

No. 13112

Supreme Court of Illinois

Robbins

vs.

Butler

71641  7

SUPREME COURT OF THE STATE OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1860.

ALLEN ROBBINS,	}	Appeal from the Circuit Court of Cook County.
vs. <i>Appellant.</i>		
CHARLES BUTLER, et al <i>Appellees.</i>		

ABSTRACT OF RECORD.

- 1 BILL filed May 14th, 1856, by Charles Butler, John P. Chapin, and Walter S. Gurnee, on behalf of themselves and all other shareholders in the Chicago Land Company, and Mahlon D. Ogden the surviving trustee of said association.
- 2 *Alleges*, that on the 31st of May, 1847, William B. Ogden and Allen Robbins were owners in fee simple, as joint tenants, and not as tenants in common, of certain parcels of land, situate in Chicago, Cook County, Illinois, (describing them.)
- 3 That one Jane E. Wight, widow of John F. Wight, deceased, was entitled to dower in said land, and that the said Ogden and Robbins for the purpose of settling her dower claim, and for other purposes, on the same day entered into an agreement in writing. as follows. to wit :
" This indenture made this 31st day of May, A. D., 1847; witnesseth, Whereas we, Wm. B. Ogden of the City of Chicago, in the County of

Cook and State of Illinois; and Allen Robbins of the city, county and State of New York, hold the title to and are owners in fee simple as joint tenants and not as tenants in common, of (here follows a description of the same land before mentioned).

- 6 And whereas, Jane E Wight, of Erie, in the State of Pennsylvania, widow of John F. Wight, late of Erie aforesaid, deceased, did release to us her right of dower in all said premises, and did quit claim to us all the right, title and interest whatsoever which she had or might be supposed to have therein. Now be it known that in consideration of said releases of dower and quit claim of all right and interest in all of said premises made and duly executed by the said Jane E. Wight to us, and for other considerations to us thereunto, moving we hereby agree as follows. That said lots and lands shall be placed in the immediate care and be under the exclusive supervision and management of Ogden and Jones of Chicago, (and the survivor of them and their successors in business in Chicago, subject to the general directions of us the said Ogden and Robbins, the survivor of us our executors and administrators; that the said Ogden and Jones, their survivors or successors in business in Chicago, shall proceed to survey, plat, subdivide and improve said property, that such surveys, plats, sub-
- 7 divisions and improvements, including the erection of bridges, buildings, fences, the making of streets, avenues and alleys, the construction of side walks, grading and McAdamizing, paving and planking of roads, streets, avenues and alleys, the planting of trees, shrubs and plants, the fencing and cultivating of lots, blocks and fields, the employment of laborers, horses and superintendents, and all other necessary expenses, the laying out of public and private squares, and places, the appropriation and donation of lands for the same, and for churches, schools or other public institutions, and for any other purposes which shall, in the opinion of said Ogden and Jones, their survivor or successors, be calculated to advance the value of the property, shall be done by said Ogden and Jones, their survivor and successors, under the general direction of us, the survivor of us our executors and administrators, when, where, and to such extent as we and they shall think proper; and they shall also make, under the general advice and direction of us, the survivor of us, our executors and administrators, any and all such other improvements, and take such steps and proceedings in connection with, or relating to said property, as to them or us, the survivor of us, our executors and administrators, shall from time

to time seem meet and proper, and for the best interest of said property and most beneficial results to be derived from the same.

8 The said Ogden and Jones, their survivor and successors in business shall proceed to make sales of said premises, or lease or otherwise dispose of, in part or in whole, when, where, and as they shall in their discretion think and deem to be most advantageous and conducive to the best interests of said property, and most beneficial to the results to be realized from the same; such sales, leases or other disposition of said property, to be made at such time or times, hereafter, and in such manner and on such terms for cash and credit, or in exchange for other property, thing or things, or partly on credit, or partly for payment in hand, or for other property or thing in exchange, as we or our survivor, executors and administrators, or the said Ogden and Jones, their survivor and successors in business, in Chicago, shall in our or their discretion think to be most advantageous to said property, and best calculated to enhance the amount to be derived therefrom. All the accounts with said property shall be kept by and with Ogden and Jones, their survivor or successors, at their office in Chicago. And they shall make semi-annual statements of their accounts with said property to the said Allen Robbins, and to James C. Marshall, of the borough of Erie, aforesaid Trustee, and in case of his death to the said Jane E. Wight, her executors or administrators, on the first
9 day of February and August in each year, and shall at such times pay over any surplus proceeds then in their hands, as is herein provided for, such payments to be made at their office, unless otherwise agreed upon hereafter. The costs of all the aforesaid improvements, and the amount of all disbursements hereinbefore provided for, together with all taxes, assessments and other necessary expenses or proper charges, accrued or accruing, incurred or charged on or against the aforesaid premises or growing out of the general care and management thereof, together with ten per cent. commissions, to be charged by said Ogden and Jones their survivor or successors in business for their services, on the amount of all such taxes, assessments, expenses and disbursements, and on the amount of the costs of all improvements made in accordance herewith, and on the amount of all sales made of said property, to be first reserved by said Ogden and Jones, their survivor or successors, in business, at such semi-annual statements of their account, to be made by them from the proceeds of any sales,

rents or other receipts realized by them from said property. And six per cent. interest is to be allowed them upon any balance of accounts in their favor with said property, until the same shall be paid them. And they are in like manner, to allow six per cent. interest on any balance in their
10 hands on the first day of February or August in each year, until the same shall have been paid over by them, or until the party entitled to the same shall have been notified of their readiness to pay over the same; the said Robbins from time to time to pay the said Ogden and Jones one half part of any such excess of disbursements by them, and to receive the same, with six per cent. interest, back again from them from any future balance of account, in favor of said property, on the books of Ogden and Jones. When all of the above items of disbursements, charges, expenses and interest shall have been first fully met, returned and satisfied, from the proceeds of said property, or otherwise, to said Ogden and Jones, and their successors, and to said Robbins, then one equal one-third part of any surplus net proceeds which shall be received therefrom, over and above the current and accruing disbursements and expenses hereinbefore mentioned and provided for, shall be applied in payment to said Allen Robbins and to Ogden and Jones, herein named, or to their respective representatives, and for their respective sole use and benefit; each party receiving half until they shall have been paid altogether the sum of eleven
11 hundred and four $\frac{53}{100}$ dollars, with six per cent. interest thereon from the date hereof; and the further sum of two thousand and seventy-six dollars and forty-nine cents, [\$2,076, 49] with six per cent. interest from and after the fifth day of February, A. D., 1849, until paid, provided the same shall not be paid previous to the fifth day of February, A. D., 1849, from sales made from the property hereinbefore described. All like surplus net money proceeds received from the other two-thirds part of said property, to be from time to time on rendering semi-annual statements by said Ogden and Jones, their survivor and successors, of their accounts paid over to said Allen Robbins and Ogden and Jones, or their legal representatives respectively, according to their respective interests in said proceeds, to wit: one-half to said Allen Robbins or his legal representatives, and the other half to said Ogden and Jones, or their legal representatives, for the sole use of them, and for their respective representatives. When the aforesaid sums of eleven hundred and four $\frac{53}{100}$ dollars, and two thousand and seventy-

six dollars and forty-nine cents with interest as aforesaid shall have been fully paid said Robbins, Ogden and Jones, from the net proceeds of the said one-third part, after all other liabilities and accruing and current charges hereinbefore named shall have been fully met, and paid from the general proceeds of said property, any further net proceeds received and realized from said Ogden and Jones, or by us from the said one-third

12 part from which the aforesaid payment to Robbins, Ogden and Jones shall have been previously made and deducted, shall be paid over to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to the said Jane E. Wight, her executors and administrators; and when all previous expenses, charges, taxes, assessments, costs of collections and disbursements for improvements, or for services rendered or otherwise, and all commissions on the same and on all sales made, as is hereinbefore provided for, shall have been paid and satisfied, and the sum of eleven hundred and four $\frac{53}{100}$ dollars, with interest from the date hereof, and the further sum of two thousand and seventy-six dollars and forty-nine cents, with interest from and after February fifth, A. D. 1849, (provided it shall not be sooner received and paid from proceeds of said property as is herein provided,) shall also have been realized from the net proceeds of one equal third part of sales and receipts from said premises, and have been paid over to said Robbins, Ogden and Jones, or to their respective legal representatives, then at the request of the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, of the said Jane E. Wight, or her executors or administrators, or, if desired, by us, or the legal representatives of either of us, the equal one-third part of any remaining unsold portion of said premises, [if any,] after the

13 same shall first have been legally and equitably divided, together with one-third in amount and value of all the outstanding contracts, assets or other effects, [if any] belonging to and resulting from said property shall be released by us and conveyed to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to the said Jane E. Wight, her executors and administrators, or to whom he, she or they may direct, and all his, her or their claims upon us, under or by virtue of this agreement, shall thereby and thereupon be fully settled, discharged and satisfied, and a like division of the other two-thirds, half to said Robbins or his legal representatives, and half to the said Ogden and Jones, or their legal representatives for their respective use and benefit, shall also

then, or at any other time thereafter, be made when desired by either party thereto, or by the legal representatives of such party hereto, and this agreement, with its provisions, conditions and stipulations, shall thereupon be fulfilled, terminated and held for naught. Should no such request be made by either party, however, nor by the legal representatives of either of said parties, the said property shall continue to be managed as is hereinbefore provided for, until such request be made, at least by one of the parties herein named, or their legal representatives, or until the whole

14 be disposed of, and the proceeds thereof be realized and divided as hereinbefore provided for. Should the equal one-third of said property not prove to be sufficient to meet the expenses accruing on account thereof, as is herein before provided for, and also to pay the said sum of eleven hundred and four $\frac{53}{100}$ dollars, with interest thereon, as aforesaid, and the further sum of two thousand and seventy-six dollars and forty-nine cents, with interest thereon, as hereinbefore provided, to said Robbins, Ogden and Jones, neither the said James C. Marshall, nor the said Jane E. Wight, shall in that event be liable for any such deficit, but the same shall be borne and suffered by the said Robbins, Ogden and Jones, and their legal representatives. The only claim or interest growing out of this instrument of writing made by us is intended and hereby declared to be but a personal contingent claim or money demand against us personally, for a part of the net money proceeds to arise from the sales or other dispositions of the premises named herein, and is not and shall not be construed as creating any right to the realty or fee of the same, until the happening of the contingent condition herein provided for, requiring a division and conveyance from us of a portion of the unsold remainder of said property, if any remain, nor shall it then constitute any claim to the realty or fee thereof, until such conveyance shall have actually been exe-

15 cuted by us, or our legal representatives, and delivered to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to said Jane E. Wight, her executors or administrators. It is hereby stipulated, and expressly agreed, that the said Ogden and Robbins, and their legal representatives, shall have the privilege and right of purchasing of said James C. Marshall, Trustee, as aforesaid, or in case of his decease, of the said Jane E. Wight, or her executors or administrators, all and every interest which he, she or they may acquire, under or by virtue of this agreement, at such price and terms as any other person or persons shall agree or bind

himself or themselves to give or pay for the same, [provided he, or in case of his decease, she, or her, executors or administrators shall elect to sell the same, and any sale of such interest, without first offering the same to said Ogden and Robbins, or their executors or administrators] at the like price, and on the like terms as those for which the same shall be sold to another person or persons, shall be declared void, and said Ogden and Robbins, or their executors or administrators, shall, at their election, be declared the purchasers of the same, upon paying to said Marshall, Trustee, as aforesaid, or in case of his decease, to said Jane E. Wight, or her executors and administrators, the price for which said premises shall be sold, or complying with the terms and condition of such sale or sales.

- 16 The said Ogden and Robbins, and the survivor of them, and in case of decease of both of them, their executors, administrators, or the executors or administrators of either of them, shall have the right and power, in case said Ogden and Jones, and the survivor of them, shall cease to act as the agents of the aforesaid lands and lots, and they shall be succeeded in business by another party or firm, to take away and remove said agency and business from such successor, and give and commit the same to such person or persons as shall be appointed by the Judge of any Court of Chancery, held in said county of Cook, to act in the premises as the agent for, and to have the management of said property in as full a manner as said successor or successors might do by virtue hereof, and successively to transfer such agency and management from time to time, as they may see fit, in the like manner and with the like authority. Notice of the application to such judge for such appointment, shall be given personally to the parties hereto, or published in some newspaper published in the City of Chicago, for sixty days immediately preceding each application; but the power of such successor may be suspended without such notice, by either of said Ogden and Robbins, or either of their executors or administrators, by filing notice of such suspension in the Recorder's Office of said Cook County aforesaid.

- 17 In witness whereof, the said Ogden and Robbins have hereunto set their hands and seals, the day and year first above written.

W. B. OGDEN, [L. S.]
 ALLEN ROBBINS, [L. S.]

We hereby accept and agree to and approve of the terms, conditions and provisions in the above instrument contained.

Witness our hands and seals this thirty-first day of May, A. D., 1847.

JAMES C. MARSHALL, [L. S.]

JANE E. WIGHT. [L. S.]

18 Acknowledged by Wm. B. Ogden, Allen Robbins, and James C.
 19 Marshall, May 31st, 1847, and by Jane E. Wight, June 28th, 1847, and
 20 recorded in the Recorder's Office of Cook County, July 9th, 1847.

That at the making of said agreement, the firm of Ogden and Jones, therein mentioned, consisted of William B. Ogden and William E. Jones; and afterwards, to-wit, on the first of July, 1850, they associated with them Mahlon D. Ogden, one of the complainants, and one Edwin H. Sheldon, and thereafter transacted business under the name of Ogden, Jones & Co. That on the 9th of March, 1851, the said Jones deceased, leaving the said Wm. B. Ogden as the survivor of the said Ogden and
 21 Jones. That the said Wm. B. and Mahlon D. Ogden and Sheldon continued the business, after said Jones' decease, as partners under the name of Ogden, Jones & Co., as the successors of said Ogden and Jones, up to the 1st of January, 1853, when they associated with themselves one Edwin R. La Bar, and continued the transaction of said business under the name of Ogden, Jones & Co. That said La Bar deceased on the 2d of January, 1854, and said business was continued by Wm. B. and Mahlon D. Ogden and Sheldon, under the name of Ogden, Jones & Co., until the 1st of November, 1855, when one Stanley H. Fleetwood was admitted into the firm, and since then they have transacted business under the name of Ogden, Fleetwood & Co. That said firm of Ogden, Jones & Co., consisting of its different members, at different times, were the successors in business of the firm of Ogden and Jones, and that Ogden, Fleetwood & Co. have been since the 1st of November, 1855, and are now the successors of said Ogden & Jones.

22 That on the first of June, 1852, the said Wm. B. Ogden, the survivor of said Ogden and Jones and acting as such survivor, and for said Ogden, Jones & Co., the successors in business of said Ogden and Jones, for himself and the other parties to the agreement above set forth, entered into a verbal agreement with John Bradley and A. Hyatt Smith, which was, on the 10th of November, 1852, reduced to writing, and is as follows, to wit :

“Whereas Allen Robbins of New York, and Wm. B. Ogden of Chicago, in the State of Illinois, in and by their certain Indenture and instrument of Writing, dated 31st day of May, A. D. 1847, and duly recorded in Cook County, in the State of Illinois, on the ninth day of July, 1847, in Book 24 of Deeds, on pages 37, 38, 39, 40 and 41, did among other things for a consideration therein expressed, contract, consent and agree that Ogden and Jones [a firm composed of the said Wm. B. Ogden and Wm. E. Jones,] their survivors and successors in business shall proceed to make sales of, or lease or otherwise dispose of the lands and
 23 premises described in said Indenture, in part or in whole, when, where, and as they shall in their discretion think and deem to be most advantageous and conducive to the best interests of said property, and most beneficial to the results to be realized from the same. And whereas, James C. Marshall of Erie, Pennsylvania, Trustee of Jane E. Wight and named in said Indenture, did in writing assent to the same. And whereas, William E. Jones, of the said firm of Ogden and Jones, has since the making of said Indenture died, leaving surviving the said Wm. B. Ogden, the other member of said firm of Ogden and Jones, named in said Indenture.

And whereas, the said Wm. B. Ogden, survivor as aforesaid, acting for himself, for the said Allen Robbins, and for said James C. Marshall, Trustee of the said Jane E. Wight, parties named in said Indenture, and having an interest in said premises, or the proceeds thereof, under and by virtue of the provisions in said Indenture contained, has as party of the first part agreed, to sell and dispose of all the lands and premises hereinafter described, being part and parcel of said lands and premises in said Indenture mentioned, and specified, to John Bradley of Burlington, Chittenden County, Vermont, and A. Hyatt Smith of Janesville, Rock County, Wisconsin, party of the second part, and their heirs on the terms and conditions hereinafter mentioned.

24 Now, therefore, this contract made between the said party of the first
part, before named and described, and the said Bradley and Smith, party
of the second part, Witnesseth, that the said party of the first part have
sold and disposed of to the said party of the second part, and to their heirs
forever all and every, the lands and premises hereinafter specified, namely :
25-26 (Here follows a description of the lands in controversy.)

27 And the said John Bradley and A. Hyatt Smith, parties of the second
part, hereto agree to pay to the said party of the first part hereto, at the
office of Ogden, Jones & Co., in Chicago, for the lots, blocks, lands and
premises hereinbefore named and described, the full sum of one hundred
thousand dollars, in manner following, to-wit: Twenty-five thousand dol-
lars in cash on the execution of these presents, with interest from the 1st
of September, 1852; twenty-five thousand dollars on the first day of
September, 1853; twenty-five thousand dollars on the first day of Septem-
ber, 1854; and twenty-five thousand dollars on the first day of September,
1855, together with six per cent. annual interest from the first day of
September, 1852, to be paid annually on the first day of September, in
each year, hereafter, on the whole sum from time to time remaining
unpaid.

And also agree that they will well and faithfully, in due season, pay,
or cause to be paid, all ordinary taxes, assessed for revenue purposes, upon
said premises, or any part thereof, subsequent to the year 1851; and also
all other assessments which now or may be hereafter charged or assessed
upon or against said premises, or any part thereof. But, in case the said
parties of the second part fail to pay any or all such taxes or assessments
upon said premises or appurtenances, or any part thereof, whenever and
28 as soon as the same shall become due or payable, and the party of the
first part shall pay from time to time, or at any time, any or all such taxes
or assessments, or cause the same to be paid, the amount of any and all
such payments so made by the party of the first part, shall immediately,
thereupon become an additional consideration and payment to be made
by the party of the second part hereto, for the premises herein agreed to
be conveyed.

And upon the faithful performance by the said second party hereto,
of their undertakings in their behalf, and upon the payment, by them, of

the principal and interest of the sum above mentioned, and in the manner and at the times specified, then under and by virtue hereof, and in accordance with the provisions, powers and intent of the above named indenture and agreement, dated 31st of May, 1847, and first hereinbefore referred to, and upon which this contract and agreement of sale and purchase is based, they, the said second party hereto, shall be entitled to, and shall thereupon and thereafter, when demanded by them, receive from said first party hereto, a deed or conveyance in law of all said lots, lands and premises hereinbefore named, the same to be duly executed and acknowledged and delivered to them, the said second parties hereto, their heirs, or assigns, and to convey to them, the said second parties hereto, their heirs or assigns, all their, the said first parties hereto, right, title and
29 interest of in and to the above described premises, with their appurtenances: And it is further mutually agreed between the parties hereto, that the second party hereto (the first cash payment of Twenty-Five Thousand Dollars, to be made hereon, first being punctually paid on execution of these presents,) may at any time hereafter, at their election, demand a deed for said premises, to which they shall be entitled, on thirty days written notice being given, they duly executing to the said first part hereto, in return a proper Bond and Mortgage upon all of said premises; such Bond and Mortgage to contain a provision, that in case said second party shall fail or neglect to pay any payment of principal or interest, or any part of such payment of principal or interest, when and as the same becomes due, then and thereupon the whole of said principal moneys and interest, named in said Bond and Mortgage, shall forthwith become due and payable, and suit, or foreclosure, or both, or other legal procedure, may be had for the collection thereof, the same as if so expressed in said Bond and Mortgage, in the first place, anything therein or herein contained, to the contrary notwithstanding, and so in case of failure, on the part of the said second party hereto to meet and make the payments of principal or interest, or any part thereof, when and as the
30 same respectively fall due; it is in like manner agreed, that the whole amount of principal and interest then due, owing, accrued or remaining unpaid hereon, shall thereupon become due and payable, and subject to suit, foreclosure or other legal proceedings, as provided in a case of a Bond, and Mortgage, as above named, anything hereinbefore contained to the contrary notwithstanding.

It is understood, that the Deed to be made, pursuant to this agreement, to the party of the second part, their heirs, shall include all the right, title and interest of said Ogden and Robbins, and all other parties named in said Indenture, of the 31st day of May, 1847, hereinbefore named, to the property and every part thereof, hereinbefore described, and contracted to be conveyed to the said party of the second part.

In Witness whereof, the said William B. Ogden, acting for himself, Allen Robbins and James C. Marshall, Trustee, and the said party of the second part, have hereunto set their hands and seals this Tenth day of November, A. D. 1852.

WM. B. OGDEN, [L. S.]

JOHN BRADLEY, [L. S.]

A. HYATT SMITH, [L. S.]

Signed, sealed and delivered

in presence of

Recorded Nov. 19th, 1852.

S. H. FLEETWOOD.

31 That in making said contract, the said Wm. B. Ogden acted with the full knowledge and approbation of said Mahlon D. Ogden and Edwin H. Sheldon, his copartners, and that he intended to exercise all the power and authority, vested in him individually, or in said firm of Ogden, Jones & Co., and to vest in said Bradley and Smith a complete equitable title to said land upon the performance by them of their part of said contract, which was so understood by them, and by said firm of Ogden, Jones & Co., at that time.

That on the 13th of March, 1855, said Bradley and Smith executed the following instrument, in writing, to wit :

33 Whereas, we, John Bradley, of Burlington, Chittenden county, Vermont, and A. Hyatt Smith, of Janesville, Rock County, Wisconsin, did purchase of Wm. B. Ogden of Chicago, Cook county, Illinois, acting for himself, Allen Robbins and James C. Marshall, Trustee, as by a certain contract therefor, executed by us and the said Ogden, bearing date the tenth day of November, A. D., 1852, for and in consideration of the sum of one hundred thousand dollars, payable one quarter cash, on the execution of said contract, and the balance in three equal annual payments

thereafter, with six per cent. annual interest, all the property named and described in said contract and situate in the City of Chicago, County of Cook and State of Illinois, as by reference to said contract, executed by us and the said William B. Ogden, acting for himself, Allen Robbins and James C. Marshall, Trustee, will more fully and in detail appear.

Now we, the said John Bradley, and A. Hyatt Smith, do hereby declare that said purchase was made by us for the sole benefit, account, and use of parties to and shareholders in the Chicago Land Company, so called, and that all payments which have been made on said contract on
 34 account of said purchase and property have been made by the members and parties in interest in said Chicago Land Company Association, as the same became due, and for their own benefit and account.

And we hereby further declare, that we purchased said property under said contract, as therein described, for the sole use and benefit of the said Chicago Land Company, and the shareholders and parties in interest therein, and that the property in said contract described, was contracted for by us for and on account and on behalf of the said Company, and subject to their order, direction, disposal and control, in such manner and way as they may elect, subject, nevertheless, to the payment by them of the balance of the purchase money, and interest still remaining due and unpaid on said contract.

In witness whereof, we, the said John Bradley and A. Hyatt Smith, have hereunto set our hands and seals the thirteenth day of March, A. D 1855.

JOHN BRADLEY, { SEAL }

A. HYATT SMITH." { SEAL }

35 That on the 2d of May, 1853, Robert J. Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, William Sloan, John Bradley, Jacob P. Eastman, John P. Chapin, Edwin F. Johnson, Albert A. Bliss, William B. Hotchkiss, Walter S. Gurnee, and Daniel S. Miller, associated under the name and style of the Chicago Land Company, and entered into written articles of association between themselves, as shareholders, and said Wm.

B. Ogden, Mahlon D. Ogden and Edwin R. La Bar, as trustees, wherein among other things, it was recited that

Whereas, the subscribers to said articles, had theretofore purchased certain tracts of land in the city of Chicago, and vicinity, more particularly described in said articles ; and *whereas* only a portion of the purchase money, had been paid on said several tracts of land, and there were considerable sums remaining to be paid, as the same should fall due, which said purchases had been made in the name of some one or more of the subscribers thereto, for the benefit of all, with the understanding that all of the property should for management and disposition be vested in trustees as therein named, for the benefit of all the parties in interest, and their assigns ; and *whereas* the parties to said presents, of the second part, had agreed to take and execute such trust upon the terms and conditions thereafter named, therefore it was thereby agreed and declared that

The name and style of the association shall be the Chicago Land Company, and its purposes and objects should be the management, improvement, developement, lease, sale or other disposition of the lands, acquired for the benefit of the members of said association, situate in the city of Chicago, in the State of Illinois, or in the vicinity of said city, and especially all the lands thereafter described, and the said Wm. B. Ogden Mahlon D. Ogden, and Edwin R. La Bar, all of Chicago, parties of the second part, were thereby created trustees for the purpose of carrying into effect said articles, and that

The title of all property owned or held, or to be owned or held for the benefit of said association, should be held by the trustees in their individual names, in fee simple, as joint tenants, and not as tenants in common, to them and to their assigns, and to the survivors and survivor of them, and to his heirs and assigns.

That each of the shareholders and their assigns, should pay to the trustees, his due proportion of all future payments, due and owing upon and all the expenses incurred on account of the lands purchased, or which might thereafter be purchased, for account of said association, when and as the same should be called for by said trustees, the survivors or survivor of them, for the purpose of discharging such further payments and expenses, until the title to all of said premises should be perfected in said trustees, their survivors or survivor or successor, free and clear of all lia-

bilities, liens, or incumbrances; and that it should be the duty of said trustees to see that all such payments were duly and promptly made out of the funds, so to be furnished and provided, in ample time by the shareholders of said association or their assigns.

That the premises proposed to be conveyed to said trustees were among other premises, certain lots and lands contracted for by William Sloan and others, for account of said association, a particular description of which was not then at hand, but by reference to said contracts, would
 38 more fully appear, which provision refers among other things, to the contract hereinbefore set forth, between the said William B. Ogden and John Bradley, and A. Hyatt Smith.

And that the title in fee simple, to all of which property, lots and lands, should be duly conveyed to and vested in said trustees, as soon as the same could be conveniently done, and it was in and by said articles of association further provided, that either of said trustees might resign, and discharge himself of his trust, by an instrument in writing, under seal, on executing such conveyances to his co-trustees or successor, as might be necessary to invest his co-trustees with all his interests and powers.

That the said Edwin R. La Bar afterwards, on, about 2d of January, 1854, deceased; and that said Wm. B. Ogden on the 19th of March, 1856, by an instrument under his hand and seal, resigned his said office of trustee, and on the 19th of March, 1856, by his deed of that date, conveyed to the said Mahlon D. Ogden, all the right, title and interest in and to any lands or property, held by him, as such trustee, and that, Mahlon D.
 39 Ogden is now the sole surviving and remaining trustee of said association. That the capital stock, and interest of the shareholders were by the said articles of association, divided into 18,000 shares, of \$100 each, with power to said Trustees, to increase the number of said shares as might from time to time be necessary, and that the number of said shares was afterwards, on the 15th of July, 1853, increased to 19,700 shares, which is now the number of shares in said association.

That in, and by said articles of association, it was further provided, that the shareholders for every \$25 theretofore paid, by each in part payment for the lands of said association, and for every \$25 which should be thereafter paid, should each be entitled to a certificate for a full paid share

of \$100, and that said Trustee should deliver to each member a certificate
 40 of the number of shares held by him, and upon which the amount due
 had been paid in full, which shares or certificates thereof, might be trans-
 ferred from time to time by the holder thereof, or his personal representa-
 tive by endorsement under hand and seal, and giving notice of such
 transfer to said Trustees, with a proviso, that the assignee of such share
 or shares should become a party to said articles of association, by sub-
 scribing his name, and affixing his seal thereto.

That certificates for 18,400 full paid shares have been issued, by said
 Trustees, to the shareholders, that many of said certificates have been
 assigned and surrendered, and new ones issued, in lieu thereof, and such
 new certificates have been assigned, and surrendered, and new ones
 issued in lieu thereof, and so on *toties quoties*, until the shareholders are
 now in number, upwards of sixty persons.

That the shareholders of said association are now so numerous, that
 41 it would be impracticable, to make them parties hereto by name, and that
 by reason of the negotiable or assignable character of said certificates,
 and the almost constant change in the ownership thereof, it would be im-
 practicable, to conduct a suit with such shareholders parties thereto by
 name, and that such a suit would be a serious embarrassment to the share-
 holders by its interference with the assignment and transfer of their re-
 spective shares.

That in and by said articles, it is further provided that there shall be
 an executive committee of said association, to be appointed by a majority
 of the shareholders, who, in conjunction with said trustees, the survivors
 or successors of them, should have the entire immediate management and
 control of the affairs of said association, subject to the general direction
 of the shareholders therein, and that Charles Butler, John P. Chapin and
 Walter S. Gurnee, are now the executive committee of said association,
 duly appointed, and acting as such, and are also shareholders in said asso-
 ciation, and as such, have certificates for full paid shares therein, repre-
 senting in the whole, 2,411 shares.

That the said John Bradley and A. Hyatt Smith, on the 6th day of
 42 April, 1855, by their deed of that date, assigned, transferred and set over,
 unto Mahlon D. Ogden, as such trustee, his heirs and assigns, forever, all
 their right, title and interest in, and to all the lands described in the said

contract between William B. Ogden, and John Bradley and A. Hyatt Smith, together with all rights which they might have under or by virtue of said contract.

That said John Bradley and A. Hyatt Smith, on the execution of said contract between themselves and said William B. Ogden, to-wit: on the 10th day of November, A. D. 1852, paid to the said William B. Ogden the full sum of \$25,000, being the first payment under said contract, together with the sum of \$295.83, for the interest thereon, from the 1st of September, 1852, to the time of said payment; and that the said Ogden endorsed upon said contract, a receipt of the same.

That the remainder of the purchase money of the premises was fully
 43 paid by the said Chicago Land Company, to the said William B. Ogden, and to the said firm of Ogden, Jones & Co., together with the interest on the same, at the times when the said purchase money and interest, respectively became due; and that said John Bradley, A. Hyatt Smith and the Chicago Land Company, have, from time to time paid and discharged all taxes and assessments upon the premises.

That the trustees of said Chicago Land Company, under, and by virtue of said contract, with said Bradley and Smith, and soon after the execution thereof, entered into possession of said premises, and have ever since remained in possession.

That on the 20th of March, 1856, for the purpose of vesting the legal title to the undivided one-half of the premises mentioned in said last mentioned contract, which remained in the said William B. Ogden, in the said Mahlon D. Ogden, as trustee of the Chicago Land Company, the said William B. Ogden, by his deed of that date, conveyed and confirmed unto the said Mahlon D. Ogden, his heirs and assigns forever, the undivided one half of the said premises, described in said last mentioned contract.

44 That heretofore, to-wit, on the day of A. D. 1856, James C. Marshall and Jane E. Wight, by her deed of that date, released, remised, and forever quit claimed unto Mahlon D. Ogden, his heirs and assigns forever, all right, title, claim or demand, which she might have in or to said premises, or any part thereof.

That Mahlon D. Ogden has applied to said Robbins to execute a deed to pass the legal title remaining in him to the undivided half of said premises, but that said Robbins refuses, and at times pretend that said William

B. Ogden had no power under the agreement of the 31st of May, 1847, to make said contract with said Bradley and Smith, and at other times that before the execution of said contract he had revoked the power of said Ogden under said agreement.

46 *Charges*, that said Ogden had full power to make said contract, that said power was irrevocable, that said Robbins was fully aware of the terms and conditions of said contract while it was in negotiation and that he approved of them, that said power was not revoked, or if it was, neither said Bradley nor Smith, nor the shareholders of the Chicago Land Co., had any notice thereof, and that his omission to notify them of said revocation, knowing that they were about to enter into said contract, is such a fraud
47 as will deprive him of all advantage which might otherwise be taken by reason of such revocation.

