

## New Jersey Court of Errors and Appeals.

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ALETHA B. SLINGERLAND, <i>Plaintiff in Error,</i> <i>vs.</i> THOMAS A. GILLESPIE, <i>et als.,</i> <i>Defendants in Error.</i>	} <i>On Error to Supreme Court.</i>	10
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### BRIEF FOR DEFENDANTS IN ERROR.

This case is brought to this court on a writ of error to the Supreme Court on the part of the plaintiff to review a verdict in favor of the defendants. 20

The case was tried at the May term, 1903, of the Morris Circuit at Morristown, before the Honorable Abram Q. Garretson and a struck jury.

The action was brought to recover damages for an alleged injury to the plaintiff on the 24th day of December, 1891.

In order to understand the case, a narration of the events which preceded the occurrence on that day, will be necessary. 30

In September, 1889, the City of Newark entered into a contract with the East Jersey Water Company, in which the company became bound to procure for the city, lands, water, and water rights, and to construct works for the furnishing of a new water supply. Among the provisions in this contract was one which bound the city, whenever necessary, to use its power of condemnation in aid of the contract, and for the purpose of securing necessary lands and rights for the purposes of the contract. 40

The East Jersey Water Company subsequently sub-contracted with the defendants in this case, to lay the pipe line which the company was bound to construct under the terms of that contract.

10 The pipe line to be constructed ran from Macopin Intake, a point on the Pequannock River, near Smith's Mills, in the County of Passaic, to the reservoirs of the City of Newark, in the County of Essex, a distance of about twenty-five miles. It was the duty of the company to secure, as far as practicable, a right of way for this pipe line, and the company succeeded in securing all the land that was necessary, by purchase, from the point of diversion at the Macopin Intake to the reservoirs in the city, except for a distance of about 600 feet across the lands of the father of the plaintiff, Andrew J. Slingerland, who owned a farm at Pompton Plains, on the line of the said pipe, and about eighteen miles from the City of Newark and seven from Macopin Intake.

20 Across the farm of the said Andrew J. Slingerland, the City of Newark, under the contract made with the company, proceeded to condemn a strip thirty-three feet wide, and about 60 feet in length, as a right of way for the pipe line to be constructed. Prior to the termination of the proceedings in condemnation, the contractors had proceeded to lay the pipe from the Intake down to the Slingerland place on the north, and from the Slingerland place on the south to the reservoirs of the City of Newark, leaving a gap in the line of only this distance of 600 feet.

30 The condemnation proceedings resulted in an award to Andrew J. Slingerland, the owner of the land, to \$250 as the value of the land, and \$1,000 for the damages caused by the taking.

A few years ago Andrew Slingerland took an appeal from this award and had the damages and value re-assessed by a jury who re-assessed it at the sum of \$2,500, which amount was paid by the East Jersey Water Company to Slingerland, with interest on the excess over the \$1,250, the \$1,250 having been deposit-

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ed with the clerk of Morris County, after it was tendered to Slingerland and refused by him.

At the conclusion of the condemnation proceedings before the commissioners, and before an entry had been made upon the condemned strip, Slingerland obtained a restraining order from the Court of Chancery prohibiting the Water Company from taking possession thereof. After hearing, and on the 24th day of December, 1890, the restraining order was vacated. Immediately upon the vacation of this order the amount of the award made by the commissioners in the condemnation proceedings was tendered to Andrew Slingerland, who was present at the hearing in Jersey City. Immediately after, a telephone message was sent to Gillespie, the defendant, who was the contractor in charge of the work of laying the pipe, advising him of the dissolving of the injunction. Gillespie had been for some time at Pompton Plains with a force of men awaiting permission to proceed to construct the line across the Slingerland farm, and after receiving the message, by telephone, of the dissolving of this injunction, on the morning of the 24th he took possession of the condemned strip and began the work of laying the pipe.

The question as to the time of entry has been much disputed in the former cases and in the present one. The defendant fully established the fact that the entry was made after half-past ten in the morning and after the injunction had been dissolved. In Justice Collins' opinion (on pages 392 and 393 in 38 Vroom), he enumerates the defendant's witnesses who testified as to the time of entry. All of these witnesses, excepting Martin P. Voorhees and Patrick J. Lawler, testified in the trial of the case which is now under review and their testimony is the same without variation.

Slingerland, when he went that morning to the hearing, left his property in charge of his daughter, the plaintiff in this suit, with these instructions: That she should allow no one to come upon his property

without showing authority. In the previous cases he says he instructed her "not to allow anyone to come on the place but to keep them off unless they showed written authority to do so."

10 The plaintiff went beyond the scope of her authority, as appears in the evidence in the case, and first commanded the men not to lay the pipe, and on their refusal to obey her she placed herself in front of the sections of pipe which they were rolling in position and refused to move out of the way, although requested to do so. She was thereupon removed by the defendant and some of his employees, but on being released she immediately placed herself in front of the pipe again. This was done several times, although she was informed that the defendant had a legal right to lay the pipe and intended to do so. On two occasions she claims that the pipe was rolled against her while she was standing in front of it and before she was removed out of the way, but this was denied. If the pipe did touch her it was without any physical injury to her whatsoever.

20 There was testimony in the case tending to show that the pipes while being rolled into place extended beyond the condemned strip and were rolled against the plaintiff while so standing on her father's property. But it was impossible for the defendants, or their servants, to ascertain the exact line across the Slingerland farm condemned for the pipe line, as the plaintiff's uncle, Jacob Slingerland, who testified he was acting under Aletha's instructions, and whose actions were not curbed or in any way interfered with by her, threw down the instruments of Olmsted, the surveyor, who was surveying the land condemned, and then stood in the way of his sighting the instruments. The surveyor was obliged to give it up and they laid the pipe across the farm as best they could.

30 The case is brought by this girl for injuries sustained by her by reason of the fright, shock and nervous excitement caused by her removal while the defendants were legally laying these pipes.

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The case was first brought against the East Jersey Water Company, for whom the defendants were sub-contractors.

The jury returned a verdict for the plaintiff for \$5,000, and, on a rule to show cause, the verdict was set aside and a new trial granted. The case is reported *Slingerland v. East Jersey Water Company*, 24 Vroom, page 411.

The case was then brought against the Gillespies, the sub-contractors, and a verdict for \$2,500 was rendered. This was likewise removed to the Supreme Court on a rule to show cause, which rule was made absolute by the Supreme Court, and the opinion, which is by Chief Justice Gummere, is reported in 36 Vroom, page 93. 10

The case was again re-tried and a verdict of \$5,500 was rendered, which amount was \$500 in excess of the amount sued for. This verdict was likewise removed to the Supreme Court on a rule to show cause, which was made absolute, and the opinion in this case is reported in 38 Vroom, page 387. 20

The last trial was before a struck jury. It resulted in a verdict for the defendant, and this verdict is brought to this court for review.

There are nine assignments of error.

The first, sixth and seventh assignments are general and contain no specific charge of error.

The second assignment is that there is error in the direction of the trial judge in striking out the answer of the mother of the plaintiff, Sarah Slingerland, who was asked (p. 95): "What did she say (referring to Aletha, the plaintiff) after she came to the house, after she had left the place where the pipe was being laid?" Her answer was: "Mamma, I could never go out there again." On being urged by the plaintiff's counsel to proceed further, she said: "She (referring to Aletha) sat down on the bed." At this point defendant's counsel questioned the competency of the proposed testimony and moved to strike out what the witness had said. It was stricken out. 30 40

Plaintiff's counsel urged that it was competent for the purpose of showing the condition of the mind of the plaintiff and what she was or had been suffering from.

We do not think that what Aletha said to her mother after she returned to the house was competent for any purpose. It was not part of the *res gestae* and was properly stricken out. If error, it was harmless, did not go to the question of the defendant's liability and was cured by the verdict of the jury, which found the defendants not guilty of the supposed trespasses. The answer the plaintiff gave, which was stricken out, did not tend to show the condition of her mind.

As to the third assignment:

The evidence stricken out is clearly hearsay. In the previous case counsel for defendants told this witness, Zeliff, not to state anything that anyone else had said. The plaintiff's counsel made no objection to this and it is well to note the difference in the testimony then and in the case before the court. Zeliff, in the former case, stated that Jacob Slingerland said to him when he saw him, "I think they are going to try to come on the land, and asked me what way to stop it." In the case on rule to show cause, reported in 38 Vr., Justice Collins, at the bottom of page 390, comments on the testimony, shows its insufficiency, and distinctly says, "it is worth nothing." Now in the present case, after the court has said his testimony is worth nothing, Zeliff strengthens it and says: "I think he told me that they had come there and broke in the place—was to work tearing down the fences." This was properly ruled out by the trial judge, and was worthless whether it remained or was stricken out.

The fourth assignment is in the following form: That the court, against the plaintiff's objection, refused to admit evidence on the plaintiff's part as to

what plaintiff did or said immediately after the trespass complained of, and before she had left the place where the trespass was committed.

The assignment, no doubt, refers to the exception on page 115, where Jacob Slingerland, on his direct examination was asked: Q. "What was Aletha's condition at that time when you went back to the house that time?" A. "She took hold of my arm and said they had rolled the pipes against her." The court, on defendant's motion, struck out the part of the testimony where witness testified as to what plaintiff had said. 10

The testimony stricken out was certainly not responsive to the question asked. The question asked was as to her condition and the reply was as to her statement respecting something which had previously happened.

This testimony is also hearsay and is incompetent as it is not part of the *res gestae*.

The supreme court considered testimony very much the same as this in the case of *Blackman v. The West Jersey & Seashore R. R. Co.*, 39 Vroom, p. 2. The question there was in reference to a trolley accident. The plaintiff had fallen from the car and the conductor ran back and asked her if she was hurt. She replied, "I signalled you to let me get off and you answered me." The witness replied, "I know I did but I fotgot you, it is entirely my fault." 20

The testimony seems much like that in the present case in reference to being part of the *res gestae*. The court held that such statements as these were not a part of the *res gestae*, and said: "The rule with relation to the admission of declaration upon this ground, is that where the declaration is concomitant with the fact under consideration and is so connected with it as to illustrate its character, it may be proved as part of the *res gestae*; but where it is merely narrative of a past occurrence it cannot be received as proof of the character of that occurrence." 30

The fifth assignment, refers to the testimony of Paul Van Voorhis, on page 254; the plaintiff's counsel, in cross examining the defendant Thomas A. Gillespie, on page 169, asked witness this question:

Q Then why did you take a pistol out of your bag at Gillin's hotel and put it in your pocket at eight o'clock that morning?

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A I never carried a pistol in my life. I don't remember it. It must have been when I was a boy, it was so long ago. I might have had a pistol when I paid off.

Q Can you say, did you do that that morning?

A No, sir.

This was not proper cross examination as counsel never examined Mr. Gillespie as to having carried a pistol, and plaintiff's counsel, in asking him this question was bound by his answer, which was "no."

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The plaintiff put a new witness, Van Voorhis, on the stand in rebuttal, and asked him if he remembered Gillespie's doing anything particular before he left the hotel that morning (on page 254). Witness answered, "When he (meaning Gillespie) came out of the dining room he went in a little wash room and took out a grip." The court asked what that was in rebuttal of and plaintiff's counsel said that Mr. Gillespie had said he did not take out a revolver that morning. The court very properly held that that was part of plaintiff's main case. It makes no difference, however, as it was incompetent. What Gillespie did at Gillin's Hotel that morning had no bearing on the question of rolling pipe against the plaintiff. This whole matter seems to have been introduced to create an unfavorable impression on the minds of the jury.

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As to the eighth and ninth assignments, that there was error in the charge of the court that if the plaintiff was outside of the right of way, but was there for

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the purpose of preventing pipes from being rolled on the right of way, then she could not recover, and also the charge of the judge in reference to the defendants' third request that if the plaintiff was a wrongdoer, that is to say, if these defendants had the right at the time they did enter, then she was a wrongdoer, and that if her action upon the adjoining land was part of a design on her part to prevent pipe from being put on the thirty-three foot strip and without intention to protect the land outside of the strip, she could not recover. 10

This part of the charge has been carefully considered in the previous cases in the supreme court. Chief Justice Beasley, in the case against the East Jersey Water Company, in his opinion at page 413, says:

“Nor will the pretense set up at the trial that  
 “the plaintiff on at least one occasion was pushed  
 “against by one of the water pipes while she was  
 “standing on her father’s land outside of the 20  
 “strip of thirty-three feet, be of any avail. The  
 “claim was that in rolling some of the pipes they  
 “extended on to contiguous property and one of  
 “the plaintiff’s witnesses says that at one of the  
 “times in question the plaintiff was at least two  
 “feet beyond the line of the condemned tract.  
 “If this be so, she was still there committing a  
 “trespass, for her purpose and attempt were to  
 “prevent, by force, this contractor from the exer-  
 “cise of his legal rights. There is no testimony 30  
 “that even tends to show that she had been  
 “commissioned by her father to defend, by vio-  
 “lence or by other means, an intrusion, no mat-  
 “ter how wrongful, into any part of his land.”

Again, in the first case reported against the Gillespies, in 36 Vr., at page 95, Chief Justice Gummere says:

“We further held that the fact that the pipes  
 “were pushed against her while she was standing 40

10 “on her father’s land outside of the condemned strip, would not avail to support the verdict, the reason being that she was there committing a trespass for her purpose and attempt were to prevent, by force, this defendant from the exercise of his legal right, and that there was no testimony that even tended to show that she had been commissioned by her father to defend by violence an intrusion, no matter how wrongful, in any part of his land.”

Again in the last case reported, Justice Collins says, in 38 Vr. at the bottom of page 394:

20 “The learned justice who tried the cause instructed the jury that if the action of the plaintiff upon the adjoining land was part of a design on her part to prevent the pipes from being put upon the thirty-three feet strip, and without intention to protect the land outside of that strip, she could not recover. That instruction must stand as the law of the case on this rule.”

30 Chief Justice Beasley, in delivering the opinion of the supreme court in the suit brought against the East Jersey Water Co., November term, 1895, 58 N. J. L., 412, called attention to the character of the instructions given by Andrew J. Slingerland to his daughter, the plaintiff, testified in that case that when he left home on the morning of the day on which the alleged injury was inflicted, he left his property in the care of the plaintiff. The chief justice said:

“She (the plaintiff) was a simple wrongdoer. She had no authority from her father to intervene in the affair. She was not his agent for that purpose, and he was not responsible for her acts.”

40 At the next trial, January 1897, (*Slingerland v. Gillespie*), Slingerland endeavored to improve upon his former testimony in this respect.

On his direct examination he testified as follows :

Q Who was in charge of your property, your farm, while you were at the chancery chambers in Jersey City?

A My daughter, Aletha.

Q What instructions did you give your daughter?

A I instructed her to look after my property while I was gone, and, if any one entered the premises to ask them to show their authority by which they entered, their written authority. 10

Q And in case they didn't have written authority, what?

A That she should forbid them the premises in my name.

In commenting on this part of the case, Mr. Justice Gummere said, the plaintiff had apparently misunderstood the scope of her authority, for she endeavored to prevent the laying of the pipe, both by words and deeds, and did not confine herself to protest or objection. 20

At the second trial of the case against the Gillespies, Mr. Slingerland endeavored to put his daughter in the position of a general caretaker of his premises. On his principal examination he said :

"I told her not to allow anyone to come on the premises; that she must keep them off, unless they showed written authority to come." 30

On his cross examination, his attention was called to the fact that his instruction as it was now stated by him, was to keep them (referring to the defendants) off his premises unless they should show written authority from the court to come, and that on his previous examinations he had stated that if the defendants did not produce such written authority, his further instruction was to forbid them to enter in his name. And in the course of a long cross examination upon this point, he admitted that he might have so 40

stated in his former testimony, and would not deny that the former statement was correct.

His cross examination is found in the state of the case of *Gillespie v. Slingerland*, reported in 38 Yroom, 385, at pages 26 and 27.

In the case now before the court, he stated in his principal examination, on page 21, that his instruction to her was that, "there must not anyone come upon the premises unless they showed a written authority to come there upon my premises."

On his cross examination, he was asked what he meant by his instruction to his daughter "not to let anybody come upon his premises," and he said, "I meant my property. Whatever property was mine, that's what I meant."

"Was it," he was asked, "to prevent them from going on and laying the pipe line?" A "If it was on my property; if it was, it did."

Q Was she to allow people to come on the right of way to lay the pipe line?

A She was not to interfere with them on the pipe line if they showed their authority.

Q What did you mean by showing their authority?

A That they had a right to do what they could show; that they knowed it and I didn't, that's what I meant.

Q What evidence did you expect to get of that?

A I expected to get knowledge from the court that that was not my property any more to seize.

Q What was she to have to show?

A She was to have, if they didn't show the authority, that they hadn't—(interruption).

Q Then was she to assume, if they didn't show authority that they had not? Is that it?

No answer.

Q Is that it?

A I can't say any more, I have said what I had to say.

Q Is that it?

A No, sir.

Q What did you want to say?

A I want to say this,—that she never entered upon the disputed property of the right of way, and whether it was her'n, or whether it was mine, that she kept herself upon that; that she had definite knowledge was her own property outside of the disputed property.

Q I didn't ask you that.

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A I answered just as you asked me.

Q I understand you to say that they were to have some legal authority.

A I did, to come on my property.

Q What kind of legal authority?

A There was no order, or anyone that had higher authority than myself, no authority that was outside of my authority. It was my property.

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Q I don't understand you.

A Well, I can't make you understand it any plainer.

Q Did you intend that whoever came to enter upon the right of way for the purpose of laying down the pipe line must bring some legal paper or document to show?

(*The Witness*). To come on the right of way? Yes, to come on the right of way.

A Certainly, she showed—she would expect that they would show the right to come upon the property.

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Q What kind of a right?

A Well, the right that would satisfy her that it was their property, or the signature that would satisfy her.

Thus it will be seen that this witness upon this important point, to supply the deficiency, which the opinion of the court disclosed, changed position from time to time. He was finally forced to admit at the

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last trial that he had instructed his daughter to keep the contractors from entering upon the right of way for the purpose of laying the pipe line therein, unless they produced written authority, changing in this respect from the testimony given in the first and second cases tried, in which he stated that all the instruction he gave her was, in case they did not produce such written authority, to forbid them from entering in his name.

10 I have made this exhibition of his testimony to show that his testimony is not reliable and that the jury would be justified in giving it little weight.

*The question of trespass outside of the condemned strip and upon the adjoining land of Slingerland is not raised by the pleadings in this case.*

The plaintiff in her declaration alleged an assault upon her in the Township of Pequannock.

20 The defendants pleaded first not guilty, and secondly, that before and at the time of the alleged assault they were in lawful possession of a certain close in the Township of Pequannock, and then described by metes and bounds the thirty-three foot strip condemned for the pipe line. And being so possessed charged that the plaintiff was unlawfully upon said close and attempted to prevent defendants from pursuing their lawful business with force, etc., and that defendants gently removed plaintiff from defendants' property.

30 To which plea plaintiff filed a replication first, joining issue on this plea, and secondly, as to the said trespass in the introductory part of plea secondly pleaded, that it is not true that at the time in the declaration alleged the plaintiff was unlawfully in and on close of defendants, described in said plea, etc. The plaintiff in said replication further states that defendants of their own wrong committed the trespass mentioned in the introductory part of defendants' plea, to a greater degree  
40 and with more force and violence than was necessary

for the purposes in that plea mentioned. To which replication the defendants rejoined and denied using any more force than was necessary for the purposes set out in their plea.

Upon looking at these it will be seen that issue was joined as to what occurred on the thirty-three foot strip. Justice Collins, in his opinion on page 394 of 38 Vroom, says in reference to them:

“If we could consider the question *de novo*, the  
 “result would be the same, especially in view of 10  
 “the pleadings in the cause. The defendants, in  
 “their plea of justification of the supposed tres-  
 “passes, set up that they occurred on a specified  
 “close. The plaintiff did not newly assign, but,  
 “by her first replication, inartificial, because con-  
 “taining a negative pregnant, but capable of no  
 “other construction than as referable to the close  
 “described by the plea, joined issue merely on  
 “the lawfulness of her presence on that close and 20  
 “her conduct there. Her second replication  
 “raised no other issue than of excess of force in  
 “her removal from that close.”

He further (on page 395) suggests the possibility of an amendment of the pleadings.

When the case came back for trial no application to amend the pleadings was made, and it is clear that the plaintiff cannot recover a verdict for damages for a trespass outside of the thirty-three foot strip.

But plaintiff has no right to complain of the trial judge on this point; at the trial he charged and ruled in her favor.

Defendants requested the trial judge to charge “that under the issue as framed, the jury should disregard the evidence of the plaintiff given to show that the assault (if any was made) was made outside of the right of way” (page 257).

The court at the end of his charge, on page 270 of printed case, said:

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“I am also requested to charge that under the  
 “issue as framed, the jury should disregard the  
 “evidence of the plaintiff given to show that the  
 “assault, if any was made, was made outside of  
 “the right of way. I decline to charge that.”

Thus, it can well be seen that the court submitted  
 to the jury the question as to whether the plaintiff  
 (if struck by the pipes at all) was struck while out-  
 10 side of the condemned strip, and if they so found, the  
 judge expressly charged she could recover for such  
 injuries as done to her by that act.

The jury, by their finding in favor of defendants,  
 found that she was not struck outside of the thirty-  
 three foot strip, in fact, that she was not hit at all.

On looking at the whole case it seems that there is  
 no testimony that the plaintiff received any physical  
 injury during her removal while she was standing in  
 the way of the pipes. The testimony both for plain-  
 20 tiff and defendants show that no unnecessary force  
 was used, but on the contrary, the plaintiff was treat-  
 ed in the kindest possible manner. Mr. Gillespie in-  
 formed her that resistance to laying the pipe upon the  
 right of way would be of no avail; that they had the  
 right to lay the pipe, and intended to do so; and when  
 she interposed her person as an obstacle, he removed  
 her, using no force but leading her away gently.

There is no doubt of this, and nothing can be found  
 in the testimony, which would sustain any other find-  
 30 ing of question or fact; indeed at the trial it was not  
 insisted that any unreasonable force had been used.  
 This was one of the facts settled by the finding of the  
 jury.

*There can be no recovery for fright, terror, alarm,  
 anxiety, over-excitement or distress of mind, which re-  
 sults in physical injuries, caused solely by such men-  
 tal disturbance; unless such fright, terror, alarm,  
 anxiety, over-excitement or distress of mind is accom-  
 40 panied by physical injury and is the proximate result*

of a legal wrong committed against the plaintiff by the defendant.

*Ward v. West Jersey Seashore R. R. Co.*, 36 Vroom, 383.

*Consolidated Traction Co. v. Lambertson*, 30 Vroom, at page 302.

See *Saunderson v. Northern Pacific Ry. Co.*, and cases there cited, and notes in 60 *Lawyers Rep. Annotations*, page 403.

Also *Watkins v. Mfg. Co.*, 60 *Lawyers Rep. Ann.*, p. 617. 10

The cases outside of New Jersey have repeatedly upheld this rule.

*Mitchell v. Rochester Ry. Co.*, 151 New York, 107; also 56 *Am. St. Rep.*, 604, and note.

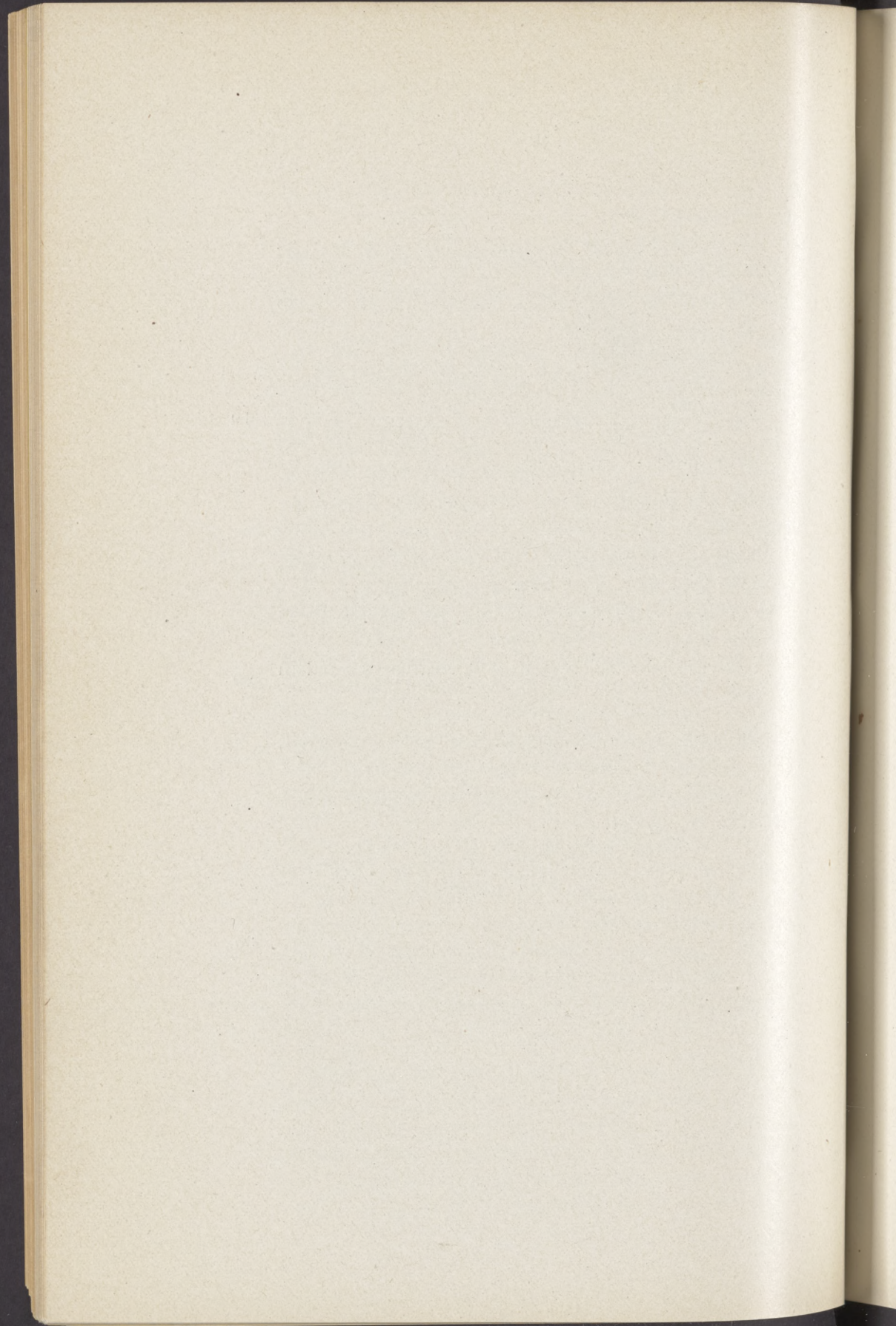
*Ewing v. Pittsburg etc. Ry. Co.*, 23 *At. Rep.*, 340; also *Am. St. Rep.*, 709.

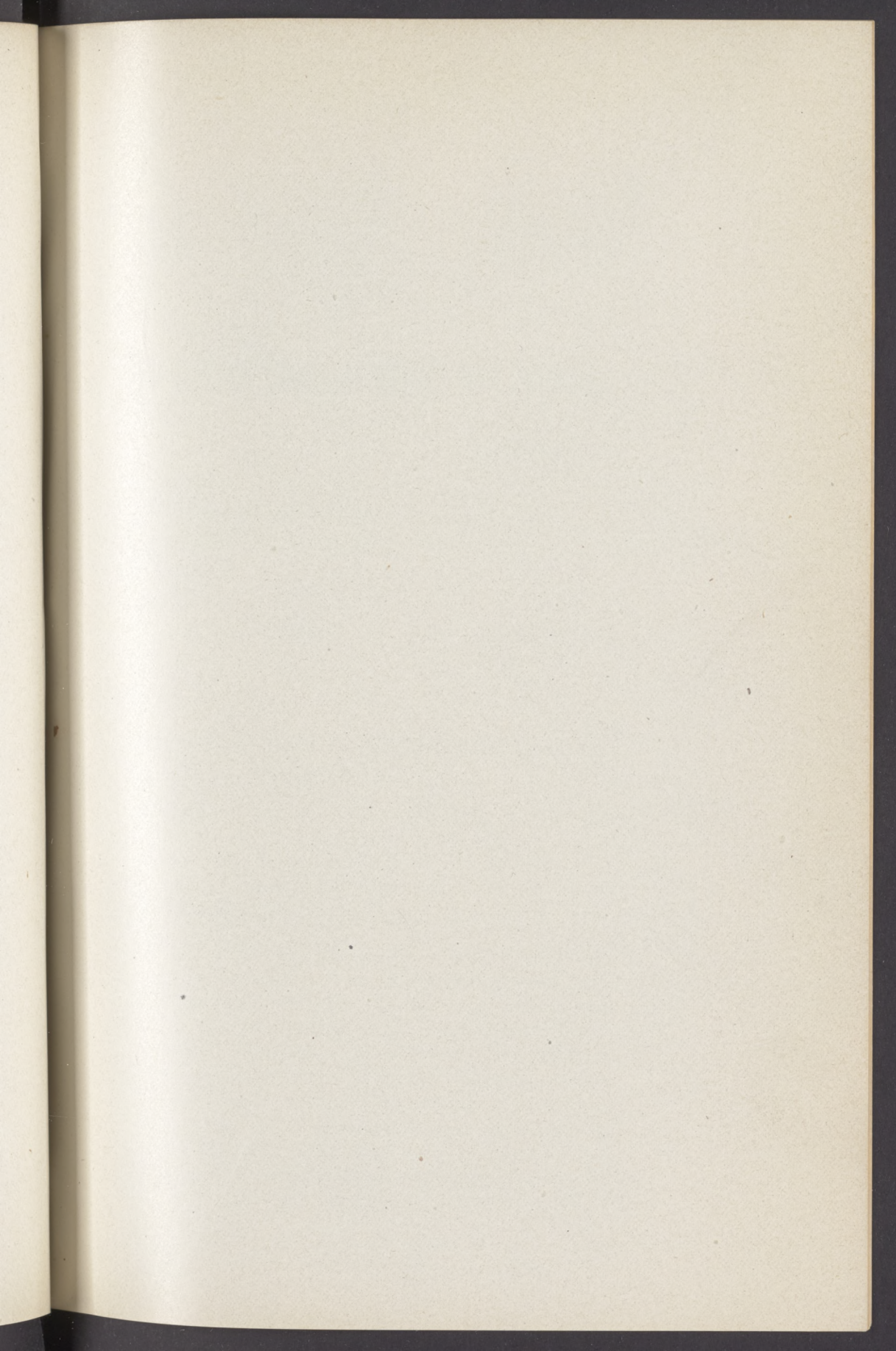
14 *Lawyers Rep. Ann.*, 666, and cases cited in note. 20

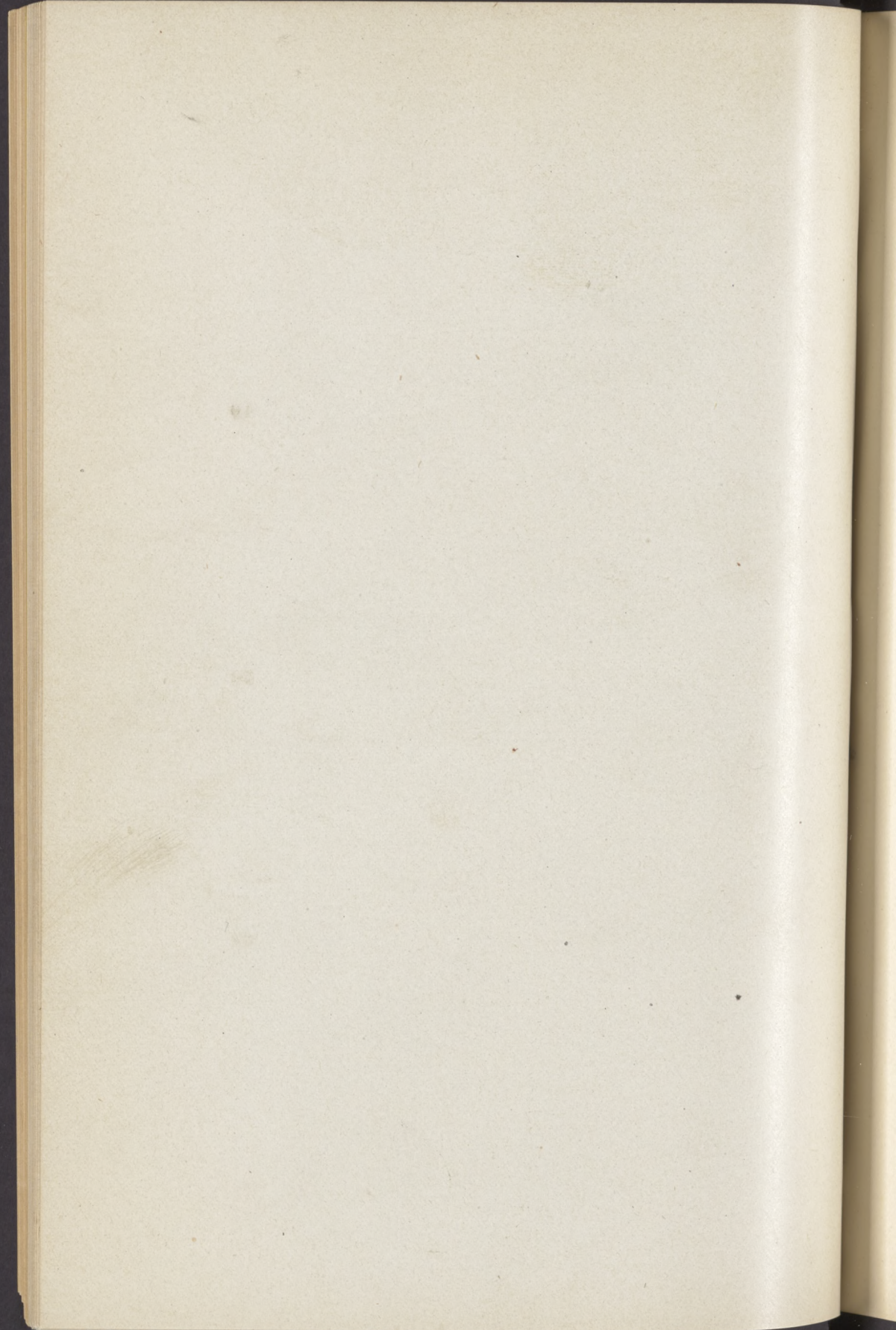
Under the above proposition, so well supported, there could not be any recovery in this case.

We submit that the verdict should remain undisturbed by this court.

COULT, HOWELL & TEN EYCK,  
*For Defendants in Error.*







# New Jersey Court of Errors and Appeals.

ALETHA B. SLINGERLAND,

*Plaintiff in Error,*

*vs.*

THOMAS A. GILLESPIE, *et als.*,

*Defendants in Error.*

*On Error  
to Supreme  
Court.*

## **Brief of RIKER & RIKER, Counsel for Plaintiff in Error.**

Plaintiff in error sued the defendants in error for damages alleged to have resulted to her from an assault and battery upon her committed by the defendants on December 24, 1891, at her father's farm in the Township of Pequannock, Morris County, New Jersey.

Certain acts are admitted to have been done by defendants at the time and place stated, which, if not justified by plaintiff's own acts, constituted an assault and battery. The justification set up by defendants was wilful acts of interference by plaintiff with their rights in a strip of land thirty-three feet wide extending across her father's farm, condemned by the City of Newark as a right of way for its water supply line. The right of way after this strip of land had been in litigation and the rights of the defendants had not been perfected until after 10 o'clock in the morning of the day in question.

