New Jersey Court of Errors and Appeals.

Between—

AMOS CHAMBERLAIN,

Appellant,

and

RICHARD H. MANNING, *et als.*,

Appellees.

On Appeal.

APPELLANT'S BRIEF.

The bill in this case was filed to compel the specific performance of an agreement for sale of land by the appellee, Richard H. Manning, to the appellant.

The land in question is situated at Bloomingdale, in the County of Morris. Case, p. 1.

The appellees Howell and Noble were made defendants on account of their having purchased land of said Manning which embraced the land in question, subsequent to the making of said agreement.

The Agreement.

The agreement in question was made by and between James Tintle, the agent of Manning, and Chamberlain.

The negotiations were commenced in the latter part of February, 1878. Case p. 31, l. 26; p. 72, l. 24.

Chamberlain picked the lot out at that time. Case p. 72, l. 31.

Tintle then had the lot thus picked out surveyed. Case p. 72, l. 36.

The survey was made by Benjamin Roome. Case p. 73; 17; p. 197, l. 12.

Mr. Roome was at that time surveying lands for Manning. Case p. 73, l. 21; p. 198, l. 33.

After the survey was made Tintle notified Chamberlain of the fact by a postal card, dated March 3d, 1878. See the same; Case p. 427. See also p. 31, l. 28; p. 73, l. 5.

Chamberlain received this notice on March 4th, 1878. Case p. 32, l. 11.

And the next day he went to Bloomingdale, and saw Tintle, who showed him the courses, borders and lines of the lot as they had been run out. Case p. 32, l. 30; p. 73, l. 24.

Chamberlain then and there agreed to take the lot as thus surveyed. Case p. 32, l. 35; p. 73, l. 39.

The price agreed upon was $150. Case, p. 32, l. 15; p. 75, l. 10.

Chamberlain told Tintle that he was ready to pay for the lot at any time. Case, p. 32, l. 37; p. 81; l. 27.

He says he said to Tintle, "I want to go right to work at it," and Tintle replied: "Well, here is your corner, borders and lines; I now deliver it over to you and give you possession; go on, as soon as you have a mind to; we will make you a deed in a few days or a few weeks." Case, p. 32, l. 36. See also p. 33, last line, &c.

Tintle says, in reply to the question, "Did you give him possession at that time?" "Yes, I told him at that time. I think he asked me whether it would make any difference if he went on and improved it; I told him no, not that I

knew of." Case, p. 74, l. 28.

Tintle thinks that Roome was to make the deed and send it down to Manning. Case, p. 81, l. 19; p. 85, l. 14.

Roome and his son who worked with him (case, p. 201, l. 19.) generally made deeds for all the lots they surveyed for Manning. Case, p. 199, l. 11.

But he don't recollect whether or not anything was said to him about the deed in this case. Case, p. 199, l. 7; p. 209, l. 26.

Chamberlain took possession of the lot and commenced making improvements upon it in a very short time at least after the agreement was made. He says he did so on the same day. Case, p. 33, l. 37. See also, p. 75, l. 18, (Tintle); p. 157, l. 16, (Post); p. 158, l. 33, (Post); p. 172, l. 32, (Reeves); p. 183, l. 38, &c. (Cook); 219, last line, &c. (Roome).

Tintle's Authority.

Was Tintle authorized by Manning to sell, or contract for the sale of, land for him, and fix the price, without first submitting the matter to him for his approval or disapproval.

Tintle claims that he had such authority. Case, p. 72, l. 29; p. 82, l. 8 to p. 83, l. 18.

It appears from the evidence, as will hereafter be shown, that he sold seven or eight lots or plots, besides this one to Chamberlain.

And he says, that to his knowledge, Manning never refused to execute a deed. Case, p. 111, last line, &c.

And that he thinks all the sales he made for Manning except this one were finally closed up. Case, p. 87, l. 4.

There does not appear anywhere in the case another instance in which a sale, or bargain, of land made by Tintle for Manning was not finally closed up.

According to Manning's testimony, he had, before the sale to Howell & Noble, had a part of this land surveyed and laid off in building lots, and had fixed prices on some of the lots of which Tintle was informed; that such of these lots as had the prices fixed upon them Tintle could sell without submitting the offers to him; and that the extent of Tintle's authority in respect to the rest of the land was to find customers and obtain offers and refer them to him. Case, p. 279, l. 7, to p. 280, l. 8.

These lots were laid off on a map, as will be shown hereafter.

Tintle denies that Manning put prices on certain of them. Case, p. 87, l. 20.

And he says that the only lot sold on which Manning fixed the price was the first one. Case, p. 83, l. 6—13.

He says in one place that he sold some of these lots before the map was made. Case, p. 107, l. 19, &c.

And in another, that he can't say that he sold any building lots after the map was made. Case, p. 87, l. 24.

So far as Manning contradicts Tintle upon this point, Tintle is to be believed in preference to Manning.

Tintle appears to be a very respectable and reliable man.

Manning placed great confidence in him, as appears from the evidence.

He is an entirely disinterested witness, while Manning is an interested witness.

Manning was the owner of the land when the bargain with Chamberlain was made.

And he gave a warranty deed for the same to Howell and Noble. Case, p. 360, l. 14; p. 451, l. 30.

But the case, outside the depositions of these two men, clearly shows that Manning is wrong and Tintle is right upon this point.

In the testimony of Manning that has been referred to, the laying out into lots, plotting and surveying, of this land,

or a part of it, are mentioned.

This work was done by Mr. Roome, the same man that surveyed the lot in question in this case. Case, p. 205 last line &c; p. 337, l. 1; p. 424, l. 1.

The survey was commenced March 5th, 1878. Case, p. 424, l. 20

And the map was finished May 15, 1878. Case, p. 425, l. 2.

The original rough map made by Roome is Exhibit Q. Case, p. 424, l. 9.

The maps Exhibits 23 and 24 were originally the same, one being a copy of the other. Case p. 206, l. 13; p. 212, l. 23; p. 337, l. 9.

Roome thinks one was made for Manning and the other for Tintle. Case, p. 425, l. 38, &c.

After Howell & Noble purchased the property some changes were made in Exhibit 24. Case, p. 426, l. 7.

March 16th, 1878, Manning writes from New York to Tintle: "Let me have the new map as soon as it is done. Perhaps it will be well for you to bring it down, when we can consult about prices of each lot." Case, p. 430, l. 28.

May 17th, 1878, he writes to Tintle; "If you have occasion to come down, please bring the old map (the large one) and the new one which, I suppose Mr. Roome has completed before this." Case, p. 468, last line, &c.

May 31st, 1878, he, in mentioning a certain matter to Tintle, says, referring evidently to this Roome map; "I cannot tell till I see the map." Case, p. 469, l. 21.

Down to May 31st, 1878, therefore, he had not seen this map, on which a part of his land was laid out in building lots as he stated in his testimony.

He could not, consequently, have fixed a price on any of the lots so laid out prior to that time.

He indeed mentions an old map in his letter of May 17th. But it does not appear that that map was made for him,

or that any building lots were laid out upon it, or what part of the land he obtained from numerous persons (Case, p. 452), it included.

There is nothing in the case that shows, or even intimates, that he had any other survey made, or laying off into lots done, except those made and done by Roome as already mentioned.

And it is evident that his counsel regarded this Roome map as the one he referred to in his testimony. Case, p. 87, l. 15—25; p. 107, l. 19—32.

It may be taken, therefore, as an established fact, that he did not fix any price on any lot so laid out, prior to May 31st, 1878.

It appears that Tintle sold land for Manning to Post & Sloan, Cooke, Bruly (or Brewley), Mickens, Whitehead, Bailey, Reeves and Smith. Case, p. 93, l. 6, to p. 94, l. 10; p. 130, l. 30; p. 131, l. 35.

According to his memoranda he sold the lot to Cooke in March, one lot to Bailey April 1st, another to Bailey May 23d, and the lot to Reeves in May. Case, p. 130, l. 30.

According to Roome's bill, he surveyed the lot sold to Brewley, Feb. 25th, wrote deeds to Post & Sloan, Cooke, Brewley and Mickens, March 8th, wrote deed to Whitehead March 16th, and a deed to Bailey March 20th. Case, p. 450.

The sale to Reeves was made prior to May 31st, for the deed was sent by Manning to Tintle with a letter dated on that day. Case, p. 469, l. 32.

It don't appear when the sale or deed to Smith was made.

All the other sales, being 7 in number, counting two to Bailey, were made prior to this 31st, day of May.

And there is nothing to show that the sale to Smith was made after that time.

Tintle also sold another lot to Cooke while Manning owned the property, the deed for which was made by Howell & Noble. Case, p. 181, & 182.

It don't appear when the sale was made.

But neither the land sold to Cooke at this time, nor the land sold to Whitehead, both tracts being over the line in Passaic County, was on the map at all. Case, p. 107, l. 25.

And all the other sales mentioned, except possibly that to Smith, were made, either before the map was made, or before Manning had seen it.

Consequently the land sold to Smith was the only lot or parcel sold on which Manning could possibly have fixed his price in the manner he mentioned.

This is a material corroboration of what Tintle says, and disproval of what Manning says, in regard to the selling of lots or plots by map with prices fixed by Manning.

But this is not all.

Tintle resided at Bloomingdale. Case, p. 70, l. 28.

Manning was at Bloomingdale the 4th of March, 1878. Case, p. 281, l. 5.

And Tintle thinks he was there again during that month but is not certain about it. Case, p. 113, l. 38 to p. 114, l. 5; p. 111, l. 33.

And there is no evidence he was there again before the 31st of May.

Their communications were mainly by letters which are in evidence.

The letters Tintle received from Manning that he did not produce were taken from Manning's letter book. Case, p. 289, l. 23, to p. 290, l. 30.

And Manning also produced the letters he had received from Tintle. Case, p. 280, l. 9–19.

Manning writes as follows;

March 16th, 1878. "Now is the time to sell—don't let any opportunities slip." Case, p. 430, l. 31.

April 4, 1878. "Close up all sales as fast as you can." P. 467, l. 1.

May 14th, 1878. "I am at home again and ready to receive any amount of money, or to execute deeds if you have made any sales." P. 431, last line, &c.

May 31st, 1878. "I send you herewith the three deeds. That to Mr. Reeve is for four acres, $172 or about 42½ per acre. Don't sell anything under $100 per acre, without submitting the offer to me." P. 469.

See also, p. 430, l. 1; p. 431, l. 1 and 26; p. 448, l. 7.

It is clear that the sale to Reeves was made by Tintle without submitting the offer to Manning.

It is clear also that Manning was not satisfied with the price.

But he executed the deed nevertheless, because, no doubt, Trintle had not exceeded his authority in making the sale at his own price.

And Manning now directs Tintle not to sell anything under $100 per acre without submitting the offer to him.

This was nearly three months after the sale to Chamberlain; and was evidently the first limitation made upon Tintle's authority in respect to price.

The sale to Reeves included four acres,

The Chamberlain lot includes only about two and a quarter acres. Case, p. 385.

So that the price of the lot was at the rate of about $67 per acre.

The only offer this correspondence shows to have been submitted by Tintle to Manning, was an offer for the balance of an 8 acre lot. Case, p. 445, l. 30.

And Tintle submitted that offer for the reason that he did not feel like selling so large a tract without Manning's consent or his stating the price. Case, p. 88. l. 7.

It is clear that if that tract was sold it was not sold to either of the purchasers that have been mentioned. Case, p. 107, l. 19.

And, so far as appears from the case, the only sale to either of such purchasers that was submitted to Manning for his approval was that to Whitehead. Case, p. 447, l. 13.

And that would not have been submitted if it had not been for its peculiar terms. See case, p. 91, l. 25. The fact of one or more of offers being submitted to Manning would not prove that Tintle did not have authority to sell without consulting him.

He might well, with full authority to sell without such consultation, prefer to get Manning's views in some particular cases.

It would seem to be clear, therefore, that Tintle had all the authority he claims to have had.

It is immaterial whether the original or express authority given Tintle was or was not so extensive.

Agency, as a question of fact, may be proved by the acts, declarations, or conduct of the principal and agent. Columbia Delaware Bridge Co., 4 Vr. 39.

And such is the case even though the agent was appointed by power of Attorney. Ibid. See also Ewell's Evans on Agency, p. 23 n. 1.

The appointment may be by implication from the recognition of the principal, or from his acquiescence in the acts of the agent. Ewell's Evans on Agency, pp. 24 and 25.

It is clear, therefore, that the extent of the agent's authority may be proved from the acts, declarations, or conduct of the principal and agent, including the recognition of the principal and his acquiescence in the acts of the agent.

Now, Manning says, in substance, that he did not authorize Tintle to fix prices on the lots.

But Tintle says he did fix the prices himself on all the lots he sold except the first one. Case, p. 82, l. 38, to p. 83, l. 3.

Manning says the extent of Tintle's authority, except in respect to the surveyed and laid off lots that he had put prices on, was to find customers and obtain offers and refer them to him.

Tintle says he did not report all the offers. Case, p. 82, l. 15.

And he declares that he carved out a piece of land anywhere he chose, and sold it for what he chose, without consulting Manning, and merely wrote to Manning that he had sold a plot of ground and for him to send a deed. Case, p. 87, l. 26.

And that in no case except that of Chamberlain did Manning, to his knowledge, refuse to execute the deed. Case, p. 111, last line, &c.

The case, especially the correspondence between Manning and Tintle, shows that Tintle must have done in the most of the sales at least, what he claims to have done, and that he certainly did so in the sale to Reeves.

The authority, therefore, of Tintle to do these things was recognized and acquiesced in by Manning, and it does no good for him to say now that he did not authorize him to do them.

Authority to an agent to make a contract for the sale of land may be by parol. Doughaday v. Crowell, 3 Stock, 301; Long v. Hartwell, 5 Vr. 116, 121.

And a contract made by an agent with such authority so given will be enforced. Pomeroy on Spec. Perf. of Contracts, Sec. 79, n. (2); Heard v. Pilley, Eng. Law Rep., 4 Chan. Appeals, 548.

Talk about the matter between Tintle and Manning.

Tintle says he spoke to Manning about the sale. Case, p. 91, l. 11.

And that he did not object to it. Case, p. 112, l. 3.

And he thinks he pointed out to Manning where the lot was when he was there in March. Case, p. 111, l. 16; p. 114, l. 6.

And that Manning made no objection. Case, p. 114, l. 9.

Manning says that Tintle told him that Chamberlain wanted to buy about an acre on the hill; and that he told Tintle that the property was unsurveyed, and that if Chamberlain wanted to buy he must specify what he wanted; and that he also told Tintle to get the best offer that he could. Case, p. 282.

"You told Mr. Tintle," says his counsel, "that he must get the best offer he could for your consideration?"

"Yes, sir;" says Manning, "but it is impossible to remember exact words at this distance of time and at my age." Case, p. 283, l. 1.

He was 75 years old. Case, p. 279, l. 5.

These words, put into the mouth of Manning by his counsel, and which he as much as said he didn't remember having used, cannot be considered as evidence.

Manning's age and the distance of time no doubt disabled him from remembering the substance of what passed between him and Tintle as well as the exact words used.

That substance no doubt was that the land Chamberlain wanted should be surveyed, and Tintle should get the best price he could.

Manning says this talk with Tintle might possibly have been when he was there on the 4th of March. Case, p. 282, l. 15.

And Tintle thinks that was the time when it was pointed out to Manning where this land was. Case, p. 111, l. 16.

And other facts in the case point to this 4th of March as the time of this conversation.

It has already been shown that the negotiation between Chamberlain and Tintle commenced, and Chamberlain selected and designated the land he wanted, in the latter part of February.

And it was very natural that Tintle should mention the matter to Manning when he was there the 4th of March.

Manning says both Tintle and Roome were there; that Roome was surveying; that he got away by three o'clock, and presumes he left Roome there. Case, p. 359, l. 22–33.

The postal card that has been mentioned, notifying Chamberlain of the survey, was written by Roome at Tintle's, request, after the survey was made. Case, p. 214, l. 14; p. 217, l. 30.

Roome says he surveyed this land for Manning at the request of Tintle, Manning's agent. Case, p. 198, l. 20.

And it is evident that the charge for the work is included in the item for 5 days' surveying under date of March 8, 1878, in his bill. Case, p. 215, l. 37; p. 450.

The first of these 5 days would be the 4th.

The survey was no doubt made on that day and the postal card dated the 3rd (which was Sunday) by mistake. Case, p. 217, l. 14.

And it was evidently done after Manning went away.

"Did you hear," asks his counsel, "from Mr. Tintle, that he had made any provisional bargain to sell to Mr. Chamberlain? A. I think I must have heard. Q. I mean before you sold? I think I must have heard it." Case, p. 283, l. 19.

The term "provisional bargain" is the counsel's, not Manning's.

He says further that he thinks Tintle reported to him that Chamberlain would give $400 for the lot, but it might have been $150; and that he told Tintle it was too low a

price; besides the property was under offer to sell as a whole, and he should decline selling until that question was settled.

It does not appear when this is claimed to have taken place.

But it could hardly have been on the 4th of March, according to Manning's own version of the matter.

For if he had then made up his mind to decline selling until the question of his selling as a whole was settled, he would not have requested that Chamberlain should specify what he wanted and told Tintle to get the best offer from Chamberlain that he could, as he claims to have done.

Now if Manning, on this 4th of March, had objected to the sale to Chamberlain, or had not assented to it, or had requested Tintle to submit the offer he might thereafter receive from Chamberlain to him for his consideration, Tintle would not have closed the matter with Chamberlain, promised a deed, and given him possession, as he did, on the very next day.

It is extremely unreasonable to suppose that he would have jeoparded his position as the agent of Manning by acting in the matter against his objections, or contrary to his instructions or even expressed wishes.

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself, such as the common experience and observation of mankind can approve as probable, under the circumstances.

Daggers v. Van Dyck, 10 Stew., 130.

Any objections Manning may have made to the sale after what took place on the 5th of March, cannot affect any rights Chamberlain acquired on that day.

Manning also says, in another place, that he always objected to selling to Chamberlain, and gives as the main ground of such objection the fact of his negotiation with Howell & Noble for the purchase of the whole property.

Case p. 340, l. 17.

But Tintle declares that Manning did not ever, to his recollection, raise any objection to the agreement with Chamberlain. Case p. 112, l. 7.

Manning says the negotiation with Howell and Noble commenced in February. Case p. 284, l. 3.

Yet all the sales that have been mentioned, except the one to Brewley, were made subsequent to the 1st of March. Case pp. 130 and 450.

And all the letters that have been quoted from as showing the extent of Tintle's authority were written subsequent to that time.

It was not until the 4th of June that he stopped sales in consequence of such negotiation. Case p. 432.

And there is no evidence that any sales, except the one to Howell & Noble, were made by him after that.

Payment on account and promise of deed.

On the 8th of May, 1878, Chamberlain paid Tintle $10 on account of the purchase. Case p. 37, l. 1; p. 75, l. 13; p. 117, l. 1.

Chamberlain says: "At the time, I offered him more money; he got one $10 bill and he said, 'We will give you a deed and you can hand the money over altogether.' * * * I said: 'You are so slow about this deed; no question about it whatever?' 'Oh, no, not the slightest,' he said; then I said, 'I will make a payment.'" Case p. 37, l. 12.

Schulster, who was present at the time, says Tintle then said that Roome was to make out the title right away after Chamberlain had given him $10, and that he could have it right away. Case p. 120, l. 18.

Tintle says something was said about a deed at that time, and that he told Chamberlain that his habit was to have a

person when he had agreed upon a lot to pay some money down before the deed was made. Case p. 81, l. 5.

Evidently Manning had made no objection to Tintle to the sale up to that time.

Manning's Ratification.

Chamberlain says he saw Manning at his office in New York about the 25th of March, 1878. He says: "I told him I had made the bargain with James Tintle, for that lot of land, describing it, and he said it was all right; he said he was acting as agent for him. Q. That who was? A. That James Tintle was; any bargains I made with James Tintle, he said, was all right; I told him he had showed me the property and he had given me possession, and that I then had possession of the property; he said he was glad, that it was all right." Case, p. 34, l. 12.

He also says he at that time told Manning the price he was to pay ($150), and he didn't find any fault whatever. Case, p. 34, l. 36.

And also told him he was about to build on it then; had commenced work on the foundation; and Manning said, "All right, that anything done by James Tintle was all right." Case, p. 35. l. 1.

He says he saw Manning again in New York in the latter part of May. He says: "I said to him that I had bought that property and I began to feel as if I wanted a deed for it now, and he said all right, he expected to be up there a few days before, and didn't come. He said to me that the reason why he didn't come was that he was about negotiating with another party—he didn't tell me who the party was—for the sale of the rest of that land. I said, 'Has that got anything to do with me?" He said, "No, what is done already is all right.' He said it had nothing to do with me." Case, p. 35, l. 20.

The term "all right" seems to have been one of Manning's common expressions. See case, p. 430, l. 5.

He says he called on Manning again for the deed in the latter part of July, and that Manning then told him he had transferred the rest of the property, or all the property altogether, to Howell and Noble, and that they would make him a deed for his part; and that that was the first information he had of the transfer to them. Case, p. 36, l. 9.

If this is true, Manning ratified all that Tintle had done.

As to the effect of such a ratification see Gulick v. Grover, 4 Vr. 463,471; Ewells Evans on Agency, 65, marginal paging 48; Pomeroy on Spec. Perf. page 116, Sec. 79; Waterman on Spec. Perf. p. 332, Sec. 244; Wood on Statute of Frauds, p. 786, Sec. 426.

The only conversation with Chamberlain that Manning had any recollection about was one that took place after he was at Bloomingdale with Howell & Noble on the 17th of June. Case, p. 285, l. 18—32, to p. 287, l. 30.

Speaking of this conversation on direct examination: "Q. What did you tell him? He said that you had told him that you arranged with Howell and Noble to carry out your contract; did you tell him anything like that? A. I think very likely I did. Well, contract to convey to him? A. No; I didn't tell him that; I probably told him that I should advise them to sell the lot to him as the simplest way of settling the whole matter." Case, p. 287, l. 31.

See also p. 288, l. 26 to p. 289, l. 4.

He says he thinks Chamberlain at this time made a claim on him for the lot; that he did not admit any liability; and that he said as little as possible. Case, p. 288.

It appears that he did not consider himself as liable or responsible in the matter for the reason that no papers had passed. Case, p. 287, l. 8.

As to his lame and ineffectual denial of a part of Chamberlain's statement as to what he said at the March inter-

view, see p. 288, l. 13.

As to the May interview, he "don't remember." Case, p. 24.

That an interview between Chamberlain and Manning did take place in New York in the latter part of May, as stated by Chamberlain, although Manning remembered nothing about it, appears from a letter from Manning to Tintle, dated May 31st. Case, p. 469.

Then a paper written by Chamberlain, in October, 1878, stating, among other things, the substance of the two first conversations with Manning as testified to by Chamberlain, was read by him to Manning, and then given to Manning in June, 1879. Case, p. 160, l. 27, to p. 162, l. 11 (Post); p. 222, l. 1—35 (Chamberlain). Said paper is Exhibit M. Case, p. 440.

Chamberlain says he handed the statement to Manning who read it also. Case, p. 222, l. 15.

Manning said the statement was true to the letter and he had never denied it. Case, p. 161, l. 39, to p. 162, l. 4; p. 222, l. 14—25.

Manning recollects this interview but remembers nothing of what took place, excepting that, according to his recollection, he tried to be as uncommunicative and non-committal as possible. Case, p. 338, l. 36, to p. 339, l. 14.

Of the fact of the ratification claimed there can be no doubt.

Possession.

It was shown, when speaking of the agreement, that immediate possession of the land in question was given by Tintle and taken by Chamberlain.

There is no dispute that he has held possession thereof from that time to the present time.

Possession alone of land under a verbal contract, when

delivered to the vendee, or taken by him with the consent of the vendor, or with the knowledge which implies such consent, is an act of part performance which takes the case out of the statute of frauds, even without the additional circumstance of the payment of consideration or the making of improvements. Pomeroy in Spec. Perf. p. 164, Sec. 115; Wood on Statute of Frauds, p 826, Sec. 488; Green v. Richards, 8 C. E. Gr. 32, 536.

When the possession has been taken without consent, and the owner subsequently permits the intruder to keep possession, it will operate as an act of part performance. Waterman on Spec. Perf., p. 371 § 270; Pomeroy on Spec. Perf., p. 168, § 119.

If Tintle had authority to sell land, and not merely to receive offers to be submitted to Manning, the power to deliver possession, even before the execution of the deed, would seem to follow.

And in that case his delivering possession to Chamberlain would have the same effect as if it had been done by Manning himself.

But however this may be, there can be no doubt that Tintle was the general agent of Manning in respect to this land and his business generally at Bloomingdale.

This clearly appears from the correspondence before them and the bills for money paid, &c., in evidence, which show that Tintle, in addition to the matter of sales of land, attended to the sale of wood, the building of fences, surveying, the grading of streets, the payment of taxes, &c., &c., &c. Case, p. 436, l. 14; p. 447, l. 4, 33; 455, &c.

Such being the case the knowledge of Chamberlain's possession that Tintle unquestionably had, was constructive knowledge of the same fact on the part of Manning. Ewell's Evans on Agency, 230, marginal paging, 164.

Then Chamberlain says that he told Manning, about the 25th of March, that Tintle had given him possession,

and that he then had possession, of the property; and Manning said he was glad, and it was all right. Case, p. 34, l. 31.

And Manning does not deny that such was the case.

Manning, therefore, not only ratified what Tintle had done in this respect, but had actual knowledge of Chamberlain's possession, in twenty days after he took possession.

And there is not the slightest evidence that he ever objected to such possession.

No difficulty can arise from the fact that the plot in question has not been wholly enclosed.

In the case of Foulke v. Bond, 12 Vr. 527, 545, it was decided that actual occupancy by residence, cultivation or *enclosure*, or the erection of permanent improvements, is not necessarily required to support a title by adverse possession.

And it would seem that a possession sufficient in that case would be sufficient in this case.

As has already been shown, this lot had been surveyed by the surveyor employed by Manning to do such work, at the request of Tintle, Manning's agent.

Stakes were put up at every corner, and the boundaries fixed so that one could travel from one to the other without any difficulty. Case, p. 197, l. 38, to p. 198, l. 4.

The surveyor having lost his field book containing this survey, a second survey was made by him for Chamberlain in 1880. Case, pp. 197 and 198.

And at the time of this second survey the stakes put down at the first survey were all there excepting one. Case, p. 203, l. 31, to p. 204, l. 24; p. 219, l. 14.

These facts with the acts of possession hereinafter mentioned are all that can be required to constitute a sufficient possession of the tract in question.

Improvements.

It was shown, when speaking of the agreement, that Chamberlain commenced making improvements upon this lot very soon after the agreement was made.

Chamberlain says that building there was his principal business after the 5th of March; that he has put there a building which he thinks is forty feet one way and sixteen feet the other way, containing eight rooms, counting the ball room below; that there is a platform attached to the building for the purpose of dancing; that the foundation of the building was laid up and ready for the frame in April (Case, p. 57, l. 19–36;) and that he must have had the building raised and partly enclosed by the 12th of June. Case, p. 37. l, 29, to p. 38, l. 39.

Tintle says he knew of a building being put on there. He can't tell the date when he first knew of it, but it must have been before July. He was around there almost every day. Case, p. 75, l. 33, to p. 76, l. 5.

He thinks the building was enclosed on the 5th of July. Case, p. 103, l. 29.

Schulster says he worked there on the 8th of May at drilling on a big stone in the lot for the construction of the foundation of the building, and that about a week afterwards he helped draw the stones and build up the foundation. Case, pp. 119 and 120.

Post says Chamberlain was busy erecting a building there in April; he was there again in May or June, he isn't positive which, and at that time the frame of the building was up and partly enclosed, one story boarded up, and there was a dancing platform erected adjoining the building. Case, p. 156, l. 33, to p. 160, l. 4., pp. 168 and 169.

Reeves says the foundations of the building were being dug in April, and he thinks the building was raised in April or May. Case, p. 172, l. 38, to p. 174, l. 1; p. 180, l. 1.

Cook says: "They first dug a foundation and laid up a wall and then put down a platform and afterwards erected a house and so on and built the building up." And he says he thinks the building was raised the last of April or the first of May. Case, p. 184, l. 4.

Roome says Chamberlain took possession and began to build; then he begun and dug a hole in the ground, and then got somebody to lay a wall up. Case, p. 220, l. 19.

These all appear to be respectable and reliable witnesses.

Tintle was Manning's agent; Post was one of the constables of the county (Case, p. 160, l. 9); Reeves and Cook were two of the purchasers of land that have been mentioned; and Roome was the surveyor.

The defendants have attempted to prove that the platform, or pavilion as some of them called it, and which appears to be its most proper designation, was put up just before the 4th of July, and that the building was erected after that date.

Howell and Noble say they had been there several times before the 17th of June, and it appears that they and Manning were all there on the 17th of June.

And all three swear to the effect that on that day there were not, according to their recollection, any indications of even the foundation of the platform or any other improvements whatever upon this lot.

Mickens, who don't know how old he is (Case, p. 231: 38), thinks the platform was built the last of June. Case p. 233. l. 4.

Mather thinks it was put up ten or twelve days before the 4th of July. Case 266, l. 10.

Luke (who can't write or read writing. Case p. 261, l. 37,) says he worked on the platform the 20th of June, but don't pretend to know when it was commenced. Case p. 245, l. 26, to p. 246, l. 10.

Shaw thinks it must have been built in June. Case, p. 329, l. 1.

These are the only witnesses who think the platform was built so near the 4th of July.

The testimony of these witnesses (excepting Manning who speaks only of the 17th of June), and also of Sisco, is to the effect that the main building was not erected until after the 4th of July.

They speak in this respect of what they did not see, or had no recollection of seeing, while the complainant's witnesses speak of what they did see.

The Vice Chancellor can see no more reason for the former to be mistaken than the latter. Case, p. 476, l. 9.

But the common experience of mankind is that while one may see a thing, another, who has equal opportunities for seeing, may not see it at all; and that a person is more likely to forget having seen a thing than to imagine he has seen it when he hasn't.

But whether the complainant's or defendant's witnesses are to be believed in what they say in respect to these improvements, does not depend upon such speculations as these.

Cooke, one of the complainant's witnesses, and Mickens, Luke, Mather and Class, four of the defendant's witnesses, say that there was a dance there on that platform before the 4th of July. Case, p. 193, l. 28 (Cooke); p. 233, l. 6—31 (Mickens); p. 260, l. 7 (Luke); p. 268, l. 14 (Mather); p. 313, l. 11; p. 320, l 38 (Cluss.)

Mickens says this dance wasn't more than a week or two, anyway, before the 4th of July. Case. p. 233, l. 30.

It is not reasonable to suppose that it was very near the fourth, when there was another dance there, as they would not be likely to have two dances very near together in that country place.

And it is shown conclusively by Chamberlain and one of

the handbills that he had a dance there on the 8th of June. Case, p. 408–410.

The handbill is Exhibit N. Case, p. 444.

Class thinks the June dance he mentioned was on a Saturday. Case, p. 313, l. 13.

And the 8th was Saturday.

Yet Manning, Howell and Noble didn't see any signs of even the foundation of this platform or pavilion, on the 17th of June, and others of the defendant's witnesses are confident that it was built immediately before the 4th of July.

And since they were so mistaken about this pavilion, no reliance can be placed upon their testimony in respect to the main building.

This disposes of the testimony of all the defendant's witnesses in respect to these improvements excepting that of Sisco.

Sisco says he worked at Bloomingdale on the 4th, 5th, 6th and 8th of April. Case, p. 224, l. 30, to p. 225, l. 24.

And that there was not any sign of any building on this lot at that time. Case, p. 226, l. 12.

That is no doubt true, for the foundation was not completed until sometime in April.

He says he was there again in June after the 15th of the month, and saw the pavilion, but did not see from the road any house or any signs of the foundation of a house. Case, p. 225, l. 30–39; p. 227, l. 1–11.

And he says the road was 150 or 200 feet from the lot. Case, p. 231, l. 17.

Evidently his testimony don't amount to much.

It is difficult to see the object of all this testimony on the part of the defendants in respect to these improvements.

It is conceded that this pavilion was built before the 4th of July, and that there was a dance upon it at that time.

This pavilion must have been quite a substantial struc-

ture; for if it was not it would not have answered the purpose for which it was built.

It is still standing. Case, p. 38, l. 38 (Chamberlain); p. 226, l. 39 (Sisco); p. 233, l. 32 (Mickens); p. 249, l. 11 (Luke).

Luke says it has since been thoroughly enclosed; and that the underpinning is the same as it was. Case, p. 249, l, 15—31.

It is evident, therefore, that it was intended from the beginning for a permanent structure, and that it must have cost considerable money previous to July 4th, 1878.

It is, consequently, all the improvement that can be required in this case.

For the deed from Manning to Howell & Noble was not acknowledged until the 3d of July, and was not delivered before the 5th. Case, p. 349, l. 1. to p. 350, l. 3; p. 372, l. 27; p. 398, l. 35.

There was no written agreement or contract of sale. Case, p. 398, l. 1.

And it is not pretended that anything was paid or possession taken by Howell & Noble before the deed was delivered.

Nobody about there, with ordinary powers or habits of observation, could have failed to see that these improvements were being made, for they are in a very conspicuous place. Case, p. 38, l. 18; p. 145, l. 36; p. 160, l. 12; p. 173, l. 18; p. 196, l. 3; p. 200, l. 17; p. 229, l. 27.

Chamberlain says he told Manning when he saw him in New York on the 25th of March, 1878, that he was about to build on the lot and had commenced work on the foundation, and Manning replied, "All right." Case, p. 35, l. 1.

Manning does not deny that such was the case.

And there can be no reasonable doubt that he saw what Chamberlain had done and was doing when he was there

the 17th of June, whether he remembers it or not; and his agent, Tintle, knew all about it.

And there is not the slightest evidence that he ever objected to such improvements being made.

Effect of the making of such improvements in such cases: Pomeroy on Spec. Perf. p. 178, Sec. 126; Wood on Statute of Frauds, p. 829, Sec 491.

Howell and Noble.

It cannot make any difference whether all the improvements that have been made on this lot were or were not made or completed before the transfer from Manning to Howell & Noble

If at the time of such transfer, Chamberlain had acquired a right to a specific performance of the agreement, he had a right to complete any improvements commenced, and commence and complete others.

The only questions that can possibly arise in respect to Howell and Noble are whether when such transfer was made they knew of Chamberlain's claim, or had sufficient notice or knowledge respecting it to put them upon inquiry; and however this may be, whether they did not acquiesce in his possession and making of improvements too long after such transfer to permit them to deny his rights now.

They were both at Bloomingdale with Manning on the 17th of June, nine days after there had been a dance at the pavilion.

And they both claim to have been on or near this lot at that time, as appears from their testimony respecting the then condition thereof in respect to improvements. See case, p. 294, l. 13–30; p. 304, l. 28.

And they both say they had been there several times before the 17th of June. Case, p. 395, l. 2; p. 305, l. 1.

They had ample opportunities, therefore, to see what Chamberlain was doing there, and there can be no reasonable doubt that they did see it.

Chamblerlain says he saw Howell & Noble at Bloomingdale several times after the 12th of June in the rest of that month and through the month of July. Case, p. 40, l. 1.

That the first time ~~he was~~ this man there after the 12th of June, he, at their request, showed them the corners and borders and lines of this lot, and they proposed trading the lot for another lot in another locality, and he refused to trade. Case, p. 40, l. 12, to p. 41, l. 22.

And that sometime in the fall Noble offered to let him have an acre where his house stood in settlement of the matter, and he refused to accept it unless it covered his plot. Case, p. 45, l. 26; p. 64 and 65.

Tintle thinks he showed Howell & Noble, one or both of them, where this lot lay sometime in the spring, and showed the stakes at the corners. Case, p. 77, l. 31.

Manning, in speaking of what took place at Bloomingdale on the 17th of June, says: "Mr. Noble said to me, 'Now, if there is anything—any substance in this report about Mr. Chamberlain having bought this property, if you are under any obligation to sell to him, if you have entered into any agreement with him, I don't want to have anything to do about it. * * * I do remember this because it was emphatic; I told him I was under no obligation whatever; no papers had passed. * * * I remember further * * * that I said to Mr. Noble that perhaps the best way to settle matters to satisfy Mr. Chamberlain would be for them to sell the lot." And he says Noble said he would see about it. Case, p. 286, l. 27, to p. 287, l. 25.

Now this is sufficient in itself to show that Noble had heard that Manning had sold to Chamberlain, or had agreed to sell to him, and Manning's reply that he was under no obligation simply because no papers were passed, and recommendation to "settle matters" by selling the lot, must have given him clearly to understand that there was at least

a verbal agreement to sell, which, in connection with Chamberlain's possession of and improvements on the lot, left some matters to be settled.

And there can be no doubt that Howell knew all that Noble knew about the matter.

They were at Bloomingdale a week or two after the 4th of July. Case, p. 398, l. 38; p. 391, l. 34; p. 306, l. 35.

They then saw the pavillion. Case, p. 299, l. 1; p. 307, l. 29.

After that they went up there as a rule once a week. Case, p. 30, l. 33.

The evidence—even that of the defendant's witnesses—shows that after Chamberlain commenced these improvements, he kept working at them pretty steadily until the house, which the most of the defendant's witnesses say was built in the fall of that year, was completed.

And yet Chamberlain says they did not forbid his working there until after the 28th of October. Case, p. 43, l. 15.

And that that was the first of their finding any fault with him, and the first he learned they were going to claim the lot. Case, p. 43, l. 23.

See Exhibit M. on p. 442, l. 15.

He evidently referred to this exhibit in fixing the date. Case, p. 43, l. 18.

And he says this was after Noble had offered to let him have an acre. Case, p. 64, l. 38.

It seems to be very clear that these questions respecting Howell & Noble must be answered in the affirmative.

Miscellaneous.

Tintle says that Manning knew he had agreed with Chamberlain, and that about the time of the consummation of the sale to Howell & Noble, he asked Manning about "this plot of Mr. Chamberlain's," as he calls

it, and Manning told him he thought it would be all right; he thought there would be no trouble; and he thought Howell & Noble would give a deed for the plot. Case, p. 77, l. 12.

Howell says that a short time before the 4th of July Tintle came to see him at Morristown and said to him: "Mr. Chamberlain wanted me to see you and ask permission to lay down a board floor to have a dance on on the Fourth of July," and that he finally consented. Case, p. 296, l. 3, to p. 298, p. 19.

Chamberlain says he did not send Tintle to Howell to ask such permission; that he did not know Tintle went to see Howell on his behalf for such permission; and that Tintle did not tell him he had seen Howell on the subject. Case, p. 62, l. 1.

Tintle denies the whole story. Case, p. 104, 105.

And the absurdity and falsity of it appears from the fact that the platform was there and used for a dance on the 8th of June, before Howell & Noble had even bargained for the land.

Chamberlain has been ready and willing at any time to pay the remainder of the money he agreed to pay for the land in question, and, before the commencement of this suit, he tendered said remainder to, and demanded a deed for said land from, Manning, and Noble & Howell also. Case, p. 39.

In respect to the Vice-Chancellor's claim that there is a want of mutuality in this case, it is sufficient to say: 1. That possession alone is sufficient without improvements. 2. That at the time of the sale to Howell & Noble, there had been, according to all of the evidence, a dancing platform erected on the lot, and, according to the greatly preponderating weight of evidence, the principal part of a house also.

GEO. S. HILTON,
Of Counsel with Complainant.

NEW JERSEY COURT OF ERRORS & APPEALS.

Between AMOS CHAMBERLAIN, *Compl't and Appl't,* *and* RICHARD H. MANNING AND BENJAMIN F. HOWELL AND CHARLES E. NOBLE, *Deft's and Resp'd'ts.*	*On appeal from decree advised by Vice Chancellor Bird dismissing the bill of complaint.* *On bill, answer, and proofs.*

H. C. PITNEY for the defendants and respondents.

BRIEF STATEMENT OF FACTS.

Prior to March 1st, 1878, the defendant *Manning*, residing in the City of New York, was the owner of several tracts of land situate in the neighborhood of Bloomingdale, in the counties of Morris and Passaic.

One of the tracts, comprising some 135 acres of land, was situate in the County of Morris, and a part of it had been mapped and laid off in building lots and offered for sale, and a few of the lots had been sold.

Manning visited the premises frequently himself, and had a sort of agent, one *James Tintle*, who lived in the neighborhood.

Tintle had general charge of the property and negotiated sales for *Manning*. He had no written power or authority to make sales or to execute contracts for sales or deeds. The course of business was for *Tintle*

to make a verbal bargain for the sale of a particular lot at a price previously fixed by *Manning*, and, if the lot had not been previously surveyed or laid out, to have it surveyed by a surveyor living in the neighborhood—Mr. Roome—who would make up a description, prepare a deed of conveyance and forward it to Mr. *Manning*, who, if he approved the sale, would execute it and send it out for delivery upon paying or securing the purchase money.

In none of these transactions was any preliminary contract of sale made or executed. The whole matter rested in parole until the execution and delivery of the deed of conveyance.

In none was there any preliminary taking possession of the property or making improvements on it in anticipation of a deed.

The transactions were usually closed up within a very few days.

A part of the tract of land in question had never been laid out in lots.

On the 4th, 5th, 6th and 7th of March, 1878, Mr. *Benjamin Roome* and his son, Mr. *William Roome*, the surveyors, or one of them, were on the ground surveying in preparation for laying out and mapping the whole tract.

Mr. *Manning* was on the ground on the 4th day of March.

This plotting and mapping by the *Roomes* for Mr. *Manning* was concluded some time in the month of May, 1878, and took the shape of a map showing the lines of the proposed streets and lots.

Between the 1st of February and the 1st of July, 1878, several sales of small lots out of this tract and other tracts in the neigborhood belonging to *Manning* were made and concluded, the deeds being prepared by the *Roomes*, executed by *Manning*, and delivered in the manner above stated

During the time last mentioned negotiations were going on between Mr. *Manning* and Messrs. *Noble & Howell*, the other two defendants, for a sale to the lat

ter of the whole premises, and such sale was concluded on the 17th of June, 1878, on which day Mr. *Manning* and Messrs. *Noble & Howell* were on the premises. The deed of conveyance was dated of June 12, and *Noble & Howell* took possession on that day, June 17.

The deed was actually delivered and the money paid or secured on or about the 3rd day of July.

In carrying out this sale Mr. *Manning* made a statement of the number of acres in the tract, deducting the amount of different sales which he had made, and delivered it to Messrs. *Noble & Howell.*

One or two sales were unfinished at the time of the actual transfer to *Noble & Howell*, and they agreed to carry them out and did do so.

Complainant charges that on the last day of February, 1878, he made a verbal contract with Mr. *Tintle* for the purchase of a tract of land, part of the tract in question, the general outlines of which were to be fixed between him and *Tintle*, and which was to be surveyed and conveyed immediately at the price of $150. That the same was surveyed afterwards, on the 4th of March, by the elder Mr. *Roome*, and the lines determined, and that the tract contained two acres and twenty-eight hundredths of an acre of land. That Mr. *Tintle* agreed to have the description written out and inserted in a deed and forwarded to Mr. *Manning* for execution. This was, in point of fact, never done.

No fence, or other marks on the ground, indicated the lines of this lot so claimed to have been surveyed.

Defendants deny that it was in fact surveyed.

Some time in the month of May or June, *Chamberlain* went upon the ground, and, as he claims, did some work in the way of clearing and preparing a place to build a house, and in the latter part of June he placed on the ground a rough platform made of timbers placed on a level and boards placed upon the top of them, with poles up at the corners and poles laid across loosely, and upon those poles were laid green boughs cut from bushes with leaves upon them to make a shade,

the whole forming a dancing platform or pavilion, and on that pavilion he had one or more evening dancing parties at or shortly before the 4th of July, 1878.

Some time after the 4th of July, 1878, he commenced the erection of a cheap dwelling upon the lot, and immediately adjoining this dancing pavilion.

As soon as the erection of this house was observed by Messrs. *Noble & Howell*, who lived in Morristown, they forbade its erection. But plaintiff persisted, and, after a long delay, completed the dwelling.

Defendant *Manning* denies the making or approving of any contract for the sale of the lot to *Chamberlain*, and defendants *Noble & Howell* deny all knowledge and notice of any such contract at the time they purchased, took possession and paid their money.

The tract as laid out on the ground includes within its limits the lines of a street laid out by *Roome* on the map made by him as the result of the survey of March, 1878.

No allusion to, or mention of, any contract for the sale to *Chamberlain* of this or any tract appears in any of the numerous letters which passed between *Mr. Tintle* and *Mr. Manning* between the 1st of March and the 1st of July, 1878.

A man in the employ of defendants *Noble & Howell*, by their orders, did some act upon the premises in the way of asserting title thereto, which resulted in an action of trespass in a justice's court by *Chamberlain* against the employee, and a plea of title in *Noble & Howell*, and a suit in the Passaic Circuit which, after considerable delay, was terminated there in favor of the defendants on a demurrer to the declarations, based on want of jurisdiction.

That suit being ended, *Noble & Howell* brought ejectment against *Chamberlain*, and the latter filed this bill for an injunction.

ARGUMENT.

I make three points.

I.

There was no contract made and concluded between *Chamberlain* and *Manning*.

II.

Noble & Howell bought without notice of any such contract, if one were made, and there was no part performance until after their purchase and possession, so that their consciences are not charged.

III.

The acts relied upon as constituting part performance in this case were not done in such manner and under such circumstances as to raise any equity in favor of complainant.

Nothing in the circumstances justified him in going on and spending money in advance of receiving his deed.

The circumstances warrant the conclusion that he did it for the purpose of creating an equity after he knew that there was doubt about the contract being assumed either by *Manning* or *Noble & Howell*.

I.

There was no contract made and concluded between Coamberlain and Manning.

a. There was no authority given to *Tintle*, the agent, to make contracts, either verbal or written, for the sale of land, without the especial ratification in each case of *Manning*. It was neither within the scope of his employment nor the terms of his authority.

Tintle, p. 71, l. 35–40, and his letters generally ;

Manning, p. 279, 280, and his evidence generally.

No special authority, either oral or written, is pretended.

It is claimed that it is to be inferred from the course of dealing and business.

The course of dealing does not support the idea that *Tintle* could make binding contracts.

He never did, in fact, make one in writing.

The transactions were always those of *immediate completion*, so that there was no occasion for any preliminary contract, and they were such as never bound *Manning* until the deed was delivered.

In the several instances of sales proven, the deed was prepared and executed and delivered within a very few days. There was in none of them any occasion for any preliminary binding contract, and no authority to make such can be inferred.

Above all, there is not the least glimpse of any authority given to *Tintle* to let the purchaser into possession and permit him to make improvements under a parol contract in such manner as to bind the conscience of *Manning*.

Such an authority is something quite different from, and quite outside of, a mere authority to make a valid binding contract to sell, and its absence here is fatal to the complainant.

b. There was no contract concluded.

There was no certainty about the lines of the lot.

The pretended survey was a myth.

The postal card relied upon is dated March 3, 1878, which was Sunday. There is no post mark on it.

Chamberlain and *Tintle* both swear it was in *Tintle's* hand writing ; p. 32, top ; p. 46 ; p. 73 ; p. 87 ; p. 214.

It turns out to be in *Roome's* handwriting.

No surveying was done before Monday, March 4, 1878. P. 115, l. 25 ; p. 131, l. 1–12.

Mr. Roome is a methodical old gentleman who keeps a diary of every day's transactions (p. 214, 215). He could not have written "3" instead of "4."

The postal card is an afterthought.

No field book of the survey is produced, although one was always kept (p. 197; p 201, l. 8–12.)

No copy of the survey was written out and handed either to *Chamberlain* or *Tintle.*

Two years afterwards *Roome* comes on the ground with *Chamberlain*, who has an old map loaned him by *Tintle* (p. 52, 102), and makes a new survey as directed by *Chamberlain*, and from that new survey the lines are procured.

P. 39, 44, 47, 197, 198, 199, 203, 204, 205, 160, 218, 219, 110, 114, p. 32, bottom.

This survey of 1879 reaches to the Sisco house where the projected street reached, according to the old map.

This circumstance shows it was made to match this old map, while it actually ran across and included the street as laid out by *Roome* on March 4th to the 8th, 1878.

This is apparent by placing a map of the lot made by Mr. *Howell* on the large map.

Tintle swears the survey did not reach within 50 or 60 feet of the Sisco house, and that the stakes were removed.

P. 100, 101, 114, 203, 204.

Roome swears he did no other surveying that day—March 4, 1878—except the lot for *Chamberlain*, and that *Manning* was not there.

Pp. 111, 112, 201, 213.

Tintle swears no other surveying was done.

P. 112 at the bottom.

Manning's diary shows, and he swears, that he was there on the ground on March 4th and that *Roome* was surveying for the new map, and that he (*Manning*) heard not a word about *Chamberlain's* lot. 280 bottom, 281, 282, Ex. D. 4, p. 444.

Tintle, p. 111 top.

Roome's bills for services usually state the work

done, and not a word is found in them about this job.

Tintle's account book is produced and contains not a scrap about this sale or survey, nor is there a lisp about it in one of his letters.

c. But, admitting the survey to have been made, there is no certainty as to its lines or corners.

It is not probable that *Roome* would map out the land into streets, cutting through the lot which he had just surveyed. Yet such is the fact.

Tintle fails to account for not having had the deed made out at once according to his usual custom, or accounts for it in such a way as to destroy the case. *He says he wanted to see if Mr. Chamberlain was satisfied with the lines, and that there was some change to be made in them by the new streets.*

This is fatal as showing the affair was never finished or finally agreed upon.

P. 74, l. 10–20; p. 81, l. 10–18; p. 85 top; p. 96 top to p. 97 bottom; pp. 99, 100, 101.

Manning denies the whole thing, and says he never heard of a sale of two acres being talked of, nor of any sale at $70 or less per acre. He says he heard that *Chamberlain* wanted to buy one acre, and that he objected on account as well of the price as to *Chamberlain* personally, and also on account of the laying of the streets, and because he expected to sell the whole property.

He says he never agreed to the sale, and that he so told *Noble & Howell.*

He says he never heard of the survey, nor had any corners pointed out to him. P. 281–284, 339, 340.

He made up a statement of the quantity of land in the whole tract and of the exceptions and of the quantity to be sold and conveyed to *Noble & Howell*, and that he did not count this *Chamberlain* tract as one of the exceptions.

P. 411, 412.

See Exhibits 31, 32; p. 452.

The burden is on the complainant to make out a

clear case of a concluded contract with definite terms.

He fails to show any concluded contract.

He fails to show a settled description.

He fails to show any authority on the part of the agent to make the sale.

The evidence shows that *Tintle* did not consider the contract closed until the question of the location of the street was settled and *Chamberlain* had approved it. There is no proof that this was ever done. *Tintle* does not prove it, and *Chamberlain's* evidence in that direction is disproved.

He says he went to the ground the day after he received the postal, which, he says, was March 5th, and saw *Tintle* and looked at the stakes and said he would take it, and that no surveyor was there on that day.

In point of fact both surveyors were there at work on that day, as is shown by their bills, their evidence and their diaries.

P. 450; p. 424, l. 20–30; p. 216, l. 30–40; p. 89, l. 20–30; p. 115, l. 20–30; p. 134, l. 10–40.

In conflict with this evidence of *Chamberlain* is *Tintle's* evidence to the effect that the matter was in abeyance for a long time.

The rule is well settled that the contract must be concluded.

Wharton vs. Stoutenburgh, 8 Stew., 266, 275;

Brewer vs. Wilson, 2 C. E. G., 180.

Strict proof of the conclusion of the contract is required as against an assignee.

Kendal vs. Almy, 2 Sumner, 278, at p. 295.

The terms of the contract must be certain and the description of the land clear.

Nichols vs. Williams, 7 C. E. G., 63, 65;

King vs. Ruckman, 5 C. E. G., 316;

Cases cited in Ransom's brief, 5 C. E. G., 330 *et seq.*;

Crane vs. Land Company, 7 C. E. G., 85;

Potts vs. Whitehead, 5 C. E. G., 55.

A contract, any material part of which remains to

be settled by negotiations between the parties, will not be enforced in equity.

Lynes vs. Hayden, 119 Mass., 482.

II.

There was neither part performance nor notice of the contract to *Noble & Howell.*

Chamberlain is unworthy of belief.

His evidence is full of contradictions.

Instances: the postal card, and his visit of March 5th; the tender of the deed and demand (p. 39; p. 44; p. 198, 199): he swears he made the demand in June, '79, and the survey was not made or deed prepared until Oct., 1880: as to the time he commenced his improvements: his statement that he did not show *Roome* the lines of the survey when *Roome* went there in October, 1880, (pp. 49, 50, 53 bottom, 54 top; 203, 204, 205).

He commenced work on the timber for his house at his home miles away, and then testified in such a manner as to make it appear that this work was done on the ground.

Shaw, p. 331, l. 10–20, 336, and generally.

Which day was the money paid—May 8th or June 8th?

Schulster, pp. 177, 118, 119, 120.

It is a remarkable feature that *Chamberlain* has several sons, young men living with him, who were members of the band who played in this pavilion, and who must have been familiar with the erection of this building, and yet not one of them is put on the stand to corroborate their father.

The taking of testimony extended from December 14, 1883, to April, 1884. The case was noticed for hearing at the May Term of 1884, and again at the October Term of 1884, and was referred to Vice Chanellor Bird, who set it down for hearing in Newark, November 14th, 1884.

On that day complainant, for the first time, produced an old printed hand-bill notice of a dance, with a blank left for the date, which he himself filled in in pencil, for June 8th, 1878 (p. 441).

But he produced no witness to substantiate his own story.

There was nothing on the ground to show the outlines of the tract. No fence was erected or anything in the nature of a fence.

Manning, p. 286;
Noble, p. 305, *et seq.*;
Howell, p. 297, *et seq.*;
Tintle, p. 76, top; p. 104, 105, 106, 107.

All the witnesses unite in saying that the dancing platform was built and used before the house was commenced.

Schulster, p. 119, 120;
Post, 159 top; 168;
Reeves, p. 180;
Cook, p. 184, 187, 188;
James H. Class, p. 311, *et seq.*;
Mather, p. 266, *et seq.*;
Shaw, p. 327, *et seq.*;
Luke, p. 244, *et seq.*;
Mickens, p. 231.

Chamberlain admits that the platform was built just before the 4th of July (p 61, l. 25–30).

And so swear all the witnesses who were able to fix the date with anything like certainty. Luke swears there was an entertainment there on several successive 4ths of July, which may account for some discrepancies in the evidence.

The burden is on complainant to prove (1) that his contract was a binding one when *Noble & Howell* purchased, and also (2) that they had notice of it.

That notice must have been given, if at all, at or before June 17th, the day of the meeting on the ground, for the evidence forbids any other view.

The defendants, *Noble & Howell*, were not on the

ground between June 17th and about the 10th or 15th of July.

On that day—June 17th—the contract was concluded and the deed was prepared and possession transferred.

Such was the stipulation (p. 196, l. 30-40).

Possession was then taken of all these lands by *Noble & Howell.* A fence surrounded them.

The purchase was notorious in the neighborhood, and *Chamberlain* admits he heard of it in June.

At that time there was nothing on the ground to indicate any change of possession or ownership of this Chamberlain lot, and nothing to put *Noble & Howell* on inquiry, and no sufficient act or part performance had been done.

Admitting that the rock had been drilled, or both drilled and blasted, that was too small a matter to count as a part performance.

What, then, was the situation of the parties, and what would have been the effect if there had been a definite parol contract of purchase between *Chamberlain* and *Manning*, such as would have been enforced if in writing and *Noble & Howell* had had notice of it?

Clearly, *Chamberlain* had no legal or equitable claim against *Manning.*

The parol contract unexecuted gave him no such claim.

Therefore notice of it, as it then stood, did not affect *Noble & Howell.*

But they had no notice of it. They inquired and were informed according to the truth of the case (pp. 305, 306).

What occurred between that time and July 4th cannot change the aspect of affairs.

Noble & Howell lived in Morristown and had no actual notice of the occurrences on the ground except that derived through *Tintle* in asking permission for *Chamberlain* to build this dancing platform, as testified to by *Howell*, p 296-298; p. 392.

Noble, p. 307, 383, 384.

That was notice of putting up the platform by permission, and not under claim of right under a contract.

And yet the platform was erected with full knowledge that *Noble & Howell* were purchasers, and of itself was not an act sufficient to avoid the statute.

Pp. 40, 59, 60, 61, 62, 63.

The erection of the house afterwards by the side of the platform was no act of performance, because it was done after the title passed.

It is well settled that the acts of part performance must be done with the actual knowledge and express consent of the owner.

The foundation of relief in equity in cases like the present is fraud.

The ground of the fraud is that the parol purchaser has acted in good faith with full knowledge and consent on the part of the seller, and in such a manner that he cannot be restored.

Acts done without such knowledge and consent of the owner, and not contemplated at the making of the parol contract, do not count as against the owner.

Take the case of a parol contract to purchase a lot to be executed presently, that is, as soon as the deed can be prepared and the money paid, and nothing said at the time or in the contemplation of the parties to show that any great delay was expected, or that any occasion existed to take possession before the deed should be delivered; and suppose the purchaser takes possession and improves before he gets his deed and without the knowledge of the seller. Such case shows no fraud on the purchaser and no sufficient ground to take the case out of the statute.

Pomeroy on Specific Performance, secs. 103, 104, and cases cited;

Also secs. 106, 119.

"There must be acts of such a nature that the plain-
"tiff cannot be replaced, and there *must be the knowl-*
"*edge on the part of the defendant which is an essen-*
"*tial of every fraud, either actual or constructive.*"

"If possession or improvements are taken or made "or other acts done against vendor's consent, *or even* "*without his knowledge*, they would lack an essential "element for the imputation of fraud, and would not "be a ground for enforcing the agreement. To consti- "tute a fraud, the knowledge and the conduct which "is inconsistent and unfair with reference to it, must "unite in one and the same individual."

Lord vs. Underdunck, 1 Sand. Chy., p. 46, 48;
Given vs. Calder, 2 Desaussure S. C., p. 171, is very much in point
See the cases cited in the brief, p. 183, and the opinion on the point, p. 189, top.
Jervis vs. Smith, Hoff. Chy., pp. 470, 474: a case much in point.

Here, as soon as *Noble & Howell* saw what was being done they gave notice and forbade the work.
There was no acquiescence on their part.
Howell, p. 301, 302;
Noble, p. 308.
After a conveyance by a parol vendor to a third party, no act of part performance can avail, even though the purchaser had notice of the parol sale, unless he renews the contract and consents to the act of part performance.
Up to that time if the conscience of the parol vendor is not charged, no burden comes with the estate to the purchaser, and his conscience cannot be charged unless he renews the contract and encourages the part performance.

Bearing in mind that the foundation of relief is fraud and that the fraud consists in the change of circumstances on the part of the complainant at the request or by the express acquiescence of the defendant—suppose A agree by parol to sell to B a lot of land, and before any act of part performance A conveys to C, and then B, knowing of the conveyance, enters into

possession and improves by virtue of express permission given by A before he conveyed to C, but without C's permission or knowledge—it seems clear that B would have no remedy against C because the mere permission by A to take possession amounts to nothing until acted upon.

The equity arises out of the action of B on the strength of the permission, and not out of the permission itself.

So when A conveyed to C, B had no equity whatever, and the conveyance is a revocation of the permission. And so even if C had full notice of the contract and permission to take possession, he would not have his conscience charged with any burden.

Then the subsequent action of B in taking possession would not avail him because not done with the knowledge and permission of the owner.

So, here, the sale by *Manning* to *Noble & Howell* was at once a revocation and withdrawal of any license and permission supposably previously given to take possession and improve.

Finally, on this part of the case,

There is no proof that *Manning* ever gave *Chamberlain* permission to take possession and make improvements, or authorized *Tintle* to do so, or knew that he had done so.

The whole course of business excludes the idea.

The transactions were simple. The sales were small. Never by written contract, or on a long time given for the delivery of the deed and payment, but were always closed up at once, and if the price was not all paid, a note or mortgage was taken.

No precedent is found in Mr. *Tintle's* employment for taking possession before conveyance, or for any serious delay in closing the transaction.

As before remarked, authority to make an ordinary contract for sale does not include authority to let the purchaser into possession and to make improvements.

III.

The so-called acts of part performance were not done in good faith, or in such manner as to raise any equity against anybody.

Consider the circumstances.

The complainant is a man of ample means; the purchase price is small.

He contends the contract was complete March 5th, 1878.

The vendor lived close by. He visited the premises frequently.

Complainant was to have the deed at once, and the payment was to be cash.

The fact that he did not get the deed at once, standing alone, was ample to put him on his guard and inquire why the delay.

It was a very simple matter.

The survey had been made, as he alleges.

He pays $10 in May, as he says.

There is no other proof of the date. There is no entry of it in *Tintle's* book.

Still no deed came.

He must have known of the contemplated sale to *Noble & Howell.* In fact, he admits he learned it of *Manning* before the sale, namely, in May (pp. 40, 58, 59, 60, 62, 63, 67, 68).

In the face of all this he goes on without a deed (pp. 55, 56, 58, 59, 60).

It is plain that he was in doubt when he made the payment (p. 66).

It is also plain that early in July and before anything more than the platform was built, he knew *Noble* and *Howell* repudiated the contract (pp. 45, 64, 67).

Noble and *Howell*, according to *Chamberlain*, offered to sell him an acre early in July, and he declined, standing on his strict rights (pp. 45, 64, 67).

Now after this he could not proceed and gain any standing in equity.

His course of conduct was not taken in good faith.

He had no right to rely on a verbal contract after that.

It is perfectly plain that he was trying to make an equity in his own favor by going on and spending money.

This cannot be done.

The case is transparent.

After time enough had elapsed to have the deed executed half a dozen times, namely, two months, he pays $10 to bind the bargain, and drills a hole in a rock.

In the same month—May—he learns from *Manning* that he thought of selling. This must have been in *May*, and not in *July*, for the sale had been fully consummated in July.

He hears at the time—middle of June—that *Noble & Howell* had bought, and yet without asking them their intentions he goes on and builds this platform as a feeler.

There is reason to believe that he asked their permission, through *Tintle*, to do even so little.

He is warned early in July that there will be trouble about a deed, and yet he proceeds to build a house slowly—is two or three years about it.

In the meantime an action of trespass is brought, and is pending a long time (p. 396).

It is plain that any injury done to complainant is self-inflicted with open eyes.

No sufficient reason is shown why he should have proceeded a step without his deed.

No fraud was perpetrated by *Manning*.

None by *Noble & Howell*.

They did not encourage complainant in any direction or degree.

When they took the title he had no equity against *Manning*, and he acquired none subsequently against them.

He plainly attempted to create an equity in his own favor, and has failed.

Defendants have acted fairly and liberally. They offered to sell complainant the lots upon which his building was in course of erection at the same or a less price than they demanded from others, and they offered to permit him to remove it. He declined both offers.

His attempt is to compel defendants to convey to him title to a piece of land, part of which they have laid out and opened in a street, and another part of which they have conveyed to a third party who has built and improved it in good faith.

I submit that the attempt must fail.

DEFENDANT'S EXHIBITS.

No,		Page where introduced.	Page where printed
1.	Notice. Howell & Noble to Chamberlain,	69	445
2.	Letter, Tintle to Manning, Feb. 16, 1878,	87	445
3.	" " " Feb. 11, 1878,	88	446
4.	" " " Mar. 1, '78,	90	446
5.	" " " Mar. 16, '78,	91	447
6.	" " " May 20, '78,	92	447 10
7.	" " " May 28, '78,	92	448
8.	" " " June 24, '78,	92	448
9.	Tintle's bill and letter of June, 18, '78,	93	449
10.	Roome & Son's bill, April 4, '78,	94	450
11a.	" " $7.50,	95	450
11.	Letter. Manning to Tintle, Feb. 16, '78,	123	466
12.	" " " Ap'l 23, "	123	467
13.	" " " Ap'l 4, "	123	466
14.	" " " Ap'l 24, "	123	468
15.	" " " May 17, "	123	468 20
16.	" " " May 24, "	123	469
17.	" " " May 31, "	124	469
18.	" " " June 11, "	124	470
19.	" " " " 13, "	124	470
20.	" " " " 24, "	124	471
21a.	Copies of 15 letters to Tintle from Letter book of Manning,	130 291	455-466
21.	Tintle's Ac't Book,	143	Not printed
22.	Tracing of map in Clerk's office,	302	
23.	Map of Roome & Son, M'ch to May, '78, (Map 1),	209	30
24.	Map of Roome & Son (altered by Noble). (Map 2.)	337	
25.	Geo. W. Howell's map,	375	
26.	do. do.	386	
27.	Check of C. E. Noble, July 3, '78,	397	451
28.	Check of B. F. Howell, July 5, '78,	397	451
29.	Letter, B. F. Howell, July 7, '78,	397	451
30.	Deed, Noble & Howell to Mather,	397	not p'ed
31.	Mem. of lots sold—made by Manning,	411	452 40
32.	Letter, Manning to Noble, June 13, '78,	411	453

COMPLAINANT'S EXHIBITS.

	PAGE WHERE INTRODUCED	PAGE WHERE PRINTED.
a. Postal card—James Tintle to Amos Chamberlain,	32	427-423
b. Unexecuted deed—Manning to Chamberlain,	45	427
c. Chamberlain map on brown paper,	52	
10 d. Letter from Manning to Tintle, March 15, 1878,	121	429
e. Letter from Manning to Tintle, March 16, 1878,	121	430
f. Letter from Manning to Tintle, April 11, 1878,	121	431
g. Letter from Manning to Tintle, April 22, 1878,	122	431
h. Letter from Manning to Tintle, May 24, 1878,	122	431
20 i. Letter from Manning to Tintle, June 4, 1878,	121	432
j. Deed from Manning to Cook, dated March 8, 1878,	196	432
k. 1. Letter—Mr. Manning to Tintle, October 2, 1878,	146	436
k. 2. Deed from Noble and Howell to Cook—dated July 15, 1878,	196	436
l. Roome's field book,	221	440
m. Paper that Chamberlain read to Manning, in New York,	222	440
30 n. Handbill of dance to be held June 8, 1878,	409	444
o. Quitclaim deed—Manning to Noble and Howell, June 12, 1878,		Not printed
p. Warranty deed—Manning to Noble & Howell, June 12, 1878,		
q. Map made by Roome—original of maps D. 23 & 24.	421	

COURT WILL PLEASE MAKE FOLLOWING CORRECTIONS IN PRINTED BOOK.

Page.	Line.	
29.	20.	For "Robert H. Manning" read "Richard H. Manning."
"	29.	" "John W. Pitney" read "Henry C. Pitney."
264.	18.	" "Stanhope," read "Stanley."
275.	9.	" "lying" " "running."
276.	last line.	" "pay" " "path."
280.	27.	" "3d" " "1st."
281.	2.	" "third" " "first."
291.	26 & 27.	" Strike out all after "are," and read "printed on pages 455—466."
"	16.	" "20" read "20 a."
301.	11.	" "if you ever gave" read "to give."
302.	30.	" "subject to" " "upon."
306.	"	" "one" " "point."
309.	6.	" "he" " "we."
362.	13.	" strike out "up."
394.	37.	Insert "I did" before "offer."
414.	3.	Strike out "not."
424.	36.	Read "this" for "the."
"	37.	Insert after lots, "May 7 I mapped part of the day."
426.	15.	Insert after "know" the word "now."
459.	10.	For May "31" read May "24."

Letters of Tintle to Manning (Exhibits 2–9), are printed without showing mistakes of orthography, &c.

Clerks Docket No 5

In Chancery of New Jersey.

Between AMOS CHAMBERLAIN, Compl't, and RICHARD H. MANNING, BENJAMIN F. HOWELL, and CHARLES E. NOBLE, Def'ts.	*Bill &c.,* *For Injunction.*

10

To His Honor THEODORE RUNYON, Chancellor of the State of New Jersey :

Humbly complaining showeth unto your Honor your orator, Amos Chamberlain, of New Foundland, in the Township of West Milford, County of Passaic and State of New Jersey, that on or about the first day of March in the year eighteen hundred and seventy-eight, Richard 20 H. Manning, was seized and possessed in fee simple of all that tract or parcel of land and premises situate, lying and being in the Township of Pequannoc, in the County of Morris and State of New Jersey, at Bloomingdale. Beginning at a stake standing near the brow of the hill, being the northwest corner of the said lot, thence running (1) south sixteen degrees west three hundred and thirty-three feet to a corner of Charles H. Sandford's lot; thence (2) along his line and road four hundred and twenty feet to opposite the southwest corner of the Sisco 30

house; thence from beginning again south eighty-two degrees and a half east three hundred and fifteen feet to the west line of a street; thence about south twelve degrees and a quarter east two hundred and ten feet to the end of the second course in front of the southwest corner of the Sisco house.

And your orator further shows, that the said Richard H. Manning being willing and desirous of selling and disposing of said described lands, did, on or about the fourth day of March in the year eighteen hundred and seventy-eight, employ one James Tintle, of the Township of Pequannoc, in the County of Morris and State of New Jersey, as his agent, to sell and dispose of the land hereinbefore described, and other lands lying in the immediate vicinity of the said lands hereinbefore described, and that the said Richard H. Manning gave the said James Tintle full power and authority to sell and dispose of said lands, as his agent, and to contract and agree for said lands, and to receive the moneys arising from such sales, and in all things relating to the sale of said lands, or in contracting and agreeing to convey said lands, to act as fully and to have the same power as the said Richard H. Manning could have in attending personally to the sale of such premises.

And your orator further shows that the said Richard H. Manning, by James Tintle, his agent, as aforesaid, did contract and agree to convey to various persons, several tracts of land lying in the vicinity of the land above described, and that the purchasers thereof did, by virtue of such contract or agreement to convey, so made by the said Richard H. Manning through his agent, James Tintle, as aforesaid, enter into possession of said lands so contracted and agreed to be conveyed, and did build and construct upon said lands houses and other improvements, and upon which contracts and agreements of sale the said Richard H. Manning did at the times agreed upon, make and execute deeds of conveyance to the respective persons to whom said lands had been contracted and agreed to be conveyed as aforesaid.

And your orator further shows that on or about the

fourth day of March, eighteen hundred and seventy-eight, your orator being desirous of purchasing the lands hereinbefore described, negotiated with the said James Tintle, the agent of the said Richard H. Manning, for the purchase of said lands whereupon the said James Tintle consulted the said Richard H. Manning in regard to the sale of said lands above described to your orator, and that the said Richard H. Manning contracted and agreed to convey said lands to your orator for the sum of one hundred and fifty dollars, and that your orator contracted and agreed to pay to the said Richard H. Manning, the said sum of one hundred and fifty dollars for the said lands so contracted and agreed to be conveyed to your orator by the said Richard H. Manning as aforesaid.

And your orator further shows that on the said fourth day of March, eighteen hundred and seventy-eight, your orator contracted and agreed to purchase of the said Richard H. Manning, for the sum of one hundred and fifty dollars, the lands hereinbefore described, and the said Richard H. Manning contracted and agreed to convey to your orator said lands for said sum of one hundred and fifty dollars, as aforesaid.

And your orator further shows, that at the time said agreement for the purchase and conveying of said lands was so entered into between your orator and the said Richard H. Manning as aforesaid, the said Richard H. Manning agreed to convey said lands to your orator, and deliver to your orator a deed of conveyance for said lands in a very short time.

And your orator further shows that on the fifth day of March, eighteen hundred and seventy-eight, the said Richard H. Manning employed Benjamin Roome, a civil engineer, to run the boundaries of said lands so contracted and agreed by the said Richard H. Manning, to be conveyed to your orator as aforesaid, and that the said Benjamin Roome went upon said lands and surveyed the same, and that said survey was in accordance with the description hereinbefore set forth, and that immediately after the survey was made and the lines run by the said Benjamin Roome, at the request and under the directions of

the said Richard H. Manning, the said Richard Manning delivered possession of said lands to your orator, and that your orator entered into possession thereof under the terms of said agreement as hereinbefore set forth.

And your orator further shows that at the time the said Richard H. Manning contracted and agreed to convey said lands to your orator, and at the time he delivered possession thereof to your orator as aforesaid, your orator informed the said Richard H. Manning that it was your orator's intention to forthwith commence to build and erect a building on said lands and to otherwise improve said lands without waiting for the execution of the deed of conveyance for said lands, and that the said Richard H. Manning informed your orator that it would be all right, and instructed and advised your orator to commence building upon said lands, without waiting until the same was conveyed to your orator and at said time informed your orator that a deed would be executed to him, by virtue of said agreement to convey in a very short time.

And your orator further shows that on said fifth day of March, eighteen hundred and seventy-eight, your orator did commence to build and construct, and has built and constructed upon said lands, so agreed to be conveyed to your orator by the said Richard H. Manning as aforesaid, a building which has cost your orator at least the sum of one thousand dollars, and that your orator has spent large sums of money in improving said lands, and that the said Richard H. Manning, during the whole time your orator was building and constructing said building and improving said lands, has acquiesced and consented to the actings and doings of your orator, and that your orator from the time possession of said lands was so given to him by the said Richard H. Manning as aforesaid, has continued in possession of said premises from that time up to the present time.

And your orator further shows that on or about the tenth day of May, eighteen hundred and seventy-eight, your orator paid to the said Richard H. Manning, through his agent, James Tintle, the sum of ten dollars, as a part of the consideration money for the said premises, con-

tracted and agreed to be conveyed to your orator by the said Richard H. Manning, and that the said Richard H. Manning accepted said sum of ten dollars as a part payment of said consideration money, for the said premises so contracted and agreed to be conveyed to your orator as aforesaid.

And your orator further shows, that sometime in the month of June eighteen hundred and eighty, your orator tendered to the said Richard H. Manning the balance of the consideration money for the said premises contracted 10 and agreed to be conveyed to your orator, and also handed to the said Richard H. Manning a deed of conveyance for said lands which had been drawn by the said Benjamin Roome at the request and under the direction of the said Richard H. Manning, and that the said Richard H. Manning refused to accept said sum of one hundred and forty dollars the balance due on said agreement and refused to execute said deed so presented to him for execution as aforesaid, but informed your orator that Howell and Noble of Morristown, would give him a deed. 20

And your orator further shows, that he has always been ready and willing to pay said sum of one hundred and forty dollars so due on said contract for the conveying of said premises, and always has been and now is ready and willing to do and perform everything agreed to be done by your orator in the premises.

And your orator further shows, that on or about the twelfth day of June eighteen hundred and seventy-eight, and after the said Richard H. Manning had so entered into said contract to convey said lands to your orator as 30 aforesaid, and after your orator had paid a part of the consideration for said lands on said agreement to convey to your orator as aforesaid, and after the said Richard H. Manning had delivered possession of said lands to your orator as aforesaid, the said Richard H. Manning by writing under his hand and seal, made and executed a deed of conveyance to Benjamin F. Howell and Charles E. Noble of Morristown, in the County of Morris and State of New Jersey, for the premises hereinbefore described, and contracted and agreed to be conveyed to your orator 40

as aforesaid, with other property owned by the said Richard H. Manning and adjoining the lands so contracted and agreed to be conveyed to your orator, the following being a description of the property so conveyed to the said Benjamin F. Howell and Charles E. Noble and which includes the tract of land above described, all that tract of land situate in the Township of Pequannoc and Pompton in the Counties of Morris and Passaic in the State of New Jersey, which was returned to Benjamin
10 Howell, April 7, 1846, and the survey of which is recorded in the Surveyor General's office at Perth Amboy New Jersey in Book S 22, page 140, and is bounded as follows, to wit: Beginning at the beginning corner of a survey of 219 45-100 acres returned to J. and N. Ogden, April 1763, and recorded in the aforesaid office at Perth Amboy in Book S 5, page 97, thence running (1) south 61 degrees west 2 chains; thence (2) south 81 degrees west 17 chains; thence (3) north 45 degrees west 6 chains; thence (4) north 21 degrees, west 6 chains and 50 links;
20 thence (5) north 80 degrees west 8 chains; thence (6) south 83 degrees west 10 chains; thence (7) north 21 degrees west 5 chains; thence (8) north 83 degrees east 10 chains; thence (9) south 80 degrees east 8 chains; thence (10) north 54 degrees east 3 chains and 25 links; thence (11) south 32 1-2 degrees east 10 chains; thence (12) south 74 1-2 degrees east 6 chains; thence (13) north 83 degrees east 14 chains; thence (14) north 4 degrees west 4 chains and 56 links to the place of beginning, containing nominally as appears by former deeds, 24 66-100
30 acres but actually only 2 71-100 acres more or less. Being the same land and premises conveyed by Henry Carman and Emily his wife, John Hopper and Mary A. his wife, to the Newbrough Hard Rubber Company by deed dated February 7, 1870, and recorded in said Morris County Clerk's office, February 18, 1870, in Book N 7 of Deeds, page 56, and recorded in said Passaic County Clerk's office, June 10, 1870, in Book W 3 of Deeds, page 445, etc. Also all those tracts or parcels of land and premises, situate, lying
40 and being in said township of Pompton, heretofore mort-

gaged by one Kanouse and wife to Andrew P. Hopper, by mortgage bearing date the 29th of March, 1844, and recorded in the Clerk's office, in the County of Passaic, on the 24th day of June, 1844, in Book C of mortgages, page 36, deducting nevertheless the tavern house and the land north thereof, to a white rock lying about fifteen feet to the north thereof, and west of the Paterson and Hamburg Turnpike road, which rock is imbedded in the ground, thence from the said rock in a line parallel with the north end of said tavern house to the river, but this 10 exception and reservation is not to include the raceway or any part thereof, leading from the mills to the river, and the exclusive use thereof. It is further to be understood that the remainder of the said tracts of land hereinbefore referred to and lying in a southerly direction is not intended to be hereby conveyed, being the same land and premises conveyed to Nathaniel T. Henry and Mary C. his wife to the said Newbrough Hard Rubber Company, by deed dated October 14, 1869, and recorded in said Passaic County Clerk's office, October 29, 1869, in 20 Book 33 of Deeds, pages 300, etc.

But said tracts being the same as conveyed with other lands to said Richard H. Manning, by Charles P. Baldwin, Trustee, by deed dated April 20, 1877, and recorded in said Morris County Clerk's office, May 9, 1877, in Book S 9 of Deeds, page 250, and in said Passaic County Clerk's office, May 18, 1877, in Book S 5 of Deeds, at page 571, which said was recorded in the Clerk's office of the County of Morris, in Book C 9 of Deeds for said county, pages 515, &c. 30

And your orator further shows that said Benjamin F. Howell and Charles E. Noble, at the time the said conveyance was so made to them, by the said Richard H. Manning as aforesaid, were informed by the said Richard H. Manning of the existence of the agreement made by him to convey the premises first above described to your orator, and which said lands were included in the deed last above described, and that the said Benjamin F. Howell and Charles E. Noble agreed with the said Richard H. Manning, when said deed was executed to them, to 40

make and execute to your orator a deed of conveyance for the tract of land first above described, and which the said Richard H. Manning agreed to convey to your orator as aforesaid.

