New Jersey

Court of Errors and Appeals

JAMES C. GIBBS

Plaintiff and Defendant in Error,

vs.

WATSON C. COOPER

Defendant and Plaintiff in Error.

ON CONTRACT

This was case tried at the December term, 1912, of the Warren Circuit Court, before Judge Black and a jury. The suit was brought upon an agreement between the plaintiff and defendant for the sale of land (a farm) in Frelinghuysen township, Warren County, N. J., set out at length on page 80 etc., of case b ok. The agreement for sale was made and executed by the parties on the 16th day of October, 1911.

The deed was to be delivered on the first day of April, 1912. It was tendered by Mr. Cooper at the office of Mr. Angle in Belvidere between the hours of ten and four P. M on April 1st, 1912, but refused by Mr. Gibbs, on the ground that a gas machine had been taken out and removed from the buildings on the premises.

Suit was brought by the plaintiff, Mr. Gibbs against the defendant Mr. Cooper, for a breach of the contract of sale, who claimed a right to recover one thousand dollars, as liquidated damages, upon the following covenant in the Contract of Sale, namely: "and for the preformance of all and singular the covenants and agreements aforesaid, the said parties to bind themseles, and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to preform the same, the sum of one thousand dollars, which they hereby fix and settle as liquidated damages therefor".

Plaintiff's declaration, on page 7, beg. line 4 alleges that the defendant did not keep or perform any part of the agreement, and did not convey by deed of warranty, the land and premises, and the manure and compost.

It appears by the testimony of plaintiff on page 26, l. 12-13 and l. 31, that plaintiff's refusal to take the deed was "because the light plant and fixtures were gone". There was no other ground of refusal to take the deed at the time of its tender, and no other reason alleged at the trial.

CHARGE OF COURT

The Court on page 77, directed the jury "to find a verdict for the plaintiff for one thousand dollars, with interest from April first, 1912, up to February next, which will be $1052."

REQUEST TO CHARGE BY DEFENDANT AND PLAINTIFF IN ERROR

The defendant requested the Court to charge the jury, page, 78, (6) that "the sum agreed upon as liquidated damages in the agreement between plaintiff and defendant under the circumstances of this case, is a penalty, and if the jury believe there was a breach of any part of the agreement by the defendant, it is necessary for the plaintiff to show the damage caused thereby". The Court refused

to charge as requested and an exception was taken and allowed to defendant.

This is the sixth reason a signed in the notice of appeal, p. 2, line 19-25, for reversal.

ARGUMENT.

I wish the Court to observe that the sum of one thousand dollars, p. 82, 1. 10 as liquidated damages, was for a failure to preform all and singular the covenants and agreements in the agreement for sale.

There was a single breach, as the plaintiff testified, of the agreement by defendant; "we said to him (defendant) that the light p ant was withdrawn and we couldn't comply with the agreement". That was on page 26, 1. 12 & 13 of plaintiff's testmony, and again on line 31 of same page the plaintiff testified that his sole objection to tading the deed and complying with the agreement of sale was, "because the light plant and fixtures were gone".

In the agreement of sale were several covenants and a stipulated damage for the breach of all of them. It was therefore a penalty and not liquidated damages, and as a penalty it was necessary for the plaintiff to prove actual damages, and the Court erred in holding it liquidated damages.

The Court, in the leading case of Whitfield v. Levy 6 Vroom p. 149. See page 155, near top "nor is the word 'liquidated damages' conclusive. If the Court can see from the whole instrument taken together, that there was no intention that the entire sum should be paid absolutely on the non performance of any of the stipulations of the deed, they will reject the words and consider it in the nature of a penalty only." At the bottom of the page the Court further said: "In general, a sum of money in gross, to be paid for the non performance of an agreement, is considered as a penalty,

and not as liquidated damages. Taylor v. Sandiford 7 Wheat. 13. It applies to the covenant on the part of the plaintiff to make conveyance, and that on the part of the defendant to pay the residue of the consideration money that will be required to defray half of the expense of the searches as well as the covenant which is sued on." In the case cited it was held that the sum named was a penalty and not liquidated damages. The agreement is set out on page 150 of 6th Vroom, and it will be seen that there are more covenants in the agreement of sale, in the present case, than in the case of Whitfield v. Levy.

The Court lays down the rule in this last case, on page 156, as follows: "The rule is well settled that a sum named in an agreement containing disconnected stipulations of various degrees of importance, will be considered as a penalty, though it is called in the agreement liquidated damages, unless the agreement specify the particular stipulation or stipulations to which the liquidated damages are to be confined."

The measure of damages, on the one hand, is for a failure to pay purchase money and the giving of a mortgage at 5 per cent. interest, on the other the delivery of the deed at a certain time and place and with it a conveyance of the manure, &c. As to these, as is said in Whitfield vs. Levy, 6 Vroom, page 156, the $1000 cannot be considered as liquidated damages, "a sum cannot be liquidated damages in one case and not in the other. It must be susceptible of being regarded as liquidated as to all the provisions to which it extends, or it will not as to any.

The Court of Errors and Appeals in Monmouth Park Asso. vs. Wallis Iron Works, 26 Vroom, page 140, says: If "they have provided for the same damages on the breach of any one of several stipulations when the loss resulting from such breaches

clearly must differ in amount, or that they have named an excessive sum in a case where the real damages are certain or readily reducible to certainty by proof before a jury, or a sum which it would be unconsionable to award, under any of these conditions the sum designated is deemed a penalty.

A breach of a covenant, as to the payment of the consideration, or the failure to deliver the deed as specified, or to include in it the manure and compost, the loss resulting from such breaches must differ in amount.

On page 66, line 16 &c.: the value of the gass plant and fixtures was shown to be worth not more than $100, and at a public sale by the defendant the gas plant was bid up to $39, and no more. It is unconscionable to award $1000 for $39, or less than $100 damage ; and this amount would not be the same as for a breach of the agreement about the manure or delivery of the deed or warranty, or payment of the consideration money, or the giving of the mortgage and other breaches.

In Backenklan vs. Peerless Realty Co., 80 Eq. (10 Buch.) p. 30, the Vice Chancellor cites the general rule taken from the nineteenth volume of the Am. and Eng. Ency. of Law, 410 and 411, as follows: "The general rule as stated, where the sum named in the contract to be paid on a breach is wholly disproportionate to the actual damages sustained is that the Courts will deem the parties to have intended to stipulate for a mere penalty to secure performance, and not for a liquidation of the damages. But the view is believed to be not so much that such circumstance is indicative of the intent of the parties to stipulate for a penalty as that *the Courts refuse to depart from the rule of actual compensation, where this can be ascertained.*"

The Vice Chancellor, at the bottom of page 30, further says that there is no difficulty in the viola-

tion of a sales contract. "The measure of recovery is well ascertained—what the realty company could recover in case of the violation of this contract on the part of these complainants to take the land and pay the price. They are entitled to the difference between the contract price and the value of the property. In the event of the property rising in value there really is no damage at all. Only in case of a decline in value is there any substantial recovery possible on the part of the Realty Company, the vendor under this contract."

According to the Vice Chancellor's views, just cited, the plaintiff had, in this case, no difficulty in ascertaining the measure of recovery between the contract price and the actual value of the farm at the time the deed was tendered and refused.

THE GAS PLANT NOT A FIXTURE

Charles R. Osmum, on page 37, says that the gas machine was not fastened to the floor, or the sides in the barn ; and that it sat on a few boards. It formed a union with a short line of pipe under ground about 18 inches, connecting with the house where it ran through augur holes in the ceilings and along the beams unfastened, and a light was dropped from these pipes in the rooms. These were not fixed permanently, the boards were left loose on the floor, and so arranged that it could be removed, and this was done under the defendant's express instructions. (p. 38.)

On page 36, 1—28, &c., the witness, Charles R Osmun, was asked this question: "What did the defendant tell you about putting that plant in there, so that it would be personal property?" Plaintiff's counsel objected to the question. It was overruled by the Court and an exception prayed and allowed. I submit that the question was proper, under the decision, being the third rule in ascertaining whether it is a fixture or not, as laid

down in Erdmore vs. Moore & Co., 29th Vroom, p. 461, as follows: "Whether or not it was the intention of the person making the annexation that the Chattel should become a permanent accession to the freehold."

In this connection I insist that the question was proper and should have been allowed by the trial Court. On page 63 top, the trial Court refused to allow, on behalf of the defendant, his instructions to the plumbers as to the manner of putting in the gas plant so it would be personal property; to which an exception was taken and allowed. I insist that the instructions, at the time the machine was put in, to the plumbers, are proper, on the ground of showing intention,

The defendant in his testimony says that the gas machine sat upon two blocks. It was not fastened to anything, just loose, and when it was taken out no injury was done to the premises.

The same objection to the plaintiff's purpose in leaving the boards loose was sustained by the trial Court, and an exception was taken and allowed.

I insist that these questions were proper as showing the intention to preserve the personal character of the Chattels when they were put in the building.

I cite not only the above case, but also—

19 Cyc., p. 1046.

10 Dick., p. 623.

Now, it clearly appears by the testimony of the defendant, on page 57, bottom, and top of page 58, and Irene Cooper, on page 70, l., 6 to 12, and Simon Gratton, p. 71, l. 20, that the defendant, before the sale, told the plaintiff that the gas machine and plant were personal property, and that it would not go with the farm, and that it was

agreed that it should be considered personal property. Such an agreement is good in preserving the personal character of the gas machine and fixtures as personal property, as laid down by this Court in Campbell vs. Ruddy, 17 Stew., p. 248, bottom of page, and again in Palmateer vs. Robinson, 31 Vroom, p. 437, bottom, and Pape vs. Skinkle, 16 Vroom, p. 39.

J. M. ROSEBERRY,

Of Counsel with Defendant, and Plaintiff in Error.

New Jersey Court of Errors and Appeals.

James C. Gibbs,

vs. } On Error to Supreme Court.

Watson C. Cooper.

Points for plaintiff in reply to points for defendant.

Point (1).

The undisputed testimony in this case proves that the gas-lighting plant was part of the freehold agreed to be conveyed by Cooper to Gibbs.

This is shown by the method of annexation and the use to which the lighting plant was put as well as by the way the apparatus was taken out; from these circumstances the intent is inferred,—and that is an intent to make an addition to the freehold.

In connection with this point, I insist that the hayfork with the tracks on which the car ran and to which were attached ropes and pulleys for its operation were also fixtures.

The facts are proved by all the testimony.

The intention which determines whether a chattel annexed to realty becomes a part of the realty is the intention the parties had at the time of annexing it to the realty.

The cases cited in defendant's brief so hold.

The cases in **10th Dick,** and **29th Vroom** hold that the intention is not ascertained by the declaration of the parties, but by their conduct; and that the purpose is generally judged by the method of attachment and the use of the articles so attached in connection with the freehold.

He was without employment from the first of April to the first of July, and to begin farming then was late in the season and one could not get as good results as to begin the first of April, the season when, in the country, farming operations begin.

Now, I submit that under the decisions in New Jersey the parties having fixed the sum of $1,000.00 as liquidated damages, and that for loss which could not be readily ascertained, the plaintiff was entitled to recover just what the contract called for.

In this I am sustained, I think, by the last deliverance on the subject, in this court.

I refer to **City of Summit vs. Morris Traction Company, 88Atl., Rep. 1048.**

The New Jersey cases bearing on this subject as well as other cases are there reviewed and I think the fair inference is to sustain my position.

I rspectfully ask from this court an opinion, not only as to the question of whether the judgment for the $1,000.00 is right as based on my view of the contract, but also upon the other question, which must be settled between these parties, whether the plaintiff is not entitled to recover, if not the $1,000.00, then for such loss as he actually sustained in the payment of the $155.00, cash received by the defendant, October 16, 1911, and also, for the value of his labor in hauling out the manure; and also, for the loss of his earning capacity for three months and the loss he sustained by the defendant removing the gasoline light plant from the building, and the loss sustained in the sale of his farm stock, etc.

But I do not admit that the defendant is not liable for the $1,000.00 liquidated damages.

WM. H. MORROW,

of counsel with James C. Gibbs, plaintiff.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

NOTICE OF APPEAL.

James C. Gibbs,
Plaintiff,

vs.

Watson C. Cooper,
Defendant.

} On Contract.

TO WILLIAM H. MORROW, ATTORNEY OF PLAINTIFF, TAKE NOTICE:

That the defendant appeals from the whole of the judgment entered in this case, on the following grounds:

1. Because the Court refused to charge: that an actual physical annexation and attachment to the realty is necessary to change the character of the gas machine as personal property to that of a fixture.

2. Because the Court refused to charge: it must be fitted for and applied to the use to which the real estate was appropriated, all being designed for and necessary to the prosecution of a common purpose. Thus the gas machinery and farm became unified and incorporated together as a whole.

3. Because the Court refused to charge: the annexation of the gas machine to the property by the defendant,

Mr. Cooper, must be made with the intention of a permanent accession to the freehold, that is to the farm.

4. Because the Court refused to charge: if there was a mutual agreement, express or implied, between the owner of the real estate and the gas machine, in this case Cooper, and the buyer, Gibbs, in respect to the manner in which the gas machine was annexed to the premises and was personal property and not a part of the farm such an agreement, express or implied, was binding on the plaintiff, Gibbs, in preserving the personal character of the gas machine, as between the plaintiff and defendant.