As to the rest of the farm of plaintiff's father, beyond the limits of the thirty three foot strip, defendants had no right or permission to enter upon it for any purpose.

The verdict of the jury was not guilty. The charge of the trial judge disclosed that two questions of fact were submitted to the jury under the evidence :

1. Were any acts of trespass upon the plaintiff committed by the defendants outside of the thirty-three feet right of way which were not justified ?

2. Were any acts of trespass upon the plaintiff committed by the defendants before the right of possession of the thirty-three feet right of way had been perfected ?

In reaching a verdict of not guilty, the jury must have decided both of these questions in the negative and adversely to the plaintiff.

#### I.

The charge of the trial judge contained error calculated to mislead the jury in the determination of the first of these questions. This error is pointed out in the eighth and ninth assignment of error (case p. 275).

The trial judge (case p. 266, l 31), charged as follows :

“Now as to the question of being beyond the thirty-three feet strip \* \* \* \* \*  
If her action outside of the thirty-three feet strip was simply to protect the land outside of that without any reference to that strip and that was all she intended to do, *and she was taken hold of and the pipes rolled on her*, she would have a right to recover for whatever injury was done to her by that act; *but if her action there was with the intention of prevent-*

*ing the pipes being rolled on the thirty-three feet strip, she cannot recover unless there was excessive force used."*

The evidence to which this part of the charge was directed will be found in the testimony of Samuel Slingerland (case p. 56, 1, 29-40, p. 57, 11-3), and tended to show that while the plaintiff was standing upon land belonging to her father entirely beyond the thirty three feet strip, defendant's employees rolled heavy steel pipes against her and forcibly removed her from the place where she was standing. Plaintiff's *action* in standing upon her father's property outside the thirty-three feet strip was certainly a lawful one—she was undisputably a member of his family, and specially charged with the protection of his rights. If she, while thus standing, was struck by one of the pipes—part of the pipe striking her must have been outside the right of way, and *ipso facto* the defendants trespassers and wrongdoers. How are the defendants justified in committing this trespass by any "intention of preventing the pipes being rolled on the thirty-three feet strip" which plaintiff might be supposed to entertain?

Intention or intent is defined to be "A state of Mind."

The law does not concern itself with states of mind except as embodied in the concrete form of acts.

When an act is lawfully done it cannot be made unlawful *ab initio*, unless by some positive act incompatible with the exercise of the legal right to do the first act. The mere intention of doing a subsequent illegal act is not sufficient to render the first act unlawful.

*Gates vs. Lounsbury*, 20 Johns, 427.

*Lawrence vs. Ocean Ins. Co.*, 11 Johns, 241.

What had the defendants, or the Court, or the jury, to do with the intention of the plaintiff? With her un-

lawful acts of interference with defendants' rights in the thirty-three feet strip, whatever her intent, defendants had a right to deal using the means reasonably necessary to that end.

What *reasonable necessity* can be imagined, let alone shown from the evidence, for rolling heavy steel pipes against the plaintiff while she was standing beyond the right of way? What unlawful overt act of the plaintiff appears to have justified this course adopted by the defendants?

They were trespassers both upon the land of plaintiff's father and upon the person of the plaintiff herself when they rolled any part of the pipes beyond the right of way and struck the plaintiff, and were doubly wrongdoers. Notwithstanding this, the plain and necessary inference to be drawn by the jury from this part of the charge is that if the plaintiff, in their opinion, really intended to interfere with defendants in placing the pipes within the right of way, then her mere presence outside the limits of the right of way justified the rolling of the pipes against her—justified their trespass upon her father's land, justified their double wrongdoing.

In order that there might be no possible doubt on the part of the jury, the trial judge concluded his charge in this way: "I am asked to charge you that the plaintiff was a wrongdoer, and that if her action upon the adjoining land was part of a design on her part to prevent pipes from being put upon the thirty-three feet strip, and without intention to protect the land outside of the strip, she cannot recover. I will charge you, gentlemen, that if she was a wrongdoer—that is to say, if these defendants had the right at the time they did enter upon the thirty-three feet strip to enter, then she was a wrongdoer—and then the rest of the request is charged as requested.

"I am also requested to charge that under the issue as framed the jury should disregard the evidence of the plaintiff given to show that the assault, if any was made, was made outside of the right of way. I decline to charge that."

In other words, if the assault upon plaintiff occurred beyond the thirty-three feet strip, but after the rights of defendants in that strip had been perfected, and if she then intended to prevent pipes being put upon that strip, she was a wrongdoer by reason of the intent, and could not recover.

Here there is no qualification or limitation. If the jury concluded that plaintiff became a wrongdoer by reason of an intent, their verdict must be for the defendants, although she was struck by heavy steel pipes while outside the right of way.

The charge is not qualified by any caution as to the use of excessive force by defendants or the appropriateness of defendants' acts to protect their rights. If plaintiff was a wrongdoer she could not recover for injuries resulting from being seized upon by Italians and hustled away from being struck by heavy steel pipes, and if not for these, then she could not recover for injuries resulting from being struck with stones or shovels or pick-axes.

But what was plaintiff's "*action there*" (outside the right of way) to which the Court refers as constituting her a wrongdoer if the jury found an intent in her mind? It might be supposed that it was something actively hostile to defendant's rights and which prevented them from exercising these rights. A careful examination of the record fails to disclose any "*action there*" by the plaintiff except taking her stand upon land belonging to her father, in which defendants had no right of any sort. Was it her duty to retire to the house, to take to the woods—to get off the earth." It seems to us a novel species

of "wrongdoing" this "standing where she had a perfect right to stand with intent to prevent defendants from exercising their rights over an entirely separate strip of land."

If her standing outside the right of way had any effect upon the defendants, it was to prevent their trespassing upon her father's land committed to her care, and it makes no difference that the trespass may have been committed while defendants were attempting to place the pipe within the right of way, and incidentally her interference with the trespass may have interfered with the placing of the pipes on the right of way. Her protection of her father's land outside the right of way against trespass by defendants was a lawful act, and cannot be made unlawful by any hope, expectation, belief or intent that this lawful act might result in preventing defendants from exercising their rights in the thirty-three feet strip.

## II.

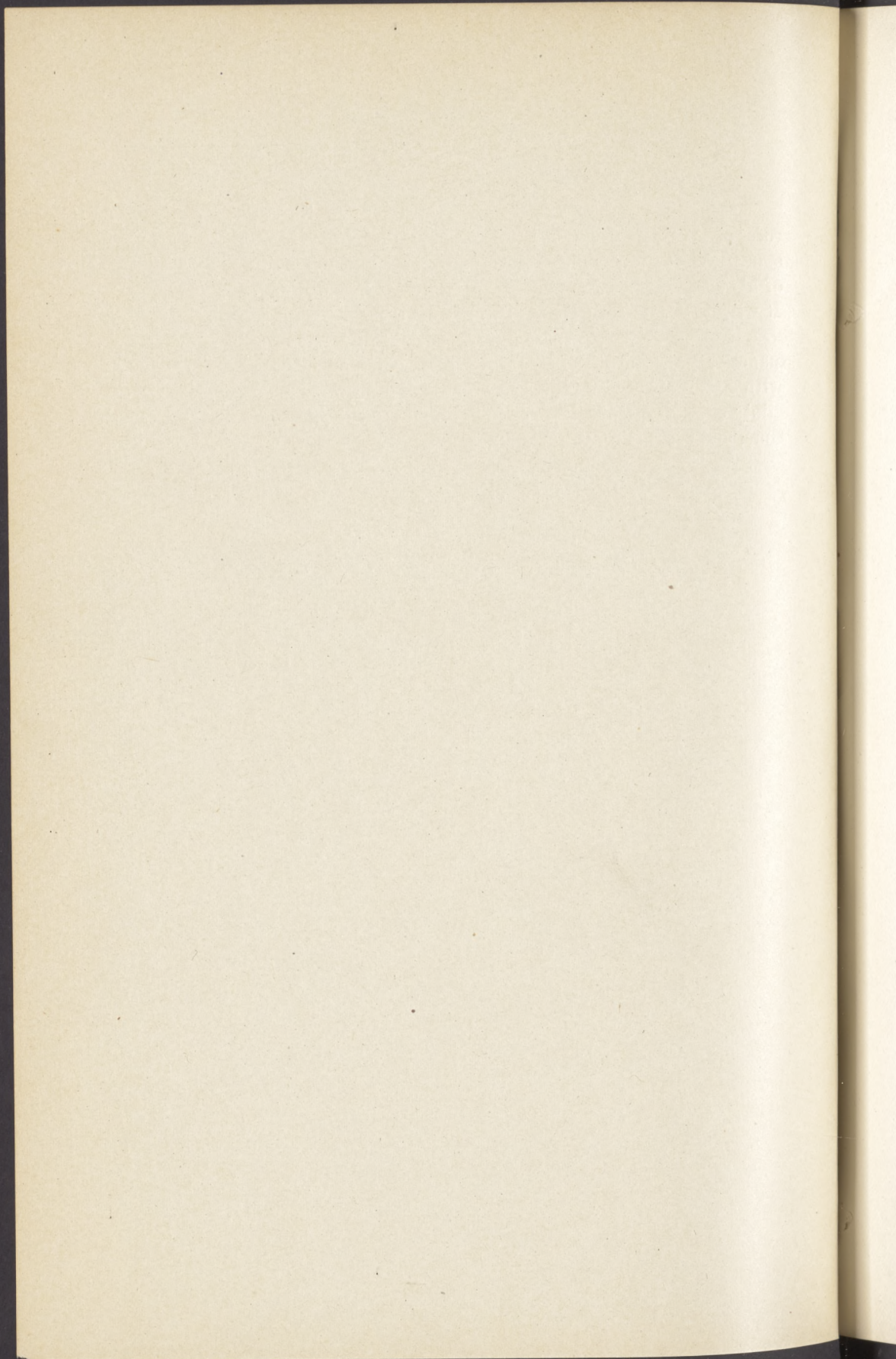
As to the second question of fact submitted to the jury: Were any acts of trespass upon the plaintiff committed by the defendants before the right of possession of the thirty-three feet right of way had been perfected? We submit that the trial judge erred in refusing to admit the testimony of Amzie Zelliff (case page 103), referred to in the Third Assignment of Error. Time was of the very essence of the correct determination of the question above stated.

Zelliff was testifying to the hour of his meeting Jacob Slingerland on the morning of December 24th, 1891, and as part of the attendant circumstances of that meeting identifying and fixing it in his memory as associated with the subject matter of the suit, repeated as a remark by Jacob Slingerland, "I think he told me they had come to break in the place were to work tearing down fences." This the trial judge ordered struck out and

refused to admit when offered as part of the circumstances identifying and fixing in his memory the hour of his meeting with Slingerland on the day in question. It will be borne in mind that the witness was testifying nearly twelve years after the occurrence. The circumstances and events which fixed the hour of a meeting with Jacob Slingerland on December 24, 1891, were certainly competent in support of his direct testimony as to time, and should have been admitted.

Respectfully submitted,

RIKER & RIKER,  
*Of Counsel for Plaintiff in Error.*



# INDEX.

## Testimony for Plaintiff.

	PAGE
Beach, John H., direct .....	79
cross .....	84
Fewsmith, Joseph, direct .....	104
cross .....	106
Morgun, John C., direct .....	72
cross .....	76
re-direct .....	78
Price, William, direct .....	87
cross .....	90
Romont, Charles D., direct....	61
cross .....	69
Ryerson, Anna, direct .....	107
cross .....	109
Slingerland, Andrew J., direct .....	17
cross .....	34
Slingerland, Jacob A., direct .....	110
cross .....	116
RECALLED IN REBUTTAL.	
direct .....	255
Slingerland, Samuel S., direct .....	41
cross .....	53
Slingerland, Sarah R., direct .....	91
cross .....	100
IN REBUTTAL.	
Van Ness, Samuel, direct .....	135
Van Duyn, Lewis, direct .....	8
cross .....	12
(IN REBUTTAL) DIRECT	
Van Voorhis, Paul, direct .....	253
Zeek, George, direct .....	122
cross .....	128
Zelif, Amzi, direct .....	102
cross .....	104

### Testimony for Defendants.

Bergen, Peter, direct.....	185
cross.....	187
Coult, Joseph, direct.....	185
cross.....	138
Dannilher, Henry M., direct.....	190
cross.....	194
Evans, Britton D. direct.....	227
cross.....	232
Gillespie, Thomas A., direct.....	159
cross.....	168
Gillen, Alexander, direct.....	175
cross.....	178
Gubelman, Frederick J., direct.....	180
cross.....	183
Herschel, Clemens, direct.....	143
cross.....	146
Hewlett, Peter V. P., direct.....	234
cross.....	238
Jones, William F., direct.....	195
cross.....	202
Olmstead, Adelbert H., direct.....	211
cross.....	218
re-direct.....	225
re-cross.....	226
Snow, Archie H., direct.....	156
cross.....	158
Snyder, Benson F, direct.....	243
cross.....	248
Van Ness, Harry, direct.....	154

35  
37  
35  
38  
90  
94  
27  
32  
59  
68  
75  
78  
80  
83  
43  
46  
34  
38  
95  
02  
11  
18  
25  
26  
56  
58  
43  
48  
54

# New Jersey Supreme Court.

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ALETHA B. SLINGERLAND	}	
<i>vs.</i>		
THOMAS A. GILLESPIE AND ROB-		<i>In Tort.</i> 10
ERT G. GILLESPIE, COMPRISING		<i>On Postea.</i>
THE FIRM OF "T. A. & R. G. GIL- LESPIE."		

## JUDGMENT FOR DEFENDANT.

COULT & HOWELL, *Attorneys.*

As yet of the twenty-fifth day of April, A. D. eigh- 20  
teen hundred and ninety-six.

(Witness) MERCER BEASLEY, Esquire,  
*Chief Justice.*

BENJAMIN F. LFE, *Clerk.*

MORRIS COUNTY, ss:

Thomas A. Gillespie and Robert G. Gillespie, com-  
prising the firm of "T. A. & R. G. Gillespie," the de- 30  
fendants in this suit, were summoned to answer Aletha  
B. Slingerland, the plaintiff herein, in an action of *tort*,  
and thereupon the said Aletha B. Slingerland com-  
plains: For that whereas the said defendants, by its  
servants and agents, on the twenty-fourth day of De-  
cember, eighteen hundred and ninety-one, in the township  
of Pequannock, in the county of Morris aforesaid, with  
force and arms, etc., assaulted the said plaintiff, to wit,  
at the township of Pequannock, in the county of Mor-  
ris; and then and there, with great force and violence,  
rolled an iron pipe of great weight against her person 40

and greatly bruised and injured her by striking her with iron pipes upon her limbs; and then and there, with great force and violence, seized and laid hold of the said plaintiff; and then and there, with great force and violence, shook and pulled about the said plaintiff, by means of which said several premises, the said plaintiff was then and there greatly hurt, bruised and wounded and became and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to wit, from  
 10 thence hitherto, during all of which time the said plaintiff thereby suffered and underwent great pain, and was hindered and prevented from performing and transacting her necessary affairs and business by her during that time to be performed and transacted, to wit, at the township of Pequannock, in the county of Morris aforesaid; and other wrongs to said plaintiff then and there did against the peace of the State.

Wherefore the said plaintiff saith that she is injured and hath sustained damage to the amount of five thousand  
 20 dollars, and therefore she brings her suit, etc.

And the said defendants, by Coult & Howell, their attorneys, come and defend the wrong and injury, when, etc., and say that they are not guilty of the said supposed assaults in manner and form as the said plaintiff hath above thereof complained against them, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this the said defendants put themselves upon the country, etc.  
 30

And for a further plea in this behalf as to the assaulting, striking, seizing and pulling about the plaintiff, as in the said declaration mentioned, the said defendants, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the plaintiff ought not to have and maintain her aforesaid action thereof against them, because they say that the said defendants, before  
 40 and at the said time, when, etc., were lawfully in pos-

session of a certain close in the township of Pequannock, in the said county of Morris, described as follows :

BEGINNING at a point in the southerly line of Andrew J. Slingerland's property, said line being the property line between the said Andrew J. Slingerland and John J. Blauvelt, and which point is north eighty-nine degrees, forty-five minutes west (magnetic) along said line about two hundred and two and eight-tenths feet from the point of intersection of said line with the centre line of the Pompton Plains Road ; thence (1) north thirty-three degrees, west about seven hundred and eighteen feet to a point in the northerly line of the said Andrew J. Slingerland's property, and which line is also a property line between the said Andrew J. Slingerland and the aforesaid John J. Blauvelt ; thence (2) due west along said line about thirty-nine and three-tenths feet to a point ; thence (3) south thirty-three degrees east and parallel with the above first described course about seven hundred and seventeen and eight-tenths feet to a point in the above first described line between the said Andrew J. Slingerland and John J. Blauvelt ; thence (4) south eighty-nine degrees, forty-five minutes east along said line about thirty-nine and four-tenths feet to the place of beginning.

Intending to describe a strip of land thirty-three feet wide, ten and a half feet thereof being easterly of the centre line of the conduit (forty-eight inches in diameter) of the East Jersey Water Company, and parallel to the same and twenty-two and a half feet thereof being westerly of the centre line of said conduit and parallel to the same containing fifty-four one hundredths of an acre.

And being so possessed the said plaintiff, a little before the said time, when, &c., to wit: on the same day and year in the said declaration mentioned, was unlawfully in and upon the said close and with force and arms, attempting to prevent the said defendants from carrying on and pursuing their lawful business and employment

in and upon said close, and with force and arms, disturbing, interfering with and obstructing the defendants in the prosecution of their lawful business and employment therein ; and at the said time, when, &c , stayed and continued therein, so preventing, disturbing, interfering with and obstructing the defendants in the prosecution of their said lawful business in said close, without the leave or license and against the will of the said defendants, and during all that time, there greatly disturbing

10 ing the said defendants in the peaceable and quiet possession and enjoyment of such close, and greatly interfered with and obstructed the defendants and their servants and workmen in the prosecution of their said lawful employment therein, and thereupon the said defendants then and there requested the said plaintiff to cease so obstructing and interfering with the defendants and their workmen in their said employment, and to go and depart from and out of the said close, which the said plaintiff then and there wholly refused to do ; where-

20 upon the said defendants and their servants and workmen, in defence of the possession of their said close and of their right to prosecute their lawful business and employment therein at the said time, when, &c., gently laid their hands upon the said plaintiff in order to remove, and did then and there remove the said plaintiff from and out of the said close and did then and there prevent and restrain the said plaintiff from so interfering with and obstructing the said defendants and their workmen in the prosecution of their said lawful business

30 therein, as they lawfully might for the cause aforesaid, and which are the said supposed trespasses in the introductory part of this plea mentioned, and whereof the said plaintiff hath complained against the said defendants, without this that the said defendants were guilty of the said supposed trespasses or any or either of them elsewhere, that in the said close stated as aforesaid and this the said defendants are ready to verify ; wherefore, they pray judgment whether the said plaintiff ought

40 against them.

And the said plaintiff, as to the said plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendants, by them secondly above pleaded, as to the said trespass in the introductory part of that plea mentioned and therein attempted to be justified, saith that the said plaintiff, by reason of anything by the said defendants in that plea alleged, ought not to be barred from having and maintaining her aforesaid action there- 10  
of against the defendants, because she saith that it is not true that on the same day and year, in said declaration mentioned, the said plaintiff was unlawfully in and on the close of the said defendants in the Township of Pequannock, in said County of Morris, described in said plea, and with force and arms attempting to prevent the said defendants from carrying on and pursuing their lawful business and employment, in and upon said close, with force and arms disturbing, interfering with and ob- 20  
structing the defendants in the prosecution of their lawful business and employment therein; and it is not true that the said plaintiff, at the said time, when, &c., stayed and continued therein so preventing, disturbing, interfering with and obstructing the defendants in the prosecution of their said business in said close, without the leave or license and against the will of the said defend- 30  
ants, and during all that time there greatly disturbing the said defendants in the peaceable and quiet possession and enjoyment of such close, and greatly interfered with and obstructed the said defendants and their servants and workmen in the prosecution of their said employment therein; and this the said plaintiff prays may be inquired of by the country.

And the said plaintiff, as to the said plea of the said defendants, by them secondly above pleaded, as to the said trespass in the introductory part of the plea mentioned and therein attempted to be justified, saith that the said plaintiff, by reason of anything by the said de- 40

fendants in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the said defendants, at the said time, when, &c., in the said declaration mentioned, of their own wrong committed the said trespasses in the introductory part of that plea mentioned, to a greater degree and with more force and violence than was necessary, for the purpose in that plea mentioned, in manner and form as the said plaintiff hath in and by the said declaration complained against the said defendants. And this  
 10 the said plaintiff is ready to verify; wherefore, the said plaintiff prays judgment and her damages by her sustained by reason of the committing of the said trespasses to be adjudged to her, &c.

And the said defendants, as to the said replication of the said plaintiff to the said second plea of the said defendants, and which the said plaintiff hath prayed may be inquired of by the country, doth the like.

20 And the said defendants, as to the said replication of the said plaintiff to the said second plea of the said defendants, by the said plaintiff secondly above replied, say that the said plaintiff ought not, by reason of anything by her in that replication above alleged, to have or maintain her aforesaid action against the said defendants in respect of the said supposed trespasses in the introductory part of the said second plea, and in the said declaration mentioned, because they say that they did not, to a greater degree or with more force or violence  
 30 than was necessary for the said purpose in the said second plea mentioned, commit the said supposed trespasses in the introductory part of the said second plea mentioned, in manner and form as the said plaintiff hath in her said replication in that behalf alleged; and of this the said defendants put themselves upon the country, &c.

And the said plaintiff as to the said rejoinder by the said defendants above pleaded and whereof they put  
 40 themselves upon the country doth the like.

Therefore, let a jury thereupon come before our Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Morristown, in and for the county of Morris, on the first Tuesday of May, A. D. nineteen hundred and three, by whom, etc., and the same day is given to the parties aforesaid there, etc.

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New Jersey Supreme Court.

MORRIS CIRCUIT.

10

Wednesday, May 6, 1903.

ALETHA B. SLINGERLAND,

*vs.*

THOMAS A. GILLESPIE, *et al.*

Before HON. A. Q. GARRETSON, *J.*, and a jury.

20

For plaintiff appear RIKER & RIKER.

For defendants appear COULT & HOWELL—W. H. CORBIN, of counsel.

Mr. CHANDLER W. RIKER opens for plaintiff.

LEWIS VAN DUYN, sworn in behalf of plaintiff.

*Direct examination* by Mr. Chandler W. Riker:

30

Q. Mr. Van Duyn, where do you live?

A. Boonton, N. J.

Q. What is your business?

A. Civil engineer and surveyor.

Q. How long have you been in that business?

A. Since 1874.

Q. And how much of the time in this county?

A. All of the time, practically.

40 Q. Do you know the farm of Andrew J. Slinger-  
land?

A. I do.

Q. Have you had occasion to survey it?

A. Yes, sir.

Q. When did you first survey it?

A. August 25, 1891.

Q. At that time had the pipe line of the East Jersey Water Company, or the City of Newark, been laid across that farm?

A. The stakes were in at that time for marking the side lines of the right of way across the property. 10

Q. Have you prepared a map from your survey, showing the lines of the farm, the location of the buildings, etc.?

A. I have.

Q. Will you produce it?

[Map referred to is produced by the witness and placed on the exhibit board in the courtroom.]

Q. Now, if you will, take the pointer and show us, in the first place, the Pompton Plains road, and tell us how it runs. 20

A. (Indicating on the map referred to.) This is the Pompton Plains road; runs to Pompton, north and south.

Q. And about how far south of the church at Pompton Plains is this property?

A. One-third to a half a mile; something like that.

Q. What property is on the north of the Slingerland farm? 30

A. I made no note of the ownership of the property on the north.

Q. You don't know, as a matter of fact?

A. I do not.

Q. Do you remember whether there is a large board-ing-house there—something of that kind?

A. Yes, sir.

Q. What is on the rest of the property?

A. The roadway, called the Belleville—

Q. (Interrupting.) And what property is that—do you know?

A. Not from my personal knowledge.

Q. To what scale is that map drawn?

A. Fifty feet to the inch.

Q. Show us where the pipe line right of way is.

A. The pipe line is included between the black lines, running diagonally across this property, northwest and southeast (indicating on the map).

10 Q. What is the width of the pipe line?

A. Thirty-three feet.

Q. No, but I mean—

The Witness (interrupting): Diagonally across?

Mr. Riker: Yes; on the lines of the fence.

The Witness: Practically, thirty-nine feet.

20 Q. It's straight, is it?

A. Yes.

Q. What distance is the pipe line—that is, the easterly line of the pipe right of way—from Pompton Plains road?

A. Five hundred and ninety-five feet in a direct line; there is a little crook in the north line of Slingerland's property, but the correct distance is practically five hundred and ninety-five feet.

30 Q. What is the distance on the south of the pipe line right of way?

A. Two hundred and seventeen feet.

Q. You have apparently noted some buildings; what are they?

A. (Indicating on the map referred to.) This is the residence of Andrew J. Slingerland.

Q. How is it marked?

A. Marked "House"; directly back of it is the woodshed; next is the granary; next, shed, barn, another shed, stable and barracks.

40 Q. And the rest of those lines indicate what?

A. They indicate the yard and driveway leading across the pipe line to the westerly part of the farm ; it was fenced at that time.

Q. At what time? You refer to the summer of 1891?

A. 1891 ; yes, sir.

Q. Do you know from your own knowledge, or from your survey, on what part of the pipe right of way the pipe is actually laid?

A. I do not.

Q. And have you any personal knowledge as to the 10 size of the pipe?

A. Nothing more than ordinary observation at different places ; I did not see the pipe at that point.

Q. Now, you have something marked immediately north of the right of way, on the northerly line of the Slingerland property?

A. That is a cherry tree stump that is marked there.

Q. How far is that away from the right of way?

A. 22 feet on the north line of Mr. Slingerland's property. 20

Q. And about what size was the cherry stump when you surveyed the property?

A. My recollection is probably six to nine inches across the stump ; it was a small stump? probably it had been a tree five or six inches in diameter ; it was cut off close to the ground.

Q. Did you go to that property subsequent to the time you made the measurements for your survey?

A. I did.

Q. And when was that, can you tell me? 30

A. The next time I went there was January 23, 1897.

Q. Do you remember whether at that time there was an apple tree on any portion of the farm east of the pipe line right of way?

A. Yes, sir ; there was an apple tree.

Q. About where was that?

A. On the south side of the north line of Andrew J. Slingerland's property, distant 42½ feet from the easterly line of the right of way. 40

Q. Will you take your measure and lay off about 42 feet ?

Q. (Witness marks on the map as requested.) I will draw a line across the line showing it.

Q. Have you reference to any other apple tree in that plot on the north side; I speak without reference to the lines ?

The Witness : Without reference to the survey ?

10

Mr. Riker : No; without reference to the side lines.

A. There were several apple trees in the field north of Mr. Slingerland's property.

Q. Did you locate it ?

A. I did not; I wish to correct myself there; I said that 116 feet north of the line was an apple tree; I have it on my field notes.

Q. 116 feet north of the pipe line right of way you mean ?

A. North of Slingerland's line, up in the field.

*Cross-examination* by Mr. Coult :

Q. In Blauvelt's field ?

A. Up in the field above; I presume it was Blauvelt's field; I don't know; I presume it was; I have been told so.

Q. When did you first go there ?

A. The 21st of August, 1891.

30 Q. For what purpose did you go there on the 21st of August, '91.

A. To make a survey of Mr. Slingerland's property, to locate his buildings, etc.

Q. You took the data then by which you made this survey ?

A. I did.

Q. Why did you put down on the map at that time the pipe line ?

40

The Witness : The pipe line ?

Mr. Coult: Yes.

A. I put down the pipe line that was staked on the ground.

Q. That was staked on the ground?

A. Yes, sir.

Q. They had you going there to make a map without any reference to the proposed line of the farm?

A. No reference to the location of the right of way of the pipe line.

Q. That was in August, '91?

10

A. Yes, sir.

Q. At that time you took down, then, the location of all his buildings with reference to the proposed pipe line?

A. Yes, sir.

Q. What did you understand was the object to make a map at that time?

A. Mr. Slingerland said he wanted a map of his property showing the property, the general location of his buildings and the location of the right of way across his property for the pipe line.

20

Q. And then you went back subsequently, several years later?

A. Yes, sir.

Q. And then you went back for what purpose?

A. I went to locate certain trees and fence lines and objects on the ground that were pointed out to me by others.

Q. Those are the trees that you have pointed out here?

30

A. They are part of them.

Q. Did you put them down on your map?

A. I put down two on the map.

Q. Did you do that at the time you made the map; come here and look?

A. I did that at the time I made the map; yes, sir.

Q. You put down the cherry stump at the time you made the map?

40

A. At the time I made the last map—at the time I made this map.

Q. When was that?

A. Yesterday.

Q. Did you not make a map before?

A. I made a map before from the same field notes.

Q. Now, on your field notes, did you have down the cherry stump?

A. I did, from notes made from my second survey.

10 Q. Did you have it put down on your first survey?

A. I did not.

Q. Have you your field notes here?

A. Yes, sir.

Q. When did you put down the cherry stump first?

A. January 23, 1897.

Q. Did you go more than twice?

A. I think I was there another time, but I have no record of it.

Q. Where is your apple tree stump here now?

20 A. The apple tree stump is not located on this map.

Q. Not on any map?

A. It was on the map that was here before.

Q. Well, where is that?

A. I don't know; they told me it was lost and wanted another one.

Q. Why did you not put the apple tree stump down—you had the notes?

A. Probably neglect on my part.

30 Q. (By Mr. Riker.) Mr. Van Duyn, have you seen the map that you prepared or amended shortly after 1897 since 1897?

A. I saw it at the time of the last—about a year ago.

Q. About a year ago, in this court?

A. Yes.

Q. You haven't seen it since that time?

A. I never have.

Q. Mr. Coult has asked you about the location of other trees; just refer to your book and tell us what you did actually locate on that survey of '97.

Mr. Coult: He did tell us that. You made inquiry about it. He need not go over it again.

Mr. Riker: Go on. Mr. Coult seemed to think something strange about not having them on the map. Let's know what they are.

Mr. Coult: I didn't see them on the map; that's all.

Mr. Riker: Tell us what you have noted on your field notes. 10

A. At a point measured at right angles from the dotted line on this map, which is twenty feet south of the northerly line of Mr. Slingerland's property, where it intersects the east side line of the right of way, I have measured from that point eastwardly; at 30½ feet was an apple tree; 34.2 feet was an apple tree, and at 59.2 a cherry tree; at 63.3 feet another cherry tree; at 86 feet another cherry tree; at 105 feet another cherry tree; the opening in the fence was 37 feet from this point, which would make— 20

Q. (Interrupting.) Now, just what do you mean by the opening in the fence?

A. There was an opening in the fence at the northern line of Mr. Slingerland's property, a post and rail fence, making the total length practically from the east side of the right of way 49 feet; that fence was taken out and removed at that time; there was pointed out to me an apple tree nearly in a direct line north, at a distance of 116 feet—an apple tree; my attention was called to it and I located it. 30

Q. How large an apple tree—do you recollect?

A. About the same as those trees (indicating); an apple tree is about 12—14 inches in diameter; what we commonly term a pretty large apple tree.

Q. Were any of the trees which you have now described nearer to the pipe line than that you marked as an apple tree with a pencil, along across the northerly line of the Slingerland farm? 40

A. No; they were all further away.

Q. (By the Court.) I understand you are speaking about an apple tree on the Blauvelt farm.

A. Yes, sir.

Q. They are not in this map?

A. Not on this map.

Q. There may have been lots of trees down in this direction (indicating)?

10 A. Yes; the apple tree would be just outside of the border line; the apple tree would stand right up there (indicating).

Mr. Riker: Put a round mark there, so we will know.

[The Witness marks the map as requested.]

Q. Around on this line, were those trees or stumps?

A. I spoke of trees; they were trees.

Q. They are standing there now?

A. I presume so; I know nothing to the contrary.

20 Q. Cherry trees?

A. Principally cherry trees; my notes show one apple tree.

Q. When you say they were all trees, with reference to what were you giving your testimony?

A. They were in reference to the north line of Mr. Slingerland's property and the east side line of the right of way.

30 Q. Then what is it that you have marked there as the first thing on the north line of the right of way?

Objected to as repetition.

Objection withdrawn.

A. The cherry stump that is marked on the map that I have spoken about.

Q. (Indicating.) That is the one, here?

A. Yes.

ANDREW J. SLINGERLAND, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker:

Q. Mr. Slingerland, where do you live?

A. Pompton Plains.

Q. And how long have you lived there?

A. I was born there, and I have lived there ever since, with the exception of a half a dozen years.

Q.

10

A. I have been there, the last time, 37 years.

Q. Have you a farm at Pompton Plains?

A. I have.

Q. How long have you owned it?

A. Thirty-seven years—thirty-six years, properly.

Q. Where is it situated?

A. It is on the west of the road leading from Pompton Plains to Newark, or from Stockholm to Newark; the old Pompton Turnpike Road they call it.

(It is admitted that Mr. Slingerland owns the farm in question.) 20

Q. Now, Mr. Slingerland, on the morning of the 24th of December, 1891, where were you?

A. I was at home that night; in the morning I went away about seven o'clock on a train to Jersey City; I was in Jersey City that forenoon.

Q. Do you recall having noticed anything in connection with your farm on the day previous?

A. I did when I came home in the evening.

30

Q. I mean on December 23d?

A. December 23rd I was in Newark.

Q. Yes?

A. When I came home, then I noticed it; I came home before dark; there was nothing done on the farm at all; nothing disturbed on the farm at that time.

Q. Did you notice anything in connection with the farm?

A. I see three or four men on the north side of the farm, not on the farm.

40

Q. Where do you mean ?

A. Where these trees have been described on the Blauvelt line.

Q. About what time of day do you say that was ?

A. About an hour before dark or so.

Q. Where do your brothers live with reference to you ?

A. My oldest brother lives nearly opposite, across the road, on the Pompton road.

10 Q. Where does the other one live ?

A. The youngest brother lives on the rear end of this boulevard road, on the west side of that and nearly opposite, or a little below my farm.

Q. You say you slept at home on the night of the 23d ?

A. I did.

Q. What time did you get up ?

A. I got up about half past five—five o'clock.

Q. Who did you see ?

20 A. I seen my family, the whole of them.

Q. When you say "the whole of them," what do you mean ?

A. Well, I seen my wife and three children—three girls—and my men came in the morning before I went away.

Q. When you say your three girls, does that include Aletha B. Slingerland ?

A. Carrie, Aletha and Emily.

Q. How old was Aletha at that time ?

80 A. Seventeen years old.

Q. Do you remember where you saw her that morning ?

A. At the breakfast table.

Q. What time did you leave there ?

A. I left my house about quarter to seven ; it takes about ten minutes to go to the train ; the train left about seven o'clock, or a few minutes before seven.

Q. Did you go by wagon or on foot ?

A. I went by wagon ?

40 Q. Do you remember who drove you ?

A. No, I don't just recall who drove me.

Q. What was the condition of your daughter that morning, physically and otherwise?

A. Healthy as usual and strong; got up and got breakfast.

Q. That isn't very definite.

A. I don't mean as healthy as usual, but a healthy girl—well built; did anything that was asked of her, either inside or out; I wouldn't swear that she took me to the depot, but it is altogether likely that she did, because she used to drive the horse and take me to the depot. 10

Mr. Coult: I object to the witness stating anything about what might have been.

