
N. J. Court of Errors and Appeals.

WILLIAM T. LEONARD,
Complainant,
and
HIRAM HART,
Defendant.

BILL AND AFFIDAVITS.

[Filed August 30th, 1884.]

To the Honorable Theodore Runyon, Chancellor of the State
of New Jersey:

Humbly complaining showeth unto your Honor, your orator,
William T. Leonard, of the township of Raritan, in the county
of Hunterdon and State of New Jersey: That he is the owner
in fee-simple of a certain tract of land and premises situate in
said township of Raritan, and bounded and described as follows:
Beginning at a stake corner to a lot sold to Charles Bartollette 10
and in a line of John Besson's land; thence by said Besson's
line (1) south, one-third of a degree west, four chains and forty-
two links to a stake corner to said Besson in John Higgins'
line; thence by said Higgins' line (2) south, eighty-nine and a
quarter degrees west, four chains and fifty links; thence by the
same (3) south, one-third of a degree west, one chain and sixty

links to another of said Higgins' corners; thence by the same (4) south, sixty-eight degrees and three-quarters west, two chains and ninety-four links to a stake in said Higgins' line, "corner to a lot sold to the township of Raritan; thence (5), along said lot north, one-third of a degree east, five chains to a stake corner to said lot, in a line between the first and second tier of lots; thence along said line (6) north, sixty-eight degrees and three-quarters east, two chains and ninety-four links to a stake in a line between the second and third tier of lots; thence along said
10 line (7) north, one-third of a degree east, one chain and two links to a corner of No. 13, sold to C. Bartolette; thence along said lot (8) north, eighty-nine degrees and a quarter east, four chains and fifty links to the place of beginning, containing three acres and thirty-seven hundredths of an acre more or less."

That said premises were conveyed to your orator by George A. Allen and Mary, his wife, by their deed bearing date July sixteenth, A. D. eighteen hundred and seventy-eight, which said deed is recorded in volume 201 of Deeds for said county of Hunterdon, page 398, and to which your orator for greater cer-
20 tainty begs leave to refer, if it shall be found necessary so to do.

Your orator further shows that from the date of said deed until the present time your orator has occupied the said premises, and used them for farming purposes, and has taken therefrom a large quantity of wood, besides has cut and removed therefrom the grass and hay grown thereon and has pastured his cattle upon the premises as suited his convenience or necessity.

Your orator further shows that the said George A. Allen purchased the said premises at sheriff's sale, on the nineteenth day of March, A. D. eighteen hundred and seventy-seven, by
30 Wesley Bellis, then sheriff of the county of Hunterdon, under an execution issued out of the Supreme Court of the State of New Jersey, by Henry and John W. Britton, plaintiffs, and one Samuel M. Higgins, defendant, which said last-mentioned deed is recorded in book _____ of Deeds for Hunterdon county, page _____, and to which your orator begs leave for greater certainty to refer, if it shall be necessary so to do.

And your orator further shows that said Samuel M. Higgins purchased said premises of one John Besson by the deed of the

said John Besson bearing date March the thirtieth, eighteen hundred and thirty-nine, and recorded in book 71 of Deeds for Hunterdon county, page 137, and to which for greater certainty your orator begs leave to refer, if it shall be necessary.

And your orator further shows that the said Samuel M. Higgins occupied the said premises from the date of the last-mentioned deed until the nineteenth day of March, eighteen hundred and seventy-seven.

And your orator further shows that your orator, and those from whom your orator secured his title to the said premises, 10 have for a period of more than fifty years, in going to said premises from the public road near the residence of Abraham Hoppock, in said township of Raritan, and back again from said premises to said public road, passed over and along the lands of the said Abraham Hoppock, lands of Hiram Hart, and lands of Samuel C. Case.

And your orator further shows that on or about the twenty-eighth day of July, A. D. eighteen hundred and eighty-four, the said Hiram Hart, by placing an ox-chain about each end of a certain swinging gate, which for a long time has been erected 20 across the way aforesaid by the said Hiram Hart, and securing the chain by locking it with a padlock, has prevented your orator from the use of said way, as had been the custom of your orator and those from whom your orator procured his said title during all the time aforesaid.

And your orator further shows that your orator has no other lawful way of going to or from his said premises than over the way aforesaid, which lies over and upon the lands of said Hiram Hart, and through and by the said swinging gate.

And your orator further shows that there is no immediate 30 remedy at law by which he is able to remove the fastenings from the said swinging gate, or to secure a way to and from the said public road to his said premises; that he has applied to the said Hiram Hart to remove the said chain by which said gate is secured or fastened and your orator's way through it obstructed, but that the said Hiram Hart refuses to remove the same or allow your orator to pursue his lawful way over the lands of said Hiram Hart; and by the said conduct of the said

Hiram Hart your orator is prevented from going to his said premises.

Your orator further shows that there is upon said premises a large quantity of wood which your orator is desirous of removing therefrom, besides large quantities of grass which your orator intends to use for the feeding of the cattle and other stock of your orator.

Your orator further shows that, so far as he knows or is able to gain any information, the act of the said Hiram Hart in
10 fastening the gate as hereinbefore set forth, is the first interference with the free and uninterrupted use of said way over lands of said Hart by your orator or any other person who had the title to or the possession of the said premises of your orator.

Your orator further shows that the conduct of the said Hiram Hart towards your orator in relation to the use of said way by your orator is spiteful, evil and oppressive to your orator, inas-
much as your orator is not able to go to or from his said premises, and cannot for a long time if the usual proceedings at law are taken to determine the true, lawful rights of your orator to the
20 use of said way.

Your orator further shows that so lately as the twenty-third day of August, instant, your orator, in company with one Asa Dalrymple, and with the team and wagon of your orator, for the purpose of going to the said premises of your orator, passed from said public road over said way so far as the said gate upon the lands of said Hart, but found the said gate chained fast as above described. And said Hiram Hart was at his home, and upon your orator's asking him to unlock the gate and allow your orator to pass through, replied that he would not do it, and that
30 your orator should not go through said gate if he could help it.

Your orator further shows that he is unable to account for the conduct of the said Hiram Hart in relation to fastening said gate, unless the following facts shall show a reason for it: Some two years ago the said Samuel C. Case, who is a son-in-law of said Hiram Hart, and whose land lies adjacent to the premises of your orator—between your orator's premises and the land of said Hart—and over whose land, as well as those of said Hart, said way lies, brought a suit in the Circuit Court of Hunterdon

county against your orator, for a trespass upon his land occasioned by the use of said way by your orator. The said suit was determined in favor of your orator, and ever since that time your orator has been annoyed by the threats of the said Hiram Hart and Samuel C. Case, that your orator should in some way be deprived of his use of said way, and your orator charges that the act complained of is but the attempt of said Hart and Case to carry into effect their wicked threats.

Your orator further shows that he has caused to be annexed to his bill of complaint a map or draft of said premises, the 10 land of said Hoppock, Hart and Case, over which said way runs, and the line of the way which your orator and those who owned the premises of your orator before your orator purchased them, have traveled for more than twenty years, and by said adverse use have secured a lawful right to use the same.

In tender consideration whereof, and forasmuch as your orator has not a complete and safe and just remedy in the premises at and by the strict rules of the common law, but is greatly vexed and injured in his rightful use of the said way by the acts of the said Hiram Hart, as hereinbefore set forth, and as full and 20 complete relief can only be had in the premises by the consideration and decree of this honorable court,

To the end, therefore, that the said Hiram Hart, and any confederate, when discovered, may, without oath, full, true and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance and belief; and that it may be decreed that your orator has, at all times, a right, in passing and repassing from and to 30 the public road leading from Flemington to Croton, to and from your orator's lands, to pass over the lands of the said Hiram Hart, within the limits of said way; and also that your orator has a right to have the gate hung across said way, in such condition at all times that your orator may open the same freely and pass through the same without let or hindrance; and also that a mandatory injunction may issue, commanding the said Hiram Hart to remove forthwith the chain and lock from said

gate, by which the same is now closed against your orator, and allow your orator to pass through the same at his pleasure; and that your orator may have such other and further relief in the premises as to your Honor may seem meet, and as shall be agreeable to equity and good conscience:

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction, issuing out and under the seal of this honorable court, to be directed to the said Hiram Hart, restraining him, his agents, servants and
 10 employes from the further obstructing of said way, and strictly commanding him and them that they forthwith remove the chain and lock from said gate on said way, or any other means or thing whereby the said gate is or may be prevented from swinging and from being opened, and from being swung in the usual and ordinary use of said gate by the said complainant until the further order of this court shall be had therein; but also the State's writ of subpœna, to be directed to the said
 20 Hiram Hart, commanding him, by a certain day and under a certain penalty therein to be expressed, to appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor may seem meet, and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

R. S. KUHL,

Solicitor and of Counsel with Complainant.

STATE OF NEW JERSEY, Hunterdon County, ss.

William T. Leonard, the above-named defendant, being duly sworn, on his oath says, that the above bill of complaint has
 30 been read over to him, and that the matters and things set forth therein, so far as relates to his own acts, are true, and so far as relates to the acts of others, he believes them to be true; that he is the owner of the premises described in said bill; that he is thirty-nine years old and has always lived within one-fourth of a mile of said premises, and has no knowledge of any other way leading to said premises except the way over the lands of said Hiram Hart, and through and by the gate which is upon

the lands of said Hart ; that he has used the said way over said Hart's land and through said gate ever since he purchased it on the sixteenth day of July, A. D. eighteen hundred and seventy-eight, without any hindrance or objection on the part of the said Hiram Hart until on or about the twenty-eighth day of July last past, when deponent was informed that said Hart had fastened the said gate with the ox chain and padlock ; this deponent subsequently found to be true ; that he has no means or way of getting upon his said premises except over the lands of said Hart and through the gate near said Hart's buildings, 10 as designated on the map or draft annexed to his bill of complaint, and which has at this time been submitted to his inspection ; that on August 23d, 1884, in company with Asa Dalrymple and driving the team of deponent, he passed over said road from the public road at Hoppock's house as far as said gate, which he found fastened in the manner described, that he thereupon applied to said Hart to unfasten said gate and allow him to pass to his said premises ; the said Hart replied no ; that deponent had no right to go there and he would not let him if could help it. 20

Deponent further says he has always known the premises of Hoppock, Hart, Case and Leonard, as shown upon said map ; that those from whom he received his title to his said premises always used the way over said Hart's land and through said gate, as well as the occupiers of Samuel C. Case's lot, and other premises lying west of Hart's buildings in the immediate vicinity of deponent's said premises.

Deponent further says he has no other way by which he can reach his said premises except over the lands of said Hart and through the said gate which said Hart now has fastened with an ox chain and lock in such a manner as renders it impossible for deponent to reach his said premises ; deponent cut the grass upon said premises and carted the hay over said way this present summer without molestation on the part of said Hart in passing through said gate. 30

Deponent further says that he is a farmer and intends to lime said premises and put them in with corn next spring, besides wanting to draw some wood from the said premises and pasture

the same with his stock the present season, all of which the said Hiram Hart, by his arbitrary act in fastening said gate, prevents deponent from doing.

WILLIAM T. LEONARD.

Sworn and subscribed this 23d day of August, A. D. 1884, before me.

EDWARD P. CONKLING,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, Hunterdon County, ss.

- 10 *Abraham Hoppock*, of full age, being sworn according to law, on his oath says, that he resides in the township of Raritan, in the county of Hunterdon, at the place designated on the map annexed to the foregoing bill of complaint as lands of Abraham Hoppock; that his age is fifty-five years; he was born where he now resides and has always resided there except about eight years, from eighteen hundred and fifty-three to eighteen hundred and sixty-one; that during this eight years he resided at Barbertown, about eight miles from his present residence, but was frequently at his father's at his present residence; that he
- 20 has known the road as marked upon said map during all his life; that he has also known the premises of Hiram Hart, Samuel C. Case and William Leonard as designated upon said map; that said road has always existed as shown upon said map and been used by the persons who owned the premises of William Leonard; that his first recollection of the road and premises was in eighteen hundred and thirty-nine, when John Besson, who owned a large tract, including the premises of William Leonard, sold different lots; the premises of Leonard was then sold to one Samuel M. Higgins, who, for a number of
- 30 years, and until it was sold to George A. Allen by the sheriff, in 1877, used the said road in going to said premises and in carting the wood therefrom; that since the complainant has owned it he has used the same road for the purpose of farming the premises and carting off the wood and hay; deponent has never known any other way to the premises, nor has deponent known of any difficulty in relation to the use of said road until within about two years last past.

ABRAHAM HOPPOCK,

Sworn and subscribed this 23d of August, A. D. 1884, before me.

J. L. CONNET,
M. C. C.

STATE OF NEW JERSEY, Hunterdon County, ss.

Asa Dalrymple, being duly sworn according to law, on his oath says, his age is fifty-three years; that the map or draft annexed to the foregoing bill of complaint has been submitted to deponent's inspection; that he has known the premises designated on said map as lands of Abraham Hoppock, Hiram Hart, Samuel C. Case and William Leonard for about sixteen years; that when deponent first knew the lands of William Leonard they were owned by one Samuel M. Higgins, who, for a number of years, and until it was sold by the sheriff, in going to said land of Leonard's from the public road by Hoppock's house and back again from said premises now owned by Leonard to the said public road, used the road designated on said map; that deponent has no knowledge of any other road from said public road on any public road to said premises of Leonard or from them to any public road except the road over the land of said Hiram Hart, and through the gate near Hart's buildings as shown on said map; that on August 23d, 1884, deponent, in company with the complainant and with the team of the complainant, passed over said road as far as said gate, which was fastened by throwing an ox chain about the gate and post at the hinges, and then passed around the head of the gate and other post and fastened with a padlock; complainant, in presence of deponent, asked said Hart if he would unlock the gate and let him pass to his said premises; said Hart replied he would not, that said Leonard had no business there.

ASA DALRYMPLE.

Sworn and subscribed this 23d day of August, A. D. 1884, before me.

J. L. CONNET,
M. C. C.

STATE OF NEW JERSEY, Hunterdon County, ss.

Nathaniel Britton, being duly sworn according to law, on his oath says, his age is forty-one years; that the map annexed to the foregoing bill has been submitted to his inspection; that he has been acquainted with the lands of Abraham Hoppock, Hiram Hart, Samuel C. Case and William Leonard for twenty-one years last past; he first knew the premises of William Leonard in 1859; he was then working for his father, who farmed for one Samuel M. Higgins, who then owned the
10 premises of Leonard, but who is now dead; deponent's first acquaintance with said Leonard's premises was in carting wood from them for his father, and he continued to know them until fourteen years ago; that during all the time he knew the premises and carted from them, the only way from the public road by Hoppock's house to said Leonard's premises or from his said premises to said public road, was over the lands of said Hart and through the gate as designated on said map; that deponent never has known of any other way or road to said
20 premises of Leonard; that during all the time he has known the said premises the said road has been used by other people who owned lots west of Hart's premises, where said Leonard's premises are located.

NATHANIEL BRITTON.

Sworn and subscribed this 23d day of August, A. D. 1884,
before me.

J. L. CONNET,
M. C. C.

STATE OF NEW JERSEY, ss.

John S. Higgins, being sworn, says, his age is fifty-five years;
30 that his father, John Higgins, owned the premises of Hiram Hart in 1835 and to 1850; that he has known the premises of Abraham Hoppock, Hiram Hart, Samuel C. Case and William T. Leonard, as shown on the map or draft annexed hereto and which deponent has just inspected, for at least twenty-five years; that during all this time the persons who have owned and occupied the premises of the complainant, as well as the premises of Samuel C. Case, have passed over the way and through the gate

by Hart's buildings as designated on said map, and that deponent has never known any other way to or from said premises of said Leonard and the public road than the one over said Hart and through said gate, except occasionally they went through the field to the public road, and this was north of said Hart's buildings, and this was a number of years ago.

JOHN S. HIGGINS.

Sworn and subscribed before me this 23d day of August, A. D. 1884.

EDWARD P. CONKLING, 10
Master in Chancery of New Jersey.

On filing the foregoing bill and affidavits it is ordered by the court that an injunction issue pursuant to the prayer of the bill.

THEODORE RUNYON,
Dated August 30th, 1884. C.

Respectfully advised,
A. V. VAN FLEET,
V. C.

INJUNCTION.

