

MERRITT
vs.
BROWN and WIFE. }

Opinion.

The object of this suit is to compel the defendants to convey to the complainant lands at Elizabethport, which it is alleged the defendant, Edward G. Brown, purchased in trust for him, upon payment of such advances made by Brown as should be found due on an account taken. The complainant alleges, that at a foreclosure sale of lands belonging to him, made by the sheriff of Union county, on the twenty-first day of March, 1861, to satisfy a mortgage for twenty-eight thousand dollars, held by William Gibbons, enough had been sold to satisfy all but nine thousand dollars; that he requested Brown to purchase the balance of the mortgaged premises for him for that sum, and to pay for him whatever balance he might be unable to raise; that Brown consented, and agreed to purchase the property and to advance for him what balance he might be unable to raise, and that for that purpose, and as part of the purchase money, he advanced to Brown twenty-five shares of stock, of the par value of twenty-five hundred dollars; that the sheriff, at the request of Merritt, made in pursuance of said arrangement, sold the whole of the remaining lots in the tract in one parcel, and that Brown purchased it at one bid for nine thousand dollars; that the lots were worth twice that sum, and would have sold for a much larger sum if sold in parcels; and that it was understood that Brown was buying for complainant, who, as owner of the equity of redemption, was the only person interested, and on that account no one bid against him; that Merritt expected to raise and pay the money above the value of the stock by the time the sheriff's deed was to be delivered, but being disappointed, Brown offered to advance, and did advance the money for Merritt, and took the deed 10 20 30

in his own name, but in trust for Merritt, and to secure himself for the amount he had advanced; that Brown took possession of the premises, and received the rents, issues, and profits, and now refuses to convey them to Merritt upon being reimbursed the amount advanced with interest.

The defendants, in their answer, admit the sale by the sheriff, and that Brown bought the lots, as stated in the bill, at the sheriff's sale, for nine thousand dollars; but they deny that the property was worth ten thousand dollars
10 at the sale, or that any such arrangement as that stated in the bill was made by Merritt with Brown, and they answer, that Brown bought and holds the property for himself, and not for the complainant. And they answer, that the circumstances under which the purchase was made were these: that the mortgage of Gibbons included lands held by a church of which Brown was a member, to which they had been conveyed by Merritt, with warranty, although subject to the mortgage, and which were by the decree to be sold, if the lands yet held by Merritt did not bring enough to pay the
20 mortgage debt; that Brown and other members of that church determined to bid up Merritt's lands to a price that would satisfy the decree; but at the sale on that day the property went so low, that apparently the church property would have to be sold; that the complainant was very anxious to have the debt paid by the sale of his lots, to save himself from liability on his covenants, and to save pledges which had been given for the indemnity of the purchasers from him; and that he offered to Brown, if he would bid off the remaining lots at nine thousand dollars, the amount of
30 the deficiency, he would give him the twenty-five shares of stock, and also relieve him from raising the nine thousand dollars, by paying the same himself, before the expiration of the sixty days, the time which Gibbons had consented to give for the payment, in order to induce Brown to bid; and that if he did not so relieve Brown, the stock was to belong to Brown.

This answer of Brown is responsive, so far as it denies the agreement set up in the bill, and also in stating what were the terms of the agreement under which the purchase was
40 made. An answer, in stating the particulars of a transaction

charged and inquired into by the bill, is responsive; it was so held by Chancellor Vroom, in *Youle v. Richards, Saxt.* 539, and in this case the details are expressly in answer to the interrogatory, which asks, "for what purpose and consideration the said stock was assigned?" The defendants could not refuse to answer this without bringing themselves into contempt.

The whole controversy depends upon the question in dispute between the parties, as to what was the agreement upon which Brown bought.

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It is settled by the decision of the highest court in this state, that a parol agreement made between a defendant in execution, and a purchaser at sheriff's sale, by which the purchaser agrees to buy for the benefit of the defendant, in consequence of which the defendant permits the sale to go on, and refrains from procuring bidders, or doing anything to increase the price, will be enforced in equity, notwithstanding the want of any writing, as required by the statute of frauds. This was adjudicated in the case of *Smith & Warwick v. Marlatt*, decided at the term of March, 1866, and on this part of the case the judges of that court were unanimous. Neither in that court nor in this, did the opinions delivered state the ground on which the case was considered not to be within the statute of frauds. It may be held a resulting trust, on the ground that the excess of the value of the property purchased above the amount bid, belonged to the defendant, and was by virtue of the arrangement conveyed to the purchaser without other consideration, and, therefore, a trust results to the defendant in execution; or it may be held to be a contract in part performed, and therefore to be enforced in equity, when it is proved that the contract was made, and that the acts alleged to be the part performance, were done in execution of the contract.

It is difficult to sustain it on the doctrine of a resulting trust; the bid at the judicial sale must be taken to be the value of the property, and there would be no reason to create a resulting trust, more than in any other case where land is sold and conveyed below its value.

On the ground of a contract concerning land, in part performed, there is no difficulty in sustaining these decisions, 40

and it appears to me the true and only ground on which the doctrine can be placed.

The owner of the land, while the title is in him, makes a contract for the purchase, by which he is to do, or abstain from certain acts, in consequence of which the purchaser gets title to the property. Permitting a sale to go on, which perhaps he could not arrest or postpone, may seem a small consideration. Yet the mere power to appeal for forbearance to the plaintiff or officer conducting the sale, or to appeal
10 to the sympathies of bystanders to save him from sacrifice, by bidding its value for his property, is a consideration which a proposed purchaser must respect; and more than all, the good feeling of the persons attending a sale would induce them not to bid against a purchaser who was understood to be a friend of the defendant in execution, and to be advancing the money and buying the property for his own benefit. It would be fraud in a purchaser who had received the benefit of these considerations, at the sale, to refuse to perform his part of the agreement.

20 This view makes it important to enquire and ascertain what the agreement was, which is to be enforced for the relief of the complainant.

The only direct evidence as to the agreement, is the testimony of the complainant, and of the defendant, E. G. Brown. That of Brown consists of his responsive answer, and his examination as a witness; these agree with each other. He states in substance, that upon receiving the stock from the complainant he agreed to purchase the remainder of the property for nine thousand dollars, so as to pay off the whole debt,
30 and thus relieve the complainant from further liability, and free the property conveyed by him as a pledge to purchasers, and free the property of the church, and of other purchasers, from the lien of the mortgage. That the complainant undertook to pay, and was to have the privilege of paying the nine thousand dollars before the delivery of the sheriff's deed, and in such case was to have the property and the stock which he had transferred to Brown.

There is no evidence sufficient to overcome this statement of Brown. His admissions to several of the witnesses that
40 he had bought the property for the complainant, and that

the complainant should have a chance, do not contradict it, but are in accordance with it. The complainant himself says in his testimony that he was to redeem the property in sixty or ninety days. And he says that there was no further agreement as to what was to be done with the property if he did not redeem it within that time.

I have no doubt, from the whole testimony taken together, that the agreement was substantially as stated by Brown. That in consideration of the stock being transferred to him, he was willing to bid for the residue of the property nine 10 thousand dollars; that he was willing, if the complainant could raise the money before the deed was given to him, that the property should be conveyed to, or retained by the complainant; and that the agreement was made to carry out that purpose. The benefit to the complainant was clear, he secured the payment of his whole mortgage debt, of which in any other way there was considerable doubt. And he secured the privilege for sixty or ninety days longer, of having the right of selling the property or of keeping it if he could induce any one in that time to pay a larger price, or 20 to advance the amount upon the property.

Brown secured the object for which he set out, of protecting the church from loss, without any loss to himself, if Merritt should pay the amount, and if he should not, he would hold the property, and the stock, for which he had determined that he was willing to give nine thousand dollars.

This is such an agreement as will be enforced in this court, but upon the terms exacted in other cases, that the party asking the performance shall have substantially complied 30 with his part of it. It is clearly not a mortgage, it has none of the requisites of a mortgage, it is merely an agreement to sell. The transaction was not one that equity will convert into a mortgage, as made in the form which it was taken, for the purpose of depriving the mortgagor of his right to redeem. A deed, when made for that purpose, will sometimes be declared to be a mortgage, when there is at the same time an agreement to re-convey. But such construction is rarely made, except in cases where the conveyance was made to secure or pay an antecedent debt, or for money 40

advanced upon negotiations begun for a loan, and where it appears that a loan was intended. In this case there was no antecedent debt, and the idea of advancing nine thousand dollars as a loan, on the remnants of this property, in the situation of affairs at that time, is too absurd to be considered. It would affect defendants in execution injuriously if courts should construe such agreements into mortgages, against the clear intent of the parties. No one would dare to aid a defendant at an execution sale, for fear that his
10 only right would be a right to foreclose and sell, at the end of six months or a year, whatever might be the agreement or intention of the parties.

Brown extended this agreement for sixty days by parol; the complainant did not perform his part within the sixty days, nor the extended time, but Brown was compelled to raise the money and take the sheriff's deed himself. After this, all right or equity of the complainant to call upon Brown for specific performance of this agreement was gone. Brown, after this, offered to let him have the property upon being
20 paid the amount advanced, and several times requested him to pay the amount and take it.

The complainant omitted and declined to do this. But after two years neglect, and shortly before the filing of the bill in this case he applied to Brown for a conveyance.

Time is frequently considered not of the essence of an agreement to convey lands, and delay will not, in such cases, bar the right to have specific performance. But in all cases where the value of the property concerned has materially changed, or where great financial changes have materially
30 altered the relative value of money and land, time will be considered material, and a party will not be allowed to lie by until the change sets in his favor, and then ask for specific performance.

This rule was very properly and clearly adopted and enforced by the late Chancellor, in *Young's adm'r v. Rathbone*, 1 C. E. Green 224. In this case, the commencement of the war, by the attack on Fort Sumter, between the sheriff's sale and the time to redeem, had alarmed the community, prices were unsettled, and few were willing to purchase real
40 estate at all. Within the extension of sixty days the disaster

at Bull Run had further unsettled values, and rendered the purchase of real estate undesirable. In this condition of things the complainant failed to redeem, according to agreement, and left Brown to pay the money, and fixed with what must have appeared a bad purchase. He made no effort, he considered himself under no obligation to redeem the property. But after two years, when, by the effect of the legal tender act, the country had been flooded with a large amount of paper money, not convertible into gold, and worth far less, and the relative value of land and this money had 10 changed, the complainant, seeing that something was to be gained by him, and lost by Brown, by his performing, at this late day, his part of the contract, offers to pay and asks for the property. The mere statement of the transaction shows it to be too unconscientious to be entitled to aid in this court. It is a case where time is clearly of the essence of the contract, and to which the rule of equity, that a party, to entitle himself to the aid of this court in enforcing specific performance of a contract, must have himself been ready, willing, and eager to perform on his part, clearly applies. 20 The mere fact that he did once, when called upon to redeem, refuse or omit to perform, would be a bar to relief in this court.

The bill must be dismissed with costs.

Final Decree.

[Filed November 14, 1868.]

This cause coming on to be argued and heard at the last term of the court, and being argued upon the pleadings and proofs, by Joseph Alward and Benjamin Williamson, esqs., on behalf of the complainant, and by Robert Gilchrist and 30 Joseph P. Bradley, esqs., on behalf of the defendants, and the Chancellor having taken time to consider of the same, and being now of opinion, that the complainant is not entitled to any relief which is sought in and by the bill of complaint filed in the cause, and that the defendant, Edward G.

Brown, who purchased the lands and premises described in said bill, at sheriff's sale thereof, on or about the twenty-first day of March, in the year eighteen hundred and sixty-one, is not affected by any trust or right of redemption in favor of the said complainant as to the said lands, or any part thereof, but is entitled to have and hold the same by virtue of said purchase, as his absolute property and estate, and is not bound to account to the said complainant either for the rents and profits of said lands, or any of the same, or the proceeds thereof, or for the shares of stock of the Elizabethport Steam Power Company, in the said bill mentioned, or any of the proceeds thereof: it is therefore, on this twenty-first day of October, in the year eighteen hundred and sixty-eight, at a stated term of the Court of Chancery of New Jersey, held at Trenton, by the Chancellor, ordered, adjudged, and decreed, that the bill of complaint in this cause be dismissed, with costs, on motion in behalf of Frederick T. Frelinghuysen, solicitor for the defendants.

A. O. ZABRISKIE, C.

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Appeal.

[Filed January 4, 1869.]

The complainant hereby appeals from so much of the final decree made in this court, in the above stated cause, as declares that the complainant, Jacob T. Merritt, is not entitled to any relief which is sought in and by the bill of complaint filed in the cause, and that the defendant, Edward G. Brown, who purchased the lands and premises described in said bill, at sheriff sale thereof, on or about the twenty-first day of March, in the year eighteen hundred and sixty-one, is not affected by any trust or right of redemption in favor of the said complainant, as to the said lands, or any part thereof, but is entitled to have and hold the same by virtue of said purchase as his absolute property and estate, and is not bound to account to the said complainant, either

for the rents and profits of said lands, or any of the same, or the proceeds thereof, or for the shares of stock of the Elizabethport Steam Power Company, in the bill mentioned, or any of the proceeds thereof, and dismissing said bill, with costs, to the court of appeals in the last resort in all causes of law.

Dated December 24th, 1868.

JOSEPH ALWARD,
Solicitor of complainant.

B. WILLIAMSON, 10
Of counsel.

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

B. WILLIAMSON,
Of counsel.

Petition of Appeal.

[Filed January 5, 1869.]

COURT OF APPEALS IN THE LAST RESORT, &C.

Between

Jacob T. Merritt, *appellant,*

and

Edward G. Brown, and Deborah Brown
his wife, *appellees.*

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} *On bill, &c.*

To the Honorable Court of Appeals in the last resort in all causes of law.

The humble petition of Jacob T. Merritt, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery, by his Honor Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the twenty-first day of October, 30 eighteen hundred and sixty-eight, wherein the said Jacob T.

Merritt was complainant, and the said Edward G. Brown and Deborah Brown were defendants, in this respect, to wit, that the said decree adjudges that the complainant is not entitled to any relief which is sought in and by the bill of complaint filed in the cause, and that the defendant, Edward G. Brown, who purchased the lands and premises described in said bill, at sheriff's sale thereof, on or about the twenty-first day of March, in the year eighteen hundred and sixty-one, is not affected by any trust or right of redemption in
10 favor of the said complainant as to the said lands, or any part thereof, but is entitled to have and hold the same, by virtue of said purchase, as his absolute property and estate, and is not bound to account to the said complainant either for the rents and profits of said lands, or any of the same, or the proceeds thereof, or for the shares of stock of the Elizabethport Steam Power Company in the said bill mentioned, or any of the proceeds thereof, and dismissing said bill, with costs. Your petitioner, therefore, prays, that the said decree of the
20 said Chancellor may be in all particulars aforesaid reversed, set aside, and for nothing holden; and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

Dated December 24th, 1868.

JOSEPH ALWARD,
Solicitor of appellant.

B. WILLIAMSON,
Counsel with appellant.

Exhibits on the part of Appellant.

EXHIBIT M 1.

New York, August 8, 1863.

Mr. E. G. Brown.

Dear Sir: I am now ready to redeem the lots which you bought for me at the sheriff's sale, in the spring of 1861; say \$9000, and interest. Please let me know when the deed will be ready, and oblige,

Yours, &c.,

J. T. MERRITT. 10

Well, I will see him.

EXHIBIT M 2.

To all persons to whom these presents shall come, or whom they may concern :

I, Meline W. Halsey, late sheriff of the county of Union, in the state of New Jersey, send greeting :

Whereas, on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty, a certain writ of fieri facias was issued out of the Court of Chancery of the state of New Jersey, directed and delivered to me, 20 Meline W. Halsey, then being sheriff of the said county of Union, and which said writ is in the words or to the effect following, that is to say :

New Jersey, to wit: The state of New Jersey to the sheriff of the county of Union, greeting :

Whereas, on the sixteenth day of October, in in the year of our Lord one thousand eight hundred and sixty, by a certain decree made in in our Court of Chancery, at Trenton, in a certain cause therein depending, wherein William H. Gil - 30
bons is complainant, and Jacob T. Merritt and Julia J., his

wife, George Q. Johnson and T. Jane, his wife, John H. Rolston and Harriet, his wife, the trustees of the First Presbyterian Church and congregation, Sarah M. Emerson, Adeline O. Sammis and John Sammis, John B. Gale and James C. Fairbanks are defendants, it was ordered, adjudged, and decreed, that so much of the mortgaged premises, with the appurtenances in the bill of complaint in the said cause particularly set forth and described, that is to say: All those tracts or parcels of land and premises herein after particularly

10 described, situate, lying and being in the township of Elizabeth, in the county of (formerly) Essex, (now Union,) and state of New Jersey, as described in a deed from Peter Coriel and wife to Thomas Gibbons, dated 20th November, 1815, and recorded in the office of the clerk of the county of Essex, in book Z of Deeds, page 648, &c., that is to say: All that certain messuage, tract, or parcel of land and premises, situate, lying and being in the township of Elizabeth, on the road leading to the Old Point, in the county of Essex, in the state of New Jersey, butted and bounded as follows: Beginning at a corner of a tract of land formerly belonging to

20 Captain David Price, then by his line south forty-three degrees and fifteen minutes west, two chains to a buttonwood stump; thence south thirty-degrees and thirty minutes west, twenty-two chains and eighty-four links along another line of said Price; thence north seventy-four degrees and forty minutes west, four chains and twelve links along another line of said Price; thence south two chains and thirteen links along the line of Ralph Price; thence south sixty-nine degrees east, two chains; thence south three degrees east,

30 nine chains; thence south seventy-five degrees east, two chains; thence south sixty-nine degrees west, fourteen chains and twenty-seven links to the Elizabethtown creek; thence east one chain along said creek; thence north eight degrees east, fourteen chains and forty links to the upland; thence east two chains along the upland; thence south eight degrees west, fifteen chains to the creek aforesaid; thence east one chain along said creek; thence north eight degrees east, fifteen chains to the upland; thence east two chains; thence

40 north forty-six degrees east, two chains and forty links; thence south three degrees east, eighteen chains and thirty-

two links to the said creek ; thence north forty-five degrees east, six chains and twenty links along said creek ; thence north thirteen degrees west, six chains to a small creek ; thence north sixty degrees east, one chain ; thence north four degrees west, fourteen chains ; thence north two degrees and thirty minutes east, three chains ; thence north eight degrees and thirty minutes west, five chains and fifty-five links to a corner of land formerly belonging to Edward Thomas, deceased ; thence north fifty-nine degrees and a half east, fourteen chains and thirty-seven links to the road ; and 10
thence north forty-eight degrees west, thirteen chains and ninety-three links along the road aforesaid to the beginning, containing fifty acres of upland and meadow.

Also, another lot of salt meadow, bounded southwesterly by Elizabethtown creek, northwest by meadow of Ralph Price, northeast by the aforesaid tract of land, southeast by meadow of Captain James Ricketts, containing four acres and one quarter of an acre.

Also, another lot of salt meadow, bounded northeast on the first mentioned tract of land, southeast on said meadow, 20
southwest by Elizabethtown creek, northwesterly by said meadow, containing three acres.

Also, another lot of salt meadow, bounded northeast by said upland, southeast by meadow of Townley and Magie, southwest by Elizabethtown creek, northwest by said meadow, containing one acre and one quarter of an acre.

Also, another lot of land, formerly belonging to Edward Thomas, deceased, adjoining the first mentioned upland, beginning at a stone planted at the northeast corner of the first mentioned tract of upland marked R. S., and from thence 30
running south fifty-seven degrees and thirty minutes west, fourteen chains and twenty-six links ; thence south eleven degrees east, four chains and twenty-six links ; thence north fifty-seven degrees and thirty minutes east, to the road leading from Elizabethtown to the Old Point, and from thence, as the road runs, to the aforesaid stone, the place of beginning, containing eight acres, bounded southwest and northwest by the first mentioned tract of land ; southerly and northeast by the highway aforesaid.

Also, another lot of land and meadow adjoining said lot, 40

formerly belonging to James Chapman, beginning at the northeast corner of said eight acre lot on the road leading from Elizabethtown to the Old Point; thence running south fifty-seven degrees and fifteen minutes west, sixteen chains and twenty-nine links to a corner in the salt meadow; thence south thirty-five minutes, west four chains; thence south twenty-two minutes east, thirty-three links; then south sixty-six links to a corner of Moses Ogden's land in the salt meadow; then north fifty-two degrees and fifty minutes
 10 east, eighteen chains and ninety-six links; then north two chains and seventy links to the place of beginning, containing six acres of land and salt meadow, and is bounded on the northwest by the last mentioned lot, on the northeast by said highway leading to the Old Point, south by land of Moses Ogden, on the southwest by a ditch in the salt meadow. The aforesaid six tracts of land and salt meadow containing seventy-five acres, be the same more or less.

Also, all that tract of land and premises described in a deed from Jesse Howard and wife to Thomas Gibbons, dated
 20 20th November, 1815, and recorded in book Z of Deeds for said county, page 644, &c., that is to say: All that certain tract or parcel of land and premises herein after particularly mentioned and described, situate, lying, and being in the borough of Elizabeth, in the county of Essex (now Union,) and state aforesaid, beginning at a post standing on the south side of the public road or highway leading from Elizabethtown to the Old Point, or mouth of the Elizabethtown river, at a corner of land belonging to John Butler; thence running along his line south fifty-five degrees west,
 30 twenty-four chains and twenty links to a small creek called Price's creek; thence running along said creek the various courses as said creek runs to meadow late of Joseph Meeker, deceased; thence south sixty-three degrees and fifty minutes east, one chain and eighty-seven links; thence south eleven degrees and thirty minutes west, three chains and fifty-one links to the northwest corner of a meadow of David Crane, esquire; thence along his line south sixty-six degrees and twenty minutes east, one chain and forty-seven links; thence south fifty-nine degrees east, two chains and thirty-three
 40 links; thence north eighty-three and a half degrees east, two

chains; thence seventy-five degrees east, six chains and sixty-two links to lands late of Messrs. Henderson; thence along their line north thirty and a half degrees east, twenty-two chains and seventy-seven links; thence north forty degrees and a half east, one chain and ninety-two links to the aforesaid road; thence as the road runs north thirty-nine and a half degrees west, seven chains and seventy-two links to the place of beginning, containing thirty-six acres, one quarter and thirty-five square rods, be the same more or less, bounded northwestwardly by lands of John Butler and the 10 aforesaid Price's creek, and meadow late of Joseph Mecker, deceased, southwesterly and southerly by meadow of David Crane, esquire, Jacob Crane, John Nutman, Ralph Price, and said Henderson's, southeast by lands of the said Henderson's, and northwest by the road leading from Elizabethtown to the Old Point.

Also, all that tract of land and premises described in a deed from Moses Ogden and wife to Thomas Gibbons, dated April 19, 1817, and recorded in book C, 2, of Deeds for said county, as follows: All that tract or parcel of land and pre- 20 mises herein after particularly described, situate, lying, and being in the township of Elizabeth, in the county of Essex, and state of New Jersey, beginning at the northeast corner of Thomas Gibbons, esquire's, land, where the cross fence now is by the road side; thence south fifty-two degrees fifty minutes west, eighteen chains ninety-six links to a corner in the salt meadow; thence south five minutes east, three chains seventeen links; thence south sixty-seven degrees ten minutes east, seventy-four links, south six degrees fifty 30 east fifty-six links; thence north forty-nine degrees forty-four minutes east, nineteen chains ninety-six links to the road; thence north thirty-two degrees ten minutes east, two chains twelve links to the place of beginning, containing five acres and thirty square rods of upland and meadow, bounded on the north by lands of Thomas Gibbons, esquire, on the east and north by the road leading to the Old Point, on the south by lands of Daniel Butler, and on the south and west by a ditch, together with all and singular the fences, trees, privileges, and appurtenances

whatsoever to the same belonging or in any wise appertaining.

Also, all that tract of land and premises described in a deed from Daniel Butler and wife to Thomas Gibbons, dated May 11, 1818, and recorded in book R, 2, of Deeds for said county, on pages 351, &c., as follows: All that tract or parcel of salt meadow and premises herein after particularly described, situate, lying, and being in the township of Elizabeth, in the county and state aforesaid, butted and
10 bounded as follows: Beginning at a stake in the line of said Thomas Gibbons and Daniel Butler, and running along said Butler's land south nine degrees and thirty minutes east, eighty-two links to a stake; thence still along said land south thirty-one degrees and forty-five minutes west, four chains and seventy-four links to a stake in the middle of a worm in the line of said Thomas Gibbons; thence along said Gibbons line north thirty-two degrees and forty-five minutes west, eighty-nine links to a stake; thence still along said line
20 north thirty-five degrees east, five chains to the place of beginning, containing one rood and twelve perches, bounded east and south by Daniel Butler, west and north by Thomas Gibbons.

Also, all that tract or parcel of land and premises described in a deed from Charles Davis and wife to William Gibbons, dated November 15, 1849, and recorded in book C, 7, of Deeds for said county, on pages 335, &c., as follows: All that tract or parcel of land and premises herein after particularly described, situate, lying, and being in the township of Elizabeth, in the county of Essex (now Union,) and state
30 of New Jersey, beginning at two stones adjoining land of the party of the second part; thence running south nine degrees west, thirteen chains and sixty-six links to the Elizabethtown creek at the mouth of a small ditch; thence north eighty-five degrees and fifty minutes west, two chains and eighty-two links up said creek to the mouth of another small ditch; thence north eight degrees and twenty minutes east, thirteen chains and ninety-five links to the land of the party of the second part; thence south seventy-six degrees and forty-five minutes east, two chains and ninety-one links to
40 the place of beginning, containing four acres more or less,

being a lot of salt meadow lying in the "Elizabethtown Great Meadow," the same which formerly constituted a part of the real estate of James Ricketts, deceased—all the foregoing premises are known as the Rising Sun Farm—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, and also all the estate, right, title, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the said defendants, of, in and to the 10 same, and every part and parcel thereof, with the appurtenances, as shall be necessary to be sold to raise and satisfy the sum of twenty eight thousand one hundred and sixty dollars, the principal and interest secured by a certain mortgage given by Jacob T. Merritt and Julia J., his wife, to the complainant, bearing date the first day of April, in the year eighteen hundred and fifty-four, together with lawful interest thereon from the date of the Master's report in this case, being the nineteenth day of July, in the year eighteen hundred and sixty, until the same be paid and sat- 20 isfied, and also the costs of the said complainant, and the costs of the defendants; and that a writ of fieri facias should issue for that purpose out of this court, directed to the sheriff of the county of Union, commanding him to make sale, according to law, and in the manner and order in said decree, and herein after particularly specified and set forth, of so much of the mortgaged premises as might be necessary for the purpose, with the appurtenances, and that out of the money arising from such sale he first pay to the complainant, or his solicitor, his said debt and the interest which shall ac- 30 ccrue thereon, and also his costs as aforesaid; and to the defendant's solicitor their costs; and if sufficient money should be realized from such sale to satisfy the amount due on the complainant's mortgage, and the costs, as aforesaid, without selling the lots in said decree, and herein after mentioned, conveyed by George Q. Johnson and wife to Adaline O. Sammis, and to Sarah M. Emerson, said lots being known and described on said map as lots numbers 1, 2, 3, and 4, in block, No. 2, on a map entitled, "A map of property owned by Jacob T. Merritt, in the city of Elizabeth, county of 40

Union (late Essex,) New Jersey," that then the said sheriff should refrain from making any further sale of said lands and premises, and should thereupon make return and report of his proceedings by virtue of said writ; but if the said sheriff in order to raise the money due to the complainant, as aforesaid, should be compelled to sell the said lots of said Adaline O. Sammis and Sarah M. Emerson, known as Nos. 1, 2, 3, and 4, on block, No. 2, on said map, then if the money arising from the sales of said lots shall be more than sufficient to

10 pay any balance then due on the complainant's mortgage, that he appropriate the same to the payment of such balance pro rata, according to the respective amounts of such sales, and that out of the money remaining after such payment from the sales of the lots embraced in the conveyance from George Q. Johnson and wife to Adaline O. Sammis, he then pay to the defendant, George Q. Johnson, or to his solicitor, his debt due to him from said Adaline O. Sammis, being three hundred dollars and ninety-five cents, and the interest which shall accrue thereon from the said nineteenth day of

20 July, and out of the money remaining from the sale of the lots embraced in the conveyance from George Q. Johnson and wife to Sarah M. Emerson, he then pay to the defendant, George Q. Johnson, or to his solicitor, his said debt due to him from said Sarah M. Emerson, being four hundred and fifty-one dollars and forty-two cents, with the interest which shall accrue thereon, from the said nineteenth day of July; and that the residue of the money arising from the said sale, after payment of the said debts, interest and costs (if any there shall be,) be brought into this court, to abide the fur-

30 ther order thereof, unless otherwise previously ordered, as by the said decree remaining as of record in our said Court of Chancery at Trenton doth and may more fully appear; and whereas, the costs of the said complainant have been duly taxed at one hundred and fifty-three dollars and sixty-four cents, and the costs of the defendants have been duly taxed at thirty-one dollars and twenty-six cents, therefore you are hereby commanded to make sale, according to law, of the said mortgaged premises, and that you make sale, in the first

40 place, in parcels, of the whole of the said mortgaged premises, excepting thereout the lots, tracts, and parcels of

land herein after mentioned, being the lots conveyed by said Jacob T. Merritt and wife; and that you make sale, in the second place, of the following lots and parts of lots, being the same conveyed by said Jacob T. Merritt and wife to the trustees of the First Presbyterian Church and congregation, of Elizabethport, beginning at the northeasterly corner of G street and Elizabeth avenue, as laid down on a map entitled "Map of Elizabethport, Essex county, N. J., published by George E. Leefe, New York, 1856;" thence running northerly along said avenue fifty feet to land of John B. Gale; 10
 thence parallel with said G street along said Gale's line two hundred feet; thence southerly parallel with Elizabeth avenue fifty feet to G street; and thence easterly along G street to the place of beginning, being known and described on said Merritt's map as lots numbers 7 and 8, and the southerly half of lots numbers 10, 12, 14, and 16, in block No. 3. And that you make sale, in the third place, of the following lots, being the same conveyed by said Jacob T. Merritt and wife to John H. Rolston, described as follows: Beginning at a point in the northerly side of H street, as laid down on said Leefe's 20
 map, which point is one hundred feet distant from the northwest corner of Elizabeth avenue and said H street (which H street is a continuation of Second street); thence running westerly along said H street three hundred feet to First avenue, as laid down on said the map; thence northerly along said First avenue two hundred feet to G street, as laid down on said map; thence easterly along said G street three hundred feet to a point one hundred feet distant from the southwest corner of said G street and Elizabeth avenue; and thence southerly parallel with Elizabeth avenue two hundred feet to 30
 H street, the place of beginning, containing twelve lots on H street, each twenty-five feet front by one hundred feet deep, and twelve lots on G street, each twenty-five feet front by one hundred feet deep, and being known and designated on said Merritt's map as lots numbers 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, in block No. 2. And that in the fourth place, you make sale of the following lots or tracts conveyed by said Jacob T. Merritt and wife to George Q. Johnson, by deed dated September 11, A. D. 1857, described as follows: Beginning at a 40