And your orator further shows that the said Benjamin F. Howell and Charles E. Noble had notice and well knew that the said land hereinbefore first described had been contracted and agreed to be conveyed to your orator by the said Richard H. Manning, and that a part of
10 the consideration money agreed to be paid by your orator had been paid and accepted by the said Richard H. Manning or his agent, James Tintle, and also well knew that your orator had taken possession of said premises by virtue of said agreement for the conveyance of said lands as aforesaid, and that your orator had a building in process of erection on said lands, and was improving said lands, and had spent large sums of money in improving the same.

And your orator further shows that sometime in the
20 month of July, eighteen hundred and seventy-eight, the said Benjamin F. Howell and Charles E. Noble called on your orator and wanted to exchange some other property for the premises so agreed to be conveyed to your orator as aforesaid, and tried to convince your orator that other property which they would exchange would be better for your orator's business than the lot hereinbefore described, and further said they wanted to make a street up the hill to other property which they owned, through your orator's said lot, until it should reach theirs,
30 and your orator consented that they should make such street, and the said Benjamin F. Howell and Charles E. Noble seemed to be perfectly satisfied with such an arrangement and thanked your orator for allowing said street to run through your orator's said lot, and that the said Benjamin F. Howell and Charles E. Noble at said time did not question or pretend to question your orator's ownership to said lands and did not mention or claim to your orator that there was any dispute or controversy about your orator's right to have the conveyance made to
40 him for said lot as hereinbefore set forth, but on the con-

trary fully recognized by words and actions your orator's said interest as hereinbefore stated.

And your orator further shows, that when he applied to the said Richard H. Manning for a conveyance for the said lands so contracted and agreed to be conveyed to your orator as aforesaid, the said Richard H. Manning requested your orator to go to Benjamin F. Howell and Charles E. Noble; and stated that the said Benjamin F. Howell and Charles E. Noble would make and execute a deed of conveyance to your orator for said lands, and that your 10 orator has repeatedly gone to the said Benjamin F. Howell and Charles E. Noble and demanded of them a deed for said lands, and at the same time tendered to them the balance of said consideration money, to wit: the sum of one hundred and forty dollars, and that the said Benjamin F. Howell and Charles E. Noble refuse to make and execute such deed to your orator, and refuse to accept said sum of one hundred and forty dollars, the balance of said consideration money as aforesaid.

And your orator further shows, that on the fourth day 20 of November, eighteen hundred and eighty-two, the said Charles E. Noble and Benjamin F. Howell commenced an action in ejectment in the Supreme Court of the State of New Jersey against your orator to demand and have of your orator the possession of the tract of land with the appurtenances, so contracted and agreed to be conveyed to your orator by the said Richard H. Manning as aforesaid, which said writ of ejectment was returnable on the twentieth day of November, eighteen hundred and eighty-two, and that the said Benjamin F. Howell and Charles 30 E. Noble, the plaintiffs therein, filed their declaration within the time required by law, and that your orator filed his plea to said action on the sixteenth day of January, eighteen hundred and eighty-three, and that the said cause was noticed for trial for the next term of the Morris County Circuit Court, to wit: the first Tuesday of May next, and your orator verily believes that it is the intention of the said Benjamin F. Howell and Charles E. Noble to eject your orator from said premises and to take possession of said lands so agreed to be conveyed to your 40

orator as aforesaid, with the buildings and improvements which your orator has erected thereon as aforesaid, and that if said suit in ejectment as aforesaid be allowed to stand a great injustice will be done your orator.

And your orator further shows, that he has applied to the said Benjamin F. Howell and Charles E. Noble and requested them to make and execute a deed of conveyance for said lands so as aforesaid agreed to be conveyed to him, and at the same time tendered to the said Benjamin F. Howell and Charles E. Noble the balance of the purchase money, to wit: One hundred and forty dollars, and that the said Benjamin F. Howell and Charles E. Noble refused to execute a deed to your orator for said lands.

And your orator further shows, that he has always been and now is ready and willing to pay the balance of the consideration money so due on said agreement to convey said lands to him, and to do and perform everything agreed by him to be done and performed in the premises, and your orator hoped that the said Richard H. Manning would have made and executed a deed of conveyance to your orator for said lands so agreed to be conveyed to him by the said Richard H. Manning, as in justice and equity he ought to have done.

But now so it is may it please your Honor, that the said Richard H. Manning, Benjamin F. Howell and Charles E. Noble combining and confederating together with divers persons at present unknown to your orator, but whose names when discovered your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to injure and aggrieve your orator in the premises, absolutely refuses to comply with such reasonable requests, and they at times pretend that no contract or agreement for conveying said lands has ever been made by the said Richard H. Manning to your orator and that the said Richard H. Manning never delivered to your orator the possession of said lands, and that the said Richard H. Manning never consented that your orator should build and contract a building upon said lands and

to otherwise improve the same as hereinbefore set forth and that your orator does not hold legal possession of said premises, and that the said Benjamin F. Howell and Charles E. Noble are the owners of said lands so agreed to be conveyed to your orator as aforesaid, and have a right to enter into possession of said lands by virtue of said deed of conveyance so made by the said Richard H. Manning to them aforesaid, and that your orator never paid to the said Richard H. Manning the sum of ten dollars on said agreement so made for conveying said 10 premises or any other person for him, and that your orator has no claim or right to the possession of said premises, and that the said Richard H. Manning nor any person for him has ever contracted and agreed with your orator to convey the premises first above described to your orator.

Whereas your orator charges the contrary thereof to be the truth. All which actings, doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury and 20 oppression of your orator in the premises.

In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Richard H. Manning, Benjamin F. Howell and Charles E. Noble and their confederates when discovered may to the best and utmost of their respective knowledge, remembrance, in- 30 formation and belief, full, true and perfect answer make, to all and singular the matters aforesaid, (without oath), and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth whether the said Richard H. Manning, did not contract and agree to convey to your orator the tract of land first above described for the consideration of one hundred and fifty dollars, and deliver to your orator a deed of conveyance for said 40

lands and whether the said Richard H. Manning did not deliver to your orator the possession of said lands, and instruct your orator to commence building upon said lands at such times as he saw fit, without waiting for the execution of said deed, and whether the said Richard H. Mannning did not accept the sum of ten dollars as a part payment of the consideration of said agreement for conveying said premises to your orator, and whether the said Richard H. Manning did not convey to the said
10 Benjamin F. Howell and Charles E. Noble the tract of land agreed to be conveyed to your orator with other lands adjoining the same, and whether the said Benjamin F. Howell and Charles E. Noble at the time said deed of conveyance was made to them for said lands did accept said deed with the understanding that the tract of land first above described was contracted and agreed to be conveyed to your orator, and purchased said premises subject to your orator's right to have a deed of conveyance for the part thereof, so contracted and agreed to be con-
20 veyed to your orator, and whether the said Richard H. Manning, Benjamin F. Howell and Charles E. Noble did not acquiesce in the actings and doings of your orator in the premises, and recognize your orator's right in said land, and that the said Benjamin F. Howell and Charles E. Noble did not know that your orator had taken possession of said land and exercised ownership over the same and that the said Richard H. Manning or the said Benjamin F. Howell and Charles E. Noble may be decreed by this Honorable Court to make and execute unto your ora-
30 tor a deed of conveyance for said lands so contracted and agreed to be conveyed to your orator as aforesaid, and that the said deed of conveyance so made by the said Richard H. Manning to the said Benjamin F. Howell and Charles E. Noble conveying the lands so contracted and agreed to be conveyed to your orator with other lands adjoining the same annulled so far as it effects the lands so agreed to be conveyed to your orator and hereinbefore first described and that your orator may have such other and further relief in the premises as the nature of the
40 case may require and as shall be agreeable to equity and

good conscience. May it please your Honor, the premises considered, to grant unto your orator, not only the State's writ of inquisition issuing out of and under the seal of this Honorable Court to be directed to the said Richard H. Manning, Benjamin F. Howell and Charles E. Noble restraining them and each of them from further prosecuting the said action of ejectment in the New Jersey Supreme Court against your orator, to eject your orator from said lands so contracted and agreed to be conveyed to him as aforesaid and also restraining 10 them from selling and disposing of the said land so contracted and agreed to be conveyed to your orator as aforesaid and being the tract of land first above described but also the State's writ of subpœna, issuing out of and under the seal of this Honorable Court to be directed to the said Richard H. Manning, Benjamin F. Howell and Charles E. Noble, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to 20 answer all and singular the said premises and to stand to, abide by, and perform such order and decree as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator as in duty bound will ever pray &c.

Z. M. WARD,

Sol. and of Counsel with Complt.

30

The answer of Charles E. Noble and Benjamin F. Howell, to the Bill of Complaint of Amos Chamberlain, Complainant.

These defendants say that they admit and allege the truth to be, that on and long prior to the 5th of March, 1878, one Richard H. Manning, of the city of New York, was the owner of a large tract of land, situate in the Township of Pequannoc, in the County of Morris, and they suppose and believe that the land first mentioned
10 and described in complainant's bill of complaint, is and was included in the large tract so owned by said Manning, but they are informed and believe and therefore allege the truth to be that no such tract or lot as that first described in complainant's bill ever existed separate and apart from the large tract aforesaid, and there was nothing on the premises to mark any such boundaries as those for that purpose set forth in complainant's bill.

And they deny that the said James Tintle was ever authorized by said Manning to make sale of said Man-
20 ning's lands to any person whatever, and they deny that the said Tintle ever did, acting for said Manning or otherwise, attempt to make sale of any such lands to complainant or to any other person whatever, or that the said Manning ever made sale or contracted to sell any of said lands to said complainant, either directly or through said Tintle as his agent, for any price whatever, and they deny that any money was ever paid by said complainant to said Manning, on account of any such supposed or pretended purchase or sale.

30 These defendants say that on or about the seventeenth day of June, eighteen hundred and seventy-eight, said Richard H. Manning sold and conveyed to these defendants, by deed of bargain and sale, duly executed under his hand and seal, all the said large tract of land, hereinafter mentioned, which deed was dated the said twelfth day of June, eighteen hundred and seventy-eight, and is recorded in Book X 9, page 496, of Morris County Record of Deeds, and that these defendants paid to said Manning a large sum of money, to wit: eight thousand
40 dollars ($8,000,) as consideration therefor, and they say

that immediately after such purchase and at about the date of the delivery of said deed to them by said Manning, they took possession of said premises including said lot which the complainant by his bill claims that he had contracted to purchase of said Manning.

And these defendants further say that at the time of the said purchase by these defendants from said Manning and the said payment by them of said purchase money, they or either of them had no notice, knowledge or suspicion whatever of any contract or bargain entered into 10 between said Manning and said complainant for the sale of any portion of the lands so conveyed to them by said Manning, and they deny that said Manning ever notified or informed them, or either of them, that said complainant or any other person had any contract or bargain, oral or otherwise, for any portion of said lands, and they say that by said deed of conveyance and payment of said purchase money they became and were purchasers of the whole of said lands for a valuable consideration and in good faith, without any notice, knowledge or suspicion 20 whatever of any rights, legal or equitable, on the part of said complainant to the same or any portion thereof whatever.

And they further say that prior to the time that these defendants so purchased and paid for the said lands from said Manning and took possession of the same as aforesaid, the said complainant had not taken any possession whatever of said lands nor had he erected or placed thereon any building or structure whatever, nor was there upon said lands any monument, mark, boundary, fence, 30 or other object whatever, to indicate or show to any person whatever that the complainant claimed to be the owner of the land, by him mentioned and set forth, or any other portion of the land so conveyed to them, whatever.

And these defendants deny that at the time they purchased said lands of said Manning or at any other time the said Manning informed them or any person acting for them, that the complainant had made any purchase or bargain for any portion of the same whatever, or that 40

the complainant had any right of any kind legal or equitable therein.

And these defendants deny that at any time either in conversation with the said complainant or otherwise, they or either or them ever recognized or admitted any right whatever of complainant in or to said lands or any portion thereof and they deny that they ever proposed to exchange with said complainant another portion of said lands for the said lot by him claimed to have been pur-
10 chased from said Manning.

And these defendants say that some time, at or about or shortly after they had so purchased said large tract of land from said Manning, they were informed by some person, either said Manning or said Tintle, that said complainant was desirous of purchasing a lot of land in the neighborhood of the place where, as they understand, the land described in complainant's bill is located, but the size and exact position of said lot was not stated to these defendants or pointed out to them on the land and after
20 such purchase application was made to these defendants by or in behalf of said complainant to purchase such a lot, and these defendants declined to make any sale of said lands or lot to said Chamberlain, for the reason that they had purchased the whole tract with the view of laying out the same or a large portion of it into streets and building lots, the same being located near the growing manufacturing town of Bloomingdale, and that portion of the whole tract surrounding the place, where as they understood complainant desired to purchase, had not been
30 so laid out, or if laid out at all had not been irrevocably laid out, and these defendants had not as yet determined how they would lay out and subdivide the same and were unwilling to sell any portion of it in that neighborhood until their plans in that regard had been finally settled and adopted, and they say that when they learned with more precision the size and location of the lot which complainant desired to purchase, they declined to sell the same to him, and they say that they at no time recognized or admitted or intended to recognize or admit any equit-
40 able right on the part of complainant to have the partic-

ular lot he was negotiating for or any other lot at any particular price or otherwise.

And these defendants in further answering say, that after they had taken possession of said premises, and after it was well known in the neighborhood of the same that they had so purchased it and before the deed was actually delivered to them, the said James Tintle on or about the third day of July, eighteen hundred and seventy-eight, called upon this defendant, Benjamin F. Howell, at his residence in Morristown and stated to him that the complainant wished him, Tintle, to get permission from the defendants to erect upon the said premises (at a point mentioned by said Tintle and which these defendants now recognize as being included within the description of the lot claimed by complainant) a dancing platform to be used by said Chamberlain for the purpose of an entertainment which he had advertised to give to the public on the fourth day of July, then next. Defendant Howell hesitated about granting said permission for fear that the proposed entertainment might be disagreeable to persons living near by, and said Tintle stated to said Howell as an inducement for him to grant said permission, that said Chamberlain had expected to purchase from said Manning a lot of land in that neighborhood and had made this preparation and had advertised said entertainment on the strength of such expectation to purchase and having slipped up or failed to make such purchase from said Manning, it would be a great disappointment and loss to him not to have such entertainment and hoped that said Howell would grant him the permission requested, namely: to build said dancing platform for the special purpose of said entertainment as a favor to him, the complainant. Whereupon said defendant Howell did grant the permission to lay upon the ground a dancing platform for the purpose aforesaid and for no other purpose whatsoever.

That some time after that, just how long these defendants cannot state, they went together, from Morristown where they both reside, to Bloomingdale and went over the said lands in company with said Tintle and when

they came to the place where they had given the permission to place said dancing platform, they there found the said complainant at work in erecting a building over said platform and just engaged in putting up the frame thereof. These defendants at once forbade said Chamberlain to proceed with said erection in the most positive terms and ordered and directed him to remove the same at once, and also the said dancing platform. That at that time said Chamberlain had progressed but a
10 very little way with said building, having not yet completed the frame of the same and having no covering thereon. At the same time these defendants declared and stated to the said Chamberlain, in the most positive and explicit language, that he had no right there, no right to erect the building, no right of any sort whatever in the soil, and no right of purchase therein, and informed him most explicitly that they would not recognize anything of the sort on his part.

Sometime afterwards they were again on the premises
20 and found that said Chamberlain, in face of their said notice to him, had proceeded to enclose his said building and to finish the same as far as outward appearance was concerned. They again forbade him to continue with the erection of the building and ordered and directed him to remove the same; and afterwards, and on all occasions, whenever they met said Chamberlain they always repudiated any claim or right on his part in the premises and frequently ordered and directed him to remove said building. And, afterwards, on, or about the seventeenth
30 day of May eighteen hundred and eighty, they caused to be served upon said complainant a notice in writing the purport and effect of which was that said complainant was notified, informed and required to remove forthwith from said premises, but giving him permission to remove all erections by him placed upon said premises within thirty days from the time of service of said notice, or in default thereof they would claim the same as their own.

And these defendants in further answering say that after the conveyance so made to them as aforesaid by
40 said Manning, to wit, in the Fall of eighteen hun-

dred and seventy-eight, and in the Summer of eighteen hundred and seventy-nine they proceeded to lay out the lands in the neighborhood of the lot so claimed by said complainant into streets and building lots, laying out, fencing and grading streets and marking their boundaries upon the ground. That two of said streets, called Second and Third streets, on the map filed by these defendants in the Clerk's Office of Morris County as hereinafter stated, passed through the lands which these defendants understand to be included in the description 10 of the land now claimed by complainant in his said bill. That in the month of May, eighteen hundred and eighty they conveyed to one Henry W. Mather a lot of land fronting on said Second street, a part of which said lot is included in said description of the land so claimed by complainant as understood by these defendants. That said Mather immediately after said conveyance so made to him, entered into possession of said lot, fenced and cultivated the same, and has been in the actual and undisturbed possession of said lot from the date of said con- 20 veyance to this time.

And these defendants allege that in all their said acts, in laying out and marking the boundaries of streets and lots, grading and fencing streets, and the conveyance to and possession by said Mather of the lot so conveyed to him, were done with the full knowledge of said complainant, and without in any way consulting or considering him in any way whatever, and without any objection from him, except as hereinafter stated, and they deny that in so doing they asked any permission of said com- 30 plainant, or consulted him or his wishes therein in any degree whatsoever or thanked him therefore either directly or indirectly, expressly or impliedly.

And these defendants say that they afterwards to wit, on the eigth day of August, eighteen hundred and eighty-two, filed a map of said lands in the Clerk's Office of the County of Morris, but in making said map they paid no attention whatever to the boundaries of said lot so claimed by said complainant, and allege the fact to be that they had no knowledge of any such boundaries if any such 40

existed.

And these defendants further say that after said Third street was laid out and graded, they commenced to build a fence along the same, and employed one Shippy to do the work and the said Chamberlain attempted to treat said Shippy as a trespasser for building said fence across the lot so claimed by him and sued him therefore before a Justice of the Peace in the County of Passaic, to which action these defendants pleaded title and thereby ended
10 suit.

That afterwards said complainant brought an action of trespass against these defendants in the Circuit Court of the County of Passaic for the same cause of action to which action these defendants by advice of counsel demurred and the said demurrer was sustained after argument and judgment final entered against the plaintiff therein.

And these defendants refrained from bringing any action of ejectment againt said Chamberlain until after
20 the final disposition of the said action of trespass, but did bring said action very shortly after such final disposition thereof; and these defendants admit that they did bring the action of ejectment mentioned and set forth in said bill of complaint.

And these defendants in further answering say that knowing that said complainant desired to use said lot for a sort of hotel or place of public entertainment, they were always unwilling to sell the same to him or any other lot in that immediate neighborhood for that pur-
30 pose. But after they had so laid out the said land in streets and building lots as aforesaid, and, after the exact size and shape of the lots as laid out by them were ascertainable upon the ground and the location thereof in reference to the house so built or erected by the complainant was ascertained, in order to avoid the appearance even of doing any injustice to the complainant, they offered and proposed to sell to him at a much reduced price, the lot or lots of land upon the said map upon which his said house stood, which these defendants supposed to be lots
40 numbers ninety and ninety-one on their map so filed by

them, but the complainant declined to purchase the same at any price insisting upon having a deed for the lot described in his bill, which was of an entirely different shape from any of those laid out by these defendants and consequently would have disarranged their whole plan.

And these defendants deny that there ever was between them and the complainant any negotiation or talk of exchange of another lot for that claimed by complainant in manner and form as is mentioned in his bill or otherwise whatever. 10

And these defendants deny that the said Manning either directly or indirectly, directed or employed said Roome to make any survey whatever of any lot of land whatsoever for the complainant, and they say that if any such survey was made by said Roome, it was made by the direction of said complainant or some one in his behalf and not for the said Manning.

And these defendants deny that said complainant ever paid to said Manning the sum of ten dollars ($10) on any account whatever, and they deny that the said Manning 20 ever received or accepted the same from said complainant either directly or indirectly on account of said supposed purchase or on any account whatever.

They deny that the said complainant ever tendered the balance of one hundred and forty dollars ($140) or any other sum of money to said Manning or any deed of the premises to him, and requested him to execute the same at any time whatever, and they deny that said Manning ever gave permission to said complainant to take any possession whatever of said premises, or any portion of 30 the same, or to make any erection whatever, thereon. And they deny that said complainant ever did take any possession whatever of said premises before the sale and conveyance thereof to these defendants, or that he had any building or erection thereon, unless it be the said dancing platform so erected by him as aforesaid by the express permission of these defendants.

And they say that they do not recognize the description contained in complainant's bill of the land conveyed by said Manning to these defendants as including the 40

lands so alleged by the complainant as having been bargained for by him and first described in said bill, but believe and so allege the truth to be that it does not include the lands so first described by said complainant.

These defendants admit that said complainant has on several occasions demanded of these defendants the conveyance of a lot of land which he asserted that said Manning had agreed to convey to him, and expressed himself as ready and willing to pay one hundred and forty dol-
10 lars ($140) as the purchase money thereof to these defendants, but they deny he ever tendered any money to them, and they say that they on all occasions refused to make said conveyance to him or in anywise to recognize any right or title legal or equitable to the same on his part.

EDMUND D. HALSEY.
Solicitor for and of Counsel with
Defts., Noble & Howell.

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The answer of Richard H. Manning one of the defendants to the bill of complaint of Amos Chamberlain, complainant.

This defendant for answer unto the complainant's bill of complaint or unto so much therof as this defendant is advised it is material or necessary for him to make answer unto, answering says:

That he admits that on the first day of March, A. D. eighteen hundred and seventy-eight, he was seized and possessed of a large tract of land situate in the township 10 of Pequannoc in the County of Morris and State of New Jersey, and supposes that the tract first described in complainant's said bill of complaint was part thereof although this defendant does not recognize the said description in complainants bill of complaint and has no recollection of ever having read or seen the same until he saw it in said bill and never knew that any portion of his land had ever been separated from the whole tract by any such description. And this defendant denies that he was desirous of selling and disposing of said tract of land so firstly des- 20 cribed in said bill or that on the fourth day of March, A. D., eighteen hundred and seventy-eight or at any other time, he employed said James Tintle as his agent to sell and dispose of the same or any part thereof or to sell and dispose of any of this defendant's said lands.

And this defendant denies that he gave the said James Tintle full power and authority or any power or authority whatever to sell and dispose of said lands as his agent or to contract and agree for said lands or to receive the moneys arising from such sales; that this defendant did 30 not at any time give to the said James Tintle the same power as he himself might exercise relating to the sale of said lands or in contracting and agreeing to convey the same or any power or authority whatever in the matter.

And this defendant denies that the said James Tintle acted as the agent of this defendant in the sale of other lands of this defendant to other persons but on the contrary he says that this defendant employed said Tintle only to have the general oversight of his lands and protect the same from trespassers, to cut and sell the wood. 40

That several persons desirous of purchasing lands of this defendant made offers to him through the said Tintle which offers this defendant either accepted or rejected as he pleased, but in no case and at no time did the said Tintle have the power or authority from this defendant, nor did he ever exercise or claim the power or authority to make or conclude any agreement concerning the sale of any of the defendant's lands.

10 And this defendant admits that the complainant at some time in the Spring or Summer of 1878, but at what exact time this defendant cannot now fix, but after this defendant had entered into negotiation with said Noble & Howell for a sale of the whole property, applied to said James Tintle for the purchase of a piece or parcel of land in the neighborhood of the lands first described in the complainant's bill of complaint, but that said parcel of land was not surveyed, nor was it at that time, if ever, exactly defined as set forth in complainant's bill of com-
20 plaint. That said Tintle repeated said application to this defendant, but this defendant denies that he entertained said application or accepted any offer for said parcel of land or that he in any manner contracted or agreed to convey said parcel of land or any parcel of land to complainant.

And this defendant denies that on said fourth day of March, eighteen hundred and seventy-eight, or at any other time the complainant contracted and agreed to pur-
30 chase of this defendant for the sum of $150, the lands in said bill of complaint first described or that this defendant contracted and agreed to convey to complainant said lands or any lands whatever for said sum of $150, or any other sum of money as alleged in said bill of complaint or otherwise whatsoever.

And this defendant denies that at the time of said alleged agreement or at any other time this defendant agreed to convey said lands or any lands whatever, to the
40 complainant or to deliver to him a deed of conveyance

for said lands or any lands in a very short time or at any time whatever.

And this defendant denies that on the fifth day of March, 1878, or at any other time, he employed Benjamin Roome to run the boundaries of said lands so alleged to have been contracted for, but he says that if said Benjamin Roome made any such survey, he did it at the special instance and request of the complainant or of some person other than this defendant. 10

And this defendant denies that immediately after said alleged survey was made or at any other time, this defendant delivered possession of said lands to said complainant or that complainant entered into possession thereof under the terms of said agreement or in any manner whatever while this defendant was the owner of said lands.

And this defendant denies that said complainant informed this defendant at any time of his desire to build at once on said premises without waiting for a deed of conveyance of the same to be executed, or that this defendant said it would be all right, or anything to that effect, or that he instructed and advised the complainant to commence building upon said lands without waiting until the same was conveyed to him, or that he then or at any time informed complainant that a deed would be executed to him by virtue of said alleged agreement to convey in a very short time or at any time. 20 30

And this defendant denies that complainant did on the fifth day of March, 1878, or at any time before the conveyance was made by this defendant to Noble & Howell hereinafter stated, commence to build and construct on said lands any building whatever or to exercise any act of ownership whatever therein or in any way to take possession thereof. This defendant admits that he has heard that since the conveyance by this defendant to said Noble & Howell of all his lands in that neighborhood 40

and after the said Noble & Howell had entered into and taken possession of said premises under the deed of this defendant, said complainant erected a building somewhere on said premises, but of what kind, or at what cost and of the exact location this defendant is a stranger and leaves the complainant to make such proof thereof as he is advised is necessary or proper, and this defendant says that at the time of such building or improvement this defendant had conveyed to said Noble & Howell all said
10 lands and premises, and this defendant denies that he ever at any time gave possession of said premises, or any part thereof to said complainant or that he the said complainant was or continued to be in possession of said premises or any part thereof until long after said conveyance from this defendant to said Noble & Howell.

And this defendant has no knowledge whether or not complainant paid to said James Tintle the sum of ten dollars or any such sum but this defendant says that said
20 James Tintle had no right or authority to accept said sum as the agent of this defendant and denies that this defendant ever received or accepted said sum of ten dollars or any other sum from said complainant, through said Tintle or otherwise.

And this defendant denies that this defendant at any time while he was seized or possessed of said lands had any interview or conversation with said complainant respecting said lands or that any tender of any money was
30 ever made to him by said complainant or that he was requested by said complainant to execute any conveyance, but this defendant says that after he, this defendant, had conveyed said lands to said Noble & Howell, said complainant twice visited complainant in the city of New York and endeavored to obtain from this defendant some statement or to persuade this defendant to do some act upon which he could found a claim or pretext of right to said premises in his negotiations with said Noble & Howell, but that this defendant refused to have anything
40 to do with said complainant, denied that he had any claim

whatever to said land, and declared that he this defendant, had sold and conveyed said lands to said Noble and Howell and that he the complainant must apply to them if he wished to purchase and make his own bargain with them.

And this defendant admits that on or about the twelfth day of June, A. D., eighteen hundred and seventy-eight, by deed dated on that day, this defendant conveyed the lands described in the complainant's bill with other lands 10 adjoining thereto to said Noble and Howell including the lands pretended by the complainant to have been bargained for by him, but that said Noble and Howell were in negotiation with this defendant for said lands continously for months previously and before the month of March, A. D., 1878, and before said complainant made any overtures or offers for said land to said James Tintle.

That said Tintle was informed by this defendant of said negotiations and that he this defendant would not sell any part of said premises to any one pending said negotiations. 20 And that said Tintle and said complainant well knew that said lands were not for sale at the time said complainant approached said Tintle and endeavored to purchase said lands as he has alleged in his said bill.

And this defendant denies that at the time of said conveyance to them as aforesaid, said Noble and Howell, or either of them were informed of any agreement on part of this defendant to sell any part of said lands and premises about to be conveyed to them to said complainant, 30 and he says that no such agreement existed—and this defendant denies that said Noble and Howell ever agreed with this defendant to convey any part of said land and premises so conveyed to them to said complainant.

And this defendant denies that said Noble and Howell at the time of the said conveyance to them had any notice of any such pretended agreement as complainant alleges in his said bill or that complainant had a building in process of erection on said lands or was improving said 40

lands or had spent any money whatever in improving the same.

And this defendant says that he is a stranger to what complainant in his said bill alleges to have occurred in the month of July, 1878 after said conveyance to said Noble and Howell between said complainant and said Noble and Howell as to exchange of property and as to building a road through said premises and also as to said suit in
10 ejectment in said bill mentioned and therefore leaves the complainant to make such proof thereof as he shall be able to produce.

And this defendant humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

EDMUND D. HALSEY,
Solicitor for and of Counsel
with Richard H. Manning Deft.

20

In Chancery of New Jersey. 10

Between

AMOS CHAMBERLAIN

and

ROBERT H. MANNING 20

and others.

Dec. 14, 1883.

Examination of witnesses in the above entitled cause taken before Isaac Van Wagoner, Esq., at his office in Paterson, N. J., in the presence of Z. M. Ward, of counsel for complainant, and John W. Pitney and Edmond D. Halsey, of counsel for defendants. 30

AMOS CHAMBERLAIN, complainant, being sworn, testified as follows:

By Mr. Ward:

Q. Where do you reside?
A. Newfoundland, Passaic County, New Jersey.

Q. How long have you lived there?

A. Some 15 years.

Q. What is your age?

A. Sixty-five.

Q. What has been your business?

A. Keeping a hotel, the last number of years—my principal business.

Q. You are the complainant in this case?

A. Yes.

10 Q. How far do you live from Bloomingdale?

A. About seven miles, I should judge.

Q. Do you know Richard H. Manning?

A. Yes.

Q. Do you know of his owning some lands at Bloomingdale, in the year 1878?

A. Yes.

Q. Do you know of lands being sold there, that belonged to him?

A. Yes.

20 Q. Do you kuow of his having any person who acted as agent in the sale and disposition of his property?

Objected to, unless the witness knows.

A. I know it from hearsay and his acts, that is all; he told me he was.

Q. Do you know it?

A. Yes.

30 Q. How?

A. Through Manning and James Tintle.

Q. Who was the agent?

A. James Tintle.

Q. Where did he live?

A. Bloomingdale.

Q. What was his business at that time?

A. All I know, the selling and contracting for lands, —doing business for Mr. Manning.

Q. Was he a resident of Bloomingdale then?

A. Yes, close by there, in the suburbs.

Q. Did you buy some lands of Mr. Manning?

A. Yes.

Q. Where were they situated?

A. In Bloomingdale; we called it "Bloomingdale land;" it is called Butler, now.

Q. In what county is that land?

A. That land is in Morris county, I believe, Pequannock township. 10

Q. Is it the same land that was described in the bill in this case, that was filed in the Court of Chancery?

A. Yes.

Q. Will you now just state the negotiations that you had, and what they were with Mr. Tintle, commencing with Tintle, and also any conversations or negotiations you had with Mr. Manning, when it was and where it was?

Mr. Pitney.—The declarations of Mr. Tintle are objected to, as incompetent against Mr. Manning, and the statements of Mr. Manning are objected to, on the ground that title cannot be conveyed by parole. 20

A. I contracted with James Tintle for a lot of land, on the 28th of Feb., 1878; we made the bargain on the 4th of March; I received a note from him that he had run off that lot— 30

Objected to, unless the notice is produced.

Q. Do you mean a note, or postal card? (Handing the witness a postal card.)

A. I mean that postal card.

Q. Is that the one that you received?

A. Yes.

Q. Is that James Tintle's hand-writing?
A. Yes.
Q. And you understood it to be such?
A. Yes.

Complainant's counsel offers the postal card in evidence. Marked, complainant's Exhibit A.

10

Q. When did you receive that?
A. March 4, 1878.
Q. Where did you receive it?
A. At Newfoundland.
Q. What was the value of the lands, or price to be paid for the lands that you say you bargained for with Mr. Tintle?
A. $150.
Q. Did Mr. Tintle tell you at that time, for whom he
20 was acting?
A. Yes.
Q. Whom?
A. For Mr. Manning, in New York, of the River Company—acting for Mr. Manning.
Q. Will you give us the substance of the contract that you made with Mr. Tintle and the boundaries of the land, if any, shown at the time the contract was made, and what was done about the purchase of this land between you and Tintle?
30 A. I went down on the 5th—the next day; he showed me where he had run off the land—showed me the corner, exactly where I stuck my cane in; the contract was the 28th of Feb.; he showed me where he had run it out; I says to him, "It is just where we bargained for." He said, "Yes." I said, "All right, I find no fault; now I am ready to pay it at any time; I want to go right to work at it." "Well," he said, "here is your corner, borders and lines; I now deliver it over to you and give

you possession; go on, as soon as you have a mind to; we will make you a deed in a few days or a few weeks."

Q. Who would make it?

A. Mr. Tintle would see it would be made.

Q. By whom?

A. Made by Mr. Manning.

Q. When did you say that was?

A. March 5th, 1878. 10

Q. Do you know who had run it out?

A. Yes; Benjamin Roome.

Q. Whose surveyor was he, at that time?

A. Mr. Manning's.

Q. On the 28th of Feb. you say you made the contract?

A. I did.

Q. Did you go upon the ground?

A. Yes, sir.

Q. Were there any bounds designated or lines shown 20 to you at that time, where the land was to be?

A. I pointed it out to Mr. Tintle, where I wanted the lands to be—asked him his price and he told me, and I said I would give it.

Q. What was his price?

A. $150; he was acting agent for Mr. Manning, he told me.

Q. Was there any arrangement made about the running of the lines by any surveyor, at that time?

A. He told me he would get Mr. Roome to run it out 30 for me immediately.

Q. And when you went down, after receiving this postal card, did you then see where Mr. Roome had run the lines?

A. Yes, sir; Mr. Tintle showed me the lines which he run—gave me the lines and borders, where they struck.

Q. Did you, on that day, take possession of the land?

A. Yes, I took possession of it, and even went to work at it.

Q. Did Mr. Tintle give you possession?

A. Yes, he gave me possession right on the spot.

Q. What did he say?

A. He said, "Here, you can have it; I give you possession now; do whatever you like with it; I give it right over to you." He said he would make me a deed in a few days or weeks. He said days or weeks.

Q. That he would make the deed?

10 A. That Tintle would have it made from Mr. Manning, and I must give him the money.

Q. After the 5th of March, and after you had taken possession of this land, did you see Mr. Manning?

A. Yes, sir.

Q. Where did you see him?

A. At his office, in New York.

Q. Did you have a conversation with him, about this purchase of lands from Mr. Tintle?

A. Yes, about the 25th of March I saw him.

20 Q. In what year?

A. 1878.

Q. Did you tell him you had purchased this property?

A. I did; he said to me it was all right.

Q. What did you say to him about the purchase of it?

A. I told him I had made the bargain with James Tintle, for that lot of land—describing it—and he said it was all right; he said he was acting as agent for him.

Q. That who was?

30 A. That James Tintle was; any bargains I made with James Tintle, he said, were all right; I told him he had showed me the property and had given me possession, and that I then had possession of the property; he said he was glad, that it was all right.

Q. Did you name to him the price you were to pay?

A. Yes, I told him $150, and he didn't find any fault whatever.

Q. Did you say anything to him about building upon the property at that time?

A. Yes, I told him I was about to build on it then; I had commenced work on the foundation.

Q. What reply did he make to that?

A. He said, "All right;" he said anything done by James Tintle was all right—that he was his agent.

Q. Did you then keep on building?

A. Yes.

Q. Did you have a conversation with Mr. Manning, subsequent to that conversation? 10

A. Yes.

Q. How long about, was it, after that?

A. It was the latter part of May, the next time; it was in New York.

Q. Did you say anything to him then about the purchase of this property?

A. Yes.

Q. What did you say to him?

A. I said to him that I had bought that property and I began to feel as if I wanted a deed for it now, and he said all right, he expected to be up there a few days before, and didn't come. He said to me the reason why he didn't come was that he was about negotiating with another party—he didn't tell me who the party was—for the sale of the rest of that land. I said, "Has that got anything to do with me?" He said "No, what is done already is all right." He said it had nothing to do with me. 20

Q. How far had you progressed with your building, at that time? 30

A. I forget just whether I had it raised then, or not; I had the timber all got out, ready; I don't know whether I had it raised or not; I can't recollect, exactly, but I had been working at it, and getting out timber, all the time.

Q. Working along, from day to day?

A. Yes, working from day to day, all the time; I saw him the latter part of July.

Q. Did he say anything about the certainty of his selling this property at that time, whether it was uncertain or not?

A. He said he was about negotiating for the sale of the rest of the property; "I don't know as I shall make any sale, but," says he, "most likely I may."

Q. Did you call on Mr. Manning, in regard to this
10 property, after that?

A. Yes, sir.

Q. About how long was that?

A. That was in July, I should say, some time in July, about the latter part of July; I called on him for the deed, then.

Q. Well, what then?

A. He then said to me that he had transferred the rest of that property, or the property altogether, to another party, Howell & Noble, and they would make me
20 a deed for my part—what they had sold to me; I said, "Will they make me a deed?" He said, "Yes, they will make you a deed, all right."

Mr. Pitney.—The declarations of Mr. Manning, after the date of the conveyance from Manning to Howell & Noble, set out in the bill, are objected to as not binding on them.

Q. Did you know at that time that there had been any transfer by Mr. Manning to Howell & Noble?

30 A. No, sir; I did not.

Q. Was the first information that you had as to that transfer, from Manning, at the time of the last conversation you have stated?

A. That was the first, yes, at that time of that conversation.

Q. At the time you purchased this property, or the boundaries were made, on the 5th of March as you state, did you pay any down-money?

A. No, sir, not then.

Q. Have you paid any down-money?

A. Yes.

Q. How long subsequent to this 5th of March was it that you paid they money,—if so, how much was it?

A. The 8th of May I paid $10.

Q. To whom?

A. To James Tintle, on this property; at the time I offered him more; shall I go on? 10

Q. Yes, you may state it.

A. At the time, I offered him more money; he got one $10 bill, and he said, "We will give you a deed and you can hand the money over altogether;" I said, "All right;" he said, "Give me the money altogether;" he kept the $10 bill and refused to take any more; I tendered him $40 or $50 out of my pocket; I said, "You are so slow about this deed; no question about it whatever?" "Oh, no, not the slightest," he said; then I said, "I will make payment." 20

Q. Was that before you saw Mr. Manning in May, that you have spoken of?

A. Yes.

Q. And it was after Mr. Manning had told you Mr. Tintle was his agent?

Objected to as leading.

Q. Was it after?

A. Yes, it was after that he had told me he was his agent; it was the next visit. 30

Q. Were you at that time busy, building or erecting a building upon this land?

Objected to as leading.

A. Yes, sir.

Q. Will you tell us what you did?

A. I built the foundation and got timber out for all the building.

Q. Where was the timber?

A. It was got out principally at Newfoundland, and carted down there; the foundation was laid; the stone was brought from up there, and the foundation laid.

Q. Was the cellar dug?

A. The ditch was dug; there was no cellar to it; the ditch where we laid the wall was dug.

10 Q. Where was the timber at that time?

A. It was some on the ground and some between there and Newfoundland, carted at my convenience, whenever I could; that was my principal business—building there, after the 5th of March.

Q. Working there about how often?

A. Every few days, off and on, all the time; when I was working at home I was not working there, but when I was there, I had to go down there and work.

Q. Was this place a conspicuous place, where it could 20 be seen readily from the road—where this building was being built?

A. Yes, very much so.

Q. Have you erected a building upon the lands?

A. Yes, sir.

Q. Will you describe the size of the building and the character of it?

A. Well, I think it is forty feet one way—the finished part—and sixteen feet the other way; there are eight rooms, counting the hall-room below.

30 Q. Any other buildings on it?

A. One little small barn.

Q. How near was that building completed on the 12th of June of that year, 1878?

A. I can't just recollect; I had all the timber; I don't recollect exactly the time I did get it out; at that time I must have had it raised and partly enclosed; I know I had a spree there, on the Fourth of July.

Q. What do you mean by a spree?

A. Well, a dancing party; there is a platform attached to it, and I built it for that purpose.

Q. Had there been any streets or passage-ways built over it, at that time?

A. Not at that time, no, sir; not before the Fourth of July; after the Fourth of July—

Q. Never mind that.

A. I can't just recollect that, at the moment.

Q. Do you know of Mr. Tintle's selling other lots for Manning at that time, or the time you purchased yourself? 10

Objected to, unless the witness speaks from his own knowledge.

Q. What do you know of your own knowledge?

A. Only by hearsay.

Q. Have you been ready and willing at any time to pay the balance of the purchase money?

A. Yes, at any time and at all times. 20

Q. Will you tell us what you said to Mr. Manning about getting your deed the last time you saw him, that you have stated?

Mr. Pitney.—Mr. Manning's declarations are incompetent because it already appears that the last time the witness saw him was after the transfer was made to the defendants, Howell & Noble.

30

A. Then I went to him and asked him for the deed; that was in June, 1879; I offered him the money and demanded the deed; I had a deed with me—I had a blank with me, and had the deed made out by Mr. Roome, not filled up; I tendered him the money, and he refused to take it; the next day after I was there I went to Morristown and tendered the money to Howell & Noble, in the banking-room, and told them I wanted my deed of the property, and they refused to take it.

Q. Did you see Mr. Howell and Mr. Noble after the 12th of June, 1878, at Bloomingdale?

A. Yes, several times.

Q. When was it that you saw them first, or either of them, at Bloomingdale, after the 12th of June, 1878?

A. Well, I think I saw them several times in the rest of that month and through the next month of July; they were frequently there; we met several times; I met Messrs. Howell & Noble and showed them—

Q. The first time that you saw Messrs. Howell & Noble after the 12th of June, were they together?

A. Yes, sir, I think they were.

Q. You had seen neither of them separately, up to that time?

A. I believe not, not to say anything; I might have met them, something of that kind.

Q In what place was it that you saw them in Bloomingdale?

A. Upon the hill, by my place.

Q. On your land?

A. Yes, mine and theirs adjoining.

Q. Did you have a conversation with them about the purchase of this land?

A. Yes, sir.

Q. There, at that time?

A. Yes, at that time.

Q. Just tell us what that conversation was, as you remember.

A. Well, they asked me to show them the corners and borders and the lines, and I did so.

Q. The lines of what?

A. Of the lot which I had purchased; Mr. Howell said to me he didn't think I paid enough for it; I replied to him if I had not thought it was worth the money I wouldn't have bought it; that was the price they fixed on it; I didn't fix the price.

Q. What else was said at that interview, if anything?

A. Nothing particularly at that time, that I recollect of. They did not claim anything of me at that time.

Q. Was your building then erected?

A. Yes, it was, but perhaps not finished.

Q. Did you at any time at that interview say, or did Howell & Noble, either of them, or any one of you three, say anything about exchanging property there or lands?

A. Yes; Howell & Noble proposed— 10

Q. You have answered that. What was said about it, and who said it?

A. They proposed—

Q. Who proposed?

A. Howell and Noble were together; they both seemed to chime in and talked together about it; they proposed trading me a lot; they thought it would be better for my business down in the hollow, the side of the hill by the old depot, to exchange it for that lot. I had done work on it and didn't see fit to do it. 20

Q. You didn't do it?

A. No, sir.

Q. What did you say to them about it?

A. I said, "I don't see fit to exchange; I don't care to do it now."

Q Had you then shown them the boundaries of this lot?

A. I had.

Q. Was there anything said at that interview about a street being made there? 30

A. Not from them; no, sir.

Q. Was there anything at any time said by them about making a street over the hill?

A. Mr. Tintle spoke to me after that and said they got him to do it.

Q. Do you know of Howell & Noble opening a street?

A. Yes. Up the hill do you mean?

Q. Yes.

A. Yes.

Q. And some portions of it crossing this land?

A. Yes.

Q. Was your consent obtained or anything said to you about consenting to laying a street there?

A. Yes.

Q. Who did?

A. Mr. Tintle asked permission of me and said Messrs. Howell & Noble would like to lay a street up there. They staked it out in my absence and asked me permission to make it.

Q. Did you give permission?

A. Yes.

Mr. Pitney.—What Tintle said is objected to, because there is no proof he was authorized to bind Howell & Noble, or either of them.

Q. Did you know, of your own knowledge, of Howell & Noble building that street or having it built?

A. I know they were there, overseeing it and working there.

Q. Is that the street, a part of which run through your land, that Tintle asked permission for?

A. Yes.

Q. Is it a private way?

A. Yes.

Q. Was it made for the accommodation of any persons?

Objected to.

Q. If so, whom was it made to accommodate?

A. It was for the accommodation of Howell & Noble, to reach up to their street, and I thought it did no injury to me.

Q. Did you have a conversation with Mr. Howell about building upon that lot? If so, what was it?

A. I don't remember anything particular; I had a building up, you know.

Q. About his building on it?

A. About Howell's building?

Q. Yes; if so, what did you say to him about it?

A. I guess he never offered to build on that lot which I bought.

Q. Did you have more than one conversation with Messrs. Howell & Noble about this property? 10

A. Oh, yes, two or three times, at different times.

Q. Can you give us any further conversation than you have already given about it with them?

A. I recollect once that Mr. Noble came and forbid me working when I was putting lath on there. I said to him I would not stop work.

Q. When was that? If you have no letter by which you can tell exactly govern your mind by your best recollection and give us that. 20

A. My best recollection is it was in that fall of 1878; yes, it was after the 28th of October, 1878.

Q. Had there been any fault found with you by Mr. Howell and Mr. Noble up to that time?

A. Not before October, 1878; that was the first—the 28th of October; that is the first I learned they were going to claim it and drag me away from it.

Q. Had they been there from the month of June up to that, frequently about the place?

A. Yes, very frequently. 30

Q. You had seen them there?

A. Yes; running out the lots and everything.

Q. Running out lots near to your place that you had purchased?

A. Yes; up on the hill.

Q. Adjoining?

A. Some adjoining, yes; and in my absence they run the lines right over my lot.

Q. You say Mr. Roome was their surveyor?

A. Yes.

Q. Did you see him very frequently surveying for them?

A. Yes; frequently.

Q. Did you see him surveying previous to the month of June for Mr. Manning, do you know of your own knowledge?

A. I don't remember that I saw him running before that time that I know of, but I did after that.

10 Q. Was there a deed made by him, describing this property?

A. Yes.

Q. Would you know that deed if you saw it?

A. Yes; that is the deed made out. (Producing a paper.)

Mr. Ward offered it in evidence. Objected to, as not sufficiently proven.

20 Q. From whom did you get that deed?

A. From Mr. Roome.

Q. For what purpose did you get it?

A. For me to have it signed by Mr. Manning, for my title.

Q. Does that deed contain a true description of the property in question here?

A. Yes.

Q. Do you recollect about the time that you got that deed from Mr. Roome?

30 A. I don't remember the time he made that deed, but I recollect this much—that I had that with me and tendered it to Mr. Manning with money.

Q. Did Mr. Tintle reside near this property that you had purchassd?

A. Yes.

Q. How near did he live to it?

A. Within a mile; we were down on it every day, almost.

Q. Every day after you purchased it up to the 12th of June?

A. Very frequently afterwards ; I can't say exactly that time.

Mr. Pitney.—Having looked at the deed, I wish to enter my objection to its being received in evidence, on the ground that if it was prepared by Benjamin Roome or his son there is no sufficient proof before the Court at this time that it was done by our request or authority in any shape, nor that Messrs. Roome were authorized by Howell & Noble to make any such deed.

Marked Exhibit B.

Q. Previous to the 12th of June, and from the 5th of March up to that time, was Mr. Tintle around the place often ?

A. Yes, very often ; very frequently.

Q. What were you doing when he would be there ?

A. Working at the house, frequently.

Q Who was with you at the time you paid Tintle the $10, if anybody ?

A. William Schulster.

Q. Did you have a conversation with Messrs. Howell & Noble about your purchasing the ground, as to their knowledge, what they had heard, or anything of that sort ?

A. Well, yes ; I don't know particularly as they ever said anything, just what they had heard, that I know of.

Q. Anything said about one acre of ground ?

A. Oh, yes ; Mr. Noble said they had heard I was to have but an acre, and they would willingly give me an acre, if I would be satisfied ; they would run it off ; I said "No, not unless it comes in my plot ;" they said they would run me off the acre which my house was already on ; I said I didn't accept of it unless it covered my plot, where I had bought ; that was my reply.

Q. When was that conversation?

A. That was in the fall; I think it must have been some time in November, 1878.

CROSS-EXAMINATION:

By Mr. Pitney:

10 Q. This postal card (Exhibit A), you say that is in Tintle's hand-writing?

A. Yes.

Q. You have seen his writing frequently?

A. I think it is his hand-writing.

Q. Any doubt about it?

A. I don't think there is any doubt about it, at all.

Q. How often have you seen his writing?

A. Not very often.

Q. Did you get this through the mail?

20 A. I don't know how it came to me, whether it was sent to me; it appears to me it was handed to me on the night of the 4th, to come down the next day.

Q. Did you go down the next day?

A. Yes.

Q. Whom did you see there?

A. Mr. Tintle.

Q. Did you see Messrs. Roome, or either of them?

A. No, sir.

30 Q. They were not there?

A. No.

Q. They were not surveying that day?

A. I don't know; but he showed me the corner and the lines—

Q. I didn't ask you that; I ask you if the Roomes were there; did you see them?

A. No, sir.

Q. When did Mr. Roome prepare this deed that you have produced here, for Mr. Manning to execute?

A. I couldn't fix the date exactly, but it was a short

time before I tendered him the money and took that deed with me.

Q. When was that?

A. That was in June, 1879; I had the deed with me, and tendered the money.

Q. You requested Mr. Roome to write this deed?

A. Yes.

Q. You went and employed him? 10

A. Yes.

Q. Who paid him for it?

A. I suppose I did, for that deed.

Q. This deed which I hold in my hand, and which is marked Exhibit B?

A. Yes.

Q. Where did this description come from; who prepared this description contained in the deed?

A. Who run it out, do you mean?

Q. No, who prepared it; who made the courses and 20 distances? You know what I mean.

A. Tintle gave them the courses and distances, and had them run out.

Q. Who gave it to Mr. Roome?

A. He came and run it out there again on the same spot.

Q. I am asking you who procured or made up or produced these courses and distances contained in this deed?

A. I don't know; they are the same lines that he had 30 run out; he delivered them to me.

Q. Who did?

A. Mr. Tintle.

Q. After you got it did Tintle deliver it to you?

A. The lands are there.

Q. I want to know where these courses and distances came from?

A. From the lot that was run out to me.

Q. Who figured them out?

A. Mr. Roome.

Q. Here is, first, south 16 degrees, west 337 feet; did he give it to you himself?

A. Yes, run it and put it there himself.

Q. Second, along his line and road 420 feet, to opposite the south-west corner of the Sisco House?

A. Yes.

Q. Who produced that line?

10 A. He did, himself.

Q. Mr. Roome?

A. Yes.

Q. Did you see him come there and run it over again?

A. Yes.

Q. When?

A. A short time before; right on the same ground; before I tendered the money in June, 1879.

Q. He made these measurements in June, 1879, before you tendered the money?

20 A. He measured the same lots there again.

Q. I don't ask you that; when was it that you know or saw that Benjamin Roome measured that line that I just read, second, along his line and road 420 feet to opposite the south-west corner of the Sisco House; when did you see him run that line?

A. That was a short time before I tendered that money in June, 1879.

Q. It was about the time he made this deed?

A. Yes.

30 Q. Before making this deed he went on the ground and measured it?

A. Yes.

Q. In June, 1879?

A. Yes.

Q. Have you got the bill that Roome made out against you after doing that survey and drawing this deed?

A. No, sir?

Q. You paid him?

A. Yes.

Q. Where is it?

A. I don't know; I paid him for surveying it out.

Q. And for writing this deed?

A. I paid him for surveying it out right on the same spot.

Q. For that surveying that he did in May or June, 1879, did you pay him?

A. Yes.

Q. Have you got a bill for it here?

A. No, sir. 10

Q. How much did you pay him?

A. I don't now recollect. I recollect paying him that.

Q. You say that when you went on the ground with Mr. Tintle in the last of February, 1878, you and Tintle agreed on certain corners?

A. Yes.

Q. And you put something in the ground—some mark in the ground by which you knew those corners?

A. Yes.

Q. What was it? 20

A. I stuck my cane right down into the place, and he made that a beginning point.

Q. When did you do that?

A. The same time I contracted for the land, 28th of February.

Q. Did you leave your cane there?

A. Yes.

Q. And that corner you showed to Mr. Roome when he came to survey there, in June, 1879?

A. He knew it himself. 30

Q. I ask you if you showed it to him?

A. I can't recollect about that. I don't recollect about that, because that was the corner I showed him in 1878, you know.

Q. Did you show it to him in 1879?

A. I guess not; I guess he knew it in 1879.

Q. He did run to the same place?

A. Yes.

Q. Did he run the next line in your presence?

A. Yes; he did.

Q. And made that distance, as stated there?

A. Yes; made that distance?

Q. Did you show him the corner there which you and Mr. Tintle had agreed upon in March, 1878?

A. Did I show it to him then?

10 Q. Yes.

A. No, sir.

Q. When did you show it to him?

A. In February, 1878.

Q. Did you show it to Roome?

A. No, sir.

Q. Did anybody show it to Roome?

A. I can't say; somebody must have, or he wouldn't have run it in the same place.

Q. It must have been shown to him that very day, in June, 1879?

20 A. Didn't I just say he knew it?

Q. I am asking you about the conversation between you and Roome.

A. Will you understand me, if you please?

Q. No; I will ask you a question. Did you ever show to Benjamin Roome or his son, William Roome, on the land, the corners which you say that you and Tintle had agreed on in February or March, 1878?

A. Not that I recollect of.

30 Q. Were there any stakes or stones put down in February or March, 1878, to mark those corners?

A. In February, 1878? Yes; my cane was stuck down and we agreed to a certain monument. Now will you understand me? That was the line agreed upon. That was agreed upon to street No. 2, this way to Stony Road. Here was my stake made in the corner. They had to run out and start at my stake.

Q. I ask you what you showed Benjamin Roome?

A. Nothing.

Q. Never showed him anything?

A. Not on that point.

Q. Did you ever show him or William Roome any corners beyond this—any corners of that lot?

A. I don't know as I did.

Q. Did you ever?

A. I don't remember that I did.

Q. Were you ever on the ground with him?

A. Yes; he showed me the corners. 10

Q. Were you ever on the ground with Benjamin Roome previous to May or June, 1879?

A. No, sir; not when he went first.

Q. Were you ever on the ground with him—with Benjamin or William Roome—previous to May or the last of June, 1879?

A. I have been on the ground when he was surveying it for Noble. I don't know what you want?

Q. This is what I want: Were you ever there on the ground at the same time Benjamin Roome was there 20 before the last of May or the first of June, 1879?

A. You mean on my plot?

Q. Yes; or in that immediate neighborhood.

A. I was on the ground, but not on my plot—in that neighborhood.

Q. Previous to June, 1879, did you ever go with him on the ground?

A. Not that I recollect.

Q. Did you ever see a map of this property previous to May or June, 1879? 30

A. Yes.

Q. Where did you see it?

A. I think Tintle had it.

Q. When was it?

A. It was on or before the 28th; it was before the 28th of February, 1878.

Q. You are quite sure of that?

A. Yes.

Q. Who made the map?

A. I don't recollect it.

Q. Have you got any map in your possession, or in the possession of your counsel, of this property?

A. I don't know; I forget.

Q. Let me see what you have got, if you please.

(The witness produces a paper.)

Q. Is that the map?

10 A. I guess that is.

Q. You have cut out the plot of ground and laid it on this map?

A. Yes, I think so; I don't recollect; it has been a long time, two or three years.

Q. When did you get this map and who made it for you?

A. I made it myself from a borrowed map that Mr. Tintle had in his possession.

Q. When did you make it?

20 A. I can't recollect it now.

Q. These lots that are on this map laid out here, were they laid out on the ground at the time you bought?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. This map had not been made at that time at all?

A. No, sir, the principal corners have been made since that; it was made up to somewhere down here.

30 (Indicating.)

Q. Was Second street laid out then, when you bought?

A. Yes, it was laid out on the map, on the first original map, which was to move that house; I consented to move it and let him lay the street adjoining.

Q. I didn't ask you that. Was Third street laid out when you bought?

A. No; Third street was not laid out when I bought.

Q. But Second street was?

A. I think it was; I guess it was, where Second street was to be laid.

Q. Was your lot laid out with a view of running on Second street at that time?

A. The description was that the street was to be opened there—that Second street was to be opened and was to run down to that street, and that house was to be moved.

Q. Whose house?

A. We called it the Manning house, then.

Q. Is it the house called the Sisco House, in your deed? 10

A. I don't know; I think it is; I don't know.

Q. There is a house in your deed, called the Sisco House, spoken of here?

A. I have no recollection of that; I can't tell.

Q. Is that shown on that map?

A. I don't know, sir.

Q. Now, to come back to this description made by Mr. Roome. Mr. Roome did run those lines out for you on the ground about the time he made that deed, or just before he made that deed in the summer of 1879, 20 did he?

A. Yes, he run it over.

Q. And the only corner that was there was where your cane was?

A. That was the beginning corner.

Q. Was your cane still sticking in the corner there?

A. No, sir.

Q. How did you find the corner?

A. I fixed it so I couldn't lose it, by a bar of iron five or six feet down. 30

Q. When did you put the bar of iron there?

A. When it was sold to me.

Q. The date?

A. I don't recollect the date; I can't tell the date, sir.

Q. Did Mr. Roome run from that bar of iron?

A. Yes, a stake on top of the bar of iron.

Q. Who put the stake there?

A. Mr. Roome, when he first ran it out; then he knew

where the corner was, to run the second time the same ground.

Q. You say that on the 28th of Feb., 1878, you stuck your cane down there?

A. Yes.

Q. How long did you leave it there?

A. Till they run the lot out; I don't know how long it was there.

Q. When did you put the bar of iron down?

10 A. After the property had been delivered to me the second time; there was a stake then, in that corner where the cane was.

Q. Who drove the stake in?

A. Mr. Tintle said Roome drove it in.

Q. Mr. Roome, before this postal was written, had run from that corner?

A. Yes.

Q. Then, some time afterwards, you drove a rod of iron down?

20 A. Yes.

Q. And drove a stake on top of it?

A. It was the same stake that was put on top that the surveyors put there when they run the lot.

Q. Then, when Mr. Roome went there the second time, in June, 1879, to survey, he run it there again?

A. Yes, he run right to the same stake himself.

Q. What was the use of Roome running that over if he previously run it?

A. It was his business; I don't know.

30 Q. Hadn't he a record of it before?

A. I don't know.

Q. Did he ever deliver any to you?

A. No, sir.

Q You never did have, previous to June, 1879, the description of this lot, with metes and bounds?

A. Only of monuments.

Q. In writing?

A. No, sir.

Q. You never had?

A. No, sir.

Q. From Mr. Roome, or anybody else?

A. No, sir; not that I recollect.

Q. Had you ever applied to Tintle for it? Had you asked Mr. Tintle for a description?

A. I don't know as I had, because I was to have the deed.

Q, Did you ask for a description?

A. I don't think I did. 10

Q. Had you asked Mr. Roome for a description, previous to June, 1879, when he run the lot; had you gone to see him and asked him for a description—what surveyors call a minute—of the lot, as he ran it in 1878?

A. I asked him for the deed.

Q. You never had seen it?

A. No, sir.

Q. You never had had the minutes of it?

A. No, sir; it was not delivered according to contract. 20

Q. Mr. Roome drew the deeds made for property around there?

A. I don't know.

Q. Why did you ask him for it?

A. Because Mr. Tintle said he would make it.

Q. When you went there on the 5th of March, you learned from Tintle that the lot had been run?

A. Yes.

Q. He gave you possession?

A. Yes. 30

Q. And he was to give a deed in a few days or weeks?

A. Yes.

Q. Which was it?

A. He said both; he said, "we will make it out for you in a few days or few weeks.

Q. You were a moneyed man?

A. Not always.

Q. Perfectly able to pay $150?

A. Yes, it has always been ready for him.

Q. In five or ten minutes?

A. Yes.

Q. Why didn't you insist on having your deed right away?

A. I did, and I took their word for it for their accommodation.

Q. If Mr. Roome had surveyed the lot right there that day, how long would it take him to make out a
10 deed and send it to New York and get it executed?

A. That was Mr. Tintle's business, and he didn't do it; you asked me "how long?" I don't know.

Q. You don't think it ought to take him long?

A. I don't know.

Q. He showed you on the 5th of March, when you were there, where Roome had run it?

A. Yes, he said, "Here is your lot."

Q. He showed you the same corners that Roome afterwards ran to?

20 A. Yes, Roome went there himself, and run them.

Q. You went to see Mr. Manning that same month, in New York?

A. Yes.

Q. March, 1878?

A. Yes.

Q. Sure of that?

A. Yes.

Q. You told him you had made the bargain with Tintle for this lot at $150?

30 A. Yes.

Q. He said it was all right?

A. Yes.

Q. And you say at that time you had commenced work on the ground?

A. Yes, I had.

Q. What had you done?

A. I had been digging for the foundation and cutting brush and getting out stone; one thing and another—

busy at it, you know; I supposed everything was all right and went to work at it.

Q. Did you have a mason to lay up that foundation?

A. No, sir.

Q. Never employed a mason?

A. I did at the last; I did part of it myself.

Q. Did you use any lime and sand?

A. I did use a little, I believe.

Q. Where did you get lime and sand?

A. I guess I brought it from Newfoundland. 10

Q. Whom did you buy the lime of?

A. I can't tell you that now.

Q. Did you buy it of some neighbor?

A. I don't know that.

Q. Was it barrel lime?

A. I don't know; I have lime on hand now, and have most of the time; I may have had some then.

Q. When do you think you got that foundation laid up?

A. I got it laid up very soon, I should think; I had 20 the foundation laid up in March, anyhow.

Q. All ready for the frame?

A. It was laid up, going back and forth, at odds and ends.

Q. I didn't ask you about that. I ask you whether the foundation was ready for the frame in the month of March, 1878? I didn't ask you whether everything was there.

A. I don't understand you; I don't recollect.

Q. When was it ready for the frame? 30

A. I don't know.

Q. Was it ready for the frame in the month of April?

A. Yes, it was.

Q. You are sure of that?

A. Yes.

Q. What sort of a frame was that? Was it made out of green timber, cut in the woods, or a frame brought from the lumber yard?

A. Some hewed out, and some lumber brought from the lumber yard.

Q. Did you get the timber in the woods?

A. From that time?

Q. At any time.

A. Whether I cut a stick of wood—

Q. Whether you cut the timber for that frame?

A. I don't recollect; I had the timber.

Q. Whereabouts?

10 A. At Newfoundland; I carted it.

Q. Was it standing when this bargain was made, or was it cut?

A. I don't know; some of it may have been standing, and might not.

Q. Was it hewed at Newfoundland or on the ground?

A. Well, that I cut was hewed at Newfoundland and carted down.

Q. You say you saw Mr. Manning in the latter part of May?

20 A. Yes.

Q. Whereabouts?

A. In his office in New York.

Q. Did you tell him you had commenced your work?

A. He said it was all right.

Q. Did you tell him you wanted your deed immediately?

A. I told him I wanted my deed, of course.

Q. Did you ask why it was not prepared?

A. Yes, I asked them to hurry it along; I don't sup-

30 pose I was stubborn.

Q. I didn't ask you whether you were stubborn.

A. Well, I asked them, then.

Q. Did he give you any reason why the deed was not made out?

A. I don't recollect that he did, then.

Q. Did you offer Mr. Manning any money at that time?

A. It was not at that time that I offered money; no, sir; it was in 1879 that I tendered him the money.

Q. Did you tender him any in the latter part of May, 1878?

A. No, sir.

Q. Was it on that occasion that he spoke about probably selling the property?

A. Yes; that is the time he said he probably might sell it.

Q. The latter part of May?

A. Yes.

Q. Did he tell you at that time to whom he intended to sell it? 10

A No; he did not.

Q. When did you first hear that Howell & Noble, or either of them, talked of buying this property?

A. I can't recollect.

Q. Give us the date as near as you can.

A. I can't recollect when. Mr. Manning said there was a party negotiating, but he didn't tell me the names.

Q. When did you first hear that Howell & Noble were about buying this property, or thought of buying it? I don't care what Mr. Manning told you. When did you first hear of it? 20

A. I don't recollect.

Q. Tell me as near as you can?

A. I knew in October, 1878; then, after that, they forbid my working there.

Q. When did you first hear of their buying it, or that they talked of buying it? I ask you the date, as near you can tell.

A. I heard it about the same time it was rumored in town. 30

A You say you called on Mr. Manning the latter part of July?

A. Yes.

Q Did he or not tell you then he was going to sell it to Howell & Noble?

A. No, sir.

Q. Did he, on the occasion when you called on him,

in the latter part of July, tell you that he had sold it to Messrs. Howell & Noble?

A. Yes; he told me he had sold to them and they would make me my deed.

Q. Had you heard of it before that?

A. I can't recollect, sir.

Q. Just tell, now, whether you did before that or not?

A. I know of their being on the grounds there, but—

Q. Had you seen Mr. Manning on any other occasions
10 that Spring, between the 28th of February and the last of July, except those which you have mentioned?

A. Not that I recollect just now.

Q. They were the only occasions on which you saw Mr. Manning—the latter part of March and the latter part of May and the latter part of July, the three occasions at his office in New York?

A. I think I saw him after that some time.

Q. I ask, between those occasions?

A. I don't recollect that I did; I don't think I did;
20 I have no recollection of it.

Q. You say that after the 10th day of June you had a conversation with Noble & Howell on the ground. When was that—how soon after the 10th of June?

A. I don't recollect; every time I met them there I don't recollect.

Q. Give us the date. You say it was after the 10th of June; how long after the 10th day of June do you think it was?

A. I can't recollect, sir.

30 Q. Give us as near as you can.

A. Well, I can't say; I may have seen him several times through the month of June; I may have seen him surveying on those lots.

Q. During the month of June, 1878?

A. I think I may have.

Q. You saw him surveying on the ground?

A. I think I saw him on the ground there.

Q. That would be some time in the month of June, 1878?

A. I will say I may have seen him there in June or July, particularly in June or July. It is quite a number of years; I can't recollect to a minute.

Q. Did you at any time ask Mr. James Tintle to go and see Howell & Noble on your behalf?

A. For what?

Q. Did you ever ask James Tintle to go and see Howell & Noble on your behalf?

A. On my behalf? I don't know what you mean.

Q. You understand it, certainly. 10

A. I don't understand what you mean, sir.

Q. Do you know what you mean by asking one man to go and see another?

A. Yes; whether he was sent for what?

Q. No matter what.

A. On my behalf?

Q. Yes.

A. I don't recollect of asking him to go and see them.

Q. Just try and think whether you asked Mr. Tintle to go and see Howell & Noble for you. 20

A. I can't think; I may have asked him to hurry up my deed, something of that kind, that is all; I told him I was anxious to have him hurry up my deed; I recollect that.

Q. Did you build a platform a day or two before the Fourth of July, 1878, for dancing?

A. Yes.

Q. At that time, was there any building erected?

A. Yes.

Q. There was a building erected then? 30

A. Yes.

Q. Quite sure of that?

A. I am so sure that I know it.

Q. Was not the building put right up over the top of the dancing platform?

A. No, sir.

Q. Nothing of the kind?

A. No, sir; not at all.

Q. Had you sent James Tintle, a day or two before the Fourth of July, 1878, to Messrs. Howell & Noble for you, on an errand for you?

A. Not at all, sir; never, that I recollect of, sir.

Q. Did you send him to them for permission to build a platform on the ground?

A. No, sir.

Q. Nothing of the kind?

A. No, sir; nothing of the kind, never.

10 Q. Did you know he came to see them, pretending to come on your behalf, for permission to put down a dancing platform?

A. No, sir.

Q. Did he tell you that he had seen Mr. Benjamin F. Howell on the subject?

A. No, sir.

Q. Did you take any receipt from Mr. Tintle for the $10 that you paid him?

A. No, sir; I did not take any receipt; I couldn't 20 write, because we were in a wagon; the witness that was with me—the man that was with me—saw the money paid to him.

Q. You say, some time after the 10th of June, 1878, you met Messrs. Howell & Noble on the ground and showed them the lines of this lot; is that so?

A. Yes.

Q. About what time was it; how soon after the 10th of June?

A. I can't tell exactly, how soon after it was; it was 30 after the 10th of June, at all events, that I showed them the lines.

Q. You said that half a dozen times; I ask you how long after that?

A. I said half a dozen times I don't recollect.

Q. How long after?

A. Some time in June.

Q. You knew then they had bought the premises. I suppose, didn't you?

A. Which premises?

Q. Manning's premises, the whole concern.

A. I didn't know they had bought mine, at all.

Q. You knew they had bought the rest around there?

A. Yes, they told me they had.

Q. In the month of June, 1878?

A. Yes.

Q. They told you they had bought Mr. Manning out, didn't they?

A. Yes. 10

Q. They did not forbid you at that time to build, or anything of that kind?

A. No, sir; they did not.

Q. But the building was up at that time?

A. In June?

Q. Yes.

A. The latter part of June; yes, it was up in the latter part of June; I recollect that.

Q. The building was up and enclosed for use before the Fourth of July? 20

A. Yes, it was enclosed, the under part of it; the entire upper part was not enclosed; I remember distinctly.

Q. The frame was up before the Fourth of July?

A. Yes.

Q. 1878?

A. Yes; the musicians sat up on a tier and played; I know it by that.

Q. Between that and October Howell & Noble were there surveying with a surveyor, were they not? 30

A. I think very likely they were there.

Q. And ran out lots over your lot?

A. In my absence I don't know what they did.

Q. You heard of it.

A. Yes.

Q. Between that and October?

A. Yes.

Q. You lived seven and a half miles from there?

A. Yes.

Q. You were not there every day?

A. No, sir.

Q. You were not there every time Howell & Noble were there?

A. No, sir.

Q. You knew they were surveying and laying out lots right over the ground that you claimed to have bought, didn't you?

10 A. No, sir; it was none of my business.

Q. But you heard of it?

A. Yes, after it was done; it was staked out, in my absence.

Q. You heard they were doing it?

A. Yes, after it was done.

Q. You saw the stakes there?

A. Yes, after they had been there.

Q. In October Mr. Noble came there and forbid your building?

20 A. Yes; it was October 28th.

Q. You were building there, at work?

A. Yes, I was at work putting some lath on the house, I think.

Q. Now, you say they offered to sell you the land on which the house stood—offered to give you a deed for the land?

A. Offered to sell it to me; asked me if I would take it, and be satisfied with my contract.

Q. But you would not take it because it did not con-
30 form to the exact lines of your claim?

A. I said if it covered the plot which I had bought I would take it; that is the way I replied to them; if it did not, of course I would not.

Q. When was that?

A. I can't tell exactly; some time after the the 28th of October, I believe.

Q. It was after he had forbidden your building?

A. Yes, I think so; I am not sure about that; it was before he forbid my building.

Q. He offered to sell you?

A. No, sir; he offered to give it to me, for my lot, if I would take the survey; he said he had heard I had only bought an acre.

Q. They offered to sell you the lot if you would take it as it conformed to the way they had run it, and the streets as they had laid them out, didn't they?

A. They offered to sell me the same lot that Manning sold to me? Is that what you mean?

Q. No; they offered to sell you the lot as they had laid it out on which your house stood? 10

A. I don't remember whether they did or not. I don't remember; I don't think they did. If I would be satisfied they offered me one acre, as they had understood I had only bought an acre. I said to them: "No such thing; I bought the plot so and so, and if an acre will cover my plot I will take it."

Q. Did you ask them where the lines of the acre they proposed to sell you would run?

A. No, sir. 20

Q. You would not take it unless it conformed to the lines that you had bargained for?

A. No, sir; I did not want to make two bargains for one thing.

Q. The question is whether or not the difficulty between you and them was that the lines, as you had them run, did not correspond with the lines as they had run them?

A. No, sir; not at all. They didn't run any lines that I know of; there were no lots laid out when I bought my plot. The street they laid there runs all through my ground—laid in my absence. 30

Q. How much did you understand them to be willing to deed to you?

A. They said they would give me an acre.

Q. How much did you claim to have bought?

A. To have bought that plot.

Q. How much is in it?

A. I don't know; they never told me what it was; they never gave me the contents.

Q. Did you ever have a map of it?

A. Nothing more than a map that I stole from his map.

Q. Did he have a map and show you what it was that he proposed to convey to you?

A. I guess not; I don't recollect it.

Q. But he promised to convey you an acre, including your house?

10 A. He said he would give me an acre. He had been informed that I only purchased an acre, and he said he would run the acre off for me. I showed him I had purchased so and so, and if the acre covered the plot I was satisfied. It was my plot I wanted.

Q. Why did you pay Tintle $10 on the 8th of May?

A. Because he neglected to bring the deed. I wanted to make the payment; I wanted to make it a certainty on my side. I asked him if there was any difficulty about it. He said no.

20 Q. You paid him $10 to bind the bargain?

A. Yes.

Q. Why didn't you pay it before—in February or March?

A. Because he didn't bring the deed.

Q. He did not demand any money?

A. I said to him, "I will pay you something on this." I said, "Is there any difficulty about this?" He said, "No, not the slightest." I said, "Here, I will pay you something." I took out my pocket-book. I thought I

30 would give him forty or fifty dollars, and when he got a $10 bill he said, "Amos, that is enough; wait till you get your deed." He kept the $10, and I deposited the rest in the bank, and it is there now.

Q. That was all on the 10th of May?

A. I guess it was the 8th; I ain't sure.

Q. It was in May?

A. Yes; I think it was the 8th of May; I ain't sure about it.

Q. When was it they proposed to exchange lots with you?

A. They proposed that in July.

Q. What time in July?

A. Different times; some time about the middle of July. They spoke of the thing not less than two or three different times.

Q. In July, 1878?

A. Yes; that is right.

Q. That is before they forbade you to build? 10

A. Oh, yes.

Q. A long time?

A. Oh, yes.

Q. And before you saw Mr. Manning in New York, in July?

A. I can't say about that; when I saw Mr. Manning in July, Mr. Manning told me—

Q. Never mind what he told you. I am talking about the date.

A. Well, I am figuring up the date; what do you ask me? 20

Q. I ask you whether the time that Howell & Noble proposed to exchange lots with you was before the occasion that you saw Mr. Manning in New York, in July, 1878?

A. Before and after, both.

Q. Why didn't you tender Mr. Manning the money in New York in July?

A. I suppose because they had promised the deed, and I was waiting for them to prepare it. 30

Q. Why didn't you tender him the money in May?

A. Waiting for the deed, I suppose I neglected it, like everything else. Delays are very apt to occur with everybody.

Q. Can you tell us any reason why you should pay Mr. Tintle this $10 in May, and not pay Mr. Manning the rest of it when you were in New York, the latter part of May?

A. I told them to hurry up the deed; I wanted my deed.

Q. You kept hurrying them up all the time?

A. Yes.

Q. Asking for the deed?

A. Yes; I didn't want to be stubborn; I supposed everything was right.

Q. When did you first cart any timber down there?

A. I can't recollect now, sir.

10 Q. Tell us, as near as you can?

A. Quite soon after I had the property delivered to me; perhaps not a week.

Q. Will you swear that you carted any timber there n the month of March?

A. Yes, I do swear that.

Q. Quite sure that you carted framed or square timber there in March, 1878?

A. I carted timber there in 1878, for that business.

Q. It was visible on the ground in March, 1878?

20 A. Oh, yes; anybody could look and see it was visible.

Q. What sort of timber?

A. Chestnut timber, principally; some chestnut and hemlock; I think it was chestnut that was carted first.

Q. When was it that Mr. Tintle asked your permission to lay a street out, over your lot?

A. Well, some time in July, 1878.

Q. Did you receive a notice from Howell & Noble?

A. What do you mean?

30 Q. A notice in writing, signed by Howell & Noble?

A. Yes.

Q. Have you the original here, dated May 14th, 1880?

Mr. Ward.—I think there is such a notice here.

Q. Was it served on you about the time it bears date, May 14th, 1880?

A. Yes, I think so.

Q. Where did you lay this timber when you carted it there?

A. On the lot which I purchased.

Q. How near to where the house is?

A. I suppose quite near the house.

Q. It could be seen from the road, as you rode along?

A. Yes, depending where you looked—some little piece from it.

Q. (Showing the witness a paper.) Is that the notice that was served on you, May 14th, 1880? 10

A. Yes, I think so.

Paper marked Defendant's Exhibit 1.

Q. You brought an action for trespass against Mr. Shippy?

A. Yes.

Q. He was working there for Howell & Noble, wasn't he? 20

A. I don't know; I heard of Shippy taking some stuff off, and I sued him for trespass.

Q. Can you tell when that was done?

A. I think it was in 1878.

Q. You sued in a Justice Court?

A. Yes.

Q. And he pleaded title and you sued him in the Circuit?

A. I believe so.

Q. And that was pending some time? 30

A. A little while.

RE-DIRECT.

By Mr. Ward:

Q. Did not Mr. Roome run over these lines, as you have described, a second time before making the deed,

on account, as he states, that he had lost his field-book and could not find it?

Objected to as leading, and also on the ground that Mr. Roome's statements cannot bind the defendant.

A. Yes, I think he said he had lost his minutes.

Q. Were not the lines he run, run exclusively by himself?

10

Objected to as leading.

A. Yes, by himself and the chain bearers.

Q. Was the line that he run at that time and described in that deed run upon the very line that was pointed out to you by Mr. Tintle on the 5th of March?

A. Yes.

20

JAMES TINTLE, sworn on behalf of the complainant, testified as follows:

By Mr. Ward:

Q. Where do you reside?

A. Bloomingdale, Morris County.

30

Q. How long have you resided there?

A. 51 years, with the exception of one year I was away.

Q. Were you born there?

A. Yes.

Q. Do you know Mr. Manning?

A. Yes, sir.

Q. One of the defendants in this suit?

A. Yes.

Q. How long have you known him?

A. I should judge about 15 years—the first acquaintance.

Q. Did he own some land in Bloomingdale?

A. Yes.

Q. In 1878?

A. Yes.

Q. Where did he reside at that time?

A. In Brooklyn, I believe; his office was in New York; if I saw him generally I went to his office in New York; his residence was in Brooklyn. 10

Q. Did you do any business for him in the year 1878?

A. Yes.

Q. What was it?

A. Selling lots and having streets laid out.

Q. Whereabouts?

A. In the village of Bloomingdale, on the Morris County side.

Q. Do you recollect how many lots you sold for him? 20

A. No, sir; I couldn't tell you now; I have an account of it, though; I don't remember, just now.

Q. Did you do other business besides that?

A. Yes.

Q. What was that?

A. Wood job; overseeing a wood job for him.

Q. What was your manner of conducting the sales for him of lots that you sold there; how was it done?

A. Well just the same as any one else would, I suppose. 30

Q. Just give us an example, if you please; if you were to sell a lot to a man there, what were the preliminary steps taken in the negotiation?

A. Of course, when I had a price for the lots, and if they could agree, then I would send to Mr. Manning for a deed; I don't know but what Mr. Roome made out a few deeds at first; I won't be positive now.

