

In Chancery of N. J.

Between

CHARLES M. K. PAULISON,
AND ANNA PAULISON, HIS
WIFE,

Comp'lts. Bill

AND

JOHN H. VAN IDERSTINE,

Def't.

To the HONORABLE THEODORE RUNYON, Esquire, Chan-
cellor of the State of New Jersey.

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Humbly complaining, showeth unto your Honor, your orator Charles M. K. Paulison, and your oratrix Anna Paulison, his wife, of the City of Passaic, in the County of Passaic, and State of New Jersey, that your oratrix was on the third day of March, A. D., eighteen hundred and sixty-nine, and therefore seized in her own right in fee of a certain tract of land and premises hereinafter particularly described, situate, lying and being in the said city, formerly Village of Passaic. And that on or about said third day of March, eighteen and sixty-nine, your oratrix being so seized as aforesaid, bargained and agreed, through your orator as her agent, with John H. Van Iderstine, the defendant herein, also of said City of Passaic, to sell and convey to him by a good sufficient deed in the law, and said John H. Van Iderstine agreed to purchase said tract or parcel of land and premises of your oratrix, a true description whereof in the aggregate is as follows :

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Beginning at the Southwesterly side of Paulison Avenue, at a point distant sixty (60) feet Southeasterly from the southerly corner of High street and Paulison avenue, thence running Southwesterly on a line parallel with High street one hundred and twenty-two (122) feet, thence running Northwesterly on a line parallel with Paulison avenue sixty (60) feet to High street, thence running Southwesterly along the Southeasterly side of High street sixty (60) feet, thence running

10 Southeasterly on a line parallel with Paulison avenue, seven hundred and six feet and one-tenth of a foot (706.1) to westerly line of Erie street, thence running Northerly along said westerly side of Erie street to the Southwesterly side of Paulison avenue, thence running Northwesterly along said Southwesterly side of Paulison avenue five hundred and thirty-one feet and eight-tenths of a foot (531.8) to place or point of beginning.

And your orator and oratrix further show, that it was agreed and understood between the said Van Iderstine

20 and your orator, as agent of your oratrix, as aforesaid, that the price and value of said property should be three hundred and fifty dollars per city lot of two thousand five hundred square feet each, for as many of said lots as said property contained, and that said Van Iderstine, should pay three hundred and fifty dollars for each said city lot of two thousand five hundred square feet each, and that said Van Iderstine should pay for the same in manner following: Convey to you oratrix a certain piece

30 or parcel of land and premises, then owned by said Van Iderstine, situated on River street in said City of Pas-saic, on the Southeasterly side of River street two hundred (200) feet Northeasterly from the Southeasterly corner of Main avenue and River street, being about forty (40) feet front and rear, by about one hundred and fifty (150) feet deep at a valuation of six thousand five hundred (6,500) dollars, subject to a mortgage of two thousand seven hundred (2,700) dollars, thereon, to be assumed by your oratrix, and to give a mortgage on the premises so

as aforesaid agreed to be conveyed by your orator and oratrix to said Van Iderstine for the balance of the purchase money, whatever the same might be; and your orator and oratrix further show that in pursuance of said agreement your orator and oratrix conveyed by a good and sufficient deed of warranty in fee to said Van Iderstine, the said premises on Paulison avenue, High and Erie streets, but by the following description, that is to say: All that tract or parcel of land and premises, &c., Beginning at the southwesterly side of Paulison avenue 10 at a point distant sixty (60 feet, Southeasterly from the Southerly corner of High street and Paulison avenue, thence running Southwesterly on a line parallel with High street, one hundred and twenty-two (122) feet, thence running Northwesterly on a line parallel with Paulison avenue sixty (60) feet to High street, thence running Southwesterly along the Southeasterly side of High street sixty (60) feet, thence running Southeasterly on a line parallel with Paulison avenue five hundred and eight feet (503) and six (6) inches to westerly line of Erie street, thence running Northerly along said westerly side of Erie street to the Southwesterly side of Paulison avenue, thence running Northwesterly along said Southwesterly side of Paulison avenue three hundred and thirty-nine feet (339) and six (6) inches to the place or point of beginning. The premises above intended to be conveyed, being further known and designated as lots number 60, 62, 64, 66, 71, 72 and 73 as the same is laid down on a certain map, entitled "Paulison addition No. 2, to Village of Passaic, New Jersey, made 20 by S. G. Bachus, surveyor and filed in Clerk's office, Dec. 21st, 1867." 30

And further your orator and oratrix show that, as recited in the said deed of conveyance from your orator and oratrix to said Van Iderstine, the said description of premises was taken from, and as laid down on a Map, entitled "Paulison addition No 2 to the Village of Passaic," said premises and certain adjoining premises of

your oratrix being laid out and designated on said map
 in plots, said map having been prepared and made by a
 civil engineer of good repute and standing in his said
 profession and filed in the Clerks office of the County of
 Passaic in the year one thousand eight hundred and
 sixty-seven. And further, that the computation of the
 number of said lots in said property was based upon the
 description, figures and measurements as shown and laid
 down on said map; your orator and oratrix then suppos-
 10 ing and believing said map to be a correct and true
 survey of said property, and that the figures on said map
 intended and designed to indicate the lengths of the
 several lines and bounds of said property more in truth
 and in fact the actual and true lengths of said lines and
 bounds, and particularly, that the length of the line of
 said Paulison Avenue as laid down on said map between
 the beginning point of said described premises, conveyed
 as aforesaid, and said Erie street, represented on said map
 as being three hundred and thirty-nine and five-tenths,
 20 (339.5) feet, was as there indicated, laid down and re-
 presented, whereas the truth is and your orator and
 oratrix so charge that the actual length of said line is
 five hundred and thirty-two and eight-tenths (532.8) feet,
 and that the length of the most Southwesterly line of
 said property, between said High street and said Erie
 street, was as represented and laid down on said map, to
 wit; five hundred and eight and five-tenths (508.5) feet,
 whereas the truth is and your orator and oratrix so
 charge that the actual length of said line is seven hun-
 dred and six feet and one-tenth (706.1) of a foot. And
 30 your orator and oratrix expressly charge that the said
 map does not show and exhibit the correct and true
 survey of said property, for the reason above stated, and
 that the error and mistake in said map consists in this,
 that the actual length of the Southwesterly line of said
 Paulison Avenue, instead of being only three hundred
 and thirty-nine and five-tenths (339.5) feet, between the
 beginning point of said surveyed premises as aforesaid and

the Westerly line of said Erie street, as said map represents the same to be, is in reality and in truth five hundred and thirty-two (532) feet and eight (.8) tenths of a foot, and in this that the actual length of the Southwesterly line of said conveyed premises, between the Southeasterly line of said High street, and the Westerly line of said Erie street, instead of being only five hundred and eight (508) feet and five-tenths (.5) of a foot as said map represents the same to be, is in truth and reality seven hundred and six (706) feet and one-tenth [1] of a foot. 10

And your orator and oratrix further show that said mistake and error in said map and figures indicating distances thereon, were not discovered by your orator and oratrix until after said conveyance as aforesaid was made to said Van Iderstine, and after said Van Iderstine had resold a considerable portion of said property to other purchasers, and not until after your oratrix had sold and assigned said purchase money mortgage of seven thousand one hundred dollars and its accompanying bond to the purchase thereof, without notice of said error in said map, which mortgage has since been paid and cancelled of record. 20

And your orator and oratrix further show, that in the computation of the number of lots of two thousand five hundred square feet each that said conveyed premises contained, your orator and oratrix were misled and deceived by said erroneous and incorrect map and figures; and in fixing the price of said property under said agreement with said Van Iderstine upon the basis of said measurements and figures on said map, it was considered upon computation that said property contained about thirty-one (31) of said city lots, and your orator and oratrix charge that neither said Van Iderstine, nor any one for him, has ever paid or secured in any way your orator and oratrix for more than about thirty one (31) city lots as aforesaid, whereas in truth and in fact said property contains about forty-five (45) of said city lots, and said 30

Van Iderstine, in justice and equity, should pay your oratrix for said additional fourteen (14) lots, at the rate of three hundred and fifty (350) dollars per lot, together with legal interest thereon from said third day of March A. D. eighteen hundred and sixty-nine.

10 And your orator and oratrix further show that, although they have no knowledge on the subject, they have reason to believe and charge the truth to be that the said John H. Van Iderstine, at the time said contract was consummated by the conveyance aforesaid, had found out and knew that some mistake existed in the measurement of said lines advantageous to himself and disadvantageous to your orator and oratrix, and that there was much more land in said premises conveyed to him than was indicated by the measurements on said map, and that when he took said conveyance and executed said mortgage he acquired title to a considerable part of said land for which your oratrix was receiving no compensation whatever, and that he fraudulently withheld all knowledge or information of said mistake from your orator or oratrix, and permitted them to convey said land and take said bond and mortgage in entire ignorance thereof; and your orator and oratrix charge that if said John H. Van Iderstine did so know of said mistake when he took said conveyance, his conduct in that behalf was a gross fraud on your oratrix, and that he is bound to account to and pay your oratrix for the land so conveyed to him for which no compensation has been made.

20 30 But your orator and oratrix further charge that if said John H. Van Iderstine did not know of said mistake, and acted in ignorance thereof, as your orator and oratrix did, his refusal to account to and pay your oratrix for said difference is a fraud on your orator and oratrix which entitled them to have the said mistake corrected in this court.

And your orator and oratrix further show, that in further pursuance of said agreement upon said conveyance, as aforesaid by your orator and oratrix to said Van

Iderstine, he, said Van Iderstine, conveyed to your oratrix his said premises on River street hereinbefore referred to, subject to said mortgage of two thousand seven hundred (2,700) dollars, which mortgage your oratrix has since paid and satisfied; and in further pursuance of said agreement said Van Iderstine executed to your oratrix a mortgage on said property, so as aforesaid conveyed to said Van Iderstine by your orator and oratrix, to secure to her the payment of the sum of seven thousand one hundred (7,100) dollars, being the balance of the purchase money therefor, on the basis of about thirty-one (31) city lots at three hundred and fifty (350) dollars per city lot, which price per lot was as agreed upon as aforesaid; and your orator and oratrix further show that under and in pursuance of said agreement, said mortgage should have been for twelve thousand (12,000) dollars instead of seven thousand one hundred (7,100) dollars. 10

Your orator and oratrix further show that if the said defendant did not know of said mistake at the time he took said conveyances, he shortly after said purchase of said property as aforesaid, and before he had resold any part thereof, discovered said error in said map called "Paulison Addition No 2 to the Village of Passaic," and ascertained that he had obtained the deed and conveyance as aforesaid from your orator and oratrix of all said property, to wit: for about forty-five (45) city lots of two thousand five hundred (2,500) square feet each as aforesaid, and that he had not paid or given any consideration to your oratrix for more than about thirty-one (31) of said lots, and that he had obtained title from your orator and oratrix, under said deed, for about fourteen (14) of said lots more than your orator and oratrix supposed or intended, at the time of giving or receiving said deed as aforesaid, he actually was getting or ought to obtain. 20 30

Your orator and oratrix further show that, notwithstanding said discovery by said Van Iderstine of said error and mistake, said Van Iderstine neglected and abstained from appraising or in any manner informing

your orator and oratrix thereof, and contrary to equity and good conscience, altogether neglected and refused to pay, or in any manner secure to your oratrix the difference between the amount he did pay or secure to your oratrix as aforesaid for said premises, and what it was intended under said agreement by both parties thereto, he should have paid or secured, therefor said difference being the sum of about four thousand nine hundred (4,900) dollars with interest from the third day of March A. D. eighteen hundred and sixty nine, but on the contrary thereof said Van Iderstine after discovering said error and mistake as aforesaid, sold all said premises, that is to say all said forty-five [45] city lots, which said premises contained at a much larger sum per city lot than he paid your oratrix for said thirty-one [31] city lots as aforesaid, and received and appropriated the proceeds to his own use, contrary to equity and good conscience. And more particularly your orator and oratrix charge that said Van Iderstine after he discovered said error and mistake in said map as aforesaid, to wit: on or about the sixteenth day of December A. D. eighteen hundred and sixty nine by his deed dated on that day and recorded in Passaic County Clerk's office in Book W. 3 of deeds, page 495, conveyed in fee to one John F. Kilgour for the sum of seven thousand seven hundred (7,700) dollars, that portion of said premises lying next Westerly of said Erie street, being two hundred and two (202) feet and five (5) inches front on Paulison Avenue, and three hundred and sixteen [316] feet and eight [8] inches in the rear, and the entire depth of said premises.

And further your orator and oratrix show and charge that said Van Iderstine, has received said consideration money therefor to his own use. And further, that on or about the twenty-eighth day of March, A. D., eighteen hundred and seventy-one, by his deed dated on that day and recorded in said Clerk's office, in Book H 4, of deeds, page 105, said Van Iderstine conveyed in fee to said John

F. Kilgour, for the sum of three thousand, nine hundred and thirty-three (3,933) dollars and seventy-five (75) cents, which consideration money said Van Iderstine has received to his own use, that portion of said premises conveyed by your orator and oratrix as aforesaid, lying next adjacent on the West to the plot conveyed as aforesaid to said Kilgour, by said Van Iderstine, and being one hundred and thirty-seven (137) feet and four-tenths of a foot front on Paulison avenue, and one hundred and fifty (.50) feet and nine-tenths of a foot on the rear, and the entire depth of said premises. And further that on or about the fifteenth day of April, A. D., eighteen hundred and seventy-two, by his deed dated on that day recorded in said Clerk's office, in Book L, 4 of deeds page 632, said Van Iderstine conveyed in fee to one Richard Outwater for the sum of two thousand, nine hundred and seventy-five (2,975) dollars, which consideration money said Van Iderstine has received to his own use, that portion of said premises conveyed by your orator and oratrix as aforesaid lying next adjacent on the West to the plot conveyed as last aforesaid to said Kilgour, by said Van Iderstine, and being eighty (80) feet front on Paulison avenue and eighty (80) feet in the rear and the entire depth of said premises. And further that on or about the second day of December, A. D. eighteen hundred and seventy-two by his deed dated on that day and recorded in said Clerk's office, in Book S 4, of deeds page 216, said Van Iderstine conveyed in fee to one William H. Hall, for the sum of seven thousand (7,000) dollars which consideration money, said Van Iderstine has received to his own use the remainder of said premises conveyed by your orator and oratrix as aforesaid, together with a rectangular plot on the South corner of Paulison avenue and High street, sixty (60) feet on Paulison avenue and one hundred and twenty-two (122) feet on High street, and the whole of which property then conveyed to said Hall, by said deed being one hundred and seventy-one (171) feet and nine-tenths of a foot front on Paulison avenue,

and one hundred and fifty-nine (159) feet and two-tenths of a foot in rear, and the entire depth of said premises, that is to say one hundred and eighty-two [182] feet deep, and which last described plot conveyed to said Hall is alleged in said deed from said Van Iderstine to said Hall to contain thirty thousand and eighty-seven [30,087] square feet, which your orator and oratrix believe to be true, and being known as lots seventy-one [71] and seventy-two [72] and the whole of lots seventy-three [73] and seventy-four [74] on said map, entitled "Map of Paulison addition No. 2, to the Village of Passaic" filed

10 in the Clerk's office of the County of Passaic.

And you orator and oratrix further show that for that portion of said premises so as aforesaid, conveyed by said Van Iderstine to said Hall, which was the remainder of said premises so as aforesaid conveyed to said Van Iderstine, by your orator and oratrix as hereinbefore set forth, said Van Iderstine received from said Hall the sum of five thousand two hundred and ninety-seven (5,297)

20 dollars, to all which above referred to, deeds to and from said Van Iderstine, and to and from your orator and oratrix, and said mortgage to your oratrix, or the record thereof remaining in said Clerk's office, your orator and oratrix beg leave to refer for greater certainty.

And your orator and oratrix further show that the said Van Iderstine bargained, sold and conveyed all said premises as above set forth at a certain price per city lot as aforesaid of two thousand five hundred (2,500) square feet each, and for a much larger sum for each of said

30 city lots than he paid your oratrix as aforesaid for said thirty-one (31) city lots, and that said Van Iderstine received pay at such increased rate per city lot for as many city lots as said premises actually contained, that is to say for forty-five (45) lots, or within a fraction of forty-five (45) lots, and in so doing said Van Iderstine must have discovered (if he did not know it before) that he had conveyed and received pay for a much greater number of city lots as aforesaid than the number for which he had paid your oratrix.

And your orator and oratrix further show that the said Van Iderstine, has from the time of the execution and delivery of the said deed of conveyance to him from your orator and oratrix as aforesaid, possessed, enjoyed and used all and singular the said premises, or the proceeds thereof after the same were resold by him as aforesaid, and the rents, issues and profits thereof, and that no part of said proceeds of sale received by said Van Iderstine as aforesaid, and no compensation whatever has at any time been made by said Van Iderstine, or any one for him to your orator or oratrix, for the excess in the number of city lots, said premises actually contain over the number of said city lots your orator and oratrix supposed at the time of said sale, said premises to contain, and for which supposed number of city lots, said Van Iderstine paid your oratrix as aforesaid, as in equity and good conscience he ought to have done. And your orator and oratrix show and expressly charge that by virtue of said sale, by said Van Iderstine of said premises as aforesaid, and the receipt by him of the consideration money therefor, he has become in equity a trustee for your oratrix for so much of said proceeds of sale, received as aforesaid, by him as the excess in the number of city lots as aforesaid actually contained in said premises over the the number of said city lots appearing on said map to be therein, will amount to at the rate of three hundred and fifty (350) dollars for each of said city lots, besides legal interest thereon from said third day of March, A. D., eighteen hundred and sixty-nine.

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And your orator and oratrix further show that your orator and oratrix, or some other person or persons for them, have frequently and in a friendly manner since the discovery by your orator and oratrix of said error and mistake in said map, and of the consideration money for said premises as aforesaid, applied to said Van Iderstine and requested him to pay or secure to your oratrix the said difference, that is to say the said sum of four thousand nine hundred (4,900) dollars, as aforesaid, with law-

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ful interest from said third day of March, A. D., eighteen hundred and sixty-nine, with which just and reasonable request your orator and oratrix well hoped that he would have complied as in equity and good conscience he ought to have done, yet the said Van Iderstine has wholly neglected and refused and still neglects and refuses to pay, or secure the same or any part thereof.

10 And your orator and oratrix, further show that said Van Iderstine, has resided in the said now City of Passaic for many years, as have also your orator and oratrix and that he is and has long been a near neighbor and friend of your orator and oratrix, and that said Van Iderstine has been repeatedly spoken to in regard to the subject matter of this suit, and expostulated with from time to time by different persons, in the hope and endeavor on their part to bring about an amicable settlement thereof, and a voluntary payment by him of the amount justly and equitably due from him to your oratrix as aforesaid ; and your oratrix, hoping and trusting that
 20 these expostulations would not be in vain, but that a sense of justice and fair dealing in said Van Iderstine would prevail and bring about a just and satisfactory settlement of said difference, has delayed and abstained from the bringing of this her suit to compel such settlement and payment until this time.

Wherefore, your orator and oratrix respectfully solicit the aid of this Honorable Court, in the collection and securing by your oratrix said amount justly and equitably due her as aforesaid ; and to that end pray that the
 30 said Van Iderstine may be enjoined true, full and perfect answers to make to all and singular the allegations and charges above set forth without oath, an answer on oath being waived, fully and particularly, according to the best of his knowledge, information, remembrance and belief, as if the same were here again repeated and he interrogated thereto. And that he the said Van Iderstine may be decreed to pay to your oratrix the said sum of four thousand nine hundred (4,900) dollars with legal

interest from said third day of March, A. D. eighteen hundred and sixty-nine, for as many city lots of two thousand five hundred (2,500) square feet each, as said premises as aforesaid actually contained in excess of the number of city lots it appears by said map, Paulison Addition, No. 2, as aforesaid, to contain, at the rate of three hundred and fifty (350) dollars, for each of said lots together with all the costs and charges in this behalf expended. And that an account may be taken under the direction of this Court to ascertain the exact amount as aforesaid. 10

And that said Van Iderstine may be deemed to be a trustee for your oratrix, for said amount as aforesaid, being parcel of said monies received by said Van Iderstine from the sale of said lots, other than in excess of the number of said lots for which he so as aforesaid paid or secured your oratrix; and that your orator and oratrix may have such other and further relief in the premises as may seem proper and shall be agreeable to equity and good conscience. And that the State's writ of subpœna, 20 issuing out of and under the seal of this Honorable Court may be directed to the said John H. Van Iderstine, therein and thereby commanding him, on a certain day and under a certain penalty, therein to be specified, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises contained in this bill of complaint of your orator and oratrix, and to stand to and abide by such order and decree in the premises as shall seem meet and shall be agreeable to equity and good conscience. And your orator and oratrix as in duty bound will ever pray, &c. 30

JOHN C. PAULISON,

Solicitor for and of Counsel with the Complainants.

IN CHANCERY OF NEW JERSEY.

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|----|----------------------------------------------|---|-------------|-----------------|
| | Between | } | On Bill &c. | |
| | CHARLES M. K. PAULISON, AND ANNA PAULISON | | | <i>Comp'ls.</i> |
| 10 | AND JOHN H. VAN IDERSTINE. | | | <i>Def't.</i> |

The answer of John H. Van Iderstine, the defendant, to the bill of complaint of Charles M. K. Paulison, and Anna Paulison complainants.

20 This defendant, now at all times hereafter saving and reserving to himself all manner of benefit, and advantage of exception to the many errors and insufficiencies in the complainants said bill of complaint, contained for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, he admits it to be true, that the oratrix, Anna Paulison was seized in fee of the premises first mentioned in said bill, and that this defendant did agree to purchase the premises first mentioned and described in said bill, but this defendant denies that it was agreed or understood between this defendant and said complainant, Charles M. K. Paulison, that

30 the price and value of said property, should be three hundred and fifty dollars per city lot, of twenty-five hundred square feet each, for as many of said lots as said property contained, or that there was any agreement or understanding between this defendant and said Charles M. K. Paulison, that the price or value for the said premises, should be for city lots contained in said premises, or any thing of the kind, but this defendant charges that the price for the same was fixed at the

gross sum of eleven thousand dollars, which sum was expressly fixed and agreed upon between this defendant and said Charles M. K. Paulison.

And this defendant further answering says, that he was very desirous of purchasing a part of said premises, and the said Charles refused to sell a part, but was willing to sell the whole of the land owned by Anna Paulison, on the northerly half of the block of land bounded by High street, Erie street and Paulison Avenue, and which was all the half of said block, except one lot on the corner of High street and Paulison Avenue; that this defendant for some time refused to purchase it, but after he had been over the premises and examined it, but without making any measurement or calculation as to the exact quantity of land, and seeing by the map shown that it was all the land between High and Erie streets, fronting on Paulison Avenue, this defendant accepted the offer of said Charles M. K. Paulison, and agreed to purchase the same for eleven thousand dollars, and to pay for the same by conveying to said Anna Paulison, a tract of land on River street, in said city of Passaic, for six thousand five hundred dollars, subject to a mortgage of twenty-seven hundred dollars on the same, she taking the equity in said tract of land, at the valuation of three thousand eight hundred dollars, and giving to said Anna Paulison a mortgage on the premises to be conveyed by her to this defendant, for seven thousand one hundred dollars, that pursuant to said agreement, the said Anna Paulison and the said Charles M. K. Paulison did as in said bill stated, convey the said premises to this defendant, and this defendant accepted said deed and conveyed to the said Anna Paulison the tract of land on River street above mentioned, and made and executed to the said Anna Paulison, a bond for the payment of seven thousand one hundred dollars in two years, with interest, and secured by payment of the same by a mortgage on the said premises so conveyed to this defendant.

And this defendant expressly charges that the said deed conveys the premises that this defendant agreed to purchase and remove, that is to say the whole of the one-half of said block (except one lot on the corner of High street and Paulison avenue,) owned by the said Anna Paulison, and this defendant expressly charges that the consideration money, eleven thousand dollars stated in said deed, was the exact sum for which the said Charles M. K. Paulison agreed to sell, and which this defendant agreed to give for said premises.

And this defendant, further answering says, that during all the negotiations between this defendant and Charles M. K. Paulison for the purchase of said premises, the quantity of said land either as city lots, or its measurement in front or rear was never spoken of, or alluded to by either of them but always spoken of as one whole tract of which he would not sell part but would not sell the whole.

And this defendant, further answering says, he admits that the figures in the said map, to which the said complainants refer in their said bill are not correct, as is stated in said bill, but this defendant expressly denies that he agreed to purchase, or that he did purchase the said premises by said map so far as relates to said figures.

And this defendant, further answering denies, that at the time the contract for the sale of said land was consummated, he knew that the figures on said map were not correct, or that there was any mistake existing on the map, and expressly says, that it was not until about six months after the delivery of said deed to him, when the surveyor of the City of Passaic informed this defendant there was more land than the measurement stated in said deed to this defendant called for, but this defendant insists that his said purchase had nothing to do with the correctness, or incorrectness of said figures on said map, or with any mistake in said map.

And this defendant, further answers says, that by said deed executed and delivered by the said complainants to

to this defendant, the said complainants conveyed to this defendant the land they agreed to sell to him, and which he agreed to purchase and no more, that the said complainants and this defendant, are bound by said deed as carrying out and completing the contract made between them, that this defendant did not by said deed obtain more land than he agreed to purchase, nor more land than the said Anna Paulison agreed to convey to him by said contract, and this defendant expressly denies that there was on his part any fraud whatever in the said transaction, and further charges that he, this defendant, paid in full all the consideration he agreed to pay, or in law, or in equity he was bound to pay for said conveyance, and that the said Anna Paulison has no claim in law or equity against this defendant for the payment of any other or more consideration than has been paid by this defendant. 10

And this defendant further answers, admits that he did sell parts of said premises to one John F. Kilgour as in said bill stated. 20

And this defendant further answers, admits that he sold another part of said premises to Richard Outwater, and another part of said premises to William H. Hall, but this defendant expressly denies that he bargained, sold or conveyed the said parts of said premises to the said Richard Outwater and William H. Hall, or to either of them at a certain or any price for city lots as in said bill stated.

And this defendant expressly denies that by virtue of said sale or sales by this defendant, or by the receipt by him of the consideration money therefor, this defendant has become in equity or in any way a trustee for the said Anna Paulison for any part of the proceeds of said sales or any or either of them. 30

And this defendant further answers, expressly denies that the said Anna Paulison and Charles M. K. Paulison, or either of them, or that some or any other person or persons for them since the discovery by the said Anna

Paulison and Charles, of the alleged error or mistake on said maps, have frequently or in a friendly manner, or in any manner, applied to this defendant or requested him to pay to said Anna the said sum of forty-nine hundred dollars, or any other sum, except that on the twelfth day of February eighteen hundred and seventy-five, the said Charles called on this defendant and pretended that he had some claim or demand against this defendant on account of an error in the said deed, and this defendant
 10 expressly denies that he has been repeatedly spoken to in regard to the subject matter of this suit, or expostulated with from time to time, or at any time or times, with different persons, or any persons, to bring about an amicable settlement thereof; and this defendant further says that the first time this defendant had any knowledge of any claim or demand of the pretended claim of the said Anna against him, was in the latter part of December, eighteen hundred and seventy-four, when one J. D. Bogart who had a law suit with the said Charles,
 20 stated to this defendant that said Charles M. K. Paulison had said he would sue this defendant for some claim he had against this defendant.