- point on the westerly side of Elizabeth avenue, fifty feet from the corner of said avenue and H street, as laid down on a map of Elizabethport, New Jersey, published by George E. Leefe in 1856, (which said H street is a continuation of Second street); thence running northerly along said avenue one hundred and fifty feet to the corner of G street, as laid down on said map; thence westerly along said G street one hundred feet; thence southerly parallel with Elizabeth avenue one hundred and fifty feet to lands of George Q. Johnson;
- 10 and thence easterly one hundred feet along said Johnson's line to the place of beginning, containing six lots, each twenty-five feet front by one hundred feet in depth, and known as Nos. 1, 2, 3, 4, 5, and 6, on block No. 2, on said Merritt's map, excepting thereout lots Nos. 1, 2, 3, and 4, being the same conveyed to said Sarah M. Emerson and Adaline O. Sammis, herein after set forth. And in the fifth place, that you sell in separate parcels the lots Nos 1, 2, 3, and 4, on block No. 2, as aforesaid, being the same conveyed by said Merritt and wife to Adaline O. Sammis and Sarah
- 20 M. Emerson, the lots conveyed to said Sarah M. Emerson being described as follows: Beginning at a point on the southwesterly side of Elizabeth avenue, fifty feet from the corner of said avenue and G street, as laid down on said Leefe's map, and running thence southeasterly along said avenue fifty feet to land of the said George Q. Johnson; thence at right angles to said avenue along said Johnson's line, southwesterly one hundred feet; thence parallel with said avenue northwesterly fifty feet to land deeded to Adaline O. Sammis; thence along the said Adaline O. Sammis' line north-
- 30 easterly one hundred feet to the place of beginning, containing two lots, each twenty-five by one hundred feet, and being Nos. 3 and 4 on block No. 2, on said Merritt's map. The lots conveyed to said Adaline O. Sammis being described as follows: Beginning at a corner formed by the intersection of the southeasterly side of G street and the southwesterly side of Elizabeth avenue, as laid down on said Leefe's map, and running thence southeasterly along said avenue fifty feet to land deeded to Sarah M. Emerson; thence at right angles to said avenue southwesterly along the land of the said Sarah
- 40 M. Emerson one hundred feet; thence parallel with said

avenue northwesterly fifty feet to G street, aforesaid ; thence along said G street northeasterly one hundred feet to the place of beginning, containing two lots each twenty-five by one hundred feet deep, and being lots Nos. 1 and 2 in block No. 2, on said Merritt's map. And that in the sixth place, you make sale of the lots conveyed by said Jacob T. Merritt and wife to said George Q. Johnson, by deed dated April 13th, 1857, described as follows: Beginning on the westerly side of the Elizabeth avenue at the northerly corner of H street, as laid down on a map of Elizabethport made by George E. Leefe in 1856 (which H street is a continuation of Second street) ; thence running northerly along said Elizabeth avenue fifty feet ; thence at right angles to said avenue one hundred feet ; thence southerly parallel to said avenue fifty feet to H street ; thence easterly along H street one hundred feet to Elizabeth avenue, the place of beginning, and being lots Nos. 7 and 8 in block No. 2, on said Merritt's map. And that in the seventh place, you make sale of the lots conveyed by said Jacob T. Merritt and wife to John B. Gale, and described as follows: Beginning at the southwesterly corner of Elizabeth avenue and F street, as laid down on said Leefe's map, and distant five hundred and seventy-one feet northwesterly from the point where the westerly line of lands of Mrs. Wilson intersects the southwesterly side of said avenue, and running thence southeasterly along Elizabeth avenue aforesaid one hundred and fifty feet ; thence southwestwardly at right angles to said avenue two hundred feet ; thence northwesterly parallel with said avenue one hundred and fifty feet to F street aforesaid ; and thence northeasterly along F street two hundred feet to the point or place of beginning, excepting thereout the lots conveyed by said John B. Gale to John H. Rolston, viz. Lots Nos. 1, 2, and 3, and seventy-five feet of the northerly part of lots Nos. 9, 11, 13, and 15, in block No. 3, on said Merritt's map, being lots Nos. 4, 5, and 6, the northerly half of lots Nos. 10, 12, 14, and 16, and twenty-five feet of the southerly part of lots Nos. 9, 11, 13, and 15, in block No. 3, on said map. And that in the eighth place, you make sale of the lots conveyed as aforesaid by said John B. Gale to John H. Rolston, being Nos. 1, 2, and 3, and seventy-five 40

fect of the northerly part of lots Nos. 9, 11, 13, and 15, in block No. 3, on said Merritt's map. And that out of the money arising from such sales you first pay to the complainant, or to his solicitor, his said debt, and the interest which shall accrue thereon, and also his costs as aforesaid, and to the defendant's solicitor his costs; and if sufficient money shall be realized from such sales to satisfy the amount due on the complainant's mortgage and the costs as aforesaid, without selling the lots conveyed as aforesaid by George Q. Johnson and wife to Adaline O. Sammis, and to Sarah M. Emerson, that then you do refrain from making any further sale of said lands and premises, and do thereupon make return and report of your proceedings by virtue of this writ. But if, in order to raise the money due to the complainants, and the costs as aforesaid, you shall be compelled to sell the said lots of said Adaline O. Sammis and Sarah M. Emerson, then, if the money arising from the sales of said lots shall be more than sufficient to pay any balance then due on the complainant's mortgage, that you appropriate the same to the payment of such balance pro rata, according to the respective amounts of such sales; and that out of the money remaining after such payment from the sale of the lots embraced in the conveyance from George Q. Johnson and wife to Adaline O. Sammis, you then pay to the defendant George Q. Johnson, or his solicitor, his said debt due from said Adaline O. Sammis, and the interest which shall accrue thereon; and out of the money remaining from the sales of the lots embraced in the conveyance from George Q. Johnson and wife to Sarah M. Emerson, you then pay to the defendant, George Q. Johnson, or his solicitor, his said debt due from said Adaline O. Sammis, and the interest which shall accrue thereon; and out of the money remaining from the sales of the lots embraced in the conveyance from George Q. Johnson and wife to Sarah M. Emerson, you then pay to the defendant George Q. Johnson, or to his solicitor, his said debt, due from said Sarah M. Emerson, and the interest which may accrue thereon; and that you bring the residue of the money arising from the said sales, after payment of the said debts, interest and costs (if any there shall be,) into this court, to abide the further order thereof, unless otherwise previously ordered; and that you

make return and report of your proceedings, by virtue of this writ, to the first Tuesday of February next.

Witness, Henry W. Green, esquire, our Chancellor, at Trenton, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty

W. M. BABITT, *Clerk.*

WM. SILAS WHITEHEAD, *Solicitor.*

As by the record of the said writ of fieri facias in the office of the clerk of the said Court of Chancery, in book P 2 of Executions, page 543, &c., may more fully appear: And 10
 whereas, I, the said Meline W. Halsey, as such sheriff, as aforesaid, did, in due form of law, advertise the said lands and premises, to be sold under and by virtue of the said writ of fieri facias at public vendue, to be held at the court-house in the city of Elizabeth, on Wednesday, the twenty-third day of January, A. D. 1861, at two o'clock in the afternoon, at which time and place I did adjourn the sale thereof until Wednesday, the twentieth day of February, A. D. 1861, at the court-house in Elizabeth, at two o'clock, P. M., at which last 20
 mentioned time and place I did accordingly offer and expose a part of the said land and premises for sale at public vendue, under and by virtue of the said writ of fieri facias, being all those lots of land situate, lying, and being in the city of Elizabeth, in the county of Union, and state of New Jersey, and which are particularly laid down, designated, and distinguished, on a certain map entitled "A map of property owned by Jacob T. Merritt, in the city of Elizabeth, county of Union (late Essex), New Jersey," (which map is on file in the office of the clerk of the county of Union aforesaid,) as 30
 follows, to wit: Blocks number four (4), five (5), fourteen (14), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26) thirty-four (34), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-six (46), forty-seven, (47), forty-eight (48), and lots number twenty-four (24) to number fifty-five (55), inclusive, on block number seven (7). Also lots number three (3), seven (7) and eight (8), on block number eight (8). Also, lots number one (1) to number twenty (20), inclusive, on block number seventeen (17). Also, lots 40
 number twenty-six (26), twenty-seven (27), twenty-nine (29)

and thirty-one (31), and two gores on block number thirty (30), as by the said map on file as aforesaid, reference being thereunto had, may more fully appear; which said streets above mentioned are to be and remain open and public streets or highways for ever; and also, all the land included in said streets laid out as aforesaid, in front of and adjoining the premises hereby conveyed, extending to the centre of said streets, subject to the use thereof by the owners of lots on the said map, and the public generally, as public streets
10 or highways, until closed by lawful authority under the laws of said state. Whereupon Edward G. Brown did then and there bid for the above described lots of land and premises the sum of nine thousand dollars; and no other person bidding as much, I did then and there openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell the said lots of land and premises for the sum of nine thousand dollars, to the said Edward G. Brown, he being then and there the highest bidder for the same. Now, therefore, know ye, that I, the said
20 Meline W. Halsey, as such sheriff as aforesaid, under and by virtue of the said writ of fieri facias, and in execution of the power and trust in me reposed, and also for and in consideration of the said sum of nine thousand dollars, to me in hand paid, the receipt whereof I do hereby acknowledge and therefrom acquit, exonerate, and for ever discharge the said Edward G. Brown, his heirs, executors and administrators, have granted, bargained, sold, assigned, transferred, and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said Edward G. Brown, his
30 heirs and assigns, all and singular the said lot of land and premises, with the appurtenances, privileges, and hereditaments thereto belonging, or in any way appertaining: To have and hold the same, unto the said Edward G. Brown, his heirs and assigns, to his and their only proper use, benefit, and behoof, for ever, in as full, ample, and beneficial a manner as by virtue of the said writ of fieri facias I may, can, or ought to convey the same. And I, the said Meline W. Halsey, for myself, my heirs, executors, and administrators, do hereby covenant, promise and agree to and with the said
40 Edward G. Brown, his heirs and assigns, that I have not, as

such sheriff as aforesaid, done or caused, suffered or procured to be done, any act, matter, or thing, whereby the estate hereby intended to be conveyed in and to the said lot of land and premises, with the appurtenances, is, may, or can be changed, charged, encumbered, or defeated, in any way whatever.

In witness whereof, I, the said Meline W. Halsey, as such sheriff as aforesaid, have hereunto set my hand and seal, this twenty-first day of March, in the year of our Lord one thousand eight hundred and sixty-one. 10

M. W. HALSEY, *late sheriff*. [L. s.]

Signed, sealed, and delivered, in the presence of

JOSEPH ALWARD.

New Jersey, Union county, ss :

On this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-one, before me, the subscriber, a master in chancery of said state, personally appeared Meline W. Halsey, late sheriff of the county of Union aforesaid, who is, I am satisfied, the grantor in the within indenture named, and I having first made known to him the 20 contents thereof, he did thereupon acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOSEPH ALWARD,

Master in Chancery of New Jersey.

State of New Jersey, Union county, ss :

I, Henry R. Cannon, clerk of said county of Union, do hereby certify the foregoing to be a correct copy from the record of deeds, as recorded in book 9, page 498, &c., for said county. 30

In testimony whereof I have hereunto set my hand, and [L. s.] affixed the seal of said county, this twenty-sixth day of May, A. D. 1864.

HENRY R. CANNON, *Clerk.*

Received in the Clerk's office of the county of Union, the fifth day of February, 1862, and recorded in book 9 of Deeds for said county, page 498, &c.

HENRY R. CANNON, *Clerk.*

EXHIBIT M 4.

AGREEMENT FOR A LEASE.

This agreement, made the eleventh March, one thousand eight hundred and sixty-one, between the Elizabeth Port Steam Power Company, of the state of New Jersey, and James A. Munsell and Robert B. Thompson, of the city of New York, witnesseth, that the said Steam Power Company, agrees to execute an indenture, to be mutually binding, and to be as follows, to wit.

10 First: That the Steam Power Company agrees to demise and to let to the afore mentioned James A. Munsell and Robert B. Thompson, their heirs, executors and administrators, all that certain lot of land situated in the first ward of the city of Elizabeth, and county of Union, in the state of New Jersey, bounded on the east by Water street, on the south by New street, on the west by First street, and on the north by the property of Abraham Baiz, comprising two hundred feet on the east and west, and ninety feet on the north and
20 south sides, with the buildings and improvements of every kind and description. Also, the steam engine, shafts, belting, and fixtures, now upon said premises, for the term of five years, commencing the first day of May next, at the annual rent of eleven hundred and fifty dollars, payable quarterly.

Second: That the Steam Power Company agrees to erect additional buildings, according to plans and specifications to be furnished by the said James A. Munsell and Robert B. Thompson, and to have same completed and ready for occupancy on or before the first of April next, no casualty arising to prevent the same; all taxes and assessments to be paid by
30 the said Steam Power Company.

Third: That the said Steam Power Company agrees that in the event of the destruction of, or injury to the buildings, or any portion thereof, by fire, the rent shall cease on said buildings, or on such portion as shall have been so injured, until said building shall be rebuilt, or the portion injured be repaired, which the Steam Power Company shall proceed forthwith to have done.

Fourth: That the said James A. Munsell and Robert B. Thompson, their heirs, administrators and assigns, shall have quiet enjoyment of the afore mentioned land and buildings, with all appurtenances thereunto appertaining, for the term of five years, herein before specified, with the privilege of having same renewed for a further term of five years, with all the conditions herein contained, at the annual rent of fifteen hundred dollars (\$1500), on their giving written notice to that effect thirty days previous to the expiration of the first term.

10

Fifth: That the said James A. Munsell and Robert B. Thompson do hereby bind themselves, their heirs, assigns, and administrators, to rent and occupy the herein before mentioned land, premises and buildings, with the appurtenances thereunto appertaining, for the purpose only of manufacturing stoves, forge bellows, and other kinds of iron, wood, and leather work, embraced in their trade and business, and to keep the same in good order and repairs at their own proper cost and expenses, usual wear and tear, and damages by the elements, excepted.

20

Sixthly: That the said James A. Munsell and Robert B. Thompson, at any time during the term or terms aforesaid, or expiration thereof, shall have the privilege to remove from said land or buildings all fixtures or improvements put thereon by them, all damage or injury caused to the land or buildings to be repaired by the said James A. Munsell and Robert B. Thompson, at their own cost and expense.

Seventhly: That the said James A. Munsell and Robert B. Thompson do further bind themselves, their heirs, administrators, and assigns, to quit and surrender up the afore mentioned land, buildings, and appurtenances thereunto appertaining, at the expiration of the term or terms aforesaid, in the like order and condition as when taken, usual wear and tear and damage from the elements, excepted.

30

Eighthly: That the Steam Power Company, and James A. Munsell and Robert B. Thompson, do hereby mutually and severally agree that the party not fulfilling the foregoing contract and conditions contained therein, shall pay, or cause to be paid, to the other party, the sum of one thousand dollars.

40

In witness whereof they, the parties to this agreement, have hereunto set their hands, and affixed their seals.

AB'M BAIZE, [L. S.]
President.

Witness to A. Baiz's signature, B. NAAR.

JAMES A. MUNSELL. [L. S.]
ROBERT B. THOMPSON. [L. S.]

Witness, B. NAAR.

It is hereby further agreed, on this tenth day of April, one
10 thousand eight hundred and sixty-one, between the Elizabeth
Port Steam Power Company and James A. Munsell and
Robert B. Thompson, herein before mentioned, that they,
the said James A. Munsell and Robert B. Thompson, shall
be empowered to remove the engine, boilers, and apparatus
appertaining thereto, now in said factory, at their own cost
and expense, and put in the place thereof a new engine,
boiler, and apparatus appertaining thereto, of the value of
thirteen hundred and fifty dollars, they allowing the sum of
\$350 (three hundred and fifty dollars) for the old engine,
20 which amount is to be deducted from the cost of the new
engine, which is to remain as the joint property of the said
Elizabeth Steam Power Company, and James A. Munsell
and Robert B. Thompson, at the valuation of one thousand
dollars, without interest, which new engine, &c., at the expi-
ration of the term or terms of lease, the Steam Power Com-
pany hereby agree to take over at a valuation.

In witness whereof said parties have hereunto set their
hands, and affixed their seals.

AB'M BAIZ,
President.

JAMES A. MUNSELL.
ROBERT B. THOMPSON.

30

Witness, B. NAAR.

EXHIBIT B 2, ON PART OF DEFENDANT.

Tuckahoe, July 10, 1863.

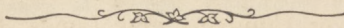
Mr. E. G. Brown: Please give me a list of the cost of
different pieces of property at the Port which you propose
to sell to me, and oblige yours,

J. T. MERRITT.

IN CHANCERY

OF

NEW JERSEY.



Between

JACOB T. MERRITT

and

EDWARD G. BROWN and
DEBORAH BROWN.

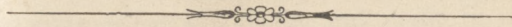
} On Bill, &c.

JOSEPH ALWARD,

Solicitor of complainant.

F. T. FRELINGHUYSEN,

Solicitor of defendants.



TRENTON:

PRINTED BY HOUGH & GILLESPIE,

Chancery Building, State street.

—
1868.

IN CHANCERY OF NEW JERSEY
NEW JERSEY

On the 20th day of April 1888
JACOB T. MERRITT
Attorney for the Plaintiff
vs.
WILLIAM G. BROWN and
LEBOHAN BROWN
Defendants

JOSEPH ALWARD

W. T. FRISVOLD

Printed by

PRINTED BY HUGH & GILBERT

In Chancery of New Jersey.

Bill of Complaint.

[Filed August 29, 1863.]

To his Honor Henry W. Green, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor your orator, Jacob T. Merritt, of the town of Yonkers, in the county of Westchester, and state of New York, that your orator, on or about the twenty-first day of March, eighteen hundred and sixty-one, was and for a long time had been seized in fee simple of certain lands and premises herein after described; and that your orator, together with his wife, Julia J. Merritt, had made and executed to one William H. Gibbons, a deed of mortgage, bearing date the first day of April, eighteen hundred and fifty-four, to secure the payment of certain sums of money due from your orator to the said William H. Gibbons, which was given for the purchase money for the said premises, and which covered the same and about one hundred acres more, all of which was purchased by your orator of said Gibbons. And your orator further showeth unto your Honor, that a suit was commenced to foreclose the said mortgage, and such proceedings were had therein that, on or about the sixteenth day of October, eighteen hundred and sixty, a certain decree was made in our Court of Chancery, at Trenton, in said suit, in favor of William H. Gibbons, complainant, and against your orator, Jacob T. Merritt and Julia J. his wife, George Q. Johnson and T. Jane his wife, John H. Rolston and Harriet his wife, the trustees of the First Presbyterian Church and congregation, Sarah M. Emerson, Adeline O. Sammis and John Sammis, John B. Gale, and James C. Fairbank, defendants, and it was ordered, adjudged, and decreed, that so much of the

mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say, all those tracts or parcels of land and premises herein after described, together with certain other lands, as should be necessary, be sold to raise and satisfy the sum of twenty-eight thousand one hundred and sixty dollars, the principal and interest secured by said mortgage, and also the costs of said complainant and the costs of said defendants; and that the said premises be sold in parcels, as
10 by said decree, recorded in the office of the clerk of our Court of Chancery, will more fully and at large appear, and to which record your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further showeth, that the said mortgaged premises had, prior to the obtaining of said decree, been surveyed and laid out in streets and lots, as described on "A map of property owned by Jacob T. Merritt, in the city of Elizabeth, county of Union, (late Essex) New Jersey," and that the defendants, George Q. Johnson, John H. Rol-
20 ston, the trustees of the First Presbyterian Church and congregation, John B. Gale, Sarah M. Emerson, and Adeline O. Sammis, subsequent to the date of the mortgage executed by your orator to William H. Gibbons, had purchased from your orator or his assigns certain portions of the mortgaged premises, which, by the decree aforesaid, were liable to be sold, if the premises then owned by your orator did not sell for sufficient to satisfy said decree.

And your orator further showeth, that the sheriff of Union county, in pursuance of said decree and a writ of *feri facias*
30 to him directed, sold a portion of said premises in parcels for a sum exceeding nineteen thousand (19,000) dollars, leaving about nine thousand (9000) due upon the said decree; and your orator, being anxious to save and redeem the balance of said premises, which was worth more than twenty thousand (20,000) dollars, requested one Edward G. Brown, as a friend of your orator, to purchase the same for him, and to advance for him any balance of money which your orator might not at the moment be able to pay to satisfy the whole amount of nine thousand (9000) dollars; and the said Edward
40 G. Brown, expressing a willingness to aid your orator, con-

sented and agreed to purchase said premises for your orator, and to pay for him whatever balance your orator might be unable to raise; and for that purpose and as part of the purchase money, your orator assigned to the said Edward G. Brown twenty-five shares of the capital stock of the Elizabethport Steam-power Company, of the par value of twenty-five hundred dollars; and after this arrangement and agreement between the said Edward G. Brown and your orator, the sheriff of Union county aforesaid, at the request of your orator and the said Edward G. Brown, sold together or in 10 one parcel the remainder of said mortgaged premises then owned by your orator, which were as follows: being all those lots, tracts, or parcels of land and premises, situate, lying, and being in the city of Elizabeth aforesaid, and which are particularly laid down, designated, and distinguished on a certain map, entitled "A map of property owned by Jacob T. Merritt, in the city of Elizabeth, in the county of Union, (late Essex) New Jersey," (which map is on file in the office of the clerk of Union county aforesaid,) as follows, to wit, the entire blocks numbers (4) four, (5) five, (14) fourteen, 20 (23) twenty-three, (24) twenty-four, (25) twenty-five, (26) twenty-six, (34) thirty-four, (36) thirty-six, (37) thirty-seven, (38) thirty-eight, (39) thirty-nine, (40) forty, (41) forty-one, (42) forty-two, (43) forty-three, (46) forty-six, (47) forty-seven, (48) forty-eight; also lots numbers from (24) twenty-four to (55) fifty-five, inclusive, in block number (7) seven; lots numbers (3) three, (7) seven, and (8) eight, in block number (8) eight; lots numbers from (1) one to (20) twenty, inclusive, in block number (17) seventeen; lots numbers (26) 20 twenty-six, (27) twenty-seven, (29) twenty-nine, and (31) 30 thirty-one, and two gores in block number (30) thirty; and also all the land included in the streets in front of and adjoining said premises, extending to the centre of said streets, as by the said map on file as aforesaid, reference being thereunto had, may more fully appear; and the said Edward G. Brown, in pursuance of the aforesaid arrangement with your orator, bid for the same the sum of nine thousand dollars, the amount estimated to be then due on said decree. And it being known that the purchase was for your orator, who had the equity of redemption, and no one being inter- 40

ested that the property should bring more than the decree, no one desired to bid against your orator, and the bid of the said Edward G. Brown, which, as was understood by all present, was for your orator, was the first and only bid for said premises, which were thereupon struck off by the sheriff for the said sum of nine thousand dollars, although the premises were then, have been ever since, and are now well worth over twenty thousand dollars, and, had it then been sold in parcels to suit the convenience of purchasers, it
10 would have sold for much larger sums than nine thousand dollars.

And your orator further showeth, that he expected, by the time the sheriff would be ready to deliver the deed, to be able to raise the balance of the money, over and above what the stock was worth, and which your orator had placed in the hands of the said Brown, as part of the purchase money as aforesaid, but, when the time came, your orator was disappointed, and the said Brown, being a man of means,
20 offered to advance the money on the said stock, and the balance, about six thousand five hundred dollars, which he did, and paid the same to the sheriff for your orator. And your orator further showeth, that your orator delivered to the said Edward G. Brown the said stock, which was valued at twenty-five hundred dollars, its par value, and which would then and will now bring that price in the market, as part payment for the said property, and for that purpose the said Brown received it, and then took the deed for said property in his own name, but in trust for your orator and to secure him for the money he so advanced to the sheriff. And your
30 orator further showeth that, since then, the said Edward G. Brown has, with the consent of your orator, received the rents and profits of the said lands and premises; and the said Edward G. Brown, while receiving said rents and profits, has repeatedly assured your orator that he might redeem said premises at pleasure.

And your orator further showeth, that being ready and desirous to redeem said premises, he hath repeatedly applied to the said Edward G. Brown, and hath offered to repay him the said sum advanced, with lawful interest thereon, together
40 with any reasonable charges expended by the said Edward

G. Brown in behalf of your orator, upon having the said premises conveyed to your orator in accordance with the original agreement, with which just and reasonable requests your orator well hoped that the said Edward G. Brown would have complied, as in justice and equity he ought to have done. But the said Edward G. Brown, instead of complying with such requests, demanded that your orator should, in addition to redeeming said premises, purchase of the said Edward G. Brown certain other premises which your orator does not want, by reason whereof Deborah, the wife of the said Edward G. Brown, may claim to have some right, title, or interest in and to said premises. But your orator insists that the said Edward G. Brown is not and never was seized of said premises, whereby the said Deborah Brown may have any claim whatsoever. 10

And now so it is, may it please your Honor, that the said Edward G. Brown and Deborah Brown, combining and confederating with divers persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator in the premises, he, the said Edward G. Brown, refuses either to give your orator a deed upon your orator's accounting what they shall find due, or to give up the certificate of stock to your orator, or to account to your orator for the said stock, and, upon various pretences, he absolutely refuses to come to any settlement with your orator; and, among other pretences, he gives out that he has sold the whole or part of said premises; but your orator insists that, if he has sold any of the said premises, he did it wrongfully and must account to your orator for its actual value; all which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. 20

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable, to the end therefore that the said Edward G. Brown, Deborah Brown, and their confederates, when dis- 30 40

covered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and, more especially, that the said confederates may, in manner aforesaid, answer and set forth whether, on the twenty-first day of March, eighteen

10 hundred and sixty-one, the said Edward G. Brown did not agree with your orator that if your orator would consent that the residue of the mortgaged premises then owned by your orator, should be offered for sale by the sheriff in one parcel, he would bid therefor the balance due under the execution in the hands of the sheriff, and that he would purchase the premises for your orator; and whether, in consideration thereof, your orator did not then assign and deliver to the said Edward G. Brown twenty-five shares of stock, as aforesaid, of the par value of twenty-five hundred dollars, as part

20 of the said purchase money; for what purpose and consideration the said stock was assigned; whether he retains the said stock; and why he retains it; and what he has done with it; and how he has appropriated it; and whether, after said agreement, at the request of the said Edward G. Brown and your orator, the sheriff did not offer for sale in one parcel the residue of said mortgaged premises then owned by your orator; and whether the said Edward G. Brown did not ask the sheriff and the complainant's attorney, W. Silas Whitehead, esq., to compute the amount due, and whether such

30 computation was not made, and the said Edward G. Brown did not bid for said premises the sum of nine thousand dollars, the amount then supposed to be due on the execution; and whether said Edward G. Brown's bid was not the first and only bid; and whether it was not then understood that no one else was interested in the said sale after the complainant's decree was paid, except your orator, and that the said sale was a mere formal one, and for your orator's benefit; and whether the said Edward G. Brown did not purchase the said premises for the benefit of your orator, and did not

40 then so declare that he purchased for your orator, and that

your orator should have the property ; and whether the said Edward G. Brown has not repeatedly acknowledged that he purchased the said premises at your orator's request, and for him ; and whether your orator has not offered to pay to said Edward G. Brown the said sum advanced, with lawful interest thereon, together with any other reasonable charges expended by the said Edward G. Brown, in the premises ; and whether the said Edward G. Brown has not refused to accept the moneys thus offered, and to convey the said premises as agreed ; and whether the property would not have sold 10 for more than nine thousand dollars, if it had been sold in parcels in the manner the first part of the property was sold ; and whether the balance of said property was not sold together, or in one parcel, so as to allow your orator to redeem the same ; and whether the said Edward G. Brown bid for himself ; and whether he expected to retain the said property for himself, when he bid ; and that the said defendants may answer the premises ; and that an account may be taken of what is due to the said defendant, Edward G. Brown, for principal and interest in respect of any money advanced by 20 him ; and that an account be taken of the rents and profits derived by the said Edward G. Brown since he has been in possession thereof, or which, but for his wilful default or neglect, might have been so received ; and also an account of all other sums which have been received by the said defendant in or towards satisfaction of said moneys advanced by the defendant, either from the said stock or the rents of the said premises or otherwise, your orator being ready and willing, and hereby offering to pay to the said defendant whatever on the balance of the said accounts appears to be due 30 to the defendant ; and that the said defendant may surrender and convey the said premises unto your orator, or such other person as he shall appoint, free and clear of all encumbrances done by him or any person claiming by, from, or under him, and may deliver up to your orator all title deeds or writings in his custody or power, relating to the said premises ; and that your orator may have such other or further relief in the premises as the nature of the circumstances of this case may require and your Honor shall deem meet, and shall be agreeable to equity and good conscience. May it please your 40

Honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Edward G. Brown and Deborah Brown his wife, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein
 10 as to your Honor shall seem meet and be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray.

JOSEPH ALWARD,
Solicitor of complainant.

BENJAMIN WILLIAMSON,
Of counsel with complainant.

Answer.

[Filed February 4, 1864.]

The answer of Edward G. Brown and Deborah Brown his wife,
 20 *to the bill of complaint of Jacob T. Merrill, complainant.*

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill contained, for answer thereto, or unto so much and such part thereof as these defendants are advised is material for them to make answer unto, they answer and say—that they admit that the said complainant, on or about the twenty-first day of March, eighteen hundred and sixty-one, and for a long time, had been seized in fee
 30 simple for certain lands and premises in said bill of complaint described; and that the complainant and his wife had executed to William H. Gibbons a mortgage, dated the first day of April, eighteen hundred and fifty-four, which covered

and was given for the purchase money of said premises and other lands, purchased of said Gibbons; and that said mortgage was foreclosed, and that on or about the sixteenth day of October, eighteen hundred and sixty, a decree was made in favor of said William H. Gibbons, and against the said complainant and the other defendants in said suit, named in said bill of complaint, and that it was decreed that so much of the premises in said bill of complaint described, and of certain other lands as should be necessary, be sold to raise and satisfy the sum of twenty-eight thousand one hundred and sixty dollars, and the costs of the complainant and defendant; and what other provisions were contained in the said decree these defendants are not informed, and leave the complainant to make such proof thereof as he is advised and deems necessary; and these defendants further answering admit, that the said mortgaged premises, or part thereof, prior to obtaining the said decree, had been laid out in streets and lots, as described in the map in the bill of complaint mentioned; and that George Q. Johnson, John H. Rolston, the trustees of the First Presbyterian Church and congregation, Sarah M. Emerson, Adaline O. Sammis, had, after the date of the said mortgage, purchased portions of the said mortgaged premises, which, by the said decree, "if the premises owned by the complainant did not sell for enough, were liable to be sold to satisfy the said decree." And that the sheriff of Union county, by authority of a writ of *feri facias*, issued on said decree, made sales of a portion of said property for a sum exceeding nineteen thousand dollars, leaving about nine thousand dollars due on said decree.