5. Because the Court refused to charge: notice by defendant to plaintiff of the personal property character of the gas machine takes the plaintiff out of that class of purchasers, who are innocent purchasers without notice.

6. Because the Court refused to charge: the sum agreed upon as liquidated damages in the agreement between plaintiff and defendant under the circumstances of this case, is a penalty, and if the jury believe there was a breach of any part of the agreement by the defendant, it is necessary for the plaintiff to show the damage caused thereby.

7. Because the Court refused to charge: the damages in this case are capable of being measured, and the breach of the agreement is not an injury of uncertain amount and extent.

8. Because the Court charged, as a matter of law, that the jury must find a verdict for ($1000.00) One thousand dollars, the amount stipulated.

9. Because the Court charged, that there was no fact in the case to go to the jury to be determined.

10. Because the Court charged, that the verbal ar-

rangement made between the plaintiff and defendant, if any, was destroyed by the contract entered into by them in writing.

11. Because the Court directed the jury to find a verdict for the plaintiff.

12. Because the Court overruled the question asked Elwood Vasbinder, if he heard James C. Gibbs state that the boy had paid ($500.00) Five hundred dollars, too much for the farm and that he would not take it.

13. Because the Court overruled the question as to the purpose for leaving the boards loose when the flooring was put in above the lights overhead.

14. Because the Court overruled the defendant's instructions to the plumber, in the putting in the gas machine and plant in such a manner that it would be personal property.

15. Because the Court overruled the question, what can you say, Mr. Cooper about putting in this machine or gas plant, which question should have been admitted.

16. Because the Court overruled the declaration of Mr. Gibbs, in reference to the throwing off of ($500.00) Five hundred dollars, or about his representing his son.

17. Because the Court ordered the answer struck out, that the plaintiff's father came and asked if the defendant would not throw ($500.00) Five hundred dollars off of the price of the farm.

18. Because the Court charged the jury "that in this case the parties have made a bargain and put it in writing, and the view the Court takes of the case is that there is no question of fact for you to decide."

19. Because the Court charged the jury that, "your functions are to decide questions of fact. The function of the Court is to decide questions of law. These parties, by solemn agreement fixed the amount one should pay to the other in case there was a breach, namely, one thousand dollars. The view the Court takes is there no fact for you to decide, and, in the exercise of its functions it directs you to find a verdict for the plaintiff for one thousand dollars, with interest from April first, 1912, up until February next, which will be $1052.00. The Clerk will take your verdict."

JOSEPH M. ROSEBERRY,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

James C. Gibbs
vs.
Watson C. Cooper.
} On Contract. On Postea.

William H. Morrow, Attorney.

As yet of the sixth day of April, A. D., nineteen hundred and twelve.

WITNESS, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice.

William Riker, Jr., Clerk.

Warren County, ss:

Watson C. Cooper, the defendant in this suit, was summoned to answer unto James C. Gibbs, the plaintiff therein in an action on contract: and thereupon the said plaintiff, by William H. Morrow, his attorney, complains for

that whereas heretofore, to-wit, on the sixteenth day of October, in the year nineteen hundred and eleven, at Newton, in the county of Sussex, to-wit, at Belvidere, in the county of Warren and within the jurisdiction of this court, the said plaintiff and the said defendant made, entered into and executed a certain sealed agreement the date whereof is on the day and year last aforesaid, which sealed agreement sealed with the seals of the said plaintiff and of the said defendant, the said plaintiff now brings into court here, a copy of which is hereto annexed and made part hereof, wherein and whereby the said defendant, for and in consideration of the covenant and agreements thereinafter mentioned made and entered into by the said plaintiff and for the consideration of the sum of six thousand dollars to be paid and satisfied as thereinafter mentioned, did agree to and with the said plaintiff that he, the said defendant, would well and sufficiently convey to the said plaintiff, his heirs and assigns by deed of warranty on or before the first day of April then next ensuing, all that lot, tract or parcel of land and premises thereinafter particularly described, situate, lying and being in the township of Allamuchy in the county of Warren and State of New Jersey, Bounded and described as follows:—Being a farm containing seventy-one acres more or less. Bounded by lands of Winthrop Rutherfurd, William Gruver and others, and being the same premises conveyed to the said defendant by Nicholas Harris, one of the Masters in Chancery of New Jersey.

And the said defendant did further in and by the said agreement, for the same consideration aforesaid agree to convey to the said plaintiff all manure and compost then on the said premises or that might be thereafter made thereon between the day of the date of the said agreement and the day thereinafter mentioned for the delivery of the deed for the said premises.

And it was in and by the said agreement further agreed by the said plaintiff, for himself, his heirs, executors and administrators to and with the said defendant, his heirs, executors and administrators and assigns, that the said

plaintiff would pay and satisfy or cause to be paid and satisfied to the said defendant the said sum of six thousand dollars as and for the purchase money of the before described land and premises in the following manner therein mentioned, to-wit:—the sum of one hundred and fifty-five dollars on the execution of the said agreement; the sum of eighteen hundred and forty-five dollars in cash on the day of the date for the delivery of the deed for the said premises; and the balance of said purchase money, being the sum of four thousand dollars to be paid either in cash by the said plaintiff or to be secured by the execution of a bond and mortgage for the said sum of four thousand dollars, the mortgage to cover the lands and premises so sold and to be conveyed by the said defendant to the said plaintiff.

And it was in and by the said agreement further agreed by the said parties thereto that the said plaintiff might enter into and upon the said lands and premises on the first day of April then next and take the rents, issues and profits thereto to himself from that day.

And it was further by the said agreement agreed by the said parties thereto that the said deed of warranty should be delivered and received at the law office of George A. Angle, in the town of Belvidere between the hours of ten in the forenoon and four o'clock in the afternoon on the said first day of April next ensuing the date of the said agreement, or such other date prior thereto as might be agreed upon by the said parties to the said agreement. And for the performance of all and singular the covenants and agreement aforesaid the said plaintiff and the said defendant did by the said agreement bind themselves; and they did in and by the said agreement agree to pay, upon failure to perform the same the sum of one thousand dollars which sum they did by the said agreement fix and settle as liquidated damages therefor.

And the said plaintiff saith that although he hath always from the time of the making of the said agreement hitherto well and truly kept, performed and fulfilled all and singular the things in the said agreement mentioned

by him to be kept, performed and fulfilled according to the true intent, tenor and effect of the said agreement thereof, to-wit, at Belvidere aforesaid.

Yet protesting that the said defendant hath not kept, performed or fulfilled anything in the said agreement contained on his part to be kept, performed or fulfilled, according to the tenor and effect, true intent and meaning of the said agreement, the said plaintiff saith that the said defendant did not on the said first day of April aforesaid, at the office of the said George A. Angle in the town of Belvidere aforesaid, between the hours of ten in the forenoon and four o'clock in the afternoon, deliver to the said plaintiff a deed of warranty for the said tract or lot of land and premises in the said agreement and hereinbefore mentioned and described, and did not convey to the said plaintiff all manure and compost on the said land and premises at the time of the making of the said agreement or that was thereafter and between the day of the date of the said written agreement and the said first day of April aforesaid, contrary to the form and effect, true intent and meaning of the said agreement so made by and between the said plaintiff and the said defendant as aforesaid, but on the contrary thereof failed and refused to deliver to said plaintiff a deed of warranty conveying to said plaintiff the said tract, lot or parcel of land and premises and the manure and compost aforesaid, contrary to the form and effect of the said agreement and the true intent and meaning thereof as aforesaid, to-wit, at Belvidere aforesaid, whereby the said defendant became liable to pay to the said plaintiff the said sum of one thousand dollars by the said plaintiff and the said defendant in and by the agreement aforesaid fixed and settled as liquidated damages for the non-performance of all and singular the agreements in the said sealed agreement contained as aforesaid.

And the said plaintiff further saith that the said defendant afterwards, to wit, on the day and year last aforesaid, at Belvidere aforesaid, in consideration of the premises promised the plaintiff to pay to him the said sum of one

thousand dollars when he the said defendant should be thereunto afterwards requested.

And for that whereas, also, the said defendant, heretofore, to-wit, on the first day of April in the year nineteen hundred and twelve, at Belvidere aforesaid, was indebted to the plaintiff in the sum of five hundred dollars for so much money before that time lent and advanced by the plaintiff to the defendant at his request; and in the like sum for so much money before then had and received by the defendant for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendant's request to the defendant of divers large sum of money by the said defendant then and there owing to the said plaintiff; and in the like sum for so much money found to be due and owing by the defendant to the plaintiff on account stated between them; and being so indebted the said defendant, afterwards, to wit, on the day and year last aforesaid at Belvidere aforesaid, in consideration of the premises, promised the said plaintiff to pay to him the said several last-moneys when he the said defendant should be thereunto afterwards requested. Yet the said defendant hath not as yet paid to the said plaintiff the said several sums of money hereinbefore mentioned or any or either of them or any part thereof, although often requested so to do, to the damage of the said plaintiff of two thousand dollars; and therefore he brings his suit, etc.

To the above named defendant, or whom it may concern:

Take notice that the following is a copy of the agreement set out in the first count of the foregoing declaration made between the said plaintiff and the said defendant to recover the sum of one thousand dollars in the said agreement mentioned and agreed to be paid as liquidated damages as set forth in the said agreement, and a bill of particulars of the demand of the said plaintiff against the said defendant mentioned in the further counts of the said declaration, viz,—

This agreement made the sixteenth day of October, in the year of our Lord one thousand nine hundred and eleven between Watson C. Cooper of the township of Frelinghuysen in the county of Warren and State of New Jersey, party of the first part and James C. Gibbs of the township of Frelinghuysen in the county of Warren and State of New Jersey, party of the second part, witnesseth that the said party of the first part for and in consideration of the sum of six thousand dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant and agreements hereinafter mentioned made and entered into by the said party of the second part, doth agree to and with the said party of the second part that he the said party of the first part, will well and sufficiently convey to the said party of the second part his heirs and assigns, by deed of warranty free from all encumbrance on or before the first day of April next ensuing the date hereof all that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Allamuchy in the county of Warren and State of New Jersey, Bounded and described as follows:—

Being a farm containing seventeen acres more or less. Bounded by lands of Winthrop Rutherfurd, William Grover and others, and being the same premises conveyed to the party of the first part by Nicholas Harris, one of the Masters in Chancery of New Jersey. For the consideration hereinbefore expressed, the party of the first part hereby agrees also to convey to the party of the second part all manure and compost now on said premises or that may be hereafter made thereon between this date and the date of the delivery of the deed for the premises.

And the said James C. Gibbs for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he the said party of the second part will pay and satisfy or cause to be paid and satisfied unto the said party of the first part the said sum of six thousand dollars as and for the

purchase money of the foregoing described land and premises in the following manner, that is to say,—The sum of one hundred and fifty-five dollars on the execution of this agreement; the sum of eighteen hundred and forty-five dollars in cash on the date of the delivery of said deed for said premises; and the balance of said purchase money, being the sum of four thousand dollars to be paid either in cash by the said party of the second part or to be secured by the execution of a bond and mortgage to cover the lands and premises so sold and conveyed by the party of the first part to the party of the second part; and said bond to bear interest at the rate of four per cent, net, that is to say, free from any deduction for taxes; said mortgage to contain a covenant that the party of the second part is to keep the buildings erected upon said premises or to be erected thereon insured against loss or damage by fire to an amount not less than four thousand dollars, and assign the policy to the party of the first part as collateral security; And it is further agreed by the parties to these presents that the said party of the second part, his heirs and assigns, may enter upon and into the said lands and premises on the first day of April next ensuing the date hereof and from thence take the rents, issues and profits to his and their use; and it is further agreed by the parties hereto that the deed of warranty shall be delivered and received at the law office of George A. Angle in the town of Belvidere between the hours of ten in the forenoon and four o'clock in the afternoon on the said first day of April next ensuing the date hereof, or such other date prior thereto as may be agreed upon by themselves hereto. And for the performance of all and singular the conveyance and agreements aforesaid the said parties to bind themselves and their respective heirs, executors and administrators; and they thereby agree to pay, upon failure to perform the same the sum of one thousand dollars which they hereby fix and settle as liquidated damages therefor.

In witness whereof the said parties have hereunto in-

terchangeably set their hands and seals the day and year first above mentioned.

Signed, sealed and delivered
in the presence of

Levi H. Morris.

Watson C. Cooper (Seal.)
James C. Gibbs (Seal.)

Bill of particulars of the demand of the plaintiff against the defendant.

(1). The sum of one thousand dollars, fixed and settled as liquidated damages as in the foregoing declaration, in its first count, mentioned, $1000.00.

Interest thereon from April 1st, 1912.

(2). To one hundred and fifty-five dollars cash received by the defendant on the 16th day of October, A. D., 1911, for the use of the plaintiff, $155.00.

Interest thereon from Oct. 17th 1911 till judgment.

At the proper time judgment will be claimed for the sum of one thousand dollars with interest thereon from April 1st 1912, and the further sum of one hundred and fifty-five dollars with interest thereon from Oct. 16th 1911.

