

N, J. Court of Errors and Appeals.

JOSEPH WHARTON,

Appellant,

and

LUKE I. STOUTENBURGH,

Respondent,

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POINTS OF APPELLANT.

No specific performance of a contract will be decreed unless the contract be actually concluded and be certain in all its parts. If the matter is still pending or rests in treaty, or if the agreement in any essential particular be uncertain, equity will not interfere. 20

Pomeroy on Specific Perf., § 58, 35, 36.

Fry on Specific Perf., § 203.

Waterman on Specific Perf., § 141.

McKibbin v Brown 1 M. Car 13.

Potts v Whitehead, 5 C. E. Gr. 55.

The mere approval of a draft of a contract does not constitute such an agreement as will be decreed to be specifically performed.

Fry Specific Perf., § 342.

Pomeroy Specific Perf., p. 87, notes to § 63.

Waterman Specific Perf., p. 175, notes to § 135.

Potts v Whitehead, 5 C. E. Gr. 58. S. C. 8 C. E. Gr. 514.

Warren v Wellington 3 Drury 523.

10 Doe v Pendegrifh 3 C. and P. 312 S. C. 19 E. C. L. Rep.

Courts of Equity will not enforce the specific performance of a contract if it be reasonably doubtful whether the contract was finally concluded.

Fry on Specific Perf., § 164, 165.

Pomeroy Specific Perf., § 58, &c.

Waterman Specific Perf., § 132.

Huddleson v Briscoe, 11 Vesey 591, 592.

20 Statford v Bosworth, 2 V. and B. 341, 345 and 346.

Brown v Wilson, 2 C. E. Gr. 180.

In order to take a case out of the statute of frauds, by part performance, two things are necessary. The terms of the agreement must be established by proofs clear and definite, and the act relied upon as part performance must be exclusively referable to the contract and done after the contract made.

Pomeroy Specific Perf., § 102, 107, 123, 125, 130, 136.

Wallace v Brown, 2, Stock, 308, 309.

30 <sup>Wall</sup> Brown v Wilson, 2 C. E. Gr. 180,

1 Stuart's Dig. p. 528, § 86 and cases.

Eyre v Eyre, 4 C. E. Gr. 102.

Patrick v Ashcroft, 4 C. E. Gr. 339.

Ackerman v Ackerman, 9 C. E. Gr. 315; S. C. 9 C. E. Gr. 585.

*Cole - Potts & Stark. 67*

*Smith v McHugh 3 Stock. 239*

A contract will not be enforced if it was induced by misapprehension or misrepresentation.

Fry Specific Perf., § 425, 426, 432, 437, 455, 457.

Pomeroy Specific Perf., § 38, 210, 217.

Waterman Specific Perf., § 118, 308, 310.

*Fisher v. Morrill S. Walter D. 478. 482.*

When a contract is not fair and its enforcement would be oppressive, equity will not decree a specific performance. It is matter of discretion.

Pomeroy Specific Perf., § 35, 38, 40, 177, 185, 188.

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Waterman Specific Perf., § 6, § 168, 169.

Cram v Decamp, 6 C. E. Gr. 414.

When a contract is a continuing one, running through an extended term, or where it provides that one of the parties may abandon contract in giving a grace notice will not be refused.

Pomeroy Specific Perf., § 42, 289, 307, 312.

Waterman Specific Perf., § 197, 198.

Marble Co. v Ripley 10 Wallace 339, 359.

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Rops v Pacific R. Rd. 1 Woolworth 264, 448.

Fallon v R. R. Co., 1 Dillon 121.

Blachett v Bates, 1 Law, Rep. Ch. Ap. case 117, 124.

Hill v Croll, 2 Phillips 60.

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## N. J. COURT OF ERRORS AND APPEALS.

LUKE I. STOUTENBURGH,

*Com'plt. and Respondent,*

AND

JOSEPH WHARTON,

*Def't. and Appellant.*

*On appeal from de-  
cree advised by  
V. C. Dodd.*

H. C. PITNEY FOR COMPL'T AND RESPONDENT.

### STATEMENT OF FACTS.

Complainant in January, 1880, was the owner of a farm on Schooley's Mountain, Morris Co., near Hackettstown, on which was an iron mine from which he was taking ores and shipping them to market to fill a contract. The yield was 107 tons for August, 1879, 234 tons for September, 127 tons for October, 193 tons for November, 194 tons for December, 299 tons for January, 1880, 335 tons for February, 1880. (p. 159, l. 5).

Defendant had recently purchased the blast furnace at Hackettstown and was about putting it in blast, and needed ores for smelting. Pig iron was high—as high as \$40 a ton. (p. 52.) Def't, by his agent Collins, applied to Compl't to purchase ores. Compl't could sell none until his contract was filled, and preferred to lease the mine; talked over the terms with Collins and made (Jan'y 9, '80) a brief sketch of a proposition, (Exhibit 2 C, p. 177) which was forwarded to Def't at Philadelphia. Def't, (Jan'y 21) wrote Compl't a letter (Exhibit 3 C, p. 178) which is important and is set out in the bill, p. 3.

In reply to this, Stoutenburgh, (Jan'y 23) wrote a letter, set out in the bill, pp. 4 and 5, (Exhibit 4 C, p. 178) and inclosed it to Collins with a note to him, (Exhibit 5 C, p. 179).

This letter was forwarded to Mr. Wharton by Collins without objection or alteration.

Stoutenburgh, hearing nothing from either Collins or Wharton, prepared and signed a lease (Exhibit 6 C, p. 180) and forwarded it to Mr. Wharton, who duly received it. (p. 38, l. 18,—p. 39, l. 20; p. 78, l. 1-5; p. 95, l. 30-40; p. 96, l. 1-20; p. 97, l. 14-20; p. 139, l. 29-35; p. 140, l. 17-25; p. 147, l. 8-10; p. 154, p. 161, l. 30—p. 162, l. 30).

After receiving this lease duly signed by Stoutenburgh, Wharton, with the lease in his pocket, visited the mine, and himself personally inspected it and took samples of the ore. (p. 77, l. 7-25; p. 91, l. 25—p. 92, l. 20.) He then, Feb'y 23, (Exhibit 7 C, p. 184) solicited an interview, and met Stoutenburgh at the Clarendon Hotel, Feb. 25. At that interview the first lease was produced by Wharton's agent, Collins, and Stoutenburgh and Wharton sat down together and went over it, clause by clause, and Wharton made alterations by striking out certain portions, shown by small capitals in the printed copy, (p. 181, 182) and interlining new matter, as shown by italics. This lease, so amended, embodied the agreement between the parties and was complete in all its parts, and they separated with the understanding that Stoutenburgh should prepare and execute two copies of this lease so amended, and forward them to Wharton, who was to execute one and return it to Stoutenburgh.

This was done promptly, and the two leases executed by Stoutenburgh were forwarded to Wharton and reached him before March 4, on which day he acknowledged their receipt in a letter (Exhibit 9 C, p. 192). The two leases are Exhibits 8 a. C, and 8 b. C, p. 184-190).

Stoutenburgh having filled his contract—the usual wet weather of winter added to the increased depth of the working resulting in such an increase of water as to overwork his pump and engine—called on Collins to take pos-

+ line 28 - p 37  
162

agreed that  
we should take  
care of the mine  
etc  
42 line 10-20  
~~line 27~~  
line 5-28  
43 line 25  
line 27  
line 10

session, which he did March 6, and employed S.'s fireman and engineer to keep the pump going. This date is fixed with certainty, (p. 45 and 110, 111; p. 136, l. 15-20; p. 150, l. 1-10; Exhibit 2 D. p. 196. Ans. p. 23, l. 7-10.)

March 6, Wharton writes Stoutenburgh a letter (Exhibit D, 1, p. 195) showing a disposition to recede from his contract: received by Stoutenburgh Mar. 8.

March 9, Stoutenburgh writes Wharton a letter in reply, (Exhibit D, 2, p. 196).

During the month of March the price of pig iron began to fall off, (p. 52, l. 28-35; p. 106, l. 19-25; p. 143).

April 3, Wharton writes Stoutenburgh a letter (Exhibit 3 D, p. 197) asking a modification of the contract. This letter Stoutenburgh answered, but the answer is not produced. (p. 60, l. 25, and p. 61, l. 28, p. 64, l. 1-35).

On the 24th April, Stoutenburgh wrote Wharton a long letter, (Exhibit 5 D, p. 199-201) rehearsing the case.

In the mean time, about April 1, Wharton had emphatically adopted the conduct of his agent in taking possession of the mine by himself personally giving directions for putting in a new boiler and pump. (p. 71-73, Exhibit 4 D, p. 198).

No answer was received to Stoutenburgh's letter of April 24, (p. 64, l. 36; p. 65, l. 1,) and operations at the mine continued at the expense and under the direction of Wharton and his agents.

In May, Collins called on Stoutenburgh and urged a modification of the leases, which resulted in an offer from Stoutenburgh, dated May. 19. (Exhibit 6 D, p. 202; p. 65, l. 10-25).

May 27, Collins returned to Stoutenburgh the two executed leases with the statement that if the amendments contained in one of them were accepted, Wharton would execute them. (p. 48, l. 10-p. 50, 51).

The alterations appear in Exhibit 8 b. C, p. 188. This alteration was never approved by Stoutenburgh.

June 27, Wharton wrote a note (Exhibit 7 D, p. 203) withdrawing from his offers up to that date.

He continued in possession until August 1.

## LAW APPLYING TO THESE FACTS.

*First Point.*

The correspondence of January, comprised in Compl't's proposition of Jan'y 9 (Exhibit 2, C), Def't's letter of Jan'y 21 (Exhibit 3, C) and Compl't's reply (Exhibit 4, C) make out a complete contract in writing, signed by the parties, subject only to the contingency of their agreeing upon the details of the lease.

They afterwards did agree fully and completely upon the terms of that lease. The Vice Chancellor has so found, and the evidence sustains his finding.

Compl't affirms this most positively, and Def't substantially admits it (p. 101, 102, 103).

Under such circumstances the original contract will be enforced, and the statute of frauds is satisfied.

*Chinnoek vs. Marchioness of Ely,*

11 Jurist, N. S. 32; 2 Hem. & Miller, 220; on appeal, 4 DeG., J. & S., 638, 646.

That was a case of a contract for a sale comprised in a correspondence signed by the compl't and the agents of the def't, but the parties disagreed as to the details of the terms of the formal contract itself, when those terms came to be settled. Sir William Page Wood decreed specific performance. This decree was reversed by Lord Westbury on appeal, on the ground of want of authority in the agents, and it is clear from his language that if that difficulty were out of the way, and the parties had agreed orally on the terms of the deed, he would have affirmed the decree.

See note of this case in Pomeroy on Cont., p. 86-88.

*Honeyman vs. Maryott,*

1. Jur. N. S., 857, 21 Beav. 14, was a case of a contract for a sale contained in a correspondence in which the letter of acceptance by the vendor contained the words "subject to the terms of a contract being arranged between his solicitor and yourself." The proposed contract contained a clause requiring a deposit of £1,500 by the vendee in advance of the execution of the deed, to which the vendee, the plaintiff, objected, and filed his bill, which was dismissed. Lord Romilly, however, says:

“ If, upon these terms being received by the plaintiff, he had forthwith said, ‘ I agree to and approve of these and I am ready immediately to execute the contract,’ then, in my opinion, there would have been a binding and complete contract between the parties. But that is not so ”

Here the Defendant had agreed in writing, by his letter of Jan’y 21, to take a lease of the property, and it is that contract we ask to be specifically performed. We want him to fulfill his agreement to take a lease. If he says the contract he signed did not specify all the terms of the lease, I answer, the proposition of compl’t of Jan’y 9, accepted by you, did contain such specific terms that a lawyer could have drawn a lease from it. If the proposed lease varied from that proposition, the variations <sup>were</sup> ~~are~~ introduced by yourself, since you, yourself, either made them or approved of them.

The cardinal fact just here is, that Defendant’s refusal to execute the leases was not put on the ground that it varied from the original contract, but on the untenable ground that he was never bound to sign any lease.

Def’t is just as much bound to execute the lease in question after having verbally approved it, as he would have been had it conformed strictly to the terms of the contract as contained in the proposition of Jan’y 9, and the acceptance of Jan’y 21. The two papers made a complete contract. No further writing from Complainant was necessary, and Defendant might have declined to accept any modification of that contract. But if the lease settled on between them Feb’y 25 did in any material respect vary from that contract, it does not lie in the mouth of Defendant at this late day to set that up, having himself agreed to such variations and put his refusal on other grounds.

We contend that the alterations, erasures and interlineations made by Def’t in the first lease prepared by Compl’t made that draft in effect a draft proposed by Def’t.

Suppose now a simple contract in general terms to sell a piece of land at a price named, without any specification of the kind of deed or the covenants it should contain, and sup-

pose the vendor himself should prepare a deed with covenants of warranty and against encumbrances, and send it to the vendee for his inspection, who should approve and return it and request it to be executed, and the vendor should decline to execute it on the ground that he was not bound to execute any deed whatever, without making any specific objection to the deed in question, is it possible that he could afterwards defend an action for specific performance on the ground that the original contract did not specify all the details of the deed? The case of *Shippey vs. Derison*, 5 Espirasse, 189, shows how nearly Def't. came to being bound at law on this lease.

*Second Point.*

Defendant received the leases, duly executed by Complainant, on or before March 4th, and kept them without returning them until May 27.

On March 6 he wrote Compl't (Exhibit 1 D, p. 195) asking for delay in their acceptance and execution "if it could be done without disadvantage" to the Compl't. This request was positively declined by the Compl't in a letter of March 9 (Exhibit D, 2, p. 196) stating that he could not release Def't from his contract, and that so to do would be damaging to him. This letter gave the Defendant the true situation at that time.

Def't made no answer to this letter, retained the leases, and wrote again, April 3d (Exhibit D, 3, p. 197) as king to be relieved from the contract. This the Complainant declined in a letter not produced by Def't, and supposed to have miscarried or to have been mislaid. Compl't wrote again, April 24 (Exhibit D, 5, p. 199), rehearsing the case to date and declining to release Def't. Now, the retaining the leases executed by Compl't in his hands all this time was, in equity at least, an acceptance of them which binds Def't.

His conduct is explicable when we recall the condition of the iron market during this period. He was experimenting. He had and retained the power to bind the Complainant at any moment that his interests might dictate, while he intended not to be bound himself, unless it should subserve his interests so to do. He was plainly attempting

to hold Compl't without being himself bound. This, equity, under the circumstances, ought not to permit him to do, and he should be held to have accepted the lease, and to be bound thereby in all respects the same as if he had signed it, and in order to give the Compl't the benefit of that equity at law he should be decreed actually to execute it.

*Third Point.*

But if the Court should hesitate to decree specific performance for the reasons thus far presented, there still remains the further and decisive consideration of *part performance*.

Possession was abandoned by Compl't and taken by Def't's agent, March 6.

Def't is chargeable with notice of his agent's acts, and he had specific notice of them by Compl't's letter of March 9 (Exhibit D 2, p. 196), and about April 1 himself ratified all this and took a decided step by giving personal directions to Carpenter to take up a new boiler and engine, which was done, and by actually working the mine for several weeks and months.

The evidence leaves no room for doubt that this possession was referable to and under the lease executed by the Complainant and in the Defendant's possession.

Compl't certainly so understood it, since he did not deliver possession until he had forwarded the lease to Def't, and had advice of its receipt.

On the Def't's part, the possession can be referred to no other authority, and his conversation with Carpenter (p. 71-74) proves it.

See also evidence of elder Collins (p. 141, 142) and Def't, p. 109, and answer p. 26, 27.

I admit that the principle upon which the Court acts in such cases is that the party seeking equitable relief has, by the invitation or consent of the other party, been brought into a position from which he can not be extricated without loss, and where it would be inequitable to leave him. The refusal of the Def't to perform his parol contract must work a fraud and do injustice to the Compl't.

In the majority of cases the action of the Court has been invoked by the vendee or lessee, but there is abundant authority for its intervention in behalf of the vendor or lessor. Doctor Pomeroy, at sec. 118 of his Treatise, says :

“ As the questions concerning specific performance may generally arise in two classes of suits, those prosecuted by vendees and those prosecuted by vendors, so the subject of possession as a part performance may be presented under these two aspects : first, when the vendee or lessee sues to enforce the verbal contract and relies upon a possession *taken* by himself with the consent of the vendor ; secondly, when the vendor sues and relies upon a possession *delivered* by himself and accepted by the vendee. Although the former case is by far the most frequent in practice, the rule as to part performance applies with the same force and effect to the latter.”

*Pyke vs. Williams,*

2 Vernon, 455, and Raithby's note.

There the purchaser by parol took possession, and was decreed to take the title.

*Earl of Aylesford's case,*

2 Strange, 783, is precisely in point, being a bill to compel a tenant, who had enjoyed a part of a term under a parol agreement for a lease, to execute a *counterpart* of a lease for the residue, and the plea of statute of frauds was overruled. This would seem to indicate that the landlord had in that case, as here, executed a lease which was in the possession of the tenant.

*Harris vs. Knickerbacker,*

1 Paige, 209. S. C. 5 Wen. 638 ;

*Pugh vs. Good,*

3 Watts & Ser. 56, per Gibson Ch. J. ;

*Bowers vs. Cator,*

4 Ves. Jr. 91 ;

Browne on Statute of Frauds, Sec. 471 ;

Dart's Vendors and Purchasers, p. 655, where it is said :

“ It is, in general, of the essence of such an act, that the Court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, ac-

“cording to their legal rights, they would be in if there were no contracts: for instance, *delivery of possession is a sufficient part performance on the part of the vendor to sustain his suit against the purchaser.*”

Here the Compl't ceased to operate his mine and abandoned possession of it, turned over his machinery and implements to the Defendant, who has displaced the same and has actually worked the mine and taken out ore.

The injury to the Plaintiff is precisely of the same character as the injury to a parol purchaser who has taken possession and made improvements.

The arrangement, or rather disarrangement, of Compl't's business is sufficient.

*Parker vs. Smith,*

1 Coll. C. C. 608, per V. C. Knight-Bruce, is an instructive case. There a mere change in a partnership by dissolution and release of the retiring partners and formation of a new partnership was held sufficient part performance of a contract with their landlord for renewal of a lease to the new firm, to take the case out of the statute.

*Coles vs. Pilkington,*

L. R. 19 Eq. 174, is to the same effect.

It is clear that when the Defendant abandoned possession August 1, Compl't could not be put in the same position that he occupied on March 6. He had lost, not only the use of his mine, but also the opportunity to lease or sell it afforded by the boom in the price of iron. The interior of the mine was changed and the machinery was displaced. Besides, there is evidence of negligence in the care of the machinery, (p. 122, l. 25-32; p. 128, l. 20—p. 130; p. 169.)

In fact the delivery of possession by vendor or lessor to vendee or lessee, would seem to create a much stronger equity in favor of the former than the latter. There is necessarily a loss of position to him who *gives up* possession, while there may or may not be a loss to him who *takes* possession.

Hence the authorities are justified in holding, as they seem to do, that a mere delivery of possession by the vendor or lessor is sufficient in his favor as against the vendee or

lessee to avoid the effect of the statute, while the vendee or lessee as pl'ff must show something more. He must show that he has lost something.

The case of *Bowers vs. Cator*, supra, is very much in point. Compl't was owner of a dwelling and Def't applied for a lease for a term of years. Compl't signed a memorandum contract for a lease, which is set out in the bill as follows :

“ ‘Agreed with Mr. *Cator* of *Guildford-Street*, that in  
 “ ‘case Mr. *Armstrong* does not take my house on or before  
 “ ‘Monday next the 26th of June 1797 upon lease for seven,  
 “ ‘fourteen, or twenty-one years (keeping the same in good  
 “ ‘repair) the lease to run with the usual covenants at 40 l.  
 “ ‘a-year from Midsummer 1797, paying all taxes, or what  
 “ ‘other taxes may happen, except land-tax, then Mr. *Cator*  
 “ ‘is to have it. Supposing the house let, have accordingly  
 “ ‘by Mr. *Cator*'s desire wrote to that effect to some appli-  
 “ ‘cations : all the fixtures to be taken by appraisement.  
 “ ‘*N. W. B.*'

“ *Armstrong* having declined taking a lease of the said  
 “ house and premises, because they were on too small a scale,  
 “ the plaintiff on or about the 21st of June 1797 signed the  
 “ said memorandum with the initials of his name ; and de-  
 “ livered the same to *Parry*, his attorney, and directed him  
 “ to call, and inform the defendant, and to prepare a lease  
 “ according to the agreement. *Parry* called on the 21st or  
 “ 22nd of June, and read the memorandum to the defendant,  
 “ who agreed to accept a lease for a term of twenty-one years,  
 “ determinable at the end of the first seven or fourteen years,  
 “ if he thought proper, upon the terms mentioned in the said  
 “ memorandum or agreement ; and *Parry* copied the memo-  
 “ randum with the assent of the defendant, as instructions  
 “ for him to prepare a lease from the plaintiff to the defen-  
 “ dant ; and the defendant, in pursuance of the said agree-  
 “ ment, on or about the 25th or 26th of June 1797, entered  
 “ into possession of the said house and premises ; and took  
 “ possession of the fixtures therein, and hath ever since been  
 “ in possession thereof. Some disputes having arisen  
 “ between the plaintiff and defendant as to what fixtures  
 “ ought to be purchased by the defendant, and what should

"be taken as belonging to the house, and the value thereof,  
 "the plaintiff agreed to leave the same to —— *Erwood*;  
 "who was recommended to him by the defendant, who pro-  
 "posed to leave the same to the said *Erwood*; and the plain-  
 "tiff and the said appraiser accordingly, with the consent of  
 "the defendant, made an inventory or account and valuation  
 "of such fixtures, as the defendant ought to purchase; and  
 "the value thereof amounted to —— which yet remains un-  
 "paid; and the defendant also purchased certain other fix-  
 "tures in the house, which belonged to the former tenant.  
 "The plaintiff has been always ready to grant a lease ac-  
 "cording to the true intent of the said agreement, and in  
 "December last caused a draft of a lease to be prepared and  
 "sent to the defendant by *Parry*: but the defendant re-  
 "turned the same with the following memorandum there-  
 "on:

"I am surprised you should send me this draft, after  
 "having given Mr. *Bowers* notice to quit. Had I been in  
 "the way, when it was left, I should have returned it by  
 "the same hand that brought it. *C. W. Cator.*'

"*Parry* afterwards tendered a lease: but the defendant  
 "refused to execute.

"The bill charged, that the agreement is to be taken as  
 "reduced to writing; but if not, that the defendant entered  
 "into possession of the said house and premises under and  
 "by virtue of such agreement before mentioned, and still is  
 "in the occupation thereof under the said agreement; and  
 "that he purchased divers fixtures, as before mentioned, of  
 "which he is in possession, which must be taken as a part-  
 "performance of the said agreement; and that he ought not  
 "therefore now to be permitted to object to carrying the  
 "said agreement into execution."

\* \* \* \* \*

"The plaintiff farther charged, that in order to avoid any  
 "dispute with the defendant, *Parry* on the 22d of Decem-  
 "ber 1797, before the notice to quit had been given, wrote  
 "to the defendant, that *Bowers* was desirous of knowing  
 "what the defendant expected to be done to the house; and  
 "if the defendant would favour him with the particulars in  
 "writing, he would wait upon *Bowers*, and immediately send

“the defendant his determination: although Mr. *Bowers* did  
 “not consider himself bound to repair, yet rather than there  
 “should be any difference, he was inclined to do it; and upon  
 “the 25th of December following, *Parry* by another note  
 “again requested to know what repairs the defendant re-  
 “quired. The defendant sent no answer; but after receiving  
 “the first note he sent a notice to quit to the plaintiff. The  
 “bill also charged, that the defendant refused an arbitration,  
 “and prayed a specific performance of the agreement.

“To this bill the defendant put in the following plea and  
 “answer:

“To so much and such part of the said bill, as seeks from  
 “this defendant discovery and relief concerning an agree-  
 “ment thereby pretended to have been made and entered  
 “into for granting a lease by the said complainant unto this  
 “defendant of the house and premises in the bill mentioned,  
 “and as seeks to compel this defendant specifically to per-  
 “form the said pretended agreement, and to accept a lease  
 “of the said house and premises upon the terms in the bill  
 “mentioned, the defendant pleads in bar the Statute of  
 “Frauds:

“And this defendant not waiving his said plea, but wholly  
 “relying and insisting thereon, for answer to the said bill,  
 “or to so much and such part thereof as this defendant is  
 “advised that it is in anywise material or necessary for him  
 “to make any answer unto, answereth and saith, he admits, he  
 “did at or about midsummer 1797, enter into possession or  
 “occupation of the house and premises in the bill mentioned;  
 “but the defendant being advised that he only entered there-  
 “upon as tenant at will to the plaintiff, and being desirous  
 “of quitting the possession thereof, did, upon the 22d of  
 “December then next following, give the plaintiff notice  
 “that the defendant should upon Midsummer 1798 quit pos-  
 “session. This defendant did accordingly quit and leave in  
 “the beginning of May 1798, and is not now, nor hath been  
 “ever since in the occupation thereof; and this defendant  
 “denies that any agreement in writing ever existed between  
 “the plaintiff and defendant, as in the said bill mentioned;  
 “or that the defendant entered in consequence of any written  
 “agreement whatsoever; and the defendant admits, that he

“ was in treaty with the plaintiff for the purchase of his fixtures in the said house and premises ; but denies, that any actual purchase of any of the fixtures or fixture in the said house and premises ever took place by the defendant of the plaintiff or any other person or persons whatsoever, or any act whatsoever to the knowledge or belief of the defendant, which can or ought fairly to be considered as a part-performance of the said pretended agreement, or with reference thereto.”

\* \* \* \* \*

“ *Lord CHANCELLOR.*—The letter sent in December does not admit that the plaintiff was bound to do any repairs. According to the terms of the memorandum the defendant is to keep in repair ; but only according to the condition in which he found the house. The letter does not admit, that there was an obligation upon the part of the plaintiff to do anything ; but to avoid disputes he consented to do something, if the defendant would let him know what he wanted.

“ The plea must be over-ruled ; for the answer does not support it at all. It is quite evasive as to the statement of possession under and by virtue of the agreement. The defendant avers that he did not take possession in consequence of any written agreement. There was not any in the sense in which he used it ; for he never agreed in writing ; and instead of answering the facts alleged as a part-performance, he says, that being advised, that he took possession as tenant at will, he therefore gave a notice to quit. Plea over-ruled.”

#### DEFENCES.

1. That there was never any agreement between the parties—no *aggregatio mentium*.

Compl't contends on the contrary that the epistolary documents show a complete contract, and the Vice Chancellor, who heard the evidence, has found as a fact that there was a complete agreement on the 25th of February. The Compl't so swears, and a careful reading of Deft's evidence confirms him.

My first point *supra* is a complete answer to this contention. It matters not whether Def't agreed at the hotel interview to execute the lease or not. He had previously in his letter of Jan. 21, agreed so to do.

2. Untrue representations as to the character and productiveness of the mine, and that the same proved to be worthless.

This is not sustained by the proofs.

At the time of the negotiations and contract the mine was producing liberally and there was a fine show on the vein, (p. 33, 159, 160.) // 7-118-174-175

There is no proof of any untrue representation on the part of the Compl't. The witnesses fail to make out any case against him.

Compl't denies any misrepresentation. He swears (p. 162-167) that he called Def't's attention to the uncertainty of iron mines in general and this one in particular; that they were liable to both "widen out" and "cut out," or "narrow down," "pinch."

But Def't-inspected the mine himself. He first sent his agent, Collins, and one Wiggins, both experts, to look at the mine and ore, and afterwards, with the first lease executed by Compl't in his pocket, went to and down into the mine and took specimens of the ore (p. 92).

All mines are peculiarly speculative and uncertain in value, and so recognized by the courts. Def't was himself an expert (p. 92-93), and the courts do not permit such persons, dealing in such property, to recede from their contracts on account of any change in the prospects of the yield, when they have themselves inspected the property.

Fry on Specific Performance, secs. 437, 438, 440, 443, 4 & 5.

*Atwood vs. Small,*

6 Clark & Fennelly, 167, \*232;

*Clapham vs. Skillito,*

7 Beav. 146;

*Jennings vs. Broughton,*

17 Beav. 234, 17 Jur. 905, 5 DeGex, McN. & G. 126;

Pomeroy, sec. 221.

9-160

47 138-162

Suppose the case reversed, and that Def't had taken possession without having the lease executed by Compl't, though its terms were agreed upon, and a little working had shown the mine to be very much more valuable than it appeared, and the lease to be very desirable; would the Court permit the Compl't to refuse to execute the lease on that account?

The rule works both ways.

The truth is that the Def't made no serious effort to develop the vein and ascertain whether there was ore there or not. Compl't with an insufficient boiler, engine and pump, was able to raise two or three hundred tons of ore a month, besides rock. Def't, with a powerful boiler, engine and pump, took out only about twenty or thirty tons of rock and ore combined from March 6 to August 1, (p. 70, l. 24; p. 171, l. 21). The force of laborers was entirely insufficient, being composed of Scadden, foreman, with Larryson and the two Reeds working under him for a short time (p. 170, l. 11-18; p. 172, l. 6-9; p. 173, l. 1-5), and Scadden swears they worked without any plan or apparent object, and that they did nothing but sink the shaft, and worked little or none on the face of the vein in the drift where the ore was to be found (p. 168-169) and they made no attempt to explore or work the upper vein which Stoutenburgh had abandoned only because he had not the appliances to keep it dry, (p. 118, l. 31—p. 119, l. 18; p. 164, l. 25—p. 167, l. 15).

3. It was urged below that this is a hard bargain and should not be enforced.

But the lease itself provides a way out. (p. 183, l. 17-25; Exhibit C.)

Def't had only to run his shaft down the required number of feet and give the six months notice required by the lease, and he was at once free. (P. 187, l. 20-30.) This he should have done. This Clause in the lease was put there in fulfilment of that part of the letter of Jan'y 9,

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152-153

which provides for a "surrender in case the mines may 'prove' unproductive."

The "proof" was to be made by sinking the shaft sixty feet on the lower vein, and fifty on the upper vein (p. 182, l. 4-15).

It was a fair contract when made.

Fry on Spec. Per., Sec. 235.

The parties stood at arm's length, and each relied upon his own skill and knowledge.

4. It was argued below that this was an attempt on the part of Compl't to induce the Court to enforce a continuing contract by ordering Def't to work a mine and raise ore; and it was urged that the Court would not undertake the task of supervising the working of a mine.

This is fallacious. We are not asking the Court to carry out a continuing contract. What we ask and all we ask is that Defendant shall execute this lease according to his agreement, and that it should be dated back to the time when he should have executed it, as was done in

*Pain vs. Coombs,*

1 DeGex & Jones, 34.

The truth is, that the real cause of the refusal of the Defendant to execute these leases is found in the very great fall in the price of pig iron—from \$40 to \$22—which took place between March 1 and July 1. Had the price of pig iron kept up, the leases would have been signed by Def't, and vigorous measures taken to develop the mine.

its being a  
Contract, see

on Spec Perf.

252 . 256 257

man on Spec Perf

165 § 173

vs Treadwell

mine 441 at p 450

vs Kirby

see 420 at p 428

WM. S. SHARP, Printer, 21 W. State St., Trenton, N. J.

## COURT OF ERRORS AND APPEALS.

LUKE J. STOUTENBURGH,

*Complt. and Respondent,*

*and*

JOSEPH WHARTON,

*Deft. and Appellant.*

On appeal from  
decree advised by  
Vice-Chancellor  
Dodd.

*Additional Memoranda of Complainant  
and Respondent.*

Under the head of part performance.

*J. E. Stoutenburg*

As to the damage sustained by the complainant by reason of his delivering possession to Wharton.

1st. From the loss of tools, timber, and mining implements, and from injury to the machinery, engine and boiler.

The agreement of February 25th, (*Exhibit 6 C.* p. 182, line 15 to 26,) was that the defendant should "purchase all the machinery and apparatus, consisting mainly of steam boiler, engine, pump, and pipes and fixtures, with mining implements now used in and about the mines, at \$1800, payable in May next. The engine-house and fixtures and mining timber about the mines to be included in this sale."

It was agreed at the meeting in Hackettstown, on the 25th of February, that Wharton should take possession of the mines and tools and machinery, (p. 42, line 10—20, p. 55, line 5—28.)

The complainant testifies (p. 47, line 20, to p. 48, line 9, and p. 70, line 5 to 22,) that all were delivered to Wharton's agent, on the 6th of March, and that since that time he has had nothing to do with them.

The timber was used as it was needed, and the Stoutenburgh boiler and pump (which was a steam-pump located down in the mine,) was used by Wharton from the 6th of March until in the month of May, (testimony of Scadden, foreman, on p. 122, line 26.)

After the new and larger engine and boiler of Wharton were started in the month of May, the fire under the Stoutenburgh boiler was put out, and the boiler was left two-thirds full of water until about the 1st of October, (testimony of Scadden on p. 127, line 30, to p. 129, line 28; followed by testimony of S. I. S. on p. 163, line 32, to p. 169, line 33, to fix the exact time.)

Since then the machinery has been left unprotected and exposed to the weather, and also to the liability of being carried away or injured by mischievous persons. P. 47, line 20, to p. 48, line 9; p. 129, line 23, above cited.

Such treatment has been greatly injurious to the boiler and machinery, and it would be a great injustice and damage to the complainant to now throw upon him whatever may be left of this movable property.

About August 1st the defendant abandoned the prem-

ises, but gave Stoutenburgh no notice thereof, and has never offered to turn over to him the machinery and tools lying about the premises or used in the mines.

The damage to the machinery from bad care and negligence is such that it cannot be measured in damages.

No inventory of the different articles of machinery, &c., has been shown, so that it is impossible to tell whether all can be returned to the complainant. And there is no appraisalment of the specific articles, so as to determine the value of those that have been used up or lost.

The complainant, Stoutenburgh, has been placed in a position in which he cannot be left without loss, and from which he cannot be extricated except by the specific performance by the defendant of his agreement to sign the lease.

Can the complainant bring a suit at law for the \$1800 (which was the estimated value of all the tools and machinery,) unless this suit is sustained?

Will not his right to recover compensation for the property lost or destroyed, stand or fall with his right to have the whole agreement specifically performed?

Is not the taking and use of the machinery a component part of this agreement, which the complainant is seeking to have enforced? and are not the two parts so clearly connected that no distinction can be drawn in favor of one part and against another?

Wharton's possession of the tools and machinery can be referable to no other agreement than to the agreement made at the meeting on the 25th of February; and if any liability has attached to him as to the tools, &c., he is also bound as to all other points in the agreement made that night.

2d. From the injury to the mine.

When Wharton took possession on the 6th of March, the mine was in workable condition, free from water, and the machinery was in position to use.

About the 1st of August he abandoned it, having some weeks before taken up the pump Stoutenburgh had had down in the mine, and having taken apart some of the machinery, and allowed the mine to become filled with water, to the great injury of the mine from the weakening of the walls and supports by saturation.

He gave no notice to Stoutenburgh, and gave him no opportunity to have protected the property if he had desired to do so.

## II.

*Untrue representations* as to the character and productiveness of the mines.

What testimony is there as to the representations of the complainant?

The direct testimony of Wharton (p. 87, line 12,) is:

“ Q. How did he represent it to you ? ”

“ A. He represented it to me as a mine from which a large quantity of ore had been taken—very excellent ore—and that it could be very cheaply and easily mined, and he thought it was the best mine on that mountain or in that country.”

See, also, cross-examination of Wharton (p. 90, line 32, to p. 94, line 18,) as to what was said to him, and what he saw at the mine on the occasion of his visiting it.

This visit was after the 21st of January, and before the meeting at Clarendon Hotel, on the 25th of February, 1880, (p. 162.)

The testimony of Collins, Wharton's superintendent, is on p. 131, line 14, to p. 132, line 8.

The testimony of Stoutenburgh on p. 162, line 30, 163, 164, 165, 166, to 167, line 10.

This is all the testimony as to representations.

Now, what are the facts about the product and condi-

tion of the mine previous to the meeting at Clarendon Hotel, in Hackettstown, on the 25th of February, 1880.

See testimony of Stoutenburgh on page 32, line 20, to p. 36, line 19; p. 42, line 20, to p. 43; p. 42, line 20, to p. 43, line 20; p. 158, line 19, to p. 160, line 28.

Testimony of M. Cogle, pp. 173, 174; p. 175, line 20.

Testimony of J. Larrison, pp. 170, 171, 172, 173.

What Wharton's impressions about the mine were will be seen by reading his testimony, on p. 90 to 94, line 18.

To constitute a misrepresentation which will prevent a decree for specific performance, the statement in question must be so material to the contract built on it, that if the statement be false, the contract becomes one which it would be unconscionable for the party who has made the statement to enforce.

*Scott v. Shiner*, 12 C. E. Gr. 185.

There is no proof that any statements made by Mr. Stoutenburgh previous to February 25th were false.

The burden lies on the defendant to show that the representations were false, and that he acted on the faith of them. Exaggeration and puffing as to the condition of the mine is not necessarily such misrepresentation as will avoid a sale, especially where the same source of information was open to both parties.

Blanchard's *Leading Cases on Mines and Minerals*, page 399.

Whartons own examination of the mine and the statements of Stoutenburgh gave him full warning that the sinking of the shaft for the stipulated sixty feet of exploration might be unproductive, and he fully realized that fact at that time, for in his letter of April 3d, *Exhibit 3 D*, (p. 197 line 26,) he used this language: "The amount of dead work, or of exploring which might prove to be dead work, seemed to be on reflection too great."

## III.

This is not a *hard contract*. The question of hardship should be judged of in respect to the time of making the contract, to wit, February 25th, 1880.

An agreement fairly entered into between the parties upon a sufficient consideration in view of the then existing state of things, should not be evaded in consequence of subsequent events rendering it less advantageous to one of the contractors than he had expected. The question in such cases always is, was the contract at the time it was made a reasonable and fair one? The rule is especially applicable to contracts which do not look to a complete performance within a defined and reasonable time, but contemplate a continuous performance extending through a number of years.

*Waterman on Spec Perform.*, §§ 173, 165.

*Fry on Spec. Perform.*, §§ 252, 256, 257, 258.

*Low v. Treadwell*, 12 *Maine* 441, at 450.

*Lee v. Kirby*, 104 *Mass.* 420 at 428.

There is no claim that on the 25th of February there was any hardship in this agreement. What is the hardship complained of? It is a lack of ore in the mines.

The *Exhibits 2 C*, (p. 177, line 30,) and 6 *C*, (p. 183, line 18,) show that the parties had this very contingency in contemplation from the beginning of the negotiations and provided for such an emergency.

Wharton visited the mine and made his own observations, which certainly were not fluttering, (p. 91 to 94) and on the bank of the mine had his attention called to the uncertainty of mineral veins (testimony of Stoutenburgh on p. 163); and after that at the meeting at the Clarendon Hotel in Hackettstown, agreed with Mr. Stoutenburgh to the clause in the lease, (p. 182; lines 5 to 15,) which requires him to sink a shaft on the lower vein "sixty feet deeper than it now is before abandoning it, *provided the ore therein shall not make it remunerative mining*, and a

shaft on the upper vein, which said party also agrees to sink to the depth of fifty feet lower than any one of the shafts now is, *the object being to more thoroughly prove the ground for iron ore.*"

Wharton's letter of April 3d, *Exhibit 3 D*, (p. 167, line 26,) shows that he had expected there would be some expensive exploring.

What is the *real, actual hardship* in this case?

IT IS THE DECLINE IN THE PRICE OF PIG IRON. Pig iron, in January, when these negotiations began, was \$40 per ton. It began to fall in price in March, and by the 1st of August, when Wharton abandoned the mines, pig iron was worth only \$22, and less, per ton. (Stoutenburgh, on p. 51, line 32; p. 52, 53; Collins, on p. 143.)

Wharton did not do any work in the mine until after the 10th of June, (p. 46, line 30, to p. 47, line 10,) but before that time had been seeking modifications of contract. (See *Exhibit 3 D*, p. 197, line 20; *Exhibit 5 D*, p. 199, line 32, to p. 202, line 10.)

And on the 27th of May he returned to Stoutenburgh the leases, and demanded modifications, under a threat of abandoning, (p. 48, line 10, to p. 51, line 19.)

These desired modifications *were upon the same identical points* which Wharton has testified were agreed upon and were satisfactory to both parties at the meeting on the 25th of February, 1880.

Compare erasure and interlineation on p. 189, line 2, with p. 181, line 4.

Also, p. 190, line 2 to 12, with p. 182, line 5 to 15.

Also, p. 190, line 13 to 23, with p. 182, line 16 to 28.