And these defendants in further answering deny, that the balance of the property which remained unsold was worth twenty thousand dollars, or half that sum, and deny that any such arrangement was made by the said complainant with the said defendant, Edward G. Brown, as that set forth in the said bill, and deny that the said Edward G. Brown holds any part of the said mortgaged premises or of the capital stock in the said bill mentioned, in trust for the said complainant; and these defendants admit that the said complainant did assign to this defendant, Edward G. Brown, twenty-five shares of the capital stock of the Elizabethport Steam-

power Company, of the nominal par value of one hundred dollars a share, and that the defendant, Edward G. Brown, did bid off and purchase at the sheriff's sale under the said decree, for the sum of nine thousand dollars, that portion of the mortgaged premises in the bill of complaint in that behalf mentioned. And these defendants in further answering say, that the said stock was assigned to, and the said purchase of mortgaged premises made by this defendant, Edward G. Brown, under the circumstances and in the man-
10 ner herein after stated.

And these defendants in further answering say, that this defendant, Edward G. Brown, was a member of the board of the trustees of the First Presbyterian Church and congregation; that the said church and congregation were the purchasers, subsequent and subject to the said mortgage, of a part of the mortgaged premises, and had erected thereon a parsonage at an expense of about thirty-five hundred dollars; that there had been two or three sales by the sheriff under the said decree, by means of which the sum of nineteen
20 thousand dollars had been raised towards satisfying the decree, and that the church parsonage property and the portions of the mortgaged premises purchased subsequent to the mortgage, and which belonged to members of the said congregation, still remained unsold; that by reason of the prices realized at the said sale, the church and the other owners of property subject to the mortgage, became satisfied that their property would have to be sold to raise the balance due on the decree, unless some action was taken by them in the premises; that a meeting of the trustees and male members
30 of the church was held, where it was determined to bid up the land to such a price as if possible avoid a sale of the parsonage under said decree; but at the sale it was found that the property still went so low that it would be necessary to sell the parsonage; that the trustees and church members, and those who owned the lots subject to the decree, applied to the defendant, Edward G. Brown, to bid off the property for the balance due on the decree; that the said Gibbons, and his lawyer, Wm. S. Whitehead, being desirous of realizing the amount of the decree, offered that, if the defendant,
40 Brown, would bid off the property, they would give him

sixty days to pay for it; that the defendant, Edward G. Brown, was satisfied that the property remaining unsold, excepting therefrom the parsonage and that owned by the subsequent purchasers, was not worth the amount of nine thousand dollars still remaining due of the said decree; that the threatening aspects of war, the stagnation of business, had then greatly depreciated real estate, and that at the prices which had already been realized at the sale, the residue of the property aforesaid was not, by any means, worth as much as there was due on decree. And the defendant, 10 Edward G. Brown, declined taking the property, and the said Gibbons then determined not further to adjourn the sale, but to go on and sell the residue of the mortgaged premises, including the property of the church and of the subsequent purchasers, for what it would bring. And these defendants further show, that the said complainant was very desirous that some arrangement should be made by which the said decree should be satisfied; that he desired that the bond, which the mortgage was given to secure, should be paid and not remain an existing claim against him; that he had given 20 to the church and the other subsequent purchasers, warranty deeds for the land they had purchased of him, on which he would be personally liable, if the land so conveyed by him was sold under the decree; that one of such subsequent purchasers was John D. Gale, in whose hands the said complainant had placed security, that the property conveyed to said Gale should not be sold under the said mortgage, and the said Gale had purchased the said property and built thereon on the faith of said security, which pledge or security the complainant would forfeit and lose in the event 30 of the sale under the decree, of the property so conveyed to the said Gale; that the church had agreed with the said complainant to convey to him four lots, situated on other premises back of the church building, as a part consideration for property the complainant had conveyed to the church; which four lots the said complainant would lose, in the event of the parsonage property being sold under the decree. And for these reasons, the complainant was very desirous that some arrangements should be made by which the decree should be satisfied, without the sale of the parsonage pro- 40

erty or the property of subsequent purchasers. And these defendants in further answering show, that the said complainant, finding the said Brown was unwilling to bid off the said property, for the purpose of inducing him so to do and to make the purchase more advantageous to Brown, offered to transfer to him twenty-five shares of the capital stock of the Elizabethport Steam-power Company, if he would purchase the property at nine thousand dollars. And the defendant, Edward G. Brown, understood at the time that the complainant would relieve him, the said Edward G. Brown, from his bid before the expiration of the sixty days, which the said Gibbons had agreed to give the said defendant for payment, and that if he failed so to do, that the stock would belong to the said defendant. And the trustees of the church and the subsequent purchasers of the property also urged the defendant, Edward G. Brown, to purchase the property, stating that they would help to make the payments by taking a part of the property; whereupon this defendant, Edward G. Brown, did bid off the balance of the said mortgaged premises, as described in the said bill of complaint, for the sum of nine thousand dollars, and paid the sheriff ten per cent. of the purchase money; that the said purchase was made by the said Brown on the twenty-first day of March, (1861) eighteen hundred and sixty-one, but the deed therefor, and the payment of the ninety per cent. of the purchase money, was not made until more than sixty days thereafter. And these defendants further answering say, that after the said Brown had bid off the said property, and paid the ten per cent. of the purchase money as aforesaid, he told the trustees of the church and subsequent purchasers, that he would throw up the bid and forfeit the ten per cent. paid, unless they took a part of the property and thus assisted him in making the payment, whereupon block number fourteen (14) being forty lots, was put up at auction and sold for seven hundred and sixty dollars, and one J. C. Fairbanks gave his check for forty dollars, thus making eight hundred dollars, which was paid over to this defendant, Brown, and he paid the same, with eight thousand two hundred dollars more, to the sheriff for the purchase money. And these defendants further answering say, that after the said Brown had bid off the pro-

perty as aforesaid, he offered the said complainant, if he would pay one thousand dollars, he, Brown, would pay the balance and give the complainant time to reimburse him for the balance paid, but the complainant said he could not do it, and that the defendant, the said Brown, must do what he saw fit with the property; and the defendant, Brown, sent J. C. Fairbanks to the complainant after the sale to induce the complainant to pay one thousand dollars, and to relieve him, the said Brown, from the said purchase as aforesaid; that the said Brown, after the said purchase, offered to sell 10 the property at a thousand dollars less than it cost him, but could find no one to take the same. And the said complainant, up to the time the deed was delivered to the said Brown, and long after, although requested so to do, refused to relieve the said Brown from the said purchase, and has now no claim to the said property.

And these defendants in further answering say, that the said capital stock, at the time it was transferred to the defendant, Brown, was not worth more than five hundred dollars; that the said complainant, knowing that he had no 20 right to said stock, has now asked for it, and if he had made any demand, such a demand would have been refused.

That the whole value of the property of the said company consists in its ability to return rent to the stockholders; that at the time the stock was assigned to the defendant, Brown, no business was being done on the property, no tenant occupied it, the glasses were broken out of the windows, and the property in bad repair, and had been standing idle for eight years; that after the assignment of the said stock of the said company to the defendant, Brown, he and Mr. Blaiz 30 and another person owned all the capital stock; that they put the building in good repair, built an additional brick building one hundred feet long and seventy feet wide, procured a good tenant, at a rent of ten per cent. on the cost of the new part, and thus, by their care, enterprise, and large expenditure of money, have made the stock worth par, at which price the defendant, Brown, has sold his twenty-five shares.

And these defendants further show, that after the defendant, Edward G. Brown, found that he could not relieve him- 40

self from part of the mortgaged premises which he had purchased, he commenced to improve the property so as to make it, if possible, remunerative, and to that end erected a good picket fence all around it, graded the streets in front of it, purchased all the manure he could get and carted it on the premises, drained it, and put it in a state of cultivation. That the said complainant, treating the said property as belonging to the said Brown, as he knew it did, has several times offered to sell the defendant, Brown, lands adjoining thereto.

And these defendants in further answering say, that although the defendant, Edward G. Brown, bid off the said property in March, eighteen hundred and sixty-one, and has been since then the acknowledged owner of it, publicly improving it; the said complainant has never, to the present time, made any tender of the purchase money paid by the said Brown therefor, and never, until sometime in the latter part of the summer or fall of eighteen hundred and sixty-three, made any claim that he had any right or interest in the said property; and then made such claim by a note sent to the defendant, Brown, just before the filing the bill in this suit.

And these defendants in further answering say, that the defendant, Edward G. Brown, bought and holds the said property for himself and not for the said complainant, and that he paid therefor what was then a full consideration, and gave for the said property a higher price than that which was paid for the property which was sold to raise the nineteen thousand dollars, and which is situated alongside of that bought by the defendant, Edward G. Brown.

And the defendant, Edward G. Brown, in further answering says, that while he denies that the said complainant applied to him to advance the balance due on the decree, for the reason as stated in the bill of complaint, that he, the complainant, was not at the moment able to pay the whole amount of nine thousand dollars; yet the fact was, that he, the said Brown, would have been glad to have been relieved therefrom, and to have retransferred the said stock, and, as herein before stated, before making the payment to the sheriff, and before his expenditures relative to the said stock

and the improvement of the said lands, and before he had run all the risks in the depreciation in value of the property, and did offer the said complainant, if he would pay one thousand dollars on the purchase, to advance the balance of the purchase money for him, and to let him, the said complainant, take the said deed, which offer the said complainant refused.

And these defendants insist, that the said complainant, having refused the said offer, and the defendant, Edward G. Brown, having made the payment and taken the deed, and 10 having spent large sums of money in improving the property, and run all risks of loss, that the said complainant cannot, after a lapse of two years and an half, set up any claim, either legal or equitable, to the property.

And these defendants deny, that the said property would have sold for more than or as much as nine thousand dollars at the sheriff's sale, had the same been sold in separate parcels, or under any other circumstances than those under which it was sold. And these defendants deny, that the money paid by the defendant, Edward G. Brown, was, in 20 any sense, an advance of money for the benefit of the complainant; and deny that the said Edward G. Brown has received the rent of the premises, by reason of the consent of the complainant, but had received the rents and profits of the land as the proceeds of his own property; and deny that the said Edward G. Brown has repeatedly or ever assured the complainant, that he might redeem the premises at pleasure, or that he has made any such offer, other than as herein before stated. And these defendants deny, that the said complainant has applied to the said Brown for a convey- 30
ance of the said premises otherwise than as herein before stated.

And the said defendants in further answering say, that the said premises were, on the twenty-first of March, eighteen hundred and sixty-one, sold in one parcel, and that the amount due on the decree was ascertained before the bid was given, and that there was no other bid than that of the said Edward G. Brown—but these defendants deny that the property was sold in one parcel at the solicitation of the said Edward G. Brown, but that said Brown was solicited as aforesaid, to become the purchaser; and the stock was as- 40

signed to said Brown to induce him to become the purchaser, so that, if the said complainant did not in sixty days relieve the said Brown from the bid and purchase, he, the said Brown, would have a more desirable purchase than he otherwise would have; and these defendants deny, that the purchase was made for the benefit of the said complainant, and aver that it was made and consummated for the benefit of the said Edward G. Brown, and that the only interest the said complainant had in the matter was, that it was understood that if the said complainant within sixty days relieved him from his bid, he, the said complainant, was to have the benefit thereof—but that the said complainant, not only for sixty days but for two years, neglected to relieve said Brown from the purchase, and when the complainant has been applied to, as aforesaid, to take the property, he has refused so to do, stating his inability to provide the requisite funds; and these defendante insist the said complainant has no claim to any benefit from the purchase by said Brown; and the said Edward G. Brown, in further answering says, that at the time he made the bid he did understand it was for his own benefit, and that unless the purchase money was furnished by the said complainant before the expiration of sixty days, that he, the said complainant, would have no interest in either the stock or the mortgaged premises.

And these defendants in further answering say, that the property was not sold in one parcel to enable the complainant to redeem it, but was so sold as the only way in which the balance due on the decree could be raised, and that the property brought more than it would in any mode of sale, and sold at a higher rate than that part of the mortgaged premises which was sold in lots.

And these defendants deny that the said complainant ever, until a few weeks before filing his bill in this suit, made any offer to pay the money for the property, and then it was a mere verbal offer, unaccompanied with any money, which offer this defendant, Edward G. Brown, is perfectly satisfied he knew would not be accepted; and the said Edward G. Brown further saith, that to his knowledge he has made no statements relative to the transaction, different in substance from that contained in this answer.

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for this defendant to make answer unto, and not hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge and belief of these defendants; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray that these defendants may be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained. And 10 these defendants, as in duty bound, will ever pray.

FRED'K T. FRELINGHUYSEN,
Solicitor and counsel for defendants.

State of New Jersey, Essex county, ss.—Edward G. Brown, the within named defendant, being duly sworn according to law, on his oath saith—that the facts, matters, and things set forth in the foregoing answer, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of other persons, he believes them to be true.

E. G. BROWN. 20

Sworn and subscribed, February 2d, 1864, at Newark, N. J., before me.

THEO. FRELINGHUYSEN, *M. C.*

Replication.

[Filed February 24, 1864.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the 30 said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied

unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

JOSEPH ALWARD,

Solicitor for, and

BENJ. WILLIAMSON,

Of counsel with complainant.

Examination of Witnesses.

10

[Filed October 16, 1866.]

Examination of witnesses, &c., in the above stated cause, depending in said Court of Chancery, taken at the office of William Jay Magie, in the city of Elizabeth, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, before William J. Magie, one of the masters and examiners of said court, in the presence of Joseph Alward, esquire, solicitor of complainant, and of Robert S. Green, esquire, of counsel with defendant—due notice of said examination being admitted
20 by counsel for defendants to have been given in behalf of complainant.

Jacob T. Merritt, a witness produced on the part of the complainant, alleging himself to be conscientiously scrupulous of taking an oath, being duly affirmed, declares and says— I reside in the county of Westchester, in the state of New York; my occupation is farming; I am the complainant in this suit; I purchased lands at Elizabethport, in the state of New Jersey, and took a deed therefor on the first of April, eighteen hundred and fifty-four; those lands comprise a pro-
30 perty usually known as the Rising Sun Farm; I purchased that property of William H. Gibbons, at the price of forty-two thousand dollars; I paid at the time I took the deed, twelve thousand dollars of the purchase money; I gave a mortgage for thirty thousand dollars; in April, of the year

eighteen hundred and fifty-five, I paid six thousand dollars of the principal and interest to that time; this mortgage was afterwards foreclosed by said William H. Gibbons.

Quest. What else have you paid upon that mortgage?

Ans. About twenty-two hundred dollars of interest.

Quest. What amount have you paid for taxes upon the property?

Ans. About a thousand dollars.

Quest. Who was Mr. Gibbons' solicitor in the foreclosure of that mortgage? 10

Ans. William Silas Whitehead, esquire.

Quest. What year was that mortgage foreclosed?

Ans. I think it was commenced in eighteen hundred and fifty-nine; it was not completed until eighteen hundred and sixty.

Quest. In what manner was the property ordered sold in the decree? [Objected to by defendants' counsel as incompetent proof.]

Ans. In lots, I think.

Quest. Did the sheriff commence selling in parcels? 20

Ans. He did.

Quest. What day did he commence selling?

Ans. On the twentieth of February, eighteen hundred and sixty-one.

Quest. What amount was realized by the sales that day?

Ans. About thirty-five hundred dollars.

Quest. To when was the sale adjourned?

Ans. To the twentieth of March—four weeks from that time.

Quest. What amount was realized from sales that day? 30

Ans. Up to the evening of that day, the sales of that day and of the previous day, amounted to about thirteen thousand and five hundred dollars.

Quest. To what time was the sale then adjourned?

Ans. To the following day.

Quest. Were you satisfied with the prices for which it sold?

Ans. I was not.

Quest. How much more was realized by sales in parcels that day?

Ans. About seven thousand five hundred dollars more was produced.

Quest. How much then remained unsatisfied on the execution?

Ans. About nine thousand dollars.

Quest. Did you on that day make any arrangement with the defendant, Mr. Brown, to purchase for you?

Ans. I did.

Quest. What was that arrangement?

10 *Ans.* He was to buy the property at the nine thousand dollars, in one parcel; and I gave him twenty-five shares of stock of the Elizabethport Steam-power Company (I think that is the title of it) on account, the par value of which was one hundred dollars per share; there were also five shares of the same stock unissued, which belonged to that stock; I explain this by saying that the establishment cost fifteen thousand dollars, of which I owned one fifth; of this, twelve thousand and five hundred dollars of stock had been issued.

Quest. What property was that?

20 *Ans.* It was all that was remaining unsold of the Rising Sun Farm.

Quest. At what time?

Ans. On the twenty-first of March, about the middle of the sale—not in point of time, but of amount of sales of that day.

Quest. For whom did Mr. Brown purchase this property?

Ans. He purchased it for me.

Quest. Did this property include all the mortgaged premises remaining unsold at the time you entered into an arrange-
30 ment with Mr. Brown?

Ans. Yes, it did, except the portions of this property previously sold by me.

Quest. When was the first interview you had with Mr. Brown in reference to this arrangement?

Ans. It was on the morning of the said twenty-first of March, before the sale commenced; I walked with Mr. Brown towards the court-house, and proposed to him that he should buy what then remained unsold on joint account; there was then nearly seventeen thousand dollars remaining; I offered
40 to give him this stock above referred to, saying I had no

money, on account of my portion or half; Mr. Brown declined that proposition, as he owned one peice of property at the port, with another person, and he wanted to get rid of that—well, said I, buy it for me then; he said it was rather more money than he could spare very well; he said, well, let us go in and see how it will sell; the sale was commenced, and about four thousand dollars worth sold, when I again spoke to Mr. Brown, and, said he, let us sell a little more, it is doing pretty well; the sale was continued until the amount was reduced to about nine thousand dollars; Mr. Brown 10 then came to me and asked if I had that stock which I had spoken of in the morning; I told him I had it in my pocket; said he, let me have it and I will see what I can do; he took it and went with it to Mr. John H. Rolston—I did not go with him; he soon came back and said if I would assign it to him, he would buy the property for me; I did so—I assigned it to him or rather, I gave him a power of attorney on the back of the scrip to sell, assign, and transfer it to him; before this was done, I think immediately before he came to me for the stock, Mr. Brown asked the sheriff how much 20 there was remaining due; the sheriff answered about nine thousand dollars; after I had transferred the stock to Mr. Brown he asked the sheriff what was the amount due; the sheriff had figured it up in the mean time, and said nine thousand dollars; Mr. Brown said make it enough, sheriff; the sheriff said that would cover it; the sheriff was then asked to put the balance up in one parcel—I think I asked him myself; the sheriff then asked Mr. Whitehead if he should do so; Mr. Whitehead replied that was as Mr. Merritt says, if it suits him it suits us; I said that's all right, Mr. Brown is 30 going to buy it for me; the sheriff put it up in one parcel—Mr. Brown bid nine thousand dollars, and after crying it for two or three times, it was knocked down to him.

It was understood by the sheriff that I did not want any other bid upon it. [Objected to for defendant.]

Quest. Was it understood by those standing by that Mr. Brown was purchasing for Mr. Merritt? [Objected to as incompetent.]

Ans. It appeared to be so understood at the time; many have told me since that they so understood it. [Objected to.] 40

Quest. When was you to redeem this property? [Objected to as leading.]

Ans. In sixty or ninety days.

Quest. What conversation took place between you as to your ability to redeem it at that time?

Ans. About the time of the transferring of the scrip, Mr. Brown asked me if I thought I would be able to redeem it within sixty or ninety days; I told him I thought I should, or that I had little doubt I should—I don't remember the
10 precise words.

Quest. How much did you value this property, purchased by Mr. Brown for you, at?

Ans. Twenty thousand dollars I considered it worth at that time.

Quest. What object had you in assigning this stock to Mr. Brown? [Objected to.]

Ans. The object was that he should purchase it, the property spoken of here, for me.

Quest. Did you assign this stock to Mr. Brown to induce
20 him to purchase the land for himself? [Objected to.]

Ans. No; I did not.

Quest. Did you assign this stock that the property might sell for enough to pay the decree? [Objected to.]

Ans. No.

Quest. Did you assign this stock for the purpose of making the purchase more advantageous to Mr. Brown? [Objected to.]

Ans. No.

Quest. What was the agreement between you and Mr.
30 Brown, if you did not redeem this property within sixty or ninety days?

Ans. There was not any agreement that I know of.

Quest. Was there anything said about what should become of the stock or who it should belong to, if you did not redeem it within that time?

Ans. No.

Quest. If you had intended that as a *bona fide* sale on that day, what would you have considered the most advantageous way of selling the premises in question?

40 *Ans.* By the lot, by the small quantity, at so much per

city lot; that was the way we sold before, and if it had been sold so, it would have brought a good deal more money.

Quest. What condition was the building owned by the Elizabethport Steam-power Company in at the time when you transferred the stock? [Question withdrawn.]

Quest. Was a party negotiating to rent the premises owned by the Elizabethport Steam-power Company at the time when you transferred this stock?

Ans. The negotiation had ended, I think, before that; the place was rented—the rent to commence on the first of May 10 following.

Quest. Who were the party?

Ans. Munsell & Thompson, stove makers.

Quest. Who occupies the building now?

Ans. The same parties.

Quest. When did you next see Mr. Brown after he had purchased these premises for you, and where? [Objected to.]

Ans. Within a day or two—he called at my office, in New York.

Quest. What conversation occurred between you? 20

Ans. Mr. Brown said, now, Mr. Merritt, we must stir around and see if we can't sell this property; I can't give the exact words, but that was the substance of it; he added to what I have above given, and see if we can't make something on it.

Quest. Did you ever tell Mr. Brown that you could not redeem the property, and he might do what he pleased with it?

Ans. No.

Quest. What has always been your intention in reference 30 to redeeming? [Objected to.]

Ans. My intention has always been to redeem it.

Quest. When did you first ascertain that Mr. Brown was not willing that you should redeem it?

Ans. Some time last summer, the exact time I don't remember; my impression is that it was about May or June, it might have been later.

Quest. What conversation had you with Mr. Brown in April of last year?

Ans. In April of last year, Mr. Brown came into my 40

office; I asked him if I could pay him one or two thousand dollars, how long he would give me to redeem the balance for the property which he bought for me; I mean, to pay the balance for the property which he bought for me; he replied, you can have just as much time as you want; I would rather have money at interest than to own unproductive real estate; he proposed, at the same time, that I should buy other property which he owned at the Port, which I declined doing, and told him I would see what I could do in
10 the other matter.

Quest. Who was present at this conversation?

Ans. My brother, M. F. Merritt, was present.

Quest. After this conversation, did you offer to redeem the property?

Ans. I did.

Quest. To whom did you make the offer?

Ans. To Mr. Brown.

Quest. Verbally or in writing.

Ans. In writing, first.

20 *Quest.* Did Mr. Brown refuse to suffer you to redeem?

Ans. He did, in writing. [Objected to.]

Quest. Have you a copy of those letters with you?

Ans. I have not.

Quest. Did you offer at any subsequent time to redeem?

Ans. I did.

Quest. Was that verbally or in writing?

Ans. It was verbally.

Quest. When and where was this offer made?

Ans. I can't state the exact time, but it was after the cir-
30 cumstances above spoken of—it was on the corner of Broad-
way and Cedar street, in New York City.

Quest. State the conversation that there occurred?

Ans. I told Mr. Brown that I was ready to reimburse him, and he refused to take it, saying that he wanted me to take all the property, he had at the Port; he would like to sell all out there; I said to Mr. Brown, I thought that was very strange, as he had a short time before told me he would do it; he admitted he had, but said he had changed his mind, or made some such excuse—I don't remember exactly; we
40 had some further conversation, which I don't recollect; I

said, Mr. Brown, you seem to talk as though I had lost my rights in this matter; he said, I do; I bid him good morning and left.

Quest. Did you at that or any other time ask him how much you owed upon the property?

Ans. I did, in my note. [Objected to.]

Quest. For what purpose did you assign the above mentioned stock to Mr. Brown? [Objected to.]

Ans. I assigned it to him as a part of the purchase money.

Quest. Did he so understand it at the time? [Objected to.] 10

Ans. I think he did.

The examination of said witness was, by consent of parties, for the time being suspended, for the purpose of admitting the testimony of the witness next following.

Matthew F. Merritt, a witness produced on the part of complainant, alleging himself to be conscientiously scrupulous of taking an oath, being duly affirmed, declares and says—I reside in Stamford, Connecticut; I am a commission merchant; my place of business in April of last year was at Number 74 Broadway, in the city of New York; I heard the 20 testimony of my brother in relation to a conversation occurring there—I was present at that conversation; I am a brother of Mr. Jacob T. Merritt, the complainant.

After some other conversation which I don't remember, the important part was, Mr. Merritt asked Mr. Brown how long he would give him to pay the balance if he would pay one or two thousand dollars down, Mr. Brown replied, oh, any time you want. Then there was other conversation of a general character, which I don't remember; this part of the conversation is particularly impressed upon my mind, 30 from the inclination I had to tell my brother to name a time when he would make the payment and take the property.

Quest. What property was the subject of conversation?

Ans. The property at Elizabethport, which I had already understood Mr. Brown had bought on account of Mr. Merritt. [The last part objected to.]

Quest. Have you had any other conversations with Mr. Brown in relation to this same property?

Ans. I have.

Quest. When, where, and what were those conversations?

Ans. I can't state the exact time, but during a few months previous to the conversation in April, on more than one occasion, in the same office, he stated to me that he wished my brother would reimburse him for the money that he has paid, and take back the property.

Quest. How many times did you converse with Mr. Brown on this subject?

Ans. I don't know how many—at least on two occasions, 10 and on one of those occasions my brother was not present.

Quest. Were you present at any other conversation between your brother and Mr. Brown, except the one in April?

Ans. I have been present when they were together in that office, but I have no recollection of what took place at those interviews, except the one in April; I mean that I could not repeat the language used at those interviews, though I remember the substance.

Quest. What was the subject of those conversations?

Ans. The conversations would frequently, when Mr. 20 Brown was in, turn upon this land.

Quest. Did Mr. Brown ever come there on any other business?

Ans. Yes, he came in on other business, when there was no one present but myself.

Quest. How frequently did he come to the office?

Ans. I could scarcely state, sometimes he would be in two or three times in a fort-night, and then perhaps not in a month or two.

And being cross-examined witness further says—

30 *Quest.* Whose office is this?

Ans. We have occupied it together, my brother and myself.

Quest. What was your brother's business at that time?

Ans. He had no active business at that time as I am aware of; he could answer that question better than I could.

Quest. Was any property named or specified in that conversation, between your brother and Mr. Brown, in April?

Ans. The property at Elizabethport, which I stated before, had been bought by Mr. Brown on my brother's account.

Quest. Were those the words used in that conversation as designating the property?

Ans. I could not say that those exact words were the ones used.

Quest. What words were used?

Ans. I could not pretend to quote every word, but they were such as to leave no doubt, on the mind of any one, as to what property they were talking about.

Quest. Are the words which you have used, as nearly as you can recollect, the words which were used at that time?

Ans. They are.

Quest. By whom was this property designated in this manner?

Ans. The property was alluded to by both parties.

Quest. In the manner which you have named?

Ans. By Mr. Merritt, when he asked Mr. Brown how long he would give him to redeem the property which Mr. Brown had bought on his account.

Quest. You made use of the words a few moments ago "had bought for him," was that the expression used or not?

Ans. It would be "bought for me;" as I said before, I can't pretend to quote the precise words. 20

Quest. Then you are not certain whether the expression was "bought on my account" or "bought for me?"

Ans. I am not.

Quest. Are you certain either expression was used?

Ans. I am not entirely so, but words were used which conveyed the meaning of either of those.

Quest. Have you stated the question asked by your brother, in the words used by him as nearly as you can recollect? [Objected to as already answered.]

Ans. I have. 30

Quest. Was any money paid at that time by your brother to Mr. Brown?

Ans. Not that I saw.

Quest. Did Mr. Brown come in on this business?

Ans. I could not state what his object in coming in was. I don't recollect what the first subject of conversation was on his coming in.

Quest. Were other subjects talked of at that conversation?

Ans. I can't remember the subjects of conversation; I was

engaged a good deal of the time myself, but think other subjects were spoken of.

Quest. How was it you remember this and not the others?

Ans. This was a matter of importance to my brother, which I wanted to see him avail himself of, and the other subjects were of a general character, the matters of the day.

Quest. Have you talked this matter over with your brother?

Ans. After Mr. Brown left the office I said to my brother, that he had better make arrangements to close that matter
10 with Mr. Brown, on the proposition he had made.

Quest. Have you talked the matter of this conversation over with your brother since then, to ascertain your recollection of what that conversation was?

Ans. My brother spoke to me some time ago, asking me if I remembered the conversation; I told him I did.

Quest. Did he then state to you his recollection of it?
[Objected to.]

Ans. I don't remember whether he stated his recollection to me, or I mine to him first; during the conversation he
20 did state his recollection to me.

Quest. You both then stated your recollections of the conversation, one to the other.

Ans. Yes.

Quest. At this time did you own any property at the Port; at the time of the conversation in April?

Ans. I do now, and have no doubt I did at that time.

Quest. Was it near the property which had been bought by Mr. Brown at the sheriff's sale, and formerly owned by your brother?

30 *Ans.* I can't state how near it is to any property bought by Mr. Brown, not knowing what part of the property he bought.

Quest. Was it near the property formerly owned by your brother, and known as the Rising Sun Farm?

Ans. It was property formerly owned by my brother.

Quest. Did not that property of your brother's bound it on three sides.

Ans. I could not tell without refering to the map; my impression is that it did.

40 *Quest.* Did you have any talk with Mr. Brown at that con-

versation you have spoken of, about that property of your own. [Objected to as irrelevant.]

Ans. I have had conversations with Mr. Brown in regard to that property, but whether at that conversation in April or not, I can't say.

Quest. Have you in either of these conversations that you have mentioned?

Ans. In the conversation between Mr. Brown and myself, when my brother was not present; I had a conversation with Mr. Brown about my own property. 10

Quest. Was anything said by you at that time at what price you held your property? [Objected to.]

Ans. I don't think I named any price at which I would sell it, although I may have done so.

Quest. Did you not offer to sell that property at that time? [Objected to.]

Ans. I asked Mr. Brown if he would buy it; if that is offering it? I offered it.

Quest. Did you, if you asked Mr. Brown if he would buy it, state on what terms you would sell it? 20

Ans. I have already answered that; I have no recollection of having named a price, although I may have done so, during the conversation.

Quest. Did Mr. Brown offer to sell any land about there? [Objected to.]

Ans. He did.

Quest. Was it part of this that he had purchased at sheriff's sale, and that formerly belonged to your brother?

Ans. That I can't answer, not knowing the exact localities of the property which he bought. 30

Quest. What was your impression then?

Ans. I don't recollect whether I had any impression at the time, as to whom Brown got the property from, but I understood it to be the property adjoining my own.

Quest. At what price did he offer it to you? [Objected to.]

Ans. I can't name the exact figure.