Q. Which Mr. Roome?

A. Mr. Benjamin Roome.

Q. The surveyor up there?

A. Yes; and the deeds were sent to New York to be acknowledged.

Q. To be acknowledged by whom?

A, By Mr. Manning and wife.

Q. Can you tell us about the number of lots that you think you sold there for Mr. Manning, previous to June 12th, 1878?

10 A. Four, or five, or six perhaps, to the best of my knowledge.

Q. How much of a plot of ground did Mr. Manning own, about?

A. Well, it has been so long that I can't bring it to mind; some sixty acres, I think; there were something like that on the Morris County side and Passaic; some of it was on the Passaic side.

Q. What name was it known by?

A. Do you mean the owner's?

20 Q. The farm, what was it called?

A. There were several farms; it was called—well, part of it was the Sloan farm, and part of it the Abraham Maybe and the Peter Maybe farm.

Q. Did you, at any time, negotiate a sale of a piece of land belonging to Mr. Manning to Mr. Chamberlain?

A. Yes.

Q. Can you tell us when that was?

A. Well, it was about along the 1st of March.

Q. Were you at that time acting as an agent of Mr.

30 Manning for the sale of lots there?

A. Yes; but the bargain was not closed up at that time—not the 1st of March; it was only that he picked the lot out. He looked at different places.

Q. Picked out what lot?

A. The lot that was surveyed out for him.

Q. Was that lot surveyed after he had picked it out?

A. Yes.

Q. At the time the lot was picked out were the metes and bounds located by Mr. Chamberlain and you?

A. Yes.

Q. That, you say, was about the 1st of March?

A. I don't know whether it was the 1st. Well, I had it surveyed out, and then I think he was to come down, or I sent for him to come down in a few days, to see if it suited him.

Q. (Showing the witness Exhibit A.) Please look at that postal card; did you send that to Mr. Chamberlain?

A. Yes; I believe I did, if I know my hand-writing.

Q. Had the lot, at the time this was sent to Mr. Chamberlain, been surveyed? 10

A. Yes; it had been surveyed.

Q. It so states on that card?

A. Yes.

Q. That is the card?

A. Yes.

Q. Who had surveyed it?

A. Mr. Roome.

Q. Benjamin Roome?

A. Yes. 20

Q. Was he, at that time, surveying the lands of Mr. Manning.

A. Yes.

Q. Did you go upon the land there with Mr. Chamberlain at that time?

A. Yes, I believe I did.

Q. Did you show him the lines that had been run by Mr. Roome?

Objected to, as leading. 30

Q. Were the lines shown to him at that time?

A. Yes; the lines were shown to him.

Q. Just tell us, if you please, what took place after Mr. Chamberlain came down in response to this postal card; what was said and done between you and him about this piece of ground?

A. He agreed to take the plot of ground for so much

money, and in the meantime, as to the street running at the foot of the hill—I don't remember whether it was at that time or not—but in surveying out the street it was thought best to change the plot a little, that is, on the north side I shall call it, on account of a building there —a dwelling house.

Q. Do you remember what that dwelling house was called?

A. It was called the Sloan house, old Richard Sloan's
10 place, formerly Sisco.

Q. I want to know the first time after Mr. Roome had run it and that postal card had been sent to Mr. Chamberlain by you, as you have stated, I want to know the next interview that you had with Mr. Chamberlain about this lot, as near as you can give it.

A. I don't recollect; I didn't charge my mind with it, and of course, as I wrote to him, if it didn't suit I would have it surveyed to suit him. I don't remember whether he said it suited just as it was; no, he didn't. We
20 changed, I think, the lines some, besides the street line.

Q. Was it finally fixed, the plot that he was to take, agreed upon between you and him, settled upon?

A. Yes.

Q. Did Mr. Chamberlain commence building there?

A. Yes.

Q. Right away?

A. Now, I can't say whether he did or not.

Q. Did you give him possession at that time?

30 Objected to, as leading.

A. Yes, I told him at that time—I think he asked me whether it would make any difference if he went on and improved it; I told him no, not that I knew of; but there was nothing done, I don't think, right away; I did with him the same as with anybody, that is, when they agreed on a lot and agreed to take the lot, I had them pay down $5 or $10, or whatever they could pay, so that

I should not send to New York for the deed and after I got the deed, have anything to pay for the trouble of having the deed made out.

Q. That was the practice that you had?

A. Yes.

Q. Did Mr. Manning know of that practice?

A. I don't know whether he did or not; I couldn't say as to that; if it had been a year ago, or six months ago, I could remember more particularly about that.

Q. What was the price fixed for this lot, between you and Mr. Chamberlain? 10

A. $150.

Q. Did you receive any down-money upon the purchase of that lot?

A. Yes.

Q. How much?

A. $10.

Q. Do you know of Mr. Chamberlain's building a building there?

A. Yes. 20

Q. In the spring of 1878—the spring that he purchased it?

A. Yes.

Q. You saw him building there?

> *Mr. Pitney.*—I object to that as leading. I have not asked the Master to rule on these questions, but if the counsel insists I shall have to ask the Master to rule, under the decision of the Chancellor. 30

Q. Do you know of a building being put on those premises?

A. Yes.

Q. When was the first that you knew that the building was being put on?

A. I can't tell just the date.

Q. As near as you can give it?

A. It was before July; I remember that he told me that he would like to get the place ready for the Fourth of July; that is about as near as I can get to it.

Q. Were you around there often?

A. Oh, yes, most every day.

Q. Up to what time did you act as the agent of Mr. Manning for this property?

A. Up till the time that Howell & Noble purchased the property of him.

10 Q. How much did Mr. Chamberlain pay you?

A. I think it was $10; I have not looked at it; I have it down; I have a book, but I couldn't lay my hands on it this morning for some cause or other; the amount is set down.

Q. Do you recollect what time it was that you got it?

A. It was in May or June.

Q. Was anyone with Mr. Chamberlain when it was paid?

A. Yes, there was a man with him.

20 Q. Did you know the man?

A. No, sir; he was a stranger to me.

Q. Would you know him if you saw him?

A. I don't know; I did not notice the man much.

Q. Where was it that it was paid?

A. It was by Butler's station, or near there, between that and the plot of ground.

Q. What was Mr. Chamberlain doing, was he on the road?

A. Yes, he was on his way home, I think.

30 Q. In a wagon?

A. Yes.

Q. Did you act as agent after Mr. Manning sold the property to Howell & Noble, for Howell & Noble?

A. I don't know; I did a little business for them.

Q. Do you recollect of seeing Messrs. Howell & Noble there the latter part of May, 1878?

A. Messrs. Howell & Noble? Oh, yes, they were there frequently in May.

Q. Do you remember of having a conversation with them about the property purchased by Chamberlain?

A. I do; but I can't give the date.

Q. Can you tell us whether it was before the 12th of June?

A. Well, I can't say whether it was before or after.

Q. Just tell us now what conversation you had with them, as near as you remember?

A. I couldn't say just the conversation we had about the lot; nothing more than I remember talking with them, that I had agreed with Mr. Chamberlain to sell him the lot, and also Mr. Manning knew that I had agreed with Mr. Chamberlain, or at least, I can't say whether I sent word to New York that I had sold to Mr. Chamberlain or not; but after they had delivered—no, before they had delivered, when they were about delivering, I asked him about this plot of Mr. Chamberlain's, and he told me he thought it would be all right.

Mr. Pitney.—Who told you?

The Witness.—If my memory serves me right, I think he said he thought there would be no trouble; he thought Howell & Noble would give him a deed for the plot.

Q. That was before the sale had been consummated?

A. Yes, that was before it was closed up, or it might have been after; I can't say now; he thought it would be all right.

Q. Did you have a conversation with Howell & Noble about the lines of this property?

A. Yes.

Q. Just tell us what was said and done, if anything, about the lines.

A. As near as I remember now, I took Mr. Noble and Mr. Howell—one or both of them, and showed them the stakes, where it had been surveyed; the stakes were

there, at the corners, and I think I showed them where the plot lay.

Q. Do you recollect what time in the year that was and what the year was?

A. It was in 1878.

Q. In the spring?

A. Yes; it was some time in the spring, but I can't say, just now, what the time was.

Q. What did they say about it, if anything, when you
10 showed them the lines?

A. I don't know but what Mr. Noble said that didn't amount to anything, or something of that kind—that the lands belonged to him and Mr. Howell; they had purchased the lands of Mr. Manning.

Q. Do you remember of a street being put there by Howell & Noble?

A. Yes.

Q. Did any of that street run across or near the lots that were purchased by Mr. Chamberlain?

20 A. Yes.

Q. Did you have a conversation with them about that street, about its location?

A. Howell & Noble?

Q. Yes.

A. Yes, sir; I did.

Q. Were you requested to see Mr. Chamberlain as to this street?

A. I think not; I don't remember, now; I know I had a conversation with Mr. Chamberlain.

30 Q. Did you have charge of building that street for them?

A. Yes; I asked Mr. Chamberlain whether he had any objection to it, and he said he didn't have any objection.

Q. Objection to what?

A. To having a street laid there or worked there; of course, Howell & Noble wanted me to put the street through there.

By Mr. Pitney :

Q. They did not tell you to ask Chamberlain anything about it ?

A. I think not ; I couldn't say ; there might have been a great many things asked me and I not remember it.

By Mr. Ward :

Q. You did ask Mr. Chamberlain's permission ? 10

A. I asked if he had any objection.

Q. Did you ever have a conversation with Messrs. Howell & Noble about the buying of Mr. Chamberlain's property from him ?

A. Yes, we had a talk about it ; I don't remember the time, but when they talked a little about having a law suit, of course I felt anxious to have it settled without having a law suit over it ; I don't know but what I asked permission of them to see Mr. Chamberlain, or whether they wished me to, I don't remember ; I couldn't say, 20 now, how the conversation was.

Q. Can you tell us what was said between Howell & Noble and yourself ?

A. No, I don't know as I can ; I know there was quite a good deal said, but I don't remember.

Q. Did you go to see Mr. Chamberlain at that time ?

A Yes, I think I did.

Q. Did you at that time communicate to him what Messrs. Howell & Noble had said to you ?

A. I don't remember whether I did or not ; I think 30 not ; I offered to buy the plot of ground and building, just as it was, after the building was up, but I couldn't say whether I told him that I would buy it for them, or for whom.

Q. Whom were you offering to buy it for—whom did you want to buy it for ?

Mr. Pitney.—I object to it as immaterial

and irrelevant, unless it is proved that he was authorized by Messrs. Howell & Noble to buy it. He has already said that he did not know that Howell & Noble authorized him to go to Mr. Chamberlain at all, but he heard there was going to be a law suit and he was anxious to settle it.

Mr. Van Wagoner.—I would like to have the matter understood here. There is a rule that lately came to my notice, that it is the duty of the examiner to rule upon the questions. I have not been called upon before to rule upon any question, and I am now called upon, as I understand?

Mr. Ward.—I have asked Mr. Tintle if he had a conversation with Howell & Noble about this property. He said he had; that he went and saw Mr. Chamberlain, and wanted to buy. I ask him now whom he wanted to buy for?

Objection overruled. Mr. Pitney excepts.

A. I wanted to buy it for anyone that I could sell it to again, or, if Howell & Noble wanted it, they could have it; but I felt that I wanted to get the thing settled without any trouble; but as to their authorizing me to go to see Mr. Chamberlain for that purpose, I don't recollect of it.

Q. Did you ever have any conversation with Howell & Noble about exchanging property with Mr. Chamberlain?

A. I don't recollect that I did; I sold the property to Mr. Chamberlain in good faith, the same as I did to any other person; of course the questions can be asked of me, but to remember that length of time I wouldn't pre-

tend to do so; I can say what I know in a very few words.

Q. At the time that Mr. Chamberlain paid you the $10, do you recollect anything being said about a deed?

A. Yes; there was something said about a deed. I told him—I don't remember whether he asked me anything about paying the money down—but I told him that was the way I had been in the habit of doing when a person agreed upon a lot, for him before the deed was made, to pay some money down. I think I took money in all cases where I sold lots for Mr. Manning. 10

Q. Do you remember why the deed was not given right away to Mr. Chamberlain?

A. No, sir; I don't remember, only the delay to know whether the plot of ground suited him, &c. I couldn't say why it was?

Q. If it did suit him, after you discovered it did suit him, what was to be done then?

A. I think, if my memory serves me right, that Mr. Roome was to make a deed and send it down to Mr. Manning himself, as he lived quite a distance from me, but I am not positive of it. 20

Q. When was the balance of the purchase money to be paid?

A. When the deed was given. He told me—I did not ask him whether he had the money ready or not, I don't remember that he did—but he said the money was in the bank, ready at any time when the deed was given.

Cross-examination by Mr. Pitney: 30

Q. Mr. Chamberlain was a man of means, was he not?

A. I suppose he had money enough to purchase that plot of ground.

Q. He has that reputation?

A. Yes.

Q. There was no delay in order to enable Mr. Chamberlain to raise money to pay the balance?

A. I think not.

Q. Your mode of proceding was this, was it not—the lots were there for sale, and if a purchaser, a proposed purchaser, made an offer for a lot you reported that offer to Mr. Manning for his confirmation, didn't you?

A. Not as a general thing; I sent for the deed to have a deed made with the names of the parties.

Q. Did you pretend to have authority to make a binding bargain for Mr. Manning without his authority, consent and approbation in each particular case?

10 A. I think I did.

Q. Have you not said to Mr. Manning yourself that you had no such authority, but simply had reported the offers for his confirmation?

A. I have not reported all the offers; some of them I have not.

Q. Haven't you yourself said to Mr Manning that you did not pretend to have any authority to make a binding bargain for any particular lot without his final approbation?

20 A. I don't know but I have said so; I won't say; I don't remember saying so.

Q. Is that the truth?

A. I couldn't say what you would call it. I had the power, as I understood, to sell lots; I had so much power that I took a payment on it before I sent for the deed.

Q. Suppose he refused to execute that deed?

A. I don't know what would be the consequence then.

30 Q. Wasn't this it—that you made the provisional bargain with a party for the sale of a lot and took a payment down to guarantee against the expense of surveying and making out a deed and having it executed; after Mr. Manning approved of the sale he would execute the deed and send it out, and if not he would say so and return the money?

A. There was nothing of that kind said to the parties.

Q. Didn't he fix a price himself for each lot before you sold it?

A. No, sir.

Q. You fixed the price?

A. Yes.

Q. Did he give you a *carte blanche*, to sell at any price you might agree on?

A. He fixed the price of the first lot that was sold, I think, and that was the only one.

Q. Did he give you authority to go on and sell his land, at any price you saw fit?

A. I don't know about that; I can't say. 10

Q. How could you have authority to sell his land if he did not fix the price?

A. He did not fix the price, only the first lot.

Q. I ask you whether you had authority to go on and make a binding bargain for the sale of a lot, at a price you should fix, without first consulting Mr. Manning about the price?

A. Yes.

Q. If you had sold a lot at half of what he thought was a fair price, when you sent a deed down, he would 20 be bound, in honor and decency to make the deed, even if he thought the price was not half as much as it ought to be?

A. I told you about one case; I agreed to sell a lot and send for a deed, and I think he sent the deed, but he wrote to me he would give more money than that for it.

Q. Have you got that letter?

A. I have got it home.

Q. You did not bring any letters or papers to-day? 30

A. Yes.

Q. You knew you were going to be sworn about this thing?

A. I expected to.

Q. Did you act in the same capacity for Howell & Noble, after they bought, that you did for Mr. Manning?

A. Not long; Mr. Manning told me after the bargain was closed, that he had sold the property to them, and

spoke to me as though he had spoken to them, that I should act—do business for them, the same as I had for him; he had recommended me—something of that kind.

Q. After you had made a bargain with a man, and taken his money, did you consider the bargain closed till he paid you a payment down?

A. Oh, yes; where it was by word of mouth.

Q. I understood you to say you were in the habit of
10 taking down payments?

A. Yes.

Q. How soon were you in the habit of asking for that payment?

A. I would tell them about it when the bargain was made.

Q. You did that with Mr. Chamberlain?

A. I think I did.

Q. Did he pay you right away?

A. No, sir.

20 Q. Why not?

A. Because we had not sent for the deed.

Q. You wanted a down payment before you sent for the deed?

A. Yes; I was not ready to send for it.

Q. I understand your practice to be, when a bargain was closed you said you wanted a down payment, to guarantee Manning against the expense of surveying and making out a deed, in case they backed out?

A. Yes.

30 Q. You did that with Mr. Chamberlain?

A. Yes; if my memory serves me right, I did; I can't say, for certain.

Q. Did he pay you down?

A. He paid me in June—I think it was May or June.

Q. Did he pay you as soon as the bargain was really closed?

A. I don't know that he did; I can't say now.

Q. The practice was, then, immediately after that to have the deed made out and sent down, wasn't it?

A. Yes; as a general thing.

Q. Why didn't you do it in his case?

A. I wanted to give him time to know whether the plot of ground suited him.

Q. The fact is, you didn't agree on a plot of ground?

A. We agreed on the plot of ground, after he saw it.

Q. When was that, before or after he paid you the $10? 10

A. Before he paid the $10.

Q. As soon as he paid you the $10, why didn't you send the deed down?

A. Well, I couldn't tell you now why it was. As I said before, if my memory serves me right, Mr. Roome was to make a deed and send it down.

Q. Did you ever report this sale to Mr. Manning?

A. I can't say, for certain, whether I did or not.

Q. Was it your habit to report the sales as fast as you made them? 20

A. It was my habit, when I sent for a deed; I had not sent for it, then.

Q. Did you report to him that you had received $10?

A. No, sir; not that I know of; I may have, but I don't think I did.

Q. Did you ever credit him with this $10?

A. Mr. Manning?

Q. Yes.

A. Yes.

Q. You have credited him? 30

A. Yes.

Q. In any account that you sent?

A. No, I did not send him any with that on, that I know of

Q. Did you ever put this $10 on any account that you sent him?

A. No, sir.

Q. Why not?

A. Because the deed was not given, and the bargain, —I suppose on account of the deed not being given the money was not paid over to me; I could not send the money till I got it.

Q. He paid you $10?

A. I never sent Mr. Manning the $10 or $5, whatever would be paid, till I got the deed and sent the whole amount.

Q. Did you ever give Richard H. Manning credit for
10 this $10 which you say Mr. Chamberlain paid?

A. The same as I did in other cases.

Q. Did you ever give him credit in this case for the $10 that Mr. Chamberlain said he paid to you?

A. I gave Mr. Chamberlain credit, not Mr. Manning.

Q. Mr. Manning has paid you for all your services?

A. Well, there is a little account that is not settled up, I believe, but that is my own carelessness, nothing on his part.

Q. You never have given Mr. Manning credit for those
20 $10; whom do you owe it to now?

A. One or the other of the parties. If they had given Mr. Chamberlain a deed, the money would have been given to them; if Mr. Manning gave the deed, the money would go to him.

Q. The money is still in your possession?

A. Yes.

Q. And has never been paid or credited to Mr. Manning?

A. I don't know as it has been credited in the account;
30 I have got it.

Q. You never offered to pay it to Mr. Manning?

A. I don't know as I have; I never offered to pay any other.

Q. I have not asked you that. Is there any conveyance or bargain that you made that was not closed up by a deed given—any other sale of land that you made there that was not closed up by a deed?

A. That was not closed up by a deed being made for it?

Q. Yes.

A. No, sir; not as I know of. When the deed was made it was closed up, of course.

Q. Was there any other sale of land that you made there for Mr. Manning that was not finally closed up except this of Chamberlain?

A. I think not; I think they were all closed up.

Q. This postal card you are sure is in your hand-writing?

A. Yes. 10

Q. Any doubt about it at all?

A. I will take another look at it. (Witness examines Exhibit A.) I think that is my hand-writing; at any rate I can make affidavit that I wrote to him to that effect.

Q. Didn't Mr. Manning have a map made there, with lots plotted out on it?

A. Yes; there was a map; there were several maps made.

Q. And you sold according to those maps—he putting 20 the price on certain lots, and you sold according to that?

A. No, sir; I think not; he never did.

Q. Didn't you do that with Manning?

A. I can't say that I sold any building lots that were on the map after the map was made.

Q. Did you have authority to go there and carve a piece out of that land, anywhere you chose, and sell it for what you chose?

A. I did do it.

Q. Without consulting him beforehand? 30

A. Without consulting him—nothing more than sending for a deed. I wrote to him I had sold a plot of ground and for him to send a deed.

Q. I show you a letter, dated February 16, 1878, signed by you and addressed to Mr. Manning. Just look at that and see if you wrote that letter? (Showing witness paper.)

A. Yes; I wrote that letter. As I said before, I don't

remember all cases, but that is different from a building lot; that was an outside lot, an eight-acre lot.

Letter shown, marked Defendant's Exhibit 2, for identification.

Q. Why did you report that offer to Mr. Manning in that letter—the offer mentioned in that letter—if you had authority to sell without consulting him?

10 A. As I said, it was a certain eight-acre lot, and I didn't feel like selling that without his consent, or his stating the price; but that I do not call a building lot.

Q. I show you a letter, dated February 11, 1878, purporting to be written by you to Mr. Manning; see whether you wrote that letter. (Showing witness paper.)

A. Yes; this is the same lot of land.

Q. Why did you describe to him in that case the land that was proposed to be sold, if you had authority

20 to go right on and sell it?

A. Just as I told you before, I didn't consider that as a building lot.

Letter marked Defendant's Exhibit 3, for identification.

The Witness.—When I say I didn't do it on my own responsibility I don't remember how many lots I sold without his consent.

30 Q. I show you a letter, dated March 1, 1878, purporting to be written by you, but not in your hand-writing. (Showing witness paper.)

A. It is not my hand-writing.

Q. Did you order that to be written?

A. No, sir; I know nothing about that letter.

Q. You didn't direct that to be written?

A. Not to my knowledge.

Q. Who is "J. G. E."?

A. There is a dominie there by the name of John Entrekein?

Q. Is that his writing?

A. I don't know.

Q. Do you think anybody would write that without your direction?

A. I can't say.

Q. Have you any recollection of having such a letter as that written?

A. No, sir. 10

Q. Think whether there is anything said here that you recollect; it says here that the records were searched and a mortgage found on the property of $8,000, &c.; do you recollect about that mortgage?

A. No, sir; I recollect of hearing there was a mortgage, and spoke to Mr. Manning about it when I first saw him.

Q. Do you recollect Mr. Roome came there to survey on the 3d of March?

A. No, sir. 20

Q. Didn't he come there then?

A. Well, I have not got him credited with any work on that day.

Q. Where are your books and papers?

A. I have got an account of Mr. Roome's surveying in my pocket; on the 4th of March, from the 4th of March to the 16th.

Q. If the 1st of March was Saturday, if it came shortly before Monday, "Monday next" would be the 4th of March? 30

A. How is that?

Q. Did he or not come to survey one morning shortly after the 1st of March?

A. It was not the 4th of March.

Q. That is shortly after the 1st, isn't it?

A. Certainly; if I have given credit wrong, it is wrong; I have credited here, March 4th, 1878; William Roome came on the 5th; the old man came on the 4th.

Q. He ran out the survey for Chamberlain on the 3rd of March that you spoke of in your postal card there—that postal card which you swear you wrote is dated March 3rd, 1878, and it says, "I have had your lot run for you;" who did that?

A. I might have made a mistake in the date, which I often do, and I don't know but other folks do, too.

Q. Did Dominie Entrekein live in the same house with you at that time?

10 A. I don't know whether he did or not; he lived in my house some two or three months, I think, in that year; he moved there in the winter.

Q. See if you can't recollect that you got him to write that letter.

A. No, sir; I don't think I ever got him to write such a letter as that.

Q. Or any letter for you?

A. Not to my knowledge, though I may have got him to write a dozen, or half a dozen letters.

20 Q. Where does he live now?

A. Cape May, I believe.

Q. What place in Cape May?

A. I can't tell you.

Letter marked Defendant's Exhibit 4, for identification.

Q. I show you a letter, dated March 16th, apparently written by you to Mr. Manning; see if that is in your

30 handwriting. (Showing witness paper).

A. Yes, sir.

Q. If you had agreed with Mr. Chamberlain at that time to sell him this lot, why didn't you mention it in that letter of March 16th, now shown you?

A. I could not tell you; that is in regard to the fences.

Q You don't know why you didn't mention it?

A. No, sir.

Q Did you look at the last part of that letter when you said it was about fences?

A. No, sir.

Q. You better read the last part. (The witness examines the letter).

A. That is correct.

Q. Why didn't you mention in that letter that you had made a sale to Mr. Chamberlain?

A. I couldn't tell you; Mr. Manning will know whether I spoke to him or not. 10

Q. I ask you what you know about it. You swore that you reported it to him; I want to know when and where.

A. I swore that I did?

Q. Did you ever report this sale to Mr. Manning?

A. I said I had spoken to him about it.

Q. Did you ever report it to him in a letter?

A. I don't know.

Q. Why didn't you?

A. I can't tell you; he was there on the 1st of March, 20 at Bloomingdale; whether anything was said about this plot of ground then I can't say.

Q. Mr. Manning was there on the 1st of March?

A. Somewhere about that time.

Q. Why did you ask Mr. Manning to sign the deed for the Whitehead lot if it was satisfactory to him?

A. Because I took him personally on it, and could not return the money to him.

Letter marked Defendant's Exhibit 5, for identification. 30

Q. I show you a letter, dated May 20th, signed by you and addressed to Mr. Manning. See if that is in your hand-writing?

A. I mention there about sending some more lumber for the fence.

Letter marked Defendant's Exhibit 6, for identification.

Q. I show you a letter, dated May 28th, 1878, addressed to R. H. Manning. (Showing witness paper.)

A. That is not my handwriting, and you must read it to me before I know what it contains. (Counsel reads letter to witness.)

Q. It is signed "James Tintle."

10 A. I didn't look at the signature; (examines the signature); yes, it is my hand-writing.

Q. Did you order that letter written?

A. I don't remember of it, but my name is there; of course, it looks as though I had ordered it; that is all I can tell.

Q. Does it look any more as if you had ordered it than the one signed "James Tintle, per J. G. E."?

A. There is nothing in there I remember about, only I had seen Mr. Manning in New York, and he asked me 20 about the mortgage; I don't remember having any one write about it.

Letter marked Defendant's Exhibit 7, for identification.

Q. Did you ever have anybody write letters for you to Mr. Manning?

A. I can't say; if I did, it was very seldom; if I was sick, or something of that kind, I might have done so.

Q. I show you a letter, dated June 24th, 1878. (Show- 30 ing witness letter.)

A. That is my letter.

Letter marked Defendant's Exhibit 8, for identification.

Q. I show you another letter, dated June 18th, 1878, with a bill enclosed. See whether you wrote that?

A. I believe that is my hand-writing, and the other part is some one else's.

Q. Whose hand-writing is that—"James Tintle," at the bottom of the bill?

A. That is my hand-writing.

Q. Then the bill must have been right or you would not have signed it?

A. Certainly.

Q. Who made out the bill for you?

A. I can't say; it looks like the hand-writing of a man that worked for me; the letter is in my hand-writing. 10

Letter marked Defendant's Exhibit 9, for identification.

Q. These letters which I have shown you speak of various deeds to different parties for land, which were being sent back and forth between you and Mr. Manning, and being executed by him and sent out to you. Did you or not, between the 1st of March and the 1st of June, have prepared and sent to Mr. Manning for execution several deeds for land out there? 20

A. Yes; there were not so many, but I think we talked the thing over, and it cost more to have the deeds made out here and then sent down to be executed than to have them made there, if I remember right.

Q. All the deeds mentioned in those letters that have been shown you did go back and forth between you and them? 30

A. It looks as though the deeds had come to me, anyhow, and perhaps went to him.

Q. I ask you whether you didn't have a deed made out by Roome and sent from Manning to Post & Sloan, for lands?

A. Yes.

Q. And one to Augustus J. Cooke?

A. I think so; I don't remember who made the deeds, but I remember of selling the lots to them.

Q. John Bruly?

A. Yes.

Q. William Mickens?

A. Yes.

Q. J. H. Whitehead?

A. Yes.

Q. E. C. Bailey?

10 A. Yes.

Q. Did not Roome make all those deeds out that I have mentioned?

A. I think not; I won't be positive.

Q. You paid Roome his bill, didn't you?

A. Yes, I think I did.

Q. I have a bill of Benjamin Roome, $56.70, receipted on the 4th of April, 1878. See whether or not you did not pay him that money? (Showing witness paper.)

A. I don't see any of my hand-writing here.

20 Q. Didn't that bill pass through your hands?

A. I think so; I see some figures here that look as though I had made them.

Q. You paid that money to Mr. Roome, didn't you?

A. I ain't positive whether I did, but I think I did; all that I can say about that is that I generally paid the bills which were paid there at Bloomingdale.

Q. In this account are the following deeds, written in the month of March: Post & Sloan; A. J. Cooke; John Bruly; William Mickens; J. H. Whitehead; E. C.
30 Baily & Crammer; can you tell whether or not those deeds were all made out in the month of March?

A. I don't remember now.

Paper marked Defendant's Exhibit 10, for identification.

Q. You wouldn't have paid the bill if they had not been?

A. It is not likely I would.

Q Here is another one, made by Benjamin Roome, $7.50, which you mention in your letter; see if you recognize that? (Showing witness paper.)

A. Well, I don't see any of my figures here.

Q I read you an extract from your letter of June 24th, 1878, in your hand-writing; "Mr. Roome sent me a bill of $7.50, which I send you."

A. Is that all there is of it?

Q. That is all there is about that bill; have you any doubt but what you sent him that bill which is in your hand, in that letter of June 24th? 10

A. Well, that I can't say.

Q. You did send him some bill of $7.50, didn't you?

A. I don't know but what I did.

Q. Have you any doubt of it, when you see it in your own hand-writing?

A. No, I have not; $7.50, I see here.

Q. I show you a bill of $7.50, in Mr. Roome's hand-writing; have you any doubt that this is the very bill that you sent? (Showing witness papers.) 20

A. I can't say, but of course it might be that I sent it.

Paper marked Defendant's Exhibit 11, for inentification.

Q. You say that Mr. Chamberlain came there, to Bloomingdale, before his lot was surveyed?

A. Before his lot was surveyed? 30

Q. Yes, and you partly agreed with him for the sale of a lot?

A. Before it was surveyed?

Q. Yes.

A. Certainly.

Q. And you had it surveyed?

A. Yes.

Q. And you sent him that postal card?

A. Yes, I suppose so.

Q. Did you survey it just exactly as you and he had agreed on?

A. I don't remember now, but I suppose I did from what I said; I told him if it did not suit I would have it surveyed to suit him.

Q. If you had surveyed just exactly as you think he had agreed on, why did you write him to come down and see whether it suited him or not?

10 A. I don't remember whether the corners and bounds and everything were fixed before I had it surveyed.

Q. Then it was not fixed before you had it surveyed—the exact bounds?

A. Not before it was surveyed the first time; I don't remember; he showed me as soon as he could where he wanted it.

Q. You said something on your direct-examination about their altering the lines of it, or putting in a street there; they altered the lines?

20 A. Yes.

Q. What was that?

A. I don't remember whether that was done by Howell & Noble or Mr. Manning; I remember about Mr. Manning being there one day, and we talked about the street and so on, but what the decision was at that date I don't know; I can't say now.

Q. You said you did not know as they would make the deed, on that account?

A. Not that I remember of.

30 Q. The way they laid out the street after Roome had surveyed it for him—the street was laid out there somewhere, wasn't it?

A. Yes; it was laid out right through the house—right where the house stood.

Q. Whose house?

A. The Sisco property, or the Sloan property, whichever you want to call it.

Q. When was that laid out through that house?

A. It must have been from the 4th of March to the 16th.

Q. While Roome was surveying?

A. Yes; I wouldn't say whether it was changed from the house afterwards, or changed and put where the house stood. I think they had it surveyed where the house stood, and then it was changed afterwards?

Q. How soon afterwards?

A. I can't say.

Q. Tell us as near as you can. 10

A. Well, it might have been a month or more, I can't say now; I remember of writing to Mr. Manning something about Mr. Roome, that he could be there on such a day, and I think that was the time that Mr. Manning met Mr. Roome and me there, but as for the date, I couldn't tell you now, and that brings to my mind that perhaps that might be the $7.50 bill; I see there is a small bill there; that was June 11th.

Q. The last item on Mr. Roome's previous bill was April 4th. 20

A. I don't remember of Mr. Roome's being called again, till it was to survey this plot of ground.

Q. There is no item on Mr. Roome's bill between the 4th day of April and the 11th day of June; all the surveying done there at that time appears to have been done between the 3rd or 4th of March and the 4th of April—one month; now was that street changed during that time?

A. I think it was, but I wouldn't be positive.

Q. And put so it ran how, with regard to Chamberlain's lot? 30

A. There was something said about Mr. Chamberlain's lot, but I don't remember now.

Q. As the street was finally fixed there by Mr. Roome on his survey made in the month of March, 1878, did it not cut right through the lines, through Mr. Chamberlain's lot, as you say it was?

A. On the 1st of March? I can't say; yes, I think it did on one side, of course.

Q. Was not that what you meant by saying on your direct-examination that there was some change in the line of the street, and you wanted to know whether Mr. Chamberlain would agree to that or not before you sent the deed down?

A. That might be; I can't say.

Q. Did Mr. Roome ever make out a minute or a copy in writing of the survey as he made it for Chamberlain on the 3rd or 4th of March?

10 A. I can't say.

Q. Did he ever furnish you with what they call a minute of the survey?

A. I don't know; he may have furnished me with a dozen; I can't say.

Q. Did he make a copy of it, showing how it lay?

A. I don't remember that he did, and yet he might have done so.

Q. I want you to think about that, because on your direct-examination you said that you thought the deed 20 was not made out on account of some change in the street.

A. I say just as I did say, I don't know why the land was surveyed, only I said if it was not surveyed to suit I would survey it again; I can't state the reason, whether it was on account of the street, or what.

Q. You said something on your direct-examination to the effect that perhaps the reason why the deed was not made out—at least I so understood you and so recollect it—was that there was some change made in the 30 street which interfered with the lot as it was surveyed.

A. You might have put the words together, but when I said on account of the street—

Q. I ask you whether you can tell whether or not, in point of fact, that was not the truth, that when Mr. Roome came to survey the street he did not put it in such a way as to make it proper to make a deed to Mr. Chamberlain of the land?

A. I can't say, but I remember that was talked of,

but what was said between Mr. Manning and Mr. Chamberlain about the street I can't say now.

Q. I am not asking you what was said between Manning and Chamberlain; I ask you to account for the fact that that deed was not written and sent to New York.

A. I have told you I can't say.

Q. I ask you whether or not that that was not the reason, that when Mr. Roome came to make his survey and lay out the street and lots there he ran a street right through the lot proposed to be sold to Mr. Chamberlain? 10

A. It might be the reason, but I can't say; I am not positive.

Q. What do you think about it?

A. I don't know as I have any right to tell what I think about it.

Q. I want to know what you think about it; it is not for you to say you have no right.

A. I have no right to think, when I am under oath.

Q. You are called upon to swear to what you think. 20

A. What I think, or what I know?

Q. What you think; that is the question now, not what you know; you are called upon to say what you think, now; you need not say you know it.

A. I don't know as I can answer that question; it may be I did, and may not be; that is as near as I can give it.

Q. Now what passed between you and Chamberlain when he gave you this $10? How came it that the $10 was not paid you till the 8th of June, as you say? 30

A. I can't say now, anything more than that there was delay about the deed from some cause or other; I don't remember whether Mr. Manning was the cause of the delay, or me; I can't say now.

Q. To your knowledge, the deed was not made out that spring?

A. Not that I saw; I didn't see the deed; never saw any deed; I have been told it was not made out.

Q. Did you not tell Mr. Chamberlain, when he gave you that $10, that you did not know whether Manning would make the deed or not?

A. That I can't say; I can't say that I did not; I don't know; of course there must have been something said between us, but what was said I don't know.

Q. Did you give him any reason for it?

A. No, sir; not that I know of.

Q. Were you in the habit of giving receipts to those
10 people when they paid money on account, in that way?

A. I don't remember; I remember of giving them credit on the book.

Q. Where is that book?

A. It is home; I could not lay my hands on it this morning before I started.

Q. Where are the letters that you got from Manning?

A. They are home.

Q. You have got them all?

A. I suppose so, if they are not lost.

20 Q. Didn't you think they would be wanted here?

A. No, sir; I did not.

Q. You feel quite sure you have got that book with $10 put down in it?

A Yes, I think so.

Q. Were you there when Roome ran out the lot the second time?

A. I think not; I ain't positive.

Q. You spoke about his running it the first time; did he ever run it a second time?

30 A. The stakes were changed from where they were at first that I saw, and Mr. Roome told me that he had surveyed it.

Q. But you were not there?

A. I can't say whether I was or not; I was there several days with Mr. Roome.

Q. What do you mean by the second time? When did you understand it was run a second time, if it was run a second time?

A. I can't tell you now whether it was one month or two months.

Q. What change was made in the stakes?

A. There was a change made near the foot of the hill, where the street was spoken about.

Q. There were some changes made there?

A. I don't know whether there was any there or not.

Q. When?

A. I don't remember when it was; at that time I was working there on the street; I might have been there when Roome surveyed the second time. 10

Q. Do you recollect what time that was—whether it was the same year, or before or after?

A. It was the same year; I can't bring it to mind being there when he started it a second time.

Q. You said awhile ago that there was a street that ran through there, or near to the house of Sisco. What was the name of that street?

A. Well, I have forgotten the name of it now.

Q. See if you can recollect it. 20

A. The map would give the name of it.

Q. Wasn't it Second street?

A. That I can't tell you; I remember I had it surveyed out; I remember one street; I don't know that that was the name, either; after Howell & Noble got the property —I don't know what, in fact, they were.

Q. After they owned the property the street that was run through or near to the Sisco house never was worked out on the ground; it was just what we call a paper street, wasn't it? 30

A. I don't know whether it was worked out on the ground—

Q. There was no fence?

A. No, sir; it was not opened.

Q. It was what we call a paper street?

A. Just the same as many of them that are there yet.

Q. You had a map of them, didn't you?

A. Yes, I think there was a map of them.

Q. What has become of that map?

A. I don't remember whether I have got it, or whether Mr. Manning has it.

Q. You had a map there, in your possession, for some time?

A. Yes.

Q. You had it after Mr. Manning sold to Noble & Howell?

A. Yes, I had a map; I think I have one that they
10 had made, now in my possession.

Q. Did you have one that Manning had made?

A. Have I now?

Q. Yes.

A. I don't think I have; I think I gave that either to him or to Messrs. Howell & Noble.

Q. Did you let Mr. Chamberlain have a map there, at that time?

A. Yes, I think I did.

Q. When was that?

20 A. That I can't tell you, now.

Q. It was after Messrs. Howell & Noble had bought?

A. I don't remember whether he ever returned the map or not.

Q. It was after Howell & Noble bought, was it not?

A. I can't say.

Q. You would not let him take a map that belonged to Howell & Noble, without asking, and keep it?

A. No, sir, I don't think I would; I suppose he has returned it to me; saying I don't remember of it is not
30 to say he didn't return it.

Q. Didn't you lend him a map?

A. Yes.

Q. Some time after this muss, after you knew they would not make the deed?

A. It seems to me I did; I can't say positive that I did.

Q. Isn't it true that he got the map from you for the purpose of having this land surveyed?

A. I don't remember ; I can't say now ; I don't remember his telling me what he wanted of the map.

Q. Howell & Noble came there and went on the ground to look at the property before they bought, didn't they?

A. I suppose they did.

Q. You knew they talked of buying, before they bought, didn't you?

A. Yes.

Q. And you knew as soon as they did buy—everybody 10 knew there as soon as they did buy?

A. Yes, I suppose in a short time after they bought; I think Mr. Manning told me ; I think I heard it from him, or from them, themselves ; of course I knew about the change.

Q. You say Mr. Chamberlain got his place ready for the Fourth of July?

A. I said he told me he wanted to get it ready.

Q. You were there and saw what he was doing?

A. Yes. 20

Q. When did he commence to get ready for the Fourth of July?

A. I couldn't tell you.

Q. How many days before?

A. I don't know.

Q. A week, or a fortnight?

A. What? To put up the building?

Q. Whatever he did there, for the Fourth of July.

A. I don't remember how long he was doing that; I think I was there on the 5th of July, in the morning ; I 30 think he had the building enclosed then ; when he commenced I can't say.

Q. How long had it taken him to put it up?

A. It had taken him some little time, I suppose ; I frequently saw him come there, and I have seen him loading timber ; perhaps that would be the last I would see of him that day ; some days he would be there and some days not ; I can't tell you.

Q. Did he, at any time, send you over to Howell & Noble?

A. Not that I remember of.

Q. Did you ever go to Howell & Noble, or one of them, on his behalf?

A. No, sir; I think not.

Q. Did you not go to Benjamin F. Howell a day or two before the Fourth of July with a message from Mr. Chamberlain?

10 A. Not that I remember of.

Q. Did you go to him, about that time, and tell him that Mr. Chamberlain wanted permission from Howell & Noble to put up a dancing platform, to give an entertainment on the 4th day of July?

A. Not that I know of.

Q. Were you at Howell's house shortly before the Fourth of July?

A. Well, I can't tell what time it was.

Q. Was it about that time?

20 A. Some time before the Fourth of July.

Q. Do you recollect of saying anything to him about Mr. Chamberlain?

A. Yes, we talked about Mr. Chamberlain.

Q. Did you tell him anything at that time that was not true?

A. If I did, it was through mistake.

Q. You are not in the habit of telling anything that is not true?

A. No, sir; not to my knowledge.

30 Q. Any statement that you made to Mr. Howell as coming from Mr. Chamberlain was true, was it not?

A. I suppose it was.

Mr. Ward.—I object to that.

Q. Do you recollect a man of the name of Magee being with you at the time?

A. Yes.

Q. Did, or did you not, on that occasion, after talking with Mr. Howell on other business, start to go away, or leave, and then stop and turn and say, "I had liked to have forgotten my principal errand. Amos Chamberlain wants to see if you will let him put up a dancing platform on your land at Bloomingdale for the Fourth of July. He had thought he was going to buy a lot of land there, from Mr. Manning, but he slipped up on it, and he had made preparations for this spree on the Fourth of July, and he wants your permission to 10 put up a dancing platform"—did you say that to him, or words to that effect?

A. If I did, I told a lie, once in my life.

Q. Nothing of that kind passed between you and Mr. Howell?

A. Not that I recollect of.

Q. Nothing of that kind passed between you and Mr. Chamberlain?

A. Not that I recollect of; I don't remember of anything of that kind passing; I couldn't say positive, now, 20 what my business was at Morristown, to see Mr. Howell, but I think Mr. Magee got me to go with him; I wouldn't let him have the horse and wagon, and then he wanted to know if I would go with him, if he got a horse and wagon; I think I went with him, and I think he had some errands; I won't say what, but I remember one time of talking about some timber he had got to—

Q. The question is whether any such conversation as that passed between you and Howell? That is what I asked you. 30

A. Not to my recollection.

Q. You say if you did say that, then you told a lie for once?

A. Yes, I think I did.

Q. Did not Mr. Howell in that connection, on that occasion, say to you that he didn't know whether he ought to give consent to have this Fourth of July spree or not, for it might be offensive to Robinson, or other people living in the neighborhood?

A. Not to my recollection.

Q. Nothing of that kind?

A. It might have been talked about that Mr. Chamberlain talked of putting up a dance house and so on; I don't say there was nothing of that kind talked between us; what I meant was, I told a lie if I said he expected to buy a lot and was tripped up on it; I don't know whether Mr. Robinson lived there at that time.

Q. When did you make the bargain with these men
10 whose names I have mentioned—Cooke, Bailey, Micken, Whitehead and Bruly and Crammer?

A. I couldn't tell the date now, but I think I have got the date; I ain't certain.

Q. Were the bargains made about that time?

A. Sometimes I made a little memorandum, "Sold a lot to A. J. Cooke," or whoever it might be, so I would know.

Q. Was it made about the time these deeds were drawn?

20 A. I suppose it was; it was made before the deeds were drawn.

Q. How long before?

A. Sometimes but a short time and sometimes a week; sometimes perhaps two; I can't say now.

Q. But those bargains were all made about that time with those people?

A. I suppose so.

Q. You are quite sure that in that conversation with Mr. Howell you did not tell him that Mr. Chamberlain
30 wanted his permission to put up a platform there?

A. I don't remember of it.

Q. Is that a lie, if you told him that?

A. Is that all of the question that you put to me?

Q Yes.

A. I meant the whole question?

Q. No; that was not all the question before; I am asking it in detail now.

A. I don't remember of it.

Q. If you told Mr. Howell that Mr. Chamberlain wanted permission to put that dancing platform up for the 4th of July, was it true or not?

A. If I told him so?

Q. Yes.

A. Mr. Chamberlain had told me that he wanted to get it ready for the 4th of July, but whether I told Mr. Howell that I don't know now; I might have told him so, and I might have told him that he was trying to get ready for that. 10

Q. Suppose you told him that Chamberlain wanted to know if Howell & Noble were willing?

A. I don't remember of that.

Q. Supposing you told him that, was it true?

A. I don't know as that is a proper question—"suppose" I told him.

Q. You object to the form of the question?

A. Yes.

Q. What was the size of these lots that you sold to these people? 20

A. 50 by 100 and 150, some 75, some 200 and some of them 250, I think; I don't remember.

Q. They were all laid out on the map.

A. Yes; I sold some before the map was made.

Q. After the map was made all that you sold were laid out on the map?

A. Yes.

Q. Except Chamberlain's?

A. No; I sold some in Passaic, to Whitehead and to Augustus J. Cooke; they were small plots; one was 30 about a quarter of an acre and the one I sold to Cooke was, perhaps, an acre. Now, about that, I think I made a bargain with him; I would not say positive. But Howell & Noble know whether they made him a deed or not, and that bargain, I think, was made before the property had changed hands.

Q. Did you go with Howell & Noble to Chamberlain's house, while he was at work there, and hear them forbid him to continue the work?

A. I don't know but I did.

Q. When was that?

A. I can't tell positive, but it was some time in that year, if at all.

Q. Before he got his house finished?

A. It must have been before he got his house finished; he built an addition afterwards; I don't know how long afterwards; he built the addition, a kind of platform.

10 Q. Did he finish his house right away?

A. No, sir; I think not.

Q. Was it or not a mere shell, nothing but a frame with some boards on the outside?

A. It was nothing more than inclosed, I think; I think the wall was not put in till Fall or Winter sometime.

Q. At the time they forbade him to go on with the building didn't they ask you particularly to look at the house and see what condition it was in—that it was 20 merely partly inclosed?

A. Not to my recollection; I don't recollect it; they might have told me or asked to do so.

Q. You took a great deal of interest in trying to get this thing settled?

A. I took some interest in it, yes.

Q. And prevent being brought between the fires yourself?

A. I did not say what was the cause of it.

30 *Mr. Ward.*—I object to any further cross-examination on that point as to what the witness thinks about it.

The Witness.—I can take an interest in a person's welfare without being between two fires.

Q. Did Mr. Manning give you authority to sell the

streets that he had laid out—to sell lots and to interfere with those streets?

A. I think not.

Q. Did the lot, as you had it surveyed out for Mr. Chamberlain, interfere with any street?

A. No, sir.

Q. Where did it run to—where did it lay?

A. I don't know as I can tell you without seeing the map; if you show me the map I will show you where it lay.

Q. (Referring to map.) I show you a map; see if you can tell from this map anything about it? 10

A. Second street ran through here, but there was no name then; the lot lies in here.

Q. Which side of Second street?

A. It lies on the south side, I should call it, or the southwest.

Q. It lies, if I understand you right, to the west of Second street, as shown on this map, and between Second street and the land of the Sisco or Carman lot? 20

A. Yes.

Q. And it is north of the Stony Brook Road, from Stony Brook to Bloomingdale?

A. That can't be, because here is the street that runs north and south; but, let it run as it may, it lies left of Second street, going north.

Q. Did it not include Second street?

A. The way it has been laid out there, I can't tell now whether it did; I don't know just where that Second street is now, and yet I may have seen it surveyed. 30

Q. You had no authority to sell Second street, had you?

A. Second street I don't suppose was there. Here is where the street was, somewhere along here. The land was surveyed for Chamberlain and run up the hill and to the corner of the Sisco property.

Q. Was Mr. Roome surveying for this map, at the time he was there in March, 1878?

A. For some map; yes, sir.

Q. He was laying out the ground in lots?

A. Yes.

Q. Laying out paper streets?

A. Yes.

Q. That was his business there?

A. Yes.

Q. Supposing that he did, in point of fact, make this map at this time, and those streets were right just where
10 the streets were, which he laid out at this time?

A. Supposing he did not? He did not; that is not the map I had, and it is not like it.

Q. Where is the map you had?

A. I don't know; Messrs. Howell & Noble or Mr. Manning has it. I think when they purchased the property they asked me to give over the first map that was made, and as for this map, I can't tell when it was made; I never saw it before.

20 *Mr. Pitney.*—We cannot close the examination of Mr. Tintle until he brings the letters.

The witness.—I will endeavor to find them and produce them.

Mr. Pitney.—You will bring your book of account and memorandum of sales?

30 *The witness.*—Yes.

The cross-examination of the witness is suspended for the present.

By Mr. Ward:

Q. Was Mr. Manning on the ground before the 16th of March that year?

A. Well, I think he was. He might have been before the 4th of March, but it runs in my mind as though he was there the first day that Roome commenced surveying.

Q. About the street that has been spoken of—what did Mr. Manning say about that street?

A. I can't say what he said.

Q. Did you have a conversation with him about it?

A. Yes, and there were other ones.

Q. Was that after Mr. Chamberlain's land had been run and it was understood where this land was to be of Mr. Chamberlain's. 10

A. Understood by Mr. Chamberlain and me?

Q. It was after that?

A. Yes.

Q. Was it then pointed out to Mr. Manning, or not where Chamberlain's land was?

A. I think it was.

Q. What was said, if anything, then about the street, by Mr. Manning? 20

A. There was something said about the street and about changing the street, but I couldn't say what.

Q. Do you know whether or not Mr. Chamberlain consented to the change?

A. Yes, I think I remember hearing him say, if it was necessary, to put it there.

Q Do you recollect about how long it was after Amos Chamberlain's property had been surveyed that Mr. Manning was there?

A. No; I don't recollect. 30

Q. Was the month of March?

A. I couldn't tell.

Q. Don't you know that Mr. Manning was there on the 16th of March?

A. It may have been the 16th of March; that was the last day that Mr. Roome worked there.

Q. Was there ever an instance, while you were selling

land for Mr. Manning, that he refused to execute a deed, according to your knowledge?

A. Not to my knowledge.

Q. When you spoke to him about Chamberlain's sale did he object to the sale?

A. No, sir.

Q. Did Mr. Manning ever raise any objection to you to the agreement with Mr. Chamberlain?

A. Not to my recollection.

10 Q. Was there any reason to your knowledge, or excuse made, for the deeds not being made to Mr. Chamberlain by Mr. Manning or Mr. Roome?

A. No, nothing except Mr. Manning—I don't know as anything was said about the deed at that time, but I remember Mr. Manning, in speaking about being about to make a change with Howell & Noble; whether anything was said at that time or not, I don't know, although I asked him the question at some time, whether it would make any difference; he said no, he thought not, that it 20 would be all right.

Q. Any difference to whom?

A. About Mr. Chamberlain's getting his deed.

Q. Was that after Mr. Manning had been up there and seen this proposed street that has been spoken of?

A. That I can't say.

Q. Do you know whether Mr. Roome has surveyed any there since Messrs. Howell & Noble have owned this property?

A. Yes, he did survey there after they owned the 30 property; what makes me remember that is he could not work fast enough to suit Mr. Noble; I remember that.

Q. Were you then acting for Messrs. Howell & Noble?

A. Yes; you didn't mention any date; I don't remember what date it was.

Q. On the day that Mr. Roome surveyed this land for Mr. Chamberlain did he do other work for Mr. Manning?

A. I don't think he did.

Q. Do you recollect who paid him for that work and when it was paid?

A. I recollect of writing to Mr. Manning that I was owing him that much money, and I think it was for surveying; I don't know as he did anything else up there.

Q. Were you ever authorized by Mr. Chamberlain, in any manner whatever, to confer with Messrs. Howell & Noble as to this property?

A. Not to my knowledge. 10

Q. If you had been, you certainly would remember it?

Objected to, as leading.

Q. Would you remember it?

A. I think I would remember it, especially if I had been to see him.

By Mr. Pitney.

20

Q. You say Mr. Manning was out there in the month of March, while Mr. Roome was surveying and laying out these lots?

A. I think he was.

Q. Just try and think what time in the month of March it was?

A. I can't tell; perhaps he knows; no doubt he knows the very day.

Q. I am asking you?

A. I can't tell. 30

Q. Can you tell when it was Manning was there? Just think it over.

A. I have told it as near as I can.

Q. Was Mr. Roome engaged in surveying then?

A. I think he was there twice; it may be he was not there when we commenced work.

Q. You say that Mr. Manning was there twice while the surveying was going on?

A. I think he was; if he was not there twice then he was not there the 1st of March; if he was there twice, he was there when we commenced laying out the property; if he was not there, then he was not there but once.

Q. You say you pointed out to him where Chamberlain's lines were then?

A. I think so.

Q. He made no objection?

10 A. I think not.

Q. Did you think then, if Mr. Chamberlain's lines interfered with the street he was about to lay out, that he would make any objections to selling him the street that he was going to lay out?

A. It did not interfere with any street that was laid out then; I think the street was laid out through the building, but Mr. Chamberlain's land did not come near the building.

Q. The street was laid out by Mr. Roome, on paper,
20 and then, in the month of March, 1878?

A. Yes.

Q. Did you think Mr. Manning would have consented to sell Mr. Chamberlain land that included the street that he was then laying out?

A. No, sir; it did not interfere with the street that was being laid out then.

Q. It did not?

A. No, sir; the street ran through the house, and Mr. Chamberlain's line did not come within, I don't know
30 how many feet; it was some fifty or sixty feet; I did know once.

Q. You say the street that Mr. Roome laid out then ran through the house?

A. Yes; I think it ran through the house, but it did not interfere with the lines.

Q. Who did the actual surveying, the old gentleman or his son?

A. His son did the most of it, I believe, if I remember right.

Q. The son was there every day?

A. Yes; pretty much every day; the first day the son was not there, according to my book.

Q. Now, sir, I ask you this—whether Mr. Manning, when he was told about your proposed sale to Mr. Chamberlain, did not immediately and at once object and say he would not do it, and was not that the reason why the deed was not delivered and made out?

A. No, sir; not to my knowledge.

10

By Mr. Ward:

Q. Through what house did this proposed street run?

Mr. Pitney.—He has already stated it went through the Sisco house.

A. At first I said I did not know which way it had been changed, but, after thinking over it, it was changed from the house up to the foot of the hill.

20

Q. What house do you mean?

A. The Sisco house.

Q. When did Mr. Roome first commence the surveying there?

A. March 4th.

By Mr. Pitney:

Q. Which Mr. Roome came there on the 4th of March?

A. The old gentleman.

30

Q. And the young man did not come till the 5th?

A. Yes; so I have it; I am careless about those things, but that is the way I have it dated.

WILLIAM SCHULSTER, sworn for complainant, testified as follows:

By Mr. Ward:

Q. Where do you live?
A. Newfoundland.
Q. How old are you?
A. Thirty-five.
10 Q. Do you know Amos Chamberlain?
A. Yes.
Q. Do you know the last witness, James Tintle?
A. Yes.
Q. How long have you known him?
A. The last 15 or 16 years.
Q. Do you remember of meeting Mr. Tintle in the year 1878 and hearing Mr. Chamberlain and him have a conversation about the purchase of some ground at Bloomingdale of Mr. Manning?
20 A. Yes.
Q. Did you hear the conversation between them fully?
A. Yes.
Q. What was that conversation?

Mr. Pitney.—I object to this conversation. If Mr. Tintle has any authority from us, he has already told what the conversation was, and Mr. Chamberlain has told what it was, and we have not disproved or admitted it, and there is not the least pretence on our part that we are able to disprove it now, and the only object can be to contradict their own witnesses.

30

Mr. Ward.—It is simply to fix the dates.

Mr. Pitney.—I withdraw my objection, if it is only for the purpose of fixing the date.

Q. Do you recollect what day of the month it was?

A. It was the 8th of May, 1878.

Q. Was there anything said about the description or boundaries of the land that was purchased by Mr. Chamberlain?

Mr. Pitney.—I make the same objection.

Mr. Ward.—I wish to corroborate the testimony of the former witness. 10

Q. Did you see some money pass then?

A. Yes, I saw $10.

Q. How?

A. Pass from Mr. Chamberlain to James Tintle.

Q. What was it paid to James Tintle for?

A. For that property there. He had some more money, and Tintle said that was enough, till he had his title.

Q. He told Chamberlain so?

A. Yes. 20

Q. Do you know of Mr. Chamberlain's being in possession of that property?

A. Yes; I had been down helping him there.

Q. You had been working there?

A. Yes.

Q. What was done on the property, at that time?

A. We were fixing the foundation of the building. We drilled the big stone in the lot, and we were going to build the foundation. 30

CROSS-EXAMINATION:

By Mr. Pitney:

Q. Is that all you did that day?

A. Yes, we were only there part of a day.

Q. How do you fix the 8th day of May?

A. I know it was that day.

Q. How do you know it?

A. I know it because I put it down when I was down there; I was working for him by the day.

Q. Where did you put it down?

A. On my book, of course, where I kept all my time.

Q. What book?

A. Book of the hours.

Q. Have you got the book here?

10 A. No, sir.

Q. How many other days did you work for Mr. Chamberlain?

A. I think I only worked one day after that.

Q. When was that?

A. Some time after.

Q. About how long?

A. It might have been a week after I went up and put the foundation on the building.

Q. You have not got the book here?

20 A. No, sir.

Q. You worked for him by days?

A. Yes.

Q. The first day you went down to drill a hole in the rock?

A. Yes; right where the house stands now.

Q. You didn't blow it up that day?

A. I think we blasted the rock.

Q. You had nothing to do but drill it?

A. I drilled the rock.

30 Q. After that you went again?

A. Yes; I was down there one day and helped him afterwards draw the stones and build up the foundation.

Q. How build up the foundation?

A. Lay it up.

Q. You have not got that date?

A. No, sir.

Q. How can you tell which day it was that you saw this money tendered?

A. I am certain it was the 8th day of May.

Q. How can you tell it was this day or the other day you went there?

A. I know it was the first day I went down.

Q. How do you know?

A. I have got the right to believe what day I went down.

Q. I want to know the grounds of your belief—why you think it was one day more than another.

A. I know it was the 8th day of May. 10

Q. How can you tell it was the 8th day of May or the other day that you worked there?

A. It was the first day I worked there.

Q. How do you know that it was the first day that you worked there? Had there been any other stones blasted before you worked there?

A. I don't think there had.

Q. This was the first thing?

A. Yes.

Q. Was the foundation marked out then? 20

A. I believe the foundation was staked out.

Q. The trench was not dug?

A. Part of it was, I believe—the upper side of the trench.

Q. There was no house there at that time, was there?

A. No, sir.

Q. You understood he was preparing it for a dancing platform, didn't you?

A. Yes; and the house on one end of it.

Q. You spoke of the platform—this foundation you were building was the foundation of the platform? 30

A. The stones we blasted were the big stones, the part where the house stands now.

Q. Wasn't it blown away because it was in the way of the platform?

A. I think we filled up around it after we drilled, to build the foundation there.

Q. The question is, was it or was it not blasted because it was too high—in the way of the platform?

A. It was not blasted the day I was down there.

Q. Was that the reason why they wanted to blast it, as you understood?

A. Yes; we were going to blast it.

Q. The reason was because it stood too high, in the way of the platform?

A. It was on the platform part.

Q. Was the platform there then?

A. No, sir, it was not; there was no platform there at
10 all.

By Mr. Ward:

Q. Do you recollect anything being said about the deed?

A. Yes, sir; there was something said about the deed.

Q. Who said it?

A. Mr. Tintle; he said Roome was to make out the title right away after Chamberlain had given him $10;
20 that Roome was to make out the title; that he could have it right away.

Q. Anything said about possession?

A Yes.

Q. What was that?

A. He told Amos he had given him possession.

Adjourned to Friday, Dec. 21st, 1883, 10 o'clock A. M.

30

Dec. 21st. 1883.

Examination of witnesses continued, pursuant to adjournment, in the presence of Isaac Van Wagoner, Master in Chancery, at his office in Paterson, New Jersey, and Z. M. Ward, Esq., of counsel for complainant, and Henry C. Pitney, Esq., and Edmond D. Halsey, Esq., of counsel for defendants.

JAMES TINTLE, recalled, further testified as follows :

By Mr. Ward :

Q. You were asked the other day to produce some letters that you had received from Mr. Manning ; have you since looked for some letters and found them ?

A. Yes, sir ; I have.

Q. I now show you a letter, dated March 15th, 1878. Is that the letter received by you from Mr. Manning ? 10 (Showing witness letter.)

A. Yes, sir.

Q. And is that Mr. Manning's hand-writing in that letter.

A. Yes.

Q. Was that received at the time it bears date ?

A. Yes.

Letter put in evidence and marked Complainant's Exhibit D. 20

Q. I show you a letter dated March 16th, 1878, and ask you if that is also a letter that you received from Mr. Manning, and is that in Mr. Manning's hand-writing? (Showing witness another letter.)

A. Yes.

Letter marked Complainant's Exhibit E.

Q. The next letter I show you is dated April 11th, 1878 ; 30 did you also receive that letter from Mr. Manning ? (Showing witness another letter.)

A. Yes.

Letter marked Complainant's Exhibit F.

Q. I show you a letter dated April 22nd, 1878 ; is that a letter that you received from Mr. Manning ? (Showing witness another letter.)

A. Yes.

Q. Why is the signature not there?

A. I cut off the signature there, to use for a blank piece of paper, for something or other.

Letter marked Complainant's Exhibit G.;

Q. I show you a letter, dated May 14th, 1878; is that a letter that you received from Mr. Manning. (Showing
10 witness another letter.)

A. Yes.

Letter marked Complainant's Exhibit H.

Q. I show you a letter dated New York, June 4th, 1878; is that also a letter that you received from Mr. Manning? (Showing witness another letter.)

A. Yes.

20 Letter marked Complainant's Exhibit I.

CROSS-EXAMINATION:

By Mr. Pitney:

Q. Have you produced all the letters that you received from Mr. Manning?

A. No, sir.

Q. Have you produced all the letters that you have
30 preserved?

A. No, sir.

Q. Produce any others that you have.

The witness produced several letters and handed them to counsel for defendants.

Q. I now show you a letter just produced, dated, November 16th, 1875, which is evidently an error, meaning 1878; did you receive that letter?

A. Yes, that letter I received.

Marked Exhibit D 11.

Q. I show you a letter, dated April 22nd, 1878, produced by you; did you receive that? (Showing witness letter.)
A. Yes.

Letter marked D 12. 10

Q. I show you a letter dated April 4th, 1878; did you receive that? (Showing witness letter.)
A. Yes.

Letter marked D 13.

Q. I show you a letter dated April 24th, 1878; did you receive that? (Showing witness letter.)
A. Yes. 20

Letter marked D 14.

Q. I show you a letter dated May 17th, 1878; did you receive that? (Showing witness letter.)
A. Yes.

Letter marked D 15.

Q. I show you a letter dated May 24th, 1878; did you receive that? (Showing witness letter.) 30
A. Yes.

Letter marked D 16.

Q. I show you a letter dated May 31st, 1878; did you receive that? (Showing witness letter.)
A. Yes.

Letter marked D 17.

Q. I show you a letter dated June 11th, 1878; did you receive that? (Showing witness letter.)

A. Yes.

Letter marked D 18.

Q. I show you a letter dated June 18th, 1878; did you
10 receive that? (Showing witness letter.)

A. Yes; that is correct.

Letter marked D 19.

Q. I show you a letter dated June 24th, 1878; did you receive that? (Showing witness letter.)

A. Yes; that is correct.

Letter marked D 20.

20

Q. Have you produced all the letters that you received?

A. I believe I have, concerning this business; I have other letters, concerning the wood job, and perhaps some of them—I don't know but half of them—may be lost.

Q. Did you bring down with you all the letters that you received from Mr. Manning?

A. No, sir.

30 Q. Why didn't you bring them down?

A. I don't know as it concerns this business.

Q. Weren't you requested to bring them all down—all the letters that you had received from Mr. Manning?

A. I considered you meant all concerning this transaction.

Q. Weren't you requested to bring down all the letters that you received from Mr. Manning?

A. I can't say whether I was requested to bring down all.

Q. Did you receive a letter from him dated February 14th, 1878, and have you got among your papers a letter of that date?

A. That I couldn't tell you.

Q. You have produced one dated February 16th, 1875; that is a mistake. It should be 1878. Did you find among your papers one dated two days before that?

A. Not that I remember of.

Q. Do you recollect of any letter miscarrying from Mr. Manning to you, containing a deed? 10

A. I can't say positive.

Q. Have you any recollection that he wrote you a letter containing a deed, or did the deeds that he sent to you all come to you?

A. All that I received?

Q. No, all that he sent you.

A. I can't say.

Q. There never was any trouble between you, was there, about his having executed a deed and mailed it to you and the deed not getting to you? 20

A. Not that I remember of.

Q. You would probably recollect that?

A. Yes.

Q. I will read you this letter:

NEW YORK, Feb. 14th, 1878.

MR. JAS. TINTLE.

Dear Sir: Yours of the 11th came duly. I have had the deed made as soon as possible and enclose it herewith. It is unnecessary to have a survey made unless you can find the corner of Stony Brook road and the road to Millertown, but I suppose there can be no difficulty about that. You will see the consideration in the deed is $150. I have an impression that the sum agreed on was $125. You will know; if so take the $125 and deliver the deed. The sum named in the deed will make no difference. I have written to Mr. Howell, and he is coming to see me. Yours truly, R. H. Manning. 30

Did you receive such a letter ?

A. Yes.

Q. Where is it now ?

A. I don't know.

Q. We cannot prove this copy without accounting for the original, and I would like to know where it is.

A. I recollect the letter, since it is read ; I received such a letter.

Q. Do you think you have got it home ?

10 A. I can't tell you.

Q. Did you look for it ?

A. Yes.

Q. Did you find it ?

A. No, sir.

Q. Do you think you can find it by further looking?

Mr. Ward—I will admit the letter as being one he received from Mr. Manning.

20

Q. Did you get a letter dated March 12th, 1878 ?

A. I can't say ; I might perhaps remember it, if I heard it read.

Q. You have no idea what trouble you have put us to.

A. I brought all I could find.

Q. You brought all the letters that you could find ?

A. Concerning this. This wood job is another thing.

Q. Did you receive a letter from Mr. Manning, dated

30 April 3rd, 1878, and have you such a letter among your papers ?

A. I can't tell now ; I don't know. The letters that I have not put in I can't tell anything about, till I hear them read. I might remember of receiving them.

Q. Here is one, dated April 3rd, 1878. Read it.

Mr. Ward.—I have no objection to the letter of April 3rd.

Mr. Pitney.—We will put it in when we come to our case, as it is found in our letter-book. Here is a letter dated April 29th, in the letter-book.

Mr. Ward.—I am willing to admit that letter.

Mr. Pitney.—That will be put in evidence, from our letter-book, without producing the original, when we come to our case. Here is a letter dated June 20th, 1878. 10

Mr. Ward.—I will consent to no letters after the sale to Howell & Noble. That is written after the sale.

Q. Did you receive a letter from Mr. Manning, dated June 20th, 1878.

A. I don't remember ; if I heard it read, I might. 20

Q. Have you produced here all the letters which you can find from Mr. Manning to you, and received by you, which related to this property in any way ?

A. I think I have.

Q. You have hunted throughout your house ?

A. I don't know as I have hunted throughout the house.

Q. Have you hunted everywhere where you supposed the letter could be ?

A. Yes, I think I have ; in fact, I have not hunted so closely ; I have had the children hunt them. 30

Q. You have produced here about twenty letters this morning ?

A. Yes.

Q. Where were those found ?

A. They were found in a drawer of a bureau ; I can't say whether they were all found there.

Q. Is that were you kept them ?

A. When my family were searching for them, they were searching in that drawer, and I saw them take several out.

Q. Is that the place where the letters ought to be?

A. It is like I said the other day; some of them were in a box which was a soap-box, and some in a drawer and some in a book-case; I suppose there are letters in a dozen places.

Q. I will read you this letter and see whether you re-
10 ceived such a letter.

Mr. Ward.—I object to the letter being produced in that way, and I ask for a ruling on it; and I object to its being read to the witness unless it is shown, absolutely, that that is a lost letter. This is a copy of a letter which one of the defendants claims he wrote, and it cannot be offered at this time as testimony.

20

Mr. Van Wagoner.—It may have some bearing on this case, and I will overrule the objection.

Mr. Ward excepts.

Mr. Pitney then read to the witness letter of June 20th, 1878, as follows:

30 NEW YORK, June 20th, 1878.

MR. JAMES TINTLE, Bloomingdale.

Dear Sir:

I received yesterday your account for expenditures on the village, amount $508.34 which I have placed to your credit. Please send me the bills when you are sending. I hand you herewith my statement of the account, showing a balance against you of $548.63, which is applicable to the wood lot account

You have not paid me the $25 for second sale to Brewley nor the $125 for the sale to Corrigan. Send me those amounts to make this account square. Send also Cramer's mortgage ; I have never received it. It ought to have been taken when you delivered the deed. There will remain due from Sandford $150. If you take a note for that then all will be settled. I enclose a note for him to sign, at six months ; he can pay that at any time, sooner if he wants to. The lot to Reeve and the sale of a portion of the Maby lot will be deeded by the new owners. Get all the ties and wood down as soon as you can so that we can come to a settlement on that. Will write you about the ties as soon as I hear from the railroad.

Yours truly, R. H. MANNING.

I leave town Tuesday to be absent a week. Send me the Corrigan & Brewley money and the Crammer mortgage and the Sandford note by Saturday or Monday if possible.

Q. Did you receive such a letter as that ?

A. I don't remember the name of Corrigan.

Q. Crammer—do you remember that?

A. Yes ; I think I received such a letter.

Q. If you did, where is it ?

A. That I can't tell you.

Q. Did you find any credit on your book to Mr. Chamberlain for the $10 that was paid to you ?

A. No, sir ; I did not find it.

Q. Did you find any credit to anybody in that book for down money paid ?

A. Nothing more than I have papers here to show from A J. Cooke.

Q. Have you the book in which you made the account of sales of these lots ?

A. Yes, what few memorandums I made ; I just turned the money over to Mr. Manning; there are not half of them put down ; there area few memorandums, but

some of them do not give the date; there are several lots that I sold that I have not any memorandum of at all; very likely I kept a memorandum on pieces of paper and envelopes, and they wore out in my pocket or were lost.

Q. This little book that you just handed to me—is this the book in which you kept what accounts you did keep of the sales of land?

A. I can't say now; I may have kept them in an envelope or something, just to remember that, till the money was paid over to Mr. Manning; it is a careless way of doing business.

Q. Is this the book in which you made some memoranda of sales of lots?

A. Yes.

Q. Is this the book you speak of in your evidence, in which you said you generally put it down in a little book?

A. I suppose that is the one; that is the only one I could find; I see there Mr. Roome's time in surveying.

The book referred to is marked D 21.

Q. I see in this book—D 21—is down "A. J. Cooke, his lot next to river, $125. Mrs. Bailey, date of deed April 1st, 1878." Was that put down at the time?

A. No, sir; it was not put down at the time; there is one that was put down at the time, and then it was changed afterwards a little.

Q. On the page before that there is a memorandum, "Sold A. J. Cooke one lot, March—" without date. "Sold Mrs. Bailey one lot, April 1st., 1878, and Mrs. Bailey one lot, May 23rd. Sold Israel Reeves one lot in May, $120; sold one lot to H. V. Smith, $50." Are those memoranda that you made at or about time in the book?

A. Yes; on the one page.

Q. That is the original memorandum?

A. The last page was written first.

Q. I see also in this same book is the account of Mr. Roome's surveying?

A. Yes.

Q. It commences on March 4th and runs to March 5th, 6th, 7th, 8th, 14th, 15th and 16th; is that it?

A. Yes, as near as I can recollect now.

Q. At the same time you charged him with your time?

A. I think I did.

Q. Your time in overseeing?

A. Yes; I did charge him with that. 10

Q. The first day that you have it down that Mr. Roome came to survey, was it the 4th day of March?

A. That is the way I have it there.

Q. Do you recollect whether Mr. Manning was there that day or not?

A. I can't say whether he was there that day, or not.

Q. He was there during the job of surveying, some time?

A. Yes, I don't know but what he was there twice during the time, but I ain't positive of it. 20

Q. Which one of those days was it that the Chamberlain lot was surveyed?

A. I can't tell you.

Q. It was one of those days, was it not?

A. I think not, yet it may be the first time it was surveyed.

Q. I mean the first time it was surveyed. You say it was surveyed about the first of March, or in that neighborhood. If it was surveyed about that time, was it on one of those days. 30

A. I can't say that. I don't know whether I have a memorandum of the time, or not.

Q If you kept an account at all, you kept it all at that time, didn't you?

A. Not according to the way I have sold lots. I see I have not got an account of all the lots I sold, not more than half of them. I make it more times that Mr. Roome surveyed than what I have got the figures. The bill that I sent to Mr. Manning shows the time.

Q. The bill that was made out by Roome ?

A. Yes, the bill that was made out by Roome. It was made out by him.

Q. The way Mr. Chamberlain claims his lot to be surveyed, the corner of it comes right down to the old road that run along there—a country road ; is that so ?

A. One corner.

Q. Was there any fence along that old country road ?

A. I think there was. I took the old fence away, but
10 I can't tell positively now whether the fence was there at that time or not. I think it was, though.

Q. As you start from the fence, in front of where Mr. Chamberlain claims his lot, and go right north, what sort of ground is it, up hill or down ?

A. It is right to the foot of the hill.

Q. And you go up, quite a little way, and come to more level ground ?

A. Yes, in running southwest.

Q. Running north ?

20 A. Running north.

Q. Yes; after you get over the fence, and start to walk north from the road across what you call Mr. Chamberlain's lines, you go steep up hill ?

A. No, sir; I would go on a level.

Q. If you went at right angles with the old road ?

A. If you would go north, you mean ? You can't go north and go on the lot, without going on a level. The map would show it ; I could show it to you, on the map.

30 Q. What direction would you go, if you left the old road,—the country road, the point where Mr. Chamberlain's lot, as he claims, touched it, and went right across Mr. Chamberlain's lot,—what point of the compass would you go towards ?

A. Right across the lot ?

Q. Yes.

A. Which way across ?

Q. Right from the old road across.

A. Right from the road, north.

Q. Across the lot, I ask you what the point of the compass would be,—which way you walk, north, or south, or east, or west, or south-west, or north-east?

A You would have to go north from the old road.

Q. That is what I supposed.

A. You said up the hill.

Q Wouldn't you go up a hill?

A. Not if you go direct north, but if you go a little west of north you would go right up a hill. 10

Q. And you would go on his lot?

A. Yes.

Q. What had that land been used for?

A. Before it was laid out in lots?

Q. Yes.

A. It had been used for pasturing.

Q Were there any cross fences on it—how big a field was it, if it was a field?

A. The whole of it?

Q. Yes. 20

A. Perhaps five acres.

Q. Then there was a field there, of about five acres?

A. Yes, from five to seven acres.

Q, There was no fence that corresponded with Mr. Chamberlain's lot as he claimed it, was there?

A. Yes.

Q. Where was the fence?

A. Running at the foot of the hill, at the first line,—running from the old road, north.

Q. Running from the old road north? 30

A. Yes.

Q. Along the line of what is now Second street?

A. Yes.

Q. Or in that neighborhood?

A. Yes, in that neighborhood.

Q. There was a fence running across there?

A. Yes, it ran all the way, after they had surveyed out for Chamberlain.

Q. And further too?

A. Yes.

Q. One side of his lot was bounded by a fence?

A. No, sir.

Q. It was pretty near?

A. I can't say just how many feet from the fence his line was.

Q. Then the line did not run along the fence?

A. No, sir; I couldn't be positive of that, how near
10 the fence did run; it might sometimes have struck the fence; I can't say.

Q. How much did Mr. Roome charge a day for surveying?

A. $2, I think it was; the two together was $4.

Q. I see here on this page in your book that you have got on the right-hand side, "Mr. Manning debtor, March 4th, $4, one day's surveying, &c., by B. Roome." On the left hand side William Roome is credited. Now, that means that Benjamin Roome was there alone on the
20 4th?

A. Yes.

Q. And that William Roome was there on the 5th, and Benjamin also?

A. Yes.

Q. The two together were there on the 4th and 5th?

A. Yes.

Q, And on the 6th and 7th?

A. Yes.

Q. And that is the way your book has it?

30 A. Yes.

Q. And the old gentleman was there alone on the 4th?

A. Yes.

Q. And he and William were both there on the 5th?

A. Yes, according to the book; I suppose that correct.

Q. That is to say, you thought it was correct?

A. Yes.

Q. That is the way you read it?

A. Yes.

Q. Will you lend me this book? I will be responsible for its return to you.

A. I can make a copy of it.

Q. I want the original.

A. I would not want to let it go out of my hands; I can take out my other accounts and cross them off.

Q. No; I want the book, exactly as it is.

A. What—the other business? 10

Mr. Pitney.—Yes,

Mr. Ward.—I object to the books' being taken away. It has been marked.

Mr. Pitney.—It is only marked for identication. If any witness is subpœnæd to bring a paper to show in the court, if it was before the Court in Banc, the Court 20 would make an order at once about it. If you go before a Master, you ask the witness whether he has any objection to leave a paper with counsel, or lend it to counsel, so it may be put in evidence when counsel desires to put it in evidence. The practice is to ask the witness if he will lend counsel a book. If he says yes, that ends it; if he says no, then you have to apply to the Court for an order on the witness to 30 do it. All I desire to have is a note on the record of what the witness' willingness is, so I can apply to the Chancellor. I have not offered any paper in evidence.

Mr. Van Wagoner.—I don't see that I have anything to do with it. It is a matter for the witness, whether he will lend the book

or not. When the book is offered in evidence, then I will determine the matter.

Mr. Pitney.—The papers that have been marked for us were only marked for identification.

Mr. Van Wagoner.—It is understood, then, all the papers which have been marked, were marked for identification; it is understood all these letters were merely offered by Mr. Pitney for identification, and reference has been made particularly to the letter of June 20th, which was read to the witness.

Q. How long did you work for Howell & Noble after they came into possession of this property?

A. That I don't know; I am not prepared to tell now. Oh, perhaps it was two months, might have been three.

Q. They did not employ you any more, after that?

A. No, sir.

Q. Did you feel a little sore about it?

A. No, sir.

Q. You did not have any feeling against them for not employing you further?

A. No, sir.

Q. Had that lot—the five or six acre field or pasture lot in which Mr. Chamberlain's lot was situated, been pastured by anybody?

