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SUPREME COURT OF THE STATE OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1860.

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

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 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.]

Acknowledged by Wm. B. Ogden, Allen Robbins, and James C. Marshall, May 31st, 1847, and by Jane E. Wight, June 28th, 1847, and 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 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.

8

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.

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:

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

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 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 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 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
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 consid-
36 able 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 thereinafter 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 thereinafter 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 indi-
37 vidual 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

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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 transferred from time to time by the holder thereof, or his personal representative 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 subscribing 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 impracticable, to conduct a suit with such shareholders parties thereto by name, and that such a suit would be a serious embarrassment to the shareholders by its interference with the assignment and transfer of their respective 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 association, and as such, have certificates for full paid shares therein, representing 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

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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 manage-
68 ment; and in view of these abuses of the trust, defendant in the exercise of the reserved power, contained in said agreement, determined to 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.

abuse of trust

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.

STIPULATION admitting, that, on the 2d of May, 1853, Robert J.
84 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.

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 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.
91 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.,

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

94 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.

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

96 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,
97 &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.

99 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.

101 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 thereinafter 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

28

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. Original contract produced & identified.

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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 personal 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.

* The Bank, in reply to a letter, agreed to give up the Stock upon my paying part of the note & placing with it certain other collateral - I sent the Bank a Fond du Lac Bond & Mr Ogden sent them a draft for the amount of the purchase money to be paid me for the stock, which was to be credited by the Bank on the note.

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. p-1

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, p-9

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.

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
154 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.")

1.42 —

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
/0-44 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
/1-42 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 interested. 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 knowledged, have it in contemplation 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 degree 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 myself, 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 previous 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 dont'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
p. 43. 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 made and subsequently ratified by him 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 p. 45 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 p. 45 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

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

176 "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 pleasent 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 ex-
177 ceeding 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,
WITH
OGDEN & ROBBINS

July 22, 1852, 1 a in Sec 5, 39, 14.
Payable $525, June 1, 1853.
" $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 $\frac{1}{3}$ 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 sufficent 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 agrement 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.

180 "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 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 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. Willkins 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:

"I have no interest in the matter in controversy in this suit. I have
208 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 thould 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 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 depo-
222 sitions 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
224 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 sppposed 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 reserv-
264 ing, &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 Mahlon 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
p-73- 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 reluc-
315 tance 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.

p-73- 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.

220 500 $110,000
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. - I was not present —

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 mattters 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.

p74- 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.

p74- 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 indebtment 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.

p. 75 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.

p 75 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.

INT. 30. The paper attached to Wm. B. Ogden's deposition and
336 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. ½ of S. E. ¼ 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. ½, 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

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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.

1853.		Cr.
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

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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 defendant 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 testimony 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.

Robbins vs Butler Index

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Supreme Court of the State of Illinois. Third Grand Division. Of the April Term A. D. 1860.

Allen Robbins,
Appellant,

vs.

Charles Butler,
John P. Chapin,
Walter S. Gurnee, &
Shahlon D. Ogden,
Appellees.

Appeal from the Circuit Court of the County of Cook. In Chancery.

And now comes the said appellant Allen Robbins, by his Solicitors Stuart & Clyde, and says, that in the record and proceedings aforesaid, and also in rendering the decree aforesaid, there is manifest error; and he hath appealed therefrom to this court; and he states among other grounds of error therein the following:-

First. The court below erred in admitting and considering the testimony of John Bradley, George Stule and Edwin H. Sheldon.

Second. 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.

Third. The court below erred in decreeing a specific performance of the contract refered to in the bill.

Fourth. The court below ought to have rendered a decree dismissing the bill.

And the said appellant Allen Robbins prays that the decree aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing -

Allen Robbins
By his Solicitors
Stuart Allyn

Nullus est erratum

O Beckwith
for Appellees

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the Eleventh day) of April, in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the said United States the Eighty-third

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L. Church Clerk.

1. Be it Remembered that heretofore, to wit, on the 14th day of May, in the year of our Lord, one thousand, eight hundred and fifty six, Charles Butler, John P. Chapin, Walter S. Gurnee and Mahlon D. Ogden, Complainants, by Beckwith & Arnold their Solicitors, filed in the office of the clerk of said Circuit Court, their certain bill of complaint in the words and figures following, to wit—

Bill of complaint

To the Hon. George Manierre, Judge of the Circuit Court of Cook County, in the State of Illinois—

Humbly complaining, sheweth unto your honor, your orators, Charles Butler, of the city, county and State of New York, John P. Chapin and Walter S. Gurnee, of the city of Chicago, county of Cook and State of Illinois, on behalf of themselves, and all

other shareholders in the Chicago Land Company, a voluntary association, hereinafter described- and Mahlon D. Ogden, of the city of Chicago aforesaid, the surviving and remaining trustee of said association, that heretofore, to wit, on the 31st day of May, A D. 1847. one William B. Ogden, and one Allen Robbins, now of the city of New York aforesaid, were the owners, in fee simple, as joint tenants, and not as tenants in common, of the following described parcels of land- that is to say

The North East quarter, section five (5) in township thirty nine (39) North of Range fourteen (14) East of the third principal meridian, containing one hundred and sixty (160) acres, more or less-

2. Also, the following lots and blocks in Wights addition to Chicago, in said city of Chicago, said addition being laid out on the Southerly portion or end, of the East half of the South East quarter of section five (5) in the township and range aforesaid, to wit- Lots one (1) and three (3) in block one (1) lots one (1) two, (2) three (3) four (4) five (5) and six (6) in block two, (2) lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine, (9) ten (10) eleven (11) twelve (12) and thirteen (13) in block three (3)- lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) and nine (9) in block seven (7)- lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven

(11) and twelve (12) in block eight (8) lots one (1) two (2) three (3) four (4) five (5) six, (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) in block nine, (9) - lot one (1) in block four (4) being the entire block - lots one, (1) two (2) three, (3) four, (4) five (5) seven (7) eight (8) nine (9) ten, (10) eleven (11) and twelve (12) in block five (5) - lots two (2) three (3) six (6) seven (7) eight (8) ten (10) thirteen (13) and fourteen (14) in block ten (10) lots three (3) four (4) five (5) seven (7) eight (8) ten (10) eleven (11) thirteen (13) and fourteen (14) in block eleven (11) lots three (3) five (5) seven (7) nine (9) eleven (11) and
3. thirteen (13) in block twelve (12) and lots three (3) five (5) seven (7) eight (8) ten (10) and twelve (12) in block thirteen (13) and also the residue of the said East half of the southeast quarter of section five (5) and being all of the said East half of said South-east quarter not embraced and included in the plat of said Wights addition, and containing fifty three (53) acres, more or less, all of which said premises, lots and lands, are situate in the city of Chicago, County of Cook and State of Illinois.

Your orators further show unto your honor, that on the same 31st day of May A.D. 1847. one Jane E. Wight, widow of John S. Wight, then deceased, under whom, the said William B. Ogden and Allen Robbins, acquired their title to the said several parcels

of lands, was entitled to dower, in said several parcels above described - and the said William B. Ogden and Allen Robbins, for the purpose of compromising and settling the said dower claim of the said Jane E. Wight, and for the other purposes mentioned in the agreement, hereinafter next set forth, on the same 31st day of May, A.D. 1847. made and entered into an agreement in writing, with each other, and with the said Jane E. Wight, and one James C. Marshall, as her trustee, which said agreement, was by the said parties respectively executed, under their respective hands and seals, and is in the words and figures following, to wit -

4. This Indenture, made this Thirty first day of May in the year of our Lord, One Thousand, Eight Hundred and Forty seven, witnesseth, Whereas, we, William 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 the North-east quarter, section five (5) in Township (39) of North Range fourteen (14) East of the third principal meridian, containing one hundred and sixty (160) acres, more or less - Also the following Lots and Blocks in Wights addition to Chicago, in said city of Chicago - said addition being laid out on the southerly portion or end of the East half of the South East quarter

of section five (5) in the Township and Range a-
foresaid, to wit- Lots one (1) and three (3) in block
one (1)- lots one (1) two (2) three (3) four (4) five (5) and
six (6) in block two (2)- lots one (1) two (2) three (3) four
(4) five (5) six (6) seven (7) eight (8) nine (9) ten (10)
eleven (11) twelve (12) and thirteen (13) in block three
(3)- lots one (1) two (2) three (3) four (4) five (5) six (6)
seven (7) eight (8) and nine (9) in block seven (7)-
lots one (1) two (2) three (3) four (4) five (5) six (6)
seven (7) eight (8) nine (9) ten (10) eleven (11) and
twelve (12) in block eight (8)- lots one (1) two (2)
three (3) four (4) five (5) six (6) seven (7) eight (8)
nine (9) ten (10) eleven (11) twelve (12) thirteen (13)
and fourteen (14) in block nine (9)- lot one (1) in
block four (4) being the entire block- lots one (1)
two (2) three (3) four (4) five (5) seven (7) eight (8)
nine (9) ten (10) eleven (11) and twelve (12) in block
five (5)- lots two (2) three (3) six (6) seven (7) eight
(8) ten (10) thirteen (13) and fourteen (14) in block
ten (10)- lots three (3) four (4) five (5) seven (7) eight
(8) ten (10) eleven (11) thirteen (13) and fourteen (14)
block eleven (11)- lots three (3) five (5) seven (7) nine
(9) eleven (11) and thirteen (13) in block twelve (12)
and lots three (3) five (5) seven (7) eight (8) ten
(10) and twelve (12) in block thirteen (13) and al-
so the residue of the said East half of the South
east quarter of section five (5) and being all of
said East half of said South East quarter not

embraced and included in the plat of said Wright's addition, and containing fifty-three (53) acres, more or less, all of which said premises, lots and lands, are situate in the city of Chicago, county of Cook, and State of Illinois-

And whereas, Jane E. Wright, of Erie, in the State of Pennsylvania, widow of John H. Wright 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. Wright 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, subdivisions 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, ~~under this~~ 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—

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 term 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. Wright,

8.

her executors or administrators, on the first 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,
9. 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 shall be paid them— And there are, in like manner, to allow

six per cent. interest on any balance in their 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,
10. 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 Hundred and four 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 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 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. Wright, 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 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. Wright, 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

13.

premises, (if any) after the 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 E. Marshall, trustee, as aforesaid, or in case of his decease, to the said Jane E. Wright, 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
13. 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 de-
+ sired 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 be disposed of, and the

proceeds thereof be realized and divided as herein-
before 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 here-
inbefore provided for, and also to pay the said sum
of eleven hundred and four 53/100 dollars, with in-
terest thereon, as aforesaid, and the further sum
of two thousand and seventy six dollars and for-
ty-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.
Wright, 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
14. legal representatives— The only claim or interest grow-
ing out of this instrument of writing made by us,
is intended and hereby declared to be but a person-
al contingent claim or money demand against us
personally, for a part of the net money proceeds to a-
rise from the sales or other dispositions of the prem-
ises 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 contin-
gent condition herein provided for, requiring a divi-
sion and conveyance from us of a portion of the
unsold remainder of said property, if any re-
main, nor shall it then constitute any claim
to the realty or fee thereof, until such conveyance

shall have actually been executed 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—

15.

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
16. 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.

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. Wright— L.S.

State of Illinois
Cook County, City of Chicago } ss.

On the thirty-first day
17. of May, in the year of our Lord, One thousand, eight hundred and forty-seven, before the subscriber, William H. Bushnell, Notary Public, duly commissioned and sworn, and residing in the City of Chicago, personally appeared William B. Ogden, Allen ~~Robbins~~ Robbins, and James C. Marshall, to me known to be the real persons described in, and who executed the annexed instrument, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed—

In testimony whereof, I have hereunto set my hand, and affixed my official seal, the day and year above written—

Wm. H. Bushnell, Notary Public— L.S.

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Commonwealth of Penn.
Erie County } ss.

Be it remembered that on the Twenty-eighth day of June A. D. 1847 before me, George Kellogg, Esq. one of the Justices of the Peace in and for said County, came the within-named Jane E. Wight, and acknowledged the within instrument to be her act and deed, and desired that the same might be recorded as such, according to law. In testimony whereof, I have hereunto set my hand and Seal, the year and day above written—

George Kellogg L. S.

State of Penn.
Erie County } ss.

18.

I, Wilson King, Prothonotary of the Court of Common Pleas, of Erie county, do certify that George Kellogg, Esq. was on the 28th day of June, A D. 1847. a Justice of the Peace in and for said County of Erie, duly elected, commissioned and qualified, and by the laws of Pennsylvania, a Justice of the Peace is a proper officer to take the acknowledgement of deeds, and other instruments of writing, and that his attestation is in due form, and to whose official acts full credit are due—

In testimony whereof, I hereto subscribe my name and have affixed the seal of said Court of Erie, June 29th A. D. 1847.

Wilson King— Prothonotary— L. S.

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State of Penn.
Erie County } ss.

I, Gaylord Church, President Judge of the sixth Judicial District, (or Circuit) composed of the Counties of Erie, Crawford, Venango and Warren, do certify that Wilson King, whose name appears to the above and foregoing certificate, is the Prothonotary of the Court of Common Pleas, of the County of Erie, Pennsylvania, and the seal ~~thereto~~ by him thereto fixed, is the seal of the said Court— and also, that his attestation of the said record is in due form—

Witness my hand and seal this 29th day of June
19 A. D. 1847. G. Church L.S.

State of Penn,
Erie County } ss.

I, Wilson King, Prothonotary of the Court of Common Pleas, in and for said county, do hereby certify that Gaylord Church is President Judge of the Sixth Judicial District, or Circuit of Pennsylvania, composed of Erie and othee counties, duly commissioned and qualified, and to all whose official acts, full faith and credit are due, and further, that the signature "G. Church," to the within, purporting to be his, is genuine—

Witness my hand and the seal of said Court at Erie, June 29th 1847. Wilson King. Prothonotary

L.S.