Quest. Was it an hundred dollars an acre? [Objected to.]

Ans. I think it was about that, whether a little over or under I can't say.

And being re-examined witness further says—

Quest. What kind of land was it that Mr. Brown offered to sell to you at this time spoken of?

Ans. He spoke of it as salt meadow.

Quest. Do you know whether your land joins the premises purchased by Mr. Brown for your brother? [Objected to.]

Ans. I can't answer; I do not know.

Quest. When you asked Mr. Brown if he would buy your land, what was Mr. Brown's answer?

10 *Ans.* That he did not want to buy any property of that kind.

And being again cross-examined says—

Quest. Was that all of his answer?

Ans. That was all of his answer to my first question.

Quest. Did he say that he did not want any more of that kind of property, or words to that effect?

Ans. I can't recollect that he used the word more.

Quest. Why did you use it in commencing to give your answer to Mr. Alward's last question?

20 *Ans.* Because in the course of the conversation he referred to some salt meadow that he had up the creek, and during the conversation he said, that he would rather have money at interest than any more such property.

Quest. Is this the same remark that you heretofore said he made use of, in speaking of this Elizabeth Port property?

Ans. This answer means to refer to my salt meadow only.

M. F. MERRITT.

Affirmed and subscribed, this nineteenth day of May, A. D. 1864, at Elizabeth, before me.

W. J. MAGIE, *M. C.*

30 The further examination of witnesses, &c., in said cause, is, by and with consent of the solicitor and counsel of the respective parties, adjourned to Thursday the twenty-sixth day of May instant, at the hour of half-past ten o'clock in the forenoon of that day.

W. J. MAGIE, *M. C.*

Thursday, the twenty-sixth day of May, 1864, the parties met pursuant to adjournment, and by consent, the witness now being examined, was still set aside for the examination of the following.

W. J. MAGIE, *M. C.*

John H. Rolston, a witness produced on the part of complainant, being duly sworn, says—I reside at Elizabethport; I own real estate there; I am somewhat acquainted with Jacob T. Merritt and Edward G. Brown; I remember there was a mortgage foreclosed by Mr. Gibbons against Mr. Merritt; I own lots that were subject to that mortgage; I knew of other persons who owned lots subject to that mortgage; I don't think there was ever any meeting of all the owners of the lots covered by said mortgage; I don't recollect it; there may have been; I was present at a meeting of part of the owners of lots covered by said mortgage, held in the basement of the Presbyterian Church; it was held after the second day's sale, and prior to the last day's sale; Mr. Brown was present; there were parties also at that meeting who were not owners of property affected by that mortgage; on the second day of sale I was disappointed at the prices the lots brought, and was apprehensive that unless there was some understanding between us all, the property, outside of what was owned by Mr. Merritt alone, would come under the hammer; I therefore proposed to Mr. Brown and others, who had an interest in the thing, to have this meeting; Mr. Luther T. Hand, Mr. Spear, I think, and Mr. George Q. Johnson, I think, were there; there were two parties who had an interest in this, one who owned property affected by this mortgage and others who were connected with the church; the church had a deed for four lots of ground and had built a house on them, which was covered by that mortgage.

When we came together, after I had stated to them the reasons for the meeting, the first thing we did was to find out how much had been raised on the mortgage by the sales which had taken place up to that time, and how much still remained to be raised. We then apportioned this balance upon the property remaining unsold, and after looking over

our figures, we thought the prices were reasonable at those figures, and we agreed to bid the property up to those prices which we set on the lots, and if they were knocked down to us to take them at such prices. I mean by *us*, we who were in the room on that occasion, with the understanding that if anybody bid over the prices we had set down, whether the party so bidding was of our number or not, we, as a body, would not be responsible for the bid; we had no writings, it was merely a matter of honor; and my impression is that
10 we designated Mr. Brown to bid for us. I can't say whether there was any chairman or secretary of that meeting or not. I was on the little desk, and all the others were gathered around; we rather informally got at the prices we put upon the different lots, and then summed up the amount. I think we found they overran the balance then due on the mortgage; I do not remember how much; don't think it was over a thousand dollars.

Quest. At the prices marked would the mortgaged premises then owned by Mr. Merritt have sold for enough to
20 pay the balance of the execution?

Ans. I should think they would.

I was present at the next sale; I know that Mr. Merritt assigned on that day to Mr. Brown twenty-five shares of the Steam Power Company's stock, the par value of which was one hundred dollars a share, but I passed it in trade to Mr. Merritt myself, for the sum of three thousand dollars; I believe I wrote the assignment on the stock or scrip; either Mr. Brown or Mr. Merritt asked me to do so, or both of them, I do not know which.

30 *Quest.* Why was this stock assigned by Mr. Merritt to Mr. Brown? [Question objected to on the part of defendant.]

Mr. Brown stated to me that Mr. Merritt wanted him to buy a part of the mortgaged premises in for him; and I understood that this stock was given as collateral security to cover any risks that the owners of property sold by Mr. Merritt and encumbered by this mortgage might run in consequence of such purchase by Mr. Brown for Mr. Merritt, and also as security to Mr. Brown for any risks which he might run himself by doing this favor to Mr.

Merritt; this is my understanding of it. I understood it from Mr. Brown, as my conversation was with him.

Quest. Please state the balance of the conversation between you and Mr. Brown at the same time.

Ans. I don't know that there was any further conversation.

After this stock was assigned Mr. Brown bid off some of the property; I introduced Mr. Brown to Mr. Whitehead, the lawyer of Mr. Gibbons, and requested him to introduce Brown to Mr. Gibbons; I told him Mr. Brown was a 10 responsible man. This was in consequence of the conversation between Mr. Brown and myself in relation to his purchasing part of this property; my impression is that I had no further conversation with Mr. Brown in relation to this matter. What further agreements, if any, were made, were made with Mr. Whitehead, the Sheriff, and Mr. Gibbons. After they had agreed upon the amount necessary to pay off the execution, that is Messrs. Whitehead, Gibbons, Merritt, Brown and the Sheriff, then the property remaining unsold was put up in a lump and struck off to Mr. Brown. 20

My conversation with Mr. Brown took place on the morning of that day, previous to any sales taking place. I never knew, and don't know now, specially and particularly what bargain was made between Mr. Merritt and Mr. Brown.

I am not sure what time the stock I have spoken of was assigned, but it seems to me it was before the sale commenced that day; Mr. Brown asked me the value of the stock, I think; I can't tell whether I said I considered it worth three thousand dollars, or that it was worth what it represented—that is a hundred dollars per share; I said one 30 of those two things; then Mr. Brown asked me if it was good at any rate for two thousand dollars. I told him I thought it was.

None of the property was bought for any one who was present at the meeting of which I have spoken, in pursuance of the agreement entered into that night; one reason why not, is that all the property sold between that time and when the balance of the property was put up in the lump, was sold for more than the prices we agreed it ought to bring. 40

The property sold at better prices on the last day than it had before. I was satisfied with the prices it brought on the last day. If Mr. Merritt had permitted the property to have been sold on the first day, in my opinion, he would have done a great deal better; I don't know when the first day of sale was, whether in the month of February or March, or when; as I understand it there were three days on which the property was sold; the first was when it was advertised for sale; the second probably thirty days after, 10 and the third was about, I suppose, thirty days after the second—this is my recollection; I cannot swear to the number of days or the time; I think that at the rates the property was selling at the time the last parcel was put up, the property owned by Mr. Merritt would have satisfied the execution and more.

I had a conversation with Mr. Brown, the Sheriff and Mr. Whitehead on the day of the last sale, to satisfy myself that the amount proposed to be bid by Mr. Brown would cover what remained due on the execution; the Sheriff figured it 20 up and said it would.

Mr. Brown and I walked down from town together on the day of the last sale, and I presume that the property was more or less the subject of conversation; the only thing that I recollect now, Mr. Brown asked me if I did not think that George Q. Johnson, who had bought seventeen lots in one block on the old road, at one hundred dollars a lot, ought to let that purchase go in with the amount that he, Mr. Brown, bid off for Mr. Merritt; I told him no, I did not think he ought, that Mr. Johnson, when he went up 30 there, had given us notice that he should buy the property just as cheap as he could, and I did not consider him bound to put that property in. Mr. Brown then said I'll see, and left me and went up to Mr. Johnson, who was just ahead of us.

I presume I have had some conversation since that time with Mr. Brown in reference to that property; I know I have; I don't remember having any immediately after; may have done so; upon reflection, I am not sure but that the last day's sale was on the next day after the second sale.

And being cross-examined, witness further says—

The lots I owned that were subject to that mortgage were six lots, standing just above the house of John B. Gale, three of them fronting the road and three in the rear of those, and twenty-four lots in the rear of Johnson; I purchased the six lots of John B. Gale; the twenty-four lots from Jacob T. Merritt; I purchased those lots from Mr. Merritt previous to the Sheriff's sale, and I think in eighteen hundred and fifty-seven or eight, at the time of the great depression or panic. 10

Quest. What did you give Mr. Merritt for those lots?
[Objected to on part of complainant.]

Ans. I gave him twenty-five shares of the Steam Power Company's stock, and six hundred dollars in cash; the nominal price of the lots was one hundred and fifty dollars a lot. This was the trade of which I spoke in my direct examination. At the Sheriff's sale there were some lots sold immediately joining these—right across the street; they sold for a hundred dollars a lot, I think, at the Sheriff's sale; I think there were no lots sold at the Sheriff's sale on 20 the same side of the street with my twenty-four; I think there are thirty-two lots on that block of which I own twenty-four; of the other eight, I think Mr. Johnson owns four, and either Miss Emerson or Mr. Sannus own the other four.

Quest. Why did you apply to Mr. Brown after the sale at which you state you were disappointed at the prices obtained?

Ans. I think at the time he was one of the trustees of the Presbyterian Church, I am not sure but he was President 30 of the Board, at any rate he was one of the trustees, and he was bound to look after that property by virtue of his office. You may say, that it was as a representative of the church I applied to him. There was another reason, that Mr. Brown had professed an interest in all the parties interested in the property; I mean in all the parties interested in the property by purchase or otherwise except Mr. Gibbons. I think Mr. Merritt was not present at the meeting in the basement of the church.

Quest. How was the estimate of the value of the lots 40

made by you at that meeting arrived at; was it the estimated value of the lots, or was it the amount you would be willing to bid for them in order to save the balance of the property which was owned by others than Mr. Merritt from the effect of the execution?

Ans. It was such a reasonable price as we felt willing to pay for the property if it should be knocked down to us; that is my view of it, somebody else might have taken a different view of it. It was neither what we believed the 10 lots to be worth, nor what we would be willing to pay for them to save the other property; I think that estimate was considerably less than the market value of the lots at that time.

Quest. Was there or not some talk of moving the church building off of the lots? [Objected to on the part of complainant.]

Ans. No such question was raised at that meeting to my knowledge.

Quest. Was there at any other time? [Objected to as before.] 20

Ans. I heard something of the kind intimated, I think. I am connected with that church; I can't say whether I heard this matter intimated by any one connected with the church; I don't know as I heard any regular proposal.

Quest. Do you know the aggregate amount that Mr. Brown was authorized to bid by those present at the meeting that you have spoken of, for the balance of the property, if so, state?

Ans. I do not know the aggregate amount, but my im- 30 pression is that there remained some seventeen thousand dollars unpaid at that time.

And being re-examined, witness further says—

Quest. At what price do you hold the twenty-four lots above mentioned? [Objected to on part of defendant.]

Ans. That is a pretty hard question to answer; leaving out the two lots next to Johnson, I offered to sell the other ten along Second street at four hundred dollars a lot; those next to Johnson are most valuable, because they are nearer to the avenue.

And being again cross-examined, witness says—I think those lots are worth more now than they were at the time of the sale; I think that fourteen lots or gores sold at that sale for fourteen hundred dollars; two of those fourteen fronted on the avenue; they are less than twenty-five feet in width; those next adjoining are not one hundred feet deep, but lower down they are over one hundred feet.

JNO. H. ROLSTON.

Sworn and subscribed, this twenty-sixth day of May,
A. D. 1864, before me. 10

W. J. MAGIE, *M. C.*

Luther T. Hand, a witness produced on the part of the complainant, being duly sworn, says—I reside at Elizabethport, and own real estate there; I am acquainted with Mr. Merritt and Mr. Brown; I was present at a meeting in the basement of the church, which is I think the same one which Mr. Rolston spoke of in his testimony. The object of that meeting was to see if they could not devise some plan or means to save the parsonage property; I was present at the next sheriff's sale; I heard an arrangement made between Mr. Brown and Mr. Merritt as to buying the balance of the mortgaged premises; the arrangement, as I understood it was—the balance of the property remaining unsold was to be put up and Mr. Brown was to bid it off at a certain amount agreed to, which amount was considered sufficient to relieve the parsonage property, and also other property which had been previously purchased of Mr. Merritt—Mr. Johnson's, Mr. Gale's, Mr. Rolston's and some others. I could not state positively what that amount was; at any rate, after figuring it up, it was deemed sufficient to 20
30
free the rest of the property.

Quest. For whom was Mr. Brown to bid the property off?
[Objected to on part of defendant.]

Ans. For Mr. Merritt; I believe Mr. Merritt assigned some stock to Mr. Brown that day, it was so understood; I understood that from Mr. Brown and Mr. Merritt and others who were present—Mr. Johnson, Mr. Rolston and Gale, who were present.

Quest. Why was this stock assigned to Mr. Brown? [Objected to on part of defendant.]

Ans. I understood that Mr. Brown and Mr. Merritt had an understanding that in a certain number of days, which I think was about the first of June, that Mr. Merritt would be able to redeem the property and take it off of his hands, and the stock was assigned as a collateral security, as I understood that he would redeem this property; I understood Mr. Brown and Mr. Merritt both to say that Mr. Merritt
10 would have a right to redeem it in that number of days; Mr. Brown further remarked that he did not think Mr. Merritt would sacrifice the twenty-five hundred dollars, speaking of this collateral security, this twenty-five shares of stock; I did not have any previous conversation with Mr. Brown in relation to that bid; I have had a conversation with Mr. Brown about two weeks ago about it; I recollect also having a short conversation with Mr. Brown; he called on me one evening; it was after he bought the property; I am not able to tell exactly what that conversation
20 was, but it had reference, I think, to that meeting which was held in the basement of the church; it was something in reference to the property he purchased at the last sale; and as near as I can remember he was complaining that the parties present at that meeting had not done as they agreed to do; there seemed to be some misunderstanding between Mr. Brown and some of the parties; I am under the impression that he said at that time—although I could not swear positively that he said it at that time, he has said it to me, that he bought the property for Mr. Merritt; this is
30 the only conversation I recollect since the day of sale with Mr. Brown until lately, say two weeks ago; the conversation at the day of the sale, Mr. Brown told me he felt very anxious to do something for Mr. Merritt; he thought it was a shame that Mr. Merritt should sink so much money there.

Quest. In this conversation, what object did you understand Mr. Merritt had in assigning this stock? [Objected to on part of defendant.]

Ans. The way I understood it was, that Mr. Brown did not want to bid off that whole property in bulk and take the
40 whole responsibility upon himself, and the object was that

Mr. Merritt might have time to look about him and make arrangements for taking the property off of his hands. And Mr. Brown after talking this over applied to those present who were interested in the matter to know what they could do towards assisting; he said he had not the money in hand to pay the ten per cent. on so large a sum down on that day, and some of the parties there present, who were interested in the mortgaged property, agreed to furnish a certain amount to assist Mr. Brown. At that time I think Mr. Merritt was anxious to redeem this property. 10

Quest. At that time did you understand that Mr. Brown was bidding for himself or for Mr. Merritt? [Objected to as before.]

Ans. For Mr. Merritt; I supposed at the time it was satisfactory to all parties; the parties interested in the mortgaged premises were satisfied as it relieved them, and at the same time they would be glad to see Mr. Merritt get out of it, and save something.

Quest. Have you heard Mr. Brown say that he was under obligations to hold the property for Mr. Merritt? 20

Ans. That was the understanding at the day of sale, that he was to buy the property for Mr. Merritt and hold for him till about the first of June following, when Mr. Merritt should, on or before that time, come forward and straighten the matter up.

That meeting in the basement, as far as my memory serves me, did not come to any special agreement any further than if the property did not bring a certain amount, they set prices on certain lots and blocks, and I think agreed to bid them up to that amount. The matter was talked over at the meet- 30 ing, but I consider that every man went out to do as he pleased afterward; the prices there talked over were such as any one of them would be willing to pay. It was understood that these prices were such as would pay off the balance due on the execution; I think the property sold on the next day of sale previous to Mr. Brown's buying, brought those prices and over.

Quest. Was it necessary that the balance should be sold in one parcel to raise an amount sufficient to pay the execution? [Objected to as before.] 40

Ans. I don't think it was.

Quest. Did you understand at that time that Mr. Merritt assigned that stock to cause the property to bring enough to satisfy the execution? [Objected to as before.]

Ans. Not to cause the property to bring enough.

Quest. Did you understand that it was for any other purpose than that Mr. Merritt might have an opportunity to redeem? [Objected to as before.]

Ans. My understanding was this, that it was as a guaranty
10 that he would redeem by the time named; it was assigned that he might redeem it; Mr. Merritt was very anxious that Mr. Brown should buy in this property for him, and as an inducement for him to do it he assigned him this stock, with the understanding that he should redeem it by the time named, and also to insure Mr. Brown against any loss that he might incur by so doing.

And being cross-examined, witness says—

When I say that I don't think it was necessary to sell the rest of the property in one parcel to raise enough to satisfy
20 the execution, I mean if it had been sold at the same rates as the other property sold that day had brought; according to the location, one part of the property put up in one parcel was the most desirable; some of the other parts of it were salt meadow; the bulk of it was as good as any of the property and some of it better, and some not so good.

L. T. HAND.

Sworn to and subscribed, this 24th day of May, 1864, before me.

W. J. MAGIE, *M. C.*

30 The further examination of witnesses, &c., is adjourned by consent of solicitors of both parties to the second day of June next, at ten o'clock in the forenoon.

W. J. MAGIE, *M. C.*

The further examination of witnesses, &c., is adjourned by consent of solicitors of both parties, to the eighteenth day of June instant, at eleven o'clock in the forenoon.

June 2, 1864.

W. J. MAGIE, *M. C.*

Examination of witnesses, &c., taken before the same master and examiner, in the same cause, this eighteenth day of June, eighteen hundred and sixty-four, in the presence of said solicitors.

Jacob T. Merritt, a witness previously examined in part, and whose examination was suspended by consent, being again placed on the stand, his examination was resumed.

Quest. Did you receive from Mr. Brown any other consideration for the said stock than that you have before mentioned? 10

Ans. No.

Quest. Has Mr. Brown in any other way accounted for said stock or any part of it?

Ans. No.

Quest. Has Mr. Brown ever offered to account to you for said stock or any part of it?

Ans. No.

Quest. Have you a copy of the letter you sent to Mr. Brown offering to redeem, and if so, produce it?

Ans. I have, and this is it. 20

The paper produced is marked *Exhibit, No. 1.* on the part of complainant, having been first objected to on the part of defendant.

Quest. When was this copy made?

Ans. At the time of the writing the letter, before the letter was delivered.

Quest. Did Mr. Brown answer it?

Ans. He did.

Quest. In writing?

Ans. Yes. 30

Quest. Have you his letter?

Ans. No, I have not, or at least I did not find it after diligent search.

Quest. Can you give any explanation where it is?

Ans. I only suspect, I lost some papers out of my pocket the day my brother was examined in this cause, this was among them, I think; when I got back to my office it was not there.

Quest. Have you moved your office at any time?

Ans. Yes, on the first of May last.

On reflection, I desire to state that I had looked for that letter before the day above named, and missed it, and I think it was not amongst those papers that I lost that day.

Quest. State the contents of that letter? [Objected to as incompetent.]

Ans. I cannot precisely, but the substance was, that he did not wish to dispose of a part of his property down there, but he would sell me the whole that he had, for what it cost 10 him. [Objected to as not responsive.]

A certified copy of a deed from Meline W. Halsey, sheriff, to Edward G. Brown, dated the twenty-first of March, eighteen hundred and sixty-one, marked *Exhibit, No. 2*, on the part of complainant, is offered in evidence, having been first objected to on the part of defendant.

And witness being cross-examined further says—

Quest. In whose hand-writing in this copy that you have produced as *Exhibit marked No 1*.

20 *Ans.* In my son's, Roland Merritt.

Quest. In whose hand-writing was the original letter?

Ans. In mine.

Quest. Was this the first offer you had made to Mr. Brown to redeem, since the purchase?

Ans. I think it was the first.

Quest. How long after this letter was written was it sent?

Ans. Immediately.

Quest. On the day it bears date?

Ans. Yes, I think it was, I sent it several times before Mr. Brown got it; Mr. Brown was not in his office when 30 first sent?

Quest. How did you send it?

Ans. I sent it by my son.

Quest. Did you contemplate commencing this suit, at the time this letter was written?

Ans. No, I can't say that I did.

Quest. Was it not written after consultation with your counsel?

Ans. I have no recollection of consulting counsel before writing it.

Quest. Did you consult your counsel in reference to it, before it was delivered?

Ans. No, not between the writing and the sending it.

Quest. How long after its date was it delivered?

Ans. I really don't recollect. It might have been a week or two possibly. It might have been only a day or two.

Quest. How long after its delivery, was it that your received the answer?

Ans. I can't say. It was not long, I should think it was within a week.

Quest. Was it after receiving this answer that you first came to the determination to bring this suit? 10

Ans. Yes, I did not consider I had any reason to bring a suit before that.

Quest. Why?

Ans. Because he had not refused to comply with the understanding. He had always before that told me that he would comply.

Quest. When next before that had he told you that he would comply? 20

Ans. In April before, April, eighteen hundred and sixty-three; whether he had between that time and the time of sending the letter, I do not recollect.

Quest. You are positive he did, in April?—where was it?

Ans. I am; it was in our office, 74 Broadway.

Quest. Was this the interview of which you spoke in your other examination?

Ans. Yes.

Quest. (Being shown *Exhibit No. 1.*) What does that little memorandum mean, down in the left hand corner? 30

Ans. It is, "well, I will see him;" that was the reply Mr. Brown made to my son when he delivered the note; I wrote that—It is in my hand writing.

Quest. Did he see you between that time and the commencement of the suit, in reference to the contents of your note?

Ans. Yes; I saw him between that time and the commencement of the suit in regard to the subject matter.

Quest. Where?

Ans. On the corner of Broadway and Cedar street. 40

Quest. Was this the interview that you have spoken of before, in which you told him, you seem to talk as if I had lost my rights?

Ans. Yes.

Quest. Was that interview before you received, as you say, his answer to your letter?

Ans. It was after I received his answer to this note.

Quest. When did you last see that answer?

Ans. I can't say; it was before we moved from 74 to 170
10 Broadway.

Quest. When was the last time you remember seeing that answer?

Ans. Well, I don't remember seeing it in six or eight months.

Quest. Did you ever show it to anybody that you recollect?

Ans. No; I don't recollect—I may have done so; my impression is that I have not.

Quest. You are certain you did not have it with you the day your brother was examined, when you lost some papers,
20 are you not?

Ans. I am not certain that I have not got it now; I feel positive I did not have it with me on that day.

Quest. Why did you state the circumstance of your losing papers that day, as an explanation of where that answer is?

Ans. It struck me, at that moment, that it might have been amongst them, but I now recollect that it was not; there were other papers pertaining to this case lost at that time.

Quest. Can you give any explanation of where that answer is?
30

Ans. No, I cannot; I have not parted with it intentionally.

Quest. Was it among your own papers and in your own possession, the last time you remember of seeing it or hearing of it?

Ans. Yes.

Quest. What was your business in eighteen hundred and sixty-one?

Ans. I was not in any active business—I was farming; I had a farm and lived on it; I came to the city frequently; I
40 had old business of the firm of Merritt & Company that occupied my attention some.

Quest. What was the business of Merritt & Company?

Ans. We were ship chandlers, at the corner of Wall and South street; we failed in 1854, and kept our business going about or little over a year, for winding up the old business.

Quest. You paid the six thousand dollars after the failure of the firm, then?

Ans. Yes; my brother, who was examined before, let me have three thousand of it, and I got the other in other ways.

Quest. Have the liabilities of Merritt & Company all been settled? [Objected to.]

10

Ans. I decline answering that question.

Quest. Are you or not now responsible as a member of the firm of Merritt & Company for your proportion of their liabilities? [Objected to.]

Ans. I decline answering that question.

Quest. Were their liabilities large when they failed? [Objected to.]

Ans. I decline answering that question.

The above questions declined to be answered. Witness states that he declines answering because he is advised by counsel that they are irrelevant. 20

The further examination of witnesses, &c., adjourned, by consent of the solicitors of the respective parties, to Tuesday, May 30th, 1865., at ten o'clock A. M.

W. J. MAGIE, M. C.

The further examination of witnesses, &c., in the above stated cause taken as before, in the presence of the solicitors of the respective parties.

The witness under examination when this cause was adjourned was, by consent of the solicitors of the respective parties, set aside for the examination of the following: 30

Theron Merritt, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith—In the spring and summer of eighteen hundred and sixty-one, I resided at Tuckahoe, in the state of New York, on a farm with my father, the complainant in this cause; my father's office was at No. 74 Broadway, in the city of

New York; I heard some conversations between Edward G. Brown and my father in that office, in reference to some land at Elizabethport; Mr. Brown said to Mr. Merritt that he wished he would redeem that property as soon as he could; these conversations took place during the summer and fall of eighteen hundred and sixty-one; Mr. Brown was in then on several different occasions—two or three; I remember the first of these conversations, which was along about in July, in that year; at that conversation Mr. Brown said that
10 he wished Mr. Merritt would redeem that property which he had bought in for him as soon as he could; that conversation took place between Mr. Brown and Mr. Merritt; I think there was no one else present but myself and the office boy; Mr. Brown was in the office afterwards, and spoke to that effect, but I do not recollect any other conversation particularly; I should say that I recollect hearing three or four conversations of Mr. Brown.

Mr. Brown has talked with me when my father was not by on the subject; I remember that he was in, in July,
20 eighteen hundred and sixty-one, my father was not by; he came to the office and said that he wished to see Mr. Merritt; Mr. Merritt was not in; he then said that he wished to see Mr. Merritt about this property that he had bought in for him, that he hoped he would redeem it as soon as he could; he remarked that he had done this as a favor to Mr. Merritt, and he wished he would take the property and redeem it as soon as he could; I do not recollect any other conversation in particular after that; he was in the office a number of times during the fall and winter following, to
30 see Mr. Merritt on this business, in regard to the redeeming of this property; several of those times when he came my father was not in; I saw Mr. Brown in the office as late as in the summer of eighteen hundred and sixty-two; I was then in the office alone; my father was not in; something was said about the property at that time; he said that he wished Mr. Merritt to take that property.

And being cross-examined, witness further says—I have given as nearly as I can the very words used by Mr. Brown on these several occasions; and I have given as nearly as I

can recollect all that he said; I have spoken of these conversations to my father; I stated to him my recollection of the expressions used by Mr. Brown without any suggestion from him.

The first conversation made an impression upon me, which is the way I recollect that rather than the others; the name of the office boy was Collins, I think his first name was Robert; he lived in Brooklyn; Mr. Brown did not designate this property in any other manner than that which I have stated; he has spoken of it as that property at Elizabethport; he did not always use the expression "the property that I bought in for him."

In answer to the remark of Mr. Brown, my father said he would take it as soon as he could; I do not know of any time being fixed when he should take it.

I recollect distinctly the two conversations with Mr. Brown, of which I have spoken positively, but do not recollect any others particularly.

Theron Merritt.

Sworn and subscribed, this 30th day of May, A. D. 1865, 20
before me.

W. J. Magie, M. C.

By consent of the parties, the examination of witnesses, &c., was then adjourned to Friday, the second day of June, 1865, at the same place.

W. J. Magie, M. C.

The further examination of witnesses, &c., taken by consent, pursuant to adjournment as above, on Friday, the second day of June, 1865, at the office of W. J. Magie.

And by consent of the said parties, the witness then under examination was further set aside for the examination of the following:

Nathaniel T. Spear, a witness produced on the part of complainant, being duly sworn according to law, on his oath saith—In the winter of eighteen hundred and sixty-one, I

resided at Elizabethport; I was then acquainted with Mr. Edward G. Brown and Mr. Jacob T. Merritt; I knew something of some property of Mr. Merritt's being sold at sheriff's sale; according to the best of my recollection the first sale was on the twenty third day of February, eighteen hundred and sixty-one; I was present at that sale; I think it was adjourned then to the same day in March; I was present at that time during part of the sale; it was then adjourned, I think, until the next day; I was not present at
10 that time; I was indirectly interested in the sale of that property as a trustee of the First Presbyterian Church and Society of Elizabethport; the church had bought a portion of the property covered by the mortgage, for the foreclosure of which the sale was made, and had built a parsonage upon it, and it was in danger of being lost; I mean we were fearful that in the then state of the country, and general want of confidence, the property would not bring enough to cover the amount of the mortgage claim so as to clear the parsonage property; it was my anxiety on this subject that caused
20 me to attend the first and second sales.

Quest. Why did you not attend the third one? [Question objected to by defendant's counsel.]