And the said defendant by Joseph M. Roseberry, his attorney, comes and defends the wrong and injury, when, etc., and says, that the said sealed agreement in the first count of plaintiff's declaration is not his deed. And of this the said defendant puts himself upon the county, etc.

And for a further plea in this behalf as to the second count of said declaration the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the Statute in such case made and provided, saith that he did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, etc.

And for a further plea in this behalf as to the said supposed breach of covenant in the first count of plaintiff's declaration above assigned, the said defendant by like

leave of the court, here, for the purpose, first had and obtained, according to the form of the Statute in that case made and provided, saith, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that he the said defendant, did on the first day of April, A. D. Nineteen hundred and twelve, at the office of said George A. Angle, in the town of Belvidere, aforesaid, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, deliver to the said plaintiff a deed of warranty for the said tract or lot of land and premises in the said agreement and in said first count of plaintiff's declaration mentioned and described, and did then and there convey to the said plaintiff all manure and compost on the said land and premises at the time of the making of said agreement, or that was thereafter and between the day of the date of the said written agreement and the said first day of April, aforesaid, according to the form and effect, true intent and meaning of said agreement so made by and between the said defendant and the said plaintiff as aforesaid, but the said plaintiff did then and there refuse to receive said deed of warranty and the conveyance of said manure and compost as aforesaid from the said defendant, and would not then and there pay and satisfy or cause said plaintiff to be paid and satisfied the said sum of Six thousand dollars in the manner specified in said agreement and the first count of plaintiff's declaration as and for the purchase money of the said described land and premises and said manure and compost as aforesaid, contrary to the form and effect of the said agreement, the true intent and meaning thereof, and of the said covenant, of the said plaintiff by him in that behalf made, as aforesaid, to-wit, at Belvidere, aforesaid. And this the said defendant puts himself upon the country, &c.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Belvidere in and for the County of Warren on the fifth Tuesday of December, in the year of our Lord, one thou-

said nine hundred and twelve, by whom etc. and the same day is given to the parties aforesaid there etc.

And now at this day to wit, the eighteenth day of February, A. D., nineteen hundred and thirteen before our said Supreme Court at Trenton comes the said plaintiff by his attorney aforesaid, and the Justice before whom etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, on the 31st day of December, in the year nineteen hundred and twelve, at a term of the Circuit Court of the county of Warren, at Belvidere in said county, comes the said plaintiff as well as the said defendant by their respective attorneys within named, before the Hon. Charles C. Black, judge of the said Circuit Court and to whom by order of the justice of the Supreme Court assigned to hold the said Circuit Court the above mentioned cause was referred to be tried, and the said cause coming on to be tried and the jurors of the jury above mentioned before whom the truth, etc., of the said several matters and things are to be tried also come and having been chosen, empannelled and sworn, do, by their verdict, find that the said defendant did promise in manner and form as the said plaintiff hath above thereof complained against the said defendant, and they assessed the damages of the said plaintiff at the sum of one thousand and fifty-two dollars, over and above the costs and charges of the said plaintiff by him about his said suit thereof expended; and for those costs and charges the sum of six cents.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages by the jury in form aforesaid found to Ten hundred and Fifty-two dollars and also Fifty-three dollars and Sixty-seven cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to Eleven hundred and Five dollars and Sixty-seven cents.

Judgment signed this eighteenth day of February, A. D., nineteen hundred and thirteen.

WILLIAM S. GUMMERE, C. J.

I, Joseph P. Tumulty, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this (Seal.) twenty-fourth day of February, A. D., nineteen hundred and thirteen.

JOS. P. TUMULTY,
Clerk.

NEW JERSEY SUPREME COURT.

Warren Circuit.

December Term, 1912.

James C. Gibbs,
Plaintiff,

vs.

Watson C. Cooper,
Defendant.

} On Contract.

Transcript of shorthand notes of testimony, etc., taken in the above stated matter before Hon. Charles C. Black, Circuit Court Judge and a Jury, at the Court House, Belvidere, New Jersey, on Tuesday, December 31, 1912.

Appearances:

WILLIAM H. MORROW, Esq., for the Plaintiff.

JOSEPH M. ROSEBERRY, Esq., for the Defendant.

Jury called and sworn.

Counsel opened.

MR. MORROW: The agreement is witnessed by Mr. Levi H. Morris of Newton a member of the bar there, and it is agreed his production shall be dispensed with. The date of the agreement is the sixteenth day of October, 1911, and the deed is to be delivered on the first day of April.

THE COURT: That is admitted by consent and will be exhibit P. 1.

MR. MORROW: I desire to have it put on the notes so it may be readily seen, that the agreement is that the defendant shall convey by deed of warranty on or before the "first day of April next ensuing the date hereof, all that lot, tract or parcel of land and premises hereinafter particularly described, lying and being in the Township of Allamuchy, County of Warren and State of New Jersey," and an agreement also to convey the manure, and the purchaser is to pay and satisfy to the vendor the sum of six thousand dollars for the foregoing described lands and premises, mentioning the manner in which it is to be paid; and that he may take possession of it on the first of April next following, and the deed to be delivered on the first day of April; with a clause in fixing and settling the liquidated damages at one thousand dollars for the non-performance of the covenants and agreements.

(The agreement above referred to is marked Exhibit P-1.)

JAMES C. GIBBS, the plaintiff, sworn.

DIRECT EXAMINATION by Mr. Morrow:

Q. How old are you?
A. Twenty-four.
Q. What is your occupation?
A. Farming.
Q. How long have you been a farmer?
A. This is the third year.
Q. Are you married?
A. Yes, sir.
Q. Where did you live in October, 1911, a year ago?
A. Warren County, Johnsonsburgh.
Q. What were you doing?
A. Farming.
Q. How large a farm did you have?
A. One hundred and sixty-seven acres.
Q. Was it stocked?

A. Yes.
Q. By you?
A. Yes, sir.
Q. With what?
A. Well, with everything to run a farm.
Q. Horses and cows?
A. Horses and cows and machinery of all kinds.
Q. Do you know Mr. Cooper?
A. I do.
Q. Do you know the farm mentioned in this agreement that has been offered in evidence?
A. I do.
Q. Did you see Mr. Cooper about buying this farm?
A. I did.
Q. Did you ever see the farm itself at the time you were negotiating the bargain?
A. Yes.
Q. What if anything did you notice about how the buildings were lighted?
A. I took Mr. Cooper down there and we looked over the farm, looked it all through, and he called my attention to the improvements there and about the silo and the light plant, and went through the barn and in the house and he lit it for me and he showed how it worked, and it worked very nice.
Q. Just describe that light plant to the jury, beginning at the barn and going to the house.
A. Well, there was a generator in the barn in a closet which furnished light for the barn and house, and it was piped under ground from the barn to the house, and there was lights there and in the barn. You could just pull down a little lever and you had light, and when you went out you raised up on that and the light went out.

BY THE COURT:

Q. How far was the light plant from the barn?
A. The generator was in the barn; it furnished light to the house from the barn.

FURTHER DIRECT EXAMINATION:

Q. How far was the house from the barn?

A. I don't know; a couple of hundred yards.

Q. Did you go in the house and see the fixtures there?

A. I wasn't in the house that day.

Q. Were you in there afterwards, before it was taken out?

A. Yes.

Q. What did you see there?

A. The front room had three lights, that is, three burners.

Q. In different places?

Objected to as leading.

WITNESS: Well, they were all lighted. And the kitchen had one, the next room two and the rooms upstairs one apiece.

K. How was the gas carried to these burners?

A. From the generator at the barn.

Q. In what?

A. In pipes.

Q. What kind of pipes?

A. Little iron pipes.

Q. Could you see them in the house?

A. Yes, sir.

Q. All of them?

A. Well, what was visible; some of them was under the floor and around. I couldn't see them all, no. I couldn't see those that went through the floors.

Q. Was there any light from the ceiling?

A. Yes, sir, there was where it was lighted, from the ceiling.

Q. Could you or not see the pipe that led to the chandelier, the light from the ceiling?

A. Yes.

Q. How were those pipes fastened?

A. I don't know as I noticed how they were fastened there at all; I don't know as I ever noticed it.

Q. Have you been there since they were taken out?

A. Yes.

Q. What did you see then?

A. I saw the holes in every ceiling in the house and the boards loosened, nails pulled out and splinters lying all over the floor and the same as it was when the pipe was torn out.

Q. Have you been there since the first of April?

A. No.

Q. Who lives there now?

A. No one.

BY THE COURT:

Q. Where were the pipes that connected the plant with the house, the generator?

A. The pipe was underground, that led from the barn to the house.

Q. What distance was that?

A. I could not tell you that.

FURTHER DIRECT EXAMINATION:

Q. The distance from the generator to the house.

A. I think about a couple of hundred yards.

Q. Did you see, when you were there, any indication as to where the pipes had been, from the barn to the house?

A. No, sir, it was all filled up.

Q. What was the closet in which the generator was placed?

A. Just the same as the harness closet most farmers has in the barn to hang harness on, and it was right in front of his horses in the horse entrance.

Q. By this agreement you were to pay one hundred and fifty dollars down. Did you pay it?

A. I did.

Q. When?

A. The sixteenth day of October, the day the agreement was made.

Q. The agreement further recites about the manure; did you haul any of the manure out?

A. I did.

Q. When did you do that?

A. I cannot tell.

Q. Between what dates? What season of the year?

A. Sometime in January last, I think.

Q. How did you come to do it?

A. I wanted to get my manure out so I would not have so much to do in the spring.

Q. Did you talk to Mr. Cooper about it?

A. Yes.

Q. What did he say?

A. He said go ahead and haul if I wanted to.

Q. Where did you haul it?

A. On the sod field back of the barn.

Q. Did you haul all that was there?

A. No.

Q. How many loads did you haul out?

A. About thirty loads.

Q. And how much do you estimate was left; how much was there the first of April, about, that you observed?

A. Well, there was fifty or sixty loads of manure there, I would think, from looking at it.

Q. Did you get any of that manure?

A. I did not.

Q. It was left there on the place?

A. Left there on the place.

Q. Did you see Mr. Cooper about the time, before or after, this gas plant was taken out?

A. I did.

Q. Did he say anything to you about it?

A. I asked him if he took that light plant out and he said it was none of my business.

Q. When was that?

A. Shortly after it was taken out.

BY THE COURT:

Q. Fix the time.
A. Well, it was along about the middle of March, I think.

FURTHER DIRECT EXAMINATION:

Q. You did not go there to live?
A. I did not.
Q. Did you expect to farm this farm yourself? What was said between you and Mr. Cooper about your farming this farm yourself?
A. Nothing more than he said I could move there the first of April, and told me one morning I could move stuff in there, but he changed his mind on that pretty quick.

MR. ROSEBERRY: I object, and move to strike that out.

THE COURT: Yes, let that go out about his changing his mind pretty quick.

Q. What did he say afterwards? You say he told you to move in, and then what?
A. He had been at me all winter to buy that winter grain; I knew I didn't have to buy the winter grain if it was mine, and I told him I didn't know as I had to buy that winter grain—and I meant a man didn't have to buy what he didn't want—and he said "I know damn well you don't have to buy it," and he said "Don't you move a damned thing in there." He said that. And "You will either buy that winter grain or I will take the light plant out," and I said "I won't buy the grain and I don't think you will take the light plant out." But he did.
Q. Did you see the handbill in his hotel at Johnsonburg?

A. I did.

Q. About the sale of his property?

Objected to.

Q. Where was it?

A. In the reading room.

Q. And what—

MR. ROSEBERRY: I object to their showing the contents—

THE COURT: He can show the thing designated what it was.

MR. ROSEBERRY: He cannot designate the contents of it.

Q. Have you got one just like it?

A. Yes, sir, right here it is. (Producing paper).

Q. Is this precisely like the one you saw at the hotel?

A. Yes, sir.

Q. What did you do with your stock that you had to take on this farm?

A. I had to sell them the fourth of last April.

Q. Why did you do that?

A. I had no place to go; I either had to sell or stick them up along the road, one thing or another.

Q. State whether or not they brought their value at such a sale?

MR. ROSEBERRY: I object to that.

THE COURT: I will overrule that.

MR. MORROW: I offer to prove that the plaintiff, by reason of the failure of the defendant to complete this contract, had to sell his stock at a sacrifice because he had no place to take it, and lost money thereby.

THE COURT: The fact he had to sell is sufficient in the case, without the sacrifice.

Q. You are a farmer?
A. Yes.
Q. Are you familiar or are you not, with the time for selling farm stock?
A. Well, some, yes.
Q. State whether right after the first of April is the time to sell stock to bring its value.
A. No, sir.

MR. ROSEBERRY: I object to that; I do not think that is competent.

THE COURT: I will let him answer that.

MR. MORROW: Your Honor excludes me from going further and proving the stock was sold at a loss?

THE COURT: Yes, I will stop you at that point.

Exception to Plaintiff.

Q. How long were you out of employment, if you were?
A. That is from farming?
Q. Yes.
A. From the fourth of April till the fourth of July.
Q. Did you come to Belvidere on the first day of April?
A. I did.
Q. For what purpose?
A. For getting a deed for that farm.
Q. Before that, state whether you had been informed that the gas apparatus had been taken from the premises.

MR. ROSEBERRY: I object to that. Any informa-

tion he got which he did not get from the defendant is not competent.