A. Yes, sir.

Q. Who pastured it?

A. At the time Mr. Manning owned it do you mean?

Q. Yes.

A. Different ones I let it to; to Mr. Ball; I don't remember now; different ones.

Q. Had it been ploughed lately?

A. No, sir.

Q. Was it a rocky, stony lot?

A. Middling; some would call it a reasonably smooth lot, and some would call it pretty rough.

Q. Big stones or little ones?

A. Some quite large ones, and some small ones.

Q. It had not been ploughed in some time?

A. No, sir.

Q. Were the fences kept up around it?

A. Not all the fences, not all the cross-fences; they had not been kept in good repair; the fences were there. 10

Q. Were they so you could keep the catle in?

A. Before there was any new fences made?

Q. In the spring 1878 were the fences so you could keep the cattle in?

A. Yes, you could manage to keep the cattle in then I believe. I built a new fence—a board fence—around the most of it.

Q. When? 20

A. In 1878.

Q. What time in 1878?

A. Oh, perhaps I might have commenced in March, April or May, somewhere along there.

Q. Who built it—Mr. Manning or Messrs. Howell & Noble?

A. Mr. Manning.

Q. Before he sold?

A. Yes.

Q. You built it around the whole of the five or six acres? 30

A. Around the whole tract, that is on the north and west sides and the east side. Some part of it there was on old fence on.

Q I am speaking now of this particular field. You say there was a field of five or six acres, in one corner of which, if I understand rightly, Mr. Chamberlain's lot as he claimed it was situated. What did you do to

the fence on that lot in the spring of 1878—on that field?

A. I didn't do anything to the fences on that field, that I remember of. There was a pasture; the whole tract was fenced in; the map will show.

Q. How big was the pasture lot, as you call it?

A. I don't know how many acres there were in it.

Q. About how many, do you think?

A. Perhaps thirty acres.

10 Q. This land was a knob or hill of land, lying between the Pequannoc River and Stony Brook?

A. Yes.

Q. Stony Brook run along on the south?

A. Yes.

Q. The Pequannoc River ran on the north and east, didn't it?

A. Somewheres near there; I should call it southeast.

Q. There is a bend in the Pequannoc River there?

A. Yes.

20 Q And right at the north of this lot it runs pretty near east and west, doesn't it?

A. Yes.

Q. And then it runs to the south?

A. Do you mean the Pequannoc River?

Q. Yes.

A. Yes.

Q. And the Stony Brook comes in to the south end of that bend?

A. Yes.

30 Q. On the west of this lot Stony Brook and the river come very near together?

A. On the west—no, sir unless you count where the canal runs through to feed the works. Do you mean that?

Q. Yes.

A. Yes.

Q. The canal cuts across from the river on the west on this lot to Stony Brook?

A. Yes.

Q. And the water-power canal and the Stony Brook and the river make an island, do they not?

A. Yes.

Q. Now, this land lies in that island?

A. Yes.

Q. All that triangle which was in lots was fenced in, wasn't it, in pasture?

A. Not the whole of it.

Q. A good portion of it? 10

A. Yes.

Q. The cemetery came out of that I suppose, didn't it.

A. Yes.

Q. And the Sisco lot?

A. That didn't belong to Mr. Manning.

Q. There was a fence along the Bloomingdale Road, wasn't there?

A. Yes; and from the Sisco lot.

Q. How far, about, towards the river did they go?

A. It went to the river, I think, when I first commenced to work for Mr. Manning. 20

Q. You say you built a new fence in the spring of 1878?

A. As near as I can recollect now.

Q. Did the fence run up Second street?

A. No, sir; next to the river is First street, is it not?

Q. Yes.

A. Well, it ran along First street.

Q. How far did it run along First street?

A. On this map it would run north, perhaps, to Arch street, leaving the lots next to the river outside. 30

Q. Then it turned around through Arch street and back to the cemetery?

A. No, sir; it ran down to the depot.

Q. The depot is marked on the map here, on the railroad?

A. Yes.

Q. Then in the spring of 1878 you built a new fence, commencing at the Sisco lot?

A. No, sir.

Q. Where then?

A. Commencing at First street.

Q. Commencing at First street?

A. Yes.

Q. And running up First street till you come out at an angle?

A. Yes.

Q. And then going on by Arch street and down to the
10 depot?

A. Yes; I don't remember now whether it followed that angle or not; I think I did.

Q. You kept about two or three hundred feet away from the river?

A. Yes.

Q. And you fenced that lot in?

A. Yes, except on the old road, and there was a fence from the depot to the Sisco lot; I don't know whether Mr. Manning had that built or whether Howell & Noble
20 had; but there was a fence running from somewhere near the depot up to near the cemetery.

Q. From the depot up to the cemetery you mean?

A. Yes.

Q. After Howell & Noble bought the whole thing was fenced?

A. That portion I have shown you.

Q. All outside of those lines was substantially fenced in, either with new or old fence?

A. I can't say substantially.

30 Q. I mean practically; by substantially I do not mean substantially in the sense of hog tight or bull strong and all that sort of thing.

A. Oh, yes, it was.

Q. After you made that fence there in the spring of 1878 you could turn cattle in there with ordinary safety?

A. Yes.

Q. Was that so when Howell & Noble came there to look at the property?

A. Yes, I believe it was.

Q. How many of those lots had been sold inside of that fence?

A. I don't remember now how many lots had been sold inside of the fence.

Q. There had not been many, had there?

A. No, sir.

Q. Had any deeds been made for any lots inside the fence?

A. Not inside of the board fence. 10

Q. I am speaking of the new fence that you built.

A. I think not.

Q. How far had that new board fence that you built progressed at the time Noble & Howell bought—how near finished was it?

A. Well, I don't remember now; it was finished with the exception of the piece running up to the cemetery; I don't remember now whether that was built or not; I think likely the most of it was built; I remember of reading a letter that I received or wrote to Mr. Mann- 20 ing, or hearing it read the other day, here, about sending for lumber to finish the fence, but perhaps the fence was built; I can't say; I don't remember.

Q. Did you build it or hire a carpenter to build it?

A. I don't think I hired a carpenter; I hired men—laborers, I think, to come there and work; yes, I did hire a carpenter to build the fence—had a contract with a carpenter.

Q. I show you a letter of June 18th, 1878; see whether that does not refresh your memory as to whether the 30 fence had not been finished at that time.

(Letter handed to witness.)

A. It seems at that time the fence was not finished, judging from this letter.

Q. It speaks of "lumber I do not need?"

A. Yes; and it speaks of thirty panels yet to build.

Q. Did you not build a double fence on Arch street?

A. Yes; I built a double fence on Arch street.

Q. On each side of the street?

A. Yes; I don't know whether it was before Manning owned it or afterwards.

Q. Does not that letter of June 18th refer to that on the outside of Arch street?

A. I don't remember where the thirty panels were that were not built.

10 Q. I show you your letter of March 16th; it was about that time you commenced the fence, was it not?

A. Well, there was an old fence—that reminds me—around next to the river; I believe it was all fenced in.

Q. There was an old fence around next to the river?

A. Yes; a post and rail fence.

Q. And this new fence that you built was put inside the outside tier of lots?

A. Yes, I believe it speaks of those that have bought lots; all the lots were inside the old fence.

20 Q. All the lots that had been sold were inside the old fence?

A. Yes; on this hill.

Q. And the fence you built was inside of those lots?

A. Yes, as near as I remember now, except Mr. Chamberlain's.

Mr. Pitney.—Unless the witness is willing to lend me that book which has been marked for identification D 21—unless Mr. Tintle
30 is willing to leave the book with me, to put in evidence when I get ready, I shall ask the Master to impound the book and keep it himself.

Mr. Van Wagoner.—I would not like to take that authority upon myself without the consent of counsel; I don't see that I have any authority in the matter.

Mr. Ward.—I offer in evidence letters dated February 16th, 1878; April 4th, 1878; April 23rd, 1878; April 24th, 1878; May 17th, 1878; May 24th, 1878; May 31st, 1878; June 11th, 1878; June 18th, 1878; June 24th, 1878. I also offer the book which has been marked D 21 for identification.

Mr. Pitney.—He cannot make the book evidence without our consent, but we do not object to it. 10

RE-DIRECT.

By Mr. Ward:

Q. I call your attention to the letter which has been read here of June 20th, wherein it is stated that the lots bought by Mr. Reeves will be deeded by the new owners, purporting to have been written by Mr. Manning and read to you here. Was the deed ever made to Mr. Reeves to your knowledge for that lot? 20

Objected to, on the ground that the witness cannot know anything about it.

Mr. Ward.—I ask him if he knows of a deed being made to Mr. Reeves.

A. I think there was, according to the letter I see there, which was read. 30

Mr. Pitney.—I object to that on the ground that the deed must be produced to show whether it has been delivered or not. I object to any proof of the delivery of that deed without the production of the deed or a certified copy of it.

Objection overruled. Mr. Pitney excepts.

Q. Do you know of any such deed, of your own knowledge?

A. I think I remember of receiving such a deed.

Q. From whom?

A. Mr. Manning.

Q. Do you know where that deed now is?

A. I am not positive; it may be in my possession; I
10 may have returned it to Mr. Manning.

Q. If that deed cannot be produced do you think you could tell the contents of it? Do you think you would know the property that is described in it?

A. Yes, sir.

Q. Whom was it made by?

A. By Mr. Manning.

Q. To whom?

A. To Israel Reeves.

Q. That letter states that the deed would be made to
20 Israel Reeves by the new owner, which you have recognized. Did you know at the time who the new owners were—June 20th?

A. I knew they had been talked of—that they talked of buying.

Q. That who talked of buying?

A. Messrs. Howell & Noble.

Q. Had the sale been made of that property (before Howell & Noble purchased) to Mr. Reeves by you?

A. The sale of the lot?

30 Q. Yes.

A. I can't say positively; I think not, though.

Q. What construction did you put upon the letter about its saying the deed to Reeves would be made by new owners?

Objected to, on the ground that the witness' construction of Mr. Manning's letter is not competent.

Objection sustained.

Q. What did you think at the time you got that letter that it meant?

A. Stating the deed would be made by the new owners?

Q. Yes.

A. Well I thought there had been some change made, so that the deed was to be made by the new owners.

Q. Had you this old deed—the deed that you have spoken of—in your possession at that time? 10

A. I think I had.

Q. Then the property had been sold before that?

A. Yes.

Mr. Pitney.—I object to that, as leading, and that it is not redirect-examination.

Mr. Van Wagoner.—The answer has been taken. 20

Q. Was this lot of Mr. Chamberlain's ever fenced after he purchased it, by anybody?

A. No, sir.

Q. The fences that have been talked about, where were they located, as to Mr. Chamberlain's property?

A. Well, one fence was on the roadside, the old road, leading towards Stony Brook, and the other fence was running north from the old road.

Q. Would Mr. Chamberlain, to get on his property from the main road, have to go through any fence, after he purchased? 30

A. I think not; I think the new fence left the roadway, and there was an entrance to the depot; I don't remember whether that was kept closed up or not.

Q. What is the location of Mr. Chamberlain's property, as to being conspicuous, or easily discovered or seen from the road, or any part of this land owned by Mr. Manning—what is the character of it?

A. The character of it is a hillside, the most of it; there is some that reaches up on a flat, some part of it.

Q. Could, or not, a person help seeing this building going up there, upon any part of that land?

A. Mr. Chamberlain's?

Q. Yes.

A. No, sir; I don't think they could help seeing it; I could see it, from my place, and I live almost a mile and a half from it.

10 Q. I show you a letter dated October 2nd, 1878; was that letter received by you, from Mr. Manning?

A. Yes, sir.

Letter marked Exhibit K.

The Witness.—Have I a right to rectify something which Mr. Pitney asked me about the fence?

20 Q. You may correct any mistake you have made about the fence.

A. On the map, the fence leading up near the cemetery—I don't know as it joins the cemetery. It left this hillside and cemetery, alongside of this enclosure, when I come to reconsider.

Q. Do you mean where Mr. Chamberlain's property was?

A. Yes, outside the enclosure of the new fence.

Q. Have you corrected it, as you wished to?

30 A. Yes, it is all correct now.

Q. At the time Mr. Manning came there first, after you had sold this lot to Mr. Chamberlain, and the street was spoken of, which you testified to the other day, in your cross-examination, did you, at that time, point out to Mr. Manning the property that had been sold by you?

Objected to, as having been already asked and answered, and also as leading.

The Witness.—I can tell it all in a short time.

Q. Never mind. Will you look for that deed among your papers, carefully, on your return home?

A. Yes.

Q. And also for any memoranda that you have, or anything of that kind, pertaining to that property?

A. Yes.

10

RE-CROSS.

By Mr. Pitney:

Q, Did Mr. Manning sell a lot to C. H. Sanford, adjoining the Sisco or common lot?

A. Adjoining the Sisco lot—yes, I sold it.

Q. He made the deed?

A. Yes.

Q. Was there a house on that?

20

A. Yes.

Q. Was there a fence between that lot and the Stony Brook road?

A. A part of it; yes, sir.

Q. Fenced in?

A. Yes.

Q. What do you mean by a part of it?

A. I don't know but what the whole was fenced in, except the house; I don't remember now; no, it was not all fenced in.

30

Q. The house stands on the road, doesn't it?

A. Yes.

Q. The fence ran from the house, right along the Stony Brook road, easterly?

A. Yes, the fence wall; some of it was stone wall.

Q. And that fence and stone wall continues right on, towards Bloomingdale?

A. Yes.

Q. And goes on past what is called the Sloan or Sisco house ?

A. Yes.

Q. Is there any break in it, or was there in the spring of 1878 ?

A. Yes ; the Sanford tract ran to the point.

Q. I am speaking of after you got to the Sanford tract.

A. Then there was but one fence ; until that point
10 there were two.

Q. There was a fence in the rear of the Sanford lot and a fence in front of it ?

A. Yes.

Q. After you come to that point where there was one fence, did the fence continue on along the Stony Brook road to Bloomingdale, or toward Bloomingdale ?

A. Yes.

Q. How far ?

A. I think it went all the way to the river.

20 Q. You commenced with your new fence at what is called First avenue, east, didn't you?

A. Yes.

Q. And ran up First avenue to the north, till you came to Manning avenue, didn't you ?

A. I don't remember what the name was.

Q. And you made a bend to get around Arch street?

A. Yes.

Q. And you got around Arch street and ran with your new fence clear around it to near the railway station?

30 A. Yes.

Q. Did you go clear to the railway station ?

A. No, sir ; there is a railway wagon-road.

Q. To the cut of the railroad ?

A. Yes.

Q. Was there any fence between the Sisco or common lot and Mr. Manning's property ?

A. Yes.

Q. Was it, all the way along, fenced ?

A. I think it was.

Q. That is, from the corner of the Sanford lot, around to the cemetery, there was a fence ?

A. Yes, an old post and rail fence.

Q. From the corner of the cemetery was there a fence around the cemetery ?

A. Yes.

Q. And when you got around to the west side of the cemetery towards the railway station was there a fence from there across? 10

A. Yes.

Q. Clear across to the railroad ?

A. No ; to the street it was fenced both sides.

Q. What was that—the street leading up to the cemetery ?

A. No ; Arch street.

Q. From the end of Arch street, close to the railroad depot, was there a fence up to the cemetery ?

A. It was north of the cemetery, I think, without it was changed ; I don't remember whether it was changed 20 or not.

Q. Was there a fence from Arch street to the cemetery ?

A. I think not adjoining the cemetery, unless it was changed, as I say.

Q. There was a fence all the way finally around on the inside of Arch street ?

A. I think there was.

Q. Just tell us where the break was in the enclosure line ? 30

A. As I said, from the depot down to the Sisco property.

Q. There was a triangle west of the Sisco property and the cemetery that was not fenced in?

A. Yes.

Q. The railroad ran along there ?

A. Yes.

Q. And there was a very high cut or bank that acted as a fence?

A. Yes, some part of it; and some part of it there was not much of a bank; there was not any bank.

Q. But back of that there was a fence running from the railroad, in the neighborhood of the railway station, along to Arch street?

A. Yes.

Q. And there was a fence from Arch street to the cemetery?

A. Near the cemetery.

10 Q. How was it then that Mr. Chamberlain's lot, as he claims it, was not fenced in; how would you get from that into the highway without crossing a fence, after the new fence was built?

A. It did join; it met the old fence at the north, at the cemetery—an old post and rail fence.

Q. An old post and rail fence that was down?

A. You could get through if you tore the fence down.

Q. Without tearing down the fence or going through the break was there any way of getting into Chamber-
20 lain's lot?

A. That is right the north side of the cemetery.

Q. Was there any fence there?

A. The fence did not join the cemetery, I don't think, unless it was on one side the street; I don't remember whether the fence was on both sides the street or not.

Q. That is Sand street?

A. Yes.

Q. You could go through the cemetery?

A. No, sir.

30 Q. How would you go to get there?

A. The fence did not join the cemetery on one side, if it did on either side; the fence is there, and it will show for itself.

Q. Mr. Chamberlain could not get on his lot directly from the Stony Brook road on the southerly side of his lot without going across a fence?

A. No, sir; I think the fence was there then, at that time.

By Mr. Ward:

Q. The same fence was there then that is there now?
A. Yes; on the north side.
Q. Is it all the same as it was?
A. No, sir; it has been changed.
Q. Who changed it?
A. Where Mr. Mather bought the fence has been changed.
Q. Any other? 10
A. No, sir; I don't know of any other; when they cut the street through from the Mather property up the hill, then they tore the fence down.
Q. Mr. Chamberlain's lot was never in fence after it was sold to him?
A. No, sir.

By Mr. Pitney:

Q. The break in the fence where Mather's lot is was 20 made after Howell & Noble bought, wasn't it?
A. The break in the fence along the old road?
Q. Yes.
A. No, sir.
Q. When was it made?
A. Well, I say no, sir; I wouldn't be positive of that.
Q. The question I put to you is this: What was the condition of the old road fence leading from Sanford's lot east to the river, on the north side the road—what was the condition of that fence at the time Howell & 30 Noble bought?
A. It was an old post and rail fence.
Q. It had not been broken open to let the street in?
A. I think not; I broke it open when I commenced the street.
Q. You did that work for Howell & Noble?
A. Yes; when Mr. Manning owned it there was no street laid out there.

Mr. Ward.—I have subpœnaed Mr. Roome and two other witnesses, and they are not here. I cannot examine my other witnesses till Mr. Manning has been sworn.

Adjourned to Saturday, December 29th, 1883, 10 o'clock A. M.

10

December 29th, 1883.

Examination of witnesses continued, pursuant to adjournment, before Isaac Van Wagoner, Esq., Master in Chancery, at his office in Paterson, N. J., in the presence of Z. M. Ward, Esq., of counsel for complainant,
20 and Henry C. Pitney, Esq., and Edmond D. Halsey, Esq., of counsel for defendants.

JAMES TINTLE, recalled, further testified as follows:

By Mr. Ward:

Q. You were asked about the deed made by Mr. Manning to Israel Reeves; have you looked since you were here to find that deed?

30 A. Yes.

Q. Could you find it?

A. No, sir; I have not found it yet.

Q. Have you come to any conclusion, or do you know of your own knowledge, where that deed is, or what became of it?

A. No, sir, I can't say what became of the deed, whether Mr. Manning had me send it to him, or not; I can't say.

By Mr. Pitney:

Q. Have you made any further search for letters that you received from Mr. Manning than you had made a week ago?

A. No, sir.

Q. Do I understand you to say that you brought with you then and produced here all the letters that you could find that you had ever received from Mr. Manning?

A. No, sir; I said I had not brought them all; I said all concerning this property in that year. Oh, I have letters that I received from Mr. Manning some fifteen or eighteen years ago, I suppose. 10

Q. Have you any letters received from him about or just before the January, 1st, of 1878; about three months before the transactions commenced with regard to this alleged sale with Mr. Chamberlain?

A. That I can't say. Has there been a letter produced of about that time?

Q. No, sir; we have not produced any. The question is, whether you received such a letter. 20

A. I can't say now; I had a good many letters in that year and other years. In that year there were letters concerning a wood job and this property.

Q. Why didn't you bring them with you?

A. I brought all I could find, concerning this matter.

Q. Did you bring all the letters that you could find concerning his real estate there and the sale of lots?

A. Yes, sir; all concerning the sale of lots.

Q. Did you bring all the letters that you could find, relating to your employment by him—your authority from him to act for him? 30

A. Yes, I think I did.

Q. Did you have any written authority from him to take charge of his woodland and to sell and cut wood —to cut timber and sell it?

A. I can't say I had a written authority, or whether we made an agreement by word of mouth.

Q. Did you receive a letter from him, dated December 28th, 1877, requesting and authorizing you to take charge of his woodland, and to have it cut off and turned into railroad ties and posts and to sell the ties for him ?

A. Of course I had that authority, but I can't tell you now how I received it, whether by word of mouth or by letter. If there had been anything of that kind said last week, I could have hunted up those letters if I
10 have them in my possession.

CORNELIUS POST, sworn for complainant, testified as follows :

By Mr. Ward:

20 Q. Where do you reside ?
A. West Milford Township, County of Passaic.
Q. How old are you ?
A. Thirty-seven.
Q. Do you know the parties to this suit ?
A. I do.

Mr. Pitney.—I object to the calling of this witness for the reason that he was here one week ago to-day, present before the Master, and was not called, and the adjournment too,
30 place in the middle of the day. Counsel were brought here from Morristown to attend the examination of witnesses, and before one o'clock the counsel on the other side said he had no more witnesses that day and could not go on. This witness was here and should have been sworn then, and I wish the Master to certify that fact, because I propose to call

the attention of the Chancellor to it. I deny the right of counsel when he has requested, the attendance of the other side to stop in the middle of the day, when he has witnesses on hand, and then, at a future day, put those witnesses on the stand.

Mr. Van Wagoner.—Mr. Ward stated at the close of the last hearing: "I have subpœnaed Mr. Roome and two other witnesses, and they are not here. I cannot examine my other witnesses till Mr. Manning has been sworn." He stated he had no witnesses with whom he could proceed at that time. 10

Q. Do you know the premises in dispute here?
A. I do.
Q. Did you know them in the spring of 1878?
A. I did.
Q. Did you know them previous to the spring of 1878? 20
A. I did.
Q. Do you remember of their being purchased by Mr. Chamberlain?
A. I do.

Mr. Pitney.—I object to that.

Q. Have you, since you were here at the last sitting of this cause, made an examination of these premises? 30
A. I have.
Q. For what purpose?
A. Seeing whether the property was enclosed, how it was located and situated.
Q. Had you been on it and seen it—the condition of things there, in the spring of 1878, or about the time it was said Mr. Chamberlain purchased it?
A. Yes; after he had purchased it.

Q. About how long after March 4th do you think it was?

A. As near as I can recall now, it was about the 15th of April; it was about pay-day in the rubber mill, in April.

Mr. Pitney.—My objection to this is that it is evidence which was within the witness' knowledge a week ago to-day, and he should have been examined about it.

10

Objection overruled. Mr. Pitney excepts.

Q. Did you examine since you were here before the fences upon those premises?

A. I drove across the hill and noticed the fences as they were located on the property.

Q. Are the fences now as they were when you first knew Mr. Chamberlain took possession?

20 A. No, sir; they are not as they were when he first took possession.

Q. What has been changed?

A. There has been a board fence built upon some part of the property since he bought it, but it did not take in the property that Mr. Chamberlain purchased.

Q. You knew how the fences were at that time?

Objected to, as leading.

30 Q. Did you know how the fences were in the spring of 1878?

A. About.

Q. Were you on this property of Mr. Chamberlain's?

A. Yes; I was there in April, 1878.

Q. How does the fence around that property compare with what it was at that time?

A. At that time that property all lay kind of vacant and lay out in commons—most all the property there,

and there was no fence around it except the old fence along Stony Brook road, that was there in the spring of 1873, or in the summer of 1873; the fence was a dilapidated old fence and is still there; a few of the rails and posts are there, very near as it was at that time, along the Stony Brook road; the spring that Mr. Chamberlain purchased the property the railroad had been built up there, and the property was all thrown out into commons, from the west side or southwest side.

Q. From when? 10

A. From the time he purchased it till Mr. Tintle built the board fence around some part of the property; I don't know just the year that he built the board fence, but the board fence did not take in the property that Mr. Chamberlain purchased.

Q. Do you remember anything about a building being built upon this property that Mr. Chamberlain claims?

A. He was then busy erecting a building.

20

Mr. Pitney.—I object, because the witness knew that last week as well as to-day, and this is an abuse of the privilege of counsel, having adjourned last week until to-day, before the usual hour of adjournment, and he has no right, in the conduct of his case, to fix the day for the examination of witnesses and stop in the middle of the day, with witnesses on hand that might have been examined, and call counsel here again. I object 30 to the line of the examination. I do not object to his examining the witness as to anything he has learned since.

Mr. Van Wagoner.—I do not consider that I have any right to determine any such objection under the rule. The rule is that I am to determine as examiner all objections

to evidence. This may possibly be said to be an objection to evidence, but in the spirit of the rule, and I believe in the reading of the rule, I am not called upon to determine this matter, whether counsel for complainant is pursuing the right way of getting his testimony before the court. I overrule the objection under those circumstances.

10 After a discussion between counsel the Master said: It is understood, in future, that all remarks of counsel shall be taken down, and if after reading what the stenographer has taken it strikes me there is anything which has been said on the part of either of the gentlemen that is not proper under the circumstances, I having no authority to determine as to the course that should properly be pursued, I will then refer the matter to
20 the Chancellor for his determination.

Mr. Ward.—Shall I go on with my question?

Mr. Pitney.—Not yet; I have not determined whether I will appeal or not from the decision of the Master. (After examining the rule of the Chancellor) I will state to the Master that I do not intend to appeal,
30 but I do not propose to have personalities flung at me without answering them.

Q. When was he busy erecting the building?

A. In April, in the year I mentioned.

Q. Can you tell us about what time in April it was?

A. About the 15th, I think; it was when it was payday in the rubber mill.

Q. Will you tell us what was done about the 15th of April?

A. I remember a platform being done there—the foundations of a platform being done, and I don't remember particularly what more was done at that time; but shortly afterwards, I think in the next month, I was down there, and I then remember particularly about what was done ; he then had the frame up.

Q. State to us what you discovered was done the next month.

A. He had the frame up, and it was partly enclosed, one story boarded up. 10

Q. How large a building was it?

A. I don't know just the dimensions of the building, but I should suppose it was in the neighborhood of forty feet one way and sixteen the other.

Q. How high was it?

A. Well, it was built for a two-story building, perhaps sixteen or seventeen feet, as near as I could tell by the looks of the posts.

Q. Do you remember of its being used?

A. I don't remember of its being used, only on the 20 Fourth of July ; I remember of Mr. Chamberlain's calling on me at that time and requesting me to go to Bloomingdale with him on the Fourth of July ; he was to have a ball there at that time, and he wanted me to go down with him ; I did not go.

Q. Did you see it about that time—the Fourth of July ?

A. It was prior to the Fourth that I had seen it.

Q. Do you recollect how near it was completed in the month of May ? 30

A. I wouldn't be positive whether it was in the month of May or June that I was there, after April. I went down collecting at Bloomingdale, but whether it was pay-day in the rubber mill or the day after I can't say. I frequently run around Bloomingdale. I generally went from the depot across the hill there and looked around, and that is the way I came to see it. I wouldn't be positive whether it was in May or June I

was there. It was enclosed, as I said, when I was there and saw it the last time prior to the Fourth of July. He had a dancing platform erected adjoining the building.

Q. Do you pass along that road frequently when you are in that region?

A. I did at that time, more so than now.

Q. What were you then?

A. I was one of the constables of the county and
10 frequently had business in Bloomingdale that called me there.

Q. What is the condition or location of the land—the place where this building would be?

A. In reference to its being a conspicuous place?

Q. Yes.

A. It is very conspicuous; from the east or southerly side very much so.

Q. How is it as to being conspicuous, when you are on other parts of the land?

20 A. When you are there, in the vicinity of the depot, you cannot see the building till you pass up and get up to Arch street, or up on the hill, but then you can see it without any trouble. As to its being conspicuous, it is the most conspicuous place in Bloomingdale. You can see the building from the foundation to the gables from the south side.

Q. Did you ever go with Mr. Chamberlain to see Mr. Manning about this property?

A. I did.

30 Q. When, about, was that?

A. As near as I can recall the time, it was in June of 1879.

Q. Did you see Mr. Manning?

A. I did.

Q. Did you hear conversation between Mr. Manning and Mr. Chamberlain in regard to this property?

A. I did.

Mr. Pitney.—Any conversation between Mr. Manning and Mr. Chamberlain in June, 1879, or any other time in the year 1879, is objected to, so far as it affects the rights of Messrs. Howell & Noble, and is not objected to, so far as it affects the rights of Mr. Manning, but Mr. Manning's declarations cannot affect Messrs. Howell & Noble—declarations made after the conveyance which the bill shows was made to Mr. Manning by 10 Howell & Noble in June, 1878.

Mr. Van Wagoner.—As far as it affects Messrs. Howell & Noble, the objection seems to be good. As far as it affects Mr. Manning the question is proper.

Q. Will you state as near as you can the conversation about this property between Mr. Chamberlain and Mr. Manning? 20

A. Well, we went to Mr. Mannings office, and Mr. Chamberlain and Mr. Manning had a conversation, and Mr. Chamberlain tendered to Mr. Manning $140, as I understood at the time, as the balance of the purchase money of the property, and Mr. Manning said he had transferred the property to some other parties—Messrs. Howell & Noble—and that he could not give a deed, and Mr. Chamberlain at the same time presented a deed already drawn up, to have it signed, but Mr. Manning said to Mr. Chamberlain, or advised Mr. Chamberlain, 30 to go to Howell & Noble and said they would do what was right about the property and would make him a deed. He also said he would see them very shortly in reference to the matter—make it his business to see them and have the thing adjusted. I don't remember all the conversation; I remember Mr. Chamberlain read a statement to Mr. Manning in reference to the property, and he asked Mr. Manning if the statement was

true, and Mr. Manning said yes, he had never denied it. Mr. Chamberlain then said to him—"Do you say it is true to the letter?" He said—"I have never denied it, and do not now."

Q. Would you know that statement, if you saw it again?

A. I would.

Q. Did you do anything with it?

A. I subscribed my name on it.

10 Q. Is that the paper? (Showing witness paper.)

A. That is my signature.

Q. Do you now recollect whether there was or not anything said about Mr. Chamberlain's dealings with Mr. Tintle—what was said by Mr. Manning, if anything?

A. There was something said about that, but I don't know whether I can recall it just exactly as it was now, or not.

Q. Was there anything said about Chamberlain's hav-
20 ing purchased this property from Tintle?

A. There was something said about that, but I don't just recall it, just exactly as it was. There was something said similar to this—that it appeared as though Mr. Chamberlain had been to see Mr. Manning, or had seen Mr. Manning prior to the time we were there, and there had been some conversation in reference to the property—whether it would affect him, his selling the property to other parties at this time. Mr. Manning, I recollect, said to Mr. Chamberlain he was about to sell
30 the property that he owned in Bloomingdale, or part of it. There was a conversation about that; that is as near as I can recollect the conversation. It was about affecting him in that way.

Q. Was that paper that Mr. Chamberlain had there, on which you subscribed your name, read there to Mr. Manning?

A. Yes, it was; it was handed to Mr. Manning. I

don't remember whether he read it himself or not. Mr. Chamberlain read it in my presence.

CROSS-EXAMINATION.

By Mr. Pitney:

Q. Where do you live?

A. In West Milford Township in this county.

Q. How far from Bloomingdale? 10

A. It is about ten miles.

Q. How far from Mr. Chamberlain's?

A. Three miles.

Q. You were a constable at that time?

A. Yes; for that township.

Q. What road did you take to go from your place to Bloomingdale?

A. Frequently I took the New York, Susquehanna & Western—the Midland road, then; frequently I drove; I would drive down to Newfoundland and sometimes 20 through Macopin, by White's paper mill.

Q. It is a very rough stony road, through the mountains?

A. It is an ordinary mountain road.

Q. If you went around by Newfoundland, it was a better road?

A. Whichever way my business called me I went.

Q. You used to go down there to Bloomingdale, about once a month.

A. Yes. About that time there were some parties 30 that I had several executions against in my hands—parties working around the rubber mill and I was collecting from them when it was pay-day; they were paying by installments; the parties were kind of easy on them and I was getting the money out of them in that way.

Q. I don't care about your telling a long story in answer to such a question. It costs a great deal to have it

taken down. You were in the habit of going down every month?

A. Yes, about every month.

Q You were there in January and February and March, I suppose?

A. Yes, particularly after the first of April; these parties moved the first of April, some of them down to Bloomingdale?

Q. And you were there in June, July and August and
10 so on?

A. Yes.

Q. And you were there at various times between these times, weren't you?

A. Quite frequently.

Q. You spoke of the 15th of April; how do you fix that date, instead of the 15th of May, or some other date?

A. I said it was about the 15th. It was about the pay-day. Pay-day comes about the 15th.

20 Q. How do you make it April, instead of June, July or August?

A. I know it was very shortly after the moving; the moving was on the first of April.

Q. You were there in June, July and August?

A. Yes, sir.

Q. Have you a particular memorandum, by which you recollect the condition of things in the month of April over and above the month of May, as distinguished from May?

30 A. Nothing but my memory.

Q. Your attention was not particularly called to it, at the time.

A. Nothing more than I went up on the ground.

Q. You were looking around there?

A. Yes.

Q. You did not have to go up on the ground, to see this knoll that Mr. Chamberlain built the platform on?

A. It was somewhat nearer to get to Bloomingdale,

by going across the hill and I went across the hill from the depot.

Q. You did that every time?

A. No, sir; not every time.

Q. You think you know where all the fences were, at that time?

A. I recollect by there being no fences to get across the hill, at that time, I could pass right from the depot across the hill without any fence interfering.

Q. Where the railroad cut this land the railroad itself had not been fenced? That is all you mean to say, I suppose? 10

A. There is a long bank from Carman's all the way around the depot.

Q. It went through a deep cut, didn't it—the railroad?

A. Yes, till it got nearly up to the depot.

Q. There was a road fence there?

A. No, sir.

Q. No road fence on the Stony Brook road? 20

A. That is not the Stony Brook Road that runs up to the depot.

Q. Was there not a road fence along the Stony Brook Road?

A. Yes.

Q. In front of the church and cemetery there?

A. There is no church in the vicinity of Stony Brook road that I know of.

Q. Is there no fence that runs along the Stony Brook road—was there not then? 30

A. There was an old post and rail fence along the vicinity of this lot of Chamberlain's, but that was down on the lower side and opened to Stony Brook road.

Q. Where?

A. At the foot of the hill.

Q. When was that?

A. The day he was building; that is where I went through.

Q. Did you drive through?

A. No, sir; I went afoot.

Q. You say five years ago you can recollect the condition of the fences that you crossed, casually?

A. I remember whether I crossed a fence or did not.

Q. Six years ago?

A. Yes.

Q. You can recollect that?

A. Yes.

10 Q. You can recollect whether you came to a fence?

A. Yes, I remember the fence longer than that; I remember the fence since the summer of 1873.

Q. Do you think you can recollect of it better than the man that lived there and had charge of it?

A. I don't say that; I might, perhaps, too.

Q. Do you recollect about all the fences around the country where you go with your executions?

A. No, sir; I do not.

Q. Do you recollect when you are walking across the
20 fields, how many fences you climb? If you went shooting or gunning, would you recollect how many you went across?

A. Yes; I could recall several fences I had climbed there if I went shooting to-day.

Q. Five years ago?

A. No, sir; unless there is something particularly that called my attention to it.

Q. Suppose there was nothing particularly, do you think you could?

30 A. No, sir; I don't think I could.

Q. There was not any fence around this lot that you say you heard Mr. Chamberlain had bought?

A. No, sir; not all round it; there was Mr. Carman's property that lay adjoining on one side; that was enclosed, and down below there was a house that had a garden enclosed around.

Q. There was no fence around that lot?

A. No, sir; the lot was not enclosed.

Q. Did Carman's property lie adjoining—whereabouts?

A. It lay on the south side; he has an orchard and a little property runs back in there.

Q. I have a map of this property. See whether you can tell where you were from that map. By the Carman lot do you mean that which is marked there, "Sisco or Carman lot?"

A. Yes; the Sisco or Carman lot—I would take it from this map—and Mr. Chamberlain's lot lies here. 10

Mr. Pitney.—Mr. Chamberlain need not talk so loud that the witness can hear.

Mr Ward.—(To Mr. Chamberlain.) Never mind, do not talk to me so loud that the witness can hear.

The Witness.—I think Mr. Chamberlain's lot lies up here and it runs down to the 20 Stony Brook road.

Q. Have you seen Mr. Chamberlain's map?

A. No, sir.

Q. Haven't you seen the small map Mr. Chamberlain has?

A. I have seen it here; I didn't have it any more than to just see it.

Q. You say you went across from the railroad station?

A. When we came in here? 30

Q. No. Where did you go, on the particular occasion you swore to?

A. I went across here, and so across to the cemetery, and came out on the Stony Brook road down here.

Q. Below where Mr. Chamberlain's building is?

A. Yes; I went across by the corner of the cemetery.

Q. Did you go into the cemetery?

A. No, sir; I passed around; I have been there.

Q. On that occasion did you?

A. No, sir; I went around the north of it one time; one time I went up—

Q. On that particular occasion was it nearer as you went than to go around the road?

A. I supposed it was nearer, and I went across.

Q. You found no fence alongside the railroad when you went up there?

A. From Carman's here all the way around here, 10 there was no fence and this was dug down; from the railroad out of the public highway around here that comes out on the old turnpike just across the Pequannoc river, and this lot lay in commons at that time.

Q. The road ran from the depot, north?

A. Yes.

Q. It has not been enclosed?

A. No, sir; it had not.

Q. You say you were there shortly before the 4th of July, 1878?

20 A. Yes.

Q. How soon before the 4th do you think it was?

A. I suppose it was about the 15th or 20th of June.

Q. Shortly after that Mr. Chamberlain invited you to go down there on a spree?

A. Yes.

Q. When you saw it there was a platform built?

A. Yes.

Q. And a foundation—some kind of a foundation?

A. Yes.

30 Q. Some scantlings?

A. I never looked on the plank to see what he had. I suppose he had a board floor and I suppose he had something there.

Q. Were there scantlings?

A. Yes, around the enclosed part of it.

Q. Was there anything like a roof.

A. No, sir; not over the platform.

Q. Was there anywhere?

A. Yes.

Q. Was there anything there besides an elevated arrangement for musicians to sit on?

A. Yes, there was a frame for a building on the south side and a platform that was partly enclosed.

Q. Was it not arranged then, for musicians to sit there? Was there not a dancing platform for the musicians to sit on?

A. The musicians occupied what is now the second story of that building. The platform was fixed there for the musicians. 10

Q. How high were they above the level of the dancing platform?

A. I suppose in the neighborhood of seven feet.

Q. Was there anything over the top of the musicians' seats?

A. I don't remember about the roof, whether the roof was on top of that platform or not. The building was up there, and it was partly enclosed.

Q. What do you mean by partly enclosed? 20

A. Weather-boarded up the second story, and the lower part was enclosed so they could occupy it.

Q. Was that before or after the 4th of July?

A. Before.

Q. Quite sure about that?

A. Yes.

Q. What makes you think it was before?

A. Because I know the arrangements he was making.

Q. How did you fix it that what you saw was before rather than after? 30

A. Knowing he was to have a spree there on the 4th of July? That was the reason I recalled it.

Q. You were here a week ago to-day?

A. Yes.

Q. In this court-room?

A. Yes.

Q. In the forenoon?

A. Yes.

Q. And were here when we adjourned ?

A. Yes.

Q. Do you know of any reason why you were not called as a witness that day ?

A. No, sir.

Q. Since that you have had a long talk with Mr. Ward, haven't you ?

A. Very little.

Q. You have been at his office ?

10 A. I have been at his office.

Q. Been all over with him ?

A. No, sir.

Q. I mean been all over the case with him ?

A. No, sir ; I have not.

Q. Had you been over the case with him before coming here last Saturday morning ?

A. We had a conversation in reference to the case.

Q. Before you came here last Saturday morning?

A. Yes.

20 Q. And also with Mr. Chamberlain several times?

A. Yes.

Q. You have refreshed your memory by talking with them, &c ?

A. No, I have not refreshed my memory at all.

Q. Do you know why you were not called last Saturday ?

A. No, sir.

Q. You were ready to be sworn here ?

A. Yes.

30 Q. And could have been sworn just as well then as to-day.

A. I suppose so.

Q. How came you to go down to New York with Mr. Chamberlain to see Mr. Manning ?

A. That was by his request.

Q. You went along as a witness ?

A. Yes ; to see that he tendered the money.

Q. And to hear what was said ; did you make any memorandum of what was said ?

A. No, sir.

Q. But you signed your name to that statement which has been produced here, so as to identify it.

A. Yes.

Q. Mr. Manning did not take the paper in his hand and read it?

A. I said once that I didn't remember whether he left the paper or not. It was handed to him.

Q. Did Mr. Chamberlain read it to him ?

A. Yes, Mr. Chamberlain read it. 10

Q. And aloud, so you could hear?

A. Yes, and asked him whether it was true.

By Mr. Ward :

Q. Since you were here, have you been on that property ?

A. I have.

Q. What did you go there for?

A. To see the condition of the fences, whether they 20 were as I supposed they were and as they had been.

Q. Didn't you know about it when you were here before.

A. I was not acquainted with the property, in reference to the board fence that has been built since. I was acquainted more particularly with the property before, and they have put up a board fence around some part of it. I didn't know just how that was located.

Q. Was not that the reason you were not sworn here before—that you were to examine the fence ? 30

Mr. Pitney.—I object to that as leading.

Objection sustained.

Q. Do you know any reason you were not sworn before ?

A. I was requested after I left here the last time, to

go and look at the fence and see how it was located, before I was sworn.

ISRAEL REEVES, sworn for plaintiff, testifies as follows:

By Mr. Ward:

10

Q. Where do you live?

A. Bloomingdale; and my business is farming now.

Q. How old are you?

A. Fifty-six.

Q. Have you purchased some lands that were on the Manning tract at Bloomingdale?

A. Yes.

Q, From whom did you purchase them?

A. Do you want me to tell the circumstances?

20 Q. No; just answer the question.

A. From Howell & Noble.; first, I purchased from Mr. Tintle, the agent of Mr. Manning; I purchased from him first.

Q. How near is that to this property in dispute?

A. It was adjoining, all in one tract.

Q. Do you remember of hearing of Mr. Chamberlain's purchasing some property there also?

A. I do.

Q. Do you recollect when it was that you heard it?

30 A. It was in the spring of 1878; I can't tell you any dates at all.

Q. Did you see Mr. Chamberlain there at any time?

A. I saw people working there.

Q. Where?

A. On this lot that they said Mr. Chamberlain bought.

Q. What time was it that you saw them working there, and what were they doing?

A. As near as I can remember I think it was in April and they were digging their foundations to put a building up.

Q. Has there been a building erected upon that foundation?

A. Yes, April of the same year, 1878? Yes.

Q. How has that property been since Mr. Chamberlain got it, as to fencing anything?

A. Since Mr. Chamberlain got it, I thought it lay out in commons like; there were no fences around it, unless a man bought a lot and fenced it himself. 10

Q. I mean this property up where Mr. Chamberlain's building stood at that time?

A. I don't recollect of there being any fence around it, except the fence that was spoken of around the cemetery and this lot of Mrs. Sisco's that has been called the Carman lot.

Q. How is this property situated as to being easily seen or discovered by persons?

A. It is up on a high piece of ground; it is very easily seen from the east and south sides, or southwest. 20

Q. How is it as to being on the property of Mr. Manning, as to being conspicuous?

A. From the lot of Mr. Manning, one-half of it would be conspicuous and the balance of the lot would not.

Q. As to going along the roads, the public highways?

A. Well, it is conspicuous on what you call the Paterson and Hamburgh turnpike and Stony Brook road.

Q. How was it situated as to those roads, I mean as to being surrounded by them? 30

A. It is on the south side of the Paterson and Hamburgh turnpike; it is on the southwest I think, from the Stony Brook road.

Q. How many stories high is the building that Mr. Chamberlain put up there?

A. Two stories.

Q. Do do remember when that building was raised?

A. Not distinctly; I think it was raised in April or

May—I think May, although it might have been sooner.

Q. How far do you live from this place?

A. I live about three-quarters of a mile from this place, but I have a farm right adjoining this property.

Q. Is it easily seen from where you live?

A. Yes; from my farm, but not from where I live.

Q. Did you work your own farm that year?

A. Yes.

Q. How often were you there?

10 A. I was on my farm every day.

Q. Can you tell us about the time that you made the first contract for that property with Mr. Tintle, that you have spoken of?

A. It was about the first of May, 1878.

Q. Who made you the deed for that property, if anybody?

A. Mr. Roome told me he made out the deed; I purchased the property; I went to Tintle and bought it and he got Mr. Roome to survey it within a day or two, and 20 Mr. Roome told me he had made out the deed and sent it to Mr. Manning; I asked Mr. Tintle for the deed and he put me off and said Mr. Manning had been careless about sending it, or had been out of town, and the deed had not been executed and it would go on so for a month or more, and I saw Howell & Noble and they said they owned the property and that this agreement didn't amount to anything that I had made with Tintle; I had paid my money, but because I had not an article of agreement drawn up and signed, he said I could not 30 hold them to that bargain and they wanted to keep the best part of it for building a dam, they said; they said they thought there was a water-power on it and they wouldn't let me have that; they said that as I had agreed for a lot with Tintle, they would sell me part of it and the money I had given to Tintle should go in on the payment; they said to prosecute Mr. Manning for damages if I was injured.

CROSS-EXAMINATION.

By Mr. Pitney :

Q. You never got your deed from Mr. Manning?

A. No, sir.

Q. You took a deed from Howell & Noble?

A. Yes.

Q. And your bargain with Mr. Tintle was made about the first day of May? 10

A. I won't say the 1st of May; it was about that time, I can't tell exactly; it was between the 1st and 10th of May.

Q. Did you ever see the deed that Roome made out?

A. No, sir; Roome told me he surveyed it and there were about four acres in the lot.

Q. Whereabouts does that lie—which side the Stony Brook?

A. It lies along the Paterson and Hamburgh turnpike each side; it is in Passaic County that I purchased; I 20 did not buy any in Morris County.

Q. It was no part of this tract that has been laid out in building lots?

A. No, sir.

Q. Nothing to do with that?

A. No, sir.

Q. It was not the building lot tract at all?

A. No, sir; part of what I bought was where I built my house.

Q. But it was not to be laid out in lots of fifty by 30 one hundred?

A. No, sir; no part of that property.

Q. It was not a part of anything that Mr. Manning had in contemplation to lay out in streets and building lots?

A. No, sir.

Q. It was fit to be built on?

A. Yes; it was fit to be built on.

Q. It lay along the Paterson and Hamburgh turnpike and the river?

A. The Paterson and Hamburgh turnpike went through the middle of it and my farm joined it and I wanted to buy that strip, and after Howell & Noble got it they were willing to let me have what lay above the turnpike, but what lay between the Paterson turnpike and the river they wanted for water-power.

Q. They made a new bargain with you?

10 A. Yes; Mr. Roome said the deed was made out and executed and sent to him, and I believe there was some mistake about it; at any rate, the deed was keep from me in some way.

Q. You never understood exactly how?

A. No, sir; not exactly.

Q. When did you first see Howell & Noble about this matter?

A. I think it was some time in June.

Q. They took possession and were the bosses, so to

20 speak, some time in June, weren't they?

A. Yes.

Q. And that was generally understood in the neighborhood?

A. Yes; I think so.

Q. They had been looking at the property some time before they bought?

A. I don't know; they were strangers to me; they might have been there; the first I recollect seeing them was after I heard they bought it, and they were at Cox's

30 hotel, I think; they drove there and put out their horses; that is where I first met them.

Q. Did you speak to them about this matter?

A. Yes.

Q. That was in June?

A. As near as I can recollect, that was in June when I first saw them and talked with them about this matter.

Q. Have you any knowledge what time in June it was?

A. I can't tell you.

Q. You went up to Cox's hotel to see them; you heard they where there?

A. No, sir; I was passing; I heard they were there and I stopped in.

Q. Did you stop for the purpose of speaking to them about this matter?

A. Yes.

Q. You heard before that they were the owners,—the purchasers, hadn't you?

A. Yes, I had heard before that. 10

Q. Do you recolect how long before that you had heard that?

A. No, it was not before that; it was in May, along the first of May, when I bought the lot of Manning or Mr. Manning's agent, Mr. Tintle; I paid him money down on it.

Q. Some time after that you heard of the sale to Howell & Noble and you sought an opportunity to see them, inasmuch as your deed did not come,—to see what the matter was? 20

A. I had seen Mr. Tintle about it, and I spoke to Mr. Roome about it and they didn't give me any satisfaction and I spoke to Mr. Manning about it, as I had agreed for it; they said they would let me have part of the lot and let the money go in payment—the money that I had already paid.

Q. You knew you could recover your money back again, if you did not get your deed?

A. I didn't want my money back; I did not suppose there was going to be any trouble about it. 30

Q. You knew a verbal contract was not binding?

A. I thought when a man bought property and paid money down on it, it was binding, but Mr. Noble told me when I talked with him, that it was not; he said I could not hold a person to any agreement unless it was in black and white.

Q. Any agreement for the sale of land, I suppose he said?

A. I don't know about that; he said any agreement.

Q. You were talking about land?

A. Yes, that was the only subject we were talking about.

Q. How much did you pay Mr. Tintle down?

A. It was $15 or $25; I was going to give him $25 and I think he took $15, and said to wait till I got my deed.

Q. He said, did he not, that he required a little payment in order to insure the cost of getting up the surveying and making out the deed?

A. No, sir; he didn't say anything about it.

Q. What was the price you were to pay for the whole tract?

A. I was to pay $175 for the whole tract.

Q. For four acres?

A. Yes.

Q. How many acres did you get finally?

A. I guess there were two; Mr. Howell made out the deed; he just made the deed for a certain tract of land lying between two roads.

Q. What did you have to pay for that two acres?

A. They sold it to me for $90.

Q. Half of what you were going to pay for the whole?

A. About that.

Q. What was that little strip worth, that you did not get for your purposes?

A. It was worth a good deal to me, if I could have got it.

Q. What did you want it for?

A. To make building lots.

Q. Did you ever get this money back from Tintle?

A. No, sir; Howell & Noble allowed it to me on the other property.

Q. Then they must have got it from Tintle?

A. I suppose so; Mr. Tintle was their agent at that time; I understood that after Mr. Manning let them

have the property, Mr. Tintle had charge the same as before; that is the way I understood things at that time.

By Mr. Ward:

Q. You say you didn't get the deed that was withheld from you. What deed do you mean?

A. I mean the deed that Mr. Manning made out to me. 10

Q. About how far is it from this property that you purchased to the property that Mr. Chamberlain occupies—the property in dispute here?

A. Oh! about one-eighth of a mile I should say, across.

Q. What divides it?

A. The river.

Q. What river?

A. The Pequannoc.

Q. Can you see Mr. Chamberlain's place from where 20 this property lies?

A. Yes.

Q. Plainly?

A. Yes.

By Mr. Pitney:

Q. You were working there all summer on your farm which you say adjoins the lot which Mr. Chamberlain claims, were you? 30

A. Yes.

Q. And saw it every day?

A. Yes; I guess so.

Q. Did you make any memorandum at the time, as to the dates?

A. No, sir.

Q. Have you anything to fix it in your mind what particular time the foundation was dug and what particular time the building was put up?

A. I recollect about the foundation being dug early in the season, and I iuquired who was digging there and they told me; I know it was early in the spring, and it was shortly after that when I thought I would buy a piece of land along there too; I had not thought of doing that till about that time.

Q. I mean when you saw anything like a building going up there.

A. I have no memorandum, only I know it was about
10 a month before I had bought this property of Mr. Tintle that I was speaking about it.

Q. I mean when you saw timber, boards, planks or anything of that kind?

A. No, sir; no memorandum or anything.

Q. You don't mean to say that it was a month before you bought that you saw something in the way of carpenter work there?

A. I think so; I think they were building a platform there.

20 Q. A month before you bought?

A. Yes.

Q. That would make it about the 1st of April?

A. Yes; that would make it in April.

By Mr. Ward:

Q. You say you made inquiry; who did you learn was the owner when you made inquiry?

30 *Mr. Pitney.*—He cannot prove the title to land by a man making inquiry; I object to it.

Objection sustained.

Q. Who did they tell you were digging there?

Mr. Pitney.—I object to that as not the proper mode of proving who dug there.

Objection sustained.

AUGUSTUS J. COOK, sworn for plaintiff, testified as follows:

By Mr. Ward:

Q. Where do you live?
A. Opposite the rubber works, Morris County.
Q. In Bloomingdale?
A. Well, they call it Butler.
Q. How long have you lived there?
A. Since a year ago the 1st of September. 10
Q. Have you lived at Bloomingdale?
A. Five years from the 1st of last April.
Q. How old are you?
A. Thirty-six.
Q. Do you know the property in dispute here?
A. Yes, sir.
Q. How long have you known this property?
A. Ever since Mr. Chamberlain was bargaining for it.
Q. Did you buy some property of Mr. Manning on the same tract? 20
A. Yes.
Q. From whom did you buy it?
A. James Tintle; I made by bargain with James Tintle, agent for Mr. Manning, as I understood at the time.
Q. When was that?
A. Do you refer to the last or the first?
Q. The first.
A. I think it was March 14th, 1877.
Q. Was it the same year that Mr. Chamberlain bought? 30
A. It was 1878; that is correct.
Q. It was in March, 1878?
A. Yes.
Q. How many lots did you buy?
A. Two different plots.
Q. Did you get the deeds for them?
A. Yes; I have deeds for both--one from Mr. Manning, the last one from Howell & Noble.

Q. Have you got the deed here that you got from Howell & Noble?

A. Yes, sir; I have.

Q. With whom did you make the contract to purchase that lot?

A. James Tintle.

Q. Agent for somebody?

A. Agent for Mr. Manning.

Q. And Howell & Noble made you a deed for a lot?

10 A. Yes.

Q. Do you remember of hearing that Mr. Chamberlain had purchased a piece of ground there?

A. Yes; I do.

Q. Do you recollect about the time that you heard it?

A. About the latter part of March; it was in March or the first part of April that I heard Mr. Chamberlain had purchased there.

Q. In what year?

A. 1878.

20 Q. How did you hear it—how did you come to learn that he had purchased it?

Mr. Pitney.—I object to it as entirely incompetent, and ask to have the ruling of the Master.

Mr. Ward—We do not expect to prove title by that of course, but we expect to show by the witness that Mr. Chamberlain was in

30 possession and that other witnesses saw him working there on the place, and in that way prove possession.

Mr. Pitney.—I do not see how the evidence can be competent in any point of view. I have no objection to his proving it, but I object to any hearsay evidence of a contract which must be proved in another way. It

appears to me he is going too far. I have no objection to his proving that Mr. Chamberlain worked there. He has already stated the time when he says he heard it.

Objection sustained at the present stage of the examination.

Q. Did you have a conversation with Mr. Tintle about the sale of this property? 10

Mr. Pitney.—I object to that. The admissions of Mr. Tintle do not bind us, unless made in the course of business.

Objection overruled.

A. I really think, truly that it was Mr. Tintle that told me Mr. Chamberlain had purchased this property. 20

Mr. Pitney.—Mr. Tintle has already sworn to it that his admissions could not make it any stronger. His evidence cannot be supported by showing corroborative statements. Anything that the agent said to a third party is not competent and is the most dangerous kind of evidence. If he acted on the statements of the agent then it would be competent.

30

Mr. Ward.—I simply want to get at this question.

Mr. Van Wagoner.—I think I have a right to strike out the evidence under the rule, if it is not proper.

Q. Did you see Mr. Chamberlain on those premises?
A. Yes.

Q. What time did you see him after that spring?

A. It was in April.

Q. What were they doing?

A. They first dug a foundation and laid up a wall and then put down a platform and afterwards erected a frame and so on and built the building up.

Q. Now, when was that building raised and the roof put on it?

A. It was the last of April or the first of May, I think.
10 I rather think it was the first of May.

Q. You live close by there?

A. Yes.

Q. How far were you then, from this place?

A. About one-eighth of a mile.

Q. Where did you then work?

A. I was working around home—helping build; I built another house afterwards and I worked around home all summer pretty near, helping the carpenters and masons.

20 Q. How often did you see that place from the first you saw him working there, up to the 12th of June?

A. Once a week, any way. I passed there frequently.

Q. Was that property purchased by Mr. Chamberlain, or claimed by him there, enclosed with a fence at that time?

A. There was nothing more than an old fence that has been there for years as the witness stated.

Q. Where was that fence?

A. Along the Stony Brook road, and also around the
30 old Sisco property, I believe they call it now the Carman property.

Q. In going onto Mr. Chamberlain's property, did you or not have to go over a fence to get there?

A. No, sir.

Q. After Mr. Chamberlain bought this property at the time you first saw him there, in the spring of 1878, was there ever any change made or any fence built around it after that?

A. Well no, not exactly a fence. He had a platform there for the 4th of July, I believe.

Q. Did Mr. Manning or anybody else build a fence along there?

A. No, sir; I believe not.

Q. After you made the arrangements with Mr. Tintle for Mr. Manning, to purchase the lots, was there ever any change made as to price.

A. No, sir; there was not.

10

CROSS-EXAMINATION.

By Mr. Pitney:

Q. What is your business?

A. I am now a night boss in the rubber works.

Q. What was it in 1878?

A. I was not working in the rubber works then, I was working around the house helping build.

Q. Are you a carpenter? 20

A. No sir; I am not a carpenter, although I helped.

Q. You did not work on this Chamberlain property?

A. No sir; I did not work on it.

Q. You say there was a fence along the Stony Brook road between that and the whole property there?

A. An old post and rail fence which had been there for years, I suppose.

Q. If you were walking in the Stony Brook road along there, and in front of the Sisco property, in front of what is called the Sisco house, &c., how would you 30 get on Chamberlain's property without crossing this old fence?

A. There was some of it torn down at the foot of the hill, right close where the next building is.

Q. Whose is the next building?

A. It belonged to Mr. Mather, I believe, that owns the paper mill.

Q. Is that the old Sisco house?

A. I believe so ; as far as I can say ; I believe it was called the old Sisco property some years ago.

Q. There was an opening in front of this old Sisco house?

A. Where people made it a by-way to go across. A great many people passed to and fro, for the cross-cut.

Q. On foot or riding?

A. Generally on foot, at that time ; at the first start.

Q. They could not get up the hill with a wagon?

10 A. Not till they made a new street there.

Q. Do you mean to say that people had torn the fence down in order to cross from there to the depot on foot?

A. I don't say they did. There was a panel or two torn down, and some people would tear it down, you know.

Q. There was a panel or two of the fence down near the Sisco house, which Mr. Mather afterwards bought?

A. Yes.

20 Q. About where Second street is now?

A. There is no street goes out there.

Q. Did not Second street go into the old Stony Brook road?

A. Yes, that is so, it turns and goes right down there; you are right.

Q. Where the old Sisco house was, where Second street comes down, that was where the old fence was?

A. Yes.

Q. These was no street there then?

30 A. No, sir.

Q. There was no improvement then, no digging?

A. No, sir.

Q. The whole was a barren field up there?

A. Yes. I guess Mr. Chamberlain was the first that commenced digging up there.

Q. I ask you whether it was a barren field up there, that showed no marks of streets or anything else?

A. Yes.

Q. It was used for pasture?

A. Cattle ran there and helped themselves, I believe.

Q. You don't know whether Mr. Tintle rented it for Mr. Manning or not?

A. Yes, they put up a board fence after that and let it out for pasture.

Q. Had'nt it been pastured before?

A. I don't know; I believe it had been laid out; whether he received any rent I don't know.

Q. Do you recollect when that board fence was put up, that you speak of in your last answer? 10

A. I can't say exactly, some time during the season.

Q. Tell us as near as you can, when it was put up?

A. Probably in June or July, along there and may be not till August; I can't tell exactly.

Q. Why can't you recollect it?

A. I have answered the question as near as I can tell you.

Q. I would like to know why you can't recollect what time in 1878 that was put up? 20

A. I have answered your question as near as I can.

Q. You say the first work that was done there was building a platform?

A. Yes.

Q. Was that platform used to dance on?

A. Yes.

Q. After the platform was built, did they build anything more?

A. They put a frame up and put up a two-story building. 30

Q. But that was done after the platform was built?

A Yes.

Q. Was that the platform that was used to dance on, on the 4th of July?

A. Yes.

Q. How long did that platform remain there?

A. It is there yet, I believe.

Q. Has there been a building erected there over that since, or does it lay out of doors?

A. I think there is no cover over part of the platform there.

Q. Was there any cover over it on the 4th of July?

A. They made a shade over it; yes.

Q. That was made of boughs of trees and leaves?

A. Yes; I believe so.

Q. Was there any board or permanent covering over it on the 4th of July?

A. I believe not.

10 Q. I understood you to say that the building was erected and roofed sometime in May.

A. Well, there is a two-story building certainly erected, and a large platform out there yet that they used to dance on.

Q. I didn't ask you that; please pay attention to the question; I asked you whether I understood you properly to say that besides the platform—that is in addition to the platform, there was a building erected and roofed over sometime about the first of May?

20 A. It was raised about the last of April or first of May and enclosed right after that.

Q. How soon was the roof put on? I understood you to say before that the roof was put on at that time?

A. Well, during the month; yes, sir.

Q. Then sometime in the month of May that building was erected and the roof on it?

A. Yes.

Q. Alongside the platform?

30 A. Yes.

Q. The dancing platform?

A. Yes.

Q. The dancing platform being built first?

A. Yes.

Q. How soon after they built the dancing platform did they commence to erect the building?

A. It was all going on right along as fast as possible.

Q. One after the other?

A. Yes.

Q. Who worked at it—what men?

A. Well, I don't know exactly who the mechanics were.

Q. You saw it being done?

A. Yes.

Q. Didn't you have an idea at the time who did it?

A. I may have at the time, but I don't recollect now; I can't say.

10

Q. How many did you see at work at any one time?

A. Two or three, I think—two any how.

Q. Did you see any stone masons at work there?

A. Yes.

Q. I am speaking of the month of May, 1878?

A. It was a little earlier than May.

Q. In the spring of 1878, did you see any stone masons there?

A. Yes.

Q. How many did you see at work there?

20

A. Two, I believe.

Q. How long do you think they worked there?

A. Oh! only a few days; they did not make a long job of it; it was a short job—probably finished in a week or two, or inside of two weeks.

Q. How long did you see the carpenters at work in the spring of 1878?

A. They did some little fixing up there in the month of June, I believe.

Q. In April, May or June, how many days do you think you saw carpenters at work there?

30

A. I can't say.

Q. Did they weatherboard it?

A. Yes.

Q. Were they new weatherboards or old?

A. New.

Q. Did they shingle it?

A. Yes.

Q. Were they new shingles or old shingles?

A. New shingles.

Q. What was the frame made of?

A. Made out of timber.

Q. Of course; but was it what is called a hard, green timber frame, or was it a frame of hemlock or pine?

A. Hemlock, I believe.

Q. Did it seem to be fresh new timber?

A. Yes, sir.

10 Q. Did you see where it came from—where it was carted from?

A. From the depot.

Q. Who carted it?

A. That is more than I can say.

Q. Did you see whose team did it?

A. I think it was his own team.

Q. Mr. Chamberlain's own team, you think?

A. Yes.

Q. You don't recollect the name of either the carpen-
20 ter or mason or any of them that were at work there?

A. No, sir; I couldn't vouch for that.

Q. You didn't work any yourself at it?

A. No, sir.

Q. You think the bulk of this work was done in April or May?

A. Yes; the commencement was done early in April.

Q. And the house was substantially finished in May, the outside I mean, the covering?

A. There was some little work done in June, to finish
30 it up.

Q. Was the most of it done before June?

A. In May; I believe.

Q. Did you make any memorandum at the time of this?

A. It is quite some time ago; I didn't make a regular memorandum of it, of course; I didn't think it would ever come to this.

Q. Did you make any memorandum of it?

A. In my head; I have a pretty good memory.
Q. Do you know a man named Sillster?
A. No, sir.
Q. Schulster?
A. Yes.
Q. Did you see him at work there?
A. I can't say that I did.
Q. You don't remember whether he was working there?
A. I could not vouch for that. 10

Mr. Pitney.—I refer to the witness that was called, whatever his name was. It appears that he is known by the name of Seehulster.

(Counsel refers to the witness who gave his name as Schulster.)

Q. How many lots did you say you bought of Mr. Tintle? 20
A. Two different lots; I bought three when Tintle was agent.
Q. Whereabouts did those lots lie?
A. The first one lies on the north side of the Paterson and Hamburgh turnpike, along by the Peter Mabie property, I believe, in Passaic County.
Q. When did you buy that?
A. I think it was March 14th, 1878.
Q. You made a bargain for it on that day?
A. Yes; It was run out the same day. 30
Q. How soon did you get your deed?
A. In a week or ten days.
Q. Have you the deed here?
A. No, sir; it is home.
Q. You got a deed in a very short time?
A. Yes.
Q. When was the next that you bought?
A. June 11th, 1878.

Q. How soon after did you get your deed for June 11th—after you made the verbal bargain with Mr. Tintle?

A. On the 16th I received the deed. (Referring to a memorandum.)

Q. Let me see your memorandum.

Memorandum handed to counsel.

10 Q. You received your deed on the 16th of June?

A. Yes; Mr. Howell himself brought it.

Q. Have you looked at it lately?

A. I don't know as I have anything more than looked over it.

Q. Did you look at it this morning before going on the stand?

A. No, sir; I did not.

Q. Did you show it to the counsel on the other side?

A. No, sir; none of them saw it at all.

20 Q. How did you fix the 16th of June as having received it?

A. I didn't put the date on it; the clerk put the date on it.

Q. You go by the date of the deed itself?

A. The date is on the deed.

Q. I am not asking for information for myself. I can see it. I ask you whether the date you mentioned just now as being the 16th of June, you got from the deed or from memorandum?

30 A. The deed was brought to my wife and left on the 16th day of July.

Q. You said June.

A. July; I said June 11th the property was bought and the payment was made, but I didn't receive my deed till July 16th.

Q. You said June two or three times.

A. I should have said July.

Q. You made the bargain on the 11th of June?

A. Yes.

Q. And you got your deed on the 16th day of July?

A. Yes.

Q. With whom did you make your bargain for it?

A. James Tintle.

Q, Had you heard at that time that the property was sold or about to be sold?

A. No, sir.

Q. You didn't hear anything about it?

A. No, sir; I understood it belonged to Mr. Manning. 10

Q. The second lot you got lies in Passaic County?

A. Yes.

Q. And is a different tract entirely from this in Morris County?

A. Yes; it is a different tract.

Q. Was it surveyed after you made the bargain with him, or had it been previously surveyed and laid out in a lot?

A. No, sir; it was surveyed after I bought it. Mr. Roome, I believe, surveyed it. 20

Q. When was the third piece of property bought by you?

A. In April, 1881.

Q. Were you at this dance that was held there on the 4th of July?

A. No, sir; I was not.

Q. Was there any dance previous to that?

A. Yes; there had been one there before that.

Q. When was it? 30

A. Pay-day in June, if I recollect right.

Q. Were you there?

A. No, sir; but I could hear it; I could hear the music from my house and I could hear them dancing.

Q. Your wife has come into this room since you went on the stand and she seems to have a bundle of papers that looks like a deed, and she has spoken to you once or twice since you were on the stand; has she got the deed of this property?

A. Yes; I belive so.

(Papers handed to witness.)

Q. The tract lay also over in Passaic County, did it not?

A. Yes.

Q. How did you fix the 14th day of March that you bought that property?

10 A. I wouldn't say positively; I couldn't recollect exactly—

Q. I ask you about this deed of this property that you bought that you said, on your direct examination, that you bargained for on the 14th of March, 1878?

A. I said I thought it was about that time.

Q. How did you fix that date?

A. That is as near as I can recollect from memory.

Q. Can't you give us some idea how you got the 14th day of March in your head?

20 A. No, sir; I have said all I can say about it.

Q. You no explanation to make of how you got the 14th day of March in your head?

A. No, sir.

Q. Was that property specially surveyed for you?

A. Yes.

Q. A new survey made for you at that time?

A. Yes.

Q. By whom?

A. Mr. Roome.

30 Q. Whom did you understand wrote the deed?

A. Mr. Roome.

Q. How soon after you made the bargain did you get the deed back, according to your recollection now.

A. Inside of two weeks I guess.

Q. A very short time?

A. Yes, sir; not very long.

Q. I see by the deed which you have just handed to me that it is dated March 8th, 1878; it appears to have

been acknowledged on March 11th, and to have been recorded on March 14th, 1878. Will you please to leave that deed with the Master? I may want to show it to somebody hereafter?

A. I don't know that I have to do that.

Mr. Pitney.—The Master will determind that whether you have to do it or not. You were asked about this very deed on direct-examination without its being produced. 10

The witness handed the deed to the Master.

By Mr. Ward:

Q. At the time you made the contract with Mr. Tintle for these lots did you pay him any down money?

A. Yes, I gave him $10.

Q. Was that deducted from the purchase money in deed? 20

A. Yes.

Q. And also the deed that you have shown that came from Howell & Noble?

A. Yes.

Q. What divides Passaic and Morris Counties there?

A. The river.

Q. What river is it?

A. The Pequannoc.

Q. About how wide is that river there at that locality? 30

A. It is a good 100 feet I guess.

Q. About how far does this property of Chamberlain's lie from those lots that you purchased?

A. Oh, it is about one-eighth of a mile, I should judge.

Q. Across the river?

A. Yes.

Q. Easily seen?

A. Yes.

Q. What is the location of this property, as to its being easily seen from different directions there?

A. It is a very conspicuous place. It can be seen from a great many places, around almost all of them except the west side.

Q. How about the foundation of this building and the platform?

10 A. You can see the foundations as you pass up the Stony Brook road, very easily and the other side also.

Mr. Ward.—I now offer in evidence a deed dated March 8th, 1878, made by Richard H. Manning and wife to Augustus J. Cooke, recorded March 14th, 1878, acknowledged March 11th, 1878.

Marked Exhibit J.

20

Mr. Ward.—I also offer in evidence a deed from Charles E. Noble and wife and B. F. Howell and wife to Augustus J. Cooke, dated July 15th, 1878, and recorded May 24th, 1879.

Marked Exhibit K.

30

Mr. Pitney.—We admit that the property in dispute here, and there is no necessity of amending the bill, was conveyed to us with the whole tract on the Morris County side by deed dated June 12th, 1878, and considered as delivered on the 17th of June, on which date the bargain was closed, and the property in dispute was included in a large tract of over 100 acres.

BENJAMIN ROOME, sworn for complainant, testified as follows:

By Mr. Ward:

Q. Are you a surveyor?

A. I am, sir.

Q. How long have you been such?

A. Since I was sixteen years of age.

Q. How old are you now? 10

A. A little short of eighty-five—a few days.

Q. Do you remember of surveying a lot at Bloomingdale, in Morris County, in the spring of 1878, for Mr. Manning, that was to be sold to Mr. Chamberlain?

A. I recollect running a lot at Mr. Tintle's request for Mr. Chamberlain.

Q. Can you tell us about the time that you first went there?

A. I can't exactly to the day; it was along about the first of March, or in March. 20

Q. Have you got the survey or the field-book of the survey that was made at that time?

A. I have not.

Q. Do you know where it is?

A. I carried it down to the office, and by some means or other it got lost or mislaid.

Q. Have you looked for it?

A. Yes.

Q. Do you recollect from memory what was done at that time in the surveying of this lot? 30

A. I do not. I don't know what was done or what disposal was made of it at the time. We generally were in the habit of making out the title and handed it over to Mr. Tintle.

Q. I mean as to the metes and bounds; what was done by you as a surveyor?

A. The stakes were put up—stakes put at every corner.

Q. Were there boundaries fixed so they could be plainly discovered by you?

A. The boundaries were fixed so you could travel from one to the other without any difficulty.

Q. Did you survey this ground again subsequently?

A. Yes, afterwards.

Q. Was it the same ground that you surveyed first?

A. Yes.

Q. Have you the field-book of that survey?

10 A. Yes, I have the field-book of that survey.

Q. Where is it now?

A. I have it here in my pocket.

Q. Please produce it.

The witness produced it.

Q. Will you tell us when that survey was made as near as you can?

A. That was made on the 18th of October, 1880.

20 Q. For whom was the first survey done—I mean who was to pay you for that survey—whom was it surveyed for?

A. For Mr. Manning, at the request of James Tintle, who was agent.

Q. Agent for whom?

A. Agent for Mr. Manning.

Q. Did you do other surveying than this there at that time?

A. Yes.

30 Q. For whom?

A. Well, for different individuals. I can't tell you for whom. We ran out different lots.

Q. At whose request was it done?

A. At the request of Mr. Tintle. Tintle sold the lots, and we did the surveying.

Q. Who owned the lots that Tintle had the selling of?

A. It was on this tract belonging to Manning.

Q. What was said, the first time that you were there

surveying it, about the lot, between Mr. Tintle and yourself?

A. I don't recollect, sir.

Q. Was there anything said about to whom this lot was to be conveyed?

A. It was to be conveyed to Mr. Chamberlain.

Q. Was there anything said to you about the deed, at that time?

A. I don't recollect whether there was or not, sir.

Q. Had you made deeds for some people? 10

A. We generally made deeds for all the lots we surveyed and handed them over to Mr. Tintle.

Q. Do you remember why this deed was not made?

A. I do not, sir.

Q. How long after you had surveyed it, was it that you discovered that you had lost your field surveys?

A. When Mr. Chamberlain called on me, I guess it was along in October, 1880, he wanted me to make out a deed; I told him I couldn't do it, that I could not find the old field book, that I couldn't do it without resorting 20 to that.

Q. Was that the cause or not of your not having made the deed?

A. I can't tell why.

Q. You made a deed; is that paper in your handwriting? (Showing witness paper.)

A. That is my handwriting, sir.

Q. Does that contain the description of the property?

A. That contains the description of the property.

Q. Of what property? 30

A. Of that lot that we ran out in 1878, for Mr. Chamberlain.

Q. Can you tell us about how many lots you ran out there for Mr. Manning, through Mr. Tintle?

A. No, sir; I can't tell unless I had a map.

Q, To whom did you give your bills of surveying, after you surveyed there?

A. To Mr. Tintle.

Q. Were you paid?

A. Yes.

Q. By whom were you paid?

A. By Mr. Tintle.

Q. To whom were the bills made?

A. For Mr. Manning.

Q. And for the surveying of this lot, by whom was it paid?

A. I can't tell you that exactly; Mr. Chamberlain
10 paid me for running out the second time.

Q. The first time?

A. The first time I think I was paid by Mr. Manning.

Q. Are you well acquainted with the locations of the grounds in that vicinity, there, in Morris County?

A. Very well, sir.

Q. This lot of Mr. Chamberlain's, what is its location, as to its being conspicious from the roads and other pieces of land which you surveyed there?

20 A. It lies up on top of the hill; it is very conspicious, at least part of it—runs down to the foot of the hill.

Q. At the time you surveyed, was it enclosed or opened?

A. That lot was open; the whole tract lay open; nothing except a fence along the east side and a fence along the south side.

Q. How was Mr. Chamberlain's lot that you surveyed?

A. Mr. Chamberlain's lot? It was all open on the
30 north and west.

CROSS-EXAMINATION.

By Mr. Pitney.

Q. How long have you been a surveyor?

A. I started when I was sixteen.

Q. You have followed it ever since?

A. Yes, more or less.

Q. I suppose if I should press you on the question, you would say you thought yourself, in your time, a pretty good surveyor?

A. I let other people judge as to that.

Q. You have done a great deal of it?

A. Yes.

Q. Of course you never make a survey without making field notes of it?

A. No, I always keep field notes; I keep a copy of everything I have done, but, by some means or other, I lost sight of this. 10

Q. I speak now of the first survey in 1878. Can you tell who was present?

A. Mr. Tintle was present; I forget who else. Mr. Chamberlain was not there.

Q. Was your son William with you at that time?

A. I think not, sir.

Q. William and you work together, do you not?

A. Generally; yes, sir. 20

Q. You were in partnership then?

A. No, sir; not exactly a private partnership, but we worked together.

Q. William did not assist you in this survey?

A. No, sir; not there.

Q. Can you tell what day of the week it was?

A. No, sir; I cannot.

Q. Was Mr. Manning there?

A. No, sir; he was not there.

Q. You said you did several jobs in surveying about that time; do you recollect whether you were there several days in succession about that time or not? 30

A. Sometimes there were two or three days.

Q. On that occasion were you there two or three days or three or four days in succession, or five days?

A. No, sir; I think not.

Q. This was an odd job by itself?

A If we had been there in succession, Willie would

have been with me; we had to find help to do this work and we went together, but from some cause or other he was not along this time.

Q. What makes you think it was in the month of March?

A. I see by my old field-book; I see here we had run out the second lot on the 18th of October—"the following lots as run in March, 1878." (Referring to memorandum).

10 Q. That is in the field-book of October?

A. Yes; I have no recollection as to the day of the week or the day of the month.

Q. Now when you drew the deed, you substantially copied these notes into it?

A. Yes, sir.

Q. I see here in the notes you had written at one time the words "Formerly laid out," which you erased, so it originally read "Then from the beginning again 82½ east 315 feet to the west line of the street formerly laid 20 out;" and you erased the words "formerly laid out;" why did you do that?

A. Well, they concluded not to lay the street I suppose; it was laid out but never opened.

Q. Was there a map of it made on paper laid out that way?

A. I can't tell you unless I see the map.

Q. How did you get at that—how did you know where the west line of that street was on the 18th of October, 1880?

30 A. I could see where the stakes were? It was all run and staked out and never opened.

Q. It says, "Formerly laid out;" how could you, on the 18th of October, know where it was laid out formerly?

A. It was formerly laid out, previous to that time.

Q. And the stakes were still there?

A. Yes.

Q. I have seen this deed that you wrote before, and I

had also seen the description in here before, and I want to say frankly to you that I never would have believed that you ever wrote that description or made that survey, for reasons which I think you may not care to have me state to you; how did you ever draw such a description as that and have it said it was drawn by Benjamin Roome, the celebrated surveyor of Morris County?

A. What is the matter with it?

Q. Read it yourself and see whether you see anything remarkable about it now. 10

A. (After reading it,) well I don't see anything remarkable about it.

Q. Are you in the habit, when you draw descriptions of a lot of four sides, after you have run two lines, of turning back and going to the beginning and going back the other way to get your other two lines?

A. I very often do so.

Q. Can you point an instance where you ever did it before?

A. No, I have not got the papers here to show. It is 20 often owing to heavy attractions, and we had to get clear of them in that way.

Q. Is that the reason that you did it in this case?

A. I don't know.

Q. Is that the way you run it in 1878?

A. Well I couldn't tell you about that.

Q. How did you know on the 18th of October, 1880, where you had run in the month of March, 1878, two years and a half before, if you had no minutes or descriptions? 30

A. We had the stakes; they were there or said to be there. The corner stakes were there.

Q. They had not been moved?

A. So they said.

Q. Who said so?

A. I don't know; somebody that was there. Mr. Chamberlain was there, I guess, the second time.

Q. He said they were stakes that you had set in 1878?

A. Yes.

Q. Hadn't there been a rain out there?

A. No, all the stakes were there.

Q. You did not run from any memorandum you had made in 1878, but you run from certain stakes that Chamberlain pointed out?