Ans. I had some important business of my own in New York to attend to, and at a meeting of the society, or some members of it the evening before, an arrangement had been made which, in my judgment, rendered the parsonage property quite safe, and the defendant, Mr. E. G. Brown, assured me that it would be safe; I thought the church interests would not suffer by my absence; I do not know who bought
30 the balance of the mortgage property that was sold; my interest in it had ceased when I found that the church was safe; after the sale I had several conversations with Mr. Edward G. Brown in reference to the property; the first was either the day following the sale or within a few days after the sale; I do not know that I can state the conversation as it was; I can tell the effect it produced upon me as affecting my relations to the church; the substance of the conversation, as nearly as I can recollect it, was this—I think it was opened, though I cannot be certain, by a question
40 from me as to what was expected of me, as representing the

church, to do further ; I don't know that I can remember the reply ; the language I would not undertake to repeat ; it was to the effect that some members of the board of trustees of the church had not treated him fairly at the sale, and he asked nothing more of them ; I told him that if that was the case I cared nothing more about it, my interest in it was at an end, I felt no further responsibility ; we both got considerably excited, and I don't know as I can repeat the conversation ; I don't know that he said he had bought the property, but I remember now that he said something to this effect—that if we wished to get that property away from Mr. Merritt we could not do it ; that Mr. Merritt should have a chance ; this referred to the property called the Rising Sun Farm, which had been put up for sale ; I don't know what portion of it, but I supposed the portion of it that remained unsold at the time we had our meeting on the night before the last sale ; when Mr. Brown spoke about getting the property away from Mr. Merritt he referred to the board of trustees of the church, he did not say in what way the church were trying to get it away ; the occasion of his saying that was this—the arrangement, as I understood it, made on the evening before the sale, was that the balance of the property should not be sold for an amount less than would satisfy the mortgage claim, without sacrificing the parsonage property, and the church was to, if necessary, assume one-half of the balance of the amount necessary to pay the debt, and to have a half interest in the property sold upon paying that half ; I don't remember who was to bid for the church, my impression now is that it was Mr. Brown ; it was he who assured me that the church should be protected, that I might feel easy on that ; the church had no money then on hand in case it was bid off, and they did depend on Mr. Brown to furnish funds for paying on their one-half ; I had the conversation with Mr. Brown, of which I have spoken, expecting that I would have to raise money in behalf of the church to carry out this arrangement in relation to the purchase of the balance of the property ; by the time the conversation ended I became satisfied that I would not be obliged to raise any ; I felt aggrieved that the church should have no interest in the property ; I don't

know that I can give the language that he used that ag-
grieved me ; it was when he said that we could not have the
property, that he would give Mr. Merritt another chance ;
the words were something to this effect, we might go to the
Devil, we could not get the property away from Mr. Merritt,
he would give him another chance ; in the same connection
he said he had been shabbily treated by the board of
trustees, and was somewhat warm and excited in conse-
quence ; I could not tell when the next conversation with
10 Mr. Brown occurred, but I had frequent conversations with
him during the next three months following ; I presume I
had some conversations with him after three months, but
have no means of fixing the dates of the conversations ; they
were very frequent ; the conversations were generally in the
form of his grieving that the property was on his hands ;
the gist of them was that he would give me or anybody a
thousand dollars to find somebody to take it off of his
hands ; I think he stated how the property came to be on
his hands ; he said to this effect that Mr. Merritt had
20 thought and had said that he could raise the money if he could
have a little more time, and that he had given him an op-
portunity ; I don't know when was the last time I heard
Mr. Brown say that ; I don't know that he stated why he
had given Mr. Merritt the opportunity ; I should think that
the last time that Mr. Brown offered a thousand dollars to
any one who would take it off his hands was in the autumn
of eighteen hundred and sixty-one ; I think he said he had
offered Mr. Merritt a thousand dollars to take it off of his
hands ; I have very often estimated the value of that land ;
30 have been very often over the ground by the map ; I sup-
posed that the property which Mr. Brown offered a thousand
dollars to have taken off his hands was the property that
remained unsold at the close of the second day's sale ; I
think he told me how much he gave for it ; I think it was
about nine thousand dollars ; he told me it was more than
he calculated ; I don't know now what I estimated the land
as worth ; I had it then marked on a map of the property,
block by block ; a part of the trustees of the church, in con-
nection with Mr. Johnson, who was also interested, at in-
40 formal meetings prior to the first sale, prepared a scale of

valuations for the different blocks into which the property was divided ; this scale was so arranged that if each block brought the valuation fixed on it, the mortgage claim would be satisfied before the parsonage property was reached ; the actual sales up to the end of the second day's sales had exceeded that valuation ; I thought that in ordinary times the property would be worth double the valuation we then fixed on it.

And being cross-examined, witness further says—I supposed, but don't know, that the church had bought this property from Mr. Merritt, I don't know of my own knowledge, I think the trustees of the church were parties to this suit of foreclosure, I don't think that any defence was set up in their behalf, we employed counsel to advise us. This meeting of which I have spoken was not a formal meeting of the board of trustees ; I do not know whether all of them were present ; the arrangement or understanding come to at that meeting, as I remember now, was that the property should be bid off at a price sufficient to clear the parsonage property, to satisfy the claim, without selling the parsonage. Mr. Brown, who was one of the trustees, and the only one able to do it, would see that the property did not go for less than a sum sufficient to satisfy the mortgage ; if outside parties did not bid enough he would see that the parsonage was protected, and I understood the church to be pledged to assume half of that responsibility, the responsibility that he should incur ; I am not sure but that it was the whole of the responsibility, but my impression is it was half ; they were to take immediate measures to reimburse Mr. Brown for whatever they assumed ; it was understood that the church should mortgage their parsonage property and such property as they should bid off, to raise the money ; I don't know that that meeting had any other object than to render the parsonage property secure from sale on that execution ; the meeting was called for that purpose ; the meeting was not called because the sales of the two first days had not come up to the valuations fixed on the property ; it could not have been called for that, as the sales had equalled the valuations fixed on the property ; there was a combination formed before the first day of sale and pledged to see that no block was sold for less than the valuation we had fixed upon it ; that combination covered all the property

in the hands of Mr. Merritt ; if the remaining property had been sold as well as that which was sold on the first two days the mortgage would have been satisfied without resorting to the parsonage property ; the second day's sales were not so good as the first by any means ; Mr. Johnson and myself were greatly disappointed at the adjournment of the sale on the first day, which was done at the request of Mr. Merritt ; this combination I have spoken of, were not to act if the blocks brought the prices we had fixed upon them ; individuals might act for themselves in bidding higher, but could not bind the other parties to the arrangement ; there were members of the board of trustees who felt from the first great alarm lest the church property should be lost and sacrificed and who advocated very earnestly the plan of doing nothing until the sale should have reached the parsonage property, and then to bid that property off at a low figure, thinking that would involve a less sacrifice, and there would not be much competition in bidding against the church ; those of the trustees who felt that we could save the parsonage property did not feel justified in going forward under our arrangement, which involved, in case we bid off the property, a mortgage upon the church property, unless authorized to do so at a general meeting of the church and society ; the members of the combination of which I have spoken were Mr. G. Q. Johnson, J. H. Rolston, who agreed to be counted in to the amount of the value of his property which was jeopardized by the same mortgage, and myself, acting in behalf of such members of the board as sustained me in it ; I don't know whether I have the valuation I made at that time or whether Mr. Johnson has it ; I devoted nearly the whole of my time to this matter for three or four months, to have this property bring the valuation we had fixed on it ; I brought people from New York to look at the property and showed it to them, took the maps about ; advertised it, and wrote a good many articles about it ; made personal application to one or two hundred men to be present at the sale, to examine the property and to secure bargains.

Quest. Do you believe that the property would have brought as much as it did on the first and second days of sale, if it had not been for the exertions of yourself and others ? [Objected to by complainant's counsel.]

Ans. I do not.

In my conversations with Mr. Brown he said something to the effect that Mr. Merritt had agreed to furnish the money to pay the claim in thirty days and had not done so; I think he said I had got him into the scrape and I must help him out; I don't remember that Mr. Brown said anything in these conversations, of his expectation that Mr. Merritt would be able to pay off this money; he spoke as if he was disappointed in that matter; he said that he had a good mind to throw up the whole concern, and would have done so had not Mr. Fairbank and Mr. Johnson done something; he was sorry he had anything to do with it; [Objected to by complainants' counsel;] this was part of the conversations of which I have spoken in my direct examination, but not of the first conversation, which was very abruptly broken off.

And witness being re-examined, further says—Mr. Brown did not, I think, advocate the policy of which I have spoken of the church doing nothing until the parsonage property was put up for sale and then bidding it in at a low figure. It was within a very few days after the sale that Mr. Brown told me that Mr. Merritt had agreed to furnish the money within thirty days; I think it was in the first conversation; in that conversation, I asked him if, in case Mr. Merritt should fail to furnish the money in thirty days, whether he expected us to do it as a church; and it was in reply to that he spoke of having been badly treated by some members of the board, and he did not ask any favors of us, and we could not get the property away from Mr. Merritt, and that he was giving him another chance.

Quest. Why did you wish part of this property for the church? [Objected to by the defendant's counsel?]

Ans. I thought it would be a profitable thing for the church; I had spent a good deal of time in devising a plan for the church's disposing of their interest in this property, if they got it, and was a good deal disappointed at finding that my castle in the air was thrown down.

NATHL. T. SPEAR.

Sworn and subscribed this second day of June, eighteen hundred and sixty-five, before me, at Elizabeth.

W. J. MAGIE, *M. C.* 40

The further examination of witnesses, &c., in the above cause is, by consent of the solicitors of the parties, respectively, adjourned till the 24th day of October.

October 24th, 1865. The further examination of witnesses, &c., in the above cause resumed this day, in the presence of Robert S. Green, esquire, and Joseph Alward, esquire, counsel of the parties respectively.

Jacob T. Merritt, being recalled upon cross-examination, further saith—

- 10 Previous to the foreclosure and sale of this property under the Gibbons mortgage, I had sold some of it; I had sold to John H. Rolston, I think, twenty-four lots, back from the avenue, on Second street, and running through to another street since opened. The lots are on Block No. 2, numbered from nine to thirty-two, both inclusive, on map of the property owned by Jacob T. Merritt, in the city of Elizabeth, which map is marked *Exhibit M*, 3, on part of complainant. [This evidence objected to as incompetent by counsel for complainant.] I sold these lots to Mr. Rolston; I cannot
- 20 say when; I think it was between two and three years after I got the property; I got what was equal to thirty-six hundred dollars; I got three thousand dollars of stock in the Elizabethport Steam-power Company, which I afterwards passed to Mr. Brown; I actually received a certificate for only twenty-five hundred dollars of the stock, but there was five hundred more that should have been issued and was expected to be issued, and six hundred dollars in money; I don't know of any sales of that stock; at the time I took it, I made some inquiries as to its value; Mr. Rolston made
- 30 representations on the subject, and I inquired of Mr. J. C. Fairbank, and I believe, but am not sure, of Mr. Baiz; they represented that it was worth par; I gave no other guarantee to Mr. Rolston of this title other than the warrantee contained in the deed; I have no recollection of doing so; I have no recollection of offering this stock to Mr. Baiz.

I sold other portions of this property to Mr. G. Q. Johnson, on Block No. 2, lots numbered from (1) one to (8) eight, both inclusive; I think I got for those lots nineteen hundred and

fifty dollars in cash; I can't tell when I sold to him, but it was sometime before the foreclosure; I believe I gave him no other guarantee than the warrantee in the deed.

I also sold twelve lots to John B. Gale; they were on Block No. 3, and were numbered from 1 to 4, inclusive, and 9, 11, 13, 15, 17, 19, 21, and 23; I suppose—I think—that sale was about the first of April, eighteen hundred and fifty-five; I got one thousand dollars cash for them; I gave Mr. Gale a mortgage which I held on some property at the Port, and at Elizabeth, for twenty-five hundred dollars; I believe I as 10 signed it to him as collateral security for the title of this property that I sold him; I think that is all the guarantee I gave Mr. Gale; this mortgage was made by Mr. Fairbank to me for money that he owed me; this mortgage was not made for the express purpose of making this title secure, it was for money that I had before that paid out for him and let him have.

I also sold other parts of that property to the Presbyterian Church; they were four lots on the avenue, on Block No. 3, numbered 5, 6, 7, and 8; I am stating these numbers in re- 20 lation to all the above mentioned deeds from memory; I sold these lots to the church nominally for one thousand dollars; I actually received nothing but a deed held in escrow for me for four lots of land in the rear of the church where it now stands, they front on Franklin street; I actually exchanged my four lots for these four lots; I did not give the church any guarantee for the title, that I remember, other than the warrantees; the four lots that I received, were sold, but not by me; I am wrong, they were not sold; I never re- 30 ceived the deed for them from the church; I did not ask them for a deed until the property should be cleared from this mortgage; it was the understanding that the deed should not be delivered until this property should be cleared from the Gibbons mortgage. The deed was held in trust, to be delivered when the property I had sold to them was released from mortgage; if the property sold to the church was not released from the Gibbons mortgage and any damage resulted to the church by reason of that, then these lots should stand to indemnify the church; those lots were not sold; they have not been sold; I have never got a deed; 40

I have never applied for a deed—not to them ; I have applied for it to Mr. Alward ; the bid of \$19,000, made by Mr. Brown at the sheriff's sale under the Gibbons mortgage, did not pay the amount of the execution by about three hundred dollars ; the parsonage property was subsequently put up to pay for this deficiency of three hundred dollars, and bought for that by Mr. Alward and he took a deed for the four lots as his security. I was not present at these transactions ; I received no notice from the sheriff or any one else that there was a deficiency ;
10 these matters I have stated as I have heard them ; I never have received a deed, but I expect to receive a deed for these four lots.

I believe I did not sell any other lots before the foreclosure.

The witness desiring to explain, says—I sold the lots to Mr. Gale for the price I did, because I had promised Mr. Rolston, his brother-in-law, who was interested with him, before I bought the property, that I would let him have about an acre for one thousand dollars ; the deficiency after
20 the bid of Mr. Brown, at the sheriff's sale, occurred by reason of a miscalculation by the sheriff of the amount due.

Mr. Fairbank did not, to my knowledge, furnish any security for the title of the property I have sold, and of which I have spoken ; I did not give Fairbank any interest in this property ; he had no interest in it, either directly or indirectly, except I told him I would pay him well for selling it ; no amount was stated as the pay for selling it ; no proportion of the sales.

I do not recollect how many lots were sold on the first day
30 of the sheriff's sale, nor what proportion of the property ; I cannot state what property was sold on that day, nor on any of the other days of sale ; the sheriff's book will show.

It now occurs to me that Mr. Fairbank once told me that he had given some security of some sort for the title of lands which I sold to Mr. Johnson, and which afterwards became Mr. Sammis' ; I think he said he gave it to Mr. Sammis ; this was not at my request, it was entirely his own matter.

I do not know that the sheriff sold, at the foreclosure sale, any property that I had sold before the foreclosure, except
40 the church property, as I have stated.

I do not remember precisely what I said in reply to Mr.

Brown, when we met after the sale the first time, and he stated we must see if we can't sell the property; I coincided with him; I don't know when was the next time I saw him after that; it was not a great while after; I do not recollect having any conversation about this property on pier No. 2, with Mr. Brown; I recollect walking down Broadway with Mr. Brown, sometime in summer or fall of eighteen hundred and sixty-one, I should think; I believe there was something said about this property; I don't distinctly recollect what conclusion we came to then; Mr. Brown had several times, 10 and I think at that time, urged me to get the money and redeem the property.

My impression is, that it was early in the spring of eighteen hundred and sixty-three, that I first learned that Mr. Brown wanted me to purchase all his property that he owned at the Port, this property and other; I learned this in conversation with him; he said, oh! you had better take the whole of the property I have got at the Port; I'll let you have it at cost; I think this occurred in a conversation in which the matter of redeeming this property had been talked 20 over.

I can't say whether it was before or after the above conversation, but in April, eighteen hundred and sixty-three, he did offer to give me any time I wanted to redeem this property, independent of any other property; I never told him I would take the rest of his property; I never made him any offer for it; I asked him to put down the prices or costs of the different parcels; I think that application was made to him verbally; I suppose it included all the interest he had at the Port; it included this property. 30

I never made any arrangement with any person to buy property from Mr. Brown; I had a conversation with Mr. G. Q. Johnson in regard to taking an interest in it; there was no conclusion come to; Johnson said he would like very well to have an interest in it if he could arrange for the money; there was no distinct proposition made by me to him; I asked him if he would like to raise a quarter or a third of the money and take an interest in it; I don't know whether anything was said as to the ownership of the property at that time; the price spoken of was what it was bid 40

off at and the interest; that is, he was to come in on an even footing with me.

Before Mr. Brown bid the nine thousand dollars at the sheriff's sale, he had bought at that sale other portions of the property.

I know that Brown had a ditch dug between the property which he had previously bought and the property which he bought at his bid of nine thousand dollars; I don't know that I had any conversation with Mr. Hugh Rehil when the
10 ditch was being dug; I recollect seeing a man on the meadows about the time the ditch was dug; I don't recollect the conversation.

I believe I have never paid Mr. Brown anything since this property was bought by him; I have tendered him the money for the whole of it; I told him I was ready to pay him if he would tell me what the account was; I did not make him any legal tender; I should have done so if I had known how much the account was; what I mean by legal tender is the cash; I had the cash where I could put my finger on it; it
20 was promised me by a person who had it, my brother, Isaac; I did not have it in bank myself; he had promised me whatever it would come to; he knew what the original amount was.

I made an offer to redeem to Mr. Brown, in the letter of which I spoke in my direct examination; I think that that was the first time I had offered to redeem, and that was by the letter marked *Exhibit M 1*.

And being re-examined, witness further says—

When I said in my cross-examination that the four lots I
30 was to have from the church, were not sold, I meant that they were not sold by the sheriff to make up the deficiency.

JACOB T. MERRITT.

Affirmed and subscribed, this twenty-fourth day of October, eighteen hundred and sixty-five, before me.

W. J. MAGIE, *M. C.*

Examination of Witnesses.

[Filed October 16, 1866.]

Examination of witnesses, &c., in the above stated cause, taken at the office of William J. Magie, in the city of Elizabeth, on the first day of December, eighteen hundred and sixty-five, before William J. Magie, one of the masters and examiners of said court, in the presence of Joseph Alward, esquire, solicitor of complainant, and of Robert S. Green, esquire, solicitor of defendant, upon notice given by and in behalf of defendant, due and legal service 10 whereof is admitted on behalf of the complainant.

Abraham Baiz, a witness produced on the part of defendants, being duly sworn according to law, on his oath saith—I live at Elizabethport; I know the defendant Edward G. Brown; In 1861 I was a stockholder in the Elizabethport Steam Power Company; in the early part of that year, Mr. Jacob T. Merritt was a stockholder in that company; he offered to sell me his stock—he did so three or four times; the first time he offered it to me for two thousand dollars; he had twenty-five shares, the par value one hundred dollars each; he came 20 to me several times, and was anxious to sell; I told him the property was without a tenant and not producing an interest; I wanted to sell my own stock; he intimated to me he would sell for less than the first offer; I think that the next offer was about sixteen hundred dollars; he was very anxious to sell, but never offered to take less.

In March, 1861, there was no tenant in the company's property, and no prospect of its being rented; it was in that year, somewhere in January, February, or March, Munsell & Thompson made some offer for renting the property; the 30 condition of the property as to repair was very bad, the glass of the windows was all broken out, the brass of the engine was stolen, so that the engine was almost useless; we were very anxious to get the property into use; I rented the main building, then the only building standing, to Munsell & Thompson for eight hundred dollars a year, for ten years;

this was done in 1861, and I think in February or March; they took possession on the first of May in that year; the property was put in repair by me; this was done by agreement between me and the other parties; this agreement was in writing, and contained in an agreement made before the lease was made out. (The evidence objected to on behalf of complainant.) Repairs were made by me to that property in pursuance of an agreement I had made; the main building was repaired, and I built a foundry one hundred feet by
10 sixty-five; when I began that I went to the stockholders and told them what Munsell & Thompson required, and that I would agree to it for an additional rent of ten per cent. on the capital employed; then Mr. Schlesinger, who owned twenty-five shares of the stock, Mr. Edward G. Brown, who then was a stockholder—Mr. Merritt's shares having been transferred to him on the books; Mr. Schlesinger objected to do anything more on the establishment and refused to expend anything; Mr. Brown, to whom I spoke, would not give me a positive answer, but I persuaded him to spile the
20 foundation of the building; the land being a meadow, this was necessary; after this spiling was done, which amounted to about two hundred and fifty dollars, he called on me for the money; I told him I could not pay him, and as he was a stockholder himself he must bear a share of it; after that the parties wanted some more improvement, and I spoke to Mr. Brown about it, he objected to doing anything further, I objected and refused paying him, and by that I saw I was left alone; and I went through with my agreement, I thought then that I had suffered enough on the building and I would take
30 hold and makẽ something of it. Then Mr. Brown proposed to sell me his share, losing all he had put in the spiling, and I should assume all the additional repairs and expenses; finding I was left alone, I took the responsibility on myself of incurring the debts to Davis, the mason, and of timber, to the saw mill; these accounts were paid by me to Davis by instalments; I mortgaged my private property and my stock in the concern, to raise the money; notes were given and a mortgage, and the notes were renewed from time to time as I paid instalments on the amount, the payments were made

from the rent I received, but it was not sufficient, the balance was paid by me.

In March, 1861, I don't know that the stock of that company had any market value; when we first built the main building the real value of the stock was seventy-five dollars a share, and we made it one hundred dollars to make it in round numbers; there were altogether one hundred and twenty-five shares; that is we made the capital twelve thousand five hundred dollars; the real investment was only seventy-five dollars to each share; in March, 1861, I did not 10 think the stock was worth more than fifty dollars a share; I tried to raise loans for myself, using my stock as collateral, and it was objected to as of no value; if the property had been sold in March, 1861, I mean before I got the lease, I do not believe it would have brought enough to have made the stock worth fifty dollars a share; this company had no other property besides this I have spoken of; after these repairs and improvements were made, in my opinion the stock was worth par; I bought these twenty-five shares of that stock of Mr. E. G. Brown; I did so just after he had in- 20 curred the expense of spiling the foundation, of which I have spoken; I gave Mr. Brown twenty-five hundred dollars for the stock, payable in one year, without interest, I incurring all the liabilities, and he losing all his expense of spiling.

Witness being cross-examined, further says—If I am not mistaken this Company was incorporated in 1852—in 1851 or 1852. The building was erected, I think, in 1851 or 1852—a few months after I came to the Port. The first Directors of the Company were Mr. Fairbank, Mr. Rolston, Mr. Bunce, Mr. Esler, I think, and myself; there were five; 30 there was no stock owned by any one but the Directors; the Company had books; I was President, and Mr. Rolston Secretary; I was President, Vice President, Cashier and Treasurer; I have the books of the Company. In January, 1861, I was a director, and Mr. Schlesinger; in January, 1861, there were but three stockholders—Mr. Schlesinger, Mr. Merritt and myself; I owned three-fifths of the stock; there has been never any election of Directors since the first. When the Company was organized, each of the five stockholders owned one-fifth of the stock. There was never any 40 understanding that each of the stockholders should have

thirty shares instead of the twenty-five which they got; it was talked of, but never agreed to.

When I took the lease from Munsell & Thompson, I considered the stock worth something more, but not par, because the rent did not pay interest and taxes. I believe it was in March or April that Munsell & Thompson first made the offer to rent; whether it was in January, 1861, or not, I can't tax my memory; it was not rented, I think, before Mr. Merritt transferred his stock; it was the same week that Munsell
 10 & Thompson made the offer to lease the building that I agreed with them to let them have it; I, at that time, considered that I was renting it very low, because the repair of the main building was over two hundred dollars; I don't think that I consulted Mr. Merritt before I rented; I did consult those that owned shares; I believe I consulted Mr. Schlesinger and Mr. Brown; before I bought Mr. Brown's stock, I had no settlement with him for the rent I had received, because there had been no rent received; the rent is payable every quarter, beginning in May.

20 And being re-direct examined, witness further says—The reason that no subsequent election of Directors occurred was because there was nothing to do; no income was coming in; the property not being rented, nothing was doing but paying out money for taxes and repairs; the rents received from Munsell & Thompson have gone to pay the debts the Company owed to me for advances for the improvements I have spoken of; I believe Mr. Brown told me that he got the stock in some business with Mr. Merritt in regard to lands there, and that this stock was given him as security for some
 30 payment.

And being re-cross-examined, further says—Mr. Brown told me this, I believe, at the time I employed him to spile the building.

A. BAIZ.

Sworn and subscribed this first day of December, A. D. eighteen hundred and sixty-five, before me.

W. J. MAGIE, M. C.

Jacob Davis, a witness, produced on part of the defendant, being duly sworn according to law, on his oath saith—

I reside in the City of Elizabeth; I know the property of the Elizabeth Steam Power Company at Elizabethport; I made some additions to the buildings on that property, and some repairs; what year I did it I cannot remember; it was in 1860 or 1861. Before I made the repairs and additions the building was in about as bad a condition as any building could be—the windows out and foundation down in many places; it could not have been occupied for any purpose without repairing; I would not have given four thousand dollars for the property before these repairs and improve- 10
ments were made; I do not know what it was valued at.

And being cross-examined, witness further says—I don't know that I know how many lots there are; I suppose that it includes all that is fenced in, which I should think is seventy-five or one hundred feet front, running back two hundred feet to another street; there was a brick building on it. I think these repairs were commenced along in March; if I remember right, they wanted to get it going on the first of May, and it must have been done in April; it probably took me about six weeks to do the work. 20

JACOB DAVIS.

Sworn and subscribed before me, this first day of December, A. D. eighteen hundred and sixty-five, at Elizabeth.

W. J. MAGIE, M. C.

Meline W. Halsey, a witness produced on the part of the defendant, being duly sworn, on his oath saith—I reside in the City of Elizabeth. In 1860 I was sheriff of the county of Union; while I was such sheriff, I had placed in my hands an execution out of the Court of Chancery, in a cause wherein William H. Gibbons was complainant, and Jacob T. Merritt 30
and others were defendants; the term for which I was elected expired in November, 1860; the writ remained in my hands at that time unexecuted; in pursuance of the directions of that writ, I sold some property at Elizabethport.

Witness being shown *Exhibit B 1*, on part of defendant, says—this map is similar to the map by which I sold the property I have spoken of, under that execution, except as to the coloring and the figures in ink.

The day of the first sale under that execution, was the twentieth of February, eighteen hundred and sixty-one. I then sold as follows :

Block No. 1, 14 lots for \$102 per lot, \$1428, to Eli A. Young.

- “ “ 15, lots front 20, 20 lots, at \$45 per lot, \$900, to George Q. Johnson.
- “ “ 15, lots 21 to 40, 20 lots, at \$34 per lot, \$680, to Owen B. Arnhold.
- 10 “ “ 17, lots 21 to 40, 20 lots, at \$14 per lot, \$280, to Philip Cron.
- “ “ 16, whole block, \$160, to Jacob Keppel.
- “ “ 35, part of block, \$120, to W. S. Whitehead.
- “ “ 35, balance \$20, to Joseph O'Brine.

The next day's sale was March 20th, 1861, and I then sold as follows, viz.

Block No. 9, lots 1, \$115, to George Borphy.

- “ “ 9, lots 2, 3, 4, at \$75 per lot, \$225, to Jacob Shombre.
- “ “ “ “ 5, 6, 7, 8, 9, \$40 per lot, \$200, to George Brophy.
- “ “ “ “ 10, 11, 12, 13, 14, at \$25 per lot, \$125, to Patrick Hogan.
- 20 “ “ “ “ 15, 16, 17, 18, 19, at \$21 per lot, \$105, to H. Garcken.
- “ “ “ “ 20, 21, 22, 23, 24 and 25, (struck off but not taken.)
- “ “ 21, “ 1, 3, 5 and 7, at \$21 per lot, \$84, to Wm. Beyer.
- “ “ 21, “ 9, 11, 13, 15, 17 and 19, at \$13 per lot, \$78, to James Bird.
- “ “ 27, “ 1 to 10, 10 lots, at \$10 per lot, \$100, to John Washington.
- “ “ 27, “ 11 to 20, 10 lots, at \$8 per lot, \$80, to James Bird.
- “ “ 27, “ 21 to 30, 10 lots, at \$5.75 per lot, \$57.50, to John Washington.
- “ “ 27, “ 31 to 40, 10 lots, at \$4 per lot, \$40, to James Bird.
- 30 “ “ 20, “ 21 to 40, 20 lots, at \$12 per lot, \$240, to Thomas Robbins.
- “ “ 28, “ 1 to 40, 40 lots, at \$8.50 per lot, \$340, to James Bird.
- “ “ 29, “ 1 to 40, 40 lots, at \$8.50 per lot, \$340, to E. G. Brown.
- “ “ 21, “ 2 to 20, even numbers, 10 lots, at \$14.50 per lot, \$145, to John Washington.
- “ “ 21, “ 21 to 39, uneven numbers, 10 lots, at \$11 per lot, \$110, to Mary Ann Merritt.
- “ “ 21, “ 22 to 40, even numbers, 10 lots, at \$10.50 per lot, \$105, to John Washington.
- 40 “ “ 3, “ 17 to 31, odd numbers, 8 lots, at \$70 per lot, \$560, to Mary Ann Merritt.
- “ “ 10, “ 1 to 19, odd numbers, 10 lots, at \$34.50 per lot, \$345, to Mary Ann Merritt.
- “ “ 10, “ 21 to 39, odd numbers, 10 lots, at \$25 per lot, \$250, to G. Q. Johnson.

- Block No. 10, lots 2 to 20, even numbers, 10 lots, at \$32 per lot, \$320, to Mary Ann Merritt.
- “ “ 10, “ 22 to 40, even numbers, 10 lots, at \$30 per lot, \$300, to John Washington.
- “ “ 11, “ 1 to 10, 10 lots, at \$39 per lot, \$390, to E. G. Brown.
- “ “ 11, “ 11 to 20, 10 lots, at \$32 per lot, \$320, to E. G. Brown.
- “ “ 11, “ 21 to 30, 10 lots, at \$28 per lot, \$280, to E. K. Smith.
- “ “ 11, “ 31 to 39, odd numbers, 5 lots, at \$26.50 per lot, \$132.50, to James Bird.
- “ “ 11, “ 32 to 40, even numbers, 5 lots, at \$26.50 per lot, \$132.50, 10 Samuel Ward.
- “ “ 12, “ 1 to 10, 10 lots, at \$40 per lot, \$400, to E. G. Brown.
- “ “ 12, “ 11 to 20, 10 lots, at \$32 per lot, \$320, to E. G. Brown.
- “ “ 12, “ 21 to 30, 10 lots, at \$23 per lot, \$230, to James B. Burnet.
- “ “ 12, “ 31 to 40, 10 lots, at \$23 per lot, \$230, to James B. Burnet.
- “ “ 13, “ 1 to 10, 10 lots, at \$40 per lot, \$400, to G. Q. Johnson.
- “ “ 13, “ 11 to 20, 10 lots, at \$29 per lot, \$290, to E. K. Smith.
- “ “ 13, “ 31 to 40, 10 lots, at \$16.50 per lot, \$165, to John Wash- 20 ington.
- “ “ 30, “ 1 to 10, 10 lots, at \$8.50 per lot, \$85, to E. G. Brown.
- “ “ 30, “ 11 to 25, 15 lots, at \$7 per lot, \$105, to E. G. Brown.
- “ “ 19, “ 1 to 20, 20 lots, at \$9 per lot, \$180, to Albert Manvel.
- “ “ 19, “ 21 to 40, 20 lots, at \$7.50 per lot, \$150, to Albert Manvel.
- “ “ 18, “ 1 to 20, 20 lots, at \$6 per lot, \$120, to James Bird.
- “ “ 18, “ 21 to 40, 20 lots, at \$5 per lot, \$100, to Justus Morris.
- “ “ 31, “ 1 to 20, 20 lots, at \$7 per lot, \$140, to Amos Clark, Jr.
- “ “ 31, “ balance, “ \$52, to James Bird.
- “ “ 8, “ 1 and 2 and house, at \$530, to G. Q. Johnson. 30
- “ “ 22, “ 1 to 10, 10 lots, at \$18 per lot, \$180, to James Haley.
- “ “ 22, “ 11 to 20, 10 lots, at \$15 per lot, \$150, to E. K. Smith.
- “ “ 22, “ 21 to 30, 10 lots, at \$12 per lot, \$120, to G. Q. Johnson.
- “ “ 22, “ 31 to 40, 10 lots, at \$11 per lot, \$110, to Amos Clark, Jr.
- “ “ 32, “ 1 to 10, 10 lots, at \$9 per lot, \$90, to E. G. Brown.
- “ “ 32, “ 11 to 20, 10 lots, at \$8.50 per lot, \$85, to E. G. Brown.
- “ “ 32, “ 21 to 30, 10 lots, at \$6.50 per lot, \$65, to E. G. Brown.
- “ “ 32, “ 31 to 40, 10 lots, at \$3 per lot, \$30, to E. G. Brown.

