the matter was referred to the Master by the Vice-Chancellor that he believed his title was as good as anybody else's. If this course is adopted it would mean that the statute we have providing that all contracts and agreements for the sale of land shall be in writing should be repealed, as the parties of such a contract would be permitted to come into court and enforce a verbal contract inconsistent with the written one. The third course is set out by Vice-Chancellor Pitney to decree a conveyance and allow to the vendee pecuniary compensation or abatement on the price seems to be the proper course to pursue. And as the course which the appellant agreed before the Vice-Chancellor should be enforced. The stipulation (case 36), particularly provides that the appellant should be allowed compensation by reason of the inability of the respondent to convey tract #2, that is if tract #2 was worth anything at all that sum should be deducted from the purchase price to be paid.

The case of *Peeler vs. Levy* (26 Eq. 330) appearing in the conclusion of the Master is not a case in point. In that case the vendee filed a bill for specific performance of a contract and the Court refused to grant the relief and dismissed the bill. Applying the same law to this case the bill for specific performance should have been dismissed. The facts

in *Peeler vs. Levy* are not similar to the facts in this case, in that case the vendee knew that the vendor could not execute a deed without his wife would sign, and it appeared that two of the four tracts were in the wife's name. In this case the agreement of sale was executed by the respondent and wife both agreeing to convey the entire tracts of land. The Vice-Chancellor even in the *Peeler* case thought that there was evidence of misrepresentation on the part of the defendant's agent that the contract would not bind him unless his wife consented. So that if by any chance this case does apply to the one in issue, the bill for specific performance should be dismissed with costs.

The principle laid down in *White vs. Weaver* (68 Eq. 644) that "in order to defeat specific performance upon the ground that the vendee had notice at the time the contract was made that the vendor could not make good title, said notice must be clearly proved" seems entirely equitable. In that case Mrs. Weaver said she told Mr. White before the lease was executed that she did not own the entire property. Mrs. Weaver's sister testified to hearing a part of the conversation and the Court in its opinion states as follows:

"I think before specific performance is defeated upon this ground it should be clearly proved that the person with whom the contract was made to convey the title had notice that the one who agreed to make the conveyance had not the ability to give a complete title. In my judgment, it does not so clearly appear in this case as to defeat the right of Mr. White to have what he bargained for.

"It is, of course, true that Mr. White had notice of the defect in Mrs. Weaver's title when he brought this suit, and I am aware that there is a line of cases

holding that the Court will not award compensation for a defective title if the complainant knew of the defect in the title when the suit for specific performance was begun. I do not see any equity in this rule, and it was properly discredited in *Ludlum vs. Buckingham*, 35 N. J. Eq. (8 Stew.) 71, 83.

“My conclusion is that there should be a decree for performance, with an abatement in the price by way of compensation.” In the present case there is no testimony that the appellant had any notice that the one who agreed to make the conveyance had not the ability to give a complete title. In fact in this case the respondent told the appellant that he would give him good title, that his attorney told him he had a good title, “And that it did not make any difference what Robert Wilson claims we will give you a good deed for it.” The appellant had a perfect right to depend on the statement made by the vendor concerning the title. The respondent, Hall, from the time he bought the property at Sheriff’s Sale in March, 1916, until the agreement of sale in this case was made with the appellant knew all the defects in the title of tract #2. He had employed an attorney and his attorney advised him fully concerning the same. The appellant, Ely, knew only what the respondent had told him and it does not seem fair and equitable that he could not depend on the statement made to him by Hall.

The appellant therefore contends that, 1st, under the exceptions taken before the Master that all testimony concerning the transactions between the parties prior to the execution of the agreement of sale and which were improperly admitted, should be disregarded and expunged from the record. 2nd, that if the transaction between the parties previous to the agreement of sale were properly admitted

that they show that the appellant should be entitled to compensation for tract #2, the outlet or connecting link which the respondent is unable to convey.

Valuation of Tract #2.

The valuation placed upon tract #2 by the Master (case 189) is the sum of \$280 and while this valuation is not the value that this connecting link or outlet would be to the appellant, no claim is made in this appeal for a larger amount.

Interest and Adjustments.

The appellant claims that the matter of interest in cases of specific performance was fully disposed of in the case of *Jersey City vs. Flynn*, 74 Eq. at p. 119 "Where the bill is filed by the vendor and his title is first made out, that is, shown to be good in the Master's Office, the day when the title is made out is the day from which the purchase money begins to bear interest." This case follows the English rule in that the vendor being in fault the delay having been occasioned by him not performing his part of the contract is not to exact from the purchaser, the payment of interest until the time they show a good title.

The adjustments decreed to be made on the decree appealed from provided for the payment of \$900 with interest from May 25th, 1916. Interest on \$3000 the amount of the mortgage from June 25th, 1916, and the execution of a second mortgage by the appellant for \$500 with payment as provided in the agreement of sale and interest from June 25th, 1916, and also

provides for the payment of \$62.58 for taxes paid by the respondent. The appellant contends that in the adjustments no interest whatsoever should be charged against the appellant until his title is made out to be good for the entire tract of land and in no event for any longer period than from December 19, 1917, the date of the hearing before Vice-Chancellor Leaming when it appeared for the first time or the respondent admitted that he had no title to tract #2.

Cost.

The costs of the respondent in the court below amounting to \$253.62 were ordered to be paid by the decree by the appellant. These costs include the costs of filling the bill and all other matters up to and including final decree. All costs prior to December 19th, 1917, are certainly not proper charges for costs as on that day the respondent appeared in the court below and admitted that his bill for specific performance could not be maintained as he did not have title to tract #1 (Case 22, line 21). The Vice-Chancellor stated "If it is not a marketable title you can not enforce it." (Case 23, line 32) "Then we can right here determine without going further on this concession that the defendant cannot be compelled to take the title tract #2."

The costs accruing of either party since the hearing of December 19th, 1917, are costs which from the nature of the case itself indicates that the Court of Chancery has inequitably allowed costs of the respondent. It does not seem fair that costs should be allowed against the appellant by the lower Court where the appellant was willing to dispose of the

matter as suggested by the Vice-Chancellor and particularly where the whole controversy was caused by the respondent who having full knowledge to the defects of the title and having been advised by his attorney concerning the same, made an agreement to convey a good title to the appellant.

For these reasons the appellant believes the decree of the lower Court should be reversed and that an order should be made allowing the appellant a reduction in the purchase price of \$280, the value fixed by the Master on tract #2 or the connecting link and that the respondent execute a good and sufficient deed for tract #1 free and clear of all encumbrance and that the appellant pay to the respondent the balance of a purchase money after deducting the said sum of \$280 as provided in the agreement of sale (Exhibit A) without interest or costs of any kind whatsoever, or that the bill of complaint for specific performance filed by the respondent in the court below be dismissed with costs and the appellant left to his remedy at law.

OSCAR B. REDROW,
Solicitor and of Counsel
for Appellant.