And this defendant further answers says, that under the law of the land, the said complainant, Anna Paulison, wife of the said Charles M. K. Paulison, had a lawful right, if any right at all, to file the bill in this cause in her own name, without writing the name of the said Charles M. K. Paulison as complainant therein, and that
 30 the joinder of Charles M. K. Paulison, her husband, as complainant therein, is a misjoinder of complainants, and this defendant prays that he may be decreed to have all the benefits of such a defence, as if he had especially pleaded the same or demurred to said bill. All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf, most wrongfully sustained.

DAVID A. HAYES,

Solicitor for and of Counsel with Defendant.

GENERAL REPLICATION.

Examination of witnesses in a certain cause depending in the Court of Chancery of the State of New Jersey, wherein Charles M. K. Paulison and Anna Paulison his wife, are complainants and John H. Van Iderstine is defendant, taken before Isaac Van Wagoner, a Master and Examiner in Chancery, on Thursday the twenty-eighth day of October, A. D. eighteen hundred and seventy-five, at his office, in the presence of John C. Paulison, of counsel for complainants, and David A. Hayes, of counsel for defendant.

10

CHARLES M. K. PAULISON, a witness produced on the part of the complainants being duly sworn according to law, on his oath deposeth and saith :

The complainants reside at Passaic, New Jersey. The defendant also resides there, all the parties to this suit have resided there since 1868.

The complainant, Anna Paulison, was a large owner of real estate in the city of Passaic since 1860, to the present time. The complainant, Anna Paulison, did agree to convey to the defendant, John H. Van Iderstine, a certain tract of land in Passaic. About the first of March, 1869, I, as the agent of Anna Paulison, entered into an agreement with John H. Van Iderstine to exchange or sell all the land contained northeast of the centre of the block bounded by Lafayette avenue, High street, Paulison avenue and Erie street, along side of the Erie Railway, excepting the corner plot, corner of High street and Paulison avenue, marked as plot number seventy-four on map of Paulison addition number two.

20

30

I had a general authority to buy and sell property in the city of Passaic for Anna Paulison, and to enter into agreements respecting the same, which agreements have always been endorsed by her and carried into effect by deeds.

1 Q. What was the agreement entered into between the defendant and the complainants, in respect to the sale

to the defendant of the property you have described, at the time spoken of?

10 A. It was to convey to John H. Van Iderstine, a tract of land already described, for the consideration of three hundred and fifty dollars per city lot as the same might contain, dividing the quantity by twenty-five hundred square feet, and Anna Paulison to receive in payment therefor the house and lot on River street at the price of six thousand five hundred dollars, I think, subject to a mortgage of twenty-seven hundred dollars and the difference, after deducting the equity on the River street house, was to be paid by a mortgage from Van Iderstine upon the property on Paulison avenue to be conveyed to Van Iderstine.

20 2 Q. You stated that the consideration agreed upon was three hundred and fifty dollars per city lot as the same might contain, dividing the quantity by twenty-five hundred square feet, explain what you mean by that, dividing what quantity by twenty-five hundred square feet?

A I mean the quantity shown by reference to the figures laid down on Paulison addition number two, the one which those figures might make up.

3 Q. Why divide by twenty-five hundred square feet?

A. Because that was the universally acknowledged area to constitute a city lot, no other area being ever considered to my knowledge by persons dealing in real estate as constituting a city lot, and for the purpose of ascertaining how many city lots there were in the tract.

30 4 Q. What quantity were you to divide by twenty-five hundred square feet?

A. It is the quantity of land or city lots contained in, as it appeared to me by reference to the figures on the map, entitled Paulison addition No. 2, and bounded, commencing at a point on the southwesterly side of Paulison avenue at the distance of sixty feet southeasterly from the southwesterly corner of Paulison avenue and High street, thence running on a line parallel with High

street one hundred and twenty-two feet, thence northwesterly on a line parallel with Paulison avenue sixty feet, thence along the southeasterly side of High street, or southerly side of High street, sixty feet, thence running southeasterly on a line parallel with Paulison avenue five hundred and eighty feet and five tenths of a foot, thence northeasterly along Erie street to Paulison avenue, thence northwesterly along the southwesterly side of Paulison avenue three hundred and thirty-nine feet and five-tenths of a foot, to the point or place of 10 beginning.

5 Q. Do you then mean that you were to ascertain the number of city lots, of twenty-five hundred square feet each, that were contained in the property you have described, and which you then agreed to convey to the defendant by dividing the whole number of square feet contained in that tract by twenty-five hundred square feet?

Objected to.

20

A. Well I do mean that.

6 Q. You say you meant the quantity shown by reference to the figures laid down on Paulison addition No. 2, what figures do you mean?

Objected to.

A. The figures describing the boundary already given by me in my previous answers.

30

7 Q. State whether or not at the time of making that agreement with the defendant, he and you made together a calculation of the number of city lots, as you have described them, and what took place then and there between you in reference to this sale and the result?

A. Mr. Van Iderstine and myself, after several conversations upon the subject, came to an agreement based upon his paying three hundred and fifty dollars per city

lot as the same might contain by reference to said map, and that reference to said map to ascertain how many lots and parts of lots the tract of land contained, and the computation was made by both of us as to how many lots there were, and the consideration for the sale was then ascertained by reference to the map, to which we referred.

8 Q. How many of such city lots did you ascertain there were or suppose to be in that tract?

10 A. I do not now remember the quantity of square feet which we then ascertained the tract to contain, but whatever the quantity was the amount, was agreed upon based on the figures containing the number of lots or parts of lots representing the consideration.

Map entitled "Paulison addition No. 2, to the village of Passaic," made by Samuel D. Backus, architect civil engineer, New Jersey, April, 1867, and marked filed December 21, 1867, in the Clerk's office of Passaic County, being shown to witness (it being agreed that a certified copy of same shall be offered in evidence, and marked exhibit P 1 or part of complainants,) he is asked--

9 Q. Is that the map that you used and upon which you made your calculation of the city lots at the time you made this agreement with the defendant?

A. I think this is the identical map, and believe the same to be the identical map.

10 Q. If not the identical map, what map had you?

30 A. I had no other map to refer to excepting this or copies of the same lithographer, and attached to an abstract of title of C. M. K. Paulison, and Anna Paulison, to lands in Passaic village, New Jersey.

11 Q. In making the calculation of the number of city lots, state specifically what figures you used to ascertain the whole number of square feet in the tract you agreed to convey to the defendant, that is to say, the exact figures in feet and inches on each line of that tract?

A. The figures which I have already stated in my description, describing the land in question.

12 Q. At that time, state what your belief was as to the correctness of the survey of that map, and of the figures laid down thereon indicating distances?

A. I believed the figures describing the boundary of the land in question to be accurate and reliable, and properly described the land in question.

13 Q. When did you first learn or have any intimation that those figures and that survey were not true and correct?

A. The first knowledge or intimation that I had that the map was incorrect, was when I was informed by John S. Strange, surveyor, about pretty nearly a year after the agreement was made with Mr. Van Iderstine, who informed me that there was an error in the map. 10

14 Q. If you had known of the error in that survey, and the incorrectness of those figures, would you have agreed to convey that property to the defendant, or would you have so conveyed it, for the sum mentioned in the deed of conveyance therefor given by you to the defendant? 20

Objected to.

A. I would not have conveyed it for any other consideration, than three hundred and fifty dollars per city lot, of twenty-five hundred square feet, as an accurate survey of the premises might be found to contain.

15 Q. If you had known of that error would you have agreed with the defendant for this property, as you did on the basis of the amount as indicated on that map, or in other words, for such a sum in gross as would equal the multiple of the number of city lots in that property, using the figures on that map, in ascertaining that number, and three hundred and fifty dollars for each of such lots? 30

Objected to.

A. I would not have entered into the agreement which

I did enter into, had I known of the error in the map.

16 Q. Question 15 repeated?

Objected to.

A. I would not.

17 Q. Exhibit P No 2. being shown to witness, he is asked what is that paper?

10 A. This is an agreement between Charles M. K. Pauli-
son, or purporting to be an agreement, and John H.
Van Iderstine, for the sale of the land already described
by me, not signed by any of the parties.

18 Q. In whose handwriting is the written part of that
paper?

A. In the handwriting of Samuel B. Fritts.

19 Q. When, in reference to the date of that exhibit,
was the agreement, stated by you to have been made with
the defendant, actually made?

A. It was made I think the same day, March 1, 1869.

20 Q. Why was that exhibit not signed and executed
by the parties named in it?

30 A. Mr Fritts the real-estate agent, through whom the
sale was made, acting for both parties, was to receive
this agreement and get both parties to sign them, when
they were ready for the signatures, I think there were
two, one other beside this, which was in my handwriting,
and this the copy in his handwriting, and he was to get
the signatures to them, but as the time of the delivery of
the deed was to be within two days thereafter, and the
deed being delivered at that time, I presume he ne-
glected to get this agreement signed.

21 Q. Where is the agreement that you think you
wrote?

A. I do not know, but think I must have it somewhere
among my papers.

22 Q. What efforts have you to make to find it?

A. On one or two occasions, or more occasions, I made

a quite diligent search among my papers for it, and failed to find it.

23 Q. Have you looked and searched in all such places as you reasonably supposed it might be?

A. I have.

24 Q. Was that agreement which you think you wrote, executed?

A. I think it was signed by both parties.

25 Q. State whether exhibit P. 2. was consummated by the complainants and the defendant, pursuant to its terms, you supposing the description set forth in that exhibit to be the true description of that property? 10

A. It was consummated upon the terms expressed in this agreement, with the impression that the description of the premises was accurately describing the land, excepting that the deed consummating this agreement named one hundred dollars more than the consideration, than the consideration named in this agreement. The agreement calling for the consideration of ten thousand nine hundred dollars, and the deed stating the consideration of eleven thousand dollars. 20

Exhibit P. 2, offered in evidence on the part of complainants.

Objected to.

Exhibit P. 3, being a certified copy of a deed dated March 3, 1869, between Charles M. K. Paulison, and Anna Paulison, his wife, to John H. Van Iderstine, the original of which is recorded in Passaic County Clerk's office, March 6, 1869, in Book O 3, of deeds, pages 596, &c., being shown witness he is asked 30

25 Q. Is that the certified copy of the deed consummating the agreement you have spoken of?

A. That is a copy of the deed, excepting that I think that one of the courses described in this copy is not described according to the deed. This copy describing five hundred and eighty feet, six inches, while I think the

deed described the course as five hundred and eight feet six inches.

Adjourned to 2 o'clock, P. M.

2 o'clock, P. M.

10 CHARLES M. K. PAULISON, continued on direct-examination.

26 Q. During the intermission have you examined the record of this deed in the Clerk's office, to see whether five hundred and eight feet is correct, and if so, how did you find the record?

20 A. I have examined the record in the County Clerk's office and find that the course described as running southeasterly on a line parallel with Paulison avenue, read five hundred and eight feet as in my previous testimony I supposed it did, and that the County Clerk has since corrected the certified copy to read five hundred and eight instead of five hundred and eighty.

Exhibit P. 3, is offered in evidence on the part of the complainants.

27 Q. Exhibit P. 2, being shown witness, he is asked: Have you refreshed your memory in regard to that paper, and in regard to a similar one which you supposed this morning you had drawn, if so, what is now your recollection about that matter?

30 A. I have reflected considerably about it, and have come to the conclusion quite clearly that I was mistaken as to my supposition that there was another paper like this, drawn up in my handwriting, to which both parties had signed their names and which I had searched for to find heretofore. And now believe that there was no other paper in the shape of an agreement between us excepting this one; I think that when we came to the ver-

bal agreement a memorandum was made of the figures which we had ascertained to be necessary to carry out our agreement, and handed the memorandum to Mr. Fritts requesting him to draw up an agreement in conformity with these figures, and our verbal understanding. It being understood between us, Mr. Van Iderstine and myself, that when prepared he should have both parties execute the same and hold the same for both of us, and that this is the agreement which he prepared.

28 Q. You speak in your last answer of a memorandum of figures agreed upon at the time by the defendant and yourself, do you remember what those figures were? 10

A. I do not remember distinctly what the figures were excepting they were the figures ascertained of the quantities found after an examination of the map, Paulison Addition No. 2.

29 Q. State in detail how the consideration of ten thousand nine hundred dollars, mentioned in Exhibit P. 2, was arrived at by the defendant and yourself at that time? 20

A. We had the map before us, and ascertained that the first course running southwesterly was one hundred and twenty-two feet, and the next course running northwesterly was sixty feet, and the next course running southwesterly was sixty feet, the next course running southeasterly was five hundred and eight feet and five-tenths of a foot, and the next course running northeasterly along Erie street, or the Erie Railway, or alongside of the Erie Railway had no figures running on a course to Paulison avenue, that the next course running northwesterly along Paulison avenue three hundred and thirty-nine feet and five-tenths to the place of beginning. I remember distinctly of including the corner lot not conveyed in the figures used in the computation of the area, and after making the best estimate we could with regard to this curve, the unknown quantity contained in this curve we got at the total area, and then deducted the corner lot sixty feet front and rear by one hundred and 30

twenty-two feet deep, and thus decided upon the quantity and consideration. We did not consider accurate to a fraction, but sufficiently accurate to carry out our agreement to receive three hundred and fifty dollars per city lot.

30 Q. How came the consideration in Exhibit P. 3, to be made eleven thousand dollars?

A. That was my work, and was in conformity with my usual custom of putting in the consideration of all my deeds as near an even sum as possible, being desirous of always having the consideration expressed in my deeds for the largest sum, to express that even amount, not considering it material, not considering the amount expressed in the deed material excepting that the price of the property should not be injuriously affected by an inadequate consideration.

31 Q. What consideration have you actually received from the defendant for that conveyance of P. 3?

A. I received a mortgage for seven thousand one hundred dollars on this property, deeded to Mr. Van Iderstine, and the equity in the house deeded by Mr. Van Iderstine to my wife on River street of thirty-eight hundred dollars, making a total of ten thousand nine hundred dollars.

32 Q. Is that all that the complainants have ever received from him for that conveyance?

A. It is all.

33 Q. What was the fair market value, per city lot of twenty-five hundred square feet each, of the property you have described as conveyed by you to the defendant in March, 1869?

Objected to.

A. It was fully three hundred and fifty dollars per city lot, and considered cheap and easily to be sold at that figure for cash.

34 Q. Are you and were you in March, 1869, acquaint-

ed with the market value of real estate generally in the now city of Passaic?

A. I was, I believe, better qualified to judge of the market value of real estate in the City of Passaic at that time, and am now, than any other person in the City of Passaic.

35 Q. Have you been for years in behalf of your wife, as owner, dealing largely in real estate in that city?

A. I have since 1860.

36 Q. Had you a uniform practice in selling real estate, in regard to the manner in which you made your sales, and if so state what that practice was? 10

Objected to.

A. I had. The practice was to always sell plots of land at so much per city lot, of twenty-five hundred square feet. I never knew of any sale in the city of Passaic, for the last sixteen years, for building plots, to be sold on any other consideration excepting so much per city lot. 20

Objected to, as not responsive to the question.

I will amend my answer by saying, I never sold any building plots in the City of Passaic, except upon the basis of so much per city lot of twenty-five hundred square feet, excepting sometimes I would, after ascertaining the area and number of city lots, fix upon a round sum as a total consideration for the number of plots sold. 30

38 Q. Did your wife make any sales of real estate in Passaic, except through yourself?

Objected to.

A. No, she never conveyed any land in the City of Passaic, excepting through me as her husband and agent.

39 Q. What became of the mortgage of seven thou-

sand one hundred dollars, which the defendant gave to your wife as part of the consideration money of this conveyance spoken of?

A. I assigned it to Benjamin W. Merriam, of New York.

Exhibit P. 4, being shown to witness he is asked

40 Q. Is that a certified copy of the assignment you have just alluded to?

A. It is.

10 Said certified copy exhibit P. 4. is offered in evidence on the part of the complainant.

41 Q. When, in reference to the date of P. 4, did you actually make that assignment?

A. I don't remember the exact day that the assignment was made, but it was about the date expressed in this exhibit.

42 Q. When, in reference to the time of making the assignment of that mortgage of seventy-one hundred dollars, did you first learn that there was an error in the survey and figures on Paulison Addition No 2. already referred to?

20 A. I do not remember the exact time when I obtained information of an error in the map, but know that it was many months afterwards.

43 Q. After the error was learned by you, what if any means were employed to get the defendant to pay for the difference between the actual contents of that tract, and the quantity you supposed it contained at the time of the agreement and conveyance spoken of by you?

30 A. The only means which I relied on to recover pay for the quantity overrun by the true measurements, was through other parties; Mr. Strange was one of those parties. He first informed me of the error, and had frequent conversations with me, subsequent to that time, informing me of conversations between himself and Van Iderstine about the subject, and from the nature of his revelations as to the condition of Mr Van Iderstine's mind upon that subject, and other revelations made to

me by many other friends, most of them mutual friends, I had reason to believe that Mr. Van Iderstine would pay me for the lots which were found to exceed the lot for which he had received a conveyance. I therefore thought that the delay which ensued would result in his offering to pay me for the lots; I requested Mr. Strange during the interval to make me an accurate survey, and give me a certificate of his surveys, so that I might be prepared when the time arrived, in my judgment it would be best to commence measures on my part for the recovery of the sum due me for the lots overrun by the corrected survey. 10

Exhibit P. 5. being shown witness he is asked.

44 Q. What is that exhibit?

A. This is the survey made by Mr. Strange, at my request, alluded to in my previous answer.

Exhibit P. 5. is offered in evidence on the part of the complainants.

45 Q. How long have you known the defendant?

A. About ten years, as near as I can remember. 20

46 Q. What have been your relations during those ten years, friendly or otherwise?

A. I have always considered them friendly, excepting this little unpleasantness, I should say very amicable.

47 Q. What, if any, influence had these relations, and the information you had, as to the endeavors of your friends to get the defendant to an amicable settlement for this difference, in regard to the quantity of land in this tract, in deferring the commencement of this suit? 30

Objected to.

A. As I said before, the intervention of mutual friends and the revelations made to me by them of the condition of Mr. Van Iderstine's mind on the subject, gave me reasons to believe that delay in the matter of bringing suit would result in an amicable settlement of my just claim for the lot which he had obtained, and for which he had not paid me.

48 Q. Did you yourself, previous to the commencement of this suit, request the defendant to adjust this matter and pay you for the difference spoken of, if so, what passed between you at the time of making such request?

- A. I did call upon Mr. Van Iderstine, at his residence with my attorney Mr. J. C. Paulison, a short time previous to the commencement of this suit; I had this map Exhibit P. 5, with me and informed him that I had frequently heard from him through other parties with reference to this matter, and that I had hoped that he would have been willing to pay me for the lots overrun by the correct measurement, but that I now called upon him to inform him that I should commence a suit to recover payment therefor unless he should make a satisfactory settlement of my claim. I told him that I had been extremely desirous of avoiding litigation, and that I was willing now to settle it on reasonable terms if he was prepared to settle. I fully explained to him the difference between the erroneous map and the survey of Mr. Strange. He declined then to do anything in the matter but promised to think over the matter and let me know within a day or two what conclusion he might be willing to come to. He admitted the error and acknowledged that I was not aware of the error at the time of the agreement for conveyance. He claimed however that he had got a deed for the property and thought that had ought to be an end to the matter. I am giving you now the substance of his language.

- 30 Examination adjourned to Thursday, November 18, 1875, 10 o'clock, A. M., at same place.

JOHN F. KILGOUR, witness produced on the part of complainants, being duly sworn according to law on his oath deposeth and saith:

I reside at Passaic, New Jersey, and have resided there

since July, 1870. I am acquainted with the defendant Mr. Van Iderstine. I have been acquainted with him since the fall of 1869. I have also been acquainted with the complainant since about the same time. I am acquainted with him.

A deed dated 16 December, 1869, between John H. Van Iderstine, and Elizabeth, his wife, to John F. Kilgour. I then lived at Kingston, New York. Consideration \$7,700. That is the true consideration for the property conveyed to me by that deed.

10

Answer objected to, as immaterial.

Exhibit P. 3, being shown witness.

The deed from John H. Van Iderstine, and wife to John F. Kilgour, just named is offered in evidence on the part of complainants and is marked Exhibit P. 6.

Objected to, as immaterial.

20

49 Q. Is the property conveyed to you, described in Exhibit P. 6, dated December 16, 1869, a part of the property described in Exhibit P. 3, from the complainants to the defendant in this case?

A. Yes.

50 Q. What was the agreement made between the defendant and yourself in reference to the amount or consideration that you were to pay him for the property described in Exhibit P. 6, as to the mode of getting at the consideration you were to pay?

30

Objected to, as immaterial, also improper in form and leading.

A. Well my agreement with him was about \$375 a lot; I think this property figures a little more, I think it figures a little more than \$375 a lot.

I think I had no agreement in writing for the purchase of this property from the defendant.

51 Q. Please give us the conversation, if any, that Mr. Van Iderstine and yourself had in reference to this sale and purchase before the conveyance was actually made?

Objected to, as immaterial.

10 A. He offered me the whole of the property, or wanted me to take whole of the property rather in the plot described in Exhibit P. 3, at \$350 a lot, which was the same as he paid, stating that in his trade he put a house in at a fair price or something like that. That was all the conversation; that was what he offered, I only took the twenty lots; he offered them to me at \$400 a lot, and I afterwards brought ten lots and a fraction of him. This was in the spring of 1870, at \$375 a lot.

52 Q. You speak of so much a lot \$350, and \$400, what sized lot do you mean?

Objected to, as improper.

20

A. I mean 25 by 100 feet.

53 Q. You stated in your answer to the question next before the last, that the defendant wanted you to take the whole of the property, described in P. 3, at \$350 per lot, which was the same as he paid; who informed you that he paid that price for that property?

30 Objected to, as immaterial, improper and leading. The witness having stated that in above answer he had given the whole of the conversation.

A. Mr. Van Iderstine, the defendant.

54 Q. When did he so inform you?

A. The first time that I ever met him, when I bought the first twenty lots.

55 Q. Now state all that he said to you at that time about the price he paid for that property described in Exhibit P. 3., at \$350 per lot?

Objected to, as immaterial, improper in form and as leading the witness or attempting to lead him. The defendant's counsel objecting to the question in any form indicating in question a reference to the supposed conversation.

That part of the question after P. 3, withdrawn by plaintiffs' counsel.

Objection still insisted on the question having been asked in the hearing of the witness. 10

A. When I offered \$350 for the twenty lots, that is \$350 per lot for the twenty lots, described in P. 6, he stated that he would take \$350 per lot for the whole plot, and that it had cost him \$350 per lot, but that he had put in a house on River street at a fair price for it. I concluded to take the twenty lots only.

56 Q. Did the defendant at any subsequent time say anything to you in reference to the price he paid for this property, described in Exhibit P. 3, if so, when was it, and what did he say? 20

A. I don't recollect of his saying any thing. He has repeated that he did not make any thing much out of the transaction. Since I have said that I wish to say that he has since told me that he had more land than he thought there was.

57 Q. Please give us the time or times as nearly as you remember, when the defendant repeated that conversation as you have just testified, and what he said, giving his language as nearly as you can? 30

Objected to, as immaterial.

A. The time was in the fall or winter, after I bought it. I used to see him, he was doing the mason work on my house, that is where I met him. I can't state that the conversation was any different from what I have narrated.

This house was on the property I purchased, described in Exhibit P. 6.

58 Q. State how this subsequent conversation came about and what was said by Mr. Van Iderstine?

A. I can't state any specific conversation further than I was trying to negotiate through that winter at different times when we met, and in the spring, in fact in the winter and spring. It was about summer when I bought these lots. He wanted \$400 a lot for them. I mean for other lots than those bought by P 6. When he said he would have been willing to have taken \$350 per lot for the whole. He mentioned this different times. I can't say how many. He said he wanted to clean them all out, and he was willing to take that for them. The subsequent conversation was what he said about the \$350. He repeated it.

59 Q. Now what do you mean us to understand he said about \$350?

A. I don't know what you have reference to. He said he wanted \$350 per lot for the whole property. What I said about the other conversations about the \$350, I said that he had repeated it, that he had paid \$350 per lot for the property.

A certified copy of a deed from John H. Van Iderstine, to John F. Kilgour, dated, March, 28, 1871, conveys a part of the property described in exhibit P 3. I think there are 10 lots or a little over of 25 feet by 100 feet described in this deed. He made a computation of the number of lots described in this deed, and also of the property described in exhibit P 6, taking the distances and measurements described in said deed.

Said deed from John H. Van Iderstine, to John F. Kilgour, dated, March, 28, 1871, is offered in evidence on the part of the complainant, and is marked exhibit P 7.

I never had any memorandum or agreement in writing with regard to either of these purchases with the defendant. Any formal agreement in writing or memorandum.

60 Q. How was the consideration \$3,933.75, in exhibit P 7, arrived at?

A. At \$375 a lot, I think was the exact amount I paid him. 25 feet by 100 feet, was the size of each lot.

61 Q. Did Mr. Van Iderstine say any thing to you at the time you took the second deed as to what he paid for the lots, if so, state what he said?

A. I can't recollect any conversation at that time.

62 Q. While you were dickering about these lots?

A. When I tried to buy the property at \$350, first twenty lots, and then afterwards the ten lots and a fraction, our conversations were about the same with one transaction as with the other. 10

When I would want to buy the property for \$350 a lot, he said it cost him that.

63 Q. What did he ask for the last ten lots?

Objected to as immaterial.

A. \$400 a lot. 20

64 Q. How did he come to take \$375 per lot. What did he say as to taking less than \$400 per lot?

Objected to as immaterial.

A. I don't remember what he said. I guess I had most to say.

65 Q. Did you pay him the consideration mentioned in P 6, and P 7, respectively?

A. Yes. 30

66 Q. How?

A. Cash. (No mortgage.)

67 Q. A map being shown to witness, entitled Paulison Addition No. 2, he is asked, which was the more valuable part of the property described in P 3, in the years 1869, 1870, and 1871, that described in P 6, or that lying north of it, south of High street?

Objected to as immaterial.

A. Well they asked the most for this lying next to High street. Mr. Van Iderstine did not own the part on the corner of High and Paulison streets, containing about four city lots. They asked a considerable more for those lots than Mr. Van Iderstine asked for the other lots.

68 Q. As to their real value at that time?

10 A. I picked out the lower part, Mr. Van Iderstine, when I offered him \$375 a lot which I think the first consideration was. There was a point bounded on Erie street and Paulison avenue, he said that he would take \$375 a lot if I took that end of the property. He did not offer the upper end at that price if I recollect.