48 *Prays* for the usual process against Allen Robbins requiring him to appear and answer said bill, but not under oath, and that he be decreed to execute and deliver to Mahlon D. Ogden a deed of conveyance of the legal title to an undivided half of said premises, and of all his right, title, and interest therein, and for such other and further relief, &c.

52 AMENDED ANSWER of Allen Robbins filed April 11th, 1859.

53 *Admits* the joint tenancy of said Ogden and Robbins, of the lands described in said bill, that said Jane E. Wight was entitled to dower and that said Ogden and Robbins executed the agreement of the 31st of May, 1847.

Admits the several changes in the firm and successorship to the firm of Ogden and Jones as in said bill set forth.

Denies that Wm. B. Ogden did on the 1st of June, or at any time
54 prior to the 10th of November, 1852, enter into a verbal agreement with Bradley and Smith, for the sale of said premises, but admits the execution of the written agreement of the 10th of November, 1852.

Alleges, that defendant has no knowledge of the execution of the declaration of trust by Bradley and Smith, dated the 13th of March, 1855, denies that said company was ever incorporated, or that it was known or recognised by any law whatever, public or private.

55 *Insists*, that the said instrument of March 13th, 1855, is illegal and void because

1st. If it is to be treated as a grant, bargain and sale, or any other instrument, deriving its effect from the statute of uses, it is void for want of a pecuniary consideration to support it.

2d. It is void for want of a grantee capable of taking the property described.

58 *Denies*, that Wm. B. Ogden had under the agreement in said Bill set forth, full power to enter into the said agreement with Bradley and Smith ; or that the power conferred upon said Ogden and Jones, their survivor and successors, was irrevocable ; or that defendant was aware of said agreement, when it was in negotiation, or that he assented to the making of it ; or that the shareholders in said Chicago Land Company, had no notice of the revocation, of the powers committed to Ogden and Jones, their survivor and successors, &c.

59 On the contrary, defendant avers that after the execution of the agreement of the 31st of May, 1847, said Ogden and Jones accepted of the trusts ; that they and the firm of Ogden, Jones & Co., who succeeded said Ogden and Jones in business, from time to time, between the date thereof and the first of September, 1852, made several sales of small parcels of said estate, and incurred some expenses, and became entitled to some commissions ; but the precise state of the account, defendant cannot
60 specify ; that on the 1st day of September 1852, the unsold portions of said estate were of the value of \$250,000, and are now of the value of \$600,000, and will continue to increase largely for several years ; that said property abuts upon each bank of the North Branch of the Chicago river ; that said river is navigable up to the extreme northern boundary of said property, and is valuable on account of its docking and wharfing privileges ; that the Chicago, St. Paul and Fond du Lac Rail Road on the 1st of September, 1852, was and now is located over that portion of the property described as Wight's addition to Chicago, laid out on the West side of said North Branch of Chicago river.

61 Defendant further represents that the true intent and meaning of the trust aforesaid, was to improve the property, and sell such portions thereof, as should be necessary to pay for improvements, and discharge the taxes, costs, and other reasonable charges, which might be incurred in the management of the property, to reimburse to Ogden and Robbins, the monies by them expended in the purchase of the property, and in extin-

guishing such liens and incumbrances as existed upon it, and also to raise money to satisfy and discharge the dower claim of the said Jane E. Wight; that for these objects said property was placed under the supervision and management of said Ogden and Jones and the survivor of them and their successors in business, subject, nevertheless, to the general directions of
 66 said Ogden and Robbins; that by the terms of said agreement it became the duty of said trustees

1st. To improve, manage, and disencumber the whole, and dispose of such portions of said property as should be necessary to accomplish the purposes of said trust, with care and faithfulness, to the common interests of the parties to said agreement.

67 2nd. To render fair, just, and accurate accounts, touching the execution of their said trust.

3rd. To promptly pay over the proceeds of said property to the persons entitled thereto, under said agreement.

4th. To pay interest on such balances as they might neglect to pay over.

5th. To make no other or greater sales of said property than should be sufficient to accomplish the object of said trust.

6th. To make partition of said property according to said agreement.

Defendant further represents, that the said Ogden and Jones, and their successors made improvements upon said property contrary to defendant's directions, and were wasteful and extravagant in their management; and in view of these abuses of the trust, defendant in the exercise of the reserved power, contained in said agreement, determined to
 68 put an end to said trust, procure a division of said property, and take his share under his own control. when the time contemplated by said agreement arrived.

69 That pursuant to this determination, on the 4th of March, 1848, defendant wrote a letter to Ogden and Jones, which was received by them, containing the following: "I, therefore, give you notice, that you must not make any further improvements on the property, without my written assent, and in order to obtain this, you must furnish me with your proposed improvements, and the estimated cost of them. I also give you further notice, that I shall call for a division of the property as soon as

the sales amount to sufficient to cover advances, which is, I believe, according to the contract." That on the 27th of August, 1852, defendant wrote a letter to Wm. B. Ogden, which contained the following: "I take this occasion to repeat the notice given you in my letter of March, 1848, that I shall require a division of the property as soon as the sales cover the advances, and I repeat my orders, that you must not make any further expenditures on the property, for improvements or otherwise, to
70 which you have not my written assent, nor any sales exceeding in amount the advances, or any sale about which I am not consulted, and to which I do not give my assent." And defendant further alleges that on various occasions between the dates of said letters he notified the said Wm. B. Ogden that he would not consent to the sale of the residue of said property, except so much as might be necessary to satisfy the trust contained in said agreement. Defendant further represents that notwithstanding these repeated notices, the said Ogden, intending to defraud defendant in the premises, commenced negotiating for the sale of the whole of said property, and pretends that he did, on the 1st of June, 1852, bargain and
71 sell the whole of it to Bradley and Smith for \$100,000. That said Bradley and Smith were then, and still are, both insolvent; and that said pretended purchase was made for the benefit of the Chicago Land Company. That said Wm. B. Ogden is either a stockholder in said Company, or that there was a secret understanding between him and said Company, that the profits of this speculation were to be divided between them. That there
72 was an understanding that all the property purchased for said Company, including this, should, for management and disposition, be placed in the hands of said Wm. B. and Mahlon D. Ogden and Edwin R. La Bar (who on the 1st of January, 1853, was admitted into the firm of Ogden, Jones & Co.,) as trustees for the parties in interest; and that said lands, ever
73 since the pretended sale to Bradley and Smith have been under the control of the said Ogden, Jones & Co., and their successors, with power from said Company to sell the same on commission.

Defendant charges that said sale did not take place on the 1st of June, but on the 13th of November, 1852; that he has never ratified the same, but repudiated it as soon as he was notified. That said Wm. B. Ogden was so anxious to make said sale in defiance of defendant's directions, that he consulted with several lawyers, as to his power to sell and compel defendant to join in a conveyance, and received advice adverse to his

wishes, but persisted, notwithstanding, in making the sale. That the property was worth \$250,000, and the consideration received was so grossly inadequate as to indicate a fraudulent breach of trust on the part of Ogden. That all the charges upon said property remaining due and unpaid at the time of said sale did not exceed \$12,000, and the sale of the whole property to pay said balance was a breach of trust ; that said sale was illegal and void, contrary to equity and good conscience, and ought to be set aside.

75 Defendant further says, that the contract of sale set forth in said bill, does not purport to be the deed of defendant, nor is it executed in his name, or sealed with his seal, and it cannot operate, either in law or equity, to bind him or affect his interest in the premises.

76 Defendant further says that by the agreement of May 31st, 1847, the power to manage and make sales of said property for the purposes therein expressed was conferred upon Ogden and Jones and their survivor and successors in business at Chicago, subject to the general directions of Wm. B. Ogden and defendant ; that upon the organization of the new firm of Ogden, Jones & Co., July 1st, 1850, all the trusts, power and authority, which had before been held and exercised by Ogden and Jones, passed to and became lodged in Ogden, Jones & Co., and after the death of Mr. 77 Jones, March 9th, 1851, the same devolved upon the surviving members of said firm, to wit: Wm. B. Ogden, M. D. Ogden and Edwin H. Sheldon who continued business as the successors of the previous firms. That on the 1st of July, 1850, the new firm of Ogden, Jones & Co., did in fact assume the management of said estate, kept all the accounts, received all the payments, made all the disbursements, and transacted all the business 78 relating thereto ; and after the death of Mr. Jones, the surviving members of said firm, retained said business and continued to manage said property.

Defendant insists that by the express terms of the said agreement, and according to the intention of the parties manifested by the acts and conduct of all concerned, the co-operation and act of all the successors in business of the said Ogden and Jones were essential to the validity of any contract for the sale of any portion of said land, made after the 1st of July, 1850 ; that it was not competent for the said Wm. B. Ogden to sell said lands, or any portion of them, after the decease of said Jones without

the personal co operation and act of his said co-partners, Mahlon D. Ogden and E. H. Sheldon, and that, therefore, the pretended sale to Bradley and Smith was, so far as defendant is concerned, unauthorized and void; and defendant claims the same benefit of this defence as if he had demurred to said bill,

Defendant further answering denies that said Ogden, in making said contract, acted with the full knowledge and advice of his said co-partners, but whether he did, or did not, defendant insists that said contract is invalid.

Defendant further says that the amount of money which was a charge upon said land, at the time of said sale, was uncertain, but defendant believes and avers that he had advanced and paid his full proportion, but if there should be any balance due from him, he offers to deposit, under the direction of the Court, such sum as will suffice to pay such balance.

For the reasons and under the circumstances aforesaid, defendant insists that complainants are not entitled to relief, and prays to be hence dismissed, &c.

81 Replication filed April 11th, 1859.

82 Motion filed by complainants April 11th, 1859, to suppress all the interrogatories and answers thereto in the depositions on file, which were objected to at the time they were taken.

Motion filed by defendant April 11th, 1859, to suppress the depositions of John Bradley, Wm. B. Ogden, George Steele, Edwin H. Sheldon, and all the interrogatories and answers in the depositions on file, which were objected to when they were taken.

COMPLAINANTS' PROOFS.

83 STIPULATION admitting the execution and delivery of the following instruments set forth in the bill of complaint, to wit:

1. Agreement of May 31st, 1847, between Wm. B. Ogden and Allen Robbins and James C. Marshall, and Jane E. Wight.

2. Contract of sale of November 10th, 1852, between Wm. B. Ogden, and Bradley and Smith.

3. Declaration of trust by Bradley and Smith March 13th, 1855.

84 STIPULATION admitting, that, on the 2d of May, 1853, Robert J. Walker and others, associated themselves together for the purposes and in the manner set forth in the printed articles of association hereto attached, which are to be admitted as evidence without further proof.

That the shares of said association were increased as in said bill alleged, and that the number of shares was 19,700 at the filing of said bill, and that they represented the entire interest of the parties thereto.

That certificates for 18,400 full paid shares had been issued to the shareholders; that many of said certificates have been assigned and surrendered, and new ones issued, &c., until the shareholders were upwards of 60, as in said bill alleged.

That Charles Butler, John P. Chapin, and Walter S. Gurnee were the executive committee of said association, and held the number of shares as alleged in said bill.

85 That the purchase money of said premises has been paid, and that Bradley and Smith and the Chicago Land Company have paid all taxes and assessments as in said bill alleged.

That the trustees of said Company entered into, and have remained in possession under said contract as alleged in the bill.

That a deed in due form was presented to said Robbins for execution, and that he refused to execute the same as alleged in the bill.

That no portion of the purchase money received from said Bradley and Smith, or said Chicago Land Company, has been received by said Robbins, and that he has always declined to receive the same.

PRINTED ARTICLES OF ASSOCIATION OF THE CHICAGO LAND COMPANY.

86 These articles are preceded by a statement of purchases for account
of the company, showing the total cost of all the lands to be \$217,800.
Total minimum valuation, as affixed by the trustees and approved by the
87 executive committee, on the first of June, 1855, about \$1,300,000.

88 Then follows the Indenture and Articles of Agreement and Association,
made this second day of May, 1853, by and between Robert J.
Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, William Sloan,
John Bradley, Jacob P. Eastman, John P. Chapin, Edwin F. Johnson,
Albert A. Bliss, and Wm. B. Hotchkiss, as shareholders, and William B.
Ogden, ^{Mahlon D. Ogden} and Edwin R. La Bar, all of Chicago, in the State of Illinois, as
trustees.

Whereas, the subscribers to these articles have purchased certain
lands in Chicago and vicinity, more particularly described in these articles;
and *whereas*, a portion of the purchase money has only been paid,
and considerable sums remain to be paid as the same shall fall due by the
terms of the purchase in each case, which said purchases have been made
89 in the name of some one or more of the subscribers hereto, for the benefit
of all, with the understanding that all the property should for management
and disposition be vested in trustees as herein named, for the
benefit of all parties in interest and their assigns; and *whereas*, the parties
to these presents of the second part have agreed to take and execute
such trust upon the terms and conditions hereinafter named, therefore it
is hereby agreed and declared as follows:

ARTICLE 1. The name of the association shall be the "Chicago
Land Company," and its objects the management, development, sale, or
other disposition of the lands acquired for the benefit of the members of
this association, and Wm. B. Ogden, Mahlon D. Ogden and Edwin R. La
Bar are hereby created trustees.

ARTICLE 2. The title of all property owned or held, or to be owned
or held for the benefit of the Company, shall be held by the trustees in
90 fee simple as joint tenants, and not as tenants in common, and to the survivors
and survivor of them, and to his heirs and assigns.

ARTICLE 3. The capital stock shall consist at present of \$1,800,000, divided into 18,000 shares of \$100 each, representing the estimated value of the land owned and to be owned for the benefit of the company, resulting from the general increased value of real estate in Chicago, since the purchase of the premises herein named, and especially from the increased value of the lands of this company, expected to result from the location of the depot of the Illinois and Wisconsin R R. thereon, and the contemplated improvements of this company thereon. The shares are now held as follows: Robert J. Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, Wm. Sloan, John Bradley, Jacob P. Eastman, and John P. Chapin, each 1500 shares, E. F. Johnson, and A. A. Bliss, each 750 shares, W. B. Hotchkiss, 2250 shares, and W. S. Gurnee and D. S. Miller each 1125 shares.

ARTICLE 4. Provides that each of the shareholders and their assigns shall pay to the trustees his due proportion of all future payments due upon, and all the expenses incurred on account of the lands purchased, or which may hereafter be purchased, for account of said company, as the same shall be called for by said trustees, etc.,

ARTICLE 5. Provides for the forfeiture of the shares of delinquent shareholders.

That any further purchase of property which the trustees may hereafter purchase for the company, shall be conveyed to said trustees for the same uses, &c., as herein provided.

That for every \$25 paid by each shareholder, a certificate for a full paid share of \$100 shall be issued.

That the trustees are vested with full power to manage, improve, sell and convey all the lands of the company, and to pay all costs, taxes, liens, &c., to receive all moneys, notes, bonds, mortgages, &c., arising from sales; to cause the lands to be surveyed and laid out into blocks, streets, public squares, &c.

That said trustees shall keep an office in Chicago, and keep books exhibiting all sales, &c.; that they may employ assistants, and legal counsel, and in January in each year shall make out a statement of the affairs of the company.

That said trustees shall jointly receive 5 per cent. commission, besides their ordinary charge for drawing papers, upon all sales made by them and

on all rents received, and disbursements made for taxes, improvements or otherwise, for or on account of said company, also one per cent. commission upon all collections, &c.

102 Provides for the resignation and removal of the trustees and the appointment of new trustees in certain cases.

103 That Robert J. Walker, John Bradley and Charles Butler shall be the executive committee for one year and until others are appointed.

104 Prescribes the power and duty of the Executive Committee.

105 That the trustees shall keep a stock and transfer book, prescribes the form of stock certificates, and provides that shares may be transferred by
106 endorsement, provided such transfer be notified to the trustees, and the assignee shall affix his name and seal to this indenture.

107 Prescribes the form of assignment and for the issuing of new certificates to the assignee.

That from the time when such transfer shall have been duly registered the shareholder making the same shall be released from all liability as a member of the company in respect of the shares transferred.

108 That the trustees shall establish a transfer office in New York city. The capital stock of the company and the interest of the several shareholders are declared to be personal property, and on the death of any shareholder, his interest shall go to his personal representative and not to his heirs at law.

109 Provides, that the trust shall be closed in June, 1863, by a sale of the remaining property of the company at public auction, provided that
110 shareholders in January or February 1863, owning three-fourths of the shares, shall have power, by a writing under their hands and seals, to continue the trust for such further period as they shall specify. It is, however, declared that a majority in number and value of the shareholders may at any time prior to June, 1863, by writing, direct the trustees to sell any part or all of the lands of the company at public auction.

Describes the premises conveyed to said trustees, &c., &c.

118 RESIGNATION of Trusteeship by Wm. B. Ogden, dated March, 19th, 1856, directed to the executive committee of said Company, under his hand and seal.

119 DEED of Wm. B. Ogden to Mahlon D. Ogden, trustee, dated March
19th, 1856, releasing and quit-claiming all the right, title and interest,
vested in him as trustee of said Company, in and to the lands and premi-
ses therein described. Acknowledged March 20th, 1856.

124 DEED from Wm. B. Ogden to Mahlon D. Ogden, dated March 20th,
1856. After referring to the agreement of May 31st, 1847, between Wm.
B. Ogden, Allen Robbins, Jane E. Wight and James C. Marshall, and to
the contract of November 10th, 1852, between Wm. B. Ogden and John
125 Bradley and A. Hyatt Smith, and reciting that the said Bradley and Smith
did on the 6th of April, 1855, assign said contract to Mahlon D. Ogden,
trustee of said Company, and that said contract had been fully performed
on the part of said Bradley and Smith and their assigns, for the purpose
of vesting the legal title to the undivided half of the premises thereinaf-
ter described, which remains in said Wm. B. Ogden, in said Mahlon D.
126 Ogden, this deed conveys to said Mahlon D. Ogden, the undivided half
of the premises in controversy, particularly describing them. Acknowl-
edged March 20th, 1856.

128 RELEASE from Jane E. Wight to William B. Ogden, Allen Robbins,
and Ogden, Jones & Co., dated June 30th, 1855, from all claims and lia-
130 bilities under the agreement of May 31st, 1847. Acknowledged same

ASSIGNMENT by John Bradley and A. Hyatt Smith to Mahlon D. Og-
den, trustee, of the contract from Wm B. Ogden to them of November
10th, 1852. Dated April 6th, 1855.

DEPOSITION OF JOHN BRADLEY, TAKEN FEB. 18, 1858.

133 INTERROGATORY 1. I am 58 years of age next May. Reside in
Janesville, Wis. Have been building railroads for 8 or 10 years.

INT. 2. I have know the parties to this suit 6 or 8 years.

134 INT. 3. I had a conversation with Wm. B. Ogden in June, 1852,
about the purchase of certain real estate. Other parties at that time had

the refusal of it, at a sum near \$100,000. I agreed with Mr. Ogden that in case the other parties did not take it, I would take it at \$100,000 for the Chicago Land Company. The terms of payment were one-fourth cash, and the balance in one, two, and three years with 6 per cent interest payable annually. The contract was reduced to writing on or about the 10th of November in the same year.

INT. 4. The real estate referred to was all the unsold property in Chicago, in Wight's addition, belonging to Allen Robbins, Wm. B. Ogden and James C. Marshall, trustee of Jane E. Wight, and is particularly described in a contract made by myself and A. Hyatt Smith with Wm. B. 135 Ogden, on the 10th or 11th of November, 1852. Smith and myself took the contract for the Chicago Land Co., and so expressed it to Mr. Ogden, who fully understood it.

INT. 5. (Objected to and withdrawn.)

INT. 6. I had been endeavoring to get Mr. Ogden to take less than \$100,000 for the property, which he refused to do, and suggested that Mr. Robbins was in the city and that I might see him on the subject. 136 called on Mr. Robbins, mentioned to him that I had been talking with Mr. Ogden about the purchase of the property, and am not sure whether I took a note from Mr. Ogden to Mr. Robbins or not, I offered Mr. Robbins \$25,000 for his interest, being, I think, one-third, which he declined. I then asked him to give me the lowest price and best terms on which he would sell his interest. He gave me as his price the third of \$100,000 payable a quarter down, and the balance in 1, 2, and 3 years and interest annually at 6 per cent. I went back to Mr. Ogden and agreed to take the entire property at the price and upon the terms mentioned as those on which I actually purchased.

INT. 7. Mr. Robbins put no other estimate upon the value of the property than that he thought it was worth, \$100,000.

I got the impression both from Mr. Ogden and Mr. Robbins, that Mr. O. had the power to sell, and I also saw the contract in the hands of Mr. Ogden. (Objected to.)

CROSS EXAMINATION.

137 CR. INT. 1. I am not a member of or interested in the Chicago Land Company.

CR. INT. 2. Said company is not indebted to me.

CR. INT. 3. I am not aware that it is liable in any event or contingency to pay me any debt due from other persons.

CR. INT. 4. It is under no contingent pecuniary liability to me of any sort.

CR. INT. 5. I was once a stockholder in said company, and whilst such I placed stock as collateral in various places. The last I had any interest in I sold to Mablon D. Ogden the 9th of last Sept. This had been pledged to the Bank of Burlington. On the 9th of Sept. I sold the residuary interest in the last stock I had.

138 CR. INT. 6. I think that on the back of the scrip is the form of a transfer, and the person transferring signs that, authorizing some person to transfer it for them on the books of the company, or in other words it must be transferred on the books of the company, either by himself or agent.

CR. INT. 7. I do not know that my stock has been transferred on the books of the company.

INT. 8. Did you not on a previous examination state that you had hypothecated certain of this stock in which you retained a residuary interest.

ANS. I placed with the Bank of Burlington 150 shares as collateral to my firm's note. I had also transferred to my son any interest I might have in that stock after paying that note. The transfer to my son was about the last of May or first of June last. I didn't calculate there was any value to it, and I told my son he might have what there was of it after paying that note.

139 CR. INT. 9. My previous examination must have been the last of May or first of June.

CR. INT. 10. I sold that stock to M. D. Ogden on the 9th of Sept., for \$6,750, and interest from the first of June previous.

CR. INT. 11. I have no knowledge that that stock has been transferred on the Books of the Company.

CR. INT. 12. My son assented to the sale of the stock to Ogden.

CR. INT. 13. I gave my son no consideration for his assent to it.

CR. INT. 14. His assent was verbal and previous to the sale.

they might refuse the property, expired from four to six days after my conversation with Mr. Robbins.

INT. 10. I got the impression that Mr. Ogden had power to sell from both parties, Mr. Ogden and Mr. Robbins. I had also seen and examined the deed.

[The testimony of this witness is excepted to, on the ground of interest.]

DEPOSITION OF WILLIAM B. OGDEN, TAKEN DEC. 16, 1858.

145 INT. 1. On or about the 31st of May, 1847, I and Mr. Robbins executed an instrument for the purpose of adjusting the dower of Jane E. Wight in certain lands in Chicago, Sec. 5, T. 39, N. R. 14, E.

146 INT. 2. The instrument referred to is the same set forth in the bill of complaint.

INT. 3. I made a sale of the unsold balance of the premises described in said indenture, to John Bradley and A. Hyatt Smith, as survivor of Ogden and Jones, about the 15th of June, 1852. Full contracts of sale were executed about the 10th of November, 1852. Several sales of small portions had been previously made to other parties between May, 1847, and June 1852. (Objected to.)

147 INT. 4. The paper exhibited is the contract of sale with Bradley and Smith,

INT. 5. I know the signatures of Bradley and Smith. The signatures to the contract are genuine.

INT. 6. I had conversations relative to the sale of this property, with the defendant, at different times; first in Mr. Burch's Banking Office, in the back room occupied by Mr. Robbins, where I showed him a proposition—say about June 1st, 1852, or not long before the sale to Bradley and Smith—made by me to Mr. Ward of Boston, for the sale of said property to him, at about \$97,925, and of
148 which proposition Mr. Robbins took a copy. At that time I also informed Mr. R. that Mr. Ward had the refusal at that price; also, that Mr. Bradley and his associates were applicants for the purchase of the property, and that I had proposed to sell it to them at \$100,000, provided Mr. Ward did not accept the proposition made him. And I proposed to give Mr. Ward

notice that he must decide either to take it or not, and I afterward did give him such notice, and he declined, as he said, from inability to fulfil in time, and I then gave notice to Mr. Bradley and his associates, that they could have the property for \$100,000. Some few days after giving Bradley such notice—I should think not three days—I met Mr. R. in front of the Tremont House. He asked me if I had concluded the sale to Mr. Bradley and associates. I told him that I had not, as they had not yet decided to take it, but I thought they would do so as soon as they could make their arrangement, which would be in a few days. He replied, that if they did not decide to take it very soon, he would not let them have it, and he did not know but that he would take it himself at that price. I told him I should be very glad to let him have it, if he
 149 wanted it. He declined to take it. These are all the interviews that I remember having had with Mr. R. previous to the sale to Bradley and associates.

INT. 7. Mr. Robbins made a proposition to sell me, or Ogden, Jones & Co., his third interest in the unsold property named in the contract of May 31st, 1847, for \$15,000, including in such price his one-third advances for improvements and expenses, but exclusive of \$2,362.11 or thereabout, advanced by him on account of the Jane E. Wight interest—that is, Mr. R. offered to take \$17,362 11 for his entire interest, including all his inter-
 150 est in unpaid contracts, and all his advances, and proposed to receive payment as follows: In cash, \$5,362.11; in one year, \$4,000; in two years, \$4,000; and in three years, \$4,000, with 6 per cent. semi-annual interest. This proposition was made about November, 1851. My memorandum of it bears date Nov. 23d, 1851. This proposition was considered too high and was declined. (Objected to.)

INT. 8. According to the terms of this proposition, his estimate of
 151 the value of the property was \$45,000, including balances unpaid on contracts, which I think was from three to six or seven thousand dollars, but I am not at all certain about the amount due on the contracts. (Objected to.)

INT. 9. I made a memorandum of said proposition at the time, and I now produce it just as I then made it, and hereto attach it. (Marked "Exhibit A.") (Objected to.)

INT. 10. I do not recollect positively the terms of payment in the Ward proposition, but I think they were much easier and on longer time than the sale to Bradley and Smith. My impression is, that they extended from one to six years or more, in annual payments, with 6 per cent. interest. I am not certain that there was not some abatement assented to from \$97,925, in the proposed sale to Ward.

152 INT. 11. At the date of the sale to Bradley and Smith, the amount chargeable to the property for purchase money, advances, expenses, and interest, was about \$17,437.49, less about \$2,299 received from previous sales, leaving \$15,138.49 which was to be first paid as provided in the contract of May 31st, 1847.

153 INT. 12. I mean by my answer to Interrogatory 3d, that I made a written memorandum of the proposition in June, which was accepted about the 15th, and the agreement of sale concluded thereby, but I gave the parties a few days to enable them to gather funds to make their first payment, \$25,000. Meanwhile, I went to New York, and failing to return, they came there and closed the arrangements by full contracts, which, with details and particulars of sale, were there executed in duplicate.

154 INT. 13. The whole of the purchase money stipulated in said contract has been paid, with interest substantially in accordance with the terms of the contract. The payments were all made by Bradley and Smith, or their assigns, and were all made to the successors of Ogden and Jones, as provided in the indenture of May 31st, 1847; and notice was given to the defendant from time to time, of such payments, and that his proportion of the same was held subject to his order. Jane E. Wight or James C. Marshall, trustee, or both, were also notified and made demand therefor, and have been paid, and have given receipts in full for their proportion thereof, and have duly conveyed their proportion of the premises to Bradley and Smith, or their assigns. (Objected to.) The survivor and legal representatives of Ogden and Jones have also received their portion of the proceeds of said sale in full, and deeds for their interest in the premises have been duly executed to the assignees of Bradley and Smith. (Objected to.)

CROSS EXAMINATION.

155 CR. INT. 1. I have not in my possession the memorandum of the proposition submitted to Bradley and Smith referred to in my answer to Interrogatory 12, but I have a rough memorandum of the substance of the proposition made at that time, which does not specify the terms of payment, but intimates a modification made as to time of drawing interest, on leaving out 8 lots, the title to which was not included in the indenture of May 31st, 1847, and which they understood to be included in the proposition of \$100,000, and which were then estimated at about \$1,400, and the interest on the sale from the 15th of June to 1st of Sept., 1852, amounting to \$1,250. It was agreed to leave out the 8 lots, and make the sale draw interest from the 1st of Sept., instead of the 15th of June, as a set-off for them. The memorandum submitted reads, "Offered Sloan and others," Sloan being one of the parties associated with Bradley and Smith and interested in the sale made to them, and most of the purchases made by him and his associates prior to, or about the time of this, having been made in his name. (Memorandum attached, and marked "Exhibit B.")

156 CR. INT. 2. The memorandum given to Bradley and Smith was substantially the substance of the contract afterwards executed. I first proposed giving them more time on the payments, but understanding from Bradley and others that Mr. Robbins preferred payment of a quarter down, I required it of them.

CR. INT. 3. I don't remember positively that any terms of payment were expressed in said memorandum, but presume there were. There might have been two memoranda made, probably not. There might have been a memorandum for the time proposed and might not.

CR. INT. 4. It was a memorandum of the proposition for the sale of the property to them, and in pursuance of which the contract was executed after acceptance by them. I don't know whether my name was signed to it or not—it was in my handwriting, I have no doubt, but it may have been written by some other party in the office, and I have no other copy of it than the one just filed.

157 CR. INT. 5. I must have given them the memorandum previous to the 15th of June. They accepted the proposition about the fifteenth of June. Whether they did so verbally or by writing I do not

recollect. There was no contract signed at the time between us. They accepted substantially without modifications, except that the time of payment might have been shortened, and the interest commencing September instead of June, in consequence of 8 lots having been left out, which were not included in the indenture of May 31st, 1847.

158 CR. INT. 6. It is my impression that the proposition did not mention any lot by name, but was for the unsold balance of the, so called, Wight property. That subsequent to the indenture of May 31st, 1847, Mr. Robbins and Ogden and Jones bought sundry lots in Wight's addition, some of which were not mentioned in said indenture, but in the list of that property kept by Ogden & Jones were included as part of the Wight property, so called. Such lots as were not included in that indenture, I was not authorized to sell. Bradley supposed they formed part of the property and were included in the offer made to sell, and perhaps under the circumstances, had a fair right to think so. In order to correct the misunderstanding, an abatement of interest about equal to their valuation was assented to.

CR. INT. 7. No memorandum of the bargain made by me with Bradley and Smith was signed by the parties prior to Nov. 10th, 1852. I might have signed a proposition made to them as above stated.

159 CR. INT. 8. All the notice I ever received from Mr. Robbins up to the time of my negotiations with Bradley and Smith, was the letter I here submit, dated March 4th, 1848, (annexed and marked "Exhibit F.")

CR. INT. 9. I did receive a letter from Mr. Robbins, dated August 27th, 1852, soon after it was written, and submit the same, (annexed and marked "Exhibit C.")

160 CR. INT. 10. I understood at the time that Bradley and Smith purchased the property for themselves and others, who were, or were to be interested with them

CR. INT. 11. I know nothing of the extent of their association, but think I heard the names of Robert J. Walker, Mr. Eastman, Eli Chittenden, Mr. Page, and perhaps Mr. Chapin, and others I do not know.

CR. INT. 12. At the time of making this sale to Bradley and Smith, I had no knowledge of the formation of any Company for the purpose of buying, improving and selling this and other property in and about

Chicago. In the spring of the next year, I think, a joint stock association,
 161 called the Chicago Land Company, was formed for the purchase and sale
 of property, of which the property in question formed a part.

CR. INT. 13. I believe the pamphlet shown me to be a copy of the
 articles of association of said Land Company.

CR. INT. 14. My understanding was that a small part only, of those
 who signed said articles of association, were interested at the time of the
 sale to Bradley and Smith. Many of them became subsequently inter-
 ested. All that I remember to have heard spoken of at the time of the
 sale, besides Bradley and Smith, were Walker, Eastman, Johnson, Cha-
 162 pin, Chittenden and Sloan, and I have no means of knowing that they
 were all interested, only from hearsay. Some of the others named in the
 articles have not at any time, to my knowledge, been interested, except
 as trustees.

CR. INT. 15. The parties interested in the purchase, at the time of
 the negotiation with me, did not, to my knowledge, have it in contempla-
 tion to form such a company as they afterwards organized. I never
 heard of it.