The next day of sales was the twenty-first day of March, 1861. On that day I sold as follows: 40

- Block No. 9, lots 20 to 25, 6 lots, at \$17 per lot, \$102, to Amos Clark, Jr.
- “ “ 8, “ 4, 5 and 6 and house, at \$975, to E. G. Brown.
- “ “ 33, “ 1 to 40, 40 lots, at \$7 per lot, \$280, to E. G. Brown.
- “ “ 3, “ 18 to 32, 8 lots, at \$100 per lot, \$800, to Alward and Magie.
- “ “ 6, “ 1 to 17, 17 lots, at \$100 per lot, \$1700, to G. Q. Johnson.

	Block No. 7,	lots 1 to 4,	4 lots,	at \$100 per lot,	\$400,	to Amos Clark, Jr.
	" "	7,	" 5 to 8,	4 lots,	at \$100 per lot,	\$400, to Samuel M. Clark.
	" "	7,	" 9 to 15,	7 lots,	at \$46 per lot,	\$322, to Amos Clark, Jr.
	" "	7,	" 16 to 23,	8 lots,	at \$52 per lot,	\$416, to William McGoldrich.
	" "	8,	" 9 to 16,	8 lots,	at \$44 per lot,	\$352, to Samuel Huntsman.
	" "	8,	" 17 to 24,	8 lots,	at \$36 per lot,	\$288, to John Lamb.
	" "	8,	" 25 to 32,	8 lots,	at \$33 per lot,	\$264, to Anthony Stewart.
10	" "	8,	" 33 to 40,	8 lots,	at \$33 per lot,	\$264, to Amos Clark, Jr.
	" "	8,	" 41 to 51,	odd numbers,	6 lots,	at \$34 per lot, \$204, to Amos Clark, Jr.
	" "	8,	" 42 to 52,	even numbers,	6 lots,	at \$35 per lot, \$215, to Amos Clark, Jr.

After this there was a recess taken ; not an adjournment, but a recess ; I suppose because the property was not bringing enough, because Mr. Merritt thought so ; I don't know that he said so, but both he and his brother came to me and asked me to stop the sale a while ; at the suggestion of the 20 parties, I mean Mr. Merritt, and Mr. Whitehead, the solicitor of Mr. Gibbons, the complainant, the terms of the sale were changed, as far as relates to the payment of the purchase money, and it was announced that ten per cent. was to be paid down, and the balance, instead of being paid within thirty days as provided by the original condition, was to be paid the first day of June, 1861, when the deed was to be delivered. These I announced under the directions of the parties, I suppose Mr. Merritt and Mr. Whitehead, it could not have been any one else ; we then proceeded and sold 30 as follows :

Blocks No. 4, 5, 14, 23, 24, 25, 26, 34, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, and lots No's 24, to 55, inclusive, on block No. 7 ; also lots No's 3, 7, and 8, on block No. 8 ; lots No. 1, to 20, inclusive, on block No. 17 ; lots No. 26, 27, 29, and 31, and two gores on block No. 30, for (\$9000) nine thousand dollars, to E. G. Brown.

Before this property, which I have just described, was put up, both Mr. Brown and Mr. Merritt came and asked me, how much is the balance due on the execution ; upon looking 40 at my sales book, I supposed about nine thousand dollars would cover the balance, and I so informed them ; there

were however two or three lots which I had sold, and which are described as follows.

Block No. 20, lots 1, to 20, 20, lots at, \$17, \$340, to H. W. Trotter.

“ “ 13, “ 21, to 30, 10, “ at, \$21, \$210, to H. W. Trotter.

The purchaser whose name had been given as H. W. Trotter, could not be found after the sale, and he never paid the ten per cent. nor took the property; I afterwards and on the sixth of June next, to which I had adjourned the sale, put up the lots last above described, the ten lots on block No. 13, sold for \$12.50 a lot, and brought \$125, and were bought 10 by George Q. Johnson; the twenty lots on block No. 20, sold for \$8 a lot to Mary C. Brice, in all for \$160; my calculation, on which I based the conclusion that there was \$9000 yet due on the execution, was made with the idea that these lots had been sold to Mr. Trotter, and that he would take them at the price bid; the difference between his bid, and the amount the lots actually brought was \$265; I ascertained that there was a deficiency on the execution of \$289.19, and the balance of the deficiency being in consequence, I suppose, of an error in my calculations, which were hastily made, 20 and of interest accruing on the tenth day of July next, to which the sale was adjourned, I sold lots 7 and 8, on block No. 3, for \$289.19, to Joseph Alward; this was a part of the parsonage property; on that same day, Mr. Brown wanted to sell to Mr. G. Q. Johnson a part of the property he had previously purchased; it was block 14, I think the price he asked was \$800; Johnson was unwilling to purchase at that; I think he offered \$700 at first, and Brown would not take it; Brown told him that unless he did take it at his price, he would throw up his whole purchase and sacrifice his ten per 30 cent.; I then suggested that I should put it up at auction; which I did, and it was bid upon, up to within \$40 of what Mr. Brown asked, and then Mr. Fairbank said he would make up the difference to what Brown asked; I struck it off to Johnson at such an amount that, with what Fairbank said he would give, amounted to \$800, which Brown asked for it at first; I don't think Mr. Merritt was present. [Objected to, the whole of the above evidence on behalf of complainant; Mr. Alward was present.]

On the twenty-first of March, before the sale to Brown for 40

\$9000, the bidding was lagging very much, so much so that the parties were not satisfied to have it go so.

Quest. If the property bought by Mr. Brown for \$9000 had been sold as the lots previously sold had been, would it, in your opinion, have brought sufficient to have covered the balance due on the execution? [Objected to as leading.]

Ans. I don't think it would, because there were not people enough there disposed to buy at any price; I find, by looking at the list, there were but ten buyers that day; if the sale
10 had gone on as it was going, when we took the recess, in my opinion there would have been a great sacrifice of the property.

The advertisement of my sale of this property, contained and published in the New Jersey Journal, contains all the property levied on by me.

I do not know anything of the relative value of the different blocks of land there; if this arrangement had not been made, I was going right on to sell the balance of the property; I presume that was known to all parties; [objected to
20 on part of complainant;] all I know is, that Mr. Whitehead was urging me for the money, and I had to make it out of the property; I think, but I will not be sure, that we had one of these maps from the beginning of the sale; I think that I acted as auctioneer, and Thomas W. Reynolds and Jabez B. Cooley also acted for me as auctioneers, except on the second day of sale, when a man from New York, whose name I forget, acted as auctioneer; Mr. Merritt introduced him to me, and told me he wanted him to act as auctioneer; I told him I had no objections; this New York auctioneer
30 was acting when these lots were struck off to H. W. Trotter.

I don't recollect that any of this property was put up as salt meadow, although it might have been; the question may have been asked sometimes whether it was meadow or upland.

And being cross-examined, witness further says—On the twenty-first day of March, I cannot say that Mr. Merritt told me he was dissatisfied with the prices the property was bringing on that day; when Mr. Merritt and his brother asked me to take a recess, I think they and Mr. Brown were all
40 talking together to me; Mr. Merritt's brother seemed to have

most to do with it ; I don't recollect whether Mr. Brown or Mr. Merritt asked how much was due yet on the execution ; they may both have done so ; I did not hear the arrangement between Mr. Brown and Mr. Merritt ; I don't think that I knew that Mr. Brown was to buy the property when I put it up ; I presumed so.

Mr. Brown paid the ten per cent. ; I don't know exactly when, but I think it was immediately after the sale ; he signed the conditions of the sale immediately after the sale ; on that day, I think the property sold low in comparison with the previous day's sales ; the bidding was dragging ; there were comparatively few buyers ; I think there were fewer buyers than there were on previous days ; I don't know what the relative value of the property sold that day was, compared with the property sold on the previous days ; I don't know whether they reserved the best or the poorest to the last ; I did not know for whom Mr. Brown was buying ; Mr. Brown did not tell me nor any one else ; I had my suspicions, because I saw the gentlemen with their heads together, and I supposed something would come out of it.

I charged Mr. Brown interest on the \$9000, on all he had not paid me, up to the time he took the deed ; Mr. Whitehead took the money as it was paid in at the sale ; I do not mean directly at the sale ; I paid him \$20,500 on April 22d, 1861, and \$500 on the 26th day of April, 1861, and the balance was \$8534.69, which I paid him July 13th, 1861 ; I charged Mr. Merritt interest on the whole decree up to 10th July, '61, and allowed him interest on what was paid to Mr. Whitehead previously.

At the time of the conversation between Mr. Brown and Mr. Johnson, as to block 14, of which I have spoken before, I think Mr. Johnson offered Brown at first \$600 ; I don't recollect Johnson's telling Brown that he had offered him that block for \$600 ; there was considerable laughing ; Mr. Brown was considerably excited.

Quest. Were parties prevented from bidding against Mr. Brown on the 21st of March, because it was known that he was bidding for Mr. Merritt ? [Objected to for defendant.]

Ans. I don't know anything about it.

M. W. HALSEY. 40

Sworn and subscribed before me, this first day of December, A. D. eighteen hundred and sixty-five, at Elizabeth.

W. J. MAGIE, *M. C.*

James C. Fairbank, a witness, produced on the part of the defendant, being duly sworn, on his oath saith—I reside at Elizabethport; I know the parties to this suit—Mr. Merritt and Mr. Brown; I know of this property at the Port bought by Mr. Merritt from Mr. Gibbons; I knew Mr. Merritt was going to buy it, and was acquainted with the circumstances
10 of his buying it at the time; at the time it was bought, I assisted Mr. Merritt, and was to have an interest in it when the business was all closed; I was to have a portion of the profit; I was to have nothing—to pay nothing—until it was all closed up; nobody else was interested; Mr. John H. Rolston had no interest in it by any agreement; he assisted in some of the correspondence with Mr. Gibbons, and I understood that he claimed, when he bought some of the property, that he should have it cheaper on that account; he did buy some of
20 the property, and cheap, as I thought; in the first commencement, I made quite a number of bargains for Mr. Merritt, to which he agreed, and which were consummated by him, with Mr. Johnson and others; in the first place, if I recollect, I sold Mr. Johnson two lots; after that, two more; then two to John Sammis; two to Miss Emerson; this, I think, comprises all I sold; that is, I made the bargains for them and Mr. Merritt confirmed them, and gave his deeds.

I did not act for Mr. Merritt in the exchange of some property of the Presbyterian Church with Mr. Merritt; I believe I was one of the trustees of the church then, and had a
30 talk with Mr. Merritt about it; he made an exchange with us and gave us four lots for four.

The property sold to Mr. Johnson was sold subject to Mr. Gibbons' mortgage; it was understood at the time; Mr. Johnson came to me and was dissatisfied, and said he must be secured or he would issue process against some one; I gave him stock to the amount of fifteen hundred dollars of Elizabethtown Steam Manufacturing Company, of which he received the dividends, which I think were usually ten per cent., until after the sheriff's sale under this mortgage

had been made and everything closed up; then he gave me back my stock; this stock was given by me, in order that if there was any deficiency that would affect the property which he had bought, he was to have the stock, or enough of it to make him good from loss. This security was given to cover any loss on the sales which became Mr. Sammis' and Miss Emerson's; upon reflection, I think that the sales which I have stated were made to Mr. Sammis and Miss Emerson were made to Mr. Johnson, and the property afterwards sold by him to them. 10

I had given my notes to Mr. Merritt, and he had got the money on them and was to pay them, which he failed to do. I had had an offer from Mr. Johnson for these lots, and Mr. Merritt told me that if I would make the sale to Johnson he would let me take the money to secure me on those notes; I got the money from Johnson, but in order to get it I had to give him the security I have spoken of.

In regard to the exchange of the church property for Mr. Merritt's, I think it was made lot for lot; I think, though I am not sure, that the church never gave him a deed for their 20 lots; it may have been made out, but was not delivered, and not to be delivered until this matter was settled.

John B. Gale, who bought some of this property, was, I have understood, secured against this mortgage in this way, Mr. Merritt held a mortgage against me, and when Mr. Gale was dissatisfied and wanted some security, Mr. Merritt gave him that mortgage, and the first thing I knew of it Mr. Gale called on me for the money; I think that mortgage was for twenty-five hundred dollars, and it was given by me to Mr. Merritt for money due him; I had, previous to this 30 assignment to Gale, given a deed to Mr. Merritt, which was to satisfy the mortgage; Mr. Merritt told me that he had not put the deed on record; he held it, and I suppose has it on record now, as he has sold the lots. I have my mortgage back again; Mr. Merritt gave me an order on Mr. Gale for it, after the sheriff's sale and the mortgage had been all settled up.

I think Mr. Merritt was aware of my having given Mr. Johnson the stock as security, I think I told him, I have no doubt of it; have no doubt he knew I had to do that in or- 40

der to get the money ; there was no understanding between Merritt and me as to my being indemnified in case my stock had been called in, except out of the property which we were then trying to sell as rapidly as possible.

I am a member of the congregation of the First Presbyterian Church of Elizabethport ; I was present at a meeting of members in regard to this property ; at several meetings, one in particular, I recollect, where they all were engaging to do their best to have the property sell at such prices as
10 would clear the property owned by the church from all liability to sale, at which each stated what they would do toward this object ; we came to no determination at that time, except that we would use all our energies to have the property bring a good price ; I don't think I was present at any meeting after the sheriff commenced his sale ; I was present at all the sales of the sheriff, I think.

After the sale of March 21st, when Mr. Brown bid the \$9000, I saw Mr. Merritt twice, in behalf of Mr. Brown, the first time was, I should think, 60 days after the sale, it
20 was the time at which I understood Mr. Merritt was to pay Mr. Brown ; Mr. Brown wished me to say to Mr. Merritt that he would give him sixty days longer, or if he would pay him a thousand dollars he would give him his own time to pay the balance ; I saw Mr. Merritt, and he appeared to be trying to do what he could, asked me if I could find anybody to do anything ; he thought at one time he had found a man to take hold of it, but he did not ; when I made the proposition about the payment of one thousand dollars, he
30 said he had not got the money, and it was not possible for him to pay it, but he would try what he could do.

I went to Mr. Merritt, sixty days after that, and I made a proposition in behalf of Mr. Brown, the same that I had before made ; Mr. Merritt had nothing new to say, only he was trying and should do all he could ; he appeared to feel anxious to bring it about ; he said he had not got a thousand dollars.

After that Mr. Brown offered to sell the property to me ; he offered me to sell it at a thousand dollars less than he paid for it, to pay a thousand dollars down and I to have my
40 own time to pay the balance ; I told him I did not have the

money, that if I had it he would not make me the offer a second time; I can't say that I informed Mr. Merritt of this offer of Mr. Brown; I made efforts to get others to take it at that offer; I went to Josiah Sterns for that purpose.

I don't know that Mr. Merritt ever proposed to me to go in with him and buy the property from Brown.

The further examination of witnesses, &c., in this cause is adjourned, by consent of parties, to the twentieth day of March, A. D. eighteen hundred and sixty-six. 10

W. J. MAGIE, *M. C.*

The further examination of witnesses, &c., in this cause is hereby resumed, this twentieth day of March, A. D. 1866, in the presence of Robert S. Green, esq., of counsel for defendant, and Joseph Alward, of counsel for complainant.

James C. Fairbank, being recalled, says—

Mr. John H. Rolston paid for the part of the property he bought, I think, five hundred dollars; that was at the rate of one hundred dollars per lot, that is my impression, although my memory is not clear; Mr. Merritt did not pay 20 these notes on the bank, of which I have spoken, they were paid by the lots I sold Mr. Johnson; they were not paid when they came due, but I afterwards got the money from Mr. Johnson; Mr. Johnson gave me his notes for the lots, some of which he paid from time to time, and others renewed and were not paid until after the sheriff's sale that has been spoken of.

And witness, being cross-examined, further says—

At the time I gave my notes to Mr. Merritt I was not owing him for the notes, but I was owing him on other mat- 30 ters for which he was secured; I exchanged notes with him for the twelve hundred dollars, or whatever the amount of them was; the deed which I gave Mr. Merritt for some lots and which was to pay the mortgage he held against me, I handed to him myself in my office; I don't recollect the date of the sale of the lots to Gale or Rolston, but it was

pretty soon after Mr. Merritt came into possession of the property; I don't recollect from whom I learned the amount of that sale, whether from Mr. Merritt or Mr. Rolston; Mr. Rolston and I were in the same office at the time; it was understood at the time I gave the notes to Mr. Merritt that he was to pay them when they came due; Mr. Merritt, and I at that time occasionally exchanged notes; the notes which Mr. Johnson gave me and which were renewed from time to time, were renewed for Mr. Johnson's accommodation; he
10 had not got all the money, and I told him I could use his notes.

I was present at the sheriff's sale at the time this nine thousand dollars purchase was made; I saw Mr. Josiah Sterns there; I don't know that he bid on the property, but he said to me what he would give; he said he would give a thousand dollars more for it; [the last sentence objected to on the part of the defendant;] this was after it was reported that the whole matter was settled; I had asked Mr. Sterns to attend the sales and to buy some of the property; that
20 there was a chance to make money; [this sentence objected to on the part of defendant;] the only time he was present was on the last day's sale that was made.

Exhibit marked B I in this cause, on the part of defendant, being shown to witness, he says—At the time of the sheriff's sale I was acquainted with the value of the property sold, and which is shown on this map; the lots on the high ground, which are colored, we considered the most valuable of the property; the lots that laid on the old road and avenue, we considered the most valuable of any of them, because the
30 roads were laid out; block 20, in my opinion, is more valuable than block 14; block 14 is low ground; I know something of the nature of the soil of blocks 23, 24, and 25—it is sandy; we never discovered any gravel, but used to think there was sand there; I don't know whether the sand is valuable for building purposes—I have never proved it; blocks 22 and 23, I should think, were about of the same value; the dotted crooked line of the map represents that east of that line the ground is hard ground, and the other side is salt meadow; blocks 18 and 19 are not so valuable as
!0 blocks 23 and 24, but the part of block 19 above the dotted

line, I considered as valuable as a similar part of either block 23 or 24; the land is not so good, but considering the difference in their location, I think they would sell for as much; of all this property, excepting the parts colored green, I consider blocks 4 and 5 the most valuable; I consider block 6 worth about as much as those, but block 4 is probably the best of them; I think I sold lots 1, 2, 3, 4, 5, and 6, on block 2, to Mr. Johnson for, I think, two hundred dollars a lot; I think that sale was in 1860, but I could not say; the part of block 7, which is not colored, is, I should think, 10 of about the same value as block 22; I considered the purchase of Mr. Brown at the sheriff's sale, a good bargain, but never fixed any price.

JAS. C. FAIRBANK.

Sworn and subscribed, this twentieth day of March, A. D. 1866, before me, at Elizabeth.

W. J. MAGIE, M. C.

Amos Clark, jun., a witness produced on the part of defendant, being duly sworn according to law, on his oath saith—I reside in Elizabeth, and was present at the sheriff's sale of this property of Mr. Merritt; I was at the two last sales; I was present at the sale at which Mr. Brown bought for nine thousand dollars; on that day the bidding was not very spirited; as the sale progressed, I think, there was a general lagging—there were but few bidders; I was present at the time the property was struck off to Mr. Brown; in my judgment, if the sale had been continued at the prices the property was then bringing, it would not have brought so much as the purchase money that Mr. Brown bid; I am largely interested in real estate in this city, and am acquainted with the value of it; I purchased at the sheriff's sale of this property on both of the last days; the lots that fronted on the old road and the avenue were the most valuable, and after those, the lots on high ground about the centre of the property and are numbered on this map, (marked *Exhibit B I*) as blocks 10, 11, 12, parts of 20, 21, and 22, that is the upper parts of those blocks; my impression at the time of the last sale, arising from the small number of buyers pre-

sent, and that they had bought all they wanted, was that, unless Mr. Brown had come forward and bought the property in the lump, there would not have been enough produced by the sale to pay off the mortgage.

Quest. Was that the general impression gathered from what was generally said?

Ans. As far as my memory serves me, it was. [This question and answer objected to on the part of complainant.]

And witness, being cross-examined, says—

10 Part of block 22 is as valuable as the part of block 7 which is not colored, because it is higher land; if my memory serves me right, I think that the part of block 22, of which I have spoken, is higher than that part of block 7; the lots west of Third avenue are low ground, but I would consider them valuable land for some purposes, such as building small houses; I consider the salt marsh good for nothing at the present time, except for use as salt meadow; in my opinion the salt meadow on this tract extends further east than is indicated by the dotted line on this map; I am
20 sure it is so on my property, block 31, but don't know about others.

In my judgment, block 6 is worth at this time about one hundred and thirty dollars a lot; that was what I purchased it for a short time since.

Quest. How much do you hold the lots on block 6 at now? [Question objected to for defendant.]

Ans. I decline answering the question; I have set no price on them.

And witness, being re-examined, further says—

30 *Quest.* What is the relative value of the whole property, at the present time, and the time of the sheriff's sale, by percentage, with improvements? [Objected to for complainant.]

Ans. I have not given this matter any consideration, but I should think, take the average, salt meadow and all, not over forty per cent.; in my opinion, take the entire average, I think it has increased that much in value; as to the high ground there has been no rapid increase, there have been

but few houses put up, and the character of the property has not changed a great deal.

At the time of the sheriff's sale real estate was dull.

And being re-cross examined, further says—

In my statement as to the increase of this property in value, I took the price for which it sold for at the sheriff's sale as the estimate of its value at that time; and I get at the value of it at the present time by what I think it is worth; if the land was now sold at sheriff's sale, I don't think it would bring much more than forty per cent. more 10 than it did then; private sale and sheriff's sale are two different things; I could not say whether it would bring forty per cent. more.

At that time this property would not have brought much of anything at private sale; because there was no money.

Quest. When money is scarce will property sell for as much money at sheriff's sale as at private sale, all things being equal?

Ans. That I could not answer.

AMOS CLARK, jun. 20

Sworn to and subscribed, this 20th day of March, A. D. 1866, at Elizabeth, before me.

W. J. MAGIE, M. C.

John P. Berry, a witness produced on the part of defendant, being duly sworn, on his oath saith—

I reside in the city of Elizabeth, and am acquainted with the property known as the Merritt property; I have lived near it and am somewhat acquainted with the value of property in that neighborhood; I was acquainted with the value of property in that neighborhood at the time of the sheriff's 30 sale of this property; at that time I lived in Elizabeth avenue, below First street; at the time of that sheriff's sale property was very dull; property is worth more now than it was then; in regard to this Merritt property I consider it is worth a good deal more now than it was then, but I don't know as I could say how much per cent. it had increased; I was not present at the sheriff's sale; in my opinion I do not think that under the circumstances this property would

have brought as much at private sale as it did at the sheriff's sale; I was acquainted with the factory of the Elizabethport Steam Power Company and its condition at the time of the sheriff's sale; there was but little there then but the land; there was a building but it was very much out of repair; it was not considered by outsiders to be worth but very little, say about four or five thousand dollars.

J. P. BERRY.

No cross-examination.

10 Sworn and subscribed, this twentieth day of March, A. D. 1866, at Elizabeth, before me.

W. J. MAGIE, *M. C.*

The further examination of witnesses, &c., in the above cause was, by consent of parties, adjourned to the twenty-eighth day of March instant, at eleven o'clock, at the same place.

W. J. MAGIE, *M. C.*

The further examination of witnesses, &c., in the above stated cause, taken pursuant to adjournment, this 28th day of
20 March, A. D. 1866, in presence of the parties and their respective solicitors.

Justus Morris, a witness produced on the part of defendant, being duly sworn, on his oath saith—I live in the city of Elizabeth; I was present at the sheriff's sale of the property of Mr. Merritt; I was at all the sales—that is, at every day's sale of this property; I was present when the balance of this property was struck off to Mr. Brown; the bidding that day was very dull; as the sale progressed, there was less interest taken in it, and the bidding declined; I think that I made
30 one of the last purchases that was made before Mr. Brown bought; I paid then three dollars a lot for ten lots; I made that bid and there was no other bid made for those lots; as the bidding was at the time Mr. Brown bought, or was just before he bought, the property he bought, if put up for sale by lots, would not have brought as much as the property had brought previously; it would not have sold as well as the

property had sold before; at that time there did not appear to be any purchasers; I understood at the time the sale was stopped, that it was stopped because, at the prices the property was bringing, it was not going to bring enough to pay the encumbrance on the property; [this answer is objected to by complainant's counsel;] I don't recollect that I heard this from any person in particular, but I got the impression from what was said there by somebody—I don't know who.

As the bidding was going on, I do not know whether the property that Brown bought would have brought as much if 10 it had been put up and sold in lots as Brown bid for it or not; I don't know how much Brown bought; before Brown purchased, I offered to take block No. 40, as marked on the map now shown me, (*Exhibit B 1*), at three dollars a lot, and they would not take it.

I bought also twenty lots at five dollars a piece—I bid five dollars, and there was no other bid against me, that is my impression; I think it was stated at the time of sale, that some of the property was salt meadow, and that the line on the map designated the line of salt meadow; I mean the 20 dotted line on the map.

I am acquainted with the value of real estate in this city, and am now in the real estate business; this property has increased in value since the time of that sale; at that time real estate was very dull.

And being cross-examined, witness says—

I think real estate had increased in value between the time of the sale and May, 1863; the lots I bought for three dollars, I have never seen, but I think they are salt meadow.

JUSTUS MORRIS. 30

Sworn and subscribed before me, this 28th day of March, 1866, at Elizabeth.

W. J. MAGIE, M. C.

Hugh Rehill, a witness produced on the part of defendant, being duly sworn according to law, on his oath saith—I reside at Elizabethport, in the city of Elizabeth; I do not know of this Merritt property, but Mr. Edward G. Brown employed

me to dig some drains on the salt meadows—it was between Capt. Spencer's property and the Elizabethtown Steam Manufacturing Company's property; I saw this gentleman, Mr. Merritt, there at that time; I did not know him then, but he told me he was the gentleman; he asked me where Mr. Brown was, and I told him I thought he was away; he either made a remark to me or I made it to him with regard to the expense Mr. Brown was going to—and then he made a remark to me himself, that he owned on one side of the drain,
10 and that Mr. Brown owned on the other; then I said to him, that he ought to pay half the expenses—as long as it was draining his property as well as Mr. Brown's; he said he would not pay half, because he got as much hay off it by reason of the water running over it; he made some remark about Mr. Brown and him trading some property, but I don't remember what the remark was; he also said that Mr. Brown bought or got all that property of him; it was made in reference to this property there; he was standing on one side of the drain, on what he represented to be his own property,
20 and we on the other side; he did not make the remark to me alone, but to the men who were there working with me—some five or six were there; I can't be positive when this was, but I think it was in the spring of 1862—I am pretty sure it was in 1862; I do not remember what Mr. Brown paid me for the draining on this property; it was done by contract by the perch; it was either forty or forty-five cents a perch—I think it was that—I am not certain; he paid me a pretty good price; I was at work for him pretty near all summer—I was also grading for him near Quemis, for which
30 he paid me by the day; he did not pay me more for the draining than it was worth—it was tight squeezing that I got that out of him.

And being cross-examined, witness says—I do not know where the property called the Island is on this land; there is a high knoll there, around which we dug a drain; we dug a drain between the knoll and the creek, I think; this conversation, with Mr. Merritt took place on the drain between the knoll and the creek, on the upper part of the drain.

I had a conversation with Mr. Brown, I told him of the

conversation between Mr. Merritt and me, the next time I saw him after the conversation in the evening or the next morning; Mr. Brown spoke to me about a month ago that he wanted me to come up and state what I knew about the draining of the meadow.

And being re-examined, witness says—this conversation took place between the knoll and the creek; it was not far from the upper end of the drain.

HUGH REHILL.

Sworn and subscribed, this twenty-eighth day of March, 10
A. D. eighteen hundred and sixty-six, before me, at Elizabeth.

W. J. MAGIE, M. C.

John B. Sammis, a witness produced on the part of defendant, being duly sworn according to law, on his oath saith—I live at Elizabethport, and in 1861 was a member of the congregation of the church there, called the First Presbyterian Church of Elizabethport; I recollect a meeting that was held in relation to property of the church that had formerly belonged to Mr. Merritt; I recollect only one meeting, and know of only one, that was the last meeting held previous²⁰ to the sale; I was secretary of the meeting; I believe the meeting was called by the trustees assembling the members of the society, for the purpose of adopting measures to secure the property on which the parsonage stood from any contingencies that might arise from the sale of the Merritt property; this meeting resulted in a committee of three persons being appointed, who were E. G. Brown, M. T. Spear and Jared Arnold, and empowered to purchase property to the amount of five thousand dollars at the sale, providing it was necessary so to do in order to save the parsonage property,³⁰ and not otherwise; that was the sum and substance of the meeting and its result.

JOHN B. SAMMIS.

No cross-examination.

Sworn and subscribed this twenty-eight day of March, A. D. 1866, before me, at Elizabeth.

W. J. MAGIE, M. C.

Elijah K. Smith, a witness produced on the part of defend-

ant, being duly sworn according to law, on his oath saith—I reside at Elizabethport, and am a member of the congregation of the First Presbyterian church there; I was present at a meeting of that congregation in relation to the property of the church bought of Mr. Merritt; that was the property on which the parsonage of that church was built; the object of that meeting, as I understood it, was to devise some way to prevent the property of the congregation, the parsonage property, from being sold; it was understood that a mortgage
10 to Mr. Gibbons covered the whole property, including the parsonage; it was to save the property from being sold to satisfy this mortgage; I cannot say with any positiveness what the result of that meeting was; I was in the back part of the room; there were certain parties who were to buy parts of the property up to a certain amount; I was one of the parties, to the amount of one thousand dollars; I had already bought some of the property before; I agreed to buy one thousand dollars beyond what I had bought before; George Q. Johnson was there, and James C. Fairbank,
20 whether they were to buy or not, I can't say positively; I do not know whether Mr. Brown was there or not; I can't say that I heard any authority given to any one to buy to the amount of five thousand dollars, although there was a talk about authorizing some one to bid to a certain sum, but whether the authority was given or not I do not know; I do not know who the chairman of that meeting was; the secretary was John B. Sammis; I never saw the minutes of this meeting.

Mr. Merritt has had a number of conversations with me
30 on the subject of this property purchased by Mr. Brown, at a number of different times.

I was present at the day of the sale when the nine thousand dollars was bid by Mr. Brown; there was hardly any bidding that day; I made up my mind that I would have to purchase to the amount of the thousand dollars, as I have said I agreed to do; as the sale progressed, the bidding went down, down, down; the prices the property brought that day, in proportion to the value and location of the property sold, I considered were a great deal lower than the prices
40 the property brought at the previous sales; at the time of

stopping the sale, before Brown's bid, I had a map on which I had marked the lots sold and the prices they brought, I went over the lots yet unsold, and at the prices which I thought they would bring, according to the way the others sold, I did not consider that the property would bring enough to pay the claim; some one of us, myself or Mr. Johnson, ascertained from the sheriff at the time the balance of the claim then remaining.