Q. How large was she—how tall?

A. About five foot nine.

Q. Do you know her weight?

A. I don't know her weight at the present time.

Q. No, at that time. 20

A. I think she weighed 135 or 40 pounds; I don't think—it varied from 135 to 40 pounds when the girls would go in the barn on the scales there.

Q. Had she been to school?

A. Yes, she went to school—I think she didn't go the year before to school—up to the Plains; she had got through with the common, with the ordinary district school.

Q. Do you know from your own personal knowledge how apt she was with her studies? 30

A. Oh, she was an apt child; she tended to everything; correct at figures, correct punctuation, correct spelling.

Q. Can you tell us anything of her usual employments and usual recreations?

Mr. Coult: We object to that question, if it please the Court, as incompetent.

The Court: I think the question is competent. 40

Mr. Riker: I want you to give the jury fully what her physical and mental condition was prior to the twenty-fourth day of December, 1891?

10 A. Her physical condition was a sound, well girl from the time she was old enough to get around; she knew, she grewed up with my business affairs and took charge of my business affairs in the absence of myself, and was competent, healthy and strong, so that she done all of that, even to hitching up the horses and anything that was to be done. Even you might call her of a—she was capable of doing everything outside and attending to business; she knew everything around my place; knew the farm and knew the business round about it; attended to it all.

Q. How about the household?

20 A. She was good about that, but her vocation was called more to outside work, but her older sister was more of a housekeeper, so she attended more to the out-doors business; but her housework consisted of making dresses and all that sort of thing; she done all of that kind of things, and kept house and everything that pertains to a woman doing in the house.

Q. What time did you return on the twenty-fourth to your own home?

A. Between—I think about four or half-past four o'clock; I don't know exactly the train I came home on; they change very little—between the hours of four and five, at least, anyhow.

30 Q. When you left the farm, on the morning of the twenty-fourth, was anyone in charge of the farm?

A. My daughter was always in charge of the farm when I was absent; told the men what to do that day; the men didn't live there with me, only one young boy; the rest came to go to work in the morning.

Mr. Coult: I object to the witness doing anything more than answer the questions.

Q. How did it happen that your daughter—I suppose by that you mean this daughter—

A. (Interrupting.) Yes.

Mr. Riker (continuing)—was left in charge of the farm on that day?

Objected to as incompetent and immaterial.

Q. I withdraw the question, and will put it this way: By what authority, if any, was she in charge of the farm?

10

A. By my authority.

Q. Given when?

A. Given out the morning that I went away,

Q. Give us the words in which her authority was received, as near as you can; what did you say to her?

A. The words—I told her that I was going to—  
to Jersey City.

Q. Yes.

A. And that there must not anyone come upon the premises unless they showed a written authority to come there upon my—on my premises.

20

Q. Where was she when you gave her these instructions

A. In the house.

Q. Do you remember whether anyone else was present?

A. Carrie, my older daughter.

Q. Well, to whom were these instructions addressed?

A. To her.

Q. Well, when you say to her, who do you mean?

30

A. To Alethe B. Slingerland.

Q. And who were to see that they were carried out?

A. Aletha B. Slingerland.

Mr. Coult: I object to that question, and move that the answer be stricken from the record.

The Court: I think it may be stricken out.

Q. Did you state to anyone who was to carry out the instructions given?

40

A. I told her if she needed—

Mr. Corbin (interrupting): We object.

Mr. Coult: I object to the question; it is incompetent.

Mr. Riker: I will withdraw that question.

Q. Now, state to us all that you said that morning to your daughter with reference to her taking charge of the place?

10            Objected to on the ground that the witness has already said specifically what he said to her in answer to the question of counsel.

The Court: It seems to be repetition.

Mr. Riker: But he did not state to whom he gave the instructions.

Mr. Coult: He said Aletha.

20            The Court: He said to her, his testimony is, that he was going to Jersey City, and that there wasn't anyone to come on the property unless they showed written authority to come on the premises.

Q. When you left in the morning, were the fences up on the side lines of your farm?

A. Yes, sir.

Q. What fence was on the north side of your property?

30            A. The line fence between my property and the adjoining—that end of my farm belonged to the adjoining owner, and previous to that, about two or three weeks previous to that I had my man put up a swing bar fence of my own, about three foot or four foot inside of my own premises, of about nine panel—not about nine panel—nine panel.

Q. And how many rails were there in this fence?

A. Four in each panel.

Q. An ordinary post and rail fence?

40            A. Yes, sir.

Q. Can you tell us how far to the east and how far to the west of the roadway this line of fence extended?

A. It extended four panels to one side, three panels across to the line, and there was a panel or two on the other side—four panels on the east, three panels across it and two panels on the other side.

Q. Can you tell us when that fence was put up?

A. About two weeks before.

Q. How long had the other fence been up?

A. That was an old fence; I can't recall how many 10 years, but it had been up a dozen years probably, from general appearances; I don't remember how long.

Q. What were the conditions on the south side of the property when you went away that morning?

A. The same conditions.

Q. What do you mean by that?

A. The line of fence between my farm and the adjoining farm was his.

Q. On the south?

A. Yes, on the south also, and the extra fence was 20 mine that I put up—nine panels.

Q. And the extra fence was similar in character to the one on the north side, do you say?

A. The same kind.

Q. What was there to the north of your property and north of this fence that you have described when you left your home?

A. On the adjoining property there were a number of four-foot pipe—steel pipe.

Q. When you say four feet, what do you mean? 30

A. Four feet in diameter.

Q. Yes; and how long were they?

A. Twenty-eight feet or twenty-seven feet and a half, or something.

Q. Where were they?

A. They were about there—they averaged from 60 to 100 feet from the line—my line; they covered that ground between 60 and 100, because there was a dozen or more of pipe.

Q. Can you say how those pipes were placed with reference to the pipe line right of way north of your property?

A. They laid, not as the pipe line ran, but the reverse way from the pipe line, across; the open end was from east to west, instead of from northeast to southwest.

Q. At right angles to the pipe line they were then, substantially?

A. Yes, sir.

10 Q. How far on the south line?

The Witness: On the Blauvelt property—how far from that line?

Mr. Riker: Yes.

A. They were at least 75 feet northeast of the pipe line right of way.

Q. How could you tell where the pipe line was on the Blauvelt line from the north of your property?

20 A. I could tell from the line these laid up to within 8 feet of the fence, where the last pipe came—within about 8 feet of the fence and dig out up to the fence, and a heap of dirt laying to the east of the property—

Q. (Interrupting.) Just one moment; let me get this clear; I don't know as I have it; you say that you could see the pipe, or that the pipe was laid to within 8 or 10 feet of your line?

A. Yes, sir.

Q. How do you know?

A. Because I seen it there.

30 Q. What part of it did you see?

A. I seen the end of the pipe.

Q. And was the end exposed on the morning of December 24th, 1891?

A. On that morning; yes.

Q. I don't suppose you had been out there that morning?

A. No, sir.

Q. How long had it been so?

A. Within that week.

40 Q. You say there was a dig-out up to your line?

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A. That trench was dug deep enough to lay the next pipe in, but it didn't come to the fence.

Q. How wide was the trench ?

A. About eight feet wide.

Q. Give us about the depth.

A. The depth was about the same.

A. And you said there was a pile of dirt there ; where was that ?

A. On the east side of the line.

Q. One the east side of the line ?

10

A. Yes, on the east side, where they—

Q. (Interrupting.) And north of your line, I assume ?

A. Yes.

Q. How near did that heap of dirt come to your line ?

A. Right up against the fence, just so it wasn't in hardly.

Q. And how wide was it, measuring from the pipe line ?

A. At the base it was probably ten feet.

20

Q. Yes ; and how high ?

A. And about four feet high.

Q. So, as I understand you, there was a mound of dirt ten feet wide and about four feet high adjoining your property ?

A. Running to a point.

Q. On your property line on the north ?

A. Yes.

Q. What was the condition of the south end of your property ?

30

A. The same condition ; there were pipes along there, only they laid on the west side of the line, on the opposite side of the right of way.

Q. You mean, then, on this part of the property (indicating on the map) ?

A. Yes, on the south side of my property.

Q. Was there a trench open there !

A. A trench was open there about from 5 to 8 feet.

Q. Now, what is the character of your property with regard to whether it is hilly or level ?

40

A. It is comparatively level ; the depression from the north to the south, the natural run of the water, or the overflow in winter time, when the ground is froze, the water runs south.

Q. But standing on the right of way on your farm, could you see any other part of the right of way ?

A. You could see the whole right of way ; the ground is level—you might call it level.

Q. When you came home in the evening of that day,  
10 what did you find with regard to the fence on the north part of your property ?

A. It was open and all gone away, and they had pipes over on my—

Q. (Interrupting.) I don't care about the pipes ; I am speaking about the fence ?

A. Well, the fence was down and gone.

Q. What do you mean by that ?

A. There was an opening of about 150 feet—I never  
20 measured it—the whole line of fence I had put up was gone.

Q. And how about the whole line of fence for the same distance ?

A. That was gone, too ; there was an opening there of about 100 feet.

Q. You say when you left in the morning there was a lot of pipe lying on your property ?

A. Yes, sir.

Q. Where was that pipe at night, when you came home ?

30 A. On my property, outside of the right of way, on the north side of my property ; they were laying on the east side of the right of way, with the exception of a few, some put in the ground ; the rest were lying promiscuously around.

Q. And what had become of the pipe that in the morning had run on the south part of your property, in the part that we call Blauvelt No. 2 ?

A. They were laying on the east—on the west side of  
40 the right of way, some of them within—that is, some of them laying within 20 feet of the right of way, and

some of them was laying within—well, there was two or three of them laying within 100 feet of the right of way—three of them, I think.

Q. How far had the pipe been distributed across your farm when you came home?

A. It had been distributed across, and some of them in the trench.

Q. How many lengths of pipe had been laid in the trench on the north end of your property?

A. I couldn't tell you.

Q. What did you find within the right of way itself—that we have spoken of? 10

A. The right of way—

Q. What did you find there when you came home?

A. I found that they was digging a trench, and had a few pipes in the trench.

Q. And how wide had they dug the trench?

A. About seven—six or seven feet.

Q. How deep had they dug the trench at its deepest point?

A. Turned so as to lay the pipe in—six to seven feet—covered it up three feet. 20

Q. How deep or shallow was it at its shallowest point?

A. It was all started, and probably only about a foot or a foot and a half in the centre.

Q. That is, in the centre of your farm?

A. Yes.

Q. What had been done with the dirt when it had been dug from the trench?

A. The dirt laid to the east of the right of way. 30

Q. That is nearer to Pompton Plains?

A. Yes, sir.

Q. And how near had it been thrown to the trench?

A. There was a walkway along by the fence a couple of feet, just so the dirt was nearer to the bank, nearer to the trench.

Q. So that between the trench and the heap of dirt you say there was a walkway?

A. Yes; a walkway where they walked along.

Q. How wide?

A. About two feet wide.

Q. How long?

A. For all the distance they had dug the trench.

Q. How wide was the heap of dirt that you have described lying to the east of this walkway?

A. Ten feet at the base.

Q. And about how high?

A. Oh, different variations some places; some places it was four foot high; other places low, you know, according to the depth they had dug.

10 Q. Where were the pipes with reference to the heap of dirt, as you have described it?

A. They lay to the east of it, towards the road, outside of the line of dirt; they didn't lay true—in all sorts of shapes.

Q. Do you know of your own knowledge as to the location of the pipe within the right of way—in what part of the right of way was the pipe laid, if you know?

A. It was laid at the easterly side, according to the 20 stakes on the right of way, across my place, that were put in there a year or so before.

Q. How far was the centre line of the pipe from the centre line east of the centre line of the right of way?

A. The pipe was laid to the east of the centre—the whole pipe was laid to the east of the centre.

Q. What I want to get at is, how near the centre of the pipe came to the easterly line of the right of way, if you know?

A. The centre of the pipe? Well, probably seven to 30 nine feet—about nine feet to the centre of the pipe line.

Q. Nine feet from the centre of the pipe to these at the east side of the right of way?

A. Yes.

Q. Did you see anyone beside your own family when you came there that evening?

The Witness: At the house or on the premises?

40

Mr. Riker: On the right of way?

A. Oh, there was a lot of men there—a lot of men there on the line.

Q. Do you remember any of them?

A. Jonesy, and a crowd of men—Jonesy—

Q. (Interrupting.) Mr. Jones?

A. I know Mr. Jones.

Mr. Riker: Are you willing to admit that this work was done by the Gillespies?

The Witness: I didn't see Mr. Gillespie. 10

Mr. Corbin: Certainly.

Mr. Riker: It is admitted, then, that this work was being done under the direction of and by the defendants in this suit.

Q. Did you see your daughter that night?

A. I did.

Q. What was her condition?

A. Setting in the corner of the room, in the northeast corner of my sitting-room, in a dazed condition. 20

Q. Did you have any conversation with her?

A. I started to, and they said I must not say anything to her; my older daughter said she was feeling bad.

Q. Cannot you describe more fully what she was doing and how she appeared?

A. Yes, sir.

Q. Well, go on and do it.

A. I went in the house when I came home and I see her sitting in the corner of the room; she paid no attention to me; I started to ask her a question and I was then—my daughter, my oldest daughter, asked me not to—not to do it. 30

Mr. Coult: One moment. Just describe without telling your conversation with other people.

The Witness: So I refrained from saying anything to her at that time, and then I asked what was the matter, and she said— 40

Mr. Coult (Interrupting): One moment.  
I object to what she said.

Q. Give us her general actions.

A. Her general actions was dead, as it were dumpy—couldn't say anything—couldn't say anything to her; and I finally did say something to her, and then she went off into a spasm—I don't know what you call it—I ain't posted on such talk.

Q. Describe it.

10 A. (Illustrating.) She done this way, as if she couldn't say anything.

Mr. Riker: That don't get on the record.

The Witness: Well, she throwed up her hands then and made such gestures that I see that I must not say nothing any more.

Q. Describe what her condition continued to be during that evening?

A. The same condition; she retired soon after that,  
20 about half past seven or eight.

Q. Did you see her the next morning?

A. She didn't get up early the next morning; I seen her later in the morning.

Q. What was her condition in the morning?

A. Her condition was similar to the night before.

Q. And how did her condition continue from that time?

A. It has continued the same from that time to this; to a certain extent improved if entirely left to herself  
30 and not—improved a little if she is brought under no excitement whatever.

Q. Was there any change in her physical condition that you noted during that time that immediately succeeded the twenty-fourth day of December?

The Witness: Previous to that?

Mr. Riker: No, after that?

A. After that she had no strength; she was—she was entirely—she had no strength to—to move, you might  
40 say, or to get around; nothing was asked—she wasn't

asked to do anything—wasn't able to do anything, and her strength had gone mainly, and her mind was—

Mr. Coult (Interrupting): One moment. I object to his stating about her mind. Let him tell what he saw.

The Court: He may tell what he saw.

Q. I was asking you particularly about her physical condition.

A. Her physical condition was bad. 10

Q. Can you say anything about her ability to walk?

A. She wasn't—she wasn't—her ability to walk was very poor; she couldn't, you might say—staggered as she walked, the common expression; her strength was gone.

Q. Was there any change in regard to her occupations in connection with the farm?

A. Oh, yes.

Q. What?

Mr. Coult: One moment. It strikes me that is an incompetent question. 20

Mr. Riker: I will put it in a different way.

Q. How do you know her strength was poor?

A. Because she couldn't do nothing.

Q. How do you know she couldn't do nothing?

Objected to.

A. She wasn't a girl that would deceive me; if I asked her anything, if she was able she would do it, and do it when she wasn't able, too, sometimes. 30

Q. In regard to knowing of her strength, was there anything in particular that called the matter to your attention?

A. I could tell at one time that she was unable to raise her hands, apparently, and it must have been so, because she wasn't—she wasn't able to raise her hands, to take hold of anything, because I asked her and she couldn't. 40

Q. And how long after the 24th of December, 1891, was that?

A. About a week.

Q. Did you notice any other change in the girl after December 24, 1891, except the changes which you have characterized as physical changes?

A. General appearance.

Q. What was her general appearance as compared with before this occurrence?

10 A. Dull and colorless and wild-looking out of the eyes at times.

Q. And what had been her color and appearance before?

A. A good, rosy-cheeked girl and very intelligent in appearance.

Q. (By Mr. Coult.) And what?

A. A very intelligent appearing girl.

Mr. Coult: I move that that be stricken from the record.

20

The Court: I do not understand what that means quite.

Q. (By Mr. Riker.) What do you mean by an intelligent looking girl?

A. Generally a person means when they say a person—I can't tell it in any other way, I mean.

Q. That description don't convey anything to our minds.

30 A. I should think that intelligence means intelligence; I can't give it in any other way.

Q. What were the different exhibitions, if any, after as compared with before?

A. Well, a dull, blank appearance and dull, responsive answers to the questions that I would put to her.

Q. Now, with reference to the quickness of an answer to a question, did you see any difference?

A. She didn't hear you.

Q. Was that before or after?

A. After this occurrence.

40

Q. And how was it before the occurrence?

A. Why, bright as a whip, quick as a flash.

Q. Now, go on from these first two weeks and tell us, in the first place, did she have any recurrence at any time of the condition you speak of as existing on the night you came home?

A. At different times.

Q. How frequently?

A. Oh, I couldn't tell—they were at—a number of times—a dozen or more.

Q. And during that space of time did that continue 10  
at these intervals?

A. They wouldn't come on at intervals—wouldn't be nothing—would be where she—where she got a little excited over anything that happened to happen, or when she heard of or about anything she seen in the paper, or anything else—anything that brought on the least excitement.

Q. And what would she do at those periods of excitement?

A. If any of us would say anything it would draw 20  
her attention right from it and start conversation on another line.

Q. What would happen?

A. Why, she would go off into what I would call—usually she done it—she couldn't go any further—couldn't say any more; she would stop; I couldn't tell—I can't describe such things.

Q. How long have they continued, or up to what period did they continue?

A. Up to the present day. 30

Q. How serious or how marked have they been recently as compared with those that happened soon after December 24, 1891?

Mr. Coult: I object to this comparison by this witness.

The Court: The question is how often, I understand, as compared with previously?

Mr. Coult: My objection is that the question says "compared with former ones?" 40

Mr. Riker: Have they been as frequent or less frequent?

A. Just the same as she has been, with the—with less strength to resist them; she gradually grows weaker, and if she has quite a severe one it takes a great while to get over it; one that she had—it was the year before—and she ain't the same now as then.

Q. Where is she to-day?

A. At home.

10 Q. Why isn't she here?

Objected to.

Mr. Riker: If you object I will withdraw the question.

*Cross-examination by Mr. Coult:*

Q. Mr. Slingerland, the laying of the pipe line on your land—the pipe had been laid on the adjoining land to the north?

20 The Witness: Do you mean laid in the trench or—

Mr. Coult (interrupting): Laid in the trench?

A. Yes, sir.

Q. And the pipe line right of way extended from that point on up to the Macopin intake, did it not?

A. To the best of my knowledge.

Q. Had the lower side of it been laid up to your  
30 line?

A. Yes, sir.

Q. And extended from there to the city of Newark?

A. Not that I know of; I should say it was, but I didn't have actual knowledge of it.

Q. Now, proceedings had been taken to condemn the right of way across you?

A. Yes, sir.

Q. You couldn't agree with the city in the—

A. (Interrupting.) They never tried to agree with  
40 me; I could agree with them, yes.

Q. You could ?

A. Yes.

Mr. Coult : I have some knowledge of that.

Mr. Riker : I object to that remark.

Q. You didn't agree ?

A. No, sir.

Q. And the proceedings were taken to take the land by condemnation ?

A. Yes, sir.

10

Q. And they took a strip across your land of 33 feet ?

A. Yes, sir.

Q. Now, for some time before that pipe was laid across your land workmen were waiting, were they not, to lay it across you ?

The Witness : Waiting where ?

Mr. Coult : In that neighborhood.

A. A day or two before some men were there ; I don't know what they were there for.

20

Q. You had obtained an injunction restraining them from going on your land ?

A. If I understand it right, I had.

Q. Now, the morning you went to Jersey City that injunction was dissolved ?

A. Yes, sir.

Q. You were present in the Chancery Chambers when it was dissolved ?

A. I was in the building ; I don't know that I was in the Chancery Chambers ; I see you there.

30

Q. You knew the injunction was dissolved ?

A. Yes, sir.

Q. At the same time the money was tendered to you, wasn't it ?

A. No, sir ; it was tendered to me not at the same time the injunction was dissolved, but tendered to my counsel ; as soon as I got there that morning they tendered my counsel the money.

Q. And you refused to receive it ?

A. Yes, sir ; he did, under my instructions.

40

Q. You went back to your place from Jersey City in the evening of that day?

A. No, sir.

Q. In the afternoon of that day?

A. No, sir.

Q. Didn't you go back home that night?

A. I did, sir.

Q. How did you go?

A. I went from Newark and from there to my home.

10 Q. What time did you arrive home?

A. About between four and five o'clock.

Q. And when you got home you found entry had been effected on your property and the pipe line laid partially across your land?

A. I saw that they had been to work there and some of the pipe laid.

Q. Before you went away you had anticipated that they were going to lay pipe across your land—you had a survey of your land made that showed the relation of your buildings to the pipe line?

20 A. Some time before that—before the condemnation, I believe.

Q. You had put up a barrack on your land?

A. Yes, sir—I didn't put up a barrack at all.

Q. You went inside of the fence line of your property?

A. Yes, sir.

Q. Put up a post and rail fence?

A. Yes, sir.

30 Q. What did you do that for?

A. For the simple reason that knowing from my knowledge of the—that if persons came on my premises without authority and broke that fence down, they broke and entered; I don't know if they broke another man's fence down and came on my property whether it would be breaking and entering.

Q. You put up a fence so that if they came on your land they would be breaking and entering?

A. Breaking and entering without authority.

40 Q. Breaking and entering without authority?

A. Yes, sir.

Q. You were going to take every necessary precaution to keep them off?

A. Yes, sir; I wasn't going to let them on if they had no right until they settled.

Q. You say you told your daughter in the morning, when you went away, that she must not let anybody come on your property?

A. Yes, sir.

Q. What did you mean?

10

A. I meant my property—whatever property was mine, and that's all I meant.

Q. It was all your's though?

A. It was all mine, yes, sir; if I understood myself it was mine that morning.

Q. Did that prevent them from going and laying the pipe line?

A. If it was on my property—if it was, it did.

Q. You were going to hit or miss it?

A. No, I wasn't going to miss it.

20

Q. Was she to allow people to come on the right of way to lay the pipe line?

A. She was not to interfere with them on the pipe line if they showed their authority.

Q. What do you mean by showing their authority?

A. That they had the right to do it that they could show; that they knowed it and I didn't; that's what I meant.

Q. What evidence did you expect to get of that?

A. I expected to get knowledge from the Court that that was not my property any more to seize.

30

Q. What was she to have to show?

A. She was to have, if they didn't show the authority, that they hadn't—

Q. (Interrupting.) Then she was to assume, if they didn't show authority, that they had none; is that it?

A. [No answer.]

Q. Is that it?

A. I can't say any more; I have said what I had to say about it.

40

Q. Is that it?

A. No, sir.

Q. What do you want to say?

A. I want to say this: That she never entered on the disputed property of the right of way, and whether it was her'n or whether it was mine that she kept herself upon that she had definite knowledge was her own property outside of the disputed property.

Q. I didn't ask you that.

10 A. I answered just as you asked me.

Q. I understand you to say that they were to have some legal authority?

A. I did, to come on my property.

Q. What kind of legal authority?

A. That there was no order or anyone that had higher authority than myself—no authority that was outside of my authority; it was on my property.

Q. I don't understand you.

A. Well, I can't make you understand it any plainer.

20 Q. Did you intend that whoever came to enter upon the right of way for the purpose of laying down the pipe line must bring some legal paper or document to show?

The Witness: To come on the right of way?

Mr. Coult: Yes.

A. Certainly, she should; she would expect that they would show the right to come on my property.

Q. Well, what kind of a right?

30 A. Well, the right that would satisfy her that it was their property; or the signature—that would satisfy her.

Q. Now, you gave some testimony in regard to the situation as it was developed after you came back along the pipe line?

A. Yes, sir.

Q. You never made any measurements, did you?

A. No, sir; not on the—

Q. All your testimony is given on our estimates?

40

A. No estimates about it; I can tell if I am at all intelligent, and I hope I am, whether a stick is ten or five feet long or whether it is eight or ten feet long, and I can tell within a foot, or at least two feet, in a hundred whether it was a hundred feet or seventy; I didn't go into all these details, because I didn't think I was called upon for that.

Q. Your counsel asked you, and now I am asking you for your knowledge.

A. My knowledge is my knowledge; I had no instruments. 10

Q. That's all?

A. Yes, sir; my knowledge is my knowledge.

Q. When you spoke of a pile of dirt ten feet high and four feet wide, without any more accurate knowledge than that—

A. (Interrupting.) Yes, sir; I can tell how much a load of dirt is to a shovelful, too.

Q. How long before the 24th of December had the pipe been laid, on the north of you, up to your line? 20

A. I didn't make a minute of that; I couldn't tell you; only a week or two; along in July, I think, they finished, but I ain't positive of that; but I know the pipe was there.

Q. In July?

A. Yes, sir; no, I wouldn't swear that it was July, positively; it might have been in August; I can't swear positively, but I know it was during the Summer of that season.

Q. Then it had been there for some months? 30

A. Yes, sir; four or five months.

Q. How long at the south of you?

A. The same time, within a week or two, whatever time it took.

Q. It had been down some time on the lower side of you?

A. Yes; it might have been September that they finished on the lower side.

Q. You knew, didn't you, that the intention was to

lay the pipe in the right of way if the Court dissolved the injunction?

A. No, I don't know as I did, because they—they came to me and said they could go around me, and so I didn't know they were going to lay it there; they came to me and surveyed; I seen them surveying around me.

Q. Didn't you know they had already condemned the land?

A. That was nothing; that didn't give them any right to come on the land.

Q. You knew that if the injunction was dissolved they had a right to go there?

A. No, sir; they was there surveying, and offered to go around, and I offered to give them \$8,000 to go around, too.

Mr. Coult: That's all humbug.

Mr. Corbin: I ask that the answer be stricken from the record, as not responsive to the question.

The Court: It will be stricken from the record.

Q. What kind of a day was this, Mr. Slingerland, on which this pipe was laid?

A. It was a little cloudy in the morning, and about noon, the time that I got to Newark, I think it rained quite a little.

Q. Rained very hard, didn't it?

A. No, not very hard; it didn't rain so hard.

Q. Well, I ask you if it didn't rain hard, and you say no.

A. No.

Q. It was a cloudy day?

A. It was a cloudy day, and as the day advanced it kept increasing.

SAMUEL S. SLINGERLAND, sworn in behalf of the plaintiff.

*Direct examination* by Mr. Riker :

- Q. You are the brother of Andrew J. Slingerland ?  
 A. Yes, sir.
- Q. And you live on the boulevard at Pompton Plains ?  
 A. Yes, sir.
- Q. About how far from your brother's residence ?  
 A. A half mile. 10
- Q. On the morning of December 24, 1891, do you remember where you were ?  
 A. I was home.
- Q. Did you leave home that morning ?  
 A. Yes, sir.
- Q. At what time ?  
 A. About 8 o'clock.
- Q. Do you remember where you went ?  
 A. I went over to my brother's, Andrew Slingerland.
- Q. Do you remember how it was that you happened to go there at that time ? 20  
 A. They sent for me.
- Q. Who came for you ; do you remember ?  
 A. John Beach.
- Q. And who was John Beach ?  
 A. He was the boy that worked for Andrew.
- Q. Worked where ?  
 A. For my brother, Andrew Slingerland.
- Q. Worked for Andrew Slingerland ?  
 A. Yes, sir. 30
- Q. How long after you were called by John Beach was it that you started for your brother's farm ?  
 A. Five or ten minutes ; as soon as I could get my coat and hat on.
- Q. Tell us on what part of the farm you entered first ?  
 A. I was on the Blauvelt side or end, rather.
- Q. About where on the farm, (Indicating on map.)  
 This is the Blauvelt farm.
- A. Yes. 40

- Q. Now, how near to the corner did you enter?  
 A. About in the middle the roadway is, I think; I went right across.  
 Q. That is, the roadway across this farm?  
 A. Yes.  
 Q. Is it a lane?  
 A. No; fenced in—or a wagon road.  
 Q. Who did you first see when you got to Andrew Slingerland's farm?  
 10 A. I saw the surveyor.  
 Q. Do you know him by name?  
 A. Mr. Olmstead.  
 Q. And where was Mr. Olmstead when you saw him with reference to the wagon road that you have described as running through the farm?  
 A. He was about a hundred—a hundred and fifty feet north of the wagon road, and one hundred—one hundred and fifty feet west of where they were digging the trench.  
 20 Q. What was he doing there?  
 A. He had an instrument, a surveying instrument.  
 Q. When you went on the farm, where did you first go?  
 A. I went to him?  
 Q. You went to him?  
 A. Yes.  
 Q. Then where did you go next?  
 A. Then I met Aletha Slingerland coming toward us; when I was by him, Aletha came across where they  
 30 were digging the trench, and I met her about half way where I met him by the trench.  
 Q. When you say, "by him," what do you mean?  
 A. When I was right by him.  
 Q. When you was right by him?  
 A. Yes, sir; after I got by him he went to where they were rolling the pipes.  
 Q. And you continued on toward the trench?  
 A. Yes; I went toward where she was coming toward us.

Q. How far from you were they digging the trench when you met her?

A. About seventy-five feet.

Q. Where was Mr. Olmstead going?

A. He started to where they were rolling the pipe on the north side.

Q. Did he have an instrument with him?

A. He took it with him.

Q. Did he have any assistance with him?

A. I don't remember any.

10

Q. After meeting Aletha, where did you go and where did she go?

A. She—she—we talked together, and she told me they would—

Mr. Coult (interrupting): Never mind what she said; don't tell what she said.

Mr. Riker: Well, don't now; I think perhaps it isn't material just now.

The Witness: Well, I went down where they was rolling in the pipes. 20

Q. You went down where they were rolling the pipe?

A. Yes, sir.

Q. How did you walk in getting to that point—where did you cross the right of way, if you know where that was?

A. Well, after I met her we took a stroll down to where they was, and crossed the pipe line when we came to it. 30

Q. Were you interrupted by any one before reaching the place where they were rolling in the pipes?

A. No, sir.

Q. So you walked right along through to that point, did you?

A. Yes, sir.

Q. How near to the fence line of Mr. Andrew Slingerland's were you—or where did you go to?

A. Well, I should think about fifty feet, maybe. 40

Q. That is, from his north fence line?

A. Yes, sir; they had a pipe there then—had a pipe rolled on it about that far (indicating).

Q. What did you do?

A. Well, we got there the same time Mr. Olmstead did—we asked them by what authority they had to come on there; we gave them notice not to let them come on the land.

Q. Who gave them notice not to come on the land?

10 A. Why, Allie did.

Q. Aletha B. Slingerland you mean by Allie?

A. Yes, sir.

Q. The plaintiff in this case?

A. Yes, sir.

Q. What did she say to them?

A. She said they couldn't come on without legal authority, as I understood it.

Q. What was the answer, if you know?

20 A. I don't remember what they said particularly, only they—they—Mr. Olmstead gave orders to take us out of the way so that they could roll the pipe.

Q. Now, when you got to that point had there been any digging done to the trench?

A. Certainly.

Q. How far, and how had it been done?

A. It had been dug about half way across the place up to the place I first met Aletha.

Q. How much had been dug at the point where you first met Aletha.

30 A. Well, there it was about a foot deep.

Q. I understood you met Aletha seventy-five feet from the trench; didn't you say so?

A. Well, I meant where we crossed the—where we crossed the trench and went to that other place.

Q. So that you say, from this place of meeting to this other place where you crossed the pipe line it was about a foot deep?

A. Yes, sir.

Q. And that was about in the middle of the trench?

40 A. Yes, sir.

Q. How wide was that about ?

A. About six feet wide.

Q. And what was done with the dirt ?

A. It was throwed out on both sides.

Q. Can you tell how far from the trench it reached on the east side ?

A. I should think it reached on from about six to eight feet from where it was dug.

Q. Yes.

A. From the side where it was dug about eight feet. 10

Q. Now, as you got nearer the north line was the digging deeper or shallower ?

A. It was deeper.

Q. And what was the depth at the point where the pipe along the trench met the north line of the Slingerland property ?

A. It was about three feet right there.

Q. So that it run from about three feet up to nothing ; is that what you wish to say ?

A. Yes, sir. 20

Q. When you first went on this property ?

A. Yes.

Q. And how far had the dirt been thrown out to the east of the trench on the north line of the Slingerland property ?

A. Well, I should think it was ten feet there ; more dirt throwed up there.

Q. When Aletha and you had your conversation with Mr. Olmstead with reference to the right to come on the property, where were you standing with reference 30 to the pipe along the trench as it had there been laid out and dug ?

The Witness : Do you mean when I first met Aletha ?

Mr. Riker : No ; you said you went with Aletha to within fifty feet of the north line of the Slingerland property.

The Witness : Yes.

Q. And that she stated that she wanted to know something about authority?

A. Yes, sir.

Q. I want you to locate where you were standing when that question was asked by Aletha?

A. We were, I should think, seventy-five feet from that first line, and probably thirty feet from where it was dug.

Q. To the east or west of where it was dug?

10 A. To the east.

Q. So you were standing something generally in that position in that triangle (illustrating)?

A. Yes.

Q. How far to the east of the dirt that had been thrown on the ground were you standing, if you can give that to us that way?

A. Well, I should think it was 20 feet.

Q. And where was the pipe that you have spoken of with reference to you and Aletha at that time?

20 A. It was right direct north of us; we were about midway of the pipe.

Q. That is, about 14 feet from each end; is that the idea?

A. Yes, sir.

Q. And what were they doing with the pipe?

A. They were rolling it, I think.

Q. Rolling it where?

80 A. They were rolling it; they had it turned so it was at right angles with the pipe line, and were rolling it parallel with it.

Q. Was the pipe in motion at the time Miss Slingerland asked for the authority.

A. I think not.

Q. Go on and tell us what she did after she asked for their authority?

The Witness: After Mr. Olmstead ordered the men to take us away?

Mr. Riker: Yes.

A. Three men grabbed me and hustled me off towards Blauvelt's line, under the apple tree; and three men grabbed her and hustled her off toward the barn; I was left at the fence by the apple tree or cherry tree.

Q. That is the partition fence up here, do you mean (indicating on the map)?

A. Yes, sir.

Q. And towards the Pompton road or right of way?

A. Yes, sir.

Q. And when you say she was taken to the barn, you 10 refer to the barn of Andrew Slingerland?

A. Yes, sir; she was taken in a southeasterly direction and I in a northeasterly direction.

Q. Do you know who actually took her off?

A. No, I do not.

Q. How far did they take her?

A. I should think 200 feet.

Q. Then what was done?

A. When they left me by the fence they started to walk back and I walked back with them; then I see the 20 other three men coming back and her following them.