69 Q. Are you acquainted with what was in 1869, and has been ever since, and still is the custom, if there be one, in Passaic among dealers in real estate, as to the manner of selling property, as to the method of getting at the consideration?

20 Objected to as immaterial, and also not a question for this witness.

A. Simply by multiplying the number of lots by the price of one lot. Lots of 25 feet by one hundred feet each. That is by city lots.

Cross-examination.

30 70 Q. Your proposal to purchase from Mr. Van Iderstine in the first negotiations was to purchase the amount of twenty lots, was it not, and not to purchase of any particular twenty lots marked out before the proposal?

A. It was for twenty lots marked out, twenty particular lots marked out.

71 Q. Had a survey been made at the time of the first negotiation?

A. Nothing farther than pacing it off; we went on

the property and looked it over, and I agreed to take twenty lots off that lower end. This deed P 6, was a consummation of my first arrangement with defendant, I paid him the consideration mentioned in that deed, and the final agreement between us, was that I was to pay him the consideration mentioned in that deed.

72 Q. Was not a sum added for the grading or improvement of the street, to make up the consideration in the first deed?

A. Yes, there was something added.

10

73 Q. Then the whole of the final agreement for purchase and payment of consideration, was not confined to the \$375 per lot for the lands. Did you not pay more than this, and did not he receive more than this, and did you not both intend that more than \$375 per lot should be received?

A. There was a little misunderstanding about that I recollect. That I gave Mr. Van Iderstine some money on account of the purchase when I bought it. This matter in regard to grading afterwards came up and I assumed and paid a portion of it. 20

That was included in the consideration of the deed. I did not take the deed until some time after I bargained for it. This matter after I bargained for the property, came up and I agreed to pay a part of the grading. &c. There was a misunderstanding on my part when I made the bargain.

I never offered to buy the whole tract of Mr. Van Iderstine mentioned in P. 3; my first offer was \$350 per lot for what I wanted; and in reply to that, he said I could have the whole tract for \$350 per lot, that was what he had paid for it, and that he had put the house in at a fair price. I understood that I could have the whole property from Mr. Van Iderstine, for what he paid for it and the only profit he would make, would be what he made on the house. 30

74 Q. Is your recollection distinct as to the words of the conversation between you and Mr. Van Iderstine,

in reference to the property after the first purchase, after this lapse of time?

A. It is as to every thing I have stated.

The next conversation after the first purchase, was about every time we met, we talked about the proposed second dicker.

I had Mr. Van Iderstine's refusal at the time of the first purchase, that I could have ten lots more up to about the first of July at the same price. The consid-
 10 eration as to the street assessment was left out of this arrangement.

I tried to trade him some lots on Aycrigg avenue in Passaic, for the balance of his lots. This was about two years after the second purchase by me. That was the only offer I afterwards made for the balance of the prop-
 erty. I understood from Mr. Van Iderstine, at the time I made the first purchase, that there was a mortgage on the property, and he was to convey clear of that mort-
 20 I have not had to pay off any former incumbrance on the property. It is possible I may have written to Mr. Van Iderstine respecting these purchases. I have not got copies of them if I did write any letters to him.

Re-Direct Examination.

75 Q. When did Mr. Van Iderstine tell you that he had more lots on this tract than he thought he had?

A. In connection with my second purchase.

30 76 Q. Did you ever have a conversation with Mr. Van Iderstine, as to his duty towards the complainants, in view of that fact, if so, when did you have such conversation and what was it?

Objected to, as immaterial.

A. I don't know that I ever had a conversation with him with regard to his duty in the matter.

77 Q. Have you had any conversation with Mr. Van Iderstine, in reference to the fact of there being more property in this tract than he said he thought there was, if so, when, and what was it?

A. Well, I don't know as I can recollect what that conversation was. When we were talking about the matter, he said he bought the whole lot by boundaries, or something like that. That was the meaning of his conversation with me. This was since my last purchase. I think it was about 1871. It was about the time the last deed was given. 10

78 Q. What did you say to Mr. Van Iderstine about this matter, and what did he say to you?

Objected to as immaterial.

A. I told him I could not tell him anything about the matter, as I was not a competent judge. He said that he calculated that his deed covered the whole of it. That was about all that was said then. That was the substance of our conversation. 20

J. F. KILGOUR.

Sworn to and subscribed before me, March 10, 1876. }

ISAAC VAN WAGONER,

Master in Chancery of New Jersey.

Examination of witnesses adjourned to Friday, March 17, 1876, at 10 o'clock A. M., at same place.

FRIDAY, MARCH 17, 1876. Examination of witnesses by consent, adjourned to Wednesday, March 22, 1876, 10 o'clock A. M., at same place. 30

WEDNESDAY, March 22d.

CHARLES M. K. PAULISON, on behalf of complainants.

On cross-examination.

79 Q. Showing paper. Mrs. Paulison was the owner of all the tract laid out in lots on this paper, was she not? Said paper marked exhibit P. 1, Paulison Addition No. 2.

10 A. She was.

80 Q. At what time was that tract purchased, and from whom?

A. Purchased from the heirs of John A. Post, about 1866 or 1867.

81 Q. Showing paper, marked exhibit No. 1, on part of defendant he is asked, is the deed as marked from executors of John A. Post to Anna Paulison, dated July 18, 1865, the deed you refer to?

A. It is.

20 82 Q. That deed conveyed the whole of the tract mapped out in Paulison Addition No. 2, did it convey any more?

A. It conveyed Paulison Addition, Nos. 2, 4, and 5.

Counsel for complainants objects to this evidence relating to the deed spoken of as irrelevant and immaterial.

30 83 Q. Between 1865, and March 1, 1869, had you not conveyed all of Paulison Addition No. 2, with the exception of the part conveyed to Mr. Van Iderstine; if not, state what parts of Paulison Addition No. 2, had not been conveyed?

Same objection.

A. There was quite a large portion of the property described on this map, excepting the property conveyed to Mr. Van Iderstine, which had not been conveyed at

that time. I think about one-third of the property, or one-quarter to one-third, had not been conveyed by Anna Paulison, or agreed to be conveyed.

84 Q. Which portion had not then been conveyed, specify by reference to the map?

A. Lots 133 to 157, inclusive, excepting 155, 156, 157, 154, 152 and 150, and part of 148. I think a part of 148, also lots 57, 58, 59, 61, 63, 65, and I think 67, 68, 69, and 70.

I think also some lots on the Northeast side of Lafayette Avenue, between High street and Pennington Avenue, I am not certain whether I had or not conveyed about one half of the block between Lafayette, Paulison, Pennington and Passaic Avenues, conveyed to Robert Foulds. It was conveyed about that time; I cannot say whether before or after, I made two conveyances to Mr. Foulds, of about one-half of that block, one I think was before, and the other I think shortly afterwards, but I am not certain, not having any data with me to refresh my memory.

86 Q. This conveyance to the defendant, closed out all that you owned on the southwest side of Paulison avenue from Pennington avenue, did it or not, or from the middle of the block, that you have just spoken of did it not?

A. I do not remember as to the time of some of the conveyances between Pennington avenue and High street; I made some conveyances on that block, about that time, whether it was before or after I could not positively say, and also as to the quantity of land in dispute in this case.

87 Q. Who had this map made; I mean the map Paulison addition No. 2, filed in the Clerk's office of Passaic County?

A. I had the map made as the agent of Anna Paulison.

88 Q. Did you also have the map filed in the office of said Clerk, as the agent of Anna Paulison and also for the purpose of a record for reference?

A. I did for that and other purposes.

89 Q. At the time of this conveyance to the defendant how far had Paulison avenue been graded in the direction of the Erie Railway?

A. I could not say now how far, but there had been considerable grading done in that direction I think.

90 Q. Did this grading extend as far as High street?

A. Yes, some slight grading.

10 91 Q. Was it grading in front of the property conveyed to defendant?

A. I think there was some little grading done there but not of much account.

92 Q. Was there not an old stone fence on the centre line of Paulison avenue in front of the property conveyed to defendant, at the time the property was conveyed to defendant?

A. I think there was.

93 Q. How far, in the direction to Pennington avenue, did that stone fence extend at that time?

20 A. I could not remember now, I could not tell as to that time.

94 Q. As near as you can recollect, did it not extend half way or about that to Pennington avenue?

A. I really could not say as to the time when that stone fence was removed from that point.

It was the line fence between two former properties which Mrs. Paulison purchased.

30 95 Q. At that time had the Paulison avenue been accepted by the public authorities as a public street up to this point?

Objected to.

A. I do not know.

96 Q. When did you put the property conveyed to defendant in hands of Fritts for sale, and was it put into his hands specially or along with other property?

A. I did not put the property in question specially

into the hands of Mr. Fritts to sell at any time ; but he had a general understanding with me that I would pay him commissions for any sales that he effected ; I consider that he had authority to negotiate for the sale of the property in question when he came to me and informed me that Mr. Van Iderstine, the defendant, was anxious to exchange his house on River street for lots on Paulison avenue between High street and the Erie Railway, I then authorized him to negotiate for the exchange.

97 Q. Did not Mr. Fritts inform you that the defendant wanted to get a part of the property afterwards conveyed to him, and not the whole ? 10

A. He did.

98 Q. Did not you tell Mr. Fritts that you wanted to sell it altogether ?

A. I did.

99 Q. Did you not tell Mr. Fritts that you wanted a single mortgage on the whole of the property for the unpaid purchase money, or anything to that effect ?

A. I don't remember of any conversation upon that particular point. 20

100 Q. Didn't you tell Mr. Fritts that you would not sell that property to Mr. Van Iderstine unless he took the whole of it, or words to that effect ?

A. I remember telling him words to this effect, that he must take all the lots, all the city lots, remaining unsold on the southwest side of Paulison avenue between High street and the Erie Railway.

101 Q. And that you wouldn't dispose of a half or a portion of them, without disposing of the whole ; was not that your intention ? 30

A. Yes.

102 Q. Was it not your object at the time of this sale to secure a single mortgage for the balance of the unpaid purchase money of this property, for the purpose of disposing of the mortgage conveniently ?

Objected to, as irrelevant and immaterial.

A. I do not remember of having any other object in view than to obtain one mortgage to secure the amount which might be found to be due after ascertaining the number of lots contained in the property.

103 Q. Question 102, repeated and answer insisted on.

Objected to.

10 A. I do not remember any other than the object I have already told you.

104 Q. Exhibit P. 2, being shown to witness, he is asked—

In whose handwriting is the written part of that paper?

A. Samuel B. Fritts.

105 Q. Did you see him write it?

A. I do not remember, but I think not.

106 Q. How came he to write it?

A. I think at the request of both the defendant and myself.

20 107 Q. Is not this a copy in Mr. Fritts' handwriting of an agreement which you drew?

A. I do not remember whether I drafted a paper or agreement of which this is a copy, but am quite sure that I furnished, together with the defendant, the data which this agreement was intended to carry into effect.

108 Q. Will you swear that you did not draw the agreement yourself, and hand to Mr. Fritts to make a copy of?

A. I will not so swear as I do not remember.

30 109 Q. Where did you get this paper, I mean when and where did it first come into your possession?

A. I think Mr. Fritts brought it to me after the commencement of this suit, or about the time of the commencement of this suit.

110 Q. When did you give Mr. Fritts data to draw the agreement, if he did draw it?

A. I think I did not give the data to him alone, but that within two or three days before the deed was given,

I, in connection with Mr. Van Iderstine, requested him to keep the agreement which we should execute for the benefit of both parties.

111 Q. Where was this?

A. I do not remember now as it is long ago, and I have not charged my mind with the exact locality of the final agreement.

112 Q. Do you mean to say you don't know where the final agreement took place?

A. I mean to say that I do not remember the exact locality where we stood when the final agreement had been come to, but do remember the locality where it was substantially agreed upon, and that was at the office of S. B. Fritts. 10

113 Q. Who was there?

A. I think there were quite a number of persons in the back part of the office.

114 Q. Was there more than one room there?

A. I do not remember now whether there was any partition dividing his office. 20

115 Q. Were there not two rooms, and were not you, the defendant, and Mr. Fritts, in one of the rooms, and in which no other persons were present, at the time of making the final agreement substantially?

A. I have already stated that I do not remember as to the two rooms, but think I do remember that there was no other person near enough to us, to hear what passed between us.

116 Q. Do you remember any other persons who were there? 30

A. I cannot recollect the names of any other persons who were there at that time.

117 Q. Exhibit No. 1, on part of defendant shown to witness, he is asked,

Did you have that paper there at that time?

A. On a minute examination of this paper, I can find nothing which induces me to believe that this paper was used, or whether it was there.

118 Q. Didn't you get from Mr. Van Iderstine three dollars for that paper on the delivery of the deed, and didn't you hand it to him as one of the papers to which he was entitled, on the settlement of the transaction?

A. I do not remember as to whether I gave him that paper on the delivery of the deed, or whether I got three dollars from him for it, but think it altogether likely I did. I did not hand it to him as one of the papers to which he was entitled at the time of the transaction.

10 119 Q. Did you have a map of Paulison Addition No. 2, at the time of the final agreement at Mr. Fritts' office?

A. I did not say that the final transaction took place at Mr. Fritts' office, but distinctly remember when the final transaction took place and that agreement was come to, that we referred to the map, Paulison Addition No. 2, to find out the consideration, which it would be necessary for him to pay, after ascertaining from said map the number of city lots found to be contained in the area described by the map.

20 120 Q. Did you have a map at Mr. Fritts' office at the meeting you have spoken of above?

A. I do not remember, but I think there was a map, but, I am not certain at that particular interview at Mr. Fritts' office.

121 Q. At that interview, at Mr. Fritts' office which you have spoken of, were not the data given for drawing the agreement between the parties?

A. I do not think that at that interview at Mr. Fritts' office, all the data was furnished for Mr. Fritts to make
30 up the agreement between us.

122 Q. Did you afterwards have any meeting or interview with the defendant before the deed was delivered?

A. I think we did.

123 Q. Where was it, when was it, and who were present?

A. I do not remember, as I said before the exact locality, where the final agreement was effected, but remember having a verbal understanding with Mr. Van

Iderstine, that he was willing to accept my proposition. It was immediately after leaving the office of Mr. Fritts, or possibly the same evening at my house, but I do not remember now exactly where. My memory is rather indistinct upon the whole subject. I have an indistinct recollection, but I am not certain that we had a meeting at my house on the evening of the same day, at which Mr. Fritts was present, and Mr. Van Iderstine and myself, and no body else.

124 Q. Was this last meeting you speak of, the meeting at which the final agreement was made? 10

A. To the best of my recollection, it was.

125 Q. What then was the agreement made in Fritts' office and in what respect did the agreement you then made differ from the agreement you made at your house which you call the final agreement?

A. The agreement made in Fritts' office was an acceptance by Mr. Van Iderstine of my offer to exchange my lots on Paulison avenue, the property in question, for the sum of \$350 per city lot, and I to receive payment for the number of lots as might be found to be contained in that tract by taking his house on River street for \$6,500, subject to a mortgage of \$2,700 which then existed on the property. I think we left upon that state of the understanding, we left Mr. Fritts' office with the intention of completing of the agreement, and the best of my recollection is that we had a meeting the same night to consummate that understanding, I think that is all. 20

126 Q. What was to be consummated, an agreement to be signed? 30

A. The final details of that agreement, I think that is all I have to say upon that point.

127 Q. When did you and Mr. Van Iderstine give the data to Mr. Fritts to draw that agreement?

A. The more I reflect upon the subject, the more I am of the opinion that it was at my house on the evening of the same day.

128 Q. Deed marked Exhibit No. 2, on the part of the defendant shown to witness her is asked—

Is the written part of that deed in your handwriting?

A. It is.

129 Q. Did you not take the description in that deed from an agreement you had drawn?

A. I do not remember, but think not.

130 Q. You are a lawyer are you not?

A. I am not, but about twenty-five years ago I was
10 practicing law for a short time in the City of New York, I have not practiced law since.

131 Q. From whom did you first ascertain that there was a mistake in the survey of the map, Paulison Addition No. 2, filed in the Clerk's office?

A. John S. Strange.

132 Q. Who was he?

A. Surveyor.

133 Q. Was he then City or Town Surveyor?

A. I think he was Village Surveyor. Passaic became
20 incorporated as a city about five years ago.

134 Q. Do you know how Mr. Strange ascertained the mistake, how he came to discover it?

A. Only by what he told me.

135 Q. What did he tell you how he came to ascertain the mistake?

A. He told me; are you aware he said to me that there is a mistake in the map of Paulison Addition No. 2, of that part you conveyed to Mr. Van Iderstine; I told him no, I was not aware of it; he said there is very important
30 error in the map. He ascertained it by measurement by a survey himself.

136 Q. How did he come to survey it?

A. I do not know.

137 Q. Did not he tell you that he was making a survey for the purpose of grading the street, making a survey of Paulison avenue for the purpose of grading the street?

A. I do not remember now whether he did or not.

138 Q. When was this conversation?

A. It was a long time after the deed had been given to Van Iderstine.

139 Q. Fix the time and place as near as you can?

A. I should think as near as I can remember about the spring of 1870. I think it was in the street but do not remember the place.

140 Q. Is there any thing by which you can fix the time?

A. Yes the survey made by John S. Strange, January 10 17, 1870, and marked exhibit P. 5, this survey was made at my request.

141 Q. Mr Strange must have informed you before you ordered this map, exhibit P. 5, did he not?

A. Yes, I am mistaken as to the date of the interview.

142 Q. You knew of the mistake sometime before you ordered this map, did you not?

A. I did, a short time before, I should think one or two months before.

143 Q. Might it not have been three or four months, 20 is your recollection clear as to that?

A. It might have been, but my recollection is not clear as to that.

Adjourned to 2 o'clock P. M.

2 o'clock P. M.

30

144. Q. You drew the bond and mortgage also for Mr. Van Iderstine, did you not?

A. Yes.

145 Q. Where were the papers exchanged, the deed, bond and mortgage?

A. I do not remember.

146. Q. Where were you to meet to sign the agreement Mr. Fritts was to draw?

A. The best of my recollection on that subject is that Mr. Fritts was to get our signatures as soon as he had the paper ready. I think there was no time or place designated,

147 Q. Are you certain about that?

A. I am not certain, but think that was the understanding.

148 Q. Are you certain that the sum of \$10,900, as the consideration, was not stated as the sum at Mr. Fritts' office?

A. I am not certain.

149 Q. Was it not understood at the meeting at Mr. Fritts' office that you should have the privilege of removing certain buildings from the property, within four months?

A. I think that subject was not discussed at Mr. Fritts' office, or talked over.

150 Q. At the meeting at Mr. Fritts' office, was it understood that the defendant was to give a mortgage for \$7,100.?

A. I think it was not understood at the meeting at Mr. Fritts' office, what the amount of the mortgage should be.

151 Q. Do you swear that it was not?

A. I feel quite positive, and prepared to the best of my recollection and belief, that the amount of the mortgage had not been agreed upon.

152 Q. When was the amount that should be paid for his equity, agreed upon?

30 A. At the meeting of Mr. Fritts it was agreed, at the office of Mr. Fritts', and subsequently at the final agreement as I have stated at my house.

153 Q. Do you now own the property conveyed to you by the defendant?

A. Well, the title. I do by virtue of an agreement. The title now, I think is vested in John A. Winters, he having purchased the same at a mortgage foreclosure in pursuance of an agreement with myself, by which he was

to purchase it for me and to hold it for six months in which to redeem it. This is a matter of agreement.

The latter part of the answer objected to, as not responsive to the question by defendant's counsel.

154 Q. After the discovery of this mistake, when was the first time that you, yourself, held any conversation in regard to it with the defendant; when did you make any application to the defendant about it. I mean you personally? 10

A. Personally I do not remember to have made any demand upon him in this matter, until just before the commencement of this action, in company with my attorney, John C. Paulison.

155 Q. A week or two before?

A. I think a week or two before. It might have been a month or two before, but no longer.

156 Q. This deed from the executors of Post, for how much property was it? 20

A. About 70 acres.

Re-Direct Examination.

157 Q. You may state here why you did not personally see the defendant, with reference to this mistake before you say you did?

Answer objected to.

A. Because I was frequently informed by my friends and his friends, what his views were upon the subject, and knowing the condition of his mind, did not think that a personal interview with him would tend to a settlement of my claim, and thought that the intervention of mutual friends, would more likely result to this on acceding to my demands upon, or claims upon him. 30

So much of answer as to conversations between complainant and third parties objected to.

And, because, that the delay would not work to my prejudice, and would the more likely result in an amicable settlement. And, because, I was excessively absorbed in pressing business engagements, making it more convenient for me to wait a little time before commencing suit. That is the whole reason I believe.

Whole answer objected to by defendant's counsel.

- 10 158 Q What did his and your friends inform you as to the condition of his mind in reference to this matter?

Objected to as hearsay and indefinite.

- 20 A. They informed me that Mr. Van Iderstine claimed that he had a deed of the whole property, and that he was unwilling to rectify the error by paying me for the lots which had been conveyed to him by the mistake, but that they had frequent arguments with him on the subject, and that they were in hopes that he would eventually reconsider his determination.

159 Q. You have been asked in your cross-examination, in reference to sales made by Mrs. Paulison and yourself, of parts of the property conveyed to her by the executors of Post, on what basis were all of those sales made?

Objected to as irrelevant:

- 30 A. On the basis of so much per city lot in all cases.
160 Q. At the time you had Paulison Addition No. 2 made by S. D. Backus, whose name appears thereon as the maker thereof, and as being a civil engineer, what was his reputation as to his ability as a civil engineer?

A. I do not know enough about his general reputation in that line, but he was well known to be a very competent architect, and a highly educated man, and abundantly competent to do a job of that kind, having divided his time both as architect and civil engineer.

161 Q. What had you known as to his having practiced civil engineering, before that time?

A. I didn't know much about his practice as civil engineer, if I had any knowledge upon the subject; but I had been acquainted with him, as of the firm of Cleveland and Backus, who published a standard work on architecture.

162 Q. Did you know whether or not, he at that time, held himself out as a civil engineer, and ready and competent to accept employment in that capacity? 10

A. He did so hold himself out.

163 Q. In your answer on your cross-examination in reference to the authority you gave Mr. Fritts to negotiate for this exchange, you said, "I then authorized him to negotiate for the exchange provided," and were then stopped by defendant's counsel, will you now give us the balance of what you intended to say on that subject?

Objected to, so far as relates to a conversation between complinant and his agent, and not in the presence of the defendant. Complainants' counsel says he expects to connect this with the following question, bringing it to defendants' knowledge. 20

A. Provided Mr. Van Iderstine was willing to negotiate for the land on the basis of \$350 per city lot, and the house at \$6,500, but that he was not authorized to do any more about the matter, unless he would accede to those terms as a basis.

164 Q. What, if any thing, and did you say to the defendant about that matter, and as to how little of the property on Paulison avenue, between High and Erie streets, you were willing to sell him? 30

A. There was some conversation on that point, I told the defendant I would not sell a part of the property lying between High street and Erie, but that he must take the whole at the rate of \$350 per city lot.

165 Q. When did you tell the defendant these things?

A. At the time already spoken of, when we had the preliminary meeting at office of Mr. Fritts.

166 Q. If you did draw an agreement, of which exhibit P. 2. on part of complainant may be a copy, was it executed by the parties?

A. I have already said that I do not remember of any paper being executed, of which this will be a copy.

167 Q. Was a document similar to exhibit No. 1. on the part of the defendant used at the meeting in Fritts' office?

A. Yes, I think the map accompanying that abstract was referred to.

168 Q. How many meetings had you at Fritts' office with the defendant, in reference to this exchange?

A. Only the one already referred to.

169 Q. Do you remember what time of day that was?

A. Yes, I think between the hours of 10 and 12 in the forenoon.

170 Q. What is your best recollection as to how long before January 17, 1870, you were informed of this mistake in exhibit P. 1. on the part of complainants?

A. My best recollection is, that it was within two weeks.

Re-cross-examination.

171 Q. Where did you ever have any conversation with the defendant, about the terms of sale, before the meeting at Fritts' office?

30 A. I do not remember having had any conversation with the defendant with reference to this exchange, prior to the meeting at Fritts office?

172 Q. Who produced the map or abstract referred to at Fritt's office?

A. I do not recollect.

173 Q. For what purpose was it referred to?

A. For the purpose of looking at the land proposed to be exchanged, the quantity of land.

174 Q. Nothing else done about it?

A. I do not remember now of any other purpose.

175 Q. Wasn't a calculation made as to the amount of purchase money, by reference to this map?

A. There might have been a rough calculation as to about how many lots there was in the tract, but I am quite certain there was no definite sum agreed upon as the result of such calculation.

C. M. K. PAULISON.

10

Sworn to October 28, 1875, }
and subscribed before }
me, March 22d, 1876. }

ISAAC VAN WAGONER,
Master in Chancery New Jersey.

SAMUEL B. FRITTS, a witness produced on part of complainants being duly sworn according to law on his oath 20
deposeth and saith :

I reside at Passaic, New Jersey ; I have resided there eleven years. I am acquainted with the complainants and defendant in this case ; I have known defendant eleven years, I have known the complainants twenty odd years. During the last nine or ten years the complainants and defendant have been neighbors living in the same place. I was in business in 1869, as a real estate agent and broker, for the purchase and sale of real estate for other 30
parties. I commenced in that business in the latter part of 1866 I think, in the Village of Passaic.

176 Q. Had you anything to do as a real estate agent in effecting the sale of the property described in Exhibit P. 3, now shown you?

A. I negotiated the exchange in that matter.

177 Q. Please state what you did in negotiating that exchange, giving us the whole history from the commence-

ment of your negotiation with the defendant in reference to this matter?

Objected to, so far as calling for answer as to conversations with complainants in the absence of the defendant.

A. The introduction of this matter with the defendant in my negotiation with him came about in this way. If
 10 my recollection serves me, he talked with me about the selling of his house in River street, which is here in question. I had been making a number of exchanges for Mr. Paulison prior to this, unimproved for improved, Mr. Paulison's unimproved. I mentioned this fact to the defendant and that I thought I could effect an exchange for this River street property advantageous to both parties. After this, from time to time, Mr. Van Iderstine and myself did have conversations in relation to an exchange, running along for some considerable time during which
 20 he stated what price he wanted for his property and I giving him the price of Mr. Paulison's property at \$325 per lot. The defendant's first price was \$7,000 for his property, what I understood and conceived to be the delay in the matter in consummating the exchange was that Mr. Van Iderstine did not want to take so large a piece of property, upon which I told him I could not get Mr. Paulison to entertain the matter unless he would exchange for the whole property, which was at first the property fronting on Paulison avenue and running from
 30 Erie street to High street, and 182 feet I believe in depth; during our negotiation at different times I sold a plot for Mr. Paulison off this property on the corner of Paulison and High street. It was 60 feet front by 122 feet in depth, if my memory serves me right. Directly after this I informed Mr. Van Iderstine in a further conversation about this deal, that Mr. Paulison had raised his price to \$350 per lot, and told him that if he had have closed with him prior to this he would have saved \$25

per lot. Mr. Van Iderstine's reasons to me from first to last was that he did not like to take the responsibility of carrying so much property. It was the only reason I recollect of his giving to me in not closing during the negotiation. Next Mr. Van Iderstine came to my office and introduced the subject. I think he introduced it, I am quite sure he did. He told me that he had concluded to make the deal with Paulison for the whole property, if Paulison would not deal with him for a part. I told him that Paulison would not deal unless he took it all. Well 10
 he says, I knew how much was in it, I will make the deal. He asked me if I knew how much was in it; I took a map I had of it and made a calculation as quickly as I was able to, I could not get at it exact for the reason that there was an arc of a circle on one end of it on Erie street. I told him that I made it so many city lots, I don't recollect how many, and then I calculated it by \$350 a city lot amounting to so much, how much I don't recollect, It was there distinctly understood between Mr. Van Iderstine and myself. 20

This answer objected to.

