

In Chancery of New Jersey.

Between

BENJAMIN W. KING and JOHN L. BROW-

NELL, Complainants,

and

ELISHA RUCKMAN AND CHARLES G. SISSON,

Defendants.

On Bill, &c.

On bill for specific performance and remittitur from the Court of Errors and Appeals.

OPINION.

DALRIMPLE, J. This cause was argued at so late a day in term, as to make it impracticable now to enter into any discussion of the questions of law or fact involved.

The court, after careful consideration of the case, has directed me to state the conclusion at which it has arrived, as follows :

First. Time is not of the essence of the contract on which the complainant's bill is founded.

Second. It is a general rule that in equity time is not 10 deemed to be of the essence of the contract, unless the parties have expressly so stipulated, or it necessarily follows from the nature and circumstances of the contract.

Third. A contract for the sale of land is regarded in equity for such purpose as if it had been specifically executed. The purchaser becomes the equitable owner of the land and the teller of the purchase money.

Fourth. In this case there is nothing in the terms of the

agreement itself, in the nature of the property or the attendant circumstances, which would make it inequitable for the court to interfere and decree performance of the contract, though payment or offer of payment had not been made on the precise day fixed.

Fifth. Parol evidence of conversation between the parties at and before the execution of the contract, is not admissible to alter, add to, or vary the terms of the written instrument, and thus render it a contract of which time is the
10 essence. But a defendant to a bill for specific performance may offer such conversations in evidence as independent proof to rebut an equity set up by the complainant.

Sixth. The defendant's contention that because the second payment of \$19,900 was not made on the 1st day of June, he lost certain contracts for the sale of land, to fulfill which on his part it was understood he depended on the receipt of said second payment on the day it fell due, is not well
20 founded, because he says in substance that those contracts matured during that month of June, and that payment by the complainant by the 10th would have served his purpose; and further, that on the 2d of June, as early as eight o'clock A. M., he served on complainant a notice that the contract was at an end, and ever afterwards refused to acknowledge its existence.

Seventh. It satisfactorily appears that while the complainant, on and prior to the said 1st day of June, was desirous of fulfilling the contract on his part, the defendant was anxious to rid himself of it.

Eighth. The notice given by defendant to complainant
30 that the time of payment of the \$19,900 would not be extended, cannot aid the defendant, because the complainant was ready with the money on the day of payment, and the dispute is whether he produced and offered it at the proper place.

Ninth. By the contract the \$19,900 was payable at the house of the defendant, and not at the office of Mr. Voorhis.

Tenth. Assuming that the defendant's refusal to extend the time of payment of the \$19,900, made it necessary for the complainant to make the payment on the precise day
40 stipulated, the weight of the testimony, after giving due and

legal consideration to the answer of the defendant and full credit to the testimony of Mr. Voorhis, is that by an understanding between the parties, the office of Mr. Voorhis was the place at which the payment was to be made. And the complainant having presented himself there with the money on the 1st day of June, and the defendant failing to attend and accept it, and having early the next morning sought to repudiate his contract, and refused, three days afterwards, to receive the money when the complainant expressed his willingness to pay it, the defendant's answer to the complainant's case that the money was not tendered to the defendant at his house on the 1st day of June, cannot prevail in a court of equity.

Eleventh. Though Mr. Voorhis advised the complainant to seek out the defendant at defendant's house, and tender the money to him there, the complainant did not under the circumstances lose his rights by not doing so.

Twelfth. Taking the contract, bill and answer together, it can be made to appear with sufficient certainty, without resorting to parol evidence, what lands were intended to be embraced in the contract.

The result is that the cross-bill of Ruckman should be dismissed with costs in this court and the court below, and a decree entered in the original cause with costs in both courts, directing the defendant, Ruckman, to make conveyance according to his contract, so far as he has the ability to do so. If the defendant should be able to perform his contract in part only, then the value of the lands embraced in the contract, and which he is not able to convey, should be ascertained and damages awarded to the complainant, or allowance made to the defendant as the principles of equity may require. In case the lands to be conveyed or any of them are encumbered, and the defendant cannot remove the encumbrances for want of funds, the complainant must assume the encumbrances or pay the same and receive an allowance therefor on the purchase money. If the contract cannot now be fully executed, let it be carried into effect on equitable principles as far as circumstances will admit.

The decree of the Chancellor in the original cause must

also be reversed, and a decree entered in this court in accordance with the principles above stated.

State of New Jersey.—I, Henry C. Kelsey, Secretary of State of the State of New Jersey, and *ex-officio* Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify the foregoing [L. s.] to be a true copy of the opinion of the court in the above stated cause, as the same is taken from and compared with the original, now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 13th day of December, A. D. 1870.

HENRY C. KELSEY.

REMITTITUR.

[Filed December 20, 1870.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

November Term, 1870.

20	BENJAMIN W. KING, and ELISHA RUCKMAN,	}	Appellant, Respondent.	} On appeal from decree of Chancellor.
----	---	---	-------------------------------	---

This cause coming on to be heard at the November term of this court, upon the appeal of Benjamin W. King from the final decree of the Court of Chancery, made in this cause, wherein Benjamin W. King was complainant, and Elisha Ruckman was defendant, bearing date twentieth day of October, A. D. one thousand eight hundred and sixty-nine, and the bill, answer, depositions, and proofs, and also the said decree, having been read, and the cause having been

argued by William L. Dayton and Frederick T. Frelinghuysen, of counsel with the appellant, and J. Dixon, Jr., of counsel with the respondent, and the court having taken time to advise thereon, and being now of the opinion that the complainant and the appellant is entitled to the relief prayed for in his bill of complainant, and that the decree of the Chancellor dismissing said bill should be reversed, with costs in both courts—It is therefore, on this fifth day of December, in the year one thousand eight hundred and seventy, ordered, adjudged, and decreed that the final decree 10
of the Chancellor be and the same is hereby in all things reversed, set aside, made void, and for nothing holden; and it is further ordered and directed that the defendant, Elisha Ruckman, make conveyance according to the contract in the bill of complainant mentioned, made and executed by the said Benjamin W. King and Elisha Ruckman on the twelfth day of May, A. D. eighteen hundred and sixty-eight, so far as he has the ability so to do, provided that if the said Elisha Ruckman should be able to perform his said contract in part only, then the value of the lands embraced in the contract, 20
and which he is not able to convey, shall be ascertained and damages awarded to the complainant, or allowance made to the defendant as the principles of equity may require. In case the lands to be conveyed, or any of them, are encumbered, and the defendant cannot remove the encumbrances for want of funds, the complainant must assume the encumbrances or pay the same and receive an allowance therefor on the purchase money. If the contract cannot now be fully executed, it shall be carried into effect on equitable principles as far as circumstances will admit. 30

And it further ordered and directed that the bill and proceedings in this cause be remitted to the Court of Chancery, to the end that the said court may proceed therein and make a decree in favor of the complainant, Benjamin W. King, in conformity with the order and the decree of this court; and that the complainant recover his costs in this court and the court below. 30

On motion of

WILLIAM L. DAYTON,

Solicitor and of counsel with Benjamin W. King, appellant. 40

State of New Jersey.—I, Henry C. Kelsey, Secretary of State and *ex-officio* Clerk of the New Jersey Court of Errors and Appeals in the last resort in all causes, &c., do [L. s.] hereby certify the foregoing to be a true copy of a decree made in the above-stated cause, as the same is taken from and compared with the minutes of said court. In witness whereof, I have hereunto set my hand and affixed my official seal this nineteenth day of December, A. D. eighteen hundred and seventy.

10 HENRY C. KELSEY.

INTERLOCUTORY DECREE.

[Filed January 10, 1871.]

This cause being opened to the court by William L. Dayton, of counsel for the complainant, and it appearing by the remittitur on file in the cause that the decree of dismissal heretofore entered therein in this court has been reversed by the Court of Errors and Appeals, and the cause remitted to this court to be proceeded with according to the discretion
20 of said Court of Errors and Appeals in said remittitur contained—It is thereupon, on this tenth day of January, A. D. one thousand eight hundred and seventy-one, ordered, adjudged and decreed that the decree of dismissal made by this court in this cause on the twentieth day of October, eighteen hundred and sixty-nine, be opened and set aside and for nothing holden, with costs to the said complainant, and that the said complainant is entitled to the relief prayed in his bill of complaint. And it is further ordered, adjudged and decreed that the said defendant, Elisha Ruckman, do convey
30 to the said complainant all that part of the land and premises mentioned in the complainant's bill and comprised in the contract therein set forth, to which the said defendant had title on the fifth day of December, one thousand eight hundred and seventy, or at any time thereafter, and that he convey the same by good and sufficient deed of conveyance, to vest in

the complainant an estate in fee simple in said premises, free and clear of all encumbrances, upon the payment and securing by the said complainant to the said defendant of the purchase money therefor in said contract mentioned. And that the said defendant do cause to be conveyed to the said complainant in fee by good and sufficient deed, clear of encumbrances, all such parts of said lands and premises as it may be in his power under contracts of purchase or otherwise to cause to be so conveyed, upon payment and security of the purchase money therefor according to the terms of said contract. And it is further ordered, adjudged and decreed that there shall be allowed to the said complainant and deducted from the purchase money to be by him paid and secured for the lands actually conveyed to him, the excess, if any, of the full present value over the contract price of all such parts of the lands and premises in said contract mentioned as the said defendant is unable for any reason to convey in fee or procure to be conveyed in fee to the said complainant, and that there shall also be allowed to the said complainant, and deducted from the said purchase money, of such parts of the lands and premises as the said defendant is able to convey or cause to be conveyed to said complainant, the principal and interest of all such encumbrances upon said lands and premises as the said defendant is unable to pay off and discharge, and the said complainant shall assume the payment of such encumbrances. And it is further ordered, adjudged and decreed that there shall be allowed to the defendant and added to the amount of the purchase money to be paid and secured by the complainant to the defendant, the excess, if any, of the contract price over the present value of any lands included in said contract which the said defendant for any reason may be unable to convey in fee, or procure to be conveyed in fee, to said complainant.

And to the end that a final decree may be made in this cause in accordance with the principles settled by this decree and the decree of the Court of Errors and Appeals, and that it may be specifically decreed therein what lands and premises, to be described by metes and bounds, the said defendant shall convey or cause to be conveyed to the said complainant, and what amount of purchase money shall be paid in cash

and secured by mortgage on said land by the said complainant to the said defendant, it is further ordered that it be referred to Washington B. Williams, one of the masters of this court, to ascertain and report to this court with all convenient speed what part of the lands and premises comprised in the aforesaid contract were owned in fee by the said defendant on the fifth day of December last past or at any time thereafter, and that he describe the same by metes and bounds, and also to ascertain and report what part of said

10 lands and premises, describing the same by metes and bounds, were on said fifth day of December last past, or at any time thereafter, so far under the control of the said defendant, by contract of purchase or otherwise, as to enable him to procure the same to be conveyed to the said complainant in fee, and that the said master do ascertain and report the principal and interest of all encumbrances upon the said lands which the said defendant owned or controlled as aforesaid on the fifth day of December last past, or at any time thereafter, and whether the said defendant is able to

20 pay and discharge said encumbrances. And that the said master do also ascertain and report what part or parts of the lands and premises comprised in the aforesaid contract the said defendant did not own in fee, or so control on the said fifth day of December last, or at any time thereafter, as to enable him to convey or cause to be conveyed in fee to the said complainant, and that he ascertain the actual present value of said lands per acre [and that the said master do ascertain and report the contract price of any land which the said defendant held under contract, or otherwise, of purchase and is

30 unable to convey] and for the better making and preparing said report, it is further ordered that the said parties, complainant and defendant, do produce before and leave with the said master on being thereto required by him, all deeds, contracts, papers and muniments of title in their possession or under their control relating to or concerning in any wise the lands and premises in said contract comprised, and that the said master make his report with all convenient speed.

A. O. ZABRISKIE, C.

[NOTE.—The brackets in the above embrace and indicate an amendment made and added to the original interlocutory decree by supplemental order of May 13th, 1872. Filed June 4th, 1872.]

ORDER.

[Filed February 11, 1871.]

Application having been made to the Chancellor for an order that within such reasonable time as the Chancellor may fix, the said Benjamin W. King do pay to the said Elisha Ruckman the sum of nineteen thousand nine hundred dollars, with interest thereon at seven per centum per annum from June first, one thousand eight hundred and sixty-eight, up to the time of payment, pursuant to the contract of May twelfth, one thousand eight hundred and sixty-eight, between said King and Ruckman, and the counsel of the respective parties having been heard thereon—It is thereupon, on this eleventh day of February, A. D. one thousand eight hundred and seventy-one, on motion of J. Dixon, Jr., of counsel with the said defendant, ordered by the court that the said Benjamin W. King do within twenty days, pay 20 to the said Elisha Ruckman the said principal sum of nineteen thousand nine hundred dollars, and that the question of the payment of interest on the same be reserved until further order.

A. O. ZABRISKIE, C.

ORDER.

[Filed June 12th, 1871.]

On motion of J. Dixon, Jr., of counsel with the defendant, Wm. L. Dayton, Esq., of counsel with the complainant, consenting thereto, it is ordered by the Chancellor, on this 10

twelfth day of June, A. D. one thousand eight hundred and seventy-one, that Abraham S. Jackson, Esq., be substituted as Master in the stead of W. B. Williams, Esq., (who is absent from this State, and therefore unable further to serve herein,) in the interlocutory decree in this cause, dated January tenth, one thousand eight hundred and seventy-one, and that the proceedings had before said Williams be continued before the said Jackson.

A. O. ZABRISKIE, C.

10 **PETITION BY WAY OF SUPPLEMENTAL BILL.**

[Filed November 18, 1871.]

To his Honor the Chancellor of the State of New Jersey :

The petition of Charles G. Sisson, of Jersey City, in the State of New Jersey, respectfully showeth :

That on the twentieth day of November, in the year eighteen hundred and sixty-nine, the said defendant, Elisha Ruckman, in conjunction with his wife, Margaret, by their deed dated on that day, for and in consideration of the sum of thirty-three thousand dollars, conveyed to Lansing Zabriskie, 20 of Jersey City aforesaid, and to his heirs and assigns, all the following tracts, pieces or parcels of land and premises situated in the township of Harrington, in the county of Bergen, and State of New Jersey.

1st. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May thirty-first, A. D. eighteen hundred and fifty-six, and recorded in the Clerk's office of the county of Bergen, in Book Z 4 of Deeds, pages 293, 294, 295, 296 and 297, consisting of one lot of thirty-six acres and nine-hundredths of 30 acre, and one lot of sixty-three acres and forty-four-hundredths.

2d. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May first, eighteen hundred and fifty-eight, and recorded in said Clerk's office in Book Z 5 of Deeds, pages 228,

229, 230, 231 and 232, consisting of one lot of six acres, more or less, one lot of ninety acres, more or less, another lot of about six acres, and one lot of twelve acres and two-quarters.

3D. All the lands described in a certain deed made by Abraham J. Auryansen and wife to said Elisha Ruckman, dated October twenty-first, A. D. eighteen hundred and sixty-seven, and recorded in said Clerk's office in Book R 6 of Deeds, pages 588, 589, &c., being a tract of about sixty-two acres.

4TH. All the lands described in a certain deed made by 10 Henry A. Hopper, Sheriff of the county of Bergen, to said Elisha Ruckman, dated February twenty-fifth, A. D. eighteen hundred and sixty five, and recorded in said Clerk's office in Book A 6 of Deeds, page 435, and being a tract containing about thirty acres. The above, taken together, being an irregular tract of land running from the Hudson river westerly to the Closter creek, and containing at least three hundred and five acres, and including the homestead of said Ruckman.

Which said lands are, as your petitioner is informed and 20 believes, part and parcel of the lands named or included in the contract of sale set forth in the bill of complaint in this cause, made by and between said King and Ruckman, and dated May twelfth, eighteen hundred and sixty-eight.

That said deed of conveyance contained, on the part of said Ruckman, the usual covenants in reference to said lands—namely, a covenant of seizin and right to convey, a covenant for quiet enjoyment, a covenant against encumbrances, and former titles and charges, a covenant for further assurance, and a covenant of general warranty. 30

Which said deed was duly executed and acknowledged by said Ruckman and his said wife, and is now in your petitioner's possession, ready to be produced and proven. The said deed was recorded in Bergen county Clerk's office, in this State, on the twenty-second day of November, eighteen hundred and sixty-nine.

That the consideration money for such conveyance was paid by your petitioner alone, the said conveyance having been made to the said Lansing Zabriskie in trust, only for your petitioner, for his sole use and benefit, the said Zabriskie 40

having no beneficial interest whatsoever in the same or the lands conveyed thereby.

That the object of the trust, upon which the legal title to said lands was held by him, having in the meantime terminated, the said Zabriskie, by his deed duly executed, and dated on the thirtieth day of September, in the year eighteen hundred and seventy-one, conveyed the same to your petitioner, who is now the legal as well as the equitable owner thereof, subject to all the rights and claims of the complainant in the above suit, as settled by the decree of this court.

That by a written assignment, duly executed by said Ruckman, under his hand and seal, and dated November the twentieth, eighteen hundred and sixty-nine, he assigned, transferred and set over to the said Zabriskie, who was thereby also acting as trustee for the benefit of your petitioner, in consideration of the sum of one dollar, all the right, title and interest of him, the said Ruckman, in and to the said contract made between him and said King, and being the same contract set out in the bill of complaint in the above cause, and to the money required to be paid thereby, so far as the same related to the said tracts of lands so as aforesaid conveyed to said Zabriskie; and it was thereby agreed that in case the decree of this court, then a short time before made, dismissing the complainant's bill in the above cause, should be reversed and a specific performance of said contract ordered or required, the said Zabriskie should take and receive all the money thereby required and stipulated to be paid and secured for the part of the lands therein named, so far as aforesaid conveyed by said Ruckman to him. And the said Zabriskie did, on the thirtieth day of September, in the year eighteen hundred and seventy-one, by writing, duly executed for that purpose, assign, transfer and set over to your petitioner all the right, title and interest that he had by or under said last above named assignment to him in and to the contract above named between said Ruckman and King.

And your petitioner is advised and insists that, by reason of the aforesaid conveyances and assignments he is entitled to have paid to him, by the said complainant, such portion of the purchase money stipulated to be paid in

said contract between said Ruckman and King, as the said Ruckman would have been entitled to have paid to him for the lands described in said deed made by him to said Zabriskie, if he had not conveyed the same or made said assignment.

And your petitioner avers that he is ready and willing, at any time, to convey said portion of said lands so held by him, to the complainant, according to the directions and decree of this court; and he submits in all things to the decree of this court as far as his interest in the subject matter of said suit is concerned, in the same manner as if he had been a party defendant thereto. That said conveyances and assignments were received and taken by and for your petitioner in good faith, without any purpose of hindering, delaying, or intermeddling with the litigation between the parties to said suit, in which your petitioner has no interest whatever, except so far as it may be necessary for him to ask for the protection of his rights aforesaid, as assignee of said Ruckman.

Your petitioner therefore prays that he may be made a party defendant to said suit, together with the said Elisha Ruckman, and be and stand in the same plight and condition, have the advantage of and be subject to all proceedings therein, in all respects as if he had originally been party defendant thereto.

And for such other or further order in the premises as the nature of the case may require.

And your petitioner, as in duty bound, &c.

CHARLES G. SISSON.

State of New Jersey, county of Hudson, ss.—Charles G. Sisson, being duly sworn, on his oath saith—that the matters and facts in the foregoing petition contained are true, to the best of his knowledge and belief.

CHARLES G. SISSON.

Sworn to and subscribed this thirty-first day of October, A. D. eighteen hundred and seventy-one, before me, at Jersey City, New Jersey.

JAMES B. VREDENBURGH, *M. C.*

ORDER TO MAKE C. G. SISSON A PARTY DEFENDANT.

[Filed November 18, 1871.]

Charles G. Sisson having presented his petition to the court, from which it appears that since the filing of the bill of complaint in this cause, and on the twentieth day of November, in the year eighteen hundred and sixty-nine, the above defendant, Elisha Ruckman, conveyed to Lansing Zabriskie certain lands and premises in said petition named, and which are part and parcel of the lands to which the bill of complaint in this cause relates and refers; and did also, on the same day, assign to the said Zabriskie all the right and interest of him, the said Ruckman, in and to the contract between him and the complainant set forth in said bill, as far as the same related to said lands so conveyed to him; and it further appearing that the said Zabriskie, who was acting as trustee for said Sisson, has since duly conveyed and assigned all his title and interest both in said lands and in contract to the said Sisson, and praying that the said Sisson be made a party defendant to this cause, subject to all the rights of the complainant as settled and established by the decree of this court; and notice of this application, together with a copy of said petition, having been duly served on the complainant's solicitor, who appeared and made no objection thereto; and notice thereof, having also been duly served on the solicitors of the defendant; and it appearing that said Sisson is entitled to be made a party defendant to this cause—

It is thereupon, on this eighteenth day of November, in the year eighteen hundred and seventy-one, on motion of L. & A. Zabriskie, of counsel with said Charles G. Sisson, the petitioner, ordered and decreed by the Chancellor that the said Charles G. Sisson be and he is hereby made a party defendant to the above cause; and that he be bound by all orders and proceedings heretofore made or had in said cause, so far as the same relates to or affects the aforesaid interest acquired by him in the subject matter thereof.

A. O. ZABRISKIE, C.

**NOTICE TO BENJAMIN W. KING, AND TO THE SOLICITORS
OF ELISHA RUCKMAN AND CHARLES G. SISSON.**

Take notice that application will be made to the Chancellor at the State House in Trenton, on Tuesday, the twenty-second day of October instant, at ten o'clock A. M., for an order to make John L. Brownell a party complainant to the above cause, on the ground that he has acquired from the said Benjamin W. King, as set forth in the accompanying petition, all the right, title, claim, demand, and interest of the said Benjamin W. King, of, in, and to the subject matter thereof, since the commencement of said suit. The accompanying is a true copy of the petition upon which the above application will be made.

Dated October 8th, 1872.

Yours, &c.,

WILLIAM L. DAYTON,

Solicitor for John L. Brownell.

ENDORSED.—We admit due and legal service of the within notice, and copy of petition therein referred to.

L. & A. ZABRISKIE, for *Sisson.* 20

per **THOMAS P. GIBSON.**

DIXON & COLLINS,

Solicitors for Elisha Ruckman.

I hereby acknowledge personal service of the within and above notice, and consent that the order therein mentioned as to be applied for may be taken, and John L. Brownell be made a party complainant to the within named cause; and I do further certify that John L. Brownell is the assignee of all my right, title, and interest as complainant in the within named suit against Elisha Ruckman; and I hereby consent that in all future orders and decrees of the court in the said cause, the said John L. Brownell may be substituted for me, and in my place and stead.

B. W. KING.

PETITION BY WAY OF SUPPLEMENTAL BILL.

[Filed October 22, 1872.]

To His Honor the Chancellor of the State of New Jersey:

The petition of John L. Brownell, of Nyack, in the county of Rockland and State of New York, respectfully showeth, that on the twentieth day of August, eighteen hundred and sixty-eight, the said complainant, Benjamin W. King, by four separate and several deeds of assignment dated on that day, and for good and valid consideration therefor, granted, 10 assigned and made over severally to Herman C. Adams, John J. Donaldson, Peter C. Adams and William R. Beigholz, each a one-fifth interest in the contract executed between him, the said complainant, and Elisha Ruckman, the said defendant, on the twelfth day of May, eighteen hundred and sixty-eight, mentioned and set in the bill of complaint in this cause made, and for the specific performance of which contract the said bill was filed; and by said four deeds of assignment the said Benjamin W. King, granted, conveyed, assigned and made over to the said Herman C. Adams, John 20 J. Donaldson, Peter C. Adams and William R. Beigholz, in the proportion to each of one-fifth of his right, title, interest, claim, property, and demand in, of, and to the premises in said contract mentioned and described, or intended to be mentioned and described. The aforesaid deeds of assignment were dated as aforesaid and duly recorded in the Clerk's office of the county of Bergen, in Liber B 7 of Deeds, page 153, &c.

And your petitioner further shows, that on the first day of March, eighteen hundred and seventy-one, the said William 30 R. Beigholz, for a good and valid consideration, by deed of assignment dated on that day, conveyed, assigned and made over to Aaron Raymond all his interest in the contract and land aforesaid, to wit, the one-fifth interest therein, conveyed and assigned to him as aforesaid by Benjamin W. King; which said deed of assignment from Beigholz to Raymond was duly recorded in the Clerk's office of Bergen county

aforesaid on March ninth, eighteen hundred and seventy-one, in Liber A 8 of Deeds, page 73, &c.

And your petitioner further shows, that on the twenty-seventh day of February, eighteen hundred and seventy-one, by deed of assignment dated on that day and recorded in the said Bergen County Clerk's office in Liber A 8 of Deeds, page 120, &c., March sixth, eighteen hundred and seventy-one, Peter C. Adams conveyed and assigned to Aaron Raymond, all his right, title, interest, claim, property and demand in, of and to one undivided one-fifth interest in the said Ruck-10 man and King contract.

And your petitioner further shows, that the aforesaid John J. Donaldson by deed of assignment dated January twelfth, eighteen hundred and seventy-one, duly conveyed, assigned and made over to Aaron Raymond all his right, title, demand, claim, property, and interest in, of, and to his one undivided one-fifth interest in the contract and lands aforesaid before assigned to him as aforesaid by Benjamin W. King, which said deed of assignment from John J. Donaldson to Aaron Raymond was recorded in the Clerk's office of the 20 said county of Bergen in Book C 8, page 583.

And your petitioner further shows, that the said Aaron Raymond by deed of assignment dated August twelfth, eighteen hundred and seventy-one, on that day duly conveyed, assigned and made over to your petitioner, John L. Brownell, all his right, title, interest, claim and property in one undivided one-fifth interest in the contract and lands aforesaid mentioned in the said bill of complaint.

And your petitioner further shows, that the said Aaron Raymond by another deed of assignment duly recorded in the 30 Clerk's office aforesaid, on June twenty-first, eighteen hundred and seventy-two, in Book O 8 of Deeds, page 164, &c., did on the twenty-fourth day of February, eighteen hundred and seventy-two, convey, assign and make over to your petitioner, John L. Brownell, all his right, title, interest, claim, property, and demand of, in, and to one undivided one-fifth interest in the said contract and land as aforesaid.

And your petitioner further shows, that the said Aaron Raymond, by another deed of assignment dated the twenty-

first day of June, eighteen hundred and seventy-two, conveyed, assigned, and made over, on that day, to your petitioner, John L. Brownell, all his right, title, interest, claim, property, and demand, of, in, and to one other undivided one-fifth interest in the said King and Ruckman contract and lands as aforesaid; which said last named assignment from Raymond to Brownell, was duly recorded in the aforesaid Clerk's office in Liber O 8 of Deeds, page 165, &c.