Q. In the meantime what was done with the pipe?

A. In the meantime the pipe had been rolled on about half way of the farm.

Q. What did you do next—what did Aletha do?

A. Then the men came back, and they went to the Blauvelt line and got another pipe; then we went over by the fence.

Q. How many men went over for pipe on Blauvelt's line?

30

A. I should think there was about thirty or forty of them.

Q. And how many pipes did you notice on the Blauvelt property north of the Slingerland property?

A. Oh, there was a dozen anyway, I should think.

Q. Just tell us what they did with the pipe after they got it?

A. We went toward the fence—

Q. (Interrupting.) Just tell us what they did with the pipe when they got it.

40

A. They rolled it up on a stump so they could twist it at right angles with the ditch, and they rolled it over.

Q. You say so they could twist it at right angles with the ditch; did they actually twist it at right angles with the ditch?

A. As I understand it.

Q. When they turned the pipe to a position so it was at right angles with the ditch and the centre of it over a stump, how far from that stump were you standing?

10 A. We were about 6 or 8 feet; we were right by the line.

Q. Well, now, which of you was to the east and which—

A. (Interrupting.) Aletha was to the east.

Objected to as leading.

Q. Well, where were you standing?

A. I was at the west, at the west end of the pipe, and Aletha the east end.

20 Q. And when you say one was toward one end and one toward the other, how far apart were you when you were in that position?

A. Oh, 10 feet probably—10 or 15.

Q. And how far was she from the cherry stump, or from the stump?

A. She was about, I should think, 10 feet from the stump.

Q. And in what direction?

A. I should say southeast.

30 Q. How far were you from the dirt that had been thrown out?

Mr. Coult: We cannot tell anything about that. That gives no idea to anybody. He has to locate the dirt.

Mr. Riker: He has located the dirt.

Mr. Coult: What dirt?

Mr. Riker: The dirt that had been thrown out of the trench to the east of the pipe—the trench which he has already described as hav-

ing been dug three feet and the dirt thrown out to the east of it.

Q. Now, I want to know how far you were from that loose dirt.

A. About ten feet; the men had room to work around the end of the pipe with their crowbars.

Q. What was done then after the pipe was turned, and when you were standing in the position in which you have described yourself as standing?

A. Well, they rolled the pipe against Aletha. 10

Q. Who rolled the pipe against Aletha?

A. Why, the men that was behind it.

Q. Did she move her position when the pipe was rolled against her?

A. I think not; no, sir.

Q. What happened when the pipe was rolled against her?

A. Why, it—it—it jarred her; it didn't push her down; she fell back.

Q. What then happened? 20

A. Then they took us away again.

Q. Who took you away?

A. Well, the men; Mr. Oimstead was one of them, and Mr. Gillespie was one.

Q. Robert or Thomas—do you remember which?

A. It was the one I saw here before.

Mr. Corbin: There is no question about that; it was Thomas.

Mr. Coult: He will be here. 30

Q. Where did Thomas Gillespie, and the others, take Aletha B. Slingerland that time?

A. Off toward the barn, outside of the east end of it.

Q. What did they do with you?

A. They hustled me back in front of the pipe all the time, as fast as they rolled it on.

Q. Kept moving you back—is that it?

A. Yes; and one time they pushed me down in the dirt; two men jumped on my back and pushed me down 40

in the dirt; otherwise I wasn't near enough to the dirt to step into it at all.

Q. Can you tell us whether in rolling either the first or second pipe the westerly end of the pipe came in contact with any of the dirt thrown out from the trench?

Mr. Coult: I would like to have him describe in his own way, without these particular and suggestive questions.

10 The Court: I do not see any objection to that question. Mr. Riker has asked the witness to describe, if the dirt was thrown out, how it was thrown out—how the trench was dug at that time. I do not see any objection to it.

[Question read by the stenographer.]

A. No, sir; because there were two men working there at that end with crowbars to keep the pipe in line to roll it, and two at the other end; there were two men  
20 working between the ends of the pipe and the dirt that was thrown out.

Q. Well, now go on and tell us what happened after Aletha had been removed from the second pipe; what did she do?

A. Well, she came back, and we went over where they entered each time—three or four times.

Q. I am talking about the third time. Was there a pipe that time brought on the property?

A. The same as the other, rolled up on this stump,  
30 and turned a little to get it in the right shape; they rolled it parallel with the ditch.

Q. And where did she take her stand at that time?

A. About the same position, and always to the east side of me.

Q. I am speaking now of where her position was with reference to the stump.

A. She was southeast of it, about; more east than south, probably.

Q. Well, what happened at that time after they turned  
40 the pipe to roll it? What did they do?

A. They rolled it all up to the—nearly to the centre of the farm.

Q. What happened to Aletha?

A. Well, they took her away each time.

Q. Well, that you say happened how many times?

A. I think about four times.

Q. Was Aletha struck with the pipe more than once?

A. I think not; they took her away before, and didn't roll it against her after the first time.

Q. When did she leave the field?

10

A. Well, that was after they had six pipes on, I should think.

Q. And do you recall any particular occurrence to fix the time in your mind?

A. Not as I know of.

Q. Can you fix the hour that she retired?

A. I think it was about ten o'clock—quarter past ten.

Q. How did she reach the house?

A. She walked over.

Q. Who was with her?

20

A. I think she went over with my brother Jake, or met him; I think she went over and met him—saw him over by the barn, or going that way.

Q. And where did you go?

A. I went over to the barn, too.

Q. And where did Aletha go—do you know?

A. Went over to the house.

Q. Do you remember where you went?

A. I stayed at the barn until twelve o'clock, then went home.

30

Q. When did you next see Aletha?

A. I can't say.

Q. Have you seen her from that time to this?

A. At different times.

Q. How frequently?

A. Oh, well, I might say once a week, and it may go two or three weeks and I not see her.

Q. Can you give us the names of any of the persons that removed Miss Slingerland off the second time?

A. No; I don't know the men at all.

40

Q. Do you know at whose direction she was removed off the second time?

A. I don't know positively; no.

Q. What was Miss Slingerland's physical condition on the morning of the 24th day of December, 1891?

A. Her condition was good; always had been.

Q. That don't show much to us, you know; was she a big or a small girl?

A. She was large.

10 Q. Go on, and give us what her condition was, if you can?

A. She was a large, healthy girl.

Q. That is the best you can describe her, is it?

A. Yes, sir.

At this point the Court took a recess of one hour.

AFTER RECESS.

20

SAMUEL S. SLINGERLAND resumes the stand.

*Further direct examination* by Mr. Riker:

Q. What has been her physical and general condition since December 24, 1891?

Mr. Coult: I object to that on the ground that the witness is not an expert witness.

30 The Court: I think all he can do is to describe her appearance. I do not think the question is competent in its present shape.

Q. What was her physical condition, as noted by you, during the first two weeks after December 24, 1891?

A. I don't recall that I saw her during the first two or three weeks.

Q. When did you first see her?

A. I can't remember.

40 Q. Do you remember ever having seen her from that time to this?

A. Oh, yes.

Q. Do you remember when you first saw her?

A. No, sir.

Q. About how long after this occurrence was it?

A. Well, it might have been two weeks; it might have been a month.

Q. Well, state what you noticed, if anything, in regard to her physical condition at that time?

A. Well, I can't state it in any way except that she seemed broken down.

10

Q. What things did you see upon which you make that statement?

A. Well, she didn't—she didn't seem to be able to do anything.

Q. And at the different times you have seen her since that, what have you noticed, if anything?

A. At times she seemed that same way.

Q. When have you seen her last?

A. I can't recall; it might be a week ago or two weeks.

20

Q. And at that time what was her appearance?

A. I didn't notice particularly that she was any different.

Q. From what?

A. From the way she had been since that time.

Q. Can you recall how she was dressed on the occasion when spoken of, December 24, 1891?

A. No, sir.

*Cross examination by Mr. Coult:*

30

Q. Mr. Slingerland you live on the road back of your brother?

A. Yes, sir.

Q. Had you been spoken to by him before the morning of the 24th?

A. Yes, sir.

Q. Where had you seen him?

A. I don't remember where it was.

Q. Did he come to you or were you at his house?

A. I don't remember that.

40

Q. Well, he spoke to you and wanted you to come over there the next morning?

A. Yes, sir.

Q. What for?

A. For to help keep the people off the land, under Allie's instructions.

Q. What people?

A. Any people.

Q. Now, this was before this thing happened; what 10 people?

A. Any people that came.

Q. Did he tell you he expected any people?

A. He thought there would be trouble about this.

Q. What for?

A. Well, people coming to lay the pipe line, as I understood it.

Q. Then he told you he expected some people were going to lay a pipe line; is that it?

A. I understood it that way.

Q. And you were to assist Allie in keeping them off? 20

A. Keeping them off his land.

Q. Off what land?

A. Off the land that was not under dispute.

Q. Eh?

A. Off the land that was not under dispute.

Q. Off the land that was not under dispute?

A. Yes.

Q. What do you mean by that?

A. Why, the 33 feet was in dispute.

Q. What? 30

A. The 33 feet was in dispute, as I understood, and he had a right to it.

Q. Didn't you intend to keep anybody off?

A. No, sir; Allie instructed me not to interfere on the 33 feet.

Q. On that 32 feet?

A. On the 33 feet, when I went there.

Q. Now, Samuel, have you ever testified to that before?

A. Well, I think they tried to get me to, but you wouldn't let them.

Q. Eh?

A. I think they tried to get me to, but you wouldn't let them.

Q. Wouldn't let you?

A. No; wouldn't let me answer the questions.

Q. What questions?

A. The questions pertaining to that.

Q. What?

10

A. The questions pertaining to that.

Q. Then you say the only reason you haven't testified to that before is because you were prevented from testifying to it?

A. Yes, sir.

Q. Who prevented you from testifying?

A. You objected, and the Court wouldn't let me answer.

Q. What questions were asked you.

A. I don't remember what they was, but that's what 20 they pertained to.

Q. Let's see; the first man you saw was a man with surveying instruments—

A. Yes, sir.

Q. —when you went out that morning?

A. Yes, sir.

Q. And Mr. Olmstead, what was he doing?

A. He was using his instrument.

Q. What for?

A. I suppose he was surveying.

Q. What?

30

A. He was surveying, I suppose.

Q. Surveying what?

A. Land, I suppose.

Q. What land?

A. Some land on Mr. Slingerland's—

Q. Is that all the answer you are going to make me?

A. I will make any other if I know what you mean.

Q. I want to know what it was he intended making a survey of.

40

A. I suppose it was in the pipe line.

Q. Then you presumed and knew, or presumed at least, that he was trying to lay out the right of way?

A. I supposed that's what he was there for.

Q. Well, now, didn't you attempt to prevent him from doing that?

A. I—I attempted to prevent him from using it where he was.

Q. You attempted to prevent him from using his instrument, didn't you?

A. From where he was.

Q. How did you do it?

A. I first forced it to one side and then he pushed me away.

Q. Didn't you go and take his instrument and throw it down?

A. No, sir.

Q. Didn't you stand in the way of his sighting across the land?

20 A. Yes, sir; just once, and then he took it up and went away.

Q. What for?

A. Because he was on Mr. Slingerland's land.

Q. That was the reason, eh?

A. Yes, sir.

Q. Now, you walked down to where they were about to roll the pipes in, didn't you?

A. Yes, sir.

30 Q. Didn't you place yourself in the way of rolling in the pipe upon the right of way?

A. No, sir.

Q. Never?

A. Never.

Q. What did you do?

A. We went across the right of way on the other side of the line.

Q. What?

A. We went across the right of way to property on the other side, on the east side, the opposite side, where

40 Olmstead was.

Q. Didn't you place yourself immediately in front of the pipe rolling on?

A. Not on the right of way.

Q. Didn't you place yourself immediately in front of the pipe rolling on, in the way of the pipe?

A. Yes sir; when the pipes were rolling on.

Q. How many times did you put yourself in front of the pipes?

A. Only once; the other times we took our position before the pipes came on.

Q. Were you taken of the right of way? 10

A. No, sir.

Q. At no time?

A. No, sir.

Q. Were you taken from in front of the rolling pipe at any time?

A. Yes, sir.

Q. How many times?

A. About four times, I think.

Q. Now, your statement is, that at no time when 20 you were taken off were you standing on the right of way?

A. No, sir; I wasn't on the right of way at all.

Q. I call your attention to your own testimony at the last trial. Were you not asked this question, and wasn't this the answer you gave it? "Wasn't that your purpose in going there?" I will go back a minute.

"Q. Didn't you tell him that you weren't going to permit the pipe to be laid there at all?

The Witness: Wasn't going to do what? 30

Mr. Coult: Permit the pipes to be laid in that property at all.

A. No, I didn't say anything like that to him.

Q. Wasn't that your purpose in going there?

A. The purpose was to protect the property.

Q. Was it not your purpose to prevent the laying of the pipe line?

A. Well, that might have been, yes; but not after I got my instructions from Allie.

Q. What?

A. But not after I got my instructions from Allie; that's what I supposed two or three days before.

Mr. Riker: He did not read as it is in the book.

Mr. Coult: Well, I did read what was in the book. I will read it again. [Reads.]  
 10 "Wasn't that your purpose, to prevent the laying of the pipe line?" "A. Well, that might have been, yes, the understanding."

Mr. Riker: Then you interrupted him before he answered.

The Witness: I didn't get a chance to finish it then.

Q. You didn't get a chance to finish it?

A. No, sir.

Mr. Coult: [Reads.] "That might have  
 20 been, yes, the understanding."

Mr. Riker: Then you interrupted him; before he finished his sentence you said, "One minute!"

Q. Did you so testify at the last trial?

A. I might have testified to that; why, certainly, whatever is there.

Q. Was that the understanding, that you were there for the purpose of preventing them from laying the  
 30 pipe line?

A. Not after I got there that morning, because I had explicit instructions on it from Allie.

Q. Now, Mr. Slingerland, did you see Mr. Gillespie there that morning?

A. Yes, sir.

Q. (Indicating a gentleman in the court room.) Is this the gentleman?

A. That's the one; yes, sir.

Q. Did he take Aletha away from the pipe?

40 A. As near as I can remember, he was one of them.

Q. How many times did he take her away ?

A. I couldn't say how many times, because—

Q. (Interrupting.) Three or four times ?

A. I don't know that he did, himself, as many times as that.

Q. Well, did you see him at all take her away ?

A. I think I did.

Q. Did you hear her ask him for his authority for coming on the land ?

A. Yes, I heard her ask for the authority. 10

Q. What did he say ?

A. I understood that they didn't have any written authority ; she asked for written authority.

Q. Well, what did he say ?

A. He didn't have any.

Q. Did he tell her that the injunction had been dissolved and they had a right to lay the pipe ?

A. I don't remember that he did.

Q. You won't say that he didn't say it ?

A. No ; he might have said it ; I was kept pretty 20 busy with two or three men, as well as she ; I couldn't hear all that was said.

Q. And didn't he tell her it would be useless to attempt to resist, because they were going to lay the pipe ?

A. I don't remember.

Q. Well, he might have said it.

A. Oh, yes ; I don't dispute that.

Q. Did it rain while you were there that morning ?

A. No, sir.

Q. What ?

30

A. No, sir.

Q. Did it rain that day ?

A. It was raining in the afternoon.

Q. Now, you say, you went there at eight o'clock in the morning ?

A. About eight o'clock.

Q. And that the fences were down ?

A. Yes.

Q. Are you sure that it was eight o'clock in the morning ?

40

A. Yes, sir ; it was as late as that.

Q. Was it not later ?

A. It might have been.

Q. It might have been how much later ?

A. Well, a half an hour it might have been.

Q. Couldn't it have been later than that ?

A. I don't think so.

Q. Why do you say you don't think so ?

A. Because that was the first thing I did after I got  
10 my breakfast, and I got up before light.

Q. Wasn't it after ten o'clock ?

A. I am quite positive it wasn't.

Q. Are you sure ?

A. Yes, sir.

Q. As sure of that as you are of anything you have testified to ?

A. Yes, sir ; as sure as anything I have testified to ; I know it was not ten o'clock.

Q. Are you perfectly positive of that ?

A. Yes, sir ; that I am perfectly positive of.  
20

Q. You have been twice before the Court and jury here in this case, haven't you ?

A. Three times, I guess.

Q. Three times ?

A. I think so.

Q. Did you state on one of those occasions this : " Q. Did you not stand and put your body, and did not Aletha stand and place her body immediately in front of it as it was being rolled on from the Blauvelt line ?" And  
30 you started to answer, " We went up"— " Q. (Interrupting.) Just answer the question." " A. We went up and forbid them coming on, while the pipe was still on the Blauvelt line" ?

A. Yes.

Q. Did you make that answer ?

A. Yes, sir ; certainly.

Q. That is, while it was still on the Blauvelt line ?

A. Yes, sir.

Q. You said to them that they shouldn't roll the pipe  
40 on Mr. Slingerland's line or on the right of way ?

A. No, sir; not on the right of way; in fact, it was not on the right of way; they were opposite Mr. Slingerland's farm.

Q. You forbid them coming on while on the Blauvelt line?

A. Certainly; forbid them from coming on Mr. Slingerland's land; they had rolled one on already.

Q. What do you mean by forbid them while they were on the Blauvelt line?

A. Because they were rolling pipe off his line onto Mr. Slingerland's; they had already rolled one or two, and we knew, of course, they were likely to roll more, and were in the act of doing it.

Q. In this case you said: "We went right up and forbid them coming on while the pipe was still on the Blauvelt line." Did you state that?

A. If it is there, why, certainly; that's just what we did, too; but there had been before that, I think, two pipes rolled on.

20

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CHARLES D. ROMONT, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker:

Q. Where do you live, doctor?

A. At Pompton Plains, N. J.

Q. You are a practicing physician?

A. Yes.

30

Q. How long have you been practicing at the Plains?

A. About in the neighborhood of thirty years.

Q. How near is your residence or office to the home of Aletha B. Slingerland?

A. It is about an eighth of a mile, I should say.

Q. Did you know her before December 24, 1891?

A. Yes.

Q. How long had you known her?

A. I have known her, that is, acquainted with her, ever since I have been on the Plains--Pompton Plains 40

—that is, from the time I commenced practicing; I was acquainted with her during the time I have been on the Plains.

Q. Can you state what her physical condition was prior to December 24, 1891?

A. It seemed to be in good condition, physical condition; her physical condition was good.

Q. When did you first see her after December 24, 1891?

10 A. Well, I was called in on April 28, 1893; that was the first call I made.

Q. (By Mr. Coult.) '93?

A. I think it was '93.

Q. April, '93?

A. The 28th of April; I was called then in consultation with Doctor Morgan; but previous to that they had sent for me, but I was away from home at the time previous to that.

20 Mr. Coult, in behalf of defendants, moved that the last part of the answer be stricken from the records.

The Court: It may be stricken out.

Q. (By Mr. Riker.) What condition did you find her in that time, physically?

The Witness: April 28th, 1893?

Mr. Riker: Yes.

30 A. Well, she was in an agitated condition; the arms, the involuntary motion of part of the arms, and twisting of the body in various contortions; and the heart was weak, the cardiac action was weak.

Q. Did you notice anything as to her color?

A. Her color was pale, ænemic.

Q. What do you mean by ænemic?

A. That is, loss of blood, in a bloodless condition; that is, the red corpuscles of blood being deficient.

Q. Did you make any examinations as to sensation?

40 A. I examined, yes, the extremities; used the point of a needle; there seemed to be a loss of sensation.

Q. What do you call that ?

A. That is loss of sensation.

Q. Yes. How about the muscles ?

A. Well, the muscles—there was no reflex action from this pricking of the needle into the limb or the skin ; it produced no reflex action, no contraction of the muscles of the limb.

Q. Well, in plain English terms that we can understand, what was the matter with her ?

A. She was, when I saw her at that time, suffering 10  
from hysteria.

Q. Well, what is hysteria ?

A. It is a morbid condition of the whole nervous system—that is, a functional disturbance.

Q. Is it recognized as a disease ?

A. Yes.

Q. Treated as such ?

A. Yes.

Q. When did you next see her ?

A. I saw her again on the 29th, I think, of this same 20  
month—the 29th of April.

Q. What was her condition then ?

A. She was in about the same condition.

Q. Did you continue to see her from time to time ?

A. I saw her at different periods, yes.

Q. And have you since that time made any special examinations ?

A. Again, in 1894—it was in April, '94, I was called  
in again.

Q. Who was with you at that time ?

30

A. Dr. Morgan, in consultation.

Q. What condition did you find her in then ?

A. Her condition hadn't improved any ; she was in a pale, ænemic condition ; loss of muscular power, weak heart and feeble pulse. And I made an examination of the muscles again and used the galvanic battery at this time to test her sensations.

Q. What result did you obtain from the use of the galvanic battery ?

40

A. I did not get any reflex action—that is, the muscles did not contract under the action of the battery on the skin, the pole of the battery.

Q. Can you say whether at that time she was in a better condition, in a worse condition or in the same condition as before?

A. Her condition was about the same at that time; very slight improvement, if any.

Q. What did that indicate, if anything, as to the  
10 future of the disease?

A. Well, the prognosis would be rather unfavorable—an unfavorable prognosis; that is, she would probably remain in a feeble condition; very slight improvement; might be slight improvement.

Q. Have you seen her since then?

A. Yes, I have seen her at different periods.

Q. When did you see her last for any length of time?

A. I saw her again in 1896, in '96 I treated her again.

Q. What condition did you find her in then?

20 A. The heart's circulation had improved some; in fact the physical condition had improved some, not marked; but had improved some, to a certain extent; but still she was in the same condition, with a slight improvement.

Q. What was the condition of her color at that time?

A. She was still pale.

Q. What was the condition of her limbs?

30 A. The limbs were about in the same condition—that is, there was no response to the—that is, no reflex action, again to the poles of the battery.

Q. When did you next treat her?

A. I saw her at other visits at different times, and she had been at the office at different periods in that interval between '97 and '96.

Q. Did you see her any time last year?

A. I saw her a year ago—a year ago this May.

Q. What was her condition then?

A. She had improved some, but was still in what we call a state of chronic invalidism.

Q. When you say "chronic," what do you mean by that?

A. That is, that she will not be entirely—that is, restored again to her health.

Q. When did you last see her, Doctor, at all?

The Witness: That is, in a professional capacity?

Mr. Riker: No, in any capacity?

A. Well, I have seen her in a carriage on the road at 10 different intervals within the last year.

Q. When did you last see her professionally?

A. In May I think, of '90—in May, last May—1902.

Q. (By Mr. Coult.) What?

A. Not this May; a year ago in May, I think it was, or June; it was in the Spring; at that time I was called in; she was suffering from some other trouble, some other disease at that period; that is what I was called in for professionally.

Q. (By Mr. Riker.) Well, now what would you call 20 her disease, if it is a disease; has it an existence?

A. Well, she is suffering from neurasthenia.

Q. What does that mean?

A. That means loss of nerve power; nerve exhaustion or loss of nerve power.

Q. Is that likely to come in her case from hysteria?

A. It does follow; not in every case, but it will follow; it does follow that some times.

Q. Is neurasthenia a recognized disease?

A. Yes. 30

Q. Can you give us the usual causes of hysteria—the causes that are usual.

A. Brought on from mental excitement or from shock produced by any excitement or accident, nervous shock; by exposure and by disease of other organs, especially the organs of the pelvis, uterine organs.

Q. (By Mr. Coult.) Of generation?

A. Of generation; yes.

Q. (By Mr. Riker.) Is there any age of a girl when this disease is more easily produced than at another? 40

A. Well, more at the menstrual epoch; more frequently occurs in females at the menstrual epoch.

Q. That usually occurs at what age doctor?

A. It occurs from twelve to thirty—from twelve years to thirty—between those periods.

Q. Can you say what would be the natural effect of rolling a pipe four feet in diameter against the body of a girl of seventeen, with reference to this disease?

10                    Objected to as incompetent and not as a proper hypothetical question, not properly stated.

Mr. Riker: I will change the form of the question a little. Would the rolling of an iron pipe four feet in diameter against the body of a girl who was standing, be likely to produce any effect on the nervous system of a girl, which would lead either to hysteria or neurasthenia?

20                    Objected to for the same reasons last above stated.

The Court: It would depend on what force it rolls. Roll of pipe against her. I don't think that question is competent in that shape.

Mr. Riker: I will add to it the condition that the pipe was being rolled slowly against her.

30                    Objected to for the same reasons.

The Court: I overrule the question.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly,

A. Q. GARRETSON, [L. s.]

*Judge.*

Q. When you say that this disease would likely be produced by shock, what do you mean by shock?

A. Well, I mean through fright, mental fright.

Q. Does it make any difference as to the cause of the fright?

The Witness: That is, let me understand the question.

Mr. Riker: Do you understand the question?

10

The Witness: No; I don't understand that question.

Mr. Riker: Well, would the character of the fright, great or little, be likely to enter into this question of shock as an element in producing the disease called hysteria?

Objected to.

The Court: I do not see how these are expert questions.

20

Mr. Riker: He defines shock as a nervous fright.

The Court: He has not defined shock yet,

Mr. Riker: That is what I understood him to define.

The Court: I have not understood him to define shock at all.

Q. Will you define shock, then? Let us get it on the record.

A. Mental shock, from excitement.

Q. (By Mr. Coult.) Eh?

A. From some excitement in the girl, of the nervous system; the excitement acting upon the nervous system produces shock.

Q. (By Mr. Riker.) You say the excitement produces the shock?

A. Yes.

Q. But what is shock?

40

A. Well, it wasn't any physical shock; I would not call it physical.

Q. (By the Court.) Then you mean to say that the girl, a pipe rolling against her, would not have anything to do with it?

A. Only the excitement at the time, being in an excited state, in an excited condition.

Q. (By Mr. Coult.) A pure question of excitement?

A. Excitement would bring on this condition you  
10 speak of.

Q. (By Mr. Riker.) Then if the rolling of the pipe produced the excitement—

A. Yes (interrupting).

Q. —that would be the cause of it?

A. That would cause it.

Q. Now, what I want to get at is this: Would the greater excitement or less excitement produce shock which you would characterize as greater shock or less shock?

20 A. Well, no; I—

Q. (Interrupting.) I confess I don't get quite what the condition of shock is from your standpoint, doctor.

A. My understanding it is from the excitement, from the surroundings.

Q. That is the result of it?

A. The result; yes.

Q. But when we have shock what have we—what is our condition when we have shock?

Mr. Corbin: Mental shock.

30

A. It isn't physical—no physical shock.

Mr. Coult He asks you what the effect of mental shock is.

The Witness: Well, to disturb the functions of the whole mental system.

Q. (By Mr. Coult.) What?

A. It might effect the nervous system because of func-  
40 tional disturbance.

Q. (By Mr. Riker.) Now, what would be the first symptoms of shock which afterwards produced hysteria—what would be the first symptom you would be likely to notice?

A. Well, the system would be in an agitated condition, and probably the muscles of the limb would be in motion or in voluntary action.

Q. Yes.

A. She may give a cry, or she may laugh.

Q. What would be the later symptoms? 10

A. Well, this exhaustion of the nervous system and the weakening of different organs of the body.

Q. Have the symptoms which you have stated as appearing in this girl—namely, the lack of sensation and the loss of reflexes—any relation to the mental condition?

A. Well, my opinion is that this results from the—it is a hysterical—it is hysteria—this loss of sensation is connected with this disease hysteria.

Q. Is it a physical or a mental disease? 20

A. It is considered mental—that is, a functional disease of the different organs—that is, the whole nervous system.

Q. It affects the whole nervous system?

A. Yes, sir.

*Cross-examination* by Mr. Coult:

Q. Now, doctor, let's see if we understand each other; I understand you to say that this girl had been suffering, is suffering now, from neurasthenia? 30

A. Well, she is in a neurasthenic condition; yes.

Q. In fact, that may be one of the consequences of hysteria?

A. Yes?

Q. For when you first saw her she had symptoms indicating that she had had hysteria?

A. Yes.

Q. You did not see her, as I recollect it now, for more than a year after the occurrence? 40

A. It was a year after; yes.

Q. While you were their family physician you were not called in?

A. I was called in, but I was absent.

Q. Well, you did not come, anyhow?

A. No, sir.

Q. You didn't see her for a year?

A. I didn't see her; no.

Q. When you did see her she was suffering from hysteria—

A. (Interrupting.) Yes.

Q. —and ænemic condition?

A. Of the blood; yes.

Q. Now, I understand you to say that may be caused by fright?

A. This hysteria may be caused by fright—this nervous excitement.

Q. Might be caused by fright or nervous excitement?

A. Or nervous excitement.

20 Q. A girl going out in the rain, where they were laying down pipe, and trying to resist the laying of that pipe, might get nervous, I suppose?

A. Well, yes; she could.

Q. A young girl?

A. Yes, that age.

Q. Likely to get nervous?

A. Yes.

Q. Your more recent examinations, Doctor, have been, I suppose, with reference to testimony to be

30 given in these cases?

A. Not in the last two years—not in the last year; I haven't been called in to examine her as to this disease in the last year, but for another trouble she had.

Q. I say with reference to this particular thing, you have examined her once or twice with a view to giving testimony in this case?

A. Yes, in consultation with Dr. Morgan.

Q. What other trouble were you called with reference to?

A. It was last May ; she was suffering from what we call eryous and neuralgia.

Q. (By Mr. Corbin.) What is that first disease ?

A. That is a form of influenza or cold of the head and throat.

Q. (By Mr. Coult.) Catarrhal ?

A. It is an acute disease from exposure to atmospheric changes.

Q. There was some question as to whether she hadn't had some menstrual trouble, wasn't there ?

10

A. Well, I couldn't find anything of that kind ; that is, from external appearances.

Q. Eh ?

A. From external appearances I didn't find any such trouble ; or from questioning the girl.

Q. Had you some idea that it existed ?

A. The idea would be this : In this trouble, hysteria, at the menstrual epoch those troubles might be produced.

Q. And you looked into that matter ?

20

A. Yes, sir.

Q. Did you succeed ?

A. She would not allow any examination of those organs ; I asked her once or twice.

Q. Had you heard from her mother, or otherwise, that she had had some menstrual trouble ?

A. No.

Q. Did you know she had a rupture ?

A. I knew she had a rupture ; yes.

Q. How long had that continued ?

30

A. Oh, from a child up

Q. From a child ?

A. Yes ; she wore a truss, as I understood her.

Q. This condition in which you discovered this girl to be frequently arises, does it not, from menstrual trouble ?

A. It does—yes.

Q. It is one of the large causes of that condition in females ?

A. Yes.

40

Q. (By Mr. Riker.) How serious a rupture was this, doctor?

A. Not serious, no; in fact, I have never been called upon to treat her or examine her for this rupture; she never had any trouble from it.

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JOHN C. MORGAN, sworn in behalf of plaintiff.

10 *Direct examination* by Mr. Riker:

Q. Doctor, you are a practicing physician?

A. Yes, sir.

Q. At what place?

A. Pompton Lake.

Q. How far is that from Miss Slingerland's home?

A. Three miles.

Q. How long have you been practicing there?

A. About thirteen years.

20 Q. When did you first see her?

A. In the Fall of '92; September, I think it was.

Q. Had you known her before that?

A. Yes.

Q. Did you ever attend her professionally before that?

A. No.

Q. At the time that you mention did you make any examination of her?

Mr. Coult: That was September, '92.

80

The Court: '92, was it?

The Witness: Yes, sir.

Mr. Riker: Did you make an examination of her at that time, doctor?

A. Yes, sir.

Q. (By Mr. Coult.) Eh?

A. Yes, I did.

40 Q. (By Mr. Riker.) What was the condition of her heart?

A. Her heart was weak.

Q. (By Mr. Coult.) What did you say?

A. She had a weak heart, palpitation of the heart and a weak pulse; that is right; seemed to be nervous; a good deal of pain in the abdominal region.

Q. (By Mr. Riker.) What was her color?

A. Well, she was rather pale at that time.

Q. When did you next see her, if you can recall?

A. The next day.

Q. Well, what was the trouble with her at that time? 10

A. She had pain in the abdominal region, extending from the stomach down into the intestinal tract; suffering from pain.

Q. (By Mr. Coult.) Eh?

A. She was suffering from pain.

Q. Colic?

A. Pain in the abdominal region.

Q. (By Mr. Riker.) When did you next see her?

A. I saw her the following day after that, and she was improved; the pain was better—had subsided. 20

Q. Yes?

A. She seemed to be improved after that, and I didn't see her again.

Q. Did you make an examination of her at any time with Dr. Romont?

A. Yes, after that; the following year after that.

Q. What was the condition of her heart at that time? What was the date of that?

A. That was in 1893; at that time I found her in a weak state; her pulse was weak, her heart was weak, 30 pale complexion, and ænemic state of her blood; a sort of a jerking sensation in her muscles, of a hysterical nature.

Q. Did you test her with a needle?

A. Yes; took the needle and applied it to the lower extremities to test her sensibilities; to see whether there was any response when you touched her with the needle; didn't seem to give any reflex action from the effects of the needle.

Q. Do you remember whether you tried an electric battery on her?

A. I don't remember whether we tried an electric battery at that time or not; it was later on, I think, that we tried an electric battery.

Q. When did you next see her?

A. That was in '94.

Q. What was her condition at that time?

A. Well, pretty much the same condition; we tested  
10 her by the needle application and the electric battery; tried to get up a reflex action of the nerves and her muscles, but we didn't get any; she seemed to be in a nervous state of excitability at that time, and her pulse was rapid; her heart was very rapid; she still had that same ænemic condition as she had before.

Q. What was the matter with her at the first time you saw her, doctor?

A. She was taken very suddenly with a very acute pain in the abdominal region.

20 Q. (By Mr. Coult.) Colic.

A. Colic you might call it.

Q. (By Mr. Riker.) That was an acute trouble?

A. Acute trouble; acute inflammation.

Q. You made no examination except for that purpose?

A. No examination for that purpose; I made, of course, an examination of the pulse and heart at that time, from the condition of things.

30 Q. Did the condition of the pulse and heart differ the next time you saw her from when you first saw her:

The Witness: The next day.

Mr. Riker: No; I mean the next year, some time after.

A. She seemed to be pretty much the same; a weak pulse and weak heart.

Q. What was the matter with her at the time you saw her in '93?

A. At that time she was suffering from nervous  
40 trouble.

- Q. Well, what do you term it ?  
 A. Well, she was in a hysterical condition ?  
 Q. Has it a name ?  
 A. Hysteria.  
 Q. Is that recognized as a disease ?  
 A. Yes, sir.  
 Q. And the last time you saw her what was her disease, trouble ?  
 A. About the same ; but she had improved a little.  
 Q. What are the ordinary symptoms of hysteria ? 10  
 A. Well, they vary some ; nervous excitement, twitching of the muscles, a jerking sensation ; the person laughs and cries.  
 Q. How about sensations ?  
 A. The sensations are impaired to a certain degree.  
 Q. What's that ?  
 A. I say the sensations are impaired to a certain degree.  
 Q. And how about the reflexes ?  
 A. They are certainly impaired to a certain degree. 20  
 Q. What parts or organs does hysteria affect ?  
 The Witness : What organs does it affect ?  
 Mr. Riker : Yes ; what is it.  
 A. It affects—it is a disease peculiar to women.  
 Q. Yes.  
 A. More particularly so than it is to the other sex ; it affects the genital organs, the uterus.  
 Q. Yes.  
 A. The ovaries. 30  
 Q. Well, is it a disease of the muscles, or what part of a person ?  
 A. A nervous disease.  
 Q. Affecting the action of the nerves ?  
 A. Affecting the nerves in general.  
 Q. All the nerves of the body, all the nerve centres !  
 A. Pretty much.  
 Q. Tell us what causes can or do produce hysteria ?  
 A. Shock—shock to the mental system.  
 Q. And by that you mean ? 40

Mr. Coult: Shock to the mental system, he says.