NEW JERSEY, to wit: The State of New Jersey to Hiram 20
Hart, his servants, attorneys, employes and agents, and each and every of them, greeting:

Whereas, it hath been represented to us, in our Court of Chancery, on the part of William T. Leonard, complainant, that he lately exhibited his bill of complaint against you, the said Hiram Hart, defendant, to be relieved touching the matters set forth in the said bill, in which said bill it is, among other matters, set forth that the actings and doings of you, the said defendant, are contrary to equity and good conscience:

We, therefore, in consideration of the premises, and of the 30
particular matters set forth in the said bill, do strictly command you, the said Hiram Hart, under the penalty that may fall

thereon, that you forthwith remove the chain and lock by which you have closed a gate standing across a way running from the public road leading from Flemington to Croton to lands of William T. Leonard, from said gate, so that the said William T. Leonard may pass through said gate at his pleasure, until you, the said defendant, shall have fully answered the said bill of complaint, and our said court shall make other order to the contrary.

Witness his Honor, Theodore Runyon, our Chancellor, at
 10 Trenton, the thirtieth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

R. S. KUHL,
Solicitor.

G. S. DURYEE,
Clerk.

STATE OF NEW JERSEY, Hunterdon county, ss.

George G. Lunger, Sheriff of the county of Hunterdon, being duly sworn according to law, on his oath says that he served a true copy of the within writ personally on the defendant, Hiram Hart, on the first day of September, A. D. 1884.

20

G. G. LUNGER,
Sheriff.

Sworn and subscribed 'this 15th day of September, A. D. 1884, before me.

H. A. FLUCK,
M. C. C.

ANSWER.

[Filed October 20th, 1884.]

The answer of Hiram Hart, the defendant above named.

This defendant answers and says, he has no information as to
 30 the title of the three acres and thirty-seven hundredths of an acre of land described in said complainant's bill of complaint, except what is furnished by reading said complainant's bill of complaint.

And this defendant, further answering, says he had no knowledge as to the said several conveyances in said complainant's bill of complaint contained, except what is furnished by reading said bill of complaint.

And this defendant, further answering, says that the said complainant and those from whom he derived his title (if any he has), in going to said premises from the public road near Abraham Hoppock's, in the township of Raritan, and back again from said premises to the said public road, did not pass over and along the lands of said Abraham Hoppock, and over the lands 10 of this defendant, and one Samuel C. Case in manner and form as alleged in said bill of complaint.

And this defendant, further answering, denies that he, on or about the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and eighty-four, "by placing an ox chain about each end of a certain swinging gate which for a long time has been erected across the way described in said bill of complaint, and securing said gate by lock and chain and thereby prevented the said complainant from the use of said way, and others, as in said bill of complaint contained." 20

And this defendant, further answering, says that he denies that the complainant has no other way of going to and from the said land and premises in said complainant's bill of complaint mentioned and described except over and upon the lands of this defendant, and through and by said swinging gate mentioned in said bill of complaint.

And this defendant, further answering, admits that the complainant has no *immediate remedy* at law to remove the fastenings from said swinging gate.

And this defendant, further answering, denies that the said 30 complainant has no means of securing a way to and from the public road to the said land and premises in said bill of complaint mentioned and described.

And this defendant, further answering, admits that the said complainant applied to this defendant to remove the said chain by which said gate was secured or fastened, and this defendant refused to remove the same, but denies that the said complainant was prevented from going to and from the said land and premises described in complainant's bill of complaint by such refusal.

And this defendant, further answering, denies that there is upon said land and premises any timber and grass as in said complainant's bill of complaint contained.

And this defendant, further answering, denies that the fastening of said gate is the first interference with the free and uninterrupted use of said way by the complainant and those whom he claims under.

And this defendant, further answering, denies that the complainant is not able to go to and from his said land and premises, and cannot for a length of time, but has divers other ways to and from said land and premises.

And this defendant, further answering, admits that he denied free passage to the complainant over and upon said way described in said complainant's bill of complaint, on or about the twenty-third day of August, in the year of Lord one thousand eight hundred and eighty-four, and also refused to unlock said gate as he lawfully might.

And this defendant, further answering, admits that one Samuel C. Case brought a suit in the Circuit Court of the county of Hunterdon, against said complainant, for trespass upon lands of the said Samuel C. Case, but not for the use of said way in complainant's bill of complaint contained, but denies that said suit was determined in favor of said complainant.

And this defendant, further answering, says he had no information whether the said complainant has annexed a map or draft of said way to this bill of complaint of the land of said Hoppock, Hart and Case, over which said way runs, and the line of the way which said complainant and those who owned the premises before said complainant, except what is furnished by reading the complainant's bill of complaint.

And this defendant, further answering, says he denies that the complainant, and those who owned the land and premises of the said complainant, have traveled said way for more than twenty years, and by adverse user.

And this defendant, further answering, says he denies that the said complainant has no adequate remedy at law.

And this defendant, further answering, says that he denies that said complainant used said land and premises for farming purposes.

And this defendant, further answering, says he denies that the said complainant used said land and premises for pasturing his cattle thereon.

O. P. CHAMBERLIN,
Solicitor.

HIRAM HART,
Defendant.

CONCLUSIONS.

[Filed December 26th, 1885.]

BIRD, Vice Chancellor.—This bill is filed to obtain an injunction against the defendant, restraining him from obstructing an alleged private way over his lands. The complainant claims that he and his grantors have used the said way for over twenty years adversely to the defendant and those under whom he claims. More than twenty years ago one of the grantors of the complainant purchased a small tract of wood land, and, from time to time, went to it and from it over the lands of the defendant by the way in question. Over this way he carted such timber as he saw fit to his farm and dwelling, which were wholly disconnected with the wood-lot. The practice of carting wood and timber, when desired, by those who have owned the same farm and dwelling, has continued without interruption or resistance in any way until the obstruction complained of in the bill. The proof is undoubted, that the complainant and his grantors used the way in question in going to and from said wood-lot for more than twenty years. The counsel for the defendant frankly and fairly, too, admitted this, but insisted that while there had been such user, it was not adverse in a legal sense. This brings us to the real defense in the case.

First. It is claimed that the said way was used by the complainant and his grantors under a license. The proof of this license rests upon the testimony of the defendant only. The person to whom he says he gave the license, then the owner of the farm, dwelling and wood-lot, is dead. The defendant says this license was given about thirty years ago; that the then

owner would visit his wood-lot once or twice a year, and in doing so would drive with his horse and wagon to the barn of defendant, located hard by the said way, where he would tie his horse and walk from thence to his wood-lot; and that upon one of those occasions he said that he would not want to use the said way much, but only once in a while. If this amounts to a license the defendant is justified in his defense. *Wood v. Hurd*, 5 Vr. 87. But I can see nothing in the statements of the defendant that amounts to a license. Nothing appears that

10 shows a formal asking or permission. It is only the ordinary conversation which might take place between neighbors at any time under similar circumstances, without the assertion, denial, or granting of any rights or privileges. I must, therefore, conclude that this branch of the defense fails.

Second. It is insisted that whatever right may have been acquired by adverse user it has been lost by the complainant and those under whom he claims consenting or submitting to a change in the location of the way at a given point. This change was made immediately opposite the barn of defendant.

20 The defendant built a new barn and wanted to improve the approaches to it, to do which it was necessary to change the location of said way; he therefore made a change of about fourteen feet. There was a gate there across the way as it originally laid. The defendant made and swung a new gate across the way when changed.

Now, it is said that the complainant and his grantors having consented to this change, and not having used the way as changed for twenty years, the claim by adverse user fails. I am not prepared to go the length required to sustain this view under

30 the circumstances of this case. The change indeed was slight; it was made solely for the accommodation of the defendant himself and by the defendant himself. I cannot understand upon what principle he can claim to take advantage of such an act. But there is one fact developed in the case which very conclusively answers both points presented by the defense.

Not long previous to the institution of this suit, the defendant was sworn as a witness in another cause, when, in speaking of this right-of-way, he said that it was used by everybody who

wanted to go through in that direction beyond the lot of the complainant's, or to a public road still farther away. He made this broad declaration, saying that everybody used it who desired to, without any qualification. This would seem to conclude the controversy.

I can find nothing to warrant me in supposing that the defendant was not, at that time, fully apprised of all the facts and circumstances connected with the use of the said way and the rights and demands of others as against himself. In my judgment he cannot be heard in speaking to the contrary thereof 10 now; he is bound by the declarations then most solemnly made.

I will advise that the injunction be made perpetual. The complainant is entitled to costs.

TESTIMONY.

Before Hon. John T. Bird, Vice-Chancellor.

Transcript of shorthand notes of testimony, &c., taken in the above stated cause at the hearing therein at the Court House in Flemington, N. J., on the 11th day of December, 1885.

Appearances—R. S. KUHLMAN, Esq., for Complainant. O. P. CHAMBERLIN, Esq., for Defendant. 20

A. C. Besson, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

Mr. Kuhl.—I desire to offer in evidence the following: Deed from John Besson to Samuel M. Higgins, dated March 30th, 1839, recorded in Vol. 71, p. 137; deed from Wesley Bellis, Sheriff, Samuel M. Higgins to George A. Allen, dated March 19th, 1877, conveying the same property; deed from George A. Allen and wife to William Leonard, the complainant, dated July 16th, 1878, recorded in Vol. 201, p. 398. 30

Q. What relation were you to John Besson, the person who owned the William Leonard lot?

A. He was my grandfather.

Q. Do you remember him?

A. Yes, sir.

Q. Did he ever own the William Leonard lot, as it is called now?

A. Yes, sir; the wood lot that was sold off and one other lot.

Q. Did he also own the Samuel Case lot?

A. Yes, sir; at one time he did.

Q. How long ago do you remember your grandfather occupying this property?

A. Well, I can remember when it was sold off, but I can't exactly give you the date; I remember his owning it, and it was sold off in wood lots; I can't tell you when it was; quite a good number of years ago.

Q. At the time the lots were sold, who bought the Leonard lot?

A. I don't know as I can tell you that; the lots were bought you know, and after the timber was cut off it changed hands.

Q. You don't know who bought the Leonard lot?

A. I don't remember who bought that particular lot; no.

Q. Do you know of any one who used it or occupied it after the sale; whether Samuel M. Higgins did or not?

A. Well, come to think, I think it was the lot that Samuel M. Higgins bought, and I suppose he bought it, you know, for fire wood.

Q. When your grandfather owned it, do you know how he got to it or from it to the public road?

A. Well, they never used it a great deal more than to cart a little fire-wood from there, and they used to go right across from the woods up to the house the best way they could.

Q. That is where Case lives?

A. No; not exactly where he lives, but it is out the same woods up that way; I remember when I was a boy, me and my father hauled some wood out on a sled that way.

Q. Do you know how Samuel M. Higgins got to it or from it?

A. I believe he went in by the way of Mr. Hart's.

Q. Samuel Hart's or Hiram Hart's?

A. Yes, sir.

Q. Do you remember any one carting stuff out there before him?

A. No; I don't remember any one carting stuff out there; I carted wood out there.

Q. You say you went up across from the house?

A. No; when I was a small boy I lived at grandfather's and we used to cart some wood with a sled from there.

Q. When did you cart?

A. It was 39 years ago; I carted wood off of the township lot; the township of Raritan owned four acres in there and I 10 carted it.

Q. That is not this lot (showing witness map); now just look on this map; this represents Abraham Hoppock's residence marked "residence of A. B. Hoppock" where he lives; now, this line marked "open lane" running down by the block marked "Hiram Hart," have you a knowledge of this road?

A. Yes, sir; I know that.

Q. Have you any knowledge of a gate on this road near Hiram Hart's house?

A. Yes; I believe there is.

20

Q. This is the open lane running on through here to this point called "center of bars" to block marked "property of William Leonard," do you recognize that?

A. Yes; I know where it lies.

Q. Now you say that you carted wood from this lot.

By defendant's counsel.—Of course you will have to be confined to Higgins, the owner of the property there; whether he carted wood off of that lot; not any other.

A. I never carted any wood off of that lot.

Q. Do you say that Samuel Higgins—you say he got wood 30 from there?

A. I believe so; I was not there to see whether he did, but I believe that was his intention.

Q. You never saw him get wood from there?

A. No, sir; I know he owned that lot there and I suppose he bought it for accommodation of fire-wood; I never saw him take any wood away from there.

Cross-examined by Mr. Chamberlin—

Q. Now, on what is marked the Abraham Hoppock house here, there is another road right across this one, it appears; well, that is a public road from where to where? Where does it go—to Croton, Boar's Head?

A. It goes out in the direction of Boar's Head.

[Agreed that it is the road running from Flemington to Sergeantsville connecting with that road and running over to Croton].

10 *Q.* It is a public road at all events?

A. Yes, sir.

Q. Don't it run right up to where your grandfather used to live—Andrew Bearder?

A. Yes, sir.

Q. Take this lane, what direction of the compass is it?

A. It runs west from this road.

Q. It runs east and west, doesn't it?

A. Yes, sir.

20 *Q.* That is, nearly so, so we can get north and south from that as you see fit; when you knew the Leonard lot it was covered with timber?

A. Well, yes; I knowed it then, when it was covered with timber, and I have known it since.

Q. Now you say it runs towards Croton; you know where it runs?

A. Yes.

Q. It runs right up to the Bearder house?

A. Yes, sir.

30 *Q.* Now, your grandfather, John Besson, had how many acres?

A. Well, I suppose at one time likely there was 50 acres there.

Q. Fifty acres?

A. In that wood, do you mean?

Q. No; in the whole tract all together.

A. There must have been at one time 300 acres.

Q. Did this public road run right through this 300 acres?

A. Yes; it ran right through it.

Q. What was the general shape of the 300 acres, nearly a square? You know how a farm lies, or how it lies?

A. Well, about as near square as generally farms are.

Q. With the road somewhere near through the middle?

A. Yes; near through the middle; at that time I am speaking of now, where Jerry Edwards lives and where Richards lives, there was no houses there.

Q. I am only speaking about the old Bearder house?

A. It ran right by that.

Nathaniel Brittain, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

Q. Mr. Brittain, you are a son of William Brittain?

A. Yes, sir.

Q. Were you acquainted with Samuel M. Higgins in his lifetime?

A. Yes, sir.

Q. Did your father live on his farm?

A. Yes, sir.

Q. In Raritan township?

20

A. Raritan township.

Q. And you lived there with him, did you?

A. Yes, sir.

Q. How many years ago is that?

A. About 18 years.

Q. Eighteen years ago?

A. Yes, sir.

Q. At that time, do you remember whether Samuel Higgins owned a wood lot—[Interrupted.]

A. Eighteen or 20 years ago since I lived there.

30

Q. You left the farm 18 years ago?

A. Yes; 18 years since the last time I was up there.

Q. How long before you left the farm, had you lived there for any length of time?

A. I lived there about 20 years I suppose.

Q. During the time that your father lived on Mr. Higgins' farm, did he cart wood from the lot designated the Leonard lot?

A. Yes, sir.

Q. You know where it is?

A. Yes, sir.

Q. What knowledge have you of his carting wood from there?

A. I used always to cart it; did the most of it; I carted it myself out of there.

Q. As much as how many years ago?

A. It must be 22 or 23 years ago, or longer than that.

10 Q. Since you quit, but when did you commence?

A. When I commenced? I suppose it was about—I could not tell.

Q. Well, as near as you can?

A. Twenty or 25 years ago; 25 years ago, anyhow.

Q. How did you get from the farm where you lived, to his wood lot?

A. I went through Mr. Hiram Hart's.

Q. Did you come up this public road here by Abraham Hoppock's?

20 A. Yes; Abraham Hoppock's and on through to Hiram Hart's.

Q. To an opening, called on this map, "center of bars"?

A. A pair of bars there by the side of Hiram Hart's barn, and I went through there.

Q. As it is marked on this map, "way traveled by Leonard"?

A. That is the bars there, I suppose; I turned in them bars and then went on right up towards that house what stands there now; then we got in there and went down in wherever we could get through along there.

30 Q. After you got from here you would sometimes go here, and sometimes here, according to the state of the ground?

A. According to the ground where I got through.

By the Court.—Can this witness point out from that map the extent of Leonard's land?

Mr. Bullock.—It is marked here; these are the boundaries.

By the Court.—Now, the extent of Mr. Hart's land, where does it reach?

A. Over to here—[Indicating on map].

The Court.—South of the alleged lane?