And your petitioner further shows, that Herman C. Adams, assignee aforesaid, did, on the twenty-sixth day of March, eighteen hundred and seventy-two, by deed of assignment, dated on that day, convey, assign, and make over unto your petitioner, John L. Brownell, all his right, title, claim, interest, property, and demand, of, in, and to one undivided one-fifth interest in the contract and lands aforesaid, which said deed of assignment was duly recorded October second, eighteen hundred and seventy-two.

And your petitioner further shows, that on the tenth day of June, eighteen hundred and seventy-two, Benjamin W. King, the complainant aforesaid, by deed of assignment, dated on that day, made, assigned, and conveyed to your petitioner, John L. Brownell, all his right, title, claim, demand, interest, and property, of, in, and to one undivided one-fifth interest in the said contract made by him with Ruckman, May twelfth, eighteen hundred and sixty-eight, mentioned in said bill of complaint, and in the lands included and intended to be included therein. Said last named deed of assignment from King to Brownell was left for record in the aforesaid Clerk's office, June eleventh, eighteen hundred and seventy-two, and recorded in Liber N 8, page 279, &c.

And your petitioner further shows, that all and every of the assignments hereinbefore set forth were made for a good and valid consideration.

And your petitioner further shows, that by reason of the aforesaid assignments, he has become the sole owner and possessor of all the original rights of the said Benjamin W. King in the contract set out in the bill of complaint, and that he now holds all and every right, title, interest, demand, claim, and property, of, in, and to the complainant's right, title, interest, demand, claim, and property, of, in, and to the

contract made between him and the defendant, Elisha Ruckman, on the twelfth of May, eighteen hundred and sixty-eight, and mentioned in the said bill of complaint, and for the specific performance of which contract the said bill was filed in this cause.

Your petitioner therefore prays, that he may be made a party complainant to said suit, and be, and stand therein in the said plight and condition as the said complainant, Benjamin W. King; have the advantage of, and be subject to, all proceedings therein, in all as if he had originally been party 10 complainant thereto, and for such other or further order in the premises as the nature of the case may require.

And your petitioner, as in duty bound, &c.

J. L. BROWNELL.

State of New York, city and county of New York, ss.—
John L. Brownell, being duly sworn, on his oath saith, that matters and facts in the foregoing petition contained, are true to the best of his knowledge and belief.

J. L. BROWNELL.

Sworn to, and subscribed this 14th day of October, A. D. 20
1872, before me, at New York.

Witness my hand and official seal.

[L. s.]

ARTHUR W. KNAPP.

Commissioner for New Jersey in New York.

ORDER TO MAKE JOHN L. BROWNELL A PARTY COMPLAINANT.

[Filed October 29, 1872.]

John L. Brownell, of Nyack, in the county of Rockland and State of New York, having presented his petition to the court, from which it appears that since the filing of the bill 30 of complaint in this cause, by deeds of assignment duly executed as set forth in said petition, he has become the assignee of all the right, title and interest of the said

Benjamin W. King as complainant in the above suit of, in and to the contract, which is the subject matter of said suit, and of, in and to the lands included and intended to be included in said contract, and that he has thereby acquired an interest in the subject matter of the suit aforesaid, and praying that the said John L. Brownell be made a party complainant in this cause, subject to all the rights of the parties to this suit as settled and established by this court, and notice of this application, together with a copy of said petition, having been duly served on Benjamin W. King, the complainant, and on the solicitors of Elisha Ruckman and Charles G. Sisson, defendants, and it appearing that said John L. Brownell is entitled to be made a party complainant to this cause.

It is thereupon, on this twenty-ninth day of October, in the year one thousand eight hundred and seventy-two, on motion of William L. Dayton, of counsel with said John L. Brownell, the petitioner, ordered and decreed by the Chancellor that the said John L. Brownell be and he is hereby made a party complainant in the above cause, and that he be bound by all orders and proceedings heretofore made or had in said cause, so far as the same relates to or affects the aforesaid interest acquired by him in the subject matter thereof.

A. O. ZABRISKIE, C.

ORDER.

[Filed January 1, 1871.]

Application being made to the court to make a further direction in, or to be added to the orders of reference heretofore made in this cause, and it appearing by due proof that due and sufficient notice of the said application hath been given to the solicitor of the complainant—

It is, on this sixth day of January, eighteen hundred and seventy-three, on motion of Jonathan Dixon, solicitor and of counsel with defendant, Elisha Ruckman, ordered and directed that Abraham S. Jackson, Esq., the Master, to

whom this cause for certain purposes now stands referred, do ascertain and report the fair market value, on the first day of July, one thousand eight hundred and sixty-eight, of all such lands included in the contract between the complainant and the said defendant, Elisha Ruckman, set forth in the pleadings in this cause, as the said defendant, Ruckman, cannot make a good title to complainant for, and that he make his report in this cause on or before the twentieth day of January instant, and that the said complainant have leave to bring in the cause of argument at the coming 10 January Term, without further notice.

A. O. ZABRISKIE, C.

EXAMINATION FOR DEFENDANT RUCKMAN.

[Filed February 25, 1873.]

Please take notice, that on December 4th, next, at twelve o'clock m., we will produce before Mr. Jackson, the Master, at his office in Jersey City, other deeds showing title to lands in above cause.

November 27th, 1871.

Yours resp'y,

DIXON & COLLINS, *Sol's.*

20

W. L. DAYTON, *Esq., Sol.*

Examination of witnesses, on the part of the defendant, in the above entitled cause, taken before me, Abraham S. Jackson, a Master and Examiner of said court, at my office, No. 31 Montgomery street, in Jersey City, on Monday, the 4th day of December, A. D. 1871, at twelve o'clock at noon, in pursuance of orders of reference, made heretofore in this cause, and of the notice hereto annexed. Present—Gilbert Collins, in behalf of Messrs. Dixon & 30 Collins, of counsel for the defendant; Courtlandt Parker, William L. Dayton, A. Schuyler Boyd, William B. Putney, George R. Dutton, of counsel for the complainant; Lansing Zabriskie, of counsel for the defendant Sisson.

And thereupon Mr. Collins produced before me forty-five deeds of conveyance, from the several grantors to the said Elisha Ruckman, which I have marked as *Exhibits D 1 to D 45* inclusive, on the part of the said defendant, to wit:

From Abraham B. Cole; dated January 2d, 1871; Exhibit D 1.

From Lydia J. Anderson; dated January 2d, 1871; Exhibit D 2.

From Garret S. Demarest and others; dated September 10 9th, 1870; Exhibit D 3.

From David Doremus and wife; dated September 30th, 1867; Exhibit D 4.

From Hiram Slocum and wife; dated November 27th, 1866; Exhibit D 5.

From Henry J. Westervelt and wife; dated March 18th, 1858; Exhibit D 6.

From Isaac D. Colman and wife; dated May 17th, 1864; Exhibit D 7.

From William Nangle and wife; dated September 21st, 20 1868; Exhibit D 8.

From Gabriel Hill and wife; dated March 19th, 1870; Exhibit D 9.

From Gertrude Mabie and husband; dated October 24th, 1864; Exhibit D 10.

From Eliza A. Van Orden; dated June 20th, 1864; Exhibit D 11.

From Thomas W. Demarest, guard.; dated October 27th, 1864; Exhibit D 12.

From Eliza A. Van Orden; dated October 27th, 1864; 30 Exhibit D 13.

From John Van Orden and wife and others; dated June 20th, 1864; Exhibit D 14.

From Henry A. Hopper, Sheriff; dated February 25th, 1865; Exhibit D 15.

From Jabez Lyon and wife; dated May 7th, 1864; Exhibit D 16.

From Harmon Lydecker and wife and others; dated May 15th, 1867; Exhibit D 17.

From Jacob Jordon; dated April 30th, 1859; Exhibit 40 D 18.

From Jacob Jordon; dated October 17th, 1859; Exhibit D 19.

From Benjamin Charlton and wife; dated March 31st, 1859; Exhibit D 20.

From John H. Westervelt and wife; dated February 21st, 1860; Exhibit D 21.

From William M. Bates and wife; dated November 12th, 1866; Exhibit D 22.

From Jacob Jordon and wife; dated August 12th, 1869; Exhibit D 23. 10

From Mathew S. Bogert and wife; dated January 12th, 1871; Exhibit D 24.

From Jacob J. Ferden and wife; dated January 18th, 1871; Exhibit D 25.

From Jacob J. Ferden and wife; dated January 18th, 1871; Exhibit D 26.

From Jacob J. Ferden and wife; dated January 18th, 1871; Exhibit D 27.

From Jacob J. Ferden and wife; dated January 18th, 1871; Exhibit D 28. 20

From Abr'm A. Haring and wife; dated July 8th, 1871; Exhibit D 29.

From Maria Haring; dated July 8th, 1871; Exhibit D 30.

From Debby Nangle; dated July 8th, 1871; Exhibit D 31.

From David Doremus and wife; dated September 28th, 1868; Exhibit D 32.

From Sarah Smith and others; dated June 8th, 1871; Exhibit D 33.

From Cornelius J. Herring and wife; dated August 29th, 1871; Exhibit D 34. 30

From Peter A. Blauvelt and others; dated January 16th, 1871; Exhibit D 35.

From Peter Meyer; dated April 9th, 1869; Exhibit D 36.

From George C. Turfler; dated April 5th, 1871; Exhibit D 37.

From Pierrepont Isham and wife; dated April 11th, 1871; Exhibit D 38.

From John A. Haring and wife; dated June 28th, 1871; Exhibit D 39.

From Jacob N. Bogert and wife; dated April 29th, 1871; 40
Exhibit D 40.

From Abr'm C. Blauvelt and wife; dated July 10th, 1871; Exhibit D 41.

From Mary Blauvelt, widow; dated January 16th, 1871; Exhibit D 42.

From Henry Ver Valin and wife; dated March 17th, 1869; Exhibit D 43.

From Paul Powless and wife; dated February 1st, 1870; Exhibit D 44.

From John G. Conklin and wife; dated January 12th, 10 1871; Exhibit D 45.

To the introduction of the above deeds the complainant generally excepted, and reserved the right to put in special exceptions to particular deeds.

And thereupon the examination was adjourned to Wednesday, the 13th day of December, 1871, at twelve o'clock m., at the same place.

At which time and place the examination was resumed in the presence of Messrs. Dayton, Collins, Boyd, and Dutton.

The defendant failed to produce any more deeds of conveyance or other evidences of title.

And thereupon the examination was further adjourned to Wednesday, December 20th, 1871, at twelve o'clock m., at the same place.

At which last named time and place the same examination was resumed, in the presence of Messrs. Dixon, Dayton, Boyd, Putney, and Dutton.

The defendant failed to produce any more deeds of conveyance or other evidences of title.

Charles G. Sisson was made a defendant by order dated 30 November 18th, 1871.

On the 21st day of December, 1871, the defendant produced before me thirty-one deeds of conveyance, from the several grantors to him, which I have marked as *Exhibits D 46 to D 76* inclusive, on the part of the said defendant, to wit:

From John H. Westervelt and wife; dated October 17th, 1867; Exhibit D 46.

From Abraham A. Haring and wife; dated May 1st, 1868; Exhibit D 47.

From David Doremus and wife; dated May 12th, 1858; Exhibit D 48.

From William Ferden and wife; dated September 5th, 1859; Exhibit D 49.

From Garret J. Auryansen and wife; dated January 31st, 1860; Exhibit D 50. 10

From Wm. H. Gesner and wife; dated June 27th, 1859; Exhibit D 51.

From Oliver Cosine and wife; dated April 1st, 1858; Exhibit D 52.

From Harman F. Aherns and wife; dated April 3d, 1857; Exhibit D 53.

From Peter B. Westervelt and wife; dated March 8th, 1858; Exhibit D 54.

From Catherine Powles and others; dated August 1st, 1859; Exhibit D 55. 20

From John Auryansen and wife; dated April 30th, 1860; Exhibit D 56.

From Jacob J. Ferden and wife; dated July 6th, 1864; Exhibit D 57.

From Jacob Auryansen and wife; dated April 7th, 1858; Exhibit D 58.

From Joseph Jordon and wife; dated June 11th, 1859; Exhibit D 59.

From Abner Conklin and wife; dated October 17th, 1859; Exhibit D 60. 30

From John Parsels and wife; dated July 3d, 1858; Exhibit D 61.

From John W. Conklin and wife; dated February 23d, 1860; Exhibit D 62.

From Larry Hagens; dated August 9th, 1858; Exhibit D 63.

From William Devoe and wife; dated March 12th, 1858; Exhibit D 64.

From George Huyler and wife; dated March 15th, 1858; Exhibit D 65. 40

From John Ferden and wife; dated April 10th, 1858; Exhibit D 66.

From Abraham I. Auryansen and wife; dated April 25th, 1860; Exhibit D 67.

From William L. Linderman and wife; dated May 7th, 1850; Exhibit D 68.

From John A. Ferden and wife; dated May 9th, 1859; Exhibit D 69.

From Jacob I. Ferden and wife; dated April 10th, 1858; 10 Exhibit D 70.

From Abraham B. Cole and Isaac B. Cole; dated July 12th, 1866; Exhibit D 71.

From Jacob D. C. Outwater and wife; dated May 1st, 1858; Exhibit D 72.

From Jacob D. C. Outwater and wife; dated May 31st, 1856; Exhibit D 73.

From Abraham I. Auryansen and wife; dated October 21st, 1867; Exhibit D 74.

From Harriet E. Morris and Frederic Morris; dated May 20 30th, 1868; Exhibit D 75.

From Mary Ann Gesner; dated 1868; Exhibit D 76.

I received and marked the above deeds as exhibits, subject to such exception as the complainant might take to the same.

On the 8th day of January, 1872, Lansing Zabriskie produced and delivered to me two deeds, to wit:

1. Elisha Ruckman and wife to Lansing Zabriskie, dated November 20th, 1869, which I have marked *Exhibit C G S 1*, for the defendant, Charles G. Sisson.

30 2. Lansing Zabriskie to Charles G. Sisson, dated September 30th, 1872, which I have marked *Exhibit C G S 2*, for the defendant Sisson.

I received and marked the said two deeds as exhibits, subject to such exception as the complainant or other defendant might take to the same.

On the 24th day of February, 1872, the defendant Ruckman produced and delivered to me nine deeds of conveyance

from the several grantors to him, which I have marked as *Exhibits D 77 to D 85* inclusive on, the part of the said defendant, to wit :

From Samuel R. Demarest and wife ; dated October 25th, 1871 ; Exhibit D 77.

From John Ferden and wife ; dated November 2d, 1871 ; Exhibit D 78.

From Ellen Decker and others ; dated November 9th, 1871 ; Exhibit D 79.

From Sarah J. Winner and others ; dated December 26th, 1871 ; Exhibit D 80.

From Abraham W. Haring and wife ; dated December 27th, 1871 ; Exhibit D 81.

From Samuel P. Demarest and wife ; dated December 29th, 1871 ; Exhibit D 82.

From John Auryausen and wife ; dated January 17th, 1872 ; Exhibit D 83.

From Jesse Trenchard and wife ; dated January 19th, 1872 ; Exhibit D 84.

From James D. Edwards and wife ; dated February 16th, 1872 ; Exhibit D 85.

I received and marked the above deeds as exhibits, subject to such exception as the complainant might take to the same.

On the 27th day of March, 1872, I drew an order requiring the defendant, Ruckman, to produce and leave with me on or before Wednesday, the 3d day of April, 1872, all deeds, contracts, papers and muniments of title in his possession, or under his control, relating to, or concerning in any wise, the lands and premises comprised in the contract in the bill of complaint herein set forth, and to meet me on said day at ten o'clock A. M., at my office No. 31 Montgomery street, in Jersey City, and to give in before me, and close with all convenient speed, any testimony herein on his behalf, and I did cause the said order to be served on the defendant, Ruckman, by leaving a copy of the same with Messrs. Dixon & Collins, his solicitors, as it will appear from their written acknowledgement of service endorsed on the said order.

April 3d, 1872, ten A. M., Mr. Dutton, Mr. Dayton and Mr. Dixon appeared before me.

Mr. Dixon produced before me a deed of Dower Banta and wife to Elisha Ruckman, dated February 15th, 1860, which I marked *Exhibit D 86* for defendant Ruckman.

Mr. Dixon then stated that the defendant, Ruckman, had put in all the deeds which he has to offer.

Mr. Dixon here says, that the complainant having excepted to the forty-five deeds offered on December 4th, 1871, the defendant desires to withdraw the same.

10 The Master here refuses to allow the withdrawal of any of the said deeds, unless the complainant specially excepted to the same.

To which ruling the defendant, Ruckman, excepted. The complainant insists that he did not enter a general exception to all the deeds, but, at their production, reserved the right after examination thereof, to except specially to particular deeds.

The defendant insists that even if any such right were reserved, it is too late to exercise it now.

20 The complainant then objected to the introduction of *Exhibit D 3*, because the lands therein contained are not within the territorial limits of the contract; also to *D 5* the same objection; also to *D 20* the same objection; also to *D 23* to *D 28*, both inclusive, the same objection; also to *D 33* to *D 45*, both inclusive, the same objection.

As to *Exhibits D 23* to *D 28*, both inclusive, and to *Exhibits D 33* to *D 45*, both inclusive, a further objection is, that the property described in those deeds are not within the contract, because Ruckman did not own them or have contracts for them at the date of the contract.

30 The defendant, Ruckman, here offers in evidence a copy of contract, dated July 6th, 1865, made by Wm. A. Shepard to Ruckman, which I marked *Exhibit D 87* for defendant Ruckman.

The complainant here excepts to the introduction of said exhibit, because the same was not in force at the time when the contract was executed.

The defendant Ruckman also offers in evidence a printed copy of contract on page 229 of the printed book, signed by John G. Demarest.

Both of these contracts are offered by complainant as showing lands included within the principal contract, but which the defendant Ruckman cannot convey.

The complainant also objects, for the same reason as stated regarding the *Exhibit D 23* to *D 28*, and *D 33* to *D 45*, to the *Exhibits D 77* to *D 85*, both inclusive.

The complainant here states that *Exhibit D 32* contains three lots of land which are not within the contract, the fourth lot is within the same; also that a portion of land contained in *Exhibit D 73* is not within the contract; also that a portion 10 of land contained in *Exhibit D 74*, lying west of the road, is not within the contract.

The complainant here states that *Exhibits D 4* and *D 48*, *D 59*, *D 47*, *D 8*, *D 9*, *D 47*, *D 29* and *D 30*, are defective, in that a married woman executes by power of attorney.

Mr. Dixon here states that the defendant, Ruckman, has no more deeds or other evidence to offer on his behalf.

Thereupon the master declared the testimony on the part of the defendant, Ruckman closed, and adjourned the further hearing of the case to Thursday April 11th, 1872, at ten 20 A. M., at the same place, at which time and place the complainant said that he would put in the testimony on his part, and would continue the same until he closed.

A. S. JACKSON, M. C.

EXAMINATION FOR COMPLAINANT.

[Filed February 25, 1873.]

Examination of witnesses in the above entitled cause, on the part of the complainant, taken before me, Abraham S. Jackson, the Master to whom the said cause has been referred, on Thursday, the 11th day of April, A. D. 1872, at 30 ten o'clock A. M., at my office, No. 31 Montgomery street,

Jersey City. Present—Messrs. Dayton and Putney, for complainant; Mr. Dixon came in during the taking of the testimony of John Auryansen.

John Auryansen, a witness produced for the complainant, being duly sworn, deposes and says—

I live at Closter, Bergen county, New Jersey; I hold a mortgage given to me by Elisha Ruckman; I here produce it.

[Said mortgage is offered in evidence, and marked *Exhibit C 1* for complainant.]

- 10 The lands contained in said mortgage are the same as is contained in the deed, given by me and my wife to Elisha Ruckman, dated April 30th, 1860, and is marked *Exhibit D 56* in this cause; no part of the principal of this mortgage has been paid; interest is due on the mortgage from April 30th, 1868, less \$1,000, which has been paid on account of said interest; the bond specifies interest at seven per cent. per annum; the principal of said mortgage is \$7,533; this is the only mortgage which I hold on lands of Elisha Ruckman.

JOHN AURYANSEN.

- 20 Sworn and subscribed April 11th, 1872, before me, at Jersey City.

A. S. JACKSON, M. C.

David Doremus, a witness produced on the part of the complainant, being duly sworn, deposes and says—

I live in Harrington township, Bergen county, New Jersey; I hold two mortgages on lands of Elisha Ruckman in Bergen county; I have them with me, and now produce them.

- 30 The first one is from Elisha Ruckman to me, dated September 30th, 1867, given for \$6,496.60 on lands, the same as are contained in deed from me and my wife to Elisha Ruckman, dated September 30th, 1867, and is marked *Exhibit D 4* in this cause.

No part of the principal of this mortgage has been paid.

[Said mortgage is offered in evidence, and marked *Exhibit C 2* for complainant.]

I have received the following sums of money, on account of the interest on the said mortgage :

December 27th, 1870,	\$1,132.50
February 2d, 1871,	35.00
March 11th, 1871,	100.00
August 26th, 1871,	41.35
December 4th, 1871,	228.88
March 19th, 1872,	116.25

These are all the payments of interest made on this mortgage; the mortgage became due September 30th, 1871. 10

The second mortgage is from Elisha Ruckman to me, dated May 20th, 1858, given for \$1,000, on lands the same as are contained in deed from me and my wife to Elisha Ruckman, dated May 12th, 1858, and is marked *Exhibit D 48* in this cause.

No part of the principal of this mortgage has been paid.

[Said mortgage is offered in evidence, and marked *Exhibit C 3* for complainant.]

The interest on said mortgage has been paid up in full to November 1st, 1870; the balance is still due; the mortgage 20 became due May 1st, 1859.

I have no other mortgages on lands of Ruckman.

DAVID DOREMUS.

Sworn and subscribed April 11th, 1872, before me, at Jersey City.

A. S. JACKSON, M. C.

The counsel of defendant, Ruckman, withdraws *Exhibit D 3, Exhibit D 5, Exhibit D 20, Exhibit D 78.*

It is agreed upon by the counsel of the parties that—

1. That the first lot described in *Exhibit D 21* and containing seven and thirty-one hundredths acres, is not included within the terms of the contract, the title thereto not having been in Ruckman at the date of the contract.
2. That *Exhibit D 60* shall be withdrawn, the lands therein not being within the contract.
3. That *Exhibits D 62* and *D 63* shall be withdrawn, for the same reason as that last above.

4. That the lot first described in *Exhibit D 65*, containing five acres, is not included in the terms of the contract.

The complainant offers in evidence a certificate of Charles P. Smith, Clerk of the Supreme Court, dated May 30th, 1870, for judgments against Elisha Ruckman, which said certificate is marked *Exhibit C 4* for complainant.

The defendant, Ruckman, waived any exception to the introduction of the same.

The complainant offers in evidence another certificate of 10 said Charles P. Smith, Clerk of the said court, dated July 12th, 1870, for judgments against Elisha Ruckman, which said certificate is marked *Exhibit C 5* for complainant.

The defendant, Ruckman, waived any exception to the introduction of the same.

And thereupon the examination was further adjourned to Thursday, April 18th, 1872, at ten o'clock A. M., at the same place.

At which time and place Messrs. Dayton, Putney and 20 Dutton, of counsel for complainant, and Mr. Dixon, of counsel for defendant, Ruckman, appeared and consulted among themselves for one hour and a half, and then requested me to adjourn the further hearing of the matter to Monday, April 29th, 1872, at ten o'clock A. M., at the same place, which I accordingly did.

At which last named time and place Messrs. Dutton, of counsel for complainant, and Mr. Dixon, of counsel for defendant, Ruckman, appeared and consulted among themselves for one hour, and then requested me to adjourn the further hearing of the matter to Tuesday, May 7th, 1872, at 30 two o'clock P. M., at the same place, which I accordingly did.

At which last named time and place Messrs. Dayton and 30 Dutton, of counsel for complainant, appeared, no person appearing on part of the defendant, Ruckman, and requested me to adjourn the further hearing of the matter to Friday May 17th, 1872, at ten o'clock A. M., at the same place, which I accordingly did.

[NOTE.—After the last adjournment had been made and entered, Mr. Dixon appeared and served some notice upon Mr. Dayton.]

[Whole time one and one-quarter hours.]

On Friday May 17th, 1872, I was confined to my house with boils under my left arm, and could not attend the hearing of this case. On Saturday May 18th, 1872, the defendant, Ruckman, came to my bedside, and I then adjourned the further hearing until Friday May 24th, 1872, at ten o'clock A. M., at the same place; of which I sent Mr. Dayton written notice by mail.

At which time and place the parties met and the examination was then adjourned to No. 111 Washington street, 10 at which place the examination was continued before Isaac Romaine, Master, by consent of the counsel of the respective parties.

The counsel for complainant offers in evidence a certified copy of deed from Elisha Ruckman to Warren L. Barnet, dated July 25th, 1862, which is marked *Exhibit C.6* on part of complainant.

Also offers in evidence a certified copy of deed from Elisha Ruckman and wife to Charles Judson, dated November 10th, 1866, which is marked *Exhibit C 7* on part of complainant. 20

Also offers in evidence a certified copy of deed from Elisha Ruckman to James Barnes, dated December 10th, 1861, which is marked *Exhibit C 8* on part of complainant.

Also offers in evidence an exemplified copy of judgment record of the New York Supreme Court, in a suit James I. Landford and Mortimer Porter, surviving partners of Edward Landford and Garret H. Striker and against Elisha Ruckman, entered February 24th, 1870, which is marked *Exhibit C 9* on part of complainant. 30

Also offers in evidence an exemplified copy of judgment record of the New York Superior Court in a suit, Clark B. Wheeler against Elisha Ruckman, impleaded, &c., which is marked *Exhibit C 10* on part of complainant.

The defendant alleges that in the last case he appealed and gave security, which appeal is still pending, and the docket has been or will be marked "stayed on appeal."

Crammond Kennedy, a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I reside at Demarests, Bergen county, New Jersey; it is in the township of Harrington; I am a dealer in real estate; I have dealt considerably in real estate in the State of New Jersey, and in the county of Bergen—almost entirely in the county of Bergen; I am familiar with the prices at which property has exchanged hands in Harrington and Palisade townships.

10 I have myself bought and sold real estate to a considerable extent in those townships.

The description of the first tract mentioned in the contract of John G. Demarest, marked *Exhibit D 2*, on part of defendant, in Court of Errors and Appeals book, being the tract bounded north by Samuel R. Demarest, west by Samuel S. Demarest, east by land of E. Ruckman and south by the lands of John Anderson, deceased. [Witness says]—I have a general and I think an accurate idea of where that land is, but I do not think I could go directly to it; I have

20 an idea of the value of that land; in my opinion it is worth \$500 an acre; that idea is based on actual transactions in the neighborhood, and recent; there has land in its immediate vicinity been sold at the price mentioned; upon that I base my opinion; it was sold at the same price and from \$200 to \$250 an acre higher; the land sold at a higher price had not in my judgment any higher value than this land above referred to.