Mr. Riker: Well, what do you mean by that?

A. I mean shock that will affect the nervous system.

Q. Yes; go on.

A. Any serious shock; it might be shock produced by an injury or by some mental strain.

Q. Would fright produce it?

10 A. Fright? Yes.

Q. Would a blow produce it?

A. Yes, if it was severe enough.

Q. Depending, I suppose, somewhat on the condition of their person and the severity of the blow?

A. Yes, sir; the condition of the person and the severity of the blow.

*Cross-examination* by Mr. Coult:

20 Q. Doctor, you saw her about a year after the occurrence that is here spoken of?

A. Yes, sir.

Q. For the first time?

A. Yes, sir.

Q. Never had seen her before, and had never been called before professionally?

A. No, sir; never had been called before.

Q. Never knew anything about her condition?

A. No, sir.

30 Q. Then when you were called she had an attack of acute colic?

A. Yes, sir.

Q. And you treated her for that?

A. Yes, sir.

Q. And all the other occasions when you have examined her it has been with reference to giving testimony in this suit, hasn't it?

A. Yes, sir.

40 Q. Now, you knew that Dr. Romont was the family physician?

A. Yes, sir.

Q. And had attended her?

A. Yes, sir.

Q. When you were called upon to make these examinations did you make inquiry of him as to her previous condition?

A. I don't remember.

Q. Eh?

A. I don't remember that.

Q. Did you not testify on your last examination that 10  
you did?

A. I don't remember.

Q. Let me read you some of the questions put to you and the answers you then made.

A. All right.

Q. (Reads.) "Who was the regular physician? A. Dr. Romont. Q. Did you ask him about it? A. He was not at home at that time. Q. But subsequently did you learn?"—I will go back to find out what it was about. (Reads.) "Q. She was in a condition you call 20  
æmemic? A. Yes, sir. Q. She was weak at that time? A. Yes, sir. Q. That is, pale? A. Yes, sir. Q. Do you know whether she had trouble as a female—female complaints? A. No, sir. Q. Or whether she had before? A. No, sir. Q. Did you make inquiry to find out? A. No, I did not. Q. Did you learn from any source whether she had had? A. No, sir. Q. Did you ask her physician, Dr. Romont? A. He was not at home at that time. Q. Well, subsequently did you learn? A. I think he has said something of that kind. 30  
Q. That is, Dr. Romont? A. Yes. Q. That she had that trouble? A. I think—yes, I think I remember now that he said something about that. Q. Did he describe to you the character of that trouble? A. He said some trouble during her menstrual period, with her menses. Q. And that would produce the whole effect, would it not? A. Sometimes it does." Now, then, do you remember whether Dr. Romont told you that or not?

A. No, I have forgotten.

Q. You have forgotten it?

A. Yes, sir.

Q. Since the last examination?

A. I have forgotten it.

Q. Menstrual trouble would produce the same effect, wouldn't it?

A. Yes.

Q. And usually is it not in females one of the probable causes of this trouble?

10

The Witness: Hysteria?

Mr. Coult: Yes.

A. Yes.

Q. When you speak of shock—you have been talking about it—you mean such shock as might arise from fright?

A. Yes.

Q. For instance, intelligence of a sudden death might  
20 produce shock?

A. Yes, sir.

Q. Or a fright from witnessing an accident?

A. Yes, sir.

Q. Or a fright from this girl going, on a rainy day, and trying to stop these men from laying a pipe—nervous excitement might result, might it not?

A. Yes.

Q. Might it not?

A. Yes, sir.

80 Q. If she had had menstrual trouble before, it would be quite likely to effect that?

A. Yes, sir.

*Re-direct examination by Mr. Riker:*

Q. Doctor, what is the effect of hysteria upon the menstrual organs, or female organs—genital organs?

The Witness: What effect has it on the—

40

Mr. Riker: (Interrupting) Yes.

A. Well, it stops the circulation of the blood ; sometimes to act very freely, and sometimes not to act very freely.

Q. I want to know, supposing a perfectly healthy girl up to that period gets hysteria, what effect does it have on her organs ?

A. Well, it—

Q. (Interrupting.) What's that ?

A. It might have a very serious effect.

Q. (By Mr. Coult.) Or might not have ?

A. Might not.

10

JOHN H. BEACH, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker :

Q. Mr. Beach, where do you live ?

A. Newark.

Q. What is your business ?

A. Painter.

20

Q. How long have you been living in Newark ?

A. About ten years.

Q. In 1891 where were you living ?

A. Pompton Plains.

Q. Working for whom ?

A. Mr. Slingerland.

Q. On the farm ?

A. Yes, sir.

Q. And on the morning of December 24, 1891, where were you ?

A. I was at his place.

Q. Do you remember who was with you that morning ?

A. Well, Mr. Zeek and another man who worked there.

Q. And you worked there ?

A. Yes, sir.

Q. Did you go anywhere that morning ?

A. Yes, sir.

40

- Q. Where did you go?
- A. I went over for Mr. Samuel Slingerland.
- Q. What time of the morning did you go?
- A. About half-past seven or quarter to eight.
- Q. What time did you come back?
- A. I came right back.
- Q. When did you next see Mr. Samuel Slingerland?
- A. Well, I saw him right after that, out in the field.
- Q. Did he follow you back?
- 10 A. Yes, sir.
- Q. Now, what was the occasion of your going for Mr. Slingerland?
- A. Well, I was asked to go for him.
- Q. What's that?
- A. I was asked to go.
- Q. By whom?
- A. Miss Aletha.
- Q. Do you remember whether any men came on the place that morning?
- 20 A. Yes, sir.
- Q. What part of it?
- A. Well, they came on where the pipe line was to go through.
- Q. On the north or south of the property?
- A. On the north.
- Q. Now, had they come on on that place at the time you went for Mr. Samuel Slingerland?
- A. Yes, sir.
- 30 Q. Just tell what happened on the north end of the pipe line, on Mr. Slingerland's property, before you went for Mr. Samuel Slingerland?
- A. Well, they started to take the fence down and some of the men started to dig.
- Q. How much of the fence was down when you went for "Sam" Slingerland?
- A. Scarcely any of the fence was down; they just started, and—
- Q. (Interrupting.) How much of the digging?
- A. A very little; they had just started.

Q. How many men were working,—had their implements,—when you started ?

A. Probably 40 or 50 ; I couldn't say.

Q. What was the condition as to the fence and the digging when you got back ?

A. They were still digging, and the fence was down.

Q. What did you do after you got back ?

A. I went on in the barn about my work.

Q. Do you know where Aletha was when you got back ?

10

A. Yes ; she was out in the field.

Q. And after you went in the barn you said you went to your work ; what was your work ?

A. I was taking care of the horses.

Q. Where ?

A. In the barn—in the stable.

Q. After you went in the barn, what did you see ?

A. Well, I saw them rolling pipes.

Q. How could you see them rolling pipes from the barn ?

20

A. Out of the door.

Q. Where was the door ?

A. Back of the barn.

Q. Do you mean by the back of the barn north or east or west ?

A. North.

Q. What kind of a place was there there to look out of ?

A. There was a window.

Q. Was any one with you there looking out ?

30

A. Yes, sir.

Q. Who was it ?

A. Harry Price.

Q. (By Mr. Coult.) Who ?

A. Harry Price.

Q. (By Mr. Riker.) How much of the distance,—length of pipe line,—could you see from where your outlook was in the barn ?

A. About a quarter of it, I should think.

Q. And what quarter of it could you see ?

40

A. The north end.

Q. Who did you see at that portion of the pipe line?

A. I saw the men that were working there.

Q. You said you saw some one rolling pipe?

A. Yes, sir,

Q. Where were they rolling pipe with reference to the excavation or trench?

A. On the east side of the trench.

Q. And how far from the trench?

10 A. Well, I couldn't exactly say how far.

Q. Did you see Aletha Slingerland out there?

A. Yes, sir.

Q. Where was she?

A. She was there on the east side of the trench.

Q. How far from the north fence line?

A. Oh, right near the fence.

Q. Right near the fence, you say?

A. Yes, sir.

Q. And can you tell how far away from the trench she was?

20 A. Oh, about 25 feet, I should think; I wouldn't say positive.

Q. Did you see Samuel Slingerland there?

A. Yes, sir.

Q. Where was he with reference to the fence?

A. Well, he was right near her.

Q. Were they standing or walking?

A. Well, they were standing; they did walk; of course they had to walk up there to get there.

30 Q. Just when they reached there they stood, you say?

A. Yes, sir.

Q. What happened after that?

A. Well, they rolled the pipes in.

Q. What happened to Aletha when they rolled the pipes in?

Objected to as leading.

A. She still stood there.

The Court: I think the question is proper.

40 Q. What happened?

A. I say they rolled the pipe on her.

Q. Well, what effect did it have on her as far as you could see?

A. It didn't have any effect; she stood there until they moved her.

Q. Who moved her?

A. I couldn't say; I don't know who it was.

Q. Where did they move her?

A. Just backed her out of the way.

Q. Then what happened to the pipe after that, or 10 what did they do with it?

A. They continued to roll it.

Q. Did you see the next pipe rolled on?

A. Yes.

Q. Where was Aletha when they rolled the next pipe on?

A. Well, about the same place.

Q. That is, the place where you first described her?

A. Yes, sir.

Q. What happened to her at that time? 20

A. The same; they took her out of the way.

Q. How many times did that happen?

A. That I couldn't tell you; three or four times, I guess.

Q. How old were you at that time?

A. About fifteen.

Q. Can you tell us what time it was when you last saw Aletha Slingerland from the barn as you have described her?

The Witness: On that morning? 30

Mr. Riker: Yes.

A. Well, I should think it was about 9 o'clock.

Q. Can you say with whom she left the last time?

A. No, sir; I cannot.

Q. Did you see Jacob Slingerland that morning, do you remember?

A. Yes, sir.

Q. What time did you see him?

A. I saw him early; about 7 o'clock, I guess. 40

- Q. Where was he when you saw him?  
 A. He came over there at the barn.  
 Q. Had Andrew Slingerland left at the time Jacob first came over?  
 A. I think he had?  
 Q. Do you recall who took Andrew Slingerland away that morning?  
 A. No; I couldn't say.  
 Q. You can't say whether you did or not?  
 10 A. No; I cannot.  
 Q. Did you see Jacob Slingerland again that morning after 7 o'clock?  
 A. He went away with a wagon, and I didn't see him until after that; until later.  
 Q. Whose wagon did he go away with?  
 A. Mr. Andrew Slingerland's.  
 Q. And who put up the wagon for him, do you remember?  
 A. No, I couldn't remember that; probably I did.  
 20 Q. At what time did he come back?  
 A. He came back about half-past 10, I should think.  
 Q. Did he bring back the wagon?  
 A. Oh, yes.  
 Q. At that time?  
 A. Yes, sir.

*Cross-examination* by Mr. Coult :

- Q. Have you gone over your testimony with any person recently?  
 30 A. No, sir.  
 Q. You testified in this case before?  
 A. I think I did; yes, sir.  
 Q. Which one of the Slingerlands came in first that morning, Jacob or Samuel?  
 A. Samuel didn't come in until I went for him.  
 Q. Until you went for him?  
 A. Yes, sir.  
 Q. What time did Jacob come in the morning?  
 A. I couldn't say positively.

Q. Well, you have no way of fixing the time at all, have you, excepting from your memory?

A. That's all.

Q. You don't recollect to have observed the time?

A. Well, I know from the time that the wagon went to the train and so on; different things of that kind; that's all?

Q. Did you say that Jacob came over at 7 o'clock in the morning?

A. About as early as that.

10

Q. Well, do you mean as early as that, or that it might have been earlier or might have been later?

A. Well, it was as early as that; it was about that time.

Q. How do you know it was about that time?

A. Well, I know from going to the train.

Q. Eh?

A. I know from going to the train—from the time I got up and had my breakfast; that's the only way I know.

20

Q. Did you see anybody take down the fence that morning?

A. I saw them start to take it down.

Q. You saw them start to take it down?

A. Yes, sir.

Q. Was there a rail moved before 10 o'clock in the morning?

A. Yes, sir.

Q. Do you swear to that?

A. Yes, sir.

30

Q. By whom?

A. I don't know who the men was.

Q. How early?

A. Before 8 o'clock; I am positive of it.

Q. That's all you know?

A. That's all.

Q. Did you see Mr. Gillespie there that morning?

A. Probably I did; I don't know whether I did or not.

Q. Did you see this gentleman (indicating)?

40

A. I don't remember ; I don't remember his face.

Q. Were you down at the fence where they were taking the pipes on ?

A. No, sir.

Q. You were not in that vicinity at all ?

A. No, sir.

Q. No nearer than the barn ?

A. No, sir.

Q. The barn is several hundred feet away, isn't it ?

10 A. Not very many hundred.

Q. What ?

A. Not many hundred.

Q. Well, it is several hundred feet away ?

A. Yes ; I don't know how many.

Q. What were you doing around the barn ?

A. I was doing my work around the barn.

Q. You were not called upon to resist these men ?

A. No.

Q. Did you know they were coming on that morning ?

20 A. I didn't know until I seen them coming.

Q. Didn't you know they were likely to come ?

A. Well no, not in particular, I didn't.

Q. Had not Mr. Slingerland been preparing for it before ?

A. Not that I know of.

Q. He had put up two fences across the right-of-way, hadn't he ?

A. I believe he had ; yes, sir.

Q. What were they put up for, did he tell you ?

30 A. No, he didn't tell me.

Q. You knew there was a right-of-way sought to be laid out across his place, didn't you ?

A. I supposed there was ; I saw it on this day.

Q. You knew that pipes had been laid on both sides of the place ?

A. Yes, sir.

Q. (By Mr. Riker) What time did you have breakfast that morning, do you remember ?

40 A. About half-past six.

Q. Can you place the time of seeing Jacob Slingerland with reference to the time of breakfast?

A. Shortly after breakfast.

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WILLIAM PRICE, sworn in behalf of the plaintiff.

*Direct examination* by Mr. Riker :

Q. Where do you reside, Mr. Price? 10

A. Pompton Plains.

Q. What is your business?

A. Farmer.

Q. For whom are you working?

A. Working at home.

Q. Did you ever work for Mr. Andrew J. Slingerland?

A. Yes, sir, at odd times.

Q. Do you remember where you were on the 24th of December, '91? 20

A. Yes, sir.

Q. Where?

A. At Mr. Slingerland's.

Q. Were you working for him at that time?

A. No, sir.

Q. How did you happen to be there?

A. I went over to see John Beach after breakfast.

Q. What time did you go over there?

A. Between seven and eight, I guess. 30

Q. Where did you find him?

A. In the barn.

Q. What was he doing?

A. Doing his work.

Q. Do you remember anything particular happening that day?

A. Yes, sir.

Q. What:

A. They tore down the fence at the north of his property and started to dig on it. 40

Q. How soon was that after you went over to see your friend?

A. I should suppose about an hour—an hour and a quarter.

Q. Tell us just what you did see.

A. Well, that was the first I saw; tore down the fence or start to tear down the fence; and then, afterwards, I saw some people digging.

Q. (By Mr. Coult.) What?

10 A. First they started to tear down the fence, and after some came across and started to dig.

Q. (By Mr. Riker.) Where were you when you saw them?

A. In the barn.

Q. Could you see out of the barn?

A. I saw through the window.

Q. And where was the window?

A. At the north of the barn.

Q. How many men were working there?

20 A. Oh, about fifty, I should think.

Q. Can you say whether you remember seeing any one but the workmen there?

A. No, sir.

Q. Did you see Samuel Slingerland that morning?

A. I think I did.

Q. Did you see Aletha?

A. Yes, sir.

Q. Where did you see Aletha?

30 A. Between the barn and the line to the north of the lot.

Q. How long was she out there?

A. That I couldn't say.

Q. What was she doing when you saw her?

A. I think she was trying to stop them from coming on.

Q. And how near the fence line or north line of the property was she?

A. That I don't remember.

Q. Who was with her?

40 A. I think Samuel Slingerland was with her.

Q. How did she try? You say she was trying to stop the rolling of the pipe.

A. Yes.

Q. How was she trying to do it?

A. She stood in front of the pipe.

Q. Then what happened to her?

A. They rolled the pipe against her.

Q. Do you know how many times they did that?

A. No, sir; I don't remember.

Q. How old were you at that time?

10

A. About twenty.

Q. You say you saw the men digging; what were they digging?

A. The ground.

Q. And how long did they continue digging?

A. That I don't remember.

Q. How long did you stay at that window?

A. Oh, I was there off and on, back and forth.

Q. Well, altogether, between the time you first looked out and the time you looked out again?

20

A. Oh, I couldn't say.

Q. How many pipes did you see rolled on?

A. Two or three.

Q. And did you see Aletha removed from them at any time?

A. Yes.

Q. By whom?

A. By the workmen.

Q. And where was she taken on these occasions?

A. Taken off from the side of the line.

30

Q. Which side?

A. The east side, I think.

Q. That was towards the Pompton Turnpike?

A. Yes, sir.

Q. Do you remember whether you saw Mr. Zeek that morning?

A. I think I did.

Q. Where was he?

A. In the barn.

Q. Do you remember seeing him anywhere else?

40

A. No, sir.

*Cross-examination* by Mr. Coult :

Q. You remained in the barn ?

A. Yes, sir.

Q. And all you saw was from the barn ?

A. Yes, sir.

Q. Could you recognize any men that you saw at the time they were rolling in the pipe ?

10 A. No, sir ; I could not.

Q. Did you see this gentleman, Mr. Gillespie ?

A. No, sir ; not that I know of.

Q. You saw Aletha and Samuel Slingerland out in front of the pipe—

A. (Interrupting.) Yes, sir.

Q. —several times, didn't you, when they were rolling the pipes onto the land ?

A. Two or three times, I guess.

Q. And you saw them as many times taken away ?

20 A. Yes, I suppose so.

Q. By somebody ?

A. Yes.

Q. What was their purpose, so far as you could see, in getting in front of the pipe ?

Mr. Riker : How could he see the purpose.

Q. Was it for the purpose of preventing them from putting the pipe on ?

30 Objected to on the ground that their purpose cannot be seen.

Q. Was it for the purpose of obstructing and preventing the laying of the pipes ?

The Court : I suppose he can tell what he saw. How can he tell his conclusion ?

Q. When they were removed did they go right back in the same place again ?

A. Yes, sir ; I think they did.

40 Q. Did you see any pipe that touched either one of them ?

A. I was too far away for that.

Q. Eh ?

A. I was too far away for that.

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SARAH R. SLINGERLAND, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker :

Mrs. Slingerland, you are the wife of Andrew J. Slingerland and the mother of Aletha B. Slingerland ? 10

A. Yes, sir.

Q. How old is Aletha ?

A. Thirty.

Q. Where was she born ?

A. At Pompton Plains.

Q. And where had she lived up to the 24th of December, 1891 ?

A. Always had lived where she is living now.

Q. Did she go to school ?

20

A. Yes, sir.

Q. At what period did she go to school ?

A. Well, from about seven—probably up to fifteen.

Q. And where did she go to school ?

A. At Pompton Plains.

Q. Do you mean the public schools ?

A. Yes, sir.

Q. Do you know, of your own knowledge, how she stood in her classes ?

A. Always stood the highest.

30

Q. And after she left school, what did she do ?

A. She worked around the house—helped with anything that she was called upon to do.

Q. Did she assist in the housework ?

A. Yes, sir.

Q. With what ?

A. Washing, ironing and cleaning.

A. Anything else ?

A. And preparing the meals—anything she was called on to do about the housework.

40

Q. Did she do anything in connection with the farm work?

A. Nothing but pick berries sometimes—strawberries.

Q. Did she have any care of the horses?

A. Yes, sir.

Q. What did she do?

A. She would drive them—hitch them up when we wanted to go out.

10 Q. Do you remember whether she had a horse of her own?

A. She did.

Q. Did she drive it?

A. Yes, sir.

Q. How did she spend her time when not engaged in work?

A. Reading and sewing and playing the piano.

Q. Did she go to church?

A. Yes, sir,

20 Q. What did she do there; do you remember?

A. She used to assist in the Sunday School and Christian Endeavor.

Q. What part of the Sunday School did she have part in?

A. She taught the infant class.

Q. What was the condition of her health up to December 24, 1891?

A. She had always been well.

80 Q. Had she had any illness of any kind that you recall now?

A. Nothing more than is common to children; measles and whooping cough.

Q. Had she had any trouble with her genital organs?

A. No, sir; not at all.

Q. Did she ever have any trouble with her menses?

A. No, sir; not that I had ever seen.

Q. Did she ever have hysteria, neurasthenia or any thing of that sort?

A. No, sir; not at all.

40 Q. What was her temperament?

A. She was very mild.

Q. What's that?

A. She was a very mild disposition.

Q. What was her strength?

The Witness: Do you mean before that?

Mr. Riker: Yes.

A. She had the usual amount of strength that any one would have, as far as I know.

Q. Did you notice a weakness of any kind about the 10 girl up to the 24th of December, 1891?

A. No, sir.

Q. Where were you on the 24th of December, 1891?

A. I was sick in bed.

Q. Did you see your daughter that morning?

A. I did.

Q. At what time?

A. When she got up.

Q. And where were you when you saw her?

A. In my room.

20

Q. She came in there, did she?

A. Yes, sir.

Q. Do you remember who brought you your breakfast that morning?

A. Well, I have forgotten whether it was her or her sister.

Q. Was your room on the first or second floor?

A. The first floor.

Q. How was it situated with reference to the other rooms?

30

A. Adjoining.

Q. Adjoining what room?

A. The dining room and kitchen.

Q. On which side of the house?

A. The west side.

Q. What time was it, do you think, when you first saw her in the morning?

A. Perhaps about six o'clock.

Q. Did you see her later on?

A. Yes, sir.

40

Q. Do you remember whether she went out that morning?

A. She did go out.

Q. Do you know the time?

A. I couldn't say precisely the time.

Q. Well, about what time was it?

A. Between seven and eight, I should think.

Q. How was she dressed?

A. Very comfortably; very warm.

10 Q. What did she have on?

A. A woolen dress, a thick sack, and over that a waterproof cloak lined with red flannel, a fur hat tied with a ribbon and a rag, with the ribbon tied under the chin.

Q. When she went out that morning, at the time you speak of, did you notice anything particular or peculiar about her?

A. No, sir, I did not.

20 Q. So far as you could see, she was in normal condition that morning?

A. Yes, sir.

Q. When did you next see her?

A. After she came in the house from being out at the pipe line, as we called it.

Q. What time was that?

A. I couldn't just say when it was.

Q. Well, about what?

A. Oh, it may have been nine, or after nine.

Q. Well, was it before dinner?

30 A. Oh, yes, it was before dinner.

Q. Give us about how long before dinner it was?

A. Probably an hour. Oh, I couldn't tell you, for I don't just know.

Q. Was it some considerable time or a short time?

A. It might have been an hour or an hour and a half; I couldn't tell precisely.

Q. At what time do you have dinner?

A. We have it at 12 o'clock. It might have been later in the day; I couldn't say.

40 Q. What was her condition when she came in?

A. She was excited.

Q. What did she say?

A. Well, she said "Mamma, I couldn't never go out there again."

Q. Well, go on; what did she do?

A. She sat down on the bed by the side—

Mr. Coult (Interrupting) What she said I don't suppose is competent, and I move to strike that out.

Mr. Riker: I think it is competent, what she said in connection with her condition. 10

The Court: On what ground is it competent?

Mr. Riker: To show the condition of her mind.

The Court: How is that competent?

Mr. Riker: To show what she had been or was suffering from. 20

The Court: Strike it out.

Mr. Riker in behalf of the plaintiff prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

*Judge.*

Q. Go on and describe her actions? 30

A. I couldn't tell you, only that she acted excited.

Q. How—in what way excited?

A. Well, she acted different from what I had ever seen her act before; talked about being handled by the men outside.

Mr. Coult: Do not speak of what she said, only of her condition—what you saw.

The Witness: I don't know but what I have said that. 40

Q. (By Mr. Coult.) What ?

A. I don't know but what I did say that.

Q. (By Mr. Riker.) What did she next do ?

A. I can't tell you.

Q. How long did she stay there ?

A. I don't know ; I didn't time it, so I can't tell ; probably fifteen or twenty minutes.

Q. What was her condition during that time ?

A. All of the time in a nervous, excited state.

10 Q. Can you describe her actions with more particularity than you have ?

A. Well, she—she cried and threw her hands.

[Witness illustrates.]

Q. When you say she cried do you mean wept, shed tears ?

A. Yes.

Q. What do you mean by saying she threw her hands up ?

20 A. I mean she was excited and nervous ?

Q. She was how ?

A. (Illustrating.) Going this way and that way.

Q. In addition to the actions which you have described, were there any vocal utterances ?

Mr. Coult: We object to that, what they were ; we can't take that ; if she made any exclamations, I do not suppose that would be important.

30 Mr. Riker: The words might not be important, but the method of saying the words may be important.

The Court: What do you mean by vocal utterances ? Talking would be a vocal utterance ; a scream would be ; I suppose crying might be said to be.

Q. Did she make any noise when she was crying ?

A. No.

Q. When did you next see your daughter ?

40 A. I see her all day ; I couldn't say just when ?

Q. From time to time ?

A. From time to time through the day.

Q. What was her condition through the rest of the day ?

A. Just the same as it was when she first came to me.

Q. You said she cried when she first came in ?

A. Yes ; she didn't cry all of the time.

Q. How often did she cry ?

A. I couldn't tell you.

Q. More than once ?

10

A. Yes ; I have seen her cry a good many times since then for the same cause.

Q. But on that day ?

A. She might have three or four times ; at different times when she came to me.

Q. Where did she sleep that night, do you know ?

A. No, I do not ; I don't know whether she slept with me or in her own room.

Q. Do you know how she appeared the next morning ?

A. She was just in the same state as she was—she had been in during the day before. 20

Q. And how was her condition during that whole week ?

A. I didn't see any change.

Q. And since that time what has been her condition ?

A. Well, sometimes she would be better and other times would be worse.

Q. Worse than what ?

A. Well, worse than she was at the first time ; same as some of you have—as bad as some of you have seen her here ; very similar to those spells she had here in the court room. 30

Q. Simply the spells that she had—that is, the spells that you have seen her with at home ?

Mr. Coult: I move that that portion of the answer as to remarks of what took place at the last trial be stricken from the record.

The Court: Strike it out.

Q. Simply what you call the spells ?

40

A. Well, she cried and would tell how bad she felt.

Q. Well, when you say "cried," what do you mean?

Mr. Coult: I suppose she means she had hysterical spells.

The Court: Answer the question.

A. She would cry in an excited way, and not the same as when one is sobbing; that's as near as I can describe  
10 it to you.

Q. Do you know what hysteria is?

A. I have seen enough of it to know.

Q. What do you mean by that?

A. Well, that is when a person is entirely broken up and they can't control themselves.

Q. Where have you seen it?

A. Seen it here and seen it home.

Q. In who—who has had it?

A. Aletha.

20 Q. How many of those spells have you seen her in at home since this 24th of December?

A. I couldn't keep account of them.

Q. How many in a year, in a general way?

A. If there was anything to excite her at all, she could have them every day.

Q. How many might she have?

A. I couldn't tell you, Mr. Riker?

Q. Well, about how many in the course of six months, we will say.

30 A. Well, I would say twenty of them.

Q. And how violent have those spells been?

A. Sometimes they would be lighter than at other times.

Q. That doesn't quite make us understand, Mrs. Slingerland. When they are the most violent how violent are they?

A. Well, so that I have to do something for her to quiet her.

40 Q. Well, how far can she be heard when she has them?

A. Oh, probably on the outside they might be heard, if a person was standing and listening.

Q. What has been her physical condition since that time—December 24th?

A. Well, I know she can't do what she could do before that; can't possibly do it.

Q. In what respect? Is she able to walk?

A. Well, she walks, but—no, I don't think she can any distance.

Q. How about her going to church since the occurrence? 10

A. Well, she don't go regular; there will be times that she does go, and then times that she will—

Q. (Interrupting.) How about her Sunday-school?

A. Well, she don't go often to that; she has no class now.

Q. How about her washing and ironing?

A. She doesn't do it.

Q. Well, can she do it? That is the question.

A. No, sir; she cannot. 20

Q. How much of the time has she been at home since the 24th of December, 1891?

A. She has been most of the time at home; she went to the city a few days with her sister.

Q. And you have been at home with her?

A. Yes, sir; I have.

Q. So you have seen her continuously, have you?

A. Yes, sir.

Q. Can you tell us whether Aletha had been accustomed to go out rainy days at home when she was a 30 girl?

A. Why, yes, she did

Q. Did any ill effects ever follow her going out in the rain?

A. I never knew there was any.

Q. Had she before that time, so far as you know, been subjected to any blows of any kind?

A. No, not that I know of.

Q. Any accidents of any kind?

A. I don't know of any. 40

Q. Any force of any kind ?

A. If she was I never knew it.

Q. Or after that time ?

A. Not that I know of

Q. Have you ever heard of any ?

Objected to.

Q. What is her present condition, or condition this morning ?

10 A. Well, I left her nervous—in a nervous state.

Q. Well, what is the condition of her strength now ?

A. Well, she isn't but very little stronger.

Q. What is her color ?

A. She is pale.

Q. How about the interest she takes in things ?

A. She doesn't take the same interest that she did ; there are things that she can't do, so she doesn't care to do them.

*Cross examination by Mr. Coult :*

20 Q. Do you know, Mrs. Slingerland, whether Aletha had suffered with her menstrual troubles before this occurrence ?

A. No, sir ; she had not.

Q. You say she had not ?

A. No, sir ; she had not.

Q. Don't you recall that Dr. Romont proposed an examination for the purpose of ascertaining ?

A. I do not know that he did.

30 Q. No such examination was made ?

A. No, sir.

Q. You knew that she had had a rupture ?

A. Oh, yes, I knew that ; but that had been attended to.

Q. What's that ?

A. That had been attended to.

Q. Yes, I know that. Do you recollect the day of this occurrence—do you recollect the day of the 24th of December ?

40 The Witness : The day of the week it was ?

Mr. Coult: No. Do you remember the day?

A. Oh, yes; yes, sir.

Q. Was it a wet day?

A. It was a foggy, misty day.

Q. Ended in rain, did it not?

A. In the afternoon.

Q. Heavy rain?

A. In the afternoon.

Q. You spoke of Aletha coming in. Didn't she come 10  
in several times during the day?

The Witness: In my room, or from out of doors?

Mr. Coult: From out of doors.

A. I don't remember.

Q. You would not say that she did not come in more than once?

A. No, sir.

Q. Were you ill in the house? 20

A. Yes, sir.

Q. In bed?

A. Yes, sir.

Q. And there you couldn't know all that transpired either by her or anybody else?

A. Not everything.

Q. Mrs. Slingerland, you wouldn't say that she came in much before 12 o'clock, finally, would you?

A. It might have been between 11 and 12; it was not as late as 12; but I know she had been in before that 30  
from the first time she went out; up to that time she hadn't been in.

Q. You only know from what somebody told you?

A. Somebody didn't tell me that, for I know she came in and went out again.

Q. I mean to say, when she finally came in the last time it was pretty near 12 o'clock?

A. Yes; it was between 11 and 12 o'clock, probably.

AMZI ZELIFF, sworn in behalf of plaintiff.

*Direct examination by Mr. Riker :*

Q Mr. Zeliff, where do you live ?

A. Lincoln Park.

Q. How far is that from Pompton Plains ?

A. About three miles.

Q. How long have you lived there ?

A. I have lived there a long while—I have lived there  
10 all my life.

Q. How long is that ; let us know.

A. 72 years.

Q. You are a Justice of the Peace, are you ?

A. Yes, sir.

Q. How long have you been a Justice ?

A. Well, about 15 years.

Q. Do you remember where you were on the morning of December 24, 1891 ?

A. I was in—I was home and in the office—right by  
20 the railroad office.

Q. Do you remember meeting, on that morning, Jacob Slingerland ?

A. I do.

Q. What time was it ?

A. Well, to the best of my knowledge, it was anywhere between twenty minutes after nine and a quarter past ten.

Q. How do you fix the time ?

A. For this very reason, that the mail train goes out  
30 at a quarter after nine, or did at that time and does yet, and the postoffice is at the same place, and we generally went in to get our mail and then go home, and I was in the act of going home when Mr. Slingerland came ; that's the way I fix the time.

Q. Where did you see Mr. Slingerland ?

A. I saw him coming toward the Plains as I went to go up from the office to my house.

Q. Did you speak to him ?

A. Yes.

40 Q. In what capacity did he address you ?

A. Well, now, it is quite awhile ago, and the thing passed from my memory, and I didn't ever expect to be called on again; I think he told me that they had come there and broke in the place—was to work tearing down the fences.

Mr. Coult, in behalf of defendant, moves that the last part of the answer be stricken from the record.

Mr. Riker: The only purpose of this is to fix the time. 10

The Court: It is incompetent what anybody said to him. It will be stricken out.

Mr. Riker, in behalf of plaintiff, prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

Judge. 20

Q. Do you know Aletha B. Slingerland?

A. Yes, sir.

Q. How long have you known her?

A. From a little girl.

Q. Did you ever have any business with her?

The Witness: With Mr. Slingerland?

Mr. Riker: Or with Aletha?

A. I have, through her father. 30

Q. What was Aletha's general appearance and condition prior to December 24, 1891.

The Witness: So far as her health was concerned?

Mr. Riker: I asked about her appearance.

A. As good as any young girl I have ever seen.

Q. Have you seen her since that time?

A. Oh, yes. 40

Q. What has been her condition since that time ?

A. Her condition since that time is very pale ; I have never seen her since that time that she weren't.

*Cross-examination* by Mr. Coult :

Q. You were examined here before, were you not ?

A. Yes, sir.

Q. In this case ?

A. Yes, sir.

10 Q. Do you remember what you testified to ?

A. No, sir.

Q. I call your attention to one paragraph of your testimony : Q. "How do you come to remember the fact that you met Mr. Slingerland that morning" (referring to the visit that you spoke of at your place)? A. "Well, I remember that because he came down there and asked me—he says, 'I think they are going to try to come on the land.'"

The Witness : Didn't I say so here ?

20 Mr. Coult : Is that what you meant to say ?

The Witness : Isn't that what I said here ?

Mr. Coult : No.

The Witness : That's just what I did say.

Q. Is that correct ?

A. That is what I answered just a little while ago.

At this point the court adjourned until Thursday, May 7, 1903, at 10'clock in the forenoon.

30

SECOND DAY.

THURSDAY, MAY 7, 1903.

Parties present as before stated.

JOSEPH FEWSMITH, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker :

Q. Where do you live ?

40 A. Newark, N. J.

Q. And how long have you been practicing as a physician?

A. 26 years—27.

Q. Do you know Aletha B. Slingerland?

A. Yes, sir.

Q. When did you first see her professionally?

A. In 1894. I don't remember the month, but it was at the time of the trial here.

Q. And where did you see her?

A. At her home in Pompton.

10

Q. How did you happen to see her?

A. I was asked by the counsel in the case to examine her—by counsel on both sides.

Q. Did you make an examination?

A. Yes, sir.

Q. What did you find her condition?

A. I found the girl pale and aenemic, giving the history to me of repeated attacks of what seemed to be hysteria, showing at that time no symptoms of acute hysteria, but general symptoms of what might be called 20 neurasthenia, often called nervous prostration. She showed some muscular weakness, some loss of sensation at the surface, a general tendency to nervous excitability.