Mr. Chamberlin.—Yes; Hart's land all lies south.

Q. Now, Mr. Brittain, you just point out on the map to the court just how you used to go to this lot and come from it?

A. We would start in there at Hoppock's gate, on Mr. Hart's; just the other side of Mr. Hart's buildings was a pair of bars, and we turned in them bars, and after we got in the bars we went up this direction until we got in a ways, and then cut across; sometimes we would go clean up; if it was wet, so we could not get through below, we would go up further towards 10 where that house is.

Q. In coming from the lot, with whatever you drew, wood or rails, which way would you come?

A. The same way.

Q. Would you always go through those bars?

A. Always go through those bars; no other place.

Q. Was there anything on this road, from the bars out to the road—anything to obstruct you at all?

A. I think sometimes—there was a gate by Mr. Hart's barn, sometimes it was open and sometimes it was shut. 20

Q. And you think that was as much as 25 years ago when you commenced to cart from there?

A. Yes, I think it is; it might not have been; I could not say positively.

Q. And you continued to cart there for how many years?

A. Well, it has been about 18 or 20 years; somewheres along there.

Q. Do you know who took possession of it after you left Mr. Higgins' farm.

A. No, sir; I don't know anything about that. 30

Q. How old are you, Mr. Brittain?

A. Forty-three.

Q. Were you born on Mr. Samuel M. Higgins' property?

A. No, sir.

Q. How old were you when you went there?

A. About 5 or 6 years old; very small.

Q. Now, how early have you a recollection of your father's coming up there after wood and you going with him; how old were you?

A. I don't think I was over 15 years; somewheres along there; I could not exactly tell.

Q. You remember going up there with your father before you went by yourself after wood?

A. Yes, sir.

Q. And as you grew older you would go by yourself after wood?

A. Yes, sir.

Q. Did your father come out the same way you have pointed
10 where you traveled?

A. Yes, sir.

Cross-examined by Mr. Chamberlin—

Q. Whereabouts, with reference to the Hoppock place, was the farm of Samuel Higgins, that your father worked; in what direction from Hoppock's?

A. It was southeast.

Q. How near Aaron Hoagland's?

A. It joined Aaron Hoagland's farm?

Q. Do you know of their traveling any other way than this
20 marked "way," as you know?

A. No, sir; not as far as I know.

Q. From this point at the bars, beyond Hart's barn, marked on the map, what is on that land where I have got my pen now, if that is the way, taking that for granted?

A. I think it is a peach orchard.

Q. How many years old?

A. That I could not tell.

Q. Well, about four or five or six?

A. It may be four or five, I could not tell; there is peaches
30 there anyhow—was a year or two ago; that is all I can tell you.

Q. Now with reference—taking that place to be where Case's house is situated—where is William Leonard's; where is his farm; where does he live; you know where he lives, don't you?

A. I know—I don't hardly know either; I never was there.

Q. Somewheres near Bullentown road, doesn't he?

A. Somewhere near there.

Mr. Chamberlin.—There is a public road there. The public road from this point is somewhere this way—[Indicating.]

Mr. Kuhl.—Yes, sir.

Counsel marked said public road approximately on the map.

By the Court.—While you are upon that branch of the case, Samuel Case and John Spencer owned the land north of the lot in question, and north of this comes the land of William T. Leonard, and from that farm he has a way to the north, to the public road which is north of him, being the same public road 10 that runs by Mr. Hoppock's house as designated on the map.

Mr. Bullock.—William T. Leonard does own that property north of Case and Spencer now; at the time of this arrangement he did not.

Q. Was or was not Mr. Samuel Higgins a little peculiar with respect to cutting his timber?

A. Whenever we wanted a post we went and got it.

Q. What did you get it for?

A. To make a fence.

Q. What kind of a fence?

20

A. A post fence; we got the posts.

Q. How many times?

A. We would go up every spring and come out maybe four or five or six times a year with the posts, and if there was any dead wood he would let us cut it down and take it for fire-wood.

Q. Did you use any poles for crossing a creek or anything along your farm?

A. Yes, sir.

Q. You got them from there?

A. Yes, sir.

30

Q. Now you may state—you say you think you traveled some 20 or 25 years; how often a year on an average?

A. I suppose I traveled maybe six or eight times a year, take it on an average; sometimes I would cart down a good deal and some springs not so much.

Q. Do you ever recollect Mr. Higgins scolding you for cutting timber there?

A. No, sir.

Q. Finding fault with you?

A. No, sir.

Q. He did not?

A. He did once.

Q. For cutting white oak?

A. Yes, sir.

Q. Well, what did he say about that?

A. He told me to go up and cut a tree down, and he pointed out one to cut, and it was split and twisted, and I didn't cut it, and I saw a nice one and I cut that down; that is why he growled.

Redirect examination by Mr. Bullock—

Q. I understand you to say you left Mr. Higgins' farm some 18 years ago, or thereabouts?

A. Somewheres about that, it would be; more or less.

Q. And that was about the time you quit carting?

A. Yes, sir; somewheres there, more or less.

William T. Leonard, the complainant, having been duly sworn in his own behalf, testified as follows:

20 Direct examination by Mr. Kuhl—

Q. You are the complainant in this case?

A. Yes, sir.

Q. Do you remember when this property, your lot, was sold by the Sheriff and bought by Mr. Allen?

A. I remember being down at the sale, but I can't tell just the date.

Q. From the time the property was sold to Mr. Allen, who had possession of it?

A. I had; me and my father.

30 Q. You and your father, Peter Leonard?

A. Yes, sir.

Q. Your father has since died—within two years?

A. Yes, sir.

Q. What use did you make of this property from that time up until the present? Just go on and state what use you made of it, how you got to it and came from it?

A. In the first place we cut the timber off; not all at once, but cut it as we could make the best sales.

Q. By Mr. Bullock.—There was an agreement just after Mr. Allen bought the property, between you and Mr. Allen, that upon the payment of a certain sum you should have the property?

A. Yes, sir.

Q. And in the meantime you were the agent of Mr. Allen?

A. Yes, sir.

Further direct—

10

Q. You cut the timber off, and as you got the money for the timber, you paid him for the property?

A. Yes, sir.

Q. Now you may state?

A. Well, we cut the timber off.

Q. Where did you cart it to?

A. Some of it to Flemington and some to Frenchtown?

Q. How did you get out to the public road?

A. We came out by Mr. Hart's place, through the bars spoken of and over this lane.

20

Q. By Mr. Hart's house?

A. By Mr. Hart's house.

Q. And through the gate in question?

A. Through the gate by his barn.

Q. Out to the public road by Hoppock's?

A. Yes, sir.

Q. In going to Frenchtown with your material, you would go by this road up here, spoken of.

A. Yes, sir; through the Bollentown road spoken of; as soon as we first got the timber off I fenced it and pastured it a couple 30 of years; since then I have been mowing; got a meadow up; I limed it; the lime was put on since the injunction.

Q. How did you get to it with your lime?

A. Through the open lane by Mr. Hart's.

Q. Prior to that had you mowed hay on it?

A. Yes, sir; I brought it out by Mr. Hart's building, through the way shown on the map.

Q. Have you any other way to the lot except this way?

A. No, sir.

Q. Your father and yourself have been the occupants of this lot ever since Mr. Allen bought it?

A. Yes, sir.

Q. And Mr. Allen deeded it to you?

A. Yes, sir.

Q. In the use of this road have you been interfered with in any way?

10 A. Yes, sir.

Q. You may state how, and by whom, and when, as near as you can?

A. Well, this last August a year ago, in the year of 1884, I went to go to my lot, and Mr. Hart had a chain stretched across this gate by the barn; it was shored around one post and stretched across to the other post with a lock put on it; I went in and asked him to take the lock off so I could drive to my lot, and he said I had no business there, and he was not going to open it; I asked him twice; it was on the 23d of August, I believe.

20 Q. Was any one with you at any time when he refused to open it?

A. Mr. Dalrymple was with me, and Mr. John Spencer was at Mr. Hart's at the time.

Q. Mr. Leonard, do you remember who owned this lot before Mr. Allen bought it?

A. Mr. Samuel Higgins.

Q. Do you remember of his taking wood from it?

A. Yes, sir.

30 Q. How long ago do you remember of his taking wood from this lot, or men that were employed by him?

A. About 30 years.

Q. About 30 years ago?

A. Yes, sir.

Q. Who do you remember carted from there?

A. Well, I seen Mr. Brittain and his father, both.

Q. As long as 30 years ago?

A. I also seen Mr. Hart haul about 20 years ago; we cut the wood and Mr. Hart hauled it.

Q. The defendant, you mean, by Mr. Hart?

A. Yes, sir.

Q. How did they go out from this lot?

A. They went out on this road shown on this map, through these bars and out by Mr. Hoppock's.

Q. By Mr. Bullock.—In 1878, at that time, who owned this property marked as property of Peter Leonard?

A. My father owned it at that time.

Q. Up until what time did he own it—up until his death?

A. Yes, sir. 10

Q. When did he die?

A. He died the 22d of July.

Q. 1884?

A. 1884.

Q. And you obtained title when?

By the Court.—The deed will show, Mr. Bullock.

Mr. Bullock.—I don't know that he has a deed of this one.

A. I have a deed; I can't tell just the date; it was in October, 1884.

Cross-examined by Mr. Chamberlin—

20

Q. You understand the topography of this map; you understand this map; it was surveyed by you and for you; you understand all about it?

A. Yes, sir.

Q. What distance is it from that point on the line of property marked "Peter Leonard" on which you lived, in a house situated up here somewheres—from that point down to that point in the Higgins lot—about 175 yards?

Mr. Bullock.—The map says one chain to the inch.

Mr. Chamberlain.—I am asking him; he knows the difference. 30

A. Yes, I should judge it was 200 yards.

Q. It is 200 yards from that point where you now own down to that point where you now own?

A. Yes, sir.

Q. Have you ever traveled on that side of Spencer's lot?

A. I go down that way on foot sometimes.

Q. Driving your cattle down there ?

A. Yes, sir.

Q. Did you, in pasturing this lot, carry your milk from here up this way ?

A. Yes, sir ; by permission from Mr. Spencer.

Q. Now, taking Samuel Case's place to be here as it is marked, do you know any thing about a road out here to the public—they have called it, or do call it, the clam-shell road—out by Thomas Hoagland's ?

10 *A.* Mr. Case travels through that way sometimes ; there is a road out there.

Q. Been traveled as long as you know anything about it ?

A. No.

Q. This road now, that comes out from this house, out to Thomas Hoagland's, isn't there a well-beaten track there, and has been traveled for fifty or sixty years ?

A. Oh, no ; I can't remember as long as that.

Q. Well, had it been traveled as long as you remember ?

A. No, sir.

20 *Q.* And isn't that the old way to get into this lot ?

A. The first I ever knowed anything about the travel Mr. Hoagland's son bought the place where Case is now, and after he had been there some time he got permission of his father to go through the woods ; that is the first I know of the road being there.

Q. Taking this locality here—Peter Leonard and Spencer—is that a part of the John Besson tract ?

A. I have heard it—what I have heard folks say—what they tell me.

30 *Q.* Now, regarding this as the west boundary of the Besson tract, do you know anything of a way right here to the public road, coming into these lots, all of this woodland here ?

A. No public road on the west side as I know of.

Q. No public road, but a way fifteen feet ; any kind of a way ; don't you know something about it ?

A. There is a way Mr. Spencer comes down to his land ; this belongs to Mr. Spencer here, and he has a roadway comes down across here to this land ; it don't touch mine ; there is a road

comes across Mr. Case's, used to get to this lot in here, but it don't touch my land at all.

Q. Now, do you know anything about what is known as the Milbron way out there?

A. No, sir.

Q. You never heard of it, you never heard of its being opened by the freeholders?

A. Well, there is a road on the map; I own the Milbron lot.

Q. Don't you know as a fact there is a way out here called the Milbron road, fifteen feet wide? 10

A. There is a road there, it is mine.

Q. Isn't there a way out there from these lots, that is what I ask, through that Milbron road?

A. No; only from the Milbron lot, that is all.

Q. Take it from the Milbron lot out, isn't there an open way there?

A. No, it isn't open; there is only a way from the Milbron lot and my building, it don't go to the public road.

Q. That was used to get into these lots adjacent to yours?

A. No, sir. 20

Q. Here is the corner of your lot as it lies; can't you get right out here this way to that road?

A. No, sir.

Q. Why not?

A. You have to go over Spencer's lots.

Q. Isn't there paths—roads—you can drive anywhere there?

A. You can't drive anywhere; you can drive in some places.

Q. Well, most places; it is stony there; well, this way, out to this house, called the clam-shell road; you have known something about it? 30

A. For the last 12 or 14 years, something like that, since Joseph Hoagland moved there; there was no road before that that I know of.

Q. Did you say to Mr. Samuel Case that you traveled over that road until Uncle Hart made a fuss about it?

A. No, sir; I never traveled through there except by foot; I have traveled through there afoot sometimes; the road is by Mr. Hoppock's land, an open lane; Mr. Case has said he had no other road himself.

Redirect examination by Mr. Kuhl—

Q. You were speaking of Mr. Case ; which way has he always come out, within your recollection, or Hoagland, who occupied the lot before him, until very recently ?

A. He came out by Mr. Hart's.

Q. Until how lately ?

A. Since Mr. Case moved there he has traveled most of the time through Mr. Hoagland's woods.

Recross examined by Mr. Chamberlin—

10 Q. Hoagland's woods is what is designated as the clam-shell road ?

A. I suppose so ; I never heard it called that before.

Q. Now, that side of this land is Spencer's, you say ?

A. Yes, sir.

Q. That is the west side ; now the east side is Samuel C. Case's, isn't it ?

A. Yes, sir.

Q. Have you ever come down the east side of this land ?

A. I have come down there.

20 Q. Traveled that way to get to this wood lot ?

A. Yes, I went down that way afoot.

Q. Haven't you ever driven that way ?

A. Yes, sir ; I bought a right of way to go across Mr. Hoagland's with a wagon.

Q. I ask you if you have not driven down that way to get to this lot ?

A. Before Mr. Case moved there.

Mr. Bullock.—I don't want to be captious, and don't want to object to anything the court will hear after while, at this time,
30 but certainly it is incompetent ; we claim a right under adverse user, and they are going all over it to talk about other roads ; I have no objection to it if the court thinks it will aid anything in the future.

The Court.—If you object, it will be overruled on the ground that it is not cross-examination, strictly speaking.

John S. Higgins, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

Q. Your father formerly owned the Hiram Hart property, did he?

A. Yes, sir.

Q. And you and your father lived within what distance of that place?

A. Three-fourth of a mile, perhaps.

Q. Down below the hill, the old homstead? 10

A. Below the hill.

Q. How long is it since you have the recollection of the property—the Hiram Hart property—and this land in by Hop-pock's?

A. How far back do you mean?

Q. Yes, sir?

A. 1838, or something back from 1838.

Q. Do you remember when Samuel M. Higgins bought the Leonard lot?

A. I remember one of those lots were sold off the Besson 20 tract; I heard tell he bought one of the lots.

Q. The date you don't remember now?

A. I don't recollect the date.

Q. State what use Samuel M. Higgins, or any one in his employ, made of this lot; how they went to it, or came from it. Just state what facts you have?

A. All I know is, going up there to cut some timber and they would drive out by Hart's with their wood; that is all I know; I never saw them carting there.

Q. Did you ever see the teams come out? 30

A. No, sir.

Q. Did you ever see the teams go in?

A. No, sir.

Q. Did you ever see them in there cutting?

A. I never did.

Q. By Mr. Bullock.—Then you only know from guess how they got there?

A. That is all I know.

Further direct—

Q. During all your recollection, this has been an open road from Hoppock's in, has it, to this bar spoken of?

[Objected to as incompetent.]

Not cross-examined.

Jacob Rockafeller, a witness produced on behalf of the complainant, having been duly sworn, testified as follows :

Direct examination by Mr. Kuhl—

Q. Did you ever own any of this property in here?

10 A. Yes, sir.

Q. The property designated as the Samuel Case property?

A. Yes; the Samuel Case property now, I believe it is.

Q. That is how many years ago?

A. Well, I suppose it is forty years ago, I don't know; I can't tell the date exactly, but I suppose it is forty years ago.