A. We run from certain stakes there standing that he said were the same stakes that I put in there.

Q. You didn't recognize them as the same yourself?

10 A. I supposed they were, or I would not have run them.

Q. From your own knowledge?

A. I had no particular knowledge of it.

Q. You supposed so because he said so, I presume. Did you find four stakes?

A. No, sir; there was no stake at the second corner in front of the Sisco house.

Q. Tell me at which of the corners you found stakes.

A. There was a stake standing at that beginning cor-
20 ner at the brow of the hill, being the north-west corner of the lot; then south sixteen degrees, west 333 feet to the corner of Sandford's lot there was a stake or post.

Q. Did you put that up?

A. Yes; it had been there forty years.

Q. That was at the corner of Sandford's lot?

A. Yes.

Q. But no stake put there for the purpose of the survey of 1878?

30 A. Yes, there was a stake driven in. Sandford bought the lot right below it on the south side of this lot. It was along Sandford's line and the road 420 feet to opposite the south-west corner of the Sisco house; there was no stake. Then beginning again from that stake south 82½ degrees, 315 feet to the west line of the street.

Q. Was there any stake there at the edge of the street?

A. No, sir.

Q. How did you know when you got to the edge of the street?

A. We had the length of the chain down and knew where the street was; I knew where the line of the street was.

Q. Where did you get the course south 82½ east?

A. Making it a square lot.

Q. You took that course to make it square?

A. Yes; as square as it could be made.

Q. You had no memory on the 18th of October, 1880, as to how you run that in March, 1878, did you? 10

A. No, sir; I had no particular memory of it.

Q. When you went there and surveyed for Mr. Manning at the request of Mr. Tintle and surveyed a particular lot for a particular person, weren't you in the habit of putting it in your bill and rendering your bill in this wise: "To surveying a lot for John Smith" as the case might be?

A. No, sir; I don't think we ever made out a bill so particularly; we called on Mr. Tintle and he would lay the account before Mr. Manning. 20

Q. Didn't you do that as I asked you?

A. No, sir; I guess not in all cases; I don't know as we did it at all.

Q. I show you a bill which has been marked D 11, purporting to be made out against Mr. Manning. See in whose hand-writing that is?

A. It is my hand-writing.

Q. And that is a bill you rendered for work done for Mr. Manning? 30

A. Yes.

Q. And that says, "June 11th, to running lot for Augustus J. Cook, $2?"

A. Yes.

Q. And deed for Cook, $1.50?

A. Yes; we did so in some cases; I don't know as we did so in all.

Q. Did you do any work that spring in 1878—you and

your son, for Mr. Manning, in the way of general mapping—laying out land in lots?

A. Yes.

Q. How long were you at work at that?

A. I don't know that I could tell you exactly; sometimes we were there a day or two; we did it between times, like.

Q. Did you not work for Mr. Manning five days in succession, you and your son, and charge for it and get
10 your pay for this very matter of plotting and mapping?

A. I don't know but we did; I can't tell you for certain; it may be so.

Q. I show you a map; see whether you recognize that work. If you have field-books I would like to look at those too. Did you do that work?

A. Yes.

Q. For Mr. Manning?

A. Yes.

Q. At that time the lots at the west of Second street
20 had not been laid out?

A. No, sir.

Q. When was the surveying for that done?

A. It was laid out in March and May, 1878.

Q. Have you got your field-book with you?

A. What, for all this?

Q. Yes.

A. No, sir.

Q. Have you got your field-book showing the days that you worked for Mr. Manning?

30 A. No, sir.

Q. A small piece of map here—a block representing the Chamberlain lot, as it is described in your handwriting in that deed—I will put it on this map which I have just shown you—

The Witness.—It is a different scale altogether; you can't lay it on here. This is one scale, and that is another.

Q. I think you will find that it is the same scale exactly.

A. What do you call that?

Q. That is the description of the lot that you surveyed for Mr. Chamberlain, October 15th, 1880, and laid out on the same scale as this map, and I have laid it on there.

A. I say it is not the same scale.

Q. We can easily determine that. The scale of the map is how much? 10

A. One hundred feet to the inch.

Q. Take the rule and tell us according to your description the distance from the obtuse corner of the Sandford lot to the east, 420 feet—how far will 420 feet bring you by that? It will bring you across Second street, will it not?

A. Yes.

Q. Including a large portion of Second street?

A. Yes.

Q. Including the whole of Second street? 20

A. Yes.

Q. And run nearly to the Sisco house?

A. Yes; to the Sisco house.

Q. Putting the scale on there and applying the scale roughly to this map which I now show you, which you say was made from surveys made in March, 1878, does or not the Chamberlain lot, when laid down there, include a large portion of Second street—does it not go clear across Second street?

A. Yes; it goes down to the Sisco house. 30

Q. Then, was not the survey of this map which lies before you now made in the early days of the month of March, 1878?

A. Yes.

Q. Were they not made between the 4th and 8th of March inclusive?

A. That I can't say.

Q. I show you a bill. Look at this bill and tell me if

the survey for the map which is shown you was not made between the 4th and 8th day of March. (Showing witness paper.)

A. Well, these are different lots that were run—not all the lots that are on this map; here is a lot run here that lies away off there. (Referring to map.)

Q. The question is whether the principal part of the surveying that was done on the ground for this map now shown you was not done between the 4th and 8th day of March, 1878?

A. Well, I can't tell you.

Q. I show you all the bills which we have that were rendered by you, having been heretofore shown Mr. Tintle. One is marked D 10 and the other D 11, for work done in that survey. Tell us whether or not whatever surveying was done on the ground to make the map now shown you was not done between the 4th and 9th day of March, 1878.

A. I would not say that; it was done in March and May.

Q. Look at those bills and tell us what part of the work was done in May, and tell us whether or not the surveying was not done in March, and the plotting was office work, done in May.

A. I don't know where the five days' surveying was; there are several names here; they are away off on the other side of the map.

Q. Where is any bill for anything done after the 4th of April?

A. I don't know.

Q. Where did you get any work after the 4th of April?

A. I don't know; I don't know as we did any.

Q. The question is whether or not the actual surveying on the ground for that map was not done between the 4th and 9th of March, 1878?

A. I don't know; I can't tell you; but I doubt it.

Q. What surveying did you do between the 4th and 9th of March, 1878, if you did not do it for this map?

A. There is a good deal laid out here that I expect was not surveyed at all. I can't tell you.

Q. What surveying according to the map itself? Down in the corner it says—"As laid out March to May, 1878, for R. H. Manning Esq., by Benjamin Roome & Son, surveyors." Did you or not do some work on the ground for the purpose of laying out that map?

A. Yes, we did some on the ground.

Q. If you did it in March, what time in March did you do it? Can you tell after seeing those bills that I have shown you? 10

A. I can't tell you; I can't tell you what day.

Q. If any of it was done on any other day in March, except between the 4th and 8th of March, would it or not have been shown in this bill?

A. I don't know.

Q. I see here, March 16th, three days' surveying, and, March 19th, one day's surveying, &c. Was it any of those days that you did this? 20

A. Of course we did the surveying different days; I can't tell you exactly what day.

Q. To go back; if you had ever received orders to have made that deed for Chamberlain, you would have made it, wouldn't you?

A. I suppose so, but I don't know whether I received orders or not.

Q. Do you know what these lots were selling for around here—these small building lots, these square lots? 30

A. I don't know exactly. I know we drew a good many deeds, but I can't tell. Some were more and some less. I can't tell what they did sell for now.

Q. What was the average price of these lots in this neighborhood?

A. I can't tell you.

Q. $100 or $200?

A. No, sir.

Q. $50?

A. There was not any as high as $200.

Q. Were there any of them as high as $100?

A. I think not; still I might be mistaken.

Q. Take these lots that are laid out on this map, 100 by 175, what portion of an acre would that make?

A. A small quantity of an acre; I can't tell you exactly without figuring it up. Our principal business was to lay the streets and make a map to show how the
10 lots could be laid out.

Q. You say there was an old street laid out further west apparently than Second street. When and where was that laid out?

A. It was laid out when they were laying out streets here.

Q. How long before this?

A. It was in 1878, when this map was made.

Q. Whereabouts was that street?

A. It is not laid down here now.

20 Q. Can you tell us whereabouts—how near was it to the Sisco house?

A. It came down to the corner of the house.

Q. Did it include the Sisco house?

A. No, sir; afterwards they concluded to change it.

Q. When?

A. After we run it. It never had been opened.

Q. Do you mean to say that street had never been laid out before the first of March, 1878?

A. I think not. I know it was not.

30 Q. That street which you say ran to the corner of the Sisco house, but did not take it in, would lie just east of Second street, between Second street and the Sisco house?

A. Just east of it; yes, sir.

Q. And that street was first projected in the month of March, 1878?

A. Yes.

Q. It never had been projected before?

A. No, sir; none of the streets had been projected before that.

Q. It was not even talked of having streets here then?

A. No, sir; not a street laid out.

Q. Nothing to show any streets there?

A. No, sir.

Q. And all this projecting of streets in this immediate neighborhood where Second street is now was done in March, 1878?

A. Yes, March and May. 10

Q. Commenced in March, 1878?

A. Yes.

Q. Previous to that there had not been any building lots laid out here?

A. No, sir; and no buildings.

Q. It was a virgin teritory?

A. Yes.

Q. A farm lay in between the Pequannoc river and Stony Brook?

A. Yes; called the Sisco farm. 20

Q. And had been tillable land and pasture?

A. Yes, all tillable land.

Q. And had been fenced in?

A. Yes.

Q. Part of a farm?

A. Yes.

Q. And this house, marked "House" on lot No. 23 on this map, was the Sisco house?

A. Yes; Sisco lived there.

Q. After you had surveyed there in March, 1878, the 30 first plan was to lay the street just here at Second street where Second street appears on this map, and then afterwards they concluded to shove it a little further west?

A. Yes, up against the hill.

Q. And then it appears to be high ground between Second street and the cemetery, or rather between Second street and the common lot?

A. Yes.

Q. That corner where Mr. Chamberlain had his lot laid out was high groumd ?

A. Yes, all high ground.

Q. And more valuable than some of it, wasn't it ?

A. I don't know that it was ; no, it was not so valuable as the ground below the hill.

Q. Why, was it not more desirable for building on ?

A. No, sir.

10 Q. Not in your judgment ?

A. No, sir ; not in my judgment.

Q. When was the change made, shoving that proposed street—Second street, further west to where it shows on this map ?

A. It was done right away that spring.

Q. And no map was made of it ?

A. No, sir.

Q. After you had made this map and located Second street to where it is now on this map, and after Howell
20 & Noble had bought, didn't you think of shoving it further east again ?

A. I don't know

Q. I show you another map which originally appears to have been a copy of the one that I first showed you ; see whether that was also made by you. (Showing witness map No. 1.)

A. Yes.

Q. See if you did not make this map (showing witness map No. 2) at about the same time you made map
30 No. 1. I don't mean whether all the work was done by you, but the body of it—was the body of the map made by you ?

A. Yes.

Q. Was it not made about the same time as the one just shown you—Map No. 1 ?

A. I guess it was made before ; I guess that is a copy of it.

Q. You think map No. 2 was made first ?

A. I think so.

Q. And map No. 1 afterwards?

A. Yes.

Q. I do not refer to the interior but the outlines of the map; the interior was made by somebody else?

A. I think map No. 2 was made first, as a rough map, and the other one was copied off from it.

Q. A finer map?

A. Yes.

Q. It is on the same scale, 100 feet to the inch? 10

A. Yes.

Q. When you were laying out Second street for Mr. Manning, did you tell him he was laying it across a lot that you had surveyed for Chamberlain?

A. No, sir; I did not see Mr. Manning at all; never saw him but once or twice; did not say anything to him about it.

Q. He was not on the ground when you were surveying?

A. He was there once or twice for a little while when 20 I was working around there.

Q. You certainly did lay Second street as he directed you to lay it?

A. I don't recollect as to that.

Q. Who directed you where to lay Second street?

A. I guess we directed ourselves, laid it of our own accord.

Q. You knew they wanted a street there somewhere?

A. Wanted it laid out in streets so the lots would sell to the best advantage. 30

Q. You knew, when you were laying Second street, that you were laying it across where you had surveyed for Chamberlain?

A. That was laid before it was surveyed to Chamberlain.

Q. You are not mistaken in supposing it was not done till March, 1878?

A. No, sir.

Q. It was not finished till May, 1878, the whole job?

A. There was a good deal of work on it; I don't know, as to the particular points, anything about it; I don't recollect anything about it, as to those particular points, whether it was March or May or April or not; I don't know.

Q. I understood you to say the street was laid not sooner than March, 1878. This memorandum at the corner was rightly made, was it not—in the corner of
10 the map?

A. Yes.

Q. That was true?

A. Yes.

Q. I show you a postal card; see if you wrote that. (Showing witness postal card already referred to.)

A. I wrote it; James Tintle signed it.

Q. See if you didn't sign it.

A. I did it for him.

Q. The question is whether it is not in your hand-
20 writing?

A. Yes; done at his request.

Q. It must have been written on the day it bears date?

A. Yes.

Q. You did not write it afterwards and date it back, did you?

A. No, sir; I did not do any such thing as that; I suppose that was the very day it was run.

Q. You never make any mistakes in date?

30 A. I do not, generally.

Q. As a surveyor, when you go around and make your field notes you are careful to put down the date?

A. Yes.

Q. Do you think you ever did make a mistake and make it one or two days out of the way?

A. I don't know that I ever did.

Q. It would be very strange for a man so methodical as you and doing so much business to make a mistake in a date, wouldn't it?

A. Yes; I generally have the date correct.

Q. Have you a diary?

A. Yes.

Q. And had a diary with you then, no doubt?

A. Well, we have a book that we write in; we can't write all we want in a diary.

Q. Have you got any of that kind?

A. Yes, forty of them; I kept an account since forty years back, for every day.

Q. I wish you had brought them with you. 10

A. I didn't know which to bring.

Q. Didn't you know you were going to be asked about March, 1878?

A. No, sir; I did not.

Q. Did not Mr. Ward come to see you about it?

A. Yes; he came to see me, and I didn't know that I was going to look back to 1878, or anything, and I didn't know then till I went down to the office and found this field-book.

Q. Weren't you asked to look for your field-book of 1878? 20

A. No, sir; he did not mention any dates; he asked me if I had this field-book, and I said no, I had mislaid it; perhaps if I had it here I could tell more about it.

Q. You kept a sort of business account of what you did every day?

A. Yes.

Q. You have got it for every day for years back, have you not? 30

A. Yes.

Q. You could not make a mistake in the month, could you?

A. No, sir; I think not.

Q. Just look at this bill—D 10—and see if you can tell me whereabouts on that bill you charged Mr. Manning for doing this surveying that you say you did at that time.

A. Perhaps it was included in that five days to March 8th ; I wouldn't wonder.

Q. There is another charge there, of February 28th. It was not that day, was it?

A. No, sir, it was not that ; that was for John Bruly.

Q. You are sure it was not that day?

A. Yes.

Q. It must have been on the 3rd of March, unless you made a mistake in the date?

10 A. Yes ; I made no mistake in the date I think.

Q. Have you any doubt, after seeing that postal card, that this was on the 3rd of March?

A. It was on the 3rd of March.

Q. You did not work Sundays?

A. Not often.

Q. Did you on that occasion?

A. No, sir.

Q. Did you ever calculate the quantity of the land of the Chamberlain survey?

20 A. No, sir.

Q. Why didn't you do that?

A. Well, I didn't see any use in doing it.

Q. Weren't you in the habit of doing it?

A. When a man sells a whole tract of land we do, but when it is laid out in building lots we do not make any calculation of it.

Q. You considered this laid out into an average building lot?

A. Yes; that was the intention.

30 Q. Mr. Tintle produced a book here, in which he has a memorandum (referring to book produced by Mr. Tintle) in which he credits you with one day's surveying on the 4th of March, and then you and your son both with a day on the 5th, and a day on the 6th, and a day on the 7th, and a day on the 8th, and has no credit to you on the 3rd. And more than that, the 3rd of March was Sunday. Now, I want to ask you how you explain all that?

A. I can't explain it now.

Q. This postal card is not stamped with any postmark. What did you do with it when you wrote it?

A. I expect I wrote it at Mr. Tintle's request.

Q. Do you know what you did with it?

A. No; I suppose I handed it to Mr. Tintle.

Q. Are you quite sure you didn't write that a long time afterwards?

A. I didn't write it afterwards; I had nothing to do with the lots. 10

By Mr. Ward:

Q. That card is dated March 3rd, and is on Sunday. Were you looking at the date when you wrote that?

A. I guess not.

Q. Do you recollect of writing that postal card?

A Yes.

Q. How did that compare with the date that you had been there surveying? 20

A. Well, the surveying was on the 4th I think.

Q. Do you think you could be mistaken about the date of this in dating it?

A. Yes, that may have been a mistake.

Q. That is the postal card that was written after the survey was made?

Objected to as leading.

Q. Was it after the survey was made? 30

A. It was, because it was written to him to go to look at it to see whether it suited him. He was not there.

Q. This map that has been shown you as map No. 2—do you know who made the marks on the interior of that map?

A. I do not.

Q. Was it made by you?

A. No, sir.

Q. Was or not a later map than either of these maps that have been shown you made ?

A. I think it is likely we have got a copy home that is later than either of them.

Q. Were or not the streets changed and altered and different alterations made a long time after the survey was made ?

A. When it got into the possession of Howell & Noble they made a great many alterations.

10 Q. And while you were working there for Mr. Manning were there not changes made ?

Objected to as leading.

Q. Do you know where the older map is—the first map ?

A. I do not, unless we have got a copy at home. I don't know that it is so.

Q. Was there any street in existence at the time that

20 this survey was made ?

A. No.

Q. Is this Second street as shown on that map where it was contemplated when the survey was made for Chamberlain ?

A. No, it was to be lower down, more east.

Q. And the marking out of lots and laying them there were they surveyed, or simply mapped on the interior of the map ?

A. They were all laid out on paper, the principal part

30 of them.

Q. Were they laid out on paper, or taken from actual survey ?

A. Laid out on paper. Very few of them were actually surveyed.

Q. You know where Mr. Chamberlain's lot was that had been surveyed when the map was made ?

A. Yes.

Q. And in making that map and marking these vari-

ous lots did you take into consideration Mr. Chamberlain's property or not?

A. I did not lay it down on the map —on that map that we made.

Q. Do you recollect of seeing Mr. Manning about the 18th of March that year?

A. Well I can't tell you what day he was there.

Q. Do you recollect of seeing him there after Mr. Chamberlain had had the survey made, or the survey had been made by you for Mr. Tintle, of the Chamberlain property?

A. I don't know as I do, sir.

Q. Have you any doubt whatever as to the description that you have given in this deed that was shown being the property that was first surveyed by you in March?

A. No, I have no doubt; it covers the very same ground that the first survey covered.

Q. Can you tell us about how far Second street was east of the present Second street, now shown on the maps which have deen shown you?

A. No, sir; I can't tell you how far; I see here by this map that Second street came up here, and all those lots were laid up the hill.

Q. Did the first survey that you made for Chamberlain's property run down to Second street, as they contemplated?

A. Yes.

Q. Did it or not take in Second street, at that time?

A. It took in part of Second street and went down to the Sisco house, and the street was to lay to the west of the house.

Q. Did or not the Sisco house, as shown by the old map, stand right square in the street, at the time Amos Chamberlain's property was surveyed?

A. No. sir; the street was run out so as to go right along by the end of the Sisco house.

Q. Did you know at the time you were laying out or

making this map that Mr. Chamberlain was in possesion of this property?

A. He was in possession of it; yes, sir.

Q. At the time?

A. Yes; after the first survey.

Q. You know of his taking possession of it?

A. Yes, sir; he took possession of it.

By Mr. Pitney:

10

Q You say he took possession of it; how did he take it?

A. Went on to it and took possession and began to build.

Q. Did he fence it?

A. No.

Q. Did he live there?

A. No.

Q. He began to build?

20 A. Yes.

Q. How did he begin to build?

A. He began and dug a hole in the ground, in the first place, and then got somebody to lay a wall up.

Q. Did he stay there nights?

A. I don't know, sir; I was not there to watch him nights.

Q. I understand that you went on and laid this street across there?

A. The street was laid before he went there.

30 Q. Before you saw any signs there?

A. The streets that came down to the Sisco house were laid; all that work was done on paper, not on the ground, with the intention of laying them out as the paper called for.

Q. You did do some surveying on the ground?

A. Run the streets.

Q. The streets were all run and staked before he went there?

A. Yes.

Q. When did you run the streets and stake them?

A. I can't tell you; it was done before he went there; that is all I can tell you.

Lee

Mr. Ward.—Puts in evidence the field-book which was produced by the witness.

Marked Exhibit L. 10

Q. Did you ever write more than one deed for Mr. Chamberlain, for this Chamberlain lot?

A. I don't know that I did.

Q. What is your recollection about it?

A. I have no recollection about it; whether I did or not.

20

CORNELIUS POST, recalled, further testified as follows:

By Mr. Pitney.

Q. (Showing witness Exhibit B.) Is that the deed that you presented?

A. There is nothing about it that I can identify it by at all. I don't know whether it is the deed or not. I don't remember having the deed in my hands when we were there. I know he presented what purported to be a deed. 30

Q. How did you fix the date?

A. The deed fixes my memory. I recollect distinctly its being in June, but I can't be positive about the year, after I come to consider the matter.

25

AMOS CHAMBERLAIN, recalled, further testified as follows :

By Mr. Ward :

Q. Is that the paper now as it was when you read it to Mr. Manning, in New York? (Showing witness paper.)

A. Yes.

Q. Did you read the whole of that paper?

10 A. Yes, every letter of it.

Q. Did Mr. Manning have it in his hands?

A. He said it was true.

Q. Did you hand it to him?

A. Yes, I handed it to him, and he read it beside.

Mr. Ward.—I offer it in evidence.

Mr. Pitney.—I object to it, as no evidence against Howell & Noble.

20

The Witness.—He said it was true to the letter, and he never denied it.

Marked Exhibit M.

CROSS-EXAMINATION.

30

By Mr. Pitney :

Q. How soon did you write this before you went down?

A. The very date that is on there—October 28th, 1878.

Mr. Ward.—There is an old map that I desire to put in evidence. With that exception

tion I close my case, if that is understood, that that can be put in evidence. I desire to show the location of a street.

Mr. Pitney.—I want to see it before it is put in evidence. If the map is sent to me it will be satisfactory.

Adjourned.

10

Examination of witnesses, &c., in the above stated cause before Walter J. Knight, Esq., one of the Masters and Examiners of this Court, at the hour of ten o'clock in the forenoon of Friday, the 28th day of March, A. D. 1884, at the office of J. B. Vreeland, Esq., Morristown, New Jersey, pursuant to an order made in this cause by 20 Vice-Chancellor Van Fleet on Monday, the day of March, 1883.

Taken in the presence of George T. Wertz, Esq., solicitor, and Z. M. Ward, Esq., counsel for said complainant; and E. D. Halsey, Esq., solicitor, and Henry C. Pitney, Esq., counsel for said defendants.

By consent and agreement of counsel said testimony was taken in shorthand, question and answer in full, and the notes of the stenographer as written out are to be regarded as if taken by the Master himself, and the 30 signatures of the witnesses to their depositions are waived.

Dated this 28th day of March, A. D. 1884.

WALTER J. KNIGHT,

Master and Examiner in Chancery.

At the hour of ten o'clock in the forenoon of this day I adjourned said examination from the office of J. B. Vreeland, Esq., aforesaid, to the office of Mr. John B. Wood, in the said town of Morristown. The examination of witnesses, &c., as above stated, then took place as follows:

JOHN F. SISCO, a witness produced on the part of the aforesaid defendants, having been duly sworn according
10 to law, deposeth and saith:

DIRECT EXAMINATION.

By Mr. Pitney:

Q. How old are you, Mr. Sisco?
A. 39.
Q. And what is your business?
A. Mason by trade.
20 Q. And where do you reside?
A. I live at Bloomingdale now.
Q. And where did you reside six years ago?
A. Mountain View.
Q. And how far is that from Bloomingdale?
A. About eight miles.
Q. Down the river?
A. Yes, sir.
Q. The river towards Paterson?
A. Yes, sir.
30 Q. Did you do any work for any of the factories at Bloomingdale in the spring of 1878?
A. I did.
Q. What month did you do it in?
A. I did some work for the Rubber Works in April.
Q. For whom?
A. The Rubber Comb and Jewelry Company, in April.
Q. The Rubber Comb and Jewelry Company?

A. Yes, sir.

Q. And you say the work was done at Bloomingdale; were you there at work?

A. I was there at work myself; yes, sir.

Q. When did you get your pay for that, Mr. Sisco?

A. I got my pay for that in June; the pay-day in June after the 15th of June; I don't recollect what time the first pay after the 15th was.

Q. What day of the week was the pay-day there?

A. The pay-day, the first pay after the 15th, the first Saturday after the 15th, but sometimes they put it off until the second Saturday. 10

Q. You can not tell whether it was the first Saturday after the 15th, or the second Saturday, but it was a Saturday after the 15th of June?

A. A Saturday after the 15th of June.

Q. What days in April and May did you work there; have you a book here showing that?

A. In April?

Q. Yes. 20

A. (Witness then produced a book to which he referred.) I worked there the 4th, 5th, 6th and 8th; I cannot say that I worked every day—

Q. (Interrupting.) Had you men at work there?

A. Yes, sir.

Q. In April?

A. Yes, sir.

Q. And in May?

A. None in May.

Q. Well, do you know whether you were then there between April and June or not? 30

A. I think I was; I think I was on the pay of May.

Q. Of May?

A. Yes, sir; and they put me off until the pay of June.

Q. Staved you off a month?

A. Yes, sir.

Q. Do you know where this property is in the bend

of the river that now belongs to Noble & Howell, a piece of land that then belonged to Mr. Manning?

A. Yes, sir; I know all the property about there.

Q. Do you know a house there that is said to be built by Mr. Chamberlain?

A. I have seen it several times; yes, sir.

Q. Was that in your view, within the range of your vision, when you were at work there in April, at work for the Rubber Comb and Jewelry Company?

10 A. It was right on the right hand side going towards the Rubber Factory; right where I was working.

Q. Was there any sign of any building there at the time you were at work there in April?

A. No, sir.

Q. When did you first see any signs of any structure on the ground there, Mr. Sisco?

A. The first time I saw anything was on this pay that am speaking of, this pay that I got my money from the Rubber Works after the 15th of June.

20 Q. The time you actually got your money?

A. Yes, sir.

Q. And what did you see there then, Mr. Sisco?

A. I saw something that looked like poles, and brush thrown over the top, and they said it was a place to dance.

Q. Was there a platform visible?

A. It looked like a platform.

Q. And brush over it?

A. Yes, sir; branches of trees and leaves to keep the 30 sun off; I supposed it was for that purpose; I could see them from the road.

Q. When did you move to Bloomingdale?

A. I moved to Bloomingdale about three years ago in the spring.

Q. Have you seen that dancing platform or pavilion since?

A. Yes, sir; frequently.

Q. Is it there yet?

A. It is there yet, I believe.

Q. At the time that you were there on this pay-day in June was there any house, or any appearance of any house, or the foundation of any house there by the platform?

A. I don't recollect of seeing any house.

Q. How positive are you about that?

A. I am positive there was no house.

Q. Any signs of any foundation of a house there?

A. Not that I could have seen from the road; I think I could see it from the road then. 10

Q. When did you first see any signs of a dwelling house there, if you recollect?

A. Along in the fall of the same year I was in Bloomingdale frequently, and went about there; I saw it in the fall of the same year.

Q. In the fall of 1878?

A. Yes, sir.

Q. What did you see then?

A. I saw a house there; it had windows on it. 20

Q. How near to the dancing platform was that?

A. It seemed to be touching right alongside of it.

Q. That is the same house that stands there now?

A. Yes, sir.

Q. That is all.

CROSS-EXAMINATION.

By Col. Ward:

30

Q. Where did you reside at that time, Mr. Sisco?

A. Mountain View.

Q. And how far is that from Bloomingdale?

A. About eight miles, I should think.

Q. Do you know how many days you worked there during the month of April?

A. Four days, I think.

Q. The month of April, 1878?

A. Yes, sir.

Q. Four days?

A. Yes, sir.

Q. And will you now give us as near as you can the exact dates of the days in April when you worked there?

A. The 4th, 5th, 6th and 8th I was there.

Q. The 4th, 5th, 6th and 8th?

A. Yes, sir.

10 Q. That was in April, 1878; now whereabouts were you working at that time, what locality?

A. I was breaking stone for the company around about there; I got part of the stone from different places.

Q. How far, about, from this place of Mr. Chamberlain's was it that you were working?

A. About half a mile; I got part of the stone on the lot back of there, but the biggest part—*(interrupted.)*

Q. That was across the railroad from the Sisco

20 place?

A. Yes, sir.

Q. West?

A. Yes, sir; west of the Sisco place.

Q. And you were drawing stone for the foundation of a mill?

A, No; for concrete work, broken stone; I broke them up.

Q. Were you there all the time?

A. Yes, sir.

30 Q. Do you recollect any dance being there at Mr. Chamberlain's on the Fourth of July?

A. I heard of it; I believe I heard of a dance there at this pay; the time I got this money.

Q. You heard that there was a dance going to be there?

A. Yes, sir.

Q. And that pay, can you tell us just when that was?

A. After the 15th; the regular pay came the first Sat-

urday after the 15th, and I don't know whether it was postponed until the Saturday after that.

Q. Was that after the 15th of May—or the 15th of June?

A. After the 15th of June; I went there on the 15th of June.

Q. And there was a pay-day on the 15th of May, was there not?

A. Yes, sir.

Q. After the 15th of each month? 10

A. Yes, sir.

Q. Did you know anything at that time about Mr. Chamberlain building on the hill?

A. Nothing more than what I heard there was to be a great dance.

Q. Was that the first then that you had heard that Mr. Chamberlain had built a pavilion?

A. Yes, sir.

Q. And that was on the 15th day of June?

A. No. 20

Q. Well, it was at that pay that you have spoken of; that was the first that you heard of it; do you recollect whether you had heard anything before that?

A. I don't recollect of hearing anything before that.

Q. Did you hear anybody speak about it at all?

A. No, sir.

Q. This building of Mr. Chamberlain's was on an elevated piece of property?

A. Yes, sir, it is; yes, sir.

Q. Considerably higher than any other property 30 around there?

A. Yes, sir.

Q. Easily to be seen from the roads?

A. Yes, sir.

Q. Easily to be seen from any of the houses surrounding it?

A. Yes, sir; with the exception of right back of the railroad; by going up the turnpike, the main road, it lays to the west of that road.

Q. But going from Bloomingdale to the Rubber Works any difficulty in seeing?

A. No, sir.

Q. And after you leave the railroad going west?

A. I don't recollect whether you can see it going from the Rubber Works west.

Q. Is it plain to be seen from the hotels in Bloomingdale?

A. Yes, sir.

Q. Either of them?

10 A. Yes, sir.

Q. How many hotels are there there?

A. I believe there was two hotels at Bloomingdale.

Q. Did you see Mr. Post around Bloomingdale working about that time in April?

A. No, sir; I don't recollect of seeing him.

Q. Do you remember of his being around there in April?

A. I don't recollect.

Q. Cornelius Post, the constable?

20 A. No, sir; I don't recollect of seeing him at that time.

Q. You know him?

A. I know him, but I don't recollect seeing him.

Q. Do you recollect seeing Mr. Chamberlain at any time during the time that you were working at the Rubber Works getting this stone?

A. I don't recollect seeing him.

Q. Or his team?

30 A. No, sir; although I may have seen him; I don't recollect.

Q. Did you go for your pay on the 15th of April that year?

A. No, sir; my work was not turned in on the 15th.

Q. When was your work first turned in to the company?

A. It should have been turned in in May; but I think there was a mistake on the books, and for that reason I was put off.

Q. Do you recollect the day of the month that you went for it in May?

A. I think I went not a long time after the pay.

Q. Do you recollect at the time that you got your pay of seeing any stone around these premises for the building of walls?

A. I don't recollect anything more than I seen a platform the time that I got my pay; I seen a platform there with brush over it, as I stated.

Q. A platform of boards? 10

A. I could not see the platform.

Q. How near were you to this ground at any one time?

A. Previous to that time I was no nearer than the road.

Q. Some little distance the road is?

A. About 150 or 200 feet; something like that.

Q. The road runs under the hill?

A. The road runs under the hill.

Q. That was the road, was it, the Stony Brook road, 20 that you were on?

A. Yes, sir.

WILLIAM MICKENS, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith: 30

DIRECT-EXAMINATION.

By Mr. Pitney:

Q. Where do you reside, Mr. Mickens?

A. Bloomingdale.

Q. How old are you?

A. I won't be positive, but I think 35.

Q. How long have you lived there?

A. I have lived there eight years, I think it is.

Q. And have you any particular trade or business?

A. No, sir; no more than that I work at laboring work.

Q. You lived there six years ago this spring, during 1878?

A. Yes, sir; I lived there then.

Q. And where did you live or board; what part of the
10 place; whereabouts in Bloomingdale?

A. I lived just opposite to the Rubber Factory, on the Millertown road.

Q. And then where did you work?

A. Well, I was working in Bloomingdale there on the streets at different times.

Q What streets were you working on?

A. On Mr. Manning's property.

Q. Well, during the spring or summer of 1878 did you have occasion when going to and from your work
20 to cross over the Manning—or the Howell & Noble tract?

A. Yes, sir.

Q. Did you have any occasion?

A. Yes, sir.

Q. Back of the grave yard?

A. Yes, sir.

Q. And the church?

A. Yes, sir.

Q. Do you know this house of Mr. Chamberlain's that
30 he claims to own?

A. Yes, sir.

Q. How near to that house did you pass when going to and from your work?

A. I passed right along near the side of it.

Q. Now, do you recollect seeing a platform or pavilion built there for dancing purposes?

A. I seen a platform there that they said was for dancing purposee.

Q. Did you notice it while it was being built?

A. Yes, sir.

Q. When was that built?

A. I think that was built along the last of June.

Q. When was it first used?

A. Well, I don't know exactly when it was; it was used the last of June sometime.

Q. Did they not use it on the Fourth of July—did they have a dance there on the Fourth of July?

A. I won't be positive; they was to have one at night, but I think it stormed. 10

Q. They had one on the Saturday before the Fourth of July?

A. I couldn't say when they had the first dance.

Q. Now, what makes you think it was the last of June that that was put up?

A. Well, we were going to have a festival in the woods for the Baptist Church and we employed Mr. Chamberlain's band to play for us.

Q. In that way you can tell when it was? 20

A. Yes, sir.

Q. When were you to have your festival?

A. On the Fourth.

Q. And in that way your attention was called to this platform there?

A. Yes, sir.

Q. You can recollect how shortly before they had the first dance it was put up, Mr. Mickens?

A. I didn't pay much attention about the dance, but I know it was just before the Fourth; it wasn't more than a week or two, anyway. 30

Q. Is that platform there yet?

A. Yes, sir; I believe it is.

Q. And is there any house there now?

A. Yes, sir.

Q. How does that house stand with regard to the platform?

A. It stands right by the side of the platform.

Q. And did you see them building that house?

A. Yes, sir.

Q. Did you see them while they were building it?

A. Yes, sir.

Q. When was that house commenced, Mr. Mickens?

A. I think it was in the fall sometime.

Q. At or about the Fourth of July, when they first had the dance there, was there any sign of a dwelling house there?

10 A. None.

Q. Any foundations dug or laid out?

A. No, sir; I didn't see any.

Q. You was there by the platform, was you, soon after it was first put up?

A. Yes, sir.

Q. And you saw them putting up this house, I understand you, from time to time?

A. Yes, sir.

Q. Who did that, putting up that house—who was

20 bossing it?

A. I saw Mr. Chamberlain working at it.

Q. And that, you think, was in the fall, after they put the platform up?

A. Yes, sir.

Q. What had you to do with this Baptist Church festival?

A. I was one of the committee-men.

Q. To get it up?

A. Yes, sir.

30 Q. Do you recollect whether there was any talk of any objection to Mr. Chamberlain's dance there among the law and order part of the community?

A. Well, I didn't hear much about it.

Q. What, if anything, was said in the neighborhood about it?

Mr. Ward.—We object to that.

Mr. Pitney.—I simply ask it to fix it in his mind—so that he may recollect those things.

Mr. Ward.—Well, I object to that unless there is something to fix the date—

[Interrupted.]

Mr. Pitney.—Well, it is to fix the date. 10

Mr. Ward.—Well, that doesn't fix the date.

Mr Pitney.—What I propose to show by this witness, Mr. Master, is this—

The Master.—Couldn't you dispense with my ruling?

20

Mr. Pitney.—If he wants to he can force you to a ruling.

Mr. Ward.—We object to the testimony, and we do not say whether we insist upon the ruling of this Master. In this instance we object and do not insist upon an enforcement of the ruling of the Master.

Q. Now, just what was said; please read the question. 30

The stenographer then read the question as follows: "Q. What, if anything, was said in the neighborhood about it?"

A. Well, there was several of the church folks that didn't approve of it.

Q. That's all.

CROSS-EXAMINED.

By Mr. Ward:

Q. You was one of the church folks that didn't approve of it, wasn't you?

A. Yes, sir.

10 Q. You belong to the Baptist Church?

A. Yes, sir.

Q. You were one of the committee?

A. Yes, sir.

Q. On that Fourth of July celebration?

A. Yes, sir.

Q. Who else were on that committee?

A. I think it was James Tintle and Dominie Indegrund.

Q. James Tintle, the agent for Mr. Manning, who has

20 been acting as Mr. Manning's agent for this land?

A. Yes, sir; he acted as his agent.

Q. And Dominie Indegrund was there?

A. I think he was.

Q. Now, did you try to get this place of Mr. Chamberlain to hold this celebration?

A. No, sir.

Q. Didn't Mr. Tintle try to get it?

A. I don't know whether he did or not.

Q. That celebration was to be held on the Fourth of

30 July, was it not?

A. Yes, sir.

Q. Where were you working in April of that year?

A. In Bloomingdale, there.

Q. Where?

A. Well, I couldn't tell exactly; different work part of the time on the property around there.

Q. Where were you working from the first to the tenth of April, that year?

A. Well, I couldn't tell exactly where I was working; I was driving a team and working at different places.

Q. Who was you driving team for?

A. James Tintle.

Q. One of the committee ones you have spoken of?

A. Yes, sir.

Q. What were you doing with the team?

A. Sometimes carting out the wood, sometimes delivering store goods.

Q. Did he keep a store—Mr. Tintle keep a store? 10

A. He did; yes, sir.

Q. Where did you live in Bloomingdale?

A. Lived just opposite the rubber factory.

Q. Opposite the rubber factory?

A. Yes, sir; on the Millertown road.

Q. Now, what business had you—how came you in going to and and from where you lived and where you worked to pass this lot of Mr. Chamberlain?

A. It was a near cut to my dinner.

Q. Wasn't there a level road to go from your house 20 to the store?

A. Yes, sir.

Q. And you say it was a nearer cut and an easier one to pass by this lot of Mr. Chamberlain's?

A. It was nearer, but I don't say it was easier.

Q. You had to go up a hill and down a hill?

A. Yes, sir.

Q. Did you go past there every time you went to Mr. Tintle's?

A. No, sir; not every time. 30

Q. Why didn't you go every time?

A. Well, I didn't want to go that way.

Q. Well, how many times do you think you went past there?

Mr. Pitney.—Between the first of April and the tenth.

Q. I mean between the first of April and the tenth?

A. I couldn't say how often I went by there.

Q. Did you go once?

A. Yes, sir.

Q. More than once?

A. Yes, sir.

Q. How many times do you think?

A. Well, I suppose I went that way a dozen times any way.

10 Q. A dozen times between the first and the tenth?

A. Well, not between the first and the tenth.

Q. Well, that is what I am talking about now; the first and the tenth of April that year—did you go past there? Where did you work from the middle of March to the first of April that year?

A. I don't recollect where I worked.

Q. You don't know where you worked?

A. I was working around Bloomingdale at different kinds of work.

20 Q. What were you doing?

A. Driving team.

Q. For whom?

A. James Tintle.

Q. When did you commence work for James Tintle to drive team?

A. I don't recollect now what time.

Q. Did you go past this place in March—last of March?

A. I don't recollect whether I did or not.

30 Q. From the middle of March to the first of April do you remember of going past there?

Mr. Pitney.—He has answered that he don't recollect.

Q. Do you remember?

A. I don't recollect whether I did or not.

Q. Well, now take—we will commence at the tenth of

April—where did you work after the tenth of April that year?

A. I couldn't tell you where I was working; I was working around Bloomingdale there at different work.

Q. What were you doing?

A. Well, I told you driving team.

Q. For James Tintle?

A. Yes, sir.

Q. How long did you drive team for James Tintle?

A. I couldn't say now how long. 10

Q. When did you leave him?

A. That I don't remember—when I did.

Q. Don't you know when you left him?

A. No, sir; I couldn't tell exactly now what time it was.

Q. Was it in the fall, winter, spring, or summer?

A. It was in the spring.

Q. That you left him?

A. Yes, sir.

Q. Now, do you recollect what year it was? 20

A. No, sir; I couldn't tell exactly what year it was.

Q. Can you tell us what year you went to work for him?

A. No, sir; I couldn't now.

Q. Can you tell us now how long you did work for him?

A. Not without I went home and looked at my time book.

Q. You heard people, you say, talking about this house, Mr. Mickens? 30

Mr. Pitney.—He didn't say that. He said he heard them talking about the dancing platform, not about any house.

Q. Did you hear them talking about this erection of Mr. Chamberlain's upon this lot at Bloomingdale?

A. I heard them speak about it.

Q. When was the first you heard them speak about it?

A. I don't recollect now the time.

Q. Well, give us as near as you can about the time that you first heard them speak about it?

A. Well, I heard them speak about it the time when he began the platform.

Q. Not before?

A. Well, I might have heard it before, but I don't remember.

10 Q. Do you know anything about that lot being run off for Mr. Chamberlain?

A. No, sir.

Q. Did you ever hear Mr. Tintle say anything about it?

Objected to.

Q. Did you ever hear any one say anything about it? Then I withdraw that. Did you ever hear any one say

20 anything about it in Bloomingdale?

A. About running off a lot for Mr. Chamberlain?

Q. Yes.

A. I heard some one say he bargainsd for a piece of ground there.

Q. When did you first hear that?

A. That I don't remember.

Q. Was it in March?

A. No, sir; I don't think it was.

Q. Well, can you teli us when you think it was; will

30 you?

A. I don't remember much about it until he began to build a platform.

Q. Do you know who worked on the platform besides Mr. Chamberlain?

A. No, sir; I don't.

Q. Did you see Cornelius Post?

A. I don't remember.

Q. You know Cornelius Post, the constable?

A. I am slightly acquainted with him.

Q. You know him by sight; can identify him; did you see him there?

A. I don't recollect seeing him there.

Q. Did you ever see anybody there besides Mr. Chamberlain?

A. I seen different ones around there.

Q. Working I mean?

A. Well, I couldn't say whether they were working or not. It was noon when I went along there. There 10 wasn't many working at that time.

Q. You generally went past there at noon?

A. Yes, sir.

Q. When there would be nobody working?

A. Well, there didn't seem to be anybody working.

Q. Would it be necessary for you to be close by this place to see them working there?

A. When I was passing by?

Q. Could you see them from Mr. Tintle's store?

A. I suppose I could. 20

Q. Do you know whether you could or not?

A. No, sir; I don't remember now.

Q. Can you see them from the road?

A. Yes, sir.

Q. From the road that runs from Bloomingdale to Butler?

A. Yes, sir.

Q. Stony Brook road it is called?

A. Yes, sir.

Q. Could you see them from the turnpike running up 30 to Newfoundland—the old turnpike; could you see them from that?

A. I think you could if you looked over that way.

Q. Would there be any difficulty in seeing them?

A. Well, I could not be positive about that.

Q. Well, what was that platform built on?

A. There was just a few stones laid under and some timber across.

Q. Is that all?

A. That's all I noticed.

Q. Didn't notice anything else?

A. No regular foundation under; no, sir.

Q. Did you see a wall built there?

A. No, sir.

Q. Did you ever see a wall built there?

A. Not until the house was built.

Q. Is there a wall under the house now?

10 A. A foundation; yes, sir.

Q. When did you look at that; when did you last see it?

A. Well, I was along the road only yesterday and looked up there and seen the foundation of the building.

Q. Under the building?

A. Under the house beyond; yes, sir.

Q. How many times did you see Mr. Chamberlain there working?

A. I couldn't tell; I seen him a number of times.

20 Q. How many do you think?

A. I haven't any recollection now.

Q. Would he be working there noons when you would go to your dinner?

A. No, sir.

Q. When did you see him working there?

A. When I was working on the streets.

Q. Whereabouts were you working on the streets?

A. Near his building.

Q. Who was you working for?

30 A. Working for Tintle.

Q. What streets were you working on, who were the streets being built for?

A. On Mr. Manning's property.

Q. And who was doing the work?

A. Tintle overseeing it.

Q. James Tintle?

A. Yes, sir.

Q. And what street was it you were working on at the time that you saw Mr. Chamberlain there?

A. The street leading right by past his building there.

Q. The street leading up the hill?

A. Yes, sir.

Q. Now, what time of the year was that street laid there?

A. I couldn't be positive what time.

Q. Wasn't it in March?

A. No, sir; I don't think it was.

Q. When was it?

A. I couldn't be positive what time it was. 10

Q. Was it in April?

A. I don't recollect what time it was put there.

Q. I mean when you were working there on the street when you saw Mr. Chamberlain there?

A. I don't remember what time it was.

Q. You did the first work that was done on that street?

Mr. Pitney.—He didn't say so.

20

Q. Well, I will ask him. Did you or did you not?

A. I don't think I did.

Q. Who did the first work for him?

A. I couldn't say who did.

Q. Did Mr. Tintle have charge?

A. Yes, sir; I think he did.

Q. Now, do you know of any one working there before you did?

A. I couldn't tell; there was different ones working there.

30

Q. Did any one work there before you?

A. I don't recollect whether there was any one there before I was or not.

Q. Was James Tintle there every day?

A. I don't remember whether he was or not; I seen him working there when I was working on the street.

Q. What is that street called?

A. I haven't heard any name for it.

Q. Is it the one that runs over the hill past this lot where Mr. Chamberlain's house stands?

A. Yes, sir.

Q. It is the only street that runs over the hill?

A. Well, there was different streets went—

[Interrupted.]

Q. Well, it is the only one runs over the hill?

10 A. Yes, sir.

Q. That's all.

JOHN LUKE, a witness produced on the part of the aforesaid defendants, being duly sworn according to law, deposeth and saith:

20 DIRECT-EXAMINATION.

By Mr. Pitney:

Q. How old are you, Mr. Luke?

A. I will be 52 years old the sixth day of July.

Q. And what is your business?

A. Mason.

Q. Stone mason?

A. Yes, sir.

30 Q. Any kind of a mason?

A. Yes, sir.

Q. Where do you live now?

A. I live now at Bloomingdale.

Q. How long have you lived there?

A. It will be four years the 11th of May now coming.

Q. And where did you live before that?

A I lived the two years previous to that at Charlottesburg.

Q. Charlottesburg is up the river from Bloomingdale?

A. West of Bloomingdale.

Q. But up the river?

A. Yes, sir.

Q. It is between Bloomingdale and Newfoundland?

A. Yes, sir; a little off the main road.

Q. How far off from Bloomingdale?

A. I should think five miles, sir.

Q. In the spring of 1878 were you doing any work for Mr. Amos Chamberlain? 10

A. In 1878? That is the time I lived at Charlotteburg. Yes, sir; I done some work for him.

Q. Where were you at work for him mainly?

A. I did some work for him at Newfoundland, near where he lived.

Q. What was he building there?

A. Some houses.

Q. Tenement houses?

A. Yes.

Q. Houses to rent? 20

A. Yes, to rent.

Q. During that spring did you do any work for him down at Bloomingdale—any kind of work?

A. I went down there during the summer to help him a little; that was done three or four times.

Q. What did you help him do there?

A. Fixing the pavilion for dancing.

Q. When was that, Mr. Luke?

A. That was in June.

Q. What part of June? 30

A. I am not certain what date; I am not certain about the date.

Q. Well, whether it was the first or last part?

Well, it was on about the 20th of June, somewheres about there?

Q. Now, did Mr. Chamberlain get you to fix this pavilion?

A. Yes, sir; I would walk from Charlotteburg to his

house, and then we would go down with a horse and wagon.

Q. What did you find on the ground there when you went there?

A. Well, the timbers was laid down and the floor was most laid.

Q. Did you learn from him how soon before you went there that was done?

A. No, sir; I don't know what time he commenced there.

10 Q. Well, what were these timbers?

A. What kind of wood?

Q. Yes; what were they?

A. Well, different kinds of wood; I think some of the plates were white wood.

Q. Well, was it sawed timber or hewed timber?

A. I am quite sure it was hewed timber; I think they laid on the floor where they danced not sawed, only flat on one side; I think so.

Q. Now, what supported those timbers?

20 A. Well, there was stones on each corner, and stones in the middle and little piers around.

Q. What were those piers built of?

A. Well, first there was some blocks of wood on some pillars and stone along.

Q. Was there any regular wall under, or trench?

A. No, sir; not at that time.

Q. Then what was on these timbers or floor beams—what was nailed on them or to them?

A. There was hemlock boards that were not planed.

30 Q. Unplaned hemlock boards?

A. Yes, sir.

Q. Then was there any posts up?

A. There wasn't many posts then; there was some few holes along there in this timber to put up posts, and then there was two or three posts put up at that time.

Q. Did you help him build it, what there was built of it that spring?

A. I didn't help him put down that timber or them sills on the stone, but after that I helped lay a little of the floor; the carpenter nailed some strips on while I held the posts.

Q. And then what was there at the top of those posts, what was placed there?

A. There was plates put on top of them posts and long timbers laid across, and then there was brush thrown over the top to keep the sun off.

Q. Green boughs? 10

A. Yes, sir; brush cut with leaves on.

Q. How high was it above the head?

A. Well, that I am not certain about; I don't think it was over six or seven feet.

Q. Did it clear the head?

A. Yes; maybe seven and a half feet or something like that.

Q. Were the leaves out in full then?

A. Yes, sir.

Q. How long were you down at work there with Mr. Chamberlain, how many days do you think? 20

A. I went down there on four different times; I don't know whether it was one day right after the other or not.

Q. How long was the thing being put up—how many days were they at it? I want to know whether they hurried it or let it drag.

A. Well, at that time we were in a hurry to get it up.

Q. How many days' work did it require to put it up?

A. It was done when I was not there; I couldn't tell. 30

Q. Well, but what you saw?

A. When I was there—

[Interrupted.]

Q. I don't mean single day's work; but how many days was Mr. Chamberlain engaged with his men in putting this thing up?

A. I don't know that, sir.

Q. Well, I don't mean exactly; *about* how many days?

A. Well, they worked when I wasn't there; I don't know how long they worked at it when I wasn't there.

Q. Can you tell whether a week or ten days?

A. I think it was completed between the 20th of June and the Fourth of July; somewhere along there, because I know we were going to have a dance on the 4th in it.

10 Q. Now, on the Fourth of July tell us what there was of the thing?

A. Well, there was just merely a floor laid and some chunks of boards sawed off, and posts to keep up the corners.

Q. To support this brush roof?

A. Yes, sir; and then timbers laid across.

Q. Was there anything at the end?

A. On each corner of this building?

Q. Yes; but was there any boarding up about the

20 sides?

A. Well, one side where we sat to play there was boards put up.

Q. You do play the fiddle?

A. Yes, sir.

Q. And knew then that where the musicians sat you say there was some boards put up to keep the wind off?

A. Yes, sir; some hemlock boards.

Q. Now, where did the musicians sit? Did you play there on the first time that it was occupied?

30 A. I played there on that Fourth of July when the band was there.

Q. Now, where did the musicians sit?

A. We sat on the pavilion.

Q. On the platform?

A. Yes, sir.

Q. In chairs?

A. Yes, sir.

Q. Do you recollect a circumstance happening to you,

that is, when you were sitting there playing, did anything happen to your chair?

A. I don't know; it runs in my mind as if I fell backwards, or fell through the floor, or slipped my chair through the cracks in the floor, or something like that.

Q. Have you any doubt about it?

A. Well, I think that there was some kind of a laugh got up about the music falling.

Q. Did you play there more than once?

A. Yes; after that I played there. 10

Q. Well, Mr. Luke, have you seen the platform since?

A. Yes, sir.

Q. When did you see it last?

A. Oh, not over a week ago.

Q. What additions, if any, have been made to the platform itself?

A. Since that Fourth of July?

Q. Yes.

A. Oh, it has all been weather-boarded nicely up to the plates, with doors in front and more posts put 20 along.

Q. That is, it has been more thoroughly enclosed?

A. Yes, sir.

Q. Any roof over it?

A. No roof over it, only some timbers laid across where this brush was.

Q. Is the same floor there?

A. I wouldn't like to say that; I wasn't inside to look at it.

Q. Is that improved any—the underpinning? 30

A. No, sir; that is the same as it was.

Q. As far as you can now see?

A. Yes, sir.

Q. Now, at that time—last June or about the Fourth of July, was there any signs of a dwelling house there, Mr. Luke? Had the dwelling house been commenced at that time?

A. I think not; I am not—I think not; I think not, sir.

Q. Any doubt about it at all?

A. No, sir.

Q. When was that dwelling house commenced?

A. Either that fall or the next spring, I can't tell which, but there was no foundation; Mr. Chamberlain got me to point a part of the wall afterwards.

Q. When?

A. About the next year.

Q. When this dance occurred on the Fourth of July
10 was there any foundation dug at all for a house or any preparation for a house?

A. I don't think there was.

Q. The dwelling house that is there now—was that built over the platform, or alongside of it?

A. Well, that stands to the east end of the platform; it joins right up against it, so that you can open the doors of the house and walk on the platform.

Q. Had the house been put over the foundation at the time you pointed up the foundation?

20 A. The house?

Q. Yes.

A. Oh, yes; the house was there then.

Q. Was the foundation laid originally in lime, or sand, or mortar at all?

A. That was laid up dry.

Q. And this pointing was simply an outside show?

A. Yes, sir.

Q. That's all.

30 CROSS-EXAMINED.

By Mr. Pitney:

Q. Wasn't the foundation laid up in the way they usually lay up the foundations of buildings, the foundation of that house?

A. Of the house, or the pavilion?

Q. Of the house.

A. Yes, sir; it was laid up —— stone work.

Q. And the cellar?

A. I don't think there is any cellar under that.

Q. Now, didn't you do that pointing, Mr. Luke, before the Fourth of July?

A. That year?

Q. Yes.

A. No, sir; I think not.

Q. Where had you been working just before you done that pointing? 10

A. At Charlotteburg.

Q. Whereabouts in Charlotteburg—for whom did you work in Charlotteburg?

A. For Sisco. I done almost any kind of work for him when I had no mason work; maybe helping load cars before that.

Q. How do you fix, then, the time that you done this pointing, when you cannot say where you worked before?

A. I don't recollect exactly where I was working before that. 20

Q. Do you mean to pretend to say you can tell definitely when you done that pointing?

A. I cannot say.

Q. Who got you to do that pointing?

A. Mr. Chamberlain got me to do that pointing; I was working for him then.

Q. Well, how many days did you work for Mr. Chamberlain?

A. Altogether there? 30

Q. Yes.

A. Oh! I helped plaster the house there. I was there a number of days; I don't rightly know how many.

Q. Well, I mean that summer of 1878?

A. Oh! I was there may be three or four different times; I rode down there with him.

Q. I mean, on the place where this pavilion is built, on the ground?

A. Yes, sir; I rode down there.

Q. Was Cornelius Post working there at any time you went there?

A. I don't recollect it.

Q. Who was the carpenter for whom you held these posts, that you speak of, while he nailed the strips on?

A. Billy Shaw, I think it was.

Q. Do you know where he is?

A. I don't; no, sir.

10 Q. Was that before the Fourth of July?

A. No, sir; before the Fourth of July there was only two or three posts put up on the end where the musicians sat, with some boards nailed up so as to keep the wind off us, while we played; but we put up some more posts either that summer or some time after that.

Q. Do you know when Mr. Chamberlain commenced this work there?

A. This pavilion?

Q. Any of it; when he first commenced, do you know?

20 A. I do not remember when he put them timbers down.

Q. Did you see any timber lying on the ground on the Fourth of July that was not used?

A. Yes, there was some timber there.

Q. Do you know who laid up this wall, excepting what you heard from Mr. Chamberlain?

A. This stone work that I pointed?

Q. Yes, sir.

A. I don't know, only Mr. Chamberlain said he done

30 it.

Q. This pavilion is easily seen from any part of the country around there?

A. It ain't very easily seen from any part; you can see it from the road going from Bloomingdale to the Rubber Factory.

Q. Can you not see it from the hotels at Bloomingdale?

A. I think you can see it from the two hotels.

Q. Can you not see it from the premises that Mr. Manning owned at that time?

A. Yes, sir; if you go up on the hill where his house stands.

Q. Now, do you know what that pavilion was built for?

A. What it was built for?

Q. Yes.

A. Well, Mr. Chamberlain told me it was built for danc'ng purposes. 10

Q. A dance house?

A. For dancing purposes.

Q. Wasn't that the understanding, that it was to be used as a dance house?

A. Yes; he told me he put it up for to have parties there.

Q. How high were the posts?

A. I don't think they were as high as this ceiling; it may be six or seven or eight feet. There were plates on top and then a long timber across and brush on the 20 top of that.

Q. And that structure is there yet?

A. I think that the timbers are along across the top.

Q. Well, is not the whole structure—that pavilion there now?

A. I think so.

Q. And more added to it?

A. Yes, sir; because it was not enclosed then, and now it is.

Q. Now, do you recollect where you went—how you 30 got on the platform to play on the Fourth of July? Just recollect it—think a moment, please.

A. How I got on the platform to play on the Fourth of July?

Q. Yes, sir; on the Fourth of July.

A. Well, that Fourth of July I could'nt get in any other way than to walk on.

Q. Didn't you go up and get through a window and get on the platform that way?

A. I did on the Fourth of July after that.

Q. On this Fourth of July?

A. No, sir; I don't think I did on this Fourth of July.

Q. Did you ever play there more than once on the Fourth of July?

A. Yes, sir,

Q. What Fourth of July did you play there after that?

A. I think I played the next year or the year after that.

10 Q. Well, be sure about it.

A. One or the other.

Q. Did you play on this Fourth of July in 1878 that you speak of?

A. I did.

Q. You went up with the band from the Methodist church that night?

A. Yes, sir, and went home after that.

Q. Did you belong to that band?

A. No, sir, no more than I played with them.

20 Q. Was it dark when you went up with the band?

A. Well, now, no; it was not dark.

Q. What was the character of the weather?

A. Oh, I am not certain.

Q. Well, think if you cannot be certain? Do you recollect whether it stormed or not?

A. I am not certain of that; I have no record of that; I don't know about that, sir.

Q. Well, now, did it storm on any night that you played there?

30 A. Yes, sir.

Q. When was that?

A. I don't recollect.

Q. Were you playing on the platform at the time it stormed?

A. Well, after that house was put up—

[Interrupted.]

Q. Answer the question, please. Were you on the platform at the time it stormed that you remember of?

A. Yes, sir.

Q. Then the house was built at the time it stormed?

Mr. Pitney.—He has not said that.

A. I am not certain about that.

Q. Were you playing on the platform at the time it stormed?

A. I don't know whether I was or not playing on the platform; but after this house was put up— 10

[Interrupted.]

Q. Were you playing on the platform at the time it stormed?

Mr. Pitney.—The witness is entitled to have his answer. Now, Mr. Master, I want you to conduct this examination. 20

Q. That is very easy answered.

Mr. Pitney.—The witness went on to finish his answer, and counsel interrupted him.

Mr. Ward.—Well, his answer was not responsive.

30

Q. I withdraw that question for the present. Did it storm on the Fourth of July on more than one occasion when you went there?

A. I am not certain whether it did on Fourth of July; I played there between Fourth of Julys.

Q. Do you remember of its storming on the Fourth of July when you went there and played?

A. I am not certain whether it was the Fourth of July or not, but it has stormed when I played there.

Q. Then you don't remember whether it was the Fourth or not that it stormed?

A. No, sir; I don't know whether it was on the Fourth when it stormed or on some other day. I played there between Fourth of Julys.

Q. If it had stormed on the first night when you were there, when you went up with the band from the church
10 that you have spoken about, would you have remembered it?

A. I don't know, sir.

Q. Hem!

A. I don't know whether I would or not.

Q. Where had you been during the day, that day when you say you played with the band from the Methodist church?

A. I came down from Charlotteburgh to help play with Mr. Chamberlain's band.

20 Q. Mr. Chamberlain's band had invited you down?

A. Yes, sir,

Q. Now, who constituted the band?

A. Who led it do you mean?

Q. Who was the band; who were the members?

A. Of the band? Well, there was Mr. Chamberlain's two sons and some of their cousins there.

Q. Well, what was their names?

A. Well, I couldn't tell exactly now, but most of them was Chamberlains; there was Johnnie Whittle
30 and Jimmie Jennings, and most of them were Chamberlains.

Q. And they were all there on this first occasion?

A. I am not certain that they were all there.

Q. Was any of them there on this first occasion?

A. Mr. Chamberlain's sons were there.

Q. What are their names?

A. Theodore and Wesley.

Q. You are sure they were there, are you?

A. Yes, sir.

Q. Anyone else that you recollect of?

A. Well, Jimmy Jennings were there.

Q. Well, give us the rest, if you can?

A. I think Abie Chamberlain and Johnny Whittle; yes, sir, I think them are the fellows that were there.

Q. And was that the day that they played for the church?

A. Well, they came down to Bloomingdale and went down and played at the church. 10

Q. They did play at the church that day?

A. Yes, sir; they told me they played at the church.

Q. You was there at the church?

A. No, sir; I didn't go down there.

Q. Did it storm that day any?

A. I am not certain about that.

Q. What time did you leave Charlotteburgh to go down there?

A. I think I left in the morning.

Q. What time in the morning? 20

A. I cannot tell exactly; I think I came down on the train.

Q. What train?

A. On the forenoon train.

Q. And got off at Bloomingdale?

A. Yes, sir.

Q. Do you know where the band was when you got down there?

A. They said it had gone down to the church.

Q. You don't know where it was? 30

A. No, sir.

Q. When did you see them first?

A. I saw them when they got back from the chur ch in the afternoon or evening.

Q. Was it afternoon or evening?

A. It was after twelve o'clock.

Q. Was it dark or daylight?

A. I think it was pretty near dark; I think it was pretty near dark.

Q. Well, when you got about to Chamberlain's place, was it dark then?

A. I don't think it was quite night yet.

Q. Was the sun gone down?

A. I couldn't tell.

Q. Had you been playing in the place alone that day?

A. No, sir; I hadn't took my violin out of the box.

Q. Where was your fiddle?

A. I had it with me.

10 Q. Had it all day with you?

A. Only when I would set it down behind the bar.

Q. Now, was there a particle of music played that night by that band?

A. At the pavilion?

Q. Yes, sir.

A. I think there was.

Q. Do you know whether there was, or was not?

A. I think there was.

Q. Do you know?

20 A. I wouldn't be positive of it; I went with that band down there, I think, two or three times; but on this Fourth of July when they were down at the church I think that the band went up there to play.

Q. Do you know whether they did, or not, play there then?

A. I am not positive of that.

Q. Were you present when they were at the pavilion on that Fourth of July?

A. I am not positive whether it was that Fourth of 30 July, or a Fourth of July after that; I went down there to play with them because I led with the violin, and they would turn in and help me.

Q. Now, when was that?

A. That was on the Fourth of July, 1878.

Q. 1878?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir; I think so, sir; I lived at Charlotteburgh then, and I only lived—

[Interrupted.]

Q. Well, that was the day when the church festival was held at Bloomingdale, was it?

A. That was the day I heard they had the church festival.

Q. Was that the time that you slipped with your chair and they laughed at you?

A. I am not certain about that; but I think it was.

Q. Don't you know that that band played in the woods that day for the church, and wasn't you there down by the depot? 10

A. I don't recollect that.

Q. Well, do you remember anything about it whether you were, or not?

A. I don't recollect that, sir.

Q. You are a stone mason by trade?

A. I work at it; yes, sir.

Q. Where did you work on the third of July that year, do you remember? 20

A. I do not.

Q. Do you remember where you had worked the week before the Fourth, any place, that year?

A. That year?

Q. Yes; before the Fourth; the week before?

A. Well, it was some little time before that I came down to Bloomingdale to help Mr. Chamberlain a little with his pavilion.

Q. Well, do you recollect any time, a month before you went to help Mr. Chamberlain, where you worked? 30

A. Well, I don't know, unless I worked for him and for William Sisco, loading timber on the cars.

Q. Well, do you remember positively?

A. Not exactly.

Q. That's all.

RE-DIRECT.

Q. Did you play at that pavilion on the occasion

when you understood it was the first dance they had a dance there?

A. The first year?

Q. The first dance that was on that pavilion after it was built; did you play there on that occasion, whenever that occurred?

A. It seems to me they had a dance there just before the Fourth of July.

Q. Well, were you at that one?

10 A. I was not at that one.

Q. Very well. When you first played there did you sit on the floor with the dancers, or did you have a raised platform or balcony for the musicians?

A. Oh! we sat on the platform.

Q. With the dancers?

A. Yes, sir.

Q. On the same level?

A. Yes, sir.

Q. Have you any doubt about that in your mind at

20 all?

A. I think not, sir.

Q. Is you recollection distinct on that subject—that you sat on the same floor—in a chair on the same floor that the people danced on?

A. I think I did at that time.

Q. Now, you have been there a good many times to play?

A. Yes, sir; different times.

Q. With the band?

30 A. Yes, sir; different times.

Q. Can you now, at this time, distinguish which time it rained and which time it didn't rain and which time this thing occurred and which time it did not occur?

A. I could not.

Q. There was a raised balcony built afterwards for the musicians?

A. Well, that was after the house was built up; there was beams put up, and we sat on them beams.

Q. Was there anything done like that the first time you played there?

A. I think not, sir.

Q. Did you help to do the plastering of that house, the house on the ground that Mr. Chamberlain built afterwards?

A. Yes, sir; I helped to plaster it.

Q. When did you do that?

A. That was done some time after the house stood there, some little time. 10

Q. Did you hear Mr. Chamberlain say anything about his having been forbid to build that house; anybody forbidding him to build it?

A. He has said so.

Q. Who forbid him?

A. He said Howell & Noble or Howell had forbid him.

Q. That's all.

RE-CROSS.

20

Q. Did he tell you that Howell & Noble came there when he was working on the house and forbid him going on building it?

A. Yes, sir.

Q. The house was built then?

A. He didn't say; he said he was working there at something, he didn't say house, or pavilion, or what; but that Mr. Howell came and forbid him.

Q. The house had been standing there some time before it was plastered? 30

A. Yes, sir.

Q. Do you recollect how long?

A. I do not.

Q. What time of the year was it you plastered it, the spring?

A. I don't rightly recollect that; well, I tell you I don't keep any time down; I can't write; I can kind of write my name, that's all; I can't read writing.

Q. Do you think it would require a man that could write to know whether he had done work in the spring or the fall?

A. No, sir.

Q. Do you recollect whether it was in the spring, or fall, or winter that you plastered this house?

A. I do not.

RE-DIRECT.

10 Q. Was it before you done the plastering that you understood that he had been forbidden to go on with the building?

A. Yes, sir; Mr. Chamberlain had told me.

Q. How far had the house progressed when he told you he had been forbidden?

A. I don't recollect that.

Q. He told you this some time before he plastered it?

A. Yes, sir; we talked about it.

20 Q. That's all.

HENRY MATHER, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

DIRECT-EXAMINATION.

30 *By Mr. Pitney:*

Q. Give us your age, Mr. Mather?

A. I am 47.

Q. And residence?

A. Of Bloomingdale; Butler, now called.

Q. When did you go to Butler to live?

A. In March; about the first of March, 1878.

Q. What was your business there?

A. I went there to become associated with the Pequannock Paper Company that had a mill there.

Q. Did you go into their employ immediately?

A. Yes, sir; after I got there.

Q. And where did you board at first?

A. I boarded about a mile and a half from the mill, in a north-easterly direction, I should think.

Q. Up the river?

A. Passing down through the main portion of the village, out past the hotels. 10

Q. How long did you board there?

A. About seven weeks.

Q. Then you went to board where?

A. Then I boarded in the opposite direction; at Widow Gormley's, near the saw mill.

Q. And how long did you board there?

A. I am not positive on that point, and my papers—a good many of them—that would refresh my recollection, are in Butler at the present time; but it was less than two months; probably about six or eight weeks. 20

Q. After you left there, where did you go to board then?

A. At a Mrs. Sloan's; about half way between our mill and the hotels

Q. Is that near, or not, the place where Mr. Chamberlain afterwards put up an erection?

A. Well, it is less than a hundred rods of it.

Q. Now, about what time did you go to board with Mrs. Sloan? 30

A. I wouldn't like to put any positive date to that.

Q. Well, how near the first of May, or June?

A. March, April, May, June. Well, I should think it was near the middle of June before I went there; I wouldn't state positively.

Q. When did you first get appointed to any office in the Company?

A. Yes, sir; I was made Treasurer of the Company

and became Manager about the first of May—on the first of May, indeed.

Q. And you think you went to Mrs. Sloan's to live about the middle of June?

A. Somewhere about that time; but the office of our Company was at the house at the foot of the hill, occupied by Mr. Robinson.

Q. That's the house called the Sisco house?

A. Yes, sir.

10 Q. Very near where Mr. Howell's building was put up afterwards?

A. Yes, sir; that is the property that I own at the present time.

Q. And your residence is there; but of late you have been away from there?

A. Yes, sir.

Q. Your business is now at Stanhope, on the D., L. & W.?

A. Yes, sir.

20 Q. You are a member of the Board of Freeholders?

A. Director.

Q. Do you recollect when Mr. Manning was negotiating to sell to Howell & Noble?

A. Yes, sir; I remember it very well.

Q. Did Mr. Howell come to you about that?

A. Yes, sir.

Q. Did he have a letter of introduction?

A. He had a letter of introduction from my brother.

Q. And did he solicit you to join with him in the

30 speculation?

A. He did, sir.

Q. And did you learn what—did you know from time to time what the state of that negotiation was between him and Mr. Manning for the purchase?

A. Mr. Howell—I saw him a few times—I couldn't say how many, in which the matter was spoken of; I don't think we ever met when the matter was not spoken of.

Q. Well, you became familiar in that way with the state of the negotiation from time to time?

A. Yes, sir.

Q. Did you see Mr. Howell and Noble on the ground there looking at that property?

A. Yes, sir.

Q. Did you learn from Mr. Howell and Noble, or either of them, when the bargain was closed?

Objected to, by Mr. Ward.

Mr. Pitney.—I ask the question of the wit- 10
ness for the purpose of fixing the date in his mind, that he learned from Mr. Howell when the bargain was closed and the deed ready to be delivered from Mr. Manning to Howell and Noble. I shall follow it up by proof of Mr. Howell when it was he did inform Mr. Mather of that circumstance. Then I propose to ask Mr. Mather after that as to what the condition of this lot was, on which Mr. Chamberlain put up his erection; the object 20
being to show that Mr. Chamberlain at the time that bargain was closed hadn't made any erection on the lot. The bill is filed —

[Interrupted.]

The Master.—I have read the bill and answer. The question is admitted merely for the purpose of fixing the date, but not for the 30
purpose of proving the fact at all; *that* counsel doesn't ask.

A. I was informed by Mr. Howell that himself and Mr. Noble had become associated in the purchase of land at this time from Mr. Manning; and Mr. Howell suggested to me that they would be in need of some one there ——

[Interrupted.]

Q. Never mind that, Mr. Mather. The question is whether they had told you they had made the purchase or not?

A. Yes, sir.

Q. That's all. Now, you saw where Mr. Chamberlain put up his dancing pavilion there, did you?

A. Yes, sir.

10 Q. At the time that you learned of Mr. Howell that the bargain was closed had that dancing pavilion been started?

A. I am quite positive there had been nothing done there at that time.

Q. When was —— How soon before the Fourth of July was that pavilion put up—the dancing platform and what ever was there, Mr. Mather?

A. I couldn't say precisely, but to the best of my recollection it might have been ten or twelve days.

20 Q. Just give any reasons that you have in your mind for thinking that was about the time—ten or twelve days?

A. Well, it was understood there was to be a dancing platform there, and a number of the young men and others were wondering whether it would be finished for the Fourth of July.

Q. It was a matter of rumor?

A. Yes, sir; when it was in process—when they saw the work started and commenced.

30 Q. Well, was it put up in a hurry or not?

A. Well, I didn't pay particular attention to that.

Q. Well, the question was raised whether they would have it finished for the Fourth?

A. Yes, sir.

Q. Now, you saw that platform; can you state what it consisted of, Mr. Mather?

A. Well, it wasn't a very permanent erection or structure.

Q. Well, describe it as well as you can?

A. As near as I can remember there was, of course, an underpinning laid upon the ground with cross-timbers upon it to support cheap flooring. I cannot say what the nature of the material was. I don't think the structure was square around the ends. There were some posts put up—well, they were six or eight feet in height, I should judge.

Q. And what was there on the top of that?

A. There were some pieces laid lengthwise, like sills 10 or plates, or stringers I would call them—stringers, I think. They were sufficient to support a cross-piece, and, I remember well, there was brush thrown over the top of it.

Q. You mean branches of trees with the leaves on?

A. Well, yes, sir; little shrubbery like.

Q. Were the leaves out in full at that time?

A. Well, there were some leaves on them to the best of my remembrance.

Q. What do you mean by the underpinning; was there 20 a regular foundation laid or only stones put under the beams?

A. Well, I should say it was a sort of underpinning. I think it was continued the whole length, but I don't think it was laid in mortar at all.

Q. Now, Mr. Mather, at that time was there any platform for the musicians above the level of the floor, so far as you recollect?

A. No, sir; I think there was not.

Q. Was there any boarding put up on the sides of 30 these posts?

A. I should think to the best of my remembrance there was a boarding at the down hill end, where the musicians sat.

Q. Now, sir; did you go up to it, at the time, about or before the Fourth of July?

A. Yes, sir; I was there.

Q. Was there at any time a booth built there for the

purpose of selling refreshments—beer and cakes, and so forth—what was called a refreshment booth—at any time was there such a thing built?

A. I think that subsequent to this time there was some changes made in it, and there was something of that kind there afterwards, but not at ——

[Interrupted.]

10

Q. Well,on the Fourth of July was there such a booth there?

A. Not that I remember of being there.

Q. Now, did they have a dance there before the Fourth of July?

A. I believe they did. I didn't attend.

Q. I mean did you hear of it?

A. I heard that there was or had been one.

Q. What was your pay-days—the pay-days of the

20 company?

A. Generally the Saturday after the 15th of the month for the month preceding, but never before the 20th.

Q. Do you recollect whether or not sometimes you didn't pay the first Saturday and put it off till the second?

A. Yes, sir; at the time I took hold of the business we were somewhat straightened financially.

Q. And you didn't always pay on the first Saturday

30 after the 15th of the month?

A. Very often our pay run very close to the second month.

Q. Now, Mr. Mather, you saw a dwelling house that Mr.Chamberlain erected on those premises, did you?

A. Yes, sir.

Q. Now, when was that dwelling house erected or commenced?

A. I couldn't tell you that, sir; but, I think as near

as I can recollect, to the best of my remembrance, it was in the fall.

Q. Was there any commencement—had any commencement ever been made on the Fourth of July of any dwelling house there, when this dancing platform was built?

A. I didn't see any.

Q. Was there any signs of it on the ground at all, any foundation dug or foundation built, or any superstructure of any kind erected? 10

A. I don't think there was.

Q. Do you know how rapidly it was built when it was started; whether it was built right up and then framed and plastered a long time afterwards?

A. Yes, sir; it was quite a while in being finished. I don t think indeed it is finished yet.

Q. You don't think it is finished yet, eh?

A. Well, I haven't been thro' the inside of it. It isn't such a dwelling as I should like to live in.

Q. Is it—what sort of a structure is it, Mr. Mather, 20 as to being well built or cheaply and slightly built?

A. Well, I don't think it was ever intended for an expensive structure at all. It was an economically built arrangement.

Q. Can you recollect how long before any plastering was done in it—started?

A. No, sir; I cannot.

Q. That's all?

CROSS-EXAMINED. 30

By Mr. Ward:

Q. You know, Mr. Mather, where this lot of Mr. Chamberlain is located from seeing the boundaries of it—that's in dispute?

A. I couldn't locate it by the boundaries.

Q. You know where it lies?

A. Yes, sir.

Q. You bought the place that was formerly known as the Sisco house?

A. Yes, sir.

Q. And in buying that place did you not take in with your deed a portion of the property that is in dispute here?

A. I never knew that to be the case.

Q. Don't you understand that to be the case?

10 A. I do not. This is the first information I have had of any such matter.

Q. You don't reside there now?

A. That's my residence.

Q. You reside in that house now?

A. I am not living there. I own the place, but the house is rented. I keep an office and a room there for my own use when I do go there.

Q. You are not there very often?

A. Not very often.

20 Q. How long has it been since you went away from there to do business?

A. Oh, it has been since July or August, perhaps, of 1881.

Q. What time did the paper mill burn down?

A. In June of 1881.

Q. You were speaking of the Robison house; is that where Andrew Robison lived?

A. It got that name from Mr. Alfred Robison, who was the manager of the mill preceding myself.

30 Q. Is he living?

A. He is dead.

Q. Do you recollect of a sale taking place at that mill —a foreclosure sale of a chattel mortgage?

A. A foreclosure sale of a chattel mortgage, sir?

Q. Yes, sir; when the boiler and fixtures were sold in the mill before it burned down?

A. No, sir; I do not.

Q. What time of the year did you say you went there, and what year was it?

A. 1878.

Q. What time?

A. In March.

Q. What time in March?

A. It was the first Monday in March, I think the 3rd day.

Q. And where did you come from when you came to live there; where had you been living previous?

A. In Connecticut, sir.

Q. And how many years did you remain there altogether, Mr. Mather? 10

A. In Butler, or Bloomingdale, as it was called?

Q. Yes.

A. Well, from March—the first of March, in 1878, until some time in July of 1881.

Q. I will read you this, Mr. Mather.

Mr. Pitney.—I object to his reading to the witness anything that is in the answer, Mr. Master. 20

Mr. Ward.—Well, I will ask him the question.

Mr. Pitney.—I guess you have no right to be telling the witness what's in our answer in that kind of style.

Q. In the month of May— 30

[Interrupted.]

Mr. Pitney.—I object, generally, that he has no right to read to the witness as part of the question.