CR. INT. 16. According to my recollection, the first I heard of such
 a company was when Mr. Eastman, and perhaps Mr. Chittenden called
 upon me in New York, in the spring of 1853, for a copy of the articles of
 the American Land Company Association, of which I had long been a
 member, from which they proposed to draw articles of association for
 themselves and associates, and the articles they adopted are in a great de-
 gree copied from the articles of the American Land Co. Association.
 They then solicited the house of Ogden, Jones & Co., to act as their
 163 agents for the management and sale of all of their property in Chicago,
 of which the property in question formed a part, and they requested my-
 self, Mahlon D. Ogden and Edwin R. La Bar to act as trustees for the
 association, to which we assented, our business being that of General
 Land Agents. I don't recollect hearing the association spoken of previ-
 ous to this time.

CR. INT. 17. I have never been interested in the stock of said Company,
 not a dollar directly or indirectly at any time. It may be, that stock may
 have been assigned to me as trustee, for the benefit of the Company, but

I never was interested in my own right, or for my own account, in any way.

CR. INT. 18. Ogden, Jones & Co., and Ogden, Fleetwood & Co.,
 164 for account of the Trustees of the Company, have made large sales of the property of the Company, and have received commissions therefor, but I am not aware that they have sold for the Company any of the property in question, except it be the right of way for the Chicago, St. Paul and Fond du Lac Railroad Company; but whether they received commissions on that sale, I do not know.

CR. INT. 19. At the time of the negotiation with Bradley and Smith I did not expect to become thereafter an agent for the management and sale of the property in question. There was no such understanding. Nothing of the kind was thought of by me. The sale was unconditional, the same as any other of the large sales made by me or my firm.

CR. INT. 20. I am connected with Mahlon D. Ogden in business, whom I believe now to be the sole trustee of said Company, but not so connected as to be entitled to any commissions he may receive as such trustee.

165 CR. INT. 21. It strikes me that when the solvency of Bradley and Smith was doubtful, the Trustees required a declaration of trust from them concerning this property, to prevent their creditors from reaching it.

CR. INT. 22. I don't know where Mr. Robbins spent the winter of 1851-2. I saw him in Chicago, I should think about the 15th of June, or about the time and previous to the sale to Bradley and Smith. He was here, I think, when the offer was accepted by them. The purchase money was to draw interest from the 15th of June, and my impression was that the sale was closed on that day, but it may have been that the proposition was made on that day, and the interest to draw from that time, and the sale consummated a short time after.

166 CR. INT. 23. I remember such a man as Mr. Valette being here and having some negotiations with him in regard to the purchase of this property, but don't remember the time when, nor for what amount.

CR. INT. 24. The conversation I had with Mr. Robbins in front of the Tremont House did not relate to the offer made by or to Valette. I

had conversations with Mr. Robbins in regard to the sale to Vallette, and might have had them in front of the Tremont House, but the conversation in reference to the sale to Bradley and Smith, took place as previously stated.

CR. INT. 25. I think I made sale of a lot (a portion of this property) to Joy, previous to the negotiation with Bradley and Smith. I think it was made verbally, pending that negotiation, and they were to carry it
167 out. I don't remember the particulars, but they were to ratify the sale. The lot Joy was to have was included in the sale to them, Ogden, Jones & Co.'s books will show.

CR. INT. 26. I don't remember anything about the paper now shown me, (an account of the sale to Joy.) Don't know who made it. Think it looks like Mr. La Bar's writing, who was a clerk in the office of Ogden Jones & Co., at that time.

CR. INT. 27. The paper now submitted is in the hand of Wm. P. Fleetwood, at that time a clerk in our office. It is probably the correct statement of the price and terms of a lot sold to Mr. Joy, and of the payments made thereon at that time, but probably incorrect as to the sale being made for Ogden and Robbins, provided the agreement of sale to Bradley and Smith was carried out. My recollection is that Mr. Joy claimed that I had verbally agreed to sell the lot to him, before the sale of it with
168 the balance of the Wight property to Bradley and Smith, and that I got Bradley and Smith after the sale to them, to agree to let Joy have it at the price he claimed I was to sell it to him for, and that the clerk not being advised of the circumstances, made out the account of Hiram Joy with Ogden and Jones. My impression is, that the money received from Joy was credited Bradley and Smith, and that this lot was included in the sale to them. (Account annexed and marked "Exhibit E.")

CR. INT. 28. I do not know whether the amount due to Mr. Robbins on account of this sale to Joy was afterwards tendered to him.

CR. INT. 29. Mr. Bradley reported to me that he had had interviews with Mr. Robbins in regard to the sale (to him and Smith,) and that Mr.
169 R. was willing to make a sale of the whole for \$100,000. Whether he went to see Mr. R. at my suggestion, or not, I don't remember, but I think it

was very likely. I did advise him to see Mr. R., and, though I had the power to sell independent of Mr. Robbins, I thought it courteous to refer to him.

CR. INT. 30. I have answered this (as to the charges against the property) fully already in my direct examination.

CR. INT. 31. The commissions charged by us upon the sale to Bradley and Smith were precisely those provided for in the indenture of May 31st, 1847.

CR. INT. 32. I think the first time I met Mr. Robbins, after the negotiation with Bradley and Smith, was in New York, in the office where I transacted my business, and it was after the completion of the contract of sale, and after the first installment was paid by them thereon.

CR. INT. 33. Mr. Robbins at that interview objected to the sale. (Objected to.)

CR. INT. 34. I don't recollect that I assigned any reason to him for having made the contract. The interview was very short.

CR. INT. 35. I did not give him as a reason that I wanted to get my commissions. No such thing took place.

171 CR. INT. 36. Some time after the sale was made, I heard a street rumor that Mr. Robbins had objected to the sale, since the making of it, and I asked two or three attorneys whether there was any question as to my obligation and authority to fulfil the sale to Bradley and Smith, and was advised by Messrs. Judd and Wilson, who examined the matter fully, that I had authority. One (I think it was Mr. McCagg) had some question of it. The agreement of sale had been made in good faith, and I fulfilled it.

RE-EXAMINATION IN CHIEF.

INT. 14. I think I did make sales of the property described in the indenture of May 31st, 1847, after March 4th, 1848, and prior to June, 1852, without advising with Mr. Robbins, and that he subsequently joined
172 in the execution of deeds conveying the property as sold. I don't know that I ever consulted Mr. Robbins in regard to any of the sales previous to the sale to Bradley and Smith. On every first of August and February,

Ogden and Jones, or their successors, notified him of any sales made in the previous six months, and rendered him an account thereof, which was all that was required by said indenture. (Objected to.)

INT. 15. The signature to the paper now shown me is in my hand. I have received the consideration therein expressed. (Attached, and marked "Exhibit G.")

INT. 16. The commissions charged upon the sale to Bradley and Smith stand to the credits of commissions still, on the books of Ogden, Jones & Co., and have never been paid to me.

173 INT. 17. I have received from the Chicago Land Company a bond of indemnity, and herewith hand it in. The signature thereto of Mahlon D. Ogden is in his hand. (Attached, and marked "Exhibit H.")

[Defendant will object to the admission of this deposition, because the witness has an adverse interest to him in this suit.]

"EXHIBIT A."

Statement of cost, etc., of Wight property.

A. Robbins' one-third cost, including interest, Aug. 1, 1851,	\$4,380.82
Cost of improvements of his one-third, with interest to Aug.	
1, 1851, and commissions, after deducting proceeds of all	
sales, - - - - -	1,914.23
	\$6,295.05
174 For this Robbins asks, - - - - -	\$15,000.00
And to be re-imbursed his one-half advances with interest to	
Aug. 1, 1851, - - - - -	2,362.11
Nov. 23, 1851, - - - - -	\$17,362.11

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"EXHIBIT B."

Offered Sloan and others the unsold portions of
 Wight property for, - - - - - \$100,000.00
 To draw interest 6 per cent. from June 15, 1852.
 The interest to 1st September amounted to, \$1,250.00
 8 lots—lots bought of J. H. Jones and Scammon,
 deducted—called - - - - - \$1,400.00

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"EXHIBIT C."

CHICAGO, August 27th, 1852.

WM. B. OGDEN, ESQ.,

Dear Sir:

I received Messrs. Ogden and Jones' accounts with the Wight estate, and find you still retain Mr. Smith a pensioner on this property. Ds. 78 being charged for his services, a portion for plans for a bridge at Halstead Street, a project on which I have not been consulted. As it must be evident that I am not satisfied with your management, and having lost confidence in your integrity as an agent, I shall esteem it a favor and kindness if you will at once accede to a division of the lots and lands at once. This course cannot be other than pleasant to you, as you will then be free from my complaints and censure. I take this occasion to repeat the notice given you in my letter to O. & J. of March, 1848, that I shall require a division of the property as soon as the sales cover the advances. And I repeat my orders, that you do not make any further advances on the property, for improvements or otherwise, to which you have not my written assent, nor make any sales exceeding in amount the advances, or any sale as to which I am not con-

177 sulted, and to which I do not give my assent.

Messrs. Ogden and Jones have omitted to report the sale of a lot to Mr. Joy, which you named to me. Will you see that it is sent to me.

Yours respectfully,

ALLEN ROBBINS.

"EXHIBIT D."

Articles of Association of the Chicago Land Company.

"EXHIBIT E."

HIRAM JOY,	}	July 22, 1852, 1 a in Sec 5, 39, 14.
WITH		Payable \$525, June 1, 1853.
OGDEN & ROBBINS		" \$500, " 1, 1854.
		" \$500, " 1, 1855.

Interest 6 per cent. June 1. Taxes after 1851.		
1852, July 22.	To contract as above, - - -	\$1,525.00
1853, June 1,	To interest on contract to date, -	78.28
May 27,	By Cash hereon, - - - -	\$603.28.
1854, June 1,	To interest on \$1000 to date, -	60.00
Dec. 1,	" " \$560, due June 1,	
	1854, extended 6 months at 10 per cent. -	28.00
	By Cash for pay't and int., due June 1, 1854, -	588.00
1855, June 1.	To interest on \$500, 1 year - -	30.00
"	To taxes 1852-3-4 - - -	29.77
178 1855, Nov. 7,	To interest on \$559.77, 5 $\frac{1}{2}$ months,	24.41
" " "	By cash hereon in full of contract,	
	interest and taxes. - - -	584.18
		\$1,775.46 \$1,775.46

Cash received on above contract \$1,775.46, by trustees of Chicago Land Company, one-third of which amount is paid to Allen Robbins at his request, \$591.82

"EXHIBIT F."

East Granby, March 4, 1848.

MESSRS. OGDEN AND JONES,

Chicago,

Dear Sirs :

I received at this place your favors of 12th and 14th ult., with accounts relating to the Wight property. Your account contains some charges which require explanation, which I shall ask of your Mr Ogden, when in New York, and if satisfactory, will then order a further payment made to you. You are aware that all improvements must have my approval, but you have proceeded so far without consulting me. It would be more satisfactory to me, and in my opinion, just to all intertests, if the improvements to be made were let by tender for cash payments rather than let in such small detached portions evidently tributary to the business of your office. I notice that you charge newly
 179 Ds. 150, for Smith's superintendence, &c. This I think is too bad. I supposed that you were to superintend the business yourselves; if you cannot you should at least pay your deputies. Your commissions are certainly sufficiently ample for that, and all the other very onerous duties you perform. I have not the contract here to refer to, but if it allows you to charge 10 per cent. on your advances, I must allow that I made a very foolish arrangement, and that it is for my interest to dissolve the connexion as soon as the contract permits. That you may proceed fairly and understandingly, I give you notice that you must not make any further improvements in the Wight property, without my written assent, and in order to obtain this, you must furnish me with your proposed improvements, and the estimated cost of them. I likewise give you notice, that I shall call for a division of the property as soon as the sales amount to sufficient to cover the advances. This I can do, I believe, according to the contract. I know not what Mr. Marshall may say of your account, but it must readily occur to him, after examination, that the widow's chance of gain is small and remote. Col. Smith is wrong as to Chicago Avenue, I made no agreement with any one. I did not know that Raymond was

interested or that Lee intended making a road on the North side. Mr. Lee told me he should drain his land by ditching.

Yours Respectfully,

A. ROBBINS.

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"EXHIBIT G."

Know all men, &c., that for and in consideration of \$3,000 to me in hand paid, &c., I have this day given, granted and assigned to said Mahlon D. Ogden, absolutely all commissions, and all claim and demand I may have to any commissions upon the proceeds of the sale of the interest of Allen Robbins, in and to a certain tract of land heretofore sold by me to A. Hyatt Smith and John Bradley, &c., &c.

As witness my hand and seal this 16th day of December, 1858.

W. B. OGDEN. [L. S.]

"EXHIBIT H."

Whereas at a meeting of the shareholders of the Chicago Land Com-
181 pany, &c., held at &c., on the 27th day of April, 1857, a resolution was offered providing that the Trustee and Executive Committee of the said Company execute to Wm. B. Ogden a proper legal instrument to indemnify and save harmless the said Ogden from all damages, &c., which may arise or accrue from the sale to said Company, or to A. Hyatt Smith and John Bradley, for said Company, of the interest of Allen Robbins in that portion of the property of the Company, heretofore belonging to Ogden and Robbins, and which was sold by Wm. B. Ogden for himself and as the attorney of Allen Robbins, to A. Hyatt Smith and John Bradley, for said Company, and which said instrument shall bind said Company to pay any amount of damages, with the costs and expenses of all legal proceedings which may at any time hereafter be obtained by said Robbins against said Ogden, or against Ogden, Fleetwood & Co., in a suit now pending, or in any which may hereafter be brought against him or them, in consequence of the sale of said Robbins' interest by said Ogden. And whereas it was

resolved, that said resolution be referred to the adjourned meeting of the shareholders of said Company to be held on the 3d day of June next following. And whereas at the said adjourned meeting, held on the 3d of June, 1857, it was resolved that the aforesaid resolution be adopted.— Now, therefore, know all men &c., that I, Mahlon D. Ogden, sole trustee of the said Chicago Land Company, in pursuance with the resolution, &c., the Executive Committee of said Co. assenting hereto, &c., and in consideration of one dollar, &c., have, and by these presents do covenant and agree to indemnify and save harmless the said Wm. B. Ogden from all damages, costs and expenses, which may arise or accrue from the sale to said Company, or to said Smith and Bradley for said Company, of the interest of Allen Robbins in that portion of the property of the Company heretofore belonging to Ogden and Robbins, and which was sold to Wm. B. Ogden for himself, and as the attorney of Allen Robbins, to Smith and
 183 Bradley for said Company, and to pay any amount of damages, with the costs and expenses of all legal proceedings which may at any time hereafter be obtained by said Robbins against said Ogden, or Ogden, Fleetwood & Co., in a suit now pending, or in any suit which may hereafter be brought against him or them, in consequence of the sale of said Robbins' interest by said Ogden. For the full and faithful performance of which said covenants, &c., the said Mahlon D. Ogden, Trustee of the said Company binds himself, his successors and assigns, as such trustee, together with the said Company, their successors and assigns. In testimony whereof, the said Mahlon D. Ogden, Trustee, &c., hath hereunto set his hand and seal this 4th day of June, A. D. 1857.

MAHLON D. OGDEN,

Trustee of Chicago Land Co. [L. s.]

The above bond, obligation or agreement of the Chicago Land Company is hereby approved and confirmed by the executive committee of
 184 said company, in pursuance of the resolutions and instructions of the shareholders above recited.

JOHN P. CHAPIN,

Ex. Committee of Chicago Land Co.

DEPOSITION OF ALLEN ROBBINS, TAKEN IN THE SUIT OF JANE E. WIGHT VS.
JAMES C. MARSHALL, ET AL., MARCH 31ST, 1854.

INT. 1. I am acquainted with Marshall and Ogden. Never saw complainant or Mr. Wetherbee.

INT. 2. I am one of the parties to the agreement of the 31st of May, 1847, with Ogden and Mrs. Wight.

185 INT. 3. I was in Chicago in July, 1852.

INT. 4. I was acquainted with the value of the lands described in said agreement which were unsold in July, 1852. I estimated their value at \$100,000.

INT. 5. It is the same property which Mr. Ogden contracted to sell in the fall of 1852.

INT. 6. In July, 1852, Mr. Marshall called on me in Chicago, and entered into conversation regarding the property. I showed him Mr. Ogden's valuation of the property.

186 INT. 7. That valuation was \$97,925.

INT. 8. This conversation was about the 6th of July.

INT. 9. Mr. Marshall said it was for the interest of Mrs. Wight to sell her interest in the property. Her pecuniary interest was such, that it was necessary for her to sell, as she was poor. He made many other remarks of the same tenor—that the property was now ample to give her a comfortable living, and he should advise her to sell. I replied that if she wanted to sell, I would buy the property and give as much as any other party, but was unwilling to give Mr. Ogden's valuation, and was not then
187 prepared to give more than \$22,000 or \$22,500.

INT. 10. I wrote to Mr. Marshall two letters, inquiring Mrs. W.'s determination as to selling her interest. The letters annexed marked Exhibits I and J, are the letters I received in reply. I also wrote another letter inquiring of Mr. M. if he had taken the valuation I had shown him, and received the letter annexed marked "Exhibit K."

CROSS EXAMINATION.

188 CR. INT. 1. In the conversation with Mr. M., I complained of Mr. Ogden's charges—that many of them were unjust and improper, and that I had notified Mr. Ogden, that as soon as sufficient of the property had been sold to pay the advances, I should call for a division. My impression was, that after Mr. Ogden got the property into his hands he would fleece me. I think I expressed the opinion to Mr. M. that Mr. Ogden was endeavoring to make a Hunter purchase of it. By that, I mean, to get the property into his hands and use it up by extravagant charges.

CR. INT. 2. I afterwards found Mr. Ogden's valuation.

CR. INT. 3. I showed Mr. Marshall a statement of charges presented by Mr. Ogden.

189 CR. INT. 4. I have never known it difficult to sell property here at a fair price, on a credit. Property at that time just began to rise.

CR. INT. 5. The remarks made by Mr. Marshall in regard to Mr. W.'s interest to sell, occurred in the course of our conversation about the property, and in regard to its management.

CR. INT. 6. The letters annexed marked Exhibits 1, 2, and 3, are letters addressed by me to Mr. Marshall, and one part of the correspondence referred to in my direct examination.

190 CR. INT. 7. I named a sum which I told Mr. M. I was willing to give for the property, but no terms were mentioned.

CR. INT. 8. I never made Mr. Ogden any proposition to sell him my interest in the property at any time whatever.

CR. INT. 9. The causes of the difficulty in selling at fair prices, referred to in my letter of July 29th, were the condition of the contract with Mr. Ogden.

CR. INT. 10. Mr. Ogden and I were at variance at that time, and had been from the rendition of the first account by Mr. Ogden.

191

"EXHIBIT I."

ERIE, August 2d, 1852.

A. ROBBINS, Esq.,

Dear Sir:

Yours of the 29th ult. is received. I have not seen Mrs. Wight since I was at your city, but have written her my views in relation to her property, and suggesting to her the propriety, and in fact the *necessity* of her making sale of her interest, as I think it is the only means of her realizing anything from the property during her life. The amount against it is large and continually increasing—she can not raise means to redeem it without selling. I have laid the whole matter fully before her, and requested an answer, which I have not yet received, &c., &c.

JAMES C. MARSHALL.

192

"EXHIBIT J."

ERIE, AUGUST 9th, 1852,

A. ROBBINS, Esq.,

Dear Sir:

Yours of the 5th inst., is received. I also received a letter on the same day from Mrs. Wight. She will be here before long, and conclude what course she will take in relation to her interest in the Chicago property. I think she would prefer to raise the money from some of her friends upon a loan to *redeem* the property to making sale. When she comes here we will conclude upon the course she will take, &c.

JAMES C. MARSHALL.

"EXHIBIT K."

ERIE, August 31, 1852.

A. ROBBINS, Esq.,

Dear Sir :

Yours of the 27th inst., is received.

193 You did not give me Mr. Ogden's valuation of the Wight property, nor have I any recollection of seeing it. You showed me the statement of his account, and pointed out your objections to it, etc. * * * * *

Mrs. W. is needy and wants all that she can honestly get out of her property. I will see her on the 10th of next month, and learn from her her views in relation to her interest in the other property. Why Mr. Ogden does not furnish me a statement of the account with the property I do not know. He has not furnished one for more than one year. I wrote him some time since to furnish me with the statement.

JAMES C. MARSHALL,

"EXHIBIT No. 3."

Letter from Allen Robbins to James C. Marshall, dated Chicago, August 27, 1852. It acknowledges receipt of Mr. Marshall's letter, of the 9th inst. As the letter refers to another subject it is omitted.

194

"EXHIBIT No. 2."

CHICAGO, August 5th, 1852.

JAMES C. MARSHALL,

Dear Sir :

I am obliged by your favor of 2d inst. If you think it advisable to negotiate with Mrs. Wight by direct ap-
 195 plication, I can supply a very trusty person, my brother-in-law who resides in Connecticut, to ascertain her views and terms, subject, however, to your approval.

I presume that she would desire that the value of her interest, whatever it may be, should be so secured as to provide for her an ample yearly income. This, however, you could probably satisfactorily arrange for her.

From some movement here I infer that the Railroad Company which I named to you as probable purchasers, have decided on other ground for their depot. Some lots in Waubansia Addition have been quietly purchased, and negotiations for others are rendering.

ALLEN ROBBINS.

"EXHIBIT No. 1."

CHICAGO, July 29th, 1852.

J. C. MARSHALL, Esq.,

Dear Sir:

When you was here you suggested that Mrs. Wight would sell her interest in the "Wight Estate."—My object in now writing is to ascertain if you have consulted her on the subject, and can you give me her views as to price and terms of payment. If she is not now prepared to name terms, I would esteem it a favor, if 196 she would, when prepared to sell, give me the refusal, or at all events consult me previous to selling. I am not very desirous of purchasing as it is difficult at the present moment to make sales at fair prices of the property, owing to causes I named to you, but if I owned her interest I could better protect my own, by having a division of estate on fair terms with Ogden, and taking into my own hands the charge of my portion and thus relieving it from Ogden's exclusive charge.

A. ROBBINS.

DEPOSITION OF GEORGE STEELE, TAKEN JAN. 24, 1859.

INT. 1. Am about 60 years old. Reside in Chicago. Am a produce dealer.

INT. 2. Know all the parties.

197 INT. 3. Have not had any conversation with defendant about any lands sold to Bradley and Smith by Mr. Ogden.

INT. 4. I was in Mr. Tinkham's office one day two or three weeks before Hyatt Smith, Sloan and others, or the Chicago Land Company, purchased the land. Mr. Tinkham called my attention on the map to a piece of land called the Sheffield Tract. It was marked "Wight's Addition." Mr. T. said, "don't you want to go into a speculation in this land." A few days after this I met Mr. Robbins on the street. I told him Tinkham and I thought of purchasing, and asked him if he did not want to sell this land, and what his price was. He said Mr. Ogden had the selling of it, and asked \$100,000 for it. We stepped into Tink-
198 ham's office and conversed about it, in the presence of Mr. Tinkham. I urged him for a reduction, and said the price was too high. He said if I wanted a reduction I must go to Mr. Ogden, for he had the selling of it.

CROSS EXAMINATION.

CR. INT. 1. I cannot swear positively to the month or year when the above conversation occurred, without reference to my books.

CR. INT. 2. I think it was in the summer or spring, but cannot say certainly.

CR. INT. 3. My attention was first recalled to it two years ago.

CR. INT. 4. I know nothing about the organization of the Chicago Land Company, further than I was asked if I did not want an interest in it, by Mr. Chapin and Sloan, about the time of its organization.

199 CR. INT. 5. This conversation with Robbins must have occurred, I think, after I was applied to by Chapin and Sloan, but won't be positive.

CR. INT. 6. The conversation with Mr. Robbins was not less than 4 years ago, and may be 5. There are memoranda on my books by which I can tell the year and very near the month.

CR. INT. 7. I had no knowledge about the sale from Ogden to Bradley and Smith, but what I got from those interested in the company.

CR. INT. 8. I never called on Mr. Ogden about the purchase of this land.

CR. INT. 9. I intended to buy the land if the price and terms suited me, but I made no offer and had no further conversation about it.

200 CR. INT. 10. The interview I had with Mr. Robbins was very brief—from 5 to 10 minutes.

CR. INT. 11. I made no memorandum of the conversation.

CR. INT. 12. I think my attention was recalled to it some time after, when Mr. Robbins was called upon to give a deed.

CR. INT. 13. I have held stock in the Chicago Land Company, as collateral security, and I took 40 or 50 shares to liquidate a debt due me from some one of the Company. I do not hold any now.

CR. INT. 14. I parted with my stock about a month or six weeks ago.

201 CR. INT. 15. I sold it to Mr. Wilkins unconditionally.

CR. INT. 16. I transferred it absolutely, to enable me to testify in this cause. I made no condition for its re-transfer. Mr. Wilkins is my son-in-law.

CR. INT. 17. I know nothing about any negotiations for this land by Mr. Valette.

DIRECT EXAMINATION RESUMED.

INT. 5. Mr. Wilkins gave me his note for the stock for about 45 cents on the dollar.

INT. 6. I still hold the note, and I believe that is about what the stock cost me.

202 INT. 7. I have refreshed my recollection as to the date of the conversation with Mr. Robbins. It was between May and August, 1852.

CROSS EXAMINATION RESUMED.

CR. INT. 18. I sold Henry Smith some lots in July, 1852. It was about this time that it came out that a company called the Chicago Land

Company were buying large tracts of land, and it was just before this that I had the conversation with Mr. Robbins. I suspected that Mr. Smith wanted to buy this land of me for the Company, and this circumstance fixed it in my memory.

CR. INT. 19. I made the contract for these lots with Mr. Smith, and think I deeded to him.

203 CR. INT. 20. These lots were so situated that the Railroad would want them for a depot. I thought that if the Land Company had them, they would demand a high rate of the Railroad Co. I felt interested in the Railroad, and wished them to get the lots cheap.

CR. INT. 21. It is very likely I told Mr. Robbins about the time of the formation of the Land Company, in 1852, that the Land Company had swindled the Railroad Company out of profits that would be derived by their various purchases.

CR. INT. 22. I do not know of my own knowledge who were principally concerned in forming the Land Company.

CR. INT. 23. Do not know whether Wm. B. Ogden took any interest in said Company.

CR. INT. 24. Know of no purchases made by Mr. Ogden for said Company.

204 DEPOSITION OF HENRY SMITH, TAKEN JAN. 24, 1859.

INT. 1. Age about 60. Am a resident of Chicago and a dealer in land.

INT. 2. In the latter part of the summer or fall of 1851, I met Mr. Robbins. I sought an interview to find out if I could purchase his interest in the Wight property, which was one-third. He offered to sell his interest for \$17,000, on Canal time, one-fourth cash. I had another interview with him, I should think 50 or 60 days afterwards. I wanted him
205 to increase the number of payments to six by adding two years time. He consented to make 5 payments and add one year's time, but said he should charge \$1,000 more. I did not purchase.

INT. 3. The following spring or summer when Mr. Robbins returned

from New York, I met him, I think, in Burch's Bank. I said to him you have made a better sale of that land than if I had been the purchaser. He made some reply but I don't recollect what it was.

206 INT. 4. It appears to me that Mr Robbins said that the price of land had advanced during the winter and spring and was likely to advance more.

INT. 5. Don't recollect that he expressed any disapprobation of the sale.

INT. 6. He said nothing more about the sale. Our interview was very brief.

INT. 7. When I talked with Robbins I supposed that a sale had been made or was in contemplation, of the whole Wight property to Bradley, Smith, Sloan and others.

INT. 8. It was the same property I negotiated for the preceding fall.

207

JUDGE'S CERTIFICATE.

This certifies that at the hearing before me, Edwin H. Sheldon was produced as a witness by complainants. The counsel for defendant objected to receiving his testimony for the reason that he was interested in the result of the suit. The objection was overruled, and counsel for defendant excepted.

The said witness testified as follows:

208 "I have no interest in the matter in controversy in this suit. I have sold my interest or share in the commissions, received by Ogden, Jones & Co., for the sale of this property, to Chas. R. Sheldon for \$1,000. I gave a deposition in this case a few days ago. The testimony I then gave is correct. I wish, however, to correct my statement in reference to the extent of the water front, upon examination I find it is four-fifths of a mile."

CROSS EXAMINATION.

"As a member of the firm of Ogden, Jones & Co., I was entitled to a share in the commissions of \$10,000 for the sale of this land. We charged

the property with these commissions. The money went into the general funds of the firm like any other moneys. The firm of Ogden, Jones & Co. have never had any settlement of their concerns. I was in the habit of drawing money from time to time as I needed it. I have received \$1,000 from Chas. R. Sheldon for my share of the commissions on this sale. None
209 of the money received for these commissions now remains in specie in the hands of the firm."

It was now agreed by counsel, that the deposition, and bill of sale attached thereto, heretofore given by the said Edwin H. Sheldon, should be read in evidence, in connection with the oral testimony above detailed—to have the same force and effect as though now taken in open court—subject, however, to the defendant's objection to the competency of said witness.

I further certify that the motion by defendant to suppress the deposition of Wm. B. Ogden, for the reason that he is interested in the result
210 of this suit was sustained by the Court—to which decision complainants excepted.

I further certify, that the due execution by the parties thereto of the various deeds and other instruments filed as evidence in this cause, was admitted by consent without proof.

GEORGE MANIERRE, [L. S.]
Judge 7th Judicial Circuit.

This agreement made this 12th day of April, 1859, at etc. Whereas certain commissions are due to the undersigned, etc., upon the sale to John Bradley and A. Hyatt Smith, or the Chicago Land Company, of certain premises known as the Wight property, etc. And whereas the commissions due, etc., for the interest of said Allen Robbins, etc., have not been drawn by said party of the first part, but are wholly unpaid and stand credited to commissions on the books of Ogden, Jones & Co., and amount to the sum of \$1,111 11-100. Now this agreement witnesseth,

that for and in consideration of \$1,000, etc., said party of the first part does hereby transfer and assign his said commissions upon the sale of the interest of the said Allen Robbins, in and to the said Wight property, and all right and claim of him, etc., in and to said commissions, or any part
212 thereof. As witness, etc.

EDWIN R. SHELDON, [L. S.]

CHARLES R. SHELDON, [L. S.]

DEPOSITION OF EDWIN H. SHELDON, TAKEN APRIL 5TH, 1859.

INT. 1. Reside in Chicago. 37 years old. Am one of the firm of Ogden, Fleetwood & Co.

INT. 2. I was one of the firm of Ogden, Jones & Co., in 1852, which firm were the successors of Ogden and Jones. I was in the office of Ogden and Jones, at the time of the execution of the contract between Ogden, Robbins and Marshall, set forth in the bill. In the spring
213 of 1852, when Sloan, Bradley and others applied to purchase the unsold portion of the Wight property, I was present. Wm. B. and Mahlon D. Ogden and myself consulted as to the price to be asked for it, and it was finally fixed, after several days' consultation. When the property was offered to Bradley and other parties, I was absent from the office more or less, on account of sickness in my family, from the middle of June, although in town. I understood at that time that the offer for the sale had been accepted. I was not present at the time of the execution of the contract to Bradley and Smith. I assented to and approved of the sale. Mahlon D. Ogden also assented to and approved of it. We were at that time all of the firm of Ogden, Jones & Co., and we left Wm. B. Ogden to act for us in the matter, under our assent and approval. (Objected to as incompetent.)

INT. 3. I was acquainted with the property, and think the price at which it was sold, was its full value at the time.

CROSS EXAMINATION.

214 CR. INT. 1. Property in Chicago did advance a good deal in 1852 and 1853—more particularly in 1853. This property is very much more valuable now than in 1852—perhaps it is worth four or five times as much. Said property is located on and near the North Branch of Chicago River, from a mile to a mile and a half from the forks of the river—the nearest about a mile. There is, I should say, a little more than half a mile fronting on the river, on both sides. The river is navigable for vessels drawing 7 or 8 feet, the entire distance. There are about 200 acres between the river and the lake, and about 20 acres on the West Side of the river. Bradley and his associates commenced the construction of the Illinois and Wisconsin Railroad, now called the Fond du Lac, I think in the fall of
215 1852. The track ran across the southwest corner of the 20 acres, on the west side of the river. The Fond du Lac, and the Chicago and Milwaukee Roads run their tracks across the 20 acres. The latter road was commenced in the fall of 1853, and winter of 1854,

CR. INT. 2. The negotiations with Bradley and Smith for this land were conducted by Wm. B. Ogden in our office.