#### IV.

As to the defence of incompleteness and indefiniteness

of the contract—no final, conclusive agreement between the minds of the two parties.

What are the facts? On the first two pages of Mr. Pitney's brief, reference is made to all the testimony bearing on the negotiations previous to the meeting of February 25th, 1880.

Does the testimony concerning that meeting sustain the conclusion of fact reached by the Vice-Chancellor?

Mr. Stoutenburgh went there at request of Wharton. (*Exhibit 7 C*, p. 184.) Young Collins was sent to office of Furnace for draft of lease which Wharton had had for some time (p. 40, line 15; p. 147, line 8; p. 162, line 14, p. 97, line 14.)

Changes were made in that draft by mutual consent. Changes were written by Wharton.

Stoutenburgh, on p. 40, line 22, to p. 42, line 10.

Also, on p. 54, line 12, to p. 55, line 40.

Wharton's direct testimony, on p. 79, line 20, to p. 80.

Wharton's cross-examination, on p. 97, line 20, to p. 103.

All the points in the lease were then agreed upon, and the lease was to be re-written in duplicate for the signature of both parties, and both parties agreed to sign such fresh copies.

On p. 42, line 2, Stoutenburgh testifies:

"Q. As to the different changes all the way through—were they agreed upon, or not, by both parties?"

"A. Yes, sir; after the changes were made, Mr. Wharton said to me 'You write two copies of that lease as changed, and send them to me at Philadelphia, and I will sign one and return it to you, and I will sign the other and keep it myself, so that we may each have a copy of the lease.'"

See, also, his cross-examination on page 54, line 15, to page 55, line 4.

Wharton, in his direct-examination, on page 80, line 23, says: "And so we went all through the features of the thing. We finally separated with the understanding that

Mr. Stoutenburgh should now prepare another sketch of the lease and send it to me, which I should execute if I found it satisfactory. The points had been gone over, and something like a concurrence of views had been reached on all the points proposed that had been brought up, and the final result of the interview was that Mr. Stoutenburgh was now to prepare a lease, perhaps in duplicate, and execute and send down to me, which I was then to execute if I saw fit; in other words, if I found the paper drawn was a satisfactory one."

"Q. Did you agree that night that with the alterations made in that paper *Exhibit No. 6* shown you, that you would execute a lease drawn with the alterations made in that paper, *Exhibit 6*?"

"A. That is something near the truth and yet it is not accurate; the accurate statement of it is more—is what I have just said; the conversation did not come to a point that I was to sign *any* paper that Mr. Stoutenburgh might send down to me, but did come to a point of his agreeing to prepare a lease in formal shape; I believe he did not mean to go to any lawyer and take any advice about it, but he was to draw up the paper and submit it to me for execution, if I found it satisfactory."

On page 99, line 30, in cross-examination, he testifies:

"By the court—

"Q. Did you and he then and there agree on the sixty cents a ton; that is the point of Mr. Pitney's question?"

"A. If I say yes to that I am saying what is not exactly true, and if I say no, I will be saying what is still less true; I can't answer that question unless I am allowed to explain."

Referring to the change shown in *Exhibit 6 C*, (page 182, line 8,) he says, on page 100, line 9, "I mean, supposing we came to a bargain upon the general lease, that this point would be satisfactory in that shape."

Referring to the change in *Exhibit 6 C*, (page 182, lines 15 to 25,) he says, on page 100, line 4—

"A. Just the same as in the last case.

"Q. You agreed to it, provided you agreed to the other things?

"A. Yes, sir.

"Q. Or provided you came to a general conclusion?

"A. Provided we came to a general bargain, that was to be satisfactory."

On p. 102, line 14, he testifies :

"Q. Wherein did you disagree that night?

"A. Our conversation that night ended in all these points being adjusted to such provision as would meet both our minds, if we finally agreed to sign the paper."

The Vice-Chancellor had the advantage of having the witnesses before him, and his conclusions upon the facts should not be disturbed unless manifestly erroneous.

## VICE CHANCELLOR'S OPINION.

LUKE I. STOUTENBURGH,  
Complainant,  
and  
JOSEPH WHARTON,  
Defendant.

10

Testimony taken and cause argued before Vice Chancellor Dodd.

J. E. STOUTENBURGH and H. C. PITNEY for complainant.

P. L. VOORHEES for defendant.

THE VICE CHANCELLOR :

The bill is filed to enforce the specific performance of a contract to execute a lease.

20

The complainant, Luke I. Stoutenburgh, being the owner of about one hundred and ten acres of land, on Schooley's Mountain, in the county of Morris, began negotiations in January, 1880, to lease the same to the defendant, Joseph Wharton.

The lands were known as the Stoutenburgh mining farm. Two separate veins of iron ore had been opened on the farm by the complainant, and iron ore had been taken out and sold, when on or about January 8, 1880, James H. Collins, agent of Mr. Wharton, proposed to Mr. Stoutenburgh to make a lease of the mine to Mr. Wharton, who resided in Philadelphia, and was largely interested in blast furnaces for the making of pig-iron. As the result of such conference Mr. Stoutenburgh, made  
 10 and signed the following proposition, to be sent by Mr. Collins to Mr. Wharton.

January 9th, 1880.

The lower mine I will lease in permanence for twenty years, with the usual conditions of surrender in case the mines may prove unproductive, for seventy cents a ton, with usual privilege of necessary buildings.

The upper mine I will lease for twenty years at the rate of royalty of fifty cents a ton for the first two years  
 20 —sixty cents a ton thereafter—pig-iron remaining not above thirty dollars per ton ; but when pig-iron shall be worth thirty dollars or over, seventy cents royalty, so long as pig-iron remains over said thirty dollars. Or, I will lease all the mines on Mine Farm to Mr. Wharton for twenty years at the rate of seventy cents royalty, but will require the working of both veins.

L. I. STOUTENBURGH.

The above proposition was sent to Mr. Wharton, who  
 30 made the following reply :

PHILADELPHIA, January 21st, 1880.

L. I. STOUTENBURGH, Esq.,

DEAR SIR :—Mr. Collins reports that under all the circumstances he advises my acceptance of your proposition of ninth instant, for leasing your magnetic ore lands on Schooley's Mountain. This I concluded to do, and in fact

have regarded the arrangement virtually made since receiving your said proposition.

Of course a formal lease will be prepared and signed by us at more convenient time, before the expiration of your existing contract to deliver ore, which I understand will be complete some time in March.

Please acknowledge receipt of this and thus confirm the bargain.

Yours truly,  
JOSEPH WHARTON. 10

In answer to the last above Mr. Stoutenburgh sent the following :

“SCHOOLEY’S MOUNTAIN, January 23d, 1880.

“JOSEPH WHARTON, ESQ.,

“DEAR SIR:—Yours of the 21st instant, by the hands of Mr. Collins, is received.

“In reply would say that I will adhere to the proposition made you through Mr. Collins on the 9th instant, 20 although my mine is looking much more promising than then. I infer from your letter that you wish not only the one mine that I am now working, but that your lease should include all the magnetic ore of the farm.

“As there are two distinct veins of ore, each of which have been opened and partially worked, you will remember that my proposition specified the working of each vein, so that I would have a greater income from both than from one. 30

“At the time of making the proposition to Mr. Collins it was also understood that if you should lease the whole property that you would take my machinery and mining improvements at a fair valuation.

“I have thought best to mention these items so as to have no misunderstanding about it when the lease is taken.

" I expect to complete my contract with the Lehigh  
" Iron Company about the middle of March.

" In order to have all things ready in time for you to  
" take possession at the termination of my contract with  
" said company, I will write and send you such a lease  
" as I may think equitable for your consideration and  
" approval if it shall suit you.

" I am very respectfully yours,

L. I. STOUTENBURGH."

10

The above letter of the 23d of January was endorsed  
and sent in one to Mr. Collins of the 24th, of which the  
following is a copy :

SCHOOLEY'S MOUNTAIN, January 24, 1880.

J. H. COLLINS, ESQ.,

DEAR SIR:—Enclosed please find an open letter to Mr.  
Joseph Wharton, which, if on reading, you find to accord  
with my proposition of the 9th instant, and our conver-  
sation about machinery, &c., please forward to him. If  
not then please return to me with comments.

20

I am very respectfully yours,

L. I. STOUTENBURGH.

The letter of 23d of January, was forwarded to Mr.  
Wharton by Mr. Collins without the return or comments  
mentioned in the letter to him of the 24th.

Mr. Stoutenburgh prepared a formal lease and sent it  
to Mr. Wharton, who received it and subsequently met  
30 Mr. Stoutenburgh by appointment at the Clarendon  
Hotel, in Hackettstown, on the 25th of February, 1880,  
to consider its details. Alterations and changes were made  
in the provisions of the draft ; and erasures and interline-  
ations were made accordingly.

It is clearly established, I think, by the evidence, that  
the formal lease with the alterations and changes then

made in it was satisfactory to both Mr. Stoutenburgh and Mr. Wharton, and that the writing then and there made, though not signed, was a full and complete expression of the terms and stipulations finally agreed on between them. Mr. Wharton in his testimony admits that all the points were adjusted so as to meet both their minds if they finally agreed to sign the paper. I cannot doubt that when the parties separated that evening each expected to execute an engrossed copy of the draft then made, and that each considered the transaction closed. 10

Two engrossed copies of such draft were made, signed and sealed by Mr. Stoutenburgh, and duly witnessed and sent by him to Mr. Wharton, to be signed by him and one copy to be returned. They were not signed by Wharton, but the receipt of them was acknowledged by the following letter :

CAMDEN, N. J., March 4, 1880.

L. I. STOUTENBURGH, ESQ.,

20

DEAR SIR:—I have your two copies of the lease and shall give the matter attention to-morrow. Was closely occupied with other matters yesterday, and shall be to-day. The house you spoke of had better be shown to Collins. What do you ask for it? I should think he might want it.

Truly yours,

JOSEPH WHARTON.

On the 6th of March, 1880, the mines and leased premises were taken possession of by Mr. Wharton through his agent and employes, and were retained in his possession till the month of August following, when he ceased to operate or occupy them. 30

The two copies of the lease were kept by Mr. Wharton for several weeks. In the meantime Mr. Wharton had

become dissatisfied with the bargain, and sought to have its terms modified. Some attempts were made by the parties towards an amicable adjustment, but without success.

In November, 1880, the bill was filed praying that the defendant be decreed to execute and deliver the lease as mutually agreed on, and reduced to writing by the parties at Hackettstown on the 25th, of February preceeding.

10

The defences mainly relied on are that the representations of Stoutenburgh, as to the character and productiveness of the mine, and on which the defendant was induced to lease it, were erroneous; not intentionally false but over sanguine and mistaken; and next that no specific performance can be decreed because the contract was not complete and certain in all its parts, and because it was not reduced to writing and signed by the parties as required by the Statute of Frauds.

20

My conclusion after giving to the evidence and the arguments of counsel upon the questions of fact and law that were discussed before me, the best consideration I could bestow, is that the defendant should be decreed to execute the lease in manner and form as prepared on the 25th of February, 1880, copies of which, executed by Stoutenburgh, were sent him as stated above.

30 The charge that he was misled by false or erroneous representations is not sustained, I think, by the proofs. Nor, as I have before said, were the terms of the contract left indefinite and incomplete. It does not seem to me needful to review the evidence on either of these points, and I shall therefore content myself with simply stating the conclusions of fact at which I have arrived. Nor do I think that the relief sought for is barred by the Statute of Frauds which is set up as a defence in the answer.

I think that the acceptance and working of the mines by the defendant was a part performance of the contract which takes this case out of the Statute of Frauds, if it be otherwise within it. Thinking it clear as I do that a full, precise and completed agreement for the possession and operation of the mines and the purchase of the property, agreed to be sold therewith, existed between the parties when they separated on the twenty-fifth of February and finding that Mr. Wharton took possession with this knowledge on his part of Mr. Stoutenburgh's understanding and expectations and with copies of the written lease, signed by and binding on Stoutenburgh, in his hands without objection to their correctness, and without suggesting that they contained anything not agreed on, or that they omitted anything agreed to be inserted, I am constrained to hold that he cannot now avail himself of the statute, and, after having experimented to see whether the bargain was or was not a good one, escape from its obligation and subject the complainant to very great loss by the objection that the bargain itself, though in writing, had not been signed as the statute requires. The Statute of Frauds does not apply where the verbal contract has been partly performed, but the conduct or transactions relied on as part performance, must be referable to the contract sought to be enforced. I am unable to see how it can be questioned that the part performance in the present case was in pursuance of the contract in the lease sent to Mr. Wharton several days before possession taken.

10

20

30

The obligation to execute the lease arises against Mr. Wharton from his letter of acceptance of January 21st, 1880, in connection with the formal lease, subsequently agreed on in Hackettstown, and his subsequent recognition of it by what he did in performance. He says in that letter that he accepts Mr. Stoutenburgh's proposition for

leasing his magnetic ore lands, on Schooley's Mountain, and regards the arrangement as mutually made, adding as follows : "of course a formal lease will be prepared and signed by us at a more convenient time before the expiration of your existing contract to deliver ore, which I understand will be completed some time in March. Please acknowledge receipt of this and thus confirm the bargain."

- 10 It was contended on behalf of the complainant that where a written contract is made and signed to execute a lease, and if the lessor and lessee could agree on the terms and the parties subsequently do agree on the terms and such terms are reduced to writing, though not signed by either, that the contract to execute the lease, though nothing further has been done under it, can be enforced in equity as not within the statute.

- 20 Without questioning the soundness of this doctrine I do not think it essential to be maintained in order to the granting of the relief prayed for in the present case.

- 30 In the argument the single point discussed was that of the execution of the lease. The complainant asked only that, and the defendant asked only that the bill be dismissed. The peculiar features of the case led me to inquire whether equitable and adequate relief might not be afforded by a decree intermediate between the two to which the argument was exclusively directed. Nothing intermediate was suggested by counsel, nor were any terms or conditions qualifying the decree sought for on either side proposed in answer to the inquiry looking to that end. My own reflections have not satisfied me that any other decree than that for a dismissal of the bill, or for the execution of the lease, is suitable to the case and my conclusion therefore is that the latter is required by the merits of the case.

IN CHANCERY OF NEW JERSEY.

Between

LUKE I. STOUTENBURGH,

Complainant,

and

JOSEPH WHARTON,

Defendant.

ON BILL

FOR

SPECIFIC 10

PERFORMANCE.

Filed November 22, 1880.

Humbly complaining, showeth unto your honor, your orator, Luke I. Stoutenburgh, of Schooley's Mountain, in the township of Washington, in the county of Morris, and 20 State of New Jersey, that he is seized and possessed and for several years last past has been seized and possessed of a certain farm or tract of land and real estate, sometimes called the "Stoutenbrorgh mining farm," situate on said Schooley's mountain, in said township of Washington, county and State aforesaid, containing about one

hundred and ten acres of land, and situate east of and adjoining lands or farm of Morris Dufford ; and that said lands or farm contains two or more veins or deposits of iron ore and other minerals ; and that previous to the twenty-fifth day of February, A. D. eighteen hundred and eighty, some considerable mining of iron ore had been done upon the said farm by your orator, and that the said veins of iron ore had been opened and developed by your orator ; and that two separate veins of iron ore had been opened and developed, and considerable quantities of iron ore of a superior quality had been mined and removed therefrom ; and that from on or about the first day of August, in the year eighteen hundred and seventy-nine, until the sixth day of March in the year eighteen hundred and eighty, your orator was engaged in operating and working the said mines, on the said farm, and in mining, raising, and selling iron ore therefrom.

And your orator further shows, that on or about the eighth day of January, in the year of our Lord one thousand eight hundred and eighty, he was visited by one James H. Collins, who represented himself to be the agent of Joseph Wharton, who was doing business in the city of Philadelphia, in the State of Pennsylvania, and that your orator then believed the said James H. Collins to be the agent of the said Joseph Wharton, and that he still so believes.

And your orator further shows, that at that said visit the said James H. Collins represented to your orator that the said Joseph Wharton was largely interested in blast-furnaces for the manufacture of pig-iron, and was buying or mining large quantities of iron ore for the supply of said blast-furnaces, and that the said Joseph Wharton was desirous of leasing from your orator the said mines of your orator, and the right of digging, mining and carrying away the iron ore from your orator's said farm.

And your orator further shows, that he, being willing to lease his said mines to the said Joseph Wharton, did, on or about the ninth day of January, in the year eighteen hundred and eighty, at the request of the said James H. Collins, submit to the said James H. Collins for transmission to the said Joseph Wharton, certain propositions of terms upon which your orator would lease his said mines and mineral lands, which said propositions were in substance as follows, viz :

“The lower mine I will lease in permanence for twenty 10  
 “years, with the usual conditions of surrender in case  
 “the mines may prove unproductive, for seventy cents a  
 “ton, with usual privilege of necessary buildings.

“The upper mine I will lease for twenty years at the  
 “rate of royalty of fifty cents a ton for the first two  
 “years—sixty cents a ton thereafter—pig-iron remaining  
 “not above thirty dollars per ton; but when pig-iron  
 “shall be worth thirty dollars or over, seventy cents roy-  
 “alty, so long as pig-iron remains over said thirty dol- 20  
 “lars. Or I will lease all the mines on Mine Farm to  
 “Mr. Wharton for twenty years for seventy cents royalty,  
 “but will require the working of both veins.

L. I. STOUTENBURGH.”

And your orator further shows unto your Honor, that on or about the twenty-third day of January, then following, your orator received from the said Joseph Wharton, by the hand of Mr. Collins, his agent, a letter which was in substance, form and effect as follows :

“PHILADELPHIA, Jan. 21st, 1880. 30

“L. I. STOUTENBURGH, ESQ.,

“DEAR SIR:—Mr. Collins reports that under all the  
 “circumstances he advises my acceptance of your propo-  
 “sition of 9th inst., for leasing your magnetic ore lands  
 “on Schooley’s Mountain. This I concluded to do, and in

“ fact have regarded the arrangement as virtually made  
 “ since receiving your said proposition.

“ Of course a formal lease will be prepared and signed  
 “ by us at more convenient time, before the expiration of  
 “ your existing contract to deliver ore, which I under-  
 “ stand will be completed some time in March.

“ Please acknowledge receipt of this and thus confirm  
 “ the bargain.

“ Yours Truly.

10

“ JOSEPH WHARTON.”

And your orator further shows that thereupon, and in compliance with such request of the said Joseph Wharton, your orator wrote a letter to the said Joseph Wharton, acknowledging the receipt of the letter from the said Joseph Wharton, and recognizing his acceptance of the proposition submitted to him by your orator, and your orator shows that the said letter was in form, substance and effect as follows, viz :

20

“ SCHOOLEY'S MOUNTAIN, Jan. 23d, 1880.

“ JOSEPH WHARTON, ESQ.,

“ DEAR SIR:—Yours of the 21st inst., by the hands  
 “ of Mr. Collins, is received.

“ In reply would say that I will adhere to the proposi-  
 “ tion made you through Mr. Collins on the 9th inst.,  
 “ although my mine is looking much more promising  
 “ than then. I infer from your letter that you wish not  
 “ only the one mine that I am now working, but that  
 “ your lease should include all the magnetic ore of the  
 30 “ farm.

“ As there are two distinct veins of ore, each of which  
 “ have been opened and partially worked, you will re-  
 “ member that my proposition specified the working of  
 “ each vein, so that I would have a greater income from  
 “ both than from one.

“ At the time of making the proposition to Mr. Collins

"it was also understood that if you should lease the whole property, that you would take my machinery and mining improvements at a fair valuation.

"I have thought best to mention these items so as to have no misunderstanding about them when the lease is taken.

"I expect to complete my contract with the Lehigh Iron Company about the middle of March.

"In order to have all things ready in time for you to take possession at the termination of my contract with said company, I will write and send you such a lease as I may think equitable, for your consideration and approval, if it shall suit you. 10

"I am very respectfully yours,

"L. I. STOUTENBURGH."

And your orator further shows, that this said letter was enclosed in another letter to Mr. J. H. Collins, which was in form and effect as follows, viz :

"SCHOOLEY'S MOUNTAIN, Jan. 24th, 1880. 20

"J. H. COLLINS, ESQ.,

"DEAR SIR:—Enclosed please find an open letter to Mr. Joseph Wharton, which if on reading you find to accord with my proposition the 9th inst., and our conversation about machinery, &c., please forward to him. If not, then please return to me, with comments.

"I am very respectfully yours,

"L. I. STOUTENBURGH."

And your orator further shows, that these two letters were sent or delivered to James H. Collins, the agent for the said Mr. Joseph Wharton. 30

And your orator further shows unto your Honor, that he thereupon prepared a form of a lease, and had it ready for submission to and approval of and execution by the said Joseph Wharton, and that subse-

quently on or about the twenty-fourth day of February, then following, your orator received through the United States mail a postal card from the said James H. Collins, which was addressed to your orator at his residence at Schooley's Mountain, and was in form and effect as follows, viz :

HACKETTSTOWN, 2d mo., 23d, 1880.

"DEAR SIR :—If convenient for you Mr. Wharton would  
 " be pleased to meet you at the Clarendon House, Hacketts-  
 10 " town, Wednesday evening, February 20th, 1880.

" Truly yours,

" JAMES H. COLLINS."

*per A. S. C.*

And your orator further shows, that in compliance with the said request your orator met the said Joseph Wharton, at the Clarendon House, in Hackettstown, on Wednesday evening, the twenty-fifth day of February, eighteen hundred and eighty, and then and there had  
 20 an interview and conference with him. And your orator further shows, that at the said interview and conference your orator submitted to the said Joseph Wharton the form of a lease which your orator had previously prepared ; and that at that interview and conference the said Joseph Wharton, and your orator together, read over and examined and considered the said form of lease of your orator's said farm and mining lands ; and that the said Joseph Wharton desired and urged some changes in the form of the lease then being considered by them ; and  
 30 that your orator consented and agreed to such changes, and that thereupon the said Joseph Wharton wrote the said desired alterations and indicated the said agreed upon changes, in the said form of lease then under consideration by the said Joseph Wharton, and your orator.

And your orator further shows unto your Honor, that the said Joseph Wharton and your orator then and there

mutually decided upon the said form of lease as then finally amended, and mutually agreed to the stipulations, covenants and conditions therein contained, and mutually agreed to be severally bound thereby.

And your orator further shows, that the said form of lease, then and there mutually agreed to by the said Joseph Wharton and your orator, was marred and defaced on account of interlineations and erasures at that time made therein, and that the said Joseph Wharton then and there requested your orator, at the early convenience 10 of your orator, to re-write the said lease, making two copies thereof, and expressly stated, and pledged, and agreed to and with your orator, that then he, the said Joseph Wharton, would sign and seal the same, and would return one copy thereof to your orator.

And your orator further shows, that the said form and agreement of lease as then as aforesaid mutually agreed upon, by and between the said Joseph Wharton and your orator was in form, and words, and effect, as follows, viz: "This indenture made            day of February, one 20  
 "thousand eight hundred and eighty, by and between L.  
 "I. Stoutenburgh, of the township of Washington, county  
 "of Morris, and State of New Jersey, and Joseph Whar-  
 "ton, of the city of Philadelphia, witnesseth, That for  
 "and in consideration of one dollar to him in hand paid,  
 "the receipt whereof is hereby acknowledged, and of the  
 "rents, stipulations, covenants and agreements herein-  
 "after mentioned to be paid, kept and performed on be-  
 "half of said Joseph Wharton, the said party of the  
 "second part, I, Luke I. Stoutenburgh, the said party of 30  
 "the first part, have granted, demised, leased and let, and  
 "by these presents do grant, demise, lease and let unto the  
 "said party of second part, his heirs, successors and as-  
 "signs the exclusive right and privilege of entering  
 "upon, searching for, mining, digging and carrying away  
 "any iron ore that may be found in, on or under all that

“certain lot or tract of land known as the ‘Stoutenburgh Mining Farm,’ containing about one hundred and ten acres, situate on Schooley’s Mountain, east of and adjoining lands of Morris Dufford.

“The said party of the second part for himself, his heirs, successors or assigns, does covenant and agree to pay to the party of the first part, his heirs and assigns the sum of sixty (60) cents for each and every ton of twenty-two hundred and forty (2240) pounds of iron ore  
 10 “so mined and carried away from the premises hereby demised; and he shall mine or pay for two thousand tons per year, and if in any one year he does not mine two thousand tons, and has paid the rent or royalty thereon, he may mine the deficiency in any subsequent year without paying any additional royalty or rent for the same.

“It is further agreed between the parties hereto, that the rent or royalty for iron ore mined and carried away from said mining farm, shall be paid quarterly, on the  
 20 “fifteenth of April, July, October and January, and for all ore that should have been mined in the quarter ending on the first of said months, while this lease remains in the possession of said Joseph Wharton; but should said Wharton dispose of this lease, or release his interest in the iron ore of said mining farm to any other party or parties, then the payment of royalty for ore mined, or that should have been mined, shall be made on or before the fifteenth of each succeeding month  
 30 “after such transferment of lease or interest in ore on said mining farm shall have been made.

“It is also agreed between the parties hereto, that said mining interest in said mining farm cannot be released to other parties or party, or this lease assigned to other parties or party without the approval in writing of the first party hereto, or his heirs, or assigns. Should royalty or rent of said mines not be paid within forty

“ days from the time it is due, then this lease may, at the  
 “ option of said first party hereto, become null and void.

“ The party of the second part shall weigh, or cause to  
 “ be weighed, all the iron ore taken from said demised  
 “ premises, on such scales as the parties hereto may agree  
 “ upon, and keep a correct account thereof, which account  
 “ shall at all reasonable times be open to the inspection  
 “ of the party of the first part, or his agent.

“ The said second party hereto agrees to have the mines  
 “ securely and properly timbered at all times, and to sink 10  
 “ the lower working shaft, where the engine now is, to the  
 “ depth of sixty feet deeper than it now is, before aban-  
 “ doning it, provided the ore therein shall not be suffi-  
 “ cient to make it remunerative mining, and a shaft on  
 “ the upper vein, which said second party also agrees to  
 “ sink to the depth of fifty feet lower than any one of the  
 “ shafts now is, on this upper vein; the object being to  
 “ more thoroughly prove the ground for iron ore.

“ It is further agreed between the parties hereto, that  
 “ the said second party will purchase all the machinery 20  
 “ and apparatus, consisting mainly of steam boiler, en-  
 “ gine, pump and pipes and fixtures, with mining imple-  
 “ ments now used in and about the mines, at \$1,800, pay-  
 “ able in May next. The engine-house and fixtures and  
 “ mining timber about the mines to be included in this  
 “ sale.

“ The party of the second part shall have the right to  
 “ enter freely on said lands with miners, workmen, horses,  
 “ wagons and cars, and may occupy the mines now opened,  
 “ or that may be opened, as much ground as may be 30  
 “ necessary for piling ore or waste material, and for dis-  
 “ charging water from mines, and for the erection of ma-  
 “ chinery and buildings, other than dwelling-houses, and  
 “ may do such other things as may be necessary for the  
 “ full enjoyment of the rights and privileges hereby

“granted and demised, at the same time doing no unnecessary damage to the crops or premises.

“The water from the mines is to be discharged in ditches, where it will do the least damage to the farm, and the shafts dug by second party, in which ore is not found, shall be filled up within three months after their abandonment.

“The second party hereto shall have the right to build dwelling-houses for miners on said premises, as may be  
 10 “necessary for their accommodation, in such places convenient to mines, as the said first party hereto may designate, and shall have the right to tear down or remove such dwellings, and any and all buildings or property belonging to him, at any time during the continuance of this lease, or within six months after its termination, without hindrance on the part of the first party, provided all rents and arrearage shall have been duly paid.

“It is hereby agreed that the party of the second part  
 20 “may terminate this lease at any time after shafts above mentioned shall have been sunken the specified depth, by giving six months’ written notification of his intention to do so, and upon the payment of all rents due, and upon the delivery of the mines to the party of the first part, free from all encumbrances, and he shall be exonerated from all claims whatever on account of said mines.

“This lease is to continue in force for twenty years from the date hereof, unless forfeited by non-payments of rent or by other specific stipulations contained in  
 30 “this indenture.

“In witness whereof, we the parties hereto, have set our hands and seals on the date above written.”

And your orator further shows, that in pursuance of the said agreement so made and entered into by and between your orator and the said Joseph Wharton, your orator performed all the acts and works so agreed to be

performed by your orator in the premises; and your orator, in pursuance of said agreement, and in full faith and reliance that it would be performed on the part of the said Joseph Wharton, permitted the said Joseph Wharton to enter into, and he did accordingly on the sixth day of March, in the year eighteen hundred and eighty, enter into and remain in possession of the said mines and mineral lands and premises, in the said agreement mentioned and referred to, and that on the sixth day of March, in the year eighteen hundred and eighty, your orator, in pursuance of the said agreement, and in the full faith and reliance that it would be performed and executed by and on the part of the said Joseph Wharton, did deliver over to the said Joseph Wharton all the machinery and apparatus, steam boiler and engine pumps and pipes, and fixtures, and hoisting apparatus, and mining implements, and the engine-house and fixtures, and the mining timber and mining tools about the said mines; and your orator further shows that all these said mines, mineral lands, goods and chattels, were then, on the sixth day of March, taken possession of by the said Joseph Wharton, and have since that time been used, occupied, controlled and retained for the possession of the said Joseph Wharton.

And your orator further shows, that your orator, in full faith and belief that the said Joseph Wharton would keep and perform his said agreement to execute the said agreements of lease, and in full reliance that he would keep and perform all the stipulations and covenants in the said agreement contained, delivered over and allowed the said Joseph Wharton to take and retain possession of the said mines, engine, pumps, mining machines, machinery, hoisting apparatus, tools, mining timber and all buildings and fixtures in and about the said mines, as hereinbefore mentioned and set forth in the lump or bulk, without having the different items thereof inventoried or appraised, or valued.

And your orator further shows, that the said pumps have been taken out of the mines by the said Joseph Wharton; that much of the machinery and apparatus has been entirely worn out; that other parts thereof have become very much deteriorated and diminished in value by use by the said Joseph Wharton, and that much of the other property and the mining timber has been converted to other uses, or cut up and used and rendered valueless, or has been used up in said mining operations  
 10 since the sixth day of March above mentioned.

And your orator further shows, that in pursuance of the said request and agreement of the said Joseph Wharton, as hereinabove mentioned, your orator did, at his earliest convenience, re-write the said agreement of lease, as mutually agreed to between them, on the said twenty-fifth day of February, A. D. eighteen hundred and eighty, making two copies thereof, and did sign and seal the said agreements, and did send them to the said Joseph Wharton, to be signed and sealed by him, fully expecting that  
 20 the said Joseph Wharton would fully and in good faith comply with his agreement, and would execute, sign and seal written agreements of lease, and would return one copy thereof to your orator.

And your orator further shows, that soon after he sent the said two copies of agreement of lease to the said Joseph Wharton to be executed by him, that your orator received through the United States mail a letter from the said Joseph Wharton acknowledging the receipt thereof, which said letter was in form as follows, viz :  
 30

“CAMDEN, N. J., March 4th, 1880.

“L. I. STOUTENBURGH, ESQ.

“DEAR SIR:—I have your two copies of the lease and  
 “shall give the matter attention to-morrow. Was  
 “closely occupied with other matters yesterday and shall  
 “be to-day. The house you spoke of had better be

"shown to Collins. What do you ask for it? I should think he might want it.

" Yours Truly.

" JOSEPH WHARTON."

And your orator further shows, the said Joseph Wharton, after taking possession of the said mines and mining apparatus, machinery, fixtures, and other materials as above set forth, continued to work the said mines, and to keep the machinery and pumps in operation until in the month of August, A. D. eighteen hundred and eighty, and that, during that time, he took out considerable quantities of iron ore, and sank the main shaft of the said mines to a depth of about twenty feet deeper than it was when he took possession of the same. 10

And your orator further shows that the said two copies of lease which were made out and sent to said Joseph Wharton, by your orator, as above set forth, were retained by the said Joseph Wharton, until the twenty-seventh day of May last, when they were returned unexecuted to your orator by Mr. Collins, the agent of said Wharton. 20

And your orator further shows, that the said Joseph Wharton now refuses to perform his said agreement, or to keep his said promises on his part, and refuses to sign, seal and execute the said agreement of lease for the said mines and mineral lands, and refuses to perform the covenants and agreements therein contained, and refuses to pay your orator for the said engine, machinery, mining apparatus, fixtures, tools, timber, and goods and materials taken by him, and refuses to pay for the royalty on the iron ore mined by him, or which should have been mined by him, although often requested by your orator so to do. And your orator well hoped that the said Joseph Wharton would have complied therewith as in equity and good conscience he ought to have done. 30

But now so it is, may it please your Honor, that the said Joseph Wharton, combining and confederating, to and with divers other persons, as yet unknown to your orator, but whose names, when discovered your orator prays may be inserted herein, with proper and apt words to charge them as defendants hereto, now to injure and aggrieve your orator in the premises, not only refuses to sign, seal and execute the said agreement of lease, and to keep and perform the covenants and agreements therein

10 contained and to pay your orator the several sums of money due him, but give out and pretend that he has not made any agreement of lease with your orator, and that he has not leased any mines or mineral lands from your orator, and has not taken possession of the same, and has not purchased any machinery, tools or other goods of any kind from your orator, and is under no obligation either in law or in equity to your orator. Whereas, your orator expressly charges the contrary thereof to be true.

20 All which actings, doings, and pretences of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury and oppression of your orator.

In tender consideration whereof, and for-as-much as your orator is remediless in the premises, at and by the strict rules of the common law, and is only retrievable in a court of equity, where matters of this nature are properly cognizable and relievable.

30 To the end, therefore, that the said Joseph Wharton, and his confederates, may respectively full, true, direct, and perfect answers make upon their respective corporal oaths, according to the best of his or their knowledge and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated, and they thereunto particularly interrogated.

And that the said Joseph Wharton may be decreed to sign, seal, and execute the said agreement of lease for the said mines and mineral lands of your orator, and to deliver the same to your orators; and that all the promises, agreements, and covenants so as aforesaid made by the said Joseph Wharton to your orator, may be specifically performed by him, your orator hereby undertaking to perform his undertakings in the premises.

And that the said Joseph Wharton may be decreed to pay to your orator the money due to your orator for the machinery, apparatus, steam-boiler, engine, pumps, pipes, fixtures, mining implements, engine-house and fixtures, and mining timber in and about the said mines. And that he may be decreed to pay your orator royalty on the iron ore mined, or which should have been mined, from the said mines and mineral lands, at the rate of sixty cents per ton, for not less than two thousand tons per year from the said sixth day of March, in the year eighteen hundred and eighty. And that the said Joseph Wharton may be decreed to pay to your orator all royalty or other moneys now due, or that may hereafter grow due, under the terms and conditions of the said agreement as above set forth. And that the said Joseph Wharton may be decreed to pay your orator all the costs and charges by him in this behalf sustained.

And that your orator may have such other and further relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience. May it please your honor, the premises considered to grant unto your order a writ or writs of subpoena, issuing out of and under the seal of this honorable Court, directed to the said Joseph Wharton, therein and thereby commanding him by a certain day, and under a certain penalty, therein to be inserted, to be and appear before your Honor, in this honorable Court, then an there to answer the premises, and further

to stand to and abide by, and perform such decree there.  
in, as to your Honor shall seem meet and agreeable to  
equity and good conscience.

And your orator will ever pray, &c.,

J. EMMETT STOUTENBURGH,

Solicitor of and of counsel with the complainant.

A true copy :—H. S. LITTLE, clerk.

IN CHANCERY OF NEW JERSEY.

10

Between

LUKE I. STOUTENBURGH,

Complainant,

and

JOSEPH WHARTON,

Defendant.

ON BILL, &c.

Answer of

JOSEPH

WHARTON.

20

Filed February 5th, 1881.

The answer of Joseph Wharton to the bill of complaint of Luke I. Stoutenburgh, complainant.

This defendant now and at all times hereafter saving and reserving to himself all, and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections, in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material or necessary for him to make answer unto, this defendant answering says, that he has been informed and believes it to be true that the said complainant owns or

claims to own some interest or estate in the farm on Schooley's Mountain, mentioned in said bill of complaint, and that the said complainant, at or about the time mentioned in said bill of complaint, was working, or having worked, on said farm a mine of iron ore. And this defendant further answering states and shows that at the times mentioned in the said bill of complaint, this defendant owned and was operating, or having operated, a blast furnace for the manufacture of pig iron, situate at  
10 the village of Hackettstown, in this State, and near said Schooley's Mountain, and was buying and using large quantities of iron ore for the use and supply of said furnace, and had at that time one James H. Collins employed as superintendent or manager of said furnace.

And this defendant, further answering, states and shows that as he has been informed and believes to be true, the said James H. Collins applied to the said complainant for the purchase of iron ore for the use of the furnace of this defendant, but the said complainant refused to sell such  
20 ore to the said Collins, for this defendant representing to said Collins that he, the said complainant, was under some contract or engagement to furnish all the iron ore raised by him to some other furnace or furnaces, and that said contract would not be completed until some time in the month of March, then next ensuing, that the said complainant represented to the said Collins that he was not desirous of continuing to work the said mine, and was desirous of leasing the same after he had completed his said contract or agreement with other furnaces; that  
30 the said mine was yielding and would yield large quantities of very valuable and rich iron ore, and that the said mine could be easily, advantageously and productively worked for iron ore, and urged upon the said James H. Collins to rent the said mine and mineral lands, or to induce or procure this defendant to rent said mine and mineral lands of said complainant, to work the same

for the use of the furnace of this defendant, and this defendant further shows that afterwards, and at or about the time mentioned in said bill of complaint, the said complainant sent to this defendant by and through the hands of the said James H. Collins, the proposition for the leasing of the said mine and mineral lands of the purport and effect, as this defendant believes, set forth in the said bill of complaint, and that this defendant, on or about the said twenty-first day of January, eighteen hundred and eighty, this defendant wrote the letter, or a letter, as this defendant believes of the purport and effect of the letter of this defendant of that date, set forth in the said bill of complaint, and thereby agreed to accept a formal lease of said mine or mineral lands, to be afterwards prepared and agreed upon by and between the said complainant and this defendant, and that the said complainant afterwards, and on or about the twenty-third day of January, in the year eighteen hundred and eighty, sent to this defendant, by or through the said James H. Collins, the said letter of the said complainant, of the date last aforesaid set out in said bill of complaint; but this defendant denies that he at any time accepted or agreed to the various stipulations, propositions or conditions in the said last mentioned letter contained, or any of them.

And this defendant further answering admits that on or about the twenty-fifth day of February, eighteen hundred and eighty, this defendant had an interview and conference with the said complainant, at the Clarendon Hotel, in the village of Hackettstown, and that at said interview the said complainant produced and submitted to this defendant, a paper purporting to be a draft of a formal lease which said complainant had prepared for his said mine and mineral lands, and that the same was then and there examined by the said complainant and this defendant, and various alterations and changes suggested

therein, and that some of said alterations and changes were written or indicated on the said paper, or draft of a formal lease prepared by said complainant, as aforesaid, by this defendant, and this defendant shows and states that at the said interview and conference it was agreed by and between the said complainant and this defendant, that the said complainant should re-write, or procure to be re-written, the said form or draft of said proposed lease, incorporating therein such alterations and changes, and should  
10 send or forward to this defendant the said draft or form of said proposed lease, when so re-written, for the approval and agreement of this defendant; and this defendant denies that at the time of the said interview or conference, between the said complainant and this defendant at the hotel at Hackettstown aforesaid, or at any other time, the said complainant and this defendant mutually agreed or decided upon the said draft or form of said proposed lease as then and there amended and changed, or that  
20 the said complainant and this defendant then and there mutually agreed to the stipulations, covenants and conditions in the said draft or form of said proposed lease, so amended and changed; or that the said complainant and this defendant mutually agreed to be severally bound by the said draft, or form of said proposed lease, so amended and changed, or by the provisions, stipulations, covenants, or conditions of said draft or form of said proposed lease so amended and changed, or that this defendant then or there stated or pledged to, or agreed with the said complainant that this defendant  
30 would at any time sign, seal or execute the said form of said proposed lease so amended and changed when the same should be re-written, or at any other time, and this defendant denies that he at any time, with the said complainant, or otherwise, decided upon or agreed to said form of said proposed lease, or any form of lease, or lease for said mine and mineral lands, or in any way agreed

to the stipulations, covenants, or conditions contained in said draft or form of said proposed lease, or of any lease with said complainant, or in any way agreed to be bound by the stipulations, covenants or conditions contained in said draft or form of said proposed lease, or any lease with said complainant, or that this defendant stated pledged or agreed to or with the said complainant to sign or seal or execute the said draft or form of said proposed lease, when re-written as aforesaid, or any lease written or to be written by the said complainant. 10

And this defendant, further answering, denies that at the said interview or conference between this defendant and the said complainant, at Hackettstown as aforesaid, the said complainant and this defendant mutually agreed to or agreed to any form or agreement of lease; and this defendant denies that at said meeting or conference at Hackettstown, or at any other time, this defendant and the said complainant mutually agreed upon, or agreed upon the said pretended form or agreement of lease, mentioned and set forth in said bill of complaint. 20

And this defendant, further answering, admits and states and shows, that shortly after the said interview and conference between the said complainant and this defendant, at Hackettstown above mentioned, the said complainant sent to this defendant two copies of a proposed lease or agreement of lease of said mine and mineral lands, which said copies were of the same purport and effect, as this defendant believes, of the said pretended copy of lease or agreement of lease, set out in said bill of complaint, and that at or about the time mentioned in the said bill of complaint this defendant wrote to the said complainant, that he had received the said copies of said proposed lease or agreement of lease; that upon the examination of said copies of said proposed lease or agreement of lease, the same proved to be unsatisfactory to this defendant, and this defendant did not in any way 30

approve of said proposed lease or agreement of lease, or agree to or execute the same, and that shortly afterwards this defendant returned the said copies of said proposed lease or agreement of lease to the said James Collins to be returned to the said complainant; and this defendant informed the said complainant that the said proposed lease, or agreement of lease, was unsatisfactory, and that this defendant did not approve of the same, and would not agree to or execute the same.