Your orators further show unto your honor, that after the execution of said agreement, as aforesaid, the same was duly acknowledged by the several parties thereto, as will more fully appear by certificates of such acknowledgements thereto attached, copies whereof are hereinbefore set forth, and that said agreement so acknowledged, as aforesaid, was afterwards, on the 9th day of July, A. D. 1847. recorded in the Recorder's office of Cook County, in Book No. 24. page 37. &c. as by the said record will more fully appear—

Your orators further show unto your honor, that on the 31st day of May, A. D. 1847. at the time of making and executing the agreement hereinbefore set forth, the firm of Ogden and Jones mentioned in said agreement, consisted of said William B. Ogden, and one William E. Jones— and that afterwards, to wit on the 1st day of July, A. D. 1850, the said William B. Ogden and William E. Jones, associated with them your orator Mahlon D. Ogden and one Edwin H. Sheldon, and thereafter transacted business under the name and style of Ogden, Jones & Co. That afterwards, to wit, on the 9th day of March A. D. 1851. the said William E. Jones deceased, leaving him the said William B. Ogden, as the survivor of the said firm of Ogden and Jones— That from and after the decease of the said William E. Jones, as aforesaid, the said

William B. Ogden, Mahlon D. Ogden and Edwin H. Sheldon, continued the business as partners, under the said name of Ogden, Jones & Co. as the successors of said firm of Ogden & Jones, up to the 1st day of January, A. D. 1853, when the said William B. Ogden, Mahlon D. Ogden and Edwin H. Sheldon, associated with themselves in said business one Edwin R. La Bar, and continued the transaction of said business under the said name of Ogden Jones & Co. That said Edwin R. La Bar, deceased on the 2nd day of January, A. D. 1854. and the said business was continued by said William B. Ogden, Mahlon D. Ogden, and Edwin H. Sheldon, under the firm name of Ogden, Jones & Co. until the 1st day of November, A. D. 1855. when one Stanley H. Fleetwood was admitted as a member of said last-mentioned firm, and since that time they have transacted business under the name and firm of Ogden, Fleetwood & Co. That that said firm of Ogden, Jones & Co. consisting of its several and different members, at different times, as hereinbefore stated, were the successors in business of the firm of Ogden and Jones, and that the firm of Ogden, Fleetwood & Co. have been, since the 1st day of November, A. D. 1855, and are now the successors in business of the said firm of Ogden and Jones.

21.

Your orators further show unto your honor, that

heretofore, to wit, on the 1st day of June A. D. 1852. the said William B. Ogden, then being the survivor of the said firm of Ogden and Jones, and acting as such survivor, and for the said firm of Ogden, Jones & Co. the successors in business of said firm of Ogden & Jones, for himself and for the other parties to the agreement, hereinbefore set forth, made and entered into a verbal agreement with John Bradley and A. Hyatt Smith, relative to the sale and purchase of the lands and lots hereinafter described— which said verbal agreement was afterwards on the 10th day of November, 1852. reduced to writing, and signed and sealed by the respective parties thereto, and which is in the words and figures following, to wit—

22.

Whereas Allen Robbins of New York, and William 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 premises described in said Indenture, in part or in whole, when, where, and as they shall in their discretion think and deem so be most advantageous and conducive to the best interest 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. Wright, and named in said Indenture, did in writing assent to the same—

And whereas, William E. Jones, of the said firm of Ogden & Jones, has, since the making of said Indenture, died, leaving surviving, the said William B. Ogden, the other member of said firm of Ogden and Jones, named in said Indenture—

23. 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. Wright, 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, Chittendon 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—

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— All the following lots and Blocks in Wights Addition to Chicago, (said Addition being laid out on the southerly portion or end of the east half of the south east quarter of section five (5) in Township thirty nine (39) north of Range fourteen (14) east of the third principal meridian, and being situate in the corporate limits of the City of Chicago in the County of Cook, and State of Illinois— to wit— Lots one and three in Block one— Lots one, two, three, four, five and six in Block two— Lots, one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen in Block three— Lots one, two, three, four, five, six, seven, eight and nine in Block seven— Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in Block eight— Lots one, two, three, four, five, six, seven, nine, ten, eleven, twelve, thirteen and fourteen in Block nine— Lot one in Block four, being

24.

the entire Block_ Lots one, two, three, four, five, seven, eight, nine, ten, eleven and twelve in Block five_ Lots two, three, six, seven, eight, ten, thirteen and fourteen in Block ten_ Lots three, four, five, seven, eight, ten, eleven, thirteen and fourteen in Block eleven_ Lots three, five, seven, nine, eleven and thirteen in Block twelve_ and Lots three, five, seven, eight, ten and twelve in Block thirteen_ and also, all the residue of said east half of the south east quarter of section five, aforesaid, being all of said east half of said south east quarter, not embraced in Wights Addition, aforesaid, and containing about fifty three acres, more or less, (excepting and reserving therefrom two acres situated on the bank of the North Branch of the Chicago river, on the east line of said last named tract, of about fifty three acres, aforesaid, being the same two acres heretofore contracted to C. F. Gray, the boundaries of which will, by reference, to said contract, more fully appear_)

25.

And also, all of the north east quarter of said section five, in the township and range aforesaid_ containing about one hundred and sixty acres, more or less, excepting and reserving therefrom, however, about nine acres of ground, sold, or contracted to be sold in parcels respectively, as follows_ To C. Rosher, one acre lying on the east side of the North Branch of the Chicago river, and bounded on the west by the center of said North Branch

on the north by an east and west line five chains south of the north line of said section five (5) on the east by the center of Cherry street, so called, and extending in width, south one chain and ninety-nine links— To Francis Bauman, two acres similarly bounded on the east and west, and lying south of and adjoining C. Roscher's acre— To Stephen Bauman, one acre next south of, and adjoining Francis Bauman's two acres, and similarly bounded on the east and west— To Vincent Burn, one acre next south of and adjoining Stephen Bauman's acre, similarly bounded on the east and west— To Henry Schade, one acre next south of the last described acre, and similarly bounded east and west— To Michael Zimmerman, one acre similarly bounded east and west, by lying south of a similar and intervening lot of one acre, lying between it and the lot of Henry Schade To Michael Bauman, one acre, lying next south of Michael Zimmerman's acre, and similarly bounded east and west— and to John Bond, one acre, lying next south of and adjoining Michael Bauman's acre, and similarly bounded east and west— in all, nine acres, so excepted and reserved as aforesaid, from the said north-east quarter of said section five (5) for more particular description of which reference is made to the respective contracts of sale made with the parties each above named—

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 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
27. 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 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

28. 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 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 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
29. 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 monies 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 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 contary 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 21st 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

30.

In witness whereof, the said William B. Ogden, acting for himself, Allen Robbins, 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.

Signed, sealed, and delivered in presence of

S. H. Fleetwood.

Wm. B. Ogden, L. S.

John Bradley, L. S.

A. Hyatt Smith. L. S.

Recorded in the Recorders office of Cook County, Illinois on 19th 1852

Your orators further show unto your Honor, that in making said contract last above mentioned, the said William B. Ogden acted with the full knowledge

advice, consent and approbation of said Mahlon D. Ogden and Edwin A. Sheldon, the then co-partners of said William B. Ogden, transacting business as aforesaid under the firm of Ogden, Jones & Co: and that said William B. Ogden in making said contract as aforesaid, intended to exercise all the power and authority vested in either him individually, or in said firm of Ogden, Jones & Co. and to vest in said John Bradley and A. Hyatt Smith, a full and complete equitable title to said lands, upon the performance by them of their part of said contract which was so understood by said Bradley and Smith, and by the said firm of Ogden, Jones & Co. at that time—

31.

Your Orators further show unto your honor, that afterwards to wit, on the 13th day of March, A.D. 1855. the said John Bradley and A. Hyatt Smith

did under their respective hands and seals, mak
execute and deliver their certain instrument of
in writing, of that date, which is in the words and
figures following, to wit—
Whereas, we, John Bradley, of Burlington, Chittendon
county, Vermont, and A. Hyatt Smith, of Janesville
Rock county, Wisconsin, did purchase of William
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, paya
33. ble, one quarter cash, on the execution of said con-
tract, and the balance in three equal annual pay
ments thereafter, with six per cent. annual inter
est, 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 de
tail 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 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 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 L.S.

A. Hyatt Smith L.S.

Sealed and delivered in the presence of

Edward Bradley, witness to J. Bradley's signature—

John A. Cutler, as to John Bradley's signature—

Isaac Woodle, as to A. Hyatt Smith—

As by the said declaration of trust now in the possession of your Orator, Mahlon D. Ogden, now here in Court, ready to be produced, will more fully appear—

Your orators further show unto your Honor, that on the second day of May, A. D. 1853 Robert J. Walker, Eli Chittendon, A. Hyatt Smith, Charles Butler, William Sloan, John Bradley, Jacob P. Eastman, John P. Chapin, Edwin H. Johnson, Albert A. Bliss, William B. Hotchkiss, Walter S. Gurnee, and Daniel S. Miller, associated themselves together under the name and style of the Chicago Land Company— and thereupon the said parties, for the purposes men-
35. tioned in the agreement hereinafter next set forth, on the day and year last aforesaid, entered into written articles of association between themselves, as shareholders, and said William B. Ogden, your Orator, Mahlon D. Ogden, and one Edwin R. La Bar, since deceased, as trustees, wherein among other things, it was recited that

Whereas, the subscribers to said articles of agreement and trust, had theretofore purchased certain tracts and lots of land, in the city of Chicago, and in the vicinity thereof, in the state of Illinois, which were more particularly described in said articles— and whereas only a portion of the purchase money, had been paid on said several tracts and lots of land, and there were considerable sums remaining to be paid

thereafter, as the same should fall due, by the terms of the purchase in each case, 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 thereinafter 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, development, 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 thereinafter described; and the said William B. Ogden, your orator Mahlon D. Ogden, and Edmund 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 of said association 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, parties in interest therein, should provide and pay to the trustees therein named, 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 and benefit 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 making and discharging such further payments
37. 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 liabilities, liens, or incumbrances— and that it should be the duty of said trustees of said association 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 more fully appear,

which provision your orators aver, 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 is thereinbefore provided, as soon as the same could be conveniently done—Your orators further show unto your honor, that 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—

38.

Your orators further show unto your honor, that said Edwin R. La Bar, afterwards, on, about the 22nd day of January, A. D. 1854. deceased, and that said William B. Ogden afterwards, on the 19th day of March, A. D. 1856, by an instrument under his hand and seal, resigned his said office and trust of trustee, of said association—and that the said William B. Ogden, on the 19th day of March, A. D. 1856. by his deed of conveyance of that date, conveyed and transfered to the said Mahlon D. Ogden, all the right, title and interest in and to any lands or property, held by him, the

said William B. Ogden, as such trustee, in pursuance of the provisions of said articles of association, and that your Orator, Mahlon D. Ogden, is now the sole surviving and remaining trustee of said association. Your Orator further show unto your honor, that the capital stock, and interests of the parties shareholders to said articles of association, were by the said articles of association, divided into eighteen thousand shares of one hundred dollars 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 day of July, A.D.
39. 1853. in pursuance of the provisions of said articles, increased to nineteen thousand, seven hundred shares, which is now the number of shares in said association, and represents the entire interest of the parties thereto, or interested therein.

Your Orator further show unto your honor, that in, and by said articles of association, it was further provided, that the said parties, shareholders therein, for every twenty five dollars theretofor paid by each in part payment for the lands of said association, and for every twenty five dollars, which should be thereafter paid by each shareholder therein, should each be entitled to a certificate for a full paid share of One hundred dollars, and that said Trustees should deliver to each member, a certificate

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 transferred from time to time by the holder thereof, or his personal representative, by endorsement under hand and seal, in pursuance of the provisions of said articles of association, 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 subscribing his name, and affixing his seal thereto—

Your Orators further show unto your honor, that certificates for eighteen thousand, four hundred

40. full paid shares have been issued, by said Trustees, to the parties shareholders in said association, that many of said certificates have been assigned and surrendered by the assignees, and new ones issued, in lieu thereof, pursuant to the provisions of said articles of association—and such new certificates have been assigned, and surrendered by the assignees of the same, and new ones issued, in lieu thereof, and so on toties quoties, until the shareholders of said association are now in number, as your Orators are informed and believe, upwards of sixty persons—

Your Orators further show unto your honor, that the shareholders of said association are now so numerous that 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 impracticable, to conduct a suit with such shareholders parties thereto by name, and that such a suit would be a serious embarassment to the shareholders of said association by its interference with the assignment and transfer of their respective shares, as provided in said articles of association —

Your orators further show unto your honor, that in and by said articles of association, it is further provided that there shall be an executive committee
41. 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 your Orators, Charles Butler, John P. Chapin and Walter S. Gurnee, are now the executive committee of said association, duly appointed, and acting as such, and that your orators, last mentioned, are also shareholders in said association, and as such, have ~~for~~ certificates for full paid shares therein, representing in the whole, two thousand, four hundred and eleven shares.

Your Orators further show unto your honor, that the said John Bradley and A. Hyatt Smith, afterwards, on

the sixth day of April, A D. 1853. by their deed of assignment of that date, assigned, transferred and set over unto your orator 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, for himself and others, and John Bradley and A. Hyatt Smith, hereinbefore set forth— together with all rights, which they might have under or by virtue of said contract, as, by the said deed of assignment in the custody of your orator, Mahlon D. Ogden will more fully appear—

Your orators further show unto your honor, that said John Bradley and A. Hyatt Smith, on the execution of said contract, between themselves and said William B. Ogden, acting for himself and others as aforesaid, to wit— on the 10th day of November, A D. 1852. paid to the said William B. Ogden the full sum of twenty five thousand dollars, being the first payment under said contract, together with the sum of two hundred and ninety five dollars and eighty three cents, for the interest thereon, from the first day of September, 1852. to the time of said payment— and that the said William B. Ogden endorsed upon said contract, a receipt of the same—

42.

Your orators further show unto your honor, that the remainder of the purchase money of the premises mentioned in said contract, was fully 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 payable by the terms of said contract - 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 mentioned in said contract, agreeably to the terms and conditions thereof -

Your orators further show unto your honor, that the trustees of said Chicago Land Company, under and by virtue of said contract, with said John Bradley and A. Hyatt Smith, and soon after the execution thereof entered into possession of said premises, and have ever since remained, and still remain in possession in the same -

43.