The land which sold at the higher price adjoined lands of the purchaser, and therefore cannot be a just criterion of 30 value, hence I fix on the lower value.

As a dealer in real estate I should hold this land at a higher price than \$500 an acre; the price of which I spoke was a buying price.

If I wasn't hard up for money I would hold the land until I got \$1,000 an acre for it.

I know the tract of land, being a tract of wood land of five acres in the Closter mountain; bounded on the east by Frederick Morris, south by Samuel S. Demarest, by lands of Barney Anderson, late Abraham Cole.

40 I have an idea of its value; the reason I say I have an idea

of it is that value is not an absolute thing, people differ about it; I know what I would give for it—I would give \$400 an acre for it; of course I would try to get it for less.

It would not be of any more value to me than another.

I know the value of property in its immediate neighborhood, and I base my opinion on that; I know at what price the adjoining lot is held by a party who wants to sell; it is held at \$400 an acre.

I would be willing to give \$500 an acre for the first tract.

CRAMMOND KENNEDY. 10

Taken, sworn to and subscribed this 24th day of May, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

It is admitted by the defendant through his counsel that the judgment, marked *Exhibit C 9*, is a lien on the property in the State of New York.

Counsel for complainant here rests for the present, reserving the right to produce exemplified copy of transcript of judgment from Rockland county, New York, and prove that the docket thereof is a lien upon the real estate of defendants in Rockland county, by the laws of the State of New York.

ISAAC ROMAINE, Master.

REBUTTING EXAMINATION FOR DEFENDANT RUCKMAN.

[Filed February 25, 1872.]

Examination of witnesses, &c., in the above entitled cause on the part of the defendants, taken before me, Isaac Romaine, a Master and Examiner of said court, at my office No. 111 Washington street, Jersey City, on Wednesday June 12th, 1872, at ten o'clock in the forenoon, in presence of Elisha Ruckman on part of the defendants, and William L. Dayton, for complainant, by consent.

John J. Demarest, a witness produced for the defendant, being duly sworn, on his oath saith—

I reside in Palisade township, formerly Hackensack township; I have resided there all my life; I have known *Elisha Ruckman* ten years or more.

[Witness being shown *Exhibit D 2* on part of defendant, in Court of Errors and Appeals book, says]—That is the contract I made with *Ruckman*, by which I agreed to convey him eighteen acres of land; the signature to the exhibit is not correct; it should be *John J. Demarest*; I afterward gave *Ruckman* notice that I had the deed ready.

Just after the 20th of June, 1868, I went to *Mr. Ruckman's* with my son and another party; I had the deed with me; I would have delivered that night if *Ruckman* had had the money to pay me; *Ruckman* never did take the deed of me.

JOHN J. DEMAREST.

Taken, sworn to, and subscribed this 12th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

20 *David S. Gesner*, a witness produced on the part of the defendant, being duly sworn, on his oath said—

I live at Tappan, Orange township, Rockland county, New York; it is near the State line; in 1868, we had a strip of land adjoining the State line containing about twenty-three acres, which we agreed to sell to *Ruckman*; the farm was in New Jersey.

I think it was just after *Mr. Ruckman* agreed to sell to *King*.

30 It was about a month or six weeks after it was rumored through the county that *Ruckman* had sold to *King*.

I think it was the early part of the spring, in which *Ruckman* sold to *King*, that I agreed to convey to *Ruckman*.

The price agreed upon for the land was \$2,500.

The reason why *Ruckman* did not take it was as he told me because he hadn't got a payment on the *King* contract; I knew *William Sneden*, who lived near me; he is now deceased.

The contract for the sale of our land I made myself.

And being cross-examined, he says—

If my recollection serves me right, it was three years ago this spring that I made the contract.

I think it was the early part of the spring I sold, because I recollect the weather was quite cold; at one time when Mr. Ruckman came to talk with me about it—I think it was the first time—there was a little sleighing yet; that makes me quite positive it was in the spring.

This land lies on the mountain east of the Old Closter road; I do not still own the property; I sold it along mid-10 summer of the same year; I think it was in June; I don't know who owns it at present; I have heard it was transferred; I do not own any property like it in that neighborhood.

I am somewhat acquainted with the value of real estate in that county now.

The land which I agreed to sell to Ruckman was afterwards offered to me for \$325 per acre; it was about eighteen months after I had sold it; he gave me a week to consider it; and then he refused to sell to me at that price. 20

I sold four acres of about equal value in the neighborhood last summer for \$1,100 an acre.

And being again examined-in-chief, he says—

I cannot fix the date when I agreed to sell to Ruckman; from my father's death, I am quite positive it was three years ago.

I have lived at a place called Palisade, about three miles from Ruckman's place, all my life; I am acquainted with the farm known as the Jacob Ferden, well; I should think the Ferden farm was worth more to farm on, or to live on, 30 than Ruckman's farm; the buildings are better; I know both farms well.

And being again cross-examined, he says—

When I speak of Mr. Ruckman's place, I refer to his farm of one hundred acres—his homestead; half of this is woodland, and not tillable—perhaps more.

D. S. GESNER.

Taken, sworn to, and subscribed this 12th day of June,
A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Joseph Jordon, a witness produced on the part of the defendants, being duly sworn, on his oath says—

I live at Closter, Harrington township; I have always lived there.

I live about a quarter of a mile from Jacob Ferden's farm, and about one hundred and fifty yards from Ruckman's homestead.

I am well acquainted with both places; I think Mr. Ferden's farm is the most valuable, either to cultivate or to rent.

I knew my uncle, William Jordon; he is now dead; he has been dead about two years.

I have heard him speak about selling Ruckman his mountain land; he was then staying at my father's, and he went away one morning and said he was going to sell his land to Ruckman; he came back and said he had sold it; he asked me what I thought about selling it; I told him I thought it was best to sell it; there was about twenty acres, he told me; he wanted me to go along and help measure it out; I think that was in the spring of 1868; I don't think it was later than April or May.

And being cross-examined, he says—

When I speak of Mr. Ruckman's homestead, I refer to the place where he is now living; I do not know how many acres there are in the place where he is now living; there is a large tract of land there; what he has for his farm contains about one hundred acres; probably one hundred and fifty acres, more or less.

I see an advertisement up that there are one hundred and fifty-four acres in the Ferden farm.

I am certain as to the time when my uncle told me he had sold the property; it was on Monday or Tuesday morning, before Mr. Ruckman went to the city, and in April or May.

This land lies about east of the place where Mr. Ruckman is now living; it adjoins my father's property, and lies between Ruckman and the river.

JOSEPH JORDON.

Taken, sworn to, and subscribed this 12th day of June,
A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

William M. Whitmore, a witness produced on the part of
the defendant, being duly sworn, on his oath saith—

I reside at Cresskill, Bergen county, New Jersey; I have
resided there, I think, five years this spring; I know where
Mr. Ruckman lives; I have charge of the Jacob Ferden
farm.

It is now owned by Trever & Colgate; I think they pur- 10
chased it in the fall of 1869; I think the deed was delivered
the following April; they paid \$40,000 cash; they bought
it for one hundred and fifty acres—from Mr. Ferden; I have
had charge of it ever since they purchased it.

The farm has not been rented since we have had it; the
first year I let a man go in the house without any rent, just
to take care of it; it was late for renting; he was to see that
the neighbors' cattle were kept off, and that the crops were
got in; we received about \$400 after paying expenses; last
year there was no one in the house; a colored man had 20
charge of it; I suppose the receipts were about the same; I
have tried to rent it and sell it, but have not succeeded; the
property don't seem to rent very well.

The taxes last year were about \$150; for the two years,
the farm has realized \$400 a year above the taxes.

And being cross-examined, he says—

I am not a farmer; I live about two or three miles below
the farm; Trever & Colgate, who bought the farm, and in
whose employ I am, asked me to take charge of it, and try to
rent it; of course I have to submit it to them. 31

I am in the office of Trever & Colgate, in New York; I go
there every day; I sign checks for them, and am their con-
fidential clerk; Trever & Colgate did not buy this farm for
the purpose of farming it, or of living on it, but for specu-
lation; they held it for sale immediately after they bought it.

There has been no regular farmer on it since I have had
it; there was a colored man on it until this spring; I have
leased it for the present year; parties are living on it now.

This present year I leased it to a farmer for half, he to furnish everything; he don't pay any rent.

W. M. WHITMORE.

Taken, sworn to, and subscribed this 12th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Sweeting Miles, a witness produced on the part of the defendant, being duly sworn, on his oath saith—

10 I reside in Harrington township, Bergen county, New Jersey, on the Palisades, within ninety feet of the edge; I have lived there nearly six years; I own some property there, and built the house I live in; I am a brother of Francis Miles; my property adjoined his until a recent sale; he owns a number of acres; I am familiar with the prices of property on the Palisades; I have been over a large part of Ruckman's property.

Some of that land is worth \$1,500 to \$2,000 an acre, and some about \$1,000 an acre, or from \$800 to \$1,000.

20 It is a singular place to ask the value of property, people differ so in value; I base my opinion on recent sales that have been made.

My brother sold five acres last fall in its primitive state; that and the sale of the Stein place to Mr. Baker impressed me with the value of this property; Harrington township has a commission called a road board, to repair, make and lay out roads; I am one of the commissioners; the question whether the laying out of a road shall be assessed on the frontage through which it runs or whether we shall extend the assessment over half a mile or through the road district has not
30 been decided by the commissioners; it is a tax on the real estate in the township and liable to be collected as such, within sixty days after the assessment; I know there is a road laid out on the Palisades from the township line to the State line; part of it is open and part not; the road board have authority to open it.

I think I suggested to Mr. Ruckman to work his part over his own land, as it would be cheaper than to put it under contract; that part is all in my district.

And being cross-examined, he says—

By Palisade property I mean all that property that has a frontage on the Palisades; this property that I call Palisade property are most of the property of various lengths, some of them running back half a mile; mine runs back sixteen hundred feet; my brother's runs back about the same distance; some few pieces run back only about eight hundred feet.

SWEETING MILES.

Taken, sworn to, and subscribed this 12th day of June, A. D. 1872, at Jersey City, before me.

10

ISAAC ROMAINE, M. C.

Whereupon the examination was adjourned to Thursday, June 20th, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel for the complainant, and the defendant Ruckman in person.

Warren L. Barnett, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I reside on Anderson avenue, Harrington township, in 20 Bergen county, in this State; I have resided in that neighborhood about ten years.

I have bought, sold and exchanged a great many hundred acres of land up there; and am familiar with the value of land there.

I know the property that Ruckman sold to King; I have read the contract; I am familiar with every inch of the property probably—that is, in New Jersey.

The present average value of the land sold by Ruckman to King is about \$1,200 per acre taking the front and rear, and 30 good and bad; I make my estimate from my knowledge of what land in that neighborhood has been sold for and what you would have to pay for it if you wanted it; it is the same character of land as that sold by Ruckman to King.

And being cross-examined, he says—

When I speak of the land described in the contract, I

mean all the land in the contract in Harrington township, and not only that which Mr. Ruckman held deeds for.

At the date of the King and Ruckman contract, May 12th, 1868, Ruckman held contracts for a number of pieces of land; I know that Ruckman was going to put in the sale some land that he was buying under contract; I know of some pieces that he was to put in the sale, because I knew the situation of the pieces in the sale by the boundaries in the contract.

10 I know that Ruckman had verbal contracts for these pieces to which I have just referred.

I have heard Mr. Ruckman say that these pieces were included in this contract; there was one piece which belonged to John G. Demarest.

I could not describe this piece exactly; it is up back near the Anderson property; it has since been sold by Demarest to I. Smith Thomas.

I should judge it to be the same property as that described in *Exhibit D 2*, on part of defendant in Court of Errors and Appeals book, which is now shown me; I consider the present actual value of that property is \$500 an acre; property is rising in value.

Another piece I referred to as embraced in the contract was formerly owned by Auryansen; Thomas has purchased it since; I am quite certain, because he told me he had.

This was a piece in Mr. Ruckman's property, bounded on all sides by him; it was in Harrington township, and north of the Dock road and east of the County road.

30 The Dock road is the Old Closter Dock road; the County road is the road running north and south from Englewood to Piermont which is the same as the old Closter road mentioned in the contract.

This piece is within the boundaries of the piece mentioned in the King and Ruckman contract.

I became familiar with this property mentioned in the King and Ruckman contract, by having read the contract and being familiar with all the land in the boundaries of the contract.

40 I should judge this Auryansen tract to be worth, or the land embraced in it, the sum of \$500 an acre.

I can't now call any other pieces to mind; I have heard Mr. Ruckman say these two pieces were in the contract; I also heard Mr. Demarest say that Mr. Ruckman told him he did not take the property because King did not give him, Ruckman, the money on the King and Ruckman contract.

And being again examined in chief, he says—

I know what price Mr. Demarest got for his property; Mr. Thomas paid him \$300 an acre for it.

I know the new avenue just laid out through the Ruckman property from Closter station to the top of the Palisades, 10 on the edge of the bluff; that road is worked and is in good order its entire length.

I know there is another road, the Palisade Boulevard, worked north and south across this property; that road is in good order.

In my opinion the opening and making these roads enhance the value of the lands mentioned in the contract and lying in Harrington township, at least \$300 an acre, and the land lying directly along the line of the roads at least \$500 an acre; I am constantly dealing in land in that neighborhood—buying and selling and dealing for other people. 20

WARREN L. BARNETT.

Taken, sworn to and subscribed this 20th day of June, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Hildebrand Nangle, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I reside in Closter, Harrington township, Bergen county, New Jersey; I have resided in Harrington township for eighteen or nineteen years; I am familiar with the Jacob 30 Ferden farm; I have worked there considerable; if I had to farm to make my living I would rather have the Jacob Ferden farm than the Ruckman farm.

I know that Mr. Ruckman had a contract for some property of my brother, William Nangle; he did not get it all.

There was about five or six acres that he did not get; the price he was to pay was \$200 an acre.

And being cross-examined, he says—

The greatest part of this property lies on the top of the Palisades in Harrington township, and a small lot lies at the foot of the hill—I am now speaking of that part which Mr. Ruckman did not get, the five or six acres.

It lies northeast of the old Closter Dock road; it was in the spring of 1868 that Mr. Ruckman had the contract for that property; my brother is in New York.

10 The property which Mr. Ruckman did not get belongs to my father's estate; my father died a little before New Years, in 1867, and the executors had a right to sell the property.

Ruckman bought another small piece of ground of about two acres from my brother William for \$200 an acre; I think this lot adjoins the other property.

In reference to the land which Mr. Ruckman failed to get on the contract with my brother, I would say that the lot next to it and not worth so much, sold last fall for \$500 an acre—property is rising.

And being again examined in chief, he says—

20 I know the two new avenues referred to in Mr. Barnett's testimony, running across the Ruckman property.

These avenues certainly enhance the value of that property a great deal.

HILDEBRAND NANGLE.

Taken, sworn to and subscribed this 20th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Charles Tanner, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

30 I reside in Harrington township, Bergen county, New Jersey; I have resided there for twenty or twenty-one years; I know the Jacob Ferden farm; I lived on it about sixteen years; I know the farm that Mr. Ruckman lives on.

I should think the Ferden farm would be worth more money, to rent or to farm on, than the Ruckman farm.

I know the avenue running over the Ruckman farm from Closter station to the Palisades; the opening of that avenue

threw the Ruckman farm in common—without newly fencing it was entirely useless for raising crops.

I have been Assessor in Harrington township; I was the last season: in my opinion the opening of that avenue has greatly enhanced the value of that property.

And being cross-examined, he says—

The only use that property could be put to without fencing it would be to let it run to grass, and if it was not destroyed, to cut it.

If I owned it, and wanted to derive a benefit from it, I 10 would fence it; the farm, if properly worked, would produce from \$1,500 to \$2,000 a year; I presume the Ferden farm is worth, for farming purposes, twice what the Ruckman farm is; when I left the Ferden farm, two years ago, I think it was worth twice as much for farming what the Ruckman farm is now; the Ferden farm is in much better condition and contains more tillable land; there is about sixty or seventy acres of tillable land in the Ruckman farm; the Ferden farm will not produce more than half as much now as it did two years ago; my comparison of the two farms is 20 based on that time.

And being again examined in chief, he says—

When I say the farm would produce \$1,500 or \$2,000 a year, I meant the gross sale of the products; the net proceeds would be about \$500 a year; by \$500 a year I mean that much after paying the running expenses of the farm, and the living and expenses of the family.

And being again cross-examined, he says—

The most of Ruckman's land, in Harrington township, is wild land, unfenced and unproductive; there is from sixty 30 to eighty acres of this farm that is fenced and productive—this is the old farm; there is about twenty acres on what is called the high hill, which is fenced and is worth, I suppose, \$25 an acre; I hired a piece of land of him of about twenty-five or thirty acres, for \$20 a year; it was well fenced; if it had not been I would not have hired it.

CHARLES TANNER.

Taken, sworn to and subscribed this 20th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

David S. Gesner, a witness heretofore produced on the part of the defendant, being recalled, says—

Since I was here before and examined, I have refreshed my memory as to the date when Mr. Ruckman had a contract with me to buy the twenty acre lot, mentioned by me in my former testimony; it was in the spring of 1868; I know it by refering back to the time I hired the grass from the man we sold to; that was in 1869, the year following; the two years following the grass was not cut, and this would be the third year; it is in this way I fix the year.

D. S. GESNER.

Taken, sworn to and subscribed this 20th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Whereupon the examination was adjourned to Monday, June 24th, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed, in the presence of the counsel of the respective parties.

James B. Vredenburg, a witness produced on the part of the defendant, being duly sworn, on his oath saith—

I reside in Jersey City; I am a counselor at law; I know William A. Shepard; I have known him three or four years; he has been a client of mine; I have had some business with him; I have seen him write. [Witness being shown a paper, says]—I believe the signature there to be William A. Shepard's.

JAMES B. VREDENBURGH.

[Said paper is offered in evidence and marked *Exhibit D 87* on part of defendants. Exhibit objected to as immaterial and incompetent.]

Taken, sworn to and subscribed this 24th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Roderick F. Clow, a witness produced on the part of the defendant, being duly sworn, on his oath saith—

I reside in New York City; I am a physician; in 1867 and 1868 I owned some land in Harrington township; it lay on the east side of the road leading from Piermont to Englewood, being the old Closter road, between the road and the Hudson river; I agreed to sell Mr. Ruckman about fifty acres of this land in the spring of 1868; the price was to be \$150 an acre; I think it was as early as February, 1868.

And being cross examined, he says— 10

I have never read the contract between Mr. Ruckman and Mr. King; I still own that land; it is not used except as an orchard and for pasturing; I consider its present actual value to be \$500 per acre; I refer to the fifty acres I contracted to sell to Mr. Ruckman in February, 1868, and which he did not take; Mr. Ruckman told me he did not take the property because he could not get the money; he said he had sold his property to Dr. King, but he had not paid him, and consequently he could not get the money.

R. F. CLOW. 20

Taken, sworn to and subscribed this 24th day of June, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Tuesday, July 23d, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

Henry S. Downs, a witness produced on the part of the defendants, being duly sworn, on his oath saith— 30

I am a real estate agent; I have been in it between twelve and fifteen months; I reside at Closter, Bergen county, N. J., Harrington township; I have resided there seven years and over; my business has made me familiar with the value of real estate in that township; I know where most of the

land lies which Ruckman sold to King in Harrington township; I think I am familiar enough with it to give an opinion of what it is worth per acre for the whole; the whole tract in Harrington township is worth \$1,250 per acre; before I went in the real estate business I had bought and sold considerable property in the township of Harrington; I am familiar with sales that have been made there in the last three or six months; from this and my knowledge of the land I base my opinion of its value.

10 And being cross-examined, he says—

I have read the contract for the sale of the land to which Mr. Ruckman refers; from the description of the lands in the contract, I think I have no difficulty in understanding what lands are there referred to; I am familiar with the value of the other land referred to in the contract, as well as that lying in Harrington township; portions of this land are as valuable as that lying in Harrington township.

HENRY S. DOWNS.

20 Taken, sworn to and subscribed this 23d day of July, A. D. 1872, at Jersey, before me.

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Tuesday, August 6th, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

George R. Dutton, a witness produced on the part of the defendant, Ruckman, being duly sworn, on his oath says—

30 I reside in the city of Brooklyn; I am a counselor-at-law in New York City; I am employed in this cause by John L. Brownell; I think Mr. Brownell is interested in the property in question in this cause; he became interested about a year ago; I think not more than that; he became interested in the contracts as a purchaser in them; he purchased three-fifths of Aaron Raymond; one-fifth of one of the Adams'; I

will qualify that somewhat; I don't think he has received the Adams contract yet; and he purchased one-fifth from Benjamin W. King; that was recently—within a month, I think; Mr. King made an assignment to Mr. Brownell of this one-fifth; it was an assignment of the contract; that assignment has been recorded; it is my impression it has been recorded within a month, in the Bergen county Clerk's Office; it is my impression that two-fifths have been assigned by Mr. Raymond to Mr. Brownell; two of the assignments made by Raymond to Brownell have been recorded in the Bergen 10
county Clerk's Office; I think Mr. Adams has transferred 01
one-fifth to Mr. Brownell, though I am not sure; it was done without my intervention, except to draw the assignment; it might have been executed before a New Jersey Commissioner; I don't know when I drew the assignment, except it was about three months ago; I am pretty sure the last assignment has not been recorded; I don't think there was any preliminary agreement made between Adams and Brownell for the transfer of Adams' share to Mr. Brownell antecedent to the signing. 20

I don't know that Benjamin W. King has any interest in the land; he has assigned his whole share of the contract; 20
Mr. Brownell resides at Nyack, Bergen county; he is in 02
business at No. 16 Broad street, New York; he is a stock broker; I have made searches of the title to the property in question, at the request of Mr. Brownell; I think I commenced the searches in the latter part of August, last year; I can hardly say that I am through my investigations yet, though I have done little or nothing at it for two or three months, except to perfect the title by procuring anterior deeds that 30
had not been recorded. 03

I presume I have been to Hackensack at least two or three 08
times a month from August, 1871, to June, 1872; I spent the day there with my clerk; I might not have gone so often; I did not generally find confusion or complication in the title; sometimes I did; in August, 1871, I was unable to find an abstract of the title; I was referred to Mr. A. S. Boyd, of Hoboken, who I understood was employed by Mr. King; I inquired of him; I did not get an abstract from him; I got a few papers which, however, threw very little light on 40

the subject; I presume my not getting the abstract from Mr. Boyd was because he did not have one; I couldn't say that I thought he had one; I think Mr. Adams referred me to Mr. Boyd; whether directly or through Mr. Brownell I can't say.

I set to work to make an original search, and did so because I was unable to find any previously made abstract.

GEORGE ROD DUTTON.

10 Taken, sworn to, and subscribed this 6th day of August,
10 A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Garret S. Demarest, a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I am sixty-eight years of age; I reside in Washington township, Bergen county; I suppose from five to six miles from Ruckman's place; I have always lived in that part of Bergen county where I live now; I have followed land surveying in that neighborhood ever since I was grown up; more than forty years; part of my business has been drawing
20 deeds, mortgages and papers relating to real estate; I am acquainted with some of the property belonging to Mr. Ruckman, mostly with the DeClark property and other property he has bought since.

I made a map of some portions of Ruckman's property; I think it was shortly after he came there; shortly after he bought the Paulus tract, which was dated August 1st, 1859; the map wasn't made at once, there was a great deal of preliminary surveying to be done; the map I made is here now.

[Said map is offered in evidence on part of the defendant,
30 Ruckman, and is marked *Exhibit D 88.*]

I have made additions to the map since I made it, but I can't recollect when; at the time I made the map I think I had marked Ruckman's name on everything he owned at that time in that territory; I did not survey every tract that I located on the map.

[Witness being shown *Exhibit D 4*, says]—That deed was drawn by me; I surveyed part of the land described in that deed; I surveyed the first lot; I think I made the survey at

about the time the deed is dated ; I made the contents of that lot twenty-nine and seventy-eight hundredths acres.

The two lots described in this deed are not marked on the map *Exhibit D 88* ; they lie east of the Old Closter road leading from Piermont to Englewood, and between the State line and the Old Closter Dock road west of the Hudson river.

[Witness being shown *Exhibit D 21*, says]—I drew that deed ; I did not survey the lot secondly described in the deed ; I can't say whether the quantity stated in that description is correct, but I presume it is ; the lot secondly described is not mentioned on my map ; it lies south of the Closter Dock road. 10

The lot first described in that deed has been out of possession of Mr. Ruckman more than six years ; it is now claimed by another man.

[It is agreed by counsel that the lot last spoken of by the witness is the same lot described in *Exhibit C 6*.]

[Witness being shown *Exhibit D 32*, says]—I drew that deed ; I surveyed the last lot described therein ; the rest was taken from former surveys ; the last lot contains the quantity 20 therein described.

These lots are not marked on the map ; they lie north of the Old Closter Dock road, and east of the road leading from Piermont to Englewood.

[Witness being shown *Exhibit D 47*, says]—I drew that deed ; I do not think I surveyed the land described in it ; it is taken from old surveys ; these lots are not marked on the map ; they are north of the Closter Dock road and east of the road from Piermont to Englewood.

[Witness being shown *Exhibit D 48*, he says]—That deed 30 is in my handwriting ; I surveyed the lots described there, and the quantity of land is correctly estimated ; that lot of land is described on my map.

[Witness being shown *Exhibit D 49*, he says]—I drew that deed ; I think I surveyed that land before Mr. Ruckman bought it ; the quantity of land is correctly estimated.

[Witness being shown *Exhibit D 53*, he says]—That deed is in my handwriting ; I surveyed it, and the quantity is correctly stated in the deed, and is north of the Old Dock road, and is described on my map. 40

[Witness being shown *Exhibit D 55*, he says]—I drew that deed and surveyed the land; the quantity is correctly described there, and is shown on my map.

[Witness being shown *Exhibit D 57*, he says]—That is in my handwriting; I surveyed that land; the quantity is correctly stated; this lot is not marked on my map.

[Witness being shown *Exhibit D 59*, says]—I drew that deed; I surveyed the land described there, and the quantities are correctly stated; these lots are all marked on my
10 map.

[Witness being shown *Exhibit D 66*, he says]—I drew that deed; the first lot I think I surveyed, I am not sure; the other lot I know I did not survey; if I surveyed the first lot the quantity is correctly mentioned; the two lots described in the deed are both on my map.

[Witness being shown *Exhibit D 68*, says]—That deed is in my handwriting; I surveyed the lot, and the quantity is correctly given; the lot is described on the map.