THE COURT: It is simply preliminary. Of course, standing by itself, it would not be of any value.

MR. MORROW: I will prove the defendant took it out.

THE COURT: I will let him answer that.

Q. I asked whether or not you had heard the gas lighting plant, or lighting plant had been taken out?

A. Yes, sir.

MR. ROSEBERRY: I object to that.

THE COURT: I will let it stand if it is connected with the primary proof that it was taken out. If not, I will strike it out.

Q. You were not on the premises right after the first of April?

A. No, sir.

Q. Were you there any time after the gas plant was taken out and saw it was taken out?

A. Yes.

MR. ROSEBERRY: I think that is incompetent because it might have been taken out after he refused to take it.

Q. When was that that you saw it, how long before the first of April?

A. Well, I don't just remember.

Q. I don't want the exact number of days. Whether it was few or many or what not.

A. It wasn't very long before the first of April.

Q. Well, that isn't anything.

A. Well, a week, then.

Q. What did you see then?
A. The lighting plant was out.
Q. Who lived on the farm then?
A. Simon Gratton.
Q. What relation was he to Mr. Cooper, a tenant or what?
A. Yes.

BY THE COURT:

Q. Do you mean the light was out or the lighting plant itself was out?
A. The plant itself was pulled out.
Q. In what way was it taken out?
A. It was taken out.

FURTHER DIRECT EXAMINATION:

Q. Well, what you saw, from the appearance of things?
A. The pipe was taken out of the house and the generator was out.
Q. How about the pipe from the stable to the house? Could you see where that had been taken out?
A. From the barn to the house?
Q. Yes.
A. They didn't take that pipe out right away when they took the rest out.
Q. Was it out when you were there at that time?
A. No, sir.
Q. Were you in the house then?
A. No, sir.
Q. You came to Belvidere on the first of April, and what did you have with you to complete this purchase?
A. Six thousand dollars.
Q. Six thousand dollars, or six thousand minus the hundred and fifty?
A. Minus the hundred and fifty.
Q. What did you have it in?

A. A certified check.

Q. Did you see Mr. Cooper that day?

A. I did.

Q. Where?

A. Mr. Angle's office.

Q. What was said about the property, taking the deed, then?

A. I refused to take the deed because it was not what I bought.

Q. What did you say to him and what did I say to him. Let us have the conversation?

A. Well, we said to him that the light plant was withdrawn and we couldn't comply with the agreement.

BY THE COURT:

Q. What did he say to that?

A. Well, he said he was there ready to comply with it.

Q. Then what did you say to that?

A. I don't know as I said anything.

Q. Was Judge Morrow with you?

A. Yes.

Q. What did he say?

A. He said we couldn't comply.

FURTHER DIRECT EXAMINATION:

Q. What reason did I give to Mr. Cooper that he could not give you a deed as the agreement called for?

A. Because the light plant and fixtures were gone.

BY THE COURT:

Q. What did he say to that?

A. He said he was ready to comply; that is all he said that I know of.

CROSS EXAMINATION by Mr. Roseberry:

Q. What did you do from the fourth of April until the fourth of July?

A. I lived at my brother's at Allamuchy, moved my goods in there and lived with him.

Q. What did you do?

A. Worked for him on the farm.

Q. By the day?

A. Yes.

Q. What did you receive per day?

A. A dollar a day.

Q. And board?

A. And board.

Q. And after the fourth of July did you farm then for yourself?

A. I bought another farm, yes, sir.

Q. And went on it?

A. Yes.

Q. And have lived on that since?

A. Yes, sir.

Q. This generator was simply an engine setting on blocks, wasn't it?

A. Well, I don't know what you would call it; it set in that closet.

Q. It was on blocks, wasn't it?

A. I don't know about that. It set there, I know that.

Q. You did not look at that particular part?

A. No, sir.

Q. When you spoke about taking out this manure, how far was this sod field from the house?

A. From the house?

Q. Yes. From the barn.

A. It was the first field back of the barn.

Q. How long did it take to haul the thirty loads?

A. We hauled one day with two teams and a spreader.

Q. Mr. Cooper said you could have that manure to haul it out?

A. He did.

Q. And said he would throw the rest that was made out on the heap for you?

A. Yes.

Q. You say he showed you this gas plant and you asked him if that plant went with the farm?

A. I don't know as I asked him about the plant going with the farm, but he took me around and showed me the plant and told me about the improvements, the light plant and silo, and also lit it for me.

Q. What day was that you were there?

A. That was probably a week before I made the agreement for the farm.

Q. Were you there the day before the agreement was made about the farm?

A. At Cooper's farm?

Q. Yes. The same day the agreement was made were you there?

A. No, sir.

Q. You were not there the same day the agreement was made?

A. To the farm?

Q. Yes.

A. No, sir.

Q. Were you there the day before?

A. No, sir.

Q. Did you see Mrs. Cooper and did Mr. Cooper speak to Mrs. Cooper about selling the farm? Do you remember that?

A. There to the hotel?

Q. Yes.

A. Yes, sir.

Q. You remember that?

A. I remember his hollering to her up the street and they went in the back room; that is all I know about it. They were talking about selling the farm.

MR. MORROW: Who went into the back room?

WITNESS: Mr. Cooper and his wife.

Q. Is that all you saw of Mrs. Cooper?
A. Yes, sir.
Q. Did you see Mr. Gratton there?
A. The day we bargained for the farm?
Q. Yes.
A. No, sir.
Q. You did not see Mr. Gratton there at all?
A. No, sir.
Q. Did you see Mr. Gratton down at the farm?
A. That day? 10
Q. Yes.
A. No, sir, I wasn't to the farm.
Q. And you did not see Mr. Gratton?
A. No, sir.
Q. Did you see Mr. Gratton there any other day?
A. I don't remember I did, no.
Q. Didn't talk to Mr. Gratton?
A. No, sir.
Q. You said there were some arrangements about buying the winter grain? 20
A. There was some talk about the winter grain when we first talked over the farm.
Q. He said he would except out the winter grain, did he not?
A. No, sir, he didn't say he would.
Q. When you went to Hackettstown your father in law was hurt in an automobile?
A. I didn't go to Hackettstown.
Q. Newton?
A. Yes. 30
Q. And you and Mr. Cooper looked after him before you went to Mr. Morris to have the agreement drawn?
A. We went to see how bad he was hurt.
Q. You took him home?
A. No, sir.
Q. Helped take him home?
A. No, sir.
Q. You got an automobile and sent him home?
A. No, sir.

Q. Did Mr. Cooper do it?

A. I don't know what he done. I didn't.

MR. MORROW: Who is your father in law?

WITNESS: James Wheeler.

Q. Wasn't the winter grain spoken about and didn't Mr. Cooper tell you that you ought to pay for putting in the seed?

A. Last winter he wanted to sell me the winter grain.

MR. MORROW: This is before the sale was made, that is what he is asking about.

Q. I am asking nothing about what took place after the sale.

A. No, sir.

Q. Didn't he say that at the hotel?

A. No, sir.

Q. And didn't you agree to it?

A. No, sir.

Q. Didn't you tell him you had been to see a lawyer and you were advised neither the gas plant or winter grain was personal property?

A. I don't think I did, on the winter grain. I told him the light plant belonged to me.

Q. Were you advised by a lawyer the light plant and winter grain, or that the gas plant also was?

A. If it belonged to the farm, you mean?

Q. Yes.

A. No. Do you mean I was advised by a lawyer?

Q. I asked you if you did not tell Mr. Cooper that?

MR. MORROW: What is the time?

Q. Before the first of April, between the time the contract was made and—

A. Yes, I seen Mr. Levi Morris about these things, yes, sir.

Q. You saw Mr. Levi Morris?

A. I did.

Q. Did you tell him so?

A. What?

Q. Did you tell Mr. Cooper so, that you saw Mr. Levi Morris?

A. No, I don't know as I did.

Q. Didn't you tell Mr. Cooper that you were advised that the gas plant was real estate?

A. No, sir, I never could talk to him; he always got too mad to talk to.

A. And the grain was real estate and you would not pay him one hundred and fifty dollars?

A. I told him I wouldn't buy the winter grain.

Q. He told you it was the value of the seed—

A. No, sir.

Q. What was said about the winter grain?

A. When we bargained for the farm and we was talking about the farm, he said "The winter grain ought to belong to me" and I said "If I buy the farm I will have to have the winter grain," and he said "We will go to Newton this afternoon and get the agreement drawn up this afternoon." I was up to Johnsonburg with the milk.

Q. Were you in the hotel there?

A. No, sir, I was out on the street.

Q. Did you go that day to Newton?

A. We did.

Q. Did you say anything about using a lantern; that you could use a lantern as well as the gas plant when you needed one on that place?

A. No, sir.

Q. Didn't say anything of that kind?

A. No, sir; I didn't think I had to use a lantern.

Q. Did you say anything to anybody that you paid too much for the property?

A. No, sir.

Q. Did you ever hear your father say—

Objected to.

A. I wanted a little farm so I could do the work myself.

Q. Did you tell Mr. Cooper your father was going to help buy the farm?

A. No, sir.

Q. Was your father to help in buying the farm?

Objected to.

THE COURT: What difference does that make?

CHARLES ROBERTSON OSMUN, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. Where do you live?

A. Hackettstown.

Q. You are one of the firm of E. M. Osmun and Son?

A. Yes.

Q. What is your business?

A. Plumber.

Q. How long have you been in that business?

A. About sixteen years.

Q. Do you put in acetylene gas plants as part of your business?

A. Yes.

Q. Did you put in that plant on Cooper's farm at Allamuchy?

A. Yes, sir.

Q. Is that the farm he bought of the Applegate estate?

A. I guess it is the old place; I could not say about that.

Q. How long ago did you put it in?

A. I think it has been in about two years or two and a half.

Q. Who got you to put it in?

A. Mr. Cooper.

Q. The defendant here?

A. Yes, sir.

Q. Tell this jury how it was exactly.

A. Why, the generator—the gas machine was set in the barn in a room by itself, just made roughly there.

Q. There was a room?

A. Yes.

Q. For that purpose?

A. Yes, and these pipes went through the barn in the necessary way and from there on through the ground and into the house.

Q. How deep in the ground were the pipes?

A. I couldn't say about that. Roughly, about eighteen inches, I would think, or maybe two feet.

Q. Is it necessary to have it go below the frost line?

A. No, sir.

Q. How was it connected in the house?

A. It ran inside the house with a union and up through the beams, under the floor.

Q. Was it under the floor?

A. Yes.

Q. How were the pipes attached to the house?

A. They were put in slits; the beams notched out about the width of the pipe and let in there under the boards.

Q. Under the floor boards?

A. Yes, sir.

Q. On which floor?

A. The second and third.

Q. In both instances were they so laid?

A. Yes.

Q. Then how did the pipes come down for the burners?

A. Dropped through the ceiling the same as these (indicating).

Q. If you were in the rooms on the first floor could you see the pipes overhead, or only the pipe coming down through?

A. No.

Q. You couldn't see that, eh?

A. No.
Q. What was the value of the plant in the place?
A. The whole business?
Q. Yes.

MR. ROSEBERRY: I object if he is giving the value when he put it in.

MR. MORROW: I will prove its value when he took it out.

THE COURT: One element is what it was worth when it was put in.

MR. MORROW: The Supreme Court said that what things cost was some evidence of their value.

MR. ROSEBERRY: He put it in, and the question is what it was worth when it was taken out.

THE COURT: The element is what it cost when put in and his opinion as to what it was worth when taken out, and his opinion as to the depreciation; and the jury can say whether these things are correct or not and they can draw the conclusion.

Objection overruled.

Q. What was its value or cost when it was put in?
A. I presume about $225., something like that.
Q. Did you take it out?
A. Yes, sir.
Q. When did you do that?
A. Oh, I think the latter part of March a year ago.
Q. Last March?
A. Yes.
Q. At whose request did you take it out?
A. Mr. Cooper's.
Q. State what you did about taking it out?

A. We went in the barn and uncoupled the machine, it was put together with unions.

Q. What was the machine coupled to?

A. To the piping.

Q. To what pipe?

A. The piping that ran to the barn.

Q. Where did that piping go to?

A. Out through the ground to the house.

Q. What was it connected with in the house?

A. Fixtures.

Q. For what purpose?

A. Lighting the rooms.

Q. The machine was coupled up to the fixtures in the house in that way?

A. Yes.

Q. And you loosened these couplings?

A. Yes.

Q. And what did you do with the fixtures in the house?

A. Unscrewed them and laid them down in the rooms where they came from.

Q. State whether or not you took the fixtures loose from the house.

A. The fixtures were all taken out.

Q. Who directed you what to do with them when you took them out?

A. Mr. Cooper.

Q. What were his directions?

A. To take out the piping and the fixtures.

Q. Did he use that expression, "the piping and the fixtures?"

A. Well, it was to remove the gas plant.

Q. Take out the whole gas plant?

A. Yes.

Q. What was the value of the plant at the time you took it out as compared with what it was when you put it in?

A. The plant was in good shape.

Q. Will you state whether or not it had deteriorated any?

A. It naturally would in that length of time.

Q. About what percentage?

A. Oh, well, I never had occasion to form any opinion on those things. I never had occasion to—

Q. State from your observation of the apparent condition of this plant how much, if any, it had deteriorated, actual depreciation.