Your Orators further show unto your Honor, that heretofore, to wit, on the 20th day of March, A. D. 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, he, 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, as by the said deed, now in the custody of your Orator, Mahlon D. Ogden, will more fully appear. Your Orator further show unto your Honor, that heretofore, to wit, on the day of A.D. 1856. James C. Marshall and Jane C. Wright, for the purpose of releasing any interest which she might have under said contracts, and to said premises, by her deed of that date, released, remised, and forever quit-claimed unto your Orator, 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, as by the said deed, now in the custody of your Orator, Mahlon D. Ogden, here in Court, to be shown, will more fully appear— And your Orator well hoped that the said Allen Robbins would have executed and delivered unto your Orator, Mahlon D. Ogden, a sufficient and proper deed of conveyance of all his right, title and interest in and to said premises sufficient in the law to have passed to your Orator, Mahlon D. Ogden the legal title remaining in the said Allen Robbins to the undivided half of said premises, and for that purpose, your Orator, Mahlon D. Ogden, has frequently and in a friendly manner, applied to the said Allen Robbins, and requested him to execute and deliver such deed of conveyance, well hoping that said Allen Robbins would have complied with such

reasonable request, as in justice and equity he ought to have done—

But now so it is, may it please your Honor, that the said Allen Robbins, combining and confederating with divers other persons, at present unknown to your Orators, whose names, when discovered, your Orators pray may be inserted herein, with apt and proper words, to charge them, as parties, defendants hereto, and contriving how to injure and wrong your Orators in the premises, he, the said Allen Robbins, absolutely refuses to comply with such request, and he, at times, pretends that said William B. Ogden had no power or authority under and by virtue of the agreement, hereinbefore set forth, bearing date the 31st day of May, A.D. 1847. to make said agreement with said John Bradley and A. Hyatt Smith, in the manner and form as the same was made by the said William B. Ogden— whereas your Orators charge, and so the said Allen Robbins well knows the truth to be, that the said William B. Ogden, under and by virtue of said articles of agreement, had full power and ample authority to make and enter into said agreement with said John Bradley and A. Hyatt Smith, in the manner and form the same was made and entered into— and at other times, he, the said Allen Robbins, pretends that he, before the execution of said agreement, with said

45.

John Bradley and A. Hyatt Smith, revoked the power of the said William B. Ogden, under and by virtue of said articles of agreement— whereas your Orators charge, and so the said Allen Robbins well knows the truth to be, that said power and authority was irrevocable— and that he, the said Allen Robbins, was fully aware of said agreement with said John Bradley and A. Hyatt Smith, and of the terms and conditions thereof, at the time the same was in negotiation, and with such knowledge, fully and unequivocally assented to the making of said agreement, and approved of the terms and conditions thereof, ~~at the time the same was in negotiation~~ and that said power and authority of the said William B. Ogden was not revoked, and if any such pretended revocation ever was made by the said Allen Robbins, neither the said John Bradley, nor A. Hyatt Smith, nor the shareholders of said Chicago Land Company ever had any notice thereof, either by the records of deeds in said Cook County, or otherwise— and that if any such pretended revocation ever was made, the silence of the said Allen Robbins, and his omission to notify said John Bradley and A. Hyatt Smith, of such revocation, knowing that the said John Bradley and A. Hyatt Smith were about to enter into said agreement, as aforesaid, is such a fraud upon his part,

46.

as will deprive him of all benefit or advantages which could or might otherwise be taken by reason of any such pretended revocation— All which actings, doings and pretences of the said Allen Robbins, are contary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your Orator in the premises— In consideration whereof, and for as much as your Orator are entirely remediless in the premises, according to the strict rules of the common Law, and can only have relief in a court of equity, where matters of this nature, are properly cognizable and relievable— To the end
47. therefore that the said Allen Robbins, and his confederates, when discovered, may (not under oath, an answer under oath being hereby expressly waived) fully true, direct and perfect answer make, to all and singular the matters and things hereinbefore stated, and charged as fully and particularly, as the same were hereinagain repeated, and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay and belief— And that said Allen Robbins may be decreed to execute and deliver unto your Orator, Mahlon D. Ogden, a deed of conveyance, acknowledged agreeably to the laws

of this state, which shall be sufficient and effectual in the law to convey to your Orator, Mahlon D. Ogden, the legal title to an undivided one half of said premises, and all his, the said Allen Robbins, right, title and interest to the same— your Orators hereby submitting to such decree in the premises, as to your honor shall seem just and equitable— and that your Orators may have such other and further relief in the premises, as the nature of their case shall require, and to your honor shall seem meet—

May it please your Honor to grant unto your Orators, a writ of summons of the People of the State of Illinois, to be issued out of and under the seal of the Circuit Court of Cook County, directed to the Coroner and acting Sheriff of Cook County, thereby commanding him, ~~the~~ to summon the said Allen Robbins personally to be and appear before said Court at the term thereof to be held at the Court House in Chicago, in said County, on the first Monday of May, A. D. 1856. on the first day of said term, and then and there, to answer all and singular, the premises, and to stand to and abide such order and decree therein as to your honor shall seem meet, and your Orators shall ever pray—

Chicago April 25th, 1856.

C. Beckwith and J. N. Arnold— Solicitors—

48.

Mahlon D. Ogden
Charles Butler
John P. Chapin and
Walter S. Gurnee
By their Solicitor, C. Beckwith—

Precipe

Charles Butler
John P. Chapin
Walter S. Gurnee &
Mahlon D. Ogden
vs
Allen Robbins

Circuit Court Cook County
In Chancery—

The Clerk will issue summons in the above entitled cause, returnable to the next term— May 14th A.D. 1856.

49.

C. Beckwith—Soli. for Orators—

Whereupon, on the same day and year aforesaid, the said Complainants by their said Solicitor, filed in the office of the Clerk of the Court aforesaid, their bond for costs in the words and figures following, to wit—

Bond for costs

Charles Butler, Walter S. Gurnee,
John P. Chapin & Mahlon D. Ogden
vs
Allen Robbins

Circuit Court, Cook County
In Chancery—

I do here by enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court, in pursuance

of the laws of this State—
Dated this 25th day of April A. D. 1856— Corydon Beckwith

And thereupon afterwards to wit, on the day and year last aforesaid, there issued out of the office of the Clerk of said Court, and under the seal thereof, the Peoples writ of summons, directed to the acting Sheriff of Cook County to execute, and clothed in the words and figures following, to wit—

Summons

State of Illinois }
County of Cook } ss.

The People of the State of Illinois to the Coroner Ex Officio acting Sheriff of said County, Greeting—

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We command you that you summon Allen Robbins, if he shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said county, on the fourth Monday of October next, to answer unto Charles Butler, John A. Chapin, Walter L. Gurnee and Marlon D. Ogden, in their certain Bill of Complaint, filed in the said Court, on the Chancery side thereof—

And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same—

Seal

Witness, Louis D. Hoard, Clerk of our said Court and the Seal thereof, at Chicago aforesaid, this fourteenth day of May—A. D. 1856—

L. D. Hoard Clerk

And afterwards to wit, on the 3rd day of July, in the year last aforesaid, said writ was returned into the Court aforesaid by said Sheriff, endorsed as follows, to wit— "Served this writ on the within-named

Return. Allen Robbins, by delivering a copy thereof to him—the 3rd day of July, 1856— Fees— 1 Service, 1.50— 1 Copy, 1.50 1 Mile, ,05— 1 Return, .10— $1.15—

James S. Beach, Coroner & Ex Officio acting Sheriff—

By F. S. Buckley, Dy Sheriff—"

Original Answer & replication thereto omitted ~~by agreement~~ from the transcript by agreement—

And afterwards, to wit at the February Special Term of said Court, to wit, on the 16th day of February A.D. 1859. the following proceedings among others were had and entered of record therein, to wit—

51. Charles Butler Etal
118— vs
Allen Robbins } Bill—

On motion of Beckwith of Counsel for said Complainants, no objection being made thereto, It is ordered that said defendant close his proof in said cause, by the first day of the next term of this court—

And afterwards, to wit, at the April term of said Court, to wit, on the Eleventh day of April, in the year last aforesaid, the following proceedings among others in said Court, were had and entered of record therein, to wit—

Charles Butler, John P. Chapin,
Walter S. Gurnee, & Mahlon D. Ogden
118 vs } Bill

52

Allen Robbins }

This day come the said parties by their respective Solicitors, and by the agreement of said parties now made in open Court, It is ordered that the said Complainants have leave to amend their Bill of Complaint in said Cause, and that said defendant have leave to file an amended answer thereto—

And thereupon on the same day and year last aforesaid, the said defendant by his Solicitors, filed in said cause, his certain amended answer to the Complainants said Bill of Complaint, in the words and figures following to wit—

Amended answer.

State of Illinois }
County of Cook } ss.

52.

In the Circuit Court of the County of Cook— On the Chancery side thereof—

The amended answer of Allen Robbins, defendant to a bill of complaint exhibited against him in said Court, by Charles Butler, John P. Chapin, Walter L. Gurnee, in behalf of themselves and all other shareholders in the Chicago Land Company, and Mahlon D. Ogden, surviving and remaining trustee of said Land Company—

This respondent, saving and reserving to himself, all right of exception to the said bill of complaint, for answer thereunto, or unto so much and such parts thereof, as this defendant is advised is or are material or

necessary for him to make answer unto, says that he admits the joint tenancy of the said William B. Ogden and this respondent, of the lands described in said bill, at the time and in the manner set forth in the said complainants bill of complaint. He also admits that at the time in said bill mentioned, the said Jane E. Wright was entitled to dower in the premises described in said bill, and that the said William B. Ogden and this respondent, for the purpose of compromising and settling the said dower claim of the said Jane E. Wright, did execute in manner and form as charged in said bill, the agreement set forth in said bill, on pages two, three, four, five, six and seven of the printed bill filed in this cause by the said complainants.

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The respondent also admits the acknowledgement and registry of the said agreement at the times and in the manner alledged in said bill. He also admits the several changes in the firm and the successorship to the firm of the said Ogden & Jones, mentioned on pages seven and eight of said printed bill, and that the same took place at the times and in the manner therein stated. This respondent further answering denies that the said William B. Ogden, acting for the persons and in the capacity named on page eight in said printed bill, did on the first day of June, or at

any time prior to the 18th day of November 1852 enter into a verbal agreement with the said John Bradley and A. Hyatt Smith, relative to the sale and purchase of the premises, or any portion thereof mentioned in said bill, and denies all knowledge thereof, but respondent admits the written agreement between the said Ogden and the said Bradley, and Smith, recited on pages eight, nine, ten and eleven in said printed bill.

This respondent further answering, says that he has no knowledge of the execution and delivery of the instrument in writing, set forth on page eleven in said printed bill, dated March 13th 1855. and

54. purporting to be a declaration of trust by the said Bradley and Smith, in favor of, and for the use and benefit of the shareholders in the said Chicago Land Company, relating to the premises in said bill mentioned. and in this connection, this respondent denies that the said Chicago Land Company was, on the 13th day of March 1855. or at any time since, an incorporated company duly organized under and by virtue of a charter granted by any one of the sovereign States which then or now are members of the Union known under the Federal constitution as the United States of America, or under a charter derived from the teritorial government of any one of the organized Territories belonging to the said Federal Union or under the sovereign power of any foreign nation

whatever- that the said Chicago Land Company was not, at the time aforesaid, known or recognized by any law whatever, public or private- And this respondent further answering insists that the said instrument in writing of March 13th 1855. is illegal and void at law and equity, for the reasons following- to wit- 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-
2nd- It is void, whatever may be the legal designation of the instrument, for want of a grantee capable of taking the property therein described-

55.

This respondent further charges that on the said 13th day of March, 1855. the said William B. Ogden, one of the trustees of this respondent as aforesaid, was a member of the said voluntary association designated in the said bill as the Chicago Land Company or if not a member openly thereof, was largely interested secretly through other parties in profits and advantages to be received by said Chicago Land Company by reason of the pretended purchase made by said John Bradley and A. Hyatt Smith, and the pretended declaration of trust set forth on page eleven of said printed bill-

And further answering, this respondent says that he knows nothing of the Asiociation of Robert J. Walker and others as set forth on page twelve of said printe

bill, of the date of May 2nd 1853. under the name and style of the Chicago Land Company, nor of the execution of any such Articles of Association, and this respondent requires strict proof to be made of the same—

And this respondent, as to the recitals set up on said twelfth page of the said printed bill, further answering, says that it is apparent that said William B. Ogden, Trustee for said company had notice of the existing equities of this respondent, and this respondent respectfully submits that such notice must be held to affect the said Chicago Land Company, and the individual members thereof—

56. And as to the several recitals further undertaken to be set up on said twelfth page, and in the first paragraph of the thirteenth page of said printed bill, this respondent cannot admit nor deny the same, he having no knowledge thereof, but demands strict proof—

And as to the second, third and fourth paragraphs of said thirteenth page of said printed bill, this respondent likewise says that he cannot admit nor deny the same, but demands strict proof—

And as to the last paragraph on said thirteenth page, of said printed bill, as to the number of members &c. of said Association, this defendant can neither admit nor deny, but requires strict proof to be made, of all facts therein, pretended to be set up, to give this

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Court jurisdiction of such parties, to the said Asso-
ciation, whose names are not set forth in said
bill, as parties thereto-
And as to the first paragraph on page fourteen of
said printed bill, this defendant not knowing,
can neither admit nor deny-
And as to the matters and things alleged in the
second, third, fourth and fifth paragraphs of page
fourteen of said bill, this respondent not knowing,
can neither admit nor deny the same, but requires
strict proof-
And as to the last paragraph on said page four-
57 teen of said bill, and the matters therein alleged,
this respondent has no means of knowledge- no ex-
hibit of the instrument therein spoken of, having been
made, and requires strict proof-
And as to the first paragraph on page fifteen of said
bill, and the matters therein set forth, this respondent
can neither admit nor deny the same, no exhibit
having been made of the deed therein described-
And as to the allegations contained in the second
paragraph of page fifteen, this respondent absolutely
denies that said Mahlon D. Ogden ever at any time
applied to this defendant for conveyance of his right,
title and interest in and to said premises-
And as to the several allegations in the third para-
graph of said page fifteen, this respondent further
answering expressly and in terms denies that he has

combined and confederated with any person or persons, to injure and wrong the said Complainants— and this respondent in particular denies that it is true that said William B. Ogden under the articles of agreement in said bill set forth had full power and ample authority to make and enter into the agreement with said John Bradley and A. Hyatt Smith, in manner and form as set forth in said bill, so as to conclude, diminish, or in any wise, impair the rights and equities of this respondent in and to said premises— or that the power and authority conferred upon said Ogden and Jones, their survivor and successors in business at Chicago, by said articles of agreement, was irrevocable— or that the said respondent was fully or at all aware of said agreement with said John Bradley and A. Hyatt Smith, and of the terms and conditions thereof, at the time the same was in negotiation— or that being so aware, this defendant assented to the making of said agreement, and approved the terms and conditions thereof— or that the said John Bradley and A. Hyatt Smith, or the shareholders of the Chicago Land Company had no notice of the revocation by this defendant, of the powers committed to said Ogden and Jones, their survivor and successors in business, by said articles of agreement— or that said powers had not, before the making of said contract between the said Ogden and the

said Bradley and Smith, been in fact revoked by this defendant—

But on the contrary thereof, this respondent avers and expressly charges the facts to be, that after the making and execution of the said articles of agreement, bearing date May 31st 1847. set forth in said bill of complaint, the said Ogden and Jones accepted of the trusts created by the said agreement, and entered upon the discharge of their duties, under said agreement, as the trustees of this defendant, and the said James C. Marshall, and the said Jane E. Wight—

And this defendant further represents to your Honor, that the said Ogden and Jones, and the firm of Ogden, Jones & Co. who succeeded the said Ogden and Jones, in business, at Chicago, in their capacity, as such trustees, and in pursuance of the said agreement, from time to time between the date of said agreement and the first day of September A.D. 1852 made several sales of small parcels of said estate in said agreement described, and incurred some expenses; and became entitled to some commissions upon such sales and expenditures, but what the precise state of said account is between the said parties respectively, this defendant is unable at present to inform your Honor—

And this defendant further represents unto your Honor, that on the said first day of September, A.D.