[Witness being shown *Exhibit D 69*, says]—That deed is
20 in my handwriting; I surveyed the tract of land described in it; the quantity is correctly given, and the lot is described on the map.

[Witness being shown *Exhibit D 70*, says]—That deed is in my handwriting; I surveyed the land described; the quantity is correctly given, and is shown on the map.

[Witness being shown *Exhibit D 73*, says]—That deed is in my handwriting, I think; I surveyed the land described there, I think, previous to the time the deed was given; the quantity is correctly stated; these lots are on the map, but
30 are comprised in the whole farm; they are part of Mr. Ruckman's homestead farm.

[Witness being shown *Exhibit D 86*, he says]—I drew that deed; I surveyed part of the land described therein; the rest is estimated; it is not on my map.

Quest. I see marked on your map "E. Ruckman, from J. D. C. Outwater, two hundred and nineteen and sixty-seven-hundredths acres," what piece of property is that?

Ans. It is the homestead farm of Mr. Ruckman—the whole farm, from the brook to the Palisades; I think that
40 was all bought of Outwater; I have surveyed the whole farm

in different parcels; after I made the map I went on and calculated the contents from the map; the lines of the Outwater land are laid down on that map as correctly as I can lay them down; what lines I did not have I surveyed; the tract on the map contains two hundred and nineteen and sixty-seven hundredths acres, by my calculation; I believe I am right; by a re-survey it might vary somewhat; it might vary an acre or two, one way or the other, especially laying as that does—so many short courses and so long and narrow; I don't think there is any land in that tract except that pur- 10
chased from Outwater.

Quest. Your map shows two lots detached from the homestead farm, said to have been bought from Outwater, are those two lots included in the two hundred and nineteen and sixty-seven hundredths acres?

Ans. No, sir; I think I have run the lines of those lots to find the corners; I have run the west line of the front lot to find the corner, and all the lines of the other lot; I had to do it to locate the lot; I calculated the contents of the west lot; the contents of the east lot were taken from the 20
deeds.

And being cross-examined, he says—

[Witness being shown *Exhibit D 32*, says]—I think I am mistaken about the location of the lots; the first three lots lie west of the road from Piermont to Englewood, but do not touch the road; the lot fourth described lies east of the road from Englewood to Piermont; I think *Exhibits D 72* and *D 73* contain all the land described in the two hundred and nineteen and sixty-seven hundredths acres tract and the two detached pieces, of which I spoke; I am not sure 30
whether I have my field notes of *Exhibit D 73* at home; I may have them on loose slips of paper among my papers; before I used books I kept my notes on loose papers, but I don't know when I commenced to use the books; I made my calculations after I came home; I always do that unless I have small lots; when I made field notes I generally took a half sheet of paper; I generally saved them, and perhaps I saved these; if I can find them I will bring them here; I have not verified this survey since I first made it; I can't

say, from recollection, from what points I ran the lines; I ran them as the boundaries of the farm ran, in some places from trees, and in some from fences and from marked trees; there were no land marks except marked trees, heaps of stones, and fences, and a brook; I have not verified any of these surveys since I first took them; I speak of their correctness because I see it is my work.

And being again examined in chief, he says—

10 I think the whole of Ruckman's homestead was comprised in the DeClark property; Mr. DeClark died twenty or twenty-five years ago; I was one of his executors; I assisted in the division of his real estate, after his death; the property was divided and sold; I made the surveys for the division; I was pretty well acquainted with the boundaries of these lots into which it was cut, at the time.

GARRET S. DEMAREST.

Taken, sworn to and subscribed this 6th day of August, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

20 *Peter Haring*, a witness produced on the part of the defendant Ruckman, being duly sworn, on his oath saith—

I live in Harrington, Bergen county, New Jersey; about two miles from Mr. Ruckman; I have lived in that neighborhood since I was born; I am fifty-three years of age; I have been engaged in surveying land for sixteen years, and have carried it on in the neighborhood where I reside; I have drawn deeds and mortgages, and papers relating to real estate; I was Commissioner of Deeds for five years; since then I have been a Master in Chancery; I am acquainted
30 with some of Mr. Ruckman's property between the old Closter Dock road and the State line, and east of the Closter road from Englewood to Piermont; I have made a map of part of that territory.

[Witness being shown *Exhibit D 9*, says]—That deed is in my handwriting; I did not survey that lot; I got the description from a map that had been made by Isaac I. Haring

for the division of the property; this land is within the boundaries previously given.

[Witness being shown *Exhibit D 29*, he says]—I drew that deed; I did not survey that land; it is situate within the limits previously given.

[Witness being shown *Exhibit D 30*, says]—I drew that deed; I did not survey the land; it is located within the boundaries previously given.

[Witness being shown *Exhibit D 31*, says]—I drew that deed; I did not survey the land; it lies within the bounds 10 previously given.

[Witness being shown *Exhibit D 50*, says]—I drew that deed; I surveyed the land and found the quantity of land as therein specified; and is situate within the same boundaries.

[Witness being shown *Exhibit D 56*, says]—I wrote that deed; I surveyed the land described therein, and the quantity was the same as that described in the deed; that is situate within the limits before mentioned.

[Witness being shown *Exhibit D 64*, says]—I drew that deed; I did not survey the lands described therein; that 20 property, excepting that part of it in Rockland county, is in the bounds before described; I know enough of the land to know it lies east of the road from Englewood to Piermont.

[Witness being shown *Exhibit D 67*, says]—That deed is in my handwriting; I surveyed the land therein described, and according to my figures the quantity there given is correct; and is within the limits before given.

[Witness being shown *Exhibit D 74*, says]—I wrote that deed; I surveyed the lot therein mentioned a few days 30 before the deed bears date; the quantity, according to my figures, is sixty-two and thirteen-hundredths acres; the deed says sixty-two acres more or less; sixty-two and thirteen-hundredths acres is correct according to my figures; that is within the limits before mentioned.

[Witness being shown *Exhibit D 76*, says]—That deed is in my handwriting; I surveyed that lot; the quantity is correctly described in the deed, and is within the same limits.

And being cross-examined, he says—

I have not got my field notes here; I did not bring them, because I did not know what I was wanted for; I have them home; I have always preserve them; I speak here from my first surveys, and speak from the correctness of the quantity of the land because the surveys are my work.

PETER HARING.

Taken, sworn to and subscribed this 6th day of August, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, M. C.

10

And thereupon the examination was further adjourned to Tuesday, August 13th, 1872, at ten o'clock A. M., at the same place.

At which time and place the parties appeared, by their respective counsel, and the examination was further adjourned to Tuesday, September 3d, 1872, at ten o'clock A. M., at the same place.

John L. Brownell, a witness produced on the part of the defendant, Ruckman, being duly sworn, deposes and says—

I live at Nyack, Rockland county, in the State of New York; my occupation is that of banker and broker, mainly, at No. 28 Broad street, city of New York.

I know Benjamin W. King and Elisha Ruckman, the parties to this suit; my acquaintance with both is slight—Mr. Ruckman, better, but Mr. King, little.

Quest. Have you seen an agreement dated May 12th, 1868, between Elisha Ruckman and Benjamin W. King, by which Mr. Ruckman agreed to sell certain lands to Mr. King; the lands situate chiefly in Bergen county, but a small portion in the State of New York?

30 *Ans.* No, sir; not to my knowledge.

Quest. Have you any way learned the existence of such an agreement?

Ans. I have seen what purported to be a copy of such agreement, and have it in my possession; I have no doubt that it is a correct copy.

Quest. Is the copy which you have, signed?

Ans. It is not signed by the parties; the signatures are copied.

Quest. Have you acquired any interest in the contract, Mr. Brownell?

Ans. I suppose so—yes, sir.

Quest. When first, and from whom, in the first instance?

Ans. I purchased my first interest in the contract on the 12th day of August, 1871; three-fifths of said contract from Peter C. Adams—I mean three-fifths of purchaser's interest.

Quest. Did you receive any transfer in writing of that 10 interest?

Ans. Yes, sir.

Quest. Are you able and willing to produce that transfer here, to be made an exhibit in this cause?

Ans. I am quite willing, and partially able; I have here an assignment of two-fifths of the three-fifths share; I have here two assignments, each one assigning one-fifth; both of these assignments are from Aaron Raymond to me, and bear date February 24th, 1872.

[Said two assignments are offered in evidence, and respectively marked *Exhibits* 89 and 90 on part of defendant, Ruckman.]

Mr. Raymond holds the assignment for one-fifth, which I acquired on the 12th of August, 1871, as a security for \$20,000 which he had loaned me; the assignment for the one-fifth was made at the same time with *Exhibits* 89 and 90; since that time Mr. Raymond loaned me \$20,000, and I handed him back that assignment; he now retains that as collateral; the one-fifth which Raymond now holds, he acquired by assignment from William R. Bergholz.

I do not think that I have the assignment of the one-fifth to Bergholz—but I may—I am not certain; my attorney informs me that it has been recorded in Bergen county Clerk's office; my recollection is that Bergholz got the assignment of the one-fifth from Benjamin W. King.

I couldn't say positively whether all the previous assignments were handed over to me, at the time of the assignment of Raymond to me.

Quest. *Exhibit* 89 states an assignment from Benjamin W. King to Peter C. Adams, was that same interest assigned 40

directly to Peter C. Adams to Aaron Raymond, or were there intermediate assignments between Adams and Raymond.

Ans. Direct from Adams to Raymond, I suppose; I believe I have the assignment in my safe—I should hate to be too positive, but I believe I have; I have not got the original assignment of the one-fifth from King to Peter C. Adams—I do not think that I have it at all; I understand that it is on record.

- 10 *Quest.* Exhibit 90 states an assignment of a one-fifth interest from Benjamin W. King to John J. Donaldson; were there any assignments intermediate between Donaldson and Aaron Raymond?

Ans. I suppose not; think not.

Quest. As to this one-fifth, have you in your possession, so as to make exhibits of them, the assignment from King to Donaldson, and the assignment from Donaldson to Raymond, or either of them?

- Ans.* No, sir; I suppose that both are recorded in Bergen
20 county Clerk's office.

Quest. In the other two-fifths of the purchaser's interest, have you acquired any interest, and if so, when and from whom?

Ans. Yes, sir; in both of them; on the 26th of March, 1872, I purchased one-fifth interest from Peter C. Adams, who was negotiating the interest of his father, Herman C. Adams; the assignment was from Herman C. Adams; Peter C. Adams stated to me that he had no interest in the said share.

- 30 I purchased the last one-fifth from Benjamin W. King, on the 10th day of June, 1872; I have not here the assignment of Herman C. Adams to me; it was given to me; it is now in the hands of Francis A. Palmer, President of the Broadway Bank, N. Y.; he holds it in escrow as a security for the payment of three sets of notes, which were given as the price of that share; two sets of those notes have been paid, and when the remaining set is paid, then the assignment is to be redelivered to me, absolutely; this assignment has not
40 been recorded; my right to it is dependent upon the payment of the last set of notes, which will become due on the

29th day of September instant; I expect to pay the notes at maturity.

I have here the assignment from King to me, dated June 10th, 1872.

[Said assignment is offered in evidence and marked *Exhibit 90½*, on the part of the defendant, Ruckman.]

I now claim to be the sole owner of the purchaser's interest, under the contract between Ruckman and King.

Quest. Since the 12th of May, 1868, have you received any conveyance from Elisha Ruckman, the defendant, for any of 10 the lands included in the contract between him and King, heretofore mentioned—if so, when and what quantity?

Ans. I have; I have received a conveyance of the twelve and a half-acre tract, mentioned in *Exhibit 72*; this was, I think, about two years ago; I have not received any more; the deed to me was delivered and recorded, I believe.

Quest. At or about the time you received that deed, did you receive an agreement in writing from Mr Ruckman, in regard to your right, in the event of Mr. Ruckman's title to that land failing? 20

Ans. The transaction referred to was a somewhat complicated one, and was done for me through my agent, Crammond Kennedy, and my attorney, Mr. Dutton, and I have not charged my memory with the details and cannot give them; I cannot say whether I received such an agreement in writing or not; it is many months since I have had my attention drawn to the transaction, and I am unable to state anything from memory with regard to it.

Quest. Is it not your recollection, Mr. Brownell, that such an agreement was given by Mr. Ruckman to you, at the 30 time the deed was delivered?

Ans. My impression is that there was an agreement of some kind given to me at the time; the agreement was in relation to the transfer of the twelve and a half acres.

Quest. Did you not accept that conveyance from Mr. Ruckman upon an agreement from him, that if, thereafter, his title to the premises should fail, he would return to you the purchase money which you paid, with interest on it?

Ans. Your question has refreshed my recollection; my

impression is that you have stated the agreement correctly in your question.

Quest. At or near to the same time, did not Mr. Ruckman make a deed of conveyance to you of another portion of the lands included in the contract between him and King, and leave that deed, by arrangement with you, in the hands of Joshua M. Van Cott in escrow?

Ans. I suppose he did.

10 *Quest.* State briefly, but clearly, the agreement between you and Mr. Ruckman, in relation to that deed?

Ans. I agreed with Mr. Ruckman to build a certain road mainly through the lands embraced in the contract under consideration; I mean the contract between King and Ruckman; by agreement I was to receive in payment a deed for about six acres of land, fronting on the cliffs, being, as I understand, the third lot of land described in *Exhibit 72*; which deed was placed in the hands of Joshua M. Van Cott, to be given to me upon the production by me of the engineer's certificate of the completion of the road; I suppose
20 the deed is still in the hands of Judge Van Cott.

Quest. Is the road complete, in part or whole?

Ans. I have the engineer's certificate that it is complete.

Quest. Connected with this last mentioned deed, was there, or not, an agreement in writing between you and Mr. Ruckman, that, if his title to this six acre lot failed, he should pay to you the consideration money named in the deed, with interest?

Ans. I think that was substantially it; the agreement is not here with me now.

30 *Quest.* So far as you know, has Benjamin W. King any further interest in the contract referred to at the outset of your examination, or in the land embraced therein?

Ans. I suppose him to have none whatever; not the slightest.

J. L. BROWNELL.

Taken, sworn, and subscribed before me, September 3d, 1872, at Jersey City.

A. S. JACKSON, M. C.

John H. Serviss, a witness produced on part of the defendant, Ruckman, being duly sworn, deposes and says—

I live at Closter, Bergen county, New Jersey; my place of business at Englewood; my occupation is that of a civil engineer and surveyor.

Quest. [Witness being shown *Exhibit D 16*, (being a deed from Jabez Lyon and wife to Elisha Ruckman) is asked]—Have you at any time surveyed the land described in that deed?

Ans. Yes, sir; I surveyed it in June, 1868; I do not remember the day of the month.

Quest. Did you then, or have you since, computed the contents of the survey?

Ans. I did then and have since; the last computation I made last week from my notes, made in 1868; I found the quantity to be thirteen and seven-tenths acres.

Quest. [Witness being shown *Exhibit D 7*, is asked]—Did you survey the lot of land contained in that deed?

Ans. Yes, sir; on July 16th and 17th, 1872; the quantity, as I computed it, was nine and four-tenths acres. 20

Cross-examination.

I made a map of this survey, but I have it not here; when I surveyed the lots, I went to high water mark of the Hudson river; the area which I give you is between high water mark and the edge of the Palisades—that is, the nine and four-tenths acre tract; the other extends back from high water mark of Hudson river to a line about parallel with the river and distant about three hundred feet west of the edge of the Palisades; in this last mentioned thirteen and seventh-tenth acre tract, there are about nine acres between high water mark and the edge of the Palisades.

I have a field book of these surveys at home.

J. H. SERVISS.

This survey was made at the instance of William Baird, of Brooklyn, who had a contract of purchase with Mr. Ruckman, for the Lyon tract, including a strip extending west of the brow of the cliff at an average of three hundred feet wide and extending north of the Lyon tract two chains.

I surveyed the lines of Baird's purchase, and my computations are based on that survey.

J. H. SERVISS.

Taken, sworn, and subscribed before me, September 3d, 1872, at Jersey City.

A. S. JACKSON, M. C.

And thereupon the examination was further adjourned to Friday, September 13th, 1872, at the hour of ten o'clock A. M. at the same place.

10 At which time and place the examination was resumed in the presence of William L. Dayton, of counsel for complainant, and of Jacob Vanatta, of counsel for the defendant, Ruckman.

Elisha Ruckman, a witness produced on the part of himself, being duly sworn, says—

08 I am one of the defendants in this suit and reside at Closter, Bergen county, New Jersey.

I acquired title to one lot in Rockland county, New York, adjoining the New Jersey line, which I owned on May 12th, 20 1868, from Isaac D. Coleman, another lot from William De Voe, another lot from John Parcells; I believe the deeds for those lots are made exhibits in this cause.

At that time I had no contracts for lands in Rockland county, New York—that is, not in this district described in this contract; I had some contracts for lands out of this district; I mean west of the road from Englewood to Piermont, 30 but none east of that road.

Quest. What quantity of land did you have title for on May 12th, 1868, in Harrington township, Bergen county, 30 north of the road called the Old Closter Dock road and east of the road leading from Englewood to Piermont?

10 *Ans.* I have delivered the deeds to the Master, but have never reckoned them up to know how much there was; I have put in here as exhibits before the Master the deeds for all the land that I held title to within that territory.

Quest. On May 12th, 1868, what quantity of land did you

have actual title for, situate in the township of Harrington, Bergen county, and lying between the Huyler's Landing road and the old Closter road?

Ans. I have never reckoned that up, but I have put the deeds in here, covering all the lands that I owned within those limits.

Quest. As to the territory situate between the old Closter Dock road, the road from Englewood to Piermont and the New York State line, what lands did you have contracts for the purchase of, on May 12th, 1868—name the owner of 10 each tract, and the quantity of land bargained for in each case?

Ans. Roderick F. Cloughe, fifty acres; Sidney Gessner, twenty three acres; William Sneden and his heirs, twenty-two acres, eleven acres of which he owned himself, and the remainder his children heired from some relative, but he had the selling of the whole; William Jordon, twenty acres and a half; John Auryansen, fifteen acres; John J. Demarest, eighteen acres; the Nangle heirs, six acres.

I was to give Roderick F. Cloughe \$7,500; the contract 20 was made with him some time in January or February, 1868; I cannot fix the time exactly, but it was before the contract with King; the contract with Cloughe was verbal; he never conveyed the land to me; I have never got title to that fifty acres or any part of it, because I was disappointed in getting the money from Mr. B. W. King; I was to have had the deed from Cloughe some time in April or May, 1868; there was no time fixed; I was to pay him cash on delivery of the deed; I had not the money to make the purchase independent of the money I was to get from King; I believe I could have got 30 title to this land from Cloughe if I had had the money from King on the first of June; he was very anxious to have some money as soon as possible; my arrangement with King for the first of June payment was intended to be applied to getting these deeds; I do not know of this land having been sold since; it has been mortgaged by Cloughe since; I have not asked him since May 12th, 1868, to make a deed to me for this land, because I had not the means to carry out my part of the agreement.

I was to give Sidney Gessner \$2,500 for the lot of twenty-three acres; I made the contract with him in February or March, 1868; there was snow on the ground at the time; he was to be paid all cash on the delivery of the deed; my contract with him was verbal; I did not get the deed from him for want of money to pay for it; I believe I could have obtained that deed from Gessner if King had paid me \$19,900 on the first of June; I think so because I had previously had verbal contracts with Gessner for the purchase of real estate, and he had carried them out; the father of Gessner was dead and he was one of the executors and an heir, and I had been in treaty for it more than a year; the price kept raising, and eventually I had to raise to that contract price, \$2,500, for the price for the twenty-three acres: I have never got title for that twenty-three acres, because I was disappointed in the money to pay for it; that land has been sold since, as I have been informed, some time during that year; I could not fix the date; I was informed that it was sold to Mr. J. S. Homans; that sale was made some time in the fall of 1869, as I am informed.

I was to give William Sneden and his heirs, for the twenty-two acres, \$1,900.

I was to give William Jordon \$3,000 for the twenty and a half acres I agreed to buy from him; the agreement to buy the land was made with him about the first week in April, 1868; the agreement was verbal; I was to take the deed and pay the money some time between that and July then next ensuing; I did not get any conveyance for that lot, and never have, because I failed to receive the money from Mr. King on June 1st, 1868; after I had made the contract with King I gave up a loan which I was to get from the State Commissioners; I believe I could have got the conveyance from Jordan if I had had the money from King on June 1st, 1868, because he appeared to be desirous of settling up with his wife for her portion; they did not live together; there was some difficulty between them, and they had agreed what portion she was to have out of the money; Jordon remained willing to convey the property to me until after the first of June; that property was sold at commissioners' sale—a public sale—on August 17th, 1872; Mr. Jordon has died; I was

at that sale; the property brought \$4,000 at that sale; Sweeting Miles bought it; he lives at Closter.

I was to give John Auryansen \$100 an acre for the fifteen acres I bargained for with him.

I bargained with him at the time I took the deed, which I have put in here, for the seventy-five acres; the deed will show the date; I bought it in with the seventy-five acres described in that deed, and his wife demurred to selling all the woodland off, while she lived; so the deed was taken for seventy-five acres, and he was to give me a deed for it if he survived his wife, and what wood he cut off was to be substituted for the interest; his wife died just before the contract was made with King; his contract was verbal; the contract for the ninety acres was verbal and existed three years; I paid him the interest on the seventy-five acres for three years; after his wife died he renewed this contract to convey me the fifteen acres at the same price; there was no particular time set for taking the deed; he was not particular so long as he got the interest; I have never got a conveyance from him for that fifteen acres, because I did not have any means to pay him; I believe I could have got it if I had had the money from King on the 1st of June, 1868; I think so because he had carried out all his previous contracts with me, which were all verbal; I never had any written contracts with him; he has told me that he had sold nearly all the land he had and that the party refused to take it unless he let this lot go with the rest; and that he had conveyed it away with the other to J. Smith Homans about a year ago; he had contracted it before that, but the date I do not know.

I was to give John J. Demarest for the eighteen acres I had bargained with him for, \$2,600; I could not fix the date of the contract with him, but it is in the book; it was before the King contract; that contract was written, and \$50 was paid on it at the time; it is the same contract marked as *Exhibit D 2*, in the printed book; I never obtained a conveyance from Mr. Demarest for those two lots of land, because I had not the money to pay for it; there was no other reason that I know of; he never exhibited any unwillingness to make the deed.

He said to me in October, 1868, that he would like me to

take the deed and pay the money; he has told that he had conveyed it, I believe to J. Smith Homans or to Kennedy, but I think to Homans; I learned of its being sold since December, 1870, after the decision of the Court of Appeals; I should think between that and the March following; I could not fix the date exactly; immediately after I got the \$19,900 from King; I offered him his \$2,550 and interest to that date, and asked for a deed, and he would not give it to me; the principal reason he gave was that he had had the deed made for
 10 me and had waited a long time and now would not let me have it; I was to give \$200 for the eleven acres I bargained for with the Nangle heirs; the bargain for that was made some time in the spring of 1868, and before May 12th, 1868; that agreement was in writing, and made with William Nangle, one of the executors of Resolvant Nangle; I have got about five acres of that land; I should think it was two or three months afterward that I got the deed for that; they could not get the estate settled up; it was long after the first of June.

One of the executors had not signed the contract, and
 20 after this King contract had been put on record, and had got noised around the neighborhood, the heirs prohibited the giving of the title for the part that William Nangle did not own himself, because they thought it was not enough for it; one of the heirs gave me title to her portion—a small portion—making about five acres, with what I got from William Nangle, leaving six acres which I did not get, and have not got yet; if I had got the money from King on the 1st of June, I believe I could have got the whole of it; the price I agreed to give for it, was a high price; it was the highest
 30 price ever known in that neighborhood for lands contiguous to it; I wanted the land because it just split my river front-right in two parts.

I do not know whether they have ever conveyed that six acres to any one else; some year or so afterwards they offered it to me at the same price; but I then had not the means; I do not know whether it is now sold or not.

Quest. On May 12th, 1868, did you have any contracts or contract for the purchase of land in the township of Harrington, lying between the Huyler's Landing road and the

Old Closter Dock road, and if so, with whom, and how much with each?

Ans. I think I had, for three small parcels with Frederick Morris, for I think between nine and ten acres; I afterwards obtained a deed for it, and that deed is made an exhibit in this cause before the Master.

Another was with Abraham Cole or Thomas Anderson—they owned it between them, I think—for about seven acres; I obtained a deed for it, and have put that deed in here as an exhibit; I got the deeds both together, from Cole and An- 10
derson; I think there were two separate deeds; these com-
prise all the land in that territory; I paid Anderson and Cole something over \$100 interest, because I could not get the money for sometime to complete the purchase.

Quest. Go back to the land north of the Old Closter Dock road in Harrington township, and east of the road from Englewood to Piermont, and say whether you had any other contracts for the purchase of land within those limits, on May 12th, 1868, besides what you have already spoken of?

Ans. I had a contract with Mr. David Doremus, was part 20
written and part verbal; and I have got the deed since; there was very near one hundred acres in that deed—I could not tell exactly; that deed has been made an exhibit in this cause; I think one deed was for about sixty-four or sixty-five acres, the other for twenty-five or twenty-six acres, and about twelve acres of that laid out of this district, west of the road from Englewood to Piermont; I had no contracts besides, except what I have deeds for; I believe some other lands in this last mentioned district, that I had agreements for, for which I have since got deeds, and which are put in 30
as exhibits in this cause; one was from Sidney Gessner's
mother, I believe, for nearly six acres; all the rest that I remember, I have put in the deeds as exhibits.

Quest. *Exhibit D* 3, before Mr. Jackson, which is a deed from Garret S. Demarest and others, dated September 9th, 1870; was that for land within the limits of the contract?

Ans. No, sir; it was for land west of the road from Englewood to Piermont; the deed got in through mistake.

Quest. *Exhibit D* 9, before Mr. Jackson, a deed from Gabriel Hill and wife, dated March 19th, 1870; does that con- 40
vey lands within those limits?

Ans. I believe that is the deed from one of the Nangle heirs, and goes to make up the five acres.

Quest. *Exhibit D 24*, before Mr. Jackson, being a deed from Matthew S. Bogart and wife, dated January 12th, 1871; does that convey lands within the limits of this contract?

Ans. Yes, sir, it does, I think; there are so many of those Bogarts that I can hardly place them.

Quest. With regard to the lands conveyed in *Exhibits D 29, D 30, and D 31*, before Mr. Jackson, all of which bear
10 date July 8th, 1871; one from Abraham Haring and wife, one from Maria Haring, and one from Debby Nangle; were the lands described in those deeds bargained for before May 12th, 1868, and if so, were they within the boundaries of the lands described in the contract with King?

Ans. They were bargained for in 1867; they were within the boundaries of the King contract; the first bargain for them was not in writing; then when they came to find out the price for which I had bargained these lands to King, there was a written contract made for a much higher price
20 than I had agreed for at first; the first bargain was for \$50 an acre, and the second was for about \$75 an acre more.