A. There wouldn't be much; there might be just a little on the machine and burners and like that.

Q. Who paid you for taking it out?

A. Mr. Cooper.

CROSS EXAMINATION by Mr. Roseberry:

Q. Mr. Cooper employed you?

A. Yes.

Q. To put it in?

A. Yes.

Q. What did he tell you when you put it in?

Objected to.

THE COURT: It doesn't make any difference what he told him, it is what he did.

Q. What did the defendant tell you about putting that plant in there, so that it would be personal property and remain personal property?

Objected to.

THE COURT: No, you want to substitute this man's opinion for the Jury's.

MR. ROSEBERRY: I want to take an exception, that is all.

Exception allowed to defendant and the same is sealed accordingly.

Judge.

Q. When you put in the gas plant, what is called the generator, what was that set on?

A. Just a few boards.

Q. It was not fastened to the floor in any way?

A. No, we generally set it on the frame that the machine comes in.

Q. It was not fastened in any way to the sides or to the floor?

A. Oh, no.

Q. And there was a union connecting it with the pipe?

A. Yes, on both sides of the machine.

Q. How was it removed?

A. With a wrench.

Q. Does that injure the plant any?

Objected to.

Objection sustained.

Q. It was taken down then, to the house. Now, when you got to the house, was it fastened to anything permanently?

Objected to.

THE COURT: Leave out the word "permanently."

Q. Was it fastened to anything, or how was it fastened?

A. It just simply laid there on the beams.

Q. How was the pipe connected?

A. Screw joints.

Q. Could these joints be removed without damaging the pipe any?

A. Oh, yes.

Q. Could it be removed without damaging the building any?

A. No more than it was when it was put in.

Q. Was the building arranged when you put it in so it could be removed?

A. Yes.

Q. Under whose instructions did you do that?

A. Mr. Cooper's.

Q. Direct instructions?

A. Yes.

Q. How did you put it in the building?

A. We just simply notched the beams and laid the pipe in.

Q. And how was this floor laid in reference to these? Loose or fastened?

A. These was all loose.

Q. What was it left loose for?

A. I presume to be taken out sometime.

Q. Did you do that under Mr. Cooper's instructions?

A. Yes, I did.

Q. When you took this out was there any damage done to the building?

Objected to.

Objection sustained.

To which ruling of the Court, defendant's counsel prays an exception and the same is allowed and sealed accordingly.

Judge.

Q. Did you notice any injury done to any of the real estate or buildings when you removed this plant?

Objected to.

Objection sustained.

Exception allowed to defendant and the same is sealed accordingly.

Judge.

Q. Did you take up or remove anything that you had not taken up when you put it in?

A. No.

Q. Was everything placed back as it was, outside of the pipe or gas machine, as it was before you took it out?

A. Yes, sir.

Q. How were the boards left when you put it in?

A. They wasn't nailed, only here and there.

Q. You mean they were loose?

A. Yes.

Q. And they were loose when you took it out?

A. Yes.

Q. And they were loose—You put them back, did you?

A. Yes.

RE-DIRECT EXAMINATION by Mr. Morrow:

Q. What was done with the holes in the ceiling through which the pipes protruded?

A. Nothing done with them, that is, where the pipes come through the ceiling.

RE-CROSS EXAMINATION:

Q. How large was that hole where it went through the ceiling?

A. About an inch in diameter.

JAMES C. GIBBS, the plaintiff, recalled.

DIRECT EXAMINATION by Mr. Morrow:

Q. When you went to buy the farm and looked it over did you notice any hay fork arrangement in the barn?

A. Yes.

Q. Describe that to the jury; describe what you saw there.

A. Well, the cow shed as he called it, where the hay was put, there was a hay fork and coil of ropes in the barn at the time I agreed to take the farm.

Q. How was that hay fork arranged in the barn, about tracks and so on?

A. The track was hooked to the rafters with iron hooks and a car ran up on the track and the fork was fast to the car.

Q. State to the jury what kind of a door there was opening out of the mow to outdoors where they drawed the hay.

A. They drawed the hay up from the end of the building; there was two doors.

Q. What kind of doors, ordinary doors or large doors?

A. Well, they were just doors large enough to take a fork full of hay in.

Q. What kind of fork full was it? Such a fork as you would take in your hands?

A. No.

Q. What kind was it?

A. A fork we used horses to, to take a third of a load of hay.

BY THE COURT:

Q. For unloading hay by means of the horses?

A. Yes, sir.

FURTHER DIRECT EXAMINATION:

Q. Was that taken out before the first of April?
A. Yes.

BY THE COURT:

Q. Did you see this hay fork and arrangement when you said you went around and he showed you the improvements?
A. I did, yes, sir.
Q. Is that one of the things that was shown you?
A. Yes, sir.

FURTHER DIRECT EXAMINATION:

Q. State whether there were any ropes in connection with this hay fork, and pulleys?
A. There was.
Q. What were they used for?
A. For the pulling of the hay in the mow.

CROSS EXAMINATION by Mr. Roseberry:

Q. Did you have one on the farm where you lived?
A. In the barn, where I live now?
Q. No, on the farm that you sold.
A. Yes, sir, there was a hay fork there.
Q. Did you take it away?
A. No sir; it is there yet.
Q. Don't you know it is customary for tenants of barns to put hay forks in the barns and they are always removable?
A. I do not think so.
Q. This was hooked to the rafters?
A. Yes.
Q. So you could take it down by unhooking?
A. The track, yes, sir.
Q. And the fork too; this was an entirely separate arrangement fastened to a rope was it?

A. Well, when I seen the fork it was fastened to the car.

Q. So if they took down the track they would take down the car and everything, simply by unhooking it?

A. Yes.

Q. Do you know whether the track was taken out?

A. That I don't know.

Q. You don't know anything about that?

A. No, sir.

Q. That is not anything that you allege as a matter of damages?

A. I do know the hay fork was taken out.

Q. It was all that was taken out.

A. Well, the ropes and pulleys.

Q. The rope could be pulled right through the pulleys?

A. Yes.

Q. And the pulleys were fastened with a hook too, weren't they?

A. I don't know how they was fastened; I didn't give them a thought.

Q. Did they screw on?

A. I could not tell you that. They were fastened there; I saw that.

Q. They were on a hook, were they not?

A. I don't know whether they would unhook or not; I didn't try them.

Q. How did you know the pulleys and rope and hay fork were gone, if you didn't see it?

A. Everyone seen it up to the sale.

Q. That is all you know about it, what you heard, is it?

A. Yes, I saw it in there, and it was down, too.

Q. Did you take your fork and your rope when you moved away from your home?

A. No, sir, I did not.

Objected to.

THE COURT: He said he did not.

WITNESS: It is in the barn there yet, and the tenant will tell you so. He is here today.

Q. Who owned that farm where you lived? Your father owned it, didn't he?

A. Yes, sir.

SIMON GRATTON, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. State where you lived last year?

A. Over to Long Bridge.

Q. On what farm?

A. Mr. Cooper's.

Q. You were there on it as tenant or hired man?

A. Hired man.

Q. You had, yourself, no interest in the crops there?

A. No, sir.

Q. State what you know or did about taking out the pipe from the gas plant in the stable running to the house.

A. I dug the holes and unscrewed the pipe and took the horses and pulled them out.

Q. Pulled what out?

A. The pipe.

Q. How deep were they in the ground?

A. About like that (illustrating).

BY THE COURT:

Q. How many feet?

A. About a foot and a half.

FURTHER DIRECT EXAMINATION:

Q. Who told you to do that?

A. Mr. Cooper.

Q. When did you do it?

A. About the latter part of March.

Q. Do you know anything about taking out the rest of the light plant?

A. I had nothing to do with the rest of it.

Q. What became of the generator and fixtures and so on?

A. It was left there till after the sale and then we took it up to Johnsonburg to the hotel.

Q. To what place?

A. To his own place.

Q. Mr. Cooper's place?

A. Yes.

Q. Were you at the sale?

A. Yes.

Q. Was it set up and sold?

A. Yes.

Q. Who bought it in?

A. It was knocked off to Mr. Will Durling.

Q. And then taken to Cooper's house?

A. He took it up afterwards.

Q. Who told you to take it up?

A. I did not take it up.

Q. Do you know who did take it?

A. Mr. Cooper took it himself.

Q. What do you know about the hay fork and ropes and pulleys that belonged to the hay fork in the stable?

A. They were there and sold at the sale.

Q. Who bought them?

A. I don't know who it was knocked off to.

Q. Do you know whether the track was sold?

A. It was not sold; it was left there in the barn.

Q. Did you help fill the ice house there that winter?

A. The winter after he bought it?

Q. Yes.

A. I helped a little bit, one forenoon.

Q. Who did you help?

A. Mr. Gibbs.

Q. Who filled the ice house?

A. Mr. Gibbs.

Q. What became of the ice?

A. What was left there when I moved away was in the house yet.

Q. When did you leave?

A. The first of April, and the ice was in there then yet.

Q. Did you see him hauling manure, too?

A. Yes, sir, I was right there.

CROSS EXAMINATION by Mr. Roseberry:

Q. Was this a public sale that Mr. Cooper had when this gas plant was sold?

A. Yes.

Q. Were there many there?

A. Quite a crowd there.

Q. How much did that gas plant bring?

A. I couldn't say.

Q. Don't you remember?

A. No, sir.

JOSEPH KOWALICK, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. Do you know the Cooper farm, that he sold to Mr. ———?

A. Yes, ma'am.

Q. Did you see anything done about removing this gas light plant?

A. No. I seen it in there, that is all.

Q. When did you see it there?

A. I seen it when we were hauling manure.

Q. Was it in operation then?

A. Yes.

Q. State how the house was lighted at that time.

A. I ain't been in the house.

Q. At that time.

A. I ain't been in the house any time.

Q. Was there any light in the barn?

A. Yes.

Q. How was it lighted?

A. It was lighted all right.

Q. By this gas plant? What was it lighted by? Lights from this machine?

A. Yes, sir.

Q. Did you see Mr. Gibbs draw out manure there?

A. Yes, sir.

Q. Did you hear Mr. Cooper say anything about hauling out manure?

A. Yes.

Q. What did he say to him?

A. We went to the hotel and Mr. Gibbs asked Mr. Cooper if he could haul out the manure and he said, "Yes, go ahead." and haul out any time he wants to.

Q. Were you at the sale Cooper had?

A. Yes.

Q. Did you see these things sold, the gas light plant?

A. Yes.

Q. Do you know what became of it afterwards?

A. No.

CROSS EXAMINATION by Mr. Roseberry:

Q. Do you remember how much that gas plant brought?

A. Yes.

Q. How much?

A. $37.50.

Q. Was it set up at public sale?

A. Yes.

Q. Everybody was invited to buy?

A. Yes.

Q. Do you remember who bought it?

A. Yes.

Q. Who?

A. W. A. Durling.

RE-DIRECT EXAMINATION by Mr. Morrow:

Q. Who took it away?
A. Mr. Cooper, I think.
Q. Where did he take it to?
A. It is in Johnsonburg now.
Q. What place in Johnsonburg?
A. In the hotel.

BY MR. ROSEBERRY:

Q. Is it put in his hotel?
A. Yes, sir.

I. J. REEDER, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. Did you ever see this gas plant in the Cooper buildings?
A. Yes, sir.
Q. When?
A. Sometime the latter part of March.
Q. Last March?
A. Sometime last winter I was in the buildings there. I don't know just what time it was.
Q. In the day time or night time?
A. In the day time.
Q. You did not see any lights burning?
A. No, sir.
Q. Do you know who filled the ice house last winter?
A. Mr. Gibbs.
Q. Did you help do it?
A. Yes, sir.

NO CROSS EXAMINATION.

JOHN ROE, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. Where do you live?
A. I am boarding at Allamuchy.
Q. Do you know Watson Cooper and James C. Gibbs?
A. Yes.
Q. Did you hear Mr. Cooper say anything about Mr. Gibbs buying the grain or taking the grain on that farm?
A. Well, I heard them having a conversation in there one day.
Q. What did you hear?
A. Well, Mr. Cooper wanted to—

MR. ROSEBERRY: When was this?

Q. When was this?
A. I can't tell.
Q. Was it after Gibbs had bought the farm?
A. After he had bought the farm?
Q. How long before the first of April?
A. Oh, I should think it was a month; I don't know.
Q. Very well. Tell what you heard.
A. I heard Mr. Cooper ask him to buy the harvest, and he says—
Q. Who says?
A. Mr. Gibbs says that he didn't have to buy it, or something.
Q. What else?
A. I think Mr. Cooper says, "You will have to buy it or else I will take the gas plant out." I think that is about all there was.