10 And this defendant, further answering, denies that this defendant and said complainant entered into or agreed to said proposed lease, or agreement of lease, set forth in said bill of complaint, or that the said complainant did or performed any acts or works agreed to be performed by him in pursuance of any agreement of lease made, or agreed to or entered into, by this defendant with said complainant.

And this defendant, further answering, states and shows that after the said complainant had sent to this defendant  
 20 the said two copies of said proposed lease or agreement of lease, for the approval of this defendant, as aforesaid, and after this defendant had written and sent to said complainant the letter of this defendant set out in said bill of complaint, and dated the fourth day of March, eighteen hundred and eighty, and when the said complainant well knew that this defendant had not in any way approved of or agreed to said proposed lease, or agreement of lease, mentioned and set out in said bill of complaint, or of any lease or agreement of lease between  
 30 the said complainant and this defendant for said mine and mineral lands, the said complainant went to the said James H. Collins and represented to him that he, the said complainant, had leased the said mineral land, mine and fixtures to this defendant, and that the said complainant was to deliver the possession thereof to the said James H. Collins, for this defendant; that the said com-

plainant was about to cease operating or working said mine and fixtures, and the said mine would be greatly injured, and this defendant greatly damaged by the accumulation of water therein, if the said engine and pump was not continued to be worked and run for the purpose of keeping the water out of said mine; that the said James H. Collins, then believing and relying upon the said statements and representations of the said complainant, did, on or about the sixth day of March, eighteen hundred and eighty, without the knowledge, consent or authority of this defendant, take possession of said mine and engine and pump connected therewith, and commenced to work, and worked the said engine and pump for the purpose of keeping the water out of said mine; and this defendant denies that the possession of said mine was taken in pursuance of said proposed lease, or agreement of lease, set out in said bill of complaint, or in pursuance of any lease or agreement of lease, made or agreed upon, by and between this defendant and said complainant; and this defendant states and shows, that after the said complainant had procured the said James H. Collins to take the possession of the said mine, &c., as aforesaid, this defendant, by and with the consent of the said complainant held the possession thereof, and entered into and had other and further negotiations with the said complainant for a lease or agreement of lease of said mine and mineral lands, or some of them, or some part thereof, but that failing to conclude or agree upon a lease, or agreement of lease, for said mine and mineral lands, &c., this defendant afterwards gave up the possession thereof as hereinafter more fully stated and set out.

And this defendant further shows, that after the said complainant had procured the said James H. Collins to take possession of the said mines, etc., as aforesaid, the boiler and engine and pump used by the said complain-

ant for taking the water out of said mine, was found to be entirely insufficient and inadequate for that purpose, and this defendant had to procure another boiler and set it at said mine and procured another pump and placed it in said mine, for the purpose of keeping the water out of said mine, and used the said boiler and pump so procured by this defendant for that purpose all the time this defendant continued to hold the possession thereof; and this defendant states and shows that the said pump, that had been  
10 used by the said complainant in said mine, was carefully taken out of said mine and carefully stored in a building or boiler-house that the said complainant had erected over the boiler of the said complainant, used by him in operating or working said mine, and that the said boiler and pump remained stored in said building all the time this defendant had possession of said premises, without, in any way, being used or injured; that the boiler taken upon the said premises by this defendant was set in another and different place from the place where the  
20 boiler of the said complainant was set, and so as not in any way to interfere with or injure the boiler of the said complainant, or the building erected by the said complainant, and in which his said boiler was set; and this defendant further states and shows, that after this defendant had procured his said boiler to be set, and his said pump to be placed in said mine for the purpose of taking and keeping the water out of said mine, this defendant, with the full knowledge and consent of the said complainant, attempted to mine iron ore in and from said  
30 mine; that after this defendant had spent a large amount of money in trying to mine and get iron ore in said mine, this defendant found that, with the expense of keeping the said mine free of the water therein, there was not sufficient iron ore therein to make the operating or working of said mine productive or remunerative; and this defendant shows and states, that all the iron ore found in

and mined in said mine, while this defendant worked it, was left by this defendant on the said premises, no part thereof having been removed or taken away by this defendant or by any other person or persons for this defendant's use, and this defendant denies that the said machinery or apparatus, around, or on, or in the said mine and premises, at the time the said complainant procured the said James H. Collins to take possession thereof, as aforesaid, or any part of it, has been entirely worn out, or worn out, or that any part of said machinery or apparatus has become very much deteriorated or diminished in value by the use of this defendant, or that the other property or mining timber on said premises, as aforesaid, has been converted to other uses, or cut up, or rendered valueless, or has been used up by this defendant in working said mine after the said complainant had procured the said James H. Collins to take the possession of said mine and premises as aforesaid, or at any other time; and this defendant further states, shows and charges that the said machinery, apparatus, tools, property and mining timber on the said premises and in the said mine, where the said complainant procured the said James H. Collins to take possession thereof, as aforesaid, and such parts thereof as were used by this defendant during all the time this defendant had possession thereof, and worked said mine, as aforesaid, were used in a careful, proper and workmanlike manner, and that such as were not used by this defendant were properly and carefully stored in the building aforesaid of the said complainant, on the said premises and cared for, and that the same were not worn out, deteriorated or diminished in value, or converted to other uses or cut up or rendered valueless or used up, and that the same were in good condition at the time they were surrendered and given up by this defendant to the said complainant, as they were at the time the said complainant procured the said James H. Collins to take possession

thereof, as aforesaid, reasonable wear and tear only excepted.

And this defendant, further answering, denies that on the twenty-fifth day of February, eighteen-hundred and eighty, the said complainant and this defendant mutually agreed upon, or agreed upon any lease or agreement of lease for said mine, mineral lands and premises, and this defendant admits that shortly after the said twenty-fifth day of February, the said complainant sent to this defendant two copies of a proposed lease or upon any agreement or lease, or agreement of lease, prepared by the said complainant for approval and execution by this defendant, and that on the receipt thereof this defendant wrote to the said complainant the letter of this defendant bearing date the fourth day of March, eighteen hundred and eighty, set out in said bill of complaint, and that afterwards and after this defendant had examined the said proposed lease or agreement of lease, this defendant notified the said complainant that the said proposed lease, or agreement of lease, was not satisfactory to this defendant, and that this defendant would not agree to or execute the same, and that shortly thereafter this defendant returned the said proposed lease, or agreement of lease, (so prepared by the said complainant), unexecuted by this defendant to the said James H. Collins, and instructed him to return the same to the said complainant, but of the time when the same were delivered to and received by the said complainant this defendant knows not and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief, or otherwise, whether the said complainant did not receive the same until the twenty-seventh day of May, eighteen hundred and eighty.

And this defendant, further answering, admits that after the said complainant had procured the said James

H. Collins to take possession of the said mine and premises, as aforesaid, this defendant worked the said mine for some time as above mentioned; but this defendant denies that he worked said mine until in the month of August, eighteen hundred and eighty; and this defendant admits that in working said mine he took out and mined some iron ore, but this defendant denies that in the working of the said mine by this defendant, he mined or took out any considerable quantity of iron ore; and this defendant shows, states and charges, that in the working of said mine by this defendant as aforesaid, the same proved to be unproductive and wholly unremunerative, and that all the iron ore mined and taken out of said mine by this defendant, while working the said mine, was left by this defendant on the said premises, no part thereof being removed therefrom by this defendant, or by any other person or persons for this defendant, or for the use of this defendant. 10

And this defendant, further answering, shows, states and charges, that after the said complainant had procured the said James H. Collins to take possession of the said mine and premises, as aforesaid, and after this defendant had ascertained that the boiler and pump used by the said complainant for taking and keeping the water out of the said mine were wholly inadequate for that purpose, and after this defendant had procured and set and placed another boiler and pump, at and in said mine, for keeping the water therefrom, as aforesaid, and after this defendant in working the said mine for iron ore had found the same to be unproductive and wholly unremunerative as aforesaid, and after the negotiations between the said complainant and this defendant for a lease or agreement of lease for said mine, mineral lands and premises had failed, and on or about the twenty-second day of June, eighteen hundred and eighty, this defendant notified the said 20 30

complainant that this defendant would abandon and give up the possession of said mine and premises, and that afterwards, and on or about the first day of July, eighteen hundred and eighty, this defendant had a personal interview with the said complainant, and there notified and told the said complainant that the said proposed lease or agreement of lease had always been unsatisfactory to this defendant; that the working of the said mine by this defendant had proved to be unproductive and unremunerative, and that this defendant would give up, surrender and abandon the said mine and premises to the said complainant, and that afterwards and in the said month of July, this defendant removed the boiler, pump and machinery and tools placed and put thereon by this defendant, and gave up and surrendered the said mine and premises to the said complainant; and this defendant denies that from the time the said complainant procured the said James H. Collins to take possession of the said mine and premises, as aforesaid, until the time of the filing of the bill of complaint in this cause, this defendant had or held possession of the said mine and premises, machinery, apparatus or tools, or that during that time the same has been held for the possession of this defendant; and this defendant denies that at any time any lease, or agreement of lease, of or for the said mine, mineral lands or premises, was ever agreed upon, or made, or concluded, or entered into by and between the said complainant and this defendant.

And this defendant further submits to this court, and respectfully insists that the said proposed formal lease of said mine, mineral lands and premises, would, if executed, be a contract or agreement for an interest in or concerning lands, tenements, and hereditaments, and that by the act of the Legislature of the State of New Jersey entitled "An act for the prevention of frauds and perjuries," approved March 27, 1874, it is among other things

enacted that no action shall be brought upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized, and this defendant insists on the said statute and claims the same benefit and advantage thereof as if he had pleaded the same. And this defendant denies all and all 10  
manner of unlawful combination and confederacy where-  
with he is in and by said bill charged without this, that  
there is any other matter, cause or thing in the said com-  
plainant's said bill of complaint contained, material or  
necessary for this defendant to make answer unto, and not  
herein and hereby well and sufficiently answered, con-  
fessed, traversed and avoided, or denied, is true to the  
knowledge or belief of this defendant, all which mat-  
ters and things this defendant is ready and willing to  
aver, maintain and prove as this honorable court shall 20  
direct, and humbly prays to be hence dismissed with his  
reasonable costs and charges in this behalf most wrong-  
fully sustained.

P. L. VOORHEES,

Solicitor for and of Council with Defendant.

STATE OF NEW JERSEY, }  
CAMDEN COUNTY. } ss.

Joseph Wharton, being duly affirmed according to law, deposeseth and saith he is the defendant named in the 30  
above answer; that the matters, facts and allegations in  
the above answer set forth and contained, so far as they  
relate to the acts and deeds of this deponent are true, and  
so far as they relate to the acts and deeds of others  
he believes them to be true.

JOSEPH WHARTON.

Affirmed and subscribed at Camden, in this county aforesaid, this fifth day of February, A. D. 1881, before me, a Master in Chancery of the State of New Jersey.

MARTIN V. BERGEN, M. C. C.

IN CHANCERY OF NEW JERSEY.

Between

LUKE I. STOUTENBURGH,

Complainant,

and

JOSEPH WHARTON,

Defendant.

} Testimony.

10

Before His Honor Vice-Chancellor AMZI DODD.

Mr. J. E. STOUTENBURGH and Mr. H. C. PITNEY, for complainant. 20

Mr. P. L. VOORHEES, for defendant.

Transcript of short-hand report in evidence, taken in the above stated case, on the hearing thereof at Morristown court house, Morristown, N. J., on Wednesday, July 13th, 1881.

LUKE I. STOUTENBURGH, a witness produced in his own behalf, being duly sworn according to law, deposeseth and saith :

Direct examination :

By Mr. Pitney :

- Ques. How old are you ?  
 Ans. I am sixty-four, sir.
- 10 Ques. And by profession ?  
 Ans. I have no profession.  
 Ques. You are a school teacher aren't you ?  
 Ans. Yes, sir.  
 Ques. You run a seminary in Chester ?  
 Ans. Yes, sir.  
 Ques. And that is on Schooley's Mountain ?  
 Ans. Yes, sir.  
 Ques. Do you own a farm on Schooley's Mountain besides the seminary farm ?  
 20 Ans. Yes, sir.  
 Ques. How far from the seminary ?  
 Ans. Directly across, three-quarters of a mile.  
 Ques. Is there a mine on that farm ?  
 Ans. Yes, sir.  
 Ques. How many different veins of ore ?  
 Ans. We traced two veins distinctly, and one vein moderately.  
 Ques. Did you open both of them ?  
 Ans. All three of them ; yes, sir.
- 30 Ques. Just locate on this diagram here, a copy of which has been handed to the Chancellor, where the veins are ?  
 Ans. (Pointing to diagram.) This is the upper vein, and this is the middle vein, and this is the lower vein ; this is the shaft which was worked first, and this is the one he was working.

Ques. What you call the upper vein was the furthest away from the road?

Ans. Yes, sir.

Ques. Did you work that mine yourself?

Ans. I worked it in 1873, sir.

Ques. You opened it 1873?

Ans. Yes, sir.

Ques. And from that time on how was it?

Ans. I opened it in 1872, and it was worked in 1872 and 3. 10

Ques. From that time on has it been worked more or less?

Ans. It was worked about three years, all the mines together; that was worked about a year and a half, from which I got out about six thousand tons of ore.

Ques. Do you know James H. Collins?

Ans. Yes.

Ques. Where does he live?

Ans. Hackettstown.

Ques. What is his business? 20

Ans. Superintendent of Mr. Wharton's furnace.

Ques. At Hackettstown?

Ans. Yes, sir.

Ques. Were you working this mine in the winter of '79 and 80?

Ans. Yes, sir.

Ques. Did you have a boiler in it?

Ans. Yes, sir.

Ques. And machinery? 30

Ans. Yes, sir.

Ques. Raising ore and water?

Ans. Yes, sir; raising ore and water.

Ques. Who worked it for you?

Ans. Samuel Scadden was the foreman.

Ques. To whom did you sell your ore?

Ans. I sold the ore I was raising then to the Lehigh Iron Company.

Ques. On a contract?

Ans. Yes, sir.

Ques. Did you have any correspondence or talk with Mr. Collins about leasing it to Mr. Wharton?

Ans. Yes, sir.

Ques. And made the written proposition which is set out in the bill?

10 Ans. Yes, sir; a written proposition, I don't remember the particulars about the proposition.

Ques. Well, I refer to the one set out in the bill, and which preceded the writing of the lease?

Ans. Yes, sir.

Ques. I show a letter from Mr. Collins, dated January 7th, 1880. Did you receive that?

Ans. I presume that I did, sir.

Ques. Well, did you receive that from Mr. Collins?

Ans. I think I did, sir.

20 The complainant's counsel offered said letter in evidence and same was marked "Exhibit 1," for complainant.

Ques. Who is Mr. Wiggins?

Ans. He is superintendent of mines for the Bethlehem Iron Company.

Ques. Is he, or not, an expert in mining and mines?

Ans. He is supposed to be, sir; he has been long at it.

Ques. Did Mr. Wiggins or Mr. Collins come to your mine in pursuance of that letter?

30 Ans. Mr. Wiggins, Mr. Collins and Mr. Wharton came.

Ques. All three?

Ans. Yes, sir.

Ques. What did they do when they came there?

Ans. They walked over the farm to the different openings and examined them carefully, and went down into

the lower mine ; Mr. Collins—young Mr. Collins, Albert Collins.—(Interrupted.)

Ques. The son of James H. Collins ?

Ans. Yes ; and Mr. Wharton went down into the mine and examined it.

Ques. Mr. Wharton, himself ?

Ans. Yes, sir.

Ques. Joseph Wharton ?

Ans. Yes, sir.

Ques. And young Mr. Collins ?

10

Ans. Yes, sir.

Ques. Descended into the mine ?

Ans. Yes, sir.

Ques. Were the ores out there exposed on the surface when they came there ?

Ans. About eighty tons.

Ques. Did they look at those ?

Ans. Very carefully.

Ques. Did you put any obstruction in their way of inspecting the mine ?

20

Ans. No, sir ; I asked them to examine it carefully.

Ques. How long were those two gentlemen down the mine ?

Ans. I should judge from a quarter to one-half hour ; I could not tell exactly.

Ques. Do you recollect what day of January they were there ?

Ans. I do not, sir.

Ques. Just look at this paper I now show you, dated January 9th, 1881, which, I believe, is a copy of the one set out in the bill. Did you write that ?

30

Ans. Yes, sir.

Ques. Do you recollect whether or not you gave a copy of it to anybody ?

Ans. To Mr. Collins.

Ques. Before or after he had been up there to look at the mine?

Ans. Before, sir.

Ques. Before he looked at the mine?

Ans. I think so; I don't know; I could not say definitely.

Ques. Was, or was not, it about that time?

Ans. About that time. It was before, sir, I remember now.

10 By the Court:

Ques. Before they came to see the mine?

Ans. Yes, sir.

Further direct examination.

Ques. It was before they came to see the mine that you made that proposition?

Ans. Yes, sir.

20 Ques. They say in their letter of the 7th, January, which Mr. Collins wrote you; he says they will be there the next morning at nine o'clock; do you recollect whether they came in pursuance of that appointment?

Ans. He was there, sir; but I don't recollect whether it was in pursuance of that letter; I suppose it to be.

By the Court:

Ques. Did he come the next morning?

Ans. I suppose so; but I don't recollect distinctly.

30 Further direct examination.

Ques. Did they come twice to inspect the mine?

Ans. Mr. Wharton did not, but Mr. Collins was there twice, sir.

The complainant's counsel offered the said letter in evidence, and the same was marked "Exhibit 2, for complainant."

Ques. Now just look at this letter which I show you, dated January 21st, 1880?

Ans. I received that from Mr. Wharton.

Ques. By the regular course of mail?

Ans. Yes, sir.

The complainant's counsel offered the said letter in evidence, and same was marked "Exhibit 3, for complainant."

By complainant's counsel: We gave you notice to produce the letter of January 24th, to Mr. Collins, which 10 is set out in the bill.

By defendant's counsel: I wrote to Mr. Wharton to make search for that copy; he wrote me saying he would search and would try to be here with it to-day; we cannot produce it because he has not yet arrived.

By Mr. Pitney: There is no doubt about this letter being competent, because they admit the letter.

Ques. You wrote a letter to Mr. Wharton on the 23rd 20 of January?

Ans. Yes, sir.

Ques. Did you write with that a note to Mr. Collins?

Ans. Yes, sir.

Ques. Did you keep a copy of what you wrote to Mr. Collins?

Ans. I don't know, sir; I don't remember whether I have a copy of it or not.

Ques. Why, that is a copy?

Ans. Oh, yes. Well I kept a copy of all the letters, sir. 30

Ques. Is that a copy of the letter you wrote to Mr. Collins, and which you inclosed with the letter to Mr. Wharton?

Ans. I suppose it to be, sir.

Ques. By the Court: It is your handwriting, is it not?

Ans. Yes, sir.

Ques. Did you make a copy of the letters you sent?

Ans. I made a copy of every letter.

Ques. And you copied that?

Ans. Yes, sir; that is my handwriting, and it is a copy.

By Mr. Pitney: We have given notice to Mr. Wharton to produce the other; I offer this in evidence.

Marked "Exhibit No. 5, for the complainant." Letter read.

By Mr. Pitney: If you have the original letter of  
10 January 23d, we will put that in, too?

By Mr. Voorhees: I have not got it here in my possession.

By Mr. Pitney: Then I will also offer in that connection a copy, in order to keep the documentary evidence in order. It is a copy of the letter of January 23d, which is admitted by the answer.

Marked "Exhibit No. 4, for the complainant."

Ques. Now did you do anything about preparing leases in that correspondence, or after that correspondence?

20 Ans. I prepared him a lease and sent it to him.

Ques. To whom?

Ans. I forget whether I sent it through Mr. Collins or directly through the mail.

Ques. Well, to Mr. Wharton?

Ans. Yes.

By the Court:

Ques. Was the lease prepared before the Hackettstown  
30 meeting?

By the witness: Yes, sir; the original lease was.

Ques. Just look at that, and see if that is the paper.  
(Handing witness the paper.)

Ans. Yes, sir.

By Mr. Pitney: That is the one that was used before

they had the Hackettstown meeting, and has the emendations in Mr. Wharton's handwriting in it.

By the Court: That is the paper which he sent to Mr. Wharton, or a copy of it?

By Mr. Pitney: This is the original paper sent to Mr. Wharton, and has the emendations which we say are in Mr. Wharton's handwriting.

Ques. Was that sent to Mr. Wharton? 10

Ans. Yes, sir; by mail.

Ques. As well as the others?

Ans. Yes, sir; and he returned it to me through Mr. Collins at the meeting at Hackettstown.

(Complainant's counsel offered said paper in evidence and same was marked "Exhibit 6.")

Ques. Now do you recollect how you got it to Mr. Wharton, whether it was through Mr. Collins or direct through the mail?

Ans. I cannot say sir, whether it was through Mr. Collins or directly by mail. 20

Ques. Well; I show you a postal card dated February 23d, 1880, see if you received that?

By Mr. Voorhees: Who is that from?

By Mr. Pitney: James H. Collins.

By witness:

Ans. Yes, sir. 30

(Complainant's counsel offered said postal card in evidence, and same was marked "Exhibit 7." Postal card read.)

Ques. Now, did you meet on the 25th of February, at Hackettstown?

Ans. Yes, sir.

Ques. Who did you meet there—who were present?

Ans. Mr. Wharton, Mr. James H. Collins, Mr. Albert Collins, and waiting was Mr. Ayers, of this town, but not connected with our business.

Ques. How happened he to be there?

Ans. He was trying to lease a mine to him.

Ques. Was the young man also in the employ of Mr. Wharton—young Collins—there?

10 Ans. Yes.

Ques. Now was this Exhibit No. 6, the first draft you made of the lease, there present?

Ans. Yes, sir.

Ques. Do you recollect who produced it?

Ans. Mr. Collins, he went for it; it was not there; it was at his house, and he went to his house to get it.

Ques. Then when you met, it was not present?

Ans. No, sir; but we waited until it became present.

Ques. Mr. Collins went out from the meeting and got  
20 it?

Ans. Yes, sir.

Ques. Now was it read over there or not?

Ans. Very carefully sir.

Ques. Were any changes made in it by any person, and if so by whom?

Ans. As we read it over we mutually agreed upon some changes, and they were put down by Mr. Wharton himself.

Ques. How?

30 Ans. With a pencil he interlined it.

Ques. Just look on the first page towards the bottom, I see the words "70 cents" seem to be erased in pencil, who did that?

Ans. Mr. Wharton.

Ques. And in the margin, "60" is written in pencil?

Ans. Mr. Wharton.

Ques. He wrote that ?

Ans. Yes, sir ; and I agreed to it.

Ques. On the second page near the bottom, the word "75" seems to be erased ?

Ans. Mr. Wharton erased it.

Ques. And "60" is written in the margin ? Who wrote it ?

Ans. Mr. Wharton, he wrote it.

Ques. In your presence ?

Ans. Yes, sir. 10

Ques. How did he come to do that ; was it by agreement between you ?

Ans. Yes, sir ; mutual agreement.

Ques. Now, on the third page—I will state to your Honor that these pages are written on one side, and they are numbered at the top, so there can be no dispute about what I mean by the third page. On the third page there are very considerable alterations ; who made all of those ?

Ans. Mr. Collins. 20

By the Court :

Ques. Mr. Collins ?

Ans. I ask your pardon, Mr. Wharton made them all.

Further direct examination .

Ques. He made the erasures and interlineations ?

Ans. Yes, sir.

Ques. Mr. Wharton made them all ?

Ans. Yes, sir. 30

By Mr. Pitney : I will read those on the third page, if your Honor pleases ; I will read it as it was before the alteration was made, and I will read it as it is now. (The counsel read the same.)

Ques. What was the understanding between you when you brought that in ?

Ans. Do you mean at the Clarendon Hotel?

Ques. Yes; as to the different changes all the way through; were they agreed upon or not by both parties?

Ans. Yes, sir; after the changes were made, Mr. Wharton said to me, "You write two copies of that lease, as changed, and send them to me, at Philadelphia, and I will sign one and return it to you, and I will sign the other and keep it myself, so that we may both each have a copy of the lease."

10 Ques. Well, what was said about his taking possession of the mine?

Ans. He was to take possession of the mine in March some time, sir; or he was to take possession of the mine as soon as my contract with those parties was through.

Ques. With the Furnace Company?

Ans. With the Lehigh Furnace Company. As soon as I could make a settlement with them he was to take charge of the mine. It was some time in March. No definite time was specified.

20 Ques. Was anything said about the water in the mine that night?

Ans. Yes, sir. It was stated to Mr. Wharton that the water was "quick" at that time of the year, and my pump and boiler was insufficient to keep the water out of it. It was a small boiler, and was insufficient to keep the water out of it, and we would work at a disadvantage. He said he had a boiler that was out of use, and that he would send it over to the mine, as it would then be there, and I could use it; that I could have the use of  
30 it until my contract was through, if I would go to the trouble of putting it up.

Ques. Was your pump in operation, and your engine in operation at the time Wharton and Collins and Wiggins were there?

Ans. Yes, sir.

Ques. At that season of the year was or not the water greater in the mine than in the summer time?

Ans. It is greater from January to the last of April generally. It was very quick then.

Ques. Was there a good deal of water at that time?

Ans. Yes, sir.

Ques. And your pump was put to its "trump," so to speak, to keep the water out?

Ans. Yes, sir.

Ques. Was that visible?

10

Ans. Yes, sir; we did all we could with the pump.

Ques. Well, could they see that themselves by looking at it?

Ans. It was stated to them sir, and they examined it.

Ques. At the meeting at Hackettstown the matter was mentioned again?

Ans. Yes, sir.

Ques. You told them you had hard work to keep the water out?

Ans. Yes, sir.

20

Ques. And he said he would send a boiler over?

Ans. Yes, sir, one he had had before.

Ques. How soon after that did they take possession?

Ans. They took possession on the 6th of March.

Ques. How was it done. Did you prepare the leases?

Ans. Yes, sir.

Ques. Immediately?

Ans. I prepared the leases within a day or two afterwards. I commenced that day, after I returned from Hackettstown and the second day I think I sent them over.

30

Ques. Who did you send them to?

Ans. To Mr. Wharton.

Ques. Directly by mail?

Ans. Directly by mail to Mr. Wharton.

Ques. See if this is one of the leases which you prepared?

Ans. Yes, sir.

Ques. That is one ?

Ans. Yes, sir ; but I did not do the interlining.

Ques. I understand that. This interlining here in red ink ; was that here when you sent it to Mr. Wharton ?

Ans. No, sir.

Ques. You made two ; were they intended to be copies ?

Ans. Yes, sir.

10 Ques. Look at this and see if this is the other one ?  
(handing witness another paper)

Ans. Yes, sir.

(Complainant's counsel offered said two papers in evidence, and same were marked respectively : (Exhibits " 8 A." and " 8 B. ")

Ques. You don't recollect the date at which you mailed these to Mr. Wharton ?

Ans. Not the date, but they were within two or three days after the interview.

20 Ques. Then it must have been in the month of February ?

Ans. Oh, yes sir ; not longer than three days after the interview at the most.

Ques. Now then I show you a letter from Mr. Wharton from Philadelphia, dated the 4th, March, 1880. Did you receive that ?

Ans. Yes, sir.

Complainant's counsel offered said letter in evidence, and same was marked " Exhibit No. 9, for complain-  
30 ant.

By Mr. Pitney : That letter is in the answer and it is not necessary to read it at this time.

Ques. Well, when did Mr. Wharton take possession, the 6th of March ?

Ans. Yes, sir.

Ques. What did he do? Was this boiler sent over that he talked of?

Ans. It was not sent over until two or three weeks afterwards, I think, sir.

Ques. What did they do when they took possession; how was it done?

Ans. I saw Mr. Collins and stated to him that we were working to a disadvantage on the ground of the quickness of the water, and that he had not sent up the boiler according to the agreement, and I asked him what I should do with the men under the circumstances; I could not get at ore from the bottom; the boiler would not keep off the water, and he agreed there to take possession of it then, and keep the water out themselves, until they would put the boiler down and run the mine properly. 10

Ques. By putting in new machinery?

Ans. Yes, sir.

Ques. Well?

Ans. And he asked me to retain the foreman, Mr. Scadden, and engineers for them, and let them run it for them, or for Mr. Wharton until they could put in the proper machinery; and everything that day was turned over to them, the next day, on the 6th, everything was turned over to Mr. Scadden and their agents; he ceased to be a superintendent of mine, and became the superintendent of Mr. Wharton, and every thing was put into his hands. 20

Ques. Mr. Collins authorized you to employ Mr. Scadden to work for him to keep the water out? 30

Ans. Yes, sir.

Ques. Did you pay any hands after that?

Ans. Not any; I paid my own hands up to the 6th.

Ques. I understand that, but I mean after that?

Ans. After that, nothing.

By Mr. Pitney: I call on you to produce the letter of the eighth of March directed, to Mr. Collins.

By Mr. Voorhees: Yes, I have it here.

Complainant's counsel offered said letter in evidence. Same was marked "Exhibit 10, for complainant."

Ques. Now did you receive a note in respect to that?

Ans. Yes, sir.

10

Complainant's counsel offered same in evidence, and the same was marked "Exhibit 11, for the complainant."

Ques. How soon did they come there and go to work?

Ans. Well, that is a hard question; I really cannot tell when they commenced working there.

Ques. Well, did any additional hands come there, and was any ore taken out?

Ans. Yes, sir; while I was away there was ore taken out; but I was away during the summer and it took them  
20 a long time to get the machinery down. It was done by piecemeal, and I don't know when they commenced working, or really how much work they did perform; I was away from home and the mine was entirely in their hands; I didn't observe it as before.

Ques. Well, do you know whether the new engine and pump was put in or not?

Ans. Yes, sir, I know it was; the boiler, engine and pump were in.

Ques. Do you know when they were put in?

30 Ans. The boiler was put in in March, if my memory serves me, and the engine in April, some time; I don't know when, but some time in April.

Ques. Were any hands put on—workmen—to take out ore and sink it deeper?

Ans. Yes, sir.

Ques. Do you know when that was done?

Ans. No, sir; I do not; it hadn't been done when I left home, and I knew nothing of any mining being done before that; I left home on the tenth of June.

Ques. You hadn't observed any actual mining before that time?

Ans. No, sir.

Ques. What had they been doing all that time?

Ans. Keeping the water out.

Ques. In regard to the machinery, what had they been doing? 10

Ans. Putting down a boiler.

Ques. You don't mean putting a boiler down into the mine?

Ans. I mean they set it up in position.

Ques. You mean they set it?

Ans. Yes, sir; they dug down deeper and put in brick-work, and put the boiler horizontally on it; and they put in their engine and put in their pump and kept the water out.

Ques. Was there any timbering done in the mine? 20

Ans. Yes, sir; but to what extent the other witnesses will state, who were here at the time.

Ques. What became of the materials, tools, and everything that was there at the time you met at the Clarendon Hotel, on the 25th of February. What became of it all?

Ans. They were all delivered into the hands of Mr. Scadden, as the agent of Mr. Collins.

Ques. Did you ever get any of them?

Ans. No, sir; none of them. I saw them lying on the banks and scattered around a few days ago; that is, the 30 pipes, &c., and the boiler was left unprotected, as was reported.

Ques. Never mind what was reported,—how was it unprotected?

Ans. Well, a part of the engine-house was open, so that the storm could get in; there was a roof over it.

Ques. And the pump and machinery, where was that? Was the pump taken out of the mine?

Ans. Yes, sir; I saw it through the cracks, a few days ago, in the tool-house, in the engine-house.

Ques. Was it a new or old one?

Ans. The old one that they purchased of me.

Ques. What became of the key to the engine-house?

Ans. They were delivered to Mr. Scadden, and that was the last I had seen of them.

10 Ques. Now, these leases that you sent to Philadelphia, were they signed as they are now when you sent them?

Ans. Yes, sir.

Ques. By you?

Ans. Yes, sir; and witnessed.

Ques. Now when did you next see these leases; how came they to be in your possession?

Ans. On or about the 27th day of May; Mr. Collins and Mr. Osmun—

Ques. Who was he?

20 Ans. He is in the employ of Mr. Wharton as overseer—they drove up the avenue, and I went out and met them there.

Ques. Do you mean the avenue of the seminary building?

Ans. Yes, sir; and they handed me these leases in a package; I did not open them.

Ques. Well, what did they say—did you make a memorandum shortly afterwards of what they said?

30 Ans. Yes, sir; I made a memorandum very soon afterwards, but the import of it was (Interrupted).

Ques. Just look at your memorandum, if there is no objection?

By Mr. Voorhees: He better state what he recollects about it.

Ques. Well?

Ans. Which do you want?

Ques. Go on with your evidence; look at your memorandum if you choose to refresh your memory, and if you don't want to—do without it?

(Witness referred to his memorandum.)

By Mr. Voorhees: I suppose we have a right to have the witness's memory?

By the Court: He has a right to refresh his memory by the memorandum. You have a right to look at the memorandum. 10

By Mr. Voorhees: Well, I object to the witness examining the memorandum before he gives his memory about it.

By the witness: The essential point that I got from this that I did not know, was the time that the record was made. It says that it was made on the 31st of—  
(Interrupted.) 20

Ques. Please give us your recollection of the interview without looking at the memorandum.

Ans. I met them as I said at the avenue, and he presented me with these leases in an envelope; I didn't look at them. He made a remark to the effect that if those interlineations were agreed to by me, and the changes he had made, he would go on with the mines, but unless it was he didn't know whether he would or not. It was to that effect, but I said to him that I would look at the leases as changed, and that if there were any changes there I could make—if there were any changes made I approved of, I would let them know. 30

Ques. So you didn't open it?

Ans. No, sir.

Ques. What makes you think there had been any changes made?

Ans. He indicated there were changes made, and if they were complied with, they would go on with the mines, or they might give it up.

Ques. What did you say?

Ans. I didn't look at it at all.

Ques. You didn't look at it?

Ans. No, sir; but I took it to my house and looked at it carefully.

Ques. Afterwards?

10 Ans. Yes, sir; and would not make the changes, and made no reply to it whatever.

Ques. On that day was any money paid to you?

Ans. Yes, sir.

Ques. How much, and by whom?

Ans. By Mr. Collins, the treasurer.

Ques. For what?

Ans. For work on the mine with my team; I think when I was away they had had my team and some other little things they purchased of me.

20 Ques. Purchased for what purpose?

Ans. For the mine, for work about the mine; they had some few things; I think the whole bill amounted to \$3.

Ques. Well, did you ever consent to the changes in the lease.

Ans. No, sir.

By Mr. Pitney: I here offer Exhibit 8B to show the changes.

30 Ques. Those changes are in red ink, (Interrupted.)

Ans. Will you allow me to correct my testimony?

Ques. Certainly.

Ans. I said I never agreed to any changes; there was some conversation in regard to the lease with Mr. Collins—young Mr. Collins, and—(Interrupted.)

Ques. When?

Ans. Some time during the time—I don't know when.

Ques. Was it after this thing ?

Ans. Not after that.

Ques. Not after the 27th of May ?

Ans. No, sir; before that; and I said that if they would carry out the agreement honestly and fairly I might make some little deduction on the royalty, if they would carry out their agreement.

Ques. Those changes in red ink in Exhibit 8B; who put them there ?

Ans. I cannot tell you; they were not in when I sent 10 them to Mr. Wharton, but were in when they came back.

(Mr. Pitney called the attention of the Court to the alterations.)

Ques. You never did agree to this lease as altered ?

Ans. No, sir.

Ques. Can you recognize the handwriting in the margin, this red-ink handwriting ?

Ans. It is Mr. Wharton's, sir.

Ques. Now, how long after that did they continue in possession there; working and running the mine, I mean, 20 and keeping the engine going ?

Ans. I was away from home, but it occurs to me it was about the first of August as near as I can make the calculation from the place where I was. I was in Monticello, and the Catskills when I received word from home, not from them, that they had taken the pumps (Interrupted.)

Ques. Well, that is your information; were the pumps taken out ?

Ans. They were.

Ques. Have you ever received any payment on the 30 leases whatever ?

Ans. No, sir.

Ques. Did you keep yourself posted to any extent as to the price of pig-iron during this time, Mr. Stoutenburgh ?

Ans. I read the papers and made inquiries about it, sir.

Ques. What was the tendency of the price of pig-iron during the spring of 1880?

Ans. In January the reports were \$40 a ton, and an upward tendency.

By Mr. Voochees: I object to this testimony.

By the Court: If he knows what the prices of pig-iron were, he can state.

10 Ques. Did you take the "Iron Age"?

Ans. No, sir; occasionally I looked at it, and the "Tribune" too.

By the Court:

Ques. In other words, did you watch the market quotations?

Ans. Yes, sir.

Further direct examination.

20 Ques. What was the price of pig-iron in January, 1880, pig-iron quotations?

Ans. No. 1 pig-iron, in the middle of January. In the middle of January about; they were forty dollars, with an upward tendency.

Ques. Forty dollars a ton?

Ans. Yes, sir.

Ques. Well, go on; how were they in March and April?

30 Ans. In the month of March—in the months of February and March—there was considerable firmness until the month of March. In the month of April they began to go down. They began to go down in the month of March, and in the month of April they went down, and in the month of May still further, and in the month of June still further, and to the first of July.

Ques. How low did they get then?

Ans. To twenty-two dollars.

Ques. What were the quotations in the market ?

Ans. I would not be willing to say ; they were less than twenty-two dollars. I saw no sales recorded less than that.

Ques. That is all.

Cross-examination :

By Mr. Voorhees :

Ques. When did you have your first interview with Mr. Wharton ? 10

Ans. On the sixth of January, sir.

Ques. Where were you ?

Ans. I was at the Clarendon Hotel.

Ques. What occurred at that interview ?

Ans. Some talk about ore. Mr. Wharton wanted to purchase my ore for the year ; he sent over to come there and see him.

Ques. Subsequent to that did he make you a proposition which is marked here Exhibit No. 2 ? 20

Ans. I don't understand you.

Ques. Was it subsequent to that that he made the proposition to you which is marked No. 2 ?

Ans. I think it was, sir.

Mr. Pitney : No. 1, is it not ?

The Witness : No. 1. That was the first interview I ever had with him.

Mr. Voorhees : Exhibit 1 is the letter from Mr. Collins. I refer now to Exhibit No. 2. 30

Ques. That was the first interview you ever had with him ?

Ans. Yes, sir.

Ques. When did you next meet with Mr. Wharton ?

Ans. I next met Mr. Wharton on the bank of the mine, sir. There was Mr. Wiggins, Mr. Collins and Mr. Wharton. It was when they went down to examine it.

Ques. Which Mr. Collins was with you at that time?

Ans. Mr. Albert Collins.

Ques. That was Mr. Collins the younger?

Ans. Yes, sir; the one that is by your side, sir.

Ques. He is the younger?

Ans. Yes, sir.

10 Ques. When next did you meet Mr. Wharton?

Ans. At the Clarendon Hotel, at the time of the consummation of the lease.

Ques. Were the alterations to that lease made at that time?

Ans. Yes, sir.

Ques. Was it agreed that the lease should be re-written?

Ans. Yes, sir.

20 Ques. Was it agreed that, after it should be re-written, it should be forwarded to Mr. Wharton?

Ans. Yes, sir.