Q. At that time, did Samuel M. Higgins own the lot called the Leonard lot now?

A. I think he did, sir.

Q. You remember of his owning it during the time you
20 owned your lot?

A. Yes, and afterwards.

Q. Now, I wish you would state any fact that you have relative to the use that Samuel M. Higgins made of his lot; how he got out of it or to it, or anything of that kind?

A. Well, he went through one corner of my lot; I don't know the distance, but I suppose 150 yards to a certain spring?

Q. By the bars?

A. After he got through the bars, I suppose 150 yards, more
30 or less, up to this spring, to get to his lot, on account of wet places that they could not cross without going up there.

Q. By Mr. Bullock.—After he left your property, where did he go?

A. Onto his own, I think; I am not certain whether he owned the lot next to me or owned one further up.

Further direct—

Q. The question was when he went in how did they come? Start from Flemington, say?

A. When he went in, he went in by Hoppock's and down through what Mr. Hart owns now and then into these bars that I speak of.

Q. And then through your lot?

A. Yes, sir.

Q. Over to his?

A. Yes, sir; them bars was on my lot. 10

Q. Now, coming out, how would he come out; come back the same way?

A. Come back the same way; I don't know that he had any other way to get back only the same way; I never seen them haul anything out of there, but I know that road went through my lot.

Cross-examined by Mr. Chamberlin—

Q. You say you never saw any of their teams haul anything else?

A. I never saw their teams haul anything else. 20

Q. How do you know they used it; you say you never saw them go to it?

A. I never saw them go to it or I never saw them come away.

Redirect examination—

Q. There was a track over your lot to this time?

A. Yes, sir.

Recross-examined—

Q. Talking about your lot then at that time, back 40 years ago, when you speak, wasn't there ways all over there; didn't they travel anywheres; there was no beaten track was there; they went all over this wood lot? 30

A. I don't know; that was the end of mine.

Q. And beyond that you don't know where Mr. Higgins would go to?

A. No; I don't know where he would go to when he got off of me, I suppose he got onto himself; I think it was the lot beyond mine.

Q. But you never saw him or anybody in his employ drive there or come away from it?

A. No; I never saw any one.

Abraham Hoppock, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Bullock—

10 Q. What is your age?

A. Well, I am very near 60.

Q. This house here that is marked "Abraham Hoppock," at the time the map was made, you lived there, did you not?

A. Yes; I have always lived there all my life, except about eight years; that was after I was 25 years old.

Q. Do you remember at the sale of the Besson property Samuel M. Higgins having bought one of these lots, either of your own knowledge or from hearsay?

A. Yes; I remember when they were sold.

20 Q. And you knew at the time, or shortly after, that Samuel M. Higgins had bought one of them and owned one of them?

A. Yes.

Q. Now, do you know while Samuel M. Higgins owned that Leonard lot to what use he put it, and how he got to it, and how he got from it?

A. He went in that place there through by Mr. Hart's, and through the long bars, as I always called it; that is the bars on the map.

30 Q. Where you went into what Mr. Rockafeller at one time owned, the Case lot it is now?

A. Yes, sir.

Q. And through that into Leonard's?

A. Yes.

Q. So far as you know, is that the way Mr. Higgins or those that used it for him always went?

A. I never knowed he had any other way to get to it.

Cross-examined by Mr. Chamberlin—

Q. Now, Mr. Hoppock, do you mean to say that you ever saw Samuel M. Higgins or anybody in his employ on this wood lot?

A. Yes, sir.

Q. Did Samuel M. Higgins drive in there?

A. I don't know that I ever seen Samuel M. in there cutting, nor hauling; I seen this man Brittain.

Q. Now, how often a year did you see anybody travel through that lane, say 30 years past, on an average; on your 10 own information now?

A. For 30 years back? well, I have traveled in there myself several times.

Q. I am not talking about you, I am talking about Higgins?

A. Oh, Higgins; I don't know that I have seen Higgins.

Q. Or you might say his farmer; I suppose these Brittain were his farmers?

A. I don't know how long ago it is, but they used to haul as long as they lived down on the farm there.

Q. I asked you how often a year—what your recollection is 20 about it?

A. I don't know how many; they generally cut a pretty good sized tree, and they would haul it away through the summer and fall.

Q. Do you know anything about Higgins' habit in regard to temper?

A. I don't know anything about that.

Asa Dalrymple, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

30

Q. What is your age?

A. 54.

Q. How long have you known the Leonard lot or Samuel Higgins lot?

A. About 18 years.

Q. During that time, have you any knowledge as to how the owners of that lot got to it or came from it?

A. The only way I ever knew them to get to it or from it, is in the way by Abraham Hoppock's and Hart's building, and so to the lot.

Q. What owners have you in your mind that you saw traveling?

A. Samuel M. Higgins was the first owner that I ever knew owned it; I have seen his man in there chopping, but I never seen them go in there or out; I saw them on the ground.

Q. You never saw anybody go in or out?

10 A. No, sir.

Q. By his man you mean William Brittain and his son Nathaniel?

A. Yes, sir.

Q. You never seen them go in or out over the road?

A. No, sir.

Not cross-examined.

Arbor Lee, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

20 Q. What is your age?

A. 52 last spring.

Q. Where do you live with reference to this lot?

A. I live over there.

Q. By the Court.—To the southwest?

A. To the southwest.

Further direct—

Q. And you have a way over this same land to the public road, from your farm land?

A. Yes, sir.

30 Q. How long have you had a knowledge of the Leonard lot as it appears on the map there?

A. The Samuel Higgins?

Q. Yes, sir, the Samuel Higgins lot?

A. Well, about 24 years and better; it is 24 years last spring since I lived there.

Q. Now just state to the Court what you know with reference to Mr. Higgins or any one else, since you first knew it, going to that lot and coming from it?

A. Well, I have seen teams going in there, but I wasn't by them, and don't know whether it was Sam Higgins' team or whose went into that lot now; it was up this way, in along here and out here.

Q. And going in they would go in by Hoppock's and so in?

A. Yes, I seen them go in and out there.

Q. Do you know William Brittain and Nathaniel Brittain? 10

A. Yes, sir.

Q. Did you ever see them go in?

A. I never was close by them that I recollect, but I suppose it was their teams.

Q. You don't know who the men were?

A. No.

Q. By Mr. Chamberlin.—You saw them from your place?

A. I saw them from my field.

Further direct—

Q. Your lot lay right off in full view of this lot? 20

A. Yes, sir.

Q. Would they load the teams and go out over this same road?

A. Yes, sir.

Cross-examined by Mr. Chamberlin—

Q. You say you have a right of way out there. Please explain to the Court by what right you go.

A. What right?

Q. Yes, sir.

[Objected to as incompetent.]

30

Mr. Chamberlin.—Is it admitted that what right he has is by grant from us?

Mr. Kuhl.—Yes, sir.

Q. You and Mr. Hart are not on good terms?

A. Why I suppose we are, for all I know; if we are not, I don't know it.

Q. Now, you say you saw somebody go in there with teams; wasn't you near enough to see who drove them? When was that, about?

A. Well, it is somewheres about 18 or 20 years ago since I lived there.

Q. Well, then it is within 24 years?

A. Yes; it is the forepart of when I lived there—when we first came there—then I seen Leonard's.

George V. Woolverton, a witness produced on behalf of the
10 complainant, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

Q. What is your age?

A. Thirty-four.

Q. How long have you had any knowledge of the Leonard lot spoken of?

A. About 20 years—20 years this summer I think, since we lived on the Case lot.

Q. You moved on the Case lot 20 years ago last summer?

A. Twenty years last spring; yes, sir.

20 Q. Who owned the Leonard lot then?

A. Samuel Higgins.

Q. Did you ever see him make any use of the lot, and if you did, how did he get to it and from it?

A. I saw him, that fall we lived there, come in there and cut some fire-wood; they came in at Mr. Hoppock's, in by Mr. Hart's, and came down by them bars and up through the Case property into the corner of the woods; they used to go up through here and go pretty well up here to the corner of the lot, because there is a big gully—a springy place; I saw them cart
30 fire-wood out there.

Q. How long did you live on the Case lot?

A. We lived there one year.

Q. It is only one year then that you knew of their using it?

A. Yes, sir.

Q. Do you remember who was with the Higgins teams?

A. I don't know; I remember one man was John Walker—
one man cutting wood for Mr. Higgins.

Q. He came up the same way ?

A. Yes, sir.

Q. You moved away after one year ?

A. Yes, sir.

Q. Since then, have you had any knowledge of the use of the lot ?

A. Yes, sir ; I helped Mr. Leonard cut some timber off of it, about five years ago, and I came out the same way spoken of.

Q. And in going into the wood, you would go in the same way ?

10

A. Yes, sir.

Cross-examined by Mr. Chamberlin—

Q. That is since Leonard owned it ?

A. Yes, sir.

Asa Dalrymple, recalled—

Q. Have you any knowledge of this road being obstructed in any way ?

A. Yes, sir.

Q. Just state in what way it was obstructed, and who did it ?

A. I was with Mr. William T. Leonard—[Interrupted.] 20

Q. When ?

A. On the 23d of August, 1884 ; I went with him ; he drove to Mr. Hart's house and stopped and asked him if he would unlock that chain and let him through, and Mr. Hart said no, he had no business through there ; and he asked him again, and he said he would not let him through.

Q. Well, did you get through ?

A. No, sir ; he drove out near the gate and turned around and came out.

Q. How was it fastened ?

30

A. With a chain shored around one end and lapped around the other and locked.

Q. Mr. Hart was there ?

A. He was at the house ; yes, sir.

Not cross-examined.

John Spencer, a witness produced on behalf of the complainant, having been duly sworn, testified as follows :

Direct examination by Mr. Kuhl—

Q. Have you any knowledge of this way being obstructed—closed up?

A. Well, just show me?

Q. Well, this road from Hoppock's running in by Mr. Hart's building up to the long bars; this is Mr. Hart's house and that is the gate.

10 A. I have seen a chain across.

Q. Just state when that was?

A. I could not exactly tell you; Mr. Leonard came in at the same time I was there.

Q. Was it last summer a year ago?

A. It was last summer—1884.

Q. Now, just state to the Court what you heard?

A. Well, Mr. Leonard he came in, him and Mr. Dalrymple, and James Shaw and Mr. Gorman, and they stopped and asked Mr. Hart if he would open the gate, they would like to go
20 through to his lot, and he said "No, I won't, you have got no business in there;" he says, "Well, you ain't going to open that gate I suppose;" he says, "No; I am not," and he said, "That is all I want to know;" and Mr. Leonard drove around where he got a chance to turn around and turned around and came out.

Cross-examined by Mr. Chamberlin—

Q. Do you speak of more than one occasion? Did you see this transaction you have stated more than once?

A. No, sir; that is just the same day Mr. Leonard came in.

Q. Who was with Leonard at the time?

30 A. James Shaw, from Lambertville.

Q. You didn't see him then when Dalrymple was with him?

A. Dalrymple was with him.

Q. In the cart with him?

A. In the wagon with him.

By Complainant's Counsel.—We offer the map in evidence. Is it admitted as being correct?

Mr. Chamberlin.—I suppose it is admitted as showing somewhat of the topography at least.

Complainant rests.

Mr. Chamberlin.—Do I understand the Court as saying that this question of way by necessity is not in the case?

The Court.—I think from the pleadings the only question is, whether Mr. Leonard has a lawful right of way over this particular road described. I think that is the only issue.

Hiram Hart, a witness produced on behalf of the defendant, having been duly sworn, testified as follows: 10

Direct examination by Mr. Chamberlin—

Q. You are the defendant in this suit?

A. Yes, sir.

Q. How long have you lived where you do now?

A. Pretty near thirty-three years.

Q. You understand then the situation, starting in here at Hoppock's, about this way?

A. Yes.

Q. Now, at the point at the gate here—here is where they claim your gate is; here is the gate and here is the house; you may state to the court whether that road is where it has always been; that is, the traveled track as you see it when you go over it? 20

A. The gate is not in the place at all; the road has been moved some distance—about sixteen feet north.

Q. That is, at the point now, where the gate was located?

A. Yes.

Q. When did you do that—about when?

A. Well, it has been two different times; I think the last time is four or five years back, and when I built my barn, that is some sixteen or seventeen years ago; it was moved then from the south up, which altogether makes it sixteen feet from where the old road originally was. 30

Q. Now, taking this way through here back to this point, you understand where that is, those bars—who has always kept that in repair?

A. I kept it in repair myself.

The Court.—From his buildings back he has kept it in repair?

Mr. Chamberlin.—All the way through; nobody else ever interfered with him or had anything to do with him.

Q. Now, at this point, say here is where your house is, somewhere, and taking the northerly side of the road, did you at any time have any difficulty with the man who owned on the north side?

10 A. I did.

Q. About working of the road?

A. Yes, sir; Mr. Bowen; it was very narrow; I could not work it; I could not get out; I went to work there and he objected to my working and said I must not take that side, it was his, and I proposed to leave it to two men, and what they said we would do, and he agreed to that, and we did that, and I paid him some five dollars.

Q. Now, that part owned by Watson Everett, what have you to say about that?

20 A. I went to Watson and told him what me and Mr. Bowen had done, and I would do the same by him; "I will pay you, it is as fair for one as the other," and he didn't want any; he said I must have my lane there, and I must have room to work it; well, I knowed he wanted some shoats, and I told him to come down and get a pair of shoats, and he said, "If you say so, I will do it," and I said I did say so, if I used his land I will pay him for it.

Q. What did you pay him, about, for his interest?

A. I don't know what the shoats were worth, but I suppose
30 the pair were worth some seven or eight dollars.

Mr. Bullock.—I don't see the relevancy of this, if the court please.

The Court.—I will let it stand, Mr. Bullock.

Q. Did Mr. Higgins, or any of his hands, ever work it?

The Court.—He has said he always worked it, and nobody else ever did.

A. I carted a good many stone there.

Q. And moved the point where the gate stands 16 feet further north?

The Court.—He has given this point.

Q. Now, state to the Court whether you had a conversation with Peter Leonard, when he had possession, with regard to Captain Allen, and if so, what he told you?

A. Mr. Leonard, after he bought this property—[Interrupted].

Q. You had a conversation with Peter Leonard, the father of the complainant?

A. Yes, sir; he told me he had bought this property of Mr. Allen, and he wanted to cut his timber off, and he would like to come through this lane with his teams—[Interrupted]. 10

Q. Was there anybody present at that conversation?

A. I don't think there was anybody.

Mr. Bullock.—Then I will have to object to it as being a conversation between parties who have no interest in this land; Peter Leonard is dead, and while I don't make the objection because he is dead, I make the objection because I have a right to, and explain it because we have no chance to rebut it.

By the Court.—The objection will go upon the record; it may turn out that it is wholly illegal, but, under the circumstances of the case, considering the title had not then passed, it may be 20 that William Leonard had a right to say what he did say, or to make any requests if he did make them; I would not be justified in overruling it at this state, but your objection appears.

Q. Now, go on and state what Peter Leonard, the father of the complainant, said?

A. Peter Leonard came down with me and told me he had bought this tract of land, and he would like to draw his spokes and his cord-wood through that; he would help me fix my road; that he ought to do that if he cut up my road—used it; but he said after a little he was going to buy a slip of land from Spen- 30 cer, and have his road right down from the lot to his house; that is what he told me; it would not be so far, he said, then.

Q. Since you speak about that, this is where he proposed to make the way—this 200 yards?

A. Yes, sir.

Q. Well, did you grant Peter Leonard that?

A. Yes, sir.

Q. Did they subsequently cart the timber out?

A. They carted out the spokes, I guess, mostly.

Q. Peter and William, together?

A. Yes, sir; sometimes one and sometimes the other, but mostly the old man himself, and their logs they cut and drew down by Arbor Lee's; they didn't come out my way.

Q. Well, did you forbid them then, until after they carted this timber off; it is in evidence that you forbade William afterwards because you fastened the gate; but they carted off their timber, by your permission, didn't they?

10 A. Yes.

Q. Now, you knew Samuel M. Higgins?

A. Yes, sir.

Q. You knew him when he was the owner of this wood lot?

A. Yes, sir.

Q. You may state now to the Court what facts you know with reference to this way as to his house or that of his farmer; recite your own knowledge?

A. Well, after I worked up this lane and made it good, he drove in, once or twice a year, generally; he would drive to the
20 barn and tie and then go up afoot to his lot.