CROSS EXAMINATION by Mr. Roseberry:

Q. Where were you?
A. I was in the reading room.

Q. Where were they?
A. In the bar room.
Q. A door between?
A. Yes.
Q. Was the door open or closed?
A. I think it was open.
Q. Was there anybody else there?
A. Not that I know of.
Q. Nobody else there?
A. Not that I remember.
Q. Do you know what he asked for the harvest?
A. No.
Q. Then he said if he didn't buy the harvest he would take out the gas plant?
A. Yes.
Q. Are you certain he used that word?
A. Well, yes; that is about the conversation, I should think.
Q. When was your attention called to this?
A. Why, when I was subpoenaed.
Q. Who did you tell about it?
A. I didn't tell anybody about it as I know of.
Q. The first thing you knew you got the subpoena?
A. Yes, I suppose Mr. Gibbs knowed I was in there.
Q. Was there any other conversation between Mr. Gibbs and Mr. Cooper?
A. Oh, sure. I couldn't remember it at all.
Q. You do not remember all the conversation that took place between them?
A. I didn't hear anything more.
Q. Did you hear anything more about the gas plant?
A. No.
Q. Or anything more about the wheat?
A. No.
Q. How long were they talking there together?
A. Oh, likely five minutes, I suppose about that.

SAMUEL UPDYKE, sworn for the Plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. Where do you live?
A. Allamuchy.
Q. Up in the Quaker settlement?
A. Yes.
Q. Near William Wilson?
A. Right close by.
Q. You are not a Quaker yourself?
A. I am supposed to be mixed with them.
Q. Do you know this farm that Watts Cooper had to sell to Mr. Gibbs?
A. Yes, sir.
Q. Did you go to the house and barn last spring some time?
A. Went to the barn different times.
Q. What did you see there about the gas light plant?
A. I saw the light was in there.
Q. Was it in there then when you first went?
A. Yes, sir.
Q. Did you see them in the house?
A. I never went in the house, not while Mr. Cooper lived there.
Q. Were you there after the gas plant had been taken out?
A. Yes, sir.
Q. Tell the jury what you saw?
A. Well I saw where the gas plant had been.
Q. Where was it?
A. Through the ceilings, holes—

MR. ROSEBERRY: I object to it. Let him ask what he saw.

WITNESS: That is what he asked me.

Q. What did you see?

A. I saw holes where the pipes had come through for the lights, through each room, it had a hole in and upstairs—well the first and second floor above had holes in, or the boards taken up where they had been taken out, and the pipe let through.

Q. What was the condition of the boards?

A. The edges were split from the board where they were pried apart; it was loose, and the boards above was split, up on the upper floor.

Q. Did you see any place where nails had been?

A. I saw a place or two where a pipe had come up alongside the joist, and had a nail drove in to bend around the pipe and hold it to the joist.

CROSS EXAMINATION by Mr. Roseberry:

Q. Who got you to go there?

A. I have been there different times.

Q. Who got you to go there this time?

A. I guess I was there one Sunday—

Q. Who got you to go there?

A. No one, I went deliberately myself.

Q. Was that the time you were looking around to see what you could see?

A. Yes, the boy bought the place and I was looking through it.

MR. MORROW: Your wife's son?

WITNESS: Yes, sir.

Q. That is the reason you went there. And you saw the hole through the ceiling?

A. Yes, sir.

Q. And you saw one board split?

A. Yes.

Q. Any others?

A. I guess there was two, I don't know.

Q. Where was that?

A. One was on the second floor and I think on the upper floor, in the garret.

Q. Was the board loose?

A. Loose, raised up, the tongue was broken.

Q. What do you mean by that?

A. They are generally plowed and grooved and they split off when they raise them up.

Q. You mean when it was originally put in it was broken?

A. It was broken when it was taken out.

Q. It was broken sometime—

A. Certainly the carpenter didn't break it when he put it in.

Q. This board was taken up when it was put in originally and then it was put back, and then it was taken out again and the pipe taken up. Now can you tell whether that groove or tongue was broken when it was put in or when it was taken out?

A. No, sir.

THE COURT: Oh, he can't do that, it is only what he saw.

Q. How long had the house been vacant?

A. I think Mr. Gratton got it the first of April.

Q. When you went to look?

A. Oh probably a week, maybe two. I don't know just the time.

Q. You didn't see anything else there?

A. Yes, there was a place there where there had been a heater pipe through, and it looked to me like a ring had been there; that was taken out and gone.

Q. Heater pipe in the cellar?

A. No, from the room below I suppose, from the stove.

Q. It was taken out before Mr. Cooper bought it?

A. I don't know when it was taken out; I don't know anything about that. You asked what I saw and I am telling you as near as I can.

Q. You saw nothing else?
A. I think not.

BY MR. MORROW:

Q. What is the name of the son of your wife?
A. Alfred Buckley.

ALFRED BUCKLEY, sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Morrow:

Q. You are the stepson of Mr. Updyke?
A. Yes.
Q. Your mother is his wife now?
A. Yes, sir.
Q. Were you in this house sometime after the first of April?
A. Yes, sir.
Q. What did you see about the place where the pipes had been?
A. I noticed nothing except the holes being in there, and also that the floor boards had been taken up but practically no damage done.
Q. Did you see where the pipe had come from the barn to the house?
A. Oh yes, there was a trench dug for the pipe to come from the barn to the house.
Q. Did you see the room in the stable where the generator had been standing?
A. Yes, sir, that room was still there.
Q. That is still there?
A. Yes, sir.

CROSS EXAMINATION by Mr. Roseberry:

Q. What kind of a room was it?
A. A room constructed out of plowed and grooved boards, constructed especially for that purpose.

Q. Did you ever see the generator in there?

A. No, sir.

Q. Did you say there was a gutter where the pipe had been?

A. At what time?

Q. When you looked at it?

A. There was at the time when Mr. Gratton was taking the pipe out, and I was there when he was taking it out.

Q. You saw it at that time?

A. Yes.

Q. You say there was no damage done to the house in removing the pipe?

A. I didn't say so.

Q. Didn't you say there was no damage done?

A. I said there was no damage done to the boards upstairs, that is the second and third floor.

Q. You bought that property?

A. Yes, sir.

Q. And paid six thousand dollars for it?

A. Yes, sir.

MR. MORROW: Does that make any difference?

The plaintiff offers in evidence the handbill, and rests. (Handbill marked Exhibit P-2.)

PLAINTIFF RESTS.

WATSON C. COOPER, the defendant, sworn in his own behalf.

DIRECT EXAMINATION by Mr. Roseberry:

Q. You are the defendant in this case?
A. Yes, sir.
Q. You owned this farm in controversy?
A. Yes.
Q. When did you first see the plaintiff about the farm, or he see you?
A. During the summer of 1911.
Q. Did he come to your place about the farm?
A. Yes, he came there and asked me if I would sell my farm; he said he understood I wanted to sell my farm.
Q. Tell us what took place.
A. I told him he understood wrong; I didn't want to sell the farm.
Q. Go on and tell.

MR. MORROW: Here is an agreement, and nothing is better settled in all the world than that negotiations are included by the agreement.

Q. He came to you and saw you about buying the farm?
A. Yes.
Q. Will you tell us about the terms of the purchase?

THE COURT: The terms are given in the written agreement, Exhibit P-1.

Q. Was anything said by you to him or him to you about the gas plant?
A. The first time—

MR. MORROW: Objected to.

THE COURT: Is that in contradiction of the plain-

tiff's statement that he looked over the farm and showed him the improvements, showed the gas plant was there.

MR. MORROW: I do not object to his disputing what the plaintiff said, but he must call his attention to that and ask him about that.

Q. Mr. Cooper, the plaintiff says that you showed him, when he came there, the gas plant, and told him that was one of the improvements for fixtures on the farm, and a part of it. What have you to say about that? Tell us what did take place?

A. He went out and looked over the farm and then it came up—I had agreed on terms to rent the farm.

THE COURT: No, no.

Q. Tell us about that. What took place about looking over this gas plant before or after, either one or both?

A. Up to Johnsonburg I told him that the gas machine and what went with it—

Objected to.

Q. Where did this take place?

A. Up at the hotel at Johnsonburg.

Q. At your place?

A. Yes.

MR. MORROW: I object to it as contradicting this agreement.

THE COURT: Let him get out first what you do not object to.

BY THE COURT:

Q. What did you say, if anything, to him in taking him over the place and showing him the gas plant? Give that and nothing else; answer that.

A. I told him the gas plant was not part of the farm,

that it was my own personal property and would not go with the farm and he must pay for that separately.

Q. Do you deny that you showed him the improvements and at that time pointed out to him the gas plant?

A. I did not go through or show him anything.

Q. You deny that?

A. I do.

Q. And you say that what the plaintiff said on that point is not true, do you?

A. Yes, sir.

FURTHER DIRECT EXAMINATION:

Q. Where did that conversation at your hotel take place?

A. When he came and asked me to sell him the farm?

Q. Who was present?

A. My wife.

Q. Just tell what did take place in the presence of him?

A. I told him I didn't want to sell the farm but I would call my wife in and ask what she thought about it, and I did call her in, and she came in and right in his presence told me I could do as I thought best. I said "There is no use of talking this over. You have already told me you don't think it is worth as much as I ask for it, and if you want to buy this farm you must buy it on my terms and my conditions." And he said, "What are those conditions?" And I said, "I will sell you that farm for six thousand dollars; I will reserve the growing winter wheat." He said, "Will you let the manure go with the farm?" I said, "Yes." He said, "Will you let the light machine go with the farm?" And I said, "No, sir, that is my personal property and can't go with the farm." And he said, "All right, we will go down and look at the farm." Then we went down and looked at the farm and I said, "If you want to look at the farm, go out and look at it. I will stay at the barn." Mr. Gratton was there at the barn, he is the man at the farm. He went out and came

back and he said, "Well, won't you do any better on the farm?" And I said, "No, sir." And he said, "Won't you let the light machine go with the farm?" And I said, "No, that is my personal property and I won't let that go with the farm." And he said, "Will you let the manure go with it?" And I said "Yes, sir." And he said "Will you let me have the winter grain?" And I said, "If you will pay what it cost to do it you can have that; otherwise I will reserve it."

Q. Did Mr. Gratton hear that?

A. Yes, sir.

Q. Then what did you do?

A. Then we went home to Johnsonburg and he said, "I will hitch up and take you to Newton"—we were going to Levi Morris—and he said, "I will take you to Newton," and after dinner he came up and instead of taking me, I had to get a livery horse and go take him, as my team had gone to Hackettstown—they go there every Monday—and I took a livery horse that was there and took him to Newton, and when we got there his father-in-law and wife had been thrown out of a wagon and injured very bad, and she was a cousin of mine and I wanted to help get them in the house, and whoever was there seemed to be excited, and I was too, and took them into the house of Mrs. Sutton, and I sent them home in an automobile. Then we went to Mr. Morris' office and had this agreement executed.

Q. How about the winter grain?

A. I don't think that they put that in. I supposed it was in.

Q. Did you see Mr. Gibbs about it afterwards, or he see you?

A. Well, we agreed then that he would think it over. He said "I will think it over and let you know."

Q. Think what over?

A. About buying the wheat. I told him I would reserve it but he could buy it if he would pay me what it cost to seed it, and he said he would think it over and let me know, and he came in and asked to draw manure and

I said "All right," and he asked if he could fill the ice house and I told him all right, to go ahead.

Q. Did you tell him you would throw what manure there was out on the heap for him?

A. Yes, sir; we would throw it out in the heap and he could do what he pleased with it, and he said, "All right."

Q. And he went on and filled the ice house?

A. Yes.

Q. Did you say any more about the wheat?

A. Yes, he came in one morning and got a bottle of whiskey and then is when the conversation took place about his telling me he didn't have to buy the wheat or the machine either one.

Q. What did he say about that?

A. After he done his little trade I said to him, "What are you going to do about the wheot?" And he said, "I have took advice and I don't have to buy that or the gas machine either one."

Q. Did you ever show Mr. Gibbs this gas machine as part of the property and offer it as an improvement on the property?

THE COURT: He said not.

A. No, sir.

Q. Was that the last conversation you had with him?

A. Yes, sir, that is the last one.

Q. Did he say anything about the price?

A. No. His father came and asked if I wouldn't throw off five hundred dollars.

MR. MORROW: I object to that. That was no answer to the question and I ask it to be stricken out on the ground it was not responsive.

THE COURT: It does not lie in your power to object on the ground it is not responsive.

MR. MORROW: He had no right to say that.

THE COURT: You cannot object to it because it is not responsive; you cannot object to it on that ground. You can object to it on many other grounds, but not on the ground it is not responsive.

MR. MORROW: He made the answer without any opportunity to object to it. I will object to it because it is irrelevant and immaterial what his father said. The reason I did not object to the statement before was because he gave the answer—

THE COURT: It may be stricken out on that ground.

Q. With whom did Mr. Gibbs live at that time?
A. On his father's farm.

THE COURT: What is the use of taking time about that?

Q. In telling you that what did Mr. Gibbs say to you? Did Mr. Gibbs say who he represented?

THE COURT: You cannot prove agency by the agent himself.

A. He said his father was going to live with him after he bought the farm.
Q. Did his father come down here with him when the deed was to be delivered?
A. Yes.
Q. He said his father was going to assist him in buying the farm?
A. Yes.

MR. ROSEBERRY: I think it is competent to show that.

THE COURT: What is the reason? I will overrule that.

Q. What did Mr. Gibbs, Senior, say in reference to this throwing off of five hundred dollars? Of about his representing his son?

Objected to.

THE COURT: You cannot prove agency by the agent himself, and it is objectionable on that ground.