CR. INT. 3. Have no personal knowledge when said contract was reduced to writing.

CR. INT. 4. I left Chicago, August, 1852, and returned in Sept., 1853. Most of the time I was out of the country.

CR. INT. 5. I have no knowledge of the particular terms of the contract made by Mr. Ogden with Bradley and Smith, save what I have obtained since my return in 1853.

216 CR. INT. 6. When I left Chicago in August, 1852, I knew nothing about any instructions given by Mr. Robbins respecting the sale of this property.

CR. INT. 7. I did not hear the subject of a Land Company, mentioned in 1852. I did not, nor did either of the firm, have any interest in the contract with Bradley and Smith.

CR. INT. 8. William B. Ogden, Mahlon D. Ogden and Edwin R. La Bar were the Trustees of the Chicago Land Company. They transacted

the business through our firm. The accounts of all their property were kept with Ogden, Jones & Co.

217 CR. INT. 9. I never signed any contract or memorandum of sale of this property to Bradley and Smith. I executed a general power of attorney to Mr. Ogden, authorizing him to act for me in every case, at the time I left in 1852. I have never in writing ratified the contract made by him.

CR. INT. 10. The firm of Ogden, Jones & Co., did succeed to the management, and assumed the supervision of this property, and kept and rendered accounts concerning it, after the 1st of July, 1850, when Mahlon D. Ogden and myself were admitted into the firm.

[Defendant objects to the foregoing deposition on account of the interest of the witness.]

AGREEMENT OF BRADLEY AND SMITH.

Whereas Wm. B. Ogden, acting for himself, &c., under and by virtue ^{solely} of authority vested in said Ogden by an indenture and contract made
218 between, &c., bearing date May 31st, 1847, has this day concluded a sale of all the unsold portions, &c., of the premises, named, &c., in such indenture, &c., and whereas there was included in said sale, &c., one acre of ground heretofore contracted by said Ogden, acting for, &c., to Hiram Joy for \$1500 or thereabouts, said acre being situated, &c. Now it was agreed in the making of said sale to said Bradley and Smith, between them and the said Ogden, that they should carry out and fulfil the condition of the said contract with said Joy, and upon his making the payment to them, &c., they should make him a proper deed, &c., of the title to said acre, or cause the same to be made to him, his heirs or assigns. The said Bradley and Smith, hereby assuming the obligations of said contract, &c.,
219 as fully as if made originally by them with said Joy. To all which they bind themselves, &c. Nov. 10th, 1852.

JOHN BRADLEY, [L. S.]

A. HYATT SMITH, [L. S.]

DEFENDANT'S PROOFS.

JUDGE'S CERTIFICATE.

This certifies that at the hearing had before me, Edward A. Drummond was produced as a witness by said defendant, who testified as follows :

220 "I am deputy clerk of the United States Circuit Court for the Northern District of Illinois. The papers now produced and exhibited by me are the original bill and answer filed in the United States Circuit Court in a certain suit in Chancery now pending therein, wherein Robert J. Walker is complainant, and Wm. B. Ogden and Mahlon D. Ogden are defendants. I have also certified copies of said bill and answer which have been furnished at the request of the defendant in this cause."

I further certify that at the said hearing John F. Clements was produced as a witness by the defendant, who testified as follows .

"I know Robert J. Walker. The signature of Robert J. Walker to the original bill filed in the suit Robert J. Walker vs. Wm. B. Ogden and Mahlon D. Ogden, pending in the United States Circuit Court, which is now here exhibited to me, is his genuine signature. He signed and made oath to said bill before me, as United States Commissioner."

I further certify, that the signatures of William B. Ogden and Mahlon
221 D. Ogden, to their answer above referred to, were admitted to be genuine.

Whereupon, the counsel for defendant offered the said bill and answer as evidence in this cause.

To this evidence the counsel for complainants objected as incompetent. This objection was sustained by the Court, and the evidence was rejected. To this decision the defendant excepted.

The certified copies of the said bill and answer above referred to were then put on file in this cause, and it was agreed by counsel that the said copies should for every purpose connected with this case be held and considered as of the same force, competency and effect as the original bill and answer, for which they are by consent substituted.

I further certify, that the motion by defendant to suppress the depositions of John Bradley and George Steele, was overruled by the Court, and to this decision defendant excepted.

I further certify that by agreement, a certified copy of a certain agreement, dated Sept. 3d, 1851, signed by John Bradley, E. F. Johnson, J. B. Macy, A. H. Smith, R. J. Walker, and Wm. Sloan, and attached to the deposition of S. H. Fleetwood, filed in the case of Walker vs. Ogden et al., in the United States Circuit Court, was introduced and read in evidence by said defendant, and the signatures thereto were admitted to be genuine.

GEORGE MANIERRE, [L. S.]
Judge 7th Judicial Circuit of Illinois.

223 BILL OF COMPLAINT in the suit Robert J. Walker vs. Wm. B. and Mahlon D. Ogden, pending in United States Circuit Court. Filed June 5th, 1855.

[This was a bill filed by Mr. Walker, as one of the shareholders in the Chicago Land Company, against the defendants, as the trustees of said Company, to compel them to deliver to him a certificate for 166 shares of stock, which the trustees claimed he had forfeited by the non-payment of an assessment made upon him, as one of the shareholders, July 19th, 1853, for \$4,166.66. It is set forth in the bill and admitted in the answer, that Mr. Walker was an original subscriber for 1,500 shares—that he had paid for and received a certificate for 200 shares—that he would have been entitled to certificates for the remaining 1,300 shares upon payment of future assessments, a certificate of one full paid share to be issued for every \$25 that should be paid. It was insisted by the trustees, that in consequence of the non-payment of the above assessments Mr. Walker had forfeited the 166 shares which he would have been entitled to receive a certificate for, had he paid the assessment, as well as all his stock in the Company, except the 200 shares for which a certificate had been issued. (See pages 226, 230, 271, and 305 of the record.) It was claimed by Mr. Walker, that there had been no legal forfeiture, and that on payment of the assessment, which was tendered, he was entitled to his certificate for

166 shares. Another object of the bill was to enjoin the sale of some of the Company's lands which had been advertised by the trustees. Only such portions of the bill and answer as are supposed to be material in this case appear in the abstract.]

To the Hon. Thos. Drummond, Judge, &c., Robert J. Walker, of &c., brings his bill against William B. Ogden and Mahlon D. Ogden of, &c. And thereupon your orator complains and says that early in the summer of 1851, your orator being convinced, from the extension of railroads and other causes, of the great enhancement that must take place in the value of real estate, in and near the City of Chicago, suggested the formation of a company to purchase land there—in consequence of which suggestion preliminary articles of association dated September 3d, 1851, providing for such purchases, were drawn up by your orator, and signed by him and by John Bradley, Edwin F. Johnson, John B. Macy, A. Hyatt Smith and Wm. Sloan; that on or about the 9th day of May, 1852, in further progress of said original plan of your orator, Wm. B. Ogden, John P. Chapin, John B. Macy, A. Hyatt Smith, William Sloan, John Bradley, Jacob P. Eastman, Edwin F. Johnson, Albert A. Bliss, Wm. B. Hotchkiss and your orator, mutually associated themselves together, for the purpose of procuring and purchasing divers tracts of land, &c., in and about the city of Chicago, for the joint benefit and advantage of the said several persons

224 last above named, according to their respective rights and interests in the premises—which said lands, &c., it was then and there agreed should be held in the name or names of one or more of the said several persons as trustees for the benefit of the whole, according to their respective interest therein as aforesaid, for the purpose of facilitating the operation of said association—that subsequently said association contracted to purchase, and did purchase, certain tracts and lots of land in or near the City of Chicago, which are more particularly described in a certain indenture of agreement bearing date the 2d day of May, 1853. (The bill then goes on to recite the articles of association of the Chicago Land Company, executed May 2d, 1853.)

* * * * *

249 And your orator further avers that per exhibit heretofore referred to it appears, and such was the fact, that said Wm. B. Ogden, under the articles before referred to, of 9th of May, 1852, was an original shareholder;

that said trustees reserved the right to purchase shares under the present articles, and from said facts, your orator believes are large shareholders, &c., &c.,

259 The foregoing bill is sworn to by the complainant June 5th, 1855.

263 THE JOINT AND SEVERAL ANSWER of Wm. B. Ogden and Mahlon D. Ogden to the above bill. Filed June 9th, 1856.

These defendants now and at all times hereafter, saving and reserving, &c., for answer to said bill, each answering for himself, and not one for the other, jointly and severally answer and say,

That they are wholly ignorant whether the statement made in said bill, that the said complainant was convinced that a great enhancement in the value of real estate would take place in the City of Chicago, is true or not, and have no information on the subject, and they are also ignorant, nor have they any information whether the said complainant suggested the formation of a company for the purchase of land in said city as is alleged in said bill, and they are unable positively to state whether such statement is true or not, but according to their best knowledge, information and belief, the said statement is not true.

And these defendants further answering, the said Wm. B. Ogden for himself, and the said Mahlon D. Ogden from information derived from the said Wm. B. Ogden, admit that on or about the 9th day of May, A. D. 1852, the said complainant was associated with Wm. B. Ogden and the other persons named in said bill, for the purpose of procuring and purchasing divers tracts of land and property in and about the City of Chicago, as is alleged in said bill. * * * *

298 And these defendants further answering, deny that the said Wm. B. Ogden was an original shareholder under the articles of the 9th of May, 1852, and aver that neither of these defendants ever purchased any shares whatever, never owned any shares under said articles of association, and never held any in their own names, except as collateral security, and as to the rights of said trustees, under said articles of association, reference is hereby made to the said articles, &c., &c.

308 The answer is signed, but not sworn to by Wm. B. Ogden, and Mah-
lon D. Ogden. [It no where appears in said answer that Wm. B. Ogden
had resigned his office as trustee.]

309 AGREEMENT between R. J. Walker and others, dated Sept. 3d, 1851.

Whereas the Illinois and Wisconsin Railroad Company have made certain contracts for the building of their road, from, etc., to the City of Chicago, and thence to the State line of Indiana, and whereas said Company propose to locate one of their depots in the said City of Chicago, which, etc., will give great value to the property in Chicago, near to said depot, etc., and whereas it is proposed to purchase said lands thus believed to be appreciated in value, etc., now it is understood that as far as practicable said lands will be purchased for the joint and equal benefit of the following persons, ten in number, and each holding one equal undivided tenth part of the same, and each contributing one-tenth part of the purchase money therefor, as hereafter stated, which said ten persons are the following seven persons, namely: John Bradley, Jacob P. Eastman, E. H. Johnson, John F. Macy, A. Hyatt Smith, R. J. Walker, and Wm. Sloan, and the others to be selected as hereafter stated, and whereas it is con-
310 templated that certain of the ten persons, etc., will contribute the cash toward the payment of the purchase money, etc., charging interest, etc., which said cash advances and interest, etc., is to be refunded within two years thereafter, etc., and whereas seven of the parties to this contract have subscribed the same, it is agreed the remaining three shall be selected by R. J. Walker, such persons being contemplated, as from their capital or influence, it is deemed by him, would contribute most to the success of this enterprise, and it is further agreed that said lands thus proposed to be purchased shall be such as to price and location are first approved or selected by John B. Macy and A. Hyatt Smith, etc., they being limited to a sum for the entire purchase not exceeding \$300,000 nor at a distance more remote than four miles from the depot of the Illinois and Wisconsin Railroad Company, which depot is to be selected by said Smith and Macy and the land purchased by them at the best rates, to an extent of about
311 20 acres, and which they shall set apart out of the purchased property,

and to be paid for by said Illinois and Wisconsin Railroad Company at the price given, or agreed to be given by said Smith and Macy, provided also that if said Walker can procure one person to make said advances, said person shall hold three tenths interest in said lands, or if two persons, said two persons shall hold three tenths, etc., it being also understood that for such advances, etc., said Smith and Macy shall transfer said lands, etc., as a security to the party making said advances, and for further security, each of said several parties, etc., to this contract shall execute his note for his tenth part of the purchase money advanced, etc., made payable in two years as aforesaid, and notes for the remaining seven-tenths payable when the remainder of the purchase money is to be paid, etc.

New York, 3d Sept. 1851.

312

JOHN BRADLEY,
EDWIN F. JOHNSON,
JOHN B. MACY,
A. HYATT SMITH,
R. J. WALKER,
WM. SLOAN.

313

DEPOSITION OF AUGUSTUS FRISBIE, TAKEN MARCH 29TH, 1859.

INT. 1. I reside in Chicago. Am 40 years of age. Engaged in the ice business.

INT. 2. In 1852 I was associated in business with Hiram Joy.

INT. 3. In connection with Mr. Joy I negotiated a trade with Mr. Ogden, which was consummated July, 22d, 1852. The first negotiations were had some two or three weeks before—about the first of July. Some
314 time elapsed in consequence of my opposing the trade. I had no interest in the purchase. The contract hereto attached "A," is the original contract signed by the parties. The price was \$1,500, on Canal time. I would not consent to the purchase until Mr. Ogden extended the time of the first payment. He extended it as expressed in the contract.

INT. 4. Mr. Ogden changed the terms of payment to meet our views, but added \$25 to make up the difference in interest on account of extending the first payment.

INT. 5. My recollection is that Mr. Ogden said about that time that he did not want to sell any more at that price—that it was cheap. He bound us to erect buildings, as appears by the contract. I saw no reluctance on his part to sign the contract and let Joy have the land.

INT. 6. I have not the most remote recollection that anything was said by Mr. Ogden during the negotiations, about any previous sale of this land to other parties. It is among the bare possibilities that something of the kind may have been said, but my memory is good, and had there been any such conversation I think I should remember it, and I should, according to my custom in such cases, have noted it on the contract, or made some memorandum of it. For the last 10 years I have kept a record and account of all Mr. Joy's real estate transactions, and have had the general supervision of all his real estate matters, and contracts of all kinds.

316 INT. 7. On the first day of June, 1853, \$603.28 was paid to Ogden, Jones & Co., and their receipt was endorsed on the contract which Joy holds (a duplicate to the one hereto attached.) On the first of Dec., 1854, \$560 was paid and receipt taken as above. On the 7th of November, 1855, \$584.18, the balance due, was paid and receipt taken.

INT. 8. The paper hereto attached marked "B," is a deed of the same property signed by Mr. Ogden. I know his signature. Mr. Joy told me that Mr. Ogden handed this deed to him, and that he handed it to Mr. Robbins to be executed, and that he declined.

INT. 9. At the time this land was sold, the contract price was all it was worth. It is now worth about \$10,000.

317 INT. 10. I should judge that the whole of Wight's Addition was at that time worth \$500 an acre. That portion along the river was worth \$25 a foot. That is what I could have sold it for, for cash, at that time.

CROSS EXAMINATION.

CR. INT. 1. I was a party to the negotiations for this land from first to last. My impression is, that the first conversation took place between Ogden and Joy.

CR. INT. 2. There was no agreement upon the terms of the contract until they were agreed upon, between Ogden, Joy and myself. The price had been fixed between Ogden and Joy.

318 CR. INT. 3. The terms of payment were agreed upon at the date of the contract—it might have been a day or two before.

CR. INT. 4. I recollect that the terms were agreed upon at that time, and might have been a few days or even weeks before.

CR. INT. 5. It is my best recollection that it was not more than two or three days, but it might have been two or three weeks, it could not have been more than that at the outside.

CR. INT. 6. I knew nothing of any sale or negotiation of sale of the whole Wight property.

CR. INT. 7. I never applied to Mr. Robbins for the purchase of this property.

319

DEPOSITION ON ISAAC H. BURCH, TAKEN MARCH 29, 1859.

INT. 1. I reside at Chicago. Am a banker.

INT. 2. I have known Allen Robbins 12 or 14 years.

INT. 3. He has occupied a desk in my office for 10 years up to within 3 or 4 years. The intimacy between us has extended to the free discussion of matters of business, and in his absence I had charge of his property in Chicago.

320 INT. 4. His residence was in New York. He was, I think, in Chicago during most of the summer of 1852, and left about the first of November.

INT. 5. I think early in the summer of 1852, Mr. Robbins informed me that Mr. Ogden was negotiating a sale of the Wight property to a Mr. Bradley. I think Ogden had proposed to sell the property at about \$100,000. He asked my advice as to his concurrence in a sale of that kind. I advised him not to sell. We examined the map, and my judgment was that the property was worth twice the money at least, and advised him to that effect. Mr. Robbins was himself convinced at the time that the figures mentioned by Mr. Ogden were too low, and was considerably excited at the threat of Mr. Ogden to sell against his remonstrance. I think he ad-

dressed a note to Mr. Ogden remonstrating against his making any sale beyond what was necessary to re-imburse expenses for taking care of the
 321 property. The letter now shown me, which is attached to the deposition of Wm. B. Ogden and marked "Exhibit C," is similar in its tone to the one he read me. I should think it was the same letter. (Objected to.)

CR. INT. 6. I knew nothing of any sale or negotiation of sale of the whole Wight Property.

INT. 7. I should think that property is now worth \$2,500 an acre.

INT. 8. I remember no other steps taken by Mr. Robbins in reference to this sale.

DEPOSITION OF HIRAM JOY, TAKEN MARCH 30, 1859.

322 INT. 1. I reside in Chicago. Age about 49. Am an ice dealer,

INT. 2. In 1852 I was associated in business with Augustus Frisbie.

INT. 3. During the year 1852 I purchased of Wm. B. Ogden the property described in the contract attached to Mr. Frisbie's deposition. I made a contract with Mr. Ogden some 3 weeks before the papers were made out. I told Frisbie what I had done and to go and make out the papers, which he did.

INT. 4. Mr. Ogden manifested no unwillingness or reluctance to close the trade.

INT. 5. Mr. Ogden said nothing about any sale of this property to Bradley and Smith, and I had no knowledge or information of any such thing, as I recollect.

323 INT. 6. I was anxious to get this property, and Mr. Ogden made no objection. At the first interview he said if I would improve it he would let me have it, otherwise he would not.

INT. 7. Mr. Ogden executed a deed to me—the same attached to Mr. Frisbie's deposition, marked Exhibit "B." I took it to Mr. Robbins for him to sign it, and he declined.

INT. 8. After he declined to sign it, I took it back to Ogden, Jones & Co.'s office. I told them he would sign it if they would pay him. Mahlon D. Ogden then handed me the paper attached to Wm. B.

Ogden's deposition, marked "E," and said "Oh, well, we will do that."
 324 He also gave me a check for \$591.82 to hand to Mr. Robbins. I took the paper and check to Mr. Robbins. He retained the paper and refused the check. He also retained the deed and contract of purchase and still declined to sign the deed. I took the check back to Mr. Ogden.

CROSS EXAMINATION.

CR. INT. 1. I made the bargain with Mr. Ogden, and then sent Mr. Frisbie to draw up the papers.

DEPOSITION OF FRANKLIN HATHAWAY, TAKEN MARCH 30TH, 1859.

INT. 1. Reside in Chicago. Am a clerk.

INT. 2. I was engaged in the office of Ogden, Jones & Co., while that firm was in business, as book-keeper and cashier.

325 INT. 3. I was in the service of Ogden and Jones prior to that for over 3 years. The firm of Ogden, Jones & Co. was formed July 1st, 1850. It was changed Nov. 1st, 1855, to Ogden, Fleetwood & Co. I have been in their office ever since.

INT. 4. The business of the concern continued to be managed as though no change in the firm had been made.

INT. 5. Ogden, Jones & Co. assumed the supervision of the Wight property, and kept and rendered regular accounts of sales, disbursements, &c., up to the time of the pretended sale to Bradley and Smith.

326 INT. 6. I cannot state positively whether Mr. Robbins was indebted to the firm on account of their disbursements for this property, at the time of said sale. My recollection is that Mr. R was in the habit of advancing his proportion every 6 months—so as to keep up with the advances made by Mr. Ogden—but the property was largely indebted for disbursements and advances on its account, at the time of the sale.

INT. 7. I think no change took place in the management of the business relating to this property in consequence of the death of Mr. Jones.

Accounts were made out and rendered to Mr. Robbins by the surviving members.

327 INT. 8. The account attached and marked "Exhibit A," was made out by me. I presume it was rendered to Mr. Robbins. I believe they were ordinarily made out in this way.

INT. 9. The papers attached, marked "B," "C," and "D," are in the hand-writing of clerks in the office. I presume they relate to this Wight property.

INT. 10. I believe the sale to Bradley and Smith embraced all the Wight property, then remaining unsold.

INT. 11. I think there was a commission of 10 per cent. charged upon Ogden, Jones & Co.'s books for this sale. (Objected to.)

328 INT. 12. Do not know whether Mr. Ogden has drawn his share.

INT. 13. Mr. Robbins has never drawn any portion of the proceeds of that sale, to my knowledge. My impression is that he has not.

INT. 14. I have no distinct recollection of the letter from Mr. Robbins to Mr. Ogden dated August, 1852. I cannot swear positively whether I ever saw the letter or not.

INT. 15. It is impossible for me to recollect any particular letter among the thousands that come to the office. I may have seen this letter, but I have no recollection of it.

329 INT. 16. I have no recollection as to what occurred about the date of that letter in relation to the sale of the Wight property.

INT. 17. At the time of the sale I think I knew nothing about any instructions given by Mr. Robbins.

INT. 18. I cannot say that I had any knowledge of Mr. Robbins' being opposed to the sale. I do not know of Mr. Ogden's having taken legal advice about it.

330 INT. 19. I mean to be understood that, at or about the time of said sale, I had no knowledge on the subject referred to.

INT. 20. I cannot fix upon the precise date when I learned that Mr. Robbins was opposed to the sale, but think it was at or about the rendering of the February semi-annual account of 1853.

INT. 21. I do not know whether any discussion was had between Mr. Ogden and Bradley and Smith as to his authority to make the sale.

INT. 22. Edwin H. Sheldon was a member of the firm of Ogden, Jones & Co., through the summer and fall of 1852.

331 INT. 23. Sheldon was not, I think, a member of the Chicago Land Company.

INT. 24. I do not know whether Wm. B. Ogden made any purchases for the Chicago Land Company in 1852.

INT. 25. Neither Mr. Ogden or his firm bought the Elston property for said Company to my knowledge.

CROSS EXAMINATION.

CR. INT. 1. The Wight property was indebted at the time of the sale to Bradley and Smith for advances, to the amount of about \$8,500, perhaps a little less.

CR. INT. 2. Ogden, Jones & Co. kept the accounts and managed this property under the direction and control of Wm. B. Ogden.

332 CR. INT. 3. There was a sale of a lot in the Wight property to Hiram Joy, in July, 1852. The Chicago Land Company got the benefit of the purchase money.

CR. INT. 4. The first money received on that contract was credited to the Wight property on the books. Soon after the entry was made it was ascertained that this lot was a part of the Chicago Land Company's purchase. The entry was then changed by charging the amount entered in error back to the Wight property, and crediting the amount to the Chicago Land Company. The money was received and credited in the latter part of May, 1853, and the entry corrected the latter part of June following.

333 CR. INT. 5. I should think that the paper attached to Wm. B. Ogden's deposition marked "Exhibit E." was a transcript of the sales-book, where the sale is noted. The contract appears in the name of Ogden and Robbins, because at that date the legal title to the property was, as I suppose, in their name. The only indication upon the paper, as to what account in the books received credit for the moneys noted therein, appears

in a note at the foot of the statement, setting forth that the money was received for the Chicago Land Company..

CR. INT. 6. I was not sufficiently acquainted with the value of real estate here in 1852, to make my opinion of much value.

DIRECT EXAMINATION RESUMED.

INT. 26 The time referred to in my statement about the indebtedment of \$8,500 of the Wight property, is the 1st of August, 1852.

334 INT. 27. This debt was contracted for taxes and improvements. Mr. Robbins had, I believe, up to that time, advanced his proportion, but the property was then indebted in the amount named.

INT. 28. The amount received from Joy went to the credit of the Chicago Land Company in the same manner as receipts for other property sold for them.

INT. 29. The paper attached, marked "E," is an account respecting the Wight property, rendered by Ogden, Jones & Co., to Mr. Robbins, Feb. 1st, 1853.

CROSS EXAMINATION RESUMED.

335 CR. INT. 7. There are cases on the books, where property accounts controlled by Wm. B. Ogden, are kept on the books of the current firm, and the accounts are rendered by them in the firm name.

CR. INT. 8. The paper attached, marked "F," is a correct transcript from the books of Ogden, Jones & Co. relating to the Joy purchase, and was made out by me.

DIRECT EXAMINATION RESUMED.

336 INT. 30. The paper attached to Wm. B. Ogden's deposition and marked "Exhibit F," is a letter purporting to be written to Ogden and Jones, and I recognize on the back of it an endorsement in the handwriting of Mr. Jones. I conclude from this that it was received by them.

EXHIBITS ATTACHED TO MR. FRISBIE'S DEPOSITION.

337

"EXHIBIT A."

Articles of agreement made, &c., the 22d day of July, 1852, between Wm. B. Ogden and Allen Robbins, by Wm. B. Ogden, his attorney, of the first part, and Hiram Joy of the second part, witnesseth, that the party of the first part, in consideration, &c., hereby agrees to sell to the party of the second part, all that certain lot, &c., known, &c., as part of the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 5, T. 39, N. R. 14 E., bounded, &c., containing about one acre. And the said party of the second part hereby agrees to pay to said party of the first part, at the office of Ogden, Jones & Co., in Chicago, the sum of \$1,525, as follows: \$525 June 1st, 1853; \$500 June 1st, 1854; \$500 June 1st, 1855, with interest annually, &c.; and that he will pay all taxes subsequent to the year 1851, and all assessments, &c. The party of the second part further agrees that he will erect good and substantial buildings on said premises by the first of December next, worth at least \$1,000, which shall remain thereon, &c.

(Here follow covenants for a deed, &c., &c.)

342 In witness whereof, the party of the first part in person and by attorney, and the party of the second part, in his own proper person, have hereunto set their hands and seals, &c.

WM. B. OGDEN, [L. S.]

ALLEN ROBBINS, [L. S.]

By W. B. Ogden, his attorney.

HIRAM JOY, [L. S.]

343

"EXHIBIT B."

[This is a deed of conveyance of the premises described in the foregoing contract, bearing date February 29th, 1856, in which the grantors mentioned are William B. Ogden and Allen Robbins, and Hiram Joy is grantee. The deed is executed only by Wm. B. Ogden.]

EXHIBITS ATTACHED TO THE DEPOSITION OF MR. HATHAWAY.

346

"EXHIBIT A."

[This is an account with the Wight property from February 1st to August 1st, 1853, rendered by Ogden, Jones & Co., August 1st, 1853, and commencing as follows :

"THE WIGHT PROPERTY,

In account with Ogden, Jones & Co., successors to Ogden & Jones."]

347

"EXHIBIT B."

[This is another account with the same property from August 1st, 1855, to February 1st, 1856, rendered by Ogden, Jones & Co., February 1st, 1856, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

348

"EXHIBIT C."

[Another account with the same property from August 1st, 1854, to February 1st, 1855, rendered by Ogden, Jones & Co., Feb. 1st, 1855, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

349

"EXHIBIT D."

[Another account with the same property from February 1st, to August 1st, 1855, rendered by Ogden, Jones & Co., Aug. 1st, 1855, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

350

"EXHIBIT E"

[Another account with the same property, from August 1st, 1852, to February 1st, 1853, rendered by Ogden, Jones & Co., February 1st, 1853, and commencing as follows :

"THE WIGHT PROPERTY,

In account with Ogden, Jones & Co., successors to Ogden & Jones.

This statement contains a credit of \$25,000 under date of Nov. 11th, 1852, received from Bradley and Smith, 1st payment on their contract, and a debit of \$10,000 under date of Jan. 31st, 1853, for 10 per cent. commissions upon the sale to Bradley and Smith.]

353

"EXHIBIT F."

WIGHT PROPERTY,

In account with Ogden, Jones & Co., successors of Ogden and Jones.

1852.		Dr.
Aug. 10.	To commissions on sale, 1 a. E. $\frac{1}{2}$, S. E. 5 to Hiram Joy, a 1525.	
	- - - - -	\$152.50
1853.		
Jan. 31.	To interest on am't com's on sale to Hiram Joy to Feb. 1, 1853.	4.32
June 30.	To Chicago Land Co. for transfer of pay't rec'd May 27, 1853, of H. Joy on cont. 1 a.	603.28
	-	

1853.		Cr.
Jan. 31.	By counter chg. of com's chg'd Aug. 10, 1852, on sale to H. Joy a \$1,525. - - - -	\$152.50
	By counter ch'g am't int. ch'gd on above com's in account ren'd - - . -	4.32
May 27.	Cash of H. Joy on cont. 1 a in Sec 5. -	603.28
		\$760.10 \$760.10

A correct abstract of Wight Property account on books of Ogden,
Jones & Co., as far as relates to sale to Hiram Joy.

F. HATHAWAY.

CHICAGO LAND CO.,		
In account with Ogden, Jones & Co.		Cr.
1853.		
June 30.	By Wight Property, for transfer of amount rec'd May 27, 1853, of H. Joy on his cont 1 a. - -	\$603.28
1854.		
Dec. 1.	By Cash of H. Joy on cont. 1 a. in 5, 39, 14, . -	588.00
1855,		
Nov. 7.	By Cash of H. Joy, on cont., L. 11, B. 83, E. a. in full. -	584.18
		\$1,775.46

A correct abstract of Chicago Land Co. account on books of Ogden,
Jones & Co. so far as relates to sale to Hiram Joy.

F. HATHAWAY.

354 *Stipulation* admitting that the letter of March 4th, 1848, from Allen
Robbins to Ogden and Jones attached to Wm. B. Ogden's deposition and
marked "Exhibit F," and that the letter of Aug. 27th, 1852, from said
Robbins to Wm. B. Ogden, attached to said Ogden's deposition and
marked "Exhibit C," were written and received at or about the times they
bear date

355 DECREE rendered May 2d, 1859, that the agreement of Nov. 10, 1852
 set forth in the pleadings, be carried into execution, and that said defend-
 ant execute and deliver to Mahlon D. Ogden, Trustee of the Chicago Land
 Company within 30 days, a deed of conveyance sufficient to convey the
 359 legal title to an undivided half of the premises in question. And in case
 of his refusal to execute such conveyance, the Master in Chancery shall
 make and deliver a deed, &c. And it is further ordered, by consent of
 parties, that the parties shall have all the benefit of their exceptions to the
 several rulings of the Judge noted in the Judge's several certificates, as
 fully as if the same were embodied in this decree, and defendant to pay
 costs, &c.

Defendant excepts to the decree and prays for an appeal.

Appeal granted, and bond filed in compliance with the order of the
 Court.

Appellant assigns for error.

1st. The Court below erred in admitting and considering the testi-
 mony of John Bradley, George Steele, and Edwin H. Sheldon.

2d. The Court below erred in excluding from this case as evidence
 the bill and answer in Chancery, in the suit Robert J. Walker vs. William
 B. Ogden and Mahlon D. Ogden.

3d. The Court below erred in decreeing a specific performance of
 the contract referred to in the bill.

4th. The Court below ought to have rendered a decree dismissing
 the bill.

STUART & AYER,

Solicitors for Appellant.

199

Robbins vs. Boutlet

Abstract

Filed Apr 20, 1860

L. L. Bond

Clark

SUPREME COURT OF THE STATE OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1860.

ALLEN ROBBINS,	}	Appeal from the Circuit Court of Cook County.
vs.		
CHARLES BUTLER, et al		
	<i>Appellants.</i>	
	<i>Appellees.</i>	

ABSTRACT OF RECORD.

- 1 BILL filed May 14th, 1856, by Charles Butler, John P. Chapin, and Walter S. Gurnee, on behalf of themselves and all other shareholders in the Chicago Land Company, and Mahlon D. Ogden the surviving trustee of said association.
- 2 *Alleges*, that on the 31st of May, 1847, William B. Ogden and Allen Robbins were owners in fee simple, as joint tenants, and not as tenants in common, of certain parcels of land, situate in Chicago, Cook County, Illinois, (describing them.)
- 3 That one Jane E. Wight, widow of John F. Wight, deceased, was entitled to dower in said land, and that the said Ogden and Robbins for the purpose of settling her dower claim, and for other purposes, on the same day entered into an agreement in writing, as follows. to wit:

"This indenture made this 31st day of May, A. D., 1847; witnesseth, Whereas we, Wm. B. Ogden of the City of Chicago, in the County of

Cook and State of Illinois; and Allen Robbins of the city, county and State of New York, hold the title to and are owners in fee simple as joint tenants and not as tenants in common, of (here follows a description of the same land before mentioned).