Q. That barn is close to this gate that was fastened, isn't it?

A. Yes, that barn; he said, "You have been doing quite a bit of work on your lane?" I told him I had; "Well," he says, "I don't want to use it much; I would like to use it sometimes for my farmers; it is handy for them to come in and out, but I ain't going to have any timber cut except water poles or pieces of timber at the barn, but I ain't going to have it cut;" I told him he could go through; I believe that is all that passed.

30 M. Higgins, about the time, as near as you can give it?

A. I could not tell anywheres near the exact time; I think it is somewheres about 30 years ago; somewheres in that neighborhood; I am not positive.

Q. Was it before the war?

A. Oh, yes; it was pretty soon after I bought the property; I lived there a few years before I bought it.

Q. You bought it in 1855, I think that is the date; do you recollect?

A. I don't recollect now.

Q. Well, the deed shows it was in 1855.

Mr. Chamberlin.—I ask the court whether—our insistent is, this was our way, and was under our control, and we intended it should be so, and whether the refusal of other parties would have anything to do with this case; I suppose not as it now stands.

The Court.—No.

Q. Then I will ask this other question, Did you intend to submit your fee to the land to Mr. Higgins' use so you could not control it? 10

[Objected to.]

A. No, sir.

Q. You did state that Higgins nor his farmer nor anybody else did any work on it; you said that didn't you?

The Court.—He said that in the beginning.

A. Nobody but me, excepting neighbors that I asked to help.

Q. By the Court.—Oh, well, that was your work?

A. Yes; it was my work; I superintended the whole thing while I lived there, and up to this day; if there was any trouble about it, they always came to me. 20

Cross-examined by Mr. Bullock—

Q. Did I understand you to say, that at the point where this gate is, and for some distance both sides of it, this road has been changed, that if this represents it as it now stands; it formerly went around here somewhere?

Mr. Chamberlin.—Moved it north; he told you that.

Q. Well, this is south, it formerly went around here nearer your buildings?

A. Yes, sir; it used to. 30

Q. Now, Mr. Hart, you say that some two or three years ago—four or five I guess—you changed it somewhat?

A. Yes.

Q. Have you a fence along here?

A. I have a fence from the barn to the gate.

Q. Did this change that you speak of—was that occasioned by your building a barn?

A. Yes, sir; somewhat.

Q. There was a little deflection there because you built a barn?

A. I put the gate out further on account of driving through there.

Q. I don't care about the gate, it is the road I am speaking about; was the location of the road changed?

A. It was.

Q. Because of your building a barn?

10 A. Because I seen fit to do it for my own convenience as much as much as anything—partly the barn.

Q. Now, you say, as I understand you, that before that time you had made a change before?

A. Yes.

Q. Why did you do that?

A. I just changed to suit myself; it was my own lane; nobody had any business to that land but myself.

Q. That is what we are trying, Mr. Hart?

20 A. I don't know but what I had a right to change my gates and bars to suit myself, and I did do it.

Q. Did the road, before you changed it, 16 or 17 years ago, run nearer your house than it does now?

A. Yes.

Q. How much nearer?

A. Well, quite some; I could not tell the exact distance there, but it ran very close to the old barn; just run the wagon out of the barn into the road.

Q. You don't own this land north of this road?

A. A little strip.

30 Recess.

Q. Now, Mr. Hart, speaking about the change of this road in the neighborhood of this gate; suppose a person should start in here to get up to this point, could they travel anyway excepting as the road now runs, and as it is laid out on this map, without striking a fence or holes, or some obstruction on the south side that you had put there?

A. Of course they could.

Q. How?

A. There is nothing in the way.

Q. Isn't there a fence along here on the south side?

A. Not by the gate; beyond the gate.

Q. Well, is there no fence here in front of your house?

A. Yes.

Q. Isn't there a fence down here until you get by your barn?

A. Pretty near to the barn.

Q. And don't the walls of the barn run out pretty near to the 10 road?

A. No, they don't.

Q. How near to it?

A. A pretty good ways.

Q. Then the fence on the north side of your property ran down as far as the gate?

A. On the north side it does.

Q. Then in order to get through here, they would either have to go through a side fence or through the gate to get to a point out here?

20

A. No.

Q. Well, I would like you to explain why?

The Court.—I don't think the witness understands you.

Q. I want to know, commencing on this corner of your property, have you a fence along this roadway?

A. When it comes to my lane, I have.

Q. Does that fence run down to your house?

A. Yes, sir.

Q. Down to the gate?

A. Yes, on the north side.

30

Q. You run over here; you have got a little strip here; let us take it on the side next the house. Is there any fence on this corner? You see these lines here, that represent the roadway. Now, is there any fence here right where these dotted lines?

A. Yes, sir.

Q. How far does it run through?

A. To my house.

Q. And stops here?

- A. Stops there a little beyond the house.
 Q. Where does it commence again?
 A. Beyond the barn.
 Q. The barn is east of the gate, is it not?
 A. South of the gate.
 Q. Isn't it east also—not directly east?
 A. The gate is south of the barn—west of the barn I should say.
 Q. The gate is west of the barn; the barn, then, is east of the
 10 gate?
 A. It is right south—I should call it southeast.
 Q. Does your barn set over here, or does it set it here?
 A. It sets on the side the house does.
 Q. On the same side of the gate the house does?
 A. Yes.
 Q. On the east side of the gate then?
 A. Yes.
 Q. Now, from the gate on here, is there a fence?
 A. There is a fence as far as my land goes.
 20 Q. Now, you speak about a conversation had with Peter Leonard; where did that conversation take place?
 A. I could not tell you the exact spot, but somewheres near my buildings on that lane.
 Q. What year was it?
 A. I don't recollect the year; it was the year after he bought the property; right after he bought it.
 Q. What month was it?
 A. I could not tell you that.
 Q. What day of the week was it?
 30 A. It was not Sunday; that is all I know.
 Q. What hour in the day was it?
 A. Well, I guess you will have to go somewheres else and find out, because I don't know.
 Q. Who commenced the conversation?
 A. He did himself; that I remember.
 Q. What did he say?
 A. He said he had been buying Mr. Higgins' lot, and he would like to draw his spokes and cord-wood through there,

and he would, if I permitted him to come through there—he would help work up the road—keep up the road.

Q. Did he say he had been buying the lot, or did he say he bought the timber?

A. He bought the lot, he told me.

Q. In your examination-in-chief, you said he bought the timber?

A. I suppose he bought them both together.

Q. I want to know what he said, not what you suppose; did he say he bought the lot or the timber? 10

A. I think he said he bought the lot, but I am not positive about that—just how he said that.

Q. Did he tell you what he paid for it?

A. I think he did, but I don't recollect what it was; it did not concern me what he paid for it.

Q. Then all you remember about the conversation is, he told you he had bought the timber or the lot, you don't know which?

A. Yes, sir.

Q. And he wanted to cart some timber through there?

A. Well, he was going to buy some land of Spencer and make 20 his road down through there.

Q. Who did you first tell about this conversation with Peter Leonard?

A. I don't know that I told anybody but Mr. Chamberlin.

Q. Since this suit was commenced?

A. Yes; I never mentioned it until I mentioned it to him; I might, but I don't remember that I did.

Q. Now, Mr. Hart, you spoke about a conversation had with Samuel M. Higgins?

A. Yes. 30

Q. When did that occur?

A. Somewheres near 30 years ago, I think; I don't recollect the exact time.

Q. Where?

A. There by my barn at the gate; he drove in there and tied; he was going for some wood or had been in, and he began to talk about my working my road.

Q. Did you have any conversation—further conversation with him about the same subject-matter?

A. I could not say ; we might have had ; I don't remember exactly.

Q. Now, what did he say in that conversation ; what was the first thing he said ?

A. He said that I had been working up my lane nicely.

Q. What did you say to that ?

A. I said yes ; says he, "I would like to come in occasionally once in a while, or my farmer would, to get some water poles or something that concerned the farm, but I ain't going to drag any
10 timber out here, it would only be for the use of the farm," and I told him he could come if he wanted to, provided he did not cut up my land ; that was what I told him.

Q. In your examination-in-chief, you said he told you that he would not have occasion to go in there very often ?

A. Well, I say that yet.

Q. You did not say in your examination-in-chief, anything about cutting up your lane ?

A. I think that was mentioned.

Q. You didn't say anything in your examination-in-chief,
20 that he only wanted it for the use of the farm and he would not cut any wood ?

A. I wasn't asked that question.

Q. No ; but you were asked to tell what he said. How is it that in the course of half an hour you make such a difference in your statement ? Do you pretend to state a conversation that did occur 30 years ago ?

A. As near as I can.

Q. Yes ; as near as you can.

A. Could you tell what occurred 30 years ago, exactly ? If
30 you can, you can do more than I can.

Q. Didn't he say, "You have fixed up your lane nicely, and he was going to get some wood out there but would not cut your lane up much" ? Isn't that what he said ?

A. No ; I don't think that is it exactly.

Q. Isn't that about what he said ?

A. He said he was going to cart some wood for his farm.

Q. Who did you first tell about this conversation with Mr. Higgins ?

A. That I can't tell.

Q. Who did you ever tell about that?

A. I can't tell everything I have said years back.

Q. I ask you to tell me who you ever did tell?

A. Well, I told Samuel Case for one.

Q. When?

A. Oh, a good time ago.

Q. When?

A. I can't go back to say when; I don't know; but some time ago, probably a couple or three years ago maybe, I can't say. 10

Q. Do you recollect of anybody else you ever told it?

A. I told it to Lake.

Q. When?

A. I guess somewhere near the same time.

Q. Who else did you ever tell it to?

A. Well, I don't know; I told it to Mr. Chamberlin.

Q. Since this suit?

A. Yes.

Q. That is all you recollect of?

A. Yes. 20

Q. Mr. Hart, do you recollect being a witness in a case between your son-in-law, Samuel C. Case, and Arbor H. Lee, in the Circuit Court, some two years ago?

A. Yes.

Q. Mr. Robert H. Lee owns, as I understand it, this slip of land that is designated—this part of the roadway running from here down to this point. He does own that, does he not? At one time you owned this; you conveyed to him, and when he conveyed to you he did not convey that part of his claim in the roadway? 30

A. No.

Q. In other words, he owns that now. That suit related to a question of right of way of Mr. Case to come down here and come out at this point on to the land of Lee. He claimed that Lee had put obstructions there that prevented him from coming out.

A. You mean right from his house down?

Q. Yes, right alongside of the Leonard lot. He claimed that

Mr. Lee had put obstructions there, so that he could not come down there and out here by Hoppock's?

A. Yes.

Q. You were a witness in that case?

A. Yes.

Q. In that case did you not testify that, as long as you had known that property and that way, that this way from Hoppock's here, on back here, and past the creek and past Lee's, and on back here, clear on back, was used by everybody who
10 wanted to travel that way?

A. Everybody that I did not hinder.

Q. Did you testify that you hindered anybody?

A. I was not asked that question.

Q. I ask you whether you did not testify in that trial, that everybody—it was used—they tried to establish that in order to allow him to come out—the point of the suit was to establish a by-road there, wasn't it?

A. I suppose it was.

Q. And in that suit did not you testify that in your opinion
20 that was a by-road, because so long as you had known it, it had been used by everybody along here, and far back—went back to the Trenton road, and in back there, they all used it to come out there whenever they pleased, and under all the circumstances; I ask you if you did not testify to that?

A. They did use it.

Q. Didn't you testify to that?

A. I testified they came in the clam-shell road and came in there too.

Q. I am not asking about the clam-shell road, I am asking
30 about this road?

A. They came in that gate and went all over just as they pleased, and by my barn too.

Q. I want to know what you testified to?

A. Of course you know.

Q. By the Court.—Answer what you remember?

A. I don't remember.

Q. You don't remember what you did testify?

A. No.

Further cross—

Q. Do you mean to say you don't know that you testified that that was used by the public generally through there, for as long as you have known the property and the road?

A. I think I testified that everybody drove as they pleased.

Q. Did you testify to a single instance of any person who had ever been prevented—in that suit did you ever testify to a single instance of any person who had ever been prevented from traveling?

A. I don't know as I did; I don't remember. 10

Q. Can you state—in that suit did you ever testify to the fact of the road ever having been changed. This map was used in that case, wasn't it.

A. I suppose so.

Q. And this road was spoken of as laid out on this map, and was always spoken of as laid out on that map.

Q. Did you testify to there ever having been any alteration in the road?

A. I don't think I did, for I was not asked that question.

Q. In your testimony in that case, did you testify to any conversation with Peter Leonard? 20

A. I don't remember that I did; I don't remember.

Q. Peter Leonard was living then, and was a witness in that case, was he not?

A. Yes.

Q. Did you testify in that case that you had ever given Peter Leonard permission to come through there?

A. I wasn't asked any such question.

Q. I asked you whether you testified to it?

A. I don't know whether I did or not; I don't suppose I 30 did, because I was not asked those questions.

Q. In that trial Jacob Rockafellar was a witness, was he not?

A. Yes.

Q. And on that trial he testified that Samuel M. Higgins and his farmers were accustomed to come from this Leonard lot out through here to that road, did he not?

A. Well?

Q. And he also testified that when he owned this property

that is now the Case property, he also went down that way through those old bars and out that way, did he not; that was his way out?

A. It might have been.

Q. And when you were asked to testify as to the use of this road by the public, and you testified that everybody used it as they pleased, did you say that Samuel M. Higgins never used it as he pleased, but he used it by your permission?

A. Well, there is others did, too.

10 Q. I ask you whether in your testimony you said a word about that?

A. I didn't say anything only what I was asked, if I remember right.

Q. You were asked what you knew about the user of this way, that is what you were asked about, and you tell me now that what you testified at that time was that everybody used that road as they pleased?

A. Yes.

20 Q. That is just what you did testify to in effect, and you say now that is a fact; now, I ask you once more whether, after hearing the testimony of Mr.—Mr. Rockefeller was sworn before you, was he not?

A. I think he was.

Q. Nathaniel Brittain also testified to the user of this old road, and Peter Leonard and William Leonard and Abraham Hoppock; these people all testified in that case before you did, did they not?

A. Likely they did; I could not say about that.

Q. Don't you recollect about that?

30 A. I don't recollect exactly about that.

Q. You heard their testimony?

A. I heard their testimony.

Q. Now, after having heard their testimony as to the right of way from these lots, now I will ask you, having heard that testimony, when you came to testify and said that the road was used by everybody just as they pleased, did you then know that Samuel M. Higgins did not use it as he pleased, but only by permission?

A. Well, they used it as they pleased by permission, of course, because they had asked permission.

Q. If you knew that fact, why, when you testified under your oath, that everybody used that as they pleased in order to try to establish a roadway there to help your son-in-law, why didn't you say to the court under oath that they did not use it as they pleased, but used it by permission; if you thought so, why didn't you say so?

A. Well, I didn't think about that part.

Q. Mr. Hart, while Jacob Rockafeller owned this property 10 that is now called the Case property—[Interrupted.]

A. He didn't own up there.

Q. Well, from this part of it, did he not come out of these old bars and that way; wasn't that his way to and fro?

A. Yes.

Q. When did you give him permission to use that?

A. Never anything said at all, nor he never said anything to me about it; there is a great many travel there that has not a word said; some I stop and some I don't.

Q. There were a number used it who never had any permis- 20 sion, that is what I want; when Joseph Hoagland owned this property, didn't he come out this way?

A. Part of the time only.

Q. Well, when he wanted to, he did come out that way?

A. He came out sometimes.

Q. Did he ever ask you whether he could?

A. Well, I sold him a property and I didn't try to hinder him.

Q. I didn't ask you that, I asked you whether he asked you if he could? 30

A. I don't know that he did; I don't remember.

Q. Mr. Hart, you said something about going there and cutting timber from Leonard's; they brought some out this way and some through here, too; I suppose it was nearer that way?

A. I don't know; I don't think it was; it might have been the way they had to go.

Q. They did not go that way because they could not come this way?

A. I don't know.

Q. Don't you recollect William Leonard put some planks on the bridge when he was going out that way with heavy loads?

A. Yes; he was afraid it would go through.

Q. Since William Leonard has occupied that property, hasn't he helped work that road at all, repair it in any way?

A. His father did, and he might have done for a while; I don't remember; but his father did.

Q. Did Arbor Lee help, too?

10 A. A great many years ago he did.

Q. Then why did you mean to testify a little while ago, in order to make your case, as you thought, that nobody ever did anything upon it but you?