1852. the unsold portions of said estate, which remained in the hands of the said Ogden, Jones & Co. and subject to the trusts in said agreement expressed, were of the value of two hundred and fifty thousand dollars, and that said property so remaining unsold is now of the value of six hundred thousand dollars, at the very lowest estimate which can reasonably be placed upon the same, and that the prospect is that said property so remaining unsold, will continue to increase largely in value, for several years to come—

And this defendant further represents, that said property, in said agreement mentioned, abuts upon each bank of the north branch of the Chicago river, that the 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 railroad formerly known as the Illinois and Wisconsin, but now designated as the Chicago, Saint Paul and Fond Du Lac Rail Road, on the said first day of September, A.D. 1852. was and now is located over that portion of said property described in said agreement as Wights addition to the said City of Chicago, and which said addition was laid out on the west side of the said north branch of the said Chicago river—

And this defendant further represents unto your Honor, that the true intent and meaning of the

said trust so created as aforesaid, and evidenced by the agreement aforesaid, was to improve the property in said agreement described, and sell such portions thereof, as should be necessary to pay the expenses of said improvements, and discharge the taxes, costs and other reasonable charges which might be laid, or incurred in the management and preservation of said property, to reimburse to the said William B. Ogden and this defendant, the monies by them laid out and expended in the purchase of said property, and in extinguishing such lien, taxes and other charges and incumbrances upon said property, as then existed, and also to raise money to satisfy and discharge the claim of dower of the said Jane E. Wight, widow of the said John H. Wight deceased, in the manner specified in said agreement, and which said dower claim, was, at the date of said agreement, an incumbrance upon said property- that for the purpose of accomplishing said objects, the said property was by said agreement, placed in the immediate care, and under the exclusive supervision and management of the said William B. Ogden and William E Jones (then partners in the real estate business in the said City of Chicago, under the name and style of Ogden and Jones) and the survivor of them and their successor in business, in the said City of Chicago, subject nevertheless, to the general directions of the said William

B. Ogden and this defendant, the survivor of them, their executors and administrators, that by the terms of said agreement, the contemplated improvements upon said property, were to be made or caused to be made by the said firm of Ogden & Jones, their survivor and successors in business, under the general direction of the said William B. Ogden and this defendant, the survivor of them, their executors or administrators, when, where, and to such extent as they and the said Ogden and Jones, and their survivor and successors in business, should think proper— that by said agreement, power was conferred upon the said Ogden and Jones, their survivor and successors in business, to make sales, leases, and other dispositions of said property, for cash, upon credit, or in exchange for other property at such time or times after making the said agreement, in such manner, upon such terms, as the said William B. Ogden and this defendant, the survivor of them, their executors or administrators, or the said Ogden and Jones, their survivor and successors in business, should, in their discretion, deem most advantageous to said property, and best calculated to enhance the amount to be derived therefrom— but this defendant expressly charges that no power was conferred upon the said William B. Ogden, during the lifetime of this defendant, nor upon the said Ogden & Jones, their survivor and successors in business, in the

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lifetime, or after the death of this defendant, to make conveyances of said property, or any portion thereof— And it was further stipulated in and by said agreement, that all accounts with said property, should be kept by, and with the said Ogden and Jones, their survivor and successors in business, at their office in the said City of Chicago— and it was further stipulated, that the said Ogden and Jones, their survivor and successors in business, should make semi-annual statements of their accounts, in relation to the said property, to the said Allen Robbins, on the first days of February and August in each and every year during the continuance of the said trust, and at the same time pay to this defendant, any surplus proceeds of said property, in their hands on those days, at their office in Chicago, unless some other place should be designated by an agreement between the said parties respectively— and that if payment of such balances should be delayed, or no notice given by the said Ogden and Jones, their survivor and successors, to this defendant, after the said statements were required to be made, and such balances struck, it was further stipulated that the said Ogden and Jones, their survivor and successors, should pay to this defendant, interest upon such balances, at and after the rate of six per cent per annum— and it was further stipulated that

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if any balances should be due and unpaid by this defendant, to the said Ogden and Jones, their survivor and successors, this defendant was to allow and pay interest upon such balances at and after the rate of six per cent. per annum— And it was further stipulated in and by said agreement, between the parties aforesaid, that all costs, charges, commissions, taxes— and expenditures of every description— which were proper charges against said property, should be first paid out of the proceeds of the said property, and might be retained by the said Ogden and Jones, their survivor and successors in business— And it was further stipulated in and by the said agreement between
64. the parties aforesaid, amongst other things, that after, out of the proceeds of said property, the claim of the said Jane E. Wight should be satisfied, and all charges and expenditures existing at the date of said agreement, or arising by virtue of the provisions thereof, should be extinguished, then upon the request of either of the parties to said agreement, it should become, and was made the duty of the said William B. Ogden, and this defendant, to make a fair, legal and equitable partition of that portion of the said property, which should, at the time of such request, remain unsold, and of outstanding contracts, assets and effects arising out of the said trust so created as

aforesaid, and assign and allot to the said James C. Marshall, trustee of the said Jane E. Wright, or in case of his death, then to her, the said Jane, her executors or administrators, the residue of an equal, undivided third part of said property, which remained unsold, or if sold, the proceeds thereof in money, contracts, assets and effects derived from such sales - the true intent and meaning of said agreement being that the interest of the said Jane E. Wright should in no event, exceed the one equal one third of said property, or the proceeds thereof, and in case such one
65. third part should prove insufficient to pay off and discharge the expenses accruing upon the same, and also to pay and satisfy the sums of money chargeable upon said property by the terms of said agreement, the residue of such expenses and money so due and chargeable upon such third interest, was to be paid by the said Ogden and Jones, and this defendant - And it was further stipulated in and by said agreement, that when said charges, liens and expenses upon, and incurred by reason of said trust, should be satisfied, and the interest of the said Jane E. Wright, closed and settled, that then, and in that event, a like fair, legal and equitable partition of the remaining two thirds of said property, contracts, assets and effects, one half to this defendant

and one half thereof to the said Ogden and Jones, for their respective use and benefit— should also, then, or at any time thereafter, be made when desired by either, the said Ogden and Jones, or this defendant, and then the said agreement, with its provisions, conditions and stipulations should thereupon be fulfilled, terminated and held for naught, but in case no such request was made, or desire expressed by either the said Ogden and Jones, or this defendant, that then the said property was to continue under the management of the said Ogden and Jones, their survivor and successors in business, subject to the provisions of said agreement, until the whole of said property should be disposed of—

And this defendant charges that the said Ogden and Jones, and their survivor and successors in business, having accepted of the trusts in said agreement expressed, it then and there became, and was their duty as such trustees—

1— 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, diligence and faithfulness, and to the common interests of the parties to said agreement, subject however to the general directions of the said William B. Ogden, and of this defendant—

2— To render fair, just and accurate accounts touching the execution of their said trust—
3— To promptly pay over the proceeds of said property to the persons entitled thereto under said agreement—
4— To pay interest on such balances, as they might neglect to pay over—
5— To make no other or greater sales of said property than should be sufficient to accomplish the object of said trust—
6— To make partition of said property according to the provisions of the said agreement, upon the request of the parties thereto, or either of them—

67. And this defendant further represents unto your Honor, that after the execution of the said agreement, and before the first day of September, A.D. 1852, the said Ogden and Jones, and their successors in business, made sales of various parcels of the lands and lots in said agreement described, and reported them to this defendant, and rendered him an account thereof—

And this defendant further represents unto your Honor, that the said Ogden and Jones, and their successors in business, made improvements upon said property, without consulting with this defendant, and contrary to his express direction— that they were wasteful and extravagant in the management of the said property, that much

unnecessary expense was incurred, in the supervision of said property, and in the execution of the trust aforesaid, that in the rendition of their accounts, many false and fraudulent items of charge against said property were inserted in the accounts of sale rendered by them to this defendant, charges were made by them for services never performed, and for work and labor not contemplated by the said agreement, and not necessary for the protection or preservation of said property- and in making sales of said property, the said Ogden and Jones, and their successors in business, Ogden, Jones and Co. did
68. not sell for the best price they could have obtained for said property, nor for what such property was really worth in the market- In view of these abuses of the trust and confidence reposed by this defendant in the said Ogden and Jones, and their said successors in business, this defendant, in the exercise of the reserved power contained in said agreement, determined to put an end to said trust, revoke the powers of the said Ogden and Jones, and their successors in business, procure a division or partition of said property, and take his share under his own exclusive control, when the time arrived contemplated by said agreement-

And this defendant charges, that in pursuance

of this determination, on the fourth day of March, 1848. this defendant wrote a letter addressed to, and which was received by the said Ogden and Jones, from which the following is an extract— "I, therefore, give you notice, that you must not "make any further improvements on the proper "ty 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"

69.

And this defendant charges that said letter, so written by him as aforesaid, had reference to the improvements and division of the property held by the said Ogden and Jones, as trustees, under the agreement herein before set forth—

And this defendant further charges that on the 27th day of August, 1852. this defendant addressed a letter to the said William B. Ogden, in which this defendant wrote as follows— that is to say— "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 ex "penditures on the property, for improvements, or

"otherwise, to which you have not my written as-
"sent, nor any sales exceeding in amount the
"advances, or any sale about which I am not con-
"sulted, and to which I do not give my assent"
And this defendant further alleges that on
various occasions, between the dates of the let-
ters aforesaid, he verbally notified the said Wil
liam B. Ogden, that he would not consent to
the sale of the residue of said property except
so much thereof as might be necessary to satisfy
the trust contained in said agreement.
And this defendant charges and shows unto
your Honor, that notwithstanding these repeat
ed notices, and peremptory orders, the said Wil
liam B. Ogden, devising and intending to cheat
and defraud this defendant in the premises,
and in violation of the trust and confidence
reposed in him by virtue of the agreement a-
foresaid, combining and confederating with his
said co-partners, and with divers other persons,
to this defendant unknown, commenced negotia
ting for the sale of the whole of said property, in
said agreement described, and which, at the date
of the letter last aforesaid, remained unsold,
and that, in pursuance and furtherance of said
intent, the said William B. Ogden did, or pretends
that he did, on the first day of June, A.D. 1852.
bargain and sell the whole of said property, which

before that time, remained unsold, to one John Bradley, a resident and citizen of the State of Vermont, and one A. Hyatt Smith (whose full christian name is to your orator unknown) a resident and citizen of Janesville in the State of Wisconsin, for the sum of one hundred thousand dollars that both the said Bradley and Smith were insolvent at the time of said pretended sale, and have so continued ever since -

And this defendant is informed, and believes and so charges the fact to be, that the said purchase was made by the said Bradley and Smith for the use and benefit of the Chicago Land Company, a voluntary association of persons engaged in the business of buying and selling land and lots, and as a foundation for this charge, this defendant alleges that in the accounts of this sale, reported to him by the said Ogden, Jones & Co. it appears that one of the payments upon such sale, was made by the said Chicago Land Company to the said Ogden, Jones and Co.

And this defendant is informed and believes, and so charges the fact to be, that the said William B. Ogden is either a secret stockholder in said Land Company, or has a controlling influence over the members of said Company, and that there is a secret understanding between the said William B. Ogden and the said Chicago Land Company, that the profits of said speculation were to be divided betwee

them. And this defendant further saith that there was, before and at the time of the said pretended purchase made by the said Bradley and Smith as aforesaid, an understanding that all of the property which had at that time been purchased for the benefit, or on account of the persons interested, or who should thereafter become interested in the said Chicago Land Company, as well as all the property which should thereafter be purchased for their benefit or on their account, including the said lots and lands embraced in the said contract made and entered into, as aforesaid, by and between the said William B. Ogden and the said John Bradley and A. Hyatt Smith, should for management and disposition, be placed and vested in the hands of the said William B. Ogden, and the said complainant Mahlon D. Ogden, and one Edwin R. La Bar (who, on the first day of January, 1853. was admitted a member of the said firm of Ogden, Jones & Co.) as trustees for the benefit of all the parties in interest and their assigns. That the said William B. Ogden, Mahlon D. Ogden and Edwin R. La Bar had agreed to take and execute such trust, and afterwards, pursuant to the understanding aforesaid, were duly appointed and constituted such trustees And this defendant charges the fact to be, that the said lands now are, and ever since the said

72.

sale to the said Bradley and Smith, have been under the control and management of the said Ogden, Jones & Co. and their successors in business and that the said Ogden, Jones & Co. and their successors in business, have the power of selling such property upon commission - And this defendant charges that said sale did not take place on the first day of June, as pretended by the said William B. Ogden, but on the 13th day of November, A. D. 1852. when the first payment was made upon the said lands, and that the contract between the said William B. Ogden, and the said Bradley and Smith, was antedated from the said 13th day of November, 1852-

73.