Q. In the month of May, 1880, was a lot conveyed to

you near this of Mr. Chamberlain's, fronting on Second street?

A. I am not positive as to the date, sir; there was land conveyed to me about there.

Q. Were you informed by them at that time, or have you ever been, that that lot included a part of the land that is in dispute with Mr. Chamberlain?

A. Nothing was ever said to me about it, sir, that I remember.

10 Q. You were busy with your duties in this mill at that time, were you not?

A. Yes, sir; quite busy.

Q. And you never went to any dance at this place yourself?

A. I don't know that I ever attended; I have been up there when there has been some kind of amusements going on, yes, sir, for a few moments, perhaps.

Q. Can you recollect when that was?

A. I won't state positively, sir; I think I went up 20 there this Fourth of July evening; but I won't swear positively.

Q. Well, when you were there was dancing going on?

A. Yes, sir.

A. And do you think that was the first Fourth of July after you went to Bloomingdale that you saw dancing there?

A. I couldn't see it any other Fourth previous to that time; I wasn't there previous to that Fourth of July.

Q. After it, I mean.

30 A. How soon?

Q. After that.

A. There was dancing there after that.

Q. Well, this dancing, the first that you saw there, was that the first that you saw there?

A. This Fourth of July, that was the first that I saw there.

Q. Was this the first year that you were in Bloomingdale that you saw this dancing?

A. Yes, sir.

Q. And there was dancing going on that Fourth of July night?

A. I was there but a few minutes; I don't know whether there was dancing going on there when I was up there, or not.

Q. Was it in the evening?

A. Yes, sir.

RE-DIRECT. 10

Q. Mr. Mather, you enclosed your lot that you bought there, didn't you?

A. Yes, sir.

Q. Did Mr. Chamberlain make any objection?

A. None that I ever knew of.

Q. Your lot was right on the corner of Second street and the Bloomingdale road, was not it?

A. Yes, sir; I think it is so called.

Q. Did you take in the Sisco house? 20

A. I bought—I made three separate purchases.

Q. Well, the one I am talking of now was between the Sisco house and Second street, wasn't it?

A. Yes, sir; and that I bought of Messrs. Howell & Noble.

Q Between the Sisco house and Second street, how much front did you have there?

A. Fifty feet, I think it was.

Q. On the Stony Brook road?

A. Yes, sir; a part of it is on that road, and a part of it is on the road that leads up over the hill. 30

Q. And that's the one you fenced in?

A. Yes, sir.

Q. When did you fence that in?

A. Soon after its purchase.

Q. And about what time?

A. About the date of the purchase.

Q. What was the date of that purchase?

A. I cannot tell.

Q. Well, you know whether it was the first year or the second year?

A. I think it was the third year.

Q. That you were there?

A. Yes, sir; it was in 1880.

Q. You said, I understood you, that Mr. Chamberlain made no objection to it?

A. He never spoke to me in regard to the matter that
10 I am aware of.

Q. That's all.

RE-CROSS.

Q. He never spoke to you and you never spoke to him about it?

A. No.

Q. You don't know now whether you have got any of his land or not?

20 A. That I don't know.

Q. You don't know, now, whether you have got any of the land in dispute or not?

A. That I do not.

Q. And you never have known anything about it?

A. No, sir.

Q. And you never talked to Mr. Chamberlain about it?

A. No, sir.

Q. Didn't you see him there when you were putting
30 up the fence?

A. No, sir; not that I know of.

Q. Have you ever seen him by the fence?

A. No, sir; not that I remember.

FURTHER RE-DIRECT.

Q. Was Second street graded along side of your lot at the time you bought it?

A. No, sir; the gentleman promised to lay a street out through there, and wanted me to buy that land between the street and my property. It never has been graded. I don't know about the laying out part. But no work had been done upon it.

Q. It has been done since?

A. No, sir; I think not.

Q. The street that work had been done on was the one lying from your lot out towards the church lot, nearly parallel with the road, wasn't it—the Stony Brook road? 10

A. Nearly at right angles with the Stony Brook road.

Q. Now, haven't they laid out a street from Second street opposite your lot out towards the church, up that way?

A. Yes, sir; up over the hill.

Q. They have laid out a street from your lot up over the hill running at right angles with Second avenue?

A. Yes, sir.

Q. That street they have laid out? 20

A. Yes, sir.

Q. Running behind the Carman lot?

A. Yes, sir.

Q. They haven't graded Second avenue?

A. No, sir.

Q. Mr. Mather, do you recollect whether this property was in fence or not when you went there; whether the whole of the tract that lies on the east of the river there had a fence around on the outside of it?

A. To the best of my memory—the tract that Messrs. Howell and Noble bought do you refer to, sir? 30

Q. Yes.

A. Well, to the best of my recollection it was partially fenced, and the fence was down and being destroyed; but evidently had been fenced, and the remains of a fence were on the property.

Q. That's all.

Q. You had heard that Mr. Chamberlain had bought this tract of land of Howell and Noble, didn't you?

A. My first impression was that Mr. Chamberlain had bought from Howell and Noble.

Q. That's your first impression?

A. That was my first impression, but I afterwards heard that he had bought from Mr. Tintle, who represented Mr. Manning.

10 Q. Now, at the time that you bought your lot, did you say any thing to Mr. Howell and Noble about that?

A. No, sir.

Q. Did you not find fault about Mr. Chamberlain's dance house being on the hill?

A. No, sir; I did not.

Q. Did they say any thing to you about it at all?

A. I don't think any remark had been made in regard to the matter at all, sir.

20 Q. At the time that you purchased your lot, there was no fence around any part of that property—it was out in the commons, wasn't it?

A. It was out in the commons with relation to the rest of the tract, sir. There was a fence along the Stony Brook road.

Q. Now, this street that you have spoken about running over the hill, do you recollect when that was laid?

A. I think that road was laid in—it was worked on, I think, in 1878, the summer and early fall.

30 Q. Of 1878?

A. I think so.

Q. Do you recollect whether that street was worked before the Fourth of July or afterwards?

A. Well, I wouldn't be positive on that point.

Q. In going to Mr. Chamberlain's place where he has this building erected, would you go up that street to get there?

A. Well, there was generally a pay up across—well,

directly across the hill, a well-worn path, and Mr. Chamberlain's structure was placed adjacent to this path.

Q. Do you recollect where Mr. Tintle's store was?

A. Yes, sir; in Mr. Sloan's house.

Q. And could you see this place plainly from that store?

A. Yes, sir; quite plainly.

Q. It fronts that store, doesn't it?

A. Yes, sir; very near. 10

Q. And how far is it from that store to this place, would you judge?

A. Well, I should think that it might be, well, perhaps forty rods.

Q. Forty rods?

A. Yes, sir; perhaps something like that, perhaps more, perhaps less.

Q. That's all.

FURTHER RE-DIRECT. 20

Q. Mr. Mather, you say the first you heard about Chamberlain buying, was that he had bought of Howell and Noble, was it?

A. I say that was my impression; I cannot tell you how I arrived at it.

Q. Did you hear that he had bought or that he had claimed to have bought?

A. I heard that he claimed to have bought from Mr. Tintle afterwards. 30

Q. Yes, but when you first heard?

A. When I first heard I was under the impression that Mr. Chamberlain had bought of Messrs. Howell & Noble; but how I arrived at it I cannot tell.

Q. Was it that he had bought, or that he only *claimed* to have bought?

A. Well, I cannot tell you that.

Q. Well, did you hear at the same time that there was any dispute whether he had bought or not?

A. Well, it was shortly after that I had heard that he had claimed to have bought of Mr. Manning; that is, he had made some—

[Interrupted.]

Q. You don't know who you heard say so?
A. That I cannot tell.

10 FURTHER RE-CROSS.

Q. Was it or was it not generally understood there among the people that Mr. Chamberlain had purchased this lot, and did you not hear it so rumored?

Mr. Pitney.—I object; that's no evidence.

Objection sustained.

20 Q. When did you first hear that he had bought it?
A. I think it was during the—while this platform was in process of construction.
Q. That's all.

RICHARD H. MANNING, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

30

DIRECT-EXAMINATION.

By Mr. Pitney:

In calling this witness I desire to state that I shall be unable to finish his examination until I have the printed evidence. I have no copy of it now to which I

can refer; I have only a partial copy; the printer has not finished it. Therefore, I shall put the witness on the stand, but I shall not be able to finish him; but do it only to save time. I want this to go down.

Q. Give us your age and residence, Mr. Manning?

A. Age, 75 years; residence, Brooklyn, New York.

Q. You were a former owner of this property—before you sold Noble & Howell did you lay any part of this off in building lots?

A. Yes, sir.

10

Q. Did you not lay the whole off?

A. No, sir; not all.

Q. Those that you laid off in building lots, did you hold them for sale?

A. I did.

Q. Did you or did you not fix prices on them?

A. Some of them.

Q. Yes, some of them. Now, sir, did you employ a man by the name of James Tintle there to work for you?

A. I did.

20

Q. Did you at any time authorize him to make any sales of any lots—in general, I mean?

A. No, sir.

Q. What did you employ him to do in your behalf?

A. I employed him to find customers and obtain offers for the property with a view to selling it.

Q. With a view to sell it?

A. Yes, sir.

Q. And when he obtained customers and had offers what was he to do?

30

A. He referred them to me, and if I accepted the offers I made deeds.

Q. This land that you surveyed out, or plotted out, did you fix prices—that you had prices on, was he informed of those prices?

A. He was.

Q. So that he knew what you would be willing to take for such lots?

A. Yes, sir.

Q. Did you ever at any time authorize him to sell any lots for you, without—whether you approved or not—without being submitted to your approval?

A. None, except these lots that were surveyed and prices made.

Q. Well, of course?

A. None others.

Q. Have you got all the letters—you have looked
10 for and put in the hands of your counsel all the letters you have received from Mr. Tintle?

A. I have, sir.

Q. Do you think that you got them all?

A. I think so.

Q. Did you take pains to preserve them?

A. As they were received I filed them away; that's my business habit.

Q. That's your business habit?

A. Yes, sir.

20 Q. And do you keep copies of all or most of all the letters that you wrote Mr. Tintle?

A. Yes, sir; all that were important at all.

Q. Have you your letter-book with you?

A. I have.

Q. Now, sir, please look at this letter, which has already been marked "Defendant's Exhibit No. 4 for Identification," from James Tintle, dated March 3rd, 1878; see whether you received that letter in the regular course of mail?

30 A. Yes, sir; I did.

Q. What did you do in consequence or pursuance of that letter?

A. I think I sent to the record office in Morristown and had the record searched and found that—

[Interrupted.]

Q. No—(Reading.) "Come up to Butler, the survey is to commence on Monday next."

A. Well, I don't remember about that, sir.

Q. Well, it is dated the third of March; where were you on the fourth of March?

A. March fourth, 1878?

Q. Where were you on Monday, the fourth of March, 1878?

A. I was at Bloomingdale.

Q. Did you go to Bloomingdale?

A. I went there that day.

Q. What time did you arrive there? 10

A. I think I must have gone by the eight o'clock train, which would arrive there a little before ten.

Q. How long did you stay there?

A. I cannot remember how long, except that I stayed as long as I could, and got home that night; I think there was a freight train that took on passengers down as far as Paterson at three or four o'clock.

Q. Did you see any one at Bloomingdale that day besides Mr. Tintle?

A. I saw Mr. Roome. 20

Q. Whom did you see?

A. The surveyor.

Q. How do you know you were there on Monday, March fourth?

A. I know from memorandum of such transactions as I have been in the habit of keeping.

Q. A diary?

A. I have; I have consulted it.

Q. Was anything said to you there that day as to whether or not—not as to whether or not, but as to any 30 lot be ing surveyed for Mr. Chamberlain?

A. I don't think anything was said about a lot being surveyed.

Q. Well, I am talking about survey entirely; was any lot surveyed in your presence while you were there?

A. No, sir; there was not.

Q. How far is your recollection upon that subject, Mr. Manning?

A. Well, it is very distinct; I cannot verify it by any special fact, except that the lot was so far out of the range of all other surveyed lots that I should have remembered it, if it was surveyed.

Q. You had no lots surveyed in that neigborhood?

A. No, sir.

Q. You hadn't offered that lot for sale—had you offered it for sale?

A. I hadn't specially offered any of my property; my
10 property was for sale, if a purchaser could be found for it.

Q. Now, Mr Manning, when did you first hear that Mr. Chamberlain wanted to buy any of your property?

A. I cannot fix any date.

Q. Well, when you went up there that fourth of March was it spoken of?

A. It is possible it was spoken of at that time.

Q. Was the quantity of land spoken of? Was there any quantity of land mentioned?

20 A. About an acre.

Q. Was it mentioned at that time?

A. I cannot say that it was at that time.

Q. When it was mentioned was there any location spoken of?

A. No special location was mentioned, only it was to be up on the hill there.

Q. Was it ever represented to you to be more than an acre that he wanted to buy?

A. No, sir.

30 Q. What did you say about it? What assent or dissent did you make to it, Mr. Manning?

A. Well it isn't an easy matter to answer that question at all, without telling a long story. I am not sure that anything was said about it at this time. But, at the time it was proposed, I told Mr. Tintle that the property was unsurveyed, and that if Mr. Chamberlain wanted to buy he must specify what he wanted to buy, and I told him to get the best offer he could.

Q. You told Mr. Tintle that he must get the best offer he could for your consideration?

A. Yes, sir; but it is impossible to remember exact words at this distance of time and at my age.

Q. Now, sir; were you ever told that he wanted to buy a lot of about two acres, or that a lot of about two acres had been surveyed?

A. No, sir.

Q. Have you looked through your letters from Mr. Tintle—and your letters to him and your letters from him, to see whether any mention or report had been made to you of any lot sold to Mr. Chamberlain? 10

A. I have.

Q. Can you find whether he ever reported to you in writing that he had ever sold any lot to Mr. Chamberlain, or Mr. Chamberlain had made the offer to buy any lot?

A. I don't remember such.

Q. Did you ever hear from Mr. Manning that he had made any provisional bargain—from Mr. Tintle—that he had made any provisional bargain to sell to Mr. Chamberlain? 20

A. I think I must have heard.

Q. I mean before you sold?

A. I think I must have heard it.

Q. What did you hear about it?

A. I think Mr. Tintle reported to me that Mr. Chamberlain would give four hundred dollars for a lot of land on the hill.

Q. Did you ever hear of $150 in connection with it? 30

A. I may be mistaken about the sum; it may be a hundred and fifty, but I got the impression of four hundred. I don't remember particularly the sum.

Q. Did you accept the offer?

A. I did not.

Q. What did you say about it to anybody that approached you?

A. I told him it was too low in price, besides that the

property was under offer to sell as a whole, and I should decline selling until that question was settled.

Q. When did you, as near as you can recollect—when did your negotiations with the present purchasers commence, or either of them?

A. I think in February, 1878.

Q. With whom?

A. I think the first intimation of doing anything was a letter to Mr. Howell in February.

10 Q. Well, then, in the month of April and May how far had they progressed?

A. We had several interviews, and he intimated that they were favorably inclined toward the purchase.

Q. Do you know whether Mr. Howell, after the price was agreed upon, whether Mr. Howell was saying who would join him in the purchase?

A. I understood there was another gentleman in Morristown who was to join him.

Q. I show you two or three letters from Mr. Howell 20 to refresh your memory as to dates. I show you one dated May 15th.

(Witness examined said letter.)

There is a memorandum that you made yourself that I found among the papers here—well?

A. I have no mark on that letter to identify it by, but I think I received it. I am quite sure I did.

Q. Now, then, I show you your deed dated June 12th, 30 1878; just look at that and see whether that refreshes you as to who it was you expected first to join in the deed—the purchase?

A. Well, I suppose the name has been altered.

Q. Mr. Troxel—was he at that time thought of as a party?

A. I presume so.

Q. Just see whether or not—here is a letter dated June tenth—see whether or not that refreshes your memory on that subject?

A. Well, I remember this letter.

Q. Well, now, sir, at that time did or did you not know the names of the parties who were to buy the property?

A. Yes, sir; I did, of course.

Q. After you got that letter?

A. Yes, sir.

Q. Look at the deed dated the 12th day of June; was the deed or not prepared before the date was put in?

A. I should judge it was by the appearance of it. 10

Q. When, then, according to your recollection, in looking at these memoranda, was the bargain closed between you and Mr. Howell; that is, when did he agree to take the property and you agree to sell it to him?

A. Prior to this 12th of June, of course; how long prior I cannot tell.

Q. Do you recollect of meeting Mr. Howell and Mr. Noble on the ground on a certain day shortly after that, or about that time? 20

A. I do.

Q. What day was that?

A. It was about the time of closing, and I think it was the 17th of June; but at present I have nothing to fix it absolutely on that day.

Q. Haven't you got your diary here?

A. No, sir.

Q. Haven't you consulted it to ascertain that was in 1878?

A. Yes, sir; heretofore. 30

Q. Now, you met there at Bloomingdale on the 17th day of June?

A. Yes, sir.

Q. Did you go over the grounds with them?

A. I think so; I think we spent the day about the premises.

Q. Were you up on the hill where Mr. Chamberlain's house now stands, above the Sisco house?

A. I don't remember being up there.

Q. You don't remember being up there in particular; but were or were you not over the whole property?

A. We went about the property; very probably went over that.

Q. At that time was any signs of building on the ground?

A. I don't remember of any; I should have seen it if it had been.

10 Q. Would or not it have attracted your attention?

A. I should think so, undoubtedly.

Q. When was it that you first seen any building?

A. I don't think I have ever seen any.

Q. Now, sir, what, if anything, did you say to Mr. Noble—did you report to Mr. Noble and Howell the contracts that you had made for sale which were not changed?

A. I did.

Q. And they understood them?

20 A. I presume so

Q. What did you say to them about Mr. Chamberlain?

A. They must have understood them, because they carried them out.

Q. All that you reported to have sold?

A. Yes, sir.

Q. What did you say to them about Mr. Chamberlain?

A. Mr. Noble said to me; "Now, if there anything—any substance in this report about Mr. Chamberlain

30 having bought this property, if you are under any obligation to sell it to him, if you have entered into any agreement with him, I don't want to have anything to do about it."

Q. How did the conversation open, Mr. Manning?

A. I think it was just after dinner—Mr. Noble took me a little one side on the street—

[Interrupted.]

Q. Did anything pass between you and Noble before?

A. Except in an ordinary way, nothing special.

Q. What had you said to him about it before?

A. Previously?

Q. Yes.

A. I don't remember anything; I do remember this because it was emphatic; I told him I was under no obligation whatever; no papers had passed.

Q. What amount of land was spoken of that Mr. Chamberlain wanted to buy? 10

A. I don't think it was spoken of at that time; I had always understood previously that he wanted about an acre; but I don't remember that it was spoken of at that time.

Q. Do you recollect whether in your previous negotiations with Mr. Howell and Noble you had mentioned the fact that Mr. Chamberlain wanted to buy?

A. I think I did.

Q. Before this?

A. Yes, sir; I remember further, to confirm that, that I think I said to Mr. Noble that perhaps the best way to settle matters to satisfy Mr. Chamberlain would be for them to sell the lot. 20

Q. What did Noble say to that?

A. Well, he said he would see about it.

Q. Well, had Chamberlain been to see you about it before that?

A. I think not; I am not positive about it.

Q. Well, he did come to see afterwards?

A. He did. 30

Q. What did you tell him? He said that you had told him that you arranged with Howell and Noble to carry out your contract; did you tell him anything like that?

A. I think very likely I did.

Q. Well, contract to convey to him?

A. No; I didn't tell him that; I probably told him that I should advise them to sell the lot to him as the simplest way of settling the whole matter.

Q. He made a claim on you for the lot, didn't he?

A. I think so.

Q. Did you admit your liability?

A. I didn't admit any liability.

Q. What did you tell him about it?

A. I told him the property was sold to Howell and Noble.

Q. What did you tell him as to whether you contracted with him to sell it to him?

10 A. I never admitted it in any way, shape or manner.

Q. What did you say about it?

A. I cannot tell you. I said a little as possible.

Q. He says that one time—Mr. Chamberlain swears that he came to see you in the month of March, 1878, and told you that he had made a bargain with Tintle for this lot for $150.00, and that you said it was all right; is that true or not?

A. I say it is not true. I could not say it was all right, because there was no place specified or no loca-

20 tion, and the quantity wasn't specified.

Q. Then he says that he saw you in the latter part of May, 1878; and told you that he had commenced work on his lot, and you told him it was all right; how is that?

A. I don't remember it. He called on me twice I remember; whether more than that or not I don't know.

Q. Then he says he called on you in the latter part of July again and that you then told him it was all right and that Howell and Noble would make a deed to him?

30 A. I probably told him that he had better negotiate with them.

Q. Yes; but the question is, whether you told him that you had arranged with Howell and Noble for them to make a deed to him?

A. I could not have told him that, because I had not done so.

Q. Did you require of them that they should make a deed to him?

A. I did not require it. They did't promise. I recommended it; that was all. I think I told Mr. Chamberlain when he came to see me that I recommended them to do so, but I couldn't control it.

Q. That's what you told him? Did James Tintle ever report to you verbally or pretend to you, while you owned the property, that he had made a positive bargain with Mr. Chamberlain for selling this lot?

A. No, sir; not a positive bargain.

Q. Did he ever report to you anything of having taken this ten dollars—anywhere? 10

A. Never.

Q. Did you ever hear of it?

A. Never heard of it until I heard of it here at the trial.

Q. Have you any interest whatever in this suit, Mr. Manning?

A. Well, that I don't know; I think not.

Q. You didn't give a warranty deed?

A. I think I did. 20

Q. No, no warranty in it. The deed speaks for itself anyway. We now show you the exhibits—your letter-book. Did you make copies of such of the letters in your letter-book that you wrote to Mr. Tintle, as he didn't produce?

A. I have. I show you two papers purporting to be copies of letters from you to Mr. Tintle; are those correctly made from your letter-book?

A. Yes, sir; I can produce the letter-book.

Q. Yes, precisely. Now, are you able at this moment to say whether these, with the letters which Mr. Tintle produced on our requisition, comprise all the letters that you wrote him of which you have copies? 30

A. How is that?

Q. The letters which he produced—did you see this bundle of letters written by you to Mr. Tintle which Mr. Tintle produced?

A. I did.

Q. Did you attempt to go over your letter-book and make copies of all the letters which you wrote which he didn't produce?

A. I think so.

Q. From the first of March, or before that, down till after you sold to Howell and Noble?

A. I think there may have been some little acknowledgments of receipts or advices—something of no importance that I didn't copy.

10

(At this point it appeared that the copies of the witness's letters to Mr. Tintle made by the witness were not complete, and the examination upon that matter was suspended.)

Q. Have you got your letter-book here?

A. I have.

Q. Just produce it.

20

(Witness did so.)

Mr. Pitney.—I now offer, Mr. Master, these letters, that I will ask you to mark Exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 10, in evidence.

Said letters were marked respectively Exhibit 1, 2, 3, 4, 5, 6, 7, 8 and 10, on the part of the defendants.

30

Q. I will now show you Exhibits 1, 2, 3, 4, 5, 6 and 8; did you write those letters to Mr. Tintle, all of them?

A. I received all those.

Q. You received all those, eh?

A. Yes, sir.

Q. Now, just see whether you received this bill of surveys from Benjamin Roome?

A. Yes, sir.

Q. Did you receive that through Mr. Tintle or from Mr. Roome directly?

A. Probably through Mr. Tintle.

Q. That is the original bill that was furnished to you?

A. Yes, sir.

Defendants' counsel offered said bill in evidence, and the same was defendants' Exhibit No. 9. 10

Q. Is that your letter-book, Mr. Manning?

A. Yes, sir.

Letter-book offered in evidence by defendants' counsel and marked Exhibit 20.

Mr. Pitney also offered in evidence copies of letters written by Mr. Manning to Mr. Tintle appearing in above letter-book, and 20 the Master is to compare them with the letter-press copies in order to ascertain the correctness thereof, which said copies are to be used in place of the letter-press copies.

Said copies are marked respectively from Exhibit 10 to 19 exclusive.

(At this point a recess was taken until 2 P. M.) 30

After recess.

Mr. Pitney stated that he desired to suspend the further examination of Mr. Manning for the reason

heretofore stated when the witness, Mr. Manning, was produced, until he had the printed evidence.

BENJAMIN F. HOWELL, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

DIRECT-EXAMINATION.

10 *By Mr. Pitney:*

Q. What is your age, Mr. Howell?

A. 61.

Q. And where do you live and how long have you lived there?

A. I live in Morristown and have lived there twenty odd years; 22 years.

Q. And previous to that where did you live?

A. In the village of Troy.

20 Q. And your middle name is Franklin?

A. Yes, sir.

Q. Commonly called Frank?

A. Often.

Q. Did you enter into negotiations with Mr. Manning to buy this property up there in the spring of 1878?

A. I did.

Q. Can you tell how early those negotiations commenced?

A. Well, the thing was pending quite a number of

30 months.

Q. Did you ever expect to buy it alone, or did you expect to have some one join with you in the purchase?

A. I didn't expect to buy it alone; I sought parties to go in with me.

Q. Mention some of the parties that you sought to go in with you?

A. I asked Mr. Mather and Mr. Mather's brother, Mr. Frank Mather and Mr. Noble, and Mr. Troxel and some others that I don't recall at this moment.

Q. Did you or did you not agree on a price or a purchase with Mr. Manning, if you were able to name the parties to join in the deed?

A. We did.

Q. You agreed with him?

A. Yes, sir.

Q. Did Mr. Troxel agree to go in with you?

A. Yes, sir; and he afterwards declined; he agreed the second time and afterwards declined.

Q. Had you or had you not on the date of this deed, the twelfth of June, closed the bargain, so to speak? 10

A. Yes, as near as it was possible to do it; I wouldn't buy it alone, and I told Mr. Manning so.

Q. Now, did you go with Mr. Noble and meet Mr. Manning on the ground one day shortly after the 12th of June?

A. I think it was Monday, the 17th; that I see from my letters to him.

Q. These letters refresh your memory on that subject, do they? 20

A. Yes, sir.

Q. You did meet him there on or about the 17th of June, did you?

A. Yes, sir.

Q. And saw him?

A. Yes, sir.

Q. Did he previously inform you what sales he had under way pending these negotiations?

A. I think he did.

Q. With different persons? 30

A. With different persons around, who wanted to buy.

Q. Did he tell you some that he had agreed to sell to, and did he ask you to carry out the contracts?

A. Yes, sir, I think he did; Mr. Cook and Mr. Reeves, across the river; I think those were the only two.

Q. Did he mention Mr. Chamberlain's name, as to his having agreed to sell to him?

A. I don't recollect that he ever spoke about it.

Q. Did he say whether or not Mr. Chamberlain wanted to buy?

A. He may have said that he wanted to buy; but he didn't say that he had agreed to sell to him; I think he was one of the parties that he said wanted to buy.

Q. Did he say how much he wanted to buy?

A. I don't think he did.

Q. Did he say whether or not any particular piece of land had been surveyed off, or anything of that kind?

10 A. He never said anything to me about lands being surveyed.

Q. Did he point out any particular neighborhood where he said Mr. Chamberlain wanted to buy?

A. I don't remember about that point.

Q. You know where the Sisco house is, close by Second street?

A. Yes, sir; originally called the Sloan house.

Q. Were you on the ground the 17th of June, with Mr. Manning and Mr. Noble?

20 A. Yes, sir; I think we were.

Q. Were you in that immediate neighborhood?

A. I think we were

Q. Is there any doubt about it in your mind?

A. Not any doubt about it in my mind.

Q. Were you so situated that you could see the very place where Mr. Chamberlain afterwards made his erection?

A. I think so; it is quite visible from the road at various places along there.

30 Q. On that 17th day of June were there any marks on the ground of any erection or of any building commenced, or any signs of any building?

A. Not to my knowledge; I don't think there was anything there that was visible.

Q. Had there been, would you or would you not, in your then present state of mind, have been apt or not apt to notice it?

A. I don't see how I could have avoided it.

Q. Had you been there on the ground frequently before the 17th of June?

A. I had been there several times with different parties.

Q. At any time previous to the 17th of June did you notice anything on the ground?

A. Not a thing to my knowledge.

Q. Well, how clear is your memory on that?

A. Very clear; I think I have not the slightest recollection of seeing anything there. 10

Q. When you closed this bargain had you any notice, or had you heard, or had you any knowledge or suspicion that Mr. Chamberlain had claimed to have bought any land there?

A. I didn't know of his having bought any land there.

Q. Had you heard?

A I never heard that he had bought any land there.

Q. Do you recollect how long after the 17th of June it was that you went on the ground, Mr. ——; do you recollect when you paid your money—took the deed? 20

A. I am not sure whether Mr. Noble and I did not go down to New York to Mr. Manning; I wouldn't be positive about that.

Q. And paid it then?

A. I wouldn't be sure of that.

Q. You haven't the dates with you so as to tell when you made your payments?

A. No, I have not.

Q. How near to the 17th of June was it that you went with Mr. Noble to Mr. Manning? 30

A. Well, I think it was after we had the deeds; it strikes me it was later than that.

Q. Well, sir; now can you recollect how soon after the 17th of June you went there again?

A. Up to Bloomingdale?

Q. Yes.

A. Well, not exactly; but it was a short time after the Fourth of July, but I don't remember the exact date.

Q. Well, between the 17th of June and the Fourth of July, you were not there?

A. No, I think not.

Q. When did you first hear that Mr. Chamberlain proposed or wished or intended to put up this dancing pavilion?

A. Well, I never heard that he proposed to do it until he asked permission of me through Mr. Tintle.

Q. That was the first?

10 A. That was the first that I ever heard about any dancing house

Q. When did that occur?

A. That occurred a short time before the Fourth of July.

Q And where?

A. At my house.

Q. In Morristown?

A. In Morristown.

Q. Did Mr. Tintle come to see you?

20 A. He did.

Q. Was there any one with him?

A. There was some party with him. He has been there a number of times with different men; but I am inclined to think it was a man named McGee. I couldn't swear positively on that point; it might have been the Dominie. They came down with a horse and wagon.

Q. What became of that horse and wagon?

A. The horse was put out in my barn.

Q. When they started to go home who got the horse

30 up?

A. Mr Tintle got the horse up.

Q. How long were they there before they went to get the horse up to go away?

A. I think they went away some time after dinner; I couldn't say exactly.

Q. Can you recollect whether you knew at the time what their business was?

A. Well, Mr. Tintle was expected to be a sort of an

agent for me; he had been looking after the property, and we anticipated work there, making streets and a variety of things, and he may have had a number of little errands.

Q. Can you look back and see what particular business either he or McGee had with you when you went out to get the horse up?

A. I don't recollect any particular business. It might have been to build a trestle work, or it might have been to say that certain persons wanted land. 10

Q. You say that Mr. Tintle went out to help get the horse up; now do you recollect any particular business that he had with you at that time—when he went to get the horse up to go away?

A. I think as he turned to go Mr. Tintle jumps up and says: "I have forgotten my most important errand here." He said: "Mr. Chamberlain wanted me to see you and ask permission to lay down a board floor to have a dance on on the Fourth of July."

Q. Well, what did you say to that? 20

A. I said to him that we hadn't the title to the property; that we had made the purchase of the property that I had authority in a certain sense, and yet for all I hadn't the real authority. I objected to Mr. Tintle that I was fearful that Mr. Robison, who lived close by, might be annoyed by having anything of that kind near him.

Q. Who was Mr. Robison?

A. Mr. Robison was the gentleman who lived in the Sloan house, and I knew he was a very quiet sort of a 30 man, and I was fearful that he might be annoyed. Mr. Tintle was an old acquaintance of mine and he urged me to permit it.

Q. You said to him that Mr. Robison might object; what did he say to that?

A. He said he didn't think he would; he said it would only be for once, and that would end it. "Well," I said "if you want to become responsible with Mr. Robison

in that way, why, as far as I am concerned, I will consent."

Q. What did he describe as being the structure?

A. He said Mr. Chamberlain only wanted to lay down some boards to have this Fourth of July dance on.

Q. Did you expect there would be any superstructure?

A. I never dreamed of anything of the kind or had any such idea.

10 Q. Was there any idea of building a house or anything of the kind spoken of?

A. Not a word.

Q. Or that Mr. Chamberlain claimed to have owned the land?

A. Not a word.

Q. You finally consented to permit this dance to take place?

A. Yes, I finally consented, and supposed that would be the end of it.

20 Q. He said it was only for once?

A. He said it was only for once; and that was his excuse, if Mr. Robison made any objection he said it would be all over. I told him further that I didn't want to get the prejudice of the community.

Q. You thought the community might object?

A. Well, I thought it can't do any special good. But, Mr. Tintle was an old acquaintance of mine and he urged me hard to consent to it, and I did so.

Q. You urged that the community might object generally?

30 A. I did; I made that a strong point; although there was only two or three houses in close proximity to this place.

Q. Was it near Mr. Robison?

A. Yes, sir; it was near Mr. Robison, up on the hill.

Q. Now, who went with you the next time you went up there?

A. Shortly after the Fourth, Mr. Noble and I went up there.

Q. What did you see when you got up there?

A. We saw this platform erected that I suppose is there now.

Q. How did it strike you when you saw it; how did it correspond with your ideas which you had formed when you saw Mr. Tintle?

A. Well, there were posts up on the corners, and it was more than I expected to see.

Q. Were there boards on the top?

A. I think there was some timbers on the top of it. I was perfectly surprised that there was so much top to it. When we were there we went up close to it. 10

Q. Now, describe it, what it looked like when you got to it?

A. Well, I don't know that I can give any better description than those that have already described it. There was a very frail sort of a foundation to it. My recollection would be that there were stones put up in several places. The boards were unplaned hemlock that's my recollection. 20

Q. How many posts were there?

A. Well, the posts that were on both sides, do you mean?

Q. Yes.

A. Well, I wouldn't be positive; perhaps four, maybe six or eight.

Q. Well, how much boarding on the sides was there?

A. Well, not much. I wouldn't be sure as to how much, but there was some on the sides.

Q. Was there any balcony for the musicians at that time? 30

A. I don't think there was.

Q. Was there any sign of a permanent dwelling house started there at all?

A. No, no.

Q. You know where the house was afterwards built and where it now stands?

A. Yes.

Q. Was there any commencement of that house when you went there in July?

A. I think not.

Q. Is there any doubt in your mind about it?

A. Not the slightest.

Q, Was there any foundation connected or anything of the kind?

A. No foundation that I remember of.

Q. Where the dwelling house is now, was there any
10 foundation?

A. No.

Q. Was there anything there to indicate that he intended to build a house?

A. I think not.

Q. Only what the board pavilion shows?

A. No, sir.

Q. Was that prepared at all as the bottom of a house?

A. Not at all.

Q. From the appearance of it would you judge it was

20 A. No, sir; no good well-built house could be built in that way.

Q. If it was built up it would be nothing only a shanty, I suppose you mean?

A. That's all.

Q. Did you see Mr. Chamberlain there or anybody there when you first went there and saw this pavilion or platform there after the Fourth of July?

A. My recollection is that there was nobody there.

Q. When did you first see Mr. Chamberlain after that
30 according to the best of your recollection?

A. Well to the best of my knowledge it was after we went up the first time after the Fourth. Mr. Noble and I, as a rule, went up there often once a week, and then again we would pass two weeks that we would not go. My memory is that we went up the following week or week afterwards.

Q. That would bring you along in the middle or last of July?

A. Yes, somewhere there.

Q. Did you see Mr. Chamberlain there then?

A. My impression is that we seen Mr. Chamberlain on that occasion.

Q. Had there been anything more done on that second occasion?

A. Well, no—yes, I think there had been some stones put up preparatory to this new building, probably.

Q. When did you first—what, if anything, did you do when you first saw an intention on the part of Mr.— Did Mr. Chamberlain ask you if you ever gave him a deed? 10

A. No, sir.

Q. Or did he ever say that he had bought that lot?

A. I think he said he bought it, or had some bargain with Mr. Manning.

Q. What did you tell him about it?

A. I told him it couldn't be the case; we wouldn't consent to his building anything and positively forbid him doing anything in that direction. 20

Q. Did you tell him that you wouldn't convey or make any such conveyance to him?

A. Yes, certainly.

Q. Was that the first time that you saw him do any building that you forbid him?

A. Yes, sir; the first time.

Q. And after that did you ever forbid him?

A. Yes, sir; whenever I went there I always made it a point to go and forbid any further operations in building the house, and I met him two or three times; it might possibly be four. 30

Q. Was he always there?

A. No.

Q. Was there always some one there to represent him?

A. Not always.

Q. Was the house built hurriedly or not?

A. It was built now and then.

Q. By patch—piecemeal?

A. Yes, sir; and I always forbid him when I saw him at work.

Q. Did he in any of these conversations ever tell you how much land there was that he claimed, or how much Mr. Manning had bargained with him for?

A. After some length of time I asked him where these lands were that he intended to buy? But nothing was said that I could form any positive idea of the boundaries; I don't think he said anything about the quantity —possibly an acre; but the bounds were very indefinite.

Q. When did you first learn that he claimed to have bought two acres of land?

A. Never heard of it spoken of before.

Q. You didn't know what the quantity was?

A. No.

Q. Well, suppose that the quantity turns out to be about two acres—did you ever authorize James Tintle to go to him and offer to trade a lot for it at all?

A. Not to my memory.

Defendant's counsel calls upon complainant's counsel for the notice, Exhibit 1.

Mr. Pitney.—We offer in evidence a map now, Mr. Master, which is supposed to be a copy of the one filed in the clerk's office, and which is offered as such copy by consent of Colonel Ward, subject to our word, to be corrected in case it is not.

Q. Now, you say in your answer that you offered to sell to Mr. Chamberlain, at your regular price, the lots on which his house stands, Nos. 91 and 92; you did that, did you?

A. It is our business to sell lots, and we offer lots to anybody.

Q. Were you willing to sell him those lots on which his house stood?

A. Certainly, we would, and be very glad to do it; I urged him hard to buy it.

Q. What were your prices of these lots?

A. Well, I don't recall them now at this moment.

Q. Did you ask him any more than your regnlar price for them?

A. No.

Q. Taking the whole price that was paid for that property, would $150 for two acres of land there be anything like a competent price? 10

A. No price at all; I think.

Q. Well, for an acre and two-thirds.

A. Only for an acre it would be a very nominal price.

Q. If you had been in Mr. Manning's place and selling lots out there at the time he was and anxious to sell, would you take one hundred and fifty dollars for an acre of land?

A. If we would we would certainly never get our money back; I don't know why he should offer any lots at any such price. 20

At this point the examination of the witness was suspended until the testimoy heretofore taken is produced.

30

CHAS. E. NOBLE, a witness (one of the defendants), produced on his own behalf, having been duly sworn according to law, deposeth and saith:

DIRECT EXAMINATION.

By Mr. Pitney:

Q. Give us you age and residence and profession, Mr. Noble?

A. My age is about 59; I reside in Morristown, and I have been an engineer by profession—a civil engineer.

Q. You have retired now from business?

A. Yes, sir.

Q. You went into this purchase with Mr. Howell in the spring of 1878, did you?

10 A. Yes, sir.

Q. Was Mr. Troxel with you at first, as you understood?

A. Yes, sir.

Q. Then he receded?

A. Yes, sir.

Q. And you went in with Mr. Howell?

A. Yes, sir.

Q. Do you recollect of being on the ground with Mr. Howell and Mr. Manning on a day in June?

20 A. Yes, sir.

Q. And what day was that, Mr. Noble?

A. The 17th.

Q. Have you any doubt about it in your mind?

A. I haven't any data to fix it, except that we were up there and closed it up just after deed was to be dated, and that was on Monday, and I find the 17th is on Monday and therefore believe it is all right.

Q. Did you go over the whole premises?

A. Yes, sir,

30 Q. Were you over them before?

A. Yes, sir; several times.

Q. You know where this house of Mr. Chamberlain's was?

A. Yes, sir.

Q. Had you been over that place?

A. Yes, sir.

Q. When did you first go over there?

A. The last part of May.

Q. Between that and the 17th of June you had been there several times?

A. Yes, sir; had walked all over the property from one end to the other twice.

A. And you had been at this point where Mr. Chamberlain has since built his house?

A. Yes, sir.

A. At any of these visits up to and including the 17th day of June were there any indications on the ground of any buildings or improvements? 10

A. I don't recollect of seeing a particle of anything.

Q. How clear is your recollection about that?

A. It is so clear that if I had seen anything of that kind I would have called it in question.

Q. It would have attracted your attention?

A. Certainly it would.

Q. Did you make any enquiries of Mr. Manning as to what lots he had sold out and what he had contracted to sell, &c.,

A. Yes, sir; he had told me what he had sold and 20 what he had agreed to sell, and as an inducement to purchase he told me of several that wanted to buy.

Q. Among those was Mr. Chamberlain's name mentioned?

A. Yes, sir; among those that wanted to buy.

Q. He told you of Mr. Chamberlain then what?

A. He told me that Mr. Crook and Mr. Reeves had bought certain property, and that he agreed to give them a deed for it; that he required us to do, and that another wanted to buy a certain piece, and he said that 30 Mr. Chamberlain wanted to buy a piece there or something to that effect.

Q. Did you learn from him the neighborhood where Mr. Chamberlain wan ed to buy?

A. Yes, sir; he said up on the hill there.

Q. Was anything said about the quantity or the lines?

A. I think he said Mr. Chamberlain wanted to buy an acre up on that hill.

Q. Was there anything said about the price?

A. I don't think there was anything said about the price.

Q. Beyond that did you hear anything?

A. I wouldn't be certain, but Mr. Tintle might have told me the same thing.

Q. Did you hear anything different from that, but simply that he wanted to buy?

A. No, sir.

10 Q. Did you hear from anybody that he claimed to have bought?

A. No, sir.

Q. Did you ask on the 17th of June, or at any particular time, did you ask Mr. Manning, in particular, about this Chamberlain matter, as to what the exact situation was?

A. Yes, sir; I asked him in particular in regard to every one. I wanted to know just where I stood before I consented to take it.

20 Q. Did youwant to buy with any claim of Mr. Chamberlain upon the principal part of the property?

A. No, sir; I said so to Mr. Manning at the time.

Q. What did you say to Mr. Manning?

A. He said first Mr. Crook wanted that yonder; Mr. Reeves wants this piece over here, and there is no objection to that. Says I: "Is there any more you have sold?" He said: "No more, but Mr. Chamberlain wanted an acre up on this hill." "Well," I said, "if you have sold that to Mr. Chamberlain you won't sell 30 me this property;" because it was an important one in our consideration. Well, he said he hadn't made any more bargains; no bargain with Mr. Chamberlain or any one else.

Q. Now, sir, after that 17th do you recollect when you went next there, whether you were there before the Fourth of July?

A. Well, I don't think I went there again until after the Fourth, within a week.

Q. Had Mr. Howell before you went there told you that he had given permission to Mr. Chamberlain to put down this dancing platform?

A. He told me previous to that.

Q. When did you first hear of it?

A. I think he came over to my house one night, and told me he had done so, and asked me if I had any objection. He said Mr. Tintle ———

[Interrupted.] 10

Objected to.

Q. Now, when was that?

A. A short time afterwards—within a few days.

Q. After what?

Mr. Ward.—We object to any further statement being made.

20

Q. Was it before you went there on the Fourth of July?

A. Yes, sir.

Q. I mean *after* the Fourth of July, that you had learned this from Mr. Howell?

A. It was before we started to go there that I learned this from Mr. Howell.

Q. When you got over there what did you see?

A. We were driving past there over towards the hotel, and when we got past the hill we saw this structure with these beams up and the bushes on the top of it, and a sort of pavilion there. 30

Q. Did you go up to it?

A. I don't recollect whether I went up to it myself or not.

Q. What sort of a thing was it in the earliest stage of it?

A. It was a platform that was laid down and held up

with some piers, and then there was brush thrown over the top of it.

Q. How high was it?

A. Six or eight feet; it might have been higher.

Q. When you first went to it was there any dwelling house started near it?

A. I didn't see any; not anything that I took for the starting of a house at least.

Q. What did you see?

10 A. I saw this platform; nothing else.

Q. You know where the house is now?

A. Very well.

Q. Was the house started when you first went there?

A. Oh, no.

Q. Now, can you tell me when it was that you did first see signs of building the present house?

A. I should judge it was some time along in the fall.

Q. You were there with Mr. Howell when you first saw any signs of building the present house?

20 A. I presume so; he and I generally went together.

Q. Did you see Mr. Chamberlain there?

A. I won't be certain that we did the first time we went there.

Q. When you first saw him there what passed between you and him?

A, Well, it must have been some time after the Fourth of July; some time in the fall; I think it was in the fall; there was I and Mr. Howell and Mr. Tintle walking over the field, and we heard a hammer over 30 there, and I said, "Let us go over and stop that man again."

Q. That was after notice had been given him and you went there again?

A. Yes, sir.

Q. What did you do then?

A. We went there and told him; I think I told him, or Mr. Howell told him, that we forbid him to do any more work there, or carrying on any more work there.

Q. Did he make any claim to have bought the lot or to have owned the lot?

A. I think he said he had bought it of Manning at that time.

Q. What did you say to that?

A. I told him he didn't know anything about it.

Q. Did you tell him what you were going to do about it—did you say whether you would recognize Manning's sale or not?

A. Oh, no; but at either that or at subsequent times —I saw him several times after that—I told him that he had better go and see Mr. Manning and not talk to me about it, or something to that effect. 10

Q. Did you ever forbid him again yourself?

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

Q. Except by this notice?

A. I joined in the notice; yes.

Q. How rapidly did the house progress that Mr. Chamberlain was building?

A. Oh! once in two or three weeks you would see a little progress, perhaps a window put in, and then a door put in, and then a little clap boards put on; I think they were a year or a year and a half getting the thing fenced. 20

Q. How much was done when you first notified him, when you went there with Mr. Tintle and Mr. Howell to stop them?

A. I think he had got some sort of a frame up there then.

Q. Was it enclosed at that time? 30

A. I think it was; partly so at least.

Q. Was the roof on?

A. I think perhaps the roof was on.

Q. Did you ever object to his moving his house off?

A. Well, I don't know as I ever consented or objected; I gave him notice that he might move it off.

Q. Did you offer to sell him the lots that his house stood on?

A. We told him he had better buy the lots; but he must buy them as the lots were laid out.

Q. Do you know anything about the prices?

A. Well, we told him we would sell them to him at a much less price—about half the price; I think it was $150, and we would let him have them at about half that; I know it was largely less than what we would sell them to anybody else for, and we told him so; but they must be taken in the way they were laid out on the map.

The further examination of witnesses, &c., in this cause stands adjourned until the hour of ten o'clock in the forenoon of Friday, the 14th day of April next, at the office of John B. Wood, Esq., at Morristown, New Jersey.

10

Examination of witnesses, &c., in the above stated cause, continued before me, at the hour of ten o'clock in the forenoon of Friday, the 11th day of April, 1884, at Morristown, N. J., in the presence of Z. M. Ward, Esq., and George Werts, Esq., counsel for the complainant, and of Edmund D. Halsey, Esq., and Henry C. Pitney, Esq., counsel for defendants, said examination being taken subject to the agreement heretofore made and entered upon the record. 20

JAMES H. CLASS, a witness produced on behalf of the defendants, having been duly sworn according to law, testified as follows :

DIRECT EXAMINATION. 30

By Mr. Pitney :

Q. What is your age, Mr. Class?

A. Thirty-six.

Q. Where do you reside?

A. Parsippany.

Q. Have you ever done any work out about Bloomingdale?

A. Yes, sir.

Q. Do you recollect when Mr. — the year that Mr. Noble and Mr. Howell bought the property out there? I do not ask you if you remember the year; I ask you if you recollect about the time.

A. I recollect about the time, yes, sir; I was out through there.

Q. Did you at any time work out there?

A. Well I have worked about Bloomingdale, about
10 that time, yes, sir; before and after.

Q. At your trade as a mason?

A. Yes, sir.

Q Do you recollect of seeing some sort of dance going on there on the hill?

A. Yes, sir; I saw several.

Q. On a platform?

A. Yes, sir.

Q. Day time or evening was this?

A. Evening.

20 Q, I now call your attention to the first time you saw this platform and dance; what was there there on the ground for the people to dance on?

A. On platform boards.

Q. Do you recollect what kind of boards they were?

A. I could not say; hemlock, I think.

Q. Could you see what they rested on, or have you seen since what they rested on?

A. They rested on timbers.

Q. What did the timbers lay on?

30 A. I guess nothing more than some stones under the corners.

Q. Under the corners did you say?

A. Under the timbers.

Q. Was there any covering over that platform the first time you saw it?

A. Nothing more than a temporary covering of brush or something like that.

Q. Branches of trees?

A. Branches of trees or something of that sort.

Q. How high was that above the heads of the people?

A. Probably eight or ten feet.

Q. How high above the floor was this covering?

A. Well, it was probably eight or ten feet, I suppose —ten feet say.

Q. Were you on the ground around the platform when the dancing was going on on that first occasion?

A. I was around there, yes, sir; I saw them, I did not dance, I saw the performance. 10

Q. How near was that to the Fourth of July?

A. Well, I think it was on a Friday or Saturday before the Fourth of July; Saturday, I think, I am not sure; it was a day or two before the Fourth of July.

Q. Did you understand at the time that that was the first time it had been used?

A. Yes, sir; that was the opening performance, I believe.

Q. Were you working around Bloomingdale at that time? 20

A. No, sir; I was not working there just at that time; I was up around through there, spending the Fourth of July, or going to, through there.

Q. Were you there again at this platform on the Fourth of July, or the evening of the Fourth of July?

A. No, sir; I was at Newfoundland on the fourth of July day.

Q. Now, when you were there on this evening shortly before the Fourth of July, at the opening exercises as you say, was any other building or structure on that 30 ground near the platform, except the platform?

A. No, sir; there was not.

Q. Were there no signs of a dwelling house, or of a dwelling house being commenced?

A. There was not, according to my recollection.

Q. Did you afterwards see a dwelling house on the ground there?

A. Yes, sir.

Q. Can you tell how long afterwards it was before that dwelling house was commenced to be erected?

A. I cannot tell exactly, but I think it was in the neighborhood of—it is two years, two or three years, I think, before the dwelling house was up—enclosed.

Q. Oh, yes! Did you work in the house?

A. Yes, sir.

Q. Plastering?

A. Yes, sir.

10 Q. How long was it after this Fourth of July arrangment that you worked in it?

A. Well, before we done the plastering I think it was two or three years—three years probably, because the dwelling house was up a year or so before we done the plastering.

Q. Can you tell how soon after that Fourth of July occasion it was before the building was commenced on the ground—started—I mean the dwelling?

A. On the ground, the foundation?

20 Q. Started so you could see it?

A. I couldn't tell exactly that; no, sir.

Q. How clear are you in your recollection that at the time you were there, on this Saturday night before the Fourth of July, there was no signs of a dwelling house there on the ground?

A. I know the platform was laid there on this occasion; there weren't no dwelling there and no signs of it.

Q. No signs of it, eh?

A. No signs of a dwelling house ; no, it—

30

CROSS-EXAMINED.

By Mr. Ward:

Q. How old are you—thirty-six years old you said; and where did you reside that year, the whole year?

A. I resided at Parsippany, and in the fall I was at Newfoundland, through there.

Q. What was you doing at Newfoundland?

A. Working a little at my trade.

Q. Who were you working for?

A. I couldn't tell you now, different ones 'round.

Q. Give us one you worked for that year at Newfoundland?

A. I think I worked there for Sisco that fall.

Q. Do you know whether you did or not?

A. I can't tell exactly; I know I was up 'round there working for different ones; I can't tell exactly who I was working for—I done some work there that fall. 10

Q. What kind of work was it?

A. Plastering.

Q. For whom?

A. I can't tell exactly who.

Q. What kind of plastering was it?

A. Small house—jobbing 'round.

Q. Where was the small houses and jobbing 'round that you worked at, where situated?

A. At West Milford; up that way. 20

Q. Whereabouts in West Milford, and who owned them?

A. That I can't tell.

Q. Whereabouts at West Milford did you work?

A. At different places up along there.

Q. For who?

A. I worked for LaRue up there.

Q. What LaRue?

A. "Chil" LaRue, I think it was.

Q. What did you do for him? 30

A. Plastering a house.

Q. Where was that house?

A. At Newfoundland, or near there; I worked up back there for a man named Van Orden and several other places.

Q. I am speaking of this fall, now, that you say you worked at Newfoundland, that you were at this place on the Fourth of July.

A. I don't know; but I worked for Amos Chamberlain that fall.

Q. Where?

A. At Newfoundland, on some of his houses; I ain't sure whether I did or not.

Q. How far is West Milford, where you worked, from Newfoundland?

A. It is all West Milford after you get up above Newfoundland.

10 Q. Do you know John P. Brown?

A. I do.

Q. Do you know where Amos Chamberlain lived?

A. I do.

Q. How far was it from Amos Chamberlain's where you worked?

A. It was about a mile, I suppose.

Q. And that was on a house of Chillion La Rue?

A. That wasn't West Milford.

Q. Was that on a house of Chillion LaRue that you

20 have spoken of?

A. I don't know whether it was that fall or not; I can't tell anything about that; I worked at jobbing off and on at different places around there.

Q. Can you tell us any one else you worked for there that fall? I am now speaking of the fall that you say—(interrupted.)

A. I can name twenty-five that I have worked for.

Q. That fall?

A. Not that fall, no, sir; I can't recollect particularly

30 that fall who I worked for.

Q. Can you recollect anybody who you worked for that fall?

A. I recollect I done some work there for LaRue.

Q. That fall?

A. I can't say it was that fall; I can't recollect that.

Q. What year was it, this Fourth of July that you have spoken about?

A. I couldn't say whether it was 1878 or 1879, or 1877, it was somewhere along there.

Q. You can't say?

A. I can't recollect all these things.

Q. Where did you board when you were working in Bloomingdale that year that you say you were at this platform on the Fourth of July?

A. The year I plastered the house for Chamberlain?

Q. No; the year you said you were there when the dance was there, where did you stop while you were there spending the Fourth of July?

A. I was around Chamberlain's; I stopped up above there at a man's by the name of Van Orden. 10

Q. What is his name?

A. James Van Orden.

Q. Is there any more than one James Van Orden living there?

A. Yes, sir—I don't know as there was at that time.

Q. What did he do, this Van Orden that you stopped with?

A. He was a farmer.

Q. Did he own a farm there? 20

A. Yes, a little place.

Q. Is he living there yet?

A. He lives near there; he has not got the same place now, but he lives near there.

Q. Did you stop there at the time you went to this platform that you speak about?

A. No, sir; I was up around there a week or so at that time, and I came back home, and then I was up there again that fall.

Q. Can you tell us of any place that you stayed or stopped at in Bloomingdale, on the day that you say this dance was had at this platform the first time? 30

A. I stayed there at the hotel.

Q. Whose hotel?

A. Why, at "Carman's" hotel.

Q. "Carman's" hotel?

A. Yes, sir.

Q. What is Carman's name?

A. I can't say whether Pete or Dave kept it at that time.

Q. There were two hotels there kept by the Carmans, wasn't there?

A. I can't say whether it was Dave or Pete.

Q. Give me an answer. Was there two Carmans keeping hotels there—two hotels at Bloomingdale?

A. At that time?

Q. Yes, sir.

10 A. No, I don't think so.

Q. What hotel did you stop at?

A. The one where Pete is now.

Q. You don't know which Carman kept it?

A. I think it was Dave; I ain't sure; it was either Dave or Pete.

Q. How long did you stay there?

A. A night or two; and I went up to Newfoundland and stayed a week or two and came back home again and went up again that fall; I was around Amos' and 20 stopped there several times.

By Mr. Pitney:

Q. Amos who?

A. Chamberlain.

FURTHER CROSS-EXAMINED.

Q. Are you a married man?

30 A. No, sir; I hang up most anywhere when I am off.

Q. Where are you working now?

A. I am over home at Parsippany.

Q. Are you working at your trade now anywhere?

A. I am jobbing a little around.

Q. You have been working a little at it?

A. Not very much.

Q. Have you been working at Bloomingdale lately?

A. No, sir; I have not worked in Bloomingdale in two years.

Q. Who subpœnaed you to come here?
A. Mr. Howell.
Q. Where?
A. Over at my place—home.
Q. Parsippany?
A. Yes, sir.
Q. When was that?
A. It is about a couple of weeks ago, I think.
Q. Two weeks ago?
A. Eight or ten days ago; well, it is about ten days ago, I think, as near as I can recollect.
Q. You done some plastering there for Mr. Chamberlain, you say?
A. Yes, sir.
Q. How long did you work there plastering for him; how many days?
A. I couldn't say; I worked putting the walls to that house of his in Bloomingdale; I couldn't tell how long it took us; two weeks probably.
Q. Who else worked with you?
A. Mr. Luke, here, helped to do it.
Q. Any one else?
A. No, sir; we done the plastering; there were several around there carrying the hod.
Q. Did you see anybody at this dance, when you were there the first time, that you knew?
A. Plenty; but I couldn't tell now.
Q. Can't you tell of one?
A. There were several there that didn't know themselves.
Q. Can't you tell of one?
A. I saw Mr. Luke there, for one.
Q. Did you see anybody else there?
A. I saw several other individuals.
Q. Any one that you knew?
A. Yes, sir; I knew a good many of them.
Q. Will you tell us one or two?
A. I saw some fellows by the name of Kimball, that lived at Newfoundland.

Q. What were their first names; do you know?

A. "Barney" and "Sid."

Q. Well, any others?

A. I saw them—(interrupted).

Q. "Barney" and "Sid" Kimball do you mean?

A. I think I seen them; they were there, and a good many other individuals; but I couldn't recollect their names.

Q. That was the first dance?

10 A. Yes, sir; the first time.

Q. Did you ever see more than one dance there?

A. Yes; I saw more than one—I never seen a dance there yet—they have undertaken to have one.

Q. You saw a dance there on the Friday before the Fourth, you say?

A. I don't know whether it was Friday or Saturday; I went through there previous to—(interrupted).

Objected to.

20

By Mr. Pitney: I ask the Master to protect the witness against being interrupted before he has finished his answer; will you do it?

By the Master: Certainly.

By Mr. Ward: And I hope you will protect the witnesses on both sides hereafter, and I will insist upon that rule being enforced.

30

Q. Well, previous to what? Finish your answer.

A. I have lost it now; what do you want me to answer?

The Stenographer, being requested to read the question and answer, did so as follows:

Q. "You saw a dance there on the Friday before the Fourth, you say?"

A. "I don't know whether it was Friday or Saturday; I went through there previous to—(interrupted)."

By the Master:

Q. Previous to what?
A. Previous to the dance, I suppose.

FURTHER CROSS-EXAMINED.

10

Q. How long previous to the dance did you go through there?

A. I went up through there previous to the dance and was there at the dance; that is all I know about it; I was there that night that the dance was there.

Q. How long previous to the dance did you go through there?

A. I was around there a day or two before the dance came off.

Q. Now, are you sure that that was on the Friday or Saturday before the Fourth. 20

A. I know it was before the Fourth when they laid the platform down and had the dance there.

Q. What makes you think it was Friday or Saturday before the Fourth?

A. Because it was a day or two before the Fourth, and I think the Fourth came on Monday that year.

Q. Then it was only a day or two before the Fourth?
A. Yes, sir.
Q. Then did you go after that to a dance? 30
A. I was there a couple of times after that.

Q. When was the next time you went, and what day was it?

A. I was there the fall after it was plastered, then they undertook to have a dance there; I was there that time; that was the fall we plastered it.

Q. When was the next time after you went to this dance, as you have stated, a few days before the Fourth that you went to this place where the platform was?

A. I won't say—to a dance do you mean?

Q. When was the next time you went there?

A. I can't tell; I was through there often, around the buildings—the platform; I passed there often going to Bloomingdale.

Q. Can you tell us the next time you went to where this platform was, on the ground where this dance was; the next time you went there to it or by it?

A. I can't; I don't recollect; I have been past it several times.

10

Q. Do you know whether there was or was not a dance there on the next Fourth of July?

A. I don't.

Q. After you were at the dance you have spoken of I mean.

A. I couldn't say whether there was or not.

Q. That is all.

RE-DIRECT EXAMINATION.

20

By. Mr. Pitney:

Q. You spoke of Parsippany as your home?

A. Yes, sir.

Q. With whom do you make it a home?

A. With mother.

Q. Your mother is a widow?

A. Yes, sir.

Q. How long, off and on, has your mother lived in Parsippany?

30

A. She has always lived there; she lived in Morristown a while, but she has lived there for the last eight or nine years.

Q. Your father is a Parsippany man?

A. Yes, sir.

Q. A few years before his death he came to Morristown and kept a hotel?

A. Yes, sir.

A. And he then moved back to Parsippany and died there?

A. Yes, sir.

Q. You are a mason and plasterer and go out to work in the country when you have occasion?

A. Yes, sir.

Q. And you have worked in the neighborhood of Bloomingdale and Newfoundland and in that neighborhood off and on?

A. Off and on, more or less, for the last ten or twelve years. 10

Q. Have you the dates when you worked at any particular place?

A. No, sir.

Q. Bloomingdale wasn't a strange place to you?

A. No, sir; near Newfoundland.

Q. Now, when you went there on this occasion previous to the Fourth of July—(Interrupted.)

A. I was going to Newfoundland.

Q. You were on your way to Newfoundland? 20

A. Yes, sir.

Q. And you stopped at the hotel at Bloomingdale?

A. Yes, sir.

Q. For a day or two?

A. Yes, sir.

Q. And then you heard of this platform?

A. Yes, sir.

By Mr. Ward.—I object to this. It is going a little too far. 30

The Master.—It is leading, yes.

Q. The question is whether or not that was the first time you had ever heard of or seen that platform, Mr. Class?

A. It was; I had heard it spoken of by parties from there, and I went through there on purpose to see it.

Q. Was it a new thing or an old thing at that time?

A. That was a new thing, of course.

Q. You said something or other about it not amounting to anything as a dance. What do you mean by that?

A. Well, they never turned out, I suppose, up to the mark what they expected there would be; it wasn't patronized as well as they expected by the Bloomingdale parties, none that I ever saw there.

10 Q. You speak of having seen several persons there that you knew. (Interrupted.)

A. I saw some.

Q. One moment, wait until I get through my question. Among others Mr. Luke?

A. Yes, sir.

Q. Is that the gentleman sitting here now?

A. Yes, sir.

Q. Were you acquainted with him?

A. I was acquainted with him years before that.

20 Q. Do you recollect what he was doing there that night?

A. I think he was one of the musicians; yes, sir.

Q. Is he a mason and plasterer also?

A. Yes, sir.

Q. Have you worked with him?

A. I have worked with him off and on for years.

Q. Do you recollect where he sat and how he sat that night?

A. I think on the end of the platform.

30 Q. On the same level with the platform, or above, or how?

A. I think he sat on the same level, I am pretty sure of it; I don't think there was any stage built.

Q. That is all.

RE-CROSS-EXAMINATION.

By Mr. Ward:

Q. Who told you about this platform at Bloomingdale?

A. I had been to Newfoundland before and had heard Chamberlain speak of where he was going to build at Bloomingdale and have a platform.

Q. Do you understand my question?

A. You asked me who told me about this platform.

Q. I asked you who told you about this platform at Bloomingdale?

A. They told me at Newfoundland about it; maybe a month before that I was at Newfoundland. Amos, I think I heard him speak of it himself. 10

Q. You heard that the platform was at Bloomingdale a month before that?

By Mr. Pitney.—I object to that because the witness has not said anything of the kind.

The Master.—I think the question, looking at the witness' last answer, is a fair one. 20

A. I heard it talked of a month; I don't know whether it was a month or how long it was I heard them talk of what he was going to have there.

Q. Did you hear any one else talk about it except Mr. Chamberlain?

A. I heard persons at Newfoundland speaking that Amos was going to have a time at Bloomingdale on the Fourth of July.

Q. How long before was that? 30

A. Maybe two or three weeks before.

Q. Who told you about that?

A. I couldn't tell you who; several that I knew there.

Q. Was it generally talked about around there?

A. It was talked about around the hotels, yes, sir; you see plenty from all over around Newfoundland, most every day in there, and they would be speaking about it.

Q. Could you see the platform from these hotels?

A. I don't know as you could; you could by going up the road a little ways.

Q. Is it easily seen from the road?

A. You can't see the platform until you get up on the hill now; the building is in the way.

Q. At that time could you see it, before the building was put up, from the road?

A. I don't know as you could see it from the road; if
10 you went up on the hill you could see it.

Q. Could you see it from the hotel?

A. You could see the posts around it and the awning over it, and you could see the lights from the hotel when it was lit up at night.

Q. Wasn't your attention then first called to this platform from seeing it at the hotel?

A. I knew there was something going on there, and my attention was called through that, of course.

Q. And you saw the platform?

20 A. I saw it, of course.

FURTHER RE-DIRECT EXAMINATION.

Q. How soon before the dance did you see it?

A. Before the dance?

Q. Yes, sir.

A. I didn't see it at all before the dance until I came there a day or two before, and it was up; they were working on it; I have seen it a good many times since.

30 Q. Before this first dance you say you saw it when you first came there a day or two?

A. Yes, sir.

Q. How long before that had you been there?

A. I had been up through Bloomingdale maybe a month before that.

Q. Was there any signs of a platform on the grounds before that?

A. No, sir; it was built just before the Fourth of July.

Q. When you were up there a month before were there any signs of it on the ground?

A. No, sir; but I heard it spoken of at Newfoundland, that Mr. Chamberlain was going to have something at Bloomingdale—a dance, that is all I heard about it.

Q. That is all.

WILLIAM SHAW, a witness, produced on behalf of the defendants, having been duly sworn according to law, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitney:

Q. Can you tell how old you are?

A. Yes, sir.

Q. Just give it, please?

A. 38 years.

Q. Where do you live?

A. I live around Greenville, up here near Green Pond.

Q. Are you a married man?

A. No, sir; I was, but I lost my wife.

Q. You are a widower?

A. Yes, sir.

Q. What is your trade?

A. Carpenter.

Q. Did you ever work for Amos Chamberlain?

A. Yes, sir.

Q. Do you recollect working for him in building a dancing platform down at Bloomingdale?

A. Yes, sir.

Q. What part did you take in it? What did you do towards it?

A. I done the carpenter work on it.

Q. How was it built, Mr. Shaw?

A. Well, a platform laid there and the house built at the end of it.

Q Well, how was the platform built? That is what I am inquiring about. How did you build it? How was it constructed? What did it lay on?

10 A. Well, it was a kind of a temporary thing, I suppose; sleepers laid down and cross-pieces laid across and floor on top.

Q. What was that floor made of?

A. Hemlock.

Q. Rough hemlock boards?

A. Yes, sir.

Q. Were they just rough hemlock boards without being plowed and grooved.

A. They wasn't plowed and grooved.

20 Q. Were they jointed?

A. No, sir.

Q. What sort of covering was there on it?

A. Well, there was no covering on it that I know of much.

Q. Did you have anything to keep the sun off or rain?

A. Not when I worked there there was none on it; we just laid the floor when I was there.

Q. Was there any foundation under it?

A. Yes, sir; stones put under there to lay the cross-
30 pieces on—the sleepers across.

Q. Was any trench dug?

A. Not as I know; no, I believe not.

Q. Did you help lay the stones and timbers?

A. I helped a little sometimes, when I had nothing else to do.

Q. Did you help build the thing from the beginning or not?

A. Yes, sir.

Q. Now, Mr. Shaw, do you recollect how soon that was before the Fourth of July?

A. Well, now, it is so long ago that I can't tell you exactly.

Q. Can you recollect whether it was anywhere near the Fourth of July, what month it was in?

A. I know they had a dance on it the Fourth of July; I can't tell exactly, but I think it must have been in June.

Q. Do you recollect whether you hurried or not to get it done? 10

A. We did hurry; of course, it could not be a great while before the Fourth of July; I don't think it was.

Q. At that time, Mr. Shaw, was there any dwelling house commenced there?

A. No, not at that time; not as I know of.

Q. Did you see any dwelling house there?

A. No.

Q. Did you help build a dwelling house afterwards?

A. Yes. 20

Q. How soon afterwards was it commenced?

A. Well, now, I can't tell exactly what time we commenced it, because I worked for him at Milford and Newfoundland, and I can't tell you when he did commence that house.

Q. It was after the time the platform was built?

A. Yes, sir; it was after the platform was built.

Q. Didn't I see you down at Paterson last winter?

A. Most likely you did.

Q. Were you there with Mr. Chamberlain? 30

A. I was there, but I wasn't called up then.

Q. He subpœnaed you, did he?

A. Yes, sir.

Q. And you were in the room?

A. A little while; not very long.

Q. That is all.

CROSS-EXAMINED.

By Mr. Ward:

Q. You were in the room a little while?

A. Yes, sir.

Q. Do you know why you were not sworn?

A. I wasn't sworn; no, sir.

Q. Do you know why?

A. No—never mind why.

Q. You were drinking somewhat that day, wasn't you?

A. I wasn't drinking at all that time; no, sir, you are mistaken.

Q. Not at that time?

A. Well, I might have drank too, but not anything out of the way.

Q. Can you read and write?

A. Yes, sir.

Q. And who did you first talk to about this matter?

A. Where do you mean about this matter, here?

Q. Yes.

A. Mr. Howell.

Q. Who subpœnaed you to come here?

A. Messrs. Howell & Noble.

Q. And where were you living when they did that?

A. Up here a little ways above Powellville; I was at a "stone frolic."

Q. Who served the subpœna on you? Do you remember?

A. Mr. Noble.

Q. Do you know who told him about you, where you was?

A. I know him; I know Mr. Noble, and I know Mr. Howell.

Q. Did you tell them yourself what you knew about it without being asked?

A. No, sir.

Q. You did a great deal of work for Mr. Chamberlain off and on, didn't you?

A. Yes, sir; off and on a great deal.

Q. You have done carpenter work for him?

A. Yes, sir.

Q. At his mill up at Milford?

A. Yes, sir, and at Newfoundland.

Q. Do you know Mr. Post working there, Mr. Cornelius Post?

A. Yes, I know him.

Q. Do you know of his being there and helping Mr. Chamberlain? 10

A. No; he didn't work there when I was there.

Q. How much timber was on the ground when you was there?

A. We got the timber all out up in Newfoundland.

Q. There was quite a good deal of timber there?

A. Yes, sir; quite a good deal of timber—not on the ground.

Q. I mean on the ground when you took it there.

A. Yes, sir.

Q. Is this platform easily seen from the hotel? 20

A. I don't know about from the hotel; when you go down the road you can see it.

Q It is a very conspicuous place there, on the hill?

A. Yes, sir; you can see it quite a ways.

Q. You say you were there to a dance on the Fourth of July?

A. I was there; yes, sir.

Q. On the Fourth of July?

A. I don't say it was the Fourth now; I was there to a dance, but I didn't dance; I didn't care much about it; 30 I just went down there.

Q. You don't know whether it was on the Fourth or not?

A. No, sir; I can't tell.

Q. Was Mr. Chamberlain's son there?

A. Mr. Chamberlain was there.

Q. Was his son there?

A. Yes; he had his band there once, and that was

the time I went there; I think that was the Fourth of July; I ain't sure.

Q. Was that the first Fourth after the platform was built?

A. I can't tell you about that, it is so long ago.

Q. Do you recollect about the Baptist Church at Bloomingdale having a festival there on the Fourth of July?

A. No, sir; I don't know.

Q. It is so long ago you can't tell so much about it?

10 A. No, sir; I can't tell, because it was so long ago, and, another thing, I didn't take no notice of it; I work in so many places I don't keep no regular account of it.

Q. That is all.

RE-DIRECT EXAMINATION.

Q, Do you know whether or not Mr. Chamberlain had more than one dance there—whether he had dances there at different occasions on the Fourth of July, &c.?

20 A. He had dances there; I don't know how many he had.

Q. Can you tell now which dance it was you were at there, whether it was the first one, or the second one, or third one, or what not that he had?

A. Well, I was there, I think, the first one; I think I was there then; I was there like enough once or twice again, but I couldn't tell whether he had any between that or not.

Q. Then you were there at more than one?

30 A. Yes, sir; he had more than one, I didn't dance.

Q. Was Mr. Luke there the first time?

A. Mr. Luke?

Q. Yes; playing.

A. Yes, sir; I believe he was one of the musicians there.

Q. Where did he sit on that occasion?

A. I kind of think he sat over towards the house.

Q. Was he on a level with the musicians or not—with the dancers?

A. I don't know whether he had a box and a chair on it, or whether he had a chair on the floor.

Q. Well, the first time I was calling your attention to that was the time you said there was no house there?

A. There was no house there.

Q. Had he carted any timber for a house there?

A. I guess not; not that I know of; he took the timber down as he got it cut; that is the way he worked down there. 10

Q. Was all the timber taken there put into the platform—used in building the platform at the first?

A. I guess it was—I don't know—I guess the timber was got out as we wanted it.

Q. He didn't take it down until he wanted to put it in the building—is that it?

A. That is it.

Q. That is all.

20

RE-CROSS EXAMINATION

By Mr. Ward:

Q. Don't you know there was lumber taken down there to build a house right alongside the platform when the platform was being built?

A. Most likely it was, but I can't say for sure.

Q. Didn't you get out the timber, and wasn't it drawn right down there on the ground at that time? 30

A. I don't know; it is so long ago that I can't tell.

Q. Don't you know the timber that you hewed at that time is in that house now?

A. Yes; there is some timber that I hewed.

Q. And wasn't that at the time the—(interrupted).

A. I worked on it and weather-boarded it, &c.; I put some timbers into it and the weather-boards and rafters.

Q. Now, wasn't the walls on which this platform was laid, stone walls, laid the whole length of the platform?

A. No.

Q. Do you recollect how they were laid?

A. I can't recollect, but it don't seem to me it was; I guess not—no, I am sure.

Q. Was the platform weather-boarded up?

A. It is weather-boarded now; I don't think it was when they had the first dance.

10 Q. Do you remember whether it was not?

A. No, it was not weather-boarded up.

Q. It was a frame structure, wasn't it?

A. It is frame now.

Q. Was it then?

A. No; There is a frame around it now; I helped to put the frame up; I got the posts out.

Q. Do you remember what it was covered over with when the first dance was there, if anything?

A. A little brush or something.

20 Q. How did they cover it; what were they put on, to cover over the top?

A. I don't think it was anything more than just over the fiddlers; I can't tell for sure now.

Q. Wasn't there posts up?

A. Yes; and sticks laid across; it was a temporary thing.

Q. Was there posts raised up on the corners and sleepers laid from one post to the other?

A. I kind of think it was, but it is so long ago.

30 Q. And aren't the same timbers that you put up on the corners of that platform and laid for the corners of the platform there now as they were put there by you?

A. Yes; I guess they are.

Q. And is that frame enclosed by boarding?

A. That platform is boarded up outside, but there is no roof on it; he may have done it within a year or two back so far as I know; I haven't worked for him for some time.

Q. Do you know or do you not know whether that was put there to remain permanently?

A. I don't know.

Q. Did you talk with Mr. Chamberlain when it was being put up as to its being a permanent structure?

Objected to and question overruled.

Q. Do you know whether at the time it was put up it was intended to remain there permanently? 10

A. I supposed that was his idea; I don't know whether he meant that or not.

Q. Well, as a matter of fact it has remained there, has it not (interrupted.)

A. Another thing I don't know, but he may have said something at the moment, but I don't know what he meant by it.

Q. Where were the stone got from that were put in that foundation?

A. Oh, it was not very strong; it was a pretty good 20 foundation, I thought, for that business.

Q. How long have you known Mr. Noble—Messrs. Howell & Noble?

A. I don't know as I know Mr. Noble, but I know Mr. Howell; I got acquainted with him by other folks telling me who he was.

Q. Did you see Mr. Noble and Mr. Howell there when you were up at the platform?

A. Yes, I guess I seen them once; I guess they were at the house once when I was weatherboarding there; 30 I seen Mr. Howell; I don't know whether I seen Mr. Noble or not.

Q. At the time you were putting up the platform for Mr. Chamberlain did you see either of them there?

A. No, sir; I didn't see them there.

Q. How near that time did you see them there?

A. I don't know how long it was exactly when we weatherboarded the house; after that I couldn't tell that.

Q. That is all.

FURTHER RE-DIRECT-EXAMINATION.

Q. You say that at the time that the first dance was there, there was no boarding up around this platform?

A. No.

Q. But that you did afterwards put up weather-boards around it and enclose it for one story?

10 A. Yes, sir.

Q. How long afterwards was that done?

A. A year or so afterwards; I don't know how long.

Q. How long was Mr. Chamberlain building that house after he commenced it?

A. Two or three years, I guess.

Q. He built it by pieces?

A. He would work a little and then leave off again and went to some other place.

Q. Were you there at any time working on it when 20 Mr. Howell came there and forbid him?

A. No, I guess not; not as I know of; I didn't hear Mr. Howell forbid him, and he didn't tell me.

Q. I understood you to say that when he got the timber and carried it down there he put it right in the building and didn't leave it around?

A. No; he used it up as fast as he got it there.

Q. Why was that?

A. I don't know; he was afraid somebody would steal it, I suppose; that is all I know.

30 Q. That is all.

RICHARD H. MANNING, recalled for further direct-examination.

By Mr. Pitney:

Q. Mr. Manning, did the Messrs. Roome furnish you with some maps?

A. They did.

Q. Just see if this one, which is marked "Map No. 2"—see if that is one that they furnished you? 10

A. They did.

Q. I show you another one, which is marked "Map Exhibit No. 23"; did they furnish you that?

A. This is the same as the other.

Map No. 2 offered in evidence and marked "Exhibit No. 24."

Q. Now, on these two maps in lot No. 23, at the corner of the Stony Brook road and Second avenue, is a 20 house marked on Exhibit No. 23, which is map No. 1, which in the evidence is called the Sisco house. Did you at any time before you sold to Noble & Howell have a paper street or projected street put on paper which cut through that house or touched the house?

A. No, there was a street there; I don't think I had it done; there was a street, a paper street that cut just the rear corner of the house.

Q. There was such a street laid out on a map?

A. On a map. 30

Q. Was that the way it was laid on the map during the time that you owned it up to the time that this map was made by Roome?

A. It was while I owned it; I don't know when this map was made.

Q. March, 1878.

A. Well, it was previous to that.

Q. Previous to what?

A. Previous to March, 1878, that the paper street lay on the corner of the house.

Q. The paper street for which Second avenue has now been substituted?

A. Yes, sir.

Q. That formerly ran further east and touched the house, the back part of the house?

A. The rear of the house.

Q. Now, you employed the Roomes to make a resurvey, a replotting, did you or not?

10

A. Yes, sir.

Q. And they made this map "Exhibit No. 23"?

A. This is one of the maps.

Q. And put Second avenue where it appears now on that map?

A. Well, considerably further to the west.

Q. And what became of the old—had the street ever been worked at all on the ground, or was it only a paper street?

20

A. It was only a paper street, I think.

Q. What became of that map?

A. I gave all the maps to Noble & Howell.

Q. You don't know what has become of them any more than that?

A. That is all—all in my possession.

Q. Did you keep them in New York, or did you leave them with Mr. Tintle?

A. Mr. Tintle had one of them.

Q. Now, was this part of the land which is shown as not laid out at all on the map No. 23—was that laid out in lots at that time?