A. I didn't say so.

Mr. Chamberlin.—He said except at his request.

Q. Did you pay these men?

A. They didn't ask any pay.

Q. Did Joe Hoagland help repair it while he owned the Case lot?

20 A. He helped repair some for the privilege of coming out.

Q. Do you mean to say you gave Joseph the privilege of coming out?

A. He worked the road for the privilege of coming out.

Q. Did he ever say so?

A. I don't know whether he ever did or not?

Q. Did you ever say so to him?

A. I think I did once, but I am not positive about it.

Q. You are not willing to swear that there was ever a word said between you and Joseph Hoagland about commission?

30 A. I think there was; because there was so many helped me I didn't think of mentioning all these things.

Q. Why did so many help you?

A. Because they carted stone out there for me, out of my quarry.

Q. Did Joseph Hoagland cart stone out for you?

A. I don't remember whether he did or not.

Q. Did Arbor Lee cart stone out for you?

A. Yes.

Q. At the time he helped you work the road?

A. Somewhere thereabout.

Q. Did Leonard help cart stone for you?

A. No.

By Mr. Kuhl—

Q. Do you wish us to understand that Joseph Hoagland applied to you for permission to come out this way, and that you granted him permission if he would help work it?

A. I don't know that I did; I don't know that there was anything of that kind. 10

Q. Has there ever a word passed between you and Joseph Hoagland about the use of this road?

A. It runs in my head there was.

Q. What do you think it was?

A. I think he said he was willing to help me work it to use it; it was the agreement that he was to help me keep it in repair as long as he used it.

Q. Isn't this the first you ever told that thing?

A. I couldn't say that; I don't think but what I have said it before. 20

Q. Who did you ever say it to?

A. I don't know.

Q. Well, think now?

A. I might have to think a good while before I could tell you, if I could tell.

Q. And Joseph Hoagland got permission of you to travel this road, did he?

A. No; I didn't say that; he was to help work the road.

Redirect examination—

Q. There has been something said about Leonard's building a 30 bridge at the corner of his lot there?

A. Yes, sir.

Q. That is not on your land, is it?

A. No.

Q. That is on Arbor Lee's land, where he built the bridge?

A. Yes.

Q. Beyond your place?

A. Yes, sir.

Q. And beyond the place in controversy?

A. Yes.

Q. That he built to get out into this lot into the lane?

A. Yes.

Q. I don't know whether I asked the question and whether it appears in the testimony, and therefore I will ask this witness, does this land represent the south end of the John Besson tract?

10 A. Yes.

Q. And this lower line, right along your land, represents the south line of the John Besson tract of 300 acres, more or less?

A. Yes.

Q. By the Court.—Then the land now owned by Mr. Hart and the original Besson land adjoined?

A. Yes, sir.

Further redirect—

Q. Now, something has been said about going up to Stockton—going out the other way, toward Arbor Lee's?

20 A. Yes.

Q. Now, I understand the evidence now, it is the nearest—this way in by Hoppock's, or what is called the old clam-shell road, to Leonard's place?

A. The clam-shell road.

Q. How does it compare in distance with the other?

A. I should think it was a mile or a mile and a half nearer.

Q. Well, is it about half the distance?

A. It isn't half the distance.

30 Q. Well, to where Samuel Higgins' farm was situated—would this be a more convenient way for him, by Hoppock's?

A. If he wanted to go to his farm, it would be more convenient because he lived off here.

Q. Talking about this change of road now, don't show beyond your building and barn here, by a stone ridge that is in your field; the line has been changed so much that it shows by a sort of stone ridge inside of your field?

A. Yes.

Q. Not only by your barn but for the general course?

A. Yes.

Q. And the stones are there now where it used to be?

A. Yes; it is washed out, hollowed out and filled up with stone.

Recross-examined by Mr. Bullock—

Q. In order to correct any erroneous impression I think the Court got from one of the answers, as to his land and the old Besson land adjoining this lane down here, Mr. Hart, you bought, did you not, on the north side of what was your land, 10 a little strip off of the Besson land in order to go in to help make up this way?

A. Make up the lane? yes, sir.

Q. By Mr. Kuhl.—The way is composed of part of your land and what was once the Besson land?

A. Yes.

Moses Lake, a witness produced on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Chamberlin—

Q. Tell the Court what you know about the change of this 20 lane at the barn.

A. Well, I lived there for 3 years while the old barn was standing.

Q. By the Court.—That is on the Hart property?

A. On the Hart property; the lane ran right by the back door, so if you backed a wagon out you got into the lane; and now it is changed, the whole width of that lane north, from what it was then.

Further direct—

Q. About what distance do you think? 30

A. Well, all of 20 feet at least, and I think more; it is all of that.

Q. By the Court.—About when was it you lived there, Mr. Lake?

A. In 1844; I lived there 3 years, not exactly; I left there to work for Crum & Sheppard.

Q. Do you know whether Higgins, in going to this lot, went in any other way than by this lane?

A. I know he did; my father bought a lot off the same tract, and we carted wood down directly south from the lot where Henry Snyder now lives, and Samuel Higgins carted poles out the same way; it was a direct road from his place, running south; Hoagland drew a load with two oxen for Samuel M.
10 Higgins to his saw-mill, which was right by his farm.

Q. Did that way have any designation or name?

A. I suppose it was called the Wagoner road; it was the road that my father always traveled as long as he lived, and myself with him; and in 1844—this lot that my father owned—and in 1844 there was a liberty pole taken out that lot, and they took it out this clam-shell road; it was cut out of my father's lot right off the Leonard lot; they had to pass the Leonard lot and along this clam-shell road, and brought it to this town and raised it here; my father's lot joined the Leonard lot on the southeast
20 corner.

Q. By Mr. Bullock.—Mr. Spencer owns it now, then?

A. Mr. Spencer has it under control, I don't know who owns it.

Cross-examined by Mr. Bullock—

Q. What year was it that Hoagland took this log out?

A. I think it was in the fall of the year; I would not be positive, but I think it was.

Q. Well, did you ever know him to go out this way by Hoppock's?

30 A. I never saw him.

Q. All you know is he went—[Interrupted.]

A. I lived 3 years there and worked in the barn for days in and days out and I never saw Hoppock travel that road, and I never saw Nathaniel Brittain; I saw people go through there, and I never saw anybody cart wood through there; I have seen Samuel Higgins' team go down by my father's that way in 1843, 1844 and, I think, 1842; but 1844 I remember particularly about that, because of this pole that was taken out.

John B. Godown, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Chamberlin—

Q. Where do you live?

A. I live in Raritan.

Q. Just beyond this disputed road?

A. Yes, sir.

Q. West of the disputed lane, do you know anything about the change of that lane?

A. Yes, sir.

10

Q. Just tell us what you know about it?

A. I made the gate; helped Mr. Hart move it; helped dig the holes.

Q. How much about did you change the road, and in what direction?

A. North.

Q. Well, how far?

A. Well, I suppose about 14 feet, as near as I can tell.

Q. When was it?

A. Well, I can't tell; it was the year that the new road was put up through Snyder's, and I can't tell when that was; it was the fall; the road was made in the spring; it has been quite a spell.

Q. Did that change go beyond where the gate now is and the road; was the road carried up beyond the building?

A. Well, it would move the way up, as a matter of course.

Q. Do you know whether it moved it so far that the old way is now inside of Hart's field, on the south side of this lane?

A. I don't know about that.

Q. You don't recollect whether that was so or not?

30

A. No, sir.

By the Court.—Mr. Godown says it is about 14 feet.

By the Witness.—From where the old road was.

Q. By the Court.—You are a carpenter, are you not?

A. Well, I have worked at it some; I don't pretend to be a carpenter exactly.

Cross-examined by Mr. Kuhl—

Q. You did this by Hart's direction?

A. Yes, sir.

Q. He hired you to do it?

A. Yes, sir.

Q. Do you know why he wanted that done?

A. I don't know anything about it; I didn't ask him any questions.

Q. Do you know the location of the lane now?

10 A. I know the road, where it is.

Q. Is there a fence on both sides now?

A. There is a fence on both sides after you get west of the gate.

Q. Is there a fence on both sides of it a little ways east of the gate?

A. Both sides of the lane until you get to his house, and then there is a place there that takes in the corner.

Q. Then coming from the west out towards Hoppock's, a person coming up by Hoppock's would either have to go through
20 a fence down into Hart's field or else open the gate?

A. They would have to do as they pleased; I suppose the gate is there; they can come through the gate if they want to.

Q. Can they go through the old way now?

A. Yes.

Q. Isn't there a fence there?

A. I don't know; but they can go through it if they want to.

Redirect examination—

By the Witness.—On the left adjoining the Milbron lot, from the corner of the Milbron lot, there is a road—[Interrupted.]

30 [Objected to.]

By the Court.—I think that has been established pretty well. If there were a dozen roads, I don't suppose that could change the relation of the parties to this one.

John Hart, a witness sworn on behalf of the defendant, testified as follows :

Direct examination by Mr. Chamberlin—

Q. You are Hiram Hart's son, are you?

A. Yes, sir.

Q. What do you know about the change of this way at the building, and beyond?

A. Well, where do you mean, by the house or barn, or both?

Q. Well, by the barn, and beyond there?

A. Well, the road is put up fifteen feet, as near as I can 10 guess at it.

Q. By the Court.—That is to the north?

A. North, yes, sir.

Further direct—

Q. Do you know whether the road-way on beyond the buildings and the gate was changed also?

A. That is from the barn on west?

Q. From the barn on west?

A. Well, I can't remember much about that down there, but from the house on it was—I put it north. 20

Q. By Mr. Bullock.—From the house, which way?

A. Between the house and barn from the gate.

Cross-examined by Mr. Kuhl—

Q. If there was any change made it was done by your father, or by his directions?

A. It was done by him.

Q. Isn't there an elm tree that stands back of the barn?

A. Yes, sir.

Q. And hasn't the road always run right south of that?

A. Well, it runs closer to the tree, for there used to be a 30 pump stood there, and they built the barn and dug a well, and filled that up where the old track is now; the watering-trough used to be there, and the top was covered with flags; that elm tree is standing there still.

Q. And the road runs south of that elm tree?

A. It does now.

Q. Between it and the barn?

A. Yes, sir.

Q. How did you come to move this gate north?

A. Well, I can't tell you.

Q. On account of building wing-walls to get up into your barn? You have got a cellar barn, haven't you?

A. Yes, sir.

Q. And you built wing-walls out to get up into your barn?

10 A. I could not tell you.

Q. Isn't that a fact; does not that road-way into your barn cover some part of the old way, as you understand it?

A. I can't tell you much about that; I don't know what it was done for.

Q. Is it not a fact that the road as it used to be—your wing-walls and your roadway to your barn runs out over where the old road used to be—some part of it?

A. I could not say about that.

Q. You know just where the old road used to be?

20 A. Somewheres near about.

Q. And you know where you put the wing-walls and the road-way; you can tell whether those walls and road-way run out into where the old road used to be?

A. I think the walls run out about to the old road.

Q. And the embankment of the road-way runs out further north than the wing walls?

A. Of course it runs further out than the barn.

Q. Isn't that one of the reasons why this road was put further north?

30 A. I could not tell what it was put there for.

Q. You were there when the barn was built?

A. I was.

Q. You remember it?

A. I remember the barn being built.

Q. And you say you know just where the old road used to be?

A. Somewheres about.

Q. And don't you know those wing-walls and road-way runs out to where the old road-way used to be?

A. I don't think the wing-walls run out quite to the old road-way, but I ain't positive about that.

By Mr. Chamberlin.—If I am not permitted to show anything about this clam-shell road being a more convenient road—
[Interrupted.]

By the Court.—I would not burden the case with that.

By Mr. Chamberlin.—I have sent out for one witness I would like to have. What I propose to prove is that Samuel Higgins went out this clam-shell road—used it. Of course it would only go to show they had several ways, and would not bar them of 10 the right here, if they had a right.

By the Court.—Yes, that is the question—did they have the right of way; and if you want to put in the testimony we will wait a minute.

By Mr. Bullock.—Well, if they want to put in the testimony, we will not object to their putting it in at any time.

By Mr. Chamberlin.—We have but one more witness, Mr. Samuel Case, and we rest with the understanding that we can call this witness when he comes in.

Defendant's counsel offered in evidence record of the Milbron 20 road and rest.

Joseph Hoagland, a witness produced on behalf of the plaintiff in rebuttal, having been duly sworn, testified as follows:

Direct examination by Mr. Kuhl—

Q. Mr. Hoagland, Mr. Hiram Hart testified a little while ago that you had helped him fix this lane running in from Abraham Hoppock's through past his buildings, and that you fixed it and told him you would do it for the privilege of going in there?

A. There was nothing ever said about that, about fixing the road when I bought the place. 30

Q. He said you said you would help him fix it for the privilege of going in there?

A. No.

Q. Had you ever asked him for any privilege, or had he ever granted it in any way at all?

A. No, sir; that was the only way I expected to go in when I bought the place.

Q. You never heard your way or right of way questioned by any one at all?

A. No, sir.

Cross-examined by Mr. Chamberlin—

Q. Did you ever go out by your father's or near your father's, Thomas Hoagland's?

A. Yes, sir.

10 Q. You know what the clam-shell road is?

A. I got the privilege of my father to go through there; I asked him whether he would have any objection to my going through his woods to the public road.

Q. Well, isn't there a well-beaten track through there?

A. Well, there are tracks there of course; I don't know where it went or anything about it.

Complainant rests.

Adeline Rake, a witness produced on behalf of the defendant in rebuttal, having been duly sworn, testified as follows:

20 Direct examination by Mr. Chamberlin—

Q. Were you living or stopping at the place where Samuel Case now lives at any time?

A. Yes, sir.

Q. You lived there at the time—did you live there in that—
[Interrupted.]

A. Yes, sir.

Q. How long about since you lived there?

A. Twenty-three or 24 years.

30 Q. What do you know, Mrs. Rake, about Samuel N. Higgins driving out what is called the clam-shell road?

A. He used to drive out of it with a load of wood.

Q. From the lot that is now owned by William Leonard?

A. Yes, sir.

Cross-examined by Mr. Kuhl—

By Mr. Bullock.—Do you offer this to show that he did go out that way, or to contradict Mr. Brittain, who testified he never went any other way?

By Mr. Chamberlin.—It is offered to show he went out that way, and then because he lived below it was nearer to him; he asked permission to come out that way.

Q. You say you saw Samuel Higgins come out of there?

A. Yes, sir.

Q. Was he driving his own team?

10

A. Sometimes he did.

Q. Samuel M. Higgins?

A. Yes, sir; sometimes he did.

Q. What did he have on his wagon?

A. Wood.

Q. What sort of a wagon?

A. I could not tell you what sort of a wagon.

Q. One horse or two horses?

A. Two horses to it—a farm wagon.

Q. Did you know Samuel M. Higgins?

20

A. Yes, sir; I knowed him quite a while before I lived there.

Q. What did he do; what was his business?

A. That I don't know what his business was.

Q. Where did he live?

A. He lived here in Flemington; I don't know what his business was.

Q. What did he look like?

A. He looked like a man.

Q. Don't you know he was in the lumber business here in Flemington?

30

A. Maybe he was, I could not tell you.

Q. You have seen him drive out there himself?

A. Yes, sir; sometimes he would have a boy with him, sometimes he drove and sometimes somebody else used to cut wood in there and haul it out.

Q. You know it was Mr. Higgins?

A. Yes, sir; I guess I know him; and sometimes he went out by Hiram Hart's and sometimes he did not; he went both ways.

Samuel C. Case, a witness produced on behalf of the defendant in rebuttal, being duly sworn, testified as follows :

Direct examination by Mr. Chamberlin—

Q. Mr. Case, did you have a conversation about this lot with William Leonard ?

A. Yes, sir.

Q. Tell what it was, and when it was ?

A. Well, it was in 1862 ; he told me he drove this way until Uncle Tom Hoagland forbid him this clam-shell way, and then
10 he got permission of Hart to go out that way and he went out that way ; he said he didn't want to kick up a muss with Uncle Tom.