MR. ROSEBERRY: I think we can show it on account of their very intimate relation; by his representing him in other capacities, and the inference is he was his agent, and I think it is competent.

THE COURT: This question is overruled on the ground that you cannot prove agency by the declaration of the agent himself.

Defendant's counsel pray an exception to the above ruling of the court, and the same is allowed and is sealed accordingly.

Judge.

Q. What can you say, Mr. Cooper, about putting in this machine or gas plant?

A. Well, when I put it in—

MR. MORROW: I object to such a general question as that. How he put it in or when he put it in—I do not object to that, but that other proposition is very wide. He might say a lot of things.

THE COURT: It is a little too broad.

(Last question read.)

MR. ROSEBERRY: Is that overruled?

THE COURT: It is a little broad. It is overruled.

To which ruling of the court defendant's counsel pray an exception.

Exception allowed. Let it be sealed and it is sealed accordingly.

Judge.

Q. Mr. Cooper, you had the gas machine put in?
A. Yes, sir.
Q. Whom did you employ to put it in?
A. Charles Osmun.

THE COURT: The witness who testified here?

MR. ROSEBERRY: Yes, sir.

Q. Who gave him instructions to put it in?
A. I did.

BY THE COURT:

Q. Didn't he put it in exactly as he has testified to it? If there is any difference will you state it? You heard his testimony that he put it in under instructions?
A. Yes.
Q. And didn't he put it in substantially as he testified to? If he did not tell us where there was any difference?
A. Yes.

BY MR. ROSEBERRY:

Q. When you put that in did you state your intentions of what kind of property it should be to the witness that has been sworn, to the plumber?
A. Yes, sir.
Q. Can you tell us what that was?
Objected to.

THE COURT: That will not bind the plaintiff.

MR. ROSEBERRY: It is a matter of intention. Does the Court overrule his instructions to the plumber as to putting it in so it would be personal property?

THE COURT: Yes.

To which ruling of the Court defendant's counsel pray an exception.

Exception allowed. Let it be sealed and it is sealed accordingly.

Judge.

Q. How was that gas machine set in the barn?
A. Just set in there loose.
Q. Tell us how loose.

THE COURT: Haven't the witnesses told you about it? If there is any difference from what they said tell us about that.

MR. ROSEBERRY: I want him to tell how it sat on the floor.

THE COURT: Two or three witnesses told us that.

MR. ROSEBERRY: It sat on a block.

THE WITNESS: Yes, it sat on two blocks. The machine weighed about two hundred pounds and it set on two blocks.

Q. How was it in the house?
A. It was not fast at all; it was not fast to anything.
Q. Were the pipes loose?
A. All loose.
Q. When was that taken out—was there any injury done to the building?
A. No, sir.

Q. How was it put in? Tell us how it was put in.

A. Well it ran with an upright pipe from the cellar up to the garret.

Q. How did you get down between the flooring and the ceiling.

A. When they put it in they took up the flooring, and when they put it down they left places over the light, in cases we wanted to take the piping out without tearing up the floor. Those places about the lights overhead were all left loose so that—

MR. MORROW: I object to the statement "so that."

THE COURT: Tell us the facts.

WITNESS: And those boards were left loose when we put it in.

Q. For what purpose?

Objected to.

Objection sustained.

To which ruling of the Court defendant's counsel pray an exception.

Exception allowed and sealed accordingly.

Judge.

Q. Were those boards left loose designedly?
A. Yes, sir.
Q. By you?
A Yes, sir.
Q. For what purpose did you do that?

Objected to as immaterial.
Objection sustained.

To which ruling of the Court defendant's counsel pray an exception.

Exception allowed and sealed accordingly.

Judge.

Q. Had it been nailed down before, had the floor been nailed primarily before you put it in the gas plant or pipes?

A. Yes, before I put the light in, originally.

Q. After you put the lights in how was the flooring left?

A. Left loose.

Q. Not nailed?

A. No, sir.

Q. When you took out the pipes how did you take them out?

A. Just unscrewed them?

Q. No. What did you do about the loose boards?

A. Lifted up the loose boards, unscrewed the pipes, and slipped them out each way.

Q. Took up no other part of the flooring?

A. No, sir.

Q. About the holes in the ceiling, how many holes were there through the ceiling?

A. One in each room.

Q. How large holes were they?

A. From a half inch to an inch; it was half inch pipe.

Q. How many rooms were there?

A. There were seven.

Q. Did each one of them have this hole in?

A. Yes.

Q. This gas plant, after it was taken up, what was done with it?

A. I took it up to Johnsonburg.

THE COURT: Is there any dispute about that?

Q. It was put up for sale?

A. Yes, sir.

THE COURT: And brought thirty-seven dollars.

Q. Were there many in attendance?
A. Yes, a large crowd.
Q. Did you try to sell it?
A. Yes.
Q. What did it bring?
A. It was bid up to thirty-nine dollars.
Q. What was done with it afterward?
A. It was not sold, and I—
Q. What was the value of that when you took it up? What was its actual value, marketable value, in your judgment?
A. I offered to sell it to Mr. Gibbs for a hundred dollars. I stayed at that when we were making the bargain for the farm, if he wanted that he could have it for a hundred dollars.
Q. What did he say?
A. He said it was pretty expensive and he thought he could get along with a lantern, but he would see and let me know.
Q. What can you say about this fork?
A. Hay fork?
Q. Yes.
A. I sold that the same as any other personal property.
Q. Well, he said—what did you take down with that fork?
A. The fork and the car and pulleys and rope.
Q. Were they or were they not detachable from the barn?
A. Oh, they are loose.
Q. Not affixed to the other part at all?
A. No.
Q. How about the track?
A. Well the track I didn't bother with; I left that in the barn.

Q. These two doors they speak of, what about them.
A. They just opened out.
Q. What about the two doors?
A. We had two large doors that opened outward.
Q. They are called the barn doors?
A. They are part of the barn, yes.
Q. They had nothing to do with the fork?
A. Nothing.
Q. Do you know when Mr. Gibbs advertised his property for sale?
A. Well he had two vendues last spring.
Q. When was the first?
A. The first one was about the middle of March.
Q. When was the other?
A. The fourth of April.
Q. You had a vendue?
A. Yes, sir.
Q. When did you have your vendue?
A. The 18th of March.
Q. Was his first vendue before yours?
A. Yes.
Q. Now after the making of this contract you came to Belvidere, did you not, on the first of April?
A. Yes, sir.
Q. I am showing you a deed from Watson C. Cooper and wife to James C. Gibbs, dated April 1st, 1912. Is that the deed that you had prepared?
A. Yes, sir.

MR. ROSEBERRY: You will acknowledge the signature of Mr. Angle there, won't you, as a witness to this deed?

MR. MORROW: Yes.

MR. ROSEBERRY: The signature of George A. Anble as subscribing witness is acknowledged by the plaintiff.

Q. What was that torn off there at the end of that signature, Watson C. Cooper, and H. Irene Cooper, what was that taken off for?

A. He didn't take the deed and I went home and thought I ought to take the seals off.

Q. Is that the deed you tendered to Judge Morrow?

A. Yes, sir.

(The deed referred to is offered in evidence and marked Exhibit D-1).

Q. What was the ground of their refusal to take the deed?

A. They refused to take the deed on account I was not in a position to deliver them the light plant that they claimed they had bought.

Q. Was there any other objection?

A. No other objection.

Q. Did you show this fork as an improvement on this property to Mr. Gibbs?

A. No, sir.

CROSS EXAMINATION by Mr. Morrow:

Q. You know Clint Gibbs, the father of this boy?

A. Yes, sir.

Q. Did you see him at your hotel the night you came down from Newton after you made the contract?

A. No, sir, not in the hotel.

Q. Well, somewhere there.

A. I stopped in his house.

Q. Didn't you tell him then, "Look at the improvements, the light plant and silo, and so on?"

A. I didn't speak about the farm at all.

Q. Didn't you say that that night?

A. No, sir.

Q. What is this generator made of?

A. The gas generator?

Q. Yes.

A. It is a steel tank.

Q. And how is the gas carried from the steel tank to the house?

A. By pipes.

Q. And a big iron pipe goes out of the steel tank?

A. Well I think it is inch. It comes out and then connects with a smaller pipe.

Q. Is that inch pipe fastened to the steel tank?

A. Yes, a faucet, that is all.

Q. It is screwed in it, isn't it?

A. Well, connected with a union.

Q. And the union screws it fast?

A. Yes.

Q. How big is the pipe till it gets to the house?

A. I think it is half inch pipe.

Q. And that pipe all the way is fastened together with unions, with couplings, isn't it?

A. Yes.

Q. And it goes into the house and goes under the floor and comes up into the rooms and goes up on the second floor, over the ceiling, and then it drops down through the ceiling to the light below?

A. Yes.

Q. And all that pipe is fastened together from one end to the other?

A. Yes, sir.

Q. It was not loose was it?

A. No, sir.

Q. It was a continuous line of pipe from the generator to the place where you lighted the match?

A. Yes.

Q. And all fast together, wasn't it?

A. Yes, sir.

MRS. IRENE COOPER, sworn for the defendant.

DIRECT EXAMINATION by Mr. Roseberry:

Q. You remember Mr. Gibbs coming to your place to see your husband about buying his farm?

A. Yes, sir.

Q. Do you remember being called out to where Mr. Gibbs was, by your husband?

A. Yes, sir.

Q. Will you just tell us what took place there?

A. He said "Mr. Gibbs wants to buy the farm," and asked what I thought about it; and I said he could do as he pleased, and they talked over the conditions and he told him he could have it for six thousand dollars, but he couldn't have the light plant, as that was personal property and he wouldn't let that go with the farm.

Q. What did Mr. Gibbs say?

A. Mr. Gibbs said "All right, we will go and look at the farm."

Q. Where did they go then?

A. Down to the farm, and came back and Mr. Cooper came in and said, "Mr. Gibbs took the farm. We are going to Newton this afternoon," and Mr. Gibbs came up after dinner and they went to Newton.

Q. That same day?

A. Yes, sir.

Q. Do you know anything about the wheat?

A. Then he told him he would have to buy that; he didn't want to let that go with the farm.

Q. (Showing witness paper) That is your signature to that deed?

THE COURT: They admit that.

MR. MORROW: There is no dispute about that.

THE COURT: And also that the refusal was on the ground of the lighting plant and nothing else.

MR. MORROW: Yes.

NO CROSS EXAMINATION.

SIMON GRATTON, recalled for the defendant.

DIRECT EXAMINATION by Mr. Roseberry:

Q. Do you remember some time in October, the previous year, of Mr. Cooper and Mr. Gibbs coming down to the farm where you were?

A. Yes, sir.

Q. Did you hear them talk there about this gas machine?

A. They were talking about the gas machine and the farm and everything.

Q. What did you hear?

A. I heard him say it was pretty expensive for the gas.

Q. Heard who—do you mean Gibbs?

A. Yes, this man here (indicating.)

Q. What did you hear Mr. Cooper say about the gas plant?

A. He said it was personal property.

Q. Did he say that would go with the farm or not?

A. It would not.

Q. It would not go with the farm?

A. No.

Q. What did he say about the wheat?

A. I didn't pay so much attention to the wheat; they was talking about the wheat, but I didn't pay much attention to the wheat.

Q. What did Mr. Gibbs say when he said it was personal property and he would not let that go with the farm?

A. He said he guessed he would take the farm anyhow.

Q. Did they then go—

A. He went away.

Q. Do you remember about his coming there about the manure?

A. Yes, sir, he hauled manure.

Q. Do you remember what was done about the manure in the stable?

A. Hauled it out.

NO CROSS EXAMINATION.

WILLIAM DURLING, sworn for the defendant.

DIRECT EXAMINATION by Mr. Roseberry:

Q. Were you clerk at Mr. Cooper's sale?

A. Yes, sir.

Q. (Showing witness paper) Is this the paper you kept of some of the things that were sold?

A. Yes, that is my writing; I made this paper.

Q. What did the gas machine bring?

THE COURT: It has been testified to twice, thirty-nine dollars.

A. It brought thirty-nine dollars, sir.

Q. Was there many bidders for it.

A. No, sir.

Q. Do you remember what times Mr. Gibbs had his vendue bills up for his sale?

A. He had two sales last spring.

Q. When did he first have his vendue bills up?

A. I don't remember the exact date of the first one. It was some time before Mr. Cooper's sale, and his second sale was in the early part of April.

Q. Do you know whether he had his vendue bills up before the first of April?

A. Mr. Gibbs you are referring to?

Q. Yes. The sale was the 4th of April, wasn't it?

A. I cannot answer you, I don't know.

Q. Hadn't they employed you before that to be clerk?

A. Yes, sir.

Q. How long before?

A. A few days before that; a few days before the sale; I don't know exactly how long.

Q. It was before the first of April, was it not?

A. I am not sure that it was.

CROSS EXAMINATION by Mr. Morrow:

Q. It was not advertised for sale till after this gas plant had been taken out, was it?

A. I don't understand what you—

Q. I say the advertisements, or vendue bills, of Gibbs were not put up until after the gas plant was taken out?

A. I don't know when those bills were posted.

Q. The gas plant wasn't sold at the vendue at all, was it?

A. Well, it was what we call bid in.

Q. Bid in by you for him?

A. Yes, sir.

Q. He says it was not sold. Do you say the same thing?

A. It was not sold. I bid it in for him.

BY MR. ROSEBERRY:

Q. It wouldn't bring any more than that, would it?

Objected to.