To consummate the negotiations that had been carried on between Mr. Van Iderstine and myself.

This conversation, I have stated was not more than one or two days at the longest before the date of this paper, Exhibit P. 2.

The day following this conversation, I think it was the day following, in the afternoon, if my memory serves me, I arranged to have Mr. Paulison and Mr. Van Iderstine meet at my office. They both knew the object of the meeting and there took the negotiation out of my hands. 30

178 Q. You stated that a day or two before this, when the defendant came into your office and informed you that he had concluded to make the deal with Paulison, that you took a map you had to calculate the quantity of land, as nearly as you could, what map had you and to which you referred?

A. It was a map made on tracing cloth of this very property in question.

179 Q. What relation, if any, had that map, with Exhibit, P. 1, on the part of complainants now shown you?

A. It was the same thing in dimensions. It was a copy. It was larger.

180 Q. Do you know from what it was traced?

A. I do not. I don't think it was traced. It was made by John S. Strange. It was a copy of Paulison
10 Addition No. 2, as filed in the Passaic County Clerk's office, of which Exhibit P. 1, is on a smaller scale, lithographed.

181 Q. You said you understood the delay in the matter of consummating the exchange was, that Mr. Van Iderstine did not want to take so large a piece of property, from whom did you so understand?

A. From Mr. Van Iderstine himself.

182 Q. You have brought the negotiation down to the time Paulison, Van Iderstine and yourself, met in your
20 office on the day or the day before, P. 2, on the part of complainant was drawn; please state what passed between the defendant, and either or both Paulison and yourself, at that time in regard to this exchange?

A. On coming together Mr. Van Iderstine and Mr. Paulison entered into conversation in relation to the understanding of Mr. Van Iderstine and myself. It is a hard thing for me to tell what they said in the very words. The price of \$6,500 for Mr. Van Iderstine's house was agreed upon between them, and the price of
30 \$350 per lot for Mr. Paulison's property was agreed upon between them, and then a calculation was made by Mr. Paulison, sitting at my desk and Van Iderstine beside him. The calculation was made by Mr. Paulison in figures as to the quantity the whole area contained and what it amounted to at the price \$350. Mr. Paulison to take Mr. Van Iderstine's equity in his River street property, and Mr. Van Iderstine to give Mr. Paulison a mortgage back on the property, from Paulison for the differ-

ence whatever that was. It was mentioned what the difference was. I can't recollect just what that difference was.

Examination adjourned to Friday 31st instant, 10 o'clock, A. M., at same place.

FRIDAY, MARCH 31, 1876. Examination of witnesses 10 continued in the presence of the same counsel.

SAMUEL B. FRITTS, *direct-examination.*

182 Q.--Answer continued.

A. Upon Mr. Paulison stating to Mr. Van Iderstine, the amount he would take in mortgage, Mr. Van Iderstine upon reflection for a moment or so, made answer that he would do it. Then some talk between them was had as to the time they would pass the papers, which time was agreed to be as soon as it could be practically done. Mr. Paulison said if you will bring me or send me your deed, I will at once search the title of your Mr. Van Iderstine's property. Mr Van Iderstine furnished Mr. Paulison, with the data necessary for him to make a search. I don't recollect distinctly whether he handed it to me or not. I think he did. After this my first meeting with them was at Mr. Paulison's house in the evening. It was one or two evenings subsequent. I can't say whether it was the next evening subsequent to that day. It was the next or the next one. There Mr. Paulison had both the deeds written and a mortgage. At that meeting there was some more figures made by Mr. Paulison, in relation to the transaction. What the result of that in changing the price, if at all, from the first as arrived at in my office, I do not now recollect. It is my impression that the papers were passed between Mr. Paulison, and Mr. Van Iderstine,

that evening, although as to that I am not positive. That is my impression.

183 Q. Was the defendant present with Paulison when he did the figuring at his house on that occasion?

A. The defendant was present.

184 Q. What, if any thing, was used by Paulison, in his figuring?

A. Small slips of paper.

10 on which, he made his figures, but what data or basis was used, from which his figuring was made?

Objected to as leading.

A. On the same basis and data as that at the first at my office.

186 Q. Was a map of that property in P. 2, used by Paulison on that occasion?

20 Objected to as leading.

A. Such a map was used.

187 Q. What kind of a map was that used by Paulison on that occasion, as compared with the map, Paulison Addition No. 2, contained in exhibit 1. on the part of the defendant?

30 Objected to as improper. The counsel for defendant insisting that the map should be produced and proven.

A. It was a map like this.

188 Q. Do you mean an exact copy of that lithograph map?

A. Yes.

189 Q. What, if any thing, was said between Paulison and Van Iderstine, in reference to the deed while Paulison was making that calculation, or while you were all together at his house at that time?

A. In that calculation, Paulison made a slight increase in the amount. It was comparatively small. I don't recollect how much. A few words passed between Paulison and Mr. Van Iderstine in relation to it, in another a playful sense. I don't recollect what there was, Mr. Van Iderstine addressing me, myself, playfully said Fritts, Paulison is always bound to have the best of it; whatever the difference was, was acquiesced in. That is all I have to say. I am through with my answer.

190 Q. What difference do you mean, and who acquiesced in it; what was said in that connection? 10

Objected to, as improper in form and calling for witness' opinion, and not for the language or conversation which took place.

Question as altered, objected to as leading.

A. The difference I mean was that arrived at by Paulison, in his calculations in my office, and his calculation made at his own house, Mr. Van Iderstine acquiesced in it. Mr. Van Iderstine said to me, Paulison is always bound to have the best of it. 20

191 Q. Do you know how that slight increase happened to be made; or did Paulison say, at that time in Van Iderstine's presence how it came to be made, what the reason of it was?

Objected to as leading.

A. Mr. Paulison stated he had not been correct in his first calculation. Other reason than that, if then given, I have no recollection of. 30

192 Q. Did Paulison then state in what respect, he had not been correct, in his first calculation; if so, state what he said about that in Van Iderstine's hearing or to him?

Objected to, as leading and improper in form.

A. He did; but it is so long ago that I do not recollect what it was.

193 Q. Do you know whether or not the consideration or amount of the mortgage, from the defendant to the complainant, Anna Paulison, given to secure part of the purchase money of P. 3, was already inserted therein, before he made his calculation at his house at that time?

A. I don't know if it was or not.

10 194 Q. Can you tell us by referring to exhibit P. 1, on the part of complainant, what figures you used in calculating the amount to be paid by Van Iderstine for the property in P. 3, at the time the defendant first informed you that he had concluded to make the deal?

A. I took the dimensions from a certain map, which I had in my office, made on tracing cloth. From that I took the line front from Erie street on Paulison avenue, to within 60 feet of the corner of Paulison and High, on Paulison avenue, I used.

20 Counsel for defendant objects to the witness reading from exhibit P. 1.

I used the figures from a map which I had in my office, which I know to be a copy of P. 1.

195 Q. What is your best recollection as to the number of lots you made that tract to contain by that calculation?

30 A. My best recollection is that in my calculation I made that tract to contain twenty-nine city lots and a fraction.

196 Q. Do you remember the substance of what was said by Paulison and the defendant at your office, when the bargain was closed, as you have stated, if so, please give it?

A. The substance was the transaction. I don't recollect the conversation. It was all in relation to their deal which they both there agreed upon.

197 Q. Give us what you do remember, please?

A. Mr. Paulison took the equity in Mr. Van Iderstine's. I can't say the conversation was that. The substance was that. I can't give you the substance more than that. That was the result.

198 Q. Was any other agreement written in reference to this deed than P. 2, that you know of?

A. Not that I had any knowledge of.

199 Q. Do you remember what figures were used by Paulison, and Van Iderstine, in making calculations of number of lots on this tract contained in P. 3, at your 10 office, at the time the bargain was closed?

Objected to as improper in form.

A. The figures that were upon the map, they used the same figures I had.

200 Q. Was there any thing in the defendants manner or conduct at the time he came to your office and informed you he had made up his mind to take this property in P. 3, that attracted your attention, if so 20 what?

A. Not at that time.

201 Q. When, in reference to that time did it, if at all?

A. It did not at all.

202 Q. Did the defendant at any time, after he had received P. 3, from the complainants, tell you what made him conclude to take this property at the time he did, if so, when and what did he tell you?

Objected to as leading. 30

A. A short time after the titles got passed, defendant told me that a very short time before he came to me, he see Demarest Hopper, on the ground walking over it, and that either Hopper or some one else, which I do not now recollect, told him Hopper that thought of purchasing it, and that he came right of to me and closed it at once. 9

203 Q. Did you ever hear the defendant say any thing as to his receiving the several considerations expressed in his deed for this property in P. 3, to Kilgour, Outwater, and Hall, if so what did he say?

A. I have; that he had sold to each of these parties plots containing about so many lots, the number of which I don't recollect, and prices varying, which I don't now recollect. I never heard him say any thing as to his receiving the considerations.

10 204 Q. What, if any thing, did the defendant tell you as to the basis on which he sold this property to Kilgour, Hall, and Outwater?

Objected to, as improper in form and leading.

A. On the basis of a city lot.

205 Q. Were you acquainted with the market value of real estate in Passaic, including the property in P. 3, in March, 1869?

20 A. I was.

206 Q. What, at that time was the fair market value of that property in P. 3, per city lot of 2,500 square feet each?

Objected to as irrelevant.

A. I consider \$350 was a fair market value.

Cross-examination.

30 207 Q. How did the market value of real estate in Passaic, in 1875, say in February, compare with the market value of the same real estate in 1869; was there not a general depression in real estate?

A. Some real estate would be higher in 1875, other classes of real estate wouldn't bring as much.

208 Q. Speaking generally, has there not been a depression in real estate between those two times mentioned?

A. Generally there has.

209 Q. Can you form any idea as to what per cent., speaking generally?

A. Some classes 10, 15, to 20 per cent.

210 Q. Where did the defendant have a conversation with you about his sale to Outwater?

A. I don't recollect whether it was in my office, in the street, or some one's place.

211 Q. Do you recollect whether it was in one of these three places? 10

A. Yes.

212 Q. When was it?

A. After he had sold.

213 Q. What time I mean; how long ago?

A. Soon after he sold to Mr. Outwater.

214 Q. When did he sell?

A. I don't know.

215 Q. Well, what did he say?

A. He had sold Mr. Outwater, one of those plots on Paulison avenue. That is all I recollect. 20

216 Q. Is that all he said to you about the sale to Outwater?

A. He further said, mentioned the price he got per lot.

217 Q. You are certain he said he got so much per lot did he?

A. I won't be positive, I think so.

218 Q. Is your memory clear about what took place; do you recollect distinctly?

A. I can not recollect distinctly after so long a lapse of time. 30

219 Q. What was the conversation about, with regard to the sale to Hall, telling when and where and what it was?

A. I don't recollect where it was. It was in the city of Passaic. It was after he had sold to Mr. Hall. He told me of the sale to him and in order to effect it, Mr. Hall made it a condition that Mr. Van Iderstine should get from Mr. Outwater, his lot lying between Mr.

Kilgour and this that Mr. Hall was buying from Mr. Van Iderstine, and that he had done so. That is all I recollect, I asked him what he had got for it. He told me. I don't recollect how much he told me. I could not give you the exact figures. I think it was about \$600 per lot.

220 Q. Do you mean he told you that?

A. Yes.

10 221 Q. Didn't he tell you just what price he got for the whole property in lump?

A. Yes sir, I think he did.

222 Q. Was it not \$7,000, he got for what he sold him, and didn't he tell you so?

A. I don't recollect, I think it very probably that he did.

223 Q. Don't you know that this price would not be \$600 per lot, or near it for what he sold Hall?

20 A. No sir, I know nothing of the sort, for I didn't know how much or little he had left after selling Kilgour and Outwater.

224 Q. He told you then, he told you he had sold what he had left?

A. He told me he had sold what he had left.

225 Q. You think he told you the price he had got for it \$7,000?

A. I think he told me what he had got for it.

226 Q. Now do you recollect any thing else he said about the sale to Hall than this?

30 A. I do not, I want to correct myself, I do. There was an assessment for street improvements, for curbing, guttering, &c., that Hall insisted on that he should pay, or pay a part, which he had agreed to do, or had done.

227 Q. About the sale to Outwater, did he not tell you the sum for which he had sold to him \$2,975, and that the plot was 80 feet front?

A. I don't recollect what the amount was that he got, that he told me he had got, I recollect he told me that Outwater jewed him down.

228 Q. Didn't he tell you that he asked \$3,000, and Outwater squeezed him down \$25?

A. I think it is very probable he did.

229 Q. Do you recollect about any other paper being signed or prepared at that meeting, when the parties were at Mr. Paulison's house, when the deeds were delivered, than the deed and bond and mortgage?

A. No.

230 Q. Do you recollect any arrangement, or agreement with reference to the property, other than those contained in the deed and bond and mortgage at that time? 10

A. Yes sir, it was a verbal agreement, I think that Mr. Paulison should reserve and move a barn standing on the premises, on or before a certain time, he was to have the use of it some months.

231 Q. Was it not until the first of July, if you recollect?

A. I don't know, I can't recollect these things.

232 Q. He didn't pay any thing extra, or allow any thing to Mr. Van Iderstine for this, did he? 20

A. Not that I know of.

233 Q. When was it that Van Iderstine said Paulison was bound to have the best of it, just before the papers were passed, or what part of the conversation; do you recollect?

A. The same evening before the papers were passed.

234 Q. Before, or after this verbal agreement was made?

A. I am not certain, I think after the verbal agreement was made. 30

235 Q. In the conversation at the house, was any thing said about the consideration in deed being \$11,000, instead of \$10,900?

A. Yes, there was something said about the consideration in the deed being more than the sum agreed upon. I don't know whether that was \$100 more or not.

236 Q. Witness shown Exhibits 2, 3 and 4, on the part of the defendants, he is asked—

In whose handwriting are the written parts of those papers?

A. Exhibit 2, I don't whose handwriting it is in; Exhibits 3 and 4, are in Charles M. K. Paulison's handwriting.

237 Q. Being shown Exhibit P. 2, he is asked—

In whose handwriting is the written part of that paper?

A. That is in mine.

238 Q. When did you write this?

A. It is dated March first, 1869. I think I wrote it on
10 the day or evening when it bears date.

239 Q. Where did you write it?

A. I think I wrote it in the library of C. M. K. Paulison, at his house.

240 Q. He was present?

A. I don't distinctly recollect, I think he must have been.

241 Q. Why do you think so?

A. The blank upon which it is written bearing his name in print. I couldn't have got that unless he gave
20 it to me. The scrolls at the bottom of the first page being Mr. Paulison's.

242 Q. How did you receive directions as to the filling up of this agreement. I mean how did you know how to fill up the agreement which Mr. Paulison gave you?

A. I received the data from Mr. Paulison on a slip of paper in pencil mark, written with a pencil, with all the figures, conditions, price, &c., and with a good deal of Mr. Paulison's phraseology I used, and some little of my own.

30 243 Q. Is your recollection clear as to the paper you had in drawing that?

A. Yes, sir; quite clear.

244 Q. What did you do with that paper after you had drawn this agreement?

A. Left it, must have left it at Mr. Paulison's where I think I drew the agreement.

245 Did you leave it with him?

A. Yes, sir; that is my impression.

246 Q. Have you ever seen it since?

A. I have not.

247 Q. What did you do with this agreement after you wrote that?

A. I took it to my office.

248 Q. For what purpose was it written?

A. To be signed by Mr. Van Iderstine and Mr. Paulison.

249 Q. The sum mentioned in this agreement is \$10,900; at the meeting between the parties in your office, was not that sum mentioned? 10

A. I don't recollect whether it was in my office.

250 Q. Was not the sum of \$7,100 for mortgage to be given by Van Iderstine mentioned?

A. The amount of the mortgage, the sum was mentioned which the mortgage was to be given. I don't now recollect now whether it was just \$7,100.

251 Q. Mr. Paulison, as I understand you stated in your direct-examination, an amount which he would take in a mortgage upon the property and that after stating that Mr. Van Iderstine reflected for a moment. Do you recollect that occurrence distinctly and what was the location of the parties in your office at that time? 20

A. I recollect that occasion distinctly, I think they were sitting side by side on chairs at my desk, though one or both might have been standing up.

252 Q. How long did Van Iderstine reflect, or hesitate before replying?

A. A very short time.

253 Q. What was Paulison's language to him---mentioning the sum for which he would take a mortgage, if you recollect? 30

A. It was this very near, I will take the equity in your property in River street, and you shall give me a mortgage back for the amount, the difference. That was the substance.

254 Q. Did he not mention that difference in the proposal, did he not say, I will take the equity in your

property on River street for \$3,800, and you shall give me a mortgage back for a sum which he then specified, but the exact sum which you do not now recollect?

A. I think he did.

255 Q. And in answer to that what did Mr. Van Iderstine say, after reflecting as you have before stated?

A. Well, I will do it.

256 Q. What was said about when the deeds were to be passed?

10 A. Soon as it could be done.

257 Q. Now was not this change in the amount of the consideration of the deed from \$10,900 to 11,000, spoken about at the meeting at Paulison's house?

A. It was.

258 Q. Was it not in order to have the consideration in the deed an even thousand, and did not Mr. Paulison, say that was his way of having them made out?

A. He did say something to that effect.

20 259 Q. Was that said in reference to the consideration being \$11,000, instead of \$10,900?

A. That I dont distinctly recollect; I recollect Mr. Paulison saying \$11,000, will make it even money, or even thousands.

260 Q. Did he not say that was his custom in filling in the consideration of his deed?

A. I think he did, where fractions came near round numbers.

261 Q. Witness shown exhibit 1, on the part of the defendant, he is asked,

30 Wasn't that paper shown or produced at the time the deed and other papers were passed?

A. Yes.

262 Q. Didn't the defendant buy it there of Mr. Paulison, and pay him \$3.00 for it?

A. He did.

263 Q. You say that you calculated the number of lots to be twenty-nine and a fraction; did you tell Mr. Van-Iderstine what the number was?

A. Yes.

264 Q. Did you tell him there was about twenty lots ?

A. I told him what I then made it. My recollection is 29 and a fraction.

265 Q. When was the price of Mr. Van Iderstine's property fixed at \$6,500, instead of \$7,000, which you say he first proposed ?

A. I don't remember. Previous to the closing of the trade I think.

266 Q. Can you recollect distinctly, what passed at each of these interviews. I mean what passed at one interview and what passed at another ; I speak of the interviews before the meeting of the parties at your office, and between you and the defendant ?

A. I recollect the substance of the interviews, between the defendant and myself in relation to this matter.

267 Q. What relation are you to the complainant ?

A. My wife and he are brother and sister.

Re-Direct.

20

268 Q. May not the paper produced and used at the meeting at Paulison's house, have been a copy of Exhibit 1, on the part of the defendant, instead of that very paper ?

A. Yes it may have been, Mr. Paulison had several of those.

269 Q. Was it before or after Paulison, with the defendant, had made a calculation from Paulison Addition No. 2 that, he said to the defendant, he would take a mortgage for a certain amount which you think he mentioned, and the defendant said he would do it ?

A. It was after he had made a calculation.

270 Q. When Paulison gave you date on slip of paper, from which to prepare the agreement, was the defendant present and did he know the contents of that slip ?

A. I don't recollect distinctly, whether it was at my office that that was given me by Paulison, or at his

house. If it was at the office, the defendant must have been present. If at the house he was not.

S. B. FRITTS.

Sworn to March 22, 1876, }
and subscribed March }
31, 1876, before me, }

ISAAC VAN WAGONER,
Master in Chancery, New Jersey.

10 Examination of witnesses adjourned by consent, to Monday, April 10, 1876, 10 o'clock A. M., at same place.

APRIL 10, 1876. Examination of witnesses by consent, adjourned to April 22, 1876, 11 o'clock A. M., at same place.

20 APRIL 22, 1876. Examination of witnesses continued in the presence of same counsel.

JOHN S. STRANGE, a witness produced on the part of the complainant being duly sworn according to law, on his oath deposes and saith:

271 Q. Where do you reside?

A. Passaic.

272 Q. What is your business?

A. Surveyor.

30 273 Q. How long have you been engaged in that business, and how much of the time in Passaic?

A. About 28 years in the business, and about 9 years in Passaic, nine years last past.

274 Q. Exhibit P. 5. shown to witness, he is asked, who made that map, if you know?

A. I made it.

275 Q. When?

A. I made the survey for it December 29, 1869. The map was made January 17, 1870.

276 Q. At whose request did you make that map?

A. Mr. Paulison's, one of the complainants in this case.

277 Q. State the circumstances under which Paulison requested you to make that survey and map?

Objected to, so far as it may call for conversations between complainant and witness in the absence of the defendant.

A. I had been engaged in making a survey for the opening of Paulison avenue for the village of Passaic, and in chaining down the block from High street to Erie street, I discovered considerable error in comparing my chaining with Mr. Paulison's map, Paulison Addition No. 2. I then told Mr. Paulison of it, and he requested me to make a particular survey of that block between High street and the Erie Railroad, for the purpose of ascertaining the accurate measurements. 10

278 Q. When did you make a particular survey of that property between High and Erie streets, at Paulison's request? 20

A. About December 29, 1869.

279 Q. When did you chain Paulison avenue along this property for the village of Passaic, when you say you discovered a discrepancy between your chaining and Paulison Addition No. 2?

A. The chaining was made September 27, 1869.

280 Q. Did you, after you discovered that discrepancy have a conversation with the defendant in reference thereto; if so, when and what did you tell him, and what if any thing, did he reply? 30

A. I told him of the discovery of the error about the same day that I found it, and he said that he thought there was more land in there, for he and another man had stepped it; that was all the conversation.

281 Q. What did you tell him about that discovered discrepancy?

A. I told him there was about two hundred feet more in there than Paulison's map called for.

282 Q. Are Erie street, Paulison avenue and High street, as laid down on Exhibit P. 5., the same streets located at the same place as those streets respectively laid down on Exhibit P. No. 1?

A. Yes, they are intended for the same streets.

10 283 Q. Were those streets when you made your survey in December, 1869, from which you made P. No. 5, located in the same places, as the same streets existed when P. No. 1, was made, and as indicated on that map P. No. 1?

A. Yes, they are the same streets. High street was fixed by the filed map, Paulison Addition No. 2, and Coffin and Renworth's filed map.

284 Q. What is the distance along the southwesterly side of Paulison avenue, between the southeasterly side of High street and the northwesterly side of Erie street?

A. 591 $\frac{8}{10}$ feet.

20 285 Q. What is the distance between the southeasterly side of High street and the northwesterly side of Erie street, at the distance of 182 feet, southwest of Paulison avenue and parallel with Paulison avenue. In other words what is the length of the southerly side of the property in question as described in P. 3?

A. 706 $\frac{1}{10}$ feet.

286 Q. On what scale is P. No. 5, made?

A. 60 feet to an inch.

30 *Cross-examination.*

237 Q. How did you fix the Erie Railway corner from Paulison avenue. How do you know their property goes only to there?

A. Having the line of the Erie Railway, knowing the width of their track, the track being 60 feet wide there, after taking 30 feet from the centre line, and taking 25 feet for Erie street. It fixes that corner.

288 Q. That is the way you fixed the north-east corner, is it?

A. Yes.

289 Q. Did you fix the south-east in the same way?

A. Yes.

290 Q. Erie street was not laid or staked out then, was it?

A. It was laid by this filed map of Paulison's and nothing else. No stakes on the ground. There was a stake at the southerly corner of the property, at the intersection of the back line of the property in question with Erie street, as laid on the map. 10

291 Q. Then Mr. Strange, if the Erie Road was more than 30 feet from the centre of the track, those corners are not right, are they?

A. Yes, at that point.

292 Q. How do you fix the day when you made the first survey or chaining of this property, when you made the discovery of the discrepancy?

A. From an entry in my diary for that year. 20

293 Q. Have you got that diary here?

A. No.

294 Q. When did you last see that entry in your diary for that year, so that it is fixed in your mind as to the entry?

A. I can't answer the question exactly. I have looked at it several times within the last month. I have seen it three or four times I know.

295 Q. Was it not the seventh of September?

A. No. 30

296 Q. Will you produce your diary.

A. I will if called on.

297 Q. Your own memory of the precise date is from that book?

A. Yes.

298 Q. How soon after this measurement did you inform Mr. Paulison that there was an error in his map?

A. I think it was the same day.

299 Q. Did you tell him about what the amount of difference you made was?

A. I told him there was about 200 feet in round numbers difference.

300 Q. You were City Surveyor at that time, were you not?

A. I was Deputy City Surveyor at that time, acting for the city.

10 301 Q. At the time when you made the survey on September 27, what was the condition of the property marked Paulison avenue, as to use?

A. It was all rough, ungraded and grown up with bushes part of the way. There were the remains of an old stonewall in the centre, the division line between the Van Wagoner and the Post property. The stonewall was about five feet wide in some places, probably about 2 feet high, a great deal of brush over it.

302 Q. When did he give you the order to make this survey, can you fix that?

20 A. I can not.

303 Q. Was it not sometime before, two or three weeks before you did the work?

A. It might have been but I think not. He was in a hurry for it at the time.

304 Q. You have no memorandum which would fix the exact time of giving the order?

A. Nothing.

Re-direct-examination.

30

305 Q. About how long before you made your survey from which you made P. 5, had the Erie Railway or Railroad been established and located along this property, as and where it was at the time you made that survey?

A. I can only answer that from the record of their survey, at the time it was sold to the Erie Railroad Company, when it was sold to them by the Hudson River Railroad Company. They had a survey made at that

time in 1851. The line of the Railroad is taken from that survey; I ran it myself, and that record was made from the track after the rails were laid. The location has been the same since 1851 at least.

306 Q. What is the width of the Erie road at the point where you measured the thirty feet as you have said?

A. The whole width of their road at that point is 60 feet, as appears from their recorded deed.

307 Q. About what time, from your recollection, independent of any entry you may have in your diary for 10 1869, did you discover that discrepancy spoken of?