Q. Well, this clam-shell road would be nearer in distance than the other road to his house, wouldn't it ?

A. The road through by Hart's ?

Q. Yes.

A. Oh, yes ; less than half the distance.

Q. Did you have a conversation with Peter Leonard, the father of the complainant ?

20 A. Yes, sir.

Q. When was that, about ?

A. Soon after I moved there, in 1862—in 1882—did I say 1862 before ? In the year 1882 ; I mis-spoke myself if I said 1862 ; since I have lived there ; I only lived there four years.

Q. You may state what it was ?

A. Well, he contended that the clam-shell road was the right way for them to get to their works ; I asked him why he thought that was the right way ; he said because old Jerry Besson used that way to get to these woods and carted out wood
30 that way.

Cross-examined by Mr. Bullock—

Q. Mr. Case, did I understand you to say that this conversation between you and William occurred in 1882 ?

A. The first year I was there.

Q. You moved there in the spring of 1882 ?

A. Yes.

Q. Where did this conversation occur?

A. I think we were hauling stalks together; he helped me haul my stalks and I helped him haul his; I think we talked then.

Q. Then it was in the fall of the year?

A. Yes.

Q. Hauling stalks to your place?

A. No; I helped him haul his and he helped me haul mine.

Q. It was corn that grew on your property and his property?

A. Yes.

10

Q. And not on this lot?

A. No.

Q. Whereabouts did the conversation occur, on your lot or his?

A. I could not tell you that; it was some time while we were hauling stalks; I could not tell you where it occurred.

Q. Do you mean to say that you can come here now and relate a conversation that occurred in 1882, and yet you cannot tell where it occurred?

A. I know we were talking all the time we were hauling 20 stalks; I could not tell the exact spot or the exact minute.

Q. Did he tell you at one time, or at several times?

A. At one time, I suppose.

Q. Now, if he told it to you all at one time, can't you tell us where it occurred so as to fix that time?

A. No, nor you couldn't either.

Q. Were you on a load?

A. I couldn't tell you whether I was on a load or off a load.

Q. If you cannot tell where it occurred, do you mean to say you can tell what occurred?

30

A. I can tell that this conversation took place at some time during the time we were hauling stalks together; I could not fix the exact spot.

Q. Was anybody by?

A. I don't think there was.

Q. How do you know there was nobody by if you cannot tell where it occurred?

A. I don't think there was anybody else by.

Q. Who started the conversation ?

A. Well, there was something said about roads soon after I moved there ; he claimed the right of way across my place ; and after we got to hauling stalks we got to talking about that ; that is the way it came up ; I could not tell who started it, me or him ; I could not tell what was the first thing that was said ; I just tell you what conversation took place.

Q. Just tell me again ; I want the first thing that was said ?

A. Oh, I don't get things down as fine as that.

10 Q. What hour of the day was it ?

A. I could not tell you that either.

Q. You can't tell me where ?

A. It was some time during the time we were hauling them stalks.

Q. Nor when—and you don't know what he said ?

A. I just told you what he said.

Q. What did you say ?

A. What did I say ?

Q. Yes.

20 A. In regard to what—what do you mean did I say ?

Q. Well, now, you have pretended to relate a conversation that occurred between you and William Leonard ; now, in order to understand that conversation, it is necessary we should know who commenced it and what was first said ?

A. I couldn't tell you what was first said, only we got to talking somehow or other about this road.

Q. Which road ?

A. The clam-shell road that he used there until Uncle Tom stopped him, and he was not going to kick up any muss with

30 Tom.

Q. He used it for what purpose ?

A. To go through his land.

Q. What land ?

A. The three acres of land.

Q. Did he say those three acres ?

A. Well, I know—I understood there was some three acres and some hundreds in this tract we are talking about.

Q. What do you say ?

A. I don't know anything about it; I know there used to be a track there in my boyhood days; I was raised near that clam-shell road and used to go down there frequently.

Q. You mean to say that in the conversation he told you in making use of his lot—William Leonard lot—he had used the clam-shell road until he had been stopped by Uncle Tom, and then he used the other?

A. Well, he used the other as long as Hiram didn't care; he would not kick up any fuss with Uncle Tom.

Q. You said that he said that he had gone and asked Mr. 10 Hart's permission?

A. Yes, he did.

Q. Why didn't you tell it to me so; you say now that what he said was that so long as Hart did not make any objection he was not going to have any fuss with Tom?

A. So long as Tom was willing; he would travel there so long as Hiram did not care; that was the terms he used exactly; I could not tell the exact spot or hour that it occurred.

Q. You are satisfied that conversation occurred?

A. Yes.

20

Q. Were you a witness in that suit between yourself and Mr. Lee?

A. Yes, sir.

Q. You were a party to that suit?

A. Yes.

Q. You were the plaintiff?

A. Yes, sir.

Q. And you were endeavoring to establish a way of your own from here down over Lee's land—(Interrupted).

By defendant's counsel.—That is not so; not of his own. 30

Q. You were trying to establish the fact that you had a right to come out here on what was supposed to be Lee's land, because it was a by-road?

A. Yes.

Q. You claimed you were entitled to come out here this way because this was a by-way?

A. Yes.

Q. Now, you were a witness in that case?

A. Yes.

Q. And you told all that you knew?

A. Yes.

Q. You did not live there, but you told all you knew about this road, and about how you had used it and about how other people had used it, as far as you knew?

A. Yes.

Q. Didn't you testify that, so far as you knew, the limited time you had been there, that anybody went in along there who
10 pleased?

A. I told all I had seen that went through there.

Q. Now, at that trial, did you say anything about this conversation with William Leonard?

A. No, I didn't say anything about it.

Q. Were not you telling all that you knew about this road, and all these roads through there?

A. I didn't tell anything about these upper roads; there wasn't anything said about them at that time.

Q. Who did you first tell about this conversation with
20 William?

A. I don't recollect.

Q. Who did you ever tell about it?

A. I told it to my father-in-law.

Q. When?

A. Soon after it happened.

Q. Before the trial of the other case?

A. [Not answered.]

Q. Did you hear your father-in-law testify in that case of
30 yours; did you go to him and tell him, after he had testified, that people went right through there as they pleased; did you go to him and tell him that Leonard did not because he said he asked his permission; did you go and tell him that so he would go on the stand and correct his testimony?

A. Why that was a public road, that didn't make any difference; why should I tell him.

Q. Did you hear your father-in-law testify that this road, all the way through back here, that people were in the habit of coming over on the Trenton road and up through here and pass-

ing through there just as they pleased, and so far as he knew everybody used it as they pleased?

A. No; I don't remember hearing him because I was not very well pleased with his testimony; he didn't please me at all.

Q. Wasn't he a witness on your part?

A. Yes, sir.

Q. Didn't he testify in effect that that was a by-road?

A. He didn't show very strong towards it.

Q. Didn't you—I ask you now was there anything to this effect, that he testified as to people traveling that as they pleased 10 when you had told him that you had this conversation with Leonard and you now remember that Leonard had obtained permission from your father-in-law; why didn't you correct your father-in-law when he testified to what was not so?

A. I might have forgotten it, I had a good deal to think of.

Q. If you did forget it when did you think of it again?

A. I remember it now.

Q. Now I ask you why, when you testified as to the people who traveled this and traveled it as a matter of right so as to establish a by-road, why you did not testify that William Leon- 20 ard did not travel it as a matter of right, but traveled it by permission of your father-in-law because he told you so?

A. Because I didn't think anything about it.

Q. Well, you had forgotten it then, that is all?

Defendants rest.

By Mr. Bullock.—I suppose, letting that witness in, we are entitled to open so far as that witness is concerned?

By the Court.—Oh, certainly.

William T. Leonard recalled on behalf of the complainant—

Q. Mr. Samuel C. Case testifies that at one time, when you 30 and he were hauling the stalks, that you told him that in the use of this three-acre lot here you had traveled to and from it over the clam-shell road until such time as Mr. Thomas Hoagland had objected, and then you traveled this other way; did any such conversation occur?

A. No, sir.

Q. At that time?

A. No, sir; I never traveled any other way, except by Mr. Hoppock's and Mr. Hart's building; I never traveled through the clam-shell road, and Mr. Hoagland never said anything to me about it.

Q. You never did travel the clam-shell road?

A. No, sir.

Q. You never said anything to Mr. Hoagland about it?

10 A. No, sir.

Q. Mr. Hoagland never said anything to you about it?

A. No, sir.

Q. That was not the question; the question was whether you, in any conversation when you were hauling stalks or at any other time, ever told Samuel C. Case that?

A. No, sir.

Q. Mr. Case says that in this conversation you remarked that you had traveled the clam-shell road until such time as Mr. Hoagland had stopped you, when you commenced to travel this
20 other way; and he said at one time that what you said about that was that you would travel that way so long as Mr. Hart did not object, because it was a better way; and at another time you said you had gone and asked permission of him to travel that way; did you tell Samuel C. Case any such thing as that?

A. No, sir.

Q. Did any such conversation occur at all?

A. No, sir; I never had any such conversation with Mr. Case.

Q. Did you ever ask permission of Mr. Hart to travel this
30 way?

A. No, sir.

Q. And since you owned that lot you always did travel?

A. Yes, sir.

Q. Is Mr. Thomas Hoagland in court at this time?

A. Yes, sir.

Q. You are quite sure you never traveled this clam-shell road?

A. Yes, sir; if I did, I only traveled it across afoot; I never did with horses or wagon.

Q. Something has been said about a conversation with your father—that you have nothing to do with ; as I understand it, you bought this property of Mr. Allen ; the deed says so ?

A. Yes, sir.

Q. Was that a fact ?

A. Yes, sir.

Q. Does the deed represent the true situation ?

A. I bought it.

Q. Did your father have any interest in the agreement of purchase prior to the execution of the deed, while you were cutting 10 timber off, before you took the title ; did your father have any interest in it ?

A. He had no interest in it ; it was all mine.

Cross-examined—

Q. Do you say that your father had nothing to do with it ; didn't go to Captain Allen's office and ask about this piece of land and agree for it ?

A. I done the bargaining myself.

Q. Do you know whether your father sold any plank off of that lot to Snyder ? 20

A. No, sir ; I sold it myself ; Mr. Hart got me to go down and see if I could not sell him some plank ; I had plank to sell ; I think Mr. Hart went with me.

Q. In taking the timber off this lot, who carted it ?

A. I carted part of it and sometimes father would cart part of it ; sometimes I would be working in the woods and father would drive the team.

Q. The agreement was, you were to pay for the land before you got the deed, by timber you cut off of it, wasn't it ?

A. Yes, sir ; I was to cut off the timber and sell it. 30

Thomas Hoagland, sworn on behalf of complainant :

Direct examination by Mr. Kuhl—

Q. You own property over by this clam-shell road ?

A. I suppose that is called the clam-shell road.

Q. How long have you lived there ?

A. I don't know as I can tell you ; about 15 or 16 years, I guess.

Q. Do you know this Leonard lot, back in there ?

A. Oh, yes ; I knew that before I knew my own place.

Q. As far as you know, did Mr. Leonard ever make use of your clam-shell road in getting to and from his lot ?

A. I don't know that he ever did ; I never heard tell of it.

Q. Did you ever forbid him to go through ?

A. I did not forbid him ; he never used to go that I know of ;
10 I never allowed anybody to come through except my son ; I let him come through.

Q. That was when he owned the Samuel Case property ?

A. Exactly.

Cross-examined—

Q. Is there a well-defined road where this track of the clam-shell road—is there a well-defined road there ?

A. There is a track ; we haul wood there.

Q. You haul wood from these woodlands, over in the neighborhood of Leonard's ?

20 A. Hauled wood, and so does anybody else.

Q. Well, since you lived there—that has been 16 years ?

A. It has been 18 or 20 years since I knew the lot ; since I came down there.

Complainant rests.

Mr. Chamberlin.—I want to ask Mr. Moses Lake a question ; I want to prove by him that Samuel Case told him of this conversation with Leonard ; you asked him if he ever told it ; I want to show that he told it to a neighbor.

[Objected to.]

30 The Court.—The rule is, if he had named a person to whom he told it, you could go so far as to ask that person and contradict the witness, but I don't think you can go so far as to support your own witness in a matter of this kind, unless it happens to be part of the *res gestæ*. I don't think it strengthens the case in one way or the other, but if Mr. Chamberlin wants to ask the

question he can do so ; I only state how I should rule on it ; if he desires to have the benefit of his exception, he may ask him the question.

Moses Lake, recalled on behalf of the defendant on rebuttal :

Q. You heard Samuel C. Case detail the conversation that he had with William Leonard ; now, did Case repeat to you a similar conversation ?

[Objected to.]

The Court.—I don't think the question is a proper one to be answered. 10

Mr. Chamberlin.—May I ask the question, whether, as a fact, he told him of the conversation ; not what it was, but whether as a fact, Case had told him about such a conversation.

The Court.—I think it is subject to the same objection.

Q. You heard Mr. William T. Leonard just say that he never traveled this clam-shell road ; have you seen him travel it ?

A. Yes, sir.

Q. When ?

A. Well, it is since I have lived with my mother there ; I lived on the old Besson farm ; I have seen him come out and go 20 in that clam-shell road.

Q. Have you seen William Leonard go in and come out that clam-shell road ?

A. Yes, I have.

Q. And that is the nearest road to this lot ?

A. Yes ; it ain't half the distance it is to go around to Hart's lot.

Cross-examined—

Q. Who have you seen go through that way ?

A. I have seen William travel through and James Hoagland 30 with a big two-horse wagon full of wood taken from this lot.

Redirect—

Q. What have you to say about this old clam-shell road being the old outlet to all these lots back there ?

[Objected to. Objection sustained.]

Hiram Hart, recalled on behalf of the defendant on rebuttal.

Direct examination by Mr. Chamberlin—

Q. Have you seen William Leonard travel what is called the clam-shell road?

A. I have, sir.

Q. When?

A. Pretty soon after they bought the wood lot.

Q. What with—what did he have?

A. A big wagon.

10 Cross-examined—

Q. Wasn't there a stone fence across this way that prevented any one traveling it until Mr. Thomas Hoagland gave his son permission to go through?

A. There was a stone fence there a while, but it was thrown down, and they drove right over—didn't make any account of it.

Q. When was this?

A. I ain't got the date.

Q. What year, and what season of the year?

A. I could not say; I think it was in the summer season.

20 Q. What did he have on?

A. He came there for wood.

Q. You saw him go in there?

A. Yes; I seen him go out there, too.

Q. On that single occasion you say he came in for wood?

A. He went to the woods and went out there; I was not in the woods.

Q. Where were you?

A. Down in my field, in the peach orchard, I think.

30 Q. Tell us now which field you were in; this clam-shell road is off here somewhere?

A. Yes, sir.

Q. About how far from Mr. Hart's house—how far from your house?

A. I could not tell; a quarter of a mile from my place.

Q. Where were you when you saw him?

A. Well, I think I was in a peach orchard south of Leonard's lot.

Q. Here then?—[Indicating.]

A. Yes, I think I was there when I seen him come in and out.

Q. From there you could see to this lot, couldn't you.

A. Yes, sir; you could see it plain enough.

Q. You could see off here from there?

A. I could see them come through them bars.

Q. Which bars?

A. The clam-shell bars.

Q. The bars of your son-in-law's place? 10

A. Yes; come right out there by the spring.

Q. You saw him come through there with a two-horse wagon?

A. By the spring, yes.

Q. When was this?

A. Well, I could not tell you.

Q. You think you were down here by the spring?

A. I think I was.

Q. Did you speak to him?

A. Not on that occasion.

Q. How do you know it was him? 20

A. I guess I know him well enough; I see him every day.

Q. You can't tell what year it was in?

A. No, sir.

Q. Nor what month it was in?

A. No; nor what day it was, nor what year it was.

Q. Nor what time of the day, whether morning or afternoon?

A. It wasn't at night.

Q. Well, you say he came after wood; did he get the wood?

A. He went in the woods and put something on, and went out; I supposed it was wood. 30

Q. He went out the same way he went in?

A. I think he did, sir; I think he came for wood to take to his house.

Q. His house is up here somewhere, isn't it?

A. Yes, sir.

Q. In coming from here to his house, if he wanted to, would he have to come away out here to the Bonetown road and come back?

A. Well, it would be nearer than to come out by my house, a mile and a half further.

Defendant rests.

Case closed.

PETITION OF APPEAL.

[Filed March 2d, 1886.]