30

A. No; that was not laid out.

Q Had you ever put any price on any of it; on any particular lot, saying I will sell so much for so much?

A. I hadn't.

Q. Mr. Manning, do you recollect of Mr. Chamberlain and a man by the name of Post coming to New York to see you some time after you had sold to Messrs Noble & Howell?

A. Mr. Chamberlain and another man; I didn't know it was Mr. Post.

Q. Mr. Chamberlain and Mr. Post say that on that occasion Mr. Chamberlain read over to you a statement which he had in writing, and you said that the statement was true, was all right?

A. My recollection is that I made no special remark to anything that he presented; that I avoided making any admission, any remark "pro" or "con."

Q. And why? 10

A. Because I had understood that Mr. Chamberlain was rather a troublesome neighbor, a troublesome man, fond of litigation, and I was careful to avoid giving any—(interrupted).

Mr. Ward objected to the witness giving his understanding about Mr. Chamberlain.

By the Master: I think the answer is competent. 20

Q. Finish your answer if you choose.

A. Avoided giving any occasion.

Q. He says he read over a statement to you in writing; do you recollect anything about that?

A. I don't remember that he read it.

Q. Mr. Chamberlain swears—I believe you have answered this question before, but I will repeat it—that on the many occasions when he went to see you he stated to you that he had made a bargain with Mr. Tintle 30 for this property and that you consented to it or approved of it and said you would carry it out or something to that effect; did you ever say anything of that kind to him?

A. I did not

Q. Did you at any time or under any circumstances approve, or affirm, or ratify any contract for the sale of this property to Mr. Chamberlain?

A. I didn't.

Objected to; question overruled.

Q. Did anybody at any time point out to you on the ground the corners or lines of any lot surveyed or said to be surveyed for Mr. Chamberlain?

A. Not to my recollection.

Q. What is your recollection as to your knowing anything about where the lot was located, or where the lines were?

A. I have no recollection about it; I had no idea where the lines were.

Q. Did you have an idea where it was that Mr. Chamberlain wished to buy?

A. Somewhere up on the hill.

Q. It has been said that these lines were pointed out to you, or that you were told of the bargain, and that you made no objection to it; did you or did you not object to making the sale to Mr. Chamberlain?

A. I always objected to selling to Mr. Chamberlain.

Q. Can you tell the grounds that you made your objections on to Mr. Tintle, or to anybody else who talked to you about it, or to Mr. Chamberlain if he spoke to you about it?

A. On several grounds; I objected on the score of the price, on the score of its being uncertain where the plot would be located—it might interfere with the laying out of streets subsequently—and, particularly, because I was in negotiation with Howell & Noble for the purchase of the whole property.

By Mr. Pitney:—I wish to put in all the letters that were referred to in the letter-book produced at the previous hearing. They have already been offered in evidence.

By Mr. Ward.—We object to any letters

that are in that letter book that were not received by Mr. Tintle. They must be proved.

By Mr. Pitney.—We produced from Mr. Tintle a lot of letters and brought them to Paterson, and they were put in evidence; letters which he had received from Mr. Manning. Mr. Tintle didn't pretend those were all he had received or all he could find. We then produced Mr. Manning's letter book to show that he had mailed to Mr. Tintle other letters than those produced. Mr. Manning certainly swore that he had mailed them, and it is perfectly well settled, now, Mr. Master, that the mailing of the letter in transactions of this kind is *prima facie* evidence that the man received it.

Q. The letter book produced here last week with copies of letters written by you to Mr. Tintle, were those letters or not all written by you and mailed, postage prepaid by you, to Mr. Tintle at Bloomingdale?

A. All in the regular course of such business—not actually mailed by me, but they were put in the box for mailing with all the other letters; they took the regular direction of all business letters.

By Complainant's Counsel:

Q. They were put in the box that you have in your store for putting letters in for the mail?

A. Yes, sir.

Q. Who did your mailing of letters from that box?

A. The boy; a clerk.

By Mr. Ward.—We do not admit any letters that he has on his letter-book that have not been proved.

By Mr. Pitney.—It is for the purpose of showing the fact that he wrote those letters at the time, it is not to prove that they were received.

By Mr. Ward.—The letters that have been proved are all right. My objection is, not to allow a man to keep a book and write letters that may not have been received. How
10 ever, I will waive my objection for the present.

By Mr. Pitney.—They are not offered for the purpose of showing that they were received.

By the Master.—I understand that the objection is waived for the present.

20 *By Mr. Pitney* (to complainant's counsel.) If you want those letters we will send for the letter book. What I want now is, I promised you should have the letters to cross-examine on and you shall have them.

CROSS-EXAMINATION.

By Mr. Ward:

30 Q. Do you recollect the first conversation you had with Messrs. Howell & Noble, or either of them, about selling this land, Mr. Manning?

A. No, sir.

Q. Can you give us the month about that you first had conversation with them?

A. My first letter to them on the subject I can give you.

Q. I don't mean a letter, I mean real conversation.

A. I can't give the first—probably late in February or early in March.

Q. Of what year?

A. 1878.

Q. And did you see them both or one of them at that time?

A. I saw one of them.

Q. Which one did you see?

A. Mr. Howell.

Q. How many times after that did you see Mr. Howell previous to the execution of the deed which you gave for this property? 10

A. Probably four or five times.

Q. Where did you see him?

A. I saw him in Morristown, here, and on the ground in Bloomingdale.

Q. What time about was it that you saw him on the ground at Bloomingdale?

A. I think I saw him there about the sale was consummated. 20

Q. Can you tell us when that sale was consummated?

A. On the 17th of June.

Q. That was when you agreed?

A. Well, it was consummated then, but they had virtually accepted it before—some days before; I don't know exactly how many.

Q. That was by agreement, was it not?

A. By agreement, of course.

Q. Was any deed passed at that time?

A. No deed passed; no, sir. 30

Q. What was done at that time?

A. What time? The 17th of June?

Q. Yes.

A. I don't know how far we went over the ground at that time; Mr. Howell and Mr. Noble were both on the ground, both in Bloomingdale; I was there, and we talked generally about the matter.

Q. You talked it over among yourselves?

A. Yes, sir.

Q. And the terms of the sale were fixed?

A. Were fixed then or had been previously fixed—had been previously fixed, I think.

Q. The prices were known?

A. The prices were known.

Q. Any "down" money paid?

A. Not on that day.

Q. Previous to that day had there been any "down" money paid?

A. I think not.

Q. When was the first money, if any, paid on that property?

A. I think early in July.

Q. Now, will you please to tell us what took place between you and Mr. Howell and Mr. Noble on the 17th of June, at Bloomingdale?

A. I have told you we went over the property more or less; I don't know how much; we dined together and talked generally about the matter.

Q. Well, what else beside the general talk, if anything?

A. I can't tell you any special conversation, excepting in this general way; the bargain was supposed to have been completed on that day; that seemed to have been the final—(interrupted.)

Q. No writing drawn that day?

A. I think not.

Q. Just passed by word of mouth?

A. I think so.

Q. Now, did you make any other writing with them than the deed to convey this property?

A. There were some letters passed between us; I don't know that they amounted to any obligation, any conveyance in any way, or any agreement to convey.

Q. Was there any contract ever entered into for the conveyance?

A. No contract entered into that I remember.

Q. Can you tell us anything special that transpired there, excepting in a general way, on that occasion?

A. I remember especially that Mr. Noble said to me—asked me if I had made any agreement with Mr. Chamberlain to sell him that property on the hill that he wanted; I assured him that I had not.

Q. You had been on the hill?

A. I don't remember whether we had been up on the hill that day or not.

Q. How did Mr. Noble address you about that, as near as you can remember? 10

A. He said to me that if I was under any obligation—if I had entered into any obligation with Mr. Chamberlain, that he did not want anything to do with the property.

Q. Had there been anything said between you and Mr. Noble about Mr. Chamberlain up to that time?

A. Not that I remember particularly.

Q. Do you know any reason for Mr. Noble's asking you about Mr. Chamberlain's having a claim there? 20

A. He didn't like to have the property broken up in that way, I suppose.

Q. Do you know how he learned that Mr. Chamberlain had any claim there?

A. No; I don't.

Q. Did he not tell you that the reason that he didn't want Mr. Chamberlain to have this lot was because he understood he was to have a dance house there, and that he would not have it with a dance house on it?

A. Very likely. 30

Q. Wasn't that what he said?

A. I don't remember.

Q. What is your best recollection about it?

A. I cannot recall any special allusion to the dance house.

Q. Well, to his keeping a place where beer might be sold; did he allude to that?

A. I don't recollect any allusion to beer.

Q. Did he say to you that he understood the purpose for which Mr. Chamberlain was going to use this lot?

A. I don't think he did; it was generally understood.

Q. What was generally understood?

A. It was generally understood that if Mr. Chamberlain could get that property, he would put up some sort of a public entertainment house there.

Q. Wasn't that given as a reason by Mr. Noble for
10 his not wanting Mr. Chamberlain there?

A. I don't know that it was given, but very likely that was his reason, or one reason.

Q. Did Mr. Howell say anything about it?

A. I don't remember that he did.

Q. Was it on the ground, on the land as described in this deed, that the conversation took place, or was it somewhere else in Bloomingdale that you talked with Mr. Noble?

A. It was somewhere in the street, near the bridge, I
20 think.

Q. On the bridge crossing the river?

A. Yes, sir; not on the bridge; I said in the street, near the bridge, somewhere in that neighborhood.

Q. In view of the land, was it not?

A. I should think the land could be seen from there; I am not sufficiently familiar with it to answer that question.

Q. Do you recollect just what you said to Mr. Noble at that time?

30 A. Yes, sir.

Q. What did you say?

A. What I have already testified to.

Q. Will you please tell us again?

A. I said that I had made no agreement with Mr. Chamberlain for the sale of that land.

Q. Did you not say in your examination the other day that you said you had made no agreement with Mr. Chamberlain, that you had made no papers to him?

A. Yes, sir.

Q. You did say that, did you?

A. I did say that, I suppose.

Q. And that you did not consider that you were bound to Mr. Chamberlain to sell the land?

A. No doubt I said that also.

Q. Did you mention any others that you had sold land to?

A. I don't remember that I mentioned it at that time. 10

Q. Did you at any time?

A. There were other sales made which Messrs. Howell & Noble were to consummate.

Q. To carry out your arrangements?

A. Carry out.

Q. And give deeds?

A. And give deeds.

Q. Do you recollect who they were that you told them you had sold to?

A. I am not sure about the names; I think Mr. Cook was one. If the names were—(interrupted). 20

Q. Is Mr. Cook the man that has been sworn in this case at Paterson?

A. I don't know whether it is the same man or not. I think it was A. J. Cook, as near as I can remember.

Q. Do you remember any other?

A. If you could give me the names.

Q. Do you remember Israel Reeves?

A. I think that was one.

Q. And were they to carry out that contract? 30

A. I don't remember particularly.

Q Well, what is your best recollection about it?

A. My recollection is that they were to give deeds to two or three or four parties whose purchases had not been consummated.

Q. Wasn't Mr. Reeves one?

A. I think so.

Q. Had you not at that time given a deed to Mr. Tintle conveying to Mr. Reeves the property?

A. I don't remember.

Q. Do you know whether you had or not?

A. I don't.

Q. Do you know that subsequently to the giving of that deed by you to Mr. Reeves that Messrs. Howell & Noble gave Mr. Reeves a deed for a part of the property that you had conveyed?

A. I think it was arranged in that way but I am not sure.

10 Q. Did you or not know of your own knowledge of Messrs. Howell & Noble denying to Mr. Reeves that you had told them about any contract or conveyance to him?

A. I do not.

Q. Did Mr. Howell or Mr. Noble ever so inform you?

A. Not that I have any recollection of.

Q. Can you tell now, as a matter of fact, whether you had at that time, or at the time that this deed was made to Mr. Howell and Mr. Noble, made a deed to Reeves 20 for the property that had been sold by Mr. Tintle?

A. I think there was a deed made.

Q. And hadn't that deed been delivered to Mr. Tintle to be given to Mr. Reeves?

A. If I made it, it probably had.

Q. When did you receive the first payment for this conveyance?

A. Early in July,

Q, How early in July, Mr. Manning?

A. As early as the sixth, perhaps a day or two earlier.

30 Q. That was before the deed was delivered, was it not?

A. I can't say whether it was before or after; I think very likely the deed had been delivered before.

Q. You didn't deliver the deed before it was dated, did you?

A. I should think not.

Q. Well, what do you remember about it?

A. I don't remember the day of its delivery; it was to be delivered about that time.

Q. You didn't deliver it before it was acknowledged, did you?

A. No, I couldn't do that.

Q. Did you or did you not receive any money before you delivered the deed?

A. Before I delivered the deed? I don't know; I don't remember the date of the delivery of the deed; the deed was undoubtedly delivered immediately after it was acknowledged; it may not have been delivered until the payments were made, but I think the deed was delivered previous.

Q. Do you remember before whom you acknowledged that deed?

A. I think it was acknowledged before Mr. ——— names depart from me sometimes; I know who, but I cannot reccollect his name—Merritt—Merrill—no, that is not the name; well, I shall think of it bye and bye; it will come to me.

Q. Sir?

A. I shall recollect it bye and bye; I have lost the name for a moment; have you got the deed there?

Q. Yes.

A. Well, you have got the name there then; there is no question about it.

Q. Nicholls?

A. Nicholls; that is it, a commissioner in Brooklyn.

Q. You acknowledged it before him, did you not?

A. I presume I did; I acknowledged all deeds before him; he was the commissioner to whom I generally went.

Q. Well, do you remember when that was done?

A. I can't tell you the date; I think however it was as early as somewhere about the middle of June or a little after.

Q. Now, wasn't it on the 3rd day of July?

A. Well, I don't know; it may have been; it is difficult to remember such dates at such a distance; it was undoubtedly on the day it is dated there.

Q, Yes, I will show you the date ; the commissioner seems to have dated it the 3rd of July.

A. Well, it was undoubtedly done then.

Q. At the time you sold this property to Messrs. Howell & Noble was there anything said about the character of the deed you were to give them?

A. I don't remember.

Q. I mean whether it was to be a warranty deed or a quit claim deed?

10 A. It is probable there was ; I don't remember.

Q. Well you did give a quit-claim deed, did you not?

A. The deed will show for itself.

Q. Well, it shows that.

A. Then I did, of course.

Q. Can you assign any reason for your not giving them a warranty deed for this property?

A. Yes, I can.

Q. Then you have a reason?

A. Yes, sir.

20 Q. Then you know that you did not give them a warranty deed?

A. I don't know that ; if I did not then I have a reason for not doing so ; I know I desired not to do so.

Q. Do you know a man by the name of Charles Nettleton?

A. I do.

Q. Did you go before him with this deed also?

A. 1 don't remember that I did.

Q. I will show you a paper attached to that deed wit-
30 nessed by Charles Nettleton. Is that your handwriting?

A. That is my handwriting, and this, Charles Nettleton, that is his signature.

Q. He says there that on the 8th of July you appeared there with that deed. Is that so?

A. Undoubtedly.

Q. You then had that deed in your possession?

A. I don't know that I had.

Q. You had it in your possession if you signed it?

A. Oh! on that day?
Q. Yes, sir.
A. I did.

By Mr. Pitney.—Did he have it in his possession because he signed it. Somebody else may have taken it there and handed it to him.

By the Witness.—You handed me the deed; if it is attached to the deed it is another matter. 10

Q. Just look at that, Mr. Manning. (Handing witness the deed.)
A.. It doesn't say that; shall I read the paper?

By Mr. Pitney:

Q. No, you need not read; it shows for itself. Read it yourself of course. 20
A. (Witness read paper.) That has nothing to do with the deed; it is supplementary.

FURTHER-CROSS-EXAMINED.

Q. When is it dated?
A. This paper is dated the sixth day of July, 1878.
Q. When is it acknowledged?
A. The 8th of July. 30
Q. Was or was not that paper upon that deed at the time that you delivered it?
A. I should say not; by the character of the paper it seems to have been a supplementary proceeding entirely.
Q. I now show you this deed and show you on the margin some figures. Do you know whether they were there at the time you executed this deed?

A. These you refer to? (Indicating figures.)

Q. Yes.

A. I don't know anything about them.

Q. I show you some writing there in lead pencil. Do you know whose writing that is on the seventh page?

A. I don't; I don't know that handwriting.

Q. "Smith reserved." Do you know what that means on the deed?

A. I do not.

10 Q. You did not put them there?

A. It is not my handwriting.

Q. Do you remember where this money was paid to you for the land?

A. I think in my office in New York.

Q. Was it in cash or by—(interrupted.)

A. Checks.

Q. By checks?

A. By checks.

Q. All at one time?

20 A. I think so.

Q. Who by?

A. By Howell & Noble.

Q. Was it their joint check, Howell & Noble?

A. I think not; I think they were individual checks.

Q. Have you any memorandum or books that will show the time the checks were paid to you?

A. I have.

Q. What is it in?

A. In the day-book and cash-book.

30 Q. Is it not in your bank-book also, deposit book?

A. It should be there in the natural course of things.

Q. Has the purchase money all been paid now?

A. Paid either in cash or by notes.

Q. The notes are still out?

A. Some of them.

Q. How many of them, sir?

A. One.

Q. You hold it?

A. I do.

Q. How much is the amount of it?

A. Something over one thousand dollars.

Q. Were there other notes given?

A. There were.

Q. When were they due and paid?

A. A long while since.

Q. How long did they run from the time of the delivery of this deed?

A. One of them, I think, had to run a year, and, if I remember right, the other two years.

Q. Were they paid to you?

A. They were.

Q. What were the amounts?

A. I think they were $2,500 and $1,333 or $1,666; I don't remember which.

Q. How many notes were there altogether—three, were there not?

A. Three; yes, sir.

Q. Do you recollect when you gave the old maps to Messrs. Howell & Noble, Mr. Manning?

A. I do not.

Q. Were they not left in Mr. Roome's hands?

A. I think not.

Q. Or Mr. Tintle's?

A. I handed them over to Mr. Howell and Mr. Noble, I think, in my office.

Q. There were duplicates of those maps in Mr. Roome's and Mr. Tintle's, were there not?

A. There was one map in Mr. Tintle's; I don't know what was in Mr. Roome's; I don't think there were any.

Q. Did you not get some maps from Mr. Roome and Mr. Tintle for the purpose of handing them over to Messrs. Howell & Noble?

A. Possibly; I don't remember.

Q. Will you endeavor to ascertain from your check or deposit book, or day-book and let us know when the exact payments were made to you?

A. I have no objection.

Q. You have also a memorandum of those notes and the various times they were due, have you not?

A. I have.

Q. And the actual amounts?

A. Yes, sir.

Q. And you will ascertain it or that, will you?

A. Yes, sir.

Q. Have you it with you?

10 A. No, sir; I haven't.

By Mr. Pitney:

Q. You have a memorandum, haven't you?

A. A memorandum, no—oh, yes! I have a memorandum of them. (Referring to memorandum.) I received checks amounting to $2,501; one note for $2,500, one note for $1,666, and one for $1,333, making $8,000.

Q. Give us the dates of the notes?

20 A. I have them entered; the notes are dated June 17th.

FURTHER CROSS-EXAMINED.

Q. How long were they to run?

A. The $2,500 note had one year, and the others, one had two years and the other four.

Q. And the four year one was how much?

A. $1,333.

30 Q. That one is still in your possession yet?

A. I think that one—either that one is in my possession or the other one; part was paid on it, and I can't tell which now.

By Mr. Pitney:

Q. State whether they were negotiable notes or not?

A. Regular negotiable notes; like any other notes.

FURTHER CROSS-EXAMINED.

Q. You haven't negotiated them?

A. I have not.

Q. Do you know when you received them?

A. I have them entered in my book on the sixth of July.

Q. Do you know when you actually received them?

A. I think I received them on that day.

Q. Were they received before you delivered the deed? 10

A. I can't say; they were received at this time, and the acknowledgment of the deed speaks for itself.

Q. When were they received?

A. The sixth of July, it is possible they were received a day or two earlier and not dated until then, but I think not—not entered.

Q. Now, were they received the day that you signed that paper, Mr. Manning, the sixth of July?

A. It is not signed the sixth of July.

Q. Isn't it? Look down at the bottom here. 20

A. It is dated the sixth of July, but it is acknowledged on the eighth.

Q. Now, wasn't that the date you received those notes if they were dated on the sixth?

A. The notes are dated the 17th June.

Q. Well, now wasn't it the day that you acknowledged that paper that you received those notes and the money?

A. I received those notes on the sixth of July, and that is acknowledged on the 8th of July. 30

By Mr. Pitney:

Q. Or a day or two before you said.

A. Or a day or two before

FURTHER CROSS-EXAMINED.

Q. Wasn't the delivery of the notes withheld from

you until you acknowledged this supplementary paper that has been attached here?

A. I presume not; I have no recollection of that supplementary paper before now; none at all; I was not aware that it was put on until I saw it here now; I supposed when you were showing me that paper before you were showing me the deed and not the supplementary paper.

Q. Will you produce the note, or a copy, that you
10 still hold, so that we may see the date that bears?

A. Will I produce what?

Q. The note?

A. What note?

A. The note you still hold against Howell & Noble?

A. I will, if it is wanted,

Q. You have no objection to doing so?

A. None.

Q. You had heard that Mr. Chamberlain was a troublesome neighbor, had you?

20 A. I had.

Q. Will you please tell us who told you that?

A. I can't tell you who told me.

Q. Where did you hear it?

A. I can't tell you even that.

Q. Didn't you hear it from Mr. Noble or Mr. Howell?

A. I don't know; I have no recollection who told me?

Q. Do you know a man by the name of Bell, that lives at Bloomingdale?

30 A. I don't know him.

Q. Did Mr. Howell or Mr. Noble say to you on the day that you consummated the agreement of the sale of the Bloomingdale property, on the 17th of June, I think, that "Mr. Chamberlain is a troublesome man, and we don't want to have anything to do with him?"

A. I can't remember what either of them said.

Q. Did they or did they not say that?

A. That I can't say.

Q. Can you tell us who it was that said that?

A. I think it not unlikely that they may have said it.

Q. Aren't they the only ones that you heard it from?

A. I can't say; I think not.

Q. And that he was fond of litigation?

A. Yes, sir.

Q. Who said that?

A. I don't know who said that.

Q. Did not Mr. Noble say that, and didn't he say that the reason he wanted to know was because Mr. Chamberlain was fond of litigation, and there would be trouble about the land? 10

A. No; I think not; I don't remember anything of the sort.

Q. Can you give us the language that was used when Mr. Chamberlain was spoken of, "about being a troublesome neighbor and fond of litigation;" was that just the language used by the person you heard it from?

A. Oh, it was a phrase of words to that effect; I can't tell the exact words. 20

Q. When did you first hear it?

A. I can't tell.

Q. Was it before you sold to Noble & Howell?

A. Yes, sir.

Q. How long before?

A. I can't say how long.

Q. How did you come to talk about Mr. Chamberlain; what brought about the conversation?

A. I can't tell you; Mr. Chamberlain's desire to buy that property was a matter of conversation probably between Mr. Tintle and myself. 30

Q. Now, at the the time that Mr. Chamberlain came to see you, you said as little as you possibly could, didn't you?

A. I did.

Q. You didn t answer his questions that he asked you?

A. Probably not.

Q. Why didn't you do so and tell him that you had not sold him the land?

A. It wasn't necessary to tell him a thing that was self-evident.

Q. He told you you had, did he not?

A. I don't remember.

Q. Don't you remember that he insisted, in the presence of Mr. Post, that he had purchased it from you and Mr. Tintle?

10 A. I don't know; it is probable he did.

Q. Why didn't you tell him then that it was not so?

A. I probably did.

Q. Did you or not?

A. I can't tell; I can only tell the impressions.

Q. You are really speaking from impressions that you formed; is that so?

A. It is more than impressions, it is my knowledge of the circumstances.

Q. Do you remember at any time changing the street 20 that cut off the Sisco house and running it further up the hill towards Mr. Chamberlain's?

A. I do.

Q. Do you remember who was there at the time?

A. Mr. Roome and Mr. Tintle, I think.

Q. That was to designate a permanent street, was it not?

A. That was the intention.

Q. Is that upon that map which has been shown you; will you please look and see? Exhibit No. 23. I think 30 it is marked No. 1 at Paterson and Exhibit 23 now. Now, will you please to point out to us, on the map in question here where the street was moved to and show us the street on the map?

A. It was moved west from this location here; the original street, I think ran paralell with that. (Indicating.)

By Mr. Ward.—Will you mark it, Mr. Master?

By the Master :

Q. Will you just mark it with your pencil?

A. The original street, as I understood it, as it was laid out, it was just a paper street, ran something like this; here was a little shed as I remember, and it cut that off.

By the Master.—I will mark that with a cross. 10

FURTHER CROSS-EXAMINED.

Q. Now, where was that street moved to afterwards?

A. It was moved further west ; it is the street now marked Second street.

Q. Do you recollect about the time that was changed?

A. I think that was on the 4th of March.

Q. What year? 20

A. 1878.

Q. Do you know on the 4th of March who was present at the time you changed the street?

A. I don't remember anybody but Mr. Roome and Mr. Tintle.

Q. You didn't remain there all the day,did you,on the 4th of March?

A. I probably got away by three o'clock.

Q. Mr. Roome was there surveying at that time?

A. I think so. 30

Q. Did you leave him there at the time you went away?

A. I presume I did ; I don't remember about it ; I have an impression that he went off early.

Q. You left on the three o'clock train on the 4th of March?

A. If there was a three o'clock train I probably left by that train.

Q. Mr. Tintle lived right close by this land at that time, did he not?

A. About an eighth of a mile, or a quarter of a mile—in that neighborhood.

Q. Had a store, didn't he?

A. Yes he had a store there; I am not sure that Mr. Tintle had a store at that time; he had one afterwards.

Q. That is all.

10 RE-DIRECT EXAMINATION.

By Mr. Pitney:

Q. I examined you before on the idea that this deed wasn't a warranty deed. I see it is a warranty deed. I never discovered that before in this case. I want that down as an explanation, Mr. Manning.

A. Yes, sir.

Q. Now, can you tell us how you happened on the 3rd
20 day of July to acknowledge that deed?

A. I cannot.

Q. Was or wasn't Messrs. Howell & Noble at your place on that day—the day you acknowledged it?

A. Probably; it is the sixth of July; you said the third.

Q. It is dated the 3rd of July, the acknowledgment is?

A. You were talking about the deed.

Q. I asked you how you came to acknowledge that
30 deed on the 3rd of July, the deed itself?

A. Well, I don't know whether they were there that day or not; I have no means of fixing that.

By Mr. Pitney:—If Saturday was the third then Sunday would be the Fourth and they wouldn't celebrate it on Sunday.

By the Master.—One of the witnesses said

the Fourth was on Sunday and they kept the day on Monday.

Q. The question is whether or not you can tell how you happened to acknowledge that deed on the 3rd of July?

A. It was probably ready at that time, and as soon as it was ready I went and acknowledged it.

Q. Now, is there anything improbable or impossible in the course of business of your having received the money on the 3rd of July and received the notes on that day and yet not entered them on your books until the sixth? 10

A. It is possible, certainly.

Q. Were you at your place of business at that time or was this done at your house?

A. At my place of business in New York.

Q. Well, now, can you now recollect that after you had executed this deed and delivered it, it was brought back to you for something additional? 20

A. I don't remember it, but it seems so.

Q. Your memorandum is that the business was transacted on the sixth?

A On the sixth; the entry is on my books the sixth.

Q. But the money and notes might have been delivered before?

A. They might have been delivered before,

Q. The notes were dated on the 17th of June?

A. On the 17th of June. Yes sir.

30

RECESS.

Q. Mr. Manning, something was said on cross-examination about your not wishing to give a warranty deed, although it turns out you did give one. What was your reason for not wishing to give one?

A. The property had gone through two or three adjustments at law, and as I couldn't be very familiar

with the legal steps that were taken I preferred to give a quit-claim deed on that account.

Q. That was your only reason?

A. That was my only reason.

Q. I show you a check, drawn by Charles A. Noble on The First National Bank of Morristown, dated July 3rd, 1878, for $1,500; have you ever seen that before?

A. I have.

Q. The endorsement, R. H. Manning; is that your
10 endorsement?

A. That is my endorsement.

Q. Have you any recollection as to where that check was drawn up, Mr. Noble?

A. I think it was drawn in my office.

Q. On the day it bears date?

A. Yes, sir; on the day it bears date.

Q. Do you recollect whether or not you were in the habit of going out of town on the Fourth of July, or the day before the Fourth, and staying out a day or two?

20 A. I generally did.

Q. Can you tell now, without reference to your diary whether you did on that Fourth or not?

A. I cannot.

Q. You haven't your diary here?

A. I have not.

Q. You didn't know there would be any occasion for looking at it in that respect?

A. I didn't suppose there would be; no.

Q. How long did you generally stay when you went
30 out of town to spend the Fourth?

A. Sometimes I staid a week.

Q. Well, now suppose that check was paid to you on the 3rd of July, too late for banking hours on that day, when, in the ordinary course of business, would it have been put through?

A. Not before the fifth or sixth.

Q. I show you a letter—do you recollect now whether or not the whole thing was closed up that day, so far as

Mr. Noble was concerned, or whether the thing was left in abeyance in part, as to part of his payment?

A. I don't know, sir.

Q. I show you a letter signed by B. F. Howell and dated July 7th, 1878; read that over and see if that refreshes your memory in any way; see, in the first place, however, whether or not you received that letter.

A. I did receive it; that is my endorsement on it.

Q. You handed it to Mr. Halsey among other letters?

A. I did; yes, sir. 10

Q. Now, read it and see if it refreshes you as to the closing up of that transaction.

A. This refers to that subsequent document attached to the deed.

Q. Yes, sir.

A. I don't know about this last clause; I don't know anything about it; it says, "I enclose Mr. Noble's note;" the probabilities are that the note came in this letter.

Q. Now, sir, suppose that on the 3rd day of July you had received Mr. Howell's cash and Mr. Howell's notes, 20 and you had received only Mr. Noble's check for $1,500, and the balance of Mr. Noble's payment had not been made, and wasn't made until afterwards, would you have made the entry on that day or would you have made it on a subsequent day, probably?

A. Most probably on a subsequent day. I see this check was passed over to our firm and was deposited by them. The probability is that for the sake of having the check go through immediately I passed it over to them and they deposited it, and I left the entry in my 30 books until I got the subsequent papers.

Q. What is the date of the entry in your books?

A. The sixth.

Q. That must have been before you got that letter?

A. Yes; before I got this letter—is that July 7th or July 4th, (referring to date of the letter)?

Q. No, it is July 7th; this letter speaks of enclosing the deed; do you recollect whether or not you did get

that deed immediately after you got this letter and have the second acknowledgment was made?

A. Probably.

Q. Is there any doubt in your mind, after reading that letter, that you did receive the deed back with the letter?

A. Yes; I don't think I received the deed; I think I received the new document.

Q. Just read it?

10 A. (Witness read letter.) "Should have been in the deed," and as it was not in the deed he makes it by the supplementary paper.

Q. You think the deed did not come back to you?

A. I think the deed did not come back at all.

Q. Just this paper?

A. Just that paper came; they asked me to execute that paper. (At this point Mr. Pitney was called from the room.)

20 *By the Witness.*—Mr. Ward I want to correct my statement in regard to the date of those notes.

By Mr. Ward.—You had better wait until Mr. Pitney comes in.

Q. Well.

30 *By the Master.*—The witness says he wants to correct a statement in regard to the notes.

By the Witness.—The notes of Messrs. Howell & Noble, I think they were dated on the 12th and not on the 17th; I probably made that entry on the 17th because I had that in my mind as the last day I met them at Bloomingdale.

By Mr. Ward.—The only way is to produce those notes.

By the Witness.—It is not very important, but I like to be correct.

Q. This letter speaks of another paper; can you now recollect anything about the other paper?

A. I cannot recall it.

Q. You have been trying to? 10

A. I have; I don't know any reason for any other paper.

RE-CROSS-EXAMINED.

By Mr. Ward:

Q. Do you know whether the notes and check all came together to you?

A. No, they didn't; according to that letter they could not have come altogether, because he speaks of sending them down. 20

Q. You didn't get the notes until after you delivered the deed, did you?

A. I think not.

Q. Now, at the time you received that letter, Mr. Manning, had the matter been closed up?

A. Long before; what do you mean by closed up?

Q. What does this letter mean, you understand it, by saying—just let me read it to you. I read this part of it: "Please sign and acknowledge the enclosed before a commissioner and return the same, which I trust will close the matter up;" what do you understand that to mean? 30

A. I supposed it to be the last thing to be done.

Q. That would close it then?

A. I supposed so.

Q. Then it wasn't really closed up until that was done, was it?

A. No, it could not have closed up while that was undone; it had been closed before, and this was a re-opening, it seems.

Q. As a matter of fact, did you or did you not receive these notes before you received this letter?

By Mr. Pitney.—That letter speaks of one note; which notes do you refer to?

10 Q. The notes of Messrs. Howell & Noble—all the notes.

A. I probably had received Mr. Howell's notes, and that refers to Mr. Noble's note; I probably received it in that letter.

Q. It also states in here: "I forgot the other papers; I will get them to fix it the first time I see him"—(interrupted)

By Mr. Pitney.—I object to that, for it
20 don't read so at all. The counsel is misreading the paper—mis-quoting it.

Q. Just read the last clause of that letter; I may misread that writing; you read it for us. (Handing witness letter.)

A. (Reading.) "In the confusion I forgot the other paper; I will get him to fix it the first time I see him."

Q. Now, what does that mean; do you know?

A. I don't know; I have no recollection of that other
30 paper whatever.

Q. Did you have any other business where other papers would be referred to, excepting in connection with this transaction?

A. I have an indistinct recollection that there was some paper to be filed, but whether it was at this time or not I don't remember; some paper to be filed in order to make the record correct in the records; it is possible that this refers to that, but I am not sure at all.

Q. On the check there, marked in blue, "C. 6," what does that mean?

A. I don't know.

Q. Does not that mean it was deposited on the sixth?

A. I think that must be a bank mark.

Q. It shows the bank, does it?

A. It was deposited in the American Exchange Bank.

Q. In the American Exchange Bank "C. 6"?

A. That is something I don't know anything about; that is probably put on in the bank, but I don't know. 10

Q. You handed that check over to your firm, didn't you, that you are a partner of?

A. Yes, sir.

Q. Did you hand it to them as soon as you got it?

A. The probability is I did.

Q. And it would be deposited as soon as you got it, would it not—if it was in banking hours?

A. Yes, sir.

Q. Have you any other checks deposited in that bank? 20

A. I don't deposit in this bank.

Q. You have a bank book that will show when that check was deposited, haven't you?

A. No; this was deposited by the firm, not by me.

Q. Your firm has a deposit book?

A. Yes, sir.

Q. Their bank book will show when that was deposited?

A. Probably—their check book. 30

FURTHER RE-DIRECT EXAMINATION.

Q. Do you know whether or not Mr. Howell and Mr. Noble came together to New York to close this up?

A. I think they did.

Q. And met you at your store—Manning & Squier?

A. Yes, sir.

Q. And you had the two notes of Mr. Howell?

A. Yes, sir.

Q. Which you have described?

A. Yes, sir.

Q. And one from Mr. Noble?

A. Yes, sir.

Q. Which you got at some time or other?

A. Yes, sir.

Q. Do you recollect something of this kind, that when Mr. Noble was there he said that he was expecting the cash in from a man who owed him and would prefer to give you the cash, but if he could not he would send you a note? Do you recollect anything of that kind?

Objected to; overruled.

Q. Mr. Manning, can you now account, in any way, for the fact that Mr. Noble's note wasn't given you previously to the time that letter came down?

A. In no other way than in the way you suggest.

By Mr. Werts.—I was just going to object to that, sir. The first question put was clearly incompetent and was put for the intention of having it overruled, but to apprise the witness of what answer was wanted.

By the Master.—I could not believe that Mr. Pitney acted with that intention at all.

Q. Have you any recollection of anything of the kind?

A. I have.

Q. State it.

A. Just as you stated, I have an indistinct recollection that Mr. Howell told me he was expecting—Mr. Noble (interrupted)

By Mr. Ward.—We object to that.

By the Master.—I don't think that is competent, Mr. Pitney.

Q. Mr. Manning, please answer the question that was put to you and which has been ruled to be competent.

By Mr. Pitney.—I want Mr. Manning to answer the question.

By Mr. Ward.—We object to it. 10

By the Master.—The question whether he has any recollection of that kind I have not ruled out; he can answer yes or no to that.

A. Yes; I have a recollection.

Q. What is your recollection? Was Mr. Noble ready to pay the whole of the cash on the day he gave the check for $1,500, or wasn't he? You need not mind what he said. 20

A. I don't quite understand the question.

Q. Mr. Noble paid you $1,500, did he not at the time he made the check? Do you recollect whether he gave you the whole of his share of the payment?

A. He didn't.

Q. Do you recollect any reason why he didn't?

A. I recollect that he said he was expecting money in a few days—(interrupted).

Objected to. 30

By the Master.—I don't think he can give the conversation between two defendants. It is overruled.

Q. That is all, I believe.

FURTHER RE-CROSS-EXAMINATION.

Q. Have you been conversing with any person about dates or such things since you left the stand?

A. I have been conversing about this letter.

Q. Have you had your mind refreshed by anybody here?

A. No, sir.

Q. Who have you talked with about this letter?

A. Mr. Pitney.

Q. And were you talking then about conversations you had had with anybody?

10 A. No, sir.

Q. That is all, Mr. Manning.

CHARLES E. NOBLE, recalled on behalf of the defendants.

20

FURTHER DIRECT EXAMINATION.

By Mr. Pitney:

Q. Mr. Noble, do you recollect where you were when you paid and settled with Mr. Manning for this property?

A. I think in New York, sir.

Q. At his place of business?

30 A. Yes, sir.

Q. And who was with you?

A. Mr. Howell.

Q. The whole consideration was about how much?

A. $8,000.

Q. And how much were you to pay?

A. One-half.

Q, Did you make any payment on that occasion?

A. Yes, sir.

Q. I show you the check which has been shown to Mr. Manning, dated July 3rd, 1878; did you draw that check?

A. Yes, sir.

Q. Do you recollect where you were when you wrote it?

A. I think in Mr. Manning's office, sir.

Q. Do you keep a check book at home?

A. Yes, sir.

Q. Is that check torn out of your check book?

A. No, sir. 10

Q. What sort of a check is that?

A. The kind I usually get from the bank counter over there, the loose checks they have; I get them and put them in my pocket occasionally, to use when I have occasion to use them.

Q. If at home?

A. At home I always draw my checks out of my book.

Q What was your impression at the time as to whether you paid the whole of the consideration at that time, or whether you gave a check; what has been your 20 impression up to this time?

A. I supposed I paid him entirely, until to-day.

Q. Had you anything in your mind as to where you got the money?

A. Yes; until we found this check I supposed I had settled with Mr. Manning that same day; and when we got this check, and thinking the matter over, I concluded I gave him this check and some other paper for the balance, and then thinking what it was, I found the Listers of Newark owed me just about $2,500 on notes, 30 which were due about that time, and I was under the impression I handed that over to Mr. Manning.

Q. Do you recollect whether or not the Listers did pay you that note?

A. I think not; I think they deferred it some little time.

Q. You saw this letter written by Mr. Howell to Mr. Manning, you saw it down in my office this noon, didn't you?

A. Yes, sir.

Q. Just read it over again and see if you can account for your note being sent by that letter.

A. Yes.

Q. Now what is your best recollection?

A. My recollection is I did not get the money as I expected, and then sent my note.

Q. Why didn't you give it the same time you gave this check?

10 A. I suppose because I was expecting this money and would then send it to him—either the money or the draft.

Q. On what day, according to the best of your recollection, was that money paid?

A. On the 3rd day of July.

Q. The check given on that day?

A. Yes, sir.

Q. Do you know any reason why you should date the check back?

20 A. No, sir.

Q. Now, sir, was or was not the check given and your note given before you went up to Bloomingdale with Mr. Howell, after the Fourth of July?

A. They were both given.

Q. Before that?

A. Yes, sir.

Q. Do you recollect of submitting this deed when it came back from New York—the day you paid your money did you get the deed or not?

30 A. I think, from recollection, I did, sir.

Q. Do you recollect submitting it to your counsel?

A. Yes, sir.

Q. Who was your counsel?

A. My counsel was Mr. Halsey.

Q. Do you recollect of his criticising the deed—finding fault with it?

A. Yes, sir; and he recommended me to have this amendment made.

Q. And you had it made accordingly ?

A. Yes, sir.

Q. Now, I show you map No. 1, which is "Exhibit 23"; Mr. Manning has marked on that map in pencil, roughly, about where he thinks a paper street existed on an old map before he sold to you; do you recollect seeing such a map ?

A. I think I did, sir.

Q. Do you know what has become of it?

A. No, sir; I do not. 10

Q. Did you have it or take it ?

A. I had it in my hand for Mr. Roome, but returned it to him again. I think Mr. Roome showed it to me.

Q. Do you know where it is now at all ?

A. That map ? No, sir.

Q. Now whereabouts, according to your recollection, was Second street laid out on that map ?

A. On the first map.

Q. The first map that you saw.

A. It ran somewhere through the house; the stakes 20 were in there; I saw them and called the attention of Mr. Roome to the fact that these stakes existed, and then he told me that a previous—(interrupted).

Q. Never mind what Mr. Roome told you. Now, when you went there and paid was this map turned over to you, or one like it ?

A. This other map was.

Q. And the street laid where it does now ?

A. Yes, sir; just as it is mapped.

Q. Now, sir, I want to show you another copy of that 30 map. At that time was this space west of Second street, and behind the Sisco lot, plotted into lots at all? I mean west of Second street.

A. No, sir.

Q. I show you another copy of this map of Roome's, which is map No. 2 and is marked "Exhibit 24."

A. I got the paper; yes, sir.

Q. Did you yourself block out the lots on that ?

Q. Yes, sir.

Q. The lots, I mean, in the rear of the Sisco or Carman lot and west of Second street. Did you make any change in the location of Second street on that map?

A. Yes, sir.

Q. What did you do with it?

A. I moved it towards the east 60 feet.

Q. And towards the house?

A. Towards the house, within 12 feet.

10 Q. Did you or not erase from this map the line of Second street as it was on it when you got it?

A. Yes, sir.

Q. Are the marks where you erased visible now?

A. They seem to be; yes sir.

Q. And the easterly side of Second street as shown on this map No. 2, Exhibit 24, does or does not that run up to the line of your property as you bought it?

A. Yes sir; it is the line of the property.

Q Did you or not buy the Sisco house and what is 20 marked there lot 23?

A. I did not.

Q. That was not included in your purchase?

A. No, sir.

Q. So that the easterly line of Second street as you made it here on this map, just included your property alone?

A. Yes, sir.

Q. Now, Mr. Noble, how long did you contemplate—for how long a time did you contemplate having the 30 lots laid out that way in streets?

A. I should think for three or four years.

Q. Before you changed them?

A. Before I changed them.

Q. I showed you the other day when on the stand, I think, this map, which you filed, Exhibit 22. This map, Exhibit 22, is the one you filed—a copy of the one you filed?

A. Yes, sir.

Q. When was that filed? 1881, eh?

A. Yes, sir.

Q. In that map Second street is pushed back to the west again, is it?

A. Yes, sir.

Q. And a strip of land left between the Manning or Sisco property, which on this map is marked "Mather," what did you do with that strip of land?

A. Sold it to Mr. Mather.

Q. Well we will put that deed in evidence. Now did you cause that map to be made showing the location of these streets at different times, as near as you could? 10

A. Yes, sir.

Q. I show you a map which may be marked Exhibit 25.

Said map marked Exhibit 25.

Q. This lettering on here, does that show it, does that explain it or not? 20

A. That refers to the different roads that are laid out.

Q. Now the one which is marked—the first one here, written out, "Black dotted line, Second street as laid out experimentally by Manning, before March, 1878, what does that refer to, the old map you speak of?

A. Yes, sir.

Q. The old map which you saw?

A. Yes, sir.

Q. Are you any ways sure that you got these lines anywhere near where they ought to be? 30

A. I am not positive, but I think they are pretty near.

Q. Can you tell what direction Second street took after it left Stony Brook road?

A. I think it took a direction about the way I have got that line drawn.

Q. Who made that for you?

A. Mr. Howell.

Q. How did you get it, by putting these other maps on and pricking it through?

A. Yes, sir.

Q. What three maps did you use, these three before us?

A. Yes, sir.

Q. Nos. 22, 23 and 24; this is 25. You will find, by putting this on, it is simply pricked through from these maps. Did Mr. Chamberlain or Mr. Howell—Mr. Chamberlain ever show to you the lines of what he claimed to be his lot?

10 A. No, sir.

Q. Did you ever know what they were until you saw them mapped out and put on the map here?

Objected to as leading. Question withdrawn.

Q. Mr. Chamberlain says that you proposed to trade him a lot for his lot. Did you ever propose to trade him a lot—buy a lot of him or trade him a lot for it?

A. I do not remember any such thing; no sir.

20 Q. Did you ever have any such idea in your mind?

A. No, sir.

Q. Did you ever ask anybody to go and get Chamberlain's consent to your laying a street out there?

A. No, sir.

Q. This map, which was finally filed, shows a street laid right out in front of what he claims to be his lot up the hill, which is a part of Third street, commencing at the end of Second street; did you have that street laid out there?

30 A. Yes, sir.

Q. Preliminary to that did you ask anybody's permission?

A. No, sir.

Q. Did anybody ever object to it; anybody object to your putting a street through there?

A. Nobody ever objected to me about putting it through there.

Q. Did you ever hear any objection on the part of anybody?

A. I never heard any objection.

Q. Did you ever offer to sell him an acre of ground?

A. No, sir; I never offered to sell any acre of ground there.

Q. To Mr. Chamberlain?

A. No, sir; nor to anybody else.

Q. You said you offered to sell him two lots at half price, or something like that?

A. Yes, sir.

Q. Is that all you ever did offer? 10

A. Yes, sir.

Q. Did you ever offer him that?

A. I offered to sell him three lots there.

Q. At less price than anybody else?

A. Yes, sir; for one-half.

Q. For a settlement?

A. Yes, sir.

Q. Did he accept that, or refuse it—Mr. Chamberlain?

A. Well, he didn't accept it. 20

Q. Mr. Noble, how was that property, as to being fenced in, the whole tract when you bought it?

A. I think it was all enclosed; that is, the tract west of Second street—or First street.

Q. You said that among the contracts which Mr. Manning made it a point that you should carry out was a deed to a man by the name of Reeves?

A. Yes, sir.

Q. Did you ever refuse or repudiate the contract with Reeves? 30

A. Never.

Q. Did you ever tell Mr. Reeves that it was not in writing and so you were not bound to carry it out?

A. No.

Q. What did you ever do about that—about the Reeves property—Reeves' purchase; how did you deal with him; what did you do with him?

A. Mr. Howell and myself saw Mr. Reeves and bar-

gained with him to sell him a part of that property that had already been bargained with for him substantially between us.

Q. Did he find any fault with your conduct?

A. We acknowledged our obligation to deed him the property, but desired to buy back part of it.

Q. And you did buy back part of it?

A. Yes, sir.

Q. And made an allowance in the price?

10 A. Certainly.

By Mr. Ward.—Hold on; is counsel saying that, or is the witness saying it?

Q. The street leading from the end of Second street up in front of what Chamberlain claims to be his lot is part of Third street, is it not?

A. Yes, sir.

20 CROSS-EXAMINATION.

By Mr. Ward:

Q. All the lots that were sold by Mr. Manning at the time you were to make good, were you, all these purchases?

A. He had made them good himself; all that he had sold.

Q. You were to make deeds for all he had sold?

30 A. He told me he had sold two lots, one to Mr. Cook and one to Mr. Reeves, which he was under obligations to carry out, and wanted us to do it; that was all he said.

Q. Was it put in writing?

A. It was not.

Q. Did not you know at the time you purchased that, that Mr. Manning had already made a deed to Mr. Reeves that was in the hands of Mr. Tintle?

A. I might have known it; I don't remember now whether I did or not.

Q. Did not you tell Mr. Reeves that there had been no such thing as that made—no deed made, or that you did not know what he had purchased, and did not you refuse to convey to him the quantity of land that had been agreed for with Mr. Tintle by Mr. Manning?

A. Neither one or the other.

Q. Did not you refuse to do it?

A. No, sir. 10

Q. You knew of a deed, didn't you?

A. I am uncertain whether I did; I am inclined to think there was a deed existing which had not been delivered.

Q. Signed by Manning and his wife?

A. I think so.

Q. Did you tell Mr. Reeves that?

A. I think I did.

Q. And you had no dispute with Mr. Reeves about the quantity of land he had purchased of Mr. Manning? 20

A. Not a particle.

Q. Nor Mr. Howell didn't, eh?

A. Not a particle that I know of.

Q. Do you know what the consideration was for the land that Mr. Reeves had purchased?

A. I knew at that time, but I don't know now.

Q. Did he pay as much for the part he got as he was to pay originally?

A. Oh, no.

Q. What proportion did he get of what he purchased first? 30

A. I do not know that it has ever been measured; we bargained with him to sell him East of a certain road.

Q. Was it anywhere near the quantity that he had purchased originally?

A. I could not tell you.

Q. Did you make the deed to Mr. Cook, or had it been made by Manning to Cook?

A. I think I made the deed to Mr. Cook.

Q. Did you know at the time that you purchased it how much land Mr. Cook had bought?

A. We knew what land he had bought, but perhaps not how many acres.

Q. Did you know how many acres Mr. Reeves purchased?

A. I knew the tract that Mr. Reeves had purchased, but do not recollect now that I knew how many acres.

10 Q. Did you know the boundaries?

A. I knew the boundaries; they had been shown to me by Mr. Manning and Mr. Tintle together.

Q. When were they shown to you?

A. It was during our negotiations; I think it was the very day we purchased the property—that we concluded to take the property.

Q. What day was that?

A. The 17th.

Q. What month?

20 A. June.

Q. In 1878?

A. Yes, sir.

Q. That was the day you agreed to take the property?

A. I am inclined to think that was the day we went up and looked at both of those tracts.

Q. Now, how long after that was it that you first found out that Mr. Chamberlain had a claim there?

A. I think on that day I was told that Mr. Chamberlain wanted to buy a piece of property up there.

30 Q. When did you first learn that he claimed that he had bought?

A. I didn't know that he claimed that he had bought until a month or two after this.

Q. Who told you that he claimed he had bought that property?

A. I think he told me himself.

Q. Where was he when he told you?

A. I could not remember where, somewhere about Bloomingdale probably.

Q. The maps shown you have been altered considerably by you, haven't they, as to plotting?

A. I made two maps of that property.

Q. I mean the two maps originally made?

A. I have entirely changed the map.

Q. Now, there is a vacant spot west of Second street on this map, is there not, and adjoining the cemetery there—map 23? 10

A. Yes, sir.

Q. Now, the map you hold in your hand, what is that?

A. Exhibit 24.

Q. Now, I show you a vacancy on that map, which is marked as plotted with lots?

A. Yes, sir.

Q. Who did that?

A. I did.

Q. When did you do that first?

A. I was doing it for three months, four months, I don't know but that it was a year before I got this; I think I commenced a few days after we purchased, perhaps within a few days or a few weeks, to change some of the streets there. 20

Q. You run a street up over the hill shown on that map?

A. Yes, sir; I run all the streets shown on this map.

Q. That street, did you lay out that street yourself?

A. I won't be certain whether I run the instruments myself or had somebody; it was done under my directions. 30

Q. Did you say you did not talk with Mr. Chamberlain about the laying of that street there?

A. I said nothing at all to him.

Q. Nor do you recollect whether you got anyone to say anything to him about putting it over there?

A. I do not recollect asking any questions about him at all.

Q. When you were over there, on the 4th of July you have spoken of, did you—(interrupted).

By Mr. Pitney.—He didn't say he was there on the 4th, he said it was after the 4th sometime.

Q. Have you got any data or memorandum that shows the time that check was paid to Mr. Manning, or paid
10 by you in the bank on which it was drawn, or charged to your account?

A. You mean what time the check was charged to my account?

Q. Yes, was taken from your account and paid.

A. No, I have not; my bank book, which I examined, when written up the next time after this check includes the check, but the date of writing up the bank book is all the memorandum there is.

20 *By Mr. Pitney:*

Q. That you have?

A. That I have.

FURTHER CROSS-EXAMINATION.

Q. The bank book does not show the date that check was charged to your account?

A. No, sir; simply a whole row of checks.

30

RE-DIRECT EXAMINATION.

By Mr. Pitney:

Q. Do you recollect how your notes came to be dated on the 12th of June, when you did not finally agree to take it until the 17th? Do you recollect what it was that was left in abeyance after the 12th and before the 17th of June?

A. My recollection is, Mr. Howell and I were in New York and bargained for that property on the 12th of June, but Mr. Manning said that he had these two contracts for the sale of property, and he wanted us to make the deeds for these properties, or allow them to go, and we told him we did not know where the property was exactly, and we set the Monday afterwards to go up and look at these properties, and that day we decided to take it.

Q. To see whether or not the selling of these properties would alter your mind as to buying? 10

A. Yes, sir.

Q. Now, sir, I will call your attention to a little matter in your evidence which you called my attention to. (Referring to the book of testimony.) I see in your evidence here, in stating what occurred between you and Mr. Manning, that you said—you are reported here to have said: "Well, I said, if you have sold that to Mr. Chamberlain you won't sell me this property." You criticised that to me; is that what you said exactly? 20

A. No, I said; "if you do sell these to Mr. Chamberlain," instead of saying, "if you have sold it," I should not have bought the property.

Q. At the time that you went out there with Mr. Howell after the 4th of July, after you had bought the property, and saw this platform, did you at that time suppose or suspect Mr. Chamberlain to be there claiming to own the property, or having bought the property.

Complainant's counsel objected. 30

By the Master.—My present impression is that what he supposed has not the slightest materiality. I don't see how it can affect the complainant at all, and I will admit it.

Complainant' counsel took an exception.

A. I supposed it was put up there only by this permission that I have spoken of; I had no idea it was a claim of his upon the property at all.

Q. What permission do you refer to?

A. That my partner had given to put the platform up.

Q. Mr. Howell do you mean?

A. Yes.

Q. When did you first learn that Mr. Chamberlain claimed to have bargained for that property, or to have a binding bargain with Mr. Manning for any property there?

A. I think Mr. Chamberlain told me that he had made a bargain with Mr. Manning for that property, and that it was after he had commenced the construction of the main part of the house, or about that time which would be, I think, in September.

Q. I believe that is all.

RE-CROSS-EXAMINATION.

By Mr. Ward:

Q. I understood you to say a moment ago, that you learned about a month after you purchased the property that Mr. Chamberlain claimed that he had bought it?

A. I said that "I think I got my information from Mr. Chamberlain that a purchase had been made of the property, and that it was a month or two or three, I don't remember how much, but I think now it was about the first of September."

Q. You said a little while ago it was about a month.

A. If I said so I had it in my mind about a month after I went there and saw the platform.

Q. When did you see the platform?

A. A week or two after the Fourth of July.

Q. I guess that is all.

GEORGE W. HOWELL, a witness called and sworn on behalf of the defendants, testifies as follows:

DIRECT EXAMINATION.

By Mr. Pitney:

Q. You are a civil engineer and surveyor?

A. Yes, sir.

Q. Where is your place of business? 10

A. I have an office in Morristown.

Q. Did you make that map with two different plottings of a lot on it?

A. Yes, sir.

Q. From the first description in this printed bill here?

A. From notes in a printed bill; (witness examined the bill) those are the notes.

Q. You have made one with the base line 450 ft. and the other with the base line 420 ft.; how is that? Why did you do that? 20

A. The description calls for 420 feet on the second line, and on the fourth line the course is given in the description as about south 12½ degrees east; drawing that fourth line on that course, it cuts off more than the 420 feet, scaling about 450 feet.

Q. That is to say it won't close at 420 feet on that course?

A. It falls outside about 30 feet, and the fourth line adjoining the end of the second, but not of the third line, and the end of the second would be about south 5 30 degrees east, instead of 12½ degrees by scaling.

Q. Have you calculated the area of those two blocks?

A. From a close approximation; the area is marked on the plan.

Q. How much?

A. The smaller one shows two acres and $\frac{21}{100}$; and two acres and $\frac{28}{100}$ on the larger.

Q. Just read that description. Let me have the deed

that you compared. Mr. Howell, you have had considerable experience in surveying and conveyance, have you or not?

A. I have.

Q. Is there anything irregular about that description as drawn there?

A. There is nothing but what I can understand the meaning of.

Q. Is it usual to describe land in that way?

10 A. It is generally customary to follow around consecutively one course after another.

Q. Did you ever see a description prepared that way before?

A. I don't know that I ever did; that seems to go around two courses and then go back to the beginning corner to describe the other sides.

Said map offered in evidence and marked Exhibit number 26.

20 Q. You made Exhibit number 25, didn't you, Mr. Howell, for Mr. Noble?

A. Yes; I made this.

Q. By using three other maps?

A. This was compiled from three other maps produced by Mr. Noble.

Q. Yes; Exhibits 22, 23 and 24.

CROSS-EXAMINATION.

30 *By Mr. Ward:*

Q. Does that map show a road on two sides of that survey, Mr. Howell?

A. This map shows no roads on this plot.

By Mr. Werts:

Q. Does the description call for a road?

A. On one side I think the description does.

By Mr. Ward :

Q. That is all; we will ask you no questions, sir.

BENJAMIN F. HOWELL, recalled on behalf of the defendants, testified as follows : 10

DIRECT EXAMINATION.

By Mr. Pitney :

Q. Mr. Howell, did you ever ask permission of Mr. Chamberlain to run this street up here, which runs up in front of what he calls his lot and then turns and forms Third street ?

A. I never did. 20

Q. Did you ever authorize Mr. Tintle to ?

A. To ask him ?

Q. Yes.

A. Never.

Q. Did you ever propose—I think I have asked you that question—ever propose to trade any other lot for it?

A. Never.

Q. Did you ever authorize Mr. Tintle to do so? 30

A. Never to my knowledge.

Q. What took place between you with regard to a sale to him of the lots on which his house stood ?

A. We had quite a number of talks with regard to those things, and we always told him we would be glad to sell him those lots.

Q. So as to save his house ?

A. Yes, sir.

Objected to

Q. For what purpose?

A. So that his house would stand on those lots.

Q. At what price did you talk with him?

A. No positive price; but we gave him to understand we would sell them very cheap, at less than our regular price.

Q. Did he manifest any disposition to buy them at all?

10 A. No; he never made any offer, or said he would take them at any price.

Q. Did he manifest any disposition to try to come to an arrangement with you?

A. Not in the slightest; we made every effort, at different times, to get him to buy the lots.

Q. That his house stood on?

A. Yes.

Q. Which is marked on this map?

20 A. The house stood on the lots we proposed to let him have.

Q. Something has been said about Mr. Reeves. Mr. Reeves says that you and Mr. Howell backed out of your contract to convey to him. What is the truth about that? Just tell the whole thing.

A. After we had gone up to see this land that was to be sold to Mr. Reeves, previous to closing up our contract, we saw Mr. Reeves and asked him if he cared about the land below the road particularly; he said he did not; he bought the property mainly to get the property on the north side of the road, because it adjoined his property, and that was the most he cared about; I told him if I could make any reasonable arrangement I would be very glad to have him let us have the land on the west side of the turnpike and let him have the land he wanted, if we could agree on the terms, and we finally agreed, and he was perfectly satisfied, and he gave us so much less money than he was to pay if he had the whole of it.

Q. What sort of land was this that you reserved out?

A. Nothing but a bed of rock, but it made the road a boundary; there has never been a house there, and I don't know how it would be possible for a man to put a house there without a great deal of work.

Q. How did it compare with the rest of the property?

A. It is nothing like as good as the great bulk of the property.

Q. How did it compare with the property he originally negotiated for?

A. Nothing like as good.

Q. Did you know that he felt hurt with you for making a new bargain?

A. I never knew that he had the slightest feeling about it before I saw this evidence; there was not an intimation to me of anything of the kind?

Q. Now, Mr. Howell, do you recollect where you were when you paid Mr. Manning for this property?

A. Well, to the best of my recollection we were in New York.

Q. Who were?

A. I think Mr. Noble and I went together, but I would not be very positive, but I am quite sure we very often went down to New York together, and my recollection is we went together.

Q. Well, when you went together did you get the deed?

A. That is my recollection.

Q. Did you pay any money yourself?

A. I did.

Q. How much did you pay?

A. Well, $1,000, more or less; I don't recollect the exact amount.

Q. Have you got the check?

A. Yes, I have got the check; I have not looked at it to see what the amount is.

Q. Do you recollect whether or not the checks were filled up before you went, or were filled up in New York?

A. I think they were filled in New York, undoubtedly.

Q. Have you got your check here?

A. Yes, sir. (Witness produced check.)

Q. Is this it?

A. That is the check I gave to Mr. Manning.

Q. Is that Mr. Manning's writing on the back of it?

A. That is Mr. Manning's writing, if I am any judge of his writing.

10 Q. Do you know how Mr. Noble's check comes to be dated July 3rd and yours July 5th?

A. I am not sure; I cannot say positively about that.

Q. Give any explanation that you can, that you know of.

A. I don't know that I could account for it by any special reason.

Q. Now, I show you a letter which you wrote to Mr. Manning on July 7th; see if you can tell what that means.

20 Did you give your notes at the same time you gave him the check?

A. Yes; I gave him two notes, which made $4,000 for my half; $1,300 and $1,600 and some odd additional dollars to make the $4,000.

Q. Well, see what you can tell after reading that letter; did you write that letter?

A. I did.

Q. On the day it bears date?

A. Undoubtedly; unless I made a mistake in the

30 date.

By Mr. Werts:

Q. What is the date of that letter?

A. July 7th.

FURTHER DIRECT EXAMINATION.

Q. What was the paper which you sent with that letter?

A. Well, this new additional acknowledgment that is there?

Q. The paper that is now annexed to the deed?

A. Yes, sir; this one drawn by Mr. Halsey—what do you call it?

Q. Well, it is an additional paper; that is what it is.

A. That is the paper I think that I sent to him after Mr. Halsey drew it up for me. 10

Q. And Mr. Halsey's handwriting, is it?

A. Yes, sir; that looks like Mr. Halsey's.

Q. Before Mr. Halsey wrote that had you or not delivered the deed to Mr. Halsey, or had Mr. Noble?

A. I guess Mr. Noble had submitted it to Mr. Halsey; Mr. Halsey was his counsel.

Q. And by whose advise did you have that prepared?

A. Mr. Halsey's.

Q. At that time where was the deed?

A. My impression is we had it in our possession. 20

Q. Now, do you know how you came to send that note to Mr. Manning; did you enclose a note in that letter to Mr. Manning?

A. I undoubtedly did; I think there was some difficulty about Mr. Noble's having the money just at that time, and he made some arrangement with Mr. Manning, and I told him I was going to write to Mr. Manning, and he gave me the note, and I sent it down that is my recollection.

Q. Do you know why he didn't give it the day before, 30 when he was down there?

A. I don't know; I haven't any special recollection about it.

Q. Now, Mr. Howell, was it before or after this that you wrote this letter, and before you got the deed, that you went with Mr. Noble to Bloomingdale and saw this platform?

A. My memory is that it was two weeks after; I asked

Mr. Noble to go up after we got our deed and it was acknowledged, and he could not go, and we put it off until the next week, and he and I went up together.

Q. I will ask you the same question that I asked Mr. Noble; when you saw the platform did that lead you to suppose, or suspect at all, that Mr. Chamberlain was claiming any permanent right or title in the property?

Complainant's counsel objected.

10

By the Master.—I will make the same ruling as in the other instance.

A. Not then, because I supposed it was under the permission that I had given Mr. Tintle to lay dowu the platform.

Q. When and how soon after that was it you learned that Mr. Chamberlain made some claim to a right to have a deed for the property?

20 A. Quite a long time, but I could not tell how long; it must have been some months after; I heard along in the fall that he claimed to have bought of Mr. Manning; I don't remember the time—the exact time.

Q. Do you recollect how your notes came to be dated on the 12th of June?

A. My recollection is that the bargain which Mr. Manning and myself and Mr. Noble made, as far as we could go, fixed on that time, provided things could be carried out; we would consider the deeds should be 30 made at that time, and Mr. Manning, I remember, expressed that wish at his office at the time, if I recollect right—at his office or at Morristown, I ain't sure, but my impression is it was there, at New York.

Q. These two lots that he sold to Mr. Cook and Mr. Reeves, do you recollect any reason, whether they had anything to do with your going to Bloomingdale to look at them?

A. I think Mr. Noble said we ought to go up and look

at this property that was talked about being sold, before we closed up the bargain, and I think there was a day set to go up and look over it in a general way.

Q. What date was that?

A. As far as I can recollect, the 17th of June.

Q. Did you or did you not look over the lots that were to be sold out to Mr. Reeves and to Mr. Cook?

A. To the best of my knowledge we did.

Q. What was the conclusion on that date—on the 17th? 10

A. My recollection is that we concluded to take the property.

Q. What about possession from that time on; who had possession?

A. Well, I think Mr. Manning said we could take possession; I am quite sure he did—go on and do anything we chose, but I do not know as we did take any special possession.

Q. How soon after that did you go at it—laying out roads and streets? 20

A. Just as quick as Mr. Noble and I went up there, I think, we gave some directions, and Mr. Tintle went on and did some work for us there; very shortly after the 4th.

Q. After the 4th of July, when you were up there?

A. Yes, sir.

Q. How was that property as to being fenced, when you bought it?

A. Well, the property had been partially fenced, and Mr. Manning had laid out some streets before we purchased the property, and my recollection is there was a new fence which surrounded perhaps some forty or fifty acres. 30

Q. What sort of a fence was there in front of the Sisco house, along the road?

A Between the Sisco house and the Sandford house there was a very good post and rail fence.

Q. Was there any difficulty about repairing it up, so as to turn cattle?

A. Not at all ; I think not.

Q. Could you get on to what Mr. Chamberlain claimed to be his lot without crossing some fence ?

A. No, not without climbing over a fence ; my knowledge is it was fenced in all along the road.

Q. The back lot ?

A. Yes, and along the road.

Q. Now, Mr. Chamberlain has sworn about his seeing you there and his pointing out to you the line of his lot before you bought, or about the time you bought.

A. My recollection is of being there, and, after having different talks with Mr. Chamberlain at different times, I think I asked him once whereabouts these lines were that he claimed, and he pointed out one place and another, but I never got any definite sort of an idea.

Q. He says he did that before you purchased.

A. I never saw Mr. Chamberlain there before we purchased.

Q. I don't know whether I asked you before about this trading; he said you proposed to trade him another lot for this.

A. I never proposed to trade ; we had told him that over in the depot direction would be a better place for the sort of business he proposed to carry on.

Q. When was that ?

A. A long time afterwards ; I have had conversations with Mr. Chamberlain in the streets and on the ground and along the road at different times.

Q. He says you told him you heard it was only an acre and you were ready to run him off an acre. Chamberlain says you and Mr. Howell said it was only an acre and you were willing to run him off an acre.

A. I never heard that he bought but an acre.

Q. Did you ever offer to run him off an acre ?

A. I never did.

Q. And sell him an acre where his house was ?

A. I never did, that I know of, offer to sell him lots there.

Q. Did you ever ask any permission about building a road? I think I asked you that. Did you ever ask permission about selling to Mather?

A. Ask permission?

Q. Yes, from him?

A. Never.

Q. You did sell a piece to Mr. Mather, between Second street. I show you a deed; see if that is the deed you made to Mr. Mather—is that the deed you gave to Mr. Mather? 10

A. I have not read it yet.

Q. Do you know whether it covers part of the lot that Mr. Chamberlain claims in his survey?

A. I suppose so.

Q. He claims the land between Second street. Just see if you can tell me whether it is the property marked here or not on this map, Exhibit 22—the lot here marked "Mather?"

A. Yes, that is the lot; is this the deed of that lot?

Q. Read it for yourself. 20

A. (Witness read the deed.) From the description of it I suppose it is.

Q. Is that the lot you intended to sell Mr. Mather, marked on here?

A. Yes, sir; the only point was we agreed to sell other lots to Mr. Mather?

A. And you didn't know whether this was the one?

A. That is all, sir.

Q. You had a man by the name of Shippey there to work for you? 30

A. Yes, sir.

Q. Do you know whether he was sued by Mr. Chamberlain?

A. I understood he was.

Q. Do you know how long that suit was pending?

A. I don't, but quite a long time; I should think a year or two; I don't remember.

Q. Do you know whether the pending of that suit had

anything to do with your delay in bringing your action of ejectment?

A. That is what I understood from the lawyers.

Q. For what was that trespass suit brought? What had Mr. Shippey been doing?

Objected to by complainant's counsel.

Question overruled.

10

By Mr. Pitney.—I wish to put the record of that suit in evidence as follows:

Suit was brought in the Justice Court by Amos Chamberlain against John Shippey in July, 1880; plea of title filed. Then an action was brought in the Passaic Circuit Court, on the 23rd of August, 1880, by Amos Chamberlain against John Shippey on a plea of trespass; then the declaration was filed, on the 10th of December, 1880, and an order made on the defendant to plead within thirty days from the 10th of January, 1881; then a demurrer was filed, on or about the 17th of February, 1881, sworn to on the 9th of January and filed shortly after; then notice of trial was given for the fourth Tuesday in April, 1881; then Mr. Bell died about that time, and then H. C. Pitney was substituted as attorney in the vacation after the April term, 1881; then the demurrer was argued that same fall, September term, 1881, and decided in April, 1882, the demurrer being sustained and judgment for the defendant. The demurrer was on the ground that the suit was brought in the wrong county, and the Court held that the suit should be brought in Morris County. I believe that is all.

20

30

By the Master.—Those facts are admitted?

By Mr. Pitney.—In place of the record this statement of facts is admitted.

By Mr. Ward.—It is admitted; the dates are approximate.

By Mr. Pitney.—We offer in evidence the two checks, the Howell letter and the deed from Noble & Howell to Henry W. Mather. 10

The same were marked as follows: Check dated July 3rd, 1878, given by Mr. Noble to Mr. Manning, for $1,500, marked Exhibit No. 27; check dated July 5th, 1878, given by Mr. Howell to Mr. Manning, for $1,000, marked Exhibit No. 28. Letter dated July 7th, 1878, from Mr. Howell to Mr. Manning, marked Exhibit No. 29. Deed from Noble and wife to Henry W. Mather, dated April 20th, 1880, marked Exhibit No. 30. 20

CROSS-EXAMINED.

By Mr. Ward:

Q. Mr. Howell, when were those notes that you sent to Mr. Manning actually made—drawn, I mean? 30

A. I think I gave him the notes at the same time I gave him my check in New York.

Q. Then the notes were ante-dated; the notes were dated back, were they not?

A. The notes we agreed should be dated so as to draw interest from the time we made the bargain.

Q. And was it understood then that if you did take the land, verbally, that the notes should be dated back to the 12th?

A. Yes ; we held that our agreement was binding from the 12th, from the conversations we had previously had.

Q. Were there any papers, any writing?

A. There were no papers, no writing.

Q. And you dated the notes then—the notes were actually drawn on the 5th, but were dated on the 12th of June ; the notes were drawn at the time you dated your check ; do you know whether the notes were made
10 on that day?

A. I think the notes were dated on the 12th.

Q. When were they originally signed?

A. I suppose that they were made on this date, but I could not be very positive, but I have no doubt they were ; the notes were dated the 12th of June.

Q. And when were they written, when did you put your name to them?

A. This date undoubtedly.

Q. What date is that?

20 A. July 5th.

Q. What year, sir?

A. 1878.

Q. Did you send him the notes after you got the deed?

A. Not my notes.

Q. Any notes?

A. I think I sent him the note of Mr. Noble.

Q. When did you give him your notes?

A. At the time I gave him the check.

30 Q. Did you send them with the check?

A. I was there in New York.

Q. You were there in New York and gave it?

A. To the best of my knowledge ; I have no doubt that is the case.

Q. That was on the 5th of July?

A. I suppose so, the 5th of July ; the deed might have been dated there a day or two different from the date I was there, but I cannot speak positively about that.

By Mr. Pitney:

Q. You cannot tell whether it was the 3rd or 5th?
A. No; I suppose it was the 3rd probably.

FURTHER CROSS-EXAMINATION.

Q. Who was with you at the time you gave your check in New York?
A. Well, I was under the impression that Mr. Noble and I were there together, but it is possible we were not; but that is my memory. 10
Q. What do you remember about it?
A. That is the best of my memory, that we were down there together.
Q. Did Mr. Noble draw his check the same day you drew yours?
A. If we were there together and settled it that day, he did.
Q. What do you remember about it? 20
A. That it would unquestionably have been closed up at the same time if we were there together.
Q. Do you know of Mr. Noble's making a payment by his check?
A. I am almost certain of it; it cannot be as plain to my mind as if it occurred within a few days, but I was satisfied he had paid his share of it somehow.
Q. Where did you get the check that you signed?
A. I got the check that I signed in my pocket; I carry them in my pocket all the time. 30
Q. Do you know how much Mr. Noble paid by check?
A. I have seen his check; I suppose $1,500.
Q. Well, do you know?
A. Only as I have seen it.
Q. Did you pay interest on the checks—the amount of money that was included by those checks from the 12th of June, did you allow interest on that amount of money?

A. The notes were made to make me owe Mr. Manning $4,000; they drew interest from the start.

Q. From the 12th of June?

A. From the time they were drawn.

Q. From the 12th of June did they draw interest?

A. I have no doubt they did, because they should justly and fairly, and I have no doubt they did; to the best of my knowledge they did.

Q. Have you any way of knowing when they were
10 drawn?

A. Only to go and see them; they were drawn dated at the same time, and there is one that is not entirely paid.

Q. How much is due Mr Manning?

A. I think it is over $1,000.

Q. You have been paying something on that note?

A. I pay him every year and have done so ever since the sale; my last payment was last year; I think I paid him $1,000.

Q. When did you pay him before that?

20 A. I have paid him in June every year since the transaction.

Q. When you and Mr. Noble went up to Bloomingdale, after the Fourth of July, 1878, did you see Mr. Tintle?

A Did I see him?

Q. Yes.

A. Well, I could not say positively.

Q You say you employed Mr. Tintle to make some roads for you there?

30 A. Yes, sir.

Q. When was it?

A. After we made the purchase we employed him to do work for us.

Q. How long after was it?

A. Not a very great while; I think some time in July we made arrangements with him to take charge of our matters there.

Q. Did he build roads also?

A. He did build roads, but the date I cannot remember.

Q. How long did he have charge of your matters there for you?

A. That would be impossible for me to tell; quite a long time, quite a number of months.

Q. A year?

A. I don't know as he did, and I don't know but what he did; I could not be positive about that.

Q. Well, do you think it was a year? 10

A. I could not be positive about that.

Q. Well, it was several months, wasn't it?

A. Yes.

Q. Did you say anything to Mr. Manning about Mr. Chamberlain's claim before the deed was executed to you, or given to you, delivered to you?

A. To Mr. Manning? I don't know; I could not say.

Q. Did you ever talk with Mr. Manning about it?

A. I don't think I ever did.

Q. You never have said anything to him? 20

A. Not until after the purchase.

Q. Well, when did you talk to him first, if ever, about it?

A. I could not remember.

Q. How long after the purchase was it that you found out Mr. Chamberlain claimed he had purchased that property?

A. I don't know; a long time afterwards when we would go up there we would hear it—hear people talk about it. 30

Q. Did you hear it from Mr. Chamberlain?

A. We did hear it from Mr. Chamberlain some time.

Q. When?

A. I think it was in the fall.

Q. Did not Mr. Tintle tell you that Mr. Chamberlain purchased a lot on the hill there?

A. I think not; do you mean did he ever tell me?

Q. Well, that summer he worked for you?

A. I don't think he did.

Q. You found out from Mr. Chamberlain some time in the fall that he had purchased the lot?

A. I think so.

Q. Did you ever say anything to Mr. Manning about it?

A. I may have spoken to him about it.

Q. Did not Mr. Chamberlain tell you that fall, when he first told you that he had purchased those lots from
10 Mr. Manning, did Mr. Chamberlain tell you that he had purchased that lot of ground from Mr. Manning?

A. I suppose he did at the time he did tell me; I suppose he said so, of course, if he spoke about it.

Q. Did he tell you how he had purchased it?

A. He said he had bought it of Mr. Tintle; of course he never bought it of Mr. Manning.

Q. Did he tell you so?

A. I suppose he did.

Q. Did he ever show you any boundaries?

20 A. He never showed me any boundaries that anybody in the world could tell where they were at any time.

Q Didn't he show you the monuments or stakes that had been driven in the corners of the lots?

A. He did after a long time when I was there; I have met him two or three times on the ground, and a long time after, when the house was being built, he told me there were some stakes out beyond; but he never gave me any exact lines or bounds that anybody could tell.

Q. Did Mr. Roome do some surveying there for you
30 after you had purchased?

A. He did.

Q. Did not Mr. Chamberlain tell you that Mr. Roome had run out the lines?

A. He did not tell me so to my knowledge.

Q. This lot that Mr. Chamberlain claimed ran down to the brook, didn't it?

A. Not to the brook, to the road.

Q. Stony Brook Road, didn't it?

A. Stony Brook Road.

Q. On one side?

A. Yes.

Q. And on the other side was there a road or street?

A. Not until we made it.

Q. When you say you offered to sell Mr. Chamberlain some of those lots, did he not tell you he did not want to buy his own ground, that it was his own ground?

A. I don't know but he may have said so.

Q. And that he had purchased it from Mr. Manning? 10

A. Very likely.

Q. And didn't you then tell him that he must go and see Mr. Manning about it?

A. I don't remember that I did, nor that I did not; may be I did,

Q. Did you not talk to Mr. Chamberlain about taking a less quantity of land than he claimed, at one time?

A. About his taking a less quantity?

Q. Yes, than he claimed to be entitled to.

A. Not that I know of, only as I offered him these 20 lots.

A. And didn't he tell you he had bought that plot and didn't want any less?

A. Well, I don't know that he used that expression; he may possibly have said so; I cannot be positive about it.

Q. Did you hear Mr. Noble say anything to Mr. Manning about Mr. Chamberlain's claim on the 17th of June, in the year 1878?

A. About his claim?

Q. Yes; about Mr. Chamberlain's claim? 30

A. I don't know that he did; because I don't know that he made a claim on the 17th of June.

Q. Did you hear him mention Mr. Chamberlain's name at all?

A. I don't know that he did; I was not by if he spoke of it

Q. Did you mention Chamberlain's name?

A. Not to my recollection.

Q. Can you account in any way why your check is dated on the 5th of July and Mr. Noble's is dated on the 3rd.

A. I don't know particularly any positive reason.

Q. If those checks had been given together would you have known it, at the same time?

A. I might have known it; I don't know why I—what do you ask?

Q. You knew previous to 1880, when this suit was commenced in the Justice Court spoken of, that Mr. Chamberlain claimed that plot of ground, didn't you?