Ques. Is that the agreement that was made at that time?

Ans. It was agreed that the bargain was consummated according to the lease, and that Mr. Wharton was to return to me the lease, signed by himself, keeping a copy of it himself. I sent him two leases; he was to sign each one of them, and to send me one back.

30 Ques. There was nothing said about his examining them and perfecting them at all—afterwards, after they were re-written?

Ans. No, sir; nothing was said about his examining them that I remember at all, sir.

Ques. His agreement then; was that you were to re-write the leases and he was to execute them?

Ans. He was to execute them after they were written;

that was understood, that they would be written in accordance with the amendments of the first, and his written in accordance with these emendations; he was to sign them and send one back to me.

Ques. Was it agreed at the time that he should take possession of the mine?

Ans. There was no special agreement; the agreement said sometime in March, as I understood it, and I could not say definitely; but sometime in March.

Ques. Was it agreed that he should take possession of 10 the mine before the lease was executed?

Ans. I ask your pardon, sir.

Ques. Was it agreed that he should take possession of the mine before the lease was executed?

Ans. No, sir; the lease itself gave him the privilege of taking possession of the mine as soon as the leases were signed by the parties.

Ques. Did you receive any other letter from Mr. Wharton about the time you sent the lease to him?

Ans. I received a letter from Mr. Wharton immediately 20 after the leases were received by him, stating his acceptance of them.

Ques. What was the date of that letter?

Ans. I could not tell the date of it, sir; but it was very soon after that.

Ques. Was it a letter that has been produced here this morning, and marked Exhibit 9, dated the 4th of March?

Ans. I think it was, sir.

(Letter handed to witness to read.)

Ques. Is that the letter? 30

Ans. (After reading.) Yes, sir; I received the letter from him about that time; I don't know the date that I received it. Let me read that letter again, please. (Said letter again handed to witness.)

Ques. Is that the letter you refer to by saying it was an acceptance of the lease?

Ans. No, sir; that letter simply indicates to me that

he had received it, and was so busy that he could not give it attention, but would do so immediately.

Ques. Did you ever afterwards receive any other letter from him about that time?

Ans. Sometime after that I received a letter. I don't remember the date of it, asking— (Interrupted.)

Mr. Pitney: Never mind stating the contents; don't state the contents of any paper.

10 Ques. About what time did you receive the next letter that you spoke of?

Ans. I should judge it to be between the 26th and 28th—no, not between the 26th, but between the 6th, 8th and 9th, of that month of March. I don't remember the date exactly.

Ques. Between the 6th, 8th and 9th of March?

Ans. Yes, sir; I judge so.

Ques. Didn't you receive it before the 6th, or on the 6th?

20 Ans. No, sir; not that I remember.

Ques. Have you got that letter which you received on or about the 6th of March?

Mr. Pitney: He didn't say he received it then.

Mr. Voorhees: Well, between the 6th and the 8th then.

Ans. Between the 6th, 8th or 9th of March, but the letters are in the hands of my attorneys.

30 Ques. Have you got that letter, sir?

Ans. They are in the hand of the attorneys.

Mr. Voorhees: Can you produce that letter?

Mr. Pitney: It is here sir. (Same produced.)

Mr. Voorhees: We will offer it as an exhibit then.

Ques. Did you answer that letter?

Ans. I believe I answered all of Mr. Wharton's letters.

Ques. (Handing witness another letter.) Is that your letter?

Ans. It is, sir. That is the answer to it.

Ques. That is your answer to it?

Ans. Yes, sir.

Defendant's counsel offered said two letters in evidence, and the same were marked respectively Exhibts 1 and 2. 10

Mr. Stoutenburgh, Jr., read Exhibit 1.

Mr. Voorhees read Exhibit 2.

By Mr. Pitney:

Ques. Have you a copy of that letter?

Ans. No, sir; but I must have had a copy of it; it may be at home.

Further cross-examination:

20

Ques. When did you next receive any communication from Mr. Wharton?

Ans. Communication from him?

Ques. Yes, sir.

Ans. Letters?

Ques. Yes, sir; letters.

Ans. I don't remember, sir. I received a letter from him in August, I think it was, or July, after sending in my bill to him in Philadelphia in July. 30

Ques. About what time in July?

Ans. The last of July, sir, towards the last of July, sir. No, I ask your pardon, sir, it must have been in the last of June, or the first of July; I have no record of the time of the year.

Ques. Did not you receive a letter from Mr. Wharton on or about the third day of April, 1880?

Ans. I may have received one, but I have no recollection about it now, sir; if you can refer to the letter, I would prefer it, and if you can let me look at the letter; I could tell you whether I received it or not.

Ques. Did not he write you a letter about the third day of April, in reference to this matter, claiming that the thing would not be carried out—that the lease would  
10 not be carried out, and objecting to parts of the lease?

Mr. Stoutenburgh, Jr., handed witness a letter.

By Mr. Pitney:

Ques. Never mind the contents of that letter; now state whether you had received a letter from him dated April third?

Ans. Well, that is a point that escaped my memory, sir.

20 Ques. Well, answer it now that you see it.

Ans. I have no doubt that I received that letter, sir, but I could not have given the date of it, sir.

Ques. Without seeing it?

Ans. Without seeing it.

Further cross-examination:

Ques. You have no doubt you received the letter on that day?

Ans. No, sir.

30 Ques. Is this is a copy of the letter you received?

Mr. Pitney: Here is the original.

Defendant's counsel offered said letter in evidence and the same was marked Exhibit 3d.

Ques. Did you receive any letters between the letter

dated the 6th of March, and this one dated the 3rd of April?

Ans. The letters have been out of my hands for a long time, and my memory does not serve me in regard to them, and I would not say whether I did or not. I have no particular remembrance of it; if I could see the letter I could tell you.

Defendant's counsel read the letter, Exhibit 3D.

By the witness: I received that letter.

10

Ques. Did you at or about that time write a letter to Mr. Wharton or Mr. Collins?

Ans. I think I did, sir.

Ques. You have forgotten it?

Ans. I answered all his letters, sir, respectively.

Ques. Did you answer that letter to Mr. Collins?

Ans. Yes, sir. (Referring to a paper.) That is in my handwriting. I wrote that, sir.

Ques. That was concerning this transaction, was it not, 20  
sir?

Ans. Yes, sir.

Mr. Voorhees: This is a letter from Mr. Stoutenburgh to Mr. Collins, dated April 3d, concerning the same transaction, and has an envelope accompanying it.

Mr. Pitney: We don't admit that that envelope is the envelope which contained the letter.

(Said letter and envelope were marked Exhibit 4D.)

30

Ques. Is that your handwriting on the envelope?

Ans. Yes, sir; but other letters passed between Mr. Collins and myself which I don't remember of.

Mr. Pitney: We don't want to be precluded by the two papers being put in together, for raising the question

as to that particular envelope containing that particular letter.

Ques. Did you receive any other letter from Mr. Wharton on the third of April?

Ans. I received a communication from him later, but I didn't receive any right after that, but if the letter was shown to me I could of course recall it. I received a letter from him in July.

10 Ques. Did you write any other communication to him?

Ans. I wrote to him in July, it seems to me there is another letter that I wrote him, but I don't remember to what it was an answer, sir.

Ques. Did you write a letter dated April 24th, 1880, (handing letter to witness.) Did you write that to Mr. Wharton?

Ans. Yes, sir.

20 Ques. (Handing witness another letter.) Did you write this letter to Mr. Wharton, dated May 19th, 1880?

Ans. Yes, sir; I wrote that letter.

Defendant's counsel offered said two letters in evidence; the first was marked Exhibit 5 D and the second Exhibit 6 D. Defendant's counsel also read said letters.

Mr. Pitney: Did you produce our answer to the letter of April 3rd?

30 Mr. Voorhees: We have no answer to that, Mr. Pitney; I have no copy of such answer here; we have neither original nor copy here; if it was ever received I have not it in my possession.

Mr. Pitney: I merely want it to appear on the notes that we called your attention to it, and you did not produce it.

Ques. Mr. Stoutenburgh, did you write an answer to the letter of April 3rd, from Mr. Wharton to you?

Ans. What is the import of the letter of April 3d ?

Ques. Here it is.

Ans. Yes, sir ; I stated so.

Ques. What letter is referred to in that Exhibit 5 ?

The Court : In the letter of April 24th ?

Mr. Voorhées : Yes, sir.

(Witness read said letter.)

Ques. Well, can you tell what letter it refers to ? 10

Ans. It refers to a conversation had with Mr. Collins. It seems to me that my answer had been received by Mr. Wharton, and that is another answer.

Ques. Have you a copy of the answer you sent to Mr. Wharton's letter ?

Ans. I think I have.

Mr. Pitney : In your possession ?

By the witness :

Ans. Well, it is misplaced ; then I always try to keep 20  
copies of my letters.

Ques. You have not got it ?

Mr. Pitney : We have not it here, sir.

Ans. I supposed I had copies of all the letters, and that they were in the hands of counsel ; I had that impression, and they may have been misplaced.

Ques. Did Mr. Wharton send you a letter about the 20th of June ?

Mr. Pitney : We will look in a moment and see. 30

Ans. I was away from home from the tenth of June, and I have forgotten about that.

Mr. Pitney : We have a letter here on the twenty-second of June, from Mr. Wharton to Mr. Stoutenburgh,

from which a press copy has evidently been made. You may see it, Mr. Voorhees, if you desire.

(Letter handed to counsel for defendant.)

By Mr. Pitney :

Ques. Where were you about the last of June ?

Ans. I think I was in Pennsylvania, at Bloomingburg, near the last of June ; was on the mountains for a day or two, and may possibly have been there ; but I was  
10 in Pennsylvania, too.

Mr. Voorhees : Will you furnish us with a copy of this letter, I have never seen it before ;

Mr. Pitney : You can have a copy.

Mr. Voorhees : I offer it in evidence. (The letter was marked Exhibit 7D.)

Further cross-examination :

Ques. Where did you meet Mr. Wharton on or about  
20 the first of July ?

Ans. In Philadelphia, sir.

(Mr. Voorhees read Exhibit 7D.)

Ques. Did you answer this letter of June 22d, at that time ?

Ans. What is the date of that letter, sir ?

Ques. June 23d.

Ans. Did I answer it.

Ques. Yes ; at the time of your interview ?

Ans. I think I answered it, sir, by that letter to him  
30 that I would be in Philadelphia, and yet I am not clear about it, sir.

Ques. At that interview did he tell you that he would give up the mine ?

Ans. He did not tell me that he would give it up, sir ; no, sir ; he did not.

Ques. He didn't tell you that he gave it up.

Ans. No, sir ; he didn't.

Ques. Did he tell you he had started to work there and would work it no longer ?

Ans. No, sir ; I could tell you what he did tell me, if you wish to hear it.

Ques. At that interview did Mr. Wharton tell you he didn't propose to go on any further with the work in the mine ?

Ans. No, sir.

Ques. Or words to that effect ?

10

Ans. No, sir ; he made me three propositions.

Ques. Did Mr. Wharton state to you at that interview that he had done all he expected to do there, and offer to pay you for what property of yours he had used ?

Ans. He made that as one of the propositions, sir ; to give me three hundred and fifty dollars and withdraw ; another proposition was.—(Interrupted.)

Ques. Did Mr. Wharton at that time offer to give you a boiler, and to withdraw and cease all operations there, and give you the boiler that was on the place ?

20

Mr. Pitney : May it please your Honor it is evident that this was an offer of compromise, I don't think that it ought to be offered in evidence.

The Court : I don't know what it may turn out to be ; he seems to be going into the particulars of the conversation ; of course I don't know what counsel's purpose is at present ; the best way will be to have it come in.

Mr. Pitney : Your Honor will allow us to note our objection.

30

Ques. That is all.

Re-direct :

Ques. You were shown a long letter written by you to

Mr. Wharton, dated the twenty-fourth of April, 1880, which has been read, in which you state you failed, or lost the opportunity to lease or sell your mine, owing to this contract with Mr. Wharton; was that true or not?

Ans. That was true, sir.

(Question objected to by defendant's counsel, as having nothing to do with case. Admitted.)

10 Ques. This letter states that you had written him a letter previously, and which you supposed had miscarried; had you written a letter to him previously, substantially stating the same thing?

Ans. Yes, sir; substantially stating the same thing, if I remember correctly.

Ques. Do you know whether or not it was written in answer to a letter of April 3d, which he wrote to you?

Ans. Yes, sir.

Ques. Have you a copy of the letter you wrote him between April 3d and 24th, with you?

Ans. I have not, sir.

20 Ques. Did you intend to keep copies of all your letters to Mr. Wharton?

Ans. I did.

Ques. Did you hand your counsel all you had in hand when this suit was being prepared for?

Ans. I intended to.

Ques. Can you now account for the fact that your counsel say that they have no copy of that letter?

Ans. No, sir.

Ques. Do you know where it is?

30 Ans. No, sir.

Ques. Unless it is mislaid?

Ans. I don't know where it is.

Ques. Have you intentionally kept back that from your counsel?

Ans. Nothing.

Ques. Now, did you get any direct reply from Mr.

Wharton to a letter of April 24th, 1880, that you know of?

Ans. That is the same one is it?

Ques. Yes, the long letter.

Ans. I think I did not, sir ; I don't remember.

Ques. If you have any it was handed to your counsel?

Ans. Yes, sir.

Mr. Pitney : Now the memorandum of May 19th, let me have that. (Defendant's counsel produced the same.) 10

Ques. The paper shown you marked Exhibit 6 for the defendant, being a sort of memorandum made by you and dated at Furnace, Hackettstown, the 19th of May 1880, how came you to make that?

Ans. I was conversing with Mr. Collins, the young gentleman, and he was speaking of Mr. Wharton's unwillingness to carry out the conditions, and stated that he wanted some compromise, and my intention in writing that letter was peace ; that is to have everything settled without litigation and as a compromise, if he would carry out the full intent of the agreement. 20

Ques. And so you left that memorandum?

Ans. Yes, sir.

Ques. Of concessions which you were willing to make?

Ans. Yes, sir ; if he would carry out the agreement—the lease.

Ques. Now, you got a letter from him dated the 23d of June, which has been produced here, and it commences this way, "my suggestions of willingness to explore the lower mine to the depth, &c.," counsel read letter down to the words ; "I withdraw it" did you ever receive any written suggestions from him of the kind he speaks of through a letter before that? 30

Ans. At the interview at Philadelphia there was some conversation.

Ques. Had you had an interview with him at Philadelphia before the 22d of June ?

Ans. No, sir ; that was afterwards.

Ques. Do you know to what he refers by saying in that letter of June 22d, " My suggestions of willingness to explore, &c." (Counsel read said letter.) Does that refer to any written communication from him ?

Ans. I don't know what it refers to.

Ques. Had you received any communication from him  
10 recently to that time ?

Ans. I don't remember it.

Ques. Do you know what it refers to if it does not refer to the original contract between you ?

Ans. I do not, sir ; I don't know what it refers to.

Ques. Have you any written communication from him to which that refers ?

Ans. I don't remember any ; if there is, it is in the hands of counsel.

Ques. Do you recollect how long after this date that let-  
20 ter actually came to your hands—the 22d of June ?

Ans. I don't know, sir ; I was away from home, and it may have been a week or two.

Ques. How soon after you got it did you go to Philadelphia, or write to him that you would be there ?

Ans. It was some time after that, I think, sir ; it might have been in July ; I think it was.

Ques. I showed you a letter from you to him, dated the first of July. Look at these two papers, one in your handwriting, and the other in the handwriting of Mr.  
30 Wharton, dated July 1st, and see whether or not that was the first communication that passed between you as to this matter after the 22d of June. Look at the papers and tell us where you were on the 1st of July ?

Ans. At Mr. Wharton's office, in Philadelphia, sir ; and that is the proposition that he made at the time.

Ques. What was your object in going there ?

Ans. I had been informed by Mr. Collins, I think, that Mr. Wharton wanted to see me very much.

Ques. And you had the letter of June 22d, also, I suppose?

Ans. Yes, sir.

Ques. And you went to Philadelphia?

Ans. Yes, sir.

Ques. Did you notify him beforehand that you would be there?

Ans. I think I did. 10

Ques. On what basis did you meet there? What was the date of the conference between you?

Ans. Mr. Wharton had, as I understood it, sent for me to make an amicable, friendly settlement of the difficulties of the mining interests.

Ques. Did he ask you to make any offer?

Ans. He made three propositions to me.

Ques. Who made the first proposition, you or he?

Ans. Mr. Wharton made the first proposition when we came together. I gave him a paper. 20

Ques. You gave him a paper?

Ans. Yes, sir.

Ques. How came you to make that paper out?

Ans. Well, for the purpose of amicably settling the difficulty.

Ques. Do you hold the paper in your hand which you made out? (Handing witness a paper.)

Ans. I have not read it yet.

Ques. Well do so.

Ans. (Witness did so.) Yes, sir; that is the paper. 30

Ques. And you handed that, or a copy of it, to him?

Ans. Well, my writing is always the same, and I don't know whether this is a copy or the original.

Ques. Did you leave the paper with him that you handed to him?

Ans. Yes, sir.

Ques. Very well, now ; did you get any reply from him on the spot, or shortly afterwards ?

Ans. I suppose I got this reply, if I mistake not.

Ques. The one you hold in your hand now ?

Ans. No, sir ; these are the propositions.

Ques. Well, you received that ?

Ans. Yes, sir.

Ques. The same day ?

Ans. Yes, sir.

10 Ques. See if you made a memorandum on the back ?

Ans. Yes, sir ; and the same hour, and here is my memorandum.

Mr. Pitney : I will show this to the counsel for defendant. Defendant's counsel looked at it.

Mr. Pitney : I offer it in evidence. The same marked Exhibit 12 for the complainant.

20 Mr. Pitney : Now I will put in Mr. Wharton's offer, which is unsigned and undated, but which has a memorandum on it sworn to by the witness. (Marked Exhibit 13 for the complainant.)

Counsel read said Exhibits 12 and 13.

Ques. I show you now a letter from Mr. Wharton, dated July 7th, 1880 ; did you receive that letter from Mr. Wharton ?

Ans. Yes, sir.

30 Ques. There it speaks of you having written him on the 6th ; did you write him a letter on the 6th of July ?

Ans. I suppose I did, I don't remember it particularly.

Ques. Have you a copy of that ?

Ans. If I have it is in the hands of my counsel.

Mr. Pitney : We ask counsel on the other side to pro-

duce the letter referred to in this letter from us to them, dated July 26th.

Mr. Voorhees: We have not it at all.

Mr. Pitney: I will offer this in evidence, then.

The same was marked Exhibit 14, for the complainant. Mr. Pitney read the same.

Ques. You did not accept his offer of July 1st?

Ans. No, sir.

10

Ques. Did or not you decline it?

Ans. I said I would take it into consideration, and if I accepted it I would notify him.

Ques. Did you write him about it?

Ans. I don't know that I wrote him about it; but after looking at it I didn't accept it for a moment; the last words I said to him were, I will take this, but see no reason in the world why the contract should not be carried out to the letter.

Ques. Did you ever, at any time, absolve him from the contract, other than has been shown here by the writings? 20

Ans. No, sir.

Ques. That's all.

Re-cross-examined.

Ques. Did you say, in your examination-in-chief, that Mr. Wharton raised any iron ore from the mine?

Ans. I didn't say anything about it, that I remember.

Ques. Do you know whether he did raise iron ore from the mine while he was there, was at his mine there? 30

Ans. I don't remember of seeing him raise any; there was ore raised that was not there when he took it.

Ques. Is that ore still there?

Ans. Well, I don't know whether it is all there. I suppose it is. There is some ore there, or was last week.

Ques. Have you taken any of it away since Mr. Whar-  
ton ceased work there?

Ans. No, sir; I have not.

Re-direct:

Ques. Have you touched anything about the mine?

Ans. I have touched nothing, sir, except I went to the  
heap of ore (I have one pile of ore, about thirty tons, of  
my own); and I went to that and got some specimens of  
it, and I went to Mr. Wharton's pile and got a little piece  
10 like that: )witness illustrated by holding his fingers a  
short distance apart.)

Ques. For advertising specimens?

Ans. Yes, sir.

Ques. Have you taken possession of the building, or  
had the keys to the building?

Ans. No, sir.

Ques. Have you touched the mine?

Ans. No, sir.

Ques. Or worked the mine?

20 Ans. No, sir.

Ques. Or disturbed anything there?

Ans. No, sir. Nothing at all.

Ques. Can you judge how many tons there were in this  
heap of ore which you say was not there when you deliv-  
ered possession of the mine to Mr. Collins?

Ans. Well, there was some washed ore, and some ore  
that is very badly gotten out, and I could not tell you  
how much ore there would be if it was properly cleaned.  
There might be twenty tons, and there might be more.  
30 It is difficult to tell on account of the uncleanness of  
the ore.

Ques. The ore you spoke of as yours was the ore you  
mined before they took possession?

Ans. Yes, sir; ore I got out the last week. I mined  
about thirty tons or more.

Ques. That is all.

HENRY CARPENTER, a witness produced on the part of the aforesaid complainant, having been duly sworn according to law, deposeth and saith :

Direct examination by Mr. Pitney:

Ques. Where do you live?

Ans. Hackettstown, sir.

Ques. Do you know Mr. Stoutenburgh?

Ans. Yes, sir.

Ques. Do you know Mr. Joseph Wharton, of Philadelphia?

Ans. Yes, sir.

Ques. The gentleman sitting there now by Mr. Voorhees?

Ans. Yes, sir.

Ques. Were you employed by him to do anything in the months of March or April a year ago?

Ans. Yes, sir; I worked for him.

Ques. What did you work at?

Ans. I worked at Batestown, in the mine. 20

Ques. Did you do any carting for him; carting an engine or anything of that kind, up to Stoutenburgh's mine?

Ans. Yes, sir; I had it taken up there.

Ques. When was that?

Ans. The engine was taken in April.

Ques. What time in April?

Ans. The forepart of April.

Ques. Was there a pump with it, or only an engine?

Ans. A pump and engine. 30

Ques. A boiler?

Ans. The boiler was taken before that.

Ques. You say that Mr. Wharton employed you?

Ans. Yes, sir; he employed me to take the boiler and engine up there; and he told me to take it up there and have it set.

Ques. Did Mr. Wharton say anything to you at that time about a lease on the premises?

Ans. Well, nothing; he was talking about working up there, and spoke something about he had better do something or quit; there was men there that wanted their pay, and he asked who was paying them, and I told him that I understood that he was.

Ques. Well?

10 Ans. Then he said he guessed he had better just stop the whole thing; and then he says, says he, I haven't signed the lease yet, but it is about the same as if I had. I cannot remember just exactly what he said, but it was all the same thing. He said you had better have the boiler taken up there; that is about as near as I can remember.

Ques. Repeat that again, so that the judge can hear you, and don't put your hand to your mouth.

Ans. He told me that he hadn't signed the lease.

Ques. Well, what did he say about intending to sign it?

20 Ans. He didn't say anything about whether he was going to sign it or not, but said he should consider it the same—all the same as if he had signed it, something to that purpose; he didn't say he would or would not.

Ques. Was that in connection with ordering you to go on and put up the engine?

Ans. He then ordered me to go and take the engine up there.

Ques. What was to be done with it?

Ans. He ordered me have it set there; Mr. Barber from Allentown was to send men there to put it up.

30 Ques. Who is he?

Ans. A machinist at Allentown.

Ques. Barber & Co?

Ans. Yes, sir.

Ques. Did they build machinery, boilers and engines?

Ans. Yes, sir; Mr. Wharton had sent there.

Ques. Did Barber & Co. put it in order?

Ans. Yes, sir.

Ques. Who ordered them to do that?

Ans. Mr. Wharton ; Mr. Barber was there present at the time.

Ques. Did he go there with you to put it up?

Ans. No, sir ; Mr. Wharton ordered me to take Mr. Barber up there to see if he could put in the pump and engine, and to report to him at Hackettstown next day, and I done so.

Ques. Then you took it up there? 10

Ans. Yes, sir.

Ques. Mr. Barber was to set it?

Ans. Yes, sir.

Ques. Well, was it done?

Ans. Yes, sir.

Ques. And the new boiler, and new engine, and new pump were put in?

Ans. No, sir ; they were not new.

Ques. Well, they were different ones?

Ans. They were ones that Mr. Wharton had. 20

Ques. How long were you getting it put up?

Ans. Well, I could not tell you ; I didn't finish it ; I only got the men to move it up.

Ques. Did you have anything more to do with it after that?

Ans. No, sir ; I only took the boiler up and set it there.

Ques. Do you work for Mr. Wharton yet?

Ans. No, sir.

Ques. That is all. 30

Recess.

Cross-examination :

By Mr. Voorhees :

Ques. Are you now employed by Mr. Wharton ?

Ans. No, sir.

Ques. How long did you continue in his employ ?

Ans. I went there in November and stayed till the next June. I went there when he first commenced to mine at Batestown, and I stayed till the next June.

Ques. Were you discharged by him ?

Ans. No, sir ; not by him ; I was by Mr. Collins.

Ques. By his foreman ?

10 Ans. Yes, sir.

Ques. Where were you when Mr. Wharton told you to take this boiler and engine up there ?

Ans. In the depot at Hackettstown, sir.

Ques. When was that ?

Ans. It was about the first of April. I am not positive whether it was the first day of April or not ; but it was very little different from the first ; I think it was the first of April.

Ques. How soon after that did you take them up there ?

20 Ans. I went to take them up the same day.

Ques. Where was the engine taken from ?

Ans. The Batestown mines.

Ques. Was the boiler taken at the same time ?

Ans. No, sir.

Ques. When was that taken ?

Ans. In March.

Ques. Who took that ?

Ans. I did.

Ques. Who directed you to take that ?

30 Ans. Mr. Collins—young Mr. Collins—Albert.

Ques. When you took the engine up, did you take the pump at the same time ?

Ans. I think we took the whole rig as fast as we could ; we didn't take it all at once, we took it in lots.

Ques. Do you know when it was set up ?

Ans. I couldn't tell you the exact date, but it was set

up in April ; it was not set up right away as soon as we got it there, it was delayed a few days but we got it set up as soon as we could.

By the Court :

Ques. Where did they set it, at the top of the shaft ?

Ans. Yes, sir ; and the pump down in the shaft.

Further cross-examination.

10

Ques. Were you there after it was set up ?

Ans. No, sir ; not to do anything.

Ques. Were you there after it was set up at all ?

Ans. Yes, sir.

Ques. What did Mr. Wharton tell you at the depot about taking the engine up ?

Ans. He told me to go home and get ready to take it up there as soon as I could, and to get it set.

Ques. Is that all that he said ?

Ans. That is what he said about setting it up, except 20 about what he said to Mr. Barber to send men up there to get it together ; he was to send a machinist there.

Ques. Well, was the machinist there at that time ?

Ans. No, sir ; but Mr. Barber was there, the proprietor of the machine shops at Allentown, and he was the man I took up to see if he could put the engine up and the pump in.

Ques. How near was it stood to where the old engine was ?

Ans. Do you mean Mr. Stoutenburgh's engine ?

30

Ques. Yes.

Ans. Well, I don't know, probably fifty to a hundred feet, or something like that ; Stoutenburgh's was off of the engine house, and this was set outside, close to the shaft.

Ques. That is all.

Re-direct-examination :

Ques. Mr. Wharton worked the Beattystown Hematite Ore Mine ?

Ans. Yes, sir.

Ques. Belonging to your father-in-law ?

Ans. Yes, sir.

Ques. How long did he work them ?

Ans. He is working them yet.

10

Complainant rests.

Joseph Wharton, a witness produced in his own behalf, as defendant, having declared himself conscientiously scrupulous of taking an oath, duly affirms and saith :

Ques. Where do you reside ?

Ans. Philadelphia.

Ques. What is your business ?

Ans. Manufacturer of nickel, and I am engaged in  
20 some other business, but that is my specific business.

Ques. Do you own, or are you interested in, the Hackettstown furnace ?

Ans. I own the Hackettstown furnace.

Ques. Are you operating that, or have you been ?

Ans. I have been ; it is just about to be blown out  
now.

Ques. Were you operating it in January, 1880.

Ans. No ; it had been blown in at that time, I think.  
In some matters of dates, I might as well say here, per-  
30 haps, I cannot always remember accurately as to dates on  
which occurrences took place. I know that about that  
time I was intending to blow in that furnace, and I cannot  
say for certain whether it was blown in in January or  
a little later. I think it was the early part of February,  
'80. I was getting ready to blow it in in January, if it  
was not already blown in.

Ques. Did you, about the month of January, make application to the complainant in this case for the purchase of iron ore?

Ans. Yes. The date I am not sure of; but I did make application to him to purchase iron ore from him; I think it was in December, 1879, or January, 1880.

Ques. Did you, at any time, go to his mine?

Ans. Yes; I did.

Ques. Who went with you?

Ans. I think Albert Collins and Mr. Stoutenburgh 10  
and Mr. Scaedem were there; we met them on the ground; that, I think, was later than the date you have named.

Ques. Did you go into the mines?

Ans. We did; into the mine, not "mines."

Ques. Into the mine?

Ans. Yes.

Ques. Did you make an examination of it?

Ans. Yes; slight—nothing to be called an examination; the mine was dirty and wet; we staid there a 20  
very short time.

Ques. Who went with you into the mine?

Ans. Albert Collins and Scaedem, I think; I am almost certain.

Ques. Was Mr. Wiggins there with you?

Ans. No; I think not.

Ques. Were you ever there with Mr. Wiggins?

Ans. No; I think not.

Ques. Did you afterwards have any negotiations about a lease of that mine? 30

Ans. Yes, sir; that negotiation arose from the fact that Mr. Stoutenburgh declined to sell his ore. You asked me if I made any attempt to negotiate for the purchase of the ore; I did so, and Mr. Stoutenburgh declined to sell his ore; he desired me to lease his mine.

Ques. Was there a proposition sent to you for the leasing of the mine, in writing?

Ans. I think there was. I think that Mr. Stoutenburgh prepared a sketch of a lease and sent it to me.

Ques. Prior to the sending of the sketch of the lease, had he made any proposition to you, in writing?

Ans. That I am not able to remember.

(Defendant's counsel called for Exhibit No. 2, and same was handed to him.)

10 Ques. Was a paper of the purport of that sent to you?

Ans. Shall I read this aloud?

By Mr. Pitney: It has been read.

Ans. I have a general recollection of some such thing having been submitted to me. I have no reason to doubt that this is a copy of the sketch.

Further direct examination:

Ques. Have you the original which was sent to you?

20 Ans. I have nothing except what has been put into your hands; I probably had such a paper submitted to me, but haven't it by me at present.

Ques. Did you write a letter to Mr. Stoutenburgh dated on or about the 21st of January?

Ans. I think it highly probable.

Ques. (Handing Exhibit 3.) Look at that?

Ans. This is my handwriting; "Your proposition of the 9th." Is that the paper which I had in my hand just now?

30 Ques. I understand so; it is said to be a copy.

Ans. "Statement of lease, January 9th, 1880." My letter which I hold in my hand is in my handwriting, and evidently refers to something which took place before, and I presume in reference to this other paper.

Ques. Subsequent to that, did you have an interview with Mr. Collins at Hackettstown?

Ans. Mr. Collins?

Ques. Mr. Stoutenburgh, I mean.

Ans. I did.

Ques. Where at?

Ans. The particular interview, which I think you are inquiring about, took place at the Clarendon Hotel.

Ques. Who were present?

Ans. Nobody; We were alone in a private parlor of the hotel, I think Mr. Collins may have been in the building, but we were alone during the interview.

Ques. Were there any papers submitted at that interview? 10

Ans. Yes.

Ques. (Handing witness Exhibit No. 6.) Is that the paper that was submitted to you at that time?

Ans. I should be totally unable to indentify that paper, or say anything about it, except that I see several things which appear to be in my handwriting, with that light thrown upon it; I presume that that paper is the one that was submitted to me at that time.

Ques. Are those lead pencil marks in your handwriting? 20

Ans. Yes, I see several lead pencil marks which are in my handwriting.

Ques. Is that yours on the first page?

Ans. I think so.

Ques. And this?

Ans. This all appears to be my handwriting.

Ques. On the third page?

Ans. Yes.

Ques. Had that paper, or a copy of it, been sent to you 30 before the interview at the Clarendon Hotel?

Ans. I think not.

Ques. Will you just state now, what occurred at that interview in reference to the proposed lease?

Ans. Mr Stoutenburgh produced this paper and suggests that as a paper which was proper for us to execute. I read the paper and found it unsatisfactory in a number

of points; and the general policy of executing a lease was talked over, and it was understood that we were likely to make a contract; we both expected to make a contract for leasing this mine. There had been correspondence between us, and possibly conversations; at any rate if there were no conversations with me, there were with Mr. Collins, and I was led to believe all Mr. Stoutenburgh's representations of the property, that the mine was a valuable one, and, being about to engage in

10 the manufacture of iron at Hackettstown, I thought it a good policy for me to carry on mining to some extent in case I was not able to buy ore satisfactorily. Mr. Stoutenburgh having declined to sell his ore, and desired instead to lease his mine, I was led to believe it would be politic for me to lease that mine; and the project of a lease which Mr. Stoutenburgh had sent, as I recollect having been unsatisfactory, this meeting at the Clarendon House took place for the purpose of trying to come nearer together, to see whether a bargain could be effected. This

20 particular paper, which, I believe, is the one lately in my hands, not being satisfactory, the different points were taken up and discussed; and each one as it was discussed was laid aside, and we passed on to the next; and so we went through all the features of the thing. We finally separated with the understanding that Mr. Stoutenburgh should now prepare another sketch of the lease and send it to me, which I should execute if I found it satisfactory. The points had been gone over, and something like a concurrence of views had been reached on all the points pro-

30 posed that had been brought up, and the final result of the interview was that Mr. Stoutenburgh was now to prepare a lease, perhaps in duplicate, and execute and send down to me, which I was then to execute if I saw fit. In other words, if I found that the paper drawn was a satisfactory one; and so we parted.

Ques. Did you agree that night, that with the altera-

tions made in that paper, Exhibit No. 6, shown you, that you would execute a lease drawn with the alterations made in that paper, Exhibit 6?

Ans. That is something near the truth, and yet it is not accurate; the accurate statement of it is more—is what I have just said. The conversation did not come to a point that I was to sign any paper that Mr. Stoutenburgh might send down to me, but did come to a point in his agreeing to prepare a lease in formal shape, or what he thought to be a suitable shape. I believe he did not mean to go to any lawyer, and take any advice about it, but he was to draw up the paper and submit it to me for execution, if I found it satisfactory. 10

Ques. Did he afterwards draw up a paper?

Ans. He did, or at least I presume it was done afterwards; at any rate, the paper came to me

Ques. Did you find the papers to be satisfactory?

Ans. No, sir.

Ques. Did you execute the paper sent to you?

Ans. I did not; on the contrary I declined to execute it. 20

Ques. Can you tell whether this is the lease he sent to you afterwards? (Handing witness a paper.)

Ans. I should be totally unable to identify it, except that I find a number of changes—a number of notes—meaning suggested changes, no doubt, in my own handwriting, and with that light thrown upon it, I have no doubt that this is the paper which he prepared.

(Said paper was marked "Exhibit 8D.")

Ques. Did you return to him the paper he sent you unexecuted? 30

Ans. I am not able to state from recollection whether I returned it to him or to Mr. Collins to hand to him. Mr. Collins being the furnace manager, I am likely to have sent that paper, or those two papers back to him to be

returned to Mr. Stoutenburgh ; I cannot recollect whether I sent them back direct or through Mr. Collins.

Ques. Did you have any further negotiations with Stoutenburgh about executing the lease after this paper was returned ?

Ans. Not until the dissension of views between us became so flagrant as to threaten a dispute which came up. There was no further negotiations, as I remember, as to the execution of this specific paper until, I should say, several  
10 months.

Ques. Did you have any corespondence with Mr. Collins about the paper ?

Ans. Mr. Collins ?

Ques. I don't mean Mr. Collins ; I mean Mr. Stoutenburgh.

Ans. I think I recollect writing to him declining to execute this lease, and that more than once ; I think that he suggested—(Interrupted.)

20 (Objected to.)

By the witness : Well I will answer the question this way then ; I am not to answer Mr. Voorhees' question as to whether any further negotiations took place between us.

Ques. Yes ; you can answer it.

Ans. I did write I think on more than one occasion, and I presume the letters or copies of them are here.

Ques. Did you write a letter of which this is a copy,  
30 April 3d ?

Ans. I did. That was taken out of my letter-book and is a copy of the letter which I wrote.

Ques. Did you write that letter also to him ?

Ans. Yes, sir.

Ques. Exhibit No. 7 ?

Ans. Yes, sir.

Ques. Did you have any interview with Mr. Stoutenburgh afterwards ?

Ans. I did. I can't remember distinctly whether we met in or near Hackettstown, but I remember distinctly his coming to see me at my office in Philadelphia.

Ques. About what time was that ?

Ans. Speaking from recollection I should say about the 1st of July, 1880. The contrariety of views between us had become perfectly apparant before that time. Re-  
curring again to to your question as to whether I had  
an interview with Mr. Stoutenburgh, I think I remember  
that we met in the neighborhood of the mine or about  
Hackettstown, but as to that I am not so clear as I should  
like to be. I think this interview in July, in Philadel-  
phia, was the second interview, and consequent upon a  
former interview or correspondence looking towards an  
amicable adjustment of this contrariety. Is it in order  
for me to say any thing except a direct answer to your  
question ? (Interrupted.)

Ques. What occurred at that interview ?

20

Ans. Well there was merely a talk about the position the thing had drifted into. The mine had been taken possession of without authority from me, and my people at Hackettstown had been induced by Mr. Stoutenburgh to take possession of the mine prematurely.

By Mr. Pitney : I object to the testimony as hearsay.

By the witness : It is not hearsay ; It is an absolute fact which I know of my own knowledge.

30

By the Court :

Ques. He says that he didn't authorize Mr. Collins to take possession ?

Ans. That is what I say, sir.

Ques. But when he says Mr. Stoutenburgh induced

Mr. Collins to do it, then he states what he doesn't know because he was not there.

Ans. That is a very just distinction, sir, and I acknowledge it.

Further direct :

Ques. At the interview in July did you notify him you would never execute a lease and would give up possession ?

10     Ans. I had done that so efficiently beforehand, and I wouldn't execute the lease ; I never conceived or acknowledged that there was a lease existing between us. My people, to go back again, and speak of my own knowledge, had taken possession of the place prematurely, without warrant from me, and thereby put me in a position which I found to be very disagreeable and totally out of my ordinary way of dealing. My habit of dealing is to make clean bargains and carry them out. As  
20     to this, the bargain wasn't consummated and yet my people, on the presumption that it was done, or would be done, or something of that kind, had taken possession, and that introduced an unbusiness like position of affairs into the matter, and I had taken every occasion to let Mr. Stoutenburgh know that I didn't acknowledge the existence of any contract between us ; I would not execute the paper which he had prepared. Now that  
30     leads up to this interview, of we will say July first.

Mr. Stoutenburgh had intimated a desire which I also felt to find an amicable adjustment of this position and he, I think, was either about to start on a journey or was returning from a journey and called in to see if I was in my office, and he found me there. Then the conversation took place upon a way of terminating the unpleasant position, and although I had been put to great expenses in trying to find ore in a place where there wasn't any, I was willing to suffer some penalty for the purpose of

terminating this position and felt a grievance at having been induced to take hold of a perfectly barren spot so far as I could find. But without dwelling on that, I wished to find a way out of this position and Mr. Stoutenburgh seemed to be also in a reasonable and amicable frame of mind. We talked in an informal way about what should be done to terminate the matter, and several propositions were made, none of which were acted upon at that time, but I was under the impression that one of them would be accepted, either that a certain boiler that was there would be accepted, or a certain sum of money named would be accepted. I have spent a considerable amount of money in sinking that mine and to that extent had been at expense to put value into the property, but I was quite willing then to do more any way, to pay certain moderate penalty for the sake of an adjustment, and I understood that Mr. Stoutenburgh was likely to accept one of those propositions, although he didn't say so. The tenor of the conversation led me to believe that I should hear from him shortly and that one of the offers would be accepted.

By Mr. Pitney : That is quite argumentative.

By the witness :

Ans. I was asked what took place at the interview, sir.

By the Court : Counsel for complainant objects to your stating your own views and thoughts and expectations. You must confine yourself to the facts, because your expectations could not bind the other party. It is very well for your counsel to make use of that argument on the facts when the time comes, but what you want to do now is to confine yourself to actual occurrences, such as what you said and did with Mr. Stoutenburgh, so that it may be made a basis of an argument afterwards.

By the witness: It seems to me the case is somewhat similar to the interview at the Clarendon Hotel.