And witness being cross-examined, says—

I did not buy any of the property the day that Brown bid; 10
the meeting of the congregation, of which I have spoken, took place on the evening of the second day of sheriff's sale; after I had agreed to buy a thousand dollars worth of the property, at that meeting, I did not make any purchases; the reason was that the lots that I had marked out on the map, that I would like to buy, had not been put up; I had marked lots to the value of about four thousand dollars, and intended if they brought less than the amount I had fixed on them, to buy them in up to one thousand dollars worth; I don't think that any of these lots that I had marked, were sold be- 20
fore the Brown bid; I don't remember which blocks the lots I marked were on, but I think some of them were on blocks 4 and 5; and I think some were in the neighborhood of blocks 23 and 24; I can't say whether block 6 was sold that day, nor who bought it; at the rate the property was going, I should have thought that if the 17 lots on block 6 had brought one thousand dollars they would have sold well; block 5 is worth more than block 6 per lot; it is worth 25 per cent. more per lot than block 6; it was worth that much more at that time; block 4 was then worth more than block 30
6, and more than block 5 per lot; it is worth 10 to 15 per cent. more per lot than block 5; blocks 4 and 5 had buildings on them, but were worth just as much without the buildings as with them; the buildings were good for nothing except for firewood. There is very little difference in the price which block 22 or 23 would bring; I consider the east end of block 21 more valuable than the west end, because it is higher; blocks 20 and 21 are not as valuable as block 22; blocks 22, 23, and 24 are about the same value; block 18 I would not have for a gift; the part of block 7, 40

which is not colored on this map, (*Exhibit B 1*), is about of the same value as block 22.

On the last day's sale, I was in Price's oyster saloon, in this city, sometime between the commencement and close of the sale; I saw Mr. Brown and Mr. Merritt talking there; I did not hear their conversation; they were sitting at the table, figuring and talking; I don't know that they said anything about the sale, but I supposed they were talking about the property; I believe Mr. Brown and Mr. Merritt walked down
10 to the court house together afterwards; after that conversation between Mr. Brown and Mr. Merritt, I can't say, positively, whether there were any sales before Mr. Brown bid the nine thousand dollars, but I think there were.

Blocks 4 and 5 were the most valuable property, in my estimation, of any that was sold; block 1, however, is as valuable per lot as block 4, and a little more, in consequence of its being upon Second street, which is extended through to the east; block 1 is also more valuable than block 6.

And being re-examined, witness says—Lots 15 to 29, odd
20 numbers, on block 4, are worth no more than lots 17 to 31, odd numbers, on block 3; the bulk of the value of block 4 lies in lots from 1 to 12, inclusive.

The map which I had, and on which I marked the estimates I made of the lots, I think I marked the evening before the church meeting, of which I have spoken; it was made between the second and third day's sale; the estimate I made, was of what I thought the lots would bring the way they had been selling; on the last day's sale the lots sold did not
bring as much as I had estimated they would.

30 As the bidding was going on the last day, if block 5 had been put up as the rest was, it would not have brought 25 per cent. more than block 6; the reason was folks were getting tired of buying; block 4 would, I think, have brought a trifle more than block 5, but not more than 10 or 15 per cent. more, if as much.

And being re-cross-examined, says—Lots 18 to 32, even
40 numbers, are worth more than 17 to 31, odd numbers, on block 3; they are worth 25 per cent. more; the reason is that on the north side of block 3, there is a heavier cutting for the street; and the south side has a southerly exposure;

block 1 is worth pretty near double block 6—I will say seventy-five per cent. more, at least.

ELIJAH K. SMITH.

Sworn and subscribed this 28th day of March, A. D. 1866, before me, at Elizabeth.

W. J. MAGIE, M. C.

Whereupon, by consent of parties, the further examination of witnesses, &c., was adjourned to the twelfth day of June, 1866.

The further examination of witnesses, &c., in this cause, 10 resumed, this twelfth day of June, 1866, in the presence of Joseph Alward and Robert S. Green, of counsel with the respective parties.

Edward G. Brown, the defendant, produced on his own behalf, and being duly sworn, on his oath saith—

I am the defendant in this cause, and reside at Elizabethport; I am acquainted with the complainant, Mr. Jacob T. Merritt; I know the property formerly owned by him, situated on Elizabeth avenue and the Old Point road; the property was generally known by the name of the “Gibbons 20 property.” That property was sold at sheriff’s sale, I think part in February and part in March, eighteen hundred and sixty-one; the first sale made by the sheriff was, I think, on the twentieth of February; the second, I think, on the twentieth of March; the third was the twenty-first of March; and there was a subsequent sale of some of it, I think was the tenth of July.

I attended the sales—all of them; some of the lots were struck off to me.

Witness being shown *Exhibit marked B 1* in this cause, 30 says—

On the two first days of sale, I bought the following parts of the said property:

Lots 1 to 14 inclusive, on block marked 1.

“ 1 to 20 “ “ “ “ 11.

“ 1 to 20 “ “ “ “ 12.

“ 1 to 20 “ “ “ “ 32.

“ 20 to 30 “ “ “ “ 32.

“ 31 to 40 “ “ “ “ 32.

These two last tracts were struck off to other parties, whose purchases I assumed, and the tracts were conveyed to me by the sheriff's deed :

Block 33—the whole of it.

And block 30, which was struck off to some one else, but I assumed his purchase, and it was conveyed to me.

Block 29 was also struck off to another person, but I assumed his purchase, and it was conveyed to me.

Also lots 4, 5, and 6, on block 8, this tract had a house
10 on it.

These were all, I think, that I bought at the two first sales made by the sheriff; I may have bought some of the pieces of property of which I have just spoken, on the morning of the third day of sale—I am speaking from my recollection.

On the third day of sale I bought the following tracts :

Block 4; block 5; lots 24 to 55 inclusive, on block 7; block 23; block 24; block 25; block 26; block 48; block 47; block 46; block 43; block 42; block 41; block 40;
20 block 39; block 38; block 37; block 36; lots 1 to 20, inclusive, on block 17; and block 14, and lots 3, 7 and 8 on block 8, and lots 26, 27, 29 and 31 and two gores on block 30, and block 34. I bid for all these lots and blocks, in one amount, nine thousand dollars; they were all put up in one lot; previous to that time the sales had been made in parcels of from one lot up to a whole block; they found—Mr. Merritt and the trustees of the Presbyterian church—found
30 and Mr. Arnold were there; Mr. Smith was there, but I am not certain whether he was a trustee or not; Mr. George Q. Johnson was there, I do not know whether he was a trustee or not; Mr. Smith and Mr. Johnson were members of the congregation; Mr. Rolston, Mr. Gale, were there, who were also members of the congregation, and I think Mr. Fairbank was there; I was one of the trustees of the church; the church had considerable interest in the sale; the parsonage of the church was on the mortgaged property that was to be sold; these gentlemen were there looking after

the church interests, and trying to make the property bring all it could, so as to clear the encumbrance before the sale reached the parsonage property; after ascertaining that the property was not bringing enough to pay the encumbrance without reaching the parsonage, Mr. Merritt and others of those interested in the church, who I do not recollect, wished me to bid off the property.

Mr. Merritt wished me to bid it off for the amount that was then due; he went to the sheriff and got from him the amount then due; Mr. Whitehead, Mr. Gibbons' lawyer, 10 represented that the amount then due was nine thousand dollars, or that nine thousand dollars would clear the encumbrance and save the parsonage; he spoke of the balance of the mortgage premises, excepting those parts which had been sold by him and Mr. Fairbank to other parties, which exceptions included the parsonage property; I would not take it; it was more property than I wanted, and I had not the means to do it; he talked with the others a while and returned to me and said that if I would buy it, he would let me have, I think, twenty-five shares of the stock of the Steam Power Company—I think is its name—the Elizabethport Steam Power Company, which would make the purchase more advantageous; we talked it over, and they, I think, adjourned the sale, or took a recess of a short time; I talked with Mr. Merritt; he told me if I would buy it that he would relieve me within sixty days; we talked sometime upon that, he persuading me that the property was valuable, and I concluded to do it and clean the thing up; I then bid it off for the nine thousand dollars, and paid ten per cent. of the purchase money, which I borrowed of Mr. 20 Gale and Mr. Rolston or others present.

Mr. Merritt at the time transferred the stock to me, and I took it down to Mr. Baiz that night, and got it transferred upon the books of the company to me.

The conversation which led to this bid of mine for the balance of the property was commenced by Mr. Merritt; I had a conversation with Mr. Merritt on that same day; it was previous to the sale; he wanted me to take one-half of the property, if I would pay it up and give him a chance to pay for the other half; nothing was said about the stock at 40

that time; I did not then know he owned any stock; no agreement or conclusion was arrived at in that conversation; I did not want the property and so told him.

By the agreement I was to take the deed; nothing was said about his taking the deed, unless he relieved me in sixty days, then he was to take the deed if he relieved me; he was to relieve me by paying up the claim, the nine thousand dollars, the amount of my bid; I did not ask him any bonus in any way; all I wanted was to get the church out clear if
10 I could.

There had been an agreement at a meeting of the members of the church about this property; the meeting was, I think, on the evening of the twentieth of March, and I was present; they authorized the trustees—three of us I think—if we found the property would not bring enough to clear the parsonage, to run the society in debt to the amount of five thousand dollars; they picked out three of the most visionary men there were among them—Spear, Arnold and myself—to raise that amount of money, and to bid it off; that
20 is my understanding of the final conclusion at which that meeting arrived; in making my bid of nine thousand dollars I considered I had exceeded my instructions from that meeting, and that I had no legal claim on the church; still they promised to stick by me, and help me out if I would bid it off.

I saw Mr. Merritt before the expiration of the sixty days, I think three or four times; the first time I saw him was, I think, at his office; at that time he told me he would get the money and relieve me before the time run out, without
30 doubt; after that I saw him a number of times and he made me the same promise every time that he would pay it; on the day of sale, or the day before the sale—I think it was the day before the sale—I saw him and he told me he could not do it; he could not do anything; I was then at his office, and I was in a hurry to catch the boat; I got him to walk down with me to the boat, and had a conversation; he wanted me then to pay it up, and give him an interest in the property; there was nothing said as to what interest he proposed; I told him I could not do it; if he
40 could not relieve me I should have to give it up, lose my ten per cent., and let the church take care of itself; then he

wanted me to take it and not let it go back on the church; I told him I could not do it; then said he—then if you won't take it you must let it go back, and the church must do as they see fit; there was a good deal said at that time, but that is the substance of it; the understanding between us at the time I left was, that he gave it up.

On the twenty-first day of March the sale was adjourned for sixty days, at which time I was to pay the balance of my nine thousand dollar bid; the conversation I have just spoken of took place either the day the sale was adjourned to, or the day before, I am not certain which.

I came up to the sale and told the trustees what Mr. Merritt said, and that he had given up the property; that he had promised me to provide the money every time I had met him, and that in consequence I had not provided a dollar of the money; (the whole statement made to the trustees objected to on the part of complainant).

Up to that adjourned day I had made no preparations for paying the amount of the bid; I had not even paid the ten per cent. I borrowed; the reason I had not made preparations to pay it was because Mr. Merritt had promised to pay it, and I expected him to do so.

At the sale I told the trustees how I was situated, and that if they would pay me eight hundred dollars, and take part of the property, I would pay the balance in a week, if the sheriff would take a draft on Boston for five thousand dollars as part of it; that they agreed to do; I then told them they might take any of the property they saw fit; there was no one of them there who wanted any of the property but Mr. Johnson; he wanted block 14 for six hundred dollars; they then put up block 14 at auction, if it did not fetch the eight hundred they agreed to pay the balance. It was sold for seven hundred and sixty dollars, and Mr. Fairbank gave his check for forty dollars to make up the eight hundred dollars; I think the eight hundred dollars was paid to me; I gave a deed for it to Mr. Johnson.

I gave the sheriff a draft on Boston for five thousand dollars at that time; I think he made me pay interest on the whole nine thousand dollars until the whole was paid; I paid the balance with interest within a week, to the best of my recollection, and then received my deed.

I saw Mr. Merritt afterwards, but never went to see him in reference to it.

At the conversation I had with Mr. Merritt at the boat, the day before the sale, I made him an offer, if he would pay a thousand dollars of it, I would try and make out the balance. His answer was, he could not do a thing.

After the sale, I made Mr. Merritt the same offer; he said he could not do anything, he must give it up; I don't remember that he told me what I must do with the property; 10 he several times told me, but not at this time, that I must do what I saw fit with the property.

I sent Mr. James C. Fairbank to Mr. Merritt to say that I would extend the time sixty days if he would pay me a thousand dollars, the time to relieve me; I mean the thousand dollars not as a bonus, but as a part payment of the amount, and give him time to pay the balance; I think I gave him another time of thirty or sixty days—this was also through Fairbank; these offers were not accepted.

At the time of sale I offered the property to the church, 20 pay for it myself, and give them time to pay for it; I did not want the property, but wanted the money more; I renewed this offer to some of the members of the church, and I offered to Mr. Fairbank if he would furnish any one who would take it off my hands to take one thousand dollars less than I had paid for it; (objection to all testimony of what was said when Mr. Merritt was not present); none of these offers were ever accepted; I have never disposed of the property at those rates.

The only time I ever recollect having any conversation 30 with Mr. Merritt about his paying me, or anything of the sort, was but shortly before he sued me; I don't recollect the date; I met him in New York, I think in Cedar street; I either had a letter before or after this conversation, don't recollect which; in this conversation, he said to me, don't you think I have an interest in that property. I said what interest; said he, I don't know; I thought I ought to have something. Either before or after this conversation I had a letter from Mr. Merritt in which he said he would pay me for the property and take a deed of it, or something to that 40 effect. I have given about all Mr. Merritt said in that con-

versation. He did not say what interest he had in the property in the conversation.

At the time of the sale there was some personal property of Mr. Merritt's left on the property; I think he had a horse there, but am not certain, but he had a wagon, mowing machines, tools, &c., and all the rails pretty much of the cross fences inside of the place; there were not much of any front fences on the place; Mr. Merritt had these things removed right away after the sixty days was up, everything was taken away except I think one haypress. 10

I had a conversation with Mr. Merritt in reference to an exchange of this property for other property of his: that property was in West Chester county, New York; he said he had a farm there which he wished to exchange with me for this property; I don't recollect what he represented it to be worth, but he said there was a claim on it for some twelve thousand dollars; twice I agreed with him to go to West Chester to see this property, but something turned up so that I could not leave; I think this offer to exchange was made in the fall of eighteen hundred and sixty two, as near as I can recollect. 20

I agreed to exchange some parts of this property with Mr. Merritt; I agreed to exchange the small blocks 48, 47 and 46 for a gore of the adjoining property which would make block 30 of the same size as block 29, with one half the streets adjoining; Mr. Merritt owns the property adjoining this property that I bought on the west side, and lying between it and the creek; and also a strip of land lying between the salt meadow portions of the tract I bought, and which extends from the creek up to block 34; upon these properties, which are shown in the map marked *Exhibit B 1*, no lots are marked out. I went to see Mr. Merritt in relation to a ditch which I proposed to dig on the line between the property I bought and his adjoining; I mean on the line which is marked on *Exhibit B 1*, "N. 10° 50' E. 1506 Ft." The ditch I proposed was to run up that line to the middle of Florida street, and up the middle of that street to the middle of Third avenue; and a branch of the same up the middle of Second street to the middle of Fourth avenue; along Fourth avenue to centre of block No. 34; and along 30

centre of block 34 to Third avenue—this last course would run across part of Mr. Merritt's property; Mr. Merritt agreed to exchange the gore of his property which lies north of the centre line of block 34 for lots 2, 4 and 6, and a small gore adjoining 6, on block 34; he agreed to come down the next day to look this over; he agreed to exchange in his office on examining the map, and he did not know but what he might be exchanging away some upland for salt meadow, and said he would come down the next day and look it over; he came
10 down, but I had been obliged to go to Pennsylvania, and he did not see me; the exchange has never been carried into effect.

In relation to the ditch, I told him where it was going to run, marked it out on the map, and told him he ought to bear part of the expense of the ditch on the line between us; he was not willing to do so; he was willing that I should do it, but was not willing to pay any of the expense; he wanted me to buy the property of him; the gore he owned, running from the creek into block 34, he also wanted me to buy;
20 he said as long as I owned all around it, I had better buy him out.

This property, which I bought at the sheriff's sale, was represented as being all clear of taxes; but it was sold for taxes, the whole property, for, I think, two years' taxes; I think that sheriff Burnet bid it in for all the parties concerned, and we had to pay it up in our different proportions, as to the amount we got; I think this sale was made in the fall of sixty-one—might have been in the spring of sixty-two.

At the time they were transferred to me, I don't know
30 what the twenty-five shares of Elizabethport Steam Power Company were worth; I don't think I could have got three hundred dollars for them, in the situation they were then in; the company had, I think, either one hundred feet square or one hundred by two hundred feet, near the saw mill; there was a brick building on it; it was then in very bad shape; the glass was all out, the roof broken, and the steam engine was very poor; the property was not then occupied, and had not been for sometime—some seven or eight years; the company did not own any other property besides this, that I
40 know of; at that time, I do not know what that property

was actually worth—there was no sale for it; I don't think it could have been sold, at that time, for three thousand dollars; I do not remember how many shares of stock there were in the company, nor what the capital of the company was; the stockholders, after I got the stock, were Mr. Baiz, a gentleman whom I never knew, and myself; we built on a building afterwards, one hundred by seventy feet, I think, repaired the other building, and put in a new steam engine; I do not remember what the expenses of these improvements were; after the property was improved, it was leased to 10 Messrs. Munsell & Thompson; I think we got for rent, ten per cent. of the cost of the improvements on the new part; what we got on the old, I do not know; this made the stock worth a great deal more, as soon as we made the improvements; I sold the stock to Mr. Baiz; I think I sold it to him for twenty-five hundred dollars; took his note at one year, without interest; this was after we had made the improvements.

The property for which I gave the nine thousand dollars, the fences inside, between the pastures and fields, had all 20 been taken down by Mr. Merritt, and piled up; he took them away—part before the sale, and part after; the outside fences, there were none of any consequence; I have fenced the whole of the property; I commenced it, I think, in the winter of 1861, or the spring of 1862; I fenced most all of it with picket fence; I have graded some of the streets, and set out since, trees; I have manured all of the upland, and I had the ditch made, which I spoke of before; I cannot say accurately, what expense I have been at, in making these im- 30provements; I have had from one to eight men on it all the time since I bought it; the first year I gave a man all he could get off of the place, and one hundred and fifty-five dollars, I think, for what he done; the whole improvements have been more than two thousand dollars, but it is impossible for me to get at the cost of the improvements on the property I bought at nine thousand dollars, as I have at the same time improved the other parts of the same property, which I bought on the other two days.

I have bought considerable property at Elizabethport; I have been from time to time acquainted with the value of 40

property there; in my opinion, the property which I gave nine thousand dollars for, was not, at that time, in the condition in which it was, worth more than that sum; I do not think it would have brought that if they had gone on and sold it; at the time of this sheriff's sale, the market for real estate was very dull; there was no sale for real estate; it was just at the time the war was coming on; that was one of the reasons there was no sale for real estate; and real estate had been pretty low there for some time; at the first day's sale, there was a good attendance, and the bidding was pretty
10 brisk; I think if they had gone on with the first day's sale, they would have done better than they did by adjourning; on the second day, the bidding was not so brisk; it was dull; but very few buyers were present; on the third day, there did not appear to be any one to buy, to speak of; the bidding was not brisk at all; if they had gone on and sold the property I bought in bulk, and it had been sold as the other property had been sold, and at the prices the other had brought before the recess, I don't think they would have got six thousand
20 dollars for it; in my opinion, it would not have begun to bring enough to discharge the encumbrance without resort to the parsonage and the other property; that was the impression of Mr. Merritt, gathered from what he said to me; he was satisfied it would not bring the claim; we tried, both of us, I think two or three times, to get them to adjourn the sale.

The stock I have spoken of, was assigned to me by Mr. Merritt, so as to make the purchase more advantageous to me; it was not as a part payment of any money I might advance on the property; it was not as a collateral security for
30 the repayment of any such money; if Mr. Merritt had relieved me of the payment, I was to let him have the stock back again.

In my opinion, of the whole tract sold at the sheriff's sale, block 5 is the most valuable part—block 4 is generally thought to be the most valuable; in my opinion, lots from 14 to 29, inclusive, on block 4, are not as valuable as lots 17 to 32, inclusive, in block 3, for the reason that those lots on block 3 are higher and more even than those on block 4; there is
40 not much difference between the value of lots on block 5,

and those on block 6; lots 24 to 55, inclusive, on block 7, are very much of the same value with lots corresponding in situation on blocks 8 and 10; lots on block 23 do not differ much in value from lots on block 22, nor from lots on block 24—the latter, I don't think, would sell quite so readily; block 25 is quite wet, springy land, the west part of it is salt meadow—I ploughed the other part once in a dry time, but never got it seeded down; the west parts of blocks 22, 23, and 24, are wet; the lots on the salt meadow are not worth near as much as the lots on the upland adjoining; I consider 10 blocks 32 and 33 more valuable than all the salt meadow between them and the creek—I mean all that I bought and what Mr. Merritt owns; I would not exchange them, but others would consider the salt meadow more valuable.

Blocks 32 and 33 are tillable ground.

Blocks 26, 46, 47, and 48, are not of much value, in consequence of their small size.

There was a person who gave the name of Trotter, who was a purchaser at the sheriff's sale. I did not know the man, but Mr. Merritt said he was a by-bidder that he had. 20

The letter I received from Mr. Merritt, I never answered; I never wrote him a line in my life, that I know of.

Mr. Merritt never made any tender of money to me.

Mr. Merritt once or twice wanted to know what I would take for all the property I had there at the Port, and I told him I would take just what it cost me; this was, I think, in 1863; I gave him the refusal of it; I wanted to sell, and he tried to see what he could do with it; he never got anybody to take hold of it; that was all he mentioned about property from the time the sixty days were up to just before the suit. 30

I had a conversation with Mr. Merritt in regard to part of this property which he had sold to others—to Mr. Gale, and to Mr. Johnson; he told me that they had turned out some securities there, and he wanted me to take this property so as to prevent his losing them; and that he would lose also four lots back of the church, unless he paid up this claim; this was when he wanted me to take hold of one half of the property; the time he spoke about the securities, was, I think, when we had the conversation at the boat; he had spoken

to me about these securities at the time he first wanted me to take hold of the property, which was before the sale.

Whereupon, by consent of the respective parties, the further examination of witnesses, &c., was adjourned to the fifteenth day of June, instant, at nine o'clock A. M.

The further examination of witnesses, &c., in said cause, taken pursuant to adjournment, in the presence of the solicitors of the respective parties, June 15th, 1866.

10 And Edward G. Brown, being recalled, and his direct examination continued, further says—I have had a conversation with Mr. Merritt in relation to his buying this property of me; I mean the land I bought for the nine thousand dollar bid, and other lots I owned at the Port; he came out and looked at the property, and sent his son out once.

Witness being shown a paper writing, marked *Exhibit B* 2, in this cause, says—I received this from Mr. Merritt—it came by mail or his son brought it; this letter refers to property I proposed to sell to Mr. Merritt, and included this nine thousand dollar property; there was no claim by Mr. 20 Merritt at that time, of his having any interest in this property which I bought for nine thousand dollars; he has never made any such claim after the sixty days were up, until just before the suit was brought; Mr. Merritt's son came to me about this property, and said his father sent him; he took down a list of the property—I think it was in 1863; and my impression is, that he brought the letter marked *Exhibit B* 2, at that time or during the same season.

The hay press of which I spoke stands on the property yet.

30 And being cross-examined witness further says—

This hay press Mr. Merritt said he had bought, but something was not right about it, and he would not take it away, for if he did he would have to pay for it; I can't tell who carted away the rails of which I have spoken; Mr. Johnson and Mr. Arnold each had a few of them, but whether they carted them or not I can't say; the rails were taken away while Mr. Dooley was there; it was after the purchase that

the most of them were taken away ; I do not know whether they were sold by Mr. Merritt ; I could not say whether they were taken away by Mr. Merritt's order ; there were a few cedar posts left there ; I could not say how many, but I could show every one of them ; they are in the fence to prevent the cattle going on to Mr. Merritt's salt meadow ; they are not on this nine thousand dollar tract, but on other parts of the property which I bought ; they were put in a fence to prevent cattle going on to Mr. Merritt's salt meadow, and he told me to use them in that fence ; I built the fence, but 10 Mr. Clark paid for it, upon blocks that he owned ; it was when I was fencing it, either in fall of 1861, or the spring of 1862, that Mr. Merritt told me to use these posts ; upon consideration, it was in 1862 that I fenced it ; the fence is a picket fence—posts, rails and pickets. This fence prevents cattle going on the salt meadow ; there has never been a hoof on there to my knowledge, unless they went to haul hay off ; I have built some rail fence on the premises along lots on block 17, the odd numbers from lots 1 to 19 ; upon further consideration, I think, although I am not certain, 20 that I put the cedar posts in fence built along Cron's property on block 17, and which it was necessary to be fenced or the fence I had built would be useless, and which Cron refused to fence ; I think that the rails I used in the fence along lots 1 to 19, odd numbers, on block 17, were on the property before ; Mr. Merritt did not remove all the rails on the property, and he left the fence along the front of the property ; I do not recollect using any other rails on the place except those used refencing along the lots from 1 to 19 on block 17, odd numbers ; those that I used in that 30 fence I think were got from the fence on the property or the front fence or both.

Mr. Arnold built some rail fence on Second street ; I don't know whether he got the rails from Mr. Merritt or not ; the fence he built is between his property and a portion of the nine thousand dollar tract.

I don't know whether Mr. Johnson got the rails of which I have spoken from Mr. Merritt or not ; I can't say where they are used ; I think there were some used in a fence on

the northwest side of block 15, which was Arnold and Johnson's.

I don't think the whole front was enclosed at the time of sale by a rail fence; I think there were some old pickets there; there was a very poor fence along the whole front of the property, an apology for a fence, not enough to keep the cattle out; part of it was a rail fence, and part a picket fence; I think the part along the Old Point road was a rail fence, and also along block 1 and Second street on the
10 avenue, and on Geneva street on the avenue; the only part of the nine thousand dollar tract which had a rail fence in front was block 5 and lots 3, 7 and 8, on block 8.

The mowing machines that were left there were taken away, I don't know by whom, but I think by Mr. Fairbank; there were two of them; I think they were taken away soon after the sale.

I think the third day of sale was on the twenty-first day of March, 1861; on that day Mr. Merritt, just previous to my making the nine thousand dollar bid, told me that he was
20 satisfied the mortgage premises would not bring enough to pay the claim without selling the parsonage; he at one time came with some of the trustees, or the members of the church, and wanted me to bid it off, that the way it was selling it would not clear the property, it would not fetch enough to clear the parsonage; these were his words, as near as I can recollect; Mr. Johnson was present at that time, when he said that, for one; I think Mr. Alward; I am sure Mr. Rolston and Fairbank were there; I think Mr. Marsh, of the firm of Howell & Marsh, was present also;
30 Mr. Amos Clark, jr., and his father and Mr. Morris were there; Mr. Spear and Mr. Elijah Smith were there; I can't say whether they heard Mr. Merritt say that; I don't know whether the men I have named were all present when Mr. Merritt said that; they were all in the house talking together, and interested in the matter, desiring to have the parsonage cleared; I could not say whether any one heard what Mr. Merritt said to me, but I have no doubt some of them did; I am very sure Mr. Johnson and Mr. Elijah Smith were present; Mr. Johnson is dead; I could not say
40 whether Mr. Rolston heard what he said; I could not say

whether Mr. Fairbank heard what he said; we were all talking together all the morning; pretty much all the rest of them wanted to stop the sale and adjourn, but Mr. Johnson wanted to go on till it was bid down, until there remained but nine thousand dollars; Mr. Merritt and his brother wanted an adjournment; I tried to get both Gibbons and the sheriff to consent to an adjournment, but could not; I could not say that Mr. Spear heard what Mr. Merritt said; to the best of my recollection Spear was there; I don't positively recollect seeing him there that day, but to the best of 10 my recollection he attended all the three first sales; Mr. Gale was also there that day, but I could not say whether he heard what Mr. Merritt said.

Both Mr. Smith and Mr. Johnson thought the property would not bring enough to satisfy the claim; I thought so; the sheriff and Mr. Whitehead both told me so; I think Smith and Johnson both told me so; I don't remember of any one else of the church people having told me so, but some of them might have done so; I could not say whether Mr. Johnson or Mr. Smith were trustees of the church; I 20 know they were both interested, and Smith often met with us; Mr. Johnson was interested in the property, besides being interested for the church; he was afraid he would lose his house; I don't know when Johnson's property would have been resorted to to make up the claim; I think the parsonage property was the first to be resorted to, in case the rest of the property failed to make up the claim; Mr. Johnson came to me and wanted me to move his house off of the property; I advised him not to do so, the same as I did the church people, who also wished me to move off the par- 30 sonage.

I never, previous to the sheriff's sale, contemplated, buying this property of Mr. Merritt's; he talked to me about buying, and so did Mr. Fairbank; before the sheriff's sale commenced, I did not, as I know of, talk with any person, to the effect that if they would put the property up in one lot, I would buy the whole; I think it was in the latter part of 1860, that Mr. Merritt first talked to me about buying the property; it was before the sheriff's sale; at one time he offered me that if I would pay to Gibbons all that was due, I 40

should have a deed for the whole, and he was to have time to pay one half of what I had to pay; that was his proposition, as near as I can recollect; my reply was I did not want the property; I don't know that I ever went over the property until after the first day of the sheriff's sale; I might have been over the day before, but think not; in Mr. Merritt's proposition I don't know as there was any time mentioned within which he was to pay me; I don't think anything was said as to what he was to pay me in; I cannot say where he
 10 was when he made me this proposition, but I think it was on board the boat.

I don't remember of his making me any other proposition to buy the whole property; after the sheriff's sale commenced, he frequently made propositions to me to buy the property, as it was going so low, he very often, as the sale was going on, wanted me to assist him in it; I took it so as not to have the property, as he thought, sacrificed.

On the third day of the sale I think I had a conversation with him as we were walking from Price's oyster saloon to
 20 the Court House; I could not tell what that conversation was; I could not tell what proposition he made to me then; I could not tell what we were talking about then; I don't remember any proposition made by Mr. Merritt to me on the third day of sale, previous to the commencement of the sale; he might have on that day made me the proposition to buy the property, he to have an interest in it; I know he did at sometime make we such a proposition: according to
 30 this proposition I was to furnish the money, nothing was said about in whose name the deed was to be taken: if this proposition had been carried out I should have considered the deed should be taken in my name: I should have considered the property was mine, unless he redeemed it: I don't know that I understood the proposition so: I don't think it was talked of at all, for I did not want the property.