And this defendant further alleges that he has not in any manner whatever, by act or words, expressly or by implication, ratified and confirmed the said sale, or assented to the same before or after it was made, but on the contrary, he repudiated and disavowed the said sale as soon as he received an official notification of it from the said Ogden, Jones and Co-

And this defendant further charges, that so anxious was the said William B. Ogden to make and consummate said sale in defiance of the notice and against the wishes of this defendant, that he, the said William B. Ogden, consulted with several lawyers in the City of Chicago, as to his power

to sell said property, without the consent, and against the express notice of this defendant, and compel this defendant to assent to said sale, and join in a conveyance of the said property, and this defendant is informed and believes, and so charges the fact to be, that the said William B. Ogden received advice from such lawyers, adverse to his wishes in the premises, and notwithstanding such advice, and the notice aforesaid, proceeded to make such sale in manner and form as hereinbefore alleged.

And this defendant alleges and charges that said property was at the time of the sale aforesaid, to the said Bradley and Smith, of the value of two hundred and fifty thousand dollars, and that the consideration received for the same, was so grossly inadequate, as to indicate a fraudulent breach of trust on the part of the said William B. Ogden.*

This defendant therefore, charges that said William B. Ogden, in the making the said sale to the said Bradley and Smith, was guilty of a fraudulent breach of the trust and confidence reposed in him under and by virtue of the agreement aforesaid, that said sale was then, and is illegal and void, contrary to equity and good conscience, and ought to be set aside, annulled and for nothing esteemed.

And this defendant charges that the said Bradley and Smith, and the said Chicago Land Company at the time of their purchase aforesaid, had actual

notice of the said agreement and the trust therein, and thereby created and also had constructive notice thereof by means of the record of the said agreement in the recorder's office in the said County of Cook and State of Illinois, and that according to the true intent and meaning of the said agreement (with a knowledge of which the said Bradley and Smith, and the said Chicago Land Company were at the time of their said purchase, properly chargeable) the said Bradley and Smith, and the said Chicago Land Company were bound, at their peril, to take notice of the extent of the power vested in the said Ogden, Jones and Co, and
75. the contingencies upon the happening of which, said power might rightfully be exercised, and also of the rights which were reserved in said agreement, in favor of this defendant in the premises—
And this defendant further answering, says that the contract of sale made and entered into by and between the said William B. Ogden and the said John Bradley and A. Hyatt Smith, as set forth in said bill, does not purport to be the deed of this defendant, nor is the same executed in his name, or sealed with his seal— And this defendant is advised and insists that the said contract and the covenants and agreements therein contained, cannot operate either in law or equity, so as to bind this defendant, or impair, or in any way affect his

interest and estate in the premises therein described—

And this defendant further answering, says that by the terms of the agreement, of the 31st of May 1847. set forth in the Complainants said bill of complaint, the supervision and management of the said lands in the said agreement described, was intrusted to the said firm of Ogden and Jones, and their survivor and successors in business, in Chicago, subject to the general directions of the said William B. Ogden and this defendant— and that the power to make sales of the said lands, for the purposes in the said agreement set forth, was

76. likewise confered upon the said Ogden and Jones, their survivor and successors in business in Chicago, subject also to the general directions of the said William B. Ogden and of this defendant— And this defendant avers and insists that after the organization of the new firm of Ogden, Jones & Co. on the first day of July, 1850. as alleged in said bill of complaint, all the trusts power and authority which up to that time had been held and exercised by the said Ogden and Jones, in respect to the said lands, by the terms of said agreement, passed to and became lodged in the said new firm of Ogden, Jones & Co. who were the successors in business at Chicago, of the said Ogden and Jones, and that after the death of the

said William E. Jones, on the 9th day of March 1851. as stated in said bill, all the aforesaid trusts, power and authority, in reference to the management and disposal of said lands, as well as to the keeping and rendering of accounts relating to the same, devolved upon and resided in the surviving members of said firm of Ogden Jones & Co. to wit, William B. Ogden, Mahlon D. Ogden and Edwin A. Sheldon, who continued to transact business at said Chicago, under the firm name and style of Ogden, Jones & Co. as the successors of the said previous firms of Ogden & Jones, and Ogden, Jones & Co. And this defendant further says, that upon and
77. after the organization of the said firm of Ogden, Jones & Co. on the first day of July 1850. the said new firm did in fact assume, as the successors of the said firm of Ogden and Jones, the supervision and management of the said lands—that all accounts relating to said lands were kept by said new firm, and were by them regularly rendered to this defendant, as required by the terms of the said agreement—that all payments and disbursements on account of said lands were made by said new firm, and all moneys received on account of sales, were received by them—that the commissions on all sales were received by said new firm, and generally all the business relating to said lands, and the trusts created by the said agreement

was transacted by said new firm, and in its name. And this defendant also says that after the death of the said William E. Jones, the surviving members of the said firm of Ogden, Jones & Co. retained the supervision and management of the said lands, and continued to transact all business in relation thereto, in the same manner, and to the same extent as before the said Jones' decease.

And this defendant further answering, insists that by the express terms of the said indenture or agreement, in the said bill of complaint set forth, and according to the clear intention of the parties to be derived therefrom, which said intention is also clearly manifested by the acts and conduct of all concerned, as herein last above set forth, the co-operation and act of all the successors in business to the said Ogden and Jones were essential to the validity of any contract for the sale of any portion of the said lands made after the first day of July, 1850. That it was not competent for the said William B. Ogden to sell or dispose of said lands, or any part thereof, after the decease of the said William E. Jones, or to take any step in reference thereto, so as to impair or affect the interest of this defendant, without the personal co-operation and act of his said co-partners, Mahlon D. Ogden and Edwin A. Sheldon, and that therefore, the pretended sale of the said lands

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made by the said William B. Ogden to the said John Bradley and A. Hyatt Smith, as alleged in said bill of complaint, was, so far as this defendant is concerned, unauthorized and void - And this defendant claims the same benefit of this defence as if he had demurred to the said complainants bill -

And this defendant further answering, denies that the said William B. Ogden, in making the said contract with the said Bradley and Smith, acted with the full knowledge, advice, consent and approbation of the said Mahlon D. Ogden and Edwin A. Sheldon, as alledged in ~~said~~ said bill, but

79. this defendant avers that the said contract was made and entered into by the said William B. Ogden, in his own name, and without the co-operation and act of his said partners - And this defendant further saith that whether the said contract was or was not made and executed by the said William B. Ogden, with the knowledge and approbation of his said co-partners, the said contract is invalid and void, so far as this defendant is concerned -

And this defendant further says that the amount of money which was a charge upon the said lands at the time of the sale by the said William B. Ogden as aforesaid, was uncertain, depending upon the true state of accounts between this defendant and the said Ogden and Jones, and Ogden Jones & Co.

but this defendant honestly believes, and so avers the fact to be, that he had advanced and paid over to said Ogden, Jones & Co. his full proportion of the charges and incumbrances upon said property contemplated by the agreement aforesaid, but if there should be any balance due from him to the said Ogden, Jones & Co. on account thereof, he is willing and hereby offers to deposit under the direction of this Honorable Court, such sum of money as will be sufficient to pay off and satisfy such balance—

And this defendant for the reasons and under the circumstances aforesaid, is advised and insists that the said complainants are not entitled to any

80. relief against this defendant, touching the matters complained of in the said bill—

And this defendant having fully answered all and singular, the allegations of said bill, either by traverse, or confession and avoidance, and hereby denying all and all manner of unlawful combination and confederacy, as charged in said bill, prays to be hence dismissed, with his reasonable costs in this behalf wrongfully incurred— Allen Robbins—

Stuart & Auger

Solicitors for defendant—

Whereupon on the same day and year last aforesaid, the said Complainants by their said Solicitors, filed in said Court, their certain Replication to the Amended answer of the said defendant, in the words and

figures following. to wit:

Replication. Circuit Court of Cook County

Charles Butler et al vs Allen Robbins. - In Chancery

The replication of the above named complainants to the amended answer of Allen Robbins, defendant.

These repliants saving and reserving to themselves, all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies in said amended answer of said defendant, for replication thereto say that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and the amended

81. answer of the said defendant is uncertain, evasive and insufficient in the law to be replied unto by these repliants, without that any other matter or thing in the said amended answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true - all of which matters and things these repliants are ready to aver, maintain and prove as this Hon. Court shall direct, and humbly pray as in and by their said bill, they have already prayed.

Beckwith Merrick & Cassin

Solrs for Complts -

And afterwards, to wit: on the day and year last aforesaid, certain motions in writing were filed in the Court aforesaid, in said cause in the words and

figures following, to wit:

Complainants Motion- Circuit Court of Cook County.

Charles Butler Etal vs Allen Robbins.- In Chancery.

And now the said Complainants move to suppress all the interrogatories and answers thereto, contained in the depositions now on file in said cause, which were objected to by said Complainants at the time said depositions were taken, and which are noted upon said depositions.-

Beckwith, Merrick & Casein

Solrs for Complts.

Defendants Motion- Circuit Court of Cook County

Charles Butler Etal. vs Allen Robbins.- In Chancery.-

And now the said defendant moves to suppress the depositions
82. John Bradley, William B. Ogden, George Steele, Edwin H. Sheldon and all the interrogatories and answers thereto contained in the depositions now on file in said cause which were objected to by said defendant at the time said depositions were taken and which are noted upon said depositions-

Stuart & Ayer

Solrs for Defendant

And afterwards, to wit: at the April term of said Court, to wit on the 2d day of May AD 1859, said Cause having been brought to a hearing, the said Complainants produced and offered in evidence therein certain stipulations, depositions Exhibits &c in the words & figures following, to wit:

Stipulation.

State of Illinois. Cook County. S.S.

Circuit Court of the County of Cook - April term. 1859.

Charles Butler etal. vs Allen Robbins. - In Chancery.

It is hereby stipulated and agreed that the execution and delivery of the following instruments set forth in the bill of complaint filed in this cause, shall be admitted at the hearing, without proof, to wit—

1— Agreement dated May 31st A.D. 1847. between Wm. B. Ogden and Allen Robbins and James C. Marshall and Jane E. Wright

2— Contract of sale dated November 10th A.D. 1852. between Wm. B. Ogden and John Bradley and A. Dyatt Smith—

3— Declaration of trust by John Bradley and A. Dyatt Smith, dated March 13th A.D. 1855—

83.

It is also admitted that the foregoing instruments are correctly set forth in said bill of complaint— and they shall be taken to have the same force and effect as evidence upon the hearing of said cause as if formally introduced and proved by the Complainants—

Beckwith & Merrick Solis for Complt—

Stuart & Tyre Solis for defendant—

Stipulation.

Charles Butler et al
vs
Allen Robbins
} Circuit Court of Cook County
In Chancery—

It is admitted in the above entitled case that on the second day of May, 1853. Robert J. Walker, Eli Chittendon, A. Dyatt Smith, Charles Butler, William Sloan, John Bradley, Isaac D. Eastman

John P. Chapin, Edwin H. Johnson, Albert A. Bliss, William B. Hotchkiss, Walter S. Gurnee, and Daniel S. Miller, 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. It is further admitted that the number of the shares of said association was increased at the time and in the manner in said bill alleged and that said 19,700 shares at the filing of said bill was the number of shares in said association and represented the entire interest of the parties thereto,

84 or interested therein.

It is further admitted that certificates for 18,400 full paid shares had been issued by said Trustees to the parties, shareholders in said association that many of said certificates have been assigned and surrendered by the assignees, and new ones issued in lieu thereof, pursuant to the provisions of said articles of association, and such new certificates had been assigned and surrendered by the assignees of the same, and new ones issued in lieu thereof, and so on, to the parties until the shareholders of said association were in number upwards of sixty persons, as in said bill alleged.

It is further admitted that Charles Butler, John P. Chapin, and Walter S. Gurnee were the executive committee of said association and had the number

of shares therein as alleged in said bill—
It is further admitted that the purchase money of said premises has been paid, as in said bill alleged— That said Bradley, A. Hyatt Smith Chicago Land Company have from time to time, paid and discharged all taxes and assessments, as in said bill alleged—
That the trustees of the Chicago Land Co. under and by virtue of said contract, with said Bradley and Smith, entered into and have remained in possession as alleged in the bill—
It is further admitted that a deed for said
85. premises prepared in due form, was presented to said Robbins for execution, as alleged in said bill, and that said Robbins neglected and refused to execute the same, as alleged in said bill—
It is further admitted that no portion of the purchase money received from said Bradley and Smith, or said Chicago Land Co. has ever been received by said Robbins, and that he has always declined to receive the same—
April 11— Stuart & Ayre, Solis for deft—
Smith Merrick & Cassin, Solis for Complts

Joints Articles of association.

Statement of purchases for account of the Chicago Land Company—

1852
July 26. To first purchase of Daniel Elston, being 98.626-1000

acres of land at $353.98¼ per acre,
amounting to $34.911.93
Addl interest and premiums as 3.202.71
paid for specie etc.
Total cost of first purchase of Daniel
Elston 38.114.64.
Total amount paid Daniel Elston
on above contract 23.202.71
Balance due Daniel Elston ——— $14.911.93

1852.
Sept 1 R.I. To purchase money $100.000 (and
interest computed till various pay-
86. ments become due, 9,295.83) of the
Ogden and Robbins purchase so
called —— 109.295.83
Amount already paid on same 82.795.83.
Balance due and payable Sept. 1. 1855. ——— 26,500,00

1852.
Nov 20 To purchase money $41.734.50 (and
interest computed till various pay-
ments become due $4.969.61) of
the Sheffield purchase, so called, 46.704.11
Amount already paid on same— 29.561.47
Balance
Balance —— 17.142.64.
Due and payable July 1. 1855, 8.944.07
" " " July 1. 1856 8.198,57
To cost of 49.03 acres bought of Daniel

Elston as stated in articles of association, and in consideration of which addition, he is shareholder to the extent of 1.700 shares ---------- 18,800.00

1852.