Quest. *Exhibits D 75 and D 76*, the first being a deed from Harriet E. Morris and Frederick Morris, dated May 30th, 1868, the other from Mary Ann Gessner, of the same date; were the lands described in those deeds within the boundaries described in your contract with King, and if so, had you bargained for those lands prior to May 12th, 1868?

Ans. They were within the boundaries, and I had bargained for them before May 12th, 1868; the contract with Morris I
30 think was written, with Gessner it was verbal.

Quest. As to the deed from you to Lansing Zabriskie, dated November 20th, 1869, marked *Exhibit C G S 1*, and the deed from Lansing Zabriskie to Charles G. Sisson, dated September 30th, 1871, marked *Exhibit C G S 2*; what are the nature of those deeds?

Ans. They were given to secure a loan at the time procured of Lansing Zabriskie; I understood that it was Mr. Sisson's money at the time, and the deed was given as security for the loan; I got a writing back, showing that the
40 deed was to secure a loan, made by Lansing Zabriskie; I

have not that agreement with me, but will produce it on a future occasion.

Quest. On May 12th, 1868, what lands had you title to in Hackensack township, Bergen county?

Ans. A piece of land adjoining the Huyler road on the cliff, containing, the deed says, a little less than nine acres; that was conveyed to me by Dower Banta; I had title to no other lands in that township at that time.

Quest. On May 12th, 1868, did you have contracts for the purchase of any land in Hackensack township, and if so, 10 with whom were those contracts?

Ans. With a company of which William A. Shepherd was, I believe, President; I think it was called the Sugar Beet Company; I had a paper in respect to those lands, signed by Shepherd; I believe that paper has been put in evidence before Mr. Jackson; I had but that one paper from Shepherd with reference to those lands; I had a copy of it; I think I had signed no paper with reference to those lands before May 12th, 1868; I have never obtained a conveyance for any of the land referred to in that paper; part of the partners 20 bought the other portion out since May 12th, 1868, as I am informed, but I don't know their names, except one, Mr. Lawton; I have now forgotten his first name; he told me he would carry out his contract since June, 1868; but I cannot fix the date; I do not know what share of the property he owned; I never knew how the shares stood; Shepherd told me he had no further interest in the property; he told me so over a year since; I did not learn the particular date when he parted with his interest in the property.

Quest. Just tell us which portions of the land embraced in 30 the King contract for which you had title May 12th, 1868, including also those within those limits for which you then had contracts and have since obtained conveyances, have been productive during the last four years, for occupation or for farming or for any other purpose, producing any annual yield?

Ans. About seventy acres belonging to homestead farm where I live, which come from the J. C. Outwater deeds of 1856; those seventy acres are both cultivated and in grass to 40 mow; my homestead has been worth annually during that

time not to exceed \$500 a year, except a stone quarry that I had leased out many years ago that I received \$300 a year for as rent; it is on the river edge, three hundred feet in length; this quarry is on part of the homestead property; I don't think you could get \$500 for the homestead property if rented to a tenant; I know of a superior place near me, with better buildings, the land in better condition, belonging to Trevor & Colgate; their agent, Mr. Wetmore, has stated here what he got for it; I have forgotten what it was; there
 10 is at least thirty acres more tillable land in it than in mine; my judgment is that not more than \$500 a year rent could have been obtained from my homestead during the last four years, exclusive of the stone quarry.

Quest. Excluding your homestead, what has been the character or description of the land included in your contract to King, during the past four years?

Ans. It is mostly high, mountainous land, not fenced in; lays out in an uncultivated state, with bushes and some heavy timber land; there are several old, dilapidated houses,
 20 not tenanted at all, which used to be occupied by woodchoppers and quarrymen, but are not productive in any way; neighbors far and near range their cattle on it.

There are no habitable buildings on any part of it, except on the homestead, except one stone house which would be habitable if there were any roads leading to it; I have had woodchoppers, when working for me, occupying it when chopping wood, and stone wall layers when laying stone wall; but it has not otherwise been occupied; that was many years ago; it has not been occupied at all during the last four
 30 years.

Quest. State what has been done on the property since May 12th, 1868, in the construction of roads?

Ans. There has been a road made from the Closter station to the cliff on the river front about two miles and a half long; there has been another road made, north and south, on the property, or worked; it was laid the year before, nearly three-quarters of a mile; I contracted with the present owner, Mr. John L. Brownell, to build the first mentioned road from the station to the cliff, and nearly half a mile of the

one running north; that contract with Brownell was made in July, 1870; I have it here with me.

[Being shown a paper, witness says]—This is it, signed by me and Mr. Brownell.

[Paper offered in evidence, dated June 30th, 1870, and marked as *Exhibit D 91*, on the part of the defendant Ruckman.] The road described in this contract has been built in part.

I was to build a road half a mile south from the intersection of the road running from the station to the cliff; I have 10 built one half of it, that is a quarter of a mile, at an expense of \$944; I have worked on the section in the contract with Mr. Brownell and expended \$1,266.10; in opening this road from the station to the cliff, it opened my homestead farm right in the centre and left it all commons; I have enclosed it with a good, substantial board fence on both sides of the road, and on the Anderson avenue, at a cost of \$1,328.20; I built this fence in 1870 and 1871; I had no communication with Mr. Brownell relative to the building of that fence; the road running north and south near the cliff was laid out by 20 the public authorities; that I had nothing to do with, as to laying it out; I was to build a half mile of it; the roads in that township are worked by commissioners, and Mr. Miles, the commissioner who had charge of that section, requested me to open that; the commissioners assess back on the lands the cost of making the road; that road was laid out before May 12th, 1868; I think about one year; the road running east and west, from the station to the cliff, was laid out by Mr. Brownell's engineer, except that part from the station to the Closter road, four thousand and six hundred feet, which 30 was laid out by the public authorities, but not opened before this transaction with Mr. Brownell; this part was under 08 regulation by the public authorities, and the cost was assessed back on the property; these commissioners came in before the quarter of a mile on the cliff road was worked, but after the four thousand and six hundred feet were worked from the station to the public road.

The Commissioners came in in 1871, and the road was worked from the station to the old road, four thousand and six hundred feet, in 1870; the road on the lot in Hackensack 40 township on the cliff was opened by a commission, and

they taxed \$150 for it ; they charged one-half to the westerly side, belonging to Mr. Banta, and one-half to the easterly side, belonging to me ; this last was only an out-road ; the others were stone-bottom roads, which cost three times as much ; these roads have added to the value of the property ; good judges say it has added \$50,000 to the value of the property ; my judgment is that it has added at least as much as the cost of making it, and it has been very judiciously laid out ; in 1870 and 1871 I put seven thousand bushels of
 10 lime on the homestead farm, applying it altogether to the cultivated parts ; it cost fifteen cents a bushel to get it there and spread it ; that is all the expenses made on the farm since May 12th, 1868.

I have paid the taxes on this property every year since May 12th, 1868, except this year, and this year's taxes have been assessed to me but not returned.

I don't think I can tell the amount of taxes on the lands in Rockland county embraced in this contract, because they group the parcels together, and they do the same in Har-
 20 rington township ; I think I have my tax bills for 1868, 1869, 1870 and 1871, but I have not got them here ; the only tax bill I have here is the one from Hackensack township for 1870 ; the taxes on this property in Hackensack and Harrington townships amount to about \$1,000 ; I am confident it will not vary \$50 from that ; I will produce the tax bills.

[Tax bill for Hackensack township tax, 1870, offered in evidence, and marked as *Exhibit D 92* on the part of the defendant.]

30 Being cross-examined, witness says—

I think there were some letters that passed between Mr. Shepherd and myself with relation to the contract between us, but I have not preserved them ; these were all received before the letter I have put in evidence ; I have had numerous conversations with Mr. Shepherd concerning this property since the date of the letter which was put in evidence ; I don't know as I could fix the date of any of these conversations ; we frequently go up and down in the cars together ; I think I have had conversations with him in the year past

on the great value which the land has turned out to have since 1868.

Quest. Up to what time did you consider that the offer of sale of the property, as indicated in the letter here put in evidence, held good? [Objected to, because the letter must speak for itself, the opinion of the witness being immaterial, irrelevant and incompetent.]

Ans. The partners that bought the others out said that they had been willing to carry out the contract during the whole season of 1868; I considered that the offer held good 10 all through 1863; I made that addition to the agreement with King in the last four lines, from the word "Englewood" down, upon the strength of my having this property; the supplemental agreement, dated May 19th, 1868, is the one I refer to.

The partner of Shepherd, to whom I refer, is Mr. Lawton; I had no understanding with any of the partners, except Mr. Lawton and Mr. Shepherd; I believe Mr. Lawton lives in Brooklyn, Kings county, New York; his office is No. 19 Cliff street, New York; the land referred to in this letter 20 in the township of Hackensack.

Quest. Can you locate it a little more definitely than that? [Defendant's counsel objects to any parol evidence to locate or describe the property referred to.]

Ans. It adjoins the Hackensack river.

Quest. In answer to the question, as to whether you could have carried out the several contracts, which you had entered into before May 12th, 1868, if you had received on the 1st of June the money, named in the contract between you and Mr. King of that date, you have stated that you could— 30 could you have carried them out, had that money been received by you after the 10th of June, 1868?

Ans. Being deprived of the money to carry them out with, I cannot tell you what I could have done, had I received the money; after the contract got noised about, which was by the 10th or 11th of June, people got excited because land had jumped up so high; some parties were afraid to set any price for fear they could not get high enough; Roderick F. Clough's piece adjoins the public road leading from Piermont to Englewood and runs up on the mountains; he 40

bought it in 1864, of Moses J. Taylor; it lies just west of the Powles piece and adjoins land of Trevor & Colgate on the north; the Gessner piece lies west of the piece I bought of William H. Gessner and adjoins the State line; the Sneden piece lies south of the Sidney Gessner piece, and I think there is about three hundred feet between them; the William Jordon piece lies within three pieces of the land I bought from Joseph Jordon; the Auryansen piece is bounded north, east and south by the sixty acres I bought of John Auryansen; the Nangle piece lies between the land I bought of David Doremus and Jacob Auryansen, and runs out on the cliff; I had a verbal contract with Jacob Jordon for eighteen acres, but after the circulation of the report about this contract with King in June, 1858, he refused to carry it out; after the King contract became known, he denied having made it, said it was only a talk on the price; I considered that it was included in the limits of the King contract.

10 Whereupon the examination was further adjourned to Friday, September 20th, 1872, at the same hour and place.

20 And thereupon, at the said time and place, the examination was continued in the presence of the counsel of the respective parties.

And being examined again in chief, he says—

Quest. Since we were last here, have you looked for your tax bills and tax receipts, and if so, have you produced here as many as you have been able to find?

Ans. I have, except one, which I think I have lost this morning; there are some, which I have not been able to find, and one which I did find; I can't find it now.

30 *Quest.* [Witness being shown receipt dated January, 1869, purporting to be signed by C. W. Jones, Collector of Orangetown, is asked]—Is this the receipt for the taxes you paid on your lands in Rockland county, New York, in the year 1868, and if so, about what part of the lands, thus taxed, were included in the contract between you and King?

Ans. This is the receipt for said taxes for the year 1868; about one-third of the lands thus taxed were included in

said contract ; I mean one-third in acres ; it was sixty per cent. more in value, than the residue of my lands in that county, because those lands were on the river front.

Quest. Were they taxed at a uniform valuation per acre or not ?

Ans. I cannot tell.

Quest. Was this for a year or six months tax, and if the latter, were you required to pay taxes for those lands twice a year in and prior to the year 1868 ? [Question objected to, because receipt must speak for itself.] 10

Ans. Yes, sir ; from the time the war tax came to and including the year 1869.

[Said receipt offered in evidence and marked *Exhibit D* 93 for defendant, Ruckman.]

Quest. [Witness being shown a bill purporting to be taxes for the year 1868, against Elisha Ruckman, in the township of Harrington, Bergen county, witness is asked]—Did you receive that receipt from the Collector of Harrington township, and if so, did you pay the taxes stated in that bill and receipt ? [Objected to.] 20

Ans. I did receive it from the Collector, and I paid the taxes, \$706.45—I paid \$713.45—there is a mistake of \$7 in addition.

Quest. In this last bill you are assessed for one thousand three hundred and sixty-seven acres of land in Harrington township—were all the lands you then owned, or had title for, in Harrington township, included in your contract with King, and if not, about how many acres in Harrington township did you have title for which is outside of the King contract ? 30

Ans. These one thousand three hundred and sixty-seven acres were not all included in the King contract ; about one hundred and seven acres were outside of it.

[Said receipt offered in evidence and marked *Exhibit D* 94 for defendant Ruckman. Objected to.]

Quest. Did you pay any taxes for 1868, on lands in Hackensack township, and if so, on what quantity of land and what amount of tax therefor, as near as you can tell ? [Objected to.]

Ans. I did pay such taxes, on about nine acres, about \$9 40

or \$10; couldn't tell without seeing the bill—I can't find the bill; I thought I had it. [Objected to.]

Quest. [Witness being shown a receipt for taxes, for 1869, in the town of Orangetown for \$95.97, is asked]—Were those the taxes for your lands in Rockland county, New York, for the year 1869, and if so, did you pay the amount shown by the receipt to the Collector of the town, and if so, what proportion of the lands thus taxed were included in your contract with King?

10 *Ans.* These were such taxes; I paid the amount, \$95.97, to the Collector of that town; about one third (in acres) of the land thus taxed were included in the King contract—being the same aforementioned as taxed in that town in 1868.

Quest. What was your real estate in Rockland county valued that year?

Ans. \$5,220.

[Said receipt offered in evidence, and marked *Exhibit D 95* for defendant Ruckman.]

20 *Quest.* [Witness being shown another paper purporting to be a receipt of the Collector of the township of Hackensack for the year 1869, is asked]—Did you pay the taxes named in that bill and receive that receipt from the Collector?

Ans. I did pay the taxes—\$9.40; and did receive this receipt from the Collector.

[Said receipt offered in evidence, and marked *Exhibit D 96* for defendant Ruckman.]

30 *Quest.* [Witness being shown paper purporting to be a receipt for taxes in Harrington township, for 1869, amounting to \$674.90, is asked]—Did you pay the taxes in that bill and receive that receipt from the Collector?

Ans. I did.

[Said receipt offered in evidence and marked *Exhibit D 97* for defendant Ruckman.]

The number of acres taxed in this bill is the same and the lands are the same as in *Exhibit D 94*.

40 *Quest.* [Witness being shown another paper, purporting to be a receipt given by the Collector of Harrington township, for taxes of 1869, is asked]—Please state whether you paid the \$8.40 called for in that bill and, if so, how you came to pay that, and whether the lands included in this bill are included in the contract with King?

Ans. I paid the \$8.40; I paid it because I had agreed with Wm. H. Gessner to purchase the land taxed; and this was in the King contract; that is the reason why I paid it; I never got the deed for this property, twenty-three acres, because King never gave me the money so that I could pay for it. [Objected to.]

Quest. Why did you pay tax on that property without having got a deed of it?

Ans. Gessner had sold to me; then the agreement was for me to pay the taxes after I had purchased it; I paid the 10 \$8.40 to the Collector, Tunis A. Haring; I expected to get title to the lot when I paid the bill, or I should not have paid it.

[Said receipt offered in evidence and marked *Exhibit D* 98 for defendant Ruckman. Objected to.]

Quest. Have you paid the taxes for 1870 in Orangetown, on your lands in Rockland county, and if so, what was the amount? [Objected to.]

Ans. I have paid these taxes; the amount was \$98.83.

Quest. Have you here the bill rendered you for the taxes 20 of that year in Rockland county?

Ans. I have; it is not received.

Quest. Where is the receipt for the taxes of that year in Rockland county?

Ans. It is either at my house, or I have lost it; I think it is at my house.

Quest. The lands taxed in 1870 were the same that were taxed in 1868 and 1869?

Ans. They were.

[Said tax bill offered in evidence and marked *Exhibit D* 30 99 for defendant, Ruckman. Objected to.]

Quest. [Witness being shown another paper, purporting to be a receipt of the Collector of Harrington township for 1870, amounting to \$762.50, is asked]—Did you pay these taxes set down in this bill, and did you receive this receipt from the Collector therein named?

Ans. I did; I worked out the road tax.

Quest. I perceive by this bill that you are taxed for seven acres more than you were taxed in the years 1868 and 1869; please state whether these additional acres are within or 40 without the limits prescribed in the King contract?

Ans. They are within the limits of the contract ; I can't state whether it was land for which I had a contract on May 12th, 1868, or not ; I think the Collector found a little piece and added it in. [Said receipt offered in evidence and marked *Exhibit D* 100 for defendant, Ruckman.]

Quest. [Witness being shown paper purporting to be a receipt signed by Moses J. Taylor, for \$114, is asked]—State where the road mentioned in this is situate, and whether it was a road built by public or private expense ?

10 *Ans.* It is situated between the old Closter road leading to Piermont and the cliff, and within the King contract ; it was a public road, and built and kept at the public expense ; Moses J. Taylor was road master of Harrington township. [Said receipt is offered in evidence and marked *Exhibit D* 101 for defendant, Ruckman.]

Quest. [Witness being shown another receipt for \$2.94 for taxes of 1870, against Margaret Lydecker, is asked]—Did you pay the taxes mentioned in this bill, and if so, whether the land mentioned in the bill is included in the King contract, whether you had title or contract for that land on 12th

20 of May, 1868, or whether you since acquired title for it, and how did you come to pay this bill ?

Ans. I paid these taxes ; the lands taxed therein are included in the King contract ; I had a contract for the lands on the 12th of May, 1868, and I think a deed, also ; I know I have a deed now ; the reason why the bill was separate was because the Collector stated that he had left it out of the gross ; had it in his books separate. [Said receipt offered in evidence and marked *Exhibit D* 102 for defendant,

30 Ruckman.]

Quest. [Witness being shown a paper purporting to be a receipt for taxes of 1871, for the town of Orangetown, for \$137.55, is asked]—Did you pay the amount of this bill to the Collector therein named, and if so, are the lands the same on which you paid taxes for 1868, 1869 and 1870 ?

Ans. I paid that amount to that Collector ; the number of acres taxed is the same as before, but the valuation was increased ; I had the same number of acres of land in Rockland county in the years 1868, 1869, 1870 and 1871 ; I got

40 title to some more lands in Rockland county late in the winter of 1871 and 1872 ; I think the taxes must have been paid by

the men who conveyed me the lands. [Said receipt offered in evidence and marked *Exhibit D* 103 for defendant, Ruckman.]

Quest. [Witness being shown another paper, being a bill and receipt for taxes of 1871 in Harrington township, for \$710.90, is asked]—Did you pay the amount of that bill to the Collector therein named?

Ans. I did.

Quest. In this bill you are taxed for sixty-four more acres than you were in the bill for 1870; state, if you can, whether you owned or had contract for those additional acres on the 12th of May, 1868—or, if not, whether you since got them, and also whether they are in the limits of the King contract or not?

Ans. They are within the limits of the King contract; I guess these additional acres are the Doremus lands; I had a contract for them on the 12th of May, 1868; the deed was made in 1867, and was held in escrow until 1871—I think—when I got out—I think so—because I paid Mr. Doremus taxes and interest until 1871, when I got title.

[Said receipt offered in evidence, and marked *Exhibit D* 104 for defendant, Ruckman.]

Quest. [Witness being shown another tax bill, School District No. 3, Harrington township, for 1871, for \$14, is asked]—Did you pay that bill to the Collector therein named—and if so, is that tax an assessment on land—and if so, is it within the King contract?

Ans. I paid this bill; it is an assessment on land within the King contract.

[Said receipt offered in evidence, and marked *Exhibit D* 30 105 for defendant, Ruckman.]

Quest. [Witness being shown a paper purporting to be a bill and receipt for taxes of 1871, for Harrington township, is asked]—Did you pay the amount of taxes in this bill to the Collector; and are the lands therein assessed included in the King contract?

Ans. I did so pay it; the lands are within the King contract—it is the mountain district—it is five hundred acres.

[Said receipt is offered in evidence, and marked *Exhibit D* 106 for defendant, Ruckman.]

Quest. You have not produced here, receipts for taxes on your lands for 1870 and 1871, in Hackensack township; please state whether you have paid the taxes for both of those years in that township, and what amount you paid—as near as you can tell? [Objected to, because receipts are not produced.]

Ans. They are about \$12 a year; I have paid them.

Quest. In the month of July, 1868, what was the market price, per acre, in the neighborhood of your lands, for such
10 lands as were included in your contract with King? [Objected to.]

Ans. The western slope land, and the top not fronting the cliff, was from \$70 to \$120 per acre; fronting the river, on the cliff, \$200 an acre; I mean by the last expression, land lying between the river and the boulevard—about quarter of mile west of the cliff.

Quest. In or prior to the month of July, 1868, did you know or hear of any such lands in that locality or region of country, selling at any higher prices than what you have
20 named, except the sale you made to King? [Objected to.]

Ans. I know of but one of seventeen acres, that sold as high; Mr. Charles Nordoff bought that; that was a very choice spot, and a very wide front on the river; Nordoff paid \$250 an acre for that; I think this was in 1866 or 1867—I won't be certain as to the year.

Quest. You produced here to-day, the agreement between you and Lansing Zabriskie, dated November 20th, 1869?

Ans. I have.

[Said agreement is offered in evidence, and marked *Ex-*
30 *hibit D 107* for defendant, Ruckman.]

Quest. Have you made any payments on that agreement—if so, when and how much?

Ans. I have—paid \$5,000 in July, 1870, and Charles G. Sisson deeded eighteen and one-half acres—twelve and one-half to Brownell, and six to me.

Quest. Have you made any payment to Mr. Zabriskie or Mr. Sisson, except the \$5,000?

Ans. No, sir.

Quest. Does Mr. Sisson, so far as you know, or have heard,

dispute or deny your right to redeem that land, upon your paying him the money, which he advanced, with interest?

Ans. He does not—on the contrary he is very anxious that I should do it; I have talked with him within the last three months about it.

Quest. After this cause was referred to W. B. Williams, and before the reference was transferred to Mr. Jackson, did you leave any of your title deeds of the property in question with Mr. Williams—and if yea, state when, and how many deeds, and about what quantity of land they conveyed? 10

Ans. I did leave some thirty-one deeds with Mr. Williams in January, 1871; I understood they was to have them thirty days to search the title; I couldn't state the quantity of acres, but suppose they conveyed the greatest portion of the land I had in Harrington township; in October, 1871, I got the deeds from Mr. Dixon, my counsel; Mr. Dixon then informed me that they had done with the m and wanted me to fetch another lot; I left these deeds with Mr. Williams by direction of my counsel, in order that the other side might examine my title; I do not know whether they were marked 20 as exhibits by Mr. Williams or not; I did not take any more deeds to Mr. Williams.

ELISHA RUCKMAN.

Taken, re-sworn, and subscribed before me, September 20th, 1872, at Jersey City.

A. S. JACKSON, *M. C.*

And thereupon the examination was further adjourned to Friday, September 27th, 1872, at ten o'clock A. M., at the same place.

At which time and place the parties appeared by their 30 respective counsel.

And thereupon, at the request of the counsel for complainant, I adjourned the examination to Friday, October 4th, 1872, at ten o'clock A. M., at the same place.

October 8th, 1872, a certified copy of deed from John

W. Westervelt and wife to Elisha Ruckman, dated January 4th, 1871, marked as *Exhibit D 108* for defendant, Ruckman.

REBUTTING EXAMINATION FOR COMPLAINANT.

[Filed February 25, 1873.]

Examination of witnesses in rebuttal, in the above cause, on the part of the complainant, taken before Isaac Romaine, a Master and Examiner in Chancery, at his office No. 111 Washington street, Jersey City, on Friday, the 4th day of October, A. D. 1872, at ten o'clock in the forenoon, in the
 10 presence of the counsel of the respective parties and of the defendant, Ruckman, and by the consent of the respective parties hereto.

Henry S. Downs, a witness produced heretofore on the part of the complainant, being re-called, says—

I know the William Jordon property included in the Ruckman contract, being the lot of twenty and a half acres; I am familiar with the value of property in that neighborhood.

Quest. What is the present actual value of this land per
 20 acre? [Question objected to.]

Ans. \$1,000 per acre.

Quest. Do you know where the William Sneden property, consisting of twenty-two acres, is located.

Ans. Yes, sir; I am familiar with the present value of lands in that neighborhood; I have become familiar with their value, being a real estate agent and having lands in that neighborhood for sale.

Quest. What in your opinion is the present actual value of that land? [Question objected to.]

30 *Ans.* \$500 to \$1,000 an acre.

Quest. [Witness being shown *Exhibit D 87*, is asked]—Do you know the property therein mentioned?

Ans. I do, sir, and I am familiar with it.

Quest. What in your opinion is the present actual value per acre of that land? [Question objected to.]

Ans. If I were going to value it, I would put different values upon it by dividing up the land; about twenty acres of it, I should call worth from \$800 to \$1,000 per acre, and the balance about \$300 an acre.

And being cross-examined, he says—

Quest. Is the land which you last spoke of, after deducting the twenty acres, all of the same quality, equally favorable in its situation and equally valuable, and if not, please explain how it is with reference to quality, situation, and value? 10

Ans. It is not all equally valuable, or I should not have placed different prices upon it; the twenty acres is clay land; it is not all equally valuable after deducting the twenty acres; there are portions of it upon which I would put a much larger value; there are portions of it upon which I would put a value of \$500 to \$600 an acre, other portions I would not value as high as \$300; in my own mind I struck an average of \$300 per acre.

Quest. About how many acres of that residue after deducting twenty acres, are worth \$500 to \$600 an acre? 20

Ans. The exact number of acres, I could not state without going on the land and having it surveyed in my presence; it would be impossible for me to state about how many; there might be twenty or thirty acres I would put a value of \$500 on; if I had been to view the land for the purpose of giving testimony I should be more exact; the railroad being built through it the last year adds very much to the value of the property.

Quest. Please give us the location as accurately as you can of the twenty acres which you have estimated as being worth from \$800 to \$1,000 per acre. 30

Ans. That is in the vicinity of the brick yard, the part of it known as the clay land; the clay itself is worth more than the price I have named for the land.

Quest. Tell us on what part of the whole tract this twenty acres is located, whether on the northerly, easterly, southerly, or westerly side or in the middle, or where it is?

Ans. It is in the northwesterly portion; the northwesterly

boundary of the whole place is one of the boundaries of the twenty acres.

Quest. Give us as nearly as you can the location of the twenty or thirty acres which you estimate at \$500 per acre?

Ans. Immediately adjoining on the north and east of the twenty acres.

Quest. About how many acres do you understand the whole tract to contain?

Ans. Something over a hundred.