- 6 And whereas, Jane E. Wight, of Erie, in the State of Pennsylvania, widow of John F. Wight, late of Erie aforesaid, deceased, did release to us her right of dower in all said premises, and did quit claim to us all the right, title and interest whatsoever which she had or might be supposed to have therein. Now be it known that in consideration of said releases of dower and quit claim of all right and interest in all of said premises made and duly executed by the said Jane E. Wight to us, and for other considerations to us thereunto, moving we hereby agree as follows. That said lots and lands shall be placed in the immediate care and be under the exclusive supervision and management of Ogden and Jones of Chicago, (and the survivor of them and their successors in business in Chicago, subject to the general directions of us the said Ogden and Robbins, the survivor of us our executors and administrators; that the said Ogden and Jones, their survivors or successors in business in Chicago, shall proceed to survey, plat, subdivide and improve said property, that such surveys, plats, sub-
- 7 divisions and improvements, including the erection of bridges, buildings, fences, the making of streets, avenues and alleys, the construction of side walks, grading and McAdamizing, paving and planking of roads, streets, avenues and alleys, the planting of trees, shrubs and plants, the fencing and cultivating of lots, blocks and fields, the employment of laborers, horses and superintendents, and all other necessary expenses, the laying out of public and private squares, and places, the appropriation and donation of lands for the same, and for churches, schools or other public institutions, and for any other purposes which shall, in the opinion of said Ogden and Jones, their survivor or successors, be calculated to advance the value of the property, shall be done by said Ogden and Jones, their survivor and successors, under the general direction of us, the survivor of us our executors and administrators, when, where, and to such extent as we and they shall think proper; and they shall also make, under the general advice and direction of us, the survivor of us, our executors and administrators, any and all such other improvements, and take such steps and proceedings in connection with, or relating to said property, as to them or us, the survivor of us, our executors and administrators, shall from time

to time seem meet and proper, and for the best interest of said property and most beneficial results to be derived from the same.

8 The said Ogden and Jones, their survivor and successors in business shall proceed to make sales of said premises, or lease or otherwise dispose of, in part or in whole, when, where, and as they shall in their discretion think and deem to be most advantageous and conducive to the best interests of said property, and most beneficial to the results to be realized from the same; such sales, leases or other disposition of said property, to be made at such time or times, hereafter, and in such manner and on such terms for cash and credit, or in exchange for other property, thing or things, or partly on credit, or partly for payment in hand, or for other property or thing in exchange, as we or our survivor, executors and administrators, or the said Ogden and Jones, their survivor and successors in business, in Chicago, shall in our or their discretion think to be most advantageous to said property, and best calculated to enhance the amount to be derived therefrom. All the accounts with said property shall be kept by and with Ogden and Jones, their survivor or successors, at their office in Chicago. And they shall make semi-annual statements of their accounts with said property to the said Allen Robbins, and to James C. Marshall, of the borough of Erie, aforesaid Trustee, and in case of his death to the said Jane E. Wight, her executors or administrators, on the first
9 day of February and August in each year, and shall at such times pay over any surplus proceeds then in their hands, as is herein provided for, such payments to be made at their office, unless otherwise agreed upon hereafter. The costs of all the aforesaid improvements, and the amount of all disbursements hereinbefore provided for, together with all taxes, assessments and other necessary expenses or proper charges, accrued or accruing, incurred or charged on or against the aforesaid premises or growing out of the general care and management thereof, together with ten per cent. commissions, to be charged by said Ogden and Jones their survivor or successors in business for their services, on the amount of all such taxes, assessments, expenses and disbursements, and on the amount of the costs of all improvements made in accordance herewith, and on the amount of all sales made of said property, to be first reserved by said Ogden and Jones, their survivor or successors, in business, at such semi-annual statements of their account, to be made by them from the proceeds of any sales,

rents or other receipts realized by them from said property. And six per cent. interest is to be allowed them upon any balance of accounts in their favor with said property, until the same shall be paid them. And they are in like manner, to allow six per cent. interest on any balance in their

10 hands on the first day of February or August in each year, until the same shall have been paid over by them, or until the party entitled to the same shall have been notified of their readiness to pay over the same; the said Robbins from time to time to pay the said Ogden and Jones one half part of any such excess of disbursements by them, and to receive the same, with six per cent. interest, back again from them from any future balance of account, in favor of said property, on the books of Ogden and Jones. When all of the above items of disbursements, charges, expenses and interest shall have been first fully met, returned and satisfied, from the proceeds of said property, or otherwise, to said Ogden and Jones, and their successors, and to said Robbins, then one equal one-third part of any surplus net proceeds which shall be received therefrom, over and above the current and accruing disbursements and expenses hereinbefore mentioned and provided for, shall be applied in payment to said Allen Robbins and to Ogden and Jones, herein named, or to their respective representatives, and for their respective sole use and benefit; each party receiving half until they shall have been paid altogether the sum of eleven

11 hundred and four $\frac{53}{100}$ dollars, with six per cent. interest thereon from the date hereof; and the further sum of two thousand and seventy-six dollars and forty-nine cents, [\$2,076, 49] with six per cent. interest from and after the fifth day of February, A. D., 1849, until paid, provided the same shall not be paid previous to the fifth day of February, A. D., 1849, from sales made from the property hereinbefore described. All like surplus net money proceeds received from the other two-thirds part of said property, to be from time to time on rendering semi-annual statements by said Ogden and Jones, their survivor and successors, of their accounts paid over to said Allen Robbins and Ogden and Jones, or their legal representatives respectively, according to their respective interests in said proceeds, to wit: one-half to said Allen Robbins or his legal representatives, and the other half to said Ogden and Jones, or their legal representatives, for the sole use of them, and for their respective representatives. When the aforesaid sums of eleven hundred and four $\frac{53}{100}$ dollars, and two thousand and seventy-

six dollars and forty-nine cents with interest as aforesaid shall have been fully paid said Robbins, Ogden and Jones, from the net proceeds of the said one-third part, after all other liabilities and accruing and current charges hereinbefore named shall have been fully met, and paid from the general proceeds of said property, any further net proceeds received and realized from said Ogden and Jones, or by us from the said one-third

12 part from which the aforesaid payment to Robbins, Ogden and Jones shall have been previously made and deducted, shall be paid over to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to the said Jane E. Wight, her executors and administrators; and when all previous expenses, charges, taxes, assessments, costs of collections and disbursements for improvements, or for services rendered or otherwise, and all commissions on the same and on all sales made, as is hereinbefore provided for, shall have been paid and satisfied, and the sum of eleven hundred and four $\frac{63}{100}$ dollars, with interest from the date hereof, and the further sum of two thousand and seventy-six dollars and forty-nine cents, with interest from and after February fifth, A. D. 1849, (provided it shall not be sooner received and paid from proceeds of said property as is herein provided,) shall also have been realized from the net proceeds of one equal third part of sales and receipts from said premises, and have been paid over to said Robbins, Ogden and Jones, or to their respective legal representatives, then at the request of the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, of the said Jane E. Wight, or her executors or administrators, or, if desired, by us, or the legal representatives of either of us, the equal one-third part of any remaining unsold portion of said premises, [if any,] after the

13 same shall first have been legally and equitably divided, together with one-third in amount and value of all the outstanding contracts, assets or other effects, [if any] belonging to and resulting from said property shall be released by us and conveyed to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to the said Jane E. Wight, her executors and administrators, or to whom he, she or they may direct, and all his, her or their claims upon us, under or by virtue of this agreement, shall thereby and thereupon be fully settled, discharged and satisfied, and a like division of the other two-thirds, half to said Robbins or his legal representatives, and half to the said Ogden and Jones, or their legal representatives for their respective use and benefit, shall also

then, or at any other time thereafter, be made when desired by either party thereto, or by the legal representatives of such party hereto, and this agreement, with its provisions, conditions and stipulations, shall thereupon be fulfilled, terminated and held for naught. Should no such request be made by either party, however, nor by the legal representatives of either of said parties, the said property shall continue to be managed as is hereinbefore provided for, until such request be made, at least by one of the parties herein named, or their legal representatives, or until the whole

14 be disposed of, and the proceeds thereof be realized and divided as hereinbefore provided for. Should the equal one-third of said property not prove to be sufficient to meet the expenses accruing on account thereof, as is herein before provided for, and also to pay the said sum of eleven hundred and four $\frac{53}{100}$ dollars, with interest thereon, as aforesaid, and the further sum of two thousand and seventy-six dollars and forty-nine cents, with interest thereon, as hereinbefore provided, to said Robbins, Ogden and Jones, neither the said James C. Marshall, nor the said Jane E. Wight, shall in that event be liable for any such deficit, but the same shall be borne and suffered by the said Robbins, Ogden and Jones, and their legal representatives. The only claim or interest growing out of this instrument of writing made by us is intended and hereby declared to be but a personal contingent claim or money demand against us personally, for a part of the net money proceeds to arise from the sales or other dispositions of the premises named herein, and is not and shall not be construed as creating any right to the realty or fee of the same, until the happening of the contingent condition herein provided for, requiring a division and conveyance from us of a portion of the unsold remainder of said property, if any remain, nor shall it then constitute any claim to the realty or fee thereof, until such conveyance shall have actually been exe-

15 cuted by us, or our legal representatives, and delivered to the said James C. Marshall, Trustee, as aforesaid, or in case of his decease, to said Jane E. Wight, her executors or administrators. It is hereby stipulated, and expressly agreed, that the said Ogden and Robbins, and their legal representatives, shall have the privilege and right of purchasing of said James C. Marshall, Trustee, as aforesaid, or in case of his decease, of the said Jane E. Wight, or her executors or administrators, all and every interest which he, she or they may acquire, under or by virtue of this agreement, at such price and terms as any other person or persons shall agree or bind

himself or themselves to give or pay for the same, [provided he, or in case of his decease, she, or her, executors or administrators shall elect to sell the same, and any sale of such interest, without first offering the same to said Ogden and Robbins, or their executors or administrators] at the like price, and on the like terms as those for which the same shall be sold to another person or persons, shall be declared void, and said Ogden and Robbins, or their executors or administrators, shall, at their election, be declared the purchasers of the same, upon paying to said Marshall, Trustee, as aforesaid, or in case of his decease, to said Jane E. Wight, or her executors and administrators, the price for which said premises shall be sold, or complying with the terms and condition of such sale or sales.

- 16 The said Ogden and Robbins, and the survivor of them, and in case of decease of both of them, their executors, administrators, or the executors or administrators of either of them, shall have the right and power, in case said Ogden and Jones, and the survivor of them, shall cease to act as the agents of the aforesaid lands and lots, and they shall be succeeded in business by another party or firm, to take away and remove said agency and business from such successor, and give and commit the same to such person or persons as shall be appointed by the Judge of any Court of Chancery, held in said county of Cook, to act in the premises as the agent for, and to have the management of said property in as full a manner as said successor or successors might do by virtue hereof, and successively to transfer such agency and management from time to time, as they may see fit, in the like manner and with the like authority. Notice of the application to such judge for such appointment, shall be given personally to the parties hereto, or published in some newspaper published in the City of Chicago, for sixty days immediately preceding each application; but the power of such successor may be suspended without such notice, by either of said Ogden and Robbins, or either of their executors or administrators, by filing notice of such suspension in the Recorder's Office of said Cook County aforesaid.

- 17 In witness whereof, the said Ogden and Robbins have hereunto set their hands and seals, the day and year first above written.

W. B. OGDEN, [L. S.]

ALLEN ROBBINS, [L. S.]

We hereby accept and agree to and approve of the terms, conditions and provisions in the above instrument contained.

Witness our hands and seals this thirty-first day of May, A. D., 1847.

JAMES C. MARSHALL, [L. S.]

JANE E. WIGHT. [L. S.]

18 Acknowledged by Wm. B. Ogden, Allen Robbins, and James C.
19 Marshall, May 31st, 1847, and by Jane E. Wight, June 28th, 1847, and
20 recorded in the Recorder's Office of Cook County, July 9th, 1847.

That at the making of said agreement, the firm of Ogden and Jones, therein mentioned, consisted of William B. Ogden and William E. Jones; and afterwards, to-wit, on the first of July, 1850, they associated with them Mahlon D. Ogden, one of the complainants, and one Edwin H. Sheldon, and thereafter transacted business under the name of Ogden, Jones & Co. That on the 9th of March, 1851, the said Jones deceased, leaving the said Wm. B. Ogden as the survivor of the said Ogden and
21 Jones. That the said Wm. B. and Mahlon D. Ogden and Sheldon continued the business, after said Jones' decease, as partners under the name of Ogden, Jones & Co., as the successors of said Ogden and Jones, up to the 1st of January, 1853, when they associated with themselves one Edwin R. La Bar, and continued the transaction of said business under the name of Ogden, Jones & Co. That said La Bar deceased on the 2d of January, 1854, and said business was continued by Wm. B. and Mahlon D. Ogden and Sheldon, under the name of Ogden, Jones & Co., until the 1st of November, 1855, when one Stanley H. Fleetwood was admitted into the firm, and since then they have transacted business under the name of Ogden, Fleetwood & Co. That said firm of Ogden, Jones & Co., consisting of its different members, at different times, were the successors in business of the firm of Ogden and Jones, and that Ogden, Fleetwood & Co. have been since the 1st of November, 1855, and are now the successors of said Ogden & Jones.

22 That on the first of June, 1852, the said Wm. B. Ogden, the survivor of said Ogden and Jones, and acting as such survivor, and for said Ogden, Jones & Co., the successors in business of said Ogden and Jones, for himself and the other parties to the agreement above set forth, entered into a verbal agreement with John Bradley and A. Hyatt Smith, which was, on the 10th of November, 1852, reduced to writing, and is as follows, to wit :

“Whereas Allen Robbins of New York, and Wm. B. Ogden of Chicago, in the State of Illinois, in and by their certain Indenture and instrument of Writing, dated 31st day of May, A. D. 1847, and duly recorded in Cook County. in the State of Illinois, on the ninth day of July, 1847, in Book 24 of Deeds, on pages 37, 38, 39, 40 and 41, did among other things for a consideration therein expressed, contract, consent and agree that Ogden and Jones [a firm composed of the said Wm. B. Ogden and Wm. E. Jones,] their survivors and successors in business shall proceed to make sales of, or lease or otherwise dispose of the lands and
 23 premises described in said Indenture, in part or in whole, when, where, and as they shall in their discretion think and deem to be most advantageous and conducive to the best interests of said property, and most beneficial to the results to be realized from the same. And whereas, James C. Marshall of Erie, Pennsylvania, Trustee of Jane E. Wight and named in said Indenture, did in writing assent to the same. And whereas, William E. Jones, of the said firm of Ogden and Jones, has since the making of said Indenture died, leaving surviving the said Wm. B. Ogden, the other member of said firm of Ogden and Jones, named in said Indenture.

And whereas, the said Wm. B. Ogden, survivor as aforesaid, acting for himself, for the said Allen Robbins, and for said James C. Marshall, Trustee of the said Jane E. Wight, parties named in said Indenture, and having an interest in said premises, or the proceeds thereof, under and by virtue of the provisions in said Indenture contained, has as party of the first part agreed, to sell and dispose of all the lands and premises hereinafter described, being part and parcel of said lands and premises in said Indenture mentioned, and specified, to John Bradley of Burlington, Chittenden County, Vermont, and A. Hyatt Smith of Janesville, Rock County, Wisconsin, party of the second part, and their heirs on the terms and conditions hereinafter mentioned.

24 Now, therefore, this contract made between the said party of the first part, before named and described, and the said Bradley and Smith, party of the second part, Witnesseth, that the said party of the first part have sold and disposed of to the said party of the second part, and to their heirs forever all and every, the lands and premises hereinafter specified, namely:

25-26 (Here follows a description of the lands in controversy.)

27 And the said John Bradley and A. Hyatt Smith, parties of the second part, hereto agree to pay to the said party of the first part hereto, at the office of Ogden, Jones & Co., in Chicago, for the lots, blocks, lands and premises hereinbefore named and described, the full sum of one hundred thousand dollars, in manner following, to-wit: Twenty-five thousand dollars in cash on the execution of these presents, with interest from the 1st of September, 1852; twenty-five thousand dollars on the first day of September, 1853; twenty-five thousand dollars on the first day of September, 1854; and twenty-five thousand dollars on the first day of September, 1855, together with six per cent. annual interest from the first day of September, 1852, to be paid annually on the first day of September, in each year, hereafter, on the whole sum from time to time remaining unpaid.

And also agree that they will well and faithfully, in due season, pay, or cause to be paid, all ordinary taxes, assessed for revenue purposes, upon said premises, or any part thereof, subsequent to the year 1851; and also all other assessments which now or may be hereafter charged or assessed upon or against said premises, or any part thereof. But, in case the said parties of the second part fail to pay any or all such taxes or assessments upon said premises or appurtenances, or any part thereof, whenever and
28 as soon as the same shall become due or payable, and the party of the first part shall pay from time to time, or at any time, any or all such taxes or assessments, or cause the same to be paid, the amount of any and all such payments so made by the party of the first part, shall immediately, thereupon become an additional consideration and payment to be made by the party of the second part hereto, for the premises herein agreed to be conveyed.

And upon the faithful performance by the said second party hereto, of their undertakings in their behalf, and upon the payment, by them, of

the principal and interest of the sum above mentioned, and in the manner and at the times specified, then under and by virtue hereof, and in accordance with the provisions, powers and intent of the above named indenture and agreement, dated 31st of May, 1847, and first hereinbefore referred to, and upon which this contract and agreement of sale and purchase is based, they, the said second party hereto, shall be entitled to, and shall thereupon and thereafter, when demanded by them, receive from said first party hereto, a deed or conveyance in law of all said lots, lands and premises hereinbefore named, the same to be duly executed and acknowledged and delivered to them, the said second parties hereto, their heirs, or assigns, and to convey to them, the said second parties hereto, their heirs or assigns, all their, the said first parties hereto, right, title and
 29 interest of in and to the above described premises, with their appurtenances: And it is further mutually agreed between the parties hereto, that the second party hereto (the first cash payment of Twenty-Five Thousand Dollars, to be made hereon, first being punctually paid on execution of these presents,) may at any time hereafter, at their election, demand a deed for said premises, to which they shall be entitled, on thirty days written notice being given, they duly executing to the said first part hereto, in return a proper Bond and Mortgage upon all of said premises; such Bond and Mortgage to contain a provision, that in case said second party shall fail or neglect to pay any payment of principal or interest, or any part of such payment of principal or interest, when and as the same becomes due, then and thereupon the whole of said principal moneys and interest, named in said Bond and Mortgage, shall forthwith become due and payable, and suit, or foreclosure, or both, or other legal procedure, may be had for the collection thereof, the same as if so expressed in said Bond and Mortgage, in the first place, anything therein or herein contained, to the contrary notwithstanding, and so in case of failure, on the part of the said second party hereto to meet and make the payments of principal or interest, or any part thereof, when and as the
 30 same respectively fall due; it is in like manner agreed, that the whole amount of principal and interest then due, owing, accrued or remaining unpaid hereon, shall thereupon become due and payable, and subject to suit, foreclosure or other legal proceedings, as provided in a case of a Bond, and Mortgage, as above named, anything hereinbefore contained to the contrary notwithstanding.

It is understood, that the Deed to be made, pursuant to this agreement, to the party of the second part, their heirs, shall include all the right, title and interest of said Ogden and Robbins, and all other parties named in said Indenture, of the 31st day of May, 1847, hereinbefore named, to the property and every part thereof, hereinbefore described, and contracted to be conveyed to the said party of the second part.

In Witness whereof, the said William B. Ogden, acting for himself, Allen Robbins and James C. Marshall, Trustee, and the said party of the second part, have hereunto set their hands and seals this Tenth day of November, A. D. 1852.

WM. B. OGDEN, [L. S.]

JOHN BRADLEY, [L. S.]

A. HYATT SMITH, [L. S.]

Signed, sealed and delivered

in presence of

Recorded Nov. 19th, 1852.

S. H. FLEETWOOD.

- 31 That in making said contract, the said Wm. B. Ogden acted with the full knowledge and approbation of said Mahlon D. Ogden and Edwin H. Sheldon, his copartners, and that he intended to exercise all the power and authority, vested in him individually, or in said firm of Ogden, Jones & Co., and to vest in said Bradley and Smith a complete equitable title to said land upon the performance by them of their part of said contract, which was so understood by them, and by said firm of Ogden, Jones & Co., at that time.

That on the 13th of March, 1855, said Bradley and Smith executed the following instrument, in writing, to wit :

- 33 Whereas, we, John Bradley, of Burlington, Chittenden county, Vermont, and A. Hyatt Smith, of Janesville, Rock County, Wisconsin, did purchase of Wm. B. Ogden of Chicago, Cook county, Illinois, acting for himself, Allen Robbins and James C. Marshall, Trustee, as by a certain contract therefor, executed by us and the said Ogden, bearing date the tenth day of November, A. D., 1852, for and in consideration of the sum of one hundred thousand dollars, payable one quarter cash, on the execution of said contract, and the balance in three equal annual payments

thereafter, with six per cent. annual interest, all the property named and described in said contract and situate in the City of Chicago, County of Cook and State of Illinois, as by reference to said contract, executed by us and the said William B. Ogden, acting for himself, Allen Robbins and James C. Marshall, Trustee, will more fully and in detail appear.

Now we, the said John Bradley, and A. Hyatt Smith, do hereby declare that said purchase was made by us for the sole benefit, account, and use of parties to and shareholders in the Chicago Land Company, so called, and that all payments which have been made on said contract on
34 account of said purchase and property have been made by the members and parties in interest in said Chicago Land Company Association, as the same became due, and for their own benefit and account.

And we hereby further declare, that we purchased said property under said contract, as therein described, for the sole use and benefit of the said Chicago Land Company, and the shareholders and parties in interest therein, and that the property in said contract described, was contracted for by us for and on account and on behalf of the said Company, and subject to their order, direction, disposal and control, in such manner and way as they may elect, subject, nevertheless, to the payment by them of the balance of the purchase money, and interest still remaining due and unpaid on said contract.

In witness whereof, we, the said John Bradley and A. Hyatt Smith, have hereunto set our hands and seals the thirteenth day of March, A. D 1855.

JOHN BRADLEY, { SEAL }

A. HYATT SMITH." { SEAL }

35 That on the 2d of May, 1853, Robert J. Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, William Sloan, John Bradley, Jacob P. Eastman, John P. Chapin, Edwin F. Johnson, Albert A. Bliss, William B. Hotchkiss, Walter S. Gurnee, and Daniel S. Miller, associated under the name and style of the Chicago Land Company, and entered into written articles of association between themselves, as shareholders, and said Wm.

B. Ogden, Mahlon D. Ogden and Edwin R. La Bar, as trustees, wherein among other things, it was recited that

Whereas, the subscribers to said articles, had theretofore purchased certain tracts of land in the city of Chicago, and vicinity, more particularly described in said articles ; and *whereas* only a portion of the purchase money, had been paid on said several tracts of land, and there were considerable sums remaining to be paid, as the same should fall due, which said purchases had been made in the name of some one or more of the subscribers thereto, for the benefit of all, with the understanding that all of the property should for management and disposition be vested in trustees as therein named, for the benefit of all the parties in interest, and their assigns ; and *whereas* the parties to said presents, of the second part, had agreed to take and execute such trust upon the terms and conditions thereafter named, therefore it was thereby agreed and declared that

The name and style of the association shall be the Chicago Land Company, and its purposes and objects should be the management, improvement, developement, lease, sale or other disposition of the lands, acquired for the benefit of the members of said association, situate in the city of Chicago, in the State of Illinois, or in the vicinity of said city, and especially all the lands thereafter described, and the said Wm. B. Ogden Mahlon D. Ogden, and Edwin R. La Bar, all of Chicago, parties of the second part, were thereby created trustees for the purpose of carrying into effect said articles, and that

The title of all property owned or held, or to be owned or held for the benefit of said association, should be held by the trustees in their individual names, in fee simple, as joint tenants, and not as tenants in common, to them and to their assigns, and to the survivors and survivor of them, and to his heirs and assigns.

That each of the shareholders and their assigns, should pay to the trustees, his due proportion of all future payments, due and owing upon and all the expenses incurred on account of the lands purchased, or which might thereafter be purchased, for account of said association, when and as the same should be called for by said trustees, the survivors or survivor of them, for the purpose of discharging such further payments and expenses, until the title to all of said premises should be perfected in said trustees, their survivors or survivor or successor, free and clear of all lia-

bilities, liens, or incumbrances; and that it should be the duty of said trustees to see that all such payments were duly and promptly made out of the funds, so to be furnished and provided, in ample time by the shareholders of said association or their assigns.

That the premises proposed to be conveyed to said trustees were among other premises, certain lots and lands contracted for by William Sloan and others, for account of said association, a particular description of which was not then at hand, but by reference to said contracts, would
 38 more fully appear, which provision refers among other things, to the contract hereinbefore set forth, between the said William B. Ogden and John Bradley, and A. Hyatt Smith.

And that the title in fee simple, to all of which property, lots and lands, should be duly conveyed to and vested in said trustees, as soon as the same could be conveniently done, and it was in and by said articles of association further provided, that either of said trustees might resign, and discharge himself of his trust, by an instrument in writing, under seal, on executing such conveyances to his co-trustees or successor, as might be necessary to invest his co-trustees with all his interests and powers.

That the said Edwin R. La Bar afterwards, on, about 2d of January, 1854, deceased; and that said Wm. B. Ogden on the 19th of March, 1856, by an instrument under his hand and seal, resigned his said office of trustee, and on the 19th of March, 1856, by his deed of that date, conveyed to the said Mahlon D. Ogden, all the right, title and interest in and to any lands or property, held by him, as such trustee, and that, Mahlon D.
 39 Ogden is now the sole surviving and remaining trustee of said association. That the capital stock, and interest of the shareholders were by the said articles of association, divided into 18,000 shares, of \$100 each, with power to said Trustees, to increase the number of said shares as might from time to time be necessary, and that the number of said shares was afterwards, on the 15th of July, 1853, increased to 19,700 shares, which is now the number of shares in said association.

That in, and by said articles of association, it was further provided, that the shareholders for every \$25 theretofore paid, by each in part payment for the lands of said association, and for every \$25 which should be thereafter paid, should each be entitled to a certificate for a full paid share

of \$100, and that said Trustee should deliver to each member a certificate
 40 of the number of shares held by him, and upon which the amount due
 had been paid in full, which shares or certificates thereof, might be trans-
 ferred from time to time by the holder thereof, or his personal representa-
 tive by endorsement under hand and seal, and giving notice of such
 transfer to said Trustees, with a proviso, that the assignee of such share
 or shares should become a party to said articles of association, by sub-
 scribing his name, and affixing his seal thereto.

That certificates for 18,400 full paid shares have been issued, by said
 Trustees, to the shareholders, that many of said certificates have been
 assigned and surrendered, and new ones issued, in lieu thereof, and such
 new certificates have been assigned, and surrendered, and new ones
 issued in lieu thereof, and so on *toties quoties*, until the shareholders are
 now in number, upwards of sixty persons.

That the shareholders of said association are now so numerous, that
 41 it would be impracticable, to make them parties hereto by name, and that
 by reason of the negotiable or assignable character of said certificates,
 and the almost constant change in the ownership thereof, it would be im-
 practicable, to conduct a suit with such shareholders parties thereto by
 name, and that such a suit would be a serious embarrassment to the share-
 holders by its interference with the assignment and transfer of their re-
 spective shares.

That in and by said articles, it is further provided that there shall be
 an executive committee of said association, to be appointed by a majority
 of the shareholders, who, in conjunction with said trustees, the survivors
 or successors of them, should have the entire immediate management and
 control of the affairs of said association, subject to the general direction
 of the shareholders therein, and that Charles Butler, John P. Chapin and
 Walter S. Gurnee, are now the executive committee of said association,
 duly appointed, and acting as such, and are also shareholders in said asso-
 ciation, and as such, have certificates for full paid shares therein, repre-
 senting in the whole, 2,411 shares.

That the said John Bradley and A. Hyatt Smith, on the 6th day of
 42 April, 1855, by their deed of that date, assigned, transferred and set over,
 unto Mahlon D. Ogden, as such trustee, his heirs and assigns, forever, all
 their right, title and interest in, and to all the lands described in the said

contract between William B. Ogden, and John Bradley and A. Hyatt Smith, together with all rights which they might have under or by virtue of said contract.

That said John Bradley and A. Hyatt Smith, on the execution of said contract between themselves and said William B. Ogden, to-wit: on the 10th day of November, A. D. 1852, paid to the said William B. Ogden the full sum of \$25,000, being the first payment under said contract, together with the sum of \$295.83, for the interest thereon, from the 1st of September, 1852, to the time of said payment; and that the said Ogden endorsed upon said contract, a receipt of the same.

That the remainder of the purchase money of the premises was fully
43 paid by the said Chicago Land Company, to the said William B. Ogden, and to the said firm of Ogden, Jones & Co., together with the interest on the same, at the times when the said purchase money and interest, respectively became due; and that said John Bradley, A. Hyatt Smith and the Chicago Land Company, have, from time to time paid and discharged all taxes and assessments upon the premises.

That the trustees of said Chicago Land Company, under, and by virtue of said contract, with said Bradley and Smith, and soon after the execution thereof, entered into possession of said premises, and have ever since remained in possession.

That on the 20th of March, 1856, for the purpose of vesting the legal title to the undivided one-half of the premises mentioned in said last mentioned contract, which remained in the said William B. Ogden, in the said Mahlon D. Ogden, as trustee of the Chicago Land Company, the said William B. Ogden, by his deed of that date, conveyed and confirmed unto the said Mahlon D. Ogden, his heirs and assigns forever, the undivided one half of the said premises, described in said last mentioned contract.

44 That heretofore, to-wit, on the day of A. D. 1856, James C. Marshall and Jane E. Wight, by her deed of that date, released, remised, and forever quit claimed unto Mahlon D. Ogden, his heirs and assigns forever, all right, title, claim or demand, which she might have in or to said premises, or any part thereof.

That Mahlon D. Ogden has applied to said Robbins to execute a deed to pass the legal title remaining in him to the undivided half of said premises, but that said Robbins refuses, and at times pretend that said William

B. Ogden had no power under the agreement of the 31st of May, 1847, to make said contract with said Bradley and Smith, and at other times that before the execution of said contract he had revoked the power of said Ogden under said agreement.

46 *Charges*, that said Ogden had full power to make said contract, that said power was irrevocable, that said Robbins was fully aware of the terms and conditions of said contract while it was in negotiation and that he approved of them, that said power was not revoked, or if it was, neither said Bradley nor Smith, nor the shareholders of the Chicago Land Co., had any notice thereof, and that his omission to notify them of said revocation, knowing that they were about to enter into said contract, is such a fraud
47 as will deprive him of all advantage which might otherwise be taken by reason of such revocation.

48 *Prays* for the usual process against Allen Robbins requiring him to appear and answer said bill, but not under oath, and that he be decreed to execute and deliver to Mahlon D. Ogden a deed of conveyance of the legal title to an undivided half of said premises, and of all his right, title, and interest therein, and for such other and further relief, &c.

52 AMENDED ANSWER of Allen Robbins filed April 11th, 1859.

53 *Admits* the joint tenancy of said Ogden and Robbins, of the lands described in said bill, that said Jane E. Wight was entitled to dower and that said Ogden and Robbins executed the agreement of the 31st of May, 1847.

Admits the several changes in the firm and successorship to the firm of Ogden and Jones as in said bill set forth.

Denies that Wm. B. Ogden did on the 1st of June, or at any time
54 prior to the 10th of November, 1852, enter into a verbal agreement with Bradley and Smith, for the sale of said premises, but admits the execution of the written agreement of the 10th of November, 1852.

Alleges, that defendant has no knowledge of the execution of the declaration of trust by Bradley and Smith, dated the 13th of March, 1855, denies that said company was ever incorporated, or that it was known or recognised by any law whatever, public or private.