By the Court: You can undoubtedly tell anything between yourself and Mr. Stoutenburgh.

By the witness: On that occasion I understand the complainant wishes to carry the interview that took place quite beyond the actual occurrence, and wants to argue from the condition of our mind then that an absolute bargain was made. I understand he carried that interview quite beyond the actual occurrence, and it occurred to me that if we aimed to get at—(Interrupted.)

(Objected to.)

By the Court: So far as the witness presses anything of that kind he presses it unduly; it would be impossible for me to decide on your conflicting claims here without having a basis of fact, and if one thing occurred that was known to both of you that is a fact, but nothing that was in the mind of one without being communicated to the other would be a fact.

By the witness: Then the interview in my office, in Philadelphia, resulted in nothing, but merely a talk over the position and a suggestion on my part of means to escape my unpleasant position.

Further direct:

30 Ques. Did you say to him, or was anything said at that time, that if the thing was not adjusted you would not hold possession any longer?

Ans. That was clearly understood. I think the work had already been abandoned. I am not sure of the date, but I think the work had been stopped at the time of the interview in Philadelphia. It was palpably a desperate

case, as far as I could see, and I gave orders to stop the work.

Ques. Can you state whether, at that time, you were doing anything further than keeping the water out of the mine?

Ans. I think that was the condition of things. The work had been stopped, and pending this prospect of amicable adjustment, I had given directions to keep the mine pumped, in order to prevent any possible claim of damages arising from not pumping. The mine was not such a one as to take injury by filling with water, but I desired to avoid any possible charge of doing injury, or neglect, or anything of that kind. 10

Ques. Did Mr. Stoutenburgh represent that mine to you as a valuable mine?

(Objected to as leading.)

Ques. How did he represent it to you?

Ans. He represented it to me as a mine from which a large quantity of ore had been taken—very excellent ore—and that it could be very cheaply and easily mined, and he thought it was the best mine on that mountain, or in that country. 20

Ques. How did you find the mine when you attempted to operate it?

Ans. I found it, as far as my work went, totally worthless; I never found any ore in it. I don't suppose there was a ton of ore taken out for the \$3,000 which I spent there, without counting the machinery, which I took away again. I don't think that the expenditure produced any ore at all. At all events, I never took any ore from there, and I think none was taken out. 30

Ques. That is all.

Cross-examined:

Ques. Do you know Mr. Wiggins?

Ans. I do.

- Ques. Who is he?  
 Ans. I believe his name is James Wiggins.  
 Ques. Is his name Louis G. Wiggins?  
 Ques. I think not.  
 Ques. Isn't his name Daniel G. Wiggins?  
 Ans. Oh, I have heard him called Dan.  
 Ques. He is mining agent for one of the Allentown companies, is he not?  
 Ans. For the Bethlehem company.
- 10 Ques. A large concern?  
 Ans. Yes, sir.  
 Ques. Is it a Bessemer works?  
 Ans. Yes, sir.  
 Ques. They handle and use a great deal of ore?  
 Ans. Yes, sir.  
 Ques. And he has charge of the sale of their ore and purchasing supplies, hasn't he?  
 Ans. He has not.  
 Ques. He has a very large responsibility there?
- 20 Ans. No, sir.  
 Ques. No?  
 Ans. No, sir; he doesn't make any purchases, and only used by the company as a visitor to go about and examine mines and gives his opinion of them.  
 Ques. He goes about examines mines, and gives his opinion as to the mine, &c.?  
 Ans. Yes, sir.  
 Ques. He is an expert in that matter, is he not?  
 Ans. I shouldn't call him so from my experience of
- 30 him.  
 Ques. Did you ever see him at all in reference to this mine?  
 Ans. I am afraid to say yes or no to that; I was talking with Mr. Wiggins about another mine at Belvidere, I remember distinctly, and quite possibly I talked to him about this mine; but I am not able to say.

Ques. Tell us how you got from Hackettstown to the mine on the day you visited it; how many times have you been to the mine altogether?

Ans. It would be impossible for me to tell; I should think three or four times from first to last.

Ques. How many times had you been there before the interview at the Clarendon Hotel on the 25th of February, 1880?

Ans. I am not sure that I had ever been there before that; I can't fix the day on which I went there, and I 10  
went down in the mine. It may have been before or after; I think it was after.

Ques. Didn't you state, on your direct examination, that you went up there with Albert Collins before the interview?

Ans. I did say I was there with Albert Collins.

Ques. Didn't you state, in your evidence, that that occurred in the month of January, 1880, in the early part of the negotiations?

Ans. I believe I did. 20

Ques. Well, wasn't that true?

Ans. I believe it was.

Ques. Weren't you in the month of January at that mine, and didn't you go down into it?

Ans. The date of my going down I am not very positive of; but I did go down into the mine, and I presume at that time.

Ques. Wasn't that, then, before the interview at the hotel?

Ans. I am not able to answer that. 30

Ques. Now, sir, how did you get from Hackettstown to the mine on that occasion?

Ans. I can't recollect. I presume I went up in a buggy wagon.

Ques. Didn't you go in a two-seated carriage?

Ans. I have no recollection.

Ques. Didn't Daniel G. Wiggins ride with you there and back again with Mr. Collins?

Ans. I have no recollection of his being there.

Ques. You swore on your direct examination pretty positive that he was not there?

Ans. That is my belief.

Ques. Didn't he ride with you in the carriage from Hackettstown?

Ans. I believe he didn't.

10 Ques. To the mine?

Ans. No.

Ques. He is a pretty stout heavy man, isn't he?

Ans. I should judge him to be a man of about my weight, shorter and stouter.

By the Court:

Ques. If he did go with you, you have no recollection of it?

20 Ans. No, sir.

Further direct:

Ques. If he did go; how came he to go?

Ans. I don't know.

Ques. Did he go at your request?

Ans. I can't say; what is the use of asking me what caused him to go? I don't believe he was there; if he was there, how he came to be there is something beyond my powers of telling.

30 Ques. Did you ever ask him to go?

Ans. That I can't recollect.

Ques. Now you say Mr. Stoutenburgh represented to you that this was a very valuable mine, and a great deal of ore had been taken from it; when and where did he make that representation?

Ans. I think he made it on every occasion that we met.

Ques. On how many occasions did you meet, previous to the first of April, 1880?

Ans. That is quite impossible for me to remember ; I should say about three times as likely as any other.

Ques. Please locate the place where you met then ?

Ans. We met at the Clarendon Hotel ; we met once at the mine, on the occasion of my going down into the mine, and other times and places I can't locate.

Ques. Do you say on those occasions he represented the mine as a very valuable one ? 10

Ans. Yes, sir.

Ques. And that he had taken a great deal of ore out of it ?

Ans. Yes, sir ; four thousand tons, I think he named.

Ques. There was a hole where ore had been taken out ?

Ans. There was a hole in the ground.

Ques. Did you see any vein of ore ?

Ans. I saw a very slight vein.

Ques. Did you see where ore had been taken out of the cavities made by the extraction of the ore ? 20

Ans. I couldn't tell what had been taken out of the cavities.

Ques. Well, you saw cavities ?

Ans. I saw a hole in the ground.

Ques. Was there ore on the bank ?

Ans. I saw a little there.

Ques. Did you take and have it analyzed ?

Ans. I think I took a piece with me ; but I didn't have it analyzed.

Ques. Did you not get a chemist to analyze it ? 30

Ans. I think not.

Ques. Are you quite sure ?

Ans. I am not quite sure.

Ques. Do you think you entered into the negotiations about the mine or spent moneys in the mine without having the ore from it analyzed ?

Ans. Yes, sir.

Ques. Do you say you would do that.

Ans. I have done such things.

Ques. Would a prudent man do that?

Ans. Yes, sir; prudent men act in very different ways.

Ques. Have you ever had the ore that came from that mine analyzed?

Ans. I think not.

Ques. Then you don't know of your own knowledge  
10 whether it is good or poor quality of ore?

Ans. I have a judgment without having an analysis made. I have seen a good deal of ore and can form a judgment about it.

Ques. Did you form a judgment on that ore when you went to the mine and saw the ore?

Ans. The specimens I saw seemed to be good.

Ques. You saw a pile of it lying on the ground around the mouth of the mine, on what the miners call the bank?

20 Ans. I saw one pile of what Mr. Stoutenburgh said was ore which I thought was poor, which he explained by saying it was not as good as he was in the habit of getting.

Ques. Did you see where teams were carting ore away?

Ans. I don't recollect any teams being there, yet there might have been.

Ques. Did you see where teams had been carting; did you see the tracks of the wagon?

30 Ans. Very evidently there had been carting done there.

Ques. Did you see a place for loading ore and all that sort of thing?

Ans. Yes, sir.

Ques. Did you see where they were raising ore while you were there?

Ans. I don't recollect that.

Ques. Were the men at work at the mine?

Ans. Yes, sir; Scaddon was there and several men at the mine.

Ques. What were they engaged in?

Ans. Picking and digging in the ground.

Ques. What were they picking and digging?

Ans. From my present knowledge of the mine I presume it was rock.

Ques. Do you know the difference between rock and ore?

Ans. I do.

Ques. How many iron mines have you owned and worked?

Ans. That I can't answer off hand. I am a participant in four different iron companies, and they have of course a great many iron mines, and I have had occasion to visit a number of those mines, but they are not magnetic mines, and these companies are all in Pennsylvania, and these mines I have been in the habit of visiting are all hematite mines. I never was in a magnetic iron mine until I went to this one. 20

Ques. And yet you say you can tell what is pretty good ore?

Ans. Yes, sir; I have been in the habit of using it.

Ques. Can you tell, when it is in the ground, whether it is ore or rock?

Ans. Yes, sir.

Ques. You say when you went to the mine that these men were not working ore, but rock? 30

Ans. Yes, sir; they were working almost entirely in rock; there was a little seam of ore, but nearly everything visible was rock.

Ques. How thick do you think the seam of ore was?

Ans. Thick as my hand or fist; not more than a few inches.

Ques. Do you mean to say there was no ore visible?

Ans. Yes, sir; there was but a thin seam I have mentioned.

Ques. Well, nothing more than that?

Ans. No, sir.

Ques. Do you know what miners mean when they speak of ore in sight?

Ans. Do you mean the latin word *in situ*?

Ques. No; I mean visible ore.

10 Ans. Yes, sir; the seam I have mentioned.

Ques. About as wide as your hand?

Ans. Yes, sir; I said it might be as thick as my fist, less than six inches, about two or three inches in thickness. I was told it had been much larger; that it had been a fine large vein, but it was now pinched down to this.

Ques. This proposition of the 9th of January was sent after you had been there?

Ans. That I stated a while ago; I am not able to locate

20 Ques. Don't you think the proposition of the 9th of January was sent after you had been there to the mine?

Ans. Indeed I can't tell; it would be nothing more than guess work; if there was any thing about it to refresh my memory I could tell you.

Ques. Had you been in the mine or not before you wrote Mr. Stoutenburgh that you would take a lease of it?

Ans. No, sir; I feel confident I had not. I feel confident this visit was subsequent to that.

30 Ques. What information did you go upon when you wrote Mr. Stoutenburgh that you would take a lease of the mine?

Ans. It was probably what Mr. Stoutenburgh had told me about the quality of the mine.

Ques. Is that what you state in your letter?

Ans. I don't remember the letter. It would refresh my memory perhaps if I saw it.

Ques. Did you send Mr. Collins there?

Ans. I think probably I did.

Ques. I will read the letter to you. It is Exhibit "3." Do you mean to tell us that you wrote that letter before you had been to see the mine, or had sent anybody to see the mine?

Ans. I believe that was written before I visited the mine. I believe also that I had asked Mr. Collins to go to look at it. I believe also that Mr. Collins was impressed as I had been by Mr. Stoutenburgh's statements as to what the mine was. 10

Ques. That is hardly evidence, nor is it a reply to my question, and I move that it be overruled. Now you say you received a draft of a lease from Mr. Stoutenburgh?

Ans. I said I believed I had received it.

Ques. What did you do with it?

Ans. I don't know; Mr. Stoutenburgh will probably know if I sent it back to him; I have no recollection. 20

Ques. You received that before you met at the Clarendon Hotel?

Ans. I believe that is the case.

Ques. That was shortly after you wrote him this letter of the 21st of January that he sent you a sketch of the lease?

Ans. As to dates I can't remember when it came.

Ques. Was it or not after you wrote that letter of January which I have read to you?

Ans. I presume so. 30

Ques. That the sketch of the lease came to you?

Ans. Yes, sir.

Ques. What did you do with it?

Ans. That, I have just said, I don't remember; I presume I sent it back to Mr. Stoutenburgh.

Ques. And it was substantially a lease, ready to be signed, with the dates, &c., filled in, wasn't it?

Ans. I don't remember how formal it was; I suppose Mr. Stoutenburgh can produce that paper.

Ques. I am asking you about your recollection of that now?

Ans. If the paper is produced, my recollection would be something worth while talking about; as it is, I can't recollect enough of it to state.

10 Ques. You call it, on your direct examination, a sketch of a lease and you now say it was sent you after the 21st of January?

Ans. I said I presumed so.

Ques. Well, that is your best recollection?

Ans. Yes, sir.

Ques. Wasn't the same thing produced to you at the Clarendon Hotel meeting?

Ans. That I can't tell.

Ques. Have you any doubt about it?

20 Ans. I have no feeling about it either way; I have no doubt or information.

Ques. Then you won't say it was or not?

Ans. No.

Ques. A lease was produced, or a sketch of a lease at the Clarendon Hotel meeting?

Ans. Yes, sir.

Ques. Do you say you didn't bring it there that night?

Ans. I believe I didn't; I believe the sketch of the lease produced on that occasion was brought from Mr.

30 Stoutenburgh's hand.

Ques. Will you say it was the same one as had previously been in your hands?

Ans. I can't say yes or no, because I have no recollection about it.

Ques. Now can you say Mr. Collins wasn't in the room

with you and Mr. Stoutenburgh when you went over this lease at the Clarendon Hotel ?

Ans. I did say so.

Ques. Do you say so now ?

Ans. I said I believed he was not ; yes, sir. I believe he was not with us ; I believe we were alone during the discussion.

Ques. Is that your recollection ?

Ans. It is my recollection that he may have been in the room at the beginning, but retired. 10

Ques. Was he going in and out ?

Ans. My recollection is, that while the discussion was going on we were alone.

Ques. Is it your recollection that this sketch of a lease was left at Mr. Collins' house, and he went out to his house for it, leaving you and Mr. Stoutenburgh talking, and that you had to wait until Mr. Collins came back ?

Ans. Something of that sort seems to dawn on me but nothing clear. I shouldn't be surprised if that was the case though. 20

Ques. You made certain alterations in the lease ?

Ans. I made certain pencil suggestions on the lease.

Ques. What did you make them for ?

Ans. I made them as noting points not agreed to.

Ques. Here, for instance, you scratched out 70 and wrote 60 cents in the margin ; what does that mean ?

Ans. That meant I wasn't willing to pay 70, but might be willing to pay 60.

Ques. Don't it show that you were willing to pay 60 ?

Ans. I don't think it does. 30

Ques. What were you willing to pay ?

Ans. Well I wasn't willing, as it turned out, to pay anything.

Ques. What were you willing to pay that night ?

Ans. I can't remember ; I think if all the points in

this agreement had been satisfactory, I might have been willing to pay 60 cents.

Ques. You sent for Mr. Stoutenburgh to come there that night?

Ans. I don't remember it.

Ques. Didn't you direct Mr. Albert Collins to write a note to Mr. Stoutenburgh to come there that night?

Ans. I think it highly probable.

10 Ques. I call your attention to this postal card. Did you direct that postal card to be written?

Ans. I presume I did.

Ques. Now, what I want to know is what you meant by scratching out 70, and writing 60 in pencil in the margin?

Ans. I presume it meant I was not willing to pay 70, but might be willing to pay 60.

Ques. Do you swear it doesn't mean that you told Mr. Stoutenburgh that you would agree to pay him 60 cents, and that he agreed to take 60 cents, instead of 70?

20 Ans. The form in which you put your question is not one which I can say yes or no to?

Ques. Do you now say that you didn't then and there say to Mr. Stoutenburgh in substance that 70 cents was too much, I will pay you 60 cents, and that he assented to change it from 70 to 60, and that you then wrote the 60 in the margin as an expression of the consent of your two minds to the proposition of that kind?

Ans. Well, you just now made an objection to leading questions. I think you are putting a leading question.

30 Ques. You never mind, sir; I have that privilege. Your counsel will object if I ask anything that I have no right to. Please answer the question.

Ans. As to the different points you are bringing up, if I should say yes to each of those things, you are going to say that I agreed to everything.

Ques. I expect it is very likely. Now, didn't you, in

substance say to him, "I will give you 60 cents, and not 70, and that he agreed to it, and that you scratched out the 70 cents and wrote 60, and he agreed to all of that then and there?"

Ans. I think that is not a correct statement of the case. If you will allow me to state in my own way, I will state what did take place then.

Ques. Just answer that question, if you please; or if you decline to answer it, say so?

Ans. I decline to answer it in that way, but I will answer them altogether, presently. 10

By the Court: I think when you put your question to the witness, he said he could not answer that, yes or no.

Witness: Even that, your Honor, is not exactly as I should like to say; and if it is permissible for me to say what did take place, I think I can clear up this thing in a moment.

The Court directed the stenographer to read the question. Stenographer read as follows: 20

Ques. Now, didn't you, in substance, say to him, "I will give you 60 cents, and not 70, and that he agreed to it, and that you scratched out the 70 cents and wrote 60, and he agreed to all of that then and there?"

By the Court:

Ques. Did you and he then and there agree on the 60 cents a ton; that is the point of Mr. Pitney's question? 30

Ans. If I say yes to that I am saying what is not exactly true, and if say no I will be saying what is still less true. I can't answer that question unless I am allowed to explain.

Further cross-examination :

Ques. Now the first alteration is in that part of the agreement which compels you to sink a shaft on the lower mine 75 feet deeper than it is now, and the word seventy-five is scratched out and sixty written in the margin, and that I understand you to have done yourself; now what do you mean by that?

Ans. I mean, supposing we came to a bargain upon the  
10 general lease, that this point would be satisfactory in that shape.

Ques. You agreed on the rest of it?

Ans. Now you are saying what I didn't say.

Ques. Now I come to the other part of the alteration  
" which says it is further agreed between the parties hereto that the said second party will purchase all the machinery, consisting of steam boiler, engine, pump &c., " and there is an interlineation in your handwriting after the words "machinery" and "apparatus" and after the words  
20 "consisting" "mainly" so as to make it read in this way "it is further agreed between the parties hereto that the said second party will purchase all the machinery and apparatus consisting mainly of steam boiler, engine, pump and pipes, and fixtures, with mining implements, now used in and about the mines;" after that you have scratched out a whole sentence which provided for your taking them at a fair valuation "and if the said parties cannot agree on the fair valuation themselves then each to select an appraiser, and these to select a third and  
30 their united judgment of valuation to be final" that you have scratched out and put in "\$1,800 payable in May next" now what do you mean by that?

Ans. Just the same as in the last case.

Ques. You agreed to it provided you agreed to other things?

Ans. Yes, sir.

Ques. Or provided you came to a general conclusion?

Ans. Provided we came to a general bargain that was to be satisfactory.

Ques. Then the next thing is this, the sentence read this wise: "The engine-house and fixtures about the mine to be included in the estimate." You have altered it so as to make it read in this way; "The engine-house and fixtures and mining timber about the mines to be included in this sale." Now why did you scratch out "estimate" and write "sale" there? 10

Ans. It was on the presumption that a bargain was going to be made.

Ques. Will you please read that lease and tell us on what you didn't agree finally, what other objection there was made to the lease except these notes in pencil?

Ans. The proper answer to that question is that the whole making of the lease was to be done, if I saw fit, after Mr. Stoutenburgh had sent me his fresh copy of the paper.

Ques. What was he to write and send you? 20

Ans. He was to write to me what he presumed to be a lease that would be satisfactory.

Ques. You said just now "fresh copy;" wasn't it that he was to copy that lease as amended by you and send it to you?

Ans. He was to make a lease and send me the lease which he assumed would be satisfactory to me, and which was to embody substantially these provisions.

Ques. Well, how was it to differ, the one he was to send; how was it to differ from the one you now hold in your hand? 30

Ans. That is very hard to say; every time a man writes a paper he writes differently.

By Mr. Pitney to the stenographer: Will you please read that; I didn't quite catch it.

The stenographer repeated the witness's answer.

By the witness: I suppose it is fair to say that he was to write a lease of what he presumed to be our understanding. We were endeavoring that evening to come to an understanding, and when you didn't wish me to state in my own language awhile ago about this matter, I was about to state that our meeting at that time was for the purpose of going over those points and finding out what points we were agreed on, and on what points we disagreed with a view that a paper should be drawn, if possible,  
 10 which should be everything that would be satisfactory, and then a final decision come to as to whether the paper so submitted, or so altered, or so re-drawn, should be executed or not.

Ques. Wherein did you disagree that night?

Ans. Our conversation that night ended in all these points being adjusted to such provision as would meet both our minds, if we finally agreed to sign the paper. It didn't reach to the point of agreeing to sign a specific  
 20 paper; he was to draw this paper after having gone over the different points, as to which points we reached, what might be called a preliminary understanding of each one as we came to it—a preliminary understanding, as expressed in these different notes, that is what I wanted to say.

Ques. There was no difference in your views that night when you quit?

Ans. So far as this preliminary understanding went; but there was not a definite obligation to sign a specific  
 30 paper; there was still to be a refusal, in my mind, of the thing that was finally submitted.

Ques. What do you mean by refusal in your mind?

Ans. I mean I was to sign it, or not sign it, as I thought proper.

Ques. Although you both agreed on the terms of the lease, you didn't consider yourselves or didn't agree to

sign such lease that night, but you still retained the right to sign it or not as you chose?

Ans. I never considered in cases of this kind that any preliminary discussion or agreement—any preliminary discussion effects the contract until it is embodied in the paper executed.

Ques. I want to get at the manner. You agreed on the terms of the lease that night; I understand you to say you did agree on the terms of the lease that night?

Ans. Then you understand more than I have said. 10

Ques. Wherein was there any difference between you as to what the terms of the lease should be when you parted that night?

Ans. The difference was as to whether the lease should be executed.

Ques. But as to the terms of the lease, if it was executed, there was no difference. Did you sign your name on that paper that night?

Ans. I did not.

Ques. Look on the back of it and see. 20

Ans. I find here "Joseph Wharton, post office box—, Philadelphia."

Ques. In your writing?

Ans. In mine. But that so far from being a signing, it is a direction given to Mr. Stoutenburgh to show him how to mail the paper which he was to submit to me for my rejection or acceptance. It was not a signature. It is on the back of a paper and is my post-office address.

Ques. Is that in your handwriting on the back of the paper? 30

Ans. You begin by saying if I signed the paper, and then you want to say that this address is a signing of the paper.

Ques. Well, it shows for itself what it is; you needn't try to argue this case, sir.

Ans. I don't want to argue the case, if you didn't want to draw an inference of more than I say.

Ques. Well, it is your duty to answer my questions; your counsel will take care of you.

Ans. I decline to answer that in such a way as to get away from the truth. You asked me, sir, in what points we were not agreed, and—(interrupted.)

Ques. I haven't asked you that lately.

10 Ans. I was answering that when this interruption took place. The principal point is that there is in this sketch of the lease no stipulation such as there had been in the preliminary correspondence and conversation upon which the whole thing was founded, that there should be a right to abandon it in case of the mine proving unproductive. That was the fundamental point in our preliminary dealings, which is not embraced in the lease, which is a sufficient reason for rejecting the lease.

Ques. You are quite sure, then, the lease contained no clause for termination?

20 Ans. I am not; that is not what I said.

Ques. What did you say?

Ans. I said it didn't contain a stipulation which was part of the original correspondence, which was that the mine should be abandoned if it was not productive.

Ques. Where is that in the original correspondence?

Ans. I think you will find it in your statement of the case.

30 Ques. If you or your counsel will point out anything about a right to abandon, if the mine isn't productive, I shall be very glad to see it.

Ans. I don't mean to limit my right to reject Mr. Stoutenburgh's lease to that one point.

Ques. But you say that was one point on which you were not agreed?

Ans. I said it was one of the points upon which I rejected that sketch of the lease.

Ques. Did you make a note of that point?

Ans. I think not.

Ques. Now I want to call your attention to this clause:  
 "It is hereby agreed that the party of the second part may terminate this lease at any time after the shaft above mentioned shall have been sunk in the specified depth by giving six months' written notification of his intention so to do, and upon the payment of all the rents due and upon the delivery of the mines to the party of the first part, free from all incumbrance; and he shall be exonerated from all claims whatsoever on account of said mines." What is there about that that you didn't agree to? 10

Ans. You will find that is a very different thing from the preliminary matter.

Ques. Where is the difference; I see that Mr. Voorhees is looking for it; why didn't you amend it in pencil?

Ans. Because it is impossible for a person, in a hurried interview, to see every point, and I held myself open if for any reason it was not satisfactory to refuse to sign it, and I did refuse to sign it. 20

Ques. Did you object to it on account of that matter when the other leases were sent to you? Did you object to them on that account?

Ans. I don't think I objected on any point. I rejected them because the propositions were sent to me, which I didn't choose to accept.

Ques. You were interested in the manufacture of pig-iron elsewhere than in the Hackettstown furnace?

Ans. Not otherwise than as a stockholder in other companies. 30

Ques. You kept yourself posted as to the price of pig-iron a little, didn't you?

Ans. Just moderately.

Ques. You expected to sell it?

Ans. I expected to at Hackettstown.

Ques. At the furnace you owned there?

Ans. Yes, sir.

Ques. You expected to use this ore in that furnace?

Ans. Yes, sir.

Ques. What time did you get that furnace started?

Ans. Well, speaking from recollection I should say in the month of February, 1880.

Ques. What price did you get for your pig-iron when you got it ready for market?

10 Ans. I didn't get any price; I didn't sell any pig-iron for—well I am afraid to say, but not until the latter part of 1880, I never sold any considerable quantity; I have it on hand now.

Ques. Did you try to sell it when you got the furnace started?

Ans. Yes, sir.

Ques. How did you find the market?

Ans. Well I can't tell from recollection. Prices current will tell.

20 Ques. Wasn't the price of pig-iron falling all the time from January until August.

Ans. Yes, sir.

Ques. Didn't it fall very rapidly that spring?

Ans. Yes, sir; it did.

Ques. And every month from that spring down to July?

Ans. That I can't recollect.

Ques. Didn't it run in the month of February, and didn't it fall in the month of March from forty dollars at tide water to thirty-eight dollars?

30 Ans. I can't tell.

Ques. And from thirty-eight to thirty-five, and thirty-three, and twenty-eight, and thirty?

Ans. I can't recollect.

Ques. And in May twenty-eight and twenty-six and twenty-four?

Ans. I can't recollect.

Ques. And in June to twenty-three and twenty-two—number one pig-iron ?

Ans. I can't recollect.

Ques. Now you didn't make No. 1 pig-iron there, did you ?

Ans. Yes, sir; some.

Ques. Most of yours was number two, was it not ?

Ans. No, sir; it was mostly lower than one and two; the chief part of the iron made there was on a lower grade. 10

Ques. And that was not worth as much a ton as number one pig-iron by three or four dollars a ton, was it ?

Ans. Well, I couldn't tell you exactly; I would have to know the proportion of it.

Ques. The difference between number one American pig-iron, in the New York market, and the lower grade is as much as three, and four, and five dollars a ton, is it not ?

Ans. Well, from number one iron down to the lowest grade, I should say it was as much as four dollars a ton, 20 and maybe five dollars.

Ques. You were never able to get the price for it that pleased you ?

Ans. Not entirely that, but the market was dull and people didn't want to take the product of a new furnace with more satisfactory iron offered them; and probably I didn't push my sales as much as others.

Ques. But it was a very severe falling market that spring ?

Ans. Yes, sir. 30

Ques. And that had nothing to do with your desire not to take this ore, I suppose ?

Ans. I don't know that; it very likely may have had something to do with my desire not to take the ore, but it didn't have any influence on my breaking the contract.

Ques. But upon your desire not to take the mines it might?

Ans. I will say no, it didn't. You ask me now to admit that I had dishonorable motives in trying to dodge an agreement I had never made. I decline to make that acknowledgement.

Ques. But your anxiety not to take the mine was more than would have been if the prices had kept up?

10 Ans. I would have no desire, in any case, to take hold of any mine that had no ore in it.

Ques. Do you say so in the letter of April 3d, that it was a hole in the ground with no ore in it?

Ans. I don't use those words, but something of that idea.

Ques. I will read the letter of April 3. (Counsel read letter.)

Ans. That is pretty nearly what I meant; it was ordinarily—it was a hole in the ground without ore in it. In other words—

20 Ques. I will continue reading the letter? (Counsel finished reading said letter.)

Ans. Well that was an answer to his allegations from saying that it would require a large amount of machinery to work it.

Ques. Now you complained there of the price, didn't you?

Ans. I don't think I complained of the price; I say there I would not dwell on that point.

30 Ques. Did you say there that there was no ore in the mine at all, but that it was a mere hole in the ground?

Ans. I said something very like it; I say the dead work is too much.

Ques. Did you get an answer to that letter?

Ans. I presume I did, I presume it is here.

Ques. You did send up more powerful machinery and put it in?

Ans. Yes, sir.

Ques. And did sink the shaft some distance didn't you?

Ans. Yes, sir.

Ques. But not the sixty feet which the lease provided for?

Ans. Not so much as sixty feet.

Ques. Why did you sink down on the vein?

Ans. Because I had been assured very positively that I would get ore if I went down, that I saw fit to spend 10 some money there even if I was getting myself into a position which was not what I would wish instead of doing what I should have done if my attention had not been taken up so much with other things, and the first thing was I found myself in a position of having taken it in hand by Mr. Collins.

Ques. Do you say that Mr. Collins went without any authority from you and took possession of the mine?

Ans. He did.

Ques. When you knew it, why didn't you tell him to 20 go away from there?

Ans. I think very likely I did.

Ques. Why did you go there afterwards and put in machinery?

Ans. Partly because I was busy with other things and partly because I expected to have a reasonable arrangement with Stoutenburgh.

Ques. Why didn't you?

Ans. Because he was always too obstinate to do any 30 thing reasonable.

Ques. He claimed he had an agreement with you, didn't he?

Ans. He didn't say much about that in the beginning; he was a little quiet about that.

Ques. You got a letter from him 24th of April, which said so pretty plainly?

Ans. I can't tell about that.

Ques. After you got that letter why did you go on working?

Ans. For the same reason just mentioned. I wanted to do what was the best and the most reasonable thing. I expected to have a satisfactory settlement, and I remember making use of an argument like this, that if I abandoned the mine it would be a condemnation of it, and I didn't want to do anything that might even by  
10 implication injure the mine or alleged mine.

Ques. That is all.

SAMUEL SCADEAM, a witness produced on the part of the aforesaid defendant, deposeth and saith :

Direct examination by Mr. Voorhees :

Ques. Where do you livè?

Ans. Schooley's Mountain.

Ques. What is your business?

20 Ans. Miner.

Ques. How long have you been engaged at it?

Ans. I have been engaged at it fifteen or twenty years.

Ques. And were you so engaged in the latter part of 1879, and the first part of 1880, and if so, for whom?

Ans. Well, I suppose I was engaged with Mr. Stoutenburgh.

Ques. Where were you mining for Mr. Stoutenburgh?

Ans. On Schooley's Mountain.

Ques. On what is known as the Stoutenburgh mining  
30 farm?

Ans. Yes, sir.

Ques. Which mine were you working; the upper mine or the lower mine?

Ans. The lower mine.

Ques. How long did you continue to work for Mr. Stoutenburgh?

Ans. Well, I couldn't tell you exactly how long it was; I suppose about a year.

Ques. But when did you stop, I mean.

Ans. On the sixth day of March.

Ques. Sixth day of March, 1880.

Ans. Yes, sir.

Ques. What did you do then?

Ans. Well, we were keeping the water out for quite a little while; I think we had a boiler sent up there.

Ques. You went to work keeping the water out of 10 the mine?

Ans. Yes, sir; for quite a little spell; I couldn't say how long, maybe a month or two; I couldn't tell how long it was.

Ques. What was done then?

Ans. Well, we could not keep the water out with Mr. Stoutenburgh's machinery that we had there. Then Henry Carpenter fetched up their machinery and we put it in, and then we put all the machinery up and pumped the water out of the mine; we drew all the 20 water out of the mine then.

Ques. Did you put the boiler in before you put the new pump and engine in?

Ans. Yes, sir.

Ques. Did that increase the power of the engine that Mr. Stoutenburgh had there?

Ans. No, sir; we never tried the power of that. Not with that boiler.

Ques. You did no mining from the time you stopped working for Mr. Stoutenburgh until the time the new 30 machinery was put in?

Ans. No, sir.

Ques. Were you employed keeping the water out with the machinery there was there?

Ans. Yes, sir.

Ques. What became of the old machinery when you put the new in ?

Ans. We left it standing on the same mine as it was standing on ; we never moved any of the machinery except the pump in the mine, which we took up and put in the change room and oiled it carefully—the boiler room.

Ques. Of the engine-house that was there ?

Ans. Yes, sir.

Ques. What did you do with the engine that Mr. Stoutenburgh had there ?

Ans. We left it standing on the same mine as it was when Mr. Stoutenburgh had it ; on the same footing and all.

Ques. Was it oiled ?

Ans. It was all oiled up and cleaned out.

Ques. After you stopped using that engine for pumping, was it ever used again by Mr. Wharton or anybody in his employment that you know of ?

Ans. No, sir.

20 Ques. Was it used there after that as you know of ?

Ans. No, sir.

Ques. Was it put in proper condition ?

Ans. Yes, sir.

Ques. Was it properly preserved ?

Ans. Yes, sir.

Ques. Well, was all the machinery of Mr. Stoutenburgh properly cared for and stored away ?

Ans. Yes, sir ; all carefully put away, everything except—I couldn't say as to the steam pipes, there was pipes  
30 that we couldn't get in there, and they were all piled up and put away carefully, but all the machinery was put away carefully, as I stated.

Ques. After you got the water out of the mine was there any mining done then ?

Ans. Yes, sir ; a little, we done a little mining, we didn't know hardly what to do.

Ques. Did you raise any amount of iron ore?

Ans. No, sir.

Ques. Was there any iron ore taken away from there by Mr. Wharton, if you know?

Ans. No, sir.

Ques. About how much ore did you raise do you suppose?

Ans. Well, it is a pretty hard matter for a man to tell how much ore we raise there, because we sunk a shaft down there, I should judge about twenty feet, but we almost took the responsibility on ourselves, I mean us men there, because we were always afraid whether they were going on with the work, or what we should do; we were always told they were going to stop, and stop because the lease had not been signed. I didn't know anything more about it, except from what people said, and we didn't know what was going to be done, but we went down about twenty feet, as near as I can judge, and when we started there I told Mr. Collins to come up and see it himself. I didn't like to take the responsibility on me, and he came up and seen it for himself and went down into the mine. 10 20

Ques. What did you find in mining twenty feet; did you find much ore?

Ans. Very little ore during that twenty feet; I should judge we took about half a ton of ore out of that shaft; I wouldn't say we took out that; I couldn't say we took out a half a ton of ore in that twenty feet, and we carried that shaft twelve feet wide and, I think now, about ten feet high; that is as near as I could say; it was not without ore; there was a little. 30

Ques. What was the size of the vein there?

Ans. When we left the vein there was nothing but a little shell of iron ore; there was a little small bit, about six or eight inches on one side of it, probably a little more, I couldn't say; I was very cautious in measuring

how deep we went down ; I didn't take much notice of the ore, because we couldn't save it.

Ques. When did you stop working there ?

Ans. I couldn't say what month it was hardly.

Ques. What month was it ?

Ans. I could hardly say when we did stop, sir.

Ques. Before or after the first of July ?

Ans. Somewhere about that time, I guess ; I think it was somewhere about that time.

10 Ques. Did you attend to pumping any after you stopped mining ?

Ans. No, sir ; we shut down as soon as we had word to stop.

Ques. You didn't run the pump any at all after that ?

Ans. No, sir ; we had word in the morning, and, I think, we shut her right down.

Ques. How did you leave the mine when you left it ?

Ans. We left the mine in a very good condition. We put in the best timbers—we put in all the best timbers  
20 we could get.

Ques. What do you mean, timbering the mine ?

Ans. Yes, sir. What we timbered we put in very fast in the shaft, I will say that.

Ques. They were in there when you left ?

Ans. Yes, sir.

Ques. What was the condition of the mine when Mr. Wharton first took possession of it ? Was it in a good condition then ?

Ans. Well, she was in a very good condition. Mr.  
30 Stoutenburgh always timbered a mine very well ; he always had the mine timbered very well. I sunk the mine myself. I went down into it, and we timbered the shaft very good. And after that we went on with just the same kind of timber.

Ques. And it was in that way when you stopped working there ?

Ans. Yes, sir; when we stopped working there it was in that way.

Ques. Were the supports all left in the mine?

Ans. In that part of the mine they are, where we were working, but away over at the other side they were hardly left in.

Ques. Were you instructed to take them out?

Ans. I had orders to take them out; that is when Mr. Stoutenburgh had it.

Ques. Was that shortly before you began to work for Mr. Wharton? 10

Ans. Well, I think—yes; I think it was a month before we started working for Mr. Wharton.

Ques. Were you instructed by Mr. Stoutenburgh to take out the supports of that mine?

Ans. Well, I was hired under Mr. Stoutenburgh at that time, and of course I had to do what he told me. We had a good deal of water, and we had to go to work in that shaft and we took two pillars; that is the way some of the mine went down; we couldn't give any account for it in any way else. 20

Ques. You were ordered to take out some of the pillars?

Ans. Well, that was left in it as pillars, and we took them out.

Ques. Well did they consist partly of ore?

Ans. Yes, sir; there was ore, a good deal of it.

Ques. Well the tools that were on or about the mine at the time Mr. Wharton took it; were they destroyed?

Ans. No, sir; we left just as many tools as there was when Mr. Wharton took hold of it. 30

Ques. Were they left in as good order as when Mr. Wharton took hold of it?

Ans. They were all in very good order when we left.

Ques. Then the tools were not all destroyed?

Ans. No, sir.

Ques. Then how did the condition of the machinery, en-

gine and tools compare at the time when you left them as to the time when Mr. Wharton went there?

Ans. They was all in very good condition.

Ques. Was it as good when you left as it was when you took it?

Ans. I don't know why they should not have been; we didn't work hardly any; we did nothing but hoist it in clear water for a little while.

Ques. That is all.

10

Cross-examination:

By Mr. Pitney:

Ques. You worked in that mine for about eight months for Mr. Stoutenburgh before you went to work for Mr. Wharton?

Ans. Eight months; I think it was longer than that I should judge.

20 Ques. After the sixth of March, 1880, Mr. Wharton paid you didn't he?

Ans. Yes, sir.

Ques. And you are working for Mr. Wharton yet?

Ans. Yes, sir.

Ques. You are a practical miner?

Ans. I think I ought to be.

Ques. About how long did you work for Mr. Stoutenburgh in the mine before you worked for Mr. Wharton?

Ans. I couldn't tell; I think we worked maybe a year, I couldn't hardly tell.

30 Ques. In what mine did you work, which one?

Ans. I worked the lower mine.

Ques. How many men did you have working there with you?

Ans. Well sometimes more than others; sometimes twelve, thirteen, fourteen and fifteen. I think we have had as high as fifteen.

Ques. And sometimes less?

Ans. And sometimes less.

Ques. Were you the foreman?

Ans. Yes, sir.

Ques. The boss?

Ans. Yes, sir; expected to be.

Ques. You were, when working for Mr. Stoutenburgh the boss?

Ans. Yes, sir.

Ques. To get the water out of the mine?

10

Ans. Yes, sir.

Ques. What was the average product of the mine at the time you were working it for Mr. Stoutenburg, how much did you get out a month?

Ans. Well, some months there, I think one month we took out—the highest I think we took out there was about, I should judge, three hundred tons, maybe a little more; I didn't hardly have any account of that.

Ques. What became of the ore?

Ans. I guess Mr. Stoutenburgh sold it.

20

Ques. Was it poor or good ore?

Ans. That was counted to be pretty good ore.

Ques. Carried to where?

Ans. I couldn't tell you.

Ques. Was it not shipped on the railroad?

Ans. Yes, sir; at German Valley?

Ques. How far was it from German Valley?

Ans. About three miles.

Ques. Down the mountain?

Ans. Yes, sir.

30

Ques. Now this ore was in sort of veins or streaks, wasn't it?