A. My recollection is that it was between the latter end of September or the beginning of October.

JOHN S. STRANGE.

Sworn to and subscribed before)
me, April 22, 1876.)

ISAAC VAN WAGONER,
Master in Chancery, New Jersey.

20

RICHARD OUTWATER, a witness produced on the part of the complainants, being duly sworn according to law, on his oath deposeth and saith :

308 Q. Where do you reside, and how long have you resided there?

A. Passaic, New Jersey. About seven and a half 30 years.

309 Q. Are you acquainted with all the parties to this suit?

A. I am.

310 Q. Did you purchase some real estate from the defendant in 1872?

A. I have no recollection of the date. I purchased real estate from the defendant.

311 Q. Exhibit P. No. 8, being shown to witness, he is asked,

Is that certified copy a deed from the defendant to you?

A. I suppose this is a copy. The original deed I have lost.

312 Q. When, in reference to the date of that exhibit, P. 8, did you bargain for and purchase the property described in that deed?

10 A. About this time.

313 Q. How much did you agree to give the defendant for that property, and how much did you give him?

A. I think about three thousand dollars, as near as I can remember without having any thing to look at.

314 Q. Was the true consideration of your purchase inserted in the deed of which P. 8, is a certified copy?

Objected to as inquiring as to contents of paper which should be produced.

20

A. I don't understand that exactly, I think it was.

315 Q. How did you fix upon and arrive at the amount of the consideration of that purchase?

Objected to as immaterial.

A. I think the price was so much per plot, \$3,000 as I remember.

30 316 Q. Do you mean that it was so much for the plot without regard to the quantity there might be contained in that plot?

A. The measurement was about 80 feet front I think, by 180 odd feet deep.

317 Q. Question 316 repeated.

Objected to as the answer is full.

A. I don't think there was any particular figuring on it at the time, as to the contents.

318 Q. Did you have any agreement or memoranda in writing in reference to this purchase before the deed was delivered, other than the deed?

A. There might have been a memorandum of minutes, but no particular signed memorandum.

319 Q. Witness shown exhibit P. 8, he is asked:

Refreshing your recollection by that exhibit, what was the real consideration you paid the defendant for that property?

A. \$2,975.

10

320 Q. How much of that sum have you actually paid him?

A. The whole it. I paid him the \$2,975.

321 Q. When, as nearly as you remember, did you so pay him?

A. At different times. That is all I remember.

322 Q. About when did you make him the last payment?

A. I have not the slightest recollection.

323 Q. Cannot you tell whether it was 12, 18, or 24, or 20 more months ago?

A. It might possibly be two years and a half. It is certainly over a year and a half.

324 Q. Do you mean to say that that consideration of \$2,975, was arrived at without regard to any subdivisions of that plot?

A. I don't remember. I can not say.

325 Q. May it have been at a certain sum per city lot of 2,500 square feet each?

30

Objected to.

A. I don't remember.

326 Q. Was the exact number of feet in that plot ascertained by you, before you bargained and concluded with the defendant for that property?

A. I think not.

The certified copy mentioned and referred in this witness' testimony, is offered in evidence on the part of the complainants, and is marked Exhibit P. 8.

Cross-examination.

327 Q. Don't you remember that defendant asked you \$3,000, for the plot and that you offered to give \$2,975 for the plot, and that the bargain was concluded on the latter figure?

10 A. The bargain was concluded on the latter figure. The \$25, was something, either a commission or a deduction from the regular price.

328 Q. You saw the property before you bought it I suppose?

A. I knew the property.

RICHARD OUTWATER.

Sworn to and subscribed before me, April 22d, 1876. }

20 ISAAC VAN WAGONER,
Master in Chancery New Jersey.

WILLIAM H. TICE, a witness, produced on the part of the complainants, being duly sworn according to law, on his own oath, deposeth and saith :

329 Q. Where do you reside?

A. Nantucket, Massachusetts.

30 330 Q. Where did you reside in 1869, 1870, and 1871?

A. In 1869 and 1870, I resided on Main avenue, Passaic, New Jersey. In 1871, I moved to Nantucket.

331 Q. When you resided at Passaic, were you acquainted with the parties to this suit?

A. Yes.

332 Q. Before you removed to Nantucket, had you heard any thing about the sale of property on Paulison avenue, High and Erie streets, from the complainants to

the defendant, and of the discovery of an error in the measurements on those streets, or one or more of them, after that sale?

A. I had.

333 Q. When and what did you learn as to the extent of that error?

Objected to, as irrelevant.

A. I heard through Mr. Van Iderstine and perhaps 10 from other persons, it was a rumor quite public at the time around the town.

Any information expect as from the defendant, objected to by defendant's counsel.

Mr. Van Iderstine said there was more lots than he supposed there was in that piece of ground. This, what I am now giving, was after the error was discovered. I afterwards saw Mr. Paulison coming on the cars from New 20 York, and had a conversation in reference to the matter.

334 Q. After you first learned of this error, whom did you first see and talk with about it, the complainant Mr. Paulison, or the defendant?

A. Defendant.

335 Q. When, in reference to the Spring of 1869, was it that you saw the defendant about the error?

A. I can't fix no time. It passed from my mind, we were neighbors and frequently talked to each other; incidentally I learned this matter. 30

336 Q. What is your best recollection as to about the time you first spoke to the defendant about this error?

A. Well I really can't fix any day, perhaps not till July or August, 1869.

337 Q. Please to give us as nearly as you can the conversation you had at that first interview with the defendant about this error?

A. He simply stated that he had bought a piece of

ground as it lay by the bounds, supposing there was a certain number of lots in it, but there proved to be more, the estimated value of the piece when he bought it was about \$350 a city lot. That is all.

338 Q. What did you say, if anything?

A. I might have remarked that he had got a good bargain.

Adjourned to 2 o'clock P. M.

10

2 o'clock P. M.

WILLIAM H. TICE, on *direct-examination*.

339 Q. Did you have any conversation, or conversations with the defendant with regard to that error, at any time or times, after that first interview you have spoken of; if so, please state when as nearly as you can and the conversation or conversations as nearly as you can?

A. Well I think sometime in November of that year, at the suggestion of Mr. Paulison, I did have a conversation with the defendant with regard to this matter. I spoke to the defendant of talking with Mr. Paulison in coming up in the cars from New York City, I told the defendant that he wished me to speak to Mr. Van Iderstine about compromising the matter, Mr. Paulison didn't wish to have any difficulty in the matter, he wished to meet
30 Mr. Van Iderstine half way, and didn't wish to have any trouble about the matter; Mr. Van Iderstine said he had bought the piece of ground as it lay without any regard to dimensions, and it was clear to me, that was his understanding of the matter. That was about the substance of the matter as I understood it at that time.

Counsel for complainants objects to the statement by the witness in his answer.

We had once or twice, we referred to this subject, and Mr. Van Iderstine invariably insisted that he had bought the ground as it lay.

340 Q. Did you ever, before removing to Massachusetts, say anything, or suggest to the defendant that he ought to pay the complainants for the excess in the number of lots over what they supposed was in this tract, at the time of the conveyance from the complainants to the defendant, if so state when and what you told him or suggested to him about that matter? 10

Objected to, as leading and irrelevant.

A. No farther than to advise to settle with Mr. Paulison as easy as possible, that he had better do it; I thought so. Mr. Van Iderstine knew his own business best. That was my opinion. I said so to him several times.

341 Q. Did you give the defendant at these times when you so advised him your reasons for that advice, if so, what reasons did you give him? 20

Objected to.

A. I don't know that I gave him any reasons, that was my opinion.

342 Q. Did you after having given that advice to the defendant say anything to the complainants or either of them, as to the fact of your having had those conversations with the defendant and having given him that advice, if so, what did you tell them? 30

Objected to, if calling for conversations in the absence of the defendant.

A. I am not aware that I have had any conversations afterwards, I might have had but I am not aware of it.

343 Q. Do you mean that you have never told Mr.

Paulison that you had given the defendant advice to settle and compromise this matter of difference with the complainants?

A. I think it probable that I did tell Mr. Paulison that I had spoken to Mr. Van Iderstine and advised him to settle, my memory is not very clear.

Cross-examination.

10 344 Q. Wasn't the first conversation you had with Mr. Van Iderstine after Mr. Strange had discovered the mistake?

A. It was.

345 Q. That was spoken of as the way in which it was discovered, was it not?

A. Yes.

346 Q. This first conversation you had was after Strange had discovered the mistake, was it not?

20 A. It was. I mean that nothing was said about the quantity of land, until after Strange had discovered the mistake.

347 Q. Now wasn't this what was said about the quantity of land. That the quantity had turned out to be more than would appear by Paulison's map?

A. No, that was not what was said, simply what was said was, that there was a certain number of lots in that piece more than there was supposed to be. That is all.

30 348 Q. More than was supposed to be by Paulison?
A. By Mr. Van Iderstine. Up to this time I had never spoken to Mr. Paulison about it.

349 Q. How do you know that this conversation was after Strange had discovered the mistake. Did Mr. Van Iderstine tell you that Mr. Strange had measured it or found the mistake?

A. No, he only said there was more land than he supposed to be.

350 Q. You knew there was talk about a mistake having been discovered by Mr. Strange?

A. I really didn't know who discovered the mistake, but Mr. Van Iderstine said there was a mistake in his favor.

351 Q. Can you recall the words of that conversation, is your memory clear about it?

A. Mr. Van Iderstine said he had bought that piece of land. That he had made a good bargain for he found there was more land than he thought there was. That was all that was said about it, I believe.

352 Q. That is all you recollect about the conversation, is it? 10

A. Yes.

353 Q. He said no more than that, or to that effect, did he?

A. To that effect.

354 Q. And you say in your other conversations with Mr. Van Iderstine that he always insisted that he had bought it as a tract, bought it as a tract altogether?

A. Yes.

355 Q. And not by the city lot? 20

A. Not by the city lot.

356 Q. How do you fix the time of the first conversation in July or August, when the error was discovered in September?

A. I did not fix the time. I said it might have been July or August, but it was later really, so it seems.

357 Q. Then I understand you did not mean positively to swear that was the time?

A. No.

358 Q. And it might have been the early part of October or the latter part of September; is that what you mean? 30

A. That is what I mean.

359 Q. How is your memory?

A. I think it is pretty clear where I am interested myself with reference to matters which transpired five or six years ago, where I was not interested, I would not be apt to note them very closely.

Re-direct-examination.

360 Q. What do you say as to your memory in reference to the conversation about which you have testified to in this case?

A. Well I think it may be depended upon.

WM. H. TISE.

Sworn to and subscribed)
before me April 22d. 1876. }

10

ISAAC VAN WAGOENR.

Master in Chancery New Jersey.

Examination adjourned to Monday, May 1, 1876, 2 P. M.
at same place.

Thursday May 18, 1876, examination of witnesses continued in the presence of the respective counsel.

20 WILLIAM H. HALL, a witness produced on the part of the complainants, being duly sworn according to law on his oath, deposes and saith:

361 Q. Where do you reside?

A. In Clifton New Jersey; I resided once in Passaic, I resided there from 1869 to 1870, and then from 1872 to 1874; I am acquainted with the defendant in this case, John H. Van Iderstine; I purchased property in the village of Passaic in December 1872, from the defendant; I guess it was a city at that time. A certified copy of a
30 deed from John H. Van Iderstine and wife, to William H. Hall, dated December 2d, 1872, recorded on the 3d day of January, 1873, in Book S. 4 page 216, of deeds for Passaic County, being shown to witness he is asked

362 Q. Is the property described in that certified copy, the property you refer to as so purchased by you of the defendant?

A. Yes.

363 Q. What was the consideration of that purchase?

A. \$7,000.

364 Q. How was that consideration arrived at between the defendant and yourself for that conveyance?

Objected to as immaterial.

A. Mr. Van Iderstine stated the price to be \$7,000. I paid him \$7,000, in this way, \$5,000 on mortgage, and \$2,000 cash.

365 Q. Was there a written agreement between you for this sale and purchase, other than the deed? 10

A. Yes.

366 Q. Where is that agreement?

A. I think I have it among my papers in New York.

367 Q. Do you mean you had a written agreement in reference to this purchase before the deed from the defendant to you was executed?

A. I am not sure about that, but I think I had. There is no record made of that I think. I think there was, upon reflection I am not sure. 20

368 Q. Please state what the defendant said as to the price at which he would sell that property, before you finally concluded and agreed to purchase it?

Objected to as immaterial and improper.

A. \$7,000. I asked him what his price was for that corner. He said that there was about twelve lots, for which he wanted \$600 a city lot, but that he would sell it to me for \$7,000, that is the whole of it, then I accepted it. 30

369 Q. Did the defendant, at any time after you had made this purchase, say any thing to you as to the number of lots in that tract, if so, what did he say?

Objected to as immaterial.

A. When I took the deed, he said that I had got a lit-

the more land, or rather that there was a little more land than he supposed there was. That he had recently had it surveyed, or that it had been surveyed and the surveyor stated that there was a little over twelve lots, probably twelve and a half. That is all.

370 Q. Do you know whether the defendant has received the whole \$7,000, the consideration money of that sale and purchase of exhibit P. 9?

10 Objected to.

A. I don't know it as a fact, only what he said. I remember it came up in this way. I wanted to get a second mortgage on the property on which I was about building an expensive house, and I went to Mr. Van Iderstine, and asked him if he could assist me in getting a second mortgage on the property. He said he thought he could get \$5,000 for me from a man named Elias Vreeland, to whom he had sold or disposed of the mortgage which I gave him as part consideration for the property. Upon mature consideration I know it to be a fact that the defendant disposed of the mortgage to Elias Vreeland.

20

371 Q. Do you know whether or not that mortgage has since been paid and cancelled of record?

A. I do not.

372 Q. Has the defendant ever said anything to you as to whether that mortgage was paid or not, if so, what did he say, and when?

A. Yes sir, he said to me that he had disposed of that mortgage, and I think I asked him whether he had much discount to make, and he said none.

30

373 Q. Exhibit P. 3, being shown to the witness, he is asked, were there any buildings or other improvements erected, or put upon any of the property in Exhibit P. 3, from the time that the defendant purchased the same to wit: March 1869, to the times respectively, that he sold portions thereof, to Kilgour, Outwater and yourself, by Exhibit P. 6, P. 7, P. 8, and P. 9?

A. I don't know. As to my own, there were no improvements on when I bought.

374 Q. At the time of your negotiations with the defendant for this property in P. 9, how many feet front, rear and sides did the defendant tell you, you would get by your purchase?

A. Just the number that the deed calls for.

The certified copy of deed from John H. Van Iderstine to William H. Hall, hereinbefore mentioned, is offered in evidence on the part of the complainants and is marked 10 Exhibit P. 9.

375 Q. When, in reference to the time of your purchase of this property, did you pay the defendant \$2,000, as part of the purchase money?

A. I can't answer. I don't remember whether I paid him the \$2,000 when I took the deed. I am not sure about the exact mode of paying it. My impression is that I paid it in two installments, first \$1,000, and then another \$2,000, in a few weeks or months afterwards.

376 Q. Within what time can you say, you certainly 20 paid him the \$2,000?

A. Within two years.

Cross-examination.

277 Q. The land in front of the lot you purchased had been sidewalked, curbed and guttered before you purchased, had it not?

A. Yes, on one side, you will remember it was a corner lot. It had been sidewalked, curbed and guttered, 30 on Paulison avenue. Paulison avenue had also at that time been graded in front of the lot. Trees had also been planted in front of the property at that time.

378 Q. Had the lot you purchased been filled up in any portions of it?

A. Not that I am aware of.

379 Q. At the time you purchased, was Mr. Kilgour's house erected on the property adjoining?

A. Yes.

380 Q. What was the character of that house, was it an expensive house for the locality?

A. Yes, it was a fine improvement.

381 Q. Had he not laid out a large sum of money for the improvement of his grounds?

A. Yes, that was included in the last answer.

382 Q. Have you any idea of the value or expense of the improvements, Kilgour put on his property?

10 A. Not less than \$15,000 or \$18,000. That includes house and everything.

383 Q. When was this conversation, you had about getting the second mortgage for you, on the property you bought?

A. The following spring after the purchase.

384 Q. You purchased this property by the lot or tract for so much, did you not?

A. I did.

20 385 Q. You did not purchase it at so much a city lot for contents of it, I mean did you agree to give so much per the city lot for the contents, or at so much for the whole tract?

A. I agreed to give \$7,000 for the whole tract.

386 Q. Did you have it surveyed?

A. I did after I bought it; I found there was about twelve lots in it, I have never been able to discover there was any more.

WM. H. HALL.

Sworn to and subscribed }
before me May 18, 1876. }

30

ISAAC VAN WAGONER.

Master in Chancery New Jersey.

CHARLES' M. K. [PAULISON, recalled on the part of the complainant.

Objected to by defendants.

Adjourned to Thursday, June 1, 1876, at 10 o'clock
A. M. at the same place.

THURSDAY, June 1, 1876, examination of witnesses continued in the presence of respective counsel.

WILLIAM H. HALL, being recalled on part of complainants. 10

387 Q. Witness being shown paper is asked, is that paper the agreement you spoke of at the last examination, which you thought you might have had in reference to the sale of the property in question, from the defendant to yourself?

A. Yes it is, the signature to that paper is the defendant's signature.

Said paper is offered in evidence on the part of the complainants, and is marked exhibit P. 10. 20

Objected to as immaterial.

388 Q. A bond and mortgage from William H. Hall, to John H. Van Iderstine, dated December 2, 1872, to secure the payment of \$1,000, being shown to witness, he is asked, refreshing your memory by those papers, what do you now say as to the time when you paid to the defendant the first \$2,000 of the purchase money of that conveyance? 30

A. Well this is paid apparently May 9, 1873, the other \$1,000, I think was paid on the first day of January before that.

Cross-examination.

389 Q. What is there in that to fix the date of the payment of the first \$1,000?

A. The first payment of \$1,000 was made on the 5th day of January, 1873, according to that agreement.

Taken before me June 1, 1876

ISAAC VAN WAGONER,

Master in Chancery of New Jersey.

10 CHARLES M. K. PAULISON, recalled on part of complainants.

390 Q. In what condition was the property in question described in P. 3, in respect to improvements at the several times that portions thereof, were conveyed by the defendant to Kilgour, Outwater, and Hall respectively, by Exhibits P. 6, P. 7, P. 8, and P. 9, compared with its condition in that respect at the time of the sale by the complainants to the defendant?

20 A. The property conveyed by the complainants as shown by exhibit P. 5, had a barn on it, which by the terms of sale was not sold with the property, and was taken off soon after the sale by the complainants. With that exception the property in question was in the same condition at the time it was sold by the complainants to the defendant, and at the time of the sale to Kilgour, Outwater, and Hall. At the last three sales there was no erections on the property, nor any improvements made on the property of any other character.

30 391 Q. Do you know whether or not the \$5,000 mortgage given by Hall to Van Iderstine, to secure part of the consideration money of the conveyance from the defendant to Hall, as heretofore testified to, had been paid to Van Iderstine, and if so, when?

A. I do know that that mortgage was paid, and it was paid before February 17, 1875.

A certified copy of an assignment of mortgage from John H. Van Iderstine, to Elias I. Vreeland, dated April 12th, 1873, recorded in Passaic County Clerk's Office in

Book H, of assignments, page 104, is offered in evidence on the part of the complainants and is marked exhibit P. 13.

A certified copy of a discharge of mortgage executed by Elias J. Vreeland, dated February 17, 1875, and recorded in said Clerk's office, in book A, of discharges of mortgages, page 139 is offered in evidence on the part of the complainants, and is marked exhibit P. 14.

Said exhibits P. 13. and P. 14, objected to by defendant's counsel. 10

A cancelled bond given by William H. Hall to John H. Van Iderstine, to secure \$1,000, dated December 2, 1872, and its accompanying mortgage recorded in said Clerk's office in book 3, of mortgages, page 422, are offered in evidence on the part of the complainants, and are marked exhibits P. 11, and P. 12.

Objected to.

20

Cross-examination.

392 Q. Do you swear that you know that mortgage was paid?

A. Yes.

393 Q. Did you see it paid?

A. No.

394 Q. Then your knowledge is not personal, is it?

A. No; only from evidence that is conclusive to my mind. 30

395 Q. You mean then that you know it was paid because there is evidence conclusive to your mind that it has been paid?

A. I mean just what I said.

396 Q. What is that?

A. That is the fact that I have seen the mortgage cancelled of record.

397 Q. Is that your whole answer ?

A. Yes.

398 Q. Where did you see the mortgage cancelled of record ?

A. At the Passaic County Clerk's office.

399 Q. An entry on the books do you mean ?

A. Yes.

400 Q. And having then seen this entry of cancellation on those books, do you mean to swear that you know the
10 mortgage is paid ?

A. I know it from that fact and other facts that have come to my knowledge that I know of.

401 Q. What are the facts ?

A. Mr. Callender, who purchased the property of Mr. Hall, got a loan of the Manhattan Life Insurance Company of New York, on the property covered by this mortgage, and he paid, or saw that the mortgage was paid before he obtained the loan from the company, and the County Clerk's records of Passaic County corroborate
20 these facts. I have seen the record and besides I know the fact from officers of the Insurance Company and Mr. Callender.

402 Q. Your whole information about it is from other people and from other sources than your personal knowledge, is it ?

A. It is from the information which I have obtained in a way I have testified, and that is a kind of personal knowledge which give me reasons to believe the fact testified by me in my previous answers.

30 403 Q. The true state of the case then is, you believe from the information that you have received from other sources, that the mortgage has been paid, but you do know that it has been paid ; is not that what you mean ?

A. A personal knowledge of the facts which I have stated is the only personal knowledge I have of the payment of that mortgage.

404 Q. Question 403, repeated.

A. The true state of the case is just as I have testified and the inferences from that testimony, any body is at liberty to determine what inference to draw, and what state of the case it is as propounded to me.

405 Q. Do you now swear that you know that mortgage was paid and answer yes or no to that question?

A. I say yes, with the facts already testified to by me, as the reasons for my answer.

406 Q. Are you unwilling to give a direct categorical answer to the previous question. Are you unwilling to do it? 10

A. I am not unwilling to answer it with the qualifications already stated.

407 Q. Are you unwilling to answer it without qualifications?

A. I am not willing to answer it, only in the manner which my conscience and judgment dictates, and that is as I have just answered.

408 Q. Does your conscience and judgment, dictate that you should answer it with qualifications, and not directly, yes or no? 20

A. Yes, in the mode and manner already answered by me.

409 Q. That mode and manner is with qualifications, is it not?

A. My answer ought to settle that question, or does express a qualification.

410 Q. Does express a qualification to the answer of the above question?

A. Yes. 30

411 Q. What did you mean then, by answering in your direct examination, and again at your first question to the cross examination, that you knew the mortgage was paid, and without any qualifications in your answer to either question?

A. I meant it, that I knew it as a fact, in the same way that I know who is the owner of a tract of land, by an examination of the records.

412 Q. Before you answered that question in your direct examination, was not your attention called by me to the fact, that knowledge meant personal knowledge, and that you must speak from personal knowledge in answering the question?

10 A. I think that while the complainants' attorney was propounding to me that question, and after he had put the question you suggested some amendment of that question, which I think was an interrogatory as whether my knowledge was personal, and I did not feel at liberty to reply to it, only in the form of the question propounded by the plaintiffs' attorney.

413 Q. Didn't you say that I could find out on a cross-examination, whether your knowledge was personal?

A. I think I did not make that reply, but did say that he could find out what knowledge I possessed on a cross-examination.

20 414 Q. You intended by your answer to that question on your direct examination to convey the impression of personal knowledge, did you not?

Defendant's counsel requests Master to read question in direct examination, which the Master does (391.)

A. If it is meant by personal knowledge, that I saw the money paid, I did not intend to say that I had a personal knowledge.

30 415 Q. Can't you give a more direct answer to this question than that; if so, please do it?

Complainants' counsel objects to this question, on the ground that the witness gave a direct and explicit answer to the question propounded, and he also objects to the prolongation of the testimony on this subject, inasmuch as the witness meaning and understanding, was long ago perfectly apparent.

A. I think I cannot give a more definite answer to express the truth.

416 Q. Was there an agreement signed in reference to the taking the barn off the property, at the time of passing the papers?

A. There was no agreement signed that I have been able to find, I can't say whether the agreement was ever signed or not.

417 Q. Was there not a paper signed by Mr. Van Iderstine, in reference to your having three or four months in which to remove the building, and given to you?

10

A. There was an agreement in writing prepared providing for such removal, but whether it was ever signed by Mr. Van Iderstine, or myself, or both, I do not now know or remember.

418 Q. Have you any such paper in your possession now; I mean have you it among your papers in your possession, I speak of a paper signed by Mr. Van Iderstine, and not of the paper marked Exhibit P. 2?

A. I have no such paper in my possession, nor do I know of any existing.

20

419 Q. The buildings remained on that property until what time about?

A. I think it was taken away by me within or about the time, four months provided in the agreement spoken of by me.

420 Q. During that time you paid nothing specially for this privilege, did you, and you were to pay nothing, were you?

A. Only the consideration expressed in the agreement for the conveyance of the land, it being a part of the consideration for the agreement, but no special other consideration.

30

421 Q. At the time of the sale to Hall, had not Kilgour already made large improvements on the property which he had purchased?

A. I do not remember accurately whether Kilgour had commenced and progressed with his improvements, at the time that Hall purchased of Van Iderstine, but my im-

pression is that he had commenced and made progress in his improvements at the time, but I am not sure of the fact.

422 Q. You pass that property nearly every day, and have since you sold it, do you not?

A. No.

423 Q. Didn't Kilgour commence to build soon after his purchase, I mean in the same season?

A. Mr. Kilgour purchased at two different times, and
10 I do not now remember how soon after the several purchases he commenced improving his property.

424 Q. His was the first house built on the lot, was it not?

A. Yes.

425 Q. Whose was the next?

A. Mr. Hall; William H. Hall.

426 Q. When was that built?

A. I do not remember.

427 Q. About what time?

20 A. About shortly after he purchased the property.

C. M. K. PAULISON.

Taken before me, June 1, 1876. }
ISAAC VAN WAGONER, }
Master in Chancery, New Jersey.

Complainants rest.

Adjourned to 1½ o'clock, P. M.

30

1½ o'clock, P. M. Examination adjourned to June, 1876, 10 o'clock, A. M., at same place.

AUGUST 31, 1876. Examination of witnesses in above entitled cause continued in the presence of the respective counsel.

JOHN H. VAN IDERSTINE, a witness produced on the part of the defendant, being duly sworn according to law, on his oath deposeth and saith :

I am the defendant in this suit. I live at Passaic, and have lived there all my life, or near there. I am a mason by trade.

In 1869, I had negotiations with Mr. Paulison with regard to the exchange of property. I then owned some property on River street in Passaic. It was a house and lot encumbered by a mortgage for \$2,700 ; I conveyed that property to Mr. Paulison, and at the time of that conveyance I received a deed from Mr. and Mrs. Paulison for property. 10

Said deed is offered in evidence on the part of the defendant and is marked Exhibit D. 1.