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of Hiram Hart, the appellant in the
10 above stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, bearing date the fourth day of January, one thousand eight hundred and eighty-six, and filed in the Clerk's office of the Court of Chancery, on the fifth day of January, in the year of our Lord one thousand eight hundred and eighty-six, wherein the said William T. Leonard was complainant and the said Hiram Hart was defendant, in this respect, to wit:
20 injunction heretofore issued in said cause be and the same is hereby made perpetual."

And your petitioner hereby appeals from said decree upon the ground that the same is erroneous.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

O. P. CHAMBERLIN,
Solicitor and of Counsel with Appellant.

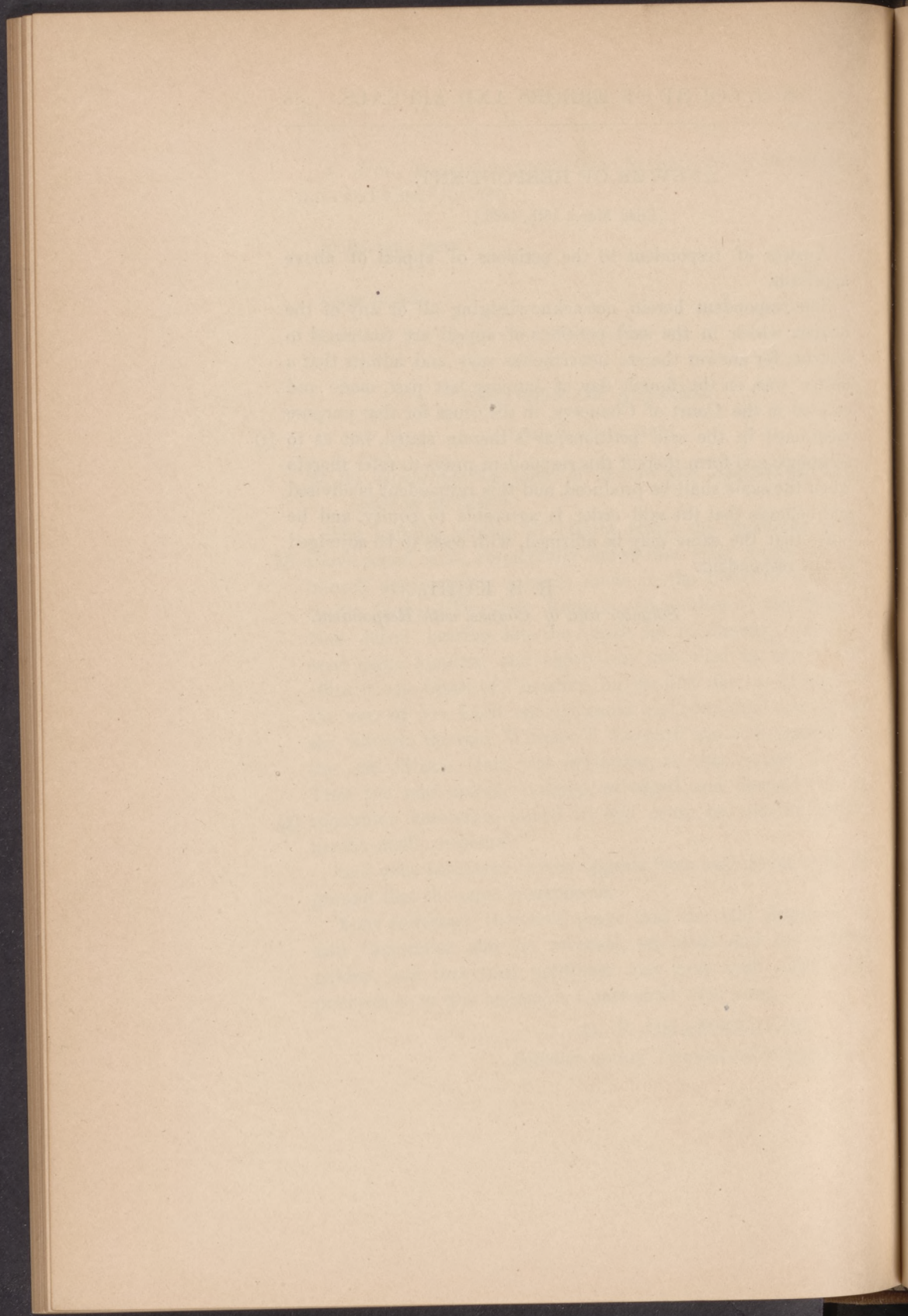
ANSWER OF RESPONDENT.

[Filed March 15th, 1886.]

Answer of respondent to the petitions of appeal of above appellant.

The respondent herein, not acknowledging all or any of the matters which in the said petitions of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was, on the fourth day of January last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petitions, as is therein stated, but as to substance and form thereof this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent. 10

R. S. KUHL,
Solicitor and of Counsel with Respondent.



New Jersey Supreme Court.

HIRAM HART,

and

WILLIAM T. LEONARD,

Appellant,

Respondent.

On Appeal.

1st. The way described by respondent not proved.

2 Greenl. on Ev., § 539, top p. 482, n. 1.

Sargent *v.* Ballard, 9 Pick. 251.

Davis *v.* Stevens, 7 C. & P. 570.

Jarvis *v.* Dean, 3 Bing. 447 (Redf. Ed. 1868).

2d. Proves too much.

Way—A right of private passage over another man's ground.

3 Kent Com. 419.

2 Greenl. on Ev., § 659, n. 6.

Cowling *v.* Higginson, 4 M. & W. 245.

Allen *v.* Gomme, 11 Ad. & El. 759.

If the proof is a use common to all others, as well as to the party claiming the way, it does not establish a *private* way.

Prince *v.* Wilbourne, 1 Rich. 58.

3d. The respondent not justified in taking another person in company with him over the way. The presumption of a grant is the foundation of prescription.

2 Bl. Com. 36 (margin Chitty Ed. 1830).

“Nor can he justify taking another person in his company.”

Finch Law 31.

4th. The way changed or altered twice within the last sixteen or seventeen years, from fourteen to twenty feet, for the distance of from two hundred to four hundred yards, and since then not used the period of prescription. In law, the enjoyment interrupted.

Lehigh Valley R. R. Co. v. McFarlan, 16 Vroom 631.

5th. The user by permission or license, and therefore affords no presumption of a grant.

2 Greenl. on Ev., §§ 539, 539a, 543, n. 5.
Steffy v. Carpenter, 37 Penna. St. 41.

6th. The plaintiff in error not estopped from setting up permission and license.

1 Greenl. on Ev., § 204, n. 6.

Estoppel by *matter in pais*.

1 Stew. Dig. 472, §§ 52, 52a, 53, 54, and the authorities there collected.
Richmon v. Baldwin, 1 Zab. 395.

An estoppel *in pais* never arises except when there is actual or legal *fraud*.

New Jersey Court of Errors and Appeals.

William T. Leonard

Respondent

And

On Bill &c.

Hiram Hart

Appellant.

Points in brief on part of Respondent.

The Complainant below and Respondent in this Court, filed his bill to obtain an injunction, ~~xxxxxx~~ restraining the defendant from obstructing an alleged right of way over the lands of the defendant.

The obstruction was fastening with a chain and lock a gate across said way, near the barn of the defendant.

The alleged way runs from the public road near the residence of Abraham Hoppock, over the lands of the defendant, to the lands of the Complainant.

The Complainant or respondent insists that for more than twenty years he and those from whom he took his title have used the way in question.

The case presents simply this fact for determination.

The Complainant relies upon the testimony of the following witnesses to establish his right.

Nathaniel Britton	Page-----	21
William T. Leonard	'-----	26
Abraham Hoppock	'-----	36
George Wolverton	'-----	40
Jacob Rockafellow	'-----	34 & 35

William T. Leonard
Respondent

On Bill No.

And

Alvan Hoppock

Appellant

Points in error on part of Respondent.

The Complainant below and Respondent in this Court, filed his bill to obtain an injunction, to restrain the defendant from obstructing an alleged right of way over the lands of the defendant. The objection was sustained with a chain and lock a case against said way, and part of the defendant.

The alleged way runs from the public road near the residence of Alvan Hoppock, over the lands of the defendant, to the lands of the Complainant.

The Complainant's respondent insists that for more than twenty years he and those from whom he took his title have used the way in question.

The case presents simply this fact for determination.

The Complainant relies upon the testimony of the following witnesses:

as to establish his right.

21	.....	Witness
22	.....	William T. Leonard
23	.....	Alvan Hoppock
24	.....	George Veitman
25	.....	Leon Kockellow

This testimony forty years use of the way was proved.

Twenty years enjoyment of an easement, in any particular way becomes an adverse enjoyment sufficient to raise a presumption of title.

Campbell Vs Smith 4th Hal 14.

Throve Vs Voorhees 2nd Cr Chan 25.

Wood Vs Hurd 5th Vroom 37.

Washburns Easements 38 star.

The case upon the part of the Complainant is virtually admitted, The defendant offers no proof to contradict the evidence above referred to.

It claims that EKH the use was by permission or license from himself to Samuel Higgins from whom Complainant took his title.

The Complainant's testimony is found on page 43.

The precise language of the permission or license is found on page 43 line 20.

No date is given to fix the time of this talk with Mr Higgins, whether it was more than twenty years after the use by Higgins or more than twenty years before the commencement of this suit.

Asking permission to use an easement after it has been once actually acquired does not affect the right.

Washburns Easements 2nd Ed 125.

Perrine Vs Garfield 3rd Vroom 210.

The use by permission does not affect the prescriptive right if it had been used and exercised for the requisite period under claim of right.

Washburns Easements 2nd Ed 127.

Arnoukel Vs Ward 29 Vt 43-62.

Summers Vs Stevens 6th Vt 337.

of this testimony forty years use of the way was is proved.

Twenty years enjoyment of an easement, in any particular way becomes

an adverse enjoyment sufficient to raise a presumption of title

Campbell Vs Smith 4th Hal 14.

Shreve Vs Voorhees 2nd Gr Chan 25.

Wood Vs Hurd 5th Vroom 37.

Washburns Easements 89 star.

The case upon the part of the Complainant is virtually admitted,

The defendant offers no proof to contradict the evidence above re-

ferred to.

But claims that KX the use was by permission or license from him-

self to Samuel Higgins from whom Complainant took his title.

The Complainant's testimony is found on page 48.

The precise language of the permission or license is found on page

48 lines 20.

No date is given to fix the time of this talk with Mr Higgins,

whether it was more than twenty years after the use by Higgins or

more than twenty years before the commencement of this suit.

Asking permission to use an easement after it has been once acqui-

sily acquired does not affect the right.

Washburns Easements 2nd Ed 125.

Perrine Vs Garfield 3rd Vroom 310.

The use by permission does not affect the prescriptive right if it

had been used and exercised for the requisite period under claim

of right.

Washburns Easements 2nd Ed 127.

Arpuckel Vs Ward 29 Vt 43-52.

Summers Vs Stevens 6th Metc 337.

The defdts testimony upon this branch of the case is unreliable, for this reason just prior to thisL suit he was sworn in a case in which his son in law was a party, and on whose behalf he was swom and declared in speaking of this wayL that every body used it who wanted to.

See cross examination of Hiram Hart page 53-57.

The defdt claims that by reason of a change in the location of the way the Complainant has lost his right of way.

The defdt made the change to fover the construction of a roadway to his barn.

This change is heard of far the first time in the present suit . He oñstructs the true way forces the other party to use another and then claims that it amounts to an abadonment.

Mr Hart made no claim of any change in the location of the way in the suit of his son in law.

This ought to answer the claim of the defdt.

Respectfully Submitted,

R. S. Kuhl
Sol of Respdts.

The date testimony upon this branch of the case is unrefuted.
For this reason that prior to this suit he was sworn in a case
in which his son in law was a party, and on whose behalf he was sworn
and declared in speaking of this way that every body need it who
wants to,

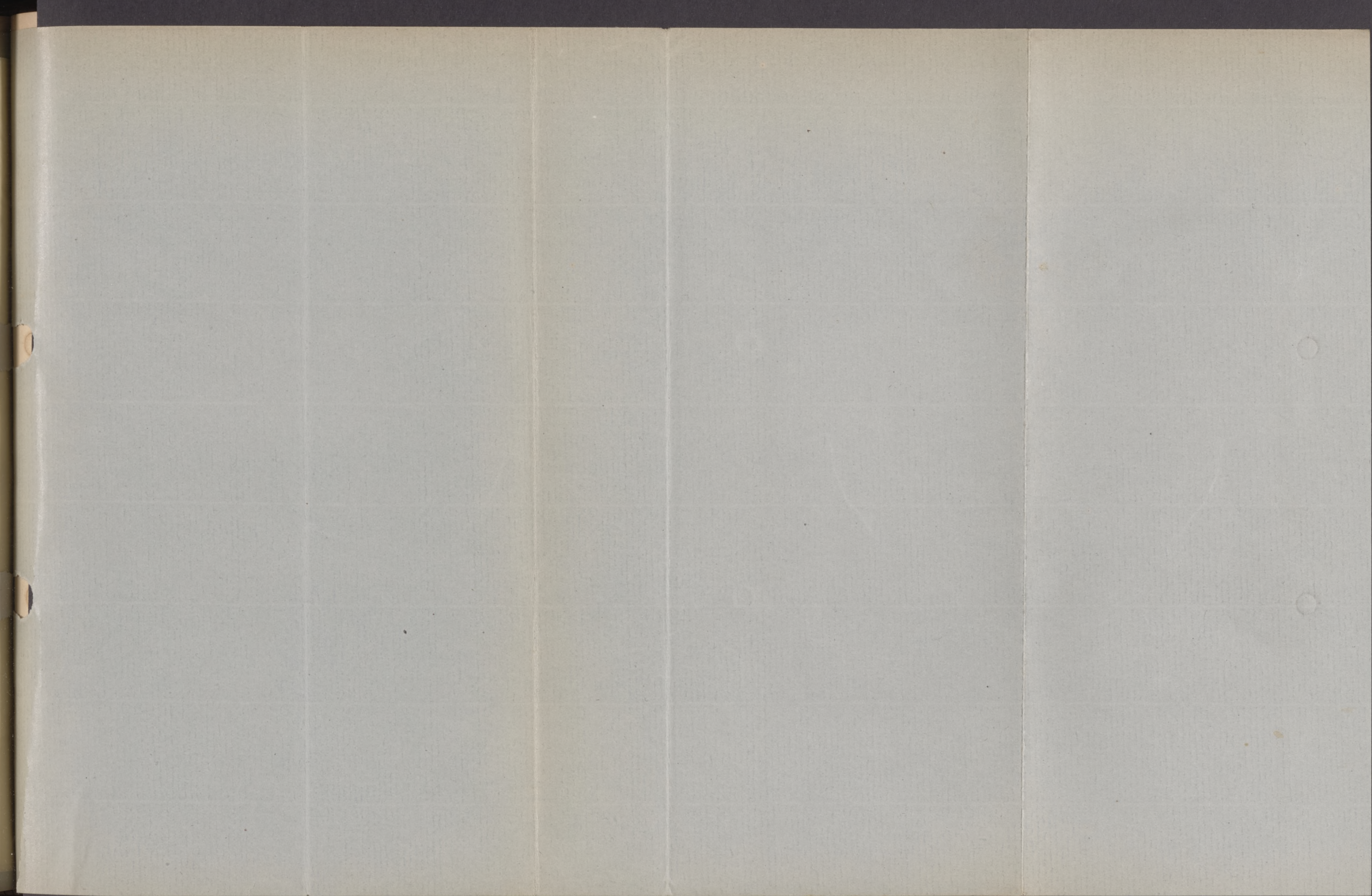
See cross examination of witness Hart page 55-57.
The date claims that by reason of a change in the location of the
way the Captain has lost his right of way.

The date wants the change to favor the construction of a roadway
to his party.
This change is heard of for the first time in the present suit.
The date wants the true way to favor the other party to use another
and then claims that it amounts to an easement.

It is said that no claim of way existed in the location of the way in
the suit of his son in law.
This suit to answer the claim of the date.

Respectfully submitted,

[Handwritten signature]
[Handwritten signature]



New Jersey Court of Appeals

Sep. 1845

William J. Leonard

Respondent } OW

vs } Bill

Henry Hart } &c

Appellant

Brief of Respondent

W. J. Kuhl
Sol