Objection sustained.

DEFENDANT RESTS.

CLINTON GIBBS sworn for the plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Morrow:

Q. Are you the father of this young man here, James Gibbs?

A. Yes, sir.

Q. Do you know Watson Cooper?

A. Yes, sir.

Q. Did you see him the night that he and James came from Newton after making this agreement of sale?

A. Yes, sir.

Q. Where did you see him?

A. In his hotel.

Q. Did he say to you then "Look at the improvements, the gas light and silo at the farm?"

A. Yes, sir.

CROSS EXAMINATION by Mr. Roseberry:

Q. Wasn't that the time you told him he charged the boy five hundred dollars too much for the farm?

A. I never told him so.

Q. And didn't you tell him so others might not hear and those tell it around the village?

A. No, sir.

Q. Never told anybody?

A. No, sir.

Q. What were you doing at the hotel that night? You didn't live right in Johnsonburg?

A. I did.

Q. Did you then?

A. Yes, sir.

Q. You say there was nobody else by?

A. I didn't say so, no.

Q. Was there anybody else by?

A. I don't remember that; there might have been a few of them there, or there might not have been anybody else.

JAMES C. GIBBS, the plaintiff, recalled in rebuttal.

DIRECT EXAMINATION by Mr. Morrow:

Q. Did Watson Cooper tell you at any time before this agreement was made that the gas light plant would not go with the farm or that it was personal property?
A. No, sir.

Objected to.

THE COURT: That is rebuttal. On the first point he said he showed him the improvements and in your testimony it was said it was not to go with the farm. Now this is rebuttal on that.

Q. Either at his hotel or at the farm or anywhere?
A. Nowhere, no, sir.
Q. Did he ever say he would except the gas light plant out of the sale?
A. Did he ever say he did?
Q. No. Did he ever say to you that he would or did?
A. No, sir.

PLAINTIFF RESTS IN REBUTTAL.

MR. ROSEBERRY: I want to show that the elder Mr. Gibbs did say he wouldn't take the farm because he charged his son five hundred dollars too much.

ELWOOD VASBINDER, sworn for the defendant in surrebuttal.

DIRECT EXAMINATION by Mr. Roseberry:

Q. Did you ever hear Mr. Gibbs, James C. Gibbs, state that he would not take the farm because the boy had to give five hundred dollars too much?

Q. Did he tell you anything of that kind?

Objected to.

Q. Did you hear him say so?

Objected to.

THE COURT: No, this is directly surrebuttal now.

MR. ROSEBERRY: I asked him if he ever said so and so around Johnsonburg.

THE COURT: And he said he didn't hear him say so.

Q. Did you hear Mr. James C. Gibbs talk around Johnsonburg last year?

THE COURT: I will overrule that.

Q. Did you hear Mr. James C. Gibbs say to anybody that Cooper had charged his son five hundred dollars too much for the farm?

THE COURT: He said he did not hear him say that? I overrule the question. He has answered it.

TESTIMONY CLOSED.

(Plaintiff's counsel moved for the direction of a verdict in favor of the Plaintiff and against the defendant.)

THE COURT: (After discussion) Gentlemen of the Jury. The object of legal procedure is to do justice. That is what this Court is organized for, and that is what you are summoned here for.

In this case the parties have made a bargain and put it in writing, and the view that the Court takes of the case is that there is no question of fact for you to decide.

Your functions are to decide disputed questions of fact. The function of the Court is to decide questions of law. These parties, by solemn agreement fixed the amount one should pay to the other in case there was a breach, namely, one thousand dollars.

The view the Court takes is there is no fact for you to decide and, in the exercise of its functions it directs you to find a verdict for the plaintiff for one thousand dollars, with interest from April first, 1912, up until February next, which will be $1052. The Clerk will take your verdict.

MR. ROSEBERRY: I asked your Honor, and I handed them up here, to charge certain requests, and I want to take an exception to your Honor refusing to do it.

THE COURT: I allow you an exception to the ruling of the Court, and that covers the case.

MR. ROSEBERRY: I would like these to appear on the minutes.

THE COURT: Yes.

MR. ROSEBERRY: Here are seven requests that I made to your Honor to charge the jury.

THE COURT: And I refuse to charge them. Hand them to the stenographer and they are part of the record.

Request to Charge.

(The requests to charge above referred to are as follows:

"The Court is requested to charge:

(1). That an actual physical annexation and attachment to the realty is necessary to change the character of the gas machine as personal property to that of a fixture.

(2). It must be fitted for and applied to the use to which the real estate was appropriated, all being designed for and necessary to the prosecution of a common purpose. Thus the gas machinery and farm became unified and incorporated together as a whole.

(3). The annexation of the gas machine to the property by the defendant, Mr. Cooper, must be made with the intention of a permanent accession to the freehold, that is to the farm.

(4). If there was a mutual agreement, express or implied, between the owner of the real estate and the gas machine, in this case Cooper, and the buyer, Gibbs, in respect to the manner in which the gas machine was annexed to the premises and was personal property and not a part of the farm such an agreement, express or implied, was binding on the plaintiff, Gibbs in preserving the personal character of the gas machine, as between the plaintiff and defendant.

(5). Notice by defendant to plaintiff of the personal property character of the gas machine takes the plaintiff out of that class of purchasers, who are innocent purchasers, who are innocent purchasers without notice.

(6). The sum agreed upon as liquidated damages in the agreement between plaintiff and defendant under the circumstances of this case, is a penalty, and if the jury believe there was a breach of any part of the agreement

by the defendant, it is necessary for the plaintiff to show the damage caused thereby.

(7). The damages in this case are capable of being measured, and the breach of the agreement is not an injury of uncertain amount and extent.")

MR. ROSEBERRY: And then I want an exception to your Honor charging as a matter of law that they must find a verdict in this case for one thousand dollars, the amount stipulated in the contract. That there is no fact in the case to go to the jury to be determined; and further that the verbal arrangement made between the plaintiff and the defendant, if any, was destroyed by the contract entered into between them in writing.

THE COURT: That covers it. And also to the direction of the Court to the Jury to find a verdict for the plaintiff?

MR. ROSEBERRY: Yes, sir.

Exception allowed and the same is sealed accordingly.

Judge.

EXHIBIT P-1.

AGREEMENT FOR THE SALE OF PROPERTY.

THIS AGREEMENT, Made the sixteenth day of October in the year of our Lord One Thousand Nine Hundred and Eleven,

BETWEEN Watson C. Cooper, of the Township of Frelinghuysen in the County of Warren and State of New Jersey party of the First Part;

AND James C. Gibbs, of the Township of Frelinghuysen, in the County of Warren and State of New Jersey, party of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Six Thousand Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance on or before the first day of April next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the Township of Allamuchy in the County of Warren and State of New Jersey:

BOUNDED AND DESCRIBED AS FOLLOWS:

Being a farm containing seventy-one acres more or less, bounded by lands of Winthrop Rutherfurd, William Grover and others, and being the same premises conveyed to the party of the first part by Nicholas Harris, one of the Masters in Chancery of the State of New Jersey.

For the consideration hereinbefore expressed, the party

of the first part hereto agrees also to convey to the party of the second part all manure and compost now on said premises or that may be hereafter made thereon between this date and the date of the delivery of the deed for said premises.

AND the said James C. Gibbs for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Six Thousand Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: The sum of One hundred and fifty-five dollars on the execution of this agreement; the sum of Eighteen hundred and forty-five dollars in cash on the date of the delivery of said deed for said premises; and the balance of said purchase money, being the sum of Four thousand dollars to be paid either in cash by the said party of the second part or to be secured by the execution of a bond and mortgage for the said sum of Four thousand dollars, the mortgage to cover the lands and premises so sold and conveyed by the party of the first part to the party of the second part; and said bond to bear interest at the rate of four per cent. net, that is to say, free from any deduction for taxes; said mortgage to contain a covenant that the party of the second part is to keep the buildings erected upon said premises or to be erected thereon insured against loss or damage by fire to an amount not less than Four thousand dollars, and assign the policy to the party of the first part as collateral security;

AND IT IS FURTHER AGREED, by the parties to these present, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the first day of April next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the law office of George A. Angle, in the town of Belvidere, between the hours of ten in the forenoon and four o'clock in the afternoon on the said first day of April next ensuing the date hereof or such other date prior thereto as may be agreed upon by the parties hereto;

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

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

Signed, Sealed and Delivered
in the presence of
Levi H. Morris.

WATSON C. COOPER, (Seal.)
JAMES C. GIBBS. (Seal.)

EXHIBIT D-1.

DEED.

THIS INDENTURE, Made the First day of April, in the year of our Lord One Thousand Nine Hundred and Twelve,

BETWEEN Watson C. Cooper and H. Irene Cooper, his wife, of the Township of Frelinghuysen, in the County of Warren and State of New Jersey, of the First Part;

AND James C. Gibbs, of the Township of Frelinghuysen, in the County of Warren and State of New Jersey, of the Second Part:

WITNESSETH, That the said party of the First Part, for and in consideration of Six Thousand 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 being 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 unto the said party of the Second Part, and to his heirs and assigns, forever, ALL those certain tracts or parcels of land, and premises, hereinafter particularly described, situate, lying and being in the township of Allamuchy in the County of Warren, and State of New Jersey. Butted and Bounded as follows, Viz.:—

The First Tract:—Beginning in the middle of the Pequest Creek in the line of a farm known as the Archibald Ayres' farm: thence (1) south fifty eight degrees west, four chains and sixteen links to a stone for a corner in the line of said Ayres' farm:—thence (2) north thirty three and a quarter degrees west, twenty seven chains and sixteen links to a stone for a corner in line of said Ayres' farm; thence (3) south fifty six degrees west, fourteen chains and eighteen links to a stone in the road for a corner, (corner of Alfred Buckley's land), thence (4) south twenty seven degrees east, nineteen chains and forty links to a stone in the road for a corner; thence (5) south thirty-five and three quarter degrees east, five chains; thence (6) south forty four degrees east, four chains and fifty links; thence (7) south six degrees east, ten chains and eighty links to the middle of the bridge that crosses the Pequest Creek; thence (8) the various courses up said Creek to the forks of said Creek; then up

the north prong or branch to the main channel of said Creek; thence (9) up Main Channel to the place of beginning, containing sixty acres and forty hundredths of an acre of land, be the same more or less.

The Second Tract:—Beginning at a stone in the road, it being a corner of James Willson's lands, and runs thence (1) south forty six degrees west, eight chains and fifty six links to a stake in Shotwell's line; thence (2) south thirty three and a half degrees east, seventeen chains to a stone corner in Buckley's land; thence (3) north fifty six and a half degrees east, six chains and sixty seven links to a stake; thence (4) south thirty three and a half degrees east, five chains to a stake; thence (5) north seventy seven and a half degrees east, fifty links to a stake; thence (6) north thirty eight and a quarter degrees west, twenty three chains and eighty three links to the place of beginning, containing fourteen and a half acres of land, be the same more or less.

From this last tract of land there is deducted and excepted six acres and thirty five hundredths of an acre of land more or less, which was conveyed by Ford N. Staples and wife to Alfred Buckley by deed dated the second day of December, eighteen hundred and ninety three, and recorded in Warren County Clerk's office in Book of Deeds No. 151, page 436 &c.

The Third Tract:—Beginning at a stone in the middle of the Public road leading from Long Bridge to Johnsonsburg, corner to the Lowery lot, and runs as the needle pointed on November 1850, as surveyed by Caleb H. Valentine, (1) north fifty seven and a quarter degrees east, six chains and seventy three links to a stake corner to Samuel Howey; thence (2) north thirty four and a quarter degrees west, five chains and thirty six links to a corner in the road; thence (3) down the middle of the road south thirty and three quarter degrees west, six chains to a stake west end of a stone bridge: thence (14) still along the middle of said road south eighty degrees east, two chains and ninety eight links to the place of be-

ginning, containing two and thirty seven hundredths acres of land, be the same more or less.

Being the same lands and premises conveyed to the said Watson C. Cooper by Nicholas Harris, Special Master in Chancery, on the twenty ninth day of March, nineteen hundred and six.

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 proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever:

AND the said Watson C. Cooper doth for himself, his heirs, executors and administrators covenant and agree to and with the said party of the Second Part, his heirs and assigns, that he, the said Watson C. Cooper, is the true, lawful and right owner 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 have 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 Watson C. Cooper will WARRANT, secure, and forever defend the said land and premises unto the said James C. Gibbs, 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 encumbrance 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.

WATSON C. COOPER, (Seal)
H. IRENE COOPER. (Seal.)

Signed, Sealed and Delivered
in the presence of
Geo. A. Angle.

State of New Jersey,
County of Warren, } ss.:

BE IT REMEMBERED, That on this first day of April, in the year of our Lord One Thousand Nine Hundred and Twelve before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Watson C. Cooper and H. Irene Cooper his wife, who, I am satisfied, are the grantors mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; And the said H. Irene Cooper, wife as aforesaid, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

GEO. A. ANGLE,
Master in Chancery of N. J.

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