I also executed at the same time a bond and mortgage and delivered the same to Mrs. Paulison. 20

Said bond and mortgage are offered in evidence on the part of the defendant and marked exhibits D. 2, and D. 3.

I know Samuel B. Fritts who testified in this suit; I have had conversation with him with reference to the River street property. It was in February, 1869, I can't say exactly the day.

428 Q. What took place between you and Mr. Fritts with reference to the sale of your River street property at that time? 30

A. I told him I wanted to sell my River street property. Fritts was a real estate agent. When I told him about my property and wanting to sell it, he told me about Mr. Paulison wanting to sell a piece of property, he had on Paulison avenue.

429 Q. Did he tell you what that property consisted of?

Objected to, the complainants' counsel claim that the only proper course of examination at this trial, is to let the witness narrate, without prompting or suggestion, the conversation called for by the question before the last.

A. He did.

430 Q. What was it. I mean the Paulison property?

A. It was a piece of property lying between High
10 street and Erie street.

431 Q. Go on and tell what took place between you and Mr. Fritts with reference to it?

A. We went down and looked at it and he told me what lot he had sold out of it. That he had sold the corner plot out of that property. I told him that I couldn't take it all, it was more than I could take care. It was more than I had money to manage for. It run along some time. He broached the subject different times when I would meet him on the street. He would speak
20 about it. I met him one day after this. He told me that Mr. Samuel Hopper, had been up to look at that property, and if I wanted to make an exchange with Mr. Paulison, that if I wanted to make a trade for my house, I had better do it before it was gone, and I told Mr. Fritts that he could see Mr. Paulison to see if he wouldn't sell about half of it, that I couldn't take it all. Some few days afterwards I saw him, Fritts again. He told me he had seen Mr. Paulison, and the answer that he got from Mr. Paulison, that he wouldn't sell half of it,
30 that he wouldn't sell unless he could sell the whole of it. It run along a little while. It was in the neighborhood of five or six weeks that the talk of this property from the time he spoke to me first until about the latter part of February. Then he spoke to me again about this property. This was the time that he told me Hopper had been to look at it. I told him he could see Mr. Paulison. He insisted on us getting together. That he thought we could make a deal. I told him that I would

meet Mr. Paulison at his office the next day, sometime in the forenoon I think it was. I went up the next day.

432 Q. Did you make any agreement with Fritts for the purchase or exchange of the property?

Objected to as leading, and because counsel interrupted witness in his narrative in order to interject this question.

Counsel for defendant denies this.

10

A. No sir.

433 Q. With whom was your agreement for the purchase of this property made?

A. Mr. Paulison.

434 Q. Where was it made?

A. Fritts' office.

435 Q. Do you recollect when it was made?

A. About the first of March in 1869.

436 Q. Who was present at the time of the making of the agreement?

20

A. I think Fritts was in his office, me, Mr. Paulison and Mr. Fritts.

437 Q. Just tell what took place at the making of the agreement?

A. I met Mr. Paulison there and he told me what he would take for his property. He would take my equity in River street house which was \$3,800, and him a mortgage back of \$7,100. I set a little, considered over it, and told him that I would take it. Then he spoke about making out the deed; that he would make out the deed and to meet up at his house on the third of March to pass the papers.

30

438 Q. At that interview, did you agree to take this property of Mrs. Paulison's at \$350 per city lot?

A. I did not.

439 Q. Did you at that interview make or assist in making any calculation as to the number of city lots in the property?

A. I did not.

440 Q. Was anything done by any person in calculating the number of lots, and if so, by whom and how?

A. Well Paulison, when I came in there was figuring on a piece of paper before he told me what he would take for this property, he was figuring on a piece of paper, what he figured I could not say.

441 Q. Did he have a map of the property there at the time he was figuring?

10 A. Well I couldn't say positive whether he had or not.

442 Q. Was any agreement in writing made at this time between the parties?

A. Not to my knowledge.

443 Q. Did you give any directions or data for a written agreement at that interview?

A. Not to my knowledge. I don't recollect that I did.

444 Q. When next did you see Mr. Paulison?

A. Up to his own house.

445 Q. At what time?

20 A. On the third day of March, in the evening.

446 Q. Who was there?

A. Mr. Paulison, Mr. Fritts and I.

447 Q. What took place up there?

A. He had his deed made out (Exhibit D. 1.) He had it made \$11,000, and I spoke about it that he had it made different from what he told me the amount which he named up at Fritts' office, and his answer to it was, that it was his customary rule when it came near the amount to make it out even money. Then he spoke about an agreement which he drew up himself and wanted me to sign
30 it, that he was to have the use of the property to remove the barn and outbuildings, I think it was for two or three months, I think it was to the first of June, I am not positive; I found fault with it, I didn't think it was right, I found fault with it at the time, I didn't think it was right to pay for the property and him to have the use of it. I signed the agreement that Mr. Paulison drew up and took the deed, and also signed the bond and mort-

gage referred to before. Before I went away from the house, he showed me a map annexed to abstract of title which is offered in evidence on the part of the defendant and is marked Exhibit D. 4, which he said would be useful to me and advised me to buy it; I asked him what it would cost and he told me three dollars, I paid him three dollars for it and took the map. When I was outside on the stoop, Fritts and I had left together, I spoke to Mr. Fritts about signing that agreement, that I didn't think it was right that Paulison would always manage to get on the best side. He didn't say a great deal about it. He said he thought Mr. Paulison would have the property taken off the property soon, which was not so, as the building wasn't take off the property for three or four months. 10

Counsel for complainants requests that all the latter part of the foregoing narrative relating to what witness said to Fritts, be stricken out, it not appearing that Paulison was present. 20

448 Q. With whom was that agreement that you mention that you signed left?

A. With Mr. Paulison.

449 Q. Have you ever had it or seen it since?

A. I have not.

450 Q. The consideration mentioned in Exhibit D. 1, is \$100 more than the actual price you say was agreed on, did you pay Mr. Paulison \$100 additional to make up the \$11,000? 30

A. No, sir.

451 Q. At the interview at Mr. Paulison's house was any change from the price agreed upon at Fritts' office, made between you?

A. There was not.

452 Q. Where was the final agreement as to price made?

A. At Fritts' office.

453 Q. Witness is shown Exhibit D. 4. What took place between you and Mr. Paulison, at the time he advised you to purchase this, Exhibit D. 4?

A. Well he told me, I should sell from Erie street up to the top of the hill and make one large plot, and that would enhance the value of the balance of the property. He pointed it out on the map and advised me to sell one large plot, the lower end of it from Erie street up, and that would increase the value of the balance of the property.

454 Q. At the time you made the agreement and the papers were passed, what did you understand to be the total amount of the purchase money of the property conveyed to you, over and above your River street property?

Objected to, the witness must tell what was said about that matter.

A. \$7,100.

455 Q. Would you have been willing to pay, or agree to pay from \$1,000 to \$4,500 more for this property conveyed to you?

Objected to.

A. I would not.

456 Q. Had you understood that the purchase money was to be this amount in addition, would you have made this agreement to purchase?

30

Objected to as before.

A. I would not.

457 Q. This purchase did not convey the lot on the corner of High street and Paulison avenue, did it?

A. It did not. The lot on the corner, 60 feet front by 122 feet deep, was not contained in Exhibit D. 1. That lot was then owned by Mr. Neff, from whom I purchased

it in 1869, during the summer. I can't say in what month.

458 Q. At the time of the purchase of the property from Paulison, or of the agreement, had you any knowledge that there was a mistake in the measurement in the map of Mr. Paulison?

A. No, I did not.

459 Q. Had you measured the property by stepping it or in any other manner?

A. I had not.

10

460 Q. When was your first knowledge of a mistake in Mr. Paulison's map, and from whom did you get it?

A. In the fall of 1869, on the 8th of October, from Mr. Strange, I got the information.

461 Q. Mr. Strange in his testimony says that when he told you of the mistake, you told him you thought there was, as you and another man had stepped it, or something to that effect, what have you to say in reference to this. Did you or another man step it, if so tell the circumstances and what took place and the time?

20

A. Some two or three weeks before I saw Mr. Strange, or met him, at the time he told me, me and Mr. Demarest Hopper, was upon the ground. He talked about buying the plot. We had this map (Exb. D. 4), with us and he wanted to buy a lot, and he stepped it down from High street corner till about half way down, where he wanted to locate a plot for himself. Either one of us had the map, and he made the remark that it looked as if there was more ground in the lower end, than there was in the upper by this map. He asked me where the line was on Erie street; I told him that the Erie Road had a piece of ground along there and Erie street. I didn't know the width of that. I couldn't tell him how far it run down there to the side hill.

30

Counsel for complainants objects to so much of the foregoing narrative, as relates to the conversation and proceedings of defendant and Demarest Hopper.

462 Q. At the time of the conversation with Strange, had there been any other stepping off that you know of?

A. Not to my knowledge. The first time Mr. Hopper stepped it with me, was some three weeks before Mr. Strange discovered the mistake.

463 Q. Was this interview with Hopper after you had purchased the corner lot?

A. I can't say positive about that. I don't know whether I had the corner then or not.

10 464 Q. Did you pay the interest regularly on the mortgage for \$7,100.

A. I did. The payments of the interest and the principal are endorsed on the bond, Exhibit D. 2, and the times of payments.

465 Q. What was the condition of the property at the time of your purchase, and what expense did you go to in improving it for sale?

A. It was in a rough condition. There was no street on the Paulison avenue side. There was brush and a
 20 stone fence on the line taken for the centre of Paulison avenue. There were hollows in portions of it filled up some eight feet. These, were the barns used to be, somewhere near the middle of the property, near about half way down from High street. In the first place I got Adrian Van Blarcom, who cleared up the old fence where the street was to be, took out the stone, brush, filled up the hollows in the street so that you could ride through. I paid him over \$200. I had filling done where the barns were, by Hoxsey. I paid for that some eighty odd
 30 dollars. I give Horatio N. Johnston a contract for filling a hollow where the barns were. I paid him between \$80 and \$90. I paid Joseph Adams for flagging, guttering streets, between \$500 and \$600. I paid City for assessments for grading the street, \$666.63. My own laborers took out trees, stone &c., clearing up. There was an old apple orchard here known as the orchard lot. These improvements were made, that is the contract for street grading was made in the latter part of 1869.

I bought the Neff property before I sold any. The first sale I made was to Kilgour. He purchased the lower end from Erie street up. He purchased thirty lots in all.

466 Q. What efforts did you make to secure a purchaser for the property, and how did you come to get Mr. Kilgour to take a portion of the property?

Objected to as immaterial.

A. Mr. Dunn was living right in the rear of this property, and I was working up there one day. He said Mr. Kilgour wanted to get down to Passaic, and he liked the location down there close to the station and if he bought it, he would build a house and improve the property. So I told him to see him and get him to come down there some time, which he did, and I afterwards negotiated a sale with Kilgour. He put up buildings there, and spent about \$30,000 there for property, house and outbuildings.

10

467 Q. How do you arrive at this estimate?

A. The price what he paid, me for the ground, the contract for the house, which Demarest and I built, and he had a great deal of work done outside of that, barns, green houses, walls around the front of his place, terracing &c.

20

468 Q. What was your next sale of the property?

A. To Richard Outwater.

469 Q. What portion of the property did you sell him, and at what price?

A. I sold him right adjoining Kilgour. Lot 80 feet by 182 feet, for \$2,975.

30

470 Q. Was that sold by the city lot?

A. No.

471 Q. What was your next sale of the property?

A. To William H. Hall, for \$7,000. I asked him \$7,250 for it. He asked me how many city lots there was in it, I told him I didn't know, I had not measured

it, I thought there was in the neighborhood of twelve city lots in it. He told me he would give me \$7,000 for it. I sold it to him for \$7,000. That was the balance of the property, including the Neff property.

Adjourned to 2 o'clock, P. M.

10 2 o'clock, P. M.

JOHN H. VAN IDERSTINE, *on direct examination.*

472 Q. How much did you pay for the Neff property?

A. \$1,500.

473 Q. Did Mr. Hall, at the time he purchased from you, purchase any other portion of property, if so state what you had to do with it?

20 Objected to, as immaterial.

A. He did. He purchased Mr. Outwater's, that is the lot I sold to Outwater. He didn't want mine unless he had Outwater's. He wanted me to go and see Outwater and see what he would take for it. I went to Outwater and asked him what he would take for it, and he said he would take \$3,600, and no less for it. I so reported to Mr. Hall, and Mr. Hall afterwards went to see Mr. Outwater and he purchased it. I think he paid \$3,600 for

30 the lot.

474 Q. When was the first time that Mr. Paulison said any thing to you about the mistake in the map, or made any demand upon you in reference to the purchase, after the purchase?

A. It was in February, 1875. I think it was somewhere about the 12th.

475 Q. What took place then?

A. Mr. Paulison came to my house with his counsel, John

C. Paulison. He came to see me about this property. He thought I ought to pay him something extra for the lots on this plot of ground that I bought. I told him that I had bought the property of him once. I didn't see why I ought to pay twice for a piece of property. And I also told him that I paid him just what he asked me for the property. He advised me to settle it. That lawsuits were bad to get into. And as he was going away out of the house, he wanted me to think over and come and see him about it. And I said I would see about 10
it.

476 Q. Had Mr. Paulison ever spoken to you about this matter before that time?

A. He had not.

477 Q. Had Mrs. Paulison, one of the complainants, ever had any conversation about this matter with you?

A. She never did.

478 Q. Did Mr. Paulison ever tender back to you the bond and mortgage, and the River street property, or demand a reconveyance of the property you purchased? 20

A. He did not. He did not have it to tender it back. He disposed of the mortgage soon after I gave it. I have understood that he does not own the River street property now.

479 Q. Did you ever have any conversations with William H. Tice, in reference to the exchange or sale between yourself and Mr. Paulison?

A. I did.

480 Q. Did you in any of the conversations with him, tell him that you bought the piece of ground, supposing 30
that there was a certain number of lots in it, and there proved to be more, and that you estimated the value of the piece by \$350 a city lot, or words to that effect?

A. No sir, I didn't tell him any thing about the city lot.

481 Q. In the first conversation you had with him after the mistake in the map was discovered, what did you tell him about it, tell what took place?

A. He told me that he had understood that Mr.

Paulison had sold it per city lot, I told him that it was no such thing. I bought it by the whole tract, Mr. Tice told me that he had understood that Mr. Paulison should have said that I had got the best of him; in answer, I told him that Paulison had got the best of me at the time I went to get the deed, in getting me to sign an agreement whereby he would hold the property for three or four months, while I was paying the interest on the purchase.

10 482 Q. Did you ever, in any of these conversations with Mr. Tice, tell him that you had bought the property at \$350 a city lot, or any thing to that effect?

A. I did not.

483 Q. Did Mr. Tice, in any of the conversations with you, state that he represented Mr. Paulison, or was talking with you on his behalf in the matter?

A. He did not.

484 Q. Did you ever know from Mr. Tice, that he was requested to see you by Mr. Paulison?

20 A. No sir.

485 Q. You went down you say with Mr. Fritts to look at the property before the purchase, did you go over the property with him?

A. I did.

486 Q. In what condition was the property at that time with reference to the boundaries of it being ascertainable, state how the property was marked, if at all, on all the sides of it, as it was pointed out to you that day?

30 A. High street side, the fence was up, post and rail fence; High street was opened on the rear line, the fence was on it and ran down to the railroad from High street, there was a post and rail fence along the ditch on the side of the railroad, that ran to a stone fence in the centre of what is now called Paulison avenue, that was not then opened, and the stone fence ran up as far as this property to High street; the corner lot was then staked out, I found the stakes there; that was the lot sold to Neff.

487 Q. Was that the property which you understood

you were buying, and which was conveyed by the deed to you?

A. It was.

488 Q. Did you ever tell Fritts before seeing Paulison, that you had concluded to make the deal for the property?

A. I did not, not till I knowed what I had to pay Mr. Paulison.

489 Q. From whom did you know that?

A. From Paulison himself in Fritts office, when he told me what he would do. 10

490 Q. Did you agree with Fritts, that you would pay \$350 a lot for the property?

A. I did not.

491 Q. Did you ever make any agreement to take the property before the agreement with Mr. Paulison at Mr. Fritts' office?

A. I did not.

492 Q. You live near Mr. Paulison don't you?

A. Yes. 20

493 Q. Since the time of the purchase have you seen him very frequently, if so, about how often?

A. Some days I have seen him may be once or twice, some days I wouldn't see him at all. I have seen him off and on during all the time.

494 Q. Have you had other dealings with him?

A. Yes, I have done some mason work for him occasionally, once in a while when we would meet, we would speak, pass the time of day.

495 Q. Did you ever, in the negotiations with Mr. Kilgour offer him the whole property, or tell him that he could have it all for \$350 a lot, which was what you paid, do you recollect any such conversation or words to that effect? 30

A. I do not, not at the time he purchased the twenty lots. He wanted to buy the whole, though afterwards he made me an offer for it, half of it to be paid in blue stone bonds or about one-half, and the other on bond

and mortgage. I wouldn't take it, and the offer fell though.

496 Q. During the Summer and Fall of 1869, would you have been willing that Mrs. Paulison should have had the property back on returning the bond and mortgage and River street property to you ?

A. I would that Summer, I would have been very happy to have had the mortgage and the property back. I had the blues about the purchase of it, that is what Out-
10 water told me. I was sick.

Cross-examination

497 Q. You said that Paulison did not speak to you in reference to the error in the map of this property, or make any claim upon you for additional compensation for this property until February, 1875, you mean he did not personally do this, do you not ?

A. He did not, no ; nor nobody else to my knowledge.

20 498 Q. Many other persons did speak to you about the matter between the Fall of 1869 and February, 1875, did they not ?

Objected to, as indefinite.

A. No, sir ; I might have had one or two who might have asked me about having heard something about it, but not anyone on account of Mr. Paulison.

30 Examination of witnesses adjourned to Saturday, September 9, 1876, at 10 o'clock, A. M., by consent.

SEPTEMBER 9, 1876, by consent of respective counsel, examination adjourned to October 12, 1876.

OCTOBER 12, 1876. Examination continued in the presence of respective counsel.

JOHN H. VAN IDERSTINE, *cross-examination.*

499 Q. Do you mean to say, that Mr. Tice, who has testified in this case, did not speak to you about the fact of your having obtained more land by Paulison's deed to you, than you say you thought you had obtained.

A. He did not, not through Paulison. He never mentioned Paulison to me.

500 Q. But he did have a conversation with you, in reference to the discovered error in Paulison's Addition No. 2 map, did he not? 10

A. He said he had heard about it. He asked me what it was.

501 Q. Did he not say to you, that if such an error existed in fact, that he thought you ought to pay Paulison for the difference between the quantity indicated by the map and the real quantity in the tract, or words of that significance?

A. He did not.

502 Q. And did not Mr. Strange, the surveyor, Mr. Gilbert D. Bogart, and others, speak to you in regard to that error after Mr. Strange discovered it, and express to you the same opinion in regard to your duty, to pay for this difference? 20

A. All that Strange told me was that he had discovered the error in Paulison's map, and that is all he spoke to me about it. That was in the fall of 1869, about October I think, when he was taking a survey of the street. Mr. Bogart got talking to me once about it, last February a year ago. He asked me how I bought that property. Bogart asked me how I bought the property. I told him I bought in bulk. 30

The latter part of the answer objected to, by complainants' counsel.

503 Q. Question 502 repeated.

A. Strange told me about it, October 8, 1869. Mr. Bogart also spoke to me about the errors; no one else

spoke to me about it according to my recollection. They did not express any opinion with regard to my duty to pay for the difference.

504 Q. You told Strange and Bogart in these conversations, that you bought the whole of this property in bulk, and not at a certain rate per city lot, did you not?

A. I did.

10 505 Q. But did they not say that if you had bought this property in the latter manner, that is, by city lot, and as indicated on map Paulison Addition No. 2, and this error existed, that then you ought to pay Paulison for the difference?

A. They did not.

20 506 Q. Do you not know that in the real estate offices of Mr. Marsellus, Mr. Fritts and Mr. Bogart, that the matter of this discovered error in this map, and of your purchase of this property was frequently a subject of conversation, both to you and in your presence, since the fall of 1869 up to a year or two ago. And that the opinion was often expressed in those conversations, that if this error existed, you ought to pay for this difference.

Objected to, unless persons with whom the conversations were held, are indicated.

30 A. There was not much of a conversation about the property until after the suit was commenced, and after the suit was commenced, I never had a man to tell me that I ought to give him more than I had agreed to pay for the property.

507 Q. Question 506 repeated.

A. They might have had a conversation among themselves, but not to me. They might have asked me how the matter was, and I might have told them. They never told me that if this error existed I ought to pay for the difference.

508 Q. You have testified, that during the summer of 1869, you would have been willing to deed back to Mr.

Paulison this property upon the complainants re-deeding to you the River street property, and giving up this \$7,100 mortgage. You do not mean to say that after Strange told you about this discovered error in the map Paulison Addition No. 2, you would have been willing to do this, do you?

A. I would like to have deeded this property back at any time in 1869, before I sold a part of it, and would have been willing to have given him something too to have taken the deed back. 10

509 Q. Did you not, after Strange told you about this error, tell Mr. Tice that there was more land in this tract that you had received a deed for from the complainants than you at the time of purchase supposed there was?

A. It was Mr. Tice that told me about that, spoke to me about it. He asked me how it was, whether I bought it by city lot, I told him no, I bought it in bulk. I also told him Paulison had got the best of me by having the use of it for three or four months, me paying him interest for it. 20

Answer objected to by complainants' counsel.

510 Q. Question 509 repeated.

A. I did not tell him so, he spoke to me about it.

511 Q. You mean that he opened the conversation in reference to the error in this map, do you not?

A. He did. 30

512 Q. But in that conversation did you not tell Mr. Tice that there was a greater quantity of land in this tract than you at the time you purchased it supposed there was?

A. I told him that the lot was no larger than when I went over it and looked at it, that is what I told him.

513 Q. Question 512 repeated.

A. No.

514 Q. Do you mean to say that you did not give Mr.

Tice to understand that you found, by reason of this discovered error in this map, that you had obtained more land than you supposed you were receiving when you purchased this tract?

A. I did not give him so to understand.

515 Q. Didn't you give him to understand anything like that?

10 Objected to, as indefinite.

A. I did not.

516 Q. You say you told him the lot was no larger than it was when you went over it and looked at it. Did you tell him, that before you purchased you had been on and over this ground and formed a judgment as to the quantity of land in it, or to that effect?

A. No.

517 Q. What then did you tell him about your having
20 been over it and looking at it?

A. I told him as I told you before that the lot was no larger than when I went over to look at it?

518 Q. Did you tell Mr. Tice when you had been over it and looked at it?

A. I don't know as I did tell him the time. I don't think I did tell him.

519 Q. When you told him that, to what time did you refer?

30 A. The time when me and Fritts was over it, before I purchased it.

520 Q. Had you not been on that tract before the time referred to in your last answer?

A. I had been over that property at different times from a school boy up. I used to cut across it going to my work.

521 Q. Had you not been on and over it before the time that you were there with Mr. Fritts with a view of purchasing it?

A. I might have been down there once or twice and looked over it. I think I walked down there one Sunday.

522 Q. Had you not been on and over it between the time that you were there with Mr. Fritts and the time you purchased it with a view of purchasing?

A. I might have been down there, but am not positive.

523 Q. Did you not at one or more of these times that you say you were on and over this ground, form a judgment as to the quantity of land in the tract? 10

A. No, sir; I never meant to purchase the whole of it, until the day I met Mr. Paulison in Fritts' office.

524 Q. Do you mean to say that you had formed no opinion, estimate, or judgment as to the quantity of land, either so many city lots, or some other measurement of quantity in that tract, before you met Mr. Paulison in Fritts' office, on the day the bargain was made for the purchase of it?

A. Well, I never made any calculations per city lots at all. I think when Fritts spoke about property in the first place, I think that was some six weeks before I purchased it, when he spoke to me about this property, and I think I asked him how many city lots there were in that plot of ground, and I think he told me there was in the neighborhood of forty city lots, but he couldn't tell me exactly; at the time of purchasing it, there was nothing said about city lot at all. 20

The last clause of the answer objected to by complainants' counsel. 30

525 Q. Before you purchased this property had you not paced it to ascertain the dimensions in feet or yards, as nearly as you could?

A. I had not.

526 Q. Had you not counted the panels of the fences along the side of it?

A. I could not, as in some places there were no fences. I had not.

527 Q. Had not some one for you paced it or counted the panels, or made some other kind of measurement?

A. They had not.

528 Q. Do you then say that you had not before you purchased it, made or had made any estimate or calculation, whatever, in any manner, as to the probable quantity of land in the tract?

A. I had not.

10 529 Q. Did not Mr. Fritts tell you that there were about thirty lots in the tract and not forty, as you said you thought he told you?

A. He did not.

530 Q. How certain are you that he said about forty?

A. The first time he mentioned to me about the property, and I spoke to him. He said he couldn't tell me exactly, he thought there were in the neighborhood of forty lots into it.

531 Q. Question 530 repeated.

20 Objected to, as indefinite and as being unintelligible.

A. It is just as I explained it to you. I am certain of it.

532 Q. Have you no doubt, whatever, that he said about forty city lots?

A. No.

30 533 Q. Did he not say at that time that Paulison's map of this property would show, and that he could not tell just how many city lots were in this tract, without referring to this map, or words to that effect?

A. He did not.

534 Q. Did he not in that conversation allude in any manner to Paulison's map of this property?

A. I think he spoke about a map that there was, showing the property from High street to Erie street on a map.

535 Q. And as Paulison's map, a map that Paulison had had made of it, did he not?

A. I understood that he had had a map made of it.

536 Q. You had several conversations with Mr. Fritts, in reference to this proposed exchange and purchase, between the complainants and yourself, prior to the day on which the bargain was made between Paulison and yourself at Fritts' office, did you not?

A. No, not over once or twice. The first time that he spoke about it, I gave it up, and it run along for five or six weeks, before ever he spoke to me again.

537 Q. Did you visit this property with Mr. Fritts, on the day he first spoke to you about exchanging this property for some of yours, and making a deal with Paulison for this property? 10

A. I don't think we did that day, but sometime afterward.

538 Q. Did you visit it with him the second time, he spoke to you about the matter?

A. I think it was about the second time.

Adjourned to 2 o'clock, P. M.

20

2 o'clock, P. M.

JOHN H. VAN IDERSTINE, *on cross-examination.*

539 Q. When you first went upon this property in company of Mr. Fritts, had Paulison already sold the corner lot to Mr. Neff?

A. I think he had, he told me what he had sold it for. 30

540 Q. For how much did he say Paulison had sold that plot to Mr. Neff?

\$300, per city lot.