Q. Well, can you characterize in a name the nature of her trouble? What would you call it?

A. I should call it neurasthenia.

Q. And is that a disease, Doctor?

A. Yes, sir.

Q. Did you see her after that time?

A. Yes, sir.

30

Q. When?

A. In April, 1901.

Q. What was her condition at that time?

A. In general, the same as when I examined her before. The general debility, muscular weakness and aenemic tendency had possibly somewhat increased.

Q. Did you ever see her again?

A. I saw her again in May, 1901, here at the Court house.

40

Q. Were you in Court when she was on the witness stand ?

A. I was.

Q. Doctor, from your examination what can you say as to the probable outcome of her disease ?

Witness: From my examination in 1901, you mean ?

Q. Taken altogether, with your examination in 1894 ?

A. Taking all of my examinations together I would  
10 say that the girl will never probably be entirely well; will never be able to stand severe nervous strain or severe physical strain.

Q. What are the ordinary causes of a difficulty such as she has ?

A. Neurasthenia may come from severe sickness such as fevers, from loss of blood, from overwork, from mental strain and worry, from shock to the nerves and especially from traumatic causes, wounds of any kind.

Q. If the result of shock, how soon after the shock  
20 are the symptoms likely to appear ?

A. Sometimes almost immediately, and sometimes not for 12 to 18 months.

Q. Are the genital difficulties such as you have mentioned a cause sometimes of this ?

Witness: I don't understand the question.

Mr. Riker: You said sometimes the cause of menstruation was a genital difficulty, a difficulty with the genital organs.

30 A. I didn't say so, but it is so.

Q. And has it any effect on those organs ?

A. It might be the same as on the other organs of the body—a debilitating effect.

Q. And the disease itself might produce difficulties there; is that right ?

*Cross examination by Mr. Coult:*

Q. Just one question. In the last examination, if I  
40 you found her in a condition somewhat improved.

A. I think in general there was a little less nervous excitability at the time I saw her, her general muscular condition. I did not—

Q. (Interrupting.) Reading from your testimony see whether this is correct or not. Q. "What did you find her condition to be? A. I found it to be practically the same as before, although there was considerable improvement"

A. Yes; that was in the same respect. There was less nervous excitability. 10

A Juror: I would like to have the Doctor define what shock is.

Q. (By Mr. Riker.) Doctor, what is shock?

A. Shock is the effect produced upon the nervous system by different causes, and prevents the nerve supply of the different organs from carrying on their functions properly.

Q. Would shock cause a degeneration of the female organs, or vice versa? 20

A. Shock can easily cause a derangement of the female organs. Except a sudden derangement of the female organs would not produce shock, but a sudden shock might produce a derangement of the female organs.

Q. (By Mr. Coult.) I think you did say it might come from fright?

A. Yes, sir.

Q. From a sudden excitement, a fall or something of that kind? 30

A. Yes, sir.

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ANNA RYERSON, sworn in behalf of plaintiff.

*Direct-examination* by Mr. Riker:

Q. Miss Ryerson, where do you live?

A. Pompton Plains.

Q. And about how far from the centre of Pompton Plains, the church ?

A. About a mile and a half.

Q. In the direction of Jacksonville ?

A. Yes, sir.

Q. Do you know Aletha B. Slingerland ?

A. Yes, sir.

Q. How long have you known her ?

A. Oh, ever since she was a child.

10 Q. Did you go to school together ?

A. Yes, sir.

Q. Go to church and Sunday-school together ?

A. Yes, sir.

Q. What was her condition as a girl, as to health ?

A. She seemed to be a healthy girl.

Q. And how was she at school ?

The Witness: Do you mean at her studies ?

Mr. Riker: As to capacity ; yes ?

20 A. She seemed to be a very apt scholar.

Q. Do you remember when the pipe line went through Pompton Plains ?

A. Yes.

Q. Can you characterize the general condition as to health of Miss Slingerland up to that time ?

A. She seemed to be as healthy as other girls ; I never heard anything to the contrary.

Q. Have you seen her since that time ?

A. Yes, sir.

30 Q. What has been her condition since that time ?

A. I should call her a sick person ; she seems nervous.

Q. And can you fix that time at all as to the time from which you call her a sick person ; do you happen to know the time that the pipe line went through Mr. Slingerland's property ?

A. Yes, sir.

Q. Now, with reference to that time, was it before or after that time that she had the general appearance of what you would say was a sick person ?

40 A. After.

Q. And what was her condition before that time?

A. Healthy.

*Cross-examination* by Mr. Coult:

Q. Miss Ryerson, do you visit Miss Slingerland?

A. Yes, sir.

Q. Have you been there since this occurrence they speak about?

A. Yes, sir.

Q. Was Miss Slingerland attending to ordinary domestic duties when you were there? 10

A. Yes; sometimes she is and sometimes she isn't.

Q. Doing what?

A. Just sewing; that's all I ever see her doing.

Q. Sewing?

A. Sewing.

Q. Washing?

A. No, sir; I haven't seen her wash.

Q. Do you go there with any frequency?

A. Yes, sir; quite often. 20

Q. Quite often?

A. Yes, sir.

Q. Do you know whether she attended Sunday-school since?

A. No, sir; she has not.

Q. You don't know whether she has or not, do you?

A. She has not.

Q. She has not?

A. No, sir.

Q. Didn't she teach Sunday-school after? 30

A. No, sir.

Q. The infant class; didn't she assist in that?

A. No, she had some one to take the class after; she had an assistant after, who took her class; she has never taught Sunday-school since.

Q. She has not?

A. No, sir.

Q. I understood she had?

A. No, sir.

JACOB A. SLINGERLAND, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker :

- Q. Where do you live, Mr. Slingerland ?  
 A. Pompton Plains.  
 Q. What is your business ?  
 A. Farmer.  
 Q. How long have you been living at Pompton Plains  
 10 as a farmer ?  
 A. Since 1882.  
 Q. Where is your farm with reference to your brother's, Andrew Slingerland ?  
 A. I live right across the street ?  
 Q. How near is your house to the road ?  
 A. About 150 feet.  
 Q. And how near is his house to the road ?  
 A. About 25 feet.  
 Q. On the morning of the 24th of December, 1891,  
 20 where were you ?  
 A. I was at home.  
 Q. Until what time ?  
 A. Seven o'clock.  
 Q. What time did you have your breakfast ?  
 A. Seven o'clock ; before 7 ; I always have my breakfast so I am ready to go out at 7 o'clock.  
 Q. Where did you go when you went out ?  
 A. Across the street to my brother's.  
 Q. How long were you there ?  
 30 A. About a half an hour at that time.  
 Q. Who did you see ?  
 A. I see Mr. Zeek, Mr. Beach, Harry Price, and as I came back I met Mr. Jones.  
 Q. Who is Mr. Jones ?  
 A. He was an employee of the East Jersey Water Company, or the Gillespies.  
 Q. Is Mr. Jones in Court ?

Mr. Coult : I don't think so.

- 40 Q. Where did you see Mr. Jones ?

A. I met him just on the street, as I was going from my brother's over home.

Q. Did you watch Mr. Jones and see where he went?

A. He turned back with me and went up—he went up the road, up towards the hotel at that time.

Q. When did you next come from your place?

A. About 8 o'clock.

Q. Where did you go at that time?

A. I run across Jones at about the same spot, just on the street, and he walked in the—on to my brother's 10 property with me.

Q. Yes. And who did you see at that time?

A. He told me at that time that he was going on the property at that time.

Q. Well?

A. And I went in the door, and Aletha Slingerland came out and said—

The Court (interrupting): I think that is incompetent, but it is not objected to.

Mr. Coult: I object to it. 20

Mr. Riker: Just what you did. I don't care what you said.

Q. Did you see Aletha Slingerland?

A. I did.

Q. Where did you then go?

A. Across the property up to the north line—north line of my brother's property.

Q. Who went with you?

A. Mr. Jones. 30

Q. What became of Aletha? Do you remember?

A. She went along with us.

Q. And how far did you go?

A. Up to the north line of my brother's property.

Q. What did you see there?

A. About fifty men, or more.

Q. Now, go on and tell us what happened. Was Mr. Gillespie there?

A. Yes, sir.

Q. Go on and tell us what happened. 40

A. They tore the fence down and came in on the property and commenced to dig the trench; we asked them their—we asked them to show—

Q. (Mr. Coult, interrupting.) Who asked?

A. Aletha Slingerland.

Q. (By Mr. Riker.) Who answered?

A. Mr. Jones.

Q. Where was Mr. Gillespie when Jones answered?

A. He was there on the property.

10 Q. Whose property?

A. Andrew Slingerland's.

Q. And where was Jones?

A. He was with us.

Q. What did Jones say?

A. Mr. Gillespie answered; he said that he had an order to go on the property; she asked him to show it; he said they didn't have no written order.

Q. Well, what did she say?

20 A. She asked them for their names, and he told her that he would give her their names after, from the pay-roll; he would send her the pay-roll.

Q. How much of the fence did they tear down while you were there, and in your presence?

A. Five or six panels of fence.

Q. Do you remember what they first did when they first went on Mr. Slingerland's property, after they tore the fence down?

30 A. Yes, sir; some of them didn't wait to get the fence tore down; jumped over the fence and picked up a brush heap that lay onto the right of way and took it off of the right of way, and the rest of them tore the fence down.

Q. How long were you there at that time with Mr. Gillespie, Jones and Aletha Slingerland?

A. About fifteen or twenty minutes, I should judge.

Q. Then where did you go?

A. I went down to the barn and ordered the horse hitched.

Q. Where did Aletha go?

40 A. She went to the house.

Q. What did you then do?

A. I went to Lincoln Park, or Beavertown, as they formerly called it.

Q. How far is that from Andrew Slingerland's house?

A. About three and a half miles.

Q. How did you go there?

A. I drove down there.

Q. With whose horse?

A. Andrew Slingerland's horse.

Q. Any one with you?

A. No, sir.

10

Q. What time did you get to Beavertown?

A. About half-past nine.

Q. Can you tell us what time you left Pequannock, Pompton Plains, to go to Beavertown?

The Witness: To go to Beavertown?

Mr. Riker: Yes.

A. About eight o'clock.

20

Q. What's that?

A. About nine o'clock; between eight and nine o'clock.

Q. Have you any way now to fix the time when you left?

A. Only as I kept a-going right along; that's all.

Q. Only from the fact that you reached Beavertown—

A. (Interrupting.) From the fact that I reached Beavertown about quarter-past nine or half-past nine.

Q. How do you know the time you were there?

30

A. I drove back and got back to Pequannock as the mail just got in, and that comes in around ten o'clock.

Q. Did you meet anyone at Beavertown?

A. Yes, sir.

Q. Who did you meet?

A. Amzi Zeliff.

Q. Where did you meet him?

A. Just as he came out of the depot.

Q. Do you know where the postoffice is in Beavertown?

40

- A. Yes, sir; in the depot; he had the mail with him and some papers in his hand as he came out.
- Q. While you were at Beavertown, were there any trains that went in either direction?
- A. I don't remember of any.
- Q. Did you talk with Mr. Zeliff?
- A. Yes, sir.
- Q. How long were you with him?
- A. Only a few minutes.
- 10 Q. Then where did you go?
- A. Back to Pequannock—to the postoffice.
- Q. And how far is the postoffice from Andrew Slingerland's land?
- A. Just about a mile.
- Q. What time do you say you were there?
- A. Ten o'clock.
- Q. How do you know?
- A. The mail had just—the mail train had just pulled out.
- 20 Q. And at what time does the mail train reach there regularly?
- A. About 10 o'clock.
- Q. And from the postoffice, where did you go?
- A. To Andrew Slingerland's barn property—drove right in under the shed.
- Q. And then what did you do?
- A. I went out onto his property, and I had his mail.
- Q. (By Mr. Coult.) Eh?
- A. I had his general mail in my hand and went out
- 30 on the property.
- Q. (By Mr. Riker.) Who did you see?
- A. Samuel Slingerland, Aletha Slingerland and the men there to work.
- Q. What were they doing?
- A. They was a digging a trench and rolling pipes.
- Q. That is, the men.
- A. The men was digging trenches and rolling pipes.
- Q. Where were Samuel Slingerland and Aletha?
- A. They were standing still by the pipe.
- 40 Q. What was done then?

A. I put up my hand and handed the general mail to them, and they went back to the house.

Q. What was Aletha's condition at that time, when you went back to the house that time?

A. She took hold of my arm and said they had rolled the pipes against her.

Mr. Coult, in behalf of the defendant, moves that the last part of the answer, that Aletha said they had rolled the pipes against her, be stricken from the record, and the Court so orders. 10

Mr. Riker, in behalf of the plaintiff, prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

*Judge.*

Q. How frequently did you see her after that time? 20

A. Oh, every day; I saw her two or three times during that day afterwards.

Q. What was her condition during the day after the occurrence you have just spoken of?

A. She was very nervous and seemed to be entirely excited; she was sitting on an easy chair in the dining-room or sitting-room.

Q. What has been her condition since that time?

A. She hasn't been very healthy since that time; been weakly. 30

Q. And what was her condition before that time?

A. Always good.

Q. Can you tell us where the men were digging when you came back shortly after ten, as I understand you?

A. Yes, sir.

Q. Where were the men digging?

A. Some of them were two-thirds of the way down; some of them were a third of the way down, and some of them half way down across the property; they had 40

a mark for them to dig out by with a pick very near across the place.

Q. When you say quarter way across the property, from which end do you speak?

A. From the north end.

Q. How had the dirt been thrown out—which way?

A. To the east.

Q. That is, toward the turnpike?

A. Yes, sir.

10 Q. And do you recall how large a place the dirt covered?

A. Yes; ten—from ten to fifteen feet.

Q. And how many pipes were on the property at that time?

A. Well, I didn't count them.

Q. Well, about how many?

A. Well, I should judge there was—they had perhaps rolled in on the property from the north side—about all rolled in when I got there; I seen them rolling as I was there, and I went out afterwards, and then they was  
20 bringing them along the line.

Q. So they reached half way across the property; is that right?

A. Yes, sir.

Q. And where were they with respect to the dirt that had been thrown out from the trench?

A. They was on the east side of the dirt.

Q. How far from the dirt?

A. Oh, some of them was 10 feet from the dirt and  
30 some of them was 25; they never was onto the dirt.

Q. Did you see Mr. Gillespie there when you came back?

A. No, sir; I did not—I didn't recognize him; there was four or five men stood off in a group by themselves; I wasn't close enough to them to see who they were.

*Cross-examination* by Mr. Coult:

Q. Did it rain any time during that day?

A. Mist—

40 Q. (Interrupting.) I asked you if it rained?

A. It did not rain any—not hard.

Q. Did it rain any time hard?

A. In the afternoon it rained.

Q. When did the hard rain commence?

A. About 11 o'clock, I should say, it commenced.

Q. In the morning?

A. Yes, sir; it commenced then to rain harder than it had been.

Q. What is that?

A. It rained harder in the afternoon than it did in the 10 morning.

Q. But did it rain more than mist in the morning?

A. After 11 o'clock.

Q. Where were you when it rained at 11 o'clock?

The Witness: When it rained?

Mr. Coult: Yes; when it commenced to rain?

A. I was going along—

Q. (Interrupting.) When it had commenced to rain? 20

A. When it commenced to rain—when it commenced to rain I was over home, and I took an umbrella—

Mr. Coult: Just stop there.

The Witness: You asked me where I was.

Q. I didn't ask you if you had an umbrella, did I?

A. No.

Mr. Coult: Then just answer the questions.

The Witness: Is that right? 30

The Court: Answer the questions.

Q. You say you saw Mr. Jones that morning?

A. Yes, sir.

Q. Where did you first see him?

A. On the highway or on the street, as I said before.

Q. You had some conversation with him there?

A. Yes, sir.

Q. Did Mr. Jones tell you that they—did he say he had come to tell you that they were about to enter upon the property? 40

A. He did tell me so.

Q. Yes; and he came to notify you that they were going to enter?

A. No, he didn't notify me; he just merely told me that they were going on the property.

Q. What was his purpose in going?

A. I don't know what his purpose was.

Q. Who did you tell him to see about it?

10 The Witness: What say?

Mr. Coult: Who did you tell him to see about it?

A. I didn't tell him to see anybody.

Q. Where was Aletha then?

A. At that time I suppose she was in the house.

Q. Where was Jones going when you first saw him at the house?

A. He was on the private road that goes to the barn.

20 Q. To the barn?

A. Yes, sir.

Q. That goes in by the house, does it not?

A. It passed the house; yes, sir.

Q. Was he alone?

A. He was.

Q. Did you know him?

A. I did; I had drove with him before, and I knowed it was Jones.

Q. And you knew he was the foreman?

30 A. I didn't know nothing about it.

Q. Well, you knew he was employed in the work?

A. Yes, sir; because he had told me so before.

Q. Did you ask him whether they had any authority to enter?

A. I did not.

Q. Did you hear Aletha ask him that question?

A. Yes, sir; when she was up on the field.

40 Q. Well, there is where you went immediately after, wasn't it—immediately after this you walked up towards the house where they were preparing to lay the pipes?

A. After I saw Mr. Jones the second time that morning.

Q. How soon was that after the first time?

A. Eight or after 8 o'clock—about a half an hour or three quarters, perhaps.

Q. Was it the first or second time you saw him, when he told you they were about to enter?

A. The first time he told me they were going to—they was going to enter to-day, and the next time he told me they were going on now.

10

Q. He told you twice, then?

A. He told me they was going on the property to-day; in the morning, when I first seen him, and the next time he said they were going on the property now.

Q. Did he not tell you that they had a right to proceed now?

A. He didn't tell me nothing of the kind.

Q. Did he tell Aletha that in your presence?

The Witness: What?

Mr. Coult: That they had received word now that they had a right to cross?

20

A. No; he did not.

Q. Didn't he tell Aletha that in your presence?

A. No, sir.

Q. Anything of that purport?

A. He said he had an order to go on the property.

Q. How did he say he had received that order?

A. He didn't say.

Q. Did Aletha ask for an order to go on the property?

30

A. For a written order; yes.

Q. What did he reply to that?

A. He said they hadn't any.

Q. Did he say how they had received word?

A. Not that I heard.

Q. Where was the conversation when he told her that they had received word to go ahead?

A. They didn't have any conversation that I heard of.

Q. I ask you where the conversation occurred in

40

which he told her that they had received word to go ahead, when she asked for a written order?

Objected to as misleading, on the ground that the witness has never said any such thing as that, and on the ground that the question intimates a statement as coming from the witness which he never made.

[Question read by the stenographer.]

10

The Court: I do not see any objection to it.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

*Judge.*

Mr. Coult: What is your answer?

20 A. I am a little deaf; you will have to speak a little louder so that I can hear what it is.

[Question read by the stenographer.]

A. She asked for a written order.

Q. Where did the conversation occur, I asked you?

A. Onto Andrew Slingerland's property, on the disputed right of way.

Q. Whereabouts?

A. Whereabouts? Up by the north line.

30 Q. Was that before any one had gone on the property?

A. No, sir; there was on the property at that time, when we went out there—the men was on the property.

Q. Where were they, and what were they doing?

A. They was digging trenches and rolling a pipe.

Q. At that time?

A. Yes, sir; when she asked them.

Q. Was Mr. Gillespie there?

A. I suppose that was the gentleman.

Q. Stand up Mr. Gillespie. Is this the gentleman?

40 A. I suppose that is the gentleman, sir.

Q. Then you took the horse and went off to Beavertown?

A. Yes, sir.

Q. And you drove to Beavertown and then drove back, as I understand it, and still drove apast the place, and went on up to the Turnpike and down to the post-office?

A. No, sir; Pequannock is to the south of Andrew Slingerland's property.

Q. Eh?

10

A. Pequannock is to the south of Andrew Slingerland's property; the post office is south of Andrew Slingerland's property.

Q. It wasn't the Pompton post office?

A. It wasn't Pompton Plains post office; the Pompton post office is about three and a half miles beyond us; Pompton Plains about a half a mile.

Q. And it was to the Pequannock post office you say you went?

A. Yes, sir.

20

Q. That was on your way back?

A. On my way back, yes, sir.

Q. After you returned you say you saw Aletha and Samuel standing in front of the pipe; was that pipe being rolled onto the property at that time?

A. Yes, sir; there was men behind it rolling it.

Q. And was she taken away from the place?

A. I didn't see her taken away, no, because I put up my general mail and they turned and came to me.

Q. What?

30

A. I put up my general mail and they turned and came to me.

Q. You put up your general mail—what do you mean by that?

A. Why, letters and papers, etc.

GEORGE ZEEK, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker :

Q. Mr. Zeek, where do you live ?

A. Over in Bergen County ; in Oakland, Bergen County.

Q. What is your business now ?

A. Working on the railroad.

Q. What railroad ?

10 A. On the—it is called the Susquehanna—the old Susquehanna.

Q. How long have you been working on the railroad ?

A. Oh, about three years ; a little over three years.

Q. In 1891, where were you working ?

A. At Andrew Slingerland's.

Q. At Pequannock ?

A. Yes, sir.

Q. Do you remember on the morning of December 24, 1891, anything happening at the farm ?

20 A. Well, the pipe line was on there at that time, in the morning.

Q. What time was it that they began putting the pipe line on the property—across the property ?

A. Well, it was after I got my barn work done. I used to go out there early in the morning.

Q. What time did you go to work on that morning ?

The Witness : That morning ?

Mr. Riker : Yes.

30 A. Well, I—about 6 o'clock.

Q. Had you had your breakfast before you went to work ?

A. Yes, sir ; I always had my breakfast before I went to work.

Q. What was the first work you did ?

A. Feeding the horses and cleaning up the horses, and all the like of that—milking the cows.

Q. What I want to get at is, if you saw men come on the property to put pipes down there ?

40 A. I did.

Q. What did they first do?

A. Well, they commenced to—they came there with a rush and some of them jumped over the fence and some commenced to tear the fence down and roll the pipe in. After they got the fence down, they commenced to roll the pipe and set right at digging—some of them went right on ahead digging the trench, and went right along across the fence to Mr. Slingerland's farm.

Q. I want to know what time of the morning that was?

10

The Witness: What time of the morning?

Mr. Riker: Yes, when they first tore down the fence?

A. It was about 8 o'clock, I should say; 8 o'clock.

Q. Did you see Jacob Slingerland that morning?

A. I did.

Q. Where did you see him?

A. He came over to Mr. Slingerland's farm, and from there he—Aletha and he went up to the—where they was tearing the fence—

20

Mr. Coult. (Interrupting.) Take your hands down; I can't hear you.

The Witness: Whether all three went up there where they was tearing the fence down and digging?

Mr. Riker: Yes.

A. And so on, right straight along, working on Mr. Slingerland's property.

30

Q. Well now, from there, where did Jacob Slingerland and Aletha go?

A. Mr. Jacob Slingerland went down to the—went to the barn and ordered a horse hitched up, and went to Lincoln Park, which he said he was going to Lincoln Park. Of course I didn't go with him.

Q. Did you go to the barn with him?

A. I went to the barn with him.

Q. When he left for Lincoln Park do you know where Aletha was?

40

A. At that time she—to my knowledge she went to the house?

Q. Yes.

A. And then she came out again.

Q. Yes.

A. After that her and Samuel Slingerland and me was out on the pipe line—when I say on the pipe line—it was on Mr. Slingerland's property, north of the pipe line.

10 Q. I want to find out about Samuel Slingerland. You say Jacob Slingerland went away?

A. Yes, sir.

Q. How long after Jacob went away did Samuel go?

A. It wasn't such a great while; a short time; a very short time.

Q. How many minutes?

A. Well, I couldn't just say to the minute; no person could.

Q. How many minutes, in general terms?

20 A. I would say probably ten minutes—fifteen minutes; something of that sort, as near as I can get at it.

Q. Then I understand you that you, Samuel and Aletha went out on the—

A. (Interrupting). Yes, sir.

Q. —towards where the men were working.

A. Yes, sir.

Q. How near did you go or did Aletha go to the north line of the Slingerland property?

30 A. We went right up by the north line to the Slingerland property; she went up there. I was very close to the fence, where the fence was torn down, the same as the fence was torn down, and right along there she was.

Q. So that she was about the distance you are from me?

A. Yes, sir.

Q. Of the fence?

A. Yes, sir.

Q. To where the fence had been?

A. Yes, sir.

40 Q. Where were the iron pipes at that time?

A. They were rolling them in.

Q. How did they get them in?

A. They rolled them in; and there was a wild cherry stump, and they angled them on that wild cherry stump to roll them down the line on this style (illustrating)—the pipe line—down like that (indicating).

Q. Yes.

A. And they angled them on the stump that stood right here (indicating) to roll them down in south of Mr. Slingerland's farm—rolled them south.

10

Q. How much dirt had been thrown out of the trench at that time, at the line of the fence?

Mr. Corbin: What time?

Mr. Riker: At the time when Aletha and the witness were first there.

The Witness: The first time?

Mr. Riker: No; when you and Aletha and Samuel Slingerland were there.

A. Oh, there was quite some, quite a heap of dirt thrown all the way along—quite a heap of dirt; I should judge it would cover probably from ten to fifteen feet, anyway, in width at this point. They was throwing it up all the time, kept throwing it up all the time right along.

20

Q. And that pile of dirt, as I understand, was ten or fifteen feet wide and parallel with the fence?

A. Yes, sir.

Mr. Coult: I suggest that counsel refrain from suggesting the answers to the witness.

30

Q. How far was the stump that the pipes were angled on, as you call it, from the dirt that had been thrown out of the trench?

A. Well, I couldn't—I couldn't—I couldn't justly say; I didn't have anything to measure it with, but it was quite a ways; it was over here, outside of where they tore the fence down. The fence was torn down away down here, but the pipe was here, angled on the stump.

40

[The Witness indicates and illustrates]. I should say probably it may be twenty feet, as near as I can tell you.

Q. How far, as the pipe was angled—what do you mean by angled?

A. Well, the pipe rolled the same as the pipe line comes down here (indicating).

Q. Yes.

A. The pipe were brought in that wagon—

10 Q. (Interrupting). I don't care how they were brought in.

A. They were laying here (indicating) and they rolled them along, angled them, the same as that was the stump; they rolled the pipe right along and angled it on the stump to roll it on Mr. Slingerland's farm, from the north towards the south.

Q. Do you mean balanced it on the stump?

A. Yes, sir. (Indicating). Say that was the stump; they balanced it on that stump to roll it down. That's  
20 the way they done it.

Q. And was there more than one cherry stump in that vicinity?

A. I remember—there was, yes; I know there was.

Q. But as to the size, how did this compare in size with the others?

A. This was a good sized cherry stump—a good sized stump.

Q. How about the other ones?

A. Well, the others were smaller—smaller ones—but  
30 this was a good size—a wild cherry stump.

Q. Well, after the pipes were balanced and turned on this cherry stump, what was done with the pipe?

A. Rolled down.

Q. Yes; and where was Aletha at that time?

A. She and Samuel Slingerland stood outside of this dirt, where it was thrown up out of the trench—on the eastward side. They stood like that (indicating); and the pipe, one side was rolled right against her. In the first start they pulled them—or some of the men grabbed  
40 and pulled them—and Samuel dragged her out of the

way; and then I think it was the second time she walked a little back—and she went away and she walked a little back—and they rolled the pipe right onto her. She, at that time asked them—

Mr. Coult (interrupting): I don't suppose what she said is competent.

The Court: This is part of the transaction. It seems to me it is part of the very thing we are investigating. This is part of the *res gestae*. 10

Q. Go on.

A. And she then said that she did not want them to come on her father's property, because they didn't have any right or any authority, and hadn't showed her any authority to come on; then they rolled the pipe almost against her and almost knocked her over, if she had not been grabbed; I would not have wanted to be in the position she was in.

Objected to.

The Witness (continuing): And after that some of them grabbed her and just jerked her from under the pipe, or the pipe would have went over her; they were rolling it right on. 20

Q. You say she was jerked away?

A. Yes, sir.

Q. What do you mean by that?

A. Well, some of them took hold of her and jerked her away, just the same as I would take hold of your arm and give you a jerk, right out of the way; say the pipe was rolling down onto you and I jerked you out of the way, that far (indicating), the pipe would roll onto you; the men were rolling constantly. 30

Q. How far did they jerk her?

A. Took her outside to the end of the pipe on her father's property.

Q. Can you recall any other thing that she said while she was there at that time?

A. No, sir.

Q. Or that was said to her by Mr. Gillespie? 40

A. I don't remember at present.

*Cross-examination* by Mr. Coult:

Q. You have been sworn before in this case several times, haven't you?

A. I believe I have.

Q. Well, do you remember it—do you remember being sworn before?

A. Yes, I remember being sworn here before.

10 Q. Now, you stated here that this occurred—the opening of the fence and the going in by the men upon the property occurred about eight o'clock in the morning?

A. That's about the time.

Q. How do you fix the time?

The Witness: How do I fix the time?

Mr. Coult: Yes.

A. Well, I know about generally what time I generally got down to my work, etc., and I did—I did always  
20 carry a watch; that I knowed.

Q. What?

A. I always carried a watch with me generally; at that time I did, of course; I am—I always generally used to carry a watch, but it is broke now.

Q. A little out of order now?

A. Yes; but it wasn't then; understand, Mr. Coult, I never stand and pull out my watch every move I make.

Q. No, you wouldn't swear that you did, every move  
30 you made, pull out a watch?

A. No, sir.

Q. Now, I want to refer to your former testimony in this suit about the time, and see if you remember it:

“Did you have any watch with you that morning? A. I might; I am pretty certain I had my watch on that morning; I won't say I didn't, understand, but of course I am kind of certain that I did. Q. Well, now, how do you want to put it—that you had or that you hadn't?

A. Well, probably—probably I did have it now. Q.

40 Well, is it probable that you did not also? A. No.

Q. Eh? A. No; I probably did. Q. Do you remember you had it? A. I couldn't say right down that I—I—but I am about positive that I did have it." Did you not swear in this case before? I call your attention to your testimony that it was about nine o'clock in the morning.

A. I don't think I said that, Mr. Coult.

Q. I refer to your testimony in the second case, pages 44 and 46. You remember, do you not, being sworn in this case when it was here for trial in 1897? 10

A. Yes, sir.

Q. January, 1897?

A. Yes, sir.

Q. And you were asked what time this occurrence took place in the morning. Did you see the pipes rolled onto the property?

A. I did.

Q. Yes, that's what you testified to; and you were asked what time it was in the morning. Do you remember what your answer was? 20

Mr. Riker: I object to that question.

The Witness: What?

Mr. Coult: Do you remember what your answer was?

The Court: Answer the question.

Mr. Coult: Do you remember what your answer was to that question at that time?

A. I do not. 30

Q. Do you remember whether you stated it was somewhere about nine o'clock in the morning—a little after nine?

A. [Witness shakes his head in the negative.]

Q. You don't?

A. No, sir, I don't; I don't remember at what time.

Q. What you said?

A. That I said it was nine o'clock; I don't remember that I ever said it was nine o'clock, Mr. Coult.

Q. No? 40

A. When she first went out there, understand.

Q. Do remember also saying, in answer to the question "Was it not later than nine?" your answer was "It was nine o'clock when I was in the house"? I asked you whether it wasn't later than nine, and you answered "It was nine o'clock that I was in the house; I went right up there from the barn, and they were tearing the fence down," etc. [reads from the testimony of the witness]. Is that your testimony?

10 A. I know that Aletha went out with me, yes, the second time—went out after she went with me—

Q. (Interrupting.) I asked you again whether it wasn't later than 10 o'clock in the morning; do you remember what your answer was?

The Witness: How was that?

20 Mr. Coult: Do you remember what your answer was to that question, whether it was not later than 10 o'clock in the morning; and did you not state, in answer to that question, "Well, I didn't have any watch just right there."

A. I don't remember saying that, Mr. Coult.

Mr. Riker: What are you reading there?

Mr. Coult: Page 52.

Q. (Reads.) "Well, won't you say whether it was later or not?"

A. I won't say whether it was later; it was late—

Mr. Riker: I object.

30 The Court: I think that is competent.

Q. (Reads.) "You wouldn't say it was after 10 o'clock?" and you asked, "When she was removed?" and I said, "Yes;" and you answered, "I wouldn't say exactly, but I don't think it was later than 10 o'clock in the morning."

A. I don't remember, Mr. Coult, anything about it, saying that at all.

40 Q. You remember being sworn again in this case more recently?

The Witness: Sir?

Q. Do you remember giving testimony in this case again more recently, a year ago?

A. Not a year ago; no, sir.

Q. When was it; last May?

The Court: Two years ago.

Mr. Coult: Or two years ago—in 1901?

A. I think it was in 1901.

Q. Do you remember that?

10

A. Yes, sir; in 1901, I think.

Q. Now, do you remember giving this testimony about the time that this occurred; but before I go on with that I will ask you do you remember your examination in the case which I last referred to—the case in 1897—in which you were asked this question: Q. “Let me ask you whether you testified to this; what time of the morning was that?” A. “Well, it was—” Mr. Coult: (Interrupting.) Hold on! The Witness: That I couldn’t tell; I couldn’t tell you because I didn’t have no watch by me; I couldn’t tell just what time it was. Did you state that at the last trial, or didn’t you? A. Well, I believe I did, but I was in the house that morning—I was in the house.” Did you give that testimony?

20

A. I don’t remember of saying I was in the house; I was in the house when I took the milk in; that I know.

Q. Now, you remember being sworn, as you have stated, in 1901?

A. Yes, sir.

30

Q. And I called your attention then to the question as to what time it was in the morning, and how you fixed the time; do you remember your giving testimony in this way: “Now, what time do you say it was in the morning that this conversation occurred?”

A. It was about 8 o’clock. Q. How do you know it was about 8 o’clock? A. Well, I most always generally carry a time-piece with me. Q. Well? A. Which generally tells me pretty near what time it is.

Q. Did you have the time-piece with you and look at it

40

that morning? A. I most always carry a time-piece—  
 Q. (Interrupting.) One moment; just answer the ques-  
 tion; did you have a time-piece and did you carry it on  
 this morning? A. I always carry a watch. Q. Answer  
 the question. A. I don't just—I don't carry justly  
 that one, but I carry—I don't carry just that one, but I  
 carry one just like it." Do you remember that?

A. That I remember; yes, sir.

Q. (Reads.) "Did you have the watch in your pocket?  
 10 et? A. Yes, sir. Q. On that morning did you take it  
 out and look at it? A. I looked at it, so I could tell  
 what time it was. Q. What time was it by your watch  
 when you looked at it that morning? A. It was 8  
 o'clock. Q. Exactly eight? A. It was 8 o'clock. Q.  
 Exactly eight? A. It was 8 o'clock. Q. Was it exactly  
 eight? A. It was 8 o'clock." Do you recollect giving  
 that testimony?

A. I said it was 8 o'clock.

Q. And then you said, "I said it was eight o'clock,  
 20 and when I say it was 8 o'clock it was 8 o'clock; when  
 I say it was 12 o'clock it was 12 o'clock. Q. Then you  
 can make it 8 or 12 o'clock, as you want? A. Yes, sir;  
 it was 8 o'clock. Q. Just precisely 8 o'clock? A. Just  
 precisely 8 o'clock." That is your testimony given at  
 that time, is it?

A. Yes, sir.

Q. You recollect giving testimony in the trial in this  
 case in January, 1897; I called your attention to some  
 part of your testimony in that case; do you remember  
 30 that; do you remember having given testimony at that  
 trial?

A. I was here; yes, sir.

Q. Now, do you remember my calling your attention,  
 on cross-examination, to the time that this occurrence  
 took place to which you have been testifying?