55 *Insists*, that the said instrument of March 13th, 1855, is illegal and void because

1st. If it is to be treated as a grant, bargain and sale, or any other instrument, deriving its effect from the statute of uses, it is void for want of a pecuniary consideration to support it.

2d. It is void for want of a grantee capable of taking the property described.

58 *Denies*, that Wm. B. Ogden had under the agreement in said Bill set forth, full power to enter into the said agreement with Bradley and Smith ; or that the power conferred upon said Ogden and Jones, their survivor and successors, was irrevocable ; or that defendant was aware of said agreement, when it was in negotiation, or that he assented to the making of it ; or that the shareholders in said Chicago Land Company, had no notice of the revocation, of the powers committed to Ogden and Jones, their survivor and successors, &c.

59 On the contrary, defendant avers that after the execution of the agreement of the 31st of May, 1847, said Ogden and Jones accepted of the trusts ; that they and the firm of Ogden, Jones & Co., who succeeded said Ogden and Jones in business, from time to time, between the date thereof and the first of September, 1852, made several sales of small parcels of said estate, and incurred some expenses, and became entitled to some commissions ; but the precise state of the account, defendant cannot
60 specify ; that on the 1st day of September 1852, the unsold portions of said estate were of the value of \$250,000, and are now of the value of \$600,000, and will continue to increase largely for several years ; that said property abuts upon each bank of the North Branch of the Chicago river ; that said river is navigable up to the extreme northern boundary of said property, and is valuable on account of its docking and wharfing privileges ; that the Chicago, St. Paul and Fond du Lac Rail Road on the 1st of September, 1852, was and now is located over that portion of the property described as Wight's addition to Chicago, laid out on the West side of said North Branch of Chicago river.

61 Defendant further represents that the true intent and meaning of the trust aforesaid, was to improve the property, and sell such portions thereof, as should be necessary to pay for improvements, and discharge the taxes, costs, and other reasonable charges, which might be incurred in the management of the property, to reimburse to Ogden and Robbins, the monies by them expended in the purchase of the property, and in extin-

guishing such liens and incumbrances as existed upon it, and also to raise money to satisfy and discharge the dower claim of the said Jane E. Wight; that for these objects said property was placed under the supervision and management of said Ogden and Jones and the survivor of them and their successors in business, subject, nevertheless, to the general directions of
 66 said Ogden and Robbins; that by the terms of said agreement it became the duty of said trustees

1st. To improve, manage, and disencumber the whole, and dispose of such portions of said property as should be necessary to accomplish the purposes of said trust, with care and faithfulness, to the common interests of the parties to said agreement.

67 2nd. To render fair, just, and accurate accounts, touching the execution of their said trust.

3rd. To promptly pay over the proceeds of said property to the persons entitled thereto, under said agreement.

4th. To pay interest on such balances as they might neglect to pay over.

5th. To make no other or greater sales of said property than should be sufficient to accomplish the object of said trust.

6th. To make partition of said property according to said agreement.

Defendant further represents, that the said Ogden and Jones, and their successors made improvements upon said property contrary to defendant's directions, and were wasteful and extravagant in their management; and in view of these abuses of the trust, defendant in the exercise of the reserved power, contained in said agreement, determined to
 68 put an end to said trust, procure a division of said property, and take his share under his own control, when the time contemplated by said agreement arrived.

69 That pursuant to this determination, on the 4th of March, 1848, defendant wrote a letter to Ogden and Jones, which was received by them, containing the following: "I, therefore, give you notice, that you must not make any further improvements on the property, without my written assent, and in order to obtain this, you must furnish me with your proposed improvements, and the estimated cost of them. I also give you further notice, that I shall call for a division of the property as soon as

the sales amount to sufficient to cover advances, which is, I believe, according to the contract." That on the 27th of August, 1852, defendant wrote a letter to Wm. B. Ogden, which contained the following : "I take this occasion to repeat the notice given you in my letter of March, 1848, that I shall require a division of the property as soon as the sales cover the advances, and I repeat my orders, that you must not make any further expenditures on the property, for improvements or otherwise, to
70 which you have not my written assent, nor any sales exceeding in amount the advances, or any sale about which I am not consulted, and to which I do not give my assent." And defendant further alleges that on various occasions between the dates of said letters he notified the said Wm. B. Ogden that he would not consent to the sale of the residue of said property, except so much as might be necessary to satisfy the trust contained in said agreement. Defendant further represents that notwithstanding these repeated notices, the said Ogden, intending to defraud defendant in the premises, commenced negotiating for the sale of the whole of said property, and pretends that he did, on the 1st of June, 1852, bargain and
71 sell the whole of it to Bradley and Smith for \$100,000. That said Bradley and Smith were then, and still are, both insolvent ; and that said pretended purchase was made for the benefit of the Chicago Land Company. That said Wm. B. Ogden is either a stockholder in said Company, or that there was a secret understanding between him and said Company, that the profits of this speculation were to be divided between them. That there
72 was an understanding that all the property purchased for said Company, including this, should, for management and disposition, be placed in the hands of said Wm. B. and Mahlon D. Ogden and Edwin R. La Bar (who on the 1st of January, 1853, was admitted into the firm of Ogden, Jones & Co.,) as trustees for the parties in interest ; and that said lands, ever
73 since the pretended sale to Bradley and Smith have been under the control of the said Ogden, Jones & Co., and their successors, with power from said Company to sell the same on commission.

Defendant charges that said sale did not take place on the 1st of June, but on the 13th of November, 1852 ; that he has never ratified the same, but repudiated it as soon as he was notified. That said Wm. B. Ogden was so anxious to make said sale in defiance of defendant's directions, that he consulted with several lawyers, as to his power to sell and compel defendant to join in a conveyance, and received advice adverse to his

wishes, but persisted, notwithstanding, in making the sale. That the property was worth \$250,000, and the consideration received was so grossly inadequate as to indicate a fraudulent breach of trust on the part of Ogden. That all the charges upon said property remaining due and unpaid at the time of said sale did not exceed \$12,000, and the sale of the whole property to pay said balance was a breach of trust ; that said sale was illegal and void, contrary to equity and good conscience, and ought to be set aside.

75 Defendant further says, that the contract of sale set forth in said bill, does not purport to be the deed of defendant, nor is it executed in his name, or sealed with his seal, and it cannot operate, either in law or equity, to bind him or affect his interest in the premises.

76 Defendant further says that by the agreement of May 31st, 1847, the power to manage and make sales of said property for the purposes therein expressed was conferred upon Ogden and Jones and their survivor and successors in business at Chicago, subject to the general directions of Wm. B. Ogden and defendant ; that upon the organization of the new firm of Ogden, Jones & Co., July 1st, 1850, all the trusts, power and authority, which had before been held and exercised by Ogden and Jones, passed to and became lodged in Ogden, Jones & Co., and after the death of Mr. 77 Jones, March 9th, 1851, the same devolved upon the surviving members of said firm, to wit: Wm. B. Ogden, M. D. Ogden and Edwin H. Sheldon who continued business as the successors of the previous firms. That on the 1st of July, 1850, the new firm of Ogden, Jones & Co., did in fact assume the management of said estate, kept all the accounts, received all the payments, made all the disbursements, and transacted all the business 78 relating thereto ; and after the death of Mr. Jones, the surviving members of said firm, retained said business and continued to manage said property.

Defendant insists that by the express terms of the said agreement, and according to the intention of the parties manifested by the acts and conduct of all concerned, the co-operation and act of all the successors in business of the said Ogden and Jones were essential to the validity of any contract for the sale of any portion of said land, made after the 1st of July, 1850 ; that it was not competent for the said Wm. B. Ogden to sell said lands, or any portion of them, after the decease of said Jones without

the personal co operation and act of his said co-partners, Mahlon D. Ogden and E. H. Sheldon, and that, therefore, the pretended sale to Bradley
 79 and Smith was, so far as defendant is concerned, unauthorized and void; and defendant claims the same benefit of this defence as if he had demurred to said bill,

Defendant further answering denies that said Ogden, in making said contract, acted with the full knowledge and advice of his said co-partners, but whether he did, or did not, defendant insists that said contract is invalid.

Defendant further says that the amount of money which was a charge upon said land, at the time of said sale, was uncertain, but defendant be-
 80 lieves and avers that he had advanced and paid his full proportion, but if there should be any balance due from him, he offers to deposit, under the direction of the Court, such sum as will suffice to pay such balance.

For the reasons and under the circumstances aforesaid, defendant insists that complainants are not entitled to relief, and prays to be hence dismissed, &c.

81 Replication filed April 11th, 1859.

82 Motion filed by complainants April 11th, 1859, to suppress all the interrogatories and answers thereto in the depositions on file, which were objected to at the time they were taken.

Motion filed by defendant April 11th, 1859, to suppress the depositions of John Bradley, Wm. B. Ogden, George Steele, Edwin H. Sheldon, and all the interrogatories and answers in the depositions on file, which were objected to when they were taken.

COMPLAINANTS' PROOFS.

83 STIPULATION admitting the execution and delivery of the following instruments set forth in the bill of complaint, to wit:

1. Agreement of May 31st, 1847, between Wm. B. Ogden and Allen Robbins and James C. Marshall, and Jane E. Wight.

2. Contract of sale of November 10th, 1852, between Wm. B. Ogden, and Bradley and Smith.

3. Declaration of trust by Bradley and Smith March 13th, 1855.

84 STIPULATION admitting, that, on the 2d of May, 1853, Robert J. Walker and others, associated themselves together for the purposes and in the manner set forth in the printed articles of association hereto attached, which are to be admitted as evidence without further proof.

That the shares of said association were increased as in said bill alleged, and that the number of shares was 19,700 at the filing of said bill, and that they represented the entire interest of the parties thereto.

That certificates for 18,400 full paid shares had been issued to the shareholders; that many of said certificates have been assigned and surrendered, and new ones issued, &c., until the shareholders were upwards of 60, as in said bill alleged.

That Charles Butler, John P. Chapin, and Walter S. Gurnee were the executive committee of said association, and held the number of shares as alleged in said bill.

85 That the purchase money of said premises has been paid, and that Bradley and Smith and the Chicago Land Company have paid all taxes and assessments as in said bill alleged.

That the trustees of said Company entered into, and have remained in possession under said contract as alleged in the bill.

That a deed in due form was presented to said Robbins for execution, and that he refused to execute the same as alleged in the bill.

That no portion of the purchase money received from said Bradley and Smith, or said Chicago Land Company, has been received by said Robbins, and that he has always declined to receive the same.

PRINTED ARTICLES OF ASSOCIATION OF THE CHICAGO LAND COMPANY.

86 These articles are preceded by a statement of purchases for account
of the company, showing the total cost of all the lands to be \$217,800.
Total minimum valuation, as affixed by the trustees and approved by the
87 executive committee, on the first of June, 1855, about \$1,300,000.

88 Then follows the Indenture and Articles of Agreement and Association,
made this second day of May, 1853, by and between Robert J.
Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, William Sloan,
John Bradley, Jacob P. Eastman, John P. Chapin, Edwin F. Johnson,
Albert A. Bliss, and Wm. B. Hotchkiss, as shareholders, and William B.
Ogden, ^{Mahlon D. Ogden} and Edwin R. La Bar, all of Chicago, in the State of Illinois, as
trustees.

Whereas, the subscribers to these articles have purchased certain
lands in Chicago and vicinity, more particularly described in these articles;
and whereas, a portion of the purchase money has only been paid,
and considerable sums remain to be paid as the same shall fall due by the
terms of the purchase in each case, which said purchases have been made
89 in the name of some one or more of the subscribers hereto, for the benefit
of all, with the understanding that all the property should for management
and disposition be vested in trustees as herein named, for the benefit
of all parties in interest and their assigns; and whereas, the parties
to these presents of the second part have agreed to take and execute
such trust upon the terms and conditions hereinafter named, therefore it
is hereby agreed and declared as follows:

ARTICLE 1. The name of the association shall be the "Chicago
Land Company," and its objects the management, development, sale, or
other disposition of the lands acquired for the benefit of the members of
this association, and Wm. B. Ogden, Mahlon D. Ogden and Edwin R. La
Bar are hereby created trustees.

ARTICLE 2. The title of all property owned or held, or to be owned
or held for the benefit of the Company, shall be held by the trustees in
90 fee simple as joint tenants, and not as tenants in common, and to the survivors
and survivor of them, and to his heirs and assigns.

ARTICLE 3. The capital stock shall consists at present of \$1,800,000, divided into 18,000 shares of \$100 each, representing the estimated value of the land owned and to be owned for the benefit of the company, resulting from the general increased value of real estate in Chicago, since the purchase of the premises herein named, and especially from the increased value of the lands of this company, expected to result from the location of the depot of the Illinois and Wisconsin R R. thereon, and the contemplated improvements of this company thereon. The shares are now held as follows: Robert J. Walker, Eli Chittenden, A. Hyatt Smith, Charles Butler, Wm. Sloan, John Bradley, Jacob P. Eastman, and John P. Chapin, each 1500 shares, E. F. Johnson, and A. A. Bliss, each 750 shares, W. B. Hotchkiss, 2250 shares, and W. S. Gurnee and D. S. Miller each 1125 shares.

ARTICLE 4. Provides that each of the shareholders and their assigns shall pay to the trustees his due proportion of all future payments due upon, and all the expenses incurred on account of the lands purchased, or which may hereafter be purchased, for account of said company, as the same shall be called for by said trustees, etc.,

ARTICLE 5. Provides for the forfeiture of the shares of delinquent shareholders.

That any further purchase of property which the trustees may hereafter purchase for the company, shall be conveyed to said trustees for the same uses, &c., as herein provided.

That for every \$25 paid by each shareholder, a certificate for a full paid share of \$100 shall be issued.

That the trustees are vested with full power to manage, improve, sell and convey all the lands of the company, and to pay all costs, taxes, liens, &c., to receive all moneys, notes, bonds, mortgages, &c., arising from sales; to cause the lands to be surveyed and laid out into blocks, streets, public squares, &c.

That said trustees shall keep an office in Chicago, and keep books exhibiting all sales, &c.; that they may employ assistants, and legal counsel, and in January in each year shall make out a statement of the affairs of the company.

That said trustees shall jointly receive 5 per cent. commission, besides their ordinary charge for drawing papers, upon all sales made by them and

on all rents received, and disbursements made for taxes, improvements or otherwise, for or on account of said company, also one per cent. commission upon all collections, &c.

102 Provides for the resignation and removal of the trustees and the appointment of new trustees in certain cases.

103 That Robert J. Walker, John Bradley and Charles Butler shall be the executive committee for one year and until others are appointed.

104 Prescribes the power and duty of the Executive Committee.

105 That the trustees shall keep a stock and transfer book, prescribes the form of stock certificates, and provides that shares may be transferred by
106 endorsement, provided such transfer be notified to the trustees, and the assignee shall affix his name and seal to this indenture.

107 Prescribes the form of assignment and for the issuing of new certificates to the assignee.

That from the time when such transfer shall have been duly registered the shareholder making the same shall be released from all liability as a member of the company in respect of the shares transferred.

108 That the trustees shall establish a transfer office in New York city. The capital stock of the company and the interest of the several shareholders are declared to be personal property, and on the death of any shareholder, his interest shall go to his personal representative and not to his heirs at law.

109 Provides, that the trust shall be closed in June, 1863, by a sale of the remaining property of the company at public auction, provided that
110 shareholders in January or February 1863, owning three-fourths of the shares, shall have power, by a writing under their hands and seals, to continue the trust for such further period as they shall specify. It is, however, declared that a majority in number and value of the shareholders may at any time prior to June, 1863, by writing, direct the trustees to sell any part or all of the lands of the company at public auction.

Describes the premises conveyed to said trustees, &c., &c.

118 RESIGNATION of Trusteeship by Wm. B. Ogden, dated March, 19th, 1856, directed to the executive committee of said Company, under his hand and seal.

119 DEED of Wm. B. Ogden to Mahlon D. Ogden, trustee, dated March 19th, 1856, releasing and quit-claiming all the right, title and interest, vested in him as trustee of said Company, in and to the lands and premises therein described. Acknowledged March 20th, 1856.

124 DEED from Wm. B. Ogden to Mahlon D. Ogden, dated March 20th, 1856. After referring to the agreement of May 31st, 1847, between Wm. B. Ogden, Allen Robbins, Jane E. Wight and James C. Marshall, and to the contract of November 10th, 1852, between Wm. B. Ogden and John
125 Bradley and A. Hyatt Smith, and reciting that the said Bradley and Smith did on the 6th of April, 1855, assign said contract to Mahlon D. Ogden, trustee of said Company, and that said contract had been fully performed on the part of said Bradley and Smith and their assigns, for the purpose of vesting the legal title to the undivided half of the premises thereafter described, which remains in said Wm. B. Ogden, in said Mahlon D.
126 Ogden, this deed conveys to said Mahlon D. Ogden, the undivided half of the premises in controversy, particularly describing them. Acknowledged March 20th, 1856.

128 RELEASE from Jane E. Wight to William B. Ogden, Allen Robbins, and Ogden, Jones & Co., dated June 30th, 1855, from all claims and lia-
130 bilities under the agreement of May 31st, 1847. Acknowledged same

ASSIGNMENT by John Bradley and A. Hyatt Smith to Mahlon D. Ogden, trustee, of the contract from Wm B. Ogden to them of November 10th, 1852. Dated April 6th, 1855.

DEPOSITION OF JOHN BRADLEY, TAKEN FEB. 18, 1858.

133 INTERROGATORY 1. I am 58 years of age next May. Reside in Janesville, Wis. Have been building railroads for 8 or 10 years.

INT. 2. I have know the parties to this suit 6 or 8 years.

134 INT. 3. I had a conversation with Wm. B. Ogden in June, 1852, about the purchase of certain real estate. Other parties at that time had

the refusal of it, at a sum near \$100,000. I agreed with Mr. Ogden that in case the other parties did not take it, I would take it at \$100,000 for the Chicago Land Company. The terms of payment were one-fourth cash, and the balance in one, two, and three years with 6 per cent interest payable annually. The contract was reduced to writing on or about the 10th of November in the same year.

INT. 4. The real estate referred to was all the unsold property in Chicago, in Wight's addition, belonging to Allen Robbins, Wm. B. Ogden and James C. Marshall, trustee of Jane E. Wight, and is particularly described in a contract made by myself and A. Hyatt Smith with Wm. B. 135 Ogden, on the 10th or 11th of November, 1852. Smith and myself took the contract for the Chicago Land Co., and so expressed it to Mr. Ogden, who fully understood it.

INT. 5. (Objected to and withdrawn.)

INT. 6. I had been endeavoring to get Mr. Ogden to take less than \$100,000 for the property, which he refused to do, and suggested that Mr. Robbins was in the city and that I might see him on the subject. called on Mr. Robbins, mentioned to him that I had been talking with Mr. 136 Ogden about the purchase of the property, and am not sure whether I took a note from Mr. Ogden to Mr. Robbins or not, I offered Mr. Robbins \$25,000 for his interest, being, I think, one-third, which he declined. I then asked him to give me the lowest price and best terms on which he would sell his interest. He gave me as his price the third of \$100,000 payable a quarter down, and the balance in 1, 2, and 3 years and interest annually at 6 per cent. I went back to Mr. Ogden and agreed to take the entire property at the price and upon the terms mentioned as those on which I actually purchased.

INT. 7. Mr. Robbins put no other estimate upon the value of the property than that he thought it was worth, \$100,000.

I got the impression both from Mr. Ogden and Mr. Robbins, that Mr. O. had the power to sell, and I also saw the contract in the hands of Mr. Ogden. (Objected to.)

CROSS EXAMINATION.

137 CR. INT. 1. I am not a member of or interested in the Chicago Land Company.

CR. INT. 2. Said company is not indebted to me.

CR. INT. 3. I am not aware that it is liable in any event or contingency to pay me any debt due from other persons.

CR. INT. 4. It is under no contingent pecuniary liability to me of any sort.

CR. INT. 5. I was once a stockholder in said company, and whilst such I placed stock as collateral in various places. The last I had any interest in I sold to Mablon D. Ogden the 9th of last Sept. This had been pledged to the Bank of Burlington. On the 9th of Sept. I sold the residuary interest in the last stock I had.

138 CR. INT. 6. I think that on the back of the scrip is the form of a transfer, and the person transferring signs that, authorizing some person to transfer it for them on the books of the company, or in other words it must be transferred on the books of the company, either by himself or agent.

CR. INT. 7. I do not know that my stock has been transferred on the books of the company.

INT. 8. Did you not on a previous examination state that you had hypothecated certain of this stock in which you retained a residuary interest.

ANS. I placed with the Bank of Burlington 150 shares as collateral to my firm's note. I had also transferred to my son any interest I might have in that stock after paying that note. The transfer to my son was about the last of May or first of June last. I didn't calculate there was any value to it, and I told my son he might have what there was of it after paying that note.

139 CR. INT. 9. My previous examination must have been the last of May or first of June.

CR. INT. 10. I sold that stock to M. D. Ogden on the 9th of Sept., for \$6,750, and interest from the first of June previous.

CR. INT. 11. I have no knowledge that that stock has been transferred on the Books of the Company.

CR. INT. 12. My son assented to the sale of the stock to Ogden.

CR. INT. 13. I gave my son no consideration for his assent to it.

CR. INT. 14. His assent was verbal and previous to the sale.

CR. INT. 15. I can't state the day or the hour, nor specifically the place, when the conversation with Mr. Robbins, above referred to, took place. It was at either the Sherman or the Matteson House, in Chicago.

CR. INT. 16. Cannot state whether anybody was present besides us.

CR. INT. 17. I think Mr. Robbins was informed that I called at the suggestion of Mr. Ogden.

141 CR. INT. 18. I have no interest in the land in controversy, and never expect to have.

CR. INT. 19. My firm had stock in the Chicago, St. Paul and Fond du Lac R. R. Co., but it is all hypothecated,

CR. INT. 20. If this stock should sell for more than it is pledged for, we should have the balance, and we have a right to pay the debts and take the stock, but I would give the stock to any one who would pay the debts. I consider it of no value to me.

142 CR. INT. 21. I have no knowledge of any contract with that Railroad Company that touches this property.

CR. INT. 22. There was a verbal agreement that the Railroad Company might take such lands of the Chicago Land Company as they should require for depot purposes, not exceeding 40 acres, at the original cost.

CR. INT. 23. The consideration of that agreement was that the Company should locate the lines of their road through the land of the Chicago Land Company. It was also the verbal understanding that the depot should be placed near the Kinzie Street Bridge. The location of the depot and road was thus made.

CR. INT. 24. I think that at the time of my conversation with Mr. Robbins the time had not expired for which the other parties had the re-
143 fusal of the property. I gave Mr. R. to understand that if I concluded to take it, I would notify Mr. Ogden.

CR. INT. 25. I did not return and inform Mr. Robbins whether I would take it. Did not consider it necessary, for I understood Mr. Ogden had power to sell.

RE-EXAMINATION IN CHIEF.

INT. 9. I think the time given to the other parties, within which

they might refuse the property, expired from four to six days after my conversation with Mr. Robbins.

INT. 10. I got the impression that Mr. Ogden had power to sell from both parties, Mr. Ogden and Mr. Robbins. I had also seen and examined the deed.

[The testimony of this witness is excepted to, on the ground of interest.]

DEPOSITION OF WILLIAM B. OGDEN, TAKEN DEC. 16, 1858.

145 INT. 1. On or about the 31st of May, 1847, I and Mr. Robbins executed an instrument for the purpose of adjusting the dower of Jane E. Wight in certain lands in Chicago, Sec. 5, T. 39, N. R. 14, E.

146 INT. 2. The instrument referred to is the same set forth in the bill of complaint.

INT. 3. I made a sale of the unsold balance of the premises described in said indenture, to John Bradley and A. Hyatt Smith, as survivor of Ogden and Jones, about the 15th of June, 1852. Full contracts of sale were executed about the 10th of November, 1852. Several sales of small portions had been previously made to other parties between May, 1847, and June 1852. (Objected to.)

147 INT. 4. The paper exhibited is the contract of sale with Bradley and Smith,

INT. 5. I know the signatures of Bradley and Smith. The signatures to the contract are genuine.

INT. 6. I had conversations relative to the sale of this property, with the defendant, at different times; first in Mr. Burch's Banking Office, in the back room occupied by Mr. Robbins, where I showed him a proposition—say about June 1st, 1852, or not long before the sale to Bradley and Smith—made by me to Mr. Ward of Boston, for the sale of said property to him, at about \$97,925, and of
148 which proposition Mr. Robbins took a copy. At that time I also informed Mr. R. that Mr. Ward had the refusal at that price; also, that Mr. Bradley and his associates were applicants for the purchase of the property, and that I had proposed to sell it to them at \$100,000, provided Mr. Ward did not accept the proposition made him. And I proposed to give Mr. Ward

notice that he must decide either to take it or not, and I afterward did give him such notice, and he declined, as he said, from inability to fulfil in time, and I then gave notice to Mr. Bradley and his associates, that they could have the property for \$100,000. Some few days after giving Bradley such notice—I should think not three days—I met Mr. R. in front of the Tremont House. He asked me if I had concluded the sale to Mr. Bradley and associates. I told him that I had not, as they had not yet decided to take it, but I thought they would do so as soon as they could make their arrangement, which would be in a few days. He replied, that if they did not decide to take it very soon, he would not let them have it, and he did not know but that he would take it himself at that price. I told him I should be very glad to let him have it, if he
 149 wanted it. He declined to take it. These are all the interviews that I remember having had with Mr. R. previous to the sale to Bradley and associates.

INT. 7. Mr. Robbins made a proposition to sell me, or Ogden, Jones & Co., his third interest in the unsold property named in the contract of May 31st, 1847, for \$15,000, including in such price his one-third advances for improvements and expenses, but exclusive of \$2,362.11 or thereabout, advanced by him on account of the Jane E. Wight interest—that is, Mr. R. offered to take \$17,362 11 for his entire interest, including all his inter-
 150 est in unpaid contracts, and all his advances, and proposed to receive payment as follows: In cash, \$5,362.11; in one year, \$4,000; in two years, \$4,000; and in three years, \$4,000, with 6 per cent. semi-annual interest. This proposition was made about November, 1851. My memorandum of it bears date Nov. 23d, 1851. This proposition was considered too high and was declined. (Objected to.)

INT. 8. According to the terms of this proposition, his estimate of
 151 the value of the property was \$45,000, including balances unpaid on contracts, which I think was from three to six or seven thousand dollars, but I am not at all certain about the amount due on the contracts. (Objected to.)

INT. 9. I made a memorandum of said proposition at the time, and I now produce it just as I then made it, and hereto attach it. (Marked "Exhibit A.") (Objected to.)

INT. 10. I do not recollect positively the terms of payment in the Ward proposition, but I think they were much easier and on longer time than the sale to Bradley and Smith. My impression is, that they extended from one to six years or more, in annual payments, with 6 per cent. interest. I am not certain that there was not some abatement assented to from \$97,925, in the proposed sale to Ward.

152 INT. 11. At the date of the sale to Bradley and Smith, the amount chargeable to the property for purchase money, advances, expenses, and interest, was about \$17,437.49, less about \$2,299 received from previous sales, leaving \$15,138.49 which was to be first paid as provided in the contract of May 31st, 1847.

153 INT. 12. I mean by my answer to Interrogatory 3d, that I made a written memorandum of the proposition in June, which was accepted about the 15th, and the agreement of sale concluded thereby, but I gave the parties a few days to enable them to gather funds to make their first payment, \$25,000. Meanwhile, I went to New York, and failing to return, they came there and closed the arrangements by full contracts, which, with details and particulars of sale, were there executed in duplicate.

154 INT. 13. The whole of the purchase money stipulated in said contract has been paid, with interest substantially in accordance with the terms of the contract. The payments were all made by Bradley and Smith, or their assigns, and were all made to the successors of Ogden and Jones, as provided in the indenture of May 31st, 1847; and notice was given to the defendant from time to time, of such payments, and that his proportion of the same was held subject to his order. Jane E. Wight or James C. Marshall, trustee, or both, were also notified and made demand therefor, and have been paid, and have given receipts in full for their proportion thereof, and have duly conveyed their proportion of the premises to Bradley and Smith, or their assigns. (Objected to.) The survivor and legal representatives of Ogden and Jones have also received their portion of the proceeds of said sale in full, and deeds for their interest in the premises have been duly executed to the assignees of Bradley and Smith. (Objected to.)

CROSS EXAMINATION.

155 CR. INT. 1. I have not in my possession the memorandum of the proposition submitted to Bradley and Smith referred to in my answer to Interrogatory 12, but I have a rough memorandum of the substance of the proposition made at that time, which does not specify the terms of payment, but intimates a modification made as to time of drawing interest, on leaving out 8 lots, the title to which was not included in the indenture of May 31st, 1847, and which they understood to be included in the proposition of \$100,000, and which were then estimated at about \$1,400, and the interest on the sale from the 15th of June to 1st of Sept., 1852, amounting to \$1,250. It was agreed to leave out the 8 lots, and make the sale draw interest from the 1st of Sept., instead of the 15th of June, as a set-off for them. The memorandum submitted reads, "Offered Sloan and others," Sloan being one of the parties associated with Bradley and Smith and interested in the sale made to them, and most of the purchases made by him and his associates prior to, or about the time of this, having been made in his name. (Memorandum attached, and marked "Exhibit B.")

156 CR. INT. 2. The memorandum given to Bradley and Smith was substantially the substance of the contract afterwards executed. I first proposed giving them more time on the payments, but understanding from Bradley and others that Mr. Robbins preferred payment of a quarter down, I required it of them.

CR. INT. 3. I don't remember positively that any terms of payment were expressed in said memorandum, but presume there were. There might have been two memoranda made, probably not. There might have been a memorandum for the time proposed and might not.

CR. INT. 4. It was a memorandum of the proposition for the sale of the property to them, and in pursuance of which the contract was executed after acceptance by them. I don't know whether my name was signed to it or not—it was in my handwriting, I have no doubt, but it may have been written by some other party in the office, and I have no other copy of it than the one just filed.

157 CR. INT. 5. I must have given them the memorandum previous to the 15th of June. They accepted the proposition about the fifteenth of June. Whether they did so verbally or by writing I do not

recollect. There was no contract signed at the time between us. They accepted substantially without modifications, except that the time of payment might have been shortened, and the interest commencing September instead of June, in consequence of 8 lots having been left out, which were not included in the indenture of May 31st, 1847.

158 CR. INT. 6. It is my impression that the proposition did not mention any lot by name, but was for the unsold balance of the, so called, Wight property. That subsequent to the indenture of May 31st, 1847, Mr. Robbins and Ogden and Jones bought sundry lots in Wight's addition, some of which were not mentioned in said indenture, but in the list of that property kept by Ogden & Jones were included as part of the Wight property, so called. Such lots as were not included in that indenture, I was not authorized to sell. Bradley supposed they formed part of the property and were included in the offer made to sell, and perhaps under the circumstances, had a fair right to think so. In order to correct the misunderstanding, an abatement of interest about equal to their valuation was assented to.

CR. INT. 7. No memorandum of the bargain made by me with Bradley and Smith was signed by the parties prior to Nov. 10th, 1852. I might have signed a proposition made to them as above stated.

159 CR. INT. 8. All the notice I ever received from Mr. Robbins up to the time of my negotiations with Bradley and Smith, was the letter I here submit, dated March 4th, 1848, (annexed and marked "Exhibit F.")

CR. INT. 9. I did receive a letter from Mr. Robbins, dated August 27th, 1852, soon after it was written, and submit the same, (annexed and marked "Exhibit C.")

160 CR. INT. 10. I understood at the time that Bradley and Smith purchased the property for themselves and others, who were, or were to be interested with them

CR. INT. 11. I know nothing of the extent of their association, but think I heard the names of Robert J. Walker, Mr. Eastman, Eli Chittenden, Mr. Page, and perhaps Mr. Chapin, and others I do not know.

CR. INT. 12. At the time of making this sale to Bradley and Smith, I had no knowledge of the formation of any Company for the purpose of buying, improving and selling this and other property in and about

Chicago. In the spring of the next year, I think, a joint stock association,
 161 called the Chicago Land Company, was formed for the purchase and sale
 of property, of which the property in question formed a part.

CR. INT. 13. I believe the pamphlet shown me to be a copy of the
 articles of association of said Land Company.