541 Q. Was it not more than \$300?

A. I think not.

542 Q. When Fritts first spoke to you about your buying this property of Paulison, Neff had not yet bought his plot, had he?

16

A. That I won't be positive about.

543 Q. How much did Fritts tell you Paulison wanted for his property, when he first spoke to you about your buying it, I mean at the time he told you, as you say he did, that there were about forty lots in the tract?

A. I don't know as he mentioned any price at all per city lot, he told me what he had sold the corner for.

544 Q. But he did not tell you what he had got for the corner lot, until you and he went to see the property, did he?

A. I don't know whether he did or not tell me before, I cannot say.

545 Q. Had you spoken to Fritts about this exchange between the complainants and yourself, between the time that Fritts and yourself went to view the property, and the time that Fritts informed you, as you say he did, that Mr. Samuel Hopper had been looking at this property, and advised you to take it, if you wanted to secure it?

A. I don't know as he did.

20 546 Q. And the time that he spoke to you about Samuel Hopper having looked at the property, was a day or two before you requested Mr. Fritts, or Fritts requested you, to meet Mr. Paulison for the purpose of arranging the terms of a deal for this property, was it not?

A. I couldn't say whether it was a day or two before, or three or four days, it was, he requested me about it; it was the last time that I spoke to Fritts about it before meeting Paulison at Fritts' office, I think it was the day before I met Paulison at Fritts' office, that he, Fritts, told me that Hopper had been looking at the ground.

30 547 Q. Did not Fritts at that time tell you that Paulison had raised his price for this tract?

A. I don't recollect that he did.

548 Q. Did he not tell you that Paulison had raised his price for this tract, at any time between your first conversation with him above referred to, and the time you met Paulison in Fritts' office?

A. I never got any price of it until I got it from Paulison at Fritts' office, I say no to the question.

549 Q. Do you say that you had not received, either from Paulison or Fritts, any information as to the price Paulison wanted for this property, until you met Paulison at Fritts' office and arranged the deal?

A. I did not for what I purchased, until I met Paulison at Fritts' office. I got information as to the price at which the Neff property had been sold.

550 Q. Did you not ask Fritts as to the price for which Paulison would sell the balance to you? 10

A. I don't know as I did. I left that to find out between me and Mr. Paulison.

551 Q. Why did you not at once conclude to take the balance when the question of a deal for it was first suggested to you?

A. Because I wanted to get as many city lots in that property as my equity in the River street was worth. I think I spoke about half of it.

552 Q. Do you mean that you thought that there were a greater number of city lots in this tract than you could carry, that it would require more money to carry them than you could conveniently invest? 20

A. I didn't want to run myself into debt, that if I could make a deal for my River street property for about half of this tract that I would do that, on the ground that I had no money to invest for the whole of it. That was one reason why I prepared to take only one-half of the property.

553 Q. Why did you think that you had not money enough to purchase the whole of it, if you did not know how much Paulison wanted for the whole? 30

A. I can tell pretty near how much property is worth by jumping at it, by looking at it.

554 Q. Had you not spoken personally to Mr. Paulison in reference to the deal, before you met him at Fritt's office?

A. I don't know as I have.

555 Q. Did you not speak first to Fritts about selling or exchanging your River street house, before he spoke to you about the Paulison tract, in question?

A. No, he spoke to me about it first, I mean he spoke to me first about exchanging the Paulison property. Fritts knew from me that I wanted to sell the River street property before he suggested the Paulison exchange.

10 556 Q. Did you not meet Fritts at his office the day before you met Paulison and Fritts together at the office of the latter?

A. I don't think I met him in the office, I met him somewhere the day before, but whether in the street or not, I don't recollect.

557 Q. Did not Mr. Fritts, at the time of that meeting, make a calculation, using map Paulison Addition No. 2, to estimate the number of city lots in this tract, to ascertain how much the whole would amount to?

20 A. There was no calculations made the day before about any price, nor until I met Mr. Paulison at his office, and he told me what he would take for it.

558 Q. Did not Fritts make a calculation at that time, using this map to ascertain the number of city lots in this tract?

A. He did not.

559 Q. Did he not do so at any time in your presence?

A. Not to my knowledge.

560 Q. Did you not at first, tell Fritts that you wanted \$7,000, for your River street house?

30 A. I did not. I told him the price was \$6,500, and that was the only price I ever fixed.

561 Q. When you thought that you could not carry the whole of this Paulison tract, for want of sufficient funds, or to run yourself in debt, how much did you understand Paulison wanted for this property?

A. I didn't understand no certain price. I knew by the quantity of ground, that he would want a difference more than the equity of my River street house, and I

didn't want to run myself in debt. That was the reason I didn't want to take it.

562 Q. Were you acquainted at that time with the prices that property in the neighborhood of this tract was held at and sold for in the market?

A. Well, I had heard what different pieces had been sold for around there, ranging from \$200 to \$300 a city lot.

563 Q. At the time the bargain was made between Paulison and yourself in Fritts' office, Fritts was present and heard the conversation between Paulison and yourself, and saw what was done, was he and did he not? 10

A. I don't know that he was paying much attention. He was present going around. He heard what Paulison tell me what he would take for it.

564 Q. He could hear and see all that was spoken and done, could he not; I mean he was in a position to do so?

A. I suppose he could if he was paying attention to it. I couldn't say positive, whether he was in the room all the time. 20

565 Q. Paulison used the map in question in making up the amount he gave you as his price, did he not?

A. I don't know whether he used a map, or a piece of paper. I couldn't say.

566 Q. Don't you know that Paulison made his calculation in reaching his price, on the idea that there was a certain number of city lots in that tract?

A. I don't know how he reached his calculation as to the price he would charge me; what he would take for it. It might have been by the acre for I all know. 30

567 Q. Have you any idea how the amount of the mortgage was made \$7,100; on what calculation?

A. No, I have not. It might have been \$7,500, and he came down to \$7,100.

568 Q. Do you mean that perhaps Paulison first asked that it should be \$7,500, and then came down to \$7,100?

A. I don't know what calculations he made. I don't

know what he did. He just named the price. He only named one figure.

569 Q. And did he not tell you how many city lots he calculated were in that tract?

A. No, he did not.

570 Q. Did no none tell you?

A. Not at that time.

571 Q. Not at any time before you made the deal?

10 A. I have answered that once, Mr. Fritts, the first time he ever spoke to me about this property. I says to him one day, how many city lots do you suppose there are in that property. I met him on the street; he told me in the neighborhood of forty city lots; this was before I had made up my mind to exchange or buy this property. It was when he first spoke to me about this property.

572 Q. How did you not know before you dealt that this property was held at more than \$300 per city lot, and that Paulison asked more than that sum for it?

20 A. No, I did not. He had sold the choice corner for \$300 as I understood. It might have been a fraction over.

573 Q. You do not mean that you have any personal knowledge as to the price Neff paid for his corner lot, do you?

A. Well I got Mr. Neff's word for it, and Mr. Fritts word for it, that is all I mean.

574 Q. Did you not tell Fritts the day before, or shortly before you met Paulison at Fritts office, that you had concluded to take the whole of this property?

30 A. I told him to see Mr. Paulison and would meet him and I would take the whole, provided we could agree on the price.

575 Q. And was it not at that time that you asked him, how many lots there were in this tract?

A. No, it was not.

576 Q. And was it not at this time that Fritts made a calculation from this map and told you about how many he made it?

A. No, he never made any calculations that I know of.

577 Q. When did you first see a map of this property according to the best of your recollection.

A. I think I saw a map of it the first time Fritts spoke about it in his office. He took the map out and pointed out where the property was located between High street and Erie street. He asked me to go down and look at it.

578 Q. And that map was Paulison Addition No. 2, in evidence in this cause, or a copy of it, was it not? 10

Counsel for defendant asks that the paper claimed to be the map be produced and objects to an answer to the question until it be produced.

Counsel for complainants says that he has no knowledge where the particular copy of Exhibit P. 1, used on that occasion is, but that whatever map was used was a copy of this Exhibit, and a copy of which the defendant purchased from the complainants at the time of passing deeds in question. 20

Complainants' counsel here hands Exhibit P. 1, to the witness and asks the question last above propounded.

A. I don't know whether it was this map or another one, I don't know whether it was this map or a copy.

579 Q. It was one like this exhibit, was it not?

Objected to.

A. It was one like it, I should judge. 30

580 Q. A map that Paulison had, had made, was it not?

A. I don't know who had it made, whether it was him or some body else.

581 Q. You have no recollection as to the amount you paid Joseph Adams, for flagging and guttering, have you?

A. It was in the neighborhood of \$600.

582 Q. This he told you, you say lately, but indepen-

dent of any thing he lately told you, you have no recollection of the amount, have you?

A. I do, I paid the bill, I ought to know, I have the receipt among a lot of papers.

583 Q. You made Kilgour, Outwater and Hall, pay a proportionate share of the amount it cost you for grading, flagging, curbing and guttering, according to their respective fronts, did you not?

10 A. I curbed and guttered, in front of Outwater's and Halls; curbed and guttered and grading in the street which was all completed and paid for before I sold, with the exception of Kilgour, he paid his own; I paid all the rest, and my bills don't include any thing for Kilgour's property.

584 Q. Do you mean that none of these parties repaid you any thing of the amounts, you say you paid for these improvements?

20 A. I got a little out of Kilgour for clearing out the brush and stone fences out of the proposed street, he agreed to pay one-half of Van Blarcom's bill, there was nothing else paid me by any body.

585 Q. How much did the flagging cost you?

A. Between \$500 and \$600, I mean the flagging, guttering, &c., in the contract with Joseph Adams.

586 Q. And did you get none of this back from any of your grantees?

A. I paid this sum for the balance, Kilgour paid his own flagging, &c.

30 587 Q. You have received the different amounts for which you sold this property to Kilgour, Outwater and Hall, have you not?

A. I have.

Re-direct-examination.

588 Q. Did you ever know, except from what Fritts told you, that Samuel Hopper had been looking at the Paulison tract?

A. I did not.

589 Q. How did the value of real-estate in the neighborhood of the property in question, compare at the time of the sale to you, and at the time of filing the bill in this cause about February, 1875, was it higher or lower in 1875?

Objected to.

A. It is higher in some places, in some places lower. It is generally higher. It has depreciated in value since 1869. 10

Re-cross-examination.

590 Q. What do you mean by your last answer?

A. I mean that property has depreciated in value, since 1869.

591 Q. Do you mean that all property is now lower than it was in 1869. 20

A. I do; I mean the biggest portion of it.

592 Q. You mean, don't you, that there is now a general dullness in real estate, and property generally cannot be sold at all, in other words that there is no market for real estate as there was in 1869?

A. I mean they don't fetch the price. That lots that were asked \$1,000 a lot for I could have bought for \$500 since.

593 Q. Offered at lower prices by those embarrassed, is not that so? 30

A. No, I know men that are not embarrassed that have offered property for low prices.

JOHN H. VAN IDERSTINE.

Sworn to August 31, 1876, }
and subscribed before me, }
October 12, 1876.

ISAAC VAN WAGONER,
Master in Chancery of New Jersey.

Defendant rests.

November 23, 1876, examination of witnesses continued in the presence of the counsel of the respective parties.

10 SAMUEL B. FRITTS, recalled on the part of complainant.

594 Q. Did you ever tell the defendant that there were about forty lots in this tract in P. 3?

Objected to as improper on rebuttal.

A. No.

20 595 Q. Did you always broach the subject of this exchange or sale first to the defendant, whenever you would converse with him in reference to the proposed sale to him, or did he sometimes broach the subject first to you?

Objected to for same reason.

A. I would sometimes broach it first, other times Mr. Van Iderstine would first.

30 596 Q. Who acted as agent for the complainant in reference to the sale of the corner lot 60 feet by 122 feet, to John C. Neff?

A. I did.

507 Q. How much did she get from Neff for that lot?

Objected to as immaterial.

A. \$1,025.

598 Q. Did you ever tell the defendant that the complainant had sold that lot to Neff for \$300 per city lot?

A. I think not. It was sold at the rate of \$350.

599 Q. When did the defendant purchase that lot from Neff?

A. February 1, 1870.

600 Q. Do you know how much he gave for it?

A. \$1,550.

601 Q. Did you ever hear Mr. Gilbert D. Bogart, John S. Strange, or any other person or persons talk either to the defendant, or in his presence, in reference to the error in Paulison Addition No. 2 map, after that error was discovered by Mr. Strange, and express the opinion that the defendant should pay the complainant for the difference, if so, state when, where and what was said about that matter? 10

Objected to, as improper and not rebuttal, and also as leading.

A. I recollect of hearing Gilbert D. Bogart talk with Mr. Van Iderstine in relation to the error in map of this property. I think in my office or in front of it, I am not positive which; I recollect of hearing Bogart say to him there being an error, you, Van Iderstine, had ought to pay Paulison the difference that it amounts to. I may have heard others talk with Van Iderstine on the subject, but I have no distinct recollection. 20

602 Q. When did you hear Bogart tell him, as you have just testified to, in reference to the time of this sale from the complainant to the defendant?

A. Soon after the error was discovered. 30

603 Q. How frequently did you hear Bogart tell him this?

A. More than twice, I couldn't say how often.

604 Q. On different occasions?

A. At different times.

605 Q. When you made a calculation from the map, Paulison Addition No. 2, to ascertain approximately the

number of city lots in this tract and the price as you state you did, where was the defendant?

Objected to, as not rebuttal.

A. He was in my office.

606 Q. Did he see you and know what you were doing?

Same objection.

10

A. Yes, he was sitting or standing right by.

Complainants' counsel offers in evidence certified copy of deed dated February 1, 1869, from the complainants to John C. Neff, recorded in Book Q. 3, of deeds for Passaic County, page 533, and is marked Exhibit P. 13.

Objected to, for irrelevancy.

20

Certified copy of deed from John C. Neff and wife, to the defendant, dated February 1, 1870, recorded in said office in Book W. 3, p. 274, offered in evidence on the part of the complainant and is marked Exhibit P. 14.

Same objection.

Cross-examination.

607 Q. How do you know that Van Iderstine paid Neff \$1,550 for his lot?

30

A. I only know what the deed shows. I mean the record of the deed in the Clerk's office; I looked at that to-day for the purpose of being able to testify as to the amount paid, if asked.

608 Q. Do you swear to the time of purchase from information obtained in the same way and for the same purpose?

A. I do.

609 Q. From what information do you swear as to the exact price Neff paid complainants, have you looked at the record of that deed?

A. I have looked at the record of that deed to day, but I knew the price I sold it for from my own recollection, and a record I have of my own charged against Paulison as commissions on that amount of that sale.

610 Q. Then you get the price from your books?

A. Yes.

611 Q. Did Paulison know about this purchase of Neff's property by Van Iderstine, about or soon after his purchase?

A. I suppose he did, I don't know positive. I knew of it soon after his purchase.

612 Q. How often did you broach this subject of sale, and how often did Van Iderstine, in your conversations about it?

A. I can't say how often I did, several times. Mr. Van Iderstine as many as on two occasions, it may have been more, I can't recollect about that. We talked a number of times about it. 20

613 Q. Can you recollect, at this lapse of time, just who commenced the conversations about it, or how it was commenced?

A. I can not recollect just how it was commenced; I do recollect that on one or more occasions I commenced it, and that Mr. Van Iderstine did on one or more occasions commence it.

614 Q. Where was the time and place of Bogart's second conversation you have spoken of? 30

A. Near the depot at Passaic, whether it was in my office or outside I don't recollect, and soon after the error was discovered.

615 Q. The same time and place as the first one?

A. Not the same time, in the immediate vicinity of the place.

616 Q. How long after the first time?

A. It was after a short interval.

617 Q. Was it after the suit was commenced?

A. No.

618 Q. Who was present at the second conversation of Bogart's?

A. I couldn't say all, I have an impression but I am not positive.

619 Q. Give all the persons you are positive about?

A. Bogart, Van Iderstine and myself.

10 620 Q. Didn't Van Iderstine always insist that he bought the property not by the city lot, in those talks?

A. He did.

631 Q. Didn't he always insist that, so far as you know?

A. He did since the error was discovered.

622 Q. Did Bogart tell Van Iderstine he ought to pay Paulison, whether he, Van Iderstine, was right about his purchase or not, or did he say if there was a mistake he ought to pay?

20 A. Bogart was giving Van Iderstine his views of the matter. Bogart in his conversation with Van Iderstine, was telling him that there was an error, that he was getting more property than Van Iderstine supposed he was or that Paulison knew of, and he thought Van Iderstine should pay Paulison the difference.

623 Q. He said he thought Van Iderstine should pay Paulison the difference, whether it was bought by city lot or not; is that what you mean?

30 A. I mean what I have stated, I don't know how Bogart arrived at his opinion in the matter, I know this that Bogart in his conversation with Van Iderstine insisted that there was an error in the map, and that Van Iderstine had ought to pay Paulison the difference.

624 Q. Did you or Paulison have any talks with Bogart about the bargain, before these conversations, I mean had Bogart been apprised by either of you about the bargain itself?

A. Yes, by myself.

625 Q. Give the particulars of the first conversation by Bogart, with Van Iderstine ?

A. I don't think I can, any more definite than I have.

626 Q. Give us that again, what was it ?

A. Bogart told Van Iderstine that an error had been discovered in the map, and you have got more property than you supposed you had, and you had ought to pay Paulison the difference, that is the substance.

627 Q. This is the same as the second conversation exactly, is it not ; were they exactly alike? 10

A. All conversations that I heard between Bogart and Van Iderstine, in relation to this matter, the tendency was the same, I don't pretend to give the exact language.

628 Q. How was Van Iderstine's talk in these conversations, was it pretty much the same ?

A. Always the same, that he had got no more than he bought, and that he didn't think he ought to pay any more.

629 Q. Bogart used to joke or jest with Van Iderstine about this dispute, didn't he, and talk to him in a joking manner, did he not? 20

A. Yes, he did.

630 Q. Were not these conversations much in a spirit of a joking or jesting way, with Van Iderstine, than otherwise ?

A. I think they were.

631 Q. You don't think Bogart expected Van Iderstine to go off and settle on account of these talks he had with him, or that he meant them for that purpose ?

A. It is hard for me to know what he expected, I do know that Mr. Paulison had made no demand on Mr. Van Iderstine at that time, I don't know what Bogart expected. 30

Re-direct.

632 Q. Do you mean that you know Paulison had made no demand at that time, or that so far as you know he had not ?

A. So far as I know, he had not at that time made no demand upon Mr Paulison, at that time.

633 Q. Did you inform Paulison about those conversations of Bogart with Van Iderstine?

Objected to, as irrelevant.

A. I don't recollect whether I did or did not.

SAMUEL B. FRITTS.

10 Taken before me Nov- }
 ember 23, 1876. }
 ISAAC VAN WAGONER,
Master in Chancery of New Jersey.

Testimony closed.

EXHIBITS ON PART OF COMPLAINANTS.

Exhibit P. 1.

Map, Paulison Addition No. 2, filed December 1867, a section of which embracing the land in question is shown on page 149

Exhibit P. 2.

10

Unexecuted agreement between Charles M. K. Paulison and John H. Van Iderstine, as follows :

AGREEMENT made the first day of March , in the year one thousand eight hundred and sixty-nine, Between Charles M. K. Paulison, of the village of Passaic, County of Passaic and State of New Jersey, party of the first part, and John H. Van Iderstine, part of the second part, in manner following : The said party 20 of the first part, in consideration of the sum of ten thousand nine hundred dollars, to be fully paid, as hereinafter mentioned, hereby agrees to sell unto said part of the second part, all those certain tracts or parcels of land and premises situate, lying, and being in the village of Passaic, County of Passaic and State of New Jersey, being bounded and described as follows : Beginning on the southwesterly side of Paulison avenue, at a point distant sixty feet, southeasterly from the southerly corner of High street and Paulison avenue ; thence running 3) southwesterly on a line parallel with High street, one hundred and twenty-two feet ; thence running northwesterly on a line parallel with Paulison avenue, sixty feet to High street ; thence southwesterly along the southeasterly side of High street, sixty feet ; thence southeasterly on the line parallel with Paulison avenue, five hundred and eight feet and six inches to Erie street ; thence northwesterly along the westerly side of Erie

street to the westerly corner of Paulison avenue and Erie street; thence northwesterly along the southwesterly side of Paulison avenue, three hundred and thirty-nine feet and six inches, to the place or point of beginning.

- And the said part of the second part hereby agree to purchase said premises at the said consideration of ten thousand and nine hundred dollars, and to pay the same as follows: Two dollars on the signing
- 10 and delivery of this agreement, six thousand five hundred dollars, by conveying to said Paulison, or his assignees in fee simple with the several full covenants, the house and lot belonging to said John Van Iderstine, now occupied by Andrew Frost, on River street, subject to a mortgage now on said property of \$2,700; four thousand and four hundred dollars, by a bond and mortgage, to be given by said Van Iderstine and wife, to said Paulison, on said first above described lots, payable in two years, with interest payable semi-annually; said
- 20 Van Iderstine, shall include and add to the above mortgage for \$4,400, the amount of the mortgage now on the premises on River street, as above stated, which will make to total mortgage on said first above described lots, amounting to seven thousand one hundred dollars; being further understood, between the parties to these presents, that should said Van Iderstine require a release from the said mortgage of any of the lots, on above to be conveyed to him, he shall be entitled to have it
- 30 upon his paying the proportion which said lot or lots, may be to the whole amount.

And the said party of the first part, on receiving such payment at the time and in the manner above mentioned, shall, at his own proper costs and expense, execute, acknowledge and deliver to the said part of the second part, or to his assigns, a proper deed, containing a general warranty and the usual full covenants for the conveying and assuring to him or them, the fee simple of the said premises, free from all incumbrance,

and which deed shall be delivered on the third day of March, 1869, of the present month.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

It is further understood and agreed between the parties to these presents, that the buildings now on the lots first above described, is not to be conveyed by the deed to be given, to the said Van Iderstine, but shall remain the property of the said Paulison and wife, and that they shall remove said buildings from said lots, within four months from the date of these presents. 10

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered }
in the presence of }

Exhibit P. 3.

20

Certified copy of deed from complainants to defendant dated March 3rd, 1869, in Book O. 3, of deeds, page 596, &c., acknowledged March 3rd, 1869, and recorded March 6, 1869.

THIS INDENTURE, made the third day of March, in the year of our Lord, One Thousand Eight Hundred and Sixty-nine, between Charles M. K. Paulison and Anna Paulison, his wife, of the Village of Passaic, in the County of Passaic, and State of New Jersey, of the First Part: And John H. Van Iderstine, also of the Village of Passaic, in the County of Passaic, and State of New Jersey, of the Second Part: 30

Witnesseth, That the said party of the first part, for and in consideration of the sum of Eleven Thousand dollars lawful money of the United States of America, to

them in hand well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented, and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Passaic, in the County of Passaic, and State of New Jersey, being bounded and described as follows :

Beginning at the southwesterly side of Paulison avenue at a point distant sixty feet, southeasterly from the Southerly corner of High street and Paulison avenue, thence running Southwesterly on a line parallel with High street, one hundred and twenty-two feet ; thence running Northwesterly on a line parallel with Paulison avenue, sixty feet to High street, thence running Southwesterly along the Southeasterly side of High street sixty feet, thence running Southeasterly in a line parallel with Paulison avenue, five hundred and eight feet six inches to the Westerly line of Erie street, thence running Northerly along said Westerly side of Erie street to the Southwesterly side of Paulison avenue, thence running Northwesterly along said Southwesterly side of Paulison avenue three hundred and thirty-nine feet and six inches to the place or point of beginning, the premises above intended to be conveyed being further known and designated as lots number sixty (60), sixty-two (62), sixty-four (64), sixty-six (66), seventy-one (71), seventy-two (72), and seventy-three (73), as the same is laid down on a certain map entitled Paulison Addition No. 2 to the Village of Passaic, New Jersey, made by S. D. Bachus, surveyor and filed in the office of the Clerk of Passaic County, N. J., December 21, 1867.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in any-wise appertaining: Also, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. To have and to hold, all and singular the above described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said parties of the first part, do, for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that she the said Anna Paulison, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may changed, charged, altered or defeated in any way whatsoever.

And also, that the said party of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that the said parties of the first part, will warrant, secure, and forever defend the said land and premises unto the said John H. Van Iderstine, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In witness whereof, the said Charles M. K. Paulison

& Anna Paulison, have hereunto set their hands and seals the day and year first above written.

CHARLES M. K. PAULISON, [L. s.]

ANNA PAULISON, [L. s.]

Signed, Sealed and Delivered }
in the presence of }
B. N. CLEVELAND,

10 STATE OF NEW JERSEY, }
PASSAIC COUNTY, } ss. Be it remembered, That on
this third day of March, in the year of Our Lord One
Thousand Eight Hundred and Sixty-nine, before me B.
N. Cleveland, a commissioner to take acknowledgments
and proof of Deeds for said Passaic County, personally ap-
peared Charles M. K. Paulison and Anna Paulison, his
wife, who, I am satisfied, are the grantors in the within
Deed of Conveyance named; and I having first made
known to them the contents thereof, they did acknow-
20 ledge they signed, sealed and delivered the same as their
voluntary act and deed, for the uses and purposes therein
expressed:

And the said Anna Paulison, being by me privately ex-
amined, separate and apart from her said husband, did
further acknowledge that she signed, sealed, and deliver-
ed the same as her voluntary act and deed, FREELY, with-
out any fear, threats or compulsion of her said husband.

B. N. CLEVELAND, *Commissioner.*

30 STATE OF NEW JERSEY, } I, Jacob H. Blauvelt, Clerk of
PASSAIC COUNTY, ss. } said county, also Clerk of said
County Courts thereof, do hereby that the foregoing is a
true of the deed made by C. M. K. Paulison and wife, to
John H. Van Iderstine, as the same remains of record in
my office in Book O. 3, of deeds, pages 596, &c.

[L. s.]

In testimony whereof, I have here-
unto set my hand, affixed the seal
of said courts and county, this
28th day Oct. A. D., 1875.

J. H. BLAUVELT, *Clerk.*

Exhibit P. 4.

Certified copy of assignment of bond and mortgage, dated March 3rd, 1869, given by def't to Anna Paulison, to secure \$7,100 of purchase money for conveyance of premises described in exhibit No. 3; said assignment bears date August 26th, 1869, made by complainants to Benjamin W. Merriam. Acknowledged August 23rd, 1869. Recorded August 31, 1869, in Book 2 of assignments page 46, &c.

10

Exhibit P. 5.

Map, made by John S. Strange, Jan'y 17, 1870, of property in question, a copy of which on reduced scale is shown on page 149

Exhibit P. 6.

20

Certified copy of deed from defendant and wife to John F. Kilgour, dated Dec'r 16th, 1869, acknowledged same day, recorded June 2nd, 1870, in book W. 3, page 495, &c.

Consideration \$7,700.

Conveys corner Paulison avenue and Erie street, all easterly and of property in question to wit : 202 feet and 5 inches on Paulison avenue, 316 feet and 8 inches in rear opposite Paulison avenue, about 222 feet along Erie street, and 182 feet deep at right angles with Paulison avenue.