Ans. Well, sometimes it run up along—well, when we were down about thirty feet we found a pretty good sight of ore. We had a great deal of it there then.

Ques. How wide was it there?

Ans. I believe at one time it ran twelve, thirteen, or fourteen feet ; maybe more, but I couldn't tell.

Ques. Well, did you take out all that ore ?

Ans. We took out all we could get.

Ques. Did you get to the end of the vein ?

Ans. Well, we got to the end of the vein when we stoped there last.

Ques. While you were working for Mr. Stoutenburgh ?

10 Ans. No, sir ; after Mr. Stoutenburgh gave up the mine, and I suppose when Mr. Wharton took hold of the mine ; I should judge as near as I could find out probably on one side of the shaft ; the west side there might be two feet and a half of ore ; it didn't run half way through the shaft and on the other side we ran right out. We went down through twenty feet while Mr. Wharton had it, and it all went to nothing.

Ques. The ore pinched in ?

Ans. Yes, sir.

Ques. That shaft ?

20 Ans. Yes, sir ; right under there.

Ques. You didn't try any other place for Mr. Wharton ?

Ans. We tried a drift a little ways east, but there was nothing to speak of.

Ques. That was not the only shaft there was it ; wasn't there another shaft on the lower vein ?

Ans. Yes, sir.

Ques. Did you dig in that then ?

Ans. No, sir ; because we couldn't dig any more.

Ques. Why ?

30 Ans. Because we had dug out all we could.

Ques. Did you dig in the upper vein ?

Ans. No, sir.

Ques. Did you ever work in the upper vein ?

Ans. Yes, sir.

Ques. You had found ore there ?

Ans. I think we took the ore out of there many years ago.

Ques. I mean this last time ?

Ans. I think we did take out a little there when Mr. Stoutenburgh had it ; yes, we did, I recollect.

Ques. Did you try there for Mr. Wharton ?

Ans. No, sir.

Ques. Do you know why you didn't ?

Ans. The reason was, that I haven't found out anything else except that the lease wasn't signed.

Ques. You had no orders to go there ; that is the reason you didn't go ? 10

Ans. No, sir.

Ques. Did you have any orders to go working in the upper mine ?

Ans. No, sir.

Ques. Was there any water in the upper mine or was that dryer ?

Ans. There was plenty of water there.

Ques. Now, Mr. Scadeam, you spoke about leaving that boiler and engine in good order ?

Ans. Yes, sir. 20

Ques. Didn't you leave that boiler two-thirds full of water ?

Ans. No, sir ; I cleaned that out myself. I can say there was probably water left in that boiler for a week, maybe a little more ; I couldn't say ; but I cleaned out that boiler myself.

Ques. And you quit pumping as soon as you quit working ?

Ans. Yes, sir.

Ques. Wasn't that the 1st of March ? 30

Ans. Well, I couldn't say.

Ques. Do you recollect seeing young Mr. Stoutenburgh there about the time that you quit ?

Ans. Well, I think he was over there.

Ques. Now, this vein of ore was uncertain ; it pinched in and out ?

Ans. Well, we hadn't any ore there for twenty feet.

Ques. Well, it had been that way before, hadn't it?

Ans. Not hardly so bad as that.

Ques. You didn't run twenty feet without getting any ore?

Ans. No, sir.

Ques. How many different holes have you worked in the upper vein?

10 Ans. Well, I never have worked only in one. Mr. Stoutenburgh, I think, did sink two holes up there while I was working for him.

Ques. And found ore in each one?

Ans. Yes, sir; found a little ore.

Ques. How big was the vein in the upper mine?

Ans. Well, that is a pretty hard matter for a man to tell that.

Ques. It varies there?

Ans. Yes, sir.

20 Ques. How long horizontally did you run along on the vein in what is called the lower mine—lengthwise?

Ans. Well I should think while Mr. Stoutenburgh had it there, we went probably one hundred and fifty feet; probably that is as far as we went there, one shaft and another—not in one shaft.

Ques. Altogether on the vein?

Ans. Yes, sir.

Ques. This place you sunk down was just in one spot—I mean for Mr. Wharton?

Ans. Yes, sir.

30 Ques. You didn't try at any other place to see the vein came in or not?

Ans. Well the vein also got out.

Ques. At the time Mr. Wharton took hold there was about two feet and a half of ore there?

Ans. Right on one side of it; in one corner of it there was about, I should judge, about two feet, at the time Mr.

Wharton was there, I don't know that he could see much about it.

Ques. Do you know when Mr. Wharton was there?

Ans. Yes, sir.

Ques. When was he there first?

Ans. Well, I can't hardly say the time he was there.

Ques. Who was with him?

Ans. Mr. Albert Collins.

Ques. Did you ever see Daniel Wiggins there?

Ans. Yes, sir; once.

10

Ques. You know him?

Ans. Yes, sir.

Ques. Who was with him?

Ans. Old Mr. Collins, I guess.

Ques. When was it Daniel Wiggins was there?

Ans. Well I could hardly tell; it was before Mr. Wharton had the mine.

Ques. Before?

Ans. Oh, a long time before he thought of it. I guess I couldn't tell anything about that though.

20

Ques. Was Mr. Wiggins there with Mr. Wharton one day?

Ans. No, sir; not that I recollect.

Ques. Did you see Mr. Wharton go down into the mine?

Ans. Yes, sir.

Ques. Were you in the mine when he went down?

Ans. No, sir; I was on the top.

Ques. Who else went down into the mine?

Ans. Mr. Albert Collins.

30

Ques. Did Mr. James Collins ever go down into the mine?

Ans. No, sir.

Ques. Did you not work in three shafts in the upper mine?

Ans. No, sir; not for Mr. Stoutenburgh, that I can recollect.

Ques. Now, you didn't try this new boiler on Stoutenburgh's engine and pump at all?

Ans. No, sir.

Ques. You didn't put the boiler in the place of the old boiler, and try how Stoutenburgh's pump and engine would do to free the mine of water?

Ans. No, sir.

10 Ques. You waited until the new engine and pump came?

Ans. Yes, sir; we were working with Mr. Stoutenburgh's pump when that was put in; we were trying to keep the water out, but couldn't do it; it was raising all the time.

Ques. But you didn't try the new boiler with the new pump and the engine?

Ans. No, sir.

20 Ques. Now you say you worked on your own account—on your own responsibility; how many men did you have on the sixth of March working with you there?

Ans. Well, we had several men getting out the foundation of the engine.

Ques. But you didn't attempt to work the mine?

Ans. We could not because the water was in.

Ques. You got ready to work the new engine about when, and got the water pumped out about when?

Ans. I couldn't tell you.

Ques. Well, about the 1st of May?

30 Ans. No; I don't think we started the first of May; it was later than that.

Ques. Do you recollect seeing Mr. Stoutenburgh there on the day you quit using the old boiler and started the new one?

Ans. I have no doubt in the world he was there; I think I did see him there, but I couldn't tell you sure.

Ques. Do you recollect that the old engine was fired up or blown out—the fire was put out of it the same day after you had started the new one?

Ans. I couldn't tell, because sometimes there was so many around there that I didn't hardly know when they came.

Ques. Was the new pump bigger than the old one?

Ans. Yes, sir.

Ques. Different kind of a pump was it not?

Ans. Yes, sir.

10

Ques. Are you quite sure it drew more water than the old one?

Ans. Well, I suppose it did; it kept the water down a little better.

Ques. I mean to say if you had the same power, the same engine and boiler on the old pump and the same boiler with the old pump, couldn't you have drawn the water out just as well as the new one did?

Ans. Well, I don't hardly suppose we could, because we tried it pretty hard; we tried all we dared with Stoutenburgh's pump, and we done all we could with it.

20

Ques. That is all.

Re-direct examination:

Ques. Who directed you to stop working there?

Ans. Mr. Albert Collins.

Ques. The younger Mr. Collins?

Ans. Yes, sir.

Ques. That is all.

30

Adjourned till Thursday morning, July 14, 1881, at 9.30 in the forenoon, at the Court House, Morristown, N. J.

Continuation of case pursuant to adjournment, on Thursday, the 13th day of July, 1881, at Morristown, N. J., before the Hon. Amzi Dodd, Vice-Chancellor.

SAMUEL SCADDEN, re-called.

Further cross-examination by Mr. Pitney :

Ques. Mr. Scadden, who did you work for at the mine, immediately after the time that the work was shut down on the Stoutenburgh mine, in the summer of 1880?

Ans. I went to work for Mr. Wharton.

Ques. Immediately?

10 Ans. After we—after Mr. Stoutenburgh shut down the business.

Ques. I mean in the summer when Wharton shut down business?

Ans. I did not go to work for anybody for a time on the mines; I had days' work.

Ques. For how long?

Ans. I could not tell; three or four months.

Ques. Then where did you work?

Ans. For Wharton.

20 Ques. Down at the Beattystown mine?

Ans. No, the Oxford mine.

Ques. How long did you work for Mr. Wharton?

Ans. Well, I should judge I worked over a year.

Ques. Working for him now, ain't you?

Ans. Yes, sir.

Ques. Did you tell anybody that this vein on the sink in the mine was from two to two and a half feet, and when you quit it was looking better?

30 Ans. Well, I did not; I don't know that I said that the mine was looking any better. I said that the mine had a rock across, and that the ore was gone right in one side of the shaft, really gone in one side of the shaft.

Ques. I am asking you what you told Stoutenburgh or anybody else. Did not you tell them that the vein of ore was from two to two and a half feet thick, and looking better at the time you quit for Wharton?

Ans. I can't recollect that I said that at all.

Ques. What did you say?

Ans. I said we had probably two feet—maybe two and a half feet in one side, the west side of the shaft.

Ques. Had you?

Ans. In the west side we had a little ore; I could not say I took particular notice in measuring it.

Ques. How wide was this sink—what is the difference between a drift and a sink. A drift runs horizontally?

Ans. They can run in anywheres in the shaft.

Ques. What do you call a drift?

10

Ans. Well, from five to six feet high.

Ques. You don't want to answer me. You are a mining man and know what I mean. I know you are trying to dodge the question. I want you to tell me the difference between a drift and a sink. Is not a sink sunk down to get on the vein of ore?

Ans. Yes, sir.

Ques. And is not a drift cut at right angles to a sink?

Ans. Yes, sir.

Ques. How wide was the sink you made?

20

Ans. Twelve feet wide and about ten feet high.

Ques. How much of that was iron ore vein?

Ans. I should judge, as near as I could tell, in one side of the shaft.

Ques. Yes?

Ans. In one side about two and a half feet; maybe that; I could not say.

Ques. In the neighborhood of that?

Ans. Yes, sir; it may be that.

Ques. That continued all the way down?

30

Ans. That continued all the way, as far as we went.

Ques. Why did you say it was only about as thick as your hand?

Ans. I said one side—(interrupted.)

Ques. Did not you say in reply—(interrupted.)

Ans. Did not I say two and a half feet?

Ques. You said yesterday it was that when you commenced to sink, and after you got down twenty feet there was not any more.

Ans. I said one side.

Ques. Then you take that back ?

Ans. I said one side there was not any ore.

Ques. Did you say one side was not any thicker than your hand ?

Ans. I don't know that I did.

10 Ques. If you did, it was not true then ?

Ans. I said there was ore where we went.

Ques. Now leave the shaft and go to the drift.

Ans. Yes, sir.

Ques. The drift was running to the east, was it not, from the bottom of the sink, the bottom of the mine, as it was before you began to sink for Wharton ?

Ans. Well, we had cut down with the sink, and left the drift up here about ten or twenty feet.

Ques. How far did that drift go to the east ?

20 Ans. We never measured.

Ques. Well, tell within a few feet.

Ans. I should think about thirty feet ; may be more, may be less.

Ques. Did you mean to say yesterday that the ore was all run out and gone ?

Ans. Not right in the drift, sir.

Ques. How thick was the vein in the drift ?

Ans. Well, the vein, I suppose, as near as I can tell, I should call it, may be eighteen inches I suppose; may be  
30 a little more; I could not tell.

Ques. Eighteen inches ?

Ans. Yes, sir.

Ques. Was not that drift from two to three feet thick in the vein ?

Ans. I could not say it was ; I don't remember so I could not tell; we never measured it.

Ques. This vein of ore was full of streaks of rock, anyhow?

Ans. It would come in in bunches.

Ques. Yes, with pieces of rock in it.

Ans. Well, it intervened.

Ques. Require any cobbing?

Ans. Yes, sir.

Ques. You said yesterday you did not get out more than half a ton of ore all the while you were working for Mr. Wharton, from 6th of March to the end? 10

Ans. I said I could not tell; I said saleable ore.

Ques. You said half a ton.

Ans. Well, if you took that ore, and washed and cleaned it, I don't know what you would make out of it.

Ques. What made you say not more than half a ton?

Ans. I could not say what it was.

Ques. Did not you know there were from ten to thirty tons?

Ans. Well, it may be as it is.

Ques. You had been getting out ore for Stoutenburgh 20 for several months. Did that have to be cleaned and cobbled before it went off?

Ans. Not all of it.

Ques. Did not you tell Stoutenburgh that the drift to the east was looking better, and that the ore at the bottom of the mine was looking better at the time you quit; At the time Wharton quit working the mine was looking better, both in the shaft and the drift?

Ans. I can't recollect that I did.

Ques. You say you cleaned out the boiler in about a 30 a week after you left the fire out the old boiler,—Stoutenburgh's boiler?

Ans. I can't tell, probably a little more. I could not tell how long it was.

Ques. It was a week or two?

Ans. May be a little more.

Ques. After you quit working for Wharton, and while you were working there by day's work, in the months of August and September, and October, 1880, did not you call on Mr. Stoutenburgh, or meet Mr. Stoutenburgh and tell him that the boiler had never been cleaned out, or washed out, and that the old muddy water was in it yet, and ask him to employ you and pay you to clean it out?

Ans. No, sir; I said it ought to have been done.

Ques. Was it done or not?

10 Ans. I said it ought to have been done, and Mr. Stoutenburgh said. (Interrupted.)

Ques. I ain't asking you that. You wanted the job of cleaning it out.

Ans. No, sir; I did not care about the job. I had plenty of work.

Ques. That's all.

Re-direct examination by Mr. Voorhees:

20 Ques. Did you take the water out of the old boiler after you stopped the fire?

Ans. Not right away; I did not, sir.

Ques. How soon after?

Ans. It is impossible for me to tell how soon, the very day. I could not tell, not for a little while.

Ques. Was it one, or two, or three weeks?

Ans. Probably it was, maybe a month; I could not tell for the world.

Ques. What did you say to Mr. Stoutenburgh afterwards?

30 Ans. I met Mr. Stoutenburgh and told him that I thought that the boiler over there, the water ought to be let out of it and cleaned up, and Stoutenburgh said he did not have anything to do with it. I believe that is the very words he said to me; I could not say now, but I think that is the very words he used.

Ques. What was that?

Ans. That was after we quit sometime, and he told me probably it was better for me to clean the boiler, and that he did not take any responsibility on it; I think so; I think he said he was not the one it would fall on to have the boiler—that ought to pay me.

Ques. What time was that?

Ans. I could not tell what time it was at all.

Ques. Was it before or after you stopped working there?

Ans. After we stopped working there. 10

Ques. That was after you stopped working there?

Ans. Yes, sir.

That's all.

By Mr. Pitney :

Ques. Did not you go and clear that boiler out after that?

Ans. Yes, sir; I did, after we stopped working.

Ques. What did you do it for?

Ans. Well because—(Paused.) 20

Ques. Who paid you?

Ans. Nobody; I never had no pay for it.

Ques. How did you get in the boiler-house?

Ans. It was not locked up, never has been locked up.

That's all.

JAMES H. COLLINS, called and sworn on the part of the complainant.

Direct examination :

30

By Mr. Voorhees :

Ques. Where do you reside?

Ans. I live at Warren Furnace.

Ques. What is your business?

Ans. My business is furnace managing.

Ques. For whom are you employed ?

Ans. Mr. Joseph Wharton.

Ques. How long have you been so employed ?

Ans. I have been in his employ since the 17th of March one year ago—17th of last March a year ago—let me see, December, I mean.

Ques. 17th of December a year ago ?

Ans. Yes, sir.

Ques. At what place ?

10 Ans. At Hackettstown, or Warren Furnace; it is in Hackettstown, I believe.

Ques. Do you know anything about the mine of Stoutenburgh ?

Ans. About which ?

Ques. The mine of Stoutenburgh's ?

Ans. Yes, sir; I know something about it; I was over at the place, I think; I never was down in the mine; never examined it.

Ques. When were you first there ?

20 Ans. Well, I was there in—I don't know whether I was there shortly after I came to Hackettstown. I went over there with Wiggins.

Ques. How came you to go with Wiggins ?

Ans. I went over to see the ore, and tried to buy some if it suited; we wanted to buy some ore; we wanted to stock our furnaces, and went over to buy some ore.

Ques. Did you go in the mine ?

Ans. No, I was not in the mine at all; I never was.

Ques. When did you go there the next time ?

30 Ans. Well it was some time afterwards, I can't exactly remember what time it was; I went over there with Mr. Wharton; I think that was the next time I was over.

Ques. Can't you specify the month ?

Ans. No, I can't; I did not keep any—well I think I did. I might have specified the month if I had been smart enough to bring my diary along. I keep a diary

of my doings every day pretty much, and if I had been smart enough to bring that along I could have answered the question.

Ques. I never heard you had a diary until now ?

Ans. Well I keep a diary, a sort of memorandum about the furnaces, and when I go to the mines, or anything of that kind on a certain day, I put it down. Is there anything laughable in that ?

Mr. Pitney. We are laughing because you have not brought it. Well did you buy any ore of Mr. Stoutenburgh ? 10

Ans. No, sir ; no, we did not buy any ; he had none to sell at the time, I believe.

Ques. Did you have any negotiations with him about leasing the mine, or anything of that kind.

Ans. No, sir ; I never had anything to do with the leasing of it.

Ques. Did you ever talk with him about it ?

Ans. Well, after he and Mr. Wharton had been talking about it, he came to see me a number of times, and talked about the mine and the leasing, too, I presume, but I could not give you the conversation. 20

Ques. What did he say about the mine ?

Ans. Well, he always represented it as a proper place for us to have, and as something that he thought would be profitable and convenient for us to have.

Ques. Did he say anything about how it could be worked ?

Ans. No ; I never said anything to him about the working of it. 30

Ques. Did he say it could be profitably worked ?

(Objected to as leading. Objection overruled.)

Ques. My question was how he represented the mine could be worked ?

Ans. No, sir; he never represented anything of the kind to me, how it could be worked.

Ques. Did he say it was profitable or not?

Ans. Well, he represented as if it was profitable to us, or he would not have asked us to have it—would not have recommended it to us.

Ques. Did he say it was a profitable mine?

Ans. Yes, sir; certainly.

10 Ques. Did you afterwards authorize any work done there?

Ans. I never authorized any work done there, except what I instructed our foreman, after they stopped working there, to keep the water out. I supposed it ought to be, if we were going to use it, and I instructed him to keep the water out.

Ques. What time was that?

20 Ans. That is a question I am not prepared to answer from my recollection; I am not prepared to do it. I don't know what month it was. I was about my own furnace business. I did not tax my memory with it. I did not suppose I would be asked a question about it.

Ques. How did you find out they were going to stop work there?

Ans. Well, I found out that they had stopped work from the foreman, and Mr. Stoutenburgh, probably; that they were about to finish work, and that it would be necessary that something should be done with it to keep the water out.

Ques. Did Mr. Stoutenburgh tell you so?

30 Ans. Well, I won't be positive whether he told me the work was stopped or not, but I was instructed so by some one that was there. I don't know whether I learned it from him or from the miner. I did not go there. I never went there after there had been any pumping done at all. I never was there but once or twice; twice, I think.

Ques. Did Mr. Stoutenburgh say anything to you about leasing the mine, that he had leased the mine, or anything to that effect?

Ans. Well, there was a great deal said about it; I could not tell you the words. Mr. Stoutenburgh came to see me, and letters were written back and forwards to Mr. Wharton and to us. I did not keep any record of the letters; I suppose they have been retained. My son, who is my bookkeeper, attended to all the correspondence for me, and I did not keep any—keep the run of it at all. 10  
I understood (interrupted.)

By Mr. Pitney:

Don't tell anything you understood unless you know it of your own knowledge.

By the witness:

I know of my own knowledge there was a great deal said; that Stoutenburgh came to see me very frequently, and there was a great deal said on the subject. I did not of course have anything to say, because I was not leasing the mine. I heard what he had to say. 20

Ques. What did Stoutenburgh say to you when you started the men pumping there?

Ans. Well, I don't know what he said to me. I don't know whether I saw him after or about the time we started pumping there, or not; I don't remember; but I was informed that they had stopped and that the mine was likely to fill up, and I instructed our foreman to keep the pump going until I knew what was to be done.

Ques. Why did you do that?

Ans. Simply because I did not want to let the mine 30 take any harm until I knew whether we were going to operate it or not.

Ques. Who told you what you talked about operating it?

Ans. Who told me?

Ques. Yes.

Ans. Well, Stoutenburgh told me a great deal about it, and we had letters back and forwards from Wharton talking about the lease, and all that sort of thing that I could not help but know this thing was going on.

Ques. Mr. Stoutenburgh told you a great deal about it?

Ans. Yes, sir.

Ques. Did Mr. Wharton tell you to go to pumping there?

10 Ans. No, sir, he found fault with me for doing it. But I told him I supposed the thing would be consummated after a little while, and it was necessary the water should be kept out; that Stoutenburg had ceased to operate it, and I did not think it was proper or prudent to let it fill up, and that is why I did it.

Ques. Did Mr. Stoutenburgh tell you he had made a bargain with Mr. Wharton?

20 Ans. Well, I don't know that he told me he had made a bargain with him. Stoutenburg told me they were about having a lease made, and I knew they were having a lease written, and having it altered every now and then, and I never knew whether it was consummated or not until Wharton wrote to me to haul away the machinery.

Ques. Were you ever on the ground after they commenced pumping there?

Ans. I never was. No, sir.

Ques. When did you haul away the machinery?

30 Ans. It was some considerable length of time after we commenced pumping, and I can't tell you how long; I can't say. I don't know that I ever made a note of that at all.

Ques. Were you present at any interview between Mr. Wharton and Mr. Stoutenburgh?

Ans. I was present at an interview between them at the Clarendon Hotel. I was invited there to be present

when they had a conversation; but they did not speak quite so loud as you do, and I am a little deaf; and if my life depended on it I could not tell what the conversation was. I knew what was talked about, and that was all.

Ques. Were you in the room all the time?

Ans. No, occasionally; I picked up a paper and amused myself reading the paper; I thought it was only a compliment inviting me there.

Ques. Did they have a paper there that day—was it day 10 time or night?

Ans. Evening.

Ques. Had they a paper there?

Ans. I don't know that they had, I don't think they had any.

Ques. Did they send for a paper?

Ans. Not to my recollection.

Ques. (Showing witness Exhibit 10, for the complainant) Did you receive that letter from Mr. Stoutenburgh?

Ans. Yes, sir. 20

Ques. Did you receive it at or about the time it bears date?

Ans. Yes, sir; what was the date of that?

Ques. Look at the date of it.

Ans. Yes, sir.

Ques. March 8th?

Ans. Yes, sir; March 8th.

Ques. March 8th, 1880?

Ans. Yes, sir.

Ques. Well did you authorize him to continue the engineer then? 30

Ans. Yes, sir; I authorized him to continue having the water kept out until I knew what we were going to do with that, whether we were going to operate it or not.

Ques. Did you authorize him to buy the coal?

Ans. I suppose I did; they were using wood, and I

think it is very likely I recommended his getting coal instead of wood.

Ques. How long before that had he seen you and agreed to keep the water out for you?

Ans. That is a question I cannot answer; I don't know. I saw Stoutenburgh very frequently, but I cannot specify the time. He used to come over very frequently to see me at the furnace.

Take the witness.

10

Cross-examined:

By Mr. Pitney:

Ques. You paid the bills of the mine, the running of the mine and keeping the water out after the 5th of March—after the 6th of March?

Ans. We paid the bills after we commenced having it pumped out, I believe.

20 Ques. Yes; that is about the 6th of March, about the date of the letter you were shown just now?

Ans. I presume so.

Ques. How long after that was it before you put in new machinery, new pump and hoisting apparatus?

Ans. That is a question I could not answer, really. Really I don't know how long; it was some considerable time. We had some machinery that we had at the Oxford mines, that was brought to our furnace, and we had that sent there.

Ques. Who ordered that to be done?

30 Ans. I ordered it.

Ques. Did Mr. Wharton authorize that?

Ans. I won't be positive whether he authorized me to do that or not, but I think it is most likely he did.

Ques. Mr. Carpenter swears that Mr. Wharton told him personally to attend to that, and take it up there; how is that?

Ans. That is something I don't know anything about.

Ques. You have not much memory about this. Anyhow, you did not charge your memory with it?

Ans. I have not much memory about that, but Mr. Carpenter was——(Paused.)

Ques. Have not you said here that you did not do anything in connection with this matter; that you did not move with the orders of Mr. Wharton?

By the Court: I do not think he said that.

10

Ques. Not here on the stand, but to people outside?

Ans. No, sir; I don't think I have.

Ques. Did not you tell Stoutenburgh that you did nothing at all in this matter, except what you were ordered to do by Mr. Wharton?

Ans. No, sir.

Ques. Did not you tell one of the witnesses, Mr. Larryson, attending court here, that you did nothing about this, except by the orders of Mr. Wharton?

Ans. No, sir; I did not tell anybody so. I don't know 20  
Mr. Larryson, and never spoke to him that I know of.

Ques. You went to the mine with Mr. Wharton once?

Ans. Yes, sir.

Ques. What for?

Ans. To look it over. He invited me to go up and see the place, and we walked over to the place together, and he and Stoutenburgh done the talking.

Ques. I did not ask you who did the talking. Did you have a mining compass with you?

Ans. No, sir.

30

Ques. Did you have a mining compass?

Ans. No, sir.

Ques. You saw the appearance of the ground?

Ans. Yes, sir.

Ques. You saw the mine at work?

Ans. Yes, sir.

Ques. You did not go down, but you saw the mine going on ?

Ans. Yes, sir ; I never was down.

Ques. You saw the ore lying there ?

Ans. Yes, sir.

Ques. Take any away ?

Ans. No, sir ; I did not. I don't recollect whether Mr. Wharton did or not.

Ques. How did you know it was ore ?

10 Ans. Well I know ore when I see it, because I don't know much of anything else.

Ques. You are a pretty good judge of ore ?

Ans. Well, I profess to be a pretty good judge of ore from appearances.

Ques. Ain't it the practice with furnaces to get their ores analyzed ?

Ans. Yes, sir.

Ques. Why did you not get some of this analyzed ?

20 Ans. I really don't know ; I did not have anything to do with it.

Ques. You were pretty well satisfied from the appearance of it and the weight of it in your hand what it was ?

Ans. Yes, sir ; I was pretty well satisfied it was not very rich ore.

Ques. What would you call rich ore ?

Ans. Plenty of iron, and not much of anything else.

Ques. That we know.

30 Ans. Well to answer it in a more practical way, a rich ore would yield fifty per cent. in the furnace.

Ques. Analyze fifty-five or sixty per cent. of the gross weight of pure iron. Now, theoretically, if your ore is perfectly pure, that is, if there is no foreign matter in it but iron and hydrogen, it only yields about 70 per cent. ?

Ans. It would yield that.

Ques. But that is all theoretically ?

Ans. Yes, sir.

Ques. It only yields seventy per cent. then ; and what there is below that of foreign matter reduces it just so much more ?

Ans. Yes, sir.

Ques. Then if an ore yields fifty per cent. in the furnace it is good ore ?

Ans. Yes, sir.

Ques. You did not have much difficulty in your mind in believing that would yield that much from feeling it 10 in the hand ?

Ans. I did not think it would ; no, sir.

Ques. You say they were carting it away all the while ; did you see the carts and wagons ?

Ans. I saw wagons carting away.

Ques. And the answer Stoutenburgh gave you when you spoke about selling was, that it was all sold before ?

Ans. Yes, sir ; it was all sold before—well, he said he had contracts running such a length of time.

Ques. It looked, as it was, an ore of good weight ? 20

Ans. Yes, sir.

Ques. And they were raising ore all the time ?

Ans. Yes, sir.

Ques. That was plain to the eye ?

Ans. Yes, sir.

Ques. Well now, you did know that there was negotiations going on ?

Ans. Yes, sir ; I knew that.

Ques. Did not you have the draft of the lease in your possession ? 30

Ans. Yes ; I have had a draft of the lease several times, and sent it to Mr. Wharton, and he has given it to Stoutenburgh and he fetched it to us again ; I don't know how often the thing was sent backwards and forwards.

Ques. Then this thing was running for quite a space of time?

Ans. Yes, sir.

Ques. Now on the night of that matter at the Clarendon Hotel; do you recollect when it was?

Ans. No, I don't.

Ques. Suppose it was the 25th of February?

Ans. I think it was in February, yes.

10 Ques. Well I will show you. Look at Exhibit seven (7), and see if it refreshes your memory any?

Ans. Yes, sir; I presume that is right.

Ques. You directed that to be written?

Ans. Yes, sir.

Ques. And did you meet there Wednesday evening, the 25th February, 1880?

Ans. I won't be positive we did, or not, but I presume we did meet.

Ques. Now, on that evening, did you not go back from the hotel to your house for the draft of the lease?

20 Ans. No, sir; If the draft was brought my son brought it.

Ques. Do you recollect of that circumstance?

Ans. I think such a thing did take place.

Ques. Now then, it was in your son's house, and not yours?

Ans. Yes, sir.

Ques. They did talk it all over that night?

Ans. Yes, sir; a great deal; what they said I don't know.

30 Ques. Only you saw they were talking it over. You did not get the run of it?

Ans. No, sir.

Ques. Did you see them make pencil memorandums?

Ans. Yes, sir.

Ques. What did you understand to be the state of things when they separated that night?

Ans. Well, if my life depended on it, I could not hardly answer that question accurately. My notion was this thing was still in agitation, and there was a great deal more to be done about this thing.

Ques. Did not you say, on your direct examination, that a new lease was to be drawn, and the lease was ready to be signed?

Ans. No, sir; I did not say so.

Ques. What was your understanding of the situation when you ordered the pumping to be done at your expense,—when you took possession of the mine by running the pumps? 10

Ans. Well, I did not understand that we had taken possession of it; but these negotiations were going on, and I supposed we would finally take possession of it, and that it would not be proper for me to let the mine fill up.

Ques. You understood you would finally take possession of it?

Ans. Well, anybody else would have supposed so all the time that such a thing would terminate after a while. 20

Ques. You did take possession of it because you expected to have a lease of it?

Ans. That was just what I expected; that we would have a—(paused).

Ques. A lease?

Ans. Yes, sir; some of these days.

Ques. Why did you take possession just at that time?

Ans. Well, I don't pretend to say I took possession.

Ques. Why did you do just what you did, just at that time? 30

Ans. Just because I understood from Mr. Stoutenburgh that he would put his men to do it if I said so, that it was necessary it should be done to keep the mine from taking injury, until some arrangement was made.

Ques. Why did not Stoutenburgh do it himself?

Ans. Because Stoutenburgh did not feel disposed to be

at the expense of it. I won't say, but when he ceased to take out ore, he did not want to pay for taking it out after he ceased to work it.

Ques. How do you know he ceased to work it?

Ans. Because he told me so himself.

Ques. Did he give you any reason why he ceased to work it?

Ans. I don't know as he did give me any reason, only he supposed he was going to get some one else there.

10 Ques. Told you he had quit because he had agreed with Mr. Wharton on the lease?

Ans. I presume so.

Ques. That is what he told you?

Ans. That is what I inferred.

Ques. Did not Mr. Stoutenburgh tell you this, that he had prepared the leases as agreed upon, and sent them to Mr. Wharton, and he was now ready to deliver possession of the mine?

20 Ans. Well I do not know whether he told me that in those many words or not, but I suppose he told me something like that; that he had sent the leases to Mr. Wharton to have them executed.

Ques. And he was now ready to deliver possession of the mine?

Ans. Yes, sir; I think it is very likely.

Ques. And on the strength of that you took possession, or undertook the pumping of the mine?

Ans. I suppose so, on the strength of that I allowed him to engage our men to keep the pump going.

30 Ques. For you, and you paid the bills from that time on.

Ans. Yes.

Ques. Now you keep account of the prices of pig-iron a little—watch the market?

Ans. Well no, I don't keep account of it; it has been so miserably poor that I hate to think about it at all.

Ques. Well, at that time, that spring of 1880, you watched the prices a little; everybody did?

Ans. Yes, I watched the prices; we got started just time enough after the thing was run down. We wanted to catch the boom.

Ques. What date did you get started?

Ans. In March, I think.

Ques. Pig-iron had fallen then?

Ans. Yes, sir; and kept on falling until the bottom fell out. 10

Ques. It was worth \$40 a ton, No. 1, pig-iron, in January?

Ans. I think it was; it did get up there at one time; if it had not got up so high, it would not have fallen down so.

Ques. In February it fell off a little?

Ans. Yes, sir.

Ques. And in March it got worse—got down to thirty dollars or thirty-five dollars?

Ans. After March. 20

Ques. I am speaking about No. 1 pig-iron; that did?

Ans. I know it got down very rapidly.

Ques. And you did not strike the boom?

Ans. No, sir.

Ques. And in April it was still worse?

Ans. Yes, sir.

Ques. And May still worse?

Ans. Yes, sir.

Well, that's all. 30

HOWELL OSMUND, a witness called and sworn on the part of the defendant, being duly sworn according to law, deposeth and saith:

Direct examination:

By Mr. Voorhees:

Ques. Where do you live, Mr. Osmund?

Ans. Hackettstown.

Ques. What is your business?

Ans. Running a mine at Beattystown?

Ques. Who for?

Ans. Mr. Wharton?

Ques. How long have you been there?

Ans. About eighteen months, I think.

Ques. Were you ever present at any conversation about  
10 this mine of Mr. Stoutenburgh's, between Mr. Stouten-  
burgh and Mr. Collins?

Ans. No, sir.

Ques. Mr. Albert Collins?

Ans. Yes, sir; I was with him once.

Ques. You were with Albert Collins once?

Ans. Yes, sir.

Ques. Where was that?

Ans. At the gate I think, where—Mr. Stoutenburgh's  
gate—where it goes to his dwelling.

20 Ques. Can you tell when it was?

Ans. No, sir; I don't recollect.

Ques. What month it was?

Ans. I could not tell that.

Ques. Well, what occurred there?

Ans. Well all that occurred there was Mr. Albert Col-  
lins gave Mr. Stoutenburgh what he said was a lease,  
and told Mr. Stoutenburgh that there was considerable  
alteration into them, and he should take and examine  
them; and he took them and said he would examine  
30 them, and if they were satisfactory he would bring  
them down—let them send them to Philadelphia, to  
Mr. Wharton.

Ques. Was anything said about a house?

Ans. Mr. Stoutenburgh asked them what they were  
going to do about the house; he told him he could not

tell him ; when the lease was executed, he could tell him more about it. That runs in my mind.

Ques. Was that all that was said ?

Ans. That is all I recollect.

Take the witness.

Cross-examined :

By Mr. Pitney :

Ques. Did Mr. Collins pay him any money that day— 10  
pay Mr. Stoutenburgh ?

Ans. It runs in my head that he paid him a little, I ain't certain, but I think he did ; I think so.

That's all.

ALBERT COLLINS, a witness produced on the part of the defendant, having been duly sworn according to law, de-  
poseth and saith.

Direct examination :

20

Mr. Voorhees :

Ques. What is your business Mr. Collins ?

Ans. I am at present bookkeeper at Wharton's furnace,  
paymaster.

Ques. How long have you been ?

Ans. About two years.

By the Court: He is a son of James Collins.

Ques. Are you a son of the Mr. Collins examined 30  
here ?

Ans. They say so ; yes, sir.

Ques. And his clerk ?

Ans. Yes, sir.

Ques. Were you ever at the Stoutenburgh mine with  
Mr. Wharton ?

Ans. Yes, sir.

Ques. At what time?

Ans. I can't fix the date; it was early in the year 1880; yes.

Ques. It was early in the year 1880. Did you go down in the mine with him?

Ans. Yes, sir.

Ques. Who else were there with you?

Ans. Who went with me?

10 Ques. Yes.

Ans. No one went with us.

Ques. Only you and Wharton?

Ans. That's all.

Ques. Who did you meet there?

Ans. Mr. Scadden and the miner, and Mr. Stoutenburgh.

Ques. Was Mr. Wiggins with you?

Ans. No, sir.

Ques. Did you go into the mine that day?

20 Ans. Yes, sir.

Ques. Which one?

Ans. I don't know which one they call it; it was one of them.

Ques. Did you go in more than one?

Ans. That was all.

Ques. Was it the one Scadden was working at?

Ans. Yes, sir.

Ques. Were you present at any interview between Stoutenburgh and Wharton?

30 Ans. Yes, sir.

Ques. Where?

Ans. At the mine and at the Clarendon House.

Ques. What time at the Clarendon House?

Ans. The same time my father was there. I cannot fix the date.

By the Court. That was February?

By Mr. Voorhees : February 25th.

By the witness : yes, sir.

Ques. Were you there all the time that they were there ?

Ans. No, sir.

Ques. Did you on that occasion go for a paper ?

Ans. Yes, sir.

Ques. Where did you go to ?

10

Ans. To the furnace.

Ques. Did you hear the whole of the conversation ?

Ans. No, sir.

Ques. The principal part of it, or any part of it ?

Ans. I heard a part of it.

Ques. Were you present at the conclusion of the conversation ?

Ans. I can't say positively.

Ques. Can't say positively. Did you understand from Mr. Wharton and Mr. Stoutenburgh what there was concluded upon ?

20

By Mr. Pitney : Not from Mr. Wharton in the absence of Mr. Stoutenburgh.

Ans. I understood there was no conclusion.

Ques. From whom did you understand it ?

Ans. From Mr. Wharton.

By Mr. Pitney :

30

I move to strike that out.

Ques. Did you understand anything from Mr. Stoutenburgh about it ?

Ans. Nothing.

By Mr. Pitney :

That is very unfair conduct on the part of somebody after distinctly warning them. I move to strike it out.

By the Court :

Yes, that is stricken out. The question is what he understood at the time ; was the determination at the time the interview ended ?

By Mr. Voorhees :

10

That is the question ; and then he said what he understood from Mr. Wharton ; and then I questioned him as to what he understood from Mr. Stoutenburgh, and he said nothing. I submit that the answer is proper.

By Mr. Pitney :

I ask the Court to confine it to the understanding of both parties.

20 By the witness :

Ans. What I meant from my understanding from Mr. Stoutenburgh was, there was no conversation passed between he and I.

Ques. Was he present at the time you had this understanding ?

Ans. Mr. Stoutenburgh was present ; yes, sir.

By the Court :

30 Ques. Did Mr. Wharton say anything to you on that point in Mr. Stoutenburgh's presence ?

Ans. Nothing to me directly.

Ques. Well indirectly ; any way ?

Ans. No, sir ; it was from the conversation that I—  
(paused.)

Ques. You drew your inference from the conversation that passed between them ?

Ans. Yes, sir.

By Mr. Voorhees: I submit that is entirely competent.

By Mr. Pitney: Yes; after the witness sees the position of the thing he beats it up.

By the Court: His testimony was rather vague and 10  
loose on the point; I don't know exactly what he meant to say.

By the Court:

Ques. Can you state what actually occurred ?

Ans. No, sir; I can't state what actually occurred; I can't remember. I knew at the time what occurred, what the conversation was, but I have forgotten it. The impression that was left with me was that it was not con- 20  
cluded; was not ended.

Ques. The papers were not signed ?

Ans. The papers were not signed.

Ques. Is that what you mean ?

Ans. That is what I meant by it. There were several alterations being made, and of course the agreement was not ended, or made.

By Mr. Voorhees:

Ques. Do you know when possession was taken there— 30  
when you commenced pumping there ?

Ans. I don't know when the pumping was commenced exactly; sometime in May I think.

Ques. May? Do you remember the receipt of that letter by your father, Exhibit 10, complainant ?

Ans. I think I remember that letter as having been received.

Ques. (Showing witness Exhibit 11.) Is that your answer to it?

Ans. Yes, sir; that is my writing.

Ques. Can you state now when the pumping was probably commenced?

Ans. Probably commenced in March.

Ques. If this letter refers to that?

Ans. Yes, sir.

Ques. Were you at work after that time?

10 Ans. Yes, sir.

Ques. When?

Ans. I was at the mine the latter part of May, and I think about the latter part of each month after we commenced having men there.

Ques. The latter part of each month, after you commenced having men there. For what purpose were you there?