July 29. To purchase and interest of sundry lots and tax titles in Wright's addition to Chicago, as bought of J.Y. Seammon- 4.885,42

Amount already paid on same 3.960,42

Balance due and payable July 29, 1855 ——— 925,00

87. Recapitulation of total cost (when paid for in full) of the various properties of the Chicago Land Company-

First purchase of Daniel Elston	38,114,64
Second " " " "	18,800,00
Ogden & Robbins purchase	109,295,83
Sheffield purchase	46,704,11
J.Y. Seammon purchase	4,885,42
Total capital cost, say	217,809,00

Total minimum valuation, as affixed by the Trustees, and approved by the Executive Committee, on the 1st June 1855, was about — — — — $1,800,000

And in connection herewith, it would be proper to add that the property of the Chicago Land Company is very favorably situated on both sides of the north branch

of the Chicago River, affording very favorable locations for business and manufacturing purposes, and of a character that must cause it to increase in value in keeping with the growth of the city—

Wm. B. Ogden,
Mahlon D. Ogden } Trustees of the
Daniel Elston } Ch. Land Co.

Chicago June 30. 1855.

Chicago Land Company—

Indenture and Articles of Agreement and Association, made this Second day of May, eighteen hundred and fifty three, by and between Robert J. Walker, Eli Chittendon, A. Hyatt Smith, Charles Butler, William Sloan, John Bradley, Jacob P. Eastman, John P. Chapin, Edwin H. Johnson, Albert A. Bliss, and William 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 of Agreement and Trust, have heretofore purchased certain tracts and lots of land in the city of Chicago and in the vicinity thereof, in the State of Illinois, which are more particularly described in these articles—and whereas, a portion of the purchase money has only been paid on said several tracts and lots of land, and there are considerable sums remaining to be paid hereafter, as the same shall fall due

by the terms of the purchase in each case, which said purchases have been made 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 the 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 herein after named, therefore, it is hereby agreed and declared as follows—

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Article I—

The name and style of this association shall be the "Chicago Land Company," and its purposes and objects shall be the management, improvement, development, lease, sale or other disposition of the lands acquired for the benefit of the members of this association situate in the city of Chicago, in the State of Illinois or in the vicinity of said city, and especially all the lands hereinafter described, and the said William B. Ogden, Mahlon D. Ogden and Edwin R. La Bar, all of Chicago, parties of the second part, are hereby created Trustees, for the purpose of carrying into effect these articles—

Article II—

The title of all property owned or held, or to be owned or held for the benefit of this association, shall be

held by the Trustees of this association, 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—

Article III.

The capital stock of this association shall consist at present, of One million, eight hundred thousand Dollars ($1,800,000) divided into 18000 shares of $100 each, representing the estimated value of the lands owned or held, and to be owned or held for the benefit of this association, resulting from the general increased value of the real estate of the city of Chicago, since the purchase of the premises herein named, and especially from the increased value of the lands of this association, expected to result from the location of the Depot of the Illinois and Wisconsin Railroad thereon, and from the contemplated improvements of this association thereon—

The shares and interest in the property, at the signing hereof, held by the following persons in the portions attached to their names respectively—

Robert J. Walker,	1,500 shares,	$150,000
Eli Chittendon,	1.500, "	150,000
A. Hyatt Smith,	1.500, "	150,000
Charles Butler,	1.500 "	150,000
William Sloan,	1.500 "	150,000

John Bradley,	1,500 shares	$150,000
Jacob P. Eastman	1,500 "	$150,000
John P. Chapin,	1,500 "	" 150,000
Edwin H. Johnson,	750 "	75,000
Albert A. Bliss	750 "	75,000
William B. Hotchkiss	2,250 "	225,000
Walter S. Gurnee,	1,125 "	112,500
Daniel S. Miller,	1,125 "	112,500
	Shares 18,000	$1.800,000

Article IV.

Each of the above named shareholders and their
91. ~~shareholders~~ assigns, parties in interest herein, shall provide and pay to the Trustees herein named, his due portion of all further payments due and owing upon, and all the expenses incurred on account of the lands purchased, or which may hereafter be purchased for account and benefit of this association, when, as the same shall be called for by said Trustees, the survivors or survivor of them, for the purpose of making and discharging such further payments and expenses, until the title to all said premises shall be perfected in said Trustees, their survivors or survivor, or successor, free and clear of all liabilities, liens or incumbrances- and it shall be the duty of said Trustees of this association, to see that all such payments are duly and promptly made out of the funds so to be furnished and provided in ample time by the shareholders of this

association, or their assigns, and it shall be the duty of said Trustees from time to time to fix and assess the pro-rata amount to be paid by each shareholder, on account of such payment of purchase money, interest and expenses so to be paid by them, and upon the first of such assessments (to be made immediately upon the full execution of these presents, by all parties herein named) said Trustees shall give to each shareholder, by letter directed and mailed to each, at his post office address, such notice as the time for making such payment of purchase money, etc, will admit of- All future assessments, after the first, shall be fixed, laid or assessed by said Trustees, upon the shareholders

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hereto, or their assigns, the said Trustees for the time being, shall give to such shareholder thirty days notice previous to the time fixed for the payment of such assessment by letter directed and mailed to each at his post office address, ~~such notice as the time for making such payment of purchase money, etc, will admit of~~ and each shareholder subscribing this Indenture as an original member of this association, or who shall hereafter subscribe to it as the assignee of any share or shares to be transfered to him as herein provided for, does hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with every other member and all other the members of this association for

the time being, that he will well and truly pay to the trustees of this association, for the time being, or their lawful attorney any such sum, and all such sums of money as may be so called for by the Trustees for the time being, upon the said shares, at the time and place, and in the manner to be required in and by such calls.

Article V.

Any shareholder or member of this association omitting or failing to make such payment as in the last preceding article provided for, shall forfeit all his shares, right and interest in the said association, and its property and effects of every sort and kind, except such shares as may have been previously issued to him, for moneys paid by him, for account of any purchase made, or expenses incurred for account and benefit of this association. All shares and interests so forfeited, shall be distributed in pro rata proportion among the shareholders who shall have paid their assessments as called for, or to such of them as shall after 30 days' notice of such forfeiture, by letter from the Trustees for the time being, directed and mailed to the respective post office addresses of each, pay the deficit due upon such forfeited shares.

And in case no shareholder or shareholders shall pay within said thirty days, the assessment due on said forfeited shares, then said Trustees shall

proceed to sell such forfeited shares at public auction for cash, upon publishing a notice of such sale in some newspaper in the city of Chicago, for thirty days prior to such sale, and such sale shall transfer to the purchaser the shares so sold, and proper certificates in accordance with the provisions herein named, shall be issued to such purchaser or purchasers—

The proceeds of such sale shall be applied to pay all costs and interest, and then in payment of the amount due on said forfeited shares, and any surplus, if any, shall go to the common benefit of this association— But in case a balance of such amount shall still remain unpaid, then such balance shall become a debt due from the shareholder or shareholders respectively, to whom said share or shares belonged when so assessed, to said Trustees jointly, and to the survivor of them, to be recovered by them from said shareholder by suit, in any court having the proper jurisdiction—

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Any further purchase of property, which under the direction and approval in writing of the Executive Committee hereinafter named, the Trustees for the time being, may hereafter purchase for the benefit and use of this association, shall be conveyed to the said Trustees for the same uses and purposes and upon like conditions, as herein provided, and shall be paid for in like manner, as is provided for balance

due on purchases already made, except shares shall only be issued to the extent of the money paid— One full share for each One Hundred Dollars paid and such further purchases shall not exceed altogether the sum of Fifty Thousand Dollars, without the consent of the shareholders, being first obtained— For every Twenty-five Dollars heretofore paid by each shareholder in part payment for the lands of this association, and for every Twenty-five Dollars which shall be hereafter paid by each shareholder therein, a certificate for a full paid share or of One Hundred Dollars shall be issued to such shareholder therefor— but no certificate of shares of the capital stock of this association shall be issued except upon the shares upon which $25 (Twenty-five Dollars) (the whole amount due and assessable) has been fully paid, until the lands purchased and owned by this association shall have been fully paid for, together with any taxes and expenses incurred on account thereof, except the payment of the mortgage of $16.000 and interest, without personal recourse named in the contract of Elston with Sloan, to be paid July 26. 1872, after which all the balance of shares due to each party in interest, or his legal representatives, to make up the amount of capital stock, hereinbefore named, may be issued as full shares, and without further payment being made therefor—

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No assignment of any interest held under these articles of association shall be made or recognized by said Trustees, except the assignment of certificates of full paid shares actually issued. And each and every shareholder of this association is hereby bound severally, each for himself to pay the full amount due upon each and every share belonging to them. All shares for which certificates have been issued as fully paid, shall be subject to no further call or assessment, which fact shall appear from the face of such certificate.

It shall be the duty of said Trustees, their survivor or survivors, successor or successors, and they are hereby vested with full power and authority to manage, protect, control, improve, use, lease, sell, convey and dispose of any and all of the lands, lots, property, assets and effects of this association, (and of the parties in interest therein) now held or which may hereafter be held by, or intrusted to said Trustees — either for cash or on credit, or partly for cash and partly for credit, or for other property or things, in part or in whole, in exchange, as and on such terms, and for such consideration as they shall from time to time, think and deem best for the interests of this association. And they are hereby authorized and empowered to make all necessary contracts, leases and agreements in connection with the care and management of the same, and also all

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conveyances for the sale and disposition of the whole or any part thereof, and to pay and discharge all expenses, costs, charges, taxes, liens, incumbrances or other liabilities pertaining to, or properly or legally charged upon or existing against said property and effects, or connected with, or growing out of the care, management, improvement, use, lease or sale, of the same or otherwise—

And the said Trustees for the time being, shall take and receive in their names individually, all moneys, notes, contracts, agreements, bonds, mortgages or other instruments in writing arising or resulting from sales of said property or otherwise, or resulting

97 therefrom, or in connection therewith in any way, and may make any exchange or compromise of any of said securities, and have power and authority to satisfy, discharge and cancel the same or any thereof—

It shall be the duty also of said trustees, the survivors or survivor, or successor or successors, of them, to cause the property of this association to be carefully surveyed, and proper maps, plats and diagrams made of the same, and they shall cause the same to be laid out into lots and blocks, streets and alleys, and also into public squares or grounds, if they shall think proper, in such manner as to secure the greatest advantage and benefit to result from said property, and every part thereof, and shall cause such

maps and plans of such allotment or allotments and subdivisions to be filed and recorded according to law, and shall have power and authority to vacate and change or alter such subdivision or subdivisions, in part or in whole, in their discretion, for the benefit of this association— provided, however, that the Executive Committee, for the time being, shall approve and concur in such allotment or subdivision before the same shall be recorded, and shall also in connection with said Trustees, fix a minimum price upon each of said lots, blocks or parcels
98. so subdivided, below which the same shall not be sold until said minimum price be changed by said Committee and Trustees for the time being. It shall be the duty of said Trustees to open, grade and plank, or otherwise pave or improve all such streets or alleys as they shall think proper, and to build and construct such bridges, with or without draws, as they shall deem to be desirable and advantageous, and to make any and all other improvements upon the lands and property of this association, which they shall deem calculated to develop, adorn and enhance the value thereof, and to employ the necessary agents and superintendants and workmen to take charge of and execute the same, and generally to do all other acts and things relating to said property, business and interest, by them deemed needful and proper to be done, in

order to carry fully and favorably into effect, the purposes and objects of this association—
Said Trustees shall keep an office in said city of Chicago, and shall also keep books in which shall be entered the property of this association, exhibiting all sales made, the names of the purchasers, the lands sold, the amount for which the same was sold, the amount paid from time to time, and to be paid thereon, with the dates of the payments, and the interest paid or to be paid, and said Trustees shall employ such assistants, agents, and superintendents of improvements, and of surveys and allotments, leases and
99. sales, as they shall deem necessary or advantageous to be the best management, protection, development and disposition of the property of this association, and they may also employ counsel, and legal advice, as to the proper execution by them of their trust, from time to time, and to defend them in their action as such Trustees, whenever assailed, and for the collection of any demands, or enforcement or protection of any right, interest or claim of the shareholders and parties in interest hereto, at the reasonable charge and cost of the shareholders of this association— And in the month of January in each year, the Trustees shall make out a complete statement, showing the condition of the affairs of this association, on the first day

of the said month, and transmit a copy of them by mail, to some of the Executive Committee hereinafter named. All the moneys remaining in the hands of said Trustees after payment and deduction of all costs, taxes, charges and commissions, purchase money, interest, improvements and expenses of every kind, shall be paid over semi-annually, from time to time, as such surplus accrues by said Trustees, to the shareholders, according to the shares held by them respectively, at the office of said Trustees in Chicago, or such amount less the amount of exchange, shall be remitted, each shareholder on request made in writing, at his cost and risk, in some common method of transmission, by said Trustees from time to time, when accrued as aforesaid, and it shall be the duty of said trustees, when such surplus has accrued, semi-annually in writing, or by publication in some newspaper, to advise each shareholder in said association of the amount to be paid on each share.

100.

Should the keeping of such books and accounts, and the frequent rendition thereof, and the record of the proceedings of the Trustees, together with the keeping of the stock and transfer books of this association, involve the necessity of the keeping of an extra clerk by said Trustees for that purpose at any time hereafter, the expense thereof shall be by them charged to and paid by this association. It is agreed that said Trustees may employ said clerk at once.

The said Trustees, or the survivors or survivor of them, shall jointly receive five per cent commission (exclusive of, and over and above their ordinary charge for drawing and preparing contracts, leases, deeds, bonds, mortgages, and other papers) upon any and all sales made by them for this association, and upon all rents received, and disbursements and expenses made and incurred by them in payment of taxes, or for improvements, or otherwise, for, or on account of the property or interests and business of this association, (other than the payment of dividends.)