The Witness: In '97?

Mr. Coult: In '97.

40 A. No, sir.

Q. I want to call your attention to this, and see whether you remember this as your testimony: "Now, you have no means of telling what time in the morning it was, have you, except by"—and your answer was: "Yes, sir; I was in the house in the morning just before this occurred."

A. I don't remember saying that.

Q. [Reads.] "Well, I saw the clock myself." Eh!

A. I don't remember.

Q. [Reading]. "I was in the kitchen and saw the clock 10 and saw what time it was." Do you remember giving testimony of that kind.

A. I don't know what that—not that way.

Q. And you were sworn in this case before, and you were asked what time it was in the morning, and you answered: "Well, it—well, now, I couldn't tell—I couldn't tell because I had no watch about me; I couldn't tell you just what time it was." Did you testify to that?

A. I don't remember that I did. 20

Q. Well, what do you say now? Did you have a watch?

A. Did I have a watch? I have got a watch, yes, home, but it is broken just now; I broke it the other day at the railroad.

The Court: Why don't you answer the question? The question is whether you had a watch that morning?

The Witness: I had a watch; yes, sir; I 30 have carried a watch for quite a number of years.

Q. Did you have a watch with you at the time you speak of that morning when you were entering upon this land?

A. I have every reason to believe that I did, in my pocket.

Q. If you had, did you look at it and see what time it was? 40

A. I didn't always pull my watch out every five or ten minutes to look at it.

Q. You testified in the case against the East Jersey Water Company, didn't you—the first case that was tried against the East Jersey Water Company?

A. I think I did.

Q. Yes.

A. If I am not mistaken.

Q. And were you asked in that case what time of the morning this occurrence was? Let me call your attention to your testimony. "Well, I couldn't—I couldn't tell you, because I didn't have no watch by me; I couldn't tell you just what time it was." Didn't you so testify?

A. I don't remember of saying that.

Q. "Well, it was some time after breakfast? A.

After, yes. Q. Sometime before dinner? A. Oh, yes.

Q. Well, can't you fix it approximately? A. Well, I couldn't just right down there to the hour or moment, but I suppose, as near as I can say, that was about 8 o'clock," etc. That was in your principal examination, conducted by Mr. Riker in that case, was it not?

A. I couldn't really say.

Q. You do not know whether that was your testimony or not, then?

A. No, sir; I couldn't—I couldn't say that is—I couldn't say so.

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80 SAMUEL VAN NESS, sworn in behalf of plaintiff.

*Direct examination* by Mr. Riker:

Q. Mr. Van Ness, where do you live?

A. Pompton Plains.

Q. And how long have you lived there?

A. Forty-six years.

Q. What was your business?

A. Carpenter.

Q. Do you know Aetha B. Slingerland?

40 A. Yes, sir.

Q. How long have you known her ?

A. I suppose all my life; or all her life, rather.

Q. Do you know when the pipe line was put through Mr. Slingerland's farm ?

A. Yes, sir.

Q. Before that time how frequently did you see Aletha ?

A. Oh, very often.

Q. What was her condition before that, as you had observed it ?

A. Well, she was a well, healthy girl.

Q. What's that ?

A. A well, healthy girl, as far as I know.

Q. How frequently did you see her ?

A. Oh, pretty near every week, I suppose.

Q. Did you have any particular day that you saw her ?

A. Well, yes ; as a general thing I would see her at any time on Sunday.

Q. At what place ?

A. At her father's house.

Q. Have you seen her since that time ?

A. Yes, sir.

Q. What has been her condition since then ?

A. Very nervous ; very weak, apparently.

Q. Has Aletha ever married, to your knowledge ?

A. Not to my knowledge.

CROSS-EXAMINATION WAIVED.

PLAINTIFF RESTS.

30

Mr. Coult opens for defendants.

JOSEPH COULT, sworn in behalf of defendants.

*Direct examination* by Mr. Corbin :

Q. Mr. Coult, were you counsel for the City of Newark in 1891, when these proceedings were taken ?

A. Yes, sir.

40

Q. Did you have to do with the proceedings for the acquiring by condemnation of the right of way across Mr. Slingerland's property. Did you conduct those proceedings?

A. I did.

Q. Were there proceedings in the Court of Chancery afterwards, and if so, with what reference to the award?

A. The award—After the award was made there was first a certiorari taken; the certiorari was dismissed, and  
10 then a bill was filed in the Court of Chancery for an injunction to restrain the city from taking possession.

Q. Who was Mr. Slingerland's solicitor in that proceeding?

A. Mahlon Pitney.

Q. When did that matter come up for decision on the Chancellor's order?

A. On the 24th day of December, at 10 o'clock in the morning of that day, in the Chancery Chambers at Jersey City.

20 Q. 1891?

A. 1891.

Q. Were you there that day?

A. I was.

Q. Were you there before the court opened?

A. I was. Mr. McCarter was there also representing the East Jersey Water Company.

Q. Was Andrew J. Slingerland there?

A. He was there personally.

Q. Was his counsel, Mr. Pitney, there?

30 A. He was.

Q State what happened between you gentlemen with reference to this order?

A. Well, after the Chancellor came in in the morning the first thing that was done was an application to discharge the order, and it was done almost immediately.

Q. About what time was the order discharged by the Chancellor?

A. All I can say about it is that it was immediately  
40 after the court opened, and the court opened at 10 o'clock in the morning.

Q. Was anything done about the tender of the money; and, if so, what?

A. I had with me the amount of money that had been awarded, in legal tender notes, and took them out and commenced to make the tender. Mr. Pitney was with Mr. Slingerland, and Mr. Pitney stated that he was not—that they would take the offer of the money as a tender, but they wouldn't accept the money.

Q. Mr. Slingerland was present, was he?

A. Mr. Slingerland was present. 10

Q. After the order discharging the injunction was made, what did you do?

A. I immediately, after the tender went across—Mr. Hershel, I believe, acting as spokesman, went to the 'phone on the other side of the street.

Q. Did you go with him?

A. I went with him for the purpose of sending a message to Pompton to Mr. Gillespie, notifying him that the injunction had been dissolved.

Q. Did you or Mr. Hershel send the message? 20

A. Mr. Hershel sent the message.

Q. Were you present when he sent it?

A. I was in the office.

Q. What time was that?

A. It was before 10:30 in the morning, or about ten thirty; it wouldn't vary from that very much.

Q. What did you afterwards do on that day?

A. We came up, all of us, as quick as we could get to Pompton.

Q. What time did you arrive at Pompton? 30

A. It was after dinner; I can't say hardly; it was in the afternoon; I should say it was after 2 o'clock.

Q. Did you go to Mr. Slingerland's land?

A. I did.

Q. What was the state of the weather?

A. It was raining very hard.

Q. What had it been previous to your arrival there that day?

A. It had rained very hard. As I remember, it commenced to rain in the morning; it was lowering, misty, 40

threatened rain in the morning, and the rain commenced—I couldn't exactly say what time—before noon.

Q. How was the temperature, warm or cold?

A. I can't say; December weather.

Q. What had been done on Mr. Slingerland's land when you got there?

A. I found the pipes strung along on the right of way, not all the way across, but nearly across, and the men camped in the pipes. It rained so they weren't  
10 working; and I remember particularly that there were quite a number of men in the pipes.

Q. Who did you see there that you knew?

A. Well, the gentlemen who went up with me. I saw Mr. Gillespie there too.

Q. Mr. Thomas Gillespie?

A. Yes, sir, and a number of men that I was not acquainted with in his office at that time.

*Cross examination by Mr. Riker:*

20 Q. Mr. Coult, you have testified to before in this case, have you not?

A. I think so, on several occasions.

Q. Did you make any tender of the money to Mr. Slingerland before half-past ten on the morning of the 24th?

A. Just what time it occurred I wouldn't state with absolute precision, but it was a little after the dissolution of the order, and I think it may have occurred and probably did occur before half past ten in the morning.

30 Q. Whatever tender was made to Mr. Slingerland you are positive was made after the dissolution of the restraining order?

A. Why certainly; immediately after.

Q. You had been in negotiation with Mr. Slingerland or his counsel for some time to get this right of way without condemnation, hadn't you?

A. All summer.

Q. And just previous to December 24th you had been in negotiation with Mr. Pitney, had you not, to get this  
40 right of way?

A. Yes, sir.

Q. And you had about reached a conclusion with Mr. Pitney on the 22d of December, had you not?

A. I hadn't reached any conclusion.

Q. Hadn't you about reached the conclusion of your negotiations?

A. I don't think so; do you mean a—

Mr. Riker (interrupting): Yes, an amicable settlement about that time?

A. No, sir; there was nothing that approached an amicable settlement.

Q. When was Mr. Gillespie sent for to come on this ground?

The Witness: Do you mean—

Mr. Riker (interrupting): From Pittsburg.

The Witness: From Pittsburg?

Mr. Riker: Yes.

A. Mr. Gillespie will have to tell you; I don't know, sir; some days before; he can tell you.

Q. Wasn't he sent for by your direction.

A. He might have been; I don't remember, sir.

Q. And hadn't he, under your directions, had men on that farm and in the vicinity of it for three days prior to the 24th of December?

A. Not particularly under my direction; I think he was prepared to go ahead when the injunction was dissolved.

Q. And with his men started to work on that right of way three days before?

A. I don't know how many days.

Q. They were there, with your knowledge, for some days?

A. Not with my knowledge.

Q. Didn't you know it?

A. I did not know it.

Q. You did not know it was being done?

A. No.

Q. Had not there been several attempts to get Mr. Slingerland to leave his farm prior to December 24, 1891, to your knowledge?

A. Not to my knowledge; I don't know what you mean; if you will state more clearly.

Mr. Riker: I think you understand.

The Witness: I do not; I tried to find Mr. Slingerland several times before that; went to his house to tender the money.

10

Q. Didn't you have him come to Morristown and Newark to get the money?

A. No, sir; not to my knowledge.

Q. And didn't you at one time offer him large sums of money if he would come to Newark?

A. Oh, no; I offered him on several occasions several sums of money in increasing amounts during the summer, as I was authorized to do so, for the purpose of getting possession of the land; they were very anxious

20

to get it.  
Q. I am talking here between December 15th and 21st.

A. Not to my knowledge.

Q. When was this restraining order obtained—can you say?

A. Well, I think just about one week—I should say just about one week before the dissolution of the order.

Q. Yes?

A. It was only a few days.

30

Q. And wasn't Mr. Hobart with you at Jersey City on that morning?

A. He might have been; I have no remembrance of his being there.

Q. And didn't you have any engagement to meet Mr. Hobart and Mr. Slingerland before the opening of the court that morning?

A. No, sir; not that I remember.

Q. Was Mr. Hobart there that morning?

A. He might have been; I don't remember.

40

Q. What time were you there?

A. Before court opened; the only people I remember being there were Mr. Herschel—I remember he was there, and I remember that Mr. Slingerland was there, and I remember that Mr. Pitney was there; I know I was there, and I think Mr. McCarter was there.

Q. That was 10 o'clock; who was there at 8.30?

A. I have no recollection of 8 o'clock; I have no recollection of being there before in the neighborhood of 10 o'clock.

Q. So you don't know what messages were sent to 10 Pequannock earlier than 10 o'clock?

A. None sent with my knowledge.

Q. You were not there, you say; how did you happen to know that Mr. Gillespie was actually on the ground before you sent the message?

A. Why, I was told so by Mr. Herschel, I think; Mr. Herschel was the chief engineer.

Q. This is the first time, Mr. Coult, that you have stated that Mr. Herschel sent the message, is it?

A. I don't think so, if I remember it; I don't think 20 so; I think, if you will look up my testimony, I must have stated that Mr. Herschel sent it.

Q. Now you say when you got to Pompton Plains it was raining hard and that the men were inside of the pipes; is that right?

A. I remember that distinctly, sir; I don't suppose they were all inside of the pipes, but I remember seeing men inside the pipes.

Q. Was Mr. Gillespie inside of a pipe?

A. I don't think he was.

30

Q. Now you say the pipes were stretched along the right of way. Did you go on the right of way?

A. Only on one end of it, and I looked at it.

Q. Which end did you go?

A. Toward the north end.

Q. That's what we will call Blauvelt No. 1, is it?

A. Yes, sir.

Q. (Indicating on the map.) Up at this end?

A. Yes.

40

Q. And how many pipes were actually laid in the trench?

A. Oh, I couldn't tell you; Mr. Gillespie can tell you more correctly.

Q. How many pipes were there in the trench that were not covered up?

A. Well, I couldn't remember that; probably six or seven lengths of pipe altogether. I remember they extended well toward the middle of the field.

10 Q. Where had the dirt been thrown that was taken from the trench?

A. To one side of the trench.

Q. To which side?

A. I don't recollect; I wouldn't swear to it.

Q. On which side of the trench were the pipes which had not been laid in the trench?

A. If I should say from memory, but I might be mistaken about that, I should say they were on the west side; although I am not sure about that.

20 Q. On the west side of the trench?

A. On the west side.

Q. You have never testified to that before?

A. No, I haven't been asked.

Mr. Corbin: That isn't cross-examination.

Q. Now you think the pipes were on the west side of the right of way?

A. That's my memory about it; I couldn't swear positively about that.

30 Q. Your memory is pretty doubtful on that point?

A. No, sir; there are others that know better about that than I; I only remember that I can see the picture.

Q. On which side was the dirt thrown up?

A. That I say I couldn't say; but it was probably on the east side of the pipes, on the other side.

Q. And where were the pipes situated in which you saw men sitting—where were they located?

A. Some were along the line; I can't say now; I remember that there were some men in the pipes.

40

Q. Was there an argument in the Court of Chancery that morning ?

A. No argument; the Chancellor immediately dissolved the order as soon as the Court opened.

Q. And wasn't the question before the Court on the taking of a writ of error on the proceedings ?

A. That was the ground undoubtedly on which the order had first been obtained, but evidently the Chancellor had considered it, for as soon as Court opened he announced his decision.

10

Q. Didn't you make an argument on that subject ?

A. I didn't have any argument. I think the Chancellor immediately dissolved the injunction, and said there had been a mistake in granting the writ.

Q. Did Mr. McCarter make an argument ?

A. I don't think there was any argument at all.

Q. Didn't Mr. Pitney have a brief and make quite an argument ?

A. I don't remember it, sir; I know it was a very brief session; it was almost immediately.

20

Q. Do you remember if the Court met promptly at 10 o'clock ?

A. That is my impression.

Q. Wasn't it a motion day ?

A. There was no other counsel in Court that day; I don't think there was any litigant in Court, so I don't think it could have been a motion day.

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CLEMENS HERSCHEL, sworn in behalf of defendants.

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*Direct examination* by Mr. Coult :

Q. Mr. Herschel, you are a Civil Engineer ?

A. Yes, sir.

Q. In charge of the work of the East Jersey Company in the laying of the pipe line for the City of Newark ?

A. I was then; yes, sir.

40

Q. They were laid during what year, if you recollect it?

A. Laid in '90 and '91.

Q. Finished in '91?

A. Finished in '91, I think the whole of it.

Q. You superintended that work?

A. Yes, sir.

Q. Do you remember whether the pipe line down to Pompton Plains and the property of Andrew J. Slingerland had been laid prior to December of that year?

A. Yes, sir.

Q. And on the other side down to Newark?

A. Yes, sir.

Q. And do you remember being present in the Court of Chancery when the dissolution of the order staying proceedings was heard?

A. I am not positive that I was in the court room; I may have been in a back seat somewhere on; I was waiting in the neighborhood, certainly.

Q. You knew the order was dissolved that morning?

A. I was told it had been.

Q. Did you know that the contractor was on the ground with some men ready to proceed with the work?

A. Yes, sir.

Q. You had charge of, special charge of that work?

The Witness: On the ground?

Mr. Coult: On the ground.

A. Mr. Gillespie was there himself—T. A. Gillespie.

Q. Mr. T. A. Gillespie; this gentleman here (indicating)?

A. Yes, sir.

Q. Do you remember sending any order over the telephone that morning?

A. Very well.

Q. What was that, Mr. Herschel?

A. Well, the order was carefully discussed before it was sent.

Mr. Riker; Never mind that. Answer the question.

Mr. Coult: Answer the question.

The Witness: I can't repeat it word for word; I can't repeat the order as it was finally agreed upon.

Q. Give us the substance of it?

A. The substance of it was that the injunction was dissolved and there was no reason now why the work should not go on, and the work should go on.

Q. To whom was that transmitted?

10

A. I talked with Archie Snow.

Q. Where was he?

A. He was in the hotel kept by a gentleman—I can't remember for the life of me now what his name is, but there is a "G" in it.

Q. Mr. Gillen?

A. Mr. Gillen; yes.

Q. You say he was in the hotel; why there?

The Witness; Why there?

Mr. Coult: Yes.

20

A. We had a telephone line that was used in construction work, and there were two stations on it that we moved along as the work required, and for some time we had had it in Mr. Gillen's hotel as a matter of convenience.

Q. And it was there at that time?

Objected to.

A. It was there at that time.

30

Mr. Riker: I object to this unless you know of your own personal knowledge.

Q. Was the telephone line station at Gillen's hotel at that time?

A. It was there by my own directions and to my own knowledge, and I used it there myself.

Q. Did you go up to the ground that day?

A. I did.

Q. How did you get there?

40

A. We went up on the New York and Susquehanna road, and drove over from a station which I know very well, and I think is named Pompton.

Q. Pompton station?

A. Which is on the—on that road.

Q. Did I go with you?

A. You went with me.

Q. Do you know what train we took and when we got there?

10 A. Well, I don't know what the hour was, what the time was to the hour; it was some time after the court proceedings.

Q. In the morning?

A. In the morning; yes.

Q. Do you recollect about what time we got there?

A. Oh, it was in the middle of the day; it might have been 1 o'clock, 12 o'clock; somewhere along there.

Q. What was the character of the day?

A. The day was rainy, a whole day; when we got up  
20 there it was raining hard.

Q. What did you find when you got there?

A. I found the work had been commenced, the ditch begun and the pipe rolled in; no work going on at the time we arrived there because it was raining too hard.

Q. Did you see any of the pipes lying on the ground?

A. The pipes were on the ground, some of them, and I know a good many of them had men inside of them to get them out of the rain.

Q. How long did you remain there?

30 A. Oh, I should think over twenty minutes.

Q. Do you remember seeing Mr. Slingerland in Jersey City that morning?

A. No; I do not.

*Cross-examination* by Mr. Riker:

Q. Did you know Mr. Snow very well, Mr. Herschel?

A. Well, I knew him well.

Q. You knew his office?

40 A. I did then; yes.

Q. And you are sure that the office you got on the telephone at that time was that of Mr. Snow and no one else?

A. That's my present recollection about it.

Q. I am speaking now of the occurrence at half-past 10, the telephoning at 10:30.

A. Yes.

Q. Did you telephone at any other time that morning to Pompton?

A. I don't think I did.

10

Q. Do you happen to know Harry Van Ness?

A. No.

Q. Did you telephone to him at any time on that morning?

A. No.

Q. Did you ever hear his voice over the telephone?

A. I don't know Harry Van Ness if I was to see him; I don't know him at all.

Q. Is Harry Van Ness in Court? (Indicating.) Is that Harry Van Ness?

20

A. Never saw him in my life before that I know of.

Q. You never telephoned him at Pompton?

A. I don't think I—well, I know I didn't; I don't know anything about it.

Q. And he was never in your employ?

A. I don't think I ever heard of him before.

Q. Or was he never in the employ of the East Jersey Water Company?

A. I can't say as to that; I don't think so; not in the engineering department.

30

Q. Who sent for Mr. Gillespie to come on from Pittsburgh?

A. I suppose I did.

Q. And how long before the 24th of December did you send for him?

A. I couldn't say.

Q. About two weeks?

A. I couldn't say at all.

Q. And did he come on about four days before the 24th?

40

A. I should think very likely; I don't know.

Q. And did you go out there to see how he stationed his men on each end of Mr. Slingerland's farm?

A. No.

Q. Did you know they were stationed at each end of Mr. Slingerland's farm?

A. I don't think I did.

Q. What did you suppose they were doing there under your general directions; you said they were under  
10 your charge, didn't you?

A. I had charge of the construction; yes.

Q. If these men were on either end of this farm for three days before the 24th of December, all day long, can you tell us what they were doing under your directions?

A. That's one of those hypothetical questions.

Q. You were in charge?

A. Not all the men.

20                    Objected to on the ground that the question is based on nothing in the case and is not cross-examination.

Q. Well, what were they doing there the day before, if they were there the day before, at each end of that farm—I mean on the 23d of December?

A. I had no charge of those men.

Q. Did you know they were there?

A. I don't think I knew they were there.

80                    Q. And did you, during the 21st, 22d or 23d of December, attempt to get Mr. Slingerland away from that farm?

The Witness: Did I?

Mr. Riker: Yes.

A. No.

At this point the court took a recess of one hour.

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AFTER RECESS.

CLEMENS HERSCHEL resumes the stand.

*Further cross-examination* by Mr. Riker :

Q. Mr. Herschel, I think you said you had been in the telephone office frequently at Gillen's Hotel in Pompton Plains?

A. I don't think I used the word frequently.

Q. What did you say about it?

A. I said that I had used the telephone there myself.

Q. How long a time before December 24th did you use it?

A. I couldn't say.

Q. Did you use it that month?

A. I couldn't say.

Q. Did you use it the month before?

A. I couldn't say anything at all about when I used it, but I used it in that room.

Q. What room was it?

A. In a corner room.

Q. A corner room of the hotel?

20

A. Yes.

Q. In the store?

A. Well, I used it in the store, too.

Q. Was there one in the store, too?

A. Another one in the store, too; that moved back and forth.

Q. When was it moved?

A. I couldn't say.

Q. Where was it on the 24th of December?

A. I think it was in the hotel.

30

Q. If I should tell you it wasn't in the hotel on the 24th, what would you say?

A. I should think you were mistaken.

Q. If I should tell you that Harry Van Ness was engaged to look after the telephone, what would you say?

A. He never was so engaged.

Q. He never had anything to do with it?

A. Never for the New Jersey Telephone Company.

Q. Do you mean to say you never saw Harry Van Ness?

40

A. Well, you take 11 years from that boy's age and he would be quite a small boy; I don't remember it.

Q. Do you remember a small boy being in there?

A. No.

Q. You can't tell about a telephone being in the store and one in the hotel?

A. I can't tell by dates; I have used it in both places.

Q. And you can't tell about it during '91!

A. During that year it was probably in both places.

10 Q. Well, you got through with the work of laying the line, and Mr. Gillespie was settled with in July, '91, and went home to Pittsburg, didn't he?

A. Mr. Gillespie was settled with and his men had nothing more to do some time before December, '91, and the crew was disbanded.

Q. Well, he was paid, wasn't he, and went home?

A. Paid on account.

Q. Wasn't he paid in full?

A. I don't think so; no.

20 Q. And didn't you then move the telephone from the hotel over to the store?

A. There were two telephones that were moved along the line frequently; we moved them just as convenience required, and—

Q. (Interrupting.) I know, but—

Mr. Corbin: (Interrupting.) Let him finish.

80 The Witness: The telephone—there wasn't a telephone either at the hotel or the store all of the time; it was only there when it was necessary.

Q. Your memory isn't very definite about the matter, is it?

A. You may say that if you have a mind to, but I think my memory is pretty good.

Q. Tell us where this telephone was on the 24th of December, '91; that's what we are inquiring about.

40 A. My impression is, when I was talking over it I

was talking with one in that corner room in Gillen's Hotel, with a man named Archie Snow.

Q. You think your memory is accurate on that?

A. My memory, I think, is accurate on that.

Q. Hadn't you been at that property within two or three days before that?

The witness: Hadn't I been?

Mr. Riker: Yes.

10

A. I couldn't say.

Q. Well, why can't you say, Mr. Herschel? It was an important matter, wasn't it?

A. Because it is 11 years ago; that's the reason I can't say.

Q. But you were anxious to get that pipe line through there?

A. Yes.

Q. You can't tell whether you were there two or three days before?

20

A. I cannot tell.

Q. Didn't you actually meet this Mr. Gillespie up there three days before the 24th of December?

A. I don't know whether I did or not; I think it is very likely.

Q. Do you know on what part of the right of way the pipe was laid?

A. I do not now know.

Q. Can you recall whether it was the east or west side of the right of way?

30

A. I am not very certain; there's another pipe line been laid since then.

Q. On which side of the right of way was that laid?

A. I don't know that for certain; some of them across.

Q. I say through the land of Mr. Andrew Slingerland?

A. I know; the reason I can't say which side it is is because they crossed.

40

Q. Don't you know Mr. Herschel, that through that part of your pipe line right of way that second pipe was laid on the west side?

The Witness: Don't I know it?

Mr. Riker: Yes, don't you know it?

A. I think it is likely enough it was, but I can't remember just exactly; I haven't been connected with the work much at all for some years, so that now I don't  
10 even walk across it.

Q. Don't you recall that the pipe line that was being laid December 24th, 1891, was being located so that its centre was 10 feet from the easterly side of the right of way?

The Witness: Don't I recall it?

Mr. Riker: Yes.

A. No, I don't recall it.

20 Q. Do you remember having testified about it?

A. I remember having testified about it; yes sir.

Q. Do you remember what you did testify about it?

A. No, I do not.

Q. If you did testify so, that the easterly line was 10 feet from the easterly line of the right of way, that's  
right?

A. Yes, sir.

Q. But you don't remember now?

A. No, sir.

30 Q. How is it that your memory is so indefinite, in Jersey City, in regard to the work that was going on?

A. I don't think it is indefinite.

Q. Do you remember testifying on a previous occasion that you were in the court room, and that Mr. Coult and some other gentlemen came to where you were and told you that the injunction had been dis-  
solved?

A. I said pretty near the same thing this morning.

40 Q. Didn't you tell us you were sitting on one of the back benches?

A. No; I said I might have been sitting on one of the back benches, or that I was waiting. If I ever testified that I was waiting across the street, that's the most likely; I think very likely I was across the street in the office.

Q. Tell us who came over to you there across the street?

A. Garrett A. Hobart, Mr. Coult, Mr. Drinker and others there may have been; I don't remember.

Q. Do you know where you were?

10

A. As I recollect it, we were at the office of Mr. Barnes, who had a telephone that we could use conveniently. I remember that building; it is in that building right across the street.

Q. Across the street from the Court of Chancery?

A. Yes.

Q. What time did you get there that morning?

A. I couldn't tell you.

Q. Do you remember having said what time you got there that morning?

20

A. I don't remember; no.

Q. Do you remember saying you took the 8:28 train from Montclair?

A. I don't remember saying it, but I don't deny having said it.

Q. Is that a fact?

A. Very likely; yes.

Q. Then you got there by 9 o'clock?

A. I don't know.

Q. Do you remember of using that telephone soon after you got there?

30

A. No, I did not use it soon after I go there.

Q. Who did?

A. Nobody, that I know of.

Q. Do you mean to say that you were there shortly after 9 o'clock and did not communicate with Mr. Gillespie?

A. I don't think I communicated with anybody at Pompton Plains except this one time.

Q. Are you sure about that?

40

A. I have a recollection of not getting Mr. Snow when I first called him.

Q. When you first called, Snow wasn't there?

A. That's my recollection, when I first called Snow wasn't there; he was sent for.

Q. Then Mr. Snow rung you up?

A. I don't know how that was, whether he rung me up or whether I rung him up, or held the wire.

Q. How long was it between the time when you first  
10 called Mr. Snow up and the time you got him on the  
'phone?

A. Not very long.

Q. Half an hour, was it?

A. Oh, no; I don't think it was.

Q. A quarter?

A. I couldn't say; I don't think it was.

Q. Do you remember where they said Mr. Snow was?

A. I don't remember where they said he was; no.

Q. It was some considerable interval of time, wasn't it?

20 A. I couldn't say; perhaps it was.

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HARRY VAN NESS, sworn in behalf of defendant.

*Direct examination* by Mr. Coult:

Q. Mr. Van Ness, you live where?

A. I live in New York at the present.

30 Q. Where were you in '94?

A. Pompton Plains.

Q. In 1891 I mean?

A. At Pompton Plains in 1891 also.

Q. What were you doing there?

A. I was working as clerk in Alfred Gillen's grocery  
store.

Q. For whom?

A. For Alfred Gillen.

40 Q. Do you recollect to have been in the telephone  
office that morning at all.

A. There was no telephone office there, no more than a telephone put up at the side of the room, fastened up to the side of the room.

Q. Where was it?

A. Well, to the best of my recollection I think it was in the hotel, opposite.

Q. But it was afterwards changed and put in the store?

A. I really don't remember; it was in the store for some time and it was in the hotel for some time; I don't know where it was first. 10'

Q. Do you know anything about a message having come over the telephone that morning?

A. I do.

Q. How do you come to know anything about it?

Mr. Riker: I object to that question unless the message is specified.

Q. Were you requested or did you procure anybody to take charge of a message about to be sent? 20'

A. No, sir; there was a message received by me that morning; at least the telephone rang as I was going through the barroom; there was no one in there to answer it and I answered it, which I had been in the habit of doing, and to the best of my recollection I think it was Mr. Herschel called.

Q. Did you know his voice?

A. No, sir; but I think he gave me his name and asked to see Archie Snow.

Q. What did you do? 30'

A. I called for some one to go after Archie Snow and held the wire.

Q. Where was Mr. Snow?

A. I couldn't tell you; he was somewhere around the premises there, I don't know just where.

Q. Did he come in?

A. He came in and talked to the gentleman at the phone, I think Mr. Herschel.

Q. What time was that? 40'

A. Well, it was about 10.30. The mail generally arrives about 10.15, and Mr. Gillen had opened the mail and as usual I was taking it across to his office, and the telephone rang.

Q. And you held the telephone until Mr. Snow came?

A. Until Mr. Snow came.

CROSS-EXAMINATION WAIVED.

10 ARCHIE H. SNOW, sworn in behalf of the defendants.

*Direct examination by Mr. Coult.*

Q. Mr. Snow, what is your occupation?

A. I am the Superintendent of the Montclair Water Company.

Q. Where do you reside?

A. At Montclair, New Jersey.

20 Q. In 1891 were you in the employ of the East Jersey Water Company?

A. I was; yes, sir.

Q. Where was you stationed at that time, say up to December 24, 1891?

A. On the 24th of December I was at Gillen's Hotel at Pompton Plains.

Q. Had you charge of the telephone at that point?

A. I did; yes, sir.

Q. Was that a private line?

80 A. Yes, sir.

Q. Did you send any message that morning to Jersey City?

A. I did; yes, sir.

Q. Who from?

A. From Mr. Herschel, if my recollection is right.

Q. Did you talk over the telephone with Mr. Herschel personally?

40 A. That, I think, is the case; I am not positive it was Mr. Herschel; I know that I had a message from some one that morning.

Q. Did you know Mr. Herschel's voice?

A. Yes, I did; but it is a good while ago.

Q. Have you any doubt that it was Mr. Herschel?

Objected to as not a proper question.

Question withdrawn.

Q. Well, what was the message?

A. I think I received a message that morning that the injunction had been dissolved; that there was nothing to prevent the continuation of the pipe line over the property in question, and directing me to inform Mr. Gillespie of the fact and ask him to go on with the work; the message was from someone whom I recognized as having authority—someone who was my superior.

Q. About what time was that?

A. Sometime between 10 and 11 o'clock, I should say.

Q. What did you do?

A. I went in the direction of the pipe line and delivered the message to Mr. Gillespie.

Q. Where did you find Mr. Gillespie?

A. Somewhere between Gillen's Hotel and the pipe line; somewhere in the vicinity of the pipe line.

Q. Did you deliver the message to him?

A. I did; yes, sir.

Q. What did he do?

A. Why, I think he came back to the hotel.

Q. What?

A. Whether he stopped at the pipe line first, or not, I do not remember; but I think he came back to the hotel, and had some conversation on the way.

Q. Did you go up to where the men were at all?

A. I did not go where the men were; no, sir; I returned to the hotel as soon as my message was delivered; my place was at the hotel in charge of the telephone; I was there for that specific purpose.

Q. Well, that's all you know about it then?

A. That's all I know about it.

*Cross-examination by Mr. Riker:*

Q. Can you re-call the message that Mr. Gillespie sent over the wire from the hotel?

A. No, I cannot.

Q. You can't remember anything about it?

A. No, I don't.

Q. Had it any reference to this particular work?

A. I believe it did.

10 Q. Do you happen to remember whether he said it had already been done?

A. No, I do not.

Q. Did he say anything about it?

A. Not to my knowledge.

Q. How is it you remember the other message so well, but do not remember the return message?

A. Well, I wouldn't be particularly interested, in a message that Mr. Gillespie might send; Mr. Gillespie sent me no message; I was not a messenger for him, or anything of that kind.

20 Q. Didn't you call someone on the 'phone for Mr. Gillespie?

A. No, sir.

Q. Weren't you right by when Mr. Gillespie sent the message?

A. That I couldn't say; I probably was.

Q. Could you say the place where he sent it?

A. No, I could not.

Q. Or the person to whom he sent it?

A. No, sir.

30 Q. You don't know anything about that?

A. No.

Q. How long was he at the office?

A. Well, I really couldn't say.

Q. Well, will you say it wasn't 11.30 when he left the office that time?

A. Why, I—I wouldn't say anything about it.

Q. What time did you get to the office in the morning?

A. That I can't tell.

Q. How many times were you called up during the morning?

A. Once, I think.

Q. That is, before this time?

A. No; once, when I took the message I have described.

Q. Do you remember Mr. Jones coming to the telephone that morning?

A. No, I do not.

Q. Did you see him that morning? 10

The Witness: Mr. Jones?

Mr. Riker: Yes.

A. Not that I recollect.

Q. Do you remember Mr. Gubelman?

A. Yes, I know Mr. Gubelman.

Q. Was he there that morning?

A. I think Mr. Gubelman was there that morning.

Q. Did he use the telephone that morning?

A. Not to my recollection. 20

Q. Do you recollect anything about it?

A. No, I don't.

Q. Just this one telephone; that's all you remember is it?

A. That's all.

Q. (By Mr. Coult.) You don't know what Mr. Gillespie telephoned nor who to?

A. No, I don't.

Q. Nor you don't know when he did telephone, do you? 30

Objected to.

A. No, sir; I do not.

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THOMAS A. GILLESPIE, sworn in behalf of defendants.

*Direct examination* by Mr. Coult.

Q. Mr. Gillispie, where do you reside? 40

A. West Orange, N. J.

Q. What is your business?

A. Contractor.

Q. How long have you been engaged in that business?

A. Oh, some 15 or 20 years.

Q. Where was your former place of business?

A. Pittsburg.

Q. When did you move from Pittsburg to New Jersey?

10 A. Well, I moved to New York in 1897. I have been living in New Jersey about three years the first of this month—no, three years last October.

Q. In 1891 you were in partnership, were you not?

A. Yes, the firm of T. A. & R. G. Gillespie.

Q. Your partner was your brother?

A. Yes, sir.

Q. You were sub-contractor in the laying of the pipe line?

A. Yes, sir.

20 Q. The original contract made by the East Jersey Water Company and your contract covered the pipe from the intake to the reservoir in Newark?