Ans. Paying them for their work.

20 Ques. Did you receive any other letter, or your father receive any other letter from Mr. Stoutenburgh about this?

Ans. I think he did.

Ques. (showing witness Exhibit 4, defendants) is that the letter that he received?

Ans. To the best of my knowledge I think he received this.

Ques. Do you know whether this is the envelope that it was received in?

30 Ans. I think it was; it is very much like the envelopes the letters were received in.

Ques. Well were you there in the latter part of May?

Ans. Yes, sir.

Ques. What did you do at that time?

Ans. At that time I paid off the men.

Ques. Paid off the men at the mine. Did you go to see Mr. Stoutenburgh?

Ans. We met Mr. Stoutenburgh.

Ques. Where?

Ans. Near his residence.

Ques. Who was with him?

Ans. Mr. Osmund?

Ques. Howell Osmund?

Ans. Yes, sir.

Ques. Did you say anything to him about it—about this transaction—what occurred there?

Ans. I handed Mr. Stoutenburgh the leases that had been sent to us by Mr. Wharton, he having had them altered—changed the wording—with directions to hand them to Mr. Stoutenburgh, for him to look them over and approve them or not, just as he thought proper. I handed them to him and told him there had been changes made; that Mr. Wharton wanted him to look at them and see what he would say. 10

Ques. Well, what was said by him?

Ans. He said he would look at them.

Ques. Was that all? 20

Ans. That was about all that was said I believe about the leases.

Ques. Did he promise to return them to you if he approved the alterations, or anything of that kind?

Ans. Well as I understand it I don't know whether he promised it or not.

Ques. You understand it but don't know whether he promised it or not?

Ans. Yes, sir.

Ques. Was anything said about the tenement-house? 30

Ans. Yes, sir.

Ques. What?

Ans. Mr. Stoutenburgh asked me "what are you going to do with the tenement-house?" I said, as near as I can tell, when we take possession of the mine, and require a tenement-house, we could probably take it.

By the Court :

State that again ?

Ans. I told him when we took the mine we would, in all probability, require the tenement house, and would take it.

Ques. What did he say ?

Ans. I don't remember what the answer was.

10 Further direct :

Ques. Did you pay anything to him that day ?

Ans. Yes, sir.

Ques. How much ?

Ans. A small sum ; I don't remember exactly what it was ; two or three dollars, perhaps.

Ques. What for ?

Ans. For work done about the mine, I think—for the use of his team about the mine.

Ques. Who had that been employed by ?

20 Ans. Had been employed by Joseph Wharton, and by his foreman there, Samuel Scadden.

Ques. Can you tell me about how long you continued operating—operations at that mine ?

Ans. Well, there was operations going on there about three months, I think.

Ques. Until what time about ?

Ans. Until about the 1st of August.

Ques. Till about the 1st of August ? When did the mining cease there ?

30 Ans. I can't say.

Ques. Did you continue to pump any time after the mining ceased ?

Ans. We kept pumping after the mining stopped.

Ques. When did you take the machinery and things from there ?

Ans. That was the time of the stopping of the work, about the 1st of August.

Ques. Then the operation of mining had ceased before that some time?

Ans. Yes, sir.

Ques. And you had been pumping?

Ans. Yes, sir.

That's all.

Cross-examined :

10

By Mr. Pitney :

Ques. Mr. Collins, what did you go to the Clarendon Hotel on the evening of the 25th February for—what was your business there?

Ans. I went there in company with father, knowing there was to be—we expected there was to be an interview between Mr. Wharton and Mr. Stoutenburgh.

Ques. What was the paper you went for?

Ans. The lease.

20

Ques. Where was it really, at your house; or at the mine, or where?

Ans. At the furnace—the office of the furnace.

Ques. How long had it been there?

Ans. I can't tell.

Ques. What did you want with that?

Ans. Mr. Wharton wanted it—they wanted it there.

Ques. You know they met there to conclude the bargain for the lease of the mine?

Ans. I don't know that they met there to conclude the bargain; I presume that is what they were there for.

30

Ques. They had been negotiating some time?

Ans. Yes, sir.

Ques. You knew Mr. Wharton had agreed to take a lease?

Ans. Had agreed to take a lease?

Ques. Yes?

Ans. Well he was there to agree to take a lease?

Ques. (Showing witness Exhibit 2.) You saw a paper like this—received a paper like this, did not you, and forwarded it to Mr. Wharton?

Ans. Yes, sir.

Ques. You knew that was forwarded to Mr. Wharton?

Ans. I think I forwarded it.

Ques. Did you ever see this letter written by Mr. Wharton, Exhibit 3, letter of January 21st?

Ans. I don't think I ever did.

Ques. Well you knew something like that had passed between the parties, did not you?

Ans. They had been writing about it; oh, yes.

Ques. Did you receive a letter like that? (Exhibit 5 from Mr Stoutenburgh.)

Ans. I suppose we received it.

Ques. And did you receive the accompanying letter, Exhibit 5, with it?

20 Ans. To the best of my knowledge, we did.

Ques. And you understood from that—you received this lease—draft of lease, did not you, from Stoutenburgh?

Ans. There was a draft of a lease came there.

Ques. And was forwarded by you to Philadelphia, and then sent back by Wharton to you?

Ans. I think that was the case.

Ques. And you knew from that that the parties—that Mr. Wharton had agreed to take a lease on the mine, and the only question was to agree on the details and the  
30 amount?

Ans. I don't remember that he agreed to take a lease.

Ques. Did not you understand all there was between the parties was to agree on some of the terms of the lease, and when that was agreed upon the lease was to be signed?

Ans. When the terms were satisfactory I understood it was to be signed.

Ques. You got that lease on the night of the 25th of February, and brought it to the hotel?

Ans. I brought it there.

Ques. You saw them make alterations?

Ans. Yes, sir.

Ques. Changes?

Ans. Yes, sir.

Ques. You saw them noting the change? 10

Ans. I think I did.

Ques. Did you notice they went all over the lease from beginning to end?

Ans. No, sir.

Ques. You did not pay much attention?

Ans. No, sir.

Ques. What you understood at the close was, that they had not yet signed the lease?

Ans. They had not signed it.

Ques. Mr. Stoutenburgh said nothing to you, whether 20 they had agreed upon the terms or not, of the lease?

Ans. I don't remember his having said anything about agreeing or having agreed.

Ques. The point that was in your mind was, that they had not signed the lease?

Ans. Yes, sir.

Ques. You did understand that a new lease was to be drawn?

Ans. That was the understanding.

Ques. Yes, by whom? 30

Ans. Mr. Stoutenburgh had this lease. The first was drawn by him, and I naturally supposed he would have the next drawn.

Ques. You knew it was his handwriting?

Ans. Yes, sir.

Ques. Did not you understand that the first draft of

the lease had been corrected by the parties, and that Mr. Stoutenburgh was to draw a new lease with it?

Ans. The corrections made, that was the understanding.

Ques. The corrections had been made, and Stoutenburgh was to draw a new lease in accordance with these corrections; was that the understanding?

Ans. I believe it was.

10 Ques. Do you recollect Mr. Wharton turning round to you on that evening and telling you to pay \$1,800—the price of the loose property there—into the May payments?

Ans. I have heard it since made use of. But I positively won't say such was the case?

Ques. Will you say it was not?

Ans. I will not; I don't remember.

Ques. What do you mean, heard it since?

Ans. I have heard it from some one since that such a conversation had taken place.

20 Ques. That night?

Ans. Yes, sir.

Ques. At the hotel?

Ans. Yes, sir.

Ques. What is your memory about it now, Mr. Collins; ransack your memory whether or not Mr. Wharton did not turn round to you and say, "Collins, put \$1,800 into the May payments for Mr. Stoutenburgh, or to the father?"

Ans. I don't think he would have said that to me.

30 Ques. To your father, I mean?

Ans. He, perhaps, may have said it to father; I don't know.

Ques. Have you any recollection of it?

Ans. I don't recollect clearly about it.

Ques. Not clearly? Well, from whom have you heard about it since?

Ans. I think Mr. Stoutenburgh mentioned it once about his having said so.

Ques. Did you recollect it then when he mentioned it?

Ans. Well, I don't know whether I did or not.

Ques. You have heard nothing from your father about it?

Ans. I don't think that he and I talked about it.

Ques. And did not Mr. Stoutenburgh ask you for that \$1,800 on the 27th of May, at the gate?

Ans. I can't remember whether he did or not. He 10 said something about it, but I don't really remember that he asked me for it.

That's all.

JAMES H. COLLINS, recalled :

By Mr. Voorhees :

Ques. Mr. Collins, at the interview between Mr. Wharton and Mr. Stoutenburgh, at the Clarendon Hotel, in February, 1880, did Mr. Wharton tell you to put into the 20 pay-roll for May, the sum of \$1,800, or words to that effect, for the machinery or tools of Mr. Stoutenburgh?

Ans. No, sir; Mr. Wharton did not tell me anything of the kind.

Take the witness.

By Mr. Pitney :

No questions.

SAMUEL SCADDEN, recalled :

30

By Mr. Voorhees :

Ques. Did you employ Mr. Stoutenburgh, or his team, or his men, or anything of that kind, to do any work around the mine while Mr. Wharton was there?

Ans. Yes, sir ; I think that I employed Mr. Stoutenburgh's team ; that is a man and team.

Ques. What for ?

Ans. Drawing stone, or lumber ; I could not say now positively what it was—whether it was to draw lumber, I could not absolutely say ; probably it was timber, I think so.

That's all.

10 By Mr. Pitney :

No questions.

By Mr. Voorhees :

We offer the exhibits we have marked here, and rest.

Luke J. Stoutenburgh. ( Recalled )

By Mr. Pitney :

20 Ques. Have you the record here of the product of your mine ?

Ans. I have sir, the record in the books.

Ques. Your book of account in which you kept it ?

Ans. Yes, sir ; kept at the time.

Ques. You said on your direct examination that it produced about two hundred tons a month ?

Ans. Averaged that sir.

Ques. Can you give us the exact amount produced each month ?

30 Ans. I cannot, without referring to the books.

Ques. By the books ?

Ans. Yes, sir.

(Objected to.)

Admitted.

Ques. Give us the various months up to the last month.

Ans. We commenced in July, about the working—

Ques. July, 1879?

Ans. July, 1879; August, 107 tons 16 hundred weight; September, 234 tons, 8 hundred weight; October, 127 tons; November, 193 tons; December, 194 tons; January, 299 tons; February, 335 tons; and there were some 30 tons taken out, I should think, in March.

Ques. Between the 1st and 6th of March, how much? 10

Ans. I should think there were 30 tons; Mr. Scadden thought there was a little over.

Ques. Ever been carted away?

Ans. No, sir; it is there still.

Ques. At the time that your mine closed, at the time that you quit working it yourself, had you yourself gone into the mine?

Ans. I had not, within a few weeks.

Ques. How long since you had been in the mine?

Ans. It must have been two or three weeks. 20

Ques. The last time you were in, how was it looking, as to the future production of the mine?

(Objected to.)

Admitted.

By Mr. Voorhees:

I enter an objection if you please.

Ans. I think there was from five to six feet of ore in the shaft and drift. 30

Ques. In thickness.

Ans. Yes, sir; there were some streaks of rocks in it.

Ques. You mean in this ore there were what you call streaks of rock—injections of rock?

Ans. Occasionally little injections of rock.

Ques. What do you mean by five or six feet of ore;

five or six feet of ore mixed with rock, making say ten feet, and deducting that, five or six feet of clear ore?

Ans. Yes, sir; five or six feet of clear ore.

Ques. How wide was the vein that is timbered up?

Ans. The timbers were over ten or twelve feet, and in that place between the walls there was five or six feet of ore the last time I was down.

Ques. And the rest was rock?

Ans. Rock.

10 Ques. That was the last time you were down?

Ans. Yes, sir.

Ques. After that did you know anything more about it except from the report that you had from your miners?

Ans. Nothing more except by the foreman.

Ques. Mr. Scadden?

Ans. Yes, sir.

Ques. What did he tell you about it at the time you quit work and turned the mine over to Mr. Wharton?

20 (Objected to.)

Ques. What did you learn from him as to the condition of the mine at or about the time you quit work and turned it over to Mr. Wharton?

Ans. I learned that from the six feet it was narrowing; gradually narrowing—not so wide; I don't know how wide it was when they took it, but it was not so wide as it was the last time I was down.

Ques. How in the drift?

30 Ans. I have no distinct recollection. They were working the drifts the last week; the water was too quick, and they could not work the drifts, and they got out the ore from nearer the surface. The surface of the west drift.

Ques. Something is said about taking out supports in the west drift, and you notice that in your letter to Mr. Collins. How was that? Just explain that.

Ans. Taking out the supports. We could not work on account of the quickness of the water in the bottom of the mine. I don't remember in regard to the supports. They followed the drift from the east shaft towards the left shaft, and got out ore towards the surface, as far as they thought it was prudent to do so.

Ques. Is it usual in mines to take the ore out clean, to the surface, or to leave what is called surface ore to keep the earth from falling in?

Ans. It is not usual to take it out to the surface. 10

Ques. They worked as near to the surface as they dared to go?

Ans. Yes, sir.

Ques. Your letter is Exhibit 2 for the defendants. I call your attention to this expression. (Counsel read letter.) Now, then, where you allude to the working near the surface, did you, besides that, give Mr. Scadden any instructions to remove what might be called supports or pillars, in the mine?

Ans. Not at that time. Previous to that there was a 20 pillar in the west shaft that was not considered as necessary there, and Mr. Scadden approved of taking it down.

Ques. When was that?

Ans. I could not tell when.

Ques. Before or after you agreed on the lease?

Ans. I presume it was after.

Ques. Did you understand you were doing anything to injure the mine?

Ans. Nothing at all, sir. Of course it was my mine, and I would not want to. 30

Ques. I call your attention again to the order of events. Your proposition to Mr. Wharton was made on the 9th of January. You got a letter from him on the 21st of January, in which he says he considers the thing as concluded, that is, Exhibit 3. Do you recollect now whether

it was before or after you received that letter that Mr. Wharton came to the mine?

Ans. I could not say, sir, when he came to the mine to examine it with these gentlemen; it was after then.

Ques. That is what I meant, after you took that letter?

Ans. Yes, sir.

Ques. Was it after or before the meeting at the Clarendon Hotel?

Ans. It was before the last meeting at the Clarendon  
10 Hotel, before the lease was consummated.

Ques. Do you recollect whether it was after you had drawn this first draft of the lease?

Ans. It was after that. Mr. Wharton had the lease with him at the time, and said it was well drawn.

Ques. That was the time he came and went into the mine?

Ans. Yes, sir.

Ques. He had the lease; this draft, Exhibit 6?

Ans. Yes, sir, and took it away with him.

20 Ques. You recollect it to be the remark that he made, that you made a good draft of a lease?

Ans. Yes, sir, for a layman.

Ques. For a layman?

Ans. Yes, sir.

Ques. Did he use that expression?

Ans. Yes, sir; emphasizing the "layman."

Ques. Did you meet Mr. Wharton more than once at the mine?

Ans. I think I never met Mr. Wharton more than once  
30 at the mine; it is possible I may.

Ques. What was said by you to him, if anything, as to what the character of the mine was, the condition of it, and the development of it?

Ans. I told Mr. Wharton at the time that that mine was wider, some ten or twelve feet wider, than then in width;

Ques. The vein you mean?

Ans. Yes, sir; we were standing on the bank of the mine after Mr. Wharton came out of the mine, and I said to him "Mr. Wharton, you are miner enough to know—you know enough about mines to know that these mines may spread out, as I believed, or that they may cut out" I made that motion to them, because the mine on the mountain that widened out, and cut out, I—

Ques. ( Interrupting ) You made that remark to Mr. Collins?

Ans. Not to Mr. Collins, to Mr. Wharton.

10

Ques. To Mr. Wharton?

Ans. Yes, sir.

Ques. That it would cut out?

Ans. Yes, sir.

Ques. What did you mean, pinch out?

Ans. Yes, sir.

Ques. Had your mine pinched out before?

Ans. It had narrowed down, and then widened, and at different times the width was wider, and the last time it was twelve feet between the walls, from ten to twelve feet, and they reported to me that they put in standards that were eighteen.

20

Ques. Eighteen feet long, timber?

Ans. Yes, sir; that the ore ran above the timber; the large timber which was ten or twelve feet was not long enough. They had to take out ore above the timber, and put in standards that were eighteen feet long, above the timber.

Ques. Do you mean that timber had been cut in the woods twelve feet long?

30

Ans. We cut most at the bank.

Ques. And when it was in the mine it was not long enough?

Ans. Ten or twelve feet was not long enough.

Ans. How long had that lower mine cut in and then widened out again?

Ans. It commenced to narrow. I think it was twice before this. It had not cut out; it had pinched.

Ques. Now Mr. Stoutenburgh, it has been stated here that you represented to somebody that the mine had been a profitable mine to you to work. What did you say about that?

10 Ans. I said to Mr. Wharton at the time he was there that I thought that were it not for the care of the mine it would be quite as profitable for me to run it as it was to lease it, and therefore I was not very anxious at that time, but would lease it. I preferred leasing it to get rid of the care. I thought it was a mine that would produce well from present appearances.

Ques. Had it been profitable to you?

Ans. It had been a paying mine. It had something more than paid up to that time, including the sinking of the shaft, which was dead work.

Ques. Including dead work, were you paid back?

Ans. Yes, sir, including dead work and everything.

20 Ques. Now, do I understand you to say that you stated to him that the mine might pinch out—might swell out, and might narrow?

Ans. I have a distinct recollection of that.

Ques. State any other representations you made to him as to the value of the mine.

30 Ans. I took him to the upper vein, (and the gentlemen that were with him,) and they examined the surface. I told him the character of the upper vein; in the upper one, that it sank about forty feet; that the shaft was pretty well timbered, and that they had walls—ceiling walls and foot walls; the ceiling wall was pretty good, but the foot wall was not well finished, but a good wall; and that we had taken ore (and that it was a pretty good color) from the upper mine, ore that would sell for \$7 a ton from that vein.

Ques. You were not working at that time?

Ans. I had been, but the water had become too quick and the mine did not drain, and I had given it up.

Ques. Had you gone over this mine with a mining compass to ascertain where the attraction was?

Ans. Yes, sir.

(Objected to.)

Ques. What did you say to him as to the vein generally? Did you say anything as to the indication of the mining compass? 10

Ans. Yes, sir. That the attraction was not very heavy, but that we had opened several hundred feet upon the upper mine at different places. I took him to the different shafts and showed him where the "old mine," I supposed, had jumped a little to the south, and we had opened there and found the vein again, and that it was about three feet—struck out on the north side, and there were indications beyond that of the ore, on the south side, which I regarded the most valuable field on the old mine. 20

Ques. Was that the upper vein?

Ans. Yes, sir; there were four open shafts on that vein.

Ques. Go on and tell us what you said to him.

Ans. I told him just how it was, took him over it, and I cannot remember the particular things that I said to him; but I told him the kind of ore that was there, and that I regarded it as a valuable mine, and regarded the upper vein as the richer ore and a more valuable mine than the lower mine. 30

Ques. Was that true?

Ans. It was.

Ques. Did you tell him anything you did not believe to be true?

Ans. I told him nothing. Everything I done with Mr. Wharton was honest.

Ques. I asked you if you made any representations you did not believe to be true?

Ans. No, sir.

Ques. Did Mr. Wharton, while he had possession, as we claim, of the mine, did he touch the upper vein at all?

Ans. Not that I know of.

Ques. You saw no indications of it? Did he, while there that day, tell you anything about his intention—  
10 what he intended to do with the machinery there already?

(Objected to.)

Ques. Just state what passed between you and Mr. Wharton on his visit to the mine in regard to his working both the mines, and the use of this machinery.

Ans. Mr. Wharton said that he would have to put heavier machinery, which he intended to do, in the lower mine, and take up this machinery for the mine on  
20 the upper vein at the corner of the field, quite removed, and put it there, and by working heavier machinery to the lower vein, and having that machinery there, he could work the intervening mine as a dry mine; that the machinery on the lower mine and the upper mine would take the water away, and he could work the intermediate mine as a dry mine without any pumping, which he could, without doubt.

Ques. Did you pretend to him at any time that the machinery that you had there was sufficient to drain the  
30 lower mine of water?

Ans. No, sir.

Ques. What was your representation to him on that subject?

Ans. That that machinery was prospecting machinery; that it was not adequate to the water in that mine; that

he would have to put heavier machinery there in order to exhaust the water. That was distinctly talked over.

Ques. You talked about the intermediate mine. Where is that?

Ans. It is the west shaft on the upper vein, a little to the northeast of the lower vein shaft.

Ques. You were not working the upper vein at the time Mr. Wharton was there?

Ans. No, sir.

Ques. How long since you had worked it? 10

Ans. Perhaps a month; it may have been a little less, or more.

Ques. How long had that vein been opened?

( Objected to. )

Ques. Now at the interview of February 25th, was anything said about the payment of \$1,800 for the machinery?

Ans. Yes, sir.

Ques. State what was said by Mr. Wharton. 20

Ans. After—Mr. Wharton was sitting at the desk, I was sitting on the west side of the table, and after concluding the matter of \$1,800 for the machinrey, he turned to Mr. Collins and said to him "Collins, pay that out of the May payments," and I don't know whether Mr. Collins replied to him or not, but, that is what he said. I have a distinct recollection, because I said to him "can't you pay it before then; it is waiting a good while?" he said "no, it is not convenient to use it before the May payment" and he turned to Mr. Col- 30  
lins; he said to him once, "pay him out of the May payments."

Ques. Do you know whether Mr. Collins heard it or not?

Ans. No, I can't say; Mr. Collins is deaf, as you all know; whether he heard it or not I can't say.

Ques. Now did you ever go down into the mine while Mr. Wharton was working it?

Ans. No, sir.

Ques. Did you make inquiries of Mr. Scadden as to how the vein appeared at any time, and if so, what did Mr. Scadden say to you?

(Objected to.)

Ques. Did you ask Mr. Scadden, or learn from Scadden, anything as to how the vein appeared?

10 Ans. I asked Mr. Scadden, and he told me that the vein was between two feet and a half and three feet, and was making better. It was intervened with some little rock, but the promise of the vein seemed to be improving; that there was from two and a half to three feet of ore on the west side of the shaft; and that the drift was also improving.

Ques. What did he refer to by the drift?

Ans. The drift of the east side.

Ques. The lower vein?

Ans. Yes, sir.

20 Ques. Recently worked?

Ans. Yes, sir.

Ques. That was improving?

Ans. Yes, sir.

Ques. Did you get the idea from Mr. Scadden that the mine was played out?

(Objected to.)

Ques. Did he convey that idea?

(Objected to.)

30 By the Court:

Ask what he said to him.

Ques. When was it he told you that?

Ans. It was in the fall, after I returned from my summer journey.

Ques. Were you there during the summer at all while

they were working, after the 27th of May or the 1st of June?

Ans. I don't know that I was ever to mine at all; I was on the mountain for a week.

Ques. Then where were you?

Ans. In Pennsylvania, and I was at Atlantic City.

Ques. When did you come back?

Ans. On the 20th, for permanency; on the 20th of September.

Ques. When did you see Scadden?

10

Ans. After that.

Ques. How soon after that?

Ans. I could not tell; it might have been a week or two.

Ques. Was it then you got this information of him?

Ans. Yes, sir.

Ques. What did he say, if anything, to you about a boiler?

Ans. He said to me that the boiler was left with a quarter full or a half full of water, and that it would rust out—it would spoil—that is what he said. It ought to be emptied and oiled up and put in position. That was in September or October, about the first of October. 20

Ques. Has he ever repeated that story to you about the condition of the mine, Mr. Scadden?

Ans. Well, I have had several conversations with him about it. He gave me the same impression until I subpoenaed him; or I called on him a week or so before I subpoenaed him. That was the first that he ever gave me a very shaky edition of it. 30

That's all. Cross-examine:

By Mr. Voorhees:

No questions.

JOHN LARRYSON, a witness produced on part of complainant, being sworn and examined :

By Mr. Pitney :

Ques. Where do you live, Mr. Larryson ?

Ans. Schooley's Mountain.

Ques. How long have you lived there ?

Ans. About eight years.

10 Ques. What is your business ?

Ans. Mining and working in the timber.

Ques. Did you ever work in the Stoutenburgh mine ?

Ans. Yes, sir.

Ques. For whom did you work there ?

Ans. I was employed by Mr. Scadden during the sinking.

Ques. In what month ?

Ans. June, July—somewhere along there.

Ques. Had you ever worked in the mine before ?

Ans. Yes, sir.

20 Ques. For Mr. Stoutenburgh ?

Ans. Yes, sir.

Ques. What did you find the—how did you find the vein of ore while sinking there ?

Ans. I should think there was two feet or two and a half, when we commenced on the one side, and it would squeeze a little, out and in.

Ques. Out and in ?

Ans. Yes, sir. I should say it was about the same when we concluded as it was when we commenced.

30 Ques. Do you know anything about the drift ?

Ans. I never worked in the drift.

Ques. Did you learn how it was running while you were there ?

Ans. The presumption was—(Interrupted.)

(Objected to.)

Ques. Did you get it from Mr. Scadden ?

Ans. He told me so ; he told me in these words, it was looking better.

Ques. What ?

Ans. The drift. I think it was some twenty feet from the sink.

Ques. When did he tell you it was looking better ?

Ans. Some where near the close.

Ques. Near the bottom did you find a spring, as they call it, of ore? 10

Ans. There was some, about that wide. (Illustrating.)

Ques. Four or five inches?

Ans. Yes, sir ; and about that, (illustrating,) in length, near the bottom, like a small spring.

Ques. Was that a continuation of the other vein, or something new ?

Ans. It was something new, I think.

Ques. Was that in addition to the other six feet you were speaking of?

Ans. Yes, sir ; within six feet of it. 20

Ques. Six feet of rock between ?

Ans. Yes, sir.

Ques. How much ore did you get out in sinking that shaft ?

Ans. What we saved ?

Ques. Yes.

Ans. Somewhere from five to eight load.

Ques. How many ton to the load ?

Ans. I could not say ; somewhere about five—eight load would be about fifteen ton, or something like that. 30

Ques. Two ton to the load ?

Ans. Yes, sir.

Ques. Was it ore by itself ?

Ans. It was saved for ore.

Ques. Separate from the rock ?

Ans. Yes, sir ; there was some little rock with it.

Ques. It had been curbed ?

Ans. Yes, sir ; but there was a little rock with it.

Ques. It was such ore—was it such ore fit to be carted to the furnace ?

Ans. It was intended to be saved, I suppose.

Ques. Who else worked in the vein ?

Ans. William Reed and Andrew Reed.

Ques. Do you know where they are now ?

Ans. Yes, sir.

10 Ques. Where ?

Ans. Driving for Mr. C———in New York.

Cross-examined :

By Mr. Voorhees :

Ques. When did you quit working there ?

Ans. I quit the night before, or the day before, or a day and a night, I went to Hackettstown with Mr. Reed, and when we came back—I think it was our day to go  
20 on ; somebody worked in our place that day, it may have been a day and a night, I can't say.

Ques. I asked you when you quit ?

Ans. I could not tell the date exactly.

Ques. Was it in June or July ?

Ans. I worked in June there, I think ; in July it must have been.

Ques. How long did you work there altogether ?

Ans. Well I can't say ; I think Mr. Scadden can tell probably.

30 Ques. Was any of the ore carted away, that you got out ?

Ans. No, sir.

Ques. It was left there ?

Ans. Lays there yet.

Ques. Lays there yet ?

Ans. I suppose it does.

That's all.

Re-direct:

Ques. Do you recollect how much your pay was, whether it was one or two months' pay?

Ans. I drew on two pay-days; William Reed drew the money.

Ques. You were there during the whole of the sinking of the twenty feet?

Ans. The whole of the sink of twenty feet. They cleaned up, and I went there with Mr. Scadden.

10

MARTIN COUGLE, a witness produced on the part of the complainant, being duly sworn according to law, deposeseth and saith:

Direct examination:

By Mr. Pitney:

Ques. Mr. Cogle, did you ever work in this mine? 20

Ans. Yes, sir.

Ques. For whom?

Ans. For Mr. Stoutenburgh.

Ques. Did you work there up to the time it was turned over to the other concern?

Ans. No, sir.

Ques. When did you quit?

Ans. I think about the 4th; it was on a Friday night.

Ques. The 4th of what?

Ans. March, on a Friday night—Saturday. 30

By the Court:

That is enough.

Ques. How long had you been working there?

Ans. I came there in August; about a year to this time; about seven months.

Ques. What was the condition of the mine at the time you quit; what was the size and appearance of the vein?

Ans. Well, it was very good in the east end; looking very good in the east drift, and very good in the sink. In the west side, east side, I think it was about two and a half feet to three feet in the sink.

Ques. And in the east drift?

Ans. About the same or a little larger.

Ques. How had it been during the month of February?

10 Ans. Well, I forget whether it was in February or January that we had about ten or twelve feet of ore in the east drift.

Ques. In the drift?

Ans. In the drift; not quite so large in the sink; it ran up higher in the roof.

Ques. And had pinched?

Ans. It pinched a little; kept pinching.

Ques. And was now about two and a half feet?

Ans. About that; yes, sir.

20 Ques. You are still mining—engaged in mining?

Ans. Yes, sir.

Ques. How was the water when you quit there?

Ans. Very strong.

Ques. Difficulty about working on account of the water?

Ans. Yes, sir; we could do nothing in the bottom of the sink.

That's all.

30 Cross-examined :

By Mr. Voorhees :

Ques. Which side of the sink was the vein?

Ans. The largest of it?

Ques. Yes.

Ans. It was the east side, sir.

Ques. How long had it been that you worked in the bottom of it?

Ans. Well I can't say what month I went out of No. 2 and No. 1. I should think it was the month of December I started with No. 1 shaft.

By Mr. Pitney :

He does not understand the question.

Ques. When were you driven out I mean ?

10

Ans. About the last of February, or the first of March ; about a week before Mr. Stoutenburgh gave it up.

Ques. A week before you stopped working there ?

Ans. Yes, sir.

By Mr. Pitney :

Ques. That was the time that the water got so strong in the bottom of the shaft that you could not sink any more?

20

Ans. Yes, sir.

Mr. Pitney offered to show by Mr. Stoutenburgh his understanding of the analysis of the ore ; and also offered the report of the State Geologist of 1879 in evidence.

(Offer overruled as incompetent.)

LUKE J. STOUTENBURGH, re-called :

Ques. Did you try to get the Reeds here ?

30

Ans. I was informed, sir, that they were out of the State. I wrote for them to come here ; I did not send them a subpoena.

Ques. Did you request them to come here ?

Ans. Yes, sir.

Ques. When did you write ?

Ans. Last week.

Ques. Did you hope they would be here when the trial commenced?

Ans. I did sir.

(Counsel stated that each had further testimony to offer, if the case were re-opened on either side.)

Adjourned for argument.

COMPLAINANT'S EXHIBITS.

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EXHIBIT 1C.

WARREN FURNECE,  
HACKETTSTOWN, 1 Mo., 7, '80.

MR. L. I. STOUTENBURGH

DEAR SIR: Mr. Wiggins and I will call and see you to-morrow morning, about 9 o'clock, in relation to ores.

Yours very truly,

JAMES H. COLLINS. 20

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EXHIBIT 2C.

Jan. 9th, 1880.

The lower mine I will lease in permanence for twenty years, with the usual conditions of surrender in case the mines may prove unproductive, for seventy cents a ton, with usual privilege of necessary buildings. 30

The upper mine I will lease for twenty years at the rate of royalty of fifty cents a ton for the first two years — sixty cents a ton thereafter — pig-iron remaining not above thirty dollars per ton; but when pig-iron shall be worth thirty dollars or over, seventy cents roy-

alty, so long as pig-iron remains over said thirty dollars. Or, I will lease all the mines on Mine Farm to Mr. Wharton for twenty years at the rate of seventy cents royalty, but will require the working of both veins.

L. I. STOUTENBURGH.

10

## EXHIBIT 3C.

PHILADELPHIA, Jan. 21st, 1880.

L. I. STOUTENBURGH, Esq.,

DEAR SIR:—Mr. Collins reports that under all the circumstances he advises my acceptance of your proposition of 9th inst., for leasing your magnetic ore lands on Schooley's Mountain. This I concluded to do, and in fact have regarded the arrangement virtually made since receiving your said proposition.

20 Of course a formal lease will be prepared and signed by us at more convenient time, before the expiration of your existing contract to deliver ore, which I understand will be completed some time in March.

Please acknowledge receipt of this and thus confirm the bargain.

Yours truly,

JOSEPH WHARTON.

30

## EXHIBIT 4C.

SCHOOLEY'S MOUNTAIN, Jan. 23d, 1880.

JOSEPH WHARTON, Esq.,

DEAR SIR:—Yours of the 21st inst., by the hands of Mr. Collins, is received.

In reply would say that I will adhere to the proposition made you through Mr. Collins on the 9th inst., although my mine is looking much more promising than then. I infer from your letter that you wish not only the one mine that I am now working, but that your lease should include all the magnetic ore of the farm.

As there are two distinct veins of ore, each of which has been opened and partially worked, you will remember that my proposition specified the working of 10 each vein, so that I would have a much greater income from both than from one.

At the time of making the proposition to Mr. Collins it was also understood that if you should lease the whole property, that you would take my machinery and mining improvements at a fair valuation.

I have thought best to mention these items so as to have no misunderstanding about it when the lease is taken.

I expect to complete my contract with the Lehigh 20 Iron Company about the middle of March.

In order to have all things ready in time for you to take possession at the termination of my contract with said company, I will write and send you such a lease as I may think equitable, for your consideration and approval, if it shall suit you.

I am very respectfully yours,

L. I. STOUTENBURGH.

30

EXHIBIT 5C.

SCHOOLEY'S MOUNTAIN, Jan. 24th, 1880.

J. H. COLLINS, ESQ.,

DEAR SIR:—Inclosed please find an open letter to



The said party of the second part for himself, his heirs, successors or assigns, does covenant and agree to pay to the party of the first part, his heirs and assigns the sum of SEVENTY (70) *sixty* cents for each and every ton of twenty-two hundred and forty (2240) pounds of iron ore so mined and carried away from the premises hereby demised; and he shall mine or pay for two thousand tons per year, and if in any one year he does not mine two thousand tons, and has paid the rent or royalty thereon, he may mine the deficiency in any subsequent year without paying any additional royalty or rent for the same. 10

It is further agreed between the parties hereto, that the rent or royalty for iron ore mined and carried away from said mining farm, shall be paid quarterly, on the fifteenth of April, July, October and January, and for all ore that should have been mined in the quarter ending on the first of said months, while this lease remains in the possession of said Joseph Wharton; but should said Wharton dispose of this lease, or release his interest in the iron ore of said mining farm to any other party or parties, then the payment of royalty for ore mined, or that should have been mined, shall be made on or before the fifteenth of each succeeding month, after such transferment of lease or interest in ore on said mining farm shall have been made. 20

It is also agreed between the parties hereto, that said mining interest in said mining farm cannot be released to other parties or party, or this lease assigned to other parties or party without the approval in writing of the first party hereto, or his heirs, or assigns. Should royalty or rent of said mines not be paid within forty days from the time it is due, then this lease may, at the option of the first party hereto, become null and void. 30

The party of the second part shall weigh, or cause to be weighed, all the iron ore taken from said demised

premise, on such scales as the parties hereto may agree upon, and keep a correct account thereof, which account shall at all reasonable times be open to the inspection of the party of the first part, or his agent.

The said second party hereto agrees to have the mines securely and properly timbered at all times, and to sink the lower working shaft, where the engine now is, to the depth of SEVENTY-FIVE, *sixty* feet deeper than it now is, before abandoning it, provided the ore therein shall not  
 10 be sufficient to make it remunerative mining, and a shaft on the upper vein, which said second party also agrees to sink to the depth of fifty feet lower than any one of the shafts now is, on this upper vein, the object being to more thoroughly prove the ground for iron ore.

It is further agreed between the parties hereto, that the said second party will purchase all the machinery  
*and apparatus* consisting *mainly* of steam boiler, engine, pump and pipes and fixtures, with mining imple-  
 20 MENTS now used in and about the mines, at A FAIR VALUA- TION, AND THAT IF SAID PARTIES CANNOT AGREE ON THE FAIR VALUATION THEMSELVES, THEN EACH TO SELECT AN APPRAISER AND THESE TWO TO SELECT THE THIRD AND THEIR UNITED JUDGMENT OF VALUATION TO BE FINAL. \$1,800, payable in *May next*. The engine-house and fixtures  
*and mining timber* about the mines to be included in this ESTIMATE sale.

The party of the second part shall have the right to enter freely on said lands with miners, workmen, horses, wagons and cars, and may occupy about the mines now  
 30 opened, or that may be opened, as much ground as may be necessary for piling ore or waste material, and for discharging water from mines, and for the erection of machinery and buildings, other than dwelling-houses, and may do such other things as may be necessary for the full enjoyment of the rights and privileges hereby

granted and demised, at the same time doing no unnecessary damage to the crops or premises.

The water from the mines is to be discharged in ditches, and where it will do the least damage to the farm, and the shafts dug by second party, in which ore is not found, shall be filled up in three months after their abandonment.

The second party hereto shall have the right to build dwelling-houses for miners on said premises, as may be necessary for their accommodation, in such places convenient to mines, as the said first party hereto may designate, and shall have the right to tear down or remove such dwellings, and any and all buildings or property belonging to him, at any time during the continuance of this lease, or within six months after its termination, without hindrance on the part of the first party, provided all rents and arrearages shall have been duly paid. 10

It is hereby agreed that the party of the second part may terminate this lease at any time after shafts above mentioned shall have been sunken the specified depth, by giving six months' written notification of his intention to do so, and upon the payment of all rents due, and upon the delivery of the mines to the party of the first part, free from all encumbrances, and he shall be exonerated from all claims whatsoever on account of said mines. 20

\* This lease is to continue in force for twenty years from the date hereof, unless forfeited by non-payment of rent or by other specific stipulations contained in this indenture. 30

In witness whereof, we, the parties hereto, have set our hands and on the date above written.

L. I. STOUTENBURGH.

(Endorsed on the back.)

JOSEPH WHARTON,  
P. O. Box 2786, Phil.

## EXHIBIT 7C,

*(Is a postal card directed)*—

MR. L. I. STOUTENBURGH,  
 Schooley's Mountain,  
 "Forrest Grove,"  
 Warren Co., N. J.

10 *(On the reverse side)*—

HACKETTSTOWN, 2 mo. 23, '80.

DEAR SIR: If convenient for you, Mr. Wharton would  
 be pleased to meet you at Clarendon House, Hacketts-  
 town, Wednesday evening, February 25th, 1880.

Truly yours,

JAMES H. COLLINS.

*per A. S. C.*

20

## EXHIBIT 8C.

This Indenture made \_\_\_\_\_ day of March, one  
 thousand eight hundred and eighty, by and between  
 Luke I. Stoutenburgh, of the township of Washington,  
 county of Morris, and State of New Jersey, of the first  
 part, and Joseph Wharton, of the city of Philadelphia,  
 State of Pennsylvania, of the second part; *Witnesseth*,  
 That for and in consideration of one dollar to him  
 30 in hand paid, the receipt of which is hereby acknowl-  
 edged, and the rents, stipulations, covenants and agree-  
 ments hereinafter mentioned to be paid, kept and per-  
 formed on behalf of the said Joseph Wharton, the said  
 party of the second part, I, the said Luke I. Stouten-  
 burgh, party of the first part, have granted, demised,  
 leased and let, and by these presents doth grant, demise,

lease and let unto the said party of the second part, his heirs, executors and assigns, the exclusive right and privilege of entering upon, searching for, mining, digging and carrying away any iron ore that may be found in, on or under all that certain lot or tract of land known as the Stoutenburgh Mining Farm, containing about one hundred and ten acres, situated on Schooley's Mountain, east of and adjoining lands of Morris Dufford. The said party of the second part, for himself, his heirs, successors and assigns, does covenant and agree to pay 10  
 to the party of the first part, his heirs and assigns, the sum of sixty (60) cents for each and every ton of twenty-two hundred and forty (2240) pounds of iron ore so mined and carried away from the premise hereby demised, and he shall mine or pay for two thousand tons a year, and if in any one year he does not mine two thousand tons, and has paid the rent or royalty thereon, he may mine the deficiency in any subsequent year without paying any additional royalty or rent for the same. It is further agreed between the parties here- 20  
 to, that the rent or royalty for iron ore mined and carried away from said mining farm shall be paid quarterly, on the fifteenth day of April, July, October and January, and for all ore that should have been mined in the quarter ending on the first of said months, while this lease remains in possession of said Joseph Wharton; but should said Wharton dispose of this lease, or release his interest in the iron ore of said mining farm to any other party or parties, then the payment of royalty for the ore mined or that should have been mined, shall be made on 30  
 or before the fifteenth of each succeeding month after such transferment of lease, or interest in iron ore on said mining farm shall have been made. It is also agreed between the parties hereto, that said mining interest in said mining farm cannot be released to other parties or party without the approval in writing of the first party  
 24

hereto, his heirs or assigns. Should royalty or rent of said mines not be paid within forty days from the time it is due, then this lease may, at the option of the first party hereto, become null and void.