Exhibit P. 7.

Certified copy of deed from defendant and wife to John F. Kilgour, dated March 28th 1871, acknowledged

March 29th, 1871, recorded Sep't 22nd, 1871, book H. 4, of deeds, page 105, &c.

Consideration \$3,933.75.

Conveys section of property in question immediately adjoining the premises described in exhibit 6, on the northwest. Being $137\frac{4}{10}$ feet front on Paulison avenue, $150\frac{9}{10}$ feet in rear, 182 feet deep on easterly line, $181\frac{67}{100}$ feet deep on westerly line.

10

Exhibit P. 8.

Certified copy of deed from defendant and wife to Richard Outwater, dated April 15th, 1872, acknowledged same day, recorded April 24th, 1872, Book L. 4 of deeds page 632, &c.

Consideration \$2,975.

20 Conveys section of property in question immediately adjoining the premises described in exhibit 7 on the northwest, being 80 feet front on Paulison avenue, 80 feet rear, 182 feet deep throughout.

Exhibit P. 9.

Certified copy of deed from defendant and wife, to William H. Hall, dated December 2nd, 1872, acknowledged January 2nd, 1873, recorded January 3rd, 1873, in Book S 4, page 216, &c.

30 Consideration \$7,000.

Conveys section of property in question, together with plot 60 feet front on Paulison avenue, by 122 f p n southwest corner of Paulison avenue and High street, described in exhibits 15 and 16 of complainants, said premises so conveyed to said Hall, immediately adjoins the premises in exhibit 8, on the northwest, and is 171.9 feet front on Paulison avenue, 159.2 on rear, 181.8 feet deep on southeast line, 182 feet deep along High s ret

containing 30,087 square feet, being further known as part of lots 71 and 72, and whole lots 73 and 74, on map exhibit No. 1 above.

Exhibit P. 10.

Contract of defendant with Wm. H. Hall as follows :

In consideration of the sum of one dollar, to me in hand paid, I hereby sell to Wm. H. Hall, the plot of ground, located on the corner of Paulison avenue and High street, consisting of about twelve city lots, size of plot one hundred and seventy-two feet ten inches on Paulison avenue, and one hundred and eighty-two feet on High street, for the sum of seven thousand dollars. One thousand dollars cash on delivery of deed about January 5, 1873 ; and one thousand on the first day of May, 1873 ; and the balance five thousand dollars on bond and mortgage for five years, at seven per cent. interest ; and, it is hereby, agreed, that Wm. H. Hall, assume the assessment for damages, on Milton Burns' house, amounting to about \$70 ; and also pay for the building stone on the ground amounting to \$50 ; which he hereby agrees to pay to me, John H. Van Iderstine, at the time of the delivery of the deed.

JOHN H. VAN IDERSTINE.

Exhibits P. 11 & 12.

Cancelled bond and mortgage, dated respectively, December 2d, 1872, made by Wm. H. Hall to defendant, to secure payment of \$1,000, on or before May 1st, 1873, said mortgage being on premises described in Exhibit 9, and recorded January 3d, 1873, in Book D, page 422, and cancelled of record May 9th, 1873.

Exhibit P. 13.

Certified copy of assignment of mortgage made by defendant to Elias J. Van Ness, dated April 12, 1873, acknowledged same day, recorded April 14, 1873, in book H. of assignment of mortgages, page 104, by which for the consideration of \$5,000 named therein the defendant assigns to said Van Ness a mortgage with its accompanying bond, each dated Dec'r 2, 1872, made by Wm. H. Hall, to secure to said defendant the sum of \$5,000 in five years from date with interest.

10

Exhibit P. 14.

Certified copy of discharge of mortgage executed by said Elias J. Vreeland, dated February 17th, 1875, acknowledged February 24th, 1875, recorded February 27th, 1875, by which said Vreeland certifies that the mortgage described in exhibit 13, dated Dec'r 2nd, 1872, for \$5,000 is paid, and consents that the same be cancelled of record.

20

Exhibit P. 15.

Certified copy of deed from complainants to John C. Neff, dated February 1, 1869, acknowledged same day, recorded February 15th, 1869, in book O 3, page 533 &c.

30

Consideration \$1,025.

Conveys rectangular lot on southwesterly corner of Paulison avenue and High street, 60 feet front on Paulison avenue, and 122 feet deep, known as lot 74 on map exhibit 1.

Exhibit P. 16.

Certified copy of deed from John C. Neff, and wife to defendant, dated February 1st, 1870, acknowledged February 10th, 1870, recorded May 9th, 1870, in book W 3, page 274 &c.

Consideration \$1,550.

Conveys same premisses as described in exhibit 15.

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EXHIBITS ON PART OF DEFENDANT.***Exhibit 1.***

Original of which exhibit 3 on part of complainants is certified copy.

Exhibit 2 and 3.

20

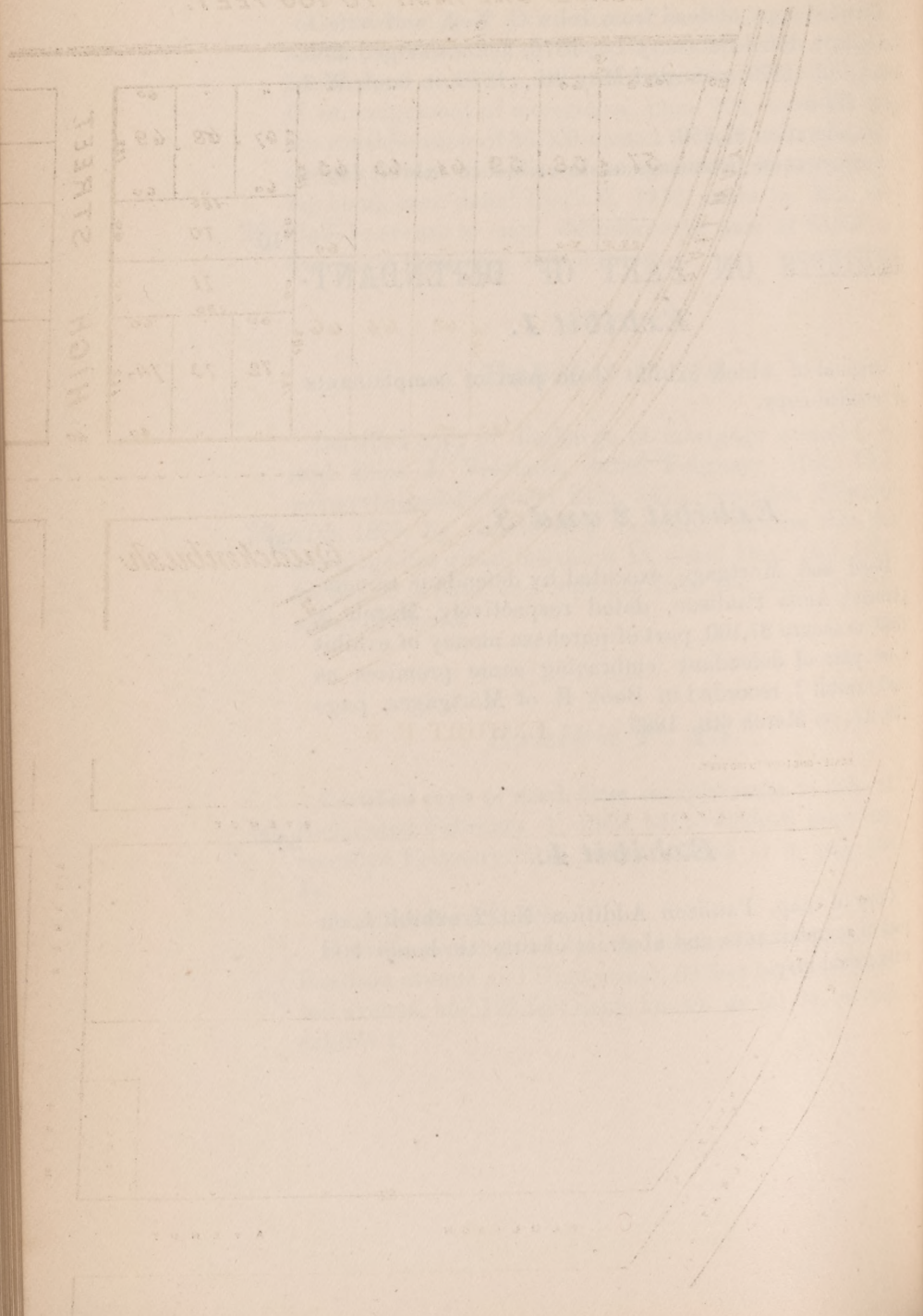
Bond and Mortgage executed by defendant to complainant, Anna Paulison, dated respectively, March 3, 1869, to secure \$7,100, part of purchase money of exhibit 1 on part of defendant, embracing same premises as said exhibit 1, recorded in Book R. of Mortgages, page 159, &c., on March 6th, 1869.

Exhibit 4.

30

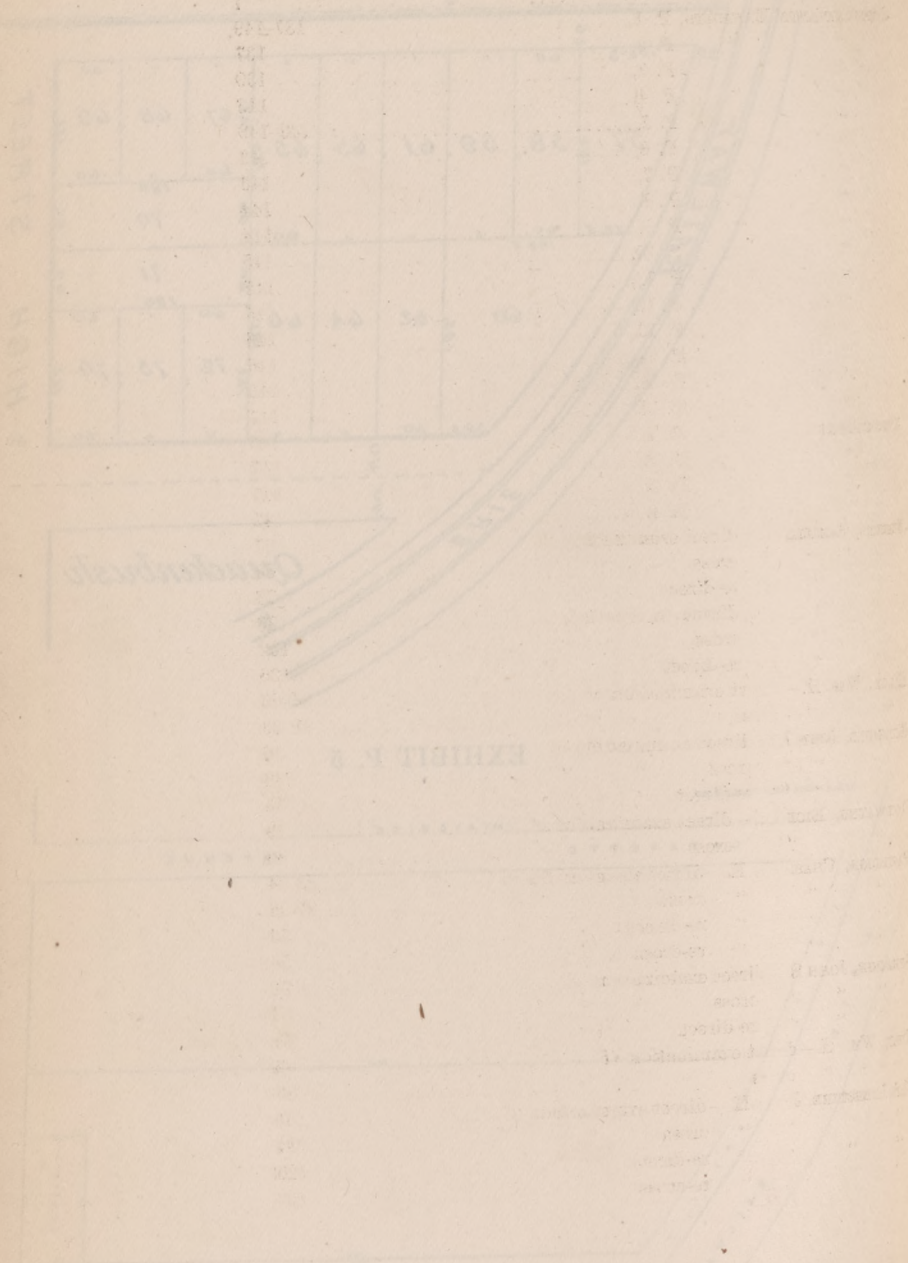
Copy of map, Paulison Addition No. 2; exhibit 1, on part of complainants, and abstract of title to lands laid out on said map.

EXHIBIT P. 1
SCALE ONE INCH TO 100 FEET



INDEX

SCALE - ONE INCH TO 100 FEET



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MAY TERM, 1877.

CHARLES M. K. PAULISON AND WIFE,

vs.

JOHN H. VAN IDERSTINE.

10

Bill for relief. On final hearing. On pleadings and proofs.

Mr. J. C. Paulison, for complainants.

Mr. J. R. Emery, for defendant.

20

THE CHANCELLOR:—This suit is brought to recover from the defendant \$4,900 alleged to be due from him to Mrs. Paulison, one of the complainants, with interest thereon from the 3d of March, 1869. The ground of the claim is that at that date the complainant sold to the defendant an unimproved plot of land in the City of Passaic, in this state, belonging to Mrs. Paulison; that the price agreed to be paid therefor was \$350 a city lot of 2,500 square feet; that owing to an error in the map on which the plot was laid down the parties were misled as to its contents, and a mistake was consequently made in computing the price which was fixed at \$10,900 instead of \$15,800, it being supposed that there were in the property only about 31 city lots of 2,500 square feet each, whereas it in fact contained 45 of that size. The error in the map was in the figures indicating the length of two of the external lines of the property, one of which was

30

- laid down as 339.5 feet, when it should have been 532.8 feet and the other as 508.5 feet instead of 706.1 feet the true length. The negotiation for the sale of the property to the defendant was conducted on behalf of Mrs. Paulison, by her husband. There can be no doubt that the alleged mistake was made by him in estimating the price at which the property was sold; nor that it was made by reason of the error in the map. The map was one which the complainants had caused to be made. The mistake in
- 10 it was not discovered by them until September, 1869, when the City Surveyor, in the course of a survey made by him for a projected municipal improvement, detected the error. He immediately communicated his discovery to Mr. Paulison. The defendant appears to have discovered it at an earlier day by pacing one of the lines. Though the matter appears to have been the subject of some conversation between the defendant and two or three of his acquaintances, neither of the complainants ever spoke to him in reference to it up to within a few days before
- 20 the commencement of this suit (which was in February, 1875,) when Mr. Paulison called upon him and demanded payment of the difference in price (\$1,900,) caused by the mistake, and interest thereon. It appears that the defendant in all the conversations which were had with him on the subject insisted that he was not liable to pay anything more than he had already paid, and that he had bought the property at a price (\$10,900) fixed by Mr. Paulison, and that he did not agree to pay for it according to its contents.
- 30 For part of the purchase money the defendant conveyed to Mrs. Paulison, a house and lot belonging to him in Passaic, and for the balance he gave to her a mortgage for \$7,100, and interest upon the property conveyed to him. That mortgage was assigned by the complainants to B. W. Merriam in August, 1869, and it has been paid off. It appears from the evidence that at the time when the negotiation for the sale began the defendant was anxious to dispose of his house and lot above mentioned and

that he had spoken to Samuel B. Fritts, a real estate broker in Passaic, on the subject. The latter suggested the exchange of the house and lot with Mrs. Paulison for some of her unimproved land. The land which was subsequently purchased by him from Mrs. Paulison, soon became the subject of their consideration with a view to an exchange. The defendant was unwilling to take the whole of it because of the large amount of the mortgage, he would be compelled to give upon it on account of the purchase money.

10

He proposed to take part of it only, but that proposition was not entertained.

The result was that he and Mr. Paulison met at Fritts' office, and a negotiation took place there on the subject of the exchange on the basis of the purchase by the defendant of the entire plot. The parties then came to an agreement, but it was only after the gross price at which the defendant was to take the property had been computed and stated to him by Mr. Paulison. Though the latter in his testimony says that no definite sum was mentioned, he admits "there might have been a rough calculation as to about how many lots there were in the tract," but he adds that he is quite certain that there was no definite sum agreed upon as the result of the calculation. Mr. Fritts however testifies that on that occasion the calculation was made by Mr. Paulison in figures, as to the quantity which the whole area of the plot contained, and what it amounted to at the price of \$350 a lot. The defendant testifies that Mr. Paulison made a calculation upon a piece of paper before he told him what he would take for the property.

20

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He swears that he was so much influenced by the amount of the purchase money that had it been stated to him at the amount now claimed he would not have taken the property.

Mr. Fritts testifies that the defendant was reluctant to take the whole of the plot. He says "Mr. Van Iderstine's reasons to me from first to last were that he did not like

to take the responsibility of carrying so much property.' He further says, obviously referring to an occasion previous to the meeting between Mr. Paulison and the defendant in Fritts' office, "He" (the defendant) "told me that he had concluded to make the deal with Paulison for the whole property, if Paulison would not deal with him for part, and I told him that Paulison would not deal unless he took it all. Well, he said I will make the deal. He asked me if I knew how much there was in it, I took

10 a map of it which I had and made a calculation as quickly as I was able to; I could not get at it exactly for the reason that there was an arc of a circle on one end of it on Erie street, I told him that I made so many city lots; I don't recollect how many, and then I calculated it by \$350 a city lot amounting to so much, how much I don't recollect" so that Fritts gave to the defendant before the negotiation with Mr. Paulison began, the same amount as the price of the price of the property which was subsequently given to him by Mr. Paulison ; for the map from

20 which Fritts took his data for his calculation was a copy of that which was used by Mr. Paulison in his calculation. Though the bill states that the mistake was not discovered by the complainants until after the defendant had sold a considerable part of the property, and although Mr. Paulison testifies that the first knowledge or intimation which he had that the map was incorrect was when he was informed by the City Surveyor, which he says was pretty nearly a year after the conveyance of the plot to the defendant; the City Surveyor testifies that he discovered the mistake in the map on the 27th of September, 1869, and informed Mr. Paulison of it on the same

30 day ; and it appears by the bill that the first conveyance of any part of the property by the defendant was not until the 28th of March, 1871, a year and a half after Mr. Paulison had been made aware of the error, and it was not until February, 1875, that the complainants made any demand upon the defendant for the rectification of the alleged mistake. He had then sold and conveyed

away all the property, and in the meantime had made large expenditures upon the premises in preparing them for sale. When he bought the property it was wholly unimproved. It was part of a farm and was in the ordinary condition of farm land. For the property the defendant realized after allowing for interest and expenses but little more than the amount which the complainants allege he agreed to pay for the purchase money. The complainants did not at any time seek to rescind the contract for the alleged mistake. They waited for 10 five years before making even a demand on the defendant in reference to it. Though the bill alleges fraud on the part of the defendant there is no evidence of it, and on the hearing the claim for relief was based entirely on the allegation of mutual mistake. Although the complainants offer as excuse for not having made any demand or taken any proceedings for rescission or any other relief in the premises, their hope of an amicable adjustment of the matter through the good offices of mutual friends, 20 yet it appears that at all times the defendant refused to entertain the complainants' claim and alleged that he had fairly paid all that he had agreed to pay for the property, and all that he was in justice bound to pay. It was the duty of the complainants in view of that claim on the part of the defendant, if they desired relief to take immediate steps for the rescission of the contract while as yet the parties could be placed in *statu quo*. The bill as already stated is in fact a bill for the recovery of part of the purchase money of the conveyance. It prays indeed that the defendant may be decreed to be a trustee for 30 Mrs. Paulson for the amount of purchase money which the complainants claim from him, but notwithstanding that it is merely a suit for the recovery of an amount of purchase money, which as the complainants allege was not received through mutual mistake of the parties in making the computation of the amount. The case has no claims upon a Court of Equity.

It remains to consider the objection of misjoinder rais-

ed in the answer and insisted upon at the hearing. There is undoubtedly a misjoinder of the husband with the wife in this suit, which is brought in reference to her separate property.

Johnson vs. Vail, 1 McCart. 423.

10 The error however would have been of no importance practically had Mrs. Paulison appeared to have been entitled to the relief sought. In that case an amendment would have been ordered which would have obviated the objection. The bill will be dismissed with costs.

IN CHANCERY OF NEW JERSEY.

BETWEEN—

20 CHARLES M. K. PAULISON AND ANNA

PAULISON,

Compl'ts.

*On Bill, &c.
Decree.*

and

JOHN H. VAN IDERSTINE,

Def't.

30 This cause coming on to be heard before the Court, on Bill, Answer, Replication and Proofs, and the Court having heard the respective counsel of the parties thereon, upon consideration had—

It is ordered adjudged and decreed that, for the reasons setforth in the opinion of the Court in this cause, the complainants' bill be and the same is hereby dismissed with costs.

May 15th, 1877.

THEODORE RUNYON, C.

COURT OF APPEALS IN THE LAST RESORT, &C.

BETWEEN—

CHARLES M. K. PAULISON AND ANNA
PAULISON,*Appellants.*

and

JOHN H. VAN IDERSTINE,

*Appellee.**On Bill, &c.
Petition of Ap-
peal.*

10

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

The humble petition of Charles M. K. Paulison and Anna Paulison, his wife, the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by a final decree, made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the fifteenth day of May, in the year eighteen hundred and seventy-seven, wherein the said Charles M. K. Paulison and Anna Paulison, his wife, were complainants, and the said John H. H. Van Iderstine, was defendant, in this respect to wit : that the said decree adjudges that, for the reasons set forth in the opinion of the Court in this cause, the complainants' bill be dismissed. 20

And your petitioners humbly appeal from said decree of the Chancellor, upon the ground that the same is erroneous for that the complainants' bill should not be dismissed, but that the relief prayed for in said bill ought to be granted. 30

Your petitioners therefore pray that the said decree of the said chancellor may be reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

Dated May 21st, 1877.

JOHN C. PAULISON,
Sol'r and of Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | | |
|----|---------------------------------|-------------------------------------------------------------|
| | BETWEEN— | } <i>On Bill, &c. Answer to Petition of Appeal.</i> |
| | CHARLES M. K. PAULISON AND ANNA | |
| | PAULISON, HIS WIFE, | |
| 10 | <i>Appellants.</i> | |
| | and | |
| | JOHN H. VAN IDERSTINE, | |
| | <i>Respondent.</i> | |

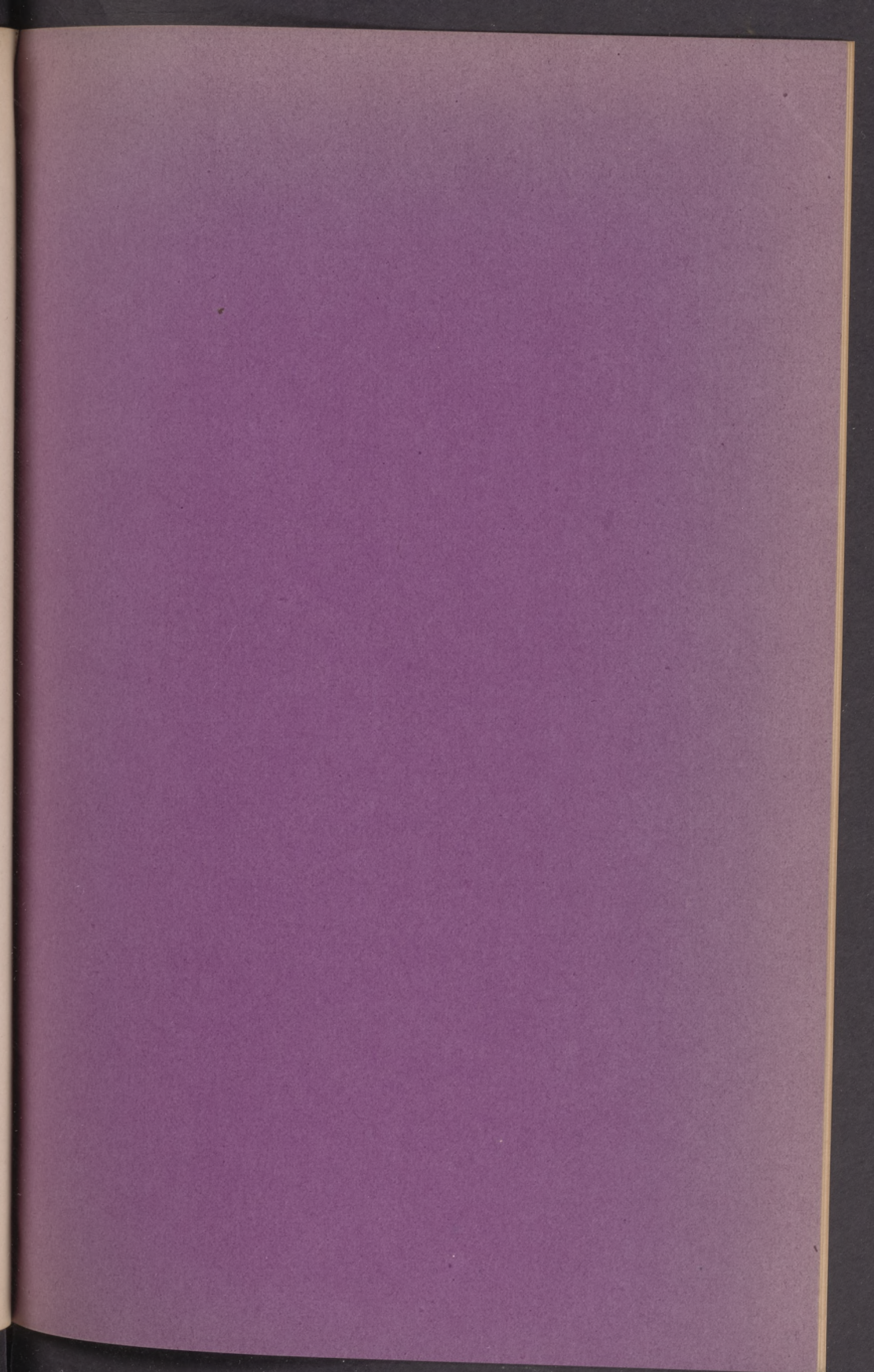
20 This respondent, not confessing all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says: that such decree as is complained of, was made by the Court of Chancery, as in the said petition of appeal is mentioned and set forth, but as to the date, substance and extent thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced; and this respondent humbly conceives and is advised that the said decree is agreeable to equity and justice, and therefore humbly hopes the same may be affirmed and said appeal may be dismissed this Honorable Court with costs.

Dated July 3, 1877.

30 JOHN R. EMERY,
Solicitor of Respondent.

I hereby consent that above answer may be filed as of July 3, 1877.

JOHN C. PAULISON,
Solicitor of Appellant.



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