Quest. When you loan money are you in the habit of taking a deed of the property instead of a mortgage? [Objected to on the part of defendant.]

Ans. I never did.

Quest. Did you not in the case of certain colored men at
 40 Westfield? [Objected to on the part of defendant.]

Ans. I don't know—I most forget about how that transaction was.

In the proposition of which I have last spoken, and which he made me at sometime, I don't remember that anything was said as to how or when he was to pay me; I don't recollect his saying anything to me at that time about his steam-power company's stock; I did not know of his owning any such stock until that day just before he transferred; I did not consider this proposition as a request from Mr. Merritt to loan him money.

Quest. Do you not understand the proposition of Mr. Merritt, stated above, to be that you should purchase an undivided interest in the property and loan Mr. Merritt money to purchase the other undivided part?

Ans. No, sir; his proposition to me was for me to buy the property and give him an interest in it, and a time to redeem his interest in it, which was to be either a half or some other undivided interest.

To the best of my recollection, the sale commenced on the third day, at ten o'clock in the morning; I think I was present during the whole of that day's sale; I think I purchased some lots on that day, prior to the nine thousand dollar bid—I don't remember how many; I could not tell what price I paid on that day; I think that for ten lots I paid on that day three dollars a lot, and fifty dollars to Justus Morris for his bargain; on consideration, I don't think I bought any on the third day of sale before the nine thousand dollar purchase, except what I may have bought from parties who had purchased at the previous sales; there are no lots contained in the deed for the nine thousand dollar bid, except those which were put up in one parcel, and for which I bid nine thousand dollars; if I had purchased any lots at the sheriff's sale previous to the nine thousand dollar bid, they would have been included in the same deed; (objected to on the part of defendant;) I know no reason why they should not have been put in one deed—the previous days' sales had been.

I think I asked Mr. Rolston the value of the steam-power company's stock—I think I asked him at the time the transfer was made; the transfer was made on the day of the nine thousand dollar purchase; I don't know whether it was made

before or after the bid was made; it was made at that time; I think Mr. Rolston came with Mr. Merritt, and represented to me the value of the stock—this was just previous to the transfer.

I think Mr. Rolston told me the stock was worth from twenty-five hundred to three thousand dollars, to the best of my recollection.

Quest. Was it the agreement between you and Mr. Merritt that, if he relieved you of your bid, he should take the deed?

10 *Ans.* Yes sir; and I was to return the stock to him.

I have disposed of that stock; I don't remember when, but I think in 1863 or 1864 I disposed of it; I sold it for twenty-five hundred dollars, and took Mr. Baiz's note for it without interest for one year—to the best of my recollection; what I realized for the stock was twenty-five hundred dollars in a year from the date of sale; I did not give Mr. Merritt any notice that I was going to sell the stock; at the time I sold it, I did not make him any offer to return the stock if he would redeem it.

20 *Quest.* Has Mr. Merritt ever received of you any consideration for that stock?

Ans. Yes, sir; by the nine thousand dollars which I bid for his property, I relieved him of his mortgages on the Johnson property—Gales and I considered the lots back of the church which were holden; he has received no other consideration besides that.

The meeting of the church, of which I have spoken, was in the evening, either after the first or the second day of sale—I could not say which; there was nothing said about my
30 buying anything for myself, but, previous to that, the trustees had agreed to each buy a certain amount of it to try and relieve the parsonage, if we could; if this arrangement with Mr. Merritt had not been made, I should have purchased five thousand dollars worth for the church, if necessary to relieve the parsonage; it was not the understanding between me and others, on the third day of sale, that we should bid enough to relieve the parsonage—only to the amount of five thousand dollars; I did not tell anybody, on the third day before the sale commenced, to my recollection, that I would
40 see that the property brought enough to relieve the parson-

age—I did not, to my recollection, tell either Mr. Spear or Mr. Arnold that.

I was present when block 6 was sold—Mr. Johnson bought it; I don't remember what day of sale, but I think it was on the second day of sale; I don't know that he made any offer for either block 4 or block 5—he made none that I remember of; I do not recollect that Mr. Johnson said that he would start either block 4 or block 5, if put up at one hundred dollars a lot.

None of the trustees of the church claimed an interest 10 in my nine thousand dollar purchase within a week after; they did afterwards; I think it was Spear who spoke to me about it; I should think it was after the money was paid up; there was never any one of them that paid a dollar; they offered to assist me in the first five thousand dollars.

I don't remember that Spear ever claimed an interest before the money was first paid up; I won't be certain, but think it was not.

Quest. Did you ever tell any one of the trustees that they should not get this property from Mr. Merritt, that you had 20 bought it for Mr. Merritt, and you would take care of him? [Objected to by counsel for defendant.]

Ans. I might; I don't remember that I did; I might have done so; I could not say whom I might have told so; I never told Mr. Spear that, to my knowledge.

It is my opinion that it was after I had taken my deed for the property, that Spear spoke to me about it; I do not remember what my answer to him was.

Mr. Fairbank told me that he thought he could get a man that would give me a thousand dollars more than I gave for 30 it; I think he told me Mr. Sterns would; I think this was in 1862, or in fall of 1861, after I had taken my deed; no one ever told me that, before I took my deed; they might have said so, but I have no recollection of it; I told Fairbank he might have it at what I paid for it, and a thousand dollars less; he never produced a purchaser.

Quest. Did any of the trustees, before you took your deed, offer to sell the land included in your nine thousand dollar bid, if you would let the surplus over the nine thousand dol-

lars go to the benefit of the church? [Objected to on the part of the defendant.]

Ans. Not that I remember of; I dont remember of ever having any such offer as that, before or after.

Quest. If you had had such an offer, at any time before you took your deed, would you have accepted it? [Objected to on the part of defendant.]

Ans. No, sir.

Quest. Why not?

10 *Ans.* Because Mr. Merritt had the sixty days to redeem it in, and I had no right to do so.

Mr. Merritt agreed to relieve me of the nine thousand dollar purchase within the sixty days, and I suppose he had a perfect right to do so; Mr. Merritt had not given me anything for that privilege; I was under a liability to hold the property for Mr. Merritt—at least a verbal agreement between me and him.

Quest. For what consideration did you make that agreement?

20 *Ans.* Outside of the nine thousand dollars, Mr. Merritt never gave me, or offered to give me, a dollar.

Question repeated. [Objection on the part of the defendant, as having been fully answered before.] There was no consideration at all.

Quest. What did you mean by saying “you would have had no right to accept such a proposition?”

Ans. Mr. Merritt had sixty days to relieve me of the purchase; I afterward gave him further time—sixty days—to relieve me, and during the time he had to relieve me, I did
30 not consider I had a right to accept such a proposition.

Mr. Merritt had, at first, sixty days to relieve me of the purchase, and after that time expired I offered the property to the church, at the time of the fourth sale; between that time and the time they declined it, I considered I had no right to dispose of it to any one else; when they declined it, I offered it to Mr. Merritt sixty days more, if he would pay me a thousand dollars, which he did not do.

Quest. At the time Mr. Merritt assigned the stock, did you tell him he could have sixty days to redeem the property
40 in?

Ans. Yes; he was to have sixty days.

Quest. Was that part of the consideration on which he assigned the stock?

Ans. Yes, sir; I suppose that was his idea of assigning the stock; he assigned the stock to me, and agreed to relieve me of the purchase in sixty days, when I was to return the stock, and he to take the deed; by the word "relieve," I mean pay up the nine thousand dollars.

At the time of the transfer of the stock, I do not know anything else was said about it, but that I told him the land was not worth the nine thousand dollars, and he agreed to assign the stock, so as to make it more advantageous; I think this was all that was said about the stock, except that he represented what it was worth.

The conversation, when I told Mr. Merritt that if he did not relieve me, I should have to lose my ten per cent. and give up the property, was on the dock, and occurred either the day before, or the very day the sixty days expired; Mr. Merritt replied that I might do just what I was a mind to; he was very anxious I should carry it out, but if I would not do so, it would have to go back on the church, and they would have to take care of themselves; these were his words, as near as I can recollect; nothing was then said about the stock, that I know of.

Quest. If you had thrown up your bid, according to your agreement with Mr. Merritt, to whom would this stock have belonged? [Objection on the part of the defendant.]

Ans. I don't know as I could answer that question. The agreement with Mr. Merritt was not definite enough to enable me to answer that question. I should have lost my ten per cent.

I think I sent Mr. Fairbank to see Mr. Merritt the first time, a very short time after I had paid up and taken my deed, probably eight or ten days after—it might have been longer; the second time I sent him was after that time had expired; I think I sent him twice.

Before the third day of sale there was no agreement between me and Mr. Johnson that we should bid certain lots up to a certain price, and if either one bought them Mr. Johnson should have them; there was not an understanding that if I bought block 14, he should have it for six hun-
40

dred dollars; he did not claim to me that by such an agreement he was entitled to block 14.

I could not tell, without referring to my checks and receipts, when I paid the ninety per cent. ; I think I gave the draft for five thousand dollars on the day Mr. Merritt was to have paid, and I think the sheriff gave me time on the balance—I think a week, and I paid it then, or very shortly afterwards, with interest, until I paid; I could not say whether it was the 6th of June or the 10th of July, that I
 10 gave the five thousand dollar draft; the reason that the sale was adjourned from the 6th of June to the 10th of July, if I remember rightly, was because there were some lots bid off by Mr. Trotter, Mr. Merritt's by-bidder, that he did not come forward and take, and they had to be sold again, and they did not bring as much as they brought before, by, I think, some two hundred and sixty dollars, and the parsonage had to be sold to make up, I think, some two hundred and eighty dollars, the amount then due, including costs and interests; I could say at whose request this adjournment
 20 was made; I think Mr. Merritt was not present; I know he was not present at one of the last two sales, but which one I could not say; it was not adjourned at my request, that I know of; I never asked it, that I know of; I was not ready to pay up my ninety per cent. that day; I had not a single dollar; I expected Mr. Merritt would relieve me; I could not say whether it was adjourned because I could not pay up the ninety per cent.

I think it was before the sixth of June that I saw Mr. Merritt at the dock, in New York. I don't remember seeing Mr.
 30 Merritt between the 6th of June and the 10th of July; I know I never went to see him; I could not say whether I sent Mr. Fairbank to see Mr. Merritt between the 6th of June and the 10th of July; I think I offered the property to the church either on the 6th of June or the 10th of July, I cannot say which; I made the offer to Mr. Johnson and to Mr. Fairbank; I think I made it to Mr. Alward and to Mr. Cooley; I know I made it to quite a number; I don't know whether there were any of the trustees there, unless Mr. Johnson was a trustee; I think Mr. Fairbank was not a
 40 trustee; I don't know that I made that offer to any one that

I knew was a trustee, unless some of them were present then.

I have sold some of this nine thousand dollars purchase; I have sold block 14, and three lots to Mr. Wentworth, which lots I have not yet deeded to him; they are lots 3, 7, and 8, in block 8.

I believe I have not sold any others; I have not agreed to sell any others; I agreed to sell these lots to Wentworth a little before this suit was commenced; it was not before the sixty days were up; it was not before I took my deed; I don't know that I have ever had any offer for any of the rest of it.

I don't remember going with Mr. Merritt to call on Dr. John Washington; I don't remember going with Mr. Merritt to Dr. Washington to get him to swap part of the land which he purchased at the sheriff's sale for part of the nine thousand dollar tract; I did go to see Dr. Washington to get him to swap part of block 21, which I did not own, but which I could have got, for part of block 28, that Washington owned; I think that was in 1863; Mr. Merritt did not ask me to go, not to my recollection; but I think Mr. Merritt owned the lots on block 21, which I thought I could get, and which I wanted to swap for the Washington lots, because I wanted the Washington lots on block 28.

I owned considerable property at Elizabethport previous to this sheriff's sale; I don't think I have bought any since the nine thousand purchase, except a part of a block, which I exchanged some stock for with Mr. Fairbank, and I exchanged a house in Brooklyn for a water front of one hundred feet, running back to Crescent street, and built a wharf for Mr. Whitlock, for which I took some salt meadow on the Sound, I think four hundred and twenty-three feet and ten inches front in the Sound—none of it was upland; I don't know of any other property; I don't know that I have tried to buy any other property since; I might talk about it sometimes, but I have no recollection of trying to buy; I might say I have tried to buy one lot of Denman, next to property I have a claim on by way of mortgage, and Denman was at one time showing some property in front of mine to an Irishman, and offered him a lot, I think, for two hundred or

two hundred and twenty-five dollars, and I told him I would try and find him a purchaser for all he had in front of me if he would not sell it to them.

I have not sold much property at the Port.

I don't know whether there are four or eight lots owned by the Steam Power Company; my impression is there were eight; may have been more, but I think not; I don't remember what the size of the old building on the lots was, nor what the thickness of the walls was; I don't know that
 10 I ever heard what the shafting in that building cost; I don't know that I ever heard it cost 1600 dollars; I don't know whether it ought to cost so much; don't know how much shafting there was there.

Quest. How much do you consider blocks 4 and 5 worth per lot, at the present time? [Objection on the part of defendant.]

Ans. I should think, judging from other property sold around there, from one hundred and thirty-five to one hundred and forty dollars per lot.

20 I don't know that I ever told Mr. Merritt's brother that I considered the property that I bought for the nine thousand dollars very cheap; I did not consider any of the lots sold there dear; I did not consider that the nine thousand dollar purchase was dear to any one that had the money; the nine thousand dollar purchase was dearer than the other property that was sold; I never told Mr. Merritt's brother that blocks 4 and 5, and 23 and 24, were worth all I gave for the property to my knowledge; I am very sure I never made that remark to him to my knowledge; I did not tell Mr. Merritt's brother
 30 that blocks 4 and 5, and the two sand blocks, were worth all I paid for it, to my recollection; I am not sure but that I might make that observation, but I don't think I ever did, and I don't recollect ever making it.

Quest. Did Mr. Merritt ever offer to redeem this property?

Ans. I think he wrote me a letter stating that he would redeem it; he met me, I think, in Cedar street, and said. "don't you think I have some interest in that property?" I said, "no, what interest?" Said he, "I don't know, I thought I had an interest in it." It was very near that time, either
 40 before or after, I had the letter I have spoken of, and very

shortly after the time of the conversation, I was sued. At the time he saw me, Mr. Merritt did not offer to redeem the property; I don't know that I said anything to him about redeeming it; I did not stop a minute with him.

I had the letter which I spoke of, and had it with the sheriff's deed and some other writings of Mr. Merritt's, but I have lost them; I do not know where that letter is; I think I saw it last about six or eight months ago; I thought I put them all together in one package.

Witness being shown *Exhibit M 1*, on the part of com-¹⁰plainant, says—I think this is a copy of the letter I spoke of; I could not remember particularly, but think it is the substance of it; I think I never answered this letter; I never answered him verbally, nor in any way that I recollect of.

At the time I gave this draft, Sturtevant & Co., of Boston, owed me some money at that time; I could not say how much; the money was not lying idle; I think I had then a note of Nesmith & Sons.

Quest. Could you have obtained that money on call? [Ob-
jected to on the part of defendant.]

20

Ans. I decline to answer.

I don't know that I heard Mr. Trotter bid at the sale; I heard a man bid and inquired of Mr. Merritt who he was, and he said it was Mr. Trotter, a by-bidder; I don't remember that I saw the man that gave his name as Trotter.

And the direct examination being resumed, witness says—

I think I had settled with the sheriff for the parts of the property that I bought previous to the nine thousand dollar bid, before giving the draft for five thousand dollars; I think that I had received the deeds for those tracts before that ³⁰ time.

Block No. 1, which I stated I bought, I was to have bought for Mr. Young; he allowed me to go to the extent of one hundred dollars a lot; it was struck off at one hundred and two dollars a lot, and I had no claim on Young, having exceeded my instructions, but still he did take it at the price it was struck off at.

I have paid to Mr. Burnet the proportionate amount of the taxes for which he bought the property at the tax sale.

Before I sent Mr. Fairbank to Mr. Merritt to make him the offer to extend the time upon his paying me a thousand dollars, I had sold block 14.

The draft for five thousand dollars of which I have spoken, was drawn on Sturtevant & Co., of Boston, and was paid by them and charged to my account.

E. G. BROWN.

Sworn and subscribed, this fifteenth day of June, A. D. 1866, before me, at Elizabeth.

10

W. J. MAGIE, M. C.

Jabez B. Cooley, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith—I reside in the first ward of the city of Elizabeth; I am acquainted with Messrs. Brown and Merritt, the parties to this suit; I am a member of the Presbyterian Church at Elizabethport; I remember the circumstance of the sale of Mr. Merritt's property on the foreclosure of Mr. Gibbons' mortgage. The parsonage of the Presbyterian Church was on a part of the mortgaged premises; after the first sale and
20 before the second, the congregation was called together and held a meeting to see what they would do in regard to the parsonage property: the meeting appointed a committee of three of the trustees, to lay out five thousand dollars in buying property, if it was necessary so to do, to save the parsonage. There were seven trustees, they were E. G. Brown, Jared Arnold, Nathaniel Spear, William H. Hoover, James Cameron, John Sammis, and myself: the committee appointed were E. G. Brown, Nathaniel Spear, and Jared Arnold; the committee was appointed to bid; I do not know
30 whom the committee authorized to bid: they did not, at the meeting, to my recollection, fix any price for which they should bid for the property: I can't say how many days of sale there were after this meeting, but it was between the first and second sale: I was present at the sheriff's sale after the meeting: I was present at all the sheriff's sales.

At the second day of sale the property did not bring as much as on the first day of sale: in my opinion it would have been better if they had continued the sale on the first

day: if they had begun the first sale early enough to have been able to put up the whole property that day, and it had brought the prices that the part sold that day did bring, in my opinion the property would have brought more than the claim and the parsonage have been relieved.

I do not recollect the third day's sales sufficiently to compare it with the second day's sale, but the property did not bring as much on either day of sale in March as it did on the first day's sale in February.

I was present when Mr. Brown bid the nine thousand 10 dollars: I do not know the agreement of Mr. Brown and Mr. Merritt at that time; they took a recess and went and talked it over, when they commenced: I went up and asked Mr. Brown if he was going to buy it, and he said yes, for Mr. Merritt, "Demerritt," he said.

At that time if the sale had gone as it was going then, I thought that the property would have brought enough to have paid the claim without resorting to the parsonage; that was my opinion.

I did not know anything that day of Mr. Merritt's assign- 20 ing any stock to Mr. Brown; I heard of it afterwards; Mr. Brown afterwards told me it had been assigned over; it was, I think, about three weeks before the nine thousand dollars was to be paid—at a meeting of the trustees at Mr. Hand's store; Mr. Brown called the trustees together, and stated to them that he wished them to pay five thousand dollars of the nine thousand dollars he was to pay; I asked him what claim he had on the church; he said he bought it to save the parsonage; I asked him why he did not call on the church to pay the ten per cent., if he bought it for the 30 church; Mr. Arnold said to him, it was a pretty thing to give us three weeks time to raise five thousand dollars; I told him that was the first I had ever heard that it was bought for the church; I told him what he said that day—that he bought it for Mr. Merritt, and that I, as one of the trustess, would never consent to such a thing, as I had understood he bought it for Mr. Merritt; he said he talked to all the trustees about it; I asked him to whom he talked; he said to Mr. Alward; he was sent for, but was not at home; Mr. Brown said if the church did not take the five thousand dol- 40

lars, they might go to hell—they should never get another cent of his money; I don't know whether I or Mr. Arnold—one of us—asked him if he was going to keep the two thousand dollars of stock that was signed over by Mr. Merritt; he said certainly; he would pay the four thousand dollars, and he would keep the stock; I do not know that he said, at that time, what Mr. Merritt assigned the stock to him for; he did not say what portion of the land he wanted the church to take.

10 *Quest.* Did he, or did he not, at any time after that, tell you that he purchased the property for Mr. Merritt? [Objection on the part of defendant.]

Ans. He did; on the last day of sale in July; he said Mr. Merritt had not come up, and he was not going to take the property, unless block 14 could be sold for eight hundred dollars; Mr. Johnson would give six hundred dollars; Mr. Brown and Mr. Fairbank talked to me and Mr. Alward about the church paying the two hundred dollars, and I said I would never consent; I do not remember Mr. Brown's saying anything on that day about the stock.

20 I did not hear Mr. Johnson claim of Mr. Brown any right in block 14 on that day.

I am a real estate agent—I have been an assessor for four or five years of the first ward of Elizabeth; I am acquainted with the value of property at Elizabethport, which was the first ward of Elizabeth, when I was assessor.

Witness being shown *Exhibit B 1*, says—of the property sold by the sheriff, the most valuable, in my judgment, were blocks 4 and 5; I consider block 4 worth more per lot than
30 block 6, because it is higher ground and nearer to the water—to the sound; blocks 4 and 5 are worth more per lot than blocks 11 and 12—the further you go from the avenue the less valuable it is—but there is some difference as to the level of the
08 lots; I think blocks 4 and 5 are worth one hundred dollars a lot more than blocks 11 and 12, per lot.

Blocks 23 and 24 are on a kind of a knoll, and I believe they have dug sand there—I think blocks 23 and 24 are worth as much as blocks 11 and 12; they are higher ground—I have not been over the ground since a day or two before

the first sale to examine it—Mr. Brown and I went over it then—there was snow on the ground.

Whereupon the further examination of witnesses, &c., was, by consent of parties, adjourned to Monday, the 18th day of June, instant.

The further examination of witnesses, &c., in said cause, resumed the 18th day of June, 1866, in the presence of the solicitors of the respective parties.

Jabez B. Cooley, being re-called and his direct examination being resumed further says—since the last examination 10 on Friday last, I have been over the property formerly of Mr. Merritt, and sold at the sheriff's sales; in my opinion blocks 23 and 24 are worth more than 21 and 22; I should not think there was a great deal of difference in value between lots 24 to 55 inclusive on block 7, and lots 9 to 40 inclusive on block 10; I should think that lots 24 to 55 inclusive on block 7 are more valuable per lot than the lots on block 23 per lot.

Quest. How much are blocks 23 and 24 worth per lot at the present time? [Objected to on the part of defendant.] 20

Ans. One hundred and fifty dollars, take them altogether, that is in my opinion and as near as I can judge.

Lots 24 to 55 inclusive on block 7 are worth two hundred dollars per lot. [Objected to on the part of defendant.]

Lots 3, 7 and 8 on block 8, are worth now two hundred and fifty dollars apiece. [Objected to on the part of defendant.]

Block 5 is worth now per lot two hundred and fifty dollars. [Objected to on the part of defendant.]

Block 4 is worth now per lot without buildings two hundred and seventy-five dollars. [Objected to on the part of defendant.]

The salt meadow, which on the map *Marked Exhibit M 3* is colored pink, I should think is worth at the rate of fifty dollars per acre. [Objected to on the part of defendant.]

Block 14 is worth now, I should think, fifty dollars a lot. [Objected to on the part of defendant.]

Blocks 25 and 26 ; I cannot tell how much they are worth ; I could give a guess at it, and should think they were worth one hundred dollars ; I don't know how much land there is in them.

I don't know how much the buildings on blocks 4 and 5 were worth at the time of the sheriff's sale.

In my valuation of block 5, given above, I estimated the lots without the building.

The transaction between Mr. Merritt and the trustees of
10 the church, whereby they acquired the property whereon the parsonage was built, was as follows: they traded four lots back of the church for the lots where the parsonage was built; the deed was ordered to be executed by John H. Rolston, then president of the trustees, to Mr. Merritt ; I mean for the lots back of the church, and Mr. Rolston was to hold the deed until Mr. Merritt gave us a clear title for the lots on which we built the parsonage, and when such title was given, then Mr. Merritt was to receive the deed for the lots
20 Merritt, because he never gave as a clear title for the parsonage property ; we, the trustees, received the title for the parsonage property by sheriff's sale.

And being cross-examined witness further says—

I went over this property last Saturday night ; some of the streets on this property have been graded ; Second street has been graded ; Geneva street has been graded down to Third avenue ; Delaware street is open and is graded at the mouth of it, on the old road, but no further to my knowledge, than sufficient to enable any one to go up on to the property ;
30 Delaware street and Caspian street are opened and fenced part way down towards the creek, down as far as Third avenue ; there are houses on Delaware street near the corner of Third avenue.

A person has bought and built a house on some lots on block 8, on Baltic street, near Second avenue ; I think he told me he gave two hundred dollars a lot for them ; this was this last spring.

Some lots have been sold on block 1 ; two lots were sold
for seven hundred dollars ; I think they were lots 7 and 8 ;

Mr. Young offered me in 1862, as many as I wanted below 5 and 6, at two hundred and twenty-five dollars per lot; I did not buy them; he sold them to Mr. Johnson.

There have been quite a number of lots on the property sold, but I can't tell what they brought.

I did not form my opinion of the value of this property from sales of lots upon it; I formed my opinion by what property was worth in the vicinity, say on the south east corner of Third street and Elizabeth avenue—that is as to blocks 4 and 5.

As to the others, I thought they were worth what I stated, according to my own judgment, and what they were asking for it in the neighborhood, and what they were selling for in the neighborhood.

I am not positive that I know what any lot about block 23, has been sold for; I only know what the man told me who bought lots on block 8; I don't know what any lots brought anywhere around there.

There is not much difference between lots 42 to 52, even numbers, on block 8, and the lots fronting on the opposite side of Baltic street, on block 7; the latter are on higher ground.

I should not think there is much difference between lots on block 7, fronting on Caspian street, and lots on block 10, fronting on the opposite side of said street; I should think that lots on block 23, fronting on Caspian street, are worth more than lots on block 22, on the opposite side of Caspian street; block 23 is on higher ground; there is not much difference in the value of the corresponding lots on each side of Caspian street, on the west parts of blocks 23 and 22

It takes about twelve lots, including the adjoining streets, to make up an acre—lots twenty-five feet by one hundred.

There would not be much difference between lots 41 to 52, inclusive, on block 8, and lots 1 to 12, inclusive, on block 24, in value. The end of block 24, nearest to the avenue, is a good deal higher than the end towards Third avenue; I do not consider the lots on the end nearest Third avenue to be so valuable as those on the other end of the block nearest to the old road, for two reasons—one, because they are lower ground, and the other because they 40 are farther from the old road.

I do not think that lots one to six on block 27, are worth as much as lots 35 to 40, on block 24, because they are much lower; I should think that lots 29 to 40, on block 24, are about of the same value as lots of corresponding numbers on block 23.

I form my estimate of value of lots 3, 7 and 8, on block 8, from my own judgment, and what they ask for lots right across the old road; I don't know of any lots having been sold around there. On lots 4, 5, and 6, on block 8, there is a
10 house; that house and those three lots are worth now, three thousand five hundred dollars, I should think, according to my judgment.

Lots on blocks 4 and 5, fronting on the Old Point road, are more valuable than lots in the rear of these blocks.

Lots 15 to 29, odd numbers, on block 4, fronting on Florida street, I think, are worth more than lots 17 to 31, odd numbers, on block 3, fronting on the opposite side of the same street. The street is not yet cut through; I don't think there would be a great deal of difference if the street was
20 opened.

I think lots 16 to 23, on block 5, are worth more than 10 to 17, on block 6.

I think lots 22 and 23, on block 5, are worth more than lots 1 and 2, on block 11.

As a general thing, property on the avenue, I mean Elizabeth avenue, is considered to be worth more than property on the Old Point road; property on the avenue and Old Point road is more valuable the nearer it is to the sound; lots 1 and 2, on block 1, are worth more than lots on blocks
30 4 and 5, fronting on the avenue and Old Point road; Mr. Young did ask one thousand dollars for lots 1 and 2, on block 1, some three or four months ago; I should not think the back lots on block 1 were as valuable as the back lots on blocks 4 and 5.

I taxed the Rising Sun farm, in 1859, at twenty-six thousand dollars; I think it is worth forty thousand dollars to-day; I think it has increased at that rate; I taxed property then at about what I thought property would bring at a forced sale; this property has been a good deal improved since
40 1861; streets have been opened and improvements made, but my estimate of its value is made with reference to its

natural increase of value without regard to improvements; when it was sold at sheriff's sale it brought about thirty thousand dollars, and then sold low; the improvements have increased the value of the property per lot, and with the improvements, I consider the property worth more than forty thousand dollars; in my opinion the property, taking in new improvements and all, has increased in value from 10 to 15 per cent. since the sheriff's sale; by this I mean that considering the improvements and all, I consider the property worth now forty-five thousand dollars. 10

I don't think there was much demand for real estate in the spring of 1861; as far as sales were concerned, I don't think property depreciated; I mean people did not ask less for it, but there were fewer people who wanted to buy.

I cannot say how many purchasers were present on the third day of sale—the 21st of March; there were quite a number; I don't know how many bidders there were there; there was some bidding; I thought if they had gone on and sold the property, it would have brought enough to pay the claim; in coming to that conclusion, I did not estimate the 20
five thousand dollars which the trustees were authorized to bid for the church; I thought it would bring the claim without the trustees bidding; I did not buy any.

I thought that the men who were present on that day, would have bought nine thousand dollars worth of that property, if they had gone on and sold; I don't remember who they were; I don't know whether Mr. Brown was one; I don't know whether Mr. Amos Clark was one of them or not; I can't say whether he was there or not; he was there that day or the previous day. 30

I don't know whether there were minutes kept of the meeting of the trustees in Hand's store; I think Jared Arnold or Nathaniel Spear was secretary; Spear was not present at the meeting at Hand's store; that meeting was not after the sixty days had expired in June; to the best of my knowledge, it was three weeks before the money was to be paid by Merritt, which, I think, was the third of June, or thereabouts; I don't think it was three weeks before the last sale; Mr. Brown was considerably excited at that meeting, and I was also considerably excited. 40

And being re-examined, witness further says—

Quest. Do you form your estimate of the value of this property from special sales that have been made, or from your general knowledge of the value of property at Elizabethport? [Objected to on the part of defendant.]

Ans. I formed it from my general knowledge.

At the time of the sheriff's sale, Second street and Geneva street had not been worked; Second street had been surveyed and partly opened, but not worked.

10 Lots 1 and 2, on block 11, are worth more than lots 9 and 10, on same block; they are corner lots, and on higher ground.

When I assessed the Rising Sun farm in 1861, there were some exceptions made from the property; in 1861 it was assessed in blocks and lots to different parties, and when I speak of my assessment of twenty-six thousand dollars, I mean the assessment made by me in 1859, and not in 1861; I speak of that assessment from memory; from that assessment there were some exceptions; what Mr. Merritt had sold were not included in that assessment, but were assessed
20 to those that owned them; block 2 was not included in the assessment, and part of block 3; I presume lots from 1 to 16, and the houses and lots on which they are built, on block 8, were also not included in the assessment, though they were assessed to Mr. Merritt.

I think that lots on block 6 were worth about as much as lots on block 1, per lot, at the time of the sheriff's sale.

I believe Josiah Sterns was present on the twenty-first day of March, at the sheriff's sale.

J. B. COOLEY.

30 Sworn and subscribed, this 18th day of June, A. D. 1866, at Elizabeth, before me.

W. J. MAGIE, *M. C.*