

in undisputed possession of the strip of land in question for upwards of forty years, and when he purchased and took a deed for said lot there stood upon it a house, extending over and covering said disputed strip of land, which said house had occupied its then position for more than forty years, "that having purchased the premises aforesaid, he (the defendant) took possession thereof and of the house thereon, with the consent of all the heirs and representatives of the former owner, under whom he claimed, and being desirous to improve said property, he pulled down a portion of the old house in order to rebuild the same, but as before, he denies that he has commenced digging a foundation or building a dwelling, as in said bill is alleged," "the old foundations of the former building remaining in the ground where they have always been, the defendant not having removed or interfered with them, but intending merely to put new walls upon them in lieu of the upper walls of the building, taken down as aforesaid; the end wall on the side claimed by the complainants being still standing."

Such is the case presented by the bill and answer, and it will be seen that, according to my view of the equity of the bill, there no longer remains a foundation upon which it can rest, and that the injunction must be dissolved, unless, indeed, the answer is overcome by the depositions which have been taken under the order of the 9th of June last.

The bill alleges that the defendant, without right or title, entered upon a portion of complainants' lot disseized them, and commenced digging a foundation and building a dwelling, &c. The answer says that this is not so; that defendant, and those under whom he claims, have been in possession of this property for upwards of forty years; that he has not commenced digging a foundation and building a house as charged, but that he simply pulled down the walls of an old house which had occupied the same site for upwards of forty years upon the said lot, and only proposes to put new walls upon the old foundation. There is, therefore, so far as digging a foundation