A. Yes. sir.

Q. How long before that did you know it?

A. I could not tell.

Q. Had Mr. Shippey done some work for you?

A. Mr. Shippey had built some houses for us, and he drew some fencing for us.

Q. Did you tell him at that time that you wanted him to draw some fencing there to see what Mr. Chamberlain would do about it?

A. No; I guess he was told to draw the fencing.

Q. Did he ever tell you so or not?

A. Did Mr. Shippey ever tell me that Mr. Chamberlain claimed it?

Q. Yes.

A. I cannot say.

Q. After you found out that Mr. Chamberlain claimed this property, who did you speak to about it first?

A. I could not tell.

Q. Did you speak to Mr. Noble?

A. I do not know.

Q. How often did you go there in the year 1878, after you purchased the property?

A. Sometimes we would go up every week, and then again it would be a month; it would depend entirely upon the necessity of our going.

Q. Did you build a hotel on that property after you purchased it?

A. I did not.

Q. Was there a hotel on it when you purchased it?

A. There was not.

Q. Is there a hotel there, kept by Mr. Cox?

A. Yes, sir.

Q. Who built that?

A. Mr. Noble.

Q. Is that a part of this tract of land that you purchased of Manning?

A. Yes, sir. 10

Q. Mr. Noble built the hotel?

A. Yes, sir.

Q. Does the title to the land that hotel stands on belong to Mr. Noble?

A. Yes, sir.

Q. Did you know at the time it was built that Mr. Chamberlain claimed this property on the hill?

A. I could not tell; I should think that I had heard it by that time.

Q. Do you know when he commenced building the hotel? 20

A. I do not know.

Q. Did you deed to Mr. Noble the property that hotel is built on?

A. I did.

Q. How far is this hotel from the property sold to Mr. Chamberlain?

A. Well, I suppose between 1,000 and 1,500 feet; I do not know exactly.

Q. Now your letter in which that check was sent is dated July 7th, isn't it? 30

By Mr. Pitney.—He did not say so, and you are mistating what the withess said.

By Mr. Ward.—Excuse me, Mr. Pitney, that is so.

Q. Did you send a note in that letter of yours? Do you know what that other paper alluded to was?

A. I do not.

Q. You cannot remember?

A. I do not.

Q. Well, at the time you purchased this property of Mr. Manning you were to carry out contracts of sale that Mr. Manning had made of the lots?

A. I suppose there was one or two parcels that he
10 wanted us to carry out.

Q. Did not Mr. Manning request you to carry out his contract of sale of another lot he had sold there?

A. He requested that this contract to Cox and the other man—I forget his name—Reeves.

Q. And wasn't the delay in the closing up of your agreement with him, from the 12th of June up to the time the deed was dated, or the deed was actually delivered—held for Mr. Manning to find out how many contracts had been made for lots, that he might fix them
20 up with the parties before deeding to you?

A. Not to my knowledge; I don't remember anything of the kind.

Q Did you hear Mr. Noble's statement as to that, what he said about it?

A. To-day?

Q. Yes.

A. I don't recollect it at this moment.

Q. Was there any such arrangement between you and Mr. Manning that he made verbal contracts with some
30 parties there, and he wanted to see Mr. Tintle and fix it and see what was to be sold there before he conveyed it to you?

A. Before Manning conveyed to us?

Q. Before the deed was actually delivered, between the 12th of June and July 3rd?

A. I don't think there was any delay between us on account of that.

Q. Then what occasioned the delay from the 12th day

of June until the execution of that deed, and the delivery of the deed, on July 3rd, what was the occasion of that delay?

A. I do not know; Mr. Manning said that his lawyer was engaged, and he could not get it done—I think that was it.

Q. The deed was drawn on the 12th, was it not?

A. Dated the 12th.

Q. Was it drawn on the 12th or not?

A. I did not draw it and could not state. 10

Q. The deed was drawn to you and somebody else beside you and Mr. Noble, at first, wasn't it?

A. A man by the name of Troxel was to be with us.

At this point the further examination of witnesses, &c., was adjourned without day.

20

30

IN CHANCERY OF NEW JERSEY.

10 AMOS CHAMBERLAIN,

vs.

RICHARD H. MANNING.

Transcript of short-hand notes of testimony taken in the above stated cause, before Vice-Chancellor Bird, at
20 the Law Library, in the city of Newark, N. J., on Monday, November 17th, 1884.

Appearances :

Z. M. WARD, ESQ., Counsel for the Complainant.

HENRY C. PITNEY, ESQ., and EDMUND D. HALSEY, ESQ., Counsel for Defendant.

30

Complainant's counsel applied for a postponement, on the ground of absence of one of his witnesses, which application was opposed by the defendant's counsel and refused by the Vice-Chancellor.

AMOS CHAMBERLAIN, the complainant, sworn in rebuttal.

DIRECT EXAMINATION.

By Mr. Ward :

Q. Did you have notices of a meeting at this place in Bloomingdale struck off—of a dance to be had there ?

Objected to as evidence on the point of time, as accumulative.

10

Objection overruled.

Q. Did you draw that ; is that your writing in the body of it ?

A. Yes, sir ; I filled that out.

Q. When was that put there ?

A. It was put there before this dance which we had the 8th of June, 1878.

Q. Was that one of the handbills that was drawn up for that dance ?

20

A. I think that was the first dance we had there at that time.

Complainant's counsel offered the handbill in evidence, which was marked "Exhibit N" for complainant.

By Mr. Pitney:—Your Honor will understand me as objecting to all this evidence.

30

CROSS-EXAMINATION.

By Mr. Pitney :

Q. Why didn't you have the time printed in here ?

A, I did it because I might have dances at different times—a large number printed.

Q. Where has this been all the while ?

A. I did not find it until—

[Interrupted.]

Q. Where has it been?

A. It has been in an old chest of papers; I happened to run against it accidentally.

Q. When did you write that "Saturday evening, June 8th?"

10 A. I wrote it before that was put up.

Q. You are sure that was done then?

A. Yes, sir; I did it myself.

Q. Didn't you prepare for this thing once before when it did not come off, before the pavilion was ready?

A. Not at that time; that time it came off and we had a good time.

Q. I ask you if you did not prepare and set up notices before the pavilion was ready?

A. Before that?

20 Q. At any time?

A. No, sir.

Q. Didn't you on one occasion set up notices and notify people to come there before you had any pavilion prepared?

A. No, sir; I did not.

Q. You are sure of that, eh?

A. I know it.

Complainant rests.

30

RICHARD H. MANNING, the defendant, recalled and sworn in rebuttal.

DIRECT EXAMINATION.

By Mr. Pitney:

Q. I show you page 277 of your letter book; I also show you another paper in your hand writing which is not marked; I show you now a letter written by you to Mr. Noble, the other defendant, on the 13th of June, 1878. Look at the letter written by you to Mr. Noble on June 13th, 1878; at the other paper which has figures on it, and at the letter press copy in your letter book, page 277. I ask you now whether or not you at that time made up a statement showing the quantity of land which you conveyed to Messrs. Noble and Howell, and the expenses and re-surveys thereof? 10

Objected to as not rebuttal.

Complainant's counsel stated that it was an oversight on his part, and the Vice-Chancellor admitted the question.

20

A. I did.
Q. And furnished it to him?
A. Furnished it to them.
Q. Is that the statement?
A. That is the statement.
Q. Is the loose paper which I show you a copy apparently on what is in the letter book?
A. Yes, sir; that is a press copy of this page 277.

Defendant's counsel offered the papers in evidence. 30

Objected to.

Objection overruled.

Marked Exhibits No. 31 and 32 for the defendant.

Q. When was this tabulation of quantities, which is contained in Exhibit 31, and a copy of which you say is in your letter press, made? See if you can tell by looking at your letter press, or at this letter of June 13th, 1878, to Mr. Noble?

A. (After examining). It must have been made about the 12th of June, 1878.

Q. Have you any doubt about that?

A. None whatever.

10 Q. Was it, or was it not truly made; that tabulation?

A. Was the tabulation correct, do you mean?

Q. Yes, at the time?

A. Certainly it was.

Q. If you had then entered in any contract with Mr. Chamberlain to convey to him, would you or would you not have included it in that statement?

Objected to.

20 Objection sustained.

Q. The four acres there to Israel Read, are they or are they not the same four acres you understand were afterwards conveyed to Mr. Read?

A. I presume it is.

The Vice-Chancellor.

Q. Have you any doubt about it?

30 A. None whatever.

FURTHER DIRECT.

Q. (Showing witness a letter dated May 24th, 1878, written to Mr. Tintle, and heretofore offered in evidence in a bundle of letters) was your attention called to that letter at any time during the progress of this litigation, until this morning?

A. Not that I recollect.

Q. The latter part of the letter refers to what must have been an interview with Mr. Chamberlain, have you any recollection of such an interview?

Objected to.

Mr. Pitney stated that the matter had escaped his memory before.

10

The Vice-Chancellor stated that under the circumstances he would allow the question.

A. I have not.

Q. Do you recollect what was in your mind at the time you wrote that letter?

A. Generally; you want the whole transaction, I presume?

Q. Does it or does it not refresh your mind at all, as to the situation of the negotiation with Mr. Chamberlain at the time that letter was written? 20

A. It does.

Q. State what is now your recollection as to the situation of the negotiations with Mr. Chamberlain at the time that letter was written.

Objected to.

The Vice-Chancellor—In order that that may be competent, it must appear that the 30 witness' recollection is refreshed. (Interrupted.)

The Witness—It does refresh my recollection; it is my own letter.

The Vice-Chancellor.—(Resuming). That the witness' recollection is refreshed more

fully than it had been before, and more fully than it otherwise would be. The wittness says it does not refresh his mind more fully, so go on.

By Mr. Ward:

Q. What is the date of that letter?

A. May 24th; my recollection of the matter is that
10 Mr. Chamberlain wanted to buy a tract—about one acre of land.

FURTHER DIRECT.

Q. Proceed:

A. And that he wanted a certain street laid down; moved a little to one side, in order to bring the lot he wanted to buy in a certain position; that appears from his letter.

20 Q. At that time, were the lines of the lot which he proposed to buy fixed, according to your recollection?

A. They were not; I do not remember that they were ever fixed.

Q. To your knowledge?

A. To my knowledge.

Q. But on his part?

A. I do not know what he—(interrupted)

Q. So far as you understood from him at that time?

A. I did not understand from him that they were
30 fixed.

Q. At that time?

A. Either in quantity or in location, definitely.

CROSS-EXAMINATION.

By Mr. Ward:

Q. You say in the letter that Mr. Chamberlain wanted

the street lower down according to his representation; "I think it is not just where we decided to put it;" what do you mean by that street?

A. We were laying out streets so that the property could be sold in village lots.

Q. You had then seen Mr. Chamberlain?

A. I probably had.

Q. Do you know whether you had or not, you say "probably?"

A. I had seen him several times, I do not remember the special dates on which I saw him. 10

Q. Do you remember anything he said to you about the streets?

A. Nothing definitely; there was a general conversation about it, he wanted to buy, and there was a general conversation about the purchase, and the location, but the definite words I could not tell at this time.

Q. Did you tell Mr. Chamberlain he could put the street where he desired it?

A. Not that I remember. 20

Q. What do you recollect about it?

A. Nothing.

Q. You do not remember that?

A. I do not remember that.

Q. Do you remember what Mr. Chamberlain said to you about it?

A. No, sir, I do not; it is simply impossible to remember a detailed conversation at this length of time; I remember distinctly what my own impressions were about the matter, because they were very definite, but I cannot remember the exact words. 30

Q. Now didn't you and Mr. Chamberlain discuss about where that street should be laid, and didn't Mr. Chamberlain and you agree it should be laid alongside of the house, instead of running through the house?

A. Very likely.

Q. Is not that the fact?

A. I don't know which is the fact, it is very probable; it would be very natural.

Q. That was the house known as the Sisco house, was it not?

A. I think so; yes, that is the house.

Q. And how long was it previous to the writing of that letter, you had the conversation with Mr. Chamberlain?

A. I don't know.

Q. Was it not the latter part of April?

A. This is May 24th.

10 Q. You wrote the letter May 24th?

A. Yes, sir.

Q. How long previous to your writing that letter was it you had the conversation with Mr. Chamberlain?

A. I cannot remember exact dates; I saw Mr. Chamberlain perhaps twice, possible three times.

Q. You went up there to see about the street being laid after that, did you not; after this letter?

A. Oh! no; long before.

Q. I mean after the letter, didn't you go up to see 20 about the alteration of the street?

A. I don't remember that I did; I was there long before; I was up there, if I remember right, according to the testimony, in March.

Q. Didn't you see Mr. Chamberlain there after May 24th?

A. I don't think I did; I might have done so.

Q. Didn't you request Mr. Chamberlain to allow you to put the street beside the house—the Sisco house—instead of running it through the house?

30 A. No, I don't think I did; of course I didn't; I know I didn't.

Q. And didn't he consent to that?

A. I don't think I had any such conversation with Mr. Chamberlain.

Q. Didn't, at the time you wrote that letter on May 24th, the contemplated street run through the Sisco house?

A. No, sir.

Q. It didn't?

A. It didn't run through it.

Q. Didn't it take part of it off?

A. The contemplated street struck the rear corner of the house, and I think on that account we moved the street further to the left, further up the hill.

By Mr. Pitney:

Q. West? 10

A. West; that is my recollection of it.

FURTHER CROSS-EXAMINATION.

Q. Now on the fourth of March, how was that street?

Objected to.

The Vice-Chancellor:—I cannot see how the question is proper. 20

By Mr. Pitney:—I charge that Mr. Chamberlain has got in his possession a map which he received from Mr. Roome, and which he was to have produced here.

By Mr. Ward:—There was a map brought to me, and it was taken, (and I think this, producing map, is the one), to Morristown, and every paper was left at Morristown with 30 Mr. Wurtz, who is with me in this case, and I know nothing about such a map as the one Mr. Pitney refers to; every map I could get, or have had I have brought here, and I am satisfied all the maps we have ever had we had at Morristown when the testimony was taken, and if they have been mislaid since that time I cannot help it; I am wil-

ling to search for that map and hunt it up, if they say there is such a map, or if I have got it, I did not dream of such a thing.

By Mr. Pitney :—I stated that at the adjournment, the last day of the meeting for taking testimony at Paterson, the record of it is found on pages 222 and 223 of the printed book, it was understood that the map
10 there spoken of by Mr. Ward was in the possession of Mr. William Roome, the surveyor, who was then there present. Mr. William Roome promised to send the map direct to me, and on or about the second day of January then next following, I received a letter from Mr. William Roome, dated January 21st, 1884, stating as follows: "Mr. Ward sent Chamberlain for the map to see it under the positive promise of sending it to you."
20 (Mr. Ward interrupted and said that he had never sent such a letter.) At the meeting in March, at Morristown, in taking the testimony on the part of the defendant, I asked for that map, and I have never seen it from that day to this, nor has the complainant put it in evidence.

By Mr. Ward:—(Producing a map.) Here is the map which has been in Mr. Wurtz's
30 hands, and that is the map.

By Mr. Pitney :—The map he shows me is the one, if I recollect right, that was produced at Paterson, and is not the one that Mr. Roome referred to, as I understand it.

By Mr. Ward :—Mr. Chamberlain says this is the map he got from Mr. William

Roome. I did not send him, and did know he got it. That is the one he got from Mr. Roome, and that is the one that shows the location of that house.

(The deed of the property which had not yet been marked, was here marked, together with the deed made at the same time for the other property, Exhibits O and B, for the complainant) 10

FURTHER CROSS-EXAMINATION.

Q. Just look at that map, and state if that is not the original survey of those lots—the old map.

Objected to.

Q. You saw that map at Morristown?

A. I presume I did. I cannot remember what I saw. 20 This is evidently a map of the premises, but there is a map previous to this.

Q. A map of the whole premises before you bought it?

A. Yes, sir.

Q. Have you ever seen it?

A. Yes, sir.

Q. Where is it?

A. I don't know.

Q. Didn't you give it to Messrs. Howell & Noble? 30

A. I presume I did.

Q. Is not this the map of the property as it stood on the 4th day of March, 1878?

A. It is so stated on the map.

By Mr. Pitney:—

I offer to prove by Mr. Noble, that this old

map, antedating the map of March 4th, 1878, is not in his possession.

CHARLES E. NOBLE, sworn for the defendant.

DIRECT-EXAMINATION.

10 *By Mr. Pitney:*

Q. What we have called in this case the "old map" which antedated this of March 4th, 1878—have you had in your possession?

A. No, sir.

Q. Do you know where it is?

A. No, sir.

Q. Have either you or Mr. Howell the other defendant, got it?

20 A. No, sir; I don't think we have ever had it in our possession.

Q. Who has had possession of the maps, &c., in the case, since you purchased; you or Mr. Howell?

A. I have.

Q. You are an engineer?

A. Yes, sir.

NOT CROSS-EXAMINED.

30

AMOS CHAMBERLAIN, re-called.

DIRECT-EXAMINATION.

By Mr. Ward :

Q. (Handing witness a map.) Is that the map you got from Mr. Roome at that time ?

A. Yes, sir.

Q. Have you ever had any other ? 10

A. No, sir ; not that I know of.

Q, Will you show us on this map where the Sisco house was ?

Objected to as incompetent.

Objection sustained.

(Map offered in evidence, and Marked Exhibit "Q," for the defendant). 20

WILLIAM ROOME, sworn for the complainant.

DIRECT-EXAMINATION.

By Mr. Ward :

30

Q. You are a surveyor ?

A. Yes, sir.

Q. Where do you live ?

A. In Pequannock, Morris County.

Q. How long have you been surveying there ?

A. About 30 years.

Q. I now show you a map. Will you tell me who made that map ?

A. I did.

Q. When was it made ?

A. About the time of the date of it, March and May, 1878.

Q. Commenced in March ?

A. The survey was begun in March ; yes, sir.

Q. I now call your attention to a street called Second street there on that map ?

A. Yes, sir.

10 Q. Was that street altered at the time this map was made ?

A. This map is an exposition of the way the streets were laid at the time this map was made—an illustration of it.

Q. This is Second street, is it ?

A. Yes, sir—not the pencil marks on this map, the other marks, I refer to the ink marks.

Q. I now call your attention to Second street as laid on that map, previous to that time where was that

20 street, if there was such a street there ?

A. Previous to the time that this map was made there were other lines run, and other maps made which have not been preserved ; in one of these maps and surveys the street ran through the house, known as the Sisco house.

Q. Will you just indicate on that map where that house was ?

A. I think the point here called "house" in red, indicates where that house stood.

30 Q. In which direction did that street run ?

A. It ran, as near as I can remember, nearly parallel to the one now denoted on the map.

Q. East and West or North and South ?

A. Is is a little East of North—a little East of North and South.

(By the direction of the Vice Chancellor the witness marked the house "Sisco house.")

Q. How far into that house did that street run, do you recollect ?

A. My recollection is that the East line of the street —the East side is probably 10 or 12 feet in that house.

Q. The East side of the line ?

A. The East side. The East line of the street ran about 10 or 12 feet, as near I can remember, in the house, from the West end ; I will say that there were so many changes, that my memory may be a little at fault, but that is my recollection as to that street. 10

Q. That street ran all the way through to Manning street ?

A. Yes, sir ; at that time, when this map was made.

Q Do you recollect where it ran when it touched Manning street, on that map ?

A. It seems to have continued clear to Arch street. Oh ! Second street, it continued at that time clear through to Arch.

Q. I mean how was the old street ?

A. I do not remember that. 20

By the Vice-Chancellor :

Q. Were there any visable marks indicating those streets ?

A. Yes, sir ; we put down stakes at the corner at that time.

Q. Were there marks indicating the former streets ?

A. There were marks indicating the streets when we surveyed them, but when we re-surveyed the stakes were pulled out and removed to the re-surveys. 30

Q. There were marks indicating the former surveys and those you removed and put in stakes indicating the lines of the streets of your survey ?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Pitney :

Q. Please to look at Exhibit No. 23, and see whether or not that was made by you?

A. It was made by me ; it is signed Benjamin Roome & Son ; I did the work.

Q. Was that substantially a copy of the map just shown you by Mr. Ward? (Exhibit "Q.")

A. Exhibit "Q" was the original rough map, and
10 No. 23 is the map pricked off from it.

Q. Does, or does not this map, Exhibit "Q," exhibit the plan as finally agreed upon in April, 1878, between March and May?

A. It is the plan adopted at that time, the survey I think was taken in the month of March.

Q. See if you have a memorandum to show when you commenced on it, and what days you worked there?

A. (Referred to a paper.) This is an extract from my daily diary.

20 Q. Give the dates you worked there?

A. March 5th, 1878, is one day ; March 6th, 1878, is another ; March 7th, 1878 is another ; March 8th, 1878, is another ; March 14th, 1878, is another ; March 15th, 1878, is another ; March 16th, 1878, is another ; then on March 18th, I began to map ; it seems that on March 19th, I did more surveying ; March 22nd, I mapped ; March 23rd, I finished mapped, and then April 17th I surveyed for Mr. Manning land that he sold to H. D. Smith ; that was on the same property,
30 but removed from this map.

Q. A different point?

A. A different point ; May 1st, I ran out some lines again ; I don't see for who, whether it was part of this, or part of some other tract ; we ran off other lots that he sold ; May 3rd, I ran off some lots for Mr. Manning, I could not say whether it was this plot or not ; May 6th, we ran off some lots ; May 7th, I mapped half of the day ; May 9th, I was home mapping ; May 10th, I went up to correct an error, half a

day, and the other half was mapping; May 11th, mapping; May 13th, mapping; May 14th, mapping; May 15th, finished.

Q. Now I will ask you whether or not, previous to this surveying and mapping which you made, commencing on the 5th of March, there was in existence a map of this property, which laid it out more or less in lots, and which showed a street corresponding to Second street?

A. I had some such maps in my possession, I think. 10

Q. Was or was not that the street that ran through the Sisco house on that old map?

A. Yes, sir; I think that the streets that were put through the Sisco house was prior to the making of this map.

Q. Prior to March?

A. Yes, sir.

Q. In the mapping of March, did you make any map which ran through the street through the Sisco house?

A. No, sir; not at the time of this map. 20

Q. Do you know where those maps are that you had which showed Second s reet, or one corresponding to it, running through the Sisco house?

A. At the time this map was made I considered the business finished and all the old prior maps were of no account, and I destroyed them. I don't know of any other maps in my possession. All I had in my possession I destroyed, simply keeping this rough one that I have here.

Q. (Showing witness Exhibit 24.) See whether this 30 was originally your work?

A. Yes, sir; that looks like my work.

Q. Just see whether the filling in of the lots west of Second street is your work, and whether the location of Second street is there the same as it was when you left it, or whether it has been altered since?

A. I made one for Mr. Tintle and one for Mr. Manning, I believe that is the way this came to be made.

Q. You made two maps when you made Exhibit 23, you say?

A. Yes, sir.

Q. See whether you think Exhibit 24 is one of those two?

A. Yes, sir; that is one of them.

Q. Now see whether Exhibit 24 has been tampered with since it came out of your hands?

A. Yes, sir; I think it has, I know it has. I would
10 say that after Messrs. Howell and Noble bought the property my father and I went up there and spent a day or so with Mr. Noble, and he then made changes; as near as I can remember, those changes are indicated on this map. (Exhibit 24.) now

Q. And you do not know, whether any map is in existence which shows Second street running through the Sisco house.

A. I don't remember of any.

Q. I understand you to say that that mode of cutting
20 the property up was abandoned in the months of March and May, 1878?

A. I don't remember the time exactly, but it was prior to the time of these maps.

Q. They ran from March to May, 1878?

A. Yes, sir.

A. In the making of those maps that plan was abandoned?

A. Yes, sir.

30 (The arguments were then commenced.)

EXHIBIT A.

MR. AMOS CHAMBERLAIN, Newfoundland.

March 3rd, 1878.

Dear Sir:—I have had a lot run off for you this afternoon if you *can* come down to-morrow, and if it does not suit you I will run it to suit ~~you.~~

Yours,

JAMES TINTLE. 10

EXHIBIT B.

THIS INDENTURE, made the.....day of..... in the year of Our Lord, One Thousand, Eight Hundred and..... BETWEEN.....of the ..... of 20 .....in the County of.....and State of New Jersey, of the first part: AND Amos Chamberlin, of the Township of West Milford, in the County of Passaic and State of New Jersey, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of one hundred and fifty dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at, or before the sealing and delivery of these presents, the receipt whereof is hereby acknowl- 30 edged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate,

lying and being in the Township of Pequanac, in the County of Morris and State of New Jersey, at Bloomingdale, BEGINNING at a stake standing near the brow of the hill, being the northwest corner of said lot, thence running (1) south sixteen degrees, west three hundred and thirty-three feet to a corner of Charles H. Sandford's lot; thence (2) along his line and road four hundred and twenty feet to opposite the southwest corner of the Sisco house; then from beginning again south
10 eighty-two degrees and a half, east three hundred and fifteen feet to the west line of a street; thence about south twelve degrees and a quarter, east two hundred and ten feet to the end of the second course in front of the southwest corner of the Sisco house, TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining: ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said
20 party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances unto said party of the second part, his heirs and assigns to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part doth for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and
30 assigns, that they, the said party of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second

part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

AND ALSO, that the said party of the first part now hath good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid.

AND ALSO, that the said party of the first part will WARRANT, secure and forever defend the said land and premises unto the said Amos Chamberlin, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever: 10

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered } 20
in the presence of }

EXHIBIT D.

Mr. JAMES TINTLE—

Dear Sir:

If the Little Ferry man comes to see the woods don't close with him till you hear from me. I have offered it to a party in Hamburg at 3.00 but he may not take it, so if the Little Ferry man, Mr. Mehehof, wants to sell it subject to hearing from me that it is not sold. 30

Mr. Howell has been in to-day. I may be able to do something with him, but if I do it will make no difference with you.

Yours truly, &c.,

R. H. MANNING.

NEW YORK, March 15, '78.

Mr. Kralmor was in to-day, he wants the lot on corner of new road and offers $350 for it. I told him to arrange it with you, and that whatever you agreed to do would be all right; adjust it as you think right.

EXHIBIT E.

10

NEW YORK, March 16th, 1878.

MR. JAMES TINTLE:

Dear Sir:—Mr. Whitehead has been in and paid $200 and given the enclosed order for wagon and sleigh. You will take charge of them. I added to the deed the following clause, which you will please put in all deeds which are bounded on the river.

"It is expressly understood that this deed does not convey to said party of the second part, or his heirs or
20 assigns, any right to the use of the water of said stream upon which said land is bounded."

This clause will prevent any future misunderstanding.

You don't tell me anything about the old house. If it is not sold, Mr. Robinson will be entitled to it at my offer. Let me know soon whether it will be sold or not. My idea about the fence was that the lots would look better and be more easily identified, but we will do nothing about it at present. Let me have the new map as soon as it is done. Perhaps it will be well for you
30 to bring it down, when we can consult about prices of each lot. Now is the time to sell—don't let any opportunities slip.

Have the other parties taken their deeds? If not, hurry them up when a thing is sold; it is best to close the transaction *at once*. You do not acknowledge receipt of my letter from Ogdensburg and one from N. Y., containing railroad map.

Yours truly, &c,

R. H. MANNING.

EXHIBIT F.

NEW YORK, April 11, '78.

MR. JAS. TINTLE:

Dear Sir.—Mr. Robinson asks at what price I will sell the old barn. I named no price for it, but referred him to you. If you think best to sell it, let him have it at a fair price, *for cash* of course. I suppose he wants it to take away. If you sell it to him, it must be on condition that he removes it within a reasonable time, which should be specified in the agreement. 10

Yours truly, &c.,

R. H. MANNING.

Have M. R. furnish the survey and map at once. I will come up before I go away.

EXHIBIT G.

20

NEW YORK, April 22, '78.

MR. JAS. TINTLE:

Dear Sir.—I could not get the deeds acknowledged in time to send them to-day; they will go up by to-morrow's mail.

Mr. Howell asks me to instruct you not to sell to the Catholics at present, so you will please do nothing with them till you hear from me again.

Yours truly,

30

EXHIBIT H.

NEW YORK, May 14, '78.

MR. JAS. TINTLE:

Dear Sir.—I am at home again and ready to receive

any amount of money, or to execute deeds if you have made any sales.

Yours truly, &c.,

R. H. MANNING.

EXHIBIT I.

10

NEW YORK, June 4, '78.

MR. JAS. TINTLE:

Dear Sir.—Yours of this morning is rec'd. I am going to see Mr. Howell to-morrow and prefer not to sell any more till after I have seen him. I presume we shall sell the lot you speak of, if you think it a fair price. I am going to Ogdensburg by milk train on Friday, and shall be glad to see you as I go up. Perhaps I can write you again to-morrow.

Yours truly, &c.,

20

R. H. MANNING.

EXHIBIT J.

THIS INDENTURE, made the eighth day of March, in the year of Our Lord, one thousand, eight hundred and seventy-eight, BETWEEN Richard H. Manning, and Mary W., his wife, of the City of Brooklyn, in the County of Kings and State of New York, of the first part, and Augustine J. Cook, of the Township of .....in the County of.....and State of New Jersey, of the second part:

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of one hundred and five dollars, lawful money of the United States of

America, to them in hand well and truly paid by the said party of the second part, at, or before the sealing and delivery of the presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Pompton, in the County of Passaic and State of New Jersey, on the north side of formerly the Paterson and Hamburgh Turnpike road. Being part of a lot of four acres, more or less, conveyed by Joshua Wells and wife, to Peter Maby, Jr., by deed, January 1st, 1831, recorded in Bergen County, in Book F, 3, 471, etc., and part of three acres, more or less, conveyed by Peter P. Maby and wife, to the Newburgh Hard Rubber Co.; said three acres being a part of said four acres. Beginning at the third corner of the said three-acre lot, being a point on the east bank of a brook crossing the said road, near the northeast corner of the bridge across said brook on said road; thence (1) along the east bank of said brook and the third line of the said three-acre lot (N. 28½ degrees W.) north twenty-eight and a half degrees, west one chain and sixty-two links to the fourth corner of the said three-acre lot, in the second line of the whole tract of four acres; (2) along said second line of the said whole tract of four acres, south eighty-six and a half degrees, west two chains and ninety-three links to the third corner thereof; (3) south three degrees, east seventy-four links to a stake in the aforesaid road; (4) along the same, south eighty and a half degrees, east three chains and forty-five links, more or less, to the beginning. Containing thirty-three hundredths of an acre, more or less, as the needle pointed in 1869.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining : ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof. TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto said party of
10 the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever ; and the said party of the first part, do for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that they, the said party of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances
20 thereunto belonging ; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever : AND ALSO, that the said party of the first part now hath good right, full power and lawful
30 authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. AND ALSO, that he the said Richard H. Manning, will WARRANT, secure, and forever defend the said land and premises unto the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part, have hereunto set their hands and seals the day and year first above written.

R. H. MANNING. [L. S.]
MARY W. MANNING. [L. S.]

Signed, Sealed and Delivered in the presence of

WALTER NICHOLS.

10

STATE OF NEW YORK, COUNTY OF KINGS. } *ss.* BE IT REMEMBERED, That on this eleventh day of March, in the year of Our Lord one thousand eight hundred and seventy-eight, before me, a Commisssoner for the State of New Jersey, residing in Brooklyn, in the County and State aforesaid, personally appeared Richard H. Manning and Mary W., his wife, who, I am satisfied, are the grantors in the within Deed of Conveyance named ; and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed : And the said Mary W. Manning, being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

20

WALTER NICHOLS,

30

[L. S.] *Commissioner for the State of New Jersey.*

[ENDORSED.]

Dated, March 8th, 1878.

Received in the Clerk's Office of the County of Passaic, on the fourteenth day of March, A. D. 1878, at

.....o'clock in the.....noon, and Recorded in Book Y, 5 of Deeds for said County, on pages 281, &c.

J. H. BLAUVELT, Clerk.

EXHIBIT K.

10 New York Oct 2/78

MR. JAS. TINTLE:

Dear Sir.—I wrote you Sept. 22nd, requesting you to send me Carman's note, rec'd from Post & Sloane, and have not rec'd the note nor heard from you about it. I wrote again on the 23rd, telling you that R. M. Mapes had been to see me about selling wood and that I referred him to you. I have heard nothing further from him or you. Do let me know if you are doing anything about it. Please send the note by return mail and do
20 answer letter promptly.

Yours truly,

R. H. MANNING.

EXHIBIT K, 2.

THIS INDENTURE, made the fifteenth day of July in
30 the year of our Lord one thousand eight hundred and seventy-eight, BETWEEN Charles E. Noble and Sophronia A., his wife, and Benjamin F. Howell and Frances H., his wife, all of the town of Morristown, of Morris Township, in the County of Morris and State of New Jersey, of the first part, and Augustin J. Cook of the township of Pompton, in the County of Passaic and State of New Jersey, of the second part,

WITNESSETH, That the said party of the first part, for

and in consideration of two hundred and fifteen dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied. contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm 10 to the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Pompton, in the County of Passaic and State of New Jersey, at Bloomingdale, on the south side of formerly the Paterson and Hamburgh turnpike road; beginning at a post the northeast corner of Isaac P. Whitehead's house lot; thence running along his line fence south five degrees west two chains; (2) south five and a half degrees east 20 two chains and thirty links to Pequannock River; (3) down the stream along said river about two chains and seventy links to an apple tree, a corner of Henry D. Smith's lot; (4) along his line north nineteen degrees and fifteen minutes, east two chains and eighty-five links to a stake, his corner at said road; (5) along said road north sixty-three and a half degrees west one chain and thirty-five links; (6) north, eighty-five degrees west two chains and six links to the place of beginning, containing one acre and a quarter more or less. It is expressly 30 understood that this deed does not convey to the party of the second part his heirs or assigns, any right to the use of the water of said streams upon which said land is bounded, and that the parties of the first part reserve for themselves their heirs and assigns, all water rights and privileges of all and every kind or in any way appertaining to said lot heretofore described; TOGETHER with all and singular the houses, buildings, trees, ways,

waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining: ALSO, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only
10 proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever; and the said Charles E. Noble and B. F. Howell, do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, his heirs and assigns, that the said Noble & Howell are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any
20 part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever, except as before mentioned and reserved,

AND ALSO, that the said party of the first part now has good right, full power and lawful au-
30 thority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. AND ALSO, that the said Charles E. Noble and B. F. Howell will WARRANT, secure and forever defend the said land and premises unto the said Angustin J. Cook, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals, the day and year first above mentioned.

Signed, sealed and delivered in the presence of }
FRANCIS R. ~~ATNO~~. Atno

CHAS. E. NOBLE, [L. S.]
SOPHRONIA A. NOBLE, [L. S.] 10
B. F. HOWELL, [L. S.]
FRANCIS H. HOWELL, [L. S.]

STATE OF NEW JERSEY, }
Morris } SS.
COUNTY OF ~~PASSAIC~~. }

BE IT REMEMBERED, That on this fifteenth day of July, in the year of Our Lord one thousand eight hundred and seventy-eight, before me, Francis R. Atno, one of the Masters of the Court of Chancery of New Jersey, personally appeared Charles E. Noble and Sophronia A., his wife, and Benjamin F. Howell and Frances H., his wife, who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Sophronia A. Noble, wife of Charles E. Noble, and Frances H., wife of Benjamin F. Howell, being by me privately examined, separate and apart from their husbands, did further acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husbands.

FRANCIS R. ATNO,
Master, &c.

[ENDORSED.]

Dated, July 15, 1878.

Received in the Clerk's Office of the County of Passaic, on the 24th day of May, A. D. 1879, at·····o'clock in the·····noon, and Recorded in Book G. 6 of Deees for said County, on pages 345, &c.

J. H. BLAUVELT, Clerk.

10

EXHIBIT L.

1880, Oct. 18th, re-surveyed the following lot, (as run March, 1878), situate at Bloomingdale, for Amos Chamberlain, began at a stake standing near the brow of the hill, being the northwest corner of said lot, and run 1 S. 16 W. 333 ft. to a corner of Charles H. Sandford's lot, 5 ch. 4 lk.; 2 along his line and road 420 ft. to
20 opposite the S. W. corner of the Sisco house, 6.36. Then from begining again S. 82½ E. 315 ft., 4.76 to the west line of a street; then about S. 12¼ E 210 ft. to the end of 420 ft: in the road opposite the S. W. corner of the Sisco house, 3.18. Originally run at James Tintle's request.

Wrote deed Nov. 23, 1880, and sent it to A. Chamberlain.

B. ROOME.

30

EXHIBIT M.

[CONTRACT FOR THE BLOOMINGDALE PROPERTY.]

JAMES TINTLE. I made a bargain with James Tintle for a lot of land, which he agreed to have run out. In the latter part of February, 1878, he had Mr. Roome to

survey it out, and make the corners and borders of said lot, and gave me notice what he had done on the 3rd day of March, 1878—notified me that he had run the lot out for me and wanted me to come see it, so if it did not suit me, he would run the lines so they would suit. I went and seen the survey, and answered him all right. I was satisfied with it, and we agreed that I would give $150 for the plot, be the same more or less. He showed me the lines and gave me possession of the same, which I have occupied and had since that time. Soon after I 10 gave him $10 and agreed to give him the balance of the $150 when he made and delivered me the deed. The money I deposited in the First National Bank, Paterson, for that purpose, ever since I bought the place a short time after I saw Mr. Manning in his office in New York, and told him what I had done. He said that what bargains I made with Mr. Tiutle was all right. Several weeks after, I happened to pass through Liberty street I called on him again. He then told me that he was about selling the whole property to an other 20 party. I then said to Mr. Manning will that make any difference with me? He said no. What has been done and what bargains has been made was all right. He was not certain yet whether he and the other party would make a bargain or not. But thought most likely they would.

Mr. Roome told me that *he had run the lot out for me*, and would make the deed as soon as he could arrange things and get time to do it.

30

Howell & Noble called on me sometime in July, and wanted to exchange some other place for this lot, as they thought it would be better for me for the business which I wanted it for. They said they wanted to make a street up the hill, so as to make a street across their lot on the hill, which would cut the whole street on me through my lot until it reached theirs.

I gave consent for them to open the street through my lot where they proposed to have it, and where they had staked it out in my absence.

I am now waiting for the deed, money ready to hand over.

Peaceable possession gave to me, and am holding the same peaceable up to this date, Oct. 28th, 1878.

10

I have and hold the property with it monuments and lines, and borders, not knowing the contents up to this date, Oct. 28th, 1878.

Messrs. Howell & Noble has found no fault otherwise, than Mr. Howell said to me that I bought the lot with too little money. That he thought I did not pay enough for it.

20 I told Mr. Howell that I gave all that was asked for it, and if I had thought it was not worth what I agreed to give I would not have bought it.

I asked Mr. Howell if he wanted the lot to build him a dwelling on for his own use. He answered no. He said he had better building lots than that was.

Same day I asked Mr. Noble if he wanted the lot to build a dwelling on for himself and family. He said no.

30

So I took it for granted that the only difficulty was that they thought I would not agree to let them make the street up the hill across my lot.

PASSAIC COUNTY, *ss.*

I, William Sehulster, of the Township of West Mil-

ford, County of Passaic, and State of New Jersey, being duly sworn, doth depose and say: That I was present and saw Amos Chamberlain pay to James Tintle, ten dollars in part payment of one hundred and fifty dollars for a lot of land, situate and lying in Bloomingdale, Morris County, New Jersey. He, the said Tintle acting as agent for selling such lands. They agreed in my presence that the said lot of land to run and bordered on the east side on the Stony Brook road, and on the north side to the centre of a street, which will be opened at the foot of the hill. And the other lines where they are staked and surveyed out by B. Roome, surveyor. Chamberlain offered him more money on payment. Tintle said no, this is enough, as you have possession of the whole thing you can pay the rest when we make you the deed.

WILLIAM SEHULSTER.

Sworn and subscribed, before me, this 16th day of April, 1879.

J. C. McCONNELL,
Justice of the Peace.

[COPY OF LETTER FROM TINTLE.]

March 3d, 1878.

MR. AMOS CHAMBERLAIN, Newfoundland.

Dear Sir:—I have had a lot run off for you this afternoon. If you can come down to-morrow, and if it doth not suit you I will run it to suit.

Yours,
JAMES TINTLE.

10

EXHIBIT N.

COTILLION PARTY!

A Cotillion party will come off at

CHAMBERLAIN'S PAVILION!

20

Bloomingdale, N. J.,

ON SATURDAY EVENING, JUNE 8TH, 1878.

All friends are hereby invited to attend.

Index Steam Printing House, Dover, N. J.

30

DEFENDANT'S EXHIBITS.

EXHIBIT D, 1.

TO AMOS CHAMBERLAIN:

Dear Sir.—We understand you are trespassing on a part of our lands at Bloomingdale, lying between Second and Third streets, having erected a building thereon which you permit to be occupied at times by your sons and others, interfering with our use of our lands. 10

We now notify you, as we have hitherto verbally notified you, forthwith to remove from said premises and every part of them.

We will give you permission to remove the building, if you do so within thirty days from this date, after which we withdraw such permission and will insist upon our legal rights, you having built it on our lands without any license or authority whatever. 20

BENJAMIN F. HOWELL,
CHAS. E. NOBLE.

Dated May 14th, 1880.

EXHIBIT D, 2. 30

BLOOMINGDALE, Feb. 16, '78.

MR. MANNING:

I received the deed last night. I will see the parties to-day. I have an offer for the balance of the eight-acre lot; he offered 675 dollars. Please set your lowest price, and let me know by return mail. He can make his payments $250 on delivery of deed, 150 dollars in

six months, the balance $100 per year. He is an honest industrious man.

Yours,

JAS. TINTLE.

EXHIBIT D, 3.

BLOOMINGDALE, Feb. 11, '78.

10 MR. MANNING:

Dear Sir.—I will name the lands adjoining the 1-2 acre that you are selling. It joins on the south by John Scott; the road on the north side leads from Bloomingdale to Millertown, a westerly direction; on the east by the Stoney Brook Road, running a southerly direction. Don't you think it will be necessary to have the first lot surveyed after the first one? The others can be described without any difficulty.

Mr. Brinley wants the deed as soon as he can get it.

20 Yours,

JAMES TINTLE.

EXHIBIT D, 4.

BLOOMINGDALE, March 1, 1878.

R. H. MANNING, Esq.:

Dear Sir.—Mr. J. J. Brownley reports to-day that he has searched the records and finds a mortgage on your 30 property, amt. $8,000. If so, what does it cover and can lots sold be released?

Of course such a report will prevent sale of lots. He says it is in favor of Mr. Sloan, deceased.

Return what information you think proper at once. The survey is to commence on Monday next.

Yours,

JAMES TINTLE,

Per J. G. E.

EXHIBIT D, 5.

BLOOMINGDALE, Mar. 16, '78.

MR. MANNING:

Dear Sir.—I received the deeds and letter you left there for me in regard to the fence. If it is to keep the street cattle off your land, it is not necessary; the law provides for that in Morris county. I think it would be harder to keep cattle off the premises with fence than without, for this reason: Those that have purchased lots cannot keep the fences up very well. I will attend to it if you wish me to. 10

Mr. Whitehead has taken my offer for the lot of land joining his place. I had the deed made and will send it and letter with him this morning. If the sale and payments is satisfactory, you can sign the deed. He is to pay you $200 dollars in cash and I will take $100 dollars in personal property, one wagon and sleigh; I think I can turn these articles to good advantage.

Yours truly,

JAMES TINTLE. 20

EXHIBIT D, 6.

BLOOMINGDALE, May 20, '78.

MR. MANNING:

Dear Sir.—I received yours of the 15th and 17th. I think I shall be at New York in a few days, then I will bring the old and new map and one deed that I have to be executed. I am building the fence. I come short of lumber for fence. Sent to Mr. Fuller for 1,400 ft. more to finish the fence. I have not much money on hand at present. 30

Yours truly,

JAMES TINTLE.

EXHIBIT D, 7.

BLOOMINGDALE, N. J., May 28, 1878.

R. H. MANNING:

Dear Sir.—The priest requires a change in the proposed deed for church lot.

Instead of making the deed to the Bishop, as proposed, make it to the Trustees of the R. C. Church of Bloomingdale, N. J. There is, by contract, to be no graveyard on the lot. Insert it in the deed if you think best. If you come up this week, please send word by the bearer what day you will be up. Would like to have you come this week.

Yours, etc.,

JAMES TINTLE.

EXHIBIT D, 8.

BLOOMINGDALE, June 24, '78.

MR. MANNING:

Dear Sir.—I received yours of the 20th. The statement you sent me showing the balance there is 31 dollars, which was taken of the house and lot sold to Charles Sandford for the mistake in selling a strip of Mr. Robinson's land. Taking 31 dollars from 548.63 leaves balance $517.63. Mr. Roome sent me a bill of 7 50-100 dollars, which I send you. Mr. Sandford does not like to give a note for the $150 dollars. He does not know when he can get the money; he may get it in a short time, and perhaps not as soon as the note would be due. I have not delivered Mr. Kramer's deed yet, nor have mortgage yet. Mr. Brewley has not paid for the 25 dollar lot. Nor the Catholic priest yet. I hold the deeds yet. This is all I have time to write, it is train time and I must close.

Yours,

JAMES TINTLE.

EXHIBIT D, 9.

June 18, '78. This bill is in full to date.

MR. MANNING:

Dear Sir:—I send you a report of expenses on the Bloomingdale property which I have paid for labor, lumber, &c. What must I do with the lumber that has not been used for the fence yet? Their is about 30 panels yet to build.

Yours, 10

JAS. TINTLE.

BLOOMINGDALE, June 18th, 1878.

May 15th.	Paid Benjamin Roome for surveying, &c.....	$ 91 50
" "	Help for surveying.....	29 75
" "	Grading street.....	103 87
" "	For lumber, freight & carting.....	137 10
" "	Expense of lawsuit to J. W. Durant.....	4 00
" "	Chopping and dressing fence posts.....	20 00
" "	Hauling.....	15 30
" "	Paid on building fence.....	8 00
June 17th.	Paid in full for building fence.....	19 32
" "	For hauling posts.....	50
" "	Grading street.....	51 00
" "	Powder fuse and sharpening drills.....	2 50
		$ 482 84
	Paid in full to date to Benjamin Roome.....	25 50
		$ 508 34

20

30

JAS. TINTLE.

EXHIBIT D, 10.

RICHARD H. MANNING,

To BENJ. ROOME & SON, Dr.

1878.

Feb. 25th.	To surveying lot sold John Brewley	$	2 00
March 8th.	To 5 days surveying, $4.00		20 00
" "	Writing deed to Post & Sloan		1 50
" "	" " Augustine J. Cook		1 50
" "	" " John Brewley		1 50
10 " "	" " William Mickens		1 50
" 16.	To 3 days surveying, $4		12 00
" "	Writing deed to S. H. Whitehead		1 50
" 19.	To 1 day surveying		4 00
" 20.	To writing deed to E. C. Bailey		1 50
" 23.	2 maps of building lots		12 00
		$	59 00
	1-2 day surveying		2 00
	1 deed, Cramer		1 50
April 4th.	1 day surveying		4 00
20		$	66 50

Received Payment in full April 4th, 1878,

BENJ. ROOME & SON.

EXHIBIT D, 11.

RICHARD H. MANNING,

30 To BENJ. ROOME & SON, Dr

1878.

June 11.	To running lot for Augustin Cook	$	2 00
	" Deed for Cook		1 50
17.	" 1 day at Bloomingdale as per request		4 00
		$	7 50

Received Payment of James Tintle,

Jan'y 14th, 1879. BENJ. ROOME & SON.

EXHIBIT D, 27.

MORRISTOWN, N. J., July 3rd, 1878.

FIRST NATIONAL BANK.

[STAMP.]

Pay to R. H. MANNING or order Fifteen Hundred Dollars.

CHAS. E. NOBLE.

$1500.

10

EXHIBIT D, 28.

MORRISTOWN, N. J., July 5th, 1878.

NATION IRON BANK.

[STAMP.]

Pay to the order of R. H. MANNING One Thousand Dollars. 20

B. F. HOWELL.

$1,000.

EXHIBIT D, 29.

MORRISTOWN, N. J., July 7th, 1878,

MR. R. H. MANNING: 30

Dear Sir.—Mr. Noble and his lawyer thinks the consideration should have been in the deed, also other covenants, to make it a full warrantee. They now ask you to please sign and acknowledge the enclosure before a Commissioner, and return the same, which I trust will close the matter up, You will find a New Jersey Commissioner at Broadway—does not require your wife.

Enclosed please find Mr. Noble's note. In the confusion I forgot the *other* paper. I will get him to fix it the first time I see him.

Yours truly,

B. F. HOWELL.

EXHIBIT D, 31.

10

No. 2	38.50-100 acres bo't of	Rich'd Sloan.
4	30 " "	Peter P. Maby.
5	3,	do
6	18,	Abram Maby.
7	2 44-100,	I. Scott.
8	16.41-100,	Silas Westervelt.
9	6.51-100, on map $6\frac{59}{100}$,	Martin Pool.
10	6.90-100,	R. S. Spear.
11	10,	Andrew Hill & Rich'd Sloan.
13	7.50-100,	Stcuterburg & Day.
14	.50-100,	Garret Pool.
	.88	
Quit claim 15	2.62 on map, 2466 on deed fr Carmen & Hopper.	
	.71	
	221	
16	8,	Martin & John Ryerson.
Quit claim 17	2,	N. R. Henry.
18	8.20 100,	C. H. Sanford.
	161.17	

20

Less 15.91		Sold to I. Rosenthal.
3		" J. P. Whitehead.
4		" Israel Reeves.
.90		" Henry D. Smith.
1		" Ellen C. Bailey.
.33		" A. I. Cook.
.32		26,815 sq. feet in 3 village lots sold.
25.46	25.46	
	$135.\frac{71}{100}$	

30

EXHIBIT D, 32.

NEW YORK, June 13th, 1878.

CHAS. E. NOBLE, ESQ., Morristown.

Dear Sir.—Yours of yesterday is rec'd. The difference in quantity did not arise, as you suggest, from my excluding the four acres sold to Reeve, as I estimated the price to be received for that, and the understanding between us was that if Reeve did not take it you were to pay for it the price he agreed to pay, in addition to the $8,000. But I went over the deeds yesterday very carefully, and found that I was mistaken in supposing the acreage short, and wrote to Mr. Howell with a definite statement of each piece, showing that there are the 136 acres as supposed, or, to be accurate, 135 71-100 acres. I also asked Mr. Howell to meet me in Bloomfield to-morrow. Tho' I have no reply from him, I hope to get one in the morning saying he will meet me. I shall go up in the 9.30 train, wh. arrives at B'd 11.35, for I cannot make a deed till the exact boundaries of the reserved house lot are determined and the lot numbered. If you or Mr. Howell are not there I will fix the lower line of the street 60 feet below where it is now on the map, and the dividing line between the two streets at half way, which will be the lower line of the reserved lot. If I get a line in the morning saying you or Mr. Howell will go up on Saturday, I will defer my visit till Sat.

Yrs truly, &c.,

R. H. MANNING.

454

Letters from Richard H. Manning to James Tintle, offered in evidence, in case of Amos Chamberlain *vs.* Manning, Noble, and Howell, from October 1st, 1877 to November, 1878:

1877.—October 1st. (Copy from Letter Book, page 257.)

NEW YORK, Oct. 1, 1877.

Mr. James Tintle—
Bloomingdale— 10

Dear Sir:

The lots of wood land which were bought by the Newbrough Hard Rubber Co., containing, one 200 acres, and the other adjoining about 29 acres. I wish you to take charge of and see that the wood or hoop poles are not taken away. I shall be glad to have you walk over the lots, and estimate the number of R. Road ties it will cut, and give me that and any other information of importance concerning it. The property is for sale, if you can find a purchaser at a fair price, I shall be glad to 20 hear from you. If you sell I will pay you a fair commission, and for any other service I will pay you at any time.

Respectfully Yours,
R. H. MANNING.

30

1877.—December 8th. (Copy from Letter Book, page 259.)

December 8th, 1877.

Mr. JAMES TINTLE—
Bloomingdale—

Dear Sir:

I hand you herewith my certified check for 89$\frac{60}{100}$ dollars, and my tax bill for same amount. Not know-

ing where to send this I enclose it to you to send or give to the collector before the 20th inst. The bill being in Mr. Baldwin's name, the p'pty stood in his name till last April, when I bo't it. In August I sold the lower mill site to Robinson. (It was conveyed to Tindale). If you can, I wish you would ascertain whether that mill site and land is included in my tax bill. I suppose it is, and if so I must collect from Robinson a fair proportion. Please acknowledge receipt of this, and oblige.

10 Yours Resp'y,

R. H. MANNING.

1877.—December 15th. (Copy from Letter Book, page 259.)

NEW YORK, Dec. 15, '77.

20 Mr. JAS. TINTLE—

Dear Sir:

Your postal card of this date is recd. I have but 156 acres in Pequannock Township, including all on the other side of the river except the 220 acres back of the Hill. If I am assessed on 220 acres it is too much. From 156 acres must be deducted several small parcels North on side of the river, but I do not remember the quantity, the map not being on hand, but I think there are 20 to 30 acres on that side, leaving only about 130 30 acres on which I ought to be taxed. Please do the best you can in the matter & oblige,

Yours truly, &c.,

R. H. MANNING.

1877.—December 28th. (Copy from Letter Book, page 261).

NEW YORK, Dec. 28th, 1877.

Mr. JAS. TINTLE—

Bloomingdale, N. J.,

Dear Sir:

A severe accident to my wife has kept me at home for some days, or I should have written to you before.

I now request and authorize you to take charge of my 220 acres wood land near Bloomingdale, and to cut therefrom and to sell on my acct. all the R. Road ties, chestnut posts and fire-wood which can be cut to advantage, using your judgment in the matter as you would if the property were your own. 10

The ties I will try to sell to the Midland Road, and report to you their offer, and the sizes they want. You can pile the stuff on my land near the new depot, in such places as will be most convenient for loading. You will want some money to begin to pay for labor before you get anything from sales. Let me know how much, when you need it, and I will send you a check, or the bills, as you prefer. For your services in the matter you are to charge a fair price, which will be allowed from time to time. I think it will be best to leave all the young trees not large enough for posts or ties, and cut only the large wood and trimmings from posts and ties for fire wood. I have received no tax bills on lands on North side of River, and do not know where to apply for it. 20

If you know I wish you would send for it so that I can pay it at once. 30

I supposed it is taxed as the other was, in the name of Chas. P. Baldwin.

I also wish you to have an eye on my other property in Bloomingdale, and report to me anything of interest, or which I ought to know.

Yours truly, &c.,

R. H. MANNING,

113 Liberty Street,

N. Y.

1878.—January 10th. (Copy from Letter Book, page 262.)

NEW YORK, Jan'y 19th, 1878.

Mr. JAMES TINTLE—

Dear Sir :

The most I can get for ties is 30 cts. They must be of chestnut or oak of any kind, hewn out of wind, that is so that the hewn sides *are*, will, lie level with parallel faces, and free from deep score hacks, not less than (8) eight feet long clear of scarf and not less than six (6) inches face at small end, 6 in. thick.

Please write me *how many* you will be likely to get—you can cart them to R. Road when you like. The above description I got from R. Road Co.

If any ties are a little smaller they may pass—if they do not pass as firsts they will as seconds at a lower rate.

Yours truly &c.,

R. H. MANNING.

I have paid taxes to Mr. Schermerhorn.

1878.—February 4th. (Copy from Letter Book, page 263.)

NEW YORK, Feb'y 4th, 1878.

Mr. JAMES TINTLE—

Bloomingdale—

Dear Sir:

Your letter was received too late to answer Saturday.

I enclose check for the sum you asked for, Fifty Dollars.

Let me know how much Mr. Hassey owes you and I will stir him up—don't deliver any more without there

being first paid for. You were to make me an offer for the 220 acres. If you can do so let me hear from you soon.

Yours truly, &c.,
R. H. MANNING.

1878.—February 14th. (Copy from Letter Book, page 266.) 10

Printed on page 125 of testimony.

1878.—March 13th. (Copy from Letter Book, page 270).

NEW YORK, March 13th, 1878.

Mr. JAMES TINTLE—
Bloomingdale—

Dear Sir: 20

I wrote you yesterday from Ogdensburg, and left the deeds and letter for you with the depot master as I went up. I now hand you an old survey of the Rail Road which I think as the road is now, but I may be mistaken; I suppose it may aid Mr. Roome in laying down the road on the old map; the part on this map marked "depot ground," is not the depot ground as recently conveyed by me to the railroad; I send also the survey of that so that Mr. Roome may locate it on the old map. 30

I don't remember how much land was conveyed along each side of the canal to the New Rubber folks; the conveyance was made by the Newbrough H. R. Company, to Rosenthall & Strauss; they paid the money July 26th, '73, so the conveyance must have been made a little before; we have no copy of that conveyance; the best way to get it will be for Mr. Roome to go to Morristown and take such notes of the

record as will enable him to determine, and then stake them out, particularly the west line of the lot; I mean the line from the canal to the Millertown road back of their new houses; or he can write for a copy of the description in the conveyance; that I shall be glad to have for future reference; preserve all the maps and papers, and return them to me when you are done with them. Yours truly, &c.

R. H. MANNING.

10 It will be better and cheaper for Mr. Roome to write to Wm. McCarty, Clerk of Morris County, for a copy of the description in the deed of the map, if there is one on the deed as I think there is.

1878.—March 15th. (Original Exhibit D, for Complainant.)

20 1878.—March 16th. (Original Exhibit E, for Complainant.)

1878.—April 4th. (Original Exhibit 13, for Defendant.)

1878.—April 11th. (Original Exhibit F, for Complainant.)

1878.—April 22nd. (Original Exhibit G, for Complainant.)

1878.—April 23rd. (Original Exhibit 12, for Defendant.)

30 1878.—April 24th. (Original Exhibit 14, for Defendant.)

1878.—April 29th. (Copy from Letter Book, page 274.)

NEW YORK, April 29th, 1878.

Mr. JAMES TINTLE—

Bloomingdale—

Dear Sir :—

I received the deed from Mr. Roome in Brooklyn; it

was addressed to 113 Liberty street, Brooklyn, but it came to my hands all right; but I hand it to you herewith; I am somewhat doubftul about the description, for it has but three courses or sides.

If the lot is a triangle it may be all right; ask Mr Roome about it so as to be sure; Mr. Robinson has re-leased to me any right he might have had to keep the house, because of failure to give him three months' notice, so there can be no troube from that quarter, and I trust Mr. Sandford and his son-in--law have done as they agreed to do, and have stopped all legal proceedings; Mr. Robinson assures me that when his man undertook to plant the potatoes, he supposed his man plowed the garden plot, and didn't suspect that Mr. Sanford thought that he had bought it; you see the difficulty arose from misunderstandings which might have been avoided if there had been a little more frankness or good nature; I hope there will be no more useless expense incurred or ill-feeling indulged all around; molasses catched more flies than vinegar.

Yours truly, &c,

R. H. MANNING.

1878.—May 14th. (Original Exhibit H, for Complainant.)

1878.—May 17th. (Original Exhibit 15, for Defendant.)

1878.—May 24th. (Original Exhibit 16, for Defendant.)

1878.—May 31st. (Original Exhibit 17, for Defendant.)

1878.—June 4th. (Original Exhibit I, for Complainant.)

1878.—June 11th. (Original Exhibit 18, for Defendant.)

1878.—June 18th. (Original Exhibit 19, for Defendant.)

1878.—June 20th. (From Letter Book, page 278, printed in testimony page 128.)

1878.—June 24th. (Original Exhibit 20, for Defendant)

1878.—September 11th. (Copy from Letter Book, page 288.)

10 NEW YORK, September 11th, 1878.

Mr. JAMES TINTLE—

Dear Sir.—I was disappointed at not seeing you at the depot yesterday, and in not hearing from you whether the wood is all hauled.

Please write at once and let me know,

1. If the wood is all down.
2. How much there is of it.
3. What proportion is chestnut.

If Post has paid the note.

20 I think I can sell the oak, maple, birch and hickory in New York better than to brickmaker, but chestnut is not wanted here ; I suppose it can be selected as it is loaded on cars.

If Post has not paid, tell him I want to close up the account and must have it; Robinson will give up his house this fall if we can sell it; I want to sell it with the lot in the rear, (the two lots reserved in my sale to Howell,) see what you can do with it; I will sell it cheap.

30 Yours truly, &c.,

R. H. MANNING.

1878.—September 23rd (Copy from Letter Book, page 289).

NEW YORK, September 23rd, 1878.

MR. JAMES TINTLE—

Dear Sir :

Mr. R. M. Mapes was in on Saturday ; he wanted

me to give him a commission of ten cents a cord for selling the wood ; I told him that you had it in charge and that if he and you could agree about it I would allow you the ten cents to be divided as you may agree ; the wood to be sold not under three dollars a cord in the pile as it runs ; be careful to sell to none but good men who will pay cash or give a note at sixty days ; I can sell the hard wood so as to net over $4.25 a cord, but prefer to sell as it runs ; can you do anything about selling the house ; is it worth while to put a bill on it "for sale" ? 10

Yours, &c.,

R. H. MANNING.

1878.—October 2nd. (Original Exhibit K. for Complainant).

1878.—October 3rd, (Copy from Letter Book, page 292).

NEW YORK, October 3rd, 1878.

Mr. JAMES TINTLE— 20

Dear Sir :

Your letter of the 3rd inst. is received. I made no agreement with Mapes except as I wrote you viz: "I told him that you had charge of the wood and that if you and he could agree about it, I would allow you 10 cts. cord for selling." He must look to you for such share of the 10 cts. as you choose to give him. I am quite sure I sent you the Cramer note endorsed by Sloan.

I think you will find it among your papers ; have you 30 collected the balance due from Sandford, and the $25 due from Brewley. You say nothing about selling the house or about putting a bill on it "For Sale." Has Muhoff bought more than the 8 car loads wood? How much is a car load? On what terms is it sold? I suppose for his note at 60 days ; don't sell to any but safe parties, except for cash on delivery.

Yours truly, &c.,

R. H. MANNING.

1878.—October 12th. (Copy from Letter Book, page 293.)

NEW YORK, October 12th, 1878.

Mr. JAMES TINTLE—

Dear Sir.—I leave town on Wednesday next, and will be glad to hear from you in answer to my letter of the 3rd October, to which I have had no reply; please say by return mail,

1. If you have found the Cramer Sloan note.
10 2. If you have put a bill on the house, For Sale, and is there any prospect of selling it.
3. If Brewley & Sandford have paid the sums due from them.
4. How much wood have you sold, and to whom, and how they are to settle for it, and much oblige,

Yours, &c.,

R. H. MANNING.

20 1878.—October 29th. (Copy from Letter Book, page 295.)

NEW YORK, Oct. 29th, 1878.

Mr. JAS. TINTLE—

Dear Sir.—I have just written to Melerhoff Bros., to send me their note for the 65 cord wood you sold them; it is quite time that Brewley & Sandford should pay, or if Sandford cannot pay ask him to give a note; he has house deeded to him, and I have no evidence of his innebtedness except you. So if you step out I could not
30 prove my claim.

Please to attend to this at once, and insist on the money or a note. I am unwilling to wait longer in this loose way. If Post has not paid, or is not ready to pay send me his note.

It will be time soon to make arrangements for cut ing more wood. I want to get this old lot all carted first. You thought a while ago that you could sell the land from which you cut the wood. Keep that in mind, and

sell, if you can, at $10 an acre or more, but not till the wood is off.

Yours truly, &c.,

R. H. MANNING.

1878.—November 8th. (Copy from Letter Book, page 295). 10

NEW YORK, Nov. 5th, 1878.

Mr. JAMES TINTLE—

Dear Sir:

I wrote you on the 29th Oct. asking you to send me Park's note. I want it to put in suit. If conv't I wish you would come down, for I see you don't like writing letters. I am unable to go up to see you. I want to know how the wood acct stands. On the 29th Oct. I wrote to Melerhoff Bros. to send me their note, but they 20 have not done so. Have they sent it you? If you cannot come down let me know by return mail about all the matters referred to in my letter of 29th Oct.

Yours Respy,

R. H. MANNING.

1878.—November 14th. (Copy from Letter Book, page 296). 30

NEW YORK, Nov. 14th, 1878.

Mr. JAS. TINTLE—

Dear Sir:

I wrote you Oct. 29th and again Nov. 14th, asking for special information and also asking you to send me the Carman Sloan note rec'd from Post. As I have no re-

ply I am at a loss to account for your neglect. If you don't want to attend to my business you ought to let me know so that I may look after it. I don't know what Melerhoff Bros. have done. As they don't write to me I suppose they may have settled with you, but I don't know. Do let me hear by return mail.

Yrs truly,

R. H. MANNING.

10

EXHIBIT D. 11.

NEW YORK, Feby 16·h, 1875.

Mr. JAS. TINTLE—

Bloomingdale—

Dear Sir:

Yours of this morning is received. I will sell the remainder of the 8 acre lot at $125 per acre, or say $837; this is the price at which I have offered the entire tract. The terms of payment are satisfactory.

20

Yours truly, &c.,

R. H. MANNING.

EXHIBIT D, 13.

30

NEW YORK, Apl. 4, '78.

Mr. JAS. TINTLE—

Dear Sir:

Yours just rec'd. The tools were forwarded Mar. 30th, to Newfoundland by mistake of shipping clerk. We have ordered them back to Bloomingdale; you will get to-morrow or next day. I sent Mrs. Bailey's deed yesterday. Is the DeBaun house sold? I have been ex-

pecting the money for Mr. Wicken's purchase; close up all sales as fast as you can. Get the note for the Cook purchase and the money for the Post purchase. Has Kramer decided to take his lot? If he has have the deed made and mortgage.

Yours truly, &c.,

R. H. MANNING.

The R. Rd folks say the tools will be down to-morrow. 10

EXHIBIT D, 12.

NEW YORK, Apl. 23, 1878.

Mr. JAS. TINTLE—

Bloomingdale—

Dear Sir: 20

I wrote you a line yesterday, and now hand you the 3 deeds duly executed. But you *must not deliver* the deed to Sanford till I come up, for I think the description is wrong. Mr. Roome has bounded on the brook. I sold up to the road to Mr. Robinson and his purchase extends to where the Rail Road intersects the or Story Brook road, which if I am not mistaken is up opposite the lot sold to Sanford. I am intending to go to Bloomingdale by milk train, and shall want to meet Mr. Roome to explain to him about this deed and other matters. 30 Please ask him to be there.

Yours truly, &c.,

R. H. MANNING.

You will observe that I have struck out the words "Except for domestic purposes." Putting them in implys that I *do* convey for domestic purposes, whereas I have no right to the water, but there can never be any

objection to such use. In selling to Robinson I reserved a 40 ft. right of way to the river for domestic purposes is for the benefit of everybody.

EXHIBIT D, 14.

10

NEW YORK, April 24, '78.

MR. TINTLE:

Dear Sir.—Please have a memorandum of your payments made on ac. of cutting and hauling wood, lumber and road making, and all expenses—and ready for me on Friday.

Mr. Ryerson called on me to-day in relation to some dispute between Mr. Sanford and Robinson's tenants. I hope you will prevent any quarrel between these parties. It can only result in cost and bad feeling for both. You did not tell me about this trouble or I should have requested you to stop it if possible. Don't deliver the deed till I see about the description.

20

Yrs, &c.,

R. H. MANNING.

30

EXHIBIT D, 15.

NEW YORK, May 17, '78.

MR. JAS. TINTLE:

Dear Sir.—I wrote you on the 15th and have no reply this morning. Let me hear from you Monday morning, as it may be important for me to know what you have done. If you have occasion to come down, please bring

the old map (the large one) and the new one wh. I suppose Mr. Roome has completed before this.

Yrs truly, &c.,

R. H. MANNING.

EXHIBIT D, 16.

NEW YORK, May 31, 1878. 10

MR. JAS. TINTLE.

Dear Sir.—Yours is received saying you will be down next week, but you don't say what day. I want to know so that I may be at home. Hope it will be early and not later than Tuesday, and I should prefer Monday. If you don't come as early as Tuesday, send down by express the maps.

Mr. Chamberlain has been in and wants the upper street lower down. According to his representation, I sh'd think it is not just where we decided to put it. But I cannot tell till I see the map. 20

Yours truly, &c.,

R. H. MANNING.

EXHIBIT D, 17.

NEW YORK, May 31, 1878. 30

MR. JAS. TINTLE:

Dear Sir.—I send you herewith the 3 deeds. That to Mr. Reeve is for four acres, $172 or about 42½ per acre. Don't sell anything under $100 per acre, without submitting the offer to me. I prefer selling those small parcels in Passaic Co. in the original parcels wherever it is possible. I mean in the lots as they were bought by the Newbrough Co.

Have not received the old map yet. Mark with pencil on it the lots just sold to Mrs. Bailey and to Mr. Reeve, and send the map by to-morrow's train if you can.

Yours tru'y, &c.,
R. H. MANNING.

10

EXHIBIT D, 18.

NEW YORK, June 11, '78.

MR. JAS. TINTLE:

Dear Sir.—Mr. Howell and his party will probably buy the property. As soon as I can make an appointment with them will let you know, and we will come up and determine about the change in the new map, &c.

Y's truly, &c.,
R. H. MANNING.

20

EXHIBIT D, 19.

NEW YORK, June 18th, 1878.

Mr. TINTLE—

Dear Sir.—I rec'd this morning, (probably from Mr. Roome), the deed to A. Cook; the last de ision was that the new owners are to give the deed to Cook and receive the money for it, so I shall do nothing about it; I did not receive the a'c from you.

30

Yours, &c.,
R. H. MANNING.

EXHIBIT D, 20.

NEW YORK, June 24th, 1878.

Mr. JAS. TINTLE—

Dear Sir.—Your letter of this morning is just received; I see no reason why Kramer should not take his deed and give the mortgage at once; the property was sold to him, and the papers should have been exchanged at once; do have it done without further delay. 10

Sandford has the deed of his house, and I have no evidence that he owes me anything; he must give a note or the mortgage; I waived the mortgage for his accommodation, the least he can do is to give a note instead; I want these, and the lot 10 and the Brewley matters settled this week, as I shall be ready to settle with Mr. Howell next Monday, and I want these matters closed up before I leave town to-morrow to be absent till next Monday morning, when I will be at my office again; the chge of $4, on Mr. Roome's bill should 20 be made to the new parties, as it was for their benefit; the balance of his bill you can pay.

Yours truly, &c.,

R. H. MANNING.

I had overlooked the $31.00 allowed Mr. Sandford; you can take it out of the note he is to give; it has nothing to do with the wood lot, and should not be deducted from that acct.

30

OPINION OF VICE-CHANCELLOR.

CHAMBERLAIN,

vs.

10 RICHARD H. MANNING, et als.

Z. M. WARD, for complainant.
H. C. PITNEY, for defendant.

BIRD, V. C. This bill is filed to enforce an alleged contract for the sale of lands

The defendant, Manning, had authorized one Tintle to 20 solicit purchasers for lots of land, in a tract of one hundred acres or more. Tintle had procured persons to purchase. His authority was by parole. He never signed for Manning. He accepted offers and promised conveyances, but in all cases the negotiations rested until Manning made, executed and delivered a deed. It seems that a few sales of lots were effected in this manner. I mention the fact because the complainant pressed it on my attention. But I cannot see that it aids him in the least, for it does not appear that Man- 30 ning was bound in any case, or could have been in the law, until the delivery of the deed.

The complainant says: "I contracted with James Tintle on 28th of February, 1878, for a lot of land." He also says he made a bargain on the 4th of March. He says, "I went down on the 5th, the next day. He showed me where he had run off the land—showed me the corner, exactly where I stuck my cane in; the contract was on the 28th of February. He showed me

where he had run it out. I say to him: It is just where we bargained for it. He said, 'Yes.' I said all right, I find no fault; now I am ready to pay for it at any time; I want to go right to work at it. 'Well,' he said, 'here is your corner, borders and lines; I now deliver it over to you and give you possession, go on as soon as you have a mind; we will make you a deed in a few days or a few weeks.' He says I pointed out to him where I wanted the lands to be, asked him his price and he told me, and I said I would give it. His price was $150. Tintle said he would get Roome to run the lines. He says Tintle showed me the lines which he had run, gave me the lines and borders where they struck."

He says that he took possession of the lot on that day, March 5th, 1878, and went to work on it. He says Tintle gave him possession.

The complainant says that after this 25th of March he saw Manning in New York, and that he told Manning that he had purchased the lot, and that Manning said it was all right, and that he told Manning he was about to build on it. The complainant says he again saw Manning in the latter part of May, and said to him I had bought that property and I began to feel as if I wanted a deed for it now, and he said all right. He said he expected to be up in a few days before, and didn't come. He said the reason why he didn't come was he was about negotiating with another party—he didn't tell me who the other was—for the sale of the rent of the land. I said, "Has that got anything to do with me?" He said, "No; what is done already is all right." He said it had nothing to do with me."

Q. How far had you progressed with your building at that time?

A. I forget just whether I had it raised then or not; I had the timber all got out ready; I don't know whether I had it raised or not; I can't recollect exactly,

but I had been working at it and getting out all the time; he saw Manning again the latter part of July; then Manning told him that he had sold the land to Howell & Noble, the other two defendants; he saw Manning, told him that Howell & Noble would make a deed to him; he paid $10.00 to Tintle on account, May 10th, 1878; he spoke of the deed and said to Tintle, you are so slow about the deed; no question about it whatever; oh no, not the slightest," he said, "then I said I
10 will make you a payment."

This was before he had seen Manning, and had been told by him that he was about to sell to others.

As to improving the lot at this time in May, he says "I built a foundation, and got timber out for all the building."

Q. Where was the timber?

A. It was got out principally at Newfoundland, and carried down there; the foundation was laid, the stone was brought up there, and the foundation was laid;
20 the ditch was dug, there was no cellar under it; the ditch when we laid the wall was dug.

Q. Where was the timber at that time?

A. It was some on the ground, and some between there and Newfoundland; carted at my convenience whenever I could.

Q. Have you erected a building upon the lands?

A. Yes, sir; it is forty feet one way, and sixteen feet the other way; there are eight rooms counting the hall room below.

30 Q. How near was the building completed on the 12th of June of that year?

A. I can't just recollect; I had all the timber; I don't recollect exactly the time; I got it out at that time; I must have had it raised, and partly enclosed; I know I had a spree there on Fourth of July."

The complainant then tendered the money to Manning in June, 1879, and demanded a deed; Manning refused to accept the money and to make a deed;

Howell & Noble had purchased the entire tract of the defendant, Manning; the complainant then made a tender to them and demanded the deed; they also refused.

If the complainant's statement are considered, it will but seem that he undertook to purchase of an agent who had no authority to execute any writing; it will also be seen that no writing was executed; it will likewise be seen that this agent delivered possession of some part of the larger tract to complainant, and that the complainant at sometime thereafter, and before the sale to Howell & Noble, made some excavations for a structure of some kind on the premises; he is only certain in his own mind that the ditch was dug; it is not certain that the timber was on the ground.

This is the complainant's best showing; I think it does not make a complete case; he has no standing except on the doctrine of part performance; he claims that he entered into possession under the contract; I do not understand that simply going upon a vacant parcel of ground is enough to satisfy the demands of the adjudged cases which prevail against the statute to prevent fraud.

But the complainant insists that he made valuable improvements in good faith, relying upon his contract, supposing the agent had power to deliver possession. I cannot conclude that the alleged improvements were made before the sale to Howell & Noble, nor before Chamberlain had notice of such sale. As intimated above, I cannot determine that he had made any substantial improvements. Judging from his own statements, there were only a trench dug and some timbers on the ground and some at Newfoundland.

But still, from the complainant's side, the material inquiry is was the building erected at the time of the sale to Howell & Noble. Notwithstanding what I have said above respecting the complainant's own statement, yet both he and his witnesses assert that the building

was up and partly enclosed. This is emphatically denied by the defendants and their witnesses. The contradiction is full and complete. I have given great consideration to the numerous conflicting statements in the hope of some reasonable reconciliation, but in vain. In such case it is not enough to say that the complainant's witnesses affirm positively that there was a house, while the defendant's witnesses only speak negatively. I can see no more reason for the latter to be mistaken than the former; they had equal opportunities for seeing. To insist that a negation cannot be established as against an affirmation in many like case, is a mere mockery of our most common experience. But let us look at this claim of possession further. Was it under the contract? How did he obtain it? C. says that Tintle told him to take possession, and Tintle says he authorized C. to enter. Tintle being a mere agent to solicit purchasers, with no authority to execute a writing or to make a conveyance, was the possession here claimed such as can be pleaded in bar of the act. As intimated, I can find no satisfactory evidence which authorized Tintle to bind Manning. It seems quite plain that M. always had the right of rejection, and especially in cases where he had not previously fixed the price. M. says so, and there is no evidence sufficiently explicit to the contrary. Hence, I am bound to say that C. was not in possession under any contract. His possession was that of a stranger, and consequently unlawful. Such a possession never ought to be tolerated to bar a solemn act of legislation, which legislation was enacted to prevent the mischiefs which seem to throng this case from its commencement to its conclusion. In all the exemplifications of the wisdom of this celebrated act, I think no more conspicuous illustration can be found than the one before me.

I have looked at this case from another standpoint. Supposing the relation of the parties reversed, the defendant, Manning, being complainant. Could he, at any

time prior to his sale to H. & N., have prevailed in a suit for specific performance? I think not. C. was not bound. He paid $10 to Tintle, but that did not bind him, all the cases so adjudged. He had taken possession of the naked soil, under the agent, and perhaps dug a trench. I cannot believe that any considerate judge would regard that a valuable substantial improvement which so changed the nature of things as to bind C. to a specific performance. If it be said that the person who makes the improvement is the only one can claim 10 benefit of them, then I say as to case, there is want of mutuality without which the law abhors specific performance.

I conclude that there was no contract within the statute, and also that there was no such part performance by the delivery of possession and making valuable improvements as would enable the defendants to avail themselves of their own wrong, unless the court should interpose.

I will advise a decree dismissing the complainant's 20 bill with cost.

30

PETITION OF APPEAL.

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

10 The humble petition of Amos Chamberlain, the appellant in the above cause, respectfully shows that your petitioner finds himself aggrieved by a final degree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the tenth day of March, eighteen hundred and eighty-five, wherein the said Amos Chamberlain was complainant and Richard H. Manning, Benjamin F. Howell and Charles E. Noble were defendants, which said decree adjudges that the complainant was not entitled to the relief sought 20 and prayed for by him in his bill of complaint, and dismissed the same with costs.

And your petitioner humbly appeals from the whole and every part of said decree of the Chancellor as aforesaid, upon the ground that the same and each and every part thereof is erroneous, for that the complainant was and is entitled to the relief sought and prayed for by him in his said bill of complaint.

Your petitioner therefore prays that the said decree of the said Chancellor may be in all things reserved, 30 set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall see meet.

Z. M. WARD.
Sol. and of Counsel with Appellant.

Dated June 15th, 1885.

ANSWER.

Between

AMOS CHAMBERLAIN,

Appellant,

and

RICHARD H. MANNING, ET ALS.,

Respondents.

10

The answer of Richard H. Manning, Benjamin F. Howell and Charles E. Noble, respondents to the petition of appeal of the above named appellant.

20

These respondents, 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 tenth day of March last, past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

30

EDMUND D. HALSEY,
Sol. of and of Counsel with Respondents.