10 *Quest.* The copy of the deed which was shown to you as part of *Exhibit D 87* says the tract contains eight hundred and twenty-seven acres, three roods and seventeen perches; do you know the boundaries of the tract of land referred to in that deed?

Ans. I consider I do not, sir.

20 *Quest.* Can you tell us whereabouts within those eight hundred and twenty-seven acres, three roods and seventeen perches, the twenty acres of which you first spoke are located, or whether they are located at all within that larger tract?

Ans. The twenty acres I refer to are where the brick yard is located, and northwest of the brick yard; it is located in the larger tract; I have been on the property and through it, but not with a view of being here as a witness, or I could have given a full description of it.

30 *Quest.* You have already stated that you do not know the boundaries of the eight hundred and twenty-seven acre tract, please tell us how it is or in what way you are able to say that the twenty acres of which you have spoken are included in the larger tract?

Ans. I have been onto the property and know it to be part of the property referred to.

Quest. The question I wish answered is, how you know it—what your means of knowing the boundaries are?

Ans. Because I have been on the property; I do not know the boundaries of the property; I only know the property the same as I know any property I have been on.

Quest. In your answers which you gave to Mr. Dayton's questions, did you not have reference to a tract of about one

hundred acres, of which the twenty acres you first spoke of are a part?

Ans. I had reference to this land I have been talking about of which this brick yard is a portion.

Quest. In answering Mr. Dayton's questions did you not suppose that the tract, of which the brick yard was a portion, contained about one hundred acres?

Ans. I supposed it contained one hundred and twenty acres, instead of about one hundred.

Quest. Now please give us the boundaries of that one hundred and twenty acres, beginning on the north side and moving around toward the right hand?

Ans. That I could not do without going on the land.

Quest. Please tell us what there is on the land to indicate the boundaries of that tract, whether they are fences, ditches or roads, or what the boundary marks are?

Ans. I could not give you the boundaries; I think, however, the creek is the boundary on one side; I would like to explain; I may go over land and know it but not be able to give you the boundaries; I have many pieces of land in 20 my hands for sale, which I know, but of which I am unable to give the boundaries; that is the case with this piece of land; I have been on it but cannot give the boundaries.

Quest. Assuming the one hundred and twenty acres of which you have last spoken to be a part of the tract of eight hundred and twenty-seven acres, can you tell us in what part of the largest of these two tracts the smallest of them is located?

Ans. The boundaries of the eight hundred and twenty-seven acre tract I do not know, and therefore cannot tell in 30 what part of it the one hundred and twenty acre tract is located.

Quest. You spoke of the William Sneden tract, please tell us what kind of land that is, whether high land or low land, whether cultivated or uncultivated, whether wet or dry?

Ans. On the west slope of the Palisades diversified, uncultivated; I should call it dry land—there are spots in it wet; it is not meadow land.

It is not low, flat land; there is no low, flat land on the west slope of the Palisades.

No part of it is marshy or boggy to my knowledge.

Quest. Was not the William Jordon lot, within six months last past, put up and sold at public auction, and if so, what did it sell for?

Ans. I understood it was sold; I was not at the sale; I did not learn what it sold for.

Quest. Did not the executor who sold it tell you he sold it and what the property brought?

Ans. He did not; I don't know the executor.

10 *Quest.* That Jordon land in August last at public auction, made by an executor or commissioners appointed by the court, sold for \$200 an acre—please explain to us, if you can, what has occurred since August last to enhance the value of that land to the price you put upon it?

Ans. I do not know what it sold for; I know that between three and four years ago I offered \$500 an acre for it; Mr. Jordon was then living; he asked \$600 for it; I know that property has been sold in that vicinity for \$1,000 to \$1,700 an acre since, and cannot account for that property being
20 sold for that price, unless there was no person at the sale except the party who bought it.

And being again examined in chief, he says—

Quest. If you had been there, how much would you have been willing to give?

Ans. A much larger sum than the price stated.

Quest [Witness being shown *Exhibit D 87*, is asked to read the description of the property annexed to the exhibit, and if he knows Hackensack river, Avenpeck creek and Billing's Kill, and the land which lies between these boundaries?]

30 *Ans.* I do, sir; I have seen every acre between those points.

Quest What, in your opinion, is the value of the land lying between these boundaries? [Question objected to.]

Ans. From \$200 to \$1,500 an acre.

HENRY S. DOWNS.

Taken, sworn to and subscribed this 4th day of October, A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Thomas C. Veale, a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I am living at Tenafly, Bergen county; my profession is civil engineering and architecture.

Quest. [Being shown *Exhibit D 91*, witness is asked]—Was you the engineer in charge of constructing the roads therein set forth?

Ans. I was.

Quest. Were those roads completed in accordance with the contract?

Ans. With the exception of about three hundred feet, as near as I remember, which was stopped by legal process which was beyond the control of the parties; there was really nothing done on that three hundred feet—ground was only broken.

Ans. I was employed by John L. Brownell for the construction of the road described in that contract; I have given Mr. Brownell a certificate showing that the road mentioned in the exhibit is built and finished according to the specifications as therein set forth. [Counsel for defendant objects to so much of the question and answer as relates to the contents of the certificate.]

And being cross-examined, he says—

I was engineer and had supervision of the construction of the road; the name of the contractor who had charge of the work was William I. Brewster; he had charge of one part of the work; this was a contract between Mr. Brownell and Mr. Brewster; L. R. Northrup was the contractor for the other portion of the construction; he had a contract also with Mr. Brownell.

Quest. Was the certificate which you gave to Mr. Brownell a certificate that Brewster had done his work according to the contract between him and Mr. Brownell, and that Northrup had done his work according to the contract between him and Mr. Brownell?

Ans. In the case of Northrup my certificate covered his entire contract; in the case of Brewster it covered of all his contract, except about three hundred feet of his original contract, which he could not do, having been stopped by a legal process.

Quest. State as nearly as you can the time when you gave Mr. Brownell the certificate, or the two, if there was more than one?

Ans. I cannot now remember; I should say between December 1st, 1870, and February, 1871—yet I cannot say positively.

Quest. [Witness being shown *Exhibit D 91*, is asked]—Please say whether you ever saw that paper before to-day?

Ans. I can't say that I have; I have seen a paper of which 10 I presume this is a copy.

Quest. About the time you gave that certificate to Mr. Brownell, or after that time, did you not give to Mr. Ruckman an estimate in writing of what it would cost to finish the roads you have been speaking of; I mean work extra of what had been done by Brownell's contractors. [Question objected to so far as it relates to the contents of that paper, if there is any.]

Ans. I gave Mr. Ruckman an estimate for additional work upon a piece of that road which had no connection with this 20 contract.

Quest. Please state the locality of the road to which your estimate had reference?

Ans. It had reference to the line of road leading from the Closter depot to Ruckman's house.

Quest. Did Mr. Brownell make the road of the width specified in this contract, *Exhibit D 91*?

Ans. He did, sir.

Quest. How wide did they make it?

Ans. It was made fifty feet between ditches, as called for 30 there—and wider.

Quest. Did not you and Mr. Ruckman measure it together since you gave the certificates, and find it not as wide as called for in the contract with Brownell?

Ans. We measured it once, and as I remember, it was wider than called for in the contract with Brownell; the road was stoned in the manner, and for the distance called for in the contract.

Quest. What is the location of that part of the road, the construction of which was stopped by legal proceedings, as 40 you have stated?

Ans. It is a flat, sandy soil, upon which there are buildings; that part of the road is the end next to the Closter depot; it is the first three hundred feet of the line of road from Closter to Ruckman's house; this was in the contract with Brewster; I am not now sure if my estimate referred to this three hundred feet, or whether it included it.

And being again examined in chief, he says—

This estimate was for work outside of the contract—it had nothing whatever to do with the contract.

Quest. Did you give separate certificates to Brewster and Northrup, so that they could draw their money, and afterwards give a separate certificate to Mr. Brownell, that the road had been built according to his contract with Ruckman?

Ans. In the case of Northrup, I think I gave him the final certificate; and in the case of Brewster, I think I gave it to Brownell for Brewster; which certificate would show Brewster's completion of his contract, and both showing Mr. Brownell's completion of his contract with Mr. Ruckman.

THOMAS VEALE.

Taken, sworn to and subscribed this 4th day of October, 20 A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Crammond Kennedy, a witness heretofore produced on the part of the complainant, being recalled, says—

I am acquainted with the William Sneden property, containing twenty-two acres; I would give \$350 an acre for it at present. [Question objected to.]

I think it is worth more than that; I would expect to make a profit on it; I know the William Jordon property, containing twenty acres and a half. 30

Quest. What is the present actual value of that property per acre? [Question objected to.]

Ans. I would give \$750 per acre for it; that is its present market value.

CRAMMOND KENNEDY.

M

Taken, sworn to and subscribed this 4th day of October,
A. D. 1872, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

STIPULATION.

It is hereby stipulated between the parties hereto, that within ten days after the filing of the Master's report herein, either party shall file his exceptions thereto, without any rule to confirm *nisi*, and that this cause may be brought on to final hearing at the February Term, A. D. 1873, of this court, and
10 that upon the final hearing, the evidence taken in the cause, the Master's report and the exceptions thereto, (if any), shall be considered before the court to the end that upon such hearing, a final decree in this court may be made herein, in accordance with the decree of the Court of Errors and Appeals, and each party shall have on such hearing, the same benefit of his exceptions, as if the same were before the court on a rule to confirm the Master's report.

Jersey City, New Jersey, January 6th, 1873.

W. L. DAYTON,

20

Solicitor of Complainant.

DIXON & COLLINS,

Solicitors of Defendant.

MASTER'S REPORT.

In pursuance of an interlocutory decree, signed herein on the 10th day of January, 1871, whereby, among other things, a reference was ordered to Washington B. Williams, and in pursuance of an order of the Chancellor, whereby a reference was directed to me, Abraham S. Jackson, a Master of this court, to ascertain and report to the Chancellor certain
30 matters therein specified, I, the undersigned, would respect-

tively report—That the matter was brought to my attention during the month of August, 1871, and that I have taken the testimony (or caused the same to be taken), which is herewith sent.

1. And I would further report, that I have ascertained what part of the lands and premises comprised in the contract between the complainant, King, and the defendant, Ruckman, which were owned in fee by the said defendant, on the 5th day of December, 1870, or at any time thereafter, and found the same to be one thousand three hundred and sixty-one and seventy-seven hundredths acres, and that I have described the same by metes and bounds, as it will fully appear from *Schedule No. 1*, hereto annexed. 10

2. And I would further report, that I have ascertained what part of the lands and premises comprised in said contract, which on the 5th day of December, 1870, or at any time thereafter, were so far under the control of the defendant, Ruckman, by contract of purchase or otherwise, as to enable him to procure the same to be conveyed to the complainant, King, in fee, and state that the same are comprised 20 and enumerated in *Schedule No. 1*, hereto annexed, and that all of said lands, so situated, have been conveyed by the several grantors to the defendant, Ruckman.

3. And I would further report, that I have ascertained the principal and interest of all encumbrances upon said lands and find the same to amount to \$65,788.46—that the particulars of the same are contained in *Schedule No. 3*, hereto annexed. And further, that the defendant, Ruckman, is not able to pay and discharge the said encumbrances.

4. And I would further report, that I have ascertained 30 what part of the lands and premises comprised in said contract the said defendant, Ruckman, did not own in fee, or so control on said 5th day of December, or at any time thereafter, as to enable him to convey the same in fee, or cause the same to be conveyed in fee, to the complainant, King, and found the same to be seven hundred and sixty-two and thirty-five hundredths acres, as it will fully appear from *Schedule No. 4*, hereto annexed. And further, that the actual present value of said lands per acre is likewise contained in said *Schedule No. 4*, to which reference is hereby made. 40

5. And I would further report, that I have ascertained the contract price of lands, which the defendant, Ruckman, held under contract or otherwise of purchase, and is unable to convey and that the same are severally stated in *Schedule No. 5*, hereto annexed, to which reference is hereby made.

6. And I would further report, that I have ascertained the fair market value, on the 1st day of July, 1868, of all such lands included in the contract aforesaid, as the defendant, Ruckman, cannot make a good title to the complainant, King,
10 for, and find that it is the same as is stated in *Schedule No. 5*, to be the contract prices for the several lots of land, to which schedule reference is hereby made.

7. And I would further report, that the defendant, Ruckman, should be allowed the sum of \$2,590.30, for building a road through a part of the lands in question and making fences thereon, and that the same should be added to the price to be paid by the complainant, King, for said lands. And further that *Schedule No. 6* contains a computation of said allowances.

20 8. And I would further report, that I have ascertained the amount of taxes paid by the defendant, Ruckman, for the years 1868, 1869, 1870, and 1871, on the lands in question and find that they amount to \$4,077.73. And I further find, that the rents arising from said lands for the past five years would be about \$800 per year, and further that said rents would about equal the amount of taxes paid on said lands during the same period. An account of said taxes will be found in *Schedule No. 7*.

9. And I do further report, that an assessment made, or to
30 be made, upon part of the lands in question for a public road, constructed through the same, should be borne by the land itself and paid by the purchaser, who must seek his recompense from the enhanced value of the lands. All of which is respectfully submitted.

Dated February, 15th, A. D. 1873.

A. S. JACKSON, *Master*.

SCHEDULE No. 1.

Land and premises comprised in the contract in question, which were owned in fee by Elisha Buckman, December 5th, 1870, or thereafter :

Exhibit.	Grantors.	To be conveyed.	No. acres
D 1	Abraham B. Cole,	1 Lot,	3 50
D 2	Lydia J. Anderson,	1 "	3 50
D 4	David Doremus and wife,	2 "	{ 29 78
D 6	Henry J. Westervelt and wife, conveyed, see Ex. C 8,		{ 34 23
D 7	Isaac D. Coleman and wife,	1 " Rock. co.	9 40
D 8	William Nangle and wife,	1 "	2 18
D 9	Gabriel Hill and wife,	2 "	{ 1
D 10 & 14 inc.	Philip Mabri and wife and others,	1 "	90
D 15	Henry A. Hopper, Sheriff,	1 "	30
D 16	Jabez Lyon and wife,	2 "	13 70
D 17	Harman Lydecker and wife and others,	2 "	4
D 18	Jacob Jordan, life estate only		
D 19	" " " "		
D 21	John H. Westervelt and wife, (1st lot sold, see Ex. C C,)	2d "	4 50
D 22	William M. Bates and wife,	2 "	{ 16
D 29	Abraham A. Haring and wife,	1 "	1 96
D 30	Maria Haring,	1 "	1 96
D 31	Debby Nangle,	1 "	1 25
D 32	David Doremus and wife, (1st three lots west of road,)	4th "	13 37
D 46	John H. Westervelt and wife,	1 "	5 72
D 47	Abraham A. Haring and wife,	2 "	{ 2 36
D 48	David Doremus and wife,	1 "	1 46
D 49	William Ferdon and wife,	1 "	39 22
D 50	Garret I. Auryansen and wife,	1 "	78 84
D 51	William H. Gesner and wife,	1 "	12 30
D 52	Oliver Cosine and wife,	1 "	5
D 53	Harman F. Ahrens and wife,	1 "	10
D 54	Peter B. Westervelt and wife,	1 "	20 35
D 55	Catharine Powles and others,	1 "	12 50
D 56	John Auryansen and wife,	1 "	52 50
D 57	Jacob J. Ferdon and wife,	2 "	{ 60 33
D 58	Jacob Auryansen and wife,	1 "	{ 15
D 59	Joseph Jordan and wife,	1 "	72
D 61	John Parsels and wife,	1 "	18 25
D 64	William Devoe and wife,	1 "	11 15
D 65	George Huyler and wife, (1st lot conveyed, see Ex. 67,)	4 "	{ 7 62
			{ 12 35
			{ 31
			30 25
			31
		2d "	10 50

Exhibit.	Grantors.	To be conveyed.	No. acres.
D 66	John Ferdon and wife,	2 Lots,	{ 33 98 24 97
D 67	Abraham I. Auryansen and wife,	1 "	6 28
D 68	William L. Linderman and wife,	1 "	19 17
D 69	John A. Ferdon and wife,	1 "	81 40
D 70	Jacob J. Ferdon and wife,	1 "	71 74
D 71	Abraham B. Cole and others,	1 "	18 75
D 72	Jacob D. C. Outwater and wife,	4 " areas taken from map,	219 67 12 50
D 73	" " "	2 " Ex. D 88,	6
D 74	Abraham I. Auyarsen and wife,	1 "	62
D 75	Frederick Morris and wife,	2 "	{ 4 50 5
D 76	Mary Ann Gesner,	1 "	5 50
D 86	Dower Banta and wife,	1 "	8 65
D 108	John W. Westervelt and wife,	1 "	4
Total,			1,361 77

SCHEDULE No. 2.

Lands and premises on the 5th day of December, 1870, or at any time thereafter, so far under the control of the defendant, by contract of purchase or otherwise, as to enable him to procure the same to be conveyed to the complainant in fee.

[NOTE.—Whatever lands and premises as would be comprised in the above conditions, are mentioned and described in Schedule No. 1.]

SCHEDULE No. 3.

Principal and interest of all the encumbrances upon the lands in question, which the defendant owned or controlled, on the 5th day of December, 1870, or at any time thereafter.

MORTGAGES.

1. Elisha Ruckman to John Auryansen, dated April 30th, 1864, for.....	\$7,533 00
Interest from April 30th, 1868, to February 15th, 1873,	\$2,526 03
Less paid.....	1,000 00
	\$1,526 03
Amount due.....	\$9,059 03

2. Elisha Ruckman to David Doremus, dated Sep- tember 30th, 1867, for.....	\$6,496 60	
Interest from September 30th, 1867, to February 15th, 1873.....	2,444 32	
		<u>\$8,940 92</u>
Less paid—		
December 20th, 1870.....	\$1,132 50	
February 2d, 1871.....	35 00	
March 11th, 1871.....	100 00	
August 26th, 1871.....	41 35	
December 4th, 1871.....	228 88	
March 19th, 1872.....	116 25	
		<u>1,653 98</u>
Amount due.....		\$7,286 94
3. Elisha Ruckman to David Doremus, dated May 20th, 1868, for.....	\$1,000 00	
Interest from November 1st, 1870, to February 15th, 1873.....	160 41	
		<u>\$1,160 41</u>
4. Elisha Ruckman to Lansing Zabriskie (in form of an absolute deed), dated November 20th, 1869, and by him conveyed to Charles G. Sisson, by deed dated Sep- tember 30th, 1871, for.....	\$3,300 00	
Interest from November 20th, 1869, to July 20th, 1870.....	1,540 00	
Amount.....	\$34,540 00	
Less paid July 20th, 1870.....	5,000 00	
Balance.....	\$29,540 00	
Interest from July 20th, 1870, to February 15th, 1873,	5,318 83	
		<u>34,858 83</u>
Total.....		\$52,365 21

JUDGMENTS.

1. New Jersey Supreme Court. Stephen B. Ransom vs. Elisha Ruckman. Signed June 7th, 1870, for debt and damages.....	\$5,180 13	
Interest from June 7th, 1870, to February 15th, 1873,	974 99	
		<u>\$6,155 12</u>
2. New York Supreme Court. James S. Sanford and others against Elisha Ruckman. Signed February 24th, 1870, for.....	\$4,621 40	
Interest from February 24th, 1870, to February 15th, 1873.....	963 39	
		<u>\$5,584 79</u>

SCHEDULE No. 5.

Contract price of lands which the defendant held under contract or otherwise of purchase, and is unable to convey.

1 Roderick F. Clough.....	50 acres,	\$7,500
2 Sidney Gesner.....	23 "	2,500
3 William Sneden and his heirs.....	22 "	1,900
4 William Jordan.....	20½ "	3,000
5 John Auryansen.....	15 "	1,500
6 John J. Demarest.....	18 "	2,600
7 The Nangle heirs.....	6 "	100
8 William A. Shepard.....	607 85 "	36,471

SCHEDULE No. 6.

Allowances to defendant Ruckman:

1 Building a road through part of the lands in question, at a cost of.....	\$944 00
Average interest for two years.....	132 16 \$1,076 16
2 Making fences rendered necessary by building roads through part of the lands aforesaid, at a cost of.....	1,328 20
Average interest for two years.....	185 94 \$1,514 14
Total.....	\$2,590 30

SCHEDULE No. 7.

TAXES.

Orangetown, Rockland county, N. Y.

Taxes of 1868.....	\$90 60
Interest from January, 1869, to February 15th, 1873.....	25 89
	———— \$116 49
Taxes of 1869.....	\$95 97
Interest from April 14th, 1870, to February 15th, 1873.....	19 02
	———— 114 99
Taxes of 1870.....	\$98 83
Interest from January 23d, 1871, to February 15th, 1873.....	14 26
	———— 113 09
Taxes of 1871.....	\$137 55
Interest from January 29th, 1872, to February 15th, 1873.....	10 07
	———— 147 62

Harrington, Bergen county, N. J.

Taxes of 1868.....	\$706 45
Interest from January, 1869, to February 15th, 1873.....	197 80
	———— 904 25
Taxes of 1869—	
One bill.....	\$674 90
"	8 40
	———— \$683 30

Interest from January, 1870, to February 15th, 1873.....	\$143 49	
		\$826 79
Taxes of 1870—		
One bill.....	\$2 94	
“	630 75	
“	114 00	
		\$747 69
Interest from January, 1871, to February 15th, 1873.....	104 66	
		852 35
Taxes of 1871—		
One bill.....	\$710 90	
“	178 00	
“	14 00	
		\$902 90
Interest from January, 1872, to February 15th, 1873.....	63 20	
		966 10
<i>Hackensack, Bergen county, N. J.</i>		
Taxes of 1869.....	\$9 40	
“ 1870.....	12 30	
“ 1871.....	12 00	
		\$33 70
Interest from January, 1872, to February 15th, 1873.....	2 35	
		36 05
Total.....		\$4,077 73

DEFENDANT'S EXCEPTIONS TO MASTERS REPORT.

[Filed February 25, 1873.]

Exceptions taken by the defendant in this cause to the report made therein by Abraham S. Jackson, Esq., one of the Masters of this court, bearing date the fifteenth day of February, A. D. 1873.

The defendant excepts to so much of said report and the schedule annexed thereto, as fixes the present values specified in *Schedule No. 4* of the lands mentioned in said *Schedule No. 4*, for the reason and on the ground that the said values are largely in excess of the actual present values of said lands, and for the further reason and on the further ground that the values therein specified are reported by said Master as the values at the date of said report, whereas he ought to have reported the values thereof in December, A. D. 1870, which are much less than those reported by said Master.

In which said several matters and respects, this exceptant excepts to said report, and humbly conceives that the said Master has erred, and that the said report is wrong, unjust and inequitable; and therefore prays that the said report, so far as regards the several particulars above specified, may be disallowed, rejected and set aside, and a new report be ordered to be taken, or that the said report may be corrected in the said several particulars, and prays the judgment of this court thereupon.

DIXON & COLLINS,

Solicitors. 10

JONATHAN DIXON,

Of Counsel with Defendant.

EXCEPTIONS TO MASTER'S REPORT.

[Filed March 5, 1873.]

Exceptions taken by complainants in this cause to the report made therein on the fifteenth day of February, eighteen hundred and seventy-three, by Abraham S. Jackson, Esquire, one of the Masters of this court, to whom this cause stands referred by decretal order, touching the matters therein referred to him. 20

First Exception. For that the Master has reported in *Schedule No. 1*, annexed to said report, deeds from Philip Mabri and wife and others, *Exhibits D 10 to 14* inclusive, as conveying ninety acres of land, whereas they convey much less, to wit, only seventy acres; and further, for that the said Master in said *Schedule No. 1* has reported the deed from Jabez Lyon and wife, *Exhibit D 16*, as conveying thirteen and seventy-hundredths acres, whereas much less is thereby conveyed, to wit, about nine acres.

Second Exception. For that the said Master, in reporting 30 (section four, *Schedule No. 4*.) that part of the lands and premises comprised in the contract of May twelfth, eighteen hundred and sixty-eight, between the said King, complainant, and Ruckman, defendant, which the said Ruckman did not

own in fee, or so control on the fifth day of December, eighteen hundred and seventy, or at any time thereafter, as to enable him to convey the same in fee, or cause the same to be conveyed in fee, to the complainant, King, has ascertained the same to be seven hundred and sixty-two and thirty-five-hundredths acres, whereas the number of acres as aforesaid is much less; and further, for that in *Schedule No. 4*, annexed to said report, the said Master has reported a contract with William A. Shepard for six hundred and seven and eighty-five-hundredths acres of land, whereas no such contract with Shepard existed, nor was the said land comprised in the aforesaid contract between King and Ruckman; and the said Master ought not to have reported the same as aforesaid, either according to the terms of the said decretal order or the principles of equity.

Third Exception. For that the said Master in his report has reported that the fair market value, on the first day of July, eighteen hundred and sixty-eight, of all such lands included in the contract between King and Ruckman aforesaid, as the defendant Ruckman cannot make a good title to the complainant King for, is the same as stated in *Schedule No. 5* to be the contract price, between said Ruckman and others than the said King, for the several lots of land, whereas the fair market value of the said lands at the time aforesaid was much greater than as stated in *Schedule No. 5*.

Fourth Exception. For that the Master has reported that the defendant Ruckman should be allowed the sum of \$2,590.30 for building a road through a part of the lands in question, and making fences thereon, and that the same should be added to the price paid by the complainant, King, for said lands, whereas the said King ought not to be charged with the same at all, nor ought the same to be so allowed to said Ruckman, either according to the terms of said decretal order or the principles of equity.

Fifth Exception. For that the Master has reported the amount of taxes paid by the defendant, Ruckman, for the years eighteen hundred and sixty-eight, eighteen hundred and sixty-nine, eighteen hundred and seventy and eighteen hundred and seventy-one, on the lands in question, and find that they amount to \$4,077.73, as stated in *Schedule No. 7*,

and that the rents arising from said lands for the past five years would be about \$800 per year, and would about equal the amount of taxes paid on said lands during the same period, whereas the said taxes paid upon the lands in question were not such nor of so large amounts as stated in *Schedule No. 7*, and whereas the annual rental value of said lands was greater than \$800; and for the further reason that the Master ought not to have so reported, either according to the terms of the said decretal order or the principles of equity.

Sixth Exception. For that the Master has not ascertained 10 and reported that the said complainants have paid to the said defendant Ruckman, and that he has received for the lands in question, on account of the purchase money named in the said contract between King and Ruckman, the sum of \$20,000.

In which said several matters and respects herein above particularized these exceptants except to the said report and humbly conceive that the said Master hath erred, and that the said report is wrong, unjust and inequitable, and therefore pray that the said report, so far as regards the several par- 20 ticulars above specified, may be disallowed, rejected and set aside, and a new report be ordered to be taken, or that the said report may be corrected in the said several particulars, and pray the judgment of the court thereupon.