CR. INT. 14. My understanding was that a small part only, of those
 who signed said articles of association, were interested at the time of the
 sale to Bradley and Smith. Many of them became subsequently inter-
 ested. All that I remember to have heard spoken of at the time of the
 sale, besides Bradley and Smith, were Walker, Eastman, Johnson, Cha-
 162 pin, Chittenden and Sloan, and I have no means of knowing that they
 were all interested, only from hearsay. Some of the others named in the
 articles have not at any time, to my knowledge, been interested, except
 as trustees.

CR. INT. 15. The parties interested in the purchase, at the time of
 the negotiation with me, did not, to my knowledge, have it in contempla-
 tion to form such a company as they afterwards organized. I never
 heard of it.

CR. INT. 16. According to my recollection, the first I heard of such
 a company was when Mr. Eastman, and perhaps Mr. Chittenden called
 upon me in New York, in the spring of 1853, for a copy of the articles of
 the American Land Company Association, of which I had long been a
 member, from which they proposed to draw articles of association for
 themselves and associates, and the articles they adopted are in a great de-
 gree copied from the articles of the American Land Co. Association.
 They then solicited the house of Ogden, Jones & Co., to act as their
 163 agents for the management and sale of all of their property in Chicago,
 of which the property in question formed a part, and they requested my-
 self, Mahlon D. Ogden and Edwin R. La Bar to act as trustees for the
 association, to which we assented, our business being that of General
 Land Agents. I don't recollect hearing the association spoken of previ-
 ous to this time.

CR. INT. 17. I have never been interested in the stock of said Company,
 not a dollar directly or indirectly at any time. It may be, that stock may
 have been assigned to me as trustee, for the benefit of the Company, but

I never was interested in my own right, or for my own account, in any way.

CR. INT. 18. Ogden, Jones & Co., and Ogden, Fleetwood & Co.,
164 for account of the Trustees of the Company, have made large sales of the property of the Company, and have received commissions therefor, but I am not aware that they have sold for the Company any of the property in question, except it be the right of way for the Chicago, St. Paul and Fond du Lac Railroad Company; but whether they received commissions on that sale, I do not know.

CR. INT. 19. At the time of the negotiation with Bradley and Smith I did not expect to become thereafter an agent for the management and sale of the property in question. There was no such understanding. Nothing of the kind was thought of by me. The sale was unconditional, the same as any other of the large sales made by me or my firm.

CR. INT. 20. I am connected with Mahlon D. Ogden in business, whom I believe now to be the sole trustee of said Company, but not so connected as to be entitled to any commissions he may receive as such trustee.

165 CR. INT. 21. It strikes me that when the solvency of Bradley and Smith was doubtful, the Trustees required a declaration of trust from them concerning this property, to prevent their creditors from reaching it.

CR. INT. 22. I don't know where Mr. Robbins spent the winter of 1851-2. I saw him in Chicago, I should think about the 15th of June, or about the time and previous to the sale to Bradley and Smith. He was here, I think, when the offer was accepted by them. The purchase money was to draw interest from the 15th of June, and my impression was that the sale was closed on that day, but it may have been that the proposition was made on that day, and the interest to draw from that time, and the sale consummated a short time after.

166 CR. INT. 23. I remember such a man as Mr. Valette being here and having some negotiations with him in regard to the purchase of this property, but don't remember the time when, nor for what amount.

CR. INT. 24. The conversation I had with Mr. Robbins in front of the Tremont House did not relate to the offer made by or to Valette. I

had conversations with Mr. Robbins in regard to the sale to Vallette, and might have had them in front of the Tremont House, but the conversation in reference to the sale to Bradley and Smith, took place as previously stated.

CR. INT. 25. I think I made sale of a lot (a portion of this property) to Joy, previous to the negotiation with Bradley and Smith. I think it was made verbally, pending that negotiation, and they were to carry it
167 out. I don't remember the particulars, but they were to ratify the sale. The lot Joy was to have was included in the sale to them, Ogden, Jones & Co.'s books will show.

CR. INT. 26. I don't remember anything about the paper now shown me, (an account of the sale to Joy.) Don't know who made it. Think it looks like Mr. La Bar's writing, who was a clerk in the office of Ogden Jones & Co., at that time.

CR. INT. 27. The paper now submitted is in the hand of Wm. P. Fleetwood, at that time a clerk in our office. It is probably the correct statement of the price and terms of a lot sold to Mr. Joy, and of the payments made thereon at that time, but probably incorrect as to the sale being made for Ogden and Robbins, provided the agreement of sale to Bradley and Smith was carried out. My recollection is that Mr. Joy claimed that I had verbally agreed to sell the lot to him, before the sale of it with
168 the balance of the Wight property to Bradley and Smith, and that I got Bradley and Smith after the sale to them, to agree to let Joy have it at the price he claimed I was to sell it to him for, and that the clerk not being advised of the circumstances, made out the account of Hiram Joy with Ogden and Jones. My impression is, that the money received from Joy was credited Bradley and Smith, and that this lot was included in the sale to them. (Account annexed and marked "Exhibit E.")

CR. INT. 28. I do not know whether the amount due to Mr. Robbins on account of this sale to Joy was afterwards tendered to him.

CR. INT. 29. Mr. Bradley reported to me that he had had interviews with Mr. Robbins in regard to the sale (to him and Smith,) and that Mr.
169 R. was willing to make a sale of the whole for \$100,000. Whether he went to see Mr. R. at my suggestion, or not, I don't remember, but I think it

was very likely. I did advise him to see Mr. R., and, though I had the power to sell independent of Mr. Robbins, I thought it courteous to refer to him.

CR. INT. 30. I have answered this (as to the charges against the property) fully already in my direct examination.

CR. INT. 31. The commissions charged by us upon the sale to Bradley and Smith were precisely those provided for in the indenture of May 31st, 1847.

CR. INT. 32. I think the first time I met Mr. Robbins, after the negotiation with Bradley and Smith, was in New York, in the office where I transacted my business, and it was after the completion of the contract
170 of sale, and after the first installment was paid by them thereon.

CR. INT. 33. Mr. Robbins at that interview objected to the sale. (Objected to.)

CR. INT. 34. I don't recollect that I assigned any reason to him for having made the contract. The interview was very short.

CR. INT. 35. I did not give him as a reason that I wanted to get my commissions. No such thing took place.

171 CR. INT. 36. Some time after the sale was made, I heard a street rumor that Mr. Robbins had objected to the sale, since the making of it, and I asked two or three attorneys whether there was any question as to my obligation and authority to fulfil the sale to Bradley and Smith, and was advised by Messrs. Judd and Wilson, who examined the matter fully, that I had authority. One (I think it was Mr. McCagg) had some question of it. The agreement of sale had been made in good faith, and I fulfilled it.

RE-EXAMINATION IN CHIEF.

INT. 14. I think I did make sales of the property described in the indenture of May 31st, 1847, after March 4th, 1848, and prior to June, 1852, without advising with Mr. Robbins, and that he subsequently joined
172 in the execution of deeds conveying the property as sold. I don't know that I ever consulted Mr. Robbins in regard to any of the sales previous to the sale to Bradley and Smith. On every first of August and February,

Ogden and Jones, or their successors, notified him of any sales made in the previous six months, and rendered him an account thereof, which was all that was required by said indenture. (Objected to.)

INT. 15. The signature to the paper now shown me is in my hand. I have received the consideration therein expressed. (Attached, and marked "Exhibit G.")

INT. 16. The commissions charged upon the sale to Bradley and Smith stand to the credits of commissions still, on the books of Ogden, Jones & Co., and have never been paid to me.

173 INT. 17. I have received from the Chicago Land Company a bond of indemnity, and herewith hand it in. The signature thereto of Mahlon D. Ogden is in his hand. (Attached, and marked "Exhibit H.")

[Defendant will object to the admission of this deposition, because the witness has an adverse interest to him in this suit.]

"EXHIBIT A."

Statement of cost, etc., of Wight property.

A. Robbins' one-third cost, including interest, Aug. 1, 1851,	\$4,380.82
Cost of improvements of his one-third, with interest to Aug.	
1, 1851, and commissions, after deducting proceeds of all	
sales, - - - - -	1,914.23
	<u>\$6,295.05</u>

174 For this Robbins asks, - - - - -	\$15,000.00
And to be re-imbursed his one-half advances with interest to	
Aug. 1, 1851, - - - - -	2,362.11
Nov. 23, 1851, - - - - -	<u>\$17,362.11</u>

175

"EXHIBIT B."

Offered Sloan and others the unsold portions of

Wight property for, - - - - - \$100,000.00

To draw interest 6 per cent. from June 15, 1852.

The interest to 1st September amounted to, \$1,250.00

8 lots—lots bought of J. H. Jones and Scammon,

deducted—called - - - - - \$1,400.00

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"EXHIBIT C."

CHICAGO, August 27th, 1852.

WM. B. OGDEN, Esq.,

Dear Sir:

I received Messrs. Ogden and Jones' accounts with the Wight estate, and find you still retain Mr. Smith a pensioner on this property. Ds. 78 being charged for his services, a portion for plans for a bridge at Halstead Street, a project on which I have not been consulted. As it must be evident that I am not satisfied with your management, and having lost confidence in your integrity as an agent, I shall esteem it a favor and kindness if you will at once accede to a division of the lots and lands at once. This course cannot be other than pleasant to you, as you will then be free from my complaints and censure. I take this occasion to repeat the notice given you in my letter to O. & J. of March, 1848, that I shall require a division of the property as soon as the sales cover the advances. And I repeat my orders, that you do not make any further advances on the property, for improvements or otherwise, to which you have not my written assent, nor make any sales exceeding in amount the advances, or any sale as to which I am not consulted, and to which I do not give my assent.

Messrs. Ogden and Jones have omitted to report the sale of a lot to Mr. Joy, which you named to me. Will you see that it is sent to me.

Yours respectfully,

ALLEN ROBBINS.

"EXHIBIT D."

Articles of Association of the Chicago Land Company.

"EXHIBIT E."

HIRAM JOY,	}	July 22, 1852, 1 a in Sec 5, 39, 14.
WITH		Payable \$525, June 1, 1853.
OGDEN & ROBBINS		" \$500, " 1, 1854.
		" \$500, " 1, 1855.

Interest 6 per cent. June 1. Taxes after 1851.

1852, July 22. To contract as above,	- - -	\$1,525.00
1853, June 1, To interest on contract to date,	-	78.28
May 27, By Cash hereon,	- - -	\$603.28.
1854, June 1, To interest on \$1000 to date,	-	60.00
Dec. 1, " " \$560, due June 1,		
1854, extended 6 months at 10 per cent.	-	28.00
By Cash for pay't and int., due June 1, 1854,	-	588.00
1855, June 1. To interest on \$500, 1 year	- -	30.00
" To taxes 1852-3-4	- - -	29.77
178 1855, Nov. 7, To interest on \$559,77, 5 $\frac{1}{2}$ months,		24.41
" " " By cash hereon in full of contract,		
interest and taxes.	- - -	584.18
		\$1,775.46 \$1.775.46

Cash received on above contract \$1,775.46, by trustees of Chicago Land Company, one-third of which amount is paid to Allen Robbins at his request, \$591.82

"EXHIBIT F."

East Granby, March 4, 1848.

MESSRS. OGDEN AND JONES,

Chicago,

Dear Sirs :

I received at this place your favors of 12th and 14th ult., with accounts relating to the Wight property. Your account contains some charges which require explanation, which I shall ask of your Mr Ogden, when in New York, and if satisfactory, will then order a further payment made to you. You are aware that all improvements must have my approval, but you have proceeded so far without consulting me. It would be more satisfactory to me, and in my opinion, just to all intertests, if the improvements to be made were let by tender for cash payments rather than let in such small detached portions evidently tributary to the business of your office. I notice that you charge newly

179 Ds. 150, for Smith's superintendence, &c. This I think is too bad. I supposed that you were to superintend the business yourselves; if you cannot you should at least pay your deputies. Your commissions are certainly sufficiently ample for that, and all the other very onerous duties you perform. I have not the contract here to refer to, but if it allows you to charge 10 per cent. on your advances, I must allow that I made a very foolish arrangement, and that it is for my interest to dissolve the connexion as soon as the contract permits. That you may proceed fairly and understandingly, I give you notice that you must not make any further improvements in the Wight property, without my written assent, and in order to obtain this, you must furnish me with your proposed improvements, and the estimated cost of them. I likewise give you notice, that I shall call for a division of the property as soon as the sales amount to sufficient to cover the advances. This I can do, I believe, according to the contract. I know not what Mr. Marshall may say of your account, but it must readily occur to him, after examination, that the widow's chance of gain is small and remote. Col. Smith is wrong as to Chicago Avenue, I made no agreement with any one. I did not know that Raymond was

interested or that Lee intended making a road on the North side. Mr. Lee told me he should drain his land by ditching.

Yours Respectfully,

A. ROBBINS.

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"EXHIBIT G."

Know all men, &c., that for and in consideration of \$3,000 to me in hand paid, &c., I have this day given, granted and assigned to said Mahlon D. Ogden, absolutely all commissions, and all claim and demand I may have to any commissions upon the proceeds of the sale of the interest of Allen Robbins, in and to a certain tract of land heretofore sold by me to A. Hyatt Smith and John Bradley, &c., &c.

As witness my hand and seal this 16th day of December, 1858.

W. B. OGDEN. [L. s.]

"EXHIBIT H."

Whereas at a meeting of the shareholders of the Chicago Land Com-
181 pany, &c., held at &c., on the 27th day of April, 1857, a resolution was offered providing that the Trustee and Executive Committee of the said Company execute to Wm. B. Ogden a proper legal instrument to indemnify and save harmless the said Ogden from all damages, &c., which may arise or accrue from the sale to said Company, or to A. Hyatt Smith and John Bradley, for said Company, of the interest of Allen Robbins in that portion of the property of the Company, heretofore belonging to Ogden and Robbins, and which was sold by Wm. B. Ogden for himself and as the attorney of Allen Robbins, to A. Hyatt Smith and John Bradley, for said Company, and which said instrument shall bind said Company to pay any amount of damages, with the costs and expenses of all legal proceedings which may at any time hereafter be obtained by said Robbins against said Ogden, or against Ogden, Fleetwood & Co., in a suit now pending, or in any which may hereafter be brought against him or them, in consequence of the sale of said Robbins' interest by said Ogden. And whereas it was

resolved, that said resolution be referred to the adjourned meeting of the shareholders of said Company to be held on the 3d day of June next following. And whereas at the said adjourned meeting, held on the 3d of June, 1857, it was resolved that the aforesaid resolution be adopted.— Now, therefore, know all men &c., that I, Mahlon D. Ogden, sole trustee of the said Chicago Land Company, in pursuance with the resolution, &c., the Executive Committee of said Co. assenting hereto, &c., and in consideration of one dollar, &c., have, and by these presents do covenant and agree to indemnify and save harmless the said Wm. B. Ogden from all damages, costs and expenses, which may arise or accrue from the sale to said Company, or to said Smith and Bradley for said Company, of the interest of Allen Robbins in that portion of the property of the Company heretofore belonging to Ogden and Robbins, and which was sold to Wm. B. Ogden for himself, and as the attorney of Allen Robbins, to Smith and
 183 Bradley for said Company, and to pay any amount of damages, with the costs and expenses of all legal proceedings which may at any time hereafter be obtained by said Robbins against said Ogden, or Ogden, Fleetwood & Co., in a suit now pending, or in any suit which may hereafter be brought against him or them, in consequence of the sale of said Robbins' interest by said Ogden. For the full and faithful performance of which said covenants, &c., the said Mahlon D. Ogden, Trustee of the said Company binds himself, his successors and assigns, as such trustee, together with the said Company, their successors and assigns. In testimony whereof, the said Mahlon D. Ogden, Trustee, &c., hath hereunto set his hand and seal this 4th day of June, A. D. 1857.

MAHLON D. OGDEN,

Trustee of Chicago Land Co. [L. s.]

The above bond, obligation or agreement of the Chicago Land Company is hereby approved and confirmed by the executive committee of
 184 said company, in pursuance of the resolutions and instructions of the shareholders above recited.

JOHN P. CHAPIN,

Ex. Committee of Chicago Land Co.

DEPOSITION OF ALLEN ROBBINS, TAKEN IN THE SUIT OF JANE E. WIGHT VS.
JAMES C. MARSHALL, ET AL., MARCH 31ST, 1854.

INT. 1. I am acquainted with Marshall and Ogden. Never saw complainant or Mr. Wetherbee.

INT. 2. I am one of the parties to the agreement of the 31st of May, 1847, with Ogden and Mrs. Wight.

185 INT. 3. I was in Chicago in July, 1852.

INT. 4. I was acquainted with the value of the lands described in said agreement which were unsold in July, 1852. I estimated their value at \$100,000.

INT. 5. It is the same property which Mr. Ogden contracted to sell in the fall of 1852.

INT. 6. In July, 1852, Mr. Marshall called on me in Chicago, and entered into conversation regarding the property. I showed him Mr. Ogden's valuation of the property.

186 INT. 7. That valuation was \$97,925.

INT. 8. This conversation was about the 6th of July.

INT. 9. Mr. Marshall said it was for the interest of Mrs. Wight to sell her interest in the property. Her pecuniary interest was such, that it was necessary for her to sell, as she was poor. He made many other remarks of the same tenor—that the property was now ample to give her a comfortable living, and he should advise her to sell. I replied that if she wanted to sell, I would buy the property and give as much as any other party, but was unwilling to give Mr. Ogden's valuation, and was not then
187 prepared to give more than \$22,000 or \$22,500.

INT. 10. I wrote to Mr. Marshall two letters, inquiring Mrs. W.'s determination as to selling her interest. The letters annexed marked Exhibits I and J, are the letters I received in reply. I also wrote another letter inquiring of Mr. M. if he had taken the valuation I had shown him, and received the letter annexed marked "Exhibit K."

CROSS EXAMINATION.

188 CR. INT. 1. In the conversation with Mr. M., I complained of Mr. Ogden's charges—that many of them were unjust and improper, and that I had notified Mr. Ogden, that as soon as sufficient of the property had been sold to pay the advances, I should call for a division. My impression was, that after Mr. Ogden got the property into his hands he would fleece me. I think I expressed the opinion to Mr. M. that Mr. Ogden was endeavoring to make a Hunter purchase of it. By that, I mean, to get the property into his hands and use it up by extravagant charges.

CR. INT. 2. I afterwards found Mr. Ogden's valuation.

CR. INT. 3. I showed Mr. Marshall a statement of charges presented by Mr. Ogden.

189 CR. INT. 4. I have never known it difficult to sell property here at a fair price, on a credit. Property at that time just began to rise.

CR. INT. 5. The remarks made by Mr. Marshall in regard to Mr. W.'s interest to sell, occurred in the course of our conversation about the property, and in regard to its management.

CR. INT. 6. The letters annexed marked Exhibits 1, 2, and 3, are letters addressed by me to Mr. Marshall, and one part of the correspondence referred to in my direct examination.

190 CR. INT. 7. I named a sum which I told Mr. M. I was willing to give for the property, but no terms were mentioned.

CR. INT. 8. I never made Mr. Ogden any proposition to sell him my interest in the property at any time whatever.

CR. INT. 9. The causes of the difficulty in selling at fair prices, referred to in my letter of July 29th, were the condition of the contract with Mr. Ogden.

CR. INT. 10. Mr. Ogden and I were at variance at that time, and had been from the rendition of the first account by Mr. Ogden.

191

"EXHIBIT I."

ERIE, August 2d, 1852.

A. ROBBINS, Esq.,

Dear Sir:

Yours of the 29th ult. is received. I have not seen Mrs. Wight since I was at your city, but have written her my views in relation to her property, and suggesting to her the propriety, and in fact the *necessity* of her making sale of her interest, as I think it is the only means of her realizing anything from the property during her life. The amount against it is large and continually increasing—she can not raise means to redeem it without selling. I have laid the whole matter fully before her, and requested an answer, which I have not yet received, &c., &c.

JAMES C. MARSHALL.

192

"EXHIBIT J."

ERIE, AUGUST 9th, 1852,

A. ROBBINS, Esq.,

Dear Sir:

Yours of the 5th inst., is received. I also received a letter on the same day from Mrs. Wight. She will be here before long, and conclude what course she will take in relation to her interest in the Chicago property. I think she would prefer to raise the money from some of her friends upon a loan to *redeem* the property to making sale. When she comes here we will conclude upon the course she will take, &c.

JAMES C. MARSHALL.

"EXHIBIT K."

[ERIE, August 31, 1852.

A. ROBBINS, Esq.,

Dear Sir :

Yours of the 27th inst., is received.

193 You did not give me Mr. Ogden's valuation of the Wight property, nor have I any recollection of seeing it. You showed me the statement of his account, and pointed out your objections to it, etc. * * * *
 Mrs. W. is needy and wants all that she can honestly get out of her property. I will see her on the 10th of next month, and learn from her her views in relation to her interest in the other property. Why Mr. Ogden does not furnish me a statement of the account with the property I do not know. He has not furnished one for more than one year. I wrote him some time since to furnish me with the statement.

JAMES C. MARSHALL.

"EXHIBIT No. 3."

Letter from Allen Robbins to James C. Marshall, dated Chicago, August 27, 1852. It acknowledges receipt of Mr. Marshall's letter, of the 9th inst. As the letter refers to another subject it is omitted.

"EXHIBIT No. 2."

194

CHICAGO, August 5th, 1852.

JAMES C. MARSHALL,

Dear Sir:

I am obliged by your favor of 2d inst. If you think it advisable to negotiate with Mrs. Wight by direct application, I can supply a very trusty person, my brother-in-law who resides in Connecticut, to ascertain her views and terms, subject, however, to your approval.

195

I presume that she would desire that the value of her interest, whatever it may be, should be so secured as to provide for her an ample yearly income. This, however, you could probably satisfactorily arrange for her.

From some movement here I infer that the Railroad Company which I named to you as probable purchasers, have decided on other ground for their depot. Some lots in Waubansia Addition have been quietly purchased, and negotiations for others are rendering.

ALLEN ROBBINS.

"EXHIBIT No. 1."

CHICAGO, July 29th, 1852.

J. C. MARSHALL, Esq.,

Dear Sir:

When you was here you suggested that Mrs. Wight would sell her interest in the "Wight Estate."—My object in now writing is to ascertain if you have consulted her on the subject, and can you give me her views as to price and terms of payment. If she is not now prepared to name terms, I would esteem it a favor, if
196 she would, when prepared to sell, give me the refusal, or at all events consult me previous to selling. I am not very desirous of purchasing as it is difficult at the present moment to make sales at fair prices of the property, owing to causes I named to you, but if I owned her interest I could better protect my own, by having a division of estate on fair terms with Ogden, and taking into my own hands the charge of my portion and thus relieving it from Ogden's exclusive charge.

A. ROBBINS.

DEPOSITION OF GEORGE STEELE, TAKEN JAN. 24, 1859.

INT. 1. Am about 60 years old. Reside in Chicago. Am a produce dealer.

INT. 2. Know all the parties.

197 INT. 3. Have not had any conversation with defendant about any lands sold to Bradley and Smith by Mr. Ogden.

INT. 4. I was in Mr. Tinkham's office one day two or three weeks before Hyatt Smith, Sloan and others, or the Chicago Land Company, purchased the land. Mr. Tinkham called my attention on the map to a piece of land called the Sheffield Tract. It was marked "Wight's Addition." Mr. T. said, "don't you want to go into a speculation in this land." A few days after this I met Mr. Robbins on the street. I told him Tinkham and I thought of purchasing, and asked him if he did not want to sell this land, and what his price was. He said Mr. Ogden had the selling of it, and asked \$100,000 for it. We stepped into Tink-
198 ham's office and conversed about it, in the presence of Mr. Tinkham. I urged him for a reduction, and said the price was too high. He said if I wanted a reduction I must go to Mr. Ogden, for he had the selling of it.

CROSS EXAMINATION.

CR. INT. 1. I cannot swear positively to the month or year when the above conversation occurred, without reference to my books.

CR. INT. 2. I think it was in the summer or spring, but cannot say certainly.

CR. INT. 3. My attention was first recalled to it two years ago.

CR. INT. 4. I know nothing about the organization of the Chicago Land Company, further than I was asked if I did not want an interest in it, by Mr. Chapin and Sloan, about the time of its organization.

199 CR. INT. 5. This conversation with Robbins must have occurred, I think, after I was applied to by Chapin and Sloan, but won't be positive.

CR. INT. 6. The conversation with Mr. Robbins was not less than 4 years ago, and may be 5. There are memoranda on my books by which I can tell the year and very near the month.

CR. INT. 7. I had no knowledge about the sale from Ogden to Bradley and Smith, but what I got from those interested in the company.

CR. INT. 8. I never called on Mr. Ogden about the purchase of this land.

CR. INT. 9. I intended to buy the land if the price and terms suited me, but I made no offer and had no further conversation about it.

200 CR. INT. 10. The interview I had with Mr. Robbins was very brief—
from 5 to 10 minutes.

CR. INT. 11. I made no memorandum of the conversation.

CR. INT. 12. I think my attention was recalled to it some time after, when Mr. Robbins was called upon to give a deed.

CR. INT. 13. I have held stock in the Chicago Land Company, as collateral security, and I took 40 or 50 shares to liquidate a debt due me from some one of the Company. I do not hold any now.

CR. INT. 14. I parted with my stock about a month or six weeks ago.

201 CR. INT. 15. I sold it to Mr. Wilkins unconditionally.

CR. INT. 16. I transferred it absolutely, to enable me to testify in this cause. I made no condition for its re-transfer. Mr. Wilkins is my son-in-law.

CR. INT. 17. I know nothing about any negotiations for this land by Mr. Valette.

DIRECT EXAMINATION RESUMED.

INT. 5. Mr. Wilkins gave me his note for the stock for about 45 cents on the dollar.

INT. 6. I still hold the note, and I believe that is about what the stock cost me.

202 INT. 7. I have refreshed my recollection as to the date of the conversation with Mr. Robbins. It was between May and August, 1852.

CROSS EXAMINATION RESUMED.

CR. INT. 18. I sold Henry Smith some lots in July, 1852. It was about this time that it came out that a company called the Chicago Land

Company were buying large tracts of land, and it was just before this that I had the conversation with Mr. Robbins. I suspected that Mr. Smith wanted to buy this land of me for the Company, and this circumstance fixed it in my memory.

CR. INT. 19. I made the contract for these lots with Mr. Smith, and think I deeded to him.

203 CR. INT. 20. These lots were so situated that the Railroad would want them for a depot. I thought that if the Land Company had them, they would demand a high rate of the Railroad Co. I felt interested in the Railroad, and wished them to get the lots cheap.

CR. INT. 21. It is very likely I told Mr. Robbins about the time of the formation of the Land Company, in 1852, that the Land Company had swindled the Railroad Company out of profits that would be derived by their various purchases.

CR. INT. 22. I do not know of my own knowledge who were principally concerned in forming the Land Company.

CR. INT. 23. Do not know whether Wm. B. Ogden took any interest in said Company.

CR. INT. 24. Know of no purchases made by Mr. Ogden for said Company.

204

DEPOSITION OF HENRY SMITH, TAKEN JAN. 24, 1859.

INT. 1. Age about 60. Am a resident of Chicago and a dealer in land.

INT. 2. In the latter part of the summer or fall of 1851, I met Mr. Robbins. I sought an interview to find out if I could purchase his interest in the Wight property, which was one-third. He offered to sell his interest for \$17,000, on Canal time, one-fourth cash. I had another interview with him, I should think 50 or 60 days afterwards. I wanted him
205 to increase the number of payments to six by adding two years time. He consented to make 5 payments and add one year's time, but said he should charge \$1,000 more. I did not purchase.

INT. 3. The following spring or summer when Mr. Robbins returned

from New York, I met him, I think, in Burch's Bank. I said to him you have made a better sale of that land than if I had been the purchaser. He made some reply but I don't recollect what it was.

206 INT. 4. It appears to me that Mr Robbins said that the price of land had advanced during the winter and spring and was likely to advance more.

INT. 5. Don't recollect that he expressed any disapprobation of the sale.

INT. 6. He said nothing more about the sale. Our interview was very brief.

INT. 7. When I talked with Robbins I supposed that a sale had been made or was in contemplation, of the whole Wight property to Bradley, Smith, Sloan and others.

INT. 8. It was the same property I negotiated for the preceding fall.

207

JUDGE'S CERTIFICATE.

This certifies that at the hearing before me, Edwin H. Sheldon was produced as a witness by complainants. The counsel for defendant objected to receiving his testimony for the reason that he was interested in the result of the suit. The objection was overruled, and counsel for defendant excepted.

The said witness testified as follows:

208 "I have no interest in the matter in controversy in this suit. I have sold my interest or share in the commissions, received by Ogden, Jones & Co., for the sale of this property, to Chas. R. Sheldon for \$1,000. I gave a deposition in this case a few days ago. The testimony I then gave is correct. I wish, however, to correct my statement in reference to the extent of the water front, upon examination I find it is four-fifths of a mile."

CROSS EXAMINATION.

"As a member of the firm of Ogden, Jones & Co., I was entitled to a share in the commissions of \$10,000 for the sale of this land. We charged

the property with these commissions. The money went into the general funds of the firm like any other moneys. The firm of Ogden, Jones & Co. have never had any settlement of their concerns. I was in the habit of drawing money from time to time as I needed it. I have received \$1,000 from Chas. R. Sheldon for my share of the commissions on this sale. None
209 of the money received for these commissions now remains in specie in the hands of the firm."

It was now agreed by counsel, that the deposition, and bill of sale attached thereto, heretofore given by the said Edwin H. Sheldon, should be read in evidence, in connection with the oral testimony above detailed—to have the same force and effect as though now taken in open court—subject, however, to the defendant's objection to the competency of said witness.

I further certify that the motion by defendant to suppress the deposition of Wm. B. Ogden, for the reason that he is interested in the result
210 of this suit was sustained by the Court—to which decision complainants excepted.

I further certify, that the due execution by the parties thereto of the various deeds and other instruments filed as evidence in this cause, was admitted by consent without proof.

GEORGE MANIERRE, [L. S.]
Judge 7th Judicial Circuit.

211

BILL OF SALE FROM EDWIN H. TO CHAS. R. SHELDON.

This agreement made this 12th day of April, 1859, at etc. Whereas certain commissions are due to the undersigned, etc., upon the sale to John Bradley and A. Hyatt Smith, or the Chicago Land Company, of certain premises known as the Wight property, etc. And whereas the commissions due, etc., for the interest of said Allen Robbins, etc., have not been drawn by said party of the first part, but are wholly unpaid and stand credited to commissions on the books of Ogden, Jones & Co., and amount to the sum of \$1,111 11-100. Now this agreement witnesseth,

that for and in consideration of \$1,000, etc., said party of the first part does hereby transfer and assign his said commissions upon the sale of the interest of the said Allen Robbins, in and to the said Wight property, and all right and claim of him, etc., in and to said commissions, or any part
212 thereof. As witness, etc.

EDWIN R. SHELDON, [L. S.]

CHARLES R. SHELDON, [L. S.]

DEPOSITION OF EDWIN H. SHELDON, TAKEN APRIL 5TH, 1859.

INT. 1. Reside in Chicago. 37 years old. Am one of the firm of Ogden, Fleetwood & Co.

INT. 2. I was one of the firm of Ogden, Jones & Co., in 1852, which firm were the successors of Ogden and Jones. I was in the office of Ogden and Jones, at the time of the execution of the contract between Ogden, Robbins and Marshall, set forth in the bill. In the spring
213 of 1852, when Sloan, Bradley and others applied to purchase the unsold portion of the Wight property, I was present. Wm. B. and Mahlon D. Ogden and myself consulted as to the price to be asked for it, and it was finally fixed, after several days' consultation. When the property was offered to Bradley and other parties, I was absent from the office more or less, on account of sickness in my family, from the middle of June, although in town. I understood at that time that the offer for the sale had been accepted. I was not present at the time of the execution of the contract to Bradley and Smith. I assented to and approved of the sale. Mahlon D. Ogden also assented to and approved of it. We were at that time all of the firm of Ogden, Jones & Co., and we left Wm. B. Ogden to act for us in the matter, under our assent and approval. (Objected to as incompetent.)

INT. 3. I was acquainted with the property, and think the price at which it was sold, was its full value at the time.

CROSS EXAMINATION.