And also one per cent commission over and above all costs of court, fees of attorneys and officers, or other
101. expenses, upon all collections made (other than cash payments, made at the time of sale) for account of this asiociation in any way— Which said commissions, over and above all expenses of books, papers, blanks, forms, leases, deeds, mortgages, contracts, acknowledgements, recording, advertisements, costs of court, suits or other legal proceedings and expenses, by, for and on account of, or against said Trustees, and over and above all expenses of agents and surveyors, maps, superintendents, improvements and other expenses, incurred, including all necessary traveling expenses and horse hire, by said Trustees, for or on account of the shareholders of this association in any way, shall be in full payment for all the services rendered by said Trustees for said association— except said Trustees shall

be allowed a fair compensation for their services, in planning, sub-dividing and appraising the lots and property of this association—

In case of any sale made by said Trustees of property, which shall revert to this association because of non-payment for the same by the purchaser or purchasers thereof, their legal representative or assigns no commission shall be paid them for such sale, except the same be received from the moneys paid by such purchaser of such property—

Either of said Trustees may by his power of attorney, duly executed and acknowledged, constitute and appoint, and authorise his associate Trustee or

102. Trustees to execute all deeds, contracts and other instruments in writing, relating to or appertaining to this trust in any way, in his name and stead—

And either or all of said Trustees may purchase shares in this association, and for their own or others account in their discretion—

Any Trustee may assign and discharge himself of his trust, by instrument in writing and under seal, on executing such conveyances to his co-Trustees or successor, as may be necessary for that purpose, subject to all legal liabilities, to account for his conduct as such Trustee—

The Trustees shall only be responsible for wilful default, and no one acting in good faith shall be responsible for any omission or fault of a co-Trustee—

Two-thirds in interest of the shareholders shall have power by instrument in writing, and under seal, to remove any Trustee for any cause which they may deem sufficient to authorize such removal— Any Trustee who may be removed, shall, within ten days after notice thereof, execute such conveyances and other instruments in writing and under seal, as may be necessary to invest his co-Trustees with all his interests and powers, and to carry this provision into effect— In case of the death, resignation, removal or inability to act, of any of the said Trustees, the persons holding a majority of the shares, may in their discretion, by an instrument in writing, by them executed under seal, constitute and appoint a Trustee to fill such vacancy, and upon the filing of such appointment in the office of the Trustees, the co-Trustees shall immediately execute a proper conveyance to said new Trustee, so as to vest in him jointly with them, the title to the property then held for this association, to be held upon the terms, conditions, duties and powers of an original Trustee, and party to these articles of association. Robert J. Walker, John Bradley and Charles Butler, Shareholders herein above named, are hereby appointed the Executive Committee of this association to hold their office for one year from 1 May 1853. and until others are appointed by an instrument in writing duly executed under the hand and seal of persons holding a majority of the stock of this association

and which instrument shall be filed in the office of said Trustees—
From the filing of such appointment as aforesaid, the Executive Committee herein named, shall cease to act, and the persons named in such appointment shall have all the power, and fulfil the duties of the Executive Committee of this association, until a new Executive Committee are in like manner appointed—
Persons holding a majority of the shares of this association, may from time to time, in like manner, fill any vacancy in said Committee, arising from any cause whatever—
The Executive Committee shall have power to consult
104. and advise, and give directions to the said Trustees, in respect to any matter or thing relating to said property, and the management and disposition thereof, and they shall call a meeting of the shareholders at any time when in their discretion, the interests of this association shall require the action of the shareholders, and in case said Executive Committee and said Trustees shall at any time fail to concur and agree in their views, as to the best course to be pursued for the interests of the parties in interest herein, either party may call a meeting of stockholders to direct in regard to such difference—
It shall be in the power of the shareholders at any general meeting of the shareholders which may be

called by the Executive Committee or the Trustees, or by Shareholders representing at least 1/4th of the shares of the association, to give directions and take orders concerning the capital and property of this association, and the management and disposing thereof, as they may think proper, provided such their directions and orders, be consistent with the provisions of this Indenture, and be assented to by a majority in interest of all the shareholders—

The Trustees shall keep at their office in said city of Chicago, a stock or share and transfer book, in which shall be registered the names of all shareholders in this association, together with the

105. number of shares to which each of them is respectively entitled, also a book containing printed forms of certificates of shares with proper marginal references, and they shall deliver to each member a certificate of the number of shares held by him, and upon which the amount due has been paid in full, which certificate shall be in the following form, viz—

No— — — Chicago Land Company

This certifies that— — — — — — — — — — — — — is proprietor of— — — — shares, each share being at present one eighteen thousandth part (1-18000th part) of the present capital stock, which is one million eight hundred thousand dollars ($1.800,000) representing the beneficial interest of the Chicago Land

Company created in pursuance of the Indenture and articles of association, dated the second day of May 1853. said shares having been paid in full, are liable to no further call or assessment, and the same are subject to all the provisions and covenants contained in said Indenture, as will more fully appear by reference thereto, and are also transferable by assignment on the back hereof, and by surrender of this certificate to the Trustees, when a new certificate will be issued by them, to the person or persons named in said assignment, such person or persons first affixing his name and seal to the articles of association above referred to, as hereinafter provided

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- - - - - Trustees-

Shares in the Capital of this association may be transfered from time to time by the holders thereof, or his personal representatives, by endorsement under hand and seal, provided such transfer be notified to the Trustees, and provided also that the assignee to whom such share or shares shall be transfered, shall in person or by his lawful attorney, affix his name and seal to this Indenture, and become a party hereto-

The form of endorsement shall be as follows-

- - - - -

For value received _____ hereby assign and transfer to _____ and to executors, administrators and assigns, all _____ right, title and interest in the within _____ shares of the Capital Stock and beneficial interests of the Chicago Land Company, subject to all the provisions, and covenants contained in the Indenture and the articles of May second, 1853. constituting said Company.

(Seal)

Each one of said certificates shall have attached to it in the printed volume, a margin as follows—

No. ___

107. Name ___

Share ___

Date ___

Chig'l }
Rop's }

After the assignee shall have subscribed as aforesaid, the transfer shall be registered in the books kept by the Trustees, and on the registering of such transfer, the former certificate shall be delivered up, and a new one shall be issued in similar form.

And 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 this association, in respect to the shares

so transferred—

The Trustees for the time being shall at any time hereafter, with the consent and approval of the Executive Committee, and under the direction, establish in the city of New York, a transfer office for the transfer of the shares of the Capital Stock of this association, and for the payment of dividends, with the necessary books and agent—

The Capital Stock of this association and the beneficial interest of the several shareholders thereof shall be and are hereby declared and agreed to be personal property, and on the death of any
108. shareholder, his interest shall go to his personal representatives, and not to his heirs at law—and such heirs at law shall at no time have or claim any interest legal or equitable therein—

The several persons subscribing this Indenture, do hereby grant and convey to the Trustees above named, and to all future Trustees of this association, full power and authority to do all matters and things hereinbefore expressed and provided for—and each person subscribing this Indenture as an original member of the association, or as the assignee of any share therein, does hereby express his assent to all the said provisions, and does also for himself, his heirs, executors and administrators, covenant, promise and agree, to and with every

person who shall subscribe this Indenture, and to and with the executors, administrators and assigns of every such other person, that he, the said covenanter, his heirs, executors and administrators, will well and truly perform, fulfil and keep, so far as therein lies, all and singular, the provisions hereinbefore contained, and that he will do all and every act and thing that may be necessary, and that may be lawfully done, to give full effect to the object and interest of this association—

This Trust shall be closed in the month of June, 1863, (if not sooner closed by the direction of a majority in number and value of the shareholders, as hereinafter provided) in the following manner— all the property and effects on hand at that time belonging to the association, shall be sold at public auction for cash, to the highest bidder, in the city of Chicago, on the third Wednesday of June, 1863. by the Trustees, of which three months, previous notice of the time, place and conditions of sale shall be given in at least three of the leading newspapers published in the city of Chicago at that time, and in at least two of the principal newspapers published in the city of New York, provided however, that shareholders, who are such in the month of January or February, 1863. owning three fourths of the shares of

109.

this association, shall have power, and they are hereby authorized, by an instrument in writing to be executed under their hands and seals, and delivered to the said Trustees for the time being, to continue this Trust under these articles of association beyond the said month of June, 1863, and for such further period as they shall in the same instrument, specify—

It is however, expressly declared, that a majority in number and value, of the shareholders of this association, may at any time prior to the said month of June, 1863. by an instrument in writing, direct
110. the said Trustees for the time being, to sell any part or all of the lands and properties and effects of this association at public auction, after reasonable notice, on such terms and conditions, and at such time, as they shall in the said instrument, specify, and it shall be the duty of said Trustees, on the delivery of such instrument to them, to carry the same into effect, which said instrument shall be executed under the hands and seals of the parties—

The premises herein proposed to be conveyed to said Trustees, are that part of the Clybourne farm, so called, in the city of Chicago, and adjoining the corporate limits of said city, heretofore conveyed by Joseph E. Sheffield and wife to Robert J. Walker and A. Hyatt Smith, by deed bearing date November 20, 1852, and duly recorded in Cook County, Illinois, also all the

land and premises embraced in the contract of Daniel Elston with William Sloan, dated July 26. 1852. for said Elston's land situate on the North branch of the Chicago river, in the city of Chicago aforesaid, subject to reservations for the benefit of the Illinois and Wisconsin Rail Road Company, therein named, also certain lots in Wight's addition to Chicago, contracted by J. Young Scammon to John P. Chapin, by contract, dated July 29, 1852. Also certain other lots and lands, contracted for by Wm. Sloan and others for account of this association, a particular description of which is not now at hand, but by reference to said contracts will more fully

111. appear—

The title in fee simple to all which property, lots and lands shall be duly conveyed to and vested in said Trustees, as is hereinbefore provided, as soon as the same can be conveniently done, and when the same shall all have been so conveyed to said Trustees, they shall file a schedule of all such property so conveyed to them, with the Executive Committee hereinbefore named.

In case Daniel Elston of Chicago, shall desire to become a party to this association to the extent of his reserved two fifths interest in the property purchased of him, as per contract with William Sloan herein refered to, the Trustees and the Executive Committee herein named, may in their discretion admit him,

upon his duly signing and sealing the articles of this association, and complying with all the provisions applicable to his admission, and upon his conveying said two-fifths interest in said premises, to said Trustees, and said Trustees shall then and thereafter, as is hereinbefore provided, issue to said Elston the number of shares to which he will be entitled in proportion as said two-fifths in interest, (to be valued and estimated at $26.00) or such portion of said two-fifths as he may add to the property of this association, is to the whole cost with interest of the property of this association. But
112. until all said property is fully paid for by the other shareholders herein, and the full quota of shares issued to all, said Elston shall only be entitled to share any dividends made meanwhile, in proportion as the cost of the interest purchased of and so added by said Elston, is to the entire cost of the property of the association.

In case of said Elston's admission on the terms and conditions above named, the Trustees and Executive Committee shall add to the Capital Stock hereinbefore named, and to the number of shares issued in proportion as the amount allowed said Elston is to the whole cost, and to the whole number of shares herein agreed to be issued upon such cost.

For any other purchases which said Trustees may

make with the advice and approval of the Executive Committee, and in accordance with the provisions hereinbefore named, they may issue further shares to the extent of one share for every hundred dollars paid for such purchase or purchases, and may add to the amount of the capital of this association, in like proportion—

Any purchases which may be so made, may be paid for by said Trustee in cash at the time, from time to time out of any funds of this association in their hands or control—

The Trustees, with approval in writing of the Executive Committee, are hereby authorized to grant and convey the right of way to the Illinois and Wisconsin Rail Road Company, for their railway tracks through the premises of this Association, as they shall have occasion to run the same, and they shall also convey to said Rail Road Company, such lots and lands of this association, as said Rail Road Company may select for their Depot grounds not exceeding in all selected for Depot grounds from said property the amount of twenty acres, exclusive of reservations made for that purpose in the contract with Elston—

For all which right of way and Depot grounds so to be conveyed by said Trustees, the Rail Road Company shall be charged the fair average cost thereof to this association, as the same shall be estimate

by said Trustees and Executive Committee, and said Trustees and Executive Committee may in their discretion take the full paid stock of said Rail Road Company in part payment for said right of way and Depot grounds—

In witness whereof the original parties to these presents have hereunto interchangeably set their hands and seals in duplicate this day and year first above written, one to be kept at the office of the Trustees above named, and one to be kept by the Executive Committee above named— And the other parties to these presents becoming members

114. of this association by the transfer of shares therein, have severally set their hands and seals thereto, at the time affixed to their respective names— all parties signing, affixing their Post office address to their signatures—

Names	Post Office Address	
R. J. Walker	Washington City, D. C.	Seal
John Brodey	Burlington, Vermont	"
J. P. Eastman	North Cambridge, Mass.	"
Charles Butler	New York City	"
Albert A. Bliss	Columbus, Ohio.	"
Abm. B. Holckkeis,	New York city	"
Edwin H. Johnson,	Middletown, Connecticut	"
John P. Chapin,	Chicago, Illinois-	"
Eli Chittendon	Burlington, Vermont	"
Abm. Sloan	Woodstock, Illinois	"

A. Hyatt Smith,	Janesville, Wisconsin	Seal
W. B. Ogden,		"
Mahlon D. Ogden	Trustees	"
Edwin R. La Bar	All of Chicago, Illinois	"
Daniel S. Miller,	New York	"
Walter S. Gurnee,	Chicago	"
Daniel Elston	Chicago, Illinois	"

Daniel Elston having signed and sealed the foregoing articles of association of the Chicago Land Company, and agreed to comply with all the provisions thereof applicable to his admission thereto, and having conveyed to William B. Ogden, Mahlon D Ogden and Edwin R. La Bar, the Trustees of said Chicago Land Co, forty nine and 03-100 (49.03-100) acres of his reserved two-fifths interest in the property purchased of him, as per contract with William Sloan in said articles referred to, at the price per acre (353 98/4-100 $) paid him for his three-fifths interest in said property, and amounting to seventeen thousand, three hundred and fifty five and seventy-six one hundredth dollars ($17.355,76-100) to which add a proportionate allowance to him, equal to the average interest to be paid and allowed on the property purchased of others on credit, until the same is paid for, say fourteen hundred and forty-six and 31-100 dollars ($1446.31-100) making in all eighteen thousand eight hundred and two and

115.

87-100 dollars ($18,802 87-100) (less two and 87-100 dollars paid him in cash by said Company) say eighteen thousand eight hundred dollars ($18,800) for which amount and to which extent he is hereby declared to be a stockholder in said Chicago Land Company, and is entitled now to an issue of four shares of one hundred dollars each, for every hundred dollars, of said eighteen thousand eight hundred dollars, and when the lands purchased by said Company shall have been paid for, except the sixteen thousand dollars mortgage to Elston, named in the foregoing articles of association of the
116. Chicago Land Company, then said Elston will be entitled without further payment to his pro-rata proportion of shares then to be issued to make up the full amount of the Capital Stock of said Company.

The sixteen thousand dollar mortgage to be executed to Daniel Elston, as provided for in his contract with William Sloan, hereinbefore referred to, shall be executed to him by the Trustees hereinbefore named, in the manner provided for in said contract, as soon as the premises can be conveniently and judiciously platted and subdivided as is therein provided.