WILLIAM L. DAYTON,

Solicitor, and of counsel with Complainants.

EXCEPTIONS TO MASTER'S REPORT.

[Filed March 5, 1873.]

Exceptions taken by the defendant, Charles G. Sisson, one of the defendants to above stated cause, to the report of 30 Abraham S. Jackson, Esq., one of the Masters of this court, dated February the 14th, 1873.

First Exception. For that the said Master has by his said report and the schedule thereto annexed, marked No. 3, re-

ported and stated a certain deed made by the defendant, Ruckman, to Lansing Zabriskie for certain tracts of land therein described, which deed was dated November the 20th, 1869, as a mortgage or encumbrance upon lands owned or controlled by said Ruckman on the 5th of December, 1870, whereas it appeared before said Master that such deed was an absolute conveyance for the lands therein described, and which had been thus conveyed to said defendant Sisson.

10 *Second Exception.* For that even if said deed was a mortgage, the amount reported to be due thereon is incorrect and less than it should be.

Wherefore this exceptant excepts to said matters in report, and conceives that said Master hath erred, and that said report is unjust and inequitable, and therefore prays that said report, in the particulars aforesaid, may be set aside and a new report ordered to be taken, or that said report may be corrected in the particulars aforesaid, and prays the judgment of the court thereupon.

20 **L. & A. ZABRISKIE,**
Solicitors, and of counsel with Exceptant.

ORDER REFERRING CAUSE TO VICE CHANCELLOR.

[Filed March 18, 1873.]

This cause coming on before the Chancellor, upon a motion for final hearing, in the presence of William L. Dayton, solicitor for complainant, and Jonathan Dixon, solicitor for defendants, it is ordered by the Chancellor that the above cause be referred to the Vice Chancellor, who is requested to hear the same, and to advise the Chancellor what order and decree to make therein.

30 Dated March 18th, 1873.

A. O. ZABRISKIE, C.

ORDER FOR FINAL HEARING.

[Filed March 19, 1873.]

This matter being opened to the Vice Chancellor, the same having been referred to him by an order of the Chancellor, made on the eighteenth day of March, A. D. eighteen hundred and seventy-three, directing that all further hearing in the above cause be referred to him, it is therefore on this nineteenth day of March, A. D. eighteen hundred and seventy-three, on motion of William L. Dayton, solicitor of complainants, ordered that the same be set down for hearing on the fourteenth day of April next, at the chambers of the Vice Chancellor, in the city of Newark, at ten o'clock A. M., and that said cause at that time be disposed of on final hearing for the settlement of final decree, and that the exceptions filed by both parties be considered and determined at that time, and that the course of proceedings be controlled by the written stipulation entered into by the solicitors of the respective parties on the sixth day of January last.

AMZI DODD, V. C.**EXHIBITS.****EXHIBIT D7.**

Isaac D. Coleman and Elvira B., his wife, to Elisha Ruckman. Deed dated May 17th, 1864. Not properly acknowledged nor recorded. Consideration \$425, stamp fifty cents.

Convey all that certain piece or parcel of land and premises situate, lying and being in the town of Orangetown, county of Rockland, and State of New York, bounded and described as follows: Beginning at a rock at Hudson river, in the State of New York, being distant one chain north of the line that separates the States of New York and New

Jersey, and from thence running northward along said river, its several courses, nineteen chains and fifty links, to a rock (marked) S on the south side and N on the north side, to the division line established between George Marsh Quidor and Albert Cooper; thence westwardly, up hill, along said division line, to a pine tree, and continuing the said course westwardly, to a stake at the land now or late of Stephen Parsells; thence southerly, along a row of marked trees, (a line made between Peter Quidor and John Parsells
10 on the nineteenth day of September, one thousand eight hundred and one, as will be seen, reference being had to a certain deed of release, from John Parsells to Peter Quidor,) to the Jersey line, at a stake; thence eastwardly, along said line to the land now or late of John Willsey, and thence nearly east, down hill, to the place of beginning. Bounded easterly by Hudson river, northerly by said division line, westerly by said land now or late of Stephen Parsells, and southerly by the Jersey line and line now or late of John Willsey. Being part of the premises conveyed on the 20th
20 day of August, 1817, by James Quidor, Richard Quidor, and George Quidor and Rachel, his wife, to John Willsey and George M. Quidor, by deed of conveyance recorded in the office of the Clerk of the county of Rockland, in Liber V of Deeds, page 241, on the 28th day of September, 1850, and also being the same premises released to said George M. Quidor by Albert Cooper, and conveyed to the said Isaac D. Coleman by said George M. Quidor and Margaret, his wife, by deed of conveyance dated May 10th, 1861, and recorded in said Clerk's office in Liber No. 40 of Deeds, page
30 205, on the 21st day of May, 1861.

EXHIBIT D 10.

Philip Mabie and Gertrude, his wife, to Elisha Ruckman. Deed dated October 24th, 1864. Recorded, Liber A 6, pages 157, &c., December 23d, 1864. Consideration \$2,000, stamp \$2.00.

Convey all the one undivided half part of all that certain

tract or parcel of land and premises situate, lying and being in the said township of Harrington, in the county of Bergen, and State of New Jersey. Which said tract or parcel of land contains about seventy acres, be it more or less, and is bounded as follows: Northerly by the division line between the States of New Jersey and New York, east by the Hudson river, south by lands now or late of Benjamin Granvestine, and west by the high hill or ledges of rocks known as the Palisades or North River Mountain. Being the same premises conveyed by William Ferden and Eliza 10 beth, his wife, to Peter Van Orden and Alfred Mabie, by deed dated February 18th, 1853, and recorded in the office of the Clerk of the said county of Bergen, in Liber R 4 of Deeds, page 283, &c., on the 2d day of April, 1863, and the right, title and interest of the said Alfred Mabie being the one undivided half part thereof having been conveyed to the said Gertrude Mabie by the said Alfred Mabie and Frances, his wife, by deed bearing date the 12th day of December, 1855, and recorded in said Clerk's office in Book No. 5 of Deeds, page 571, &c., on the first day of June, A. D. 20 1861.

EXHIBIT D 11.

• Eliza A. Van Orden, widow, to Elisha Ruckman. Release of dower, dated June 20th, 1864. Recorded in Liber B 6, page 424, &c., June 10th, 1865. Consideration \$1.00, stamp fifty cents.

Releases all the three equal undivided third parts of the one equal undivided half part of all that certain tract or parcel of land and premises situate, lying and being in the said township of Harrington, county of Bergen, and State 30 of New Jersey, containing about ninety acres, more or less, and bounded as follows: Northerly by the division line between the States of New Jersey and New York, east by the Hudson river, south by lands late of Benjamin Granvestine, deceased, and west by the high hill or ledge of rocks known as the Palisades or North River Mountain, being the lands

of the said Elisha Ruckman, being the same premises which were conveyed by William Ferden and Elizabeth, his wife, of Piermont aforesaid, to the said Peter Van Orden, deceased, by deed dated February 18th, 1853, and duly recorded in the office of the Clerk of Bergen county aforesaid.

EXHIBIT D 12.

Thomas W. Demarest, special guardian of Charles M. Van Orden, infant, to Elisha Ruckman. Guardian's deed, dated October 27th, 1864. Recorded, Liber C 6, page 145,
 10 &c., May 15th, 1865. Consideration \$500, stamp fifty cents.

Conveys all the right, title and estate of said infant, (being one equal undivided eighth part,) of, in and to that tract of land and premises situate, lying and being in the township of Harrington, in the county of Bergen, and State of New Jersey, containing about ninety acres, be it more or less, and bounded as follows: Northerly by the division line between the States of New Jersey and New York, east by the Hudson river, south by lands late of Benjamin Granvestine, and west by the high hill or ledge of rocks known
 20 as the Palisades or North River Mountain, being land of Elisha Ruckman.

EXHIBIT D 13.

Eliza Ann Van Orden to Elisha Ruckman. Deed dated October 27th, 1864. Recorded, Liber C 6, page 144, &c.,
 May 15th, 1865. Consideration \$1.00, stamp fifty cents.

Conveys all the equal undivided one-eighth part of all that tract of land and premises situate, lying and being in the township of Harrington, in the county of Bergen, and State of New Jersey, containing about ninety acres, be it
 30 more or less, and bounded as follows: Northerly by the division line between the States of New Jersey and New York, east by the Hudson River, south by lands late of Benjamin Granvestine, and west by the high hill or ledge

of rocks known as the Palisades or North River Mountain, being land of Elisha Ruckman.

EXHIBIT D 14.

John Van Orden, Jr., and Sarah M., his wife, Robert S. Van Orden and Emily L., his wife, Peter Van Orden and Phebe E., his wife, to Elisha Ruckman. Deed dated June 20th, 1864. Recorded, Liber B 6, page 429, &c., June 10th, 1865. Consideration \$1,500, stamp \$1.50.

Convey all the three equal undivided third parts of the one equal undivided half part of all that certain tract or 10 parcel of land and premises situate, lying and being in the said township of Harrington, county of Bergen, and State of New Jersey, containing about ninety acres, more or less, and bounded as follows: Northerly by the division line between the States of New Jersey and New York, east by the Hudson river, south by lands late of Benjamin Granvestine, deceased, and west by the high hill or ledge of rocks known as the Palisades or North River Mountain, being the lands of the said Elisha Ruckman, being the same premises which were conveyed by William Ferden and Elizabeth, his 20 wife, of Piermont aforesaid, to the said Peter Van Orden, deceased, and Alfred Mabie by deed of conveyance dated February 18th, 1853, and duly recorded in the office of the Clerk of Bergen county aforesaid.

EXHIBIT D 16.

Jabez Lyon and Miriam B., his wife, to Elisha Ruckman. Deed dated May 7th, 1864. Recorded, Liber X 5 of Deeds, page 27, &c., May 16th, 1864. Consideration \$850, stamp \$1.00.

Convey all that certain stone quarry lot of land situate, 30 lying and being in Harrington aforesaid, at the place commonly called "below the Closter Mountain," adjoining the

westerly side of Hudson river, and butted and bounded as follows: Beginning at a certain rock with three holes bored therein, lying at the edge of said Hudson river, at the northeast corner of said lot, and at the southeast corner of land formerly of Norman Gilchrist and Charles Gilchrist; from thence running westerly, up hill, along the land formerly of said Norman Gilchrist and Charles Gilchrist, to the steep rocks and land of Elisha Ruckman, the party of the second part; thence southerly along the last mentioned
 10 land, to a hemlock tree, marked, standing in the steep rocks by the land formerly of David Ver Valen; then easterly, down hill, along the last mentioned land and by a chestnut tree, marked, to said Hudson river; thence northerly along said river, to the place of beginning. Bounded northerly by the land above mentioned formerly of Norman Gilchrist and Charles Gilchrist, southerly by the land formerly of David Ver Valen, westerly by the steep rocks and land of said Elisha Ruckman, and easterly by Hudson river.

Also all that certain other lot of land and stone quarry
 20 situate, lying and being in Harrington aforesaid, at the place called "below the Closter Mountain," beginning at the rock with three holes bored therein, above mentioned, at the southeast corner of the lot hereby described, and the northeast corner of the lot above described, and land now or late of the heirs of Garret Auryansen, deceased; from thence running north sixty-two degrees and one-half west, up hill, along the land now or late belonging to the heirs of the said Garret Auryansen, deceased, being the premises herein first described, to the edge of the steep rocks and
 30 land of the party of the second part; thence south about fifty-nine degrees east, down hill, a straight course to the edge of the Hudson river; thence northerly a straight course one chain and forty-six links, along said river to the place of beginning. Bounded northerly by the land now or late of the heirs of Garret Auryansen, deceased, southerly by land formerly of Joseph Jordon, being the premises above described, and easterly by Hudson river.

Also a certain indenture of lease bearing date the sixteenth day of December, 1852, made and executed by John
 40 Auryansen, of said township of Harrington, and Joseph

Quackenbush, of the township of Hackensack, in said county of Bergen, to said Jabez Lyon, and recorded in the Bergen county Clerk's office in Book M 5 of Deeds, pages 282 and 283, August 8th, 1860.

EXHIBIT D 86.

Dower Banta and Getty, his wife, to Elisha Ruckman. Deed dated February 15th, 1860. Recorded, Liber L 5 of Deeds for Bergen, page 398, &c. Consideration \$630.

Convey all that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in 10 the township of Hackensack, in the county of Bergen, and State of New Jersey. It being the easterly part of an eighteen acre lot of wood land, of said parties of the first part, at the place called Huyler's landing, beginning at the southwest corner of said lot, and at the northeast corner of a lot of land conveyed to Thomas Jackson by John B. Westervelt, and running from thence (1) north $45\frac{1}{4}$ degrees east, 5 chains and 10 links to a stake and land of John B. Westervelt; thence (2) easterly along the land of Peter Huyler and John B. Westervelt, to the Hudson river; thence (3) 20 southerly along said river, to the land of Peter Huyler; thence (4) westerly along land of said Peter Huyler, to the place of beginning, containing about 8 acres and 65 hundredths of an acre, more or less. Bounded on the N. by land of John B. Westervelt and Peter Huyler, S. by land of Peter Huyler, E. by Hudson river, and W. by land of said Dower Banta.

EXHIBIT D 108.

John W. Westervelt and Susan, his wife, to Elisha Ruckman. Deed dated January 4th, 1871. Recorded, Liber 30 Y 7 of Deeds for Bergen county, page 606, &c. Consideration \$200, stamp fifty cents.

Convey all that certain lot of salt meadow, lying at a place commonly called the Fyke in the Teaneck meadow, in the township of Hackensack, in the county of Bergen, and State of New Jersey, and is bounded northerly by meadow of Samuel R. Demarest, southerly by meadow of Jacob Christie, easterly by meadow now or formerly of Isaac D. Gott and George Logier, and westerly by land of Peter Westervelt, containing four acres. Being the last lot described in a deed given by Isaac D. Gott and wife to said
 10 John W. Westervelt, bearing date March 1st, 1858, and recorded in the Bergen county Clerk's office in Book E 5 of Deeds aforesaid, on page 13, &c.

EXHIBIT D 87.

NEW YORK, July 6th, 1865.

E. Ruckman, Esq.:

DEAR SIR:—I did not succeed in getting matters arranged in time to say anything definite until now. You know this is a company, and although I own a majority of shares, I did not think I could say anything definite about it without
 20 consulting others.

I will now sell this land outside of the 220 acres, which I wish to keep—say 580 to 600 acres—at \$60 per acre, if paid in cash.

If you wish to purchase, or any party whom you may represent, please let me know at once, as I am now negotiating a new arrangement for our company.

Respy. yours,
 WM. A. SHEPARD.

James McMasters and Julia A., his wife, to William
 30 Moses. Deed dated May 14th, 1864; recorded in Bergen county Clerk's office, May 19, 1864, in Liber X 5 of Deeds, page 57 &c. Consideration \$1.00.

“Bargains, sells and quitclaims to said Moses, and to his heirs and assigns forever, all that certain farm or tract of land situate, lying and being on the Hackensack river, State of

New Jersey, in the township of Hackensack, county of Bergen, bounded northwesterly by the Hackensack river, southeasterly by a large creek, called Belling's Kill, northeasterly by Overpeck creek, easterly by other lots and the creek, which parts the same from the lands and meadows of Cornelius Vreeland.

And also the tract conveyed by John Terhune to the said Francis Price, to the north of the aforesaid tract and forming the junction of the Hackensack river and Overpeck, or English, creek. The whole supposed to contain by survey 10 and map, made by William Bernard in the year one thousand eight hundred and fifty-five, eight hundred and twenty-seven acres, three roods, seventeen perches, be the same more or less, as by reference to said deed will more fully and particularly appear.

Being the same premises conveyed to said James McMaster by Francis Price and Maria S., his wife, dated the 21st day of April, 1864, and acknowledged before James W. Alexander, commissioner of deeds for New Jersey."

DECLARATION OF TRUST.

20

"*Know all men by these presents* that I, William Moses of the city of New York, the grantee named in the foregoing deed hereto annexed and attached do hereby, by this instrument, at the request of the parties interested, make this declaration of trust, namely, that I hold all the foregoing described premises and appurtenances in said deed contained, in trust for a company or corporation intended to be called, when organized, 'The New York Sugar Beet Company,' and in further trust to hold the same for said company, when duly organized, for their sole use and benefit, and to convey 30 all of said property to said company whenever requested so to do at their expense. Should, however, said company not be formed within six months from the date hereof, then I do further declare that I hold three-fourths of said property in trust for the following persons, each being entitled to receive one undivided fourth part thereof, namely, Allan Hay, William A. Shepard and Emery Rider, the remaining one-fourth belonging to me, the said William Moses; and proper

conveyances are to be made to the respective parties in interest, in case said company is not formed as aforesaid.

As witness my hand and seal this _____ day of May, 1864."

WM. Moses [L. s.]

Acknowledged May 17th, 1864, and recorded with the above deed.

EXHIBIT C G S 1.

10 Elisha Ruckman and Margaret, his wife, to Lansing Zabriskie. Deed dated November 20, 1869; recorded Liber O 7 of Deeds for Bergen, page 266, &c., November 22, 1869. Consideration \$33,000, stamp \$33.

Convey all the following tracts, pieces or parcels of land and premises situated in the township of Harrington, in the county of Bergen and State of New Jersey.

1st. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May 31, A. D. 1856, and recorded in the Clerk's office of the county of Bergen, in Book Z 4 of Deeds, pages 293, 294, 20 295, 296 and 297, consisting of one lot of thirty-six acres and nine-hundredths of an acre; and one lot of sixty-three acres and forty-four hundredths.

2d. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May 1, A. D. 1858, and recorded in said Clerk's office, in Book Y 5 of Deeds, pages 228, 229, 230, 231 and 232; consisting of one lot of six acres more or less; one lot of ninety acres more or less; another lot of about six acres; and one lot of twelve acres and two quarters.

30 3d. All the lands described in a certain deed made by Abraham J. Auryansen and wife to said Elisha Ruckman, dated October 21, A. D. 1867, and recorded in said Clerk's office, in Book R 6 of Deeds, pages 588, 589, &c.; being a tract of about sixty-two acres.

4th. All the lands described in a certain deed made by Henry A. Hopper, Sheriff of the county of Bergen, to said Elisha Ruckman, dated February 25, A. D. 1865, and recorded

in said Clerk's office in Book A 6 of Deeds, page 435, and being a tract containing about thirty acres.

The above taken together being an irregular tract of land running from the Hudson river westerly to the Closter creek and containing at least three hundred and five acres, and including the homestead of said Ruckman.

Habendum in fee. Full covenants and warranty.

EXHIBIT C G S 2.

Lansing Zabriskie, unmarried, to Charles G. Sisson. Deed dated September 30, 1871, recorded Liber _____ of deeds for 10 page _____ Consideration \$5, stamp 5 cents.

Conveys all the following tracts, pieces or parcels of land and premises situated in the township of Harrington, in the county of Bergen and State of New Jersey.

1ST. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May 31, A. D. 1856, and recorded in the Clerk's office of the county of Bergen, in Book Z 4 of Deeds, pages 293, 294, 295, 296 and 297; consisting of one lot of thirty-six acres and nine hundredths of an acre, and one lot of sixty-three 20 acres and forty-four hundredths.

2D. All the lands described in a certain deed made by Jacob D. C. Outwater and wife to said Elisha Ruckman, dated May 1, A. D. 1858, and recorded in said Clerk's office, in Book Y 5 of Deeds, pages 228, 229, 230, 231 and 232; consisting of one lot of six acres, more or less; one lot of ninety acres more or less; another lot of about six acres; and one lot of twelve acres and two quarters.

3D. All the lands described in a certain deed made by Abraham J. Auryansen and wife to said Elisha Ruckman, 30 dated October 21, A. D. 1867, and recorded in said Clerk's office, in Book R 6 of Deeds, pages 588, 589, &c., being a tract of about sixty-two acres.

4TH All the lands described in a certain deed made by Henry A. Hopper, Sheriff of the county of Bergen, to said

Elisha Ruckman, dated February 25, A. D. 1865, and recorded in said Clerk's office in Book A 6 of Deeds, page 435, and being a tract containing about thirty acres.

The above taken together being an irregular tract of land running from the Hudson river westerly to the Closter creek, and containing at least three hundred and five acres, and including the homestead of said Ruckman.

Being the same lands which were conveyed to the said party of the first part by the said Elisha Ruckman and wife 10 by deed dated November 20, A. D. 1869.

Habendum in fee. Covenant against grantor's acts, "except a certain contract for sale made by said Zabriskie with Elisha Ruckman, dated November 20, 1869."

INDEX.

	PAGE.
Examination for Defendant.....	21—35
Examination for Complainant.....	29
Exceptions of Defendant Ruckman.....	98
Exceptions of Complainant.....	99
Exceptions of Defendant Sisson.....	101
Interlocutory Decree.....	6
Master's Report.....	90
Notice to King, Ruckman and Sisson.....	15
Opinion.....	1
Order to Pay \$19,900.....	9
Order Substituting Master.....	9
Order to make Sisson a party.....	14
Order to make Brownell a party.....	19
Order of Reference to Vice Chancellor.....	102
Order for Final Hearing.....	103
Petition of C. G. Sisson.....	10
Petition of John L. Brownell.....	61
Remittitur.....	4
Sisson Exhibits Produced.....	26
Stipulation.....	90
Supplemental Order to Master.....	21

WITNESSES.

Auryansen, John.....	30
Barnett, Warren L.	41
Brownell, John L.	56
Clow, Roderick F.	47
Demarest, Garret S.	50
Demarest, John J.	36
Doremus, David.....	30
Downs, Henry S.	47, 82
Dutton, George R.	48
Gesner, David S.	36, 46
Haring, Peter.....	54
Jordon, Joseph.....	38
Kennedy, Crammond.....	34, 89
Miles, Sweeting.....	40
Nangle, Hildebrand.....	43

	PAGE.
Ruckman, Elisha.....	62
Tanner, Charles	44
Veale, Thomas C.	87
Vredenburg, James B.	46
Whitmore, William M.	39

EXHIBITS.

D 7.....	103
D 10.....	104
D 11.....	105
D 12, D 13.....	106
D 14, D 16.....	107
D 86, D 108	109
D 87.....	110, 111
C G S 1.....	112
C G S 2.....	113

62
44
87
46
39

New Jersey Court of Errors and Appeals.

103
104
105
106
107
109
111
112
113

Between

Benjamin W. King and

John L. Brownell,

and

Elisha Ruckman,

Appellants.

Respondent.

On Bill, &c.

Between

Elisha Ruckman,

and

Benjamin W. King and

John L. Brownell,

Respondents.

On Bill, &c.

W. L. DAYTON and
CORTLANDT PARKER,

Of Counsel with Benj. W. King and John L. Brownell.

JACOB WEART and
JACOB VANNATTA,

Of Counsel with Elisha Ruckman.

AN ALPHABETICAL INDEX OF THE

MEMBERS OF THE
SOCIETY OF THE
SACRAMENTO VALLEY
AND
ADJACENT COUNTRIES
FROM 1840 TO 1860

OF THE

MEMBERS OF THE
SOCIETY OF THE
SACRAMENTO VALLEY
AND
ADJACENT COUNTRIES
FROM 1840 TO 1860

IN CHANCERY OF NEW JERSEY.

Between

*Benjamin W. King and
John L. Bronwell,*

Complainants,

and

*Elisha Ruckman and
Charles G. Sisson,*

Defendants,

} *On Bill. &c.*

Opinion.

On Exceptions to Master's Report and final hearing.

[October Term, 1873.]

THE VICE CHANCELLOR.

By a written contract of May 12, 1868, Elisha Ruckman agreed to sell and convey certain lands to Benjamin W. King. Ruckman afterwards refused to convey and King thereupon filed his bill for specific performance. By a final decree of the Chancellor duly made in the cause, the bill was dismissed. On the 5th of December, 1870, this decree was reversed by the 10 Court of Appeals, and the bill and proceedings remitted to this Court to make a decree in favor of complainant in conformity with the directions of the appellate tribunal.

By the terms of the contract Ruckman was to sell and convey two descriptions of premises; first, all the lands that he owned, and second, all the lands he held contracts for within

certain geographical limits—being the counties of Rockland, New York, and Bergen, New Jersey, and also two lots in Hackensack—containing in all about two thousand acres, for the price of \$275 an acre. One hundred dollars was paid at the execution of the contract; \$19,900 to be paid on the first of the following June, and \$80,000 on the first of the following July, when the deed was to be delivered, and the balance of the purchase money secured by mortgage on the premises, payable in five equal annual sums from the date of the agreement, with
10 interest at six per cent. yearly.

By the terms of the order of the Court of Appeals, Ruckman is to execute the contract so far as he has the ability to do so, provided if he shall be able to perform it in part only, then the value of the lands embraced in the contract and which he is unable to convey shall be ascertained and damages awarded to the complainant or allowance made to the defendant, as the principles of equity may require. If the contract cannot now be fully executed, it is directed to be carried into effect on equitable principles, as far as circumstances will admit.

20 To ascertain the facts in respect to the matters involved in the foregoing directions, reference was made to a Master, and upon the coming in of his report, both parties having excepted thereto, the cause has been brought by consent to final hearing upon the report, the exceptions and the evidence, to the end that a final decree might be made in accordance with the order of the Court of Appeals. In the decree afterwards made as recommended by me, several particulars were adjusted, to which it is unnecessary now to refer. The questions of principal importance then decided and which are further to be controverted
30 are three. It will be sufficient to state briefly, the grounds on which they were decided.

First, as to the interest upon the purchase money during the five years or thereabouts that intervened between the dates fixed by the contract and the date of the final decree. The purchase money, with the exception of the one hundred dollars paid when the contract was signed having been refused to be accepted by Ruckman when he refused to execute the contract and subsequent possession of the premises having also been retained by him, is he entitled to interest on the principal dur-
40 ing this interval as well as the principal itself?

Second. One hundred thousand dollars of the purchase money was to be paid at or before the delivery of the deed, and the balance to be secured by mortgage, payable in five annual equal installments. The five years having elapsed, is a mortgage of like terms to be given for the balance of principal or is the balance to be paid now in cash?

Third. What compensation or allowance, if any, is to be made to either party in respect to lands which Ruckman held contracts for but is unable to convey?

The quantity of lands which he owns and is able to convey is 10 one thousand three hundred and fifty-three acres and seventy-seven hundredths of acre. At \$275 an acre, the total price is \$372,286.75. Deducting \$100,000 for purchase payments as above, the unsettled balance is \$272,286.75. The rents and proceeds on the other hand, of the lands which Ruckman has continued in possession of are inconsiderable and reported by the Master to be equalled by the taxes. Whether, therefore, interest for five years in the past and time of payment for five years to come at six per cent. interest be allowed on the above mentioned sums respectively, are obviously important questions, 20 of amount, but my conviction is strong, that except for the magnitude of the amount they involve, little or no hesitation would be felt in deciding them.