214 CR. INT. 1. Property in Chicago did advance a good deal in 1852 and 1853—more particularly in 1853. This property is very much more valuable now than in 1852—perhaps it is worth four or five times as much. Said property is located on and near the North Branch of Chicago River, from a mile to a mile and a half from the forks of the river—the nearest about a mile. There is, I should say, a little more than half a mile fronting on the river, on both sides. The river is navigable for vessels drawing 7 or 8 feet, the entire distance. There are about 200 acres between the river and the lake, and about 20 acres on the West Side of the river. Bradley and his associates commenced the construction of the Illinois and Wisconsin Railroad, now called the Fond du Lac, I think in the fall of
215 1852. The track ran across the southwest corner of the 20 acres, on the west side of the river. The Fond du Lac, and the Chicago and Milwaukee Roads run their tracks across the 20 acres. The latter road was commenced in the fall of 1853, and winter of 1854,

CR. INT. 2. The negotiations with Bradley and Smith for this land were conducted by Wm. B. Ogden in our office.

CR. INT. 3. Have no personal knowledge when said contract was reduced to writing.

CR. INT. 4. I left Chicago, August, 1852, and returned in Sept., 1853. Most of the time I was out of the country.

CR. INT. 5. I have no knowledge of the particular terms of the contract made by Mr. Ogden with Bradley and Smith, save what I have obtained since my return in 1853.

216 CR. INT. 6. When I left Chicago in August, 1852, I knew nothing about any instructions given by Mr. Robbins respecting the sale of this property.

CR. INT. 7. I did not hear the subject of a Land Company, mentioned in 1852. I did not, nor did either of the firm, have any interest in the contract with Bradley and Smith.

CR. INT. 8. William B. Ogden, Mahlon D. Ogden and Edwin R. La Bar were the Trustees of the Chicago Land Company. They transacted

the business through our firm. The accounts of all their property were kept with Ogden, Jones & Co.

217 CR. INT. 9. I never signed any contract or memorandum of sale of this property to Bradley and Smith. I executed a general power of attorney to Mr. Ogden, authorizing him to act for me in every case, at the time I left in 1852. I have never in writing ratified the contract made by him.

CR. INT. 10. The firm of Ogden, Jones & Co., did succeed to the management, and assumed the supervision of this property, and kept and rendered accounts concerning it, after the 1st of July, 1850, when Mahlon D. Ogden and myself were admitted into the firm.

[Defendant objects to the foregoing deposition on account of the interest of the witness.]

AGREEMENT OF BRADLEY AND SMITH.

Whereas Wm. B. Ogden, acting for himself, &c., under and by virtue ^{solely} of authority vested in said Ogden by an indenture and contract made
218 between, &c., bearing date May 31st, 1847, has this day concluded a sale of all the unsold portions, &c., of the premises, named, &c., in such indenture, &c., and whereas there was included in said sale, &c., one acre of ground heretofore contracted by said Ogden, acting for, &c., to Hiram Joy for \$1500 or thereabouts, said acre being situated, &c. Now it was agreed in the making of said sale to said Bradley and Smith, between them and the said Ogden, that they should carry out and fulfil the condition of the said contract with said Joy, and upon his making the payment to them, &c., they should make him a proper deed, &c., of the title to said acre, or cause the same to be made to him, his heirs or assigns. The said Bradley and Smith, hereby assuming the obligations of said contract, &c.,
219 as fully as if made originally by them with said Joy. To all which they bind themselves, &c. Nov. 10th, 1852.

JOHN BRADLEY, [L. S.]

A. HYATT SMITH, [L. S.]

DEFENDANT'S PROOFS.

JUDGE'S CERTIFICATE.

This certifies that at the hearing had before me, Edward A. Drummond was produced as a witness by said defendant, who testified as follows :

220 "I am deputy clerk of the United States Circuit Court for the Northern District of Illinois. The papers now produced and exhibited by me are the original bill and answer filed in the United States Circuit Court in a certain suit in Chancery now pending therein, wherein Robert J. Walker is complainant, and Wm. B. Ogden and Mahlon D. Ogden are defendants. I have also certified copies of said bill and answer which have been furnished at the request of the defendant in this cause."

I further certify that at the said hearing John F. Clements was produced as a witness by the defendant, who testified as follows :

"I know Robert J. Walker. The signature of Robert J. Walker to the original bill filed in the suit Robert J. Walker vs. Wm. B. Ogden and Mahlon D. Ogden, pending in the United States Circuit Court, which is now here exhibited to me, is his genuine signature. He signed and made oath to said bill before me, as United States Commissioner."

I further certify, that the signatures of William B. Ogden and Mahlon
221 D. Ogden, to their answer above referred to, were admitted to be genuine.

Whereupon, the counsel for defendant offered the said bill and answer as evidence in this cause.

To this evidence the counsel for complainants objected as incompetent. This objection was sustained by the Court, and the evidence was rejected. To this decision the defendant excepted.

The certified copies of the said bill and answer above referred to were then put on file in this cause, and it was agreed by counsel that the said copies should for every purpose connected with this case be held and considered as of the same force, competency and effect as the original bill and answer, for which they are by consent substituted.

I further certify, that the motion by defendant to suppress the depositions of John Bradley and George Steele, was overruled by the Court, and to this decision defendant excepted.

I further certify that by agreement, a certified copy of a certain agreement, dated Sept. 3d, 1851, signed by John Bradley, E. F. Johnson, J. B. Macy, A. H. Smith, R. J. Walker, and Wm. Sloan, and attached to the deposition of S. H. Fleetwood, filed in the case of Walker vs. Ogden et al., in the United States Circuit Court, was introduced and read in evidence by said defendant, and the signatures thereto were admitted to be genuine.

GEORGE MANIERRE, [L. S.]
Judge 7th Judicial Circuit of Illinois.

223 BILL OF COMPLAINT in the suit Robert J. Walker vs. Wm. B. and Mahlon D. Ogden, pending in United States Circuit Court. Filed June 5th, 1855.

[This was a bill filed by Mr. Walker, as one of the shareholders in the Chicago Land Company, against the defendants, as the trustees of said Company, to compel them to deliver to him a certificate for 166 shares of stock, which the trustees claimed he had forfeited by the non-payment of an assessment made upon him, as one of the shareholders, July 19th, 1853, for \$4,166.66. It is set forth in the bill and admitted in the answer, that Mr. Walker was an original subscriber for 1,500 shares—that he had paid for and received a certificate for 200 shares—that he would have been entitled to certificates for the remaining 1,300 shares upon payment of future assessments, a certificate of one full paid share to be issued for every \$25 that should be paid. It was insisted by the trustees, that in consequence of the non-payment of the above assessments Mr. Walker had forfeited the 166 shares which he would have been entitled to receive a certificate for, had he paid the assessment, as well as all his stock in the Company, except the 200 shares for which a certificate had been issued. (See pages 226, 230, 271, and 305 of the record.) It was claimed by Mr. Walker, that there had been no legal forfeiture, and that on payment of the assessment, which was tendered, he was entitled to his certificate for

166 shares. Another object of the bill was to enjoin the sale of some of the Company's lands which had been advertised by the trustees. Only such portions of the bill and answer as are supposed to be material in this case appear in the abstract.]

To the Hon. Thos. Drummond, Judge, &c., Robert J. Walker, of &c., brings his bill against William B. Ogden and Mahlon D. Ogden of, &c. And thereupon your orator complains and says that early in the summer of 1851, your orator being convinced, from the extension of railroads and other causes, of the great enhancement that must take place in the value of real estate, in and near the City of Chicago, suggested the formation of a company to purchase land there—in consequence of which suggestion preliminary articles of association dated September 3d, 1851, providing for such purchases, were drawn up by your orator, and signed by him and by John Bradley, Edwin F. Johnson, John B. Macy, A. Hyatt Smith and Wm. Sloan; that on or about the 9th day of May, 1852, in further progress of said original plan of your orator, Wm. B. Ogden, John P. Chapin, John B. Macy, A. Hyatt Smith, William Sloan, John Bradley, Jacob P. Eastman, Edwin F. Johnson, Albert A. Bliss, Wm. B. Hotchkiss and your orator, mutually associated themselves together, for the purpose of procuring and purchasing divers tracts of land, &c., in and about the city of Chicago, for the joint benefit and advantage of the said several persons

224 last above named, according to their respective rights and interests in the premises—which said lands, &c., it was then and there agreed should be held in the name or names of one or more of the said several persons as trustees for the benefit of the whole, according to their respective interest therein as aforesaid, for the purpose of facilitating the operation of said association—that subsequently said association contracted to purchase, and did purchase, certain tracts and lots of land in or near the City of Chicago, which are more particularly described in a certain indenture of agreement bearing date the 2d day of May, 1853. (The bill then goes on to recite the articles of association of the Chicago Land Company, executed May 2d, 1853.)

* * * * *

249 And your orator further avers that per exhibit heretofore referred to it appears, and such was the fact, that said Wm. B. Ogden, under the articles before referred to, of 9th of May, 1852, was an original shareholder;

that said trustees reserved the right to purchase shares under the present articles, and from said facts, your orator believes are large shareholders, &c., &c.,

259 The foregoing bill is sworn to by the complainant June 5th, 1855.

263 THE JOINT AND SEVERAL ANSWER of Wm. B. Ogden and Mahlon D. Ogden to the above bill. Filed June 9th, 1856.

264 These defendants now and at all times hereafter, saving and reserving, &c., for answer to said bill, each answering for himself, and not one for the other, jointly and severally answer and say,

That they are wholly ignorant whether the statement made in said bill, that the said complainant was convinced that a great enhancement in the value of real estate would take place in the City of Chicago, is true or not, and have no information on the subject, and they are also ignorant, nor have they any information whether the said complainant suggested the formation of a company for the purchase of land in said city as is alleged in said bill, and they are unable positively to state whether such statement is true or not, but according to their best knowledge, information and belief, the said statement is not true.

And these defendants further answering, the said Wm. B. Ogden for himself, and the said Mahlon D. Ogden from information derived from the said Wm. B. Ogden, admit that on or about the 9th day of May, A. D. 1852, the said complainant was associated with Wm. B. Ogden and the other persons named in said bill, for the purpose of procuring and purchasing divers tracts of land and property in and about the City of Chicago, as is alleged in said bill. * * * * *

298 And these defendants further answering, deny that the said Wm. B. Ogden was an original shareholder under the articles of the 9th of May, 1852, and aver that neither of these defendants ever purchased any shares whatever, never owned any shares under said articles of association, and never held any in their own names, except as collateral security, and as to the rights of said trustees, under said articles of association, reference is hereby made to the said articles, &c., &c.

308 The answer is signed, but not sworn to by Wm. B. Ogden, and Mah-
 lon D. Ogden. [It no where appears in said answer that Wm. B. Ogden
 had resigned his office as trustee.]

309 AGREEMENT between R. J. Walker and others, dated Sept. 3d, 1851.

Whereas the Illinois and Wisconsin Railroad Company have made
 certain contracts for the building of their road, from, etc., to the City of
 Chicago, and thence to the State line of Indiana, and whereas said Com-
 pany propose to locate one of their depots in the said City of Chicago,
 which, etc., will give great value to the property in Chicago, near to said
 depot, etc., and whereas it is proposed to purchase said lands thus believed
 to be appreciated in value, etc., now it is understood that as far as practi-
 cable said lands will be purchased for the joint and equal benefit of the
 following persons, ten in number, and each holding one equal undivided
 tenth part of the same, and each contributing one-tenth part of the pur-
 chase money therefor, as hereafter stated, which said ten persons are the
 following seven persons, namely: John Bradley, Jacob P. Eastman, E. H.
 Johnson, John F. Macy, A. Hyatt Smith, R. J. Walker, and Wm. Sloan,
 and the others to be selected as hereafter stated, and whereas it is con-
 310 templated that certain of the ten persons, etc., will contribute the cash
 toward the payment of the purchase money, etc., charging interest, etc.,
 which said cash advances and interest, etc., is to be refunded within two
 years thereafter, etc., and whereas seven of the parties to this contract
 have subscribed the same, it is agreed the remaining three shall be select-
 ed by R. J. Walker, such persons being contemplated, as from their capi-
 tal or influence, it is deemed by him, would contribute most to the success
 of this enterprise, and it is further agreed that said lands thus proposed
 to be purchased shall be such as to price and location are first approved
 or selected by John B. Macy and A. Hyatt Smith, etc., they being limited
 to a sum for the entire purchase not exceeding \$300,000 nor at a distance
 more remote than four miles from the depot of the Illinois and Wisconsin
 Railroad Company, which depot is to be selected by said Smith and Macy
 and the land purchased by them at the best rates, to an extent of about
 311 20 acres, and which they shall set apart out of the purchased property,

and to be paid for by said Illinois and Wisconsin Railroad Company at the price given, or agreed to be given by said Smith and Macy, provided also that if said Walker can procure one person to make said advances, said person shall hold three tenths interest in said lands, or if two persons, said two persons shall hold three tenths, etc., it being also understood that for such advances, etc., said Smith and Macy shall transfer said lands, etc., as a security to the party making said advances, and for further security, each of said several parties, etc., to this contract shall execute his note for his tenth part of the purchase money advanced, etc., made payable in two years as aforesaid, and notes for the remaining seven-tenths payable when the remainder of the purchase money is to be paid, etc.

New York, 3d Sept. 1851.

312

JOHN BRADLEY,
EDWIN F. JOHNSON,
JOHN B. MACY,
A. HYATT SMITH,
R. J. WALKER,
WM. SLOAN.

313

DEPOSITION OF AUGUSTUS FRISBIE, TAKEN MARCH 29TH, 1859.

INT. 1. I reside in Chicago. Am 40 years of age. Engaged in the ice business.

INT. 2. In 1852 I was associated in business with Hiram Joy.

INT. 3. In connection with Mr. Joy I negotiated a trade with Mr. Ogden, which was consummated July, 22d, 1852. The first negotiations were had some two or three weeks before—about the first of July. Some
314 time elapsed in consequence of my opposing the trade. I had no interest in the purchase. The contract hereto attached "A," is the original contract signed by the parties. The price was \$1,500, on Canal time. I would not consent to the purchase until Mr. Ogden extended the time of the first payment. He extended it as expressed in the contract.

INT. 4. Mr. Ogden changed the terms of payment to meet our views, but added \$25 to make up the difference in interest on account of extending the first payment.

INT. 5. My recollection is that Mr. Ogden said about that time that he did not want to sell any more at that price—that it was cheap. He bound us to erect buildings, as appears by the contract. I saw no reluctance on his part to sign the contract and let Joy have the land.

INT. 6. I have not the most remote recollection that anything was said by Mr. Ogden during the negotiations, about any previous sale of this land to other parties. It is among the bare possibilities that something of the kind may have been said, but my memory is good, and had there been any such conversation I think I should remember it, and I should, according to my custom in such cases, have noted it on the contract, or made some memorandum of it. For the last 10 years I have kept a record and account of all Mr. Joy's real estate transactions, and have had the general supervision of all his real estate matters, and contracts of all kinds.

316 INT. 7. On the first day of June, 1853, \$603.28 was paid to Ogden, Jones & Co., and their receipt was endorsed on the contract which Joy holds (a duplicate to the one hereto attached.) On the first of Dec., 1854, \$560 was paid and receipt taken as above. On the 7th of November, 1855, \$584.18, the balance due, was paid and receipt taken.

INT. 8. The paper hereto attached marked "B," is a deed of the same property signed by Mr. Ogden. I know his signature. Mr. Joy told me that Mr. Ogden handed this deed to him, and that he handed it to Mr. Robbins to be executed, and that he declined.

INT. 9. At the time this land was sold, the contract price was all it was worth. It is now worth about \$10,000.

317 INT. 10. I should judge that the whole of Wight's Addition was at that time worth \$500 an acre. That portion along the river was worth \$25 a foot. That is what I could have sold it for, for cash, at that time.

CROSS EXAMINATION.

CR. INT. 1. I was a party to the negotiations for this land from first to last. My impression is, that the first conversation took place between Ogden and Joy.

CR. INT. 2. There was no agreement upon the terms of the contract until they were agreed upon, between Ogden, Joy and myself. The price had been fixed between Ogden and Joy.

318 CR. INT. 3. The terms of payment were agreed upon at the date of the contract—it might have been a day or two before.

CR. INT. 4. I recollect that the terms were agreed upon at that time, and might have been a few days or even weeks before.

CR. INT. 5. It is my best recollection that it was not more than two or three days, but it might have been two or three weeks, it could not have been more than that at the outside.

CR. INT. 6. I knew nothing of any sale or negotiation of sale of the whole Wight property.

CR. INT. 7. I never applied to Mr. Robbins for the purchase of this property.

319 DEPOSITION ON ISAAC H. BURCH, TAKEN MARCH 29, 1859.

INT. 1. I reside at Chicago. Am a banker.

INT. 2. I have known Allen Robbins 12 or 14 years.

INT. 3. He has occupied a desk in my office for 10 years up to within 3 or 4 years. The intimacy between us has extended to the free discussion of matters of business, and in his absence I had charge of his property in Chicago.

320 INT. 4. His residence was in New York. He was, I think, in Chicago during most of the summer of 1852, and left about the first of November.

INT. 5. I think early in the summer of 1852, Mr. Robbins informed me that Mr. Ogden was negotiating a sale of the Wight property to a Mr. Bradley. I think Ogden had proposed to sell the property at about \$100,000. He asked my advice as to his concurrence in a sale of that kind. I advised him not to sell. We examined the map, and my judgment was that the property was worth twice the money at least, and advised him to that effect. Mr. Robbins was himself convinced at the time that the figures mentioned by Mr. Ogden were too low, and was considerably excited at the threat of Mr. Ogden to sell against his remonstrance. I think he ad-

dressed a note to Mr. Ogden remonstrating against his making any sale beyond what was necessary to re-imburse expenses for taking care of the
 321 property. The letter now shown me, which is attached to the deposition of Wm. B. Ogden and marked "Exhibit C," is similar in its tone to the one he read me. I should think it was the same letter. (Objected to.)

CR INT. 6. I knew nothing of any sale or negotiation of sale of the whole Wight Property.

INT. 7. I should think that property is now worth \$2,500 an acre.

INT. 8. I remember no other steps taken by Mr. Robbins in reference to this sale.

DEPOSITION OF HIRAM JOY, TAKEN MARCH 30, 1859.

322 INT. 1. I reside in Chicago. Age about 49. Am an ice dealer,

INT. 2. In 1852 I was associated in business with Augustus Frisbie.

INT. 3. During the year 1852 I purchased of Wm. B. Ogden the property described in the contract attached to Mr. Frisbie's deposition. I made a contract with Mr. Ogden some 3 weeks before the papers were made out. I told Frisbie what I had done and to go and make out the papers, which he did.

INT. 4. Mr. Ogden manifested no unwillingness or reluctance to close the trade.

INT. 5. Mr. Ogden said nothing about any sale of this property to Bradley and Smith, and I had no knowledge or information of any such thing, as I recollect.

323 INT. 6. I was anxious to get this property, and Mr. Ogden made no objection. At the first interview he said if I would improve it he would let me have it, otherwise he would not.

INT. 7. Mr. Ogden executed a deed to me—the same attached to Mr. Frisbie's deposition, marked Exhibit "B." I took it to Mr. Robbins for him to sign it, and he declined.

INT. 8. After he declined to sign it, I took it back to Ogden, Jones & Co.'s office. I told them he would sign it if they would pay him. Mahlon D. Ogden then handed me the paper attached to Wm. B.

Ogden's deposition, marked "E," and said "Oh, well, we will do that."
 324 He also gave me a check for \$591.82 to hand to Mr. Robbins. I took the paper and check to Mr. Robbins. He retained the paper and refused the check. He also retained the deed and contract of purchase and still declined to sign the deed. I took the check back to Mr. Ogden.

CROSS EXAMINATION.

CR. INT. 1. I made the bargain with Mr. Ogden, and then sent Mr. Frisbie to draw up the papers.

DEPOSITION OF FRANKLIN HATHAWAY, TAKEN MARCH 30TH, 1859.

INT. 1. Reside in Chicago. Am a clerk.

INT. 2. I was engaged in the office of Ogden, Jones & Co., while that firm was in business, as book-keeper and cashier.

325 INT. 3. I was in the service of Ogden and Jones prior to that for over 3 years. The firm of Ogden, Jones & Co. was formed July 1st, 1850. It was changed Nov. 1st, 1855, to Ogden, Fleetwood & Co. I have been in their office ever since.

INT. 4. The business of the concern continued to be managed as though no change in the firm had been made.

INT. 5. Ogden, Jones & Co. assumed the supervision of the Wight property, and kept and rendered regular accounts of sales, disbursements, &c., up to the time of the pretended sale to Bradley and Smith.

326 INT. 6. I cannot state positively whether Mr. Robbins was indebted to the firm on account of their disbursements for this property, at the time of said sale. My recollection is that Mr. R was in the habit of advancing his proportion every 6 months—so as to keep up with the advances made by Mr. Ogden—but the property was largely indebted for disbursements and advances on its account, at the time of the sale.

INT. 7. I think no change took place in the management of the business relating to this property in consequence of the death of Mr. Jones.

Accounts were made out and rendered to Mr. Robbins by the surviving members.

327 INT. 8. The account attached and marked "Exhibit A," was made out by me. I presume it was rendered to Mr. Robbins. I believe they were ordinarily made out in this way.

INT. 9. The papers attached, marked "B," "C," and "D," are in the hand-writing of clerks in the office. I presume they relate to this Wight property.

INT. 10. I believe the sale to Bradley and Smith embraced all the Wight property, then remaining unsold.

INT. 11. I think there was a commission of 10 per cent. charged upon Ogden, Jones & Co.'s books for this sale. (Objected to.)

328 INT. 12. Do not know whether Mr. Ogden has drawn his share.

INT. 13. Mr. Robbins has never drawn any portion of the proceeds of that sale, to my knowledge. My impression is that he has not.

INT. 14. I have no distinct recollection of the letter from Mr. Robbins to Mr. Ogden dated August, 1852. I cannot swear positively whether I ever saw the letter or not.

INT. 15. It is impossible for me to recollect any particular letter among the thousands that come to the office. I may have seen this letter, but I have no recollection of it.

329 INT. 16. I have no recollection as to what occurred about the date of that letter in relation to the sale of the Wight property.

INT. 17. At the time of the sale I think I knew nothing about any instructions given by Mr. Robbins.

INT. 18. I cannot say that I had any knowledge of Mr. Robbins' being opposed to the sale. I do not know of Mr. Ogden's having taken legal advice about it.

330 INT. 19. I mean to be understood that, at or about the time of said sale, I had no knowledge on the subject referred to.

INT. 20. I cannot fix upon the precise date when I learned that Mr. Robbins was opposed to the sale, but think it was at or about the rendering of the February semi-annual account of 1853.

INT. 21. I do not know whether any discussion was had between Mr. Ogden and Bradley and Smith as to his authority to make the sale.

INT. 22. Edwin H. Sheldon was a member of the firm of Ogden, Jones & Co., through the summer and fall of 1852.

331 INT. 23. Sheldon was not, I think, a member of the Chicago Land Company.

INT. 24. I do not know whether Wm. B. Ogden made any purchases for the Chicago Land Company in 1852.

INT. 25. Neither Mr. Ogden or his firm bought the Elston property for said Company to my knowledge.

CROSS EXAMINATION.

CR. INT. 1. The Wight property was indebted at the time of the sale to Bradley and Smith for advances, to the amount of about \$8,500, perhaps a little less.

CR. INT. 2. Ogden, Jones & Co. kept the accounts and managed this property under the direction and control of Wm. B. Ogden.

332 CR. INT. 3. There was a sale of a lot in the Wight property to Hiram Joy, in July, 1852. The Chicago Land Company got the benefit of the purchase money.

CR. INT. 4. The first money received on that contract was credited to the Wight property on the books. Soon after the entry was made it was ascertained that this lot was a part of the Chicago Land Company's purchase. The entry was then changed by charging the amount entered in error back to the Wight property, and crediting the amount to the Chicago Land Company. The money was received and credited in the latter part of May, 1853, and the entry corrected the latter part of June following.

333 CR. INT. 5. I should think that the paper attached to Wm. B. Ogden's deposition marked "Exhibit E," was a transcript of the sales-book, where the sale is noted. The contract appears in the name of Ogden and Robbins, because at that date the legal title to the property was, as I suppose, in their name. The only indication upon the paper, as to what account in the books received credit for the moneys noted therein, appears

in a note at the foot of the statement, setting forth that the money was received for the Chicago Land Company..

CR. INT. 6. I was not sufficiently acquainted with the value of real estate here in 1852, to make my opinion of much value.

DIRECT EXAMINATION RESUMED.

INT. 26 The time referred to in my statement about the indebtedment of \$8,500 of the Wight property, is the 1st of August, 1852.

334 INT. 27. This debt was contracted for taxes and improvements. Mr. Robbins had, I believe, up to that time, advanced his proportion, but the property was then indebted in the amount named.

INT. 28. The amount received from Joy went to the credit of the Chicago Land Company in the same manner as receipts for other property sold for them.

INT. 29. The paper attached, marked "E," is an account respecting the Wight property, rendered by Ogden, Jones & Co., to Mr. Robbins, Feb. 1st, 1853.

CROSS EXAMINATION RESUMED.

335 CR. INT. 7. There are cases on the books, where property accounts controlled by Wm. B. Ogden, are kept on the books of the current firm, and the accounts are rendered by them in the firm name.

CR. INT. 8. The paper attached, marked "F," is a correct transcript from the books of Ogden, Jones & Co. relating to the Joy purchase, and was made out by me.

DIRECT EXAMINATION RESUMED.

336 INT. 30. The paper attached to Wm. B. Ogden's deposition and marked "Exhibit F," is a letter purporting to be written to Ogden and Jones, and I recognize on the back of it an endorsement in the handwriting of Mr. Jones. I conclude from this that it was received by them.

EXHIBITS ATTACHED TO MR. FRISBIE'S DEPOSITION.

337

"EXHIBIT A."

Articles of agreement made, &c., the 22d day of July, 1852, between Wm. B. Ogden and Allen Robbins, by Wm. B. Ogden, his attorney, of the first part, and Hiram Joy of the second part, witnesseth, that the party of the first part, in consideration, &c., hereby agrees to sell to the party of the second part, all that certain lot, &c., known, &c., as part of the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 5, T. 39, N. R. 14 E., bounded, &c., containing about one acre. And the said party of the second part hereby agrees to pay to said party of the first part, at the office of Ogden, Jones & Co., in Chicago, the sum of \$1,525, as follows: \$525 June 1st, 1853; \$500 June 1st, 1854; \$500 June 1st, 1855, with interest annually, &c.; and that he will pay all taxes subsequent to the year 1851, and all assessments, &c. The party of the second part further agrees that he will erect good and substantial buildings on said premises by the first of December next, worth at least \$1,000, which shall remain thereon, &c.

(Here follow covenants for a deed, &c., &c.)

342 In witness whereof, the party of the first part in person and by attorney, and the party of the second part, in his own proper person, have hereunto set their hands and seals, &c.

WM. B. OGDEN, [L. S.]
 ALLEN ROBBINS, [L. S.]
 By W. B. Ogden, his attorney.
 HIRAM JOY, [L. S.]

343

"EXHIBIT B."

[This is a deed of conveyance of the premises described in the foregoing contract, bearing date February 29th, 1856, in which the grantors mentioned are William B. Ogden and Allen Robbins, and Hiram Joy is grantee. The deed is executed only by Wm. B. Ogden.]

EXHIBITS ATTACHED TO THE DEPOSITION OF MR. HATHAWAY.

346

"EXHIBIT A."

[This is an account with the Wight property from February 1st to August 1st, 1853, rendered by Ogden, Jones & Co., August 1st, 1853, and commencing as follows :

"THE WIGHT PROPERTY,

— In account with Ogden, Jones & Co., successors to Ogden & Jones."]

347

"EXHIBIT B."

[This is another account with the same property from August 1st, 1855, to February 1st, 1856, rendered by Ogden, Jones & Co., February 1st, 1856, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

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"EXHIBIT C."

[Another account with the same property from August 1st, 1854, to February 1st, 1855, rendered by Ogden, Jones & Co., Feb. 1st, 1855, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

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"EXHIBIT D."

[Another account with the same property from February 1st, to August 1st, 1855, rendered by Ogden, Jones & Co., Aug. 1st, 1855, and commencing as follows :

"WIGHT PROPERTY,

In account with Ogden, Jones & Co., survivor and successors of Ogden & Jones."]

350

"EXHIBIT E"

[Another account with the same property, from August 1st, 1852, to February 1st, 1853, rendered by Ogden, Jones & Co., February 1st, 1853, and commencing as follows:

"THE WIGHT PROPERTY,

In account with Ogden, Jones & Co., successors to Ogden & Jones.

This statement contains a credit of \$25,000 under date of Nov. 11th, 1852, received from Bradley and Smith, 1st payment on their contract, and a debit of \$10,000 under date of Jan. 31st, 1853, for 10 per cent. commissions upon the sale to Bradley and Smith.]

353

"EXHIBIT F."

WIGHT PROPERTY,

In account with Ogden, Jones & Co., successors of Ogden and Jones.

1852.		Dr.
Aug. 10.	To commissions on sale, 1 a. E. $\frac{1}{2}$, S. E. 5 to Hiram Joy, a 1525.	\$152.50
1853.		
Jan. 31.	To interest on am't com's on sale to Hiram Joy to Feb. 1, 1853.	4.32
June 30.	To Chicago Land Co. for transfer of pay't rec'd May 27, 1853, of H. Joy on cont. 1 a.	603.28

1853.		Cr.
Jan. 31.	By counter chg. of com's chg'd Aug. 10, 1852,	
	on sale to H. Joy a \$1,525. - - - -	\$152.50
	By counter ch'g am't int. ch'gd on above	
	com's in account ren'd - - - -	4.32
May 27.	Cash of H. Joy on cont. 1 a in Sec 5. -	603.28
		\$760.10 \$760.10

A correct abstract of Wight Property account on books of Ogden, Jones & Co., as far as relates to sale to Hiram Joy.

F. HATHAWAY.

CHICAGO LAND CO.,		
In account with Ogden, Jones & Co.		Cr.
1853.		
June 30.	By Wight Property, for transfer of amount rec'd	
	May 27, 1853, of H. Joy on his cont 1 a. - -	\$603.28
1854.		
Dec. 1.	By Cash of H. Joy on cont. 1 a. in 5, 39, 14, . -	588.00
1855.		
Nov. 7.	By Cash of H. Joy, on cont., L. 11, B. 83, E. a. in full. -	584.18
		\$1,775.46

A correct abstract of Chicago Land Co. account on books of Ogden, Jones & Co. so far as relates to sale to Hiram Joy.

F. HATHAWAY.

354 *Stipulation* admitting that the letter of March 4th, 1848, from Allen Robins to Ogden and Jones attached to Wm. B. Ogden's deposition and marked "Exhibit F," and that the letter of Aug. 27th, 1852, from said Robbins to Wm. B. Ogden, attached to said Ogden's deposition and marked "Exhibit C," were written and received at or about the times they bear date

355 DECREE rendered May 2d, 1859, that the agreement of Nov. 10, 1852
 set forth in the pleadings, be carried into execution, and that said defend-
 ant execute and deliver to Mahlon D. Ogden, Trustee of the Chicago Land
 Company within 30 days, a deed of conveyance sufficient to convey the
 359 legal title to an undivided half of the premises in question. And in case
 of his refusal to execute such conveyance, the Master in Chancery shall
 make and deliver a deed, &c. And it is further ordered, by consent of
 parties, that the parties shall have all the benefit of their exceptions to the
 several rulings of the Judge noted in the Judge's several certificates, as
 fully as if the same were embodied in this decree, and defendant to pay
 costs, &c.

Defendant excepts to the decree and prays for an appeal.

Appeal granted, and bond filed in compliance with the order of the
 Court.

Appellant assigns for error.

1st. The Court below erred in admitting and considering the testi-
 mony of John Bradley, George Steele, and Edwin H. Sheldon.

2d. The Court below erred in excluding from this case as evidence
 the bill and answer in Chancery, in the suit Robert J. Walker vs. William
 B. Ogden and Mahlon D. Ogden.

3d. The Court below erred in decreeing a specific performance of
 the contract referred to in the bill.

4th. The Court below ought to have rendered a decree dismissing
 the bill.

STUART & AYER,

Solicitors for Appellant.

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Robbins vs Butler

Abstract

Filed Apr 24. 1860

L. Deland

Clark