The party of the second part hereto shall weigh, or cause to be weighed, all the iron ore taken from said mines or demised premise, on such scales as the parties hereto may agree upon, and keep a correct account thereof, which account shall be at all reasonable times open to  
 10 the inspection of the party of the first part, or his agent. The said second party hereto agrees to have the mines securely and properly timbered at all times, and to sink the lower working shaft, where the engine now is, to the depth of sixty (60) feet deeper than when taking possession of mines, before abandoning it, and a shaft on the upper vein, which said second party also agrees to sink to the depth of fifty feet lower than any one of the shafts on this vein now is; the object being to more thoroughly prove the ground for iron ore. It is further agreed be-  
 20 tween the parties hereto, that the said second party will purchase all the machinery and apparatus, consisting mainly of steam boiler and engine, pump and pipes and fixtures, with implements now used in and about the mines at eighteen hundred dollars, payable in May next. The engine house and fixtures and mining timber about the mine to be included in this sale. But the boiler, engine, and everything about the mines, to be used by said party of the first part in mining without rent, until second party hereto shall take  
 30 formal possession of the same, which it will be his right to do at any time after the signing of this agreement. The party of the second part shall have the right to enter freely on said lands with miners, workmen, horses, wagons, and cars; and may occupy about the mines now opened, or that may be opened, as much ground as may be necessary for piling ore, or waste material, and for dis-

charging water from mines, and for the erection of machinery and buildings, other than dwelling-houses; and may do such other things as may be necessary for the enjoyment of the rights and privileges hereby granted and demised; at the same time doing no unnecessary damage to the crops or premise.

The water from the mines is to be discharged in ditches, and where it will do the least damage to the farm. And shafts dug by second party, in which ore is not found, shall be filled up within three months after their abandonment. 10

The second party hereto shall have the right to build dwelling-houses for miners on said premise, as may be necessary for their accommodation, in such places convenient to the mines as said first party hereto may designate, and shall have the right to tear down or remove such dwellings, and any and all buildings, or any and all property belonging to him, at any time during the continuance of this lease, or within six months after its termination, without hindrance on the part of the first party, 20 provided all rents and arrearages shall have been duly paid.

And it is hereby agreed that the party of the second part may terminate this lease at any time after the shafts above mentioned shall have been sunken the specified depth, by giving six months' written notification of his intention to do so, and upon the payment of all rents due, and upon the delivering of the mines to the party of the first part free from all incumbrances; and he shall be exonerated from all claims whatsoever on account of said 30 mines.

This lease is to continue in force for twenty years from the date hereof, unless forfeited by non-payment of rent, or by other specific stipulations contained in this indenture.

In witness whereof we, the parties hereto, have set our hands and seals on the date above written.

LUKE I. STOUTENBURGH. [L. s.]

Witness :

A. T. STOUTENBURGH.

10

EXHIBIT 8bC.

(NOTE.—The words in SMALL CAPS indicate what was stricken out by the defendant, and *italics* what was interlined by him.)

20 This Indenture made *this first day of June*, one thousand eight hundred and eighty, by and between Luke I. Stoutenburgh, of the township of Washington, county of Morris and State of New Jersey, of the first part, and Joseph Wharton, of the city of Philadelphia, State of Pennsylvania, of the second part; Witnesseth, That for  
 30 and in consideration of one dollar to him in hand paid, the receipt of which is hereby acknowledged, and the rents, stipulations, covenants and agreements hereinafter mentioned to be paid, kept and performed on behalf of the said Joseph Wharton, the said party of the second part, I, the said Luke I. Stoutenburgh, party of the first part, HAVE *hath* granted, demised, leased and let, and by these presents doth grant, demise, lease and let unto the said party of the second part, his heirs, executors and assigns, the exclusive right and privilege of entering  
 upon, searching for, mining, digging and carrying away any iron ore that may be found in, on or under all that certain lot or tract of land known as the Stoutenburgh Mining Farm, containing about one hundred and ten acres, situated on Schooley's Mountain, east of and adjoining lands of Morris Dufford. The said party of the second part for himself, his heirs, successors and assigns,

does covenant and agree to pay to the party of the first part, his heirs and assigns, the sum of SIXTY (60) *fifty* (50) cents for each and every ton of twenty-two hundred and forty (2240) pounds of iron ore so mined and carried away from the premises hereby demised, and he shall mine or pay for two thousand tons a year; *provided so much can, in the ordinary course of working, be obtained*; and if in any one year he does not mine two thousand tons, and has paid the rent or royalty thereon, he may mine the deficiency in any subsequent year, without paying any additional royalty or rent for the same. 10

It is further agreed between the parties hereto, that the rent or royalty on iron ore mined and carried away from said mining farm, shall be paid quarterly, on the fifteenth day of April, July, October and January, and for all ore that should have been mined in the quarter ending on the first of said months, while this lease remains in possession of said Joseph Wharton; but should said Wharton dispose of this lease, or release his interest in the iron ore of said mining farm to any other party or parties, then the payment of royalty for the ore mined, or that should have been mined, shall be made on or before the fifteenth of each succeeding month after such transferment of lease, or interest in ore on said mining farm shall been made. It is also agreed between the parties hereto, that said mining interest in said mining farm cannot be released to other parties or party, or this lease assigned to other parties or party, without the approval in writing of the first party hereto, his heirs or assigns. Should royalty or rent of said mines not be paid within forty days from the time it is due then this lease may, at the option of the first party hereto, become null and void. The party of the second part hereto, shall weigh, or cause to be weighed, all the iron ore taken from the said mines or demised premise, on such scales as the party hereto may agree upon, and keep 20 30

a correct account thereof, which account shall be at all reasonable times open to the inspection of the party of the first part, or his agent. The said second party hereto agrees to have the mines securely and properly timbered at all times, and to sink the lower working shaft, where the engine now is, to the depth of sixty (60) feet deeper *measured on the dip of the vein*, than when taking possession of mines, before abandoning it, AND A SHAFT ON THE UPPER VEIN WHICH SAID SECOND PARTY ALSO AGREES TO SINK

10 TO THE DEPTH OF FIFTY FEET LOWER THAN ANY ONE OF THE SHAFTS ON THIS VEIN NOW IS, THE OBJECT BEING TO MORE THOROUGHLY PROVE THE GROUND FOR IRON ORE.

It is further agreed between the parties hereto, that the said second party will purchase *at a fair valuation all such*, ALL THE machinery and apparatus, consisting mainly of steam-boiler and engine, pump and pipes and fixtures, with mining implements now used in and about the mines, AT EIGHTEEN HUNDRED DOLLARS PAYABLE IN MAY NEXT, *as he may find it convenient to use in*

20 *mining upon the said premises*. The engine-house and fixtures, and mining timber about the mines to be included in this SALE *stipulation*. But the boiler, engine and everything about the mines to be used by the said party of the first part, in mining without rent, until the second party hereto shall take formal possession of the same, which it will be his right to do at any time after the signing of this agreement. The party of the second part shall have the right to enter freely on said lands with

30 miners, workmen, horses, wagons and cars, and may occupy about the mines now opened, or that may be opened, as much ground as may be necessary for piling ore, or waste material, and for discharging water from mines, and for the erection of machinery and buildings other than dwelling houses, and may do such other things as may be necessary for the enjoyment of the rights and privileges hereby granted and demised, at the

same time doing no unnecessary damage to the crops or premise.

The water from the mines is to be discharged in ditches, and where it will do the least damage to the farm, and shafts dug by second party in which ore is not found, shall be filled up within three months after their abandonment.

The second party hereto shall have the right to build dwelling houses for miners on said premises, as may be necessary for their accommodation, in such places convenient to the mines as said first party hereto may designate, and shall have the right to tear down or remove such dwellings, and any and all buildings, and any and all property belonging to him at any time during the continuation of this lease, or within six months after its termination, without hindrance on the part of the first party; provided, all rents and arrearages shall have been duly paid. And it is further agreed, that the party of the second part may terminate this lease at any time after the shafts above mentioned shall have been sunken the specified depth, by giving three months' written notification of this intention to do so; and upon the payment of all rents due; and upon the delivering up of the mines to the party of the first part free from all incumbrances; and he shall be exonerated from all claims whatsoever on account of said mines. This lease is to continue in force for twenty years from the date hereof, unless forfeited by non-payment of rent, or by other specific stipulations contained in this indenture.

In witness whereof we, the parties hereto, have set our hands and seals on the day above written.

LUKE I. STOUTENBURGH.

Witness:

A. T. STOUTENBURGH.

## EXHIBIT 9C.

CAMDEN, N. J., March 4th, 1880.

L. I. STOUTENBURGH :

DEAR SIR.—I have your two copies of the lease, and shall give the matter attention to-morrow. Was closely occupied with other matters yesterday and shall be to-day.

10 The house you spoke of had better be shown to Collins. What do you ask for it? I should think he might want it.

Yours truly,

JOSEPH WHARTON.

## EXHIBIT 10C.

SCHOOLEY'S MOUNTAIN, March 8th, 1880.

20 MR. JAMES COLLINS :

DEAR SIR: Pardon me for again intruding on your time, but since seeing you the other day and engaging to keep the water out of the mine for you, until it should be convenient for you to work it, I have been reminded that the time of one of the engineers expires to-morrow evening. Shall I continue him in his present position for you, say at the rate of forty or forty-five dollars a month, until you can see him and arrange with him personally, or have you any other man to put in his place?

30 I do not wish to do anything without your approval. Also, as in using wood, it requires some one to saw it, and as the sawing requires steam-power, had I not better get two or three tons of coal and use it instead of wood for a time? It seems to me that it would be better. Please inform me of your wish by bearer.

Very respectfully yours,

L. I. STOUTENBURGH.

## EXHIBIT 11C.

WARREN FURNACE, 3 mo., 8, '80.

MR. L. I. STOUTENBURGH,

Schooley's Mountain :

DEAR SIR : Your favor of even date handed by Samuel Scadden to me and noted. In reply, would say : We think it well to retain the engineer, at the wages to be arranged as best you can, until I can see him, as I have no man or don't care to make any change; and if you think coal preferable to wood, would approve of its use. 10

Thanking you for you kind attention, I remain,

Yours very truly,

JAS. H. COLLINS, *Spdt.*

*Per A. S. C.*

## EXHIBIT 12C.

20

PHILADELPHIA, July 1st, 1880.

MR. JOSEPH WHARTON :

DEAR SIR : While I consider our contract for engine, boiler, pump, fixtures and material for mining on my mine farm, together with shafts to be sunken to certain specified depths, with royalty and conditions of lease as plain and thoroughly understood and agreed to by both parties as any contract could well be, yet under the conditions of the lower mine, not developing as favorably as we expected it would, I am willing to make the following concessions in your favor, viz. : To exempt you from the payment of royalty on any more iron ore than you shall actually have mined up to the time of fulfillment of contract in sinking shafts the specified depths, you comply 30

ing with all other conditions of contract contained in lease.

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EXHIBIT 13C.

MR. L. I. STOUTENBURGH :

DEAR SIR: Without acknowledging any obligation on my part to carry out the project of lease upon your land on Schooley's Mountain, I am willing, for the sake of peace and harmony, to suffer some penalty, beyond the outlay and loss already incurred by me, as a final settlement of all questions between us, namely :

1. I am willing to give to you gratuitously the boiler which I put upon your land, as the same now stands there, I removing the steam engine, and all other apparatus put there by me, or

20 2. Instead of giving up the boiler I will give you \$350 in cash.

3. Instead of either of these courses, I will inquire as to the cost of sinking the mine to the depth of sixty feet, contemplated in the projected lease, (viz., about forty feet further than present depth) intending, if a contract could be made, to do it at a fixed sum, moderate enough to have the work continued to that depth.

In case your accepting either of the two first suggestions, I to remove all my apparatus from your land within (                    ).

30 In case of your accepting the last suggestion, and of my working the mine to the depth named (I to have the option of continuing to work the mine or not, at the royalty of fifty cents per ton,) any ore taken out during this working to belong to me without royalty.

In either case, all claims which you consider you hold against me are to be abandoned as void or as satisfied.

## EXHIBIT 14C.

CAMDEN, N. J., July 7th, 1880.

Mr. L. I. STOUTENBURGH :

DEAR SIR:—I have yours of the 6th, declining my offer for a friendly settlement of your fancied claims, and I now withdraw the same,

Very Respectfully,  
JOSEPH WHARTON.

10

## DEFENDANT'S EXHIBITS.

20

## EXHIBIT No. 1D.

March 6, 1880.

L. I. STOUTENBURGH :

DEAR SIR:—Since we parted, in Hackettstown, the cares of other business prevented me from giving immediate attention to the leasing of your property, soon after receipt of the papers sent me. Now that I turn to consideration of the matter, in view of the great delays in getting furnace started, and in starting the hematite mines at Beattystown ; and also in view of the large purchases of ore which I have made, I confess that the prospect of taking your place looks less attractive and more onerous than it did. I wish, therefore, to let the matter stand, if it can be done without disadvantage to you,

30

until I come up to Hackettstown, which I mean to do directly after hearing that the furnace is in blast; this, I imagine, will be about the middle of next week.

Yours truly,

JOSEPH WHARTON.

10

EXHIBIT No. 2D.

SCHOOLEY'S MOUNTAIN, N. J., March 9, 1880.

JOSEPH WHARTON, ESQ.

DEAR SIR:—Yours of the 6th instant was received. You will allow me to say in all kindness that I was a little surprised in receiving your letter without the duplicate copy of lease that I sent you. I regarded our business as finally settled at our last meeting at Hackettstown, as though the leases had there been formally signed, and have shaped all my business in accordance with that transaction. Have written to several gentlemen and companies which had put themselves in communication with me for the purchase or lease of the mine, that it was already positively and satisfactorily leased. As the machinery, I mean the boiler, has proven inadequate to keep the water from the bottom of the mine, so as to have the men work there, I have had them get out ore from near the surface; but on Saturday last, finding that this might injure the strength of the mine if continued further, saw Mr. Collins, and arranged with him for retaining Mr. Scadden (the foreman) and the engineer to keep the water out, until he could send the boiler up and have it put in position, and arrange things about the mine for himself. I also had the foreman gather up everything about the mine included in our contract and stored in the dressing-room of the engine-house, and placed under his care for

you. This is the condition in which our affairs pertaining to the mine now are and have been since Saturday, and of course any other arrangement than that specified in our contract would be damaging to me. But in my full confidence in you as a straightforward business man, I will not allow myself for a moment to think that you would do anything but what would be fair and equitable between us. Hoping that our business arrangements may be mutually pleasant and profitable,

I am respectfully yours,

10

L. I. STOUTENBURGH.

P. S.—Allow me further to say that the keeping the water out of the mine for any length of time without working it so as to have returns will be expensive.

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EXHIBIT No. 3D.

20

April 3, '80.

L. I. STOUTENBURGH, Esq.:

DEAR SIR:—I have been delayed from writing to you or seeing you, not only by the press of business and the troubles at the furnace, but also by misgivings concerning several points of the projected lease. First, the amount of dead work, or of exploring which might prove to be dead work, seemed to be on reflection too great. Secondly, the increased quantity of water is so great that entire new machinery instead of a partial outfit proves to be necessary for the lower mine; the large outlay thus made necessary leaves me indisposed to buy the machinery, &c., which you had there. Third, from the way in which things have worked hitherto I think it unwise to burden Mr. Collins with too many

30

undertakings at once, and think it best to operate but one of your openings.

That the royalty named is higher than is asked by any one in all the region, I find to be more strictly the case than even I supposed when we talked together, but on this point I will not dwell.

Now I think that it will be right for me to go on with the lower mine just as we talked it over, except that I pay nothing for your machinery, &c., (which thus remains of course your property,) and come under no obligation as regards the upper mine. I am arranging to send up a much more powerful engine, with plunger pump, for the lower mine, and hope it may be in place within a week or two. The upper mine I might feel able to undertake later.

Yours truly,

JOSEPH WHARTON.

Of course the sixty feet of sinking in lower mine will be measured, as I presume the sinking will be done on the slope of the vein, not vertically. I will only agree to sink so far as the machinery now to be sent is adequate.

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EXHIBIT No. 4D.

SCHOOLEY'S MOUNTAIN, April 3, 1880.

MR. COLLINS:

30 DEAR SIR:—Please pardon me if what I wrote should seem to you as an improper interference with your arrangement of machinery at the mines. But Mr. Scadden is quite of the opinion that the double action lifting pump now on the bank will not be sufficient to keep the mines free from water. He thinks (and if his description of the size and action of the pump is correct,

I accord in his judgment,) that the pump now in the mine will throw out as much if not more water than the one you sent up, provided it has sufficient steam power to run it. It has capacity at ordinary speed to throw 150 gallons of water a minute, and by forcing will discharge two hundred gallons. To sink sixty or one hundred feet deeper with proportional length of drifts, all of which will increase the quantity of water, you will need a pump capable of discharging at least three hundred gallons of water. Cameron's No. 11 will throw three hundred and twenty-five gallons a minute, and No. 12 will discharge four hundred gallons. The former may be purchased for \$800, and latter for \$900. The long stroke pump of the same numbers discharge respectively four hundred and fifty and six hundred gallons a minute. With either of the above number pumps you could have no possible difficulty in keeping the mine dry for two or three hundred feet. A lifting pump of capacity to dry the mine would of course be a little cheaper in first cost and in full, but more difficult in construction and keeping in order. 10 20

In the upper mine the water is not so quick, and of course will not require such heavy machinery.

Hoping that I have not been intrusive in the above suggestions,

I am very respectfully yours,  
L. I. STOUTENBURGH.

30

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EXHIBIT No. 5D.

SCHOOLEY'S MOUNTAIN, N. J., April 24th, 1880.

MR. JOSEPH WHARTON:

DEAR SIR:—In conversation with Mr. Collins on the

22d inst., he mentioned your desire to be released from contract to work the upper vein of ore on my farm, and also to be released from contract for engine, boiler, pump, &c. He also stated that you had not received my letter in answer to your last letter to me on the same subject, and requested me to again write you fully concerning it, which I now do under the apprehension that my first to you might have miscarried. As you must have very many things on your mind in carrying so  
 10 many and complicated branches of business, it is possible that you may have forgotten how definitely and specifically our arrangements were made at the final meeting in Hackettstown, as well as they were also in your first letter to me, after Mr. Collins sent you my first three propositions, an answer to which you wrote me as follows, January 21st :

“ Mr. Collins reports that under all the circumstances he advises my acceptance of your proposition of the 9th instant for leasing your magnetic ore lands, on  
 20 Schooley’s Mountain. This I conclude to do, and in fact have regarded the arrangement as virtually made since receiving your said proposition. Of course a formal lease will be prepared and signed by us at some convenient time before the expiration of your existing contract to deliver ore, which I understand will be completed sometime in March. Please acknowledge receipt of this, and thus confirm the bargain.

Yours truly,

JOSEPH WHARTON.”

30

After writing you the confirmatory answer to the above, I felt and considered my mining lands permanently disposed of as much as if the lease had been already signed. Indeed, your letter referring to specific propositions, which you accepted over your signature, asking for my signature to confirm it a bargain, which was sent you,

and the receipt thereof acknowledged, I regarded as settling the whole matter, and did not regard myself at liberty to negotiate with any other party or parties, either for lease or sale of any part of said mining lands or machinery. I considered myself honorably and legally bound to you, and to you only. Hence, in the early part of February, when the iron interest was exciting, rejected several good companies that desired to lease my lands, and one heavy New York company that wished to purchase the whole thing. Of course, having made all my arrangements differently from what I should have done, had not the property been leased, the taking back of any part of the mine or machinery at this time would be a heavy damage to me, which I could not think of sustaining without equitable remuneration. 10

As to machinery, &c., I mean engines, boiler, pump, fixtures and mining implements, you will remember that they were purchased by you at a specific price, viz. : \$1800, and to be paid for in May, as you then directed Mr. Collins to do. 20

While I have and now do regard the whole matter as settled, and the whole property in your possession, and in your use and subject by agreement to your direction, and on my part ready to carry out all the conditions of agreement, yet I might be induced, under certain considerations, to exempt you from working the upper vein, which I really believe, when sunken to the depth of the lower one, to be the best of the two, but of course we cannot tell in any mine what twenty or even ten feet will show. And now Mr. Wharton allow me to say that I cannot understand the grounds of your discouragement with the upper vein. The ore is rich and the walls are good, and it has been opened on at intervals for at least three hundred yards, and ore found in every opening, and the attraction is continuous, thus indicating length of vein. It of course sometimes 30

pinches in a measure as you go down and horizontally, and widens again as almost all veins do on the surface, or for the first hundred feet, yet I regard it as a good look for a good mine, and think that the two veins can be worked very much more advantageously by one party or company than by two. Hoping that you will find an abundance of ore and be highly remunerated for your labor and expense,

I am respectfully yours,

10

L. I. STOUTENBURGH.

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EXHIBIT No. 6D.

FURNACE AT HACKETTSTOWN, N. J., May 19, 1880.

Without changing the basis of permanent operation from lease sent to Mr. Wharton pertaining to lower mine, I will accept for one year from date a royalty of  
 20 fifty cents a ton for every ton of ore taken from said lower mine. I will exempt Mr. Joseph Wharton from any obligation to carry out the provisions of a certain lease made and signed by me, requiring him to sink a shaft to the depth of fifty feet, or to work said upper vein at all; and will also give him the refusal of re-taking said upper vein and carrying out the provisions of said lease, at any time within three months from this date.

30

L. I. STOUTENBURGH.

P. S.—The royalty for upper mine for one year to be fifty cents for every ton mined.

## EXHIBIT No. 7D.

HACKETTSTOWN, June 22, 1880.

L. I. STOUTENBURGH, ESQ. :

DEAR SIR :—My suggestions of willingness to explore your lower mine to the depth contemplated in the projected lease having brought no reply, I withdraw it, and have to-day ordered your old mine captain, Mr. Scadden, to do no work on my account, except temporarily to pump the mine during the day hours. After suffering 10 a loss of about two thousand dollars without any benefit, or the prospect of any, I now propose to replace everything in the condition it was in when Mr. Collins, without authority from me, undertook to pump the mine ; to pay you for anything of yours that may have been consumed, and to abandon the place without more ado.

Yours truly,

JOSEPH WHARTON.

20

30

IN CHANCERY OF NEW JERSEY.

Between	}	
10 LUKE I. STOUTENBURGH,		ON BILL
Complainant,		FOR SPECIFIC
And		PERFORMANCE.
JOSEPH WHARTON,		
Defendant.		

20 This cause having come regularly on for trial and hearing before Vice-Chancellor Amzi Dodd, on the thirteenth day of July, in the year eighteen hundred and eighty-one, in the presence of J. Emmett Stoutenburgh and Henry C. Pitney, of counsel with the complainant, and of Peter L. Voorhees, of counsel with the defendant, and the evidence of witnesses being heard, and the pleadings, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the Vice-Chancellor having taken time to advise thereon, and being now of the opinion that the complainant is

30 entitled to the relief sought and prayed for by him in his said bill of complaint.

It is on this tenth day of October, in the year of our Lord one thousand eight hundred and eighty-one, ordered, adjudged, and decreed that the said defendant, Joseph Wharton, do sign, seal, acknowledge in due form of law, and deliver to the said complainant the articles of agree-

ment of lease of mineral lands mentioned in the bill of complaint; and that such articles shall be dated and take effect as of the sixth day of March, in the year eighteen hundred and eighty, and which articles of agreement are in the words and to the effect following, viz.:

"This indenture, made this sixth day of March, one  
 "thousand eight hundred and eighty, by and between L.  
 "I. Stoutenburgh, of the township of Washington, county  
 "of Morris, and State of New Jersey, and Joseph Wharton,  
 "of the city of Philadelphia, State of Pennsylvania, wit- 10  
 "nesseth, That for and in consideration of one dollar,  
 "to him in hand paid, the receipt of which is hereby  
 "acknowledged, and of the rents, stipulations, covenants  
 "and agreements hereinafter mentioned to be paid, kept  
 "and performed on behalf of said Joseph Wharton, the  
 "said party of the second part, I, Luke I. Stoutenburgh,  
 "the said party of the first part, have granted, demised,  
 "leased and let, and by these presents do grant, demise,  
 "lease and let unto the said party of the second part,  
 "his heirs, successors and assigns the exclusive right 20  
 "and privilege of entering upon, searching for, mining,  
 "digging and carrying away any iron ore that may be  
 "found in, on or under all that certain lot or tract of  
 "land known as the "Stoutenburgh Mining Farm," con-  
 "taining about one hundred and ten acres, situated on  
 "Schooley's Mountain, east of and adjoining lands of  
 "Morris Dufford.

"The said party of the second part, for himself, his  
 "heirs, successors or assigns, does covenant and agree to  
 "pay to the party of the first part, his heirs and assigns,  
 "the sum of sixty (60) cents for each and every ton of 30  
 "twenty-two hundred and forty pounds of iron ore so  
 "mined and carried away from the premises hereby de-  
 "mised; and he shall mine or pay for two thousand tons  
 "per year, and if in any one year he does not mine two  
 "thousand tons, and has paid the rent or royalty thereon,  
 "he may mine the deficiency in any subsequent year,

“ without paying any additional royalty or rent for the  
 “ same.

“ It is further agreed between the parties hereto, that  
 “ the rent or royalty for iron ore mined and carried away  
 “ from said mining farm, shall be paid quarterly, on the  
 “ fifteenth of April, July, October and January, and for  
 “ all ore that should have been mined in the quarter  
 “ ending on the first of said months, while this lease re-  
 “ mains in the possession of said Joseph Wharton; but  
 10 “ should said Wharton dispose of this lease, or release his  
 “ interest in the iron ore of said mining farm to any other  
 “ party or parties, then the payment of royalty for ore  
 “ mined, or that should have been mined, shall be made  
 “ on or before the fifteenth of each succeeding month  
 “ after such transferment of lease or interest in ore on  
 “ said mining farm shall have been made.

“ It is also agreed between the parties hereto, that said  
 “ mining interest, in said mining farm, cannot be re-  
 “ leased to other parties, or party, or this lease assigned to  
 20 “ other parties, or party, without the approval in writing  
 “ of the first party hereto, or his heirs or assigns, should  
 “ royalty or rent of said mines not be paid within forty  
 “ days from the time it is due, then this lease may at the  
 “ option of the first party hereto, become null and void.

“ The party of the second part shall weigh, or cause to  
 “ be weighed, all the iron ore taken from the said demised  
 “ premises, on such scales as the parties hereto may agree  
 “ upon, and keep a correct account thereof, which account  
 “ shall at all reasonable times be open to the inspection  
 30 “ of the party of the first part, or his agent.

“ The said second party hereto agrees to have the mines  
 “ securely and properly timbered at all times, and to sink  
 “ the lower working shaft, where the engine now is, to the  
 “ depth of sixty feet deeper than it now is, before aban-  
 “ doning it, provided the ore therein shall not be suffi-  
 “ cient to make it remunerative mining, and a shaft on

"the upper vein, which said second party also agrees to  
 "sink to the depth of fifty feet lower than any one of the  
 "shafts now is, on this upper vein, the object being to  
 "more thoroughly prove the ground for iron ore. It is  
 "further agreed between the parties hereto, that the said  
 "second party will purchase all the machinery and  
 "apparatus, consisting mainly of steam boiler, engine,  
 "pump and pipes and fixtures, with mining implements  
 "now used in and about the mines, at eighteen hundred  
 "dollars (\$1,800,) payable in May next. The engine- 10  
 "house and fixtures and mining timber about the mines  
 "to be included in this sale.

"The party of the second part shall have the right to  
 "enter freely on said lands with miners, workmen, horses,  
 "wagons and cars, and may occupy about the mines now  
 "opened, or that may be opened, as much ground as may  
 "be necessary for piling ore or waste material, and for dis-  
 "charging water from mines, and for the erection of ma-  
 "chinery and buildings, other than dwelling-houses, and  
 "may do such other things as may be necessary for the 20  
 "full enjoyment of the rights and privileges hereby  
 "granted and demised, at the same time doing no un-  
 "necessary damage to the crops or premises.

"The water from the mines is to be discharged in  
 "ditches, and where it will do the least damage to the  
 "farm, and the shafts dug by second party, in which ore  
 "is not found, shall be filled up within three months after  
 "their abandonment.

"The second party hereto shall have the right to build  
 "dwelling-houses for miners on said premises, as may be 30  
 "necessary for their accommodation, in such places conve-  
 "nient to the mines, as the said first party hereto may des-  
 "ignate, and shall have the right to tear down or remove  
 "such dwellings, and any and all buildings or property  
 "belonging to him, at any time during the continuance  
 "of this lease, or within six months after its termination,

“ without hindrance on the part of the first party, provided all rents and arrearages shall have been duly paid.

“ And it is hereby agreed that the party of the second part may terminate this lease at any time after shafts above mentioned shall have been sunken the specified depth, by giving six months’ written notification of his intention to do so, and upon the payment of all rents due, and upon the delivery of the mines to the party of the  
 10 “ first part, free from all encumbrances, and he shall be exonerated from all claims whatsoever on account of said mines.

“ This lease is to continue in force for twenty years from the date hereof, unless forfeited for non-payment of rent or by other specific stipulations contained in this indenture.

“ In witness whereof, we, the parties hereunto, have set our hands and seals on the date above written.

And it is further ordered that such articles of agreement shall be executed in duplicate by the complainant and defendant, and one copy delivered to each, and such execution shall be completed in the presence of said Vice Chancellor, (unless the parties shall previously complete the same privately) on any motion day at his chambers in the City of Newark, at any time within twenty days after the service of a copy of this decree upon the said defendant, or upon his solicitor, upon five days’ notice from the solicitor of complainant to the solicitor of the defendant, calling on the defendant to attend and execute the same.

30 It is further ordered, that the costs of the complainant, including stenographers’ fees for taking testimony and making one copy thereof, be paid by the said defendant.

And it is further ordered, that in case the said defendant shall fail or refuse to comply with this order and decree, as hereinbefore provided, the said complainant

shall be at liberty to apply to this court for further directions and relief in the premises.

THEODORE RUNYON,  
C.

Respectfully advised October 17, 1881.

AMZI DODD, V. C.

( True copy )

G. S. DURYEE, Clk.

IN CHANCERY OF NEW JERSEY.

LUKE I. STOUTENBURGH,  
Complainant,  
10 and  
JOSEPH WHARTON,  
Defendant.

ON BILL, &c.  
NOTICE OF APPEAL.

20 The defendant hereby appeals from the decree made in this court in the above stated cause, purporting to have been made on the tenth day of October, eighteen hundred and eighty-one, advised by Amzi Dodd, Vice Chancellor, on the seventeenth day of October, eighteen hundred and eighty-one, and filed in the office of the Clerk of the Court of Chancery on the twenty-eighth day of October, eighteen hundred and eighty-one, and from the whole and every part of the said decree.

Dated November 2, 1881.

P. L. VOORHEES,

Solicitor for and of Counsel with Defendant.

Dated November 2, 1881.

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

PETER L. VOORHEES,

Of Counsel with Joseph Wharton, Defendant.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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JOSEPH WHARTON,

Appellant.

and

LUKE I. STOUTENBURGH,

Respondent.

---

ON APPEAL,

&c.

PETITION OF

APPEAL.

10

20

*To the Honorable, the Court of Errors and Appeals in the  
last resort of all causes.*

The humble petition of Joseph Wharton, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, purporting to have been made on the tenth day of October, eighteen hundred and eighty-one, advised by Amzi Dodd, Vice-Chancellor, on the seventeenth day of October, eighteen hundred and eighty-one, and filed in the office of the Clerk of the Court of Chancery, on the twenty-eighth day of October eighteen hundred and eighty-one, wherein the said Joseph Wharton was defendant, and Luke I. Stoutenburgh was complainant, in this respect, to wit: that the said decree adjudges and decrees that the said defendant,

Joseph Wharton, do sign, seal, acknowledge in due form of law, and deliver to the said complainant the articles of agreement of lease of numeral lands mentioned in the bill of complaint, and that such articles shall be dated and take effect as of the sixth day of March, in the year eighteen hundred and eighty, and which articles of agreement are in the words, and to the effect following, viz: "This indenture made this sixth day of March, one

10 "thousand eight hundred and eighty, by and between  
 "L. I. Stoutenburgh of the township of Washington,  
 "county of Morris, and State of New Jersey, and Joseph  
 "Wharton of the City of Philadelphia, State of Penn-  
 "sylvania :

"Witnesseth : That for and in consideration of one  
 "dollar to him in hand paid, the receipt of which is  
 "hereby acknowledged, and of the rents, stipulations,  
 "covenants and agreements hereinafter mentioned to be  
 "paid, kept, and performed on behalf of said Joseph  
 "Wharton, the said party of the second part, I, Luke I.  
 20 "Stoutenburgh, the said party of the first part, have  
 "granted, demised, leased, and let, and by these presents  
 "do grant, demise, lease and let unto the said party of the  
 "second part, his heirs, successors and assigns the exclu-  
 "sive right and privilege of entering upon, searching  
 "for, mining, digging and carrying away any iron ore that  
 "may be found in or under all that certain lot or tract  
 "of land known as the "Stoutenburgh Mining Farm,"  
 "containing about one hundred and ten acres, situated  
 "on Schooley's Mountain, east of and adjoining lands of  
 30 "Morris Dufford.

"The said party of the second part for himself, his  
 "heirs, successors or assigns, does covenant and agree  
 "to pay to the party of the first part, his heirs and  
 "assigns, the sum of sixty (60) cents for each and  
 "every ton of twenty-two hundred and forty pounds of  
 "iron ore so mined and carried away from the premises

“ hereby demised, and he shall mine or pay for two  
 “ thousand tons per year; and if in any one year he does  
 “ not mine two thousand tons, and has paid the rent or  
 “ royalty thereon, he may mine the deficiency in any  
 “ subsequent year without paying any additional royalty  
 “ or rent for the same.

“ It is further agreed between the parties hereto that  
 “ the rent or royalty for iron ore, mined and carried away  
 “ from said mining farm, shall be paid quarterly on the  
 “ fifteenth of April, July, October and January, and for 10  
 “ all ore that should have been mined in the quarter end-  
 “ ing on the first of said months, while this lease remains  
 “ in the possession of said Joseph Wharton; but should  
 “ said Wharton dispose of this lease, or release his interest  
 “ in the iron ore of said mining farm to any other party  
 “ or parties, then the payment of royalty for ore mined,  
 “ or that should have been mined, shall be made on or  
 “ before the fifteenth of each succeeding month after such  
 “ transferment of lease or interest in ore on said mining  
 “ farm shall have been made. 20

“ It is also agreed between the parties hereto, that  
 “ said mining interest in said mining farm cannot be re-  
 “ leased to other parties or party, or this lease assigned to  
 “ other parties or party, without the approval in writing  
 “ of the first party hereto, or his heirs, or assigns. Should  
 “ royalty or rent of said mines not be paid within forty  
 “ days from the time it is due, then this lease may, at the  
 “ option of the first party hereto become null and void.

“ The party of the second part shall weigh, or cause to  
 “ be weighed, all the iron ore taken from said demised 30  
 “ premises, on such scales as the parties hereto may agree  
 “ upon, and keep a correct account thereof, which account  
 “ shall, at all reasonable times, be open to the inspection  
 “ of the party of the first part or his agent.

“ The said party hereto agrees to have the mines se-  
 “ curely and properly timbered at all times, and to sink

“ the lower working shaft, where the engine now is, to  
 “ the depth of sixty feet deeper than it now is before  
 “ abandoning it, provided the ore therein shall not be  
 “ sufficient to make it remunerative mining, and a shaft  
 “ on the upper vein, which said second party also agrees  
 “ to sink to the depth of fifty feet lower than any one of  
 “ the shafts now is on this upper vein, the object being  
 “ to more thoroughly prove the ground for iron ore. It  
 “ is further agreed between the parties hereto, that the  
 10 “ said second party will purchase all the machinery and  
 “ apparatus, consisting mainly of steam boiler, engine,  
 “ pump and pipes and fixtures, with mining implements,  
 “ now used in and about the mines, at eighteen hundred  
 “ dollars (\$1800.00), payable in May next. The engine  
 “ house and fixtures and mining timber about the mines  
 “ to be included in this sale.

“ The party of the second part shall have the right to  
 “ enter freely on said lands with miners, workmen, horses,  
 “ wagons, and cars; and may occupy about the mines  
 20 “ now opened, or that may be opened, as much ground  
 “ as may be necessary for piling ore or waste material,  
 “ and for discharging water from mines, and for the erec-  
 “ tion of machinery and buildings, other than dwelling-  
 “ houses; and may do such other things as may be neces-  
 “ sary for the full enjoyment of the rights and privileges  
 “ hereby granted and demised; at the same time doing  
 “ no unnecessary damage to the crops or premises.

“ The water from the mines is to be discharged in  
 “ ditches, and where it will do the least damage to the  
 30 “ farm; and the shafts dug by second party in which ore  
 “ is not found shall be filled up within three months after  
 “ their abandonment.

“ The second party hereto shall have the right to build  
 “ dwelling-houses for miners on said premises, as may be  
 “ necessary for their accommodation, in such places con-  
 “ venient to the mines as the said party hereto may desig-

“nate, and shall have the right to tear down or remove  
 “such dwellings, and any and all buildings or property  
 “belonging to him, at any time during the continuance  
 “of this lease, or within six months after its termination,  
 “without hindrance on the part of first party, provided  
 “all rents and arrearages shall have been duly paid.

“And it is hereby agreed that the party of the second  
 “parts may terminate this lease at any time after shafts  
 “above mentioned shall have been sunken the specified  
 “depth, by giving six months’ written notification of his 10  
 “intention to do so, and upon the payment of all rents  
 “due, and upon the delivery of the mines to the party of  
 “first part, free from all incumbrances; and he shall be  
 “exonerated from all claims whatsoever on account of  
 “said mines.

“This lease is to continue in force for twenty years from  
 “the date hereof, unless forfeited by non-payment of rent,  
 “or by other specific stipulations contained in this inden-  
 “ture.

“In witness whereof we, the parties hereto, have here- 20  
 “unto set our hands and seals on the date above written.”

And it is further ordered, that such articles of agree-  
 ment shall be executed in duplicate by the complainant  
 and defendant, and one copy delivered to each, and such  
 executions shall be completed in the presence of the said  
 Vice-Chancellor (unless the parties shall previously com-  
 plete the same privately), on any motion day, at his  
 chambers, in the city of Newark, at any time within  
 twenty days after the service of a copy of this decree  
 upon the said defendant, or upon his solicitor, upon five 30  
 days’ notice from the solicitor of the complainant to the  
 solicitor of the defendant, calling on the defendant to  
 attend and execute the same.

It is further ordered, that the costs of the complainant,  
 including stenographer’s fees for taking testimony and  
 making one copy thereof, be paid by the said defendant.

And it is further ordered, that in case the said defendant shall fail or refuse to comply with this order and decree, as hereinbefore provided, the said complainant shall be at liberty to apply to this court for further directions and relief in the premises.

10 And your petitioner humbly appeals from the whole and every part of the said decree, which decrees as aforesaid, that your petitioner should sign and execute the said articles of agreement of lease mentioned in said decree in the manner therein prescribed; and that your petitioner should pay the costs of said complainant; and that the said complainant should have such further relief in the premises, upon the ground that the same is erroneous.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

20

PETER L. VOORHEES,  
Sol. for and of Counsel with Appellant.

IN NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

Between

JOSEPH WHARTON,

Appellant,

and

LUKE I. STOUTENBURGH,

Respondent.

20

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree advised by the Vice-Chancellor, Amzi Dodd, on the seventeenth day of October last past, was made and was filed in the office of the Clerk of the Court of Chancery, on the twenty-eighth day of October, eighteen hundred and eighty-one, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced.

And this respondent is advised and believes that the said decree is in all points agreeable to equity, and he prays that the same may be in all things affirmed with costs to be adjudged to this respondent.

J. EMMETT STOUTENBURGH,  
Solicitor for and of Counsel with Complainant.

The foregoing is a true copy from the original, filed in my office December 24th, 1881, and now remaining therein.

10 December 29th, 1881.

HENRY C. KELSEY,  
Clerk Court of Errors and Appeals.