It seems to me clear that Ruckman is not entitled to the interest, and that the complainant is entitled to give the mortgage for the above stated balance for the time it would have run, and on the terms it would have had if given on the first of July, 1868, in pursuance of the contract. By this adjustment Ruckman is prevented from taking advantage of his wrong in repudiating his bargain, and the just rights of the complainant, 30 as far as practicable, are protected. That Ruckman was wrong in seeking to escape from his contract is not open to doubt. It has been *adjudged* and cannot now be considered. The Court of Appeals in so adjudging, directed that conveyance should be made according to the contract so far as he was able to do so. In respect to lands actually owned, no modification of the terms of the contract was suggested and none is required. It can be carried out in substance and in form. That can be done now which ought to have been done then. The time that has inter-

vened is due to Ruckman's default and ought not to be computed in his favor.

The conclusions thus expressed are abundantly sustained by the cases. The doctrine relied on for the defendant in asserting claim to the interest, is the doctrine that in equity, the result of a contract of sale is that the thing sold thereupon becomes the property of the purchaser and the purchase money the property of the vendor; that as a corollary the purchaser is entitled to the rents of the estate from the time fixed for completion, and
10 the vendor is entitled to interest on the purchase money from the same time; that the estate and the purchase money are things mutually exclusive, and neither party can at the same time be entitled to both.

But this general and elementary doctrine is always applied with reference to and for the promotion of the true agreement of the parties and the equities of the case. The vendor and vendee are trustees each for the other, and each will be held to execute his trust with fidelity to the other, and neither will be permitted so to manage or mismanage his trust as to advance
20 his own interest at the expense of the *cestui que* trust. This principle, so evidently the dictate of reason, is illustrated in the cases upon the subject of interest and rents; which cases, if looked at with reference to the general doctrine as enunciated above, might well be thought conflicting, but with reference to the more specific and flexible principle governing the fulfillment of trusts are found to be clear and consistent. They are extensively exhibited in *Chap. 4, Part 6, of Fry on Specific Performance*. I will refer only to *De Visme v. De Visme*, 1 *Macnaghten & Gordon*, 336, where in the opinion of Lord Chancellor Cotten-
30 ham, the reasonable and equitable application of the doctrine is exemplified and explained.

A condition of sale there provided that the purchaser should pay in the remainder of the purchase money on or before the 26th of December, and on payment, to have possession or the rents and profits from the preceding day; but if the purchaser should fail so to pay, then from whatever cause the delay in consummating the sale might occur, he should pay interest on the balance of the purchase money from that day till paid. Notwithstanding the explicit agreement for interest during any
40 delay in consummating the sale and notwithstanding the strength

of the words from whatever cause the delay might occur, Lord Cottenham held that the interest should not be allowed. He did not find, he said, in any case a contract that a purchaser is to pay interest from a day certain, although prevented from performing his part of the contract by the acts of the vendor; no purchaser would make such an agreement. Nothing, he adds, would be more unjust than to hold that a purchaser, having contracted to pay interest on his purchase money (in almost all cases exceeding the annual value of the property purchased) is liable to pay such interest from the time contracted for though the vendor has not performed his part by delivering the abstract so as to enable the purchaser to have the benefit of the contract. 10

I think the same considerations pertain to, and must govern, the question of the mortgage. The benefit accruing to the purchaser from having time for the payment of the bulk of the principal, and of the rate agreed on for interest, is apparent. It is a material ingredient of the bargain, as much so in reality, though not in degree, as the price, and cannot be withheld from the purchaser in this case by the wilful misconduct of the vendor for the sole benefit of the vendor himself. 20

Whether or not the purchaser here made use of the purchase money after the defendant refused to accept it, is not, in my judgment, an important point in the suit. He tendered himself ready to fulfill his agreement, and has so continued since. It is not the case of a debt where, if interest is to be stopped, the principal must be held unemployed or paid into court. It is the case, as before said, of mutual trustees, one refusing and the other desiring to transfer in fulfillment of the trust. If one wrongfully retains and makes use of the land, the other is not thereby precluded from retaining and making use of the money. 30

The remaining question relates to compensation for lands which Ruckman is unable to convey. They are only the lands described in the agreement of May 12, 1868, as those for which contracts were held. In the schedule appended to the Master's report, they are shown to consist of eight tracts, containing in all 762 35-100 acres. No title was ever got by Ruckman to any of them. In respect to six of the tracts, the contracts were verbal, and in respect to tract numbered eight in the schedule, containing 607 85-100 acres, no contract whatever sufficiently 40

appears. For one tract of 18 acres, belonging to John J. Demarest, an agreement to convey, dated April 2, 1868, was held by Ruckman, on which he had paid \$50, and which sum he lost. The price of it was \$2,600. Excluding tract number eight, the acres comprised in the remaining seven tracts, for which complainant asks compensation, are 154½. They were contracted for by Ruckman shortly prior to the date of his agreement with King, and in every instance were much less in price than \$275 an acre, which King was to pay. The different tracts differ in price, but average, on the whole, a trifle less than \$125 an acre. These lands, like the others embraced in the agreement with King, advanced largely and rapidly in value; their market value being fixed by the Master, at the date of his report, February 15, 1873, at the sum of \$92,103, showing an average rise by the acre from \$125 to \$577. For this difference the complainant asks compensation. My opinion is that none should be allowed. For all but the eighteen acres of Demarest, the contracts were exclusively verbal, and not such as a court of equity could enforce, or such as could be sued on at law. The contracts held by Ruckman, and so referred to in the agreement, must be construed to be such only as had a legal or equitable existence. Verbal contracts for the sale and conveyance of lands are legal nullities, and cannot properly be said to be held. For this reason the six verbal contracts set out in the schedule are not within the terms or scope of the agreement. But supposing them to be so, the claim for compensation must fail for the further reason, applicable also, to the written contract of Demarest, and that is, that the value of the lands had not advanced on the 1st of July, 1868, when the conveyance was agreed to be made, but was still at the average price of \$125 an acre, being \$150 an acre less than King was to pay. This appears from the proofs and is so found by the Master. No rule of compensation decisive of this point is indicated in the opinion of the Court of Appeals. The value of the lands embraced in the contract, and which Ruckman is not able to convey is directed to be ascertained and damages awarded as the principles of equity may require. On the 1st of July, 1868, considerable portions of the lands to be conveyed, and which he actually owned, were worth largely more than the per acre price to be paid for the whole. These will all be conveyed. On that day the convey-

ance of the lands now in question would not, I am satisfied from what appears in the cause, have been insisted on by the complainant nor would a failure to convey have been regarded as a breach of the agreement or a matter of complaint. Under the circumstances and facts of the case, the principles of equity will be adequately met, by adopting as the rule for the measurement of damages the rule of the law. In *Drake v. Baker*, 5 *Vroom* 358, it is laid down that where a vendor of real estate unwarrantably refuses to execute his contract, the rule of damages applicable in cases of sale of personal property, is in all respects apposite, and that the measure of damages is the difference between the contract price and the market value at the stipulated time of delivery. In the present case no such difference exists and no compensation or damages arise under the adoption of the strict legal rule, which is abundantly sufficient for what seem to me the equities of the case. 10

The above briefly stated, are the reasons on which my conclusions in regard to the three controverted questions are grounded.

On Bill, &c., Final Decree.

20

This cause coming on to be heard upon exceptions taken by parties of both sides to the report of the Master, bearing date on the 15th day of February, 1873, made in pursuance of the interlocutory decree of this Court, bearing date the 10th day of January, A. D. 1871, and also by consent of parties for the settlement of a final decree in this cause, made in conformity with a decree of the Court of Errors and Appeals rendered therein; and the said exceptions and all questions arising in the settlement of said decree having been argued by William L. Dayton, and Courtland Parker, of counsel for the complainants, Jacob 30 Weart and Jacob Vannatta, of counsel for Elisha Ruckman,

defendant, and Lansing Zabriskie, of counsel for Charles G. Sisson, defendant.

And it appearing that John L. Brownell is the just and legal assignee of all the right, title, and interest of Benjamin W. King, of, in, and to the said contract.

And it appearing to this Court on review of said Master's report, and the Court now adjudging that of the lands and premises comprised in the said contract in question, the said Elisha Ruckman now owns in fee, and controls thirteen hundred
10 and fifty-three acres, and seventy-seven hundredths of an acre (1,353 77-100), and that he has paid with interest to the date of this decree for taxes thereon while in possession, since the date of said contract, the sum of four thousand one hundred and sixty-six dollars and forty seven cents (\$4,166.47), and that he has expended for roads and fences on part of said lands with interest to the date of this decree, the sum of two thousand six hundred and forty-six dollars and sixty-three cents (\$2,646.63), and that said sums respectively should be allowed to said Ruckman, and to be paid by complainants in addition to the price of
20 said lands fixed by said contract.

And it further appearing, and the Court now adjudging that no allowance should be made to said Ruckman, or paid by said complainants for interest upon any moneys contracted to be paid by said contract, the said Ruckman having ever since the date thereof wrongfully retained possession of said premises and refused to convey the same or any part thereof to said complainants, and debarred said complainants from any possession or control thereof, but that said Ruckman should pay interest on
30 such part of the purchase money as he has received, from the time of such payments; and it further appearing, and the Court now adjudging that neither the said King, nor his assignee, the said Brownell, is entitled to any compensation for the non-conveyance of lands comprised in said contract which the defendant Ruckman, does not own in fee, or so control as to enable him to convey or cause to be conveyed, but that the said King, and his said assignee, complainants, are entitled to receive a conveyance assuring to them a good and valid title in fee of the said thirteen hundred and fifty-three acres and seventy-seven hundredths of an acre (1,353 77-100), hereinafter described, and pay-
40 ing therefor, and for taxes and roads as above specified, and

securing to be paid upon the delivery of said conveyance, the sum of three hundred and seventy-two thousand, two hundred and eighty-six dollars and seventy-five cents, (\$372,286.75), for the land; and for the taxes and roads, the sum of six thousand eight hundred and thirteen dollars and ten cents (\$6,813.10), making in all, the sum of three hundred and seventy-nine thousand ninety nine dollars and eighty-five cents (\$379,099.85), partly in cash, the balance to be secured by the delivery to said Ruckman by said Brownell of a purchase money bond and mortgage of the same character as to periods of payment, interest 10 and otherwise as stated in the said contract, the date of such conveyance and mortgage to be the date of this decree.

And it further appearing, and the Court now adjudging that the defendants cannot give title to said lands free of all encumbrances, but that there now exist encumbrances upon said lands by way of mortgages and judgments, amounting on the day of the Master's report to the sum of sixty-five thousand seven hundred and eighty-eight dollars and forty-six cents (\$65,788.46), and since that time the judgment reported in favor of Stephen B. Ransom, amounting to six thousand one hundred and fifty- 20 five dollars and twelve cents (\$6,155.12), has been paid and cancelled of record, leaving the balance due on said mortgage and judgments of the sum of fifty-nine thousand six hundred and thirty-three dollars and thirty-four cents (\$59,633.34), with interest on the same from the date of said Master's report, and that the cash payment should be made to Washington B. Williams, one of the Masters of this Court, and a sufficient amount thereof appropriated by him to pay off and discharge said mortgages and judgments with the interest on the same from the date of said Master's report, and the costs and expenses of dis- 30 charging said mortgages and judgments of record.

And it further appearing that twenty thousand dollars (\$20,000) of said purchase money has already been paid by said King to said Ruckman, and that this sum, with the interest on said amount from the date of payments to the date of this decree, making three thousand one hundred and ninety-two dollars and ninety-eight cents (\$3,192.98), making in all the sum of twenty-three thousand one hundred and ninety-two dollars and ninety-eight cents (\$23,192.98), should be deducted from the purchase money hereafter to be paid; and it further appearing that on 40

the 31st day of May, 1870, the said John L. Brownell paid the said Ruckman the sum of five thousand dollars (\$5,000), for a part, to wit: twelve and a half acres of said land which was conveyed to the wife of the said John L. Brownell, at his instance and request, and which it is agreed by said Ruckman shall be accepted as so much payment on account, to be deducted from said purchase money; and it further appearing that there is a balance of purchase money to be paid and secured by said Brownell to said Ruckman on said contract upon delivery of the deed, amounting to three hundred and fifty thousand nine hundred and six dollars and eighty-seven cents (\$350,906.87), of which said amount the sum of seventy-eight thousand six hundred and twenty dollars and twelve cents (\$78,620.12) is to be paid to the Master aforesaid, leaving a balance of two hundred and seventy-two thousand two hundred and eighty-six dollars and seventy-five cents (\$272,286.75) to be secured by said bond and mortgage: It is thereupon on this 7th day of June, in the year of our Lord 1873, at a Court of Chancery held in the city of Trenton, ordered, adjudged and decreed by Theodore Runyon, Chancellor of the State of New Jersey, that the said articles of agreement between Elisha Ruckman and Benjamin W. King, in the bill of complaint in this cause mentioned and set forth be specifically performed, and that the said Elisha Ruckman defendant, do, within thirty days from the date of this decree, make, execute, acknowledge, in due form of law to John L. Brownell, a good and sufficient general warranty deed of conveyance in fee, in which conveyance all proper parties are to join, of all and singular the aforesaid thirteen hundred and fifty-three acres and seventy-seven hundredths of an acre, of lands and premises reported by the Master in his said report as comprised in said articles of agreement, and which are bounded and described as follows, to wit:

[DESCRIPTION OF PROPERTY.]

And which said deed when so executed shall be delivered to the said Washington B. Williams, to be by him delivered to the said John L. Brownell, when he shall have performed his part of said contract as embraced and settled in this decree.

And it is further ordered that the said John L. Brownell do, within sixty days from the date of this decree, or immediately

after the delivery of the deed to the Master, pay unto the said Master, the said sum of seventy-eight thousand six hundred and twenty dollars and twelve cents (\$78,620.12), out of which the Master is to pay to John Auryausen or his assigns, for the discharge of a mortgage on a part of the said premises held by him the sum of nine thousand and fifty-nine dollars and three cents (\$9,059.03), with the interest from the fifteenth day of February last, and to cancel said mortgage of record, and said Master is further to pay to David Doremus or his assigns, for the purpose of discharging two mortgages on a portion of said premises, the 10 sum of eight thousand four hundred and forty-seven dollars and thirty-five cents (\$8,447.35), with interest on the same from the fifteenth day of February last, and that he cancel said mortgages of record, and that said Master pay to Charles G. Sisson, the sum of thirty-four thousand, eight hundred and fifty-eight dollars and eighty three cents (\$34,858.83), with interest on the same from the fifteenth day of February last, upon the said Charles G. Sisson executing to the said John L. Brownell, a conveyance as hereinafter specified; and that said Master pay a judgment in the Supreme Court of New York, in favor of 20 James S. Sanford and others, amounting to five thousand five hundred and eighty-four dollars and seventy-nine cents (\$5,584.79), with interest from the fifteenth day of February last, and such further costs as may be legally added thereto, and that said Master pay a judgment in the Superior Court of the City of New York, in favor of Clark B. Wheeler, for one thousand six hundred and eighty-three dollars and thirty-four cents (\$1,683.34), with interest from the fifteenth day of February last, and such further costs as may be legally added thereto, and that said Master pay to the complainants or their solicitor the costs 30 of this suit to be taxed, and that he pay the balance of said sum to Elisha Ruckman; said sums of seventy-eight thousand six hundred and twenty dollars and twelve cents (\$78,620.12), paid to said Master, twenty-three thousand one hundred and ninety-two dollars and ninety-eight cents (\$23,192.98), being the twenty thousand dollars (\$20,000) part of cash payment and interest thereon, and the sum of five thousand dollars (\$5,000), heretofore paid by the said John L. Brownell, for lands conveyed by said Ruckman to the wife of said Brownell at his request, and now accepted on account by said Ruckman, making in all, one 40

hundred and six thousand, eight hundred and thirteen dollars and ten cents (\$106,813.10), being the cash payment of one hundred thousand dollars (\$100,000), and the cash advanced by said Ruckman, upon the payment of taxes and the construction of roads as hereinbefore stated; and that the said Brownell, do make, execute, and acknowledge in due form of law, and deliver to the said Master for the said Elisha Ruckman, a bond and mortgage upon the said lands, for the sum of two hundred and seventy-two thousand two hundred and eighty-six dollars and
10 seventy-five cents (\$272,286.75), bearing even date with said deed, and to secure the balance of the purchase money in said deed mentioned, with interest at six per cent. per annum, payable semi-annually with the usual thirty-day interest clause, to secure the payment of the balance of said purchase money in five (5) equal annual payments; said deed and bond and mortgage to be approved as to form by said Master.

And it is further ordered and decreed that the said defendants do pay the costs of this suit, including counsel fee to be taxed.

And it further appearing that the said Elisha Ruckman, on
20 the 20th day of November, 1869, assigned to Lansing Zabriskie, as trustee for Charles G. Sisson, and that the said Lansing Zabriskie, on the 30th day of September, 1871, assigned to the said Sisson, all the right, title, and interest of the said Ruckman, in and to the contract between said King and Ruckman, and to the money required to be paid thereby so far as related to the tracts of land about three hundred and five (305) acres, included in said contract between King and Ruckman, deeded by said Ruckman to said Lansing Zabriskie, by deed dated
30 November 20th, 1868, and by him deeded to said Charles G. Sisson, by deed dated September 30th, 1871; and it appearing that the said deeds were reported by the Master in his said report as a mortgage upon said property, amounting with interest, at the date of said report, to the sum of thirty-four thousand eight hundred and fifty-eight dollars and eighty-three cents (\$34,858.83), and that the report of the Master in that particular is excepted to by the said Sisson.

It is thereupon further ordered and decreed that the said Charles G. Sisson do make, execute, and acknowledge to John L. Brownell, a good and sufficient deed of conveyance of the said
40 premises to him deeded by the said Zabriskie as aforesaid, with

words releasing the same from all claims and demands by him the said Sisson had therein; the said tracts of land taken together being an irregular tract of land running from the Hudson river westerly to the Closter creek, containing at least three hundred and five (305) acres, including the homestead of said Ruckman, and deliver said deed to said Master, and by said Master to be delivered to said Brownell, when he shall have complied with his part of the contract and the terms of this decree, and it is further ordered that said Master upon the delivery of said deed by said Sisson, pay to him the said sum of 10 thirty-four thousand eight hundred and fifty-eight dollars and eighty-three cents, (\$34,858.83), with the interest on the same from the fifteenth day of February last, and that said Master hold the bond and mortgage for two hundred and seventy-two thousand two hundred and eighty-six dollars and seventy-five cents (\$272,286.75), until the further order of this Court, in order that any further equities between said Sisson and Ruckman may be finally disposed of, and if the semi-annual interest, or any installment shall fall due while said mortgage remains in 20 said Master's hands, and before the equities are settled between said Ruckman and Sisson, that said interest or installment so falling due on said bond and mortgage be paid to said Master, to be by him endorsed as payments on account of said bond and mortgage, and either party is to be at liberty to apply to this Court for further directions or relief in the premises if occasion shall require.

THEODORE RUNYON, C.

I respectfully advise the above decree.

July 10, 1873.

AMZI DODD, V. C.

I hereby consent to the above decree.

June 24, 1873.

L. ZABRISKIE,

Counsel for Defendant Sisson.

30

On Bill, &c., Appeal.

[Filed July 11, 1873.]

The complainants, Benjamin W. King and John L. Brownell, appeal from so much of the final decree in the above stated cause, made upon the Master's report in said cause, bearing date the 15th day of February, A. D. 1873, and upon exceptions thereto, as decrees that the defendant Ruckman should be allowed the sum of four thousand one hundred and sixty-six dollars and forty-seven cents (\$4,166.47) for taxes on the lands in question in this suit, paid by said Ruckman while in possession since the date of the contract, which is the subject of this suit, with interest, and the further sum of two thousand six hundred and forty-six dollars and sixty-three cents (\$2,646.63), expended by said Ruckman for roads and fences on part of the lands in question, with interest, said sums to be paid by complainants in addition to the price of said lands fixed by the said contract; and also from so much of said final decree as decrees that neither the said King nor the said Brownell is entitled to any compensation for the non-conveyance of lands comprised in the said contract in question which the said Ruckman does not own in fee, or so control as to enable him to convey or cause to be conveyed in fee.

Dated July 11, 1873.

WILLIAM L. DAYTON,
Solicitor of Complainants.

I conceive that there is good cause for said appeal.

CORTLANDT PARKER,
Of Counsel.

Appeal of ELISHA RUCKMAN, Defendant.

[Filed September 6, 1873.]

The defendant, Elisha Ruckman, hereby appeals from so much of the final decree made in this Court in the above stated cause, as declares that no allowance should be made to said Ruckman or paid by said complainants for interest upon any moneys contracted to be paid by said contract, the said Ruckman having ever since the date thereof wrongfully retained possession of said premises and refused to convey the same or any part thereof to said complainants, and debarred the said complainants from any possession or control thereof, but that said Ruckman should pay interest on such part of the purchase 10 money as he has received from the time of such payments.

And from so much of said decree as orders and adjudges that the balance of the purchase money, amounting to two hundred and seventy-two thousand two hundred and eighty six dollars and seventy-five cents (\$272,286.75), should be secured by a purchase money bond and mortgage, payable in five equal annual payments, and that portion of the decree appealed from is the clause making the payment in five equal annual payments.

And from all that portion of the decree which fails to adjudge and award damages for lands which the said Ruckman failed to 20 obtain title to by reason of the default in the payment of the \$20,000 on the 1st day of June, 1868, to the Court of Appeals in the last resort in all causes of law.

Dated September 5, 1873.

DIXON & COLLINS,
Solicitors for Elisha Ruckman.

I conceive that there is good cause for said appeal.

JACOB WEART,
Of Counsel with Defendant Elisha Ruckman.

N. J. COURT OF ERRORS AND APPEALS.

Between

*Benjamin W. King and
John L. Brownell,*

Appellants.

and

*Elisha Ruckman and
Charles G. Sisson,*

Appellees.

On Bill, &c.

Petition of Appeal.

[Filed July 15, 1873.]

*To the Honorable the Court of Appeals in the last resort in
all causes of Law and Equity:*

The humble petition of Benjamin W. King and John L. Brownell, 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, upon the Master's report in said cause and exceptions thereto, said decree bearing date the 7th day of June, in the year 1873, and filed the 10th day of July instant, wherein the said Benjamin W. King and John L. Brownell were complainants, and the said Elisha Ruckman and Charles G. Sisson were defendants, in this respect, to wit: that the said decree adjudges and orders that the sum of four thousand one hundred and sixty-six dollars and forty-seven cents (\$4,166.47), paid by said Elisha Ruckman for taxes, with interest, on the lands comprised in the contract which is the subject of the original bill of complaint in this cause, while in possession since the date of said contract, and also the sum of two thousand six hundred and forty-six dollars and sixty-three cents (\$2,646.63) expended by said Ruckman for roads and fences on part of said lands, and interest, be allowed to the said Elisha Ruckman, defendant, and

be paid by complainants in addition to the price of said lands fixed by said contract; and further, in that the said decree adjudges that neither the said King, nor his assignee, the said Brownell is entitled to any compensation for the non-conveyance of lands comprised in the said contract which the defendant, Ruckman does not own in fee, or so control as to enable him to convey or cause to be conveyed in fee.

And your petitioners humbly appeal from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the said sums of 10 money paid by said Ruckman for taxes, with interest, and expended by him for roads and fences, with interest, should not be so allowed to said Ruckman nor be paid by said complainants and for that the said Brownell, assignee of said King, is entitled to compensation for the non-conveyance of lands comprised in the said contract which the defendant Ruckman does not own in fee or so control as to enable him to convey or cause to be conveyed in fee.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, 20 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 July 15, 1873.

WILLIAM L. DAYTON,
Solicitor of Appellants.

CORTLANDT PARKER,
Of Counsel.

Answer of Elisha Ruckman to Petition of Appeal.

[Filed October 15, 1873.]

The respondent, Elisha Ruckman, not confessing or acknowledging all or any of the matters to be true as in and by the
10 said petition of appeal are contained and set forth, for answer thereunto, says :

That he believes it to be true, that such decree as is complained of by the appellant was made by the Court of Chancery as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

And this respondent is advised, and believes that the said decree in the particular appealed from is agreeable to equity and justice, and he therefore humbly prays that the same may
20 be affirmed in the particulars complained of, and that the said petition of appeal may be dismissed by this Honorable Court, with costs to be adjudged to this respondent.

DIXON & COLLINS,

*Solicitors for, and of Counsel with the said Respondent,
Elisha Ruckman.*

N. J. COURT OF ERRORS AND APPEALS.

Between

Elisha Ruckman,
and Appellant.

Benjamin W. King and
John L. Brownell,

Respondents.

On Bill and Pe-
tition of Appeal.

Petition of Appeal.

[Filed September 13, 1873.]

To the Honorable the Court of Errors and Appeals in the last resort, etc. :

The humble petition of Elisha Ruckman, the appellant in the above cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by the Chancellor, bearing date on the 7th day of June, in the year of our Lord 1873, wherein the said Benjamin W. King and John L. Brownell are complainants, and your petitioner and Charles G. Sisson are defendants, in this respect, to wit: that the said decree adjudges that no allowance should be made to said Ruckman or paid by said complainants for interest upon any moneys contracted to be paid by said contract, the said Ruckman having ever since the date thereof wrongfully retained possession of said premises, and refused to convey the same or any part thereof to said complainants, and debarred the said complainants from any possession or control thereof, but that said Ruckman should pay interest on such part of the purchase money as he has received from the time of such payments. 10

And from so much of said decree as orders and adjudges that the balance of the purchase money, amounting to two hundred 20 and seventy-two thousand two hundred and eighty-six dollars and seventy-five cents (\$272,286.75), should be secured by a purchase money bond and mortgage, payable in five equal

annual payments, and that portion of the decree appealed from is the clause making the payment in five equal annual payments.

And from all that portion of the decree which fails to adjudge and award damages for lands which the said Ruckman failed to obtain title to by reason of the default in the payment of the \$20,000 on the 1st day of June, 1868.

10 And your petitioner appeals from that portion of the decree above set forth, upon the ground that the same is erroneous, and he therefore prays that the said decree in the particulars above specified may be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Court shall seem meet.

DIXON & COLLINS,
Solicitors of Appellant.

Answer of Respondents to Petition of Appeal.

[Filed October 15, 1873.]

20 These respondents 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, say: 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, these respondents humbly crave leave to refer thereunto when the same shall be produced.

And these respondents humbly conceive and are advised that the said decree in those parts appealed from in said petition of appeal is agreeable to equity and justice, and therefore humbly hope that the same may therein be affirmed and said appeal be dismissed by this Honorable Court, with costs.

Dated October 15, 1873.

WILLIAM L. DAYTON,
Solicitor and of Counsel with Respondents.