The land purchased of Mr. Elston having fallen short in quantity, the balance due to him to be secured by mortgage, as provided in contract with

Sloan, will be fourteen thousand, nine hundred and eleven and 93-100 dollars ($14.911.93-100) instead of sixteen thousand (16,000) dollars as therein and in the foregoing articles of association, named It is hereby further declared that in consideration of the said Daniel Elston's admission to the said Chicago Land Company, and of the addition by him of land thereto, of the value at the first cost price of (18,000 eighteen thousand, eight hundred dollars, that the Capital Stock of said Company shall be and is hereby increased in proportion, that is to say the present cost price (with interest added to payments until due,) of the said Company's property, is ascertained to be one hundred and ninety-nine thousand (199,000) dollars, upon which eighteen thousand (18,000) shares of $100 each, are to be issued. Add the amount of said Elston's addition to said property, at like cost price $18.800, and it increases the total cost of the Company's property to $217,800, and it increases the pro-rata Capital Stock of the Company, to one million, nine hundred and seventy (1,970,000) thousand dollars, and the shares to be issued are increased to (19,700) nineteen thousand, seven hundred in number, which last named sum of $1,970,000, is hereby declared to be the present Capital Stock of the Chicago Land Company, and 19,700 is hereby declared to be the number of shares

117.

which shall be issued thereon, as and in the manner in the foregoing articles of association provided- the said Daniel Elston being entitled as hereinbefore provided to the said increased number of shares, amounting to seventeen hundred, (1,700) shares-

Chicago, July 15th, 1853.

W. B. Ogden
Mahlon D. Ogden,
Edwin R. La Bar
} Trustees of the Chicago Land Company-

Approved-

Charles Butler, by S. H. Fleetwood, his Atty in fact
John Bradley
} Executive Committee of the Chicago Land Company

Approved and agreed to: Daniel Elston. (Seal)

Resignation of Trusteeship.-

Chicago March 19th 1856.

To Charles Butler,
John P. Chapin
& Walter S. Gurnee
} Executive Committee of the Chicago Land Company

To Mahlon D. Ogden, Trustee of the Chicago Land Company

To the Stockholders of the Chicago Land Company, and

To whomever it may concern-

Please take notice, and this may certify, that I hereby resign my position and office as Trustee of the Chicago Land Company, to take effect on

the execution hereof- and that in accordance with the provisions of the articles of association of said Chicago Land Company, I have this day conveyed to Mahlon D. Ogden, my co and surviving Trustee of said Company, all my right, title, interest and trust whatever, in the property and effects of said Company- and do hereby assign and set over the same, whether real, personal or mixed- To have and to hold the same to him, his survivor or successor forever-

Witness my hand and seal this nineteenth day of March, A D. 1856.

119. Witness:- John H. Cutter. W. B. Ogden (Seal)

Copy of Deed from William B. Ogden.

Whereas certain lands and lots in the County of Cook and State of Illinois, were heretofore conveyed to William B. Ogden, Mahlon D. Ogden, and Edwin R. La Bar, of the City of Chicago, in the County and State aforesaid, as joint tenants and not as tenants in common, to hold as Trustees of the Chicago Land Company- and whereas the said Edwin R. La Bar has since deceased- and whereas since the decease of the said Edwin R. La Bar, certain lands and lots have been conveyed to said William B. Ogden and Mahlon D. Ogden, as joint tenants and not as tenants in common, to hold as surviving Trustees of said Chicago Land Company- and whereas the said

William B. Ogden has this day resigned his trust and office of Trustee of the said Chicago Land Company. Now therefore for the purpose of vesting all the right, title and interest held by the said William B. Ogden as such Trustee, in Mahlon D. Ogden, the surviving Trustee.

Know all men by these presents, that I, William B. Ogden of the City of Chicago in the County of Cook, and State of Illinois, in consideration of the premises, and of one dollar to me in hand paid, by Mahlon D. Ogden of the same place, the receipt whereof is hereby acknowledged, hath remised, released and forever quit claimed,

120. and by these presents do remise, release and forever quit claim, unto the said Mahlon D. Ogden, his heirs and assigns forever, all the right, title and interest which is vested in me, the said William B. Ogden, as Trustee as aforesaid, in and to the lands and lots lying and being in the County of Cook and State of Illinois aforesaid, which are described in and conveyed by the following deeds of conveyance - that is to say, a certain Deed made and executed by A. Hyatt Smith of Janesville, Rock County, State of Wisconsin, and Ann M. C. his wife, and Robert J. Walker of the City of Washington, District of Columbia, and Mary B. his wife, to the said William B. Ogden, Mahlon D. Ogden,

and Edwin R. La Bar, Trustees of the Chicago Land Company, dated the fourth day of June, Eighteen hundred and fifty three, and recorded in the Recorder's office of Cook County aforesaid, the 12th day of July, A. D. 1853. in Book 65. of Deeds, page 253–

Also a certain other deed made and executed by Daniel Elston and Blanche Maria his wife of said City of Chicago, to the said William B. Ogden, Mahlon D. Ogden and Edwin R. La Bar, as joint tenants, and not as tenants in common, dated the fifteenth day of July, Eighteen hundred and fifty three, and recorded in the
121. Recorder's office of Cook County aforesaid, 24th day of October, A. D. 1855. in book 101 of deeds, page 100–

Also a certain other deed made and executed by J. Young Scammon and Mary A. H. his wife, of the City of Chicago, Cook County, State of Illinois, to the said William B. Ogden, Mahlon D. Ogden, and Edwin R. La Bar, of same place, Trustees of the said Chicago Land Company, dated the nineteenth day of July, Eighteen hundred and fifty three, and recorded in the Recorder's office of Cook County aforesaid, the 14th day of February, 1855. in book 88 of deeds, page 180–

Also a certain other Deed made and executed by

J. Young, Seammon, and Mary A. H. his wife, of Chicago, Cook County, Illinois aforesaid, to the said William B. Ogden and Mahlon D. Ogden, surviving Trustees of the said Chicago Land Company, as joint-tenants, and not as tenants in common, dated the twenty-fourth day of January, Eighteen hundred and fifty five, and recorded in the recorders office of said Cook County, 14th day of February, A.D. 1855. in book 80 of deeds, page 542.

Also a certain other deed made and executed by Van. H. Higgins and Elizabeth S. his wife, and Bolton H. Strother, and Harr Strother, his
12 2. wife, all of Chicago, Cook County, Illinois, to the said William B. Ogden, and Mahlon D. Ogden, surviving Trustees of said Chicago Land Company, dated the twentieth day of February, Eighteen hundred and fifty six, and recorded in the Recorder's office of said Cook County, the 25th day of February, A.D. 1856. in book 108 of Deeds, page 352.

Subject to all contracts, bargains, and sales made by said Trustees, or any of them, which are to be fulfilled and carried out in the same manner as though the conveyance had not been made.

To have and to hold the same, together with all and singular, the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining

and all the Estate, right, title, interest and claim whatsoever of me, the said William B. Ogden, as Trustee as aforesaid, unto the said Mahlon D. Ogden, his successors and assigns, or their or his heirs and assigns, to his and their proper use, benefit and behoof forever.

In witness whereof, I, the said William B. Ogden, have hereunto set my hand and seal, this nineteenth day of March, Eighteen hundred and fifty six.

Sealed and delivered in presence of John A. Cutler.

W. B. Ogden (Seal)

123.

State of Illinois }
Cook County } ss.
City of Chicago }

I, John W. Magill, a Notary Public in and for said City in said County, in the State aforesaid, do hereby certify that William B. Ogden, who is personally known to me to be the same person whose name is subscribed to the foregoing written instrument, appeared before me this day in person, and acknowledged that he had signed, sealed and delivered the said instrument of writing, as his free act and deed, for the uses and purposes therein expressed.

Given under my hand and notarial seal, this twentieth day of March, A. D. 1856.

John W. Magill, Not. Pub.

Copy of Deed from Wm B. Ogden.

Whereas William B. Ogden and Allen Robbins were, on the thirty-first day of May A.D. Eighteen hundred and forty seven, the owners in fee simple as joint tenants and not as tenants in common, of the lands and lots hereinafter described - And whereas the said William B. Ogden and Allen Robbins did on the same thirty-first day of May, Eighteen hundred and forty seven, enter into an agreement of that date with each other, and with one Jane E. Wight and one James C. Marshall as her trustee, relative to the sale and disposition of said lots and lands, which said agreement
124. was recorded on the ninth day of July, A. D. 1847 - in the recorder's office of Cook county in the state of Illinois, in Book No 24 of Deeds, page 37 - et seq - to which reference is hereby had - And whereas the said William B. Ogden, as the survivor of William E. Jones, heretofore composing the firm of Ogden and Jones, acting for himself, for the said Allen Robbins, and for the said Jane E. Wight and James C. Marshall, under and by virtue of the provisions and authority in said first mentioned contract contained, did on the tenth day of November, Eighteen hundred and fifty two, contract to sell to John Bradley and A. Hyatt Smith, the lands and lots hereinafter described, upon certain terms and conditions thereinafter mentioned, which last mentioned contract was recorded on the nineteenth

day of November, A. D. 1852. in the Recorder's office of Cook County, in Book No 55. of Deeds, page 293. to which reference is hereby had—

And whereas the said John Bradley and A. Hyatt Smith did on the sixth day of April, Eighteen hundred and fifty five, assign and transfer the said last mentioned contract, together with all their right, title and Interest in and to the lands therein described, to Mahlon D. Ogden, Trustee of the Chicago Land Company— And whereas the said last mentioned contract has been fully performed on the part and behalf of the said

125. John Bradley and A. Hyatt Smith and their assignee—

Now therefore, for the purpose of vesting in said Mahlon D. Ogden, his heirs and assigns, the legal title to the undivided half of the premises hereinafter more particularly described, and which now remains in said William B. Ogden

This Indenture made and entered into this Twentieth day of March, A D. Eighteen hundred and fifty six, by and between William B. Ogden of the City of Chicago, in the County of Cook and State of Illinois, of the first part, and Mahlon D. Ogden of the same place of the second part—

Witnesseth, that the said party of the first part, for and in consideration of the premises and for the consideration of one dollar to him in hand paid

by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath alienied, remised, released, conveyed and confirmed, and by these presents, doth alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever- All the undivided one half part of the following described parcels of lands and lots situated in the City of Chicago, County of Cook and State of Illinois, that is to say- The North East quarter of Section five (5) in Township
126. thirty nine (39) North of Range fourteen East, (14) of the third principal meridian, containing One hundred and sixty acres more or less- Also the following lots and Blocks in Wights Addition to Chicago, in said City of Chicago, said Addition being laid out on the Southerly portion or end of the East half of the South East quarter of Section five (5) in the township and range aforesaid to wit- Lots one and three in Block one,
Lots one two, three, four, five and six, in Block two,
Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, in Block three- Lots one, two, three, four, five, six, seven, eight, and nine in Block seven- Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in Block eight- Lots one, two, three, four, five, six, seven, nine, ten, eleven, twelve, thirteen and fourteen in Block nine, Lot one in Block four, being the entire Block- Lots

one, two, three, four five, seven, eight, nine, ten, eleven and twelve in Block five—Lots two, three, six, seven, eight, ten, thirteen and fourteen in Block Ten Lots three, four, five, seven, eight, ten, eleven, thirteen and fourteen in Block Eleven—Lots three, five, seven, nine, eleven and thirteen in Block twelve and Lots three, five, seven, eight, ten and twelve in Block thirteen—and also the residue of said East half of said South East quarter of Section five, and being all of said East half of said South East quarter not embraced and included in the plat of said Wights addition, and containing

127. fifty three acres more or less, all of which said premises, lots and lands are situated in the City of Chicago, County of Cook and State of Illinois—Togethter with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof—and also all the estate, right, title, interest, property, possession, claim and demand, as well in law as in equity, of the said party of the first part—of, in and to the above described premises, and every part and parcel thereof—with the appurtenances—To have and to hold all and singular, the above described premises, together with the appurtenances, unto the said Mahlon D. Ogden, his heirs and assigns forever—

In witness whereof, the said William B. Ogden hath hereunto set his hand and seal, the twentieth day of March, Eighteen hundred and fifty six.

Signed. W. B. Ogden (Seal)

State of Illinois }
County of Cook } ss.

On this twentieth day of March, A. D 1856. before me, a Notary Public in and for the Town of North Chicago, in said County and State, personally came William B. Ogden, to me known to be the real person named in, and who executed the foregoing Deed, and acknowledged
128. the same to be his free act and deed, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal

(Seal) Signed, Franklin Hathaway

Notary Public.

Release of Jane E. Wight.

Whereas a certain Agreement was executed by Wm. B. Ogden and Allen Robbins to James C. Marshall, Trustee of Jane E. Wight, bearing date the 31st day of May, A. D. 1847. in and by which agreement, the firm of Ogden, Jones & Co. were to have the sale and disposition of certain lands therein mentioned belonging to said Jane E. Wight, and were to pay over the proceeds of said lands, less certain advances, charges, disbursements, and commissions as in and by said agreement provided, and whereas the said James C. Marshall

has resigned, renounced, and retired from the said Trusteeship, by an instrument in writing, executed by him to the said Jane E. Wright, and bearing date the 11th day of June, A. D. 1854. and the said Jane E. Wright has received from the said Ogden, Jones & Co. the sum of
Dollars, the receipt of which is hereby acknowledged, which said sum is in full payment and satisfaction of all claims, demands, dues, rights and proceeds due, owing, or in anywise belonging to the said Jane E. Wright, under said agreement—
Now therefore, the said Jane E. Wright has released and forever discharged, and does hereby forever release and forever discharge the said William B. Ogden, Allen Robbins, and Ogden, Jones & Co. and each of them, of and from all claim, demand, liability, action and course of action by reason of the premises aforesaid, and of any and every, the Act and Acts of the said parties, done under said agreement, or in pursuance, or on account thereof, and of and from any and all sums of money or liability for money due, chosen in action or other property due, owing or belonging to the said Jane E. Wright, under said agreement— In witness whereof, the said Jane E. Wright has hereunto set her hand and seal, this Thirtieth day of June, A.D. 1855

129.

Witness—
Matthias Banta—
William Blakeman—

Jane E. Wright (Seal)