A. Not quite the intake; about two miles south of the intake we commenced, near Butler.

Q. Near Butler?

A. Near Butler; I think on the Miller farm; there had been about two miles built prior to our commencing.

Q. When did you do your work—during that year?

A. In 1891. We commenced in May, the first week  
30 in May.

Q. Do you recollect what part of it had been completed, say, about the first of December?

A. Practically all had been except the portion through the Slingerland property.

Q. Did you return at any time, personally return before the completion of the work to Pittsburg?

A. No; I finished up the work, all with the exception of some little, some connections and things at the Belleville reservoir end, if I recollect correctly, and some  
40 odds and ends to do, and I left Jones and Dannilher

—I remember those two—behind in charge to act under Mr. Hershel's directions, and I went home to Pittsburg the first week in December.

Q. When did you return from Pittsburg with reference to the time you did lay the pipe across the Slingerland property?

A. The twenty-second left Pittsburg.

Q. And arrived here at what time?

A. I arrived at Pompton Plains on the 23d of December.

10

Q. Do you remember why you came back at that time?

A. I came back at the request of the East Jersey Water Company. I believe it was Mr. Hershel who told me to come back and finish up across the Slingerland property; that they expected to be ready in a day or two.

Q. Did you go to the ground on the 23d?

A. I did.

Q. Describe what the situation was—tell the jury what the situation was on the morning of the 23d there?

20

A. Well, I went up to Gillin's hotel and stopped there, and there were some men there, and I commenced to gather up my men and find out where this man and the other man was, and I sent off to Paterson for some riveters, and I telephoned and sent word—I have forgotten now which—to Jones or Danniher. I don't remember just exactly now how I got them but I commenced to gather the men, and there was some men working on the Blauvelt property, on a little portion of the ditch that had been dug out quite to the fence line. I stayed there that evening. The next morning I went over towards Mr. Slingerland's property, at the upper side.

30

Q. When you speak of the upper side—

A. (Interrupting.) (Indicating on the map.) This side here?

Mr. Corbin: The north side.

40

The Witness: The north side, yes. I was expecting—I was there for no other purpose than to go across Mr. Slingerland's property, and I was advised to go when I got that message on the morning of December 24.

Q. Who did you go to and state that?

A. Archie Snow was the telephone operator, and he came and gave me the message, and I went back to the telephone and talked with Mr. Hershel, or with Mr. 10 Drinker; Mr. Drinker was Vice-President of the company and an attorney; and I went back; I am quite sure I talked with both of them; they said that everything was all right, that the injunction had been dismissed and to go ahead; I called on Mr. Jones, the Superintendent, and told him to go to Mr. Slingerland's house, and I gave him the message.

Q. (Interrupting.) One moment. While you were doing that what was the situation with reference to the Slingerland land. Had there been any attempt to enter 20 on the right of way at all?

A. Absolutely nothing at all.

Q. Had any fences been taken down?

A. Not one thing done. In fact during the summer we delivered the pipe—

Objected to as not answering the question.

The Witness: Not one thing was done. After sending this message by Mr. Jones to the Slingerland house—

30 Q. (Interrupting.) What message?

A. I told Mr. Jones to go to the Slingerland house and tell Mr. Slingerland; I did not know that Mr. Slingerland was not there; I didn't know that he was in Jersey City, as I have heard since; I told him to go there and tell him that the injunction had been dismissed and that we were going on to the property; I went on the Blauvelt side, on this side (indicating on the map) and instructed the men to go ahead and put in the pipe; Mr. Olmstead was there with his assistants, and I told 40 him to go ahead and lay out the line for us.

Q. What do you mean by that?

A. To lay out the line of ditch; he was sent up there by his employer for that purpose—at least I suppose he was, anyway.

Q. State the occurrences of that morning just as they occurred, as you recollect them, and state particularly with reference to what occurred to Aletha and Samuel.

A. After the fence was torn down at this point the men commenced to roll the pipe in, and I might say that prior to this message that I got I had been over there early in the morning; I noticed people here by the Slingerland farm; one or two men, evidently on the lookout; after that fence was torn down I went in there and I saw a man and a woman running down from this neighborhood; they came right down about to there; I should say somewhere about to that point (indicating on the map). 10

Q. Nearly the centre of the field?

A. Yes; they came down—

Mr. Riker (interrupting): He did not point to nearly the centre of the field. 20

Q. Whereabouts?

A. (Indicating on the map.) About there; Mr. Olmstead started about somewhere about that vicinity to get a line.

Q. When you say that point you don't get it on the record?

A. Say 250 or 300 feet south, then, of the Blauvelt line, as near as I can remember. 30

Q. Well, on the right of way?

A. Yes, that's my recollection; on the right of way.

Q. Yes.

A. The young lady and the man ran towards Mr. Olmstead first; then she left.

Q. Where was Mr. Olmstead, and what was he doing?

A. Mr. Olmstead and some other man were right there to give us—they were right in the centre, at least; I was, I am quite sure, in the centre—must be in the centre—in order to give us the stake so we could get 40

the line of ditch first; the instrument was there for that purpose, and they came running down, this man and woman, to where Mr. Olmstead and this man were with the instrument, and the man—she left him—she left this man she was with, and whom I afterwards understood was Mr. Samuel Slingerland, and came over to me; I went forward to meet her.

Q. Just point out on the map where it was.

A. I should say right about there (indicating on map);  
 10 I know I was quite a little distance in from that fence; and she had a pencil in her hand and a book, memorandum or pad, something of the kind, and she asked me what my name was and what right I had there; and I told her I had a message by telephone that the injunction had been dismissed and that I was going on the property; she asked me for my further—for further evidence; I said that I hadn't any further evidence; that I got this message by telephone; she ordered me  
 20 off the property; I told her there wasn't any use of that, that we were there and we were going ahead, and she asked me my name and I told her my name and Jones' and, I think, some of the others, and she started to write, but she couldn't write.

Q. Why not?

A. She was too excited; she was a very excited girl just at that moment; then she started up toward the men, or toward the fence where the pipe was going in, and I went over and took hold of her and took her to one side and told her there was no use in trying to inter-  
 30 fere with the men; and she still persisted in going toward the pipe, and I took her away.

Q. Now, in doing that how did you do it?

A. I took her by the arm and led her away; not in the rough manner I have been charged with; on the contrary, I remember distinctly calling out to the men to look after this other man Slingerland—Samuel or Jacob—I think it was Samuel—and I would take care of the girl; she smiled and said she could take care of herself; everything was in a pleasant way; then she  
 40 started, if I remember, the second time, and somebody

else came up and took her on the other side; then she went to the house; afterwards she came out and repeated her first request, to go away, get off the place; well, of course, we didn't get off, and then, for a few minutes, she talked for a little while and then went in the house.

Q. At any time did she place herself in front of the pipe?

A. She ran over towards the pipe, but I never saw the pipe hit her and I never believed that it did hit her; I cannot believe that it hit her; if that pipe struck that girl to injure her, it must have hurt the men that were in front of the pipe; it seems to me as physically impossible for anybody to be injured by the pipe, because there were a good many men in front of it; then the pipe was being rolled on wetground, such as damp, heavy ground, and it was heavy pipe; it was not rolled with any momentum or any rush, you know, that would strike a blow; you could run up against a pipe of that diameter pushed across the whole length of the farm and it wouldn't hurt you. 10

Q. Just describe how the pipe were rolled on—how the men handled them.

A. Well, the pipes were brought, in the commencement, from this property—the Blauvelt property—onto this land (indicating on the map); there were quite a number of men, perhaps 15 to 20 men, behind the pipe, rolling it; there was a man at each end of the pipe and also a man in the middle; it is riveted pipe, with rivets at each end; a man stands in front of the pipe and has a little pointed crowbar to assist the men pushing the pipe; another man at this end is doing the same thing; another man in the centre, with a piece of rail or stick in his hand, what we call cutting the pipe, swing it a little that way and the pipe coming in that way (illustrating.) 30

Q. That's to keep it rolling straight?

A. Rolling straight; that's what he was there for.

Q. So he has a stick on it all the time?

A. That pipe could be stopped at any minute, and I 40

cationed the men to be careful, to use no harsh words, and I would attend to the young lady; and I made it my business to attend to the young lady and see that none were used.

Q. Were any harsh words used?

A. None whatever; all those men had been in my employ all that year—a great many of them anyway—and they were not the class of men that used harsh or vulgar words, especially to a lady.

10 Q. Some effort has been made here to show that in rolling the pipe on at some point you got off the right of way.

A. The intention was to keep on the right of way; if the pipe got off a little I don't recollect that; it must have been very slight; I don't see how it could get off a great ways.

Q. The intention was to put them right on the right of way?

A. The intention was to turn the pipes and place them  
20 parallel to the ditch when dug.

Q. They talk about there being a bank there when the work was commenced.

A. There was no bank there.

Q. State how that was.

A. We didn't have very many men to dig the trench; we were quite short of laborers; my recollection is that most of the laborers came to dig that ditch in the afternoon; the men that were working there were mostly marking out the line with a pick and throwing off the  
30 sod; my recollection is that the sod was thrown off on this side (indicating), the same side the pipe was on, and that the earth was put on the other side—that is, the greater portion of the earth; but for several hours, in fact, I might say for four or five hours no dirt was thrown out of the ditch at all—not inside.

Q. During the interval in the morning, before the opening of the trench, what were the men doing?

A. They were working a little here (indicating), at  
40 this excavation on the Blauvelt side, on the north side of the Slingerland line; there were absolutely no men

or anybody on the Slingerland property before I got that message, and it was around about 11 o'clock.

Q. Did you see the first opening yourself?

A. I did; I was right there, and I gave the order.

Q. Now, can you give the time?

A. As near as I can recollect it was about 11 o'clock; I remember being on the ground quite some time in the morning, and going back to the hotel, because I was looking for this message; I was expecting this message, and I went back there, and I came back to the place, 10 and it was raining, nasty and cold and wet, and I gave the order there, and a little while afterwards (it might have been a half an hour or so) I went back to my lunch, after the men got started to work.

Q. You speak of its being a cold, damp day.

A. It was a very disagreeable day.

Q. Do you recollect Miss Slingerland coming out there—did she have an umbrella with her?

A. No.

Q. She had no umbrella?

20

A. No.

Q. What about her clothing—was it dry or wet?

A. I don't think she—I recollect taking hold of her arm and it was wet.

Q. Do you remember about her clothing?

A. I do not think she was very well clad; I remarked several times afterward—

Mr. Riker (interrupting): I don't care what you remarked, Mr. Gillespie; just answer the question.

80

Mr. Coult: Well, I don't care either.

Q. Did you see anyone attempt to overturn the instrument of Mr. Olmstead?

A. Oh, yes, I did; I saw this man, whom I afterwards learned was Samuel Slingerland, in a fuss with Snyder, who was Mr. Olmstead's assistant, and one of them asked Olmstead to take his instrument away, and I remember me telling him "Never mind the instrument; we will finish it on the line of the trench on the 40

other side"; and we lined it up in that way, with a long rope—stretched a rope and finished it up in that way and marked it with picks where this rope was stretched along on the ground.

Q. And was this because you were unable to get a site?

A. Oh, yes; he had to go away with his instrument.

Q. Do you remember whether Aletha put herself on the site of the instrument?

10                    Objected to as leading.

A. I don't remember it.

*Cross-examination* by Mr. Riker:

Q. How does your memory now compare with what it was in 1901?

The Witness: 1891, you mean.

Mr. Riker: No; 1901?

20    A. Well, I think it is about the same; I hope so.

Q. Do you remember being asked by Mr. Coult (P. 264.) "Did you see the occurrence in the field where they were with the instrument?" And you answered "There was some fuss down in the field there that I didn't pay much attention to; I was keeping my eye on this girl, getting the pipe in and getting the work started."

A. That's right.

30    Q. And Mr. Coult says "yes," and you answered "I did; I remember something going on down there, but I don't—don't just know what it was." Now that was your memory two years ago, wasn't it?

A. I suppose it was if I said so.

Q. Well, did you testify that way or didn't you?

A. Well, if you read that correctly I presume I did?

Q. You have had a good many conversations with counsel since that time, haven't you?

A. No.

Mr. Coult: Never.

## The Witness: Never.

Q. Now, Mr. Gillespie, do you say you were down towards the work when Mr. Snow came to meet you; is that right?

A. No, I did not say that; I was going back toward the hotel when I met Snow.

Q. Coming from the work?

A. Coming from the work. I had been up there.

Q. You said you had been expecting trouble?

A. No, I did not say that.

10

Q. Well, had you been expecting trouble?

A. No, I had not been expecting trouble.

Q. Then why did you take a pistol out of your bag at Gillen's hotel and put it in your pocket at 8 o'clock that morning?

A. I never carried a pistol in my life; I don't remember it; it must have been when I was a boy, it is so long ago. I might have had a pistol when I paid off.

Q. Can you say, did you do that that morning?

20

A. No, sir.

Q. And did you say that if there was going to be any shooting you were going to be part of it?

A. I never used such language.

Q. Did you leave Gillen's hotel about 8.30?

A. I left there about seven or half-past seven.

Q. Where did you go then?

A. Up on the work.

Q. What work was going on at that time?

A. As I stated before, on this side of the Slingerland line, on the Blauvelt farm—not in there, but right there (indicating on the map).

30

Q. How many men were working right there?

A. Quite a number.

Q. About fifty?

A. No, there were a very few men working.

Q. Well, how many men?

A. I don't remember exactly.

Q. You know Mr. Olmstead, don't you?

A. Yes.

40

Q. Was Mr. Olmstead there ?

A. Yes, Mr. Olmstead was there during the morning.

Q. No; I mean at that time; when you first went over to the work, at 8.30 ?

A. I don't remember.

Q. But you do know that you were there with a dozen or two men at half past eight ?

A. I do know there were some men digging on that line at seven o'clock; I supposed so.

10 Q. You knew they were there working ?

A. Yes, sir.

Q. And you saw them working there ?

A. Yes, sir.

Q. (Indicating), Did you see that man there, referring to Jacob Slingerland ?

A. No, I never saw that man on the ground.

Q. How soon after you got there that morning with all those men you have spoken of did you see Aletha ?

A. I did not see Aletha until—until after I went in  
20 on the property.

Q. So you were actually on the property when you first saw Aletha, were you ?

A. I saw her coming running from the house.

Q. Well, when you first went on the property ?

A. Yes, that's right.

Q. Do you mean to tell this jury that Jacob Slingerland was not with her ?

A. I don't know that he was; I didn't see him.

Q. But you saw her ?

30 A. Yes; I did not see him; I saw the other Slingerland.

Q. Now, Mr. Gillespie, some man at least was coming there with her when you first saw her ?

A. Yes.

Q. And will you say that that was not at 8.30 on the morning of the 24th ?

A. I certainly will say that it was not at 8.30.

Q. Well, wasn't it about half past eight ?

A. No, it was not about half past eight.

Q. And will you tell the jury that you never to your memory saw Jacob Slingerland with Aletha on that morning?

A. I do say so; yes, sir.

Q. And you were there, as I understand, from a little after your breakfast time until Archie Snow was coming after you?

A. Yes.

Q. All the time?

A. I don't know that I was just there all the time; I wasn't foreman over the men, but I was about; just how long I was there I don't know. 10

Q. Were you the manager of this?

A. Yes, I was the manager, but I didn't watch the men shoveling out shovelsfull of earth; I had something else to do in connection with my business, of course, besides that.

Q. You were here in court when Olmstead testified the last time, weren't you, and heard him testify?

A. I am not sure about that, sir. 20

Q. Well, isn't it a fact that the side lines of the trench were run the day before, on the twenty-third, by Mr. Olmstead?

A. I don't remember.

Q. You don't remember his saying so right in court here when you were present?

A. I do not.

Q. Well, isn't it a fact that they were?

The Witness: On the Slingerland property. 30

Mr. Riker: Yes.

A. No, sir; no, sir; he was not on that property, nor was any one belonging to the company on that property before the time I have stated.

Q. If he says so he is mistaken?

A. He may have set lines, but not on the property.

Q. When did he set lines?

A. On the morning of the 24th.

Q. Didn't he put his instrument on the Blauvelt property and run a line down, and did not his assistant drive 40

the stakes for the pipe line?

Mr. Corbin: When?

Mr. Riker: On the 23d?

A. I don't know; I didn't see him if he did.

Q. And wasn't he engaged in getting levels on the 24th?

A. No, sir.

Q. And wasn't it necessary, in order to get the levels, 10 to go to his triangular point, which was out in the field 100 feet or more from the right of way?

A. I don't know anything about what is necessary for him to do, but I do know—I do know that Mr. Olmstead was not on the Slingerland property unless he went in there without my knowledge; but I do know that there was nothing done on the Slingerland property in engineering, or in the way of making lines on the morning of the 24th; at least I didn't see anything.

Q. Didn't you know it had all been staked out in Au- 20 gust, '91?

A. Now, that you speak of it, I do remember Mr. Olmstead telling me, when he was first making his line, perhaps a year prior to that, that he had got into the Slingerland property and had run off.

Q. That is not what I recall to your mind; I was trying to recall to your mind that he was giving you levels and not lines on the morning of the 24th.

A. You are mistaken.

Q. And in order to do that he had run his point of 80 triangulation out in the field—

A. (Interrupting) You cannot refresh my memory that Mr. Olmstead was on that property on the 23d, or before I told him to go there on the 24th.

Q. Is Olmstead in court?

A. I don't see him.

Q. Now, you are a pretty vigorous sort of a man when in motion, aren't you?

Objected to as immaterial and wasting the time of the Court.

Mr. Riker: Answer the question.

Objected to on the ground that it is not the health of this witness that is being inquired into.

The Witness (during argument of counsel.)  
It don't make any difference; when I take hold of a girl I don't forget that I am a gentleman.

Q. What did you say to her?

A. "Don't get in the way of this pipe; don't annoy 10  
these men; come right along with me; I will take care of you." She said, "I am able to take care of myself."

Q. Didn't she say, "I am a lady and expect to be treated as a lady?"

A. I didn't hear it.

Q. Did you put your arm around her waist?

A. I think I put my arm on her back—one arm on her arm and one on her back to walk away with her.

Q. And will you say that when you put your arm around her waist and took her away from there she did 20  
not say she expected to be treated as a lady?

A. I don't remember, sir.

Q. And will you say she smiled at you when you did that to her?

A. I say so; yes, sir.

Q. How many times did you take her off?

A. Twice is all I remember.

Q. How many times did you order her taken off?

A. I did not order her taken off.

Q. What?

30

A. I didn't order her taken off?

Q. Did you hear Olinstead order her taken off?

A. No.

Q. Do you remember the time when she was caught between two pipes?

A. I do not, and I don't think she was, for I was there and I didn't see it.

Q. You say that she was excited when she asked for the names and attempted to write them?

A. Quite so, sir.

40

Q. And that she was calm and placid when you were taking her off, with your arm around her waist?

Mr. Corbin: Witness did not say so, and I object to the question as being improper cross-examination.

Q. What was her condition when you were leading her off with your arm around her waist, and holding her by the other arm?

10 Mr. Corbin: I object to the question on the ground that there is no proof that his arm was around her waist.

Mr. Riker: Well, your arm around her back, or wherever it was; what was her condition when you were doing what your counsel say you were doing?

The Witness: I don't know exactly what you mean, sir, by her condition.

20 Q. Didn't you tell us that she was smiling?

A. She did smile when I called to the men; I called to the men to attend to the Slingerland man and I could take care of the Slingerland lady, and she smiled and said she could take care of herself.

Q. Was Samuel there?

A. Yes, sir.

Q. You say the pipe didn't strike her?

A. I did not see it, and I do not think it did.

Q. How far from the ground would it strike her?

30 A. I should say about two feet.

Q. How would a pipe striking her two feet above the ground push her along?

Objected to on the ground that there is no evidence about the pipe striking anybody.

The Court: It hardly seems to be an expert question. The jury can tell as well as witness can. I guess we will have to be content with what the witness has said about it.

Q. Mr. Gillespie, how long did you stay there after the first time you were there—how long did you stay on the ground?

A. I stayed there until about lunch time and then went over to Gillen's and had a bite, and came back again and stayed there until about 3 o'clock in the afternoon.

Q. Had Mr. Coult come when you were there?

A. He had.

Q. How far had the digging proceeded when he came there? 10

A. Why, I don't remember exactly; not very far; it couldn't have been very far with the small number of men we had.

Q. That is the reason it could not have been very far; so that it so happens that it was dug down so that there were two or three lengths of pipe in by half past two?

The Witness: You mean the ditch on the Slingerland property? 20

Mr. Riker: On the Slingerland property.

A. That is not true.

Q. You heard Mr. Coult testify to it, didn't you?

A. I did not.

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ALEXANDER GILLEN, sworn in behalf of defendant.

*Direct examination* by Mr. Coult: 30

Q. Where do you reside, Mr. Gillen?

A. Pompton Plains.

Q. How long have you lived there?

A. About 46 years.

Q. Do you keep the hotel at that place?

A. Yes, sir; and have since 1864.

Q. In 1891, in December, was there a telephone instrument in your hotel?

A. Yes, sir. 40

- Q. Where was it located ?
- A. I think it was located right on the table in one corner by a window.
- Q. To whom did it belong ?
- A. To the East Jersey Water Company.
- Q. Do you know Andrew J. Slingerland ?
- A. Yes.
- Q. How far from your place does he reside ?
- A. Well, it is a short half mile.
- 10 Q. Were you present when they commenced to lay the pipe upon Mr. Slingerland's premises on the morning of December 24th ?
- A. Yes, sir.
- Q. Were you there personally ?
- A. Yes, sir.
- Q. Where did you go from to go there ?
- A. Home.
- Q. From the hotel ?
- A. Yes, sir.
- 20 Q. What time in the morning was it ?
- A. Well, it was between half past ten and eleven o'clock; it was after the train got up, and the train got up about twenty-five minutes after ten, and it was after that I started away, after the mail came up.
- Q. After the mail had arrived ?
- A. Yes, sir.
- Q. Who went with you ?
- A. Oh, I don't know; probably 20 men that worked and somebody else that wanted to stick their noses in.
- 30 Q. Where did you go to ?
- A. Down on Mr. Slingerland's land.
- Q. Did you go on the Slingerland or the Blauvelt land ?
- A. I went on the Blauvelt land; I didn't go on his land at all.
- Q. You went on the Blauvelt land ?
- A. Yes, sir.
- Q. When you first went there had the fence been taken down at all ?
- 40 A. They were taking it down at the Blauvelt corner.

Q. The men were then taking it down?

A. Yes, sir; just as I got there.

Q. Did you stay there while they were taking it down?

A. Yes, sir.

Q. Did you see anybody trying to obstruct them coming on?

The Witness: What time?

Mr. Coult: After that?

10

A. After that they went to rolling the pipe in, and this Miss Slingerland she tried to stop them.

Q. How did she try to stop them?

A. Well, she came out there and wanted to know what authority they had, and so on; and she stood in front of the pipe while they was a rolling them.

Q. Yes.

A. There was probably 10 or 15 men behind the pipe, and two or three, probably, in front of it to keep it straight.

20

Q. Well, what was done with her when she put herself in front of the pipe?

A. Mr. Gillespie took hold of her arm and put his hand on her back and he says, "Madam, you better step off here; you might get hurt."

Q. How often did that occur?

A. I think it occurred twice with him and once with one of the foremen; I think that was right.

Q. Did anything strike her or hit her?

A. Not that I saw.

30

Q. Was there any rough usage of any kind?

A. No; Mr. Gillespie, he told the men to be very careful what they said and what they did.

Objected to.

Mr. Corbin: Said in her presence. Why not?

Q. How long did you remain there?

A. Well, I remained there long enough to get good and wet; about an hour; maybe longer.

40

Q. Did it rain while you were there?

A. Oh, yes, sir.

Q. Raining when Aletha was down there?

A. Oh, yes; it was raining when I got down there, quite hard, so hard that I got so wet that when I got home I had to go and change my clothes.

Q. Did I understand you to say that she asked Mr. Gillespie for his authority to come on?

A. I don't remember what he said; I think he said  
10 he had a telephone message, or something to that effect.

*Cross-examination* by Mr. Riker:

Q. Mr. Gillen you know the famous apple tree on the Blauvelt property, do you?

A. Yes, sir.

Q. About 140 feet from the fence, isn't it?

A. Oh, no; never.

Q. What?

A. Oh, never.

20 Q. About ten rods, you said before, didn't you?

A. Oh, no.

Objected to as not cross examination.

The Court: He went down there; it is proper cross examination to find out where he was.

Q. "Well, wasn't that just where you were when this occurrence first took place." A. "No, sir; most of the time we stood under an apple tree?"

30 A. And went from there down.

Q. One moment. Tell us about the apple tree?

A. I don't know how many feet it was from the fence.

Q. Over the Blauvelt line?

A. Yes, sir.

Q. You went down with about 20 others?

A. Yes; men that went to work.

Q. You said and others who wanted to put their noses in?

40 A. I put mine in, and I am sorry for it.

Q. You and Mr. Slingerland had been on good terms for some time?

A. Oh, yes.

Q. Well, you went under that tree. Now, how did you hear what was said from that distance?

A. After we stood under the tree awhile and seen there was going to be an explosion—it had been said around there that there was going to be dynamite up there, and I was afraid to go on the ground, and that's the reason we stopped under this apple tree first. 10

Q. Well, you stopped under the apple tree most of the time, you say?

A. Yes, and then went on the line.

Q. Yes; but for most of that hour you were under the apple tree?

A. I don't say that; we were on the line.

Q. But haven't you said that on a previous examination?

A. I don't remember, it is so long.

Q. You remember being on the stand before, some- 20  
time about January 27, 1897?

A. I don't know; I remember I was on the stand, but I don't remember what I said.

Q. [Reads.] "Well, tell us where that apple tree is?"

A. A little way from the line; I couldn't tell you.

Q. Give us some idea? A. I can't give you any idea.

[Continues to read down to the answer "I don't remember now."] Did you say that?

A. I might have said that; I don't know.

Q. Is it not true that is where that apple tree was? 30

A. No; that apple tree, if I remember right—I think it is gone now, although I am not certain of that—but I really I don't think it is over 20 feet from the Slingerland property.

Q. Do you think your memory now is better than it was in 1897?

A. Nowhere as good.

Q. And you think where you described the apple tree as being in 1897 is probably where it was?

A. I don't remember where I said it was. 40

Q. If you were under that apple tree, how did it happen that you heard this conversation?

A. We stood under the apple tree while they were taking the fence down, and when the fence was down we went over.

Q. You went on the land?

A. Yes, on the pipe line.

Q. You were not in the employ of Mr. Gillespie?

A. No, sir; I only went to see what was going on  
10 down on the pipe line.

Q. Just to see; looking for dynamite, I suppose?

A. [No answer.]

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FREDERICK J. GUBELMAN, sworn in behalf of  
defendant.

*Direct examination by Mr. Coult:*

20 Q. Mr. Gubelman, what is your occupation?

A. I am an engineer and contractor; I live in Jersey City; I am in business for myself.

Q. Were you at any time in the employ of T. A. Gillespie and his brother?

A. Yes, I was.

Q. Were you in their employ in 1891?

A. No, sir.

Q. You were then in the employ of McKee &  
80 Nilson?

A. Yes, sir.

Q. Where was your office at that time?

A. In Paterson.

Q. Did you go to Pompton on the 24th of December, from Paterson?

A. Yes, sir; I drove out from Paterson that morn-  
ing?

Q. How did you come to go?

A. I was instructed to be there the day before, and  
40 went there on the 24th in consequence of such an order.

Q. When did you go up—you drove out that morning, you say?

A. Yes, sir.

Q. What time did you leave Paterson?

A. At about half-past nine.

Q. By what route did you go from Paterson to Pompton?

A. Why, I drove out through Haledon, and went by the macadam road running out there; I don't know the name of the road.

10

Q. At what place did you stop with your carriage?

A. Why, I started from Paterson, and probably stopped at Gillen's when I arrived there, and from there drove down on the work.

Q. Do you know what time you arrived at Gillen's?

A. Yes, sir.

Q. What time was that?

A. It was between 10.30 and 11 o'clock.

Q. Do you remember what was the character of the morning?

20

A. It was a drizzling rain part of the time; part of the time it was raining hard, and at other times it wasn't raining at all; at another part of the day the rain turned into snow.

Q. Did you drive from Gillen's hotel to the ground, did you say?

A. Yes, sir; I only stopped at Gillen's hotel possibly a minute or two; I didn't get out of the buggy at all.

Q. Well, what took place after you arrived at the ground?

30

A. Why, a short time after I got there they commenced to take down the fence and roll in the pipe.

Q. Had any fence been taken down at all when you got there?

A. No, sir; it had not.

Q. Did you take any part in the work?

A. Why, I assisted Mr. Gillespie to remove Miss Slingerland from in front of the pipe once or twice; I think it was twice; I am not positive.

40

Q. Describe to the jury how she was removed.

A. She persistently placed herself in front of where the pipe was being rolled, and Mr. Gillespie got hold of her one hand, or one arm with his one hand, and placed his other arm on her back, and I got hold of the other arm, and we led her out of the road; she resisted somewhat, but we told her that there was no use of her resisting or making a scene; that we intended to go on with the work, and that we did not want to do her any  
10 injury; and I thought her resisting was sufficient to constitute a forcible removal, and I think she took it sensibly, because she didn't seem to resist except slightly, so that we had to push her along.

Q. Was she pushed by the pipe at all?

A. I am not sure; I think it was rolled up against her.

Q. To injure her at all?

A. No, sir; not at all; the pipe was moving very slowly, and it could not have possibly have injured her.

20 Q. Did you see a man there?

A. Yes, sir; I saw Mr. Samuel Slingerland.

Q. What was he doing?

A. Why, he attempted to get in the way, and also—also got into some wrangle with Mr. Olmstead, who had his instrument there and was trying to give a line, and he got in the line of vision of that instrument, so that he couldn't do it.

Q. In the line of vision?

A. Of the instrument; Mr. Olmstead had to abandon  
30 the use of the instrument for the time being.

Q. Where was the instrument then setting?

A. About the—about in the centre of the right of way, on the line of pipe.

Q. What did Slingerland do with the instrument—do you know?

A. I don't think he succeeded in doing anything; he tried to knock it down; that's my recollection.

Q. Did, or not, the surveyor abandon the use of his instrument?

40 A. Yes, sir; he did.

Q. And do you know how the lines were obtained?

A. Why, they were gotten by sighting along, in between two pipes already laid on one side of the property, and then stringing a small line about the size of a clothes-line and marking out the width of the ditch; the men went along with picks and cut up the sod where those lines were indicated.

Q. Did you hear Aletha make any inquiry of Mr. Gillespie as to his authority to come on?

A. Yes, sir; not only Mr. Gillespie, but asked me for my authority, and I told her we had no authority—that we had no authority other than a verbal authority, and that we intended to go ahead with the work unless she served us with an injunction; she persistently asked for our authority; asked for that several times. 10

*Cross-examination* by Mr. Riker:

Q. The result of the little difficulty between Mr. Olmstead and Mr. Samuel Slingerland was that Mr. Samuel Slingerland got knocked down, wasn't it? 20

A. I don't recollect that, but I think that was the result of it.

Q. Yes? Now, you ran your lines across on the line of the ditch about eight feet apart, didn't you—the sides of the ditch?

A. Somewheres about that width; I don't recollect exactly.

Q. Then you marked it out with a pick along those lines?

A. Yes, sir. 30

Q. (By Mr. Coult.) Do you know whether Olmstead went down or Slingerland went down when they got together?

A. My recollection was that Slingerland went down; Slingerland, as I recollect it, was trying to knock the instrument over, and Mr. Olmstead defended the instrument, and, as I remember it, Slingerland was knocked down.

Q. Well, he came up again?

A. Oh, yes. 40

Q. And put himself at the pipe again, didn't he?

A. Yes, sir; I think he did.

Q. He wasn't injured in any way?

A. His clothes were torn slightly; that was all.

10

Mr. Coult: I offer in evidence the original papers and the record of the original papers in the County Clerk's office in the matter of the application of the Mayor and Common Council of the City of Newark in reference to certain rights owned by Andrew J. Slingerland and his wife. The petition is dated June 25, 1891, and the award was made September 15, 1891; filed in the office of the Clerk of the County of Morris on October 31, 1891, and recorded the same day. This record also has a map showing the line across Mr. Slingerland's land.

20

I also offer in evidence the record of the Court of Common Pleas for the County of Morris, in which the receipt is recorded of \$1250 in the matter of the application of the Mayor and Common Council of the City of Newark for the condemnation of lands and rights owned by Andrew J. Slingerland and others, for a pipe line, dated December 23, 1891.

30

Mr. Riker: I do not wish to make any objection to the form of the proof, but unless the entry is to be connected with other matters, I do not think it is proper to be admitted. In order to be put in it is necessary that we first be made a tender.

Mr. Corbin: That is a question of law. Do you object to this record?

Mr. Riker: No, I do not object to that.

40

PETER L. BERGEN, sworn in behalf of defendants.

*Direct examination* by Mr. Coult :

Q. Mr. Bergen, where do you now reside?

A. Paterson, N. J.

Q. What is your business?

A. I am Superintendent for my father now; a contractor.

Q. Where did you reside in December, 1891?

A. Paterson, N. J. 10

Q. Where were you on the 24th day of December of that year?

A. Why, on the line adjoining the Slingerland property, the Blauvelt property I believe you call it.

Q. Where were you stopping at that time?

A. At the Gillen Hotel.

Q. What were you doing at that time?

A. I was timekeeper.

Q. Timekeeper for the men?

A. Yes, sir. 20

Q. Were you with the men who were there that morning?

A. Yes, I had a gang adjoining the Slingerland property.

Q. Were you there at the time the fence was opened?

A. No, I was on the southerly side, nearest to the Pequannock River.

Q. Did you see the fence go down?

A. I did not see the fence go down; just about the time the fence was being taken down, Mr. Jones and Mr. Gillespie yelled to me to come over. 30

Q. What time of the morning was that?

A. That was between ten and eleven.

Q. Did you see them when they commenced to roll in the pipe?

A. Yes.

Q. Who did you see there?

A. Well, Mr. Gillespie and Mr. Jones and the working men.

Q. Did they give you any order about it? 40

A. They told me to assist Mr. Olmstead in marking out the trench; I was running the lines, you know, so they could.

Q. Did anybody interfere with your work there that morning?

A. Well, this Mr. Slingerland interfered with Mr. Olmstead.

Q. In what way?

A. Well, he obstructed his view from the transit, and  
10 then there was kind of a scuffle between him and a man by the name of Snyder; Snyder was Mr. Olmstead's assistant.

Q. Then it was between Mr. Olmstead's assistant and—

A. (Interrupting). Yes; and this man Snyder gave Slingerland a pretty bad fall.

Q. Snyder was the fellow that had the fall, was it?

A. I said this man Slingerland gave Snyder a pretty bad fall.

20 Q. Did you see Aletha?

A. Yes, sir.

Q. What did she do?

A. Well, she went toward the pipe and Mr. Gillespie escorted her away from the pipe, and she was smiling; he took her by the arm and placed his hand at her back, and they walked away together and had a few words, and she kind of smiled; then she came back the second time, and I didn't know who took her away. She in-  
30 he referred her to me, and she never came to me.

Q. Why did he refer her to you?

A. I was timekeeper, I had all the men.

Q. Do you know how many times she was taken off?

A. Two, to my knowledge.

Q. Was any violence used?

A. None whatever.

Q. Were any harsh words spoken?

A. None whatever.

Q. Did you see this man Samuel Slingerland at any  
40 time put himself in front of the pipe?

A. Well, I don't know about that.

Q. You don't remember?

A. No, sir.

*Cross examination* by Mr. Riker:

Q. Mr. Bergen, about half-past 8 on the morning of the 24th of December you were on the Blauvelt property, south of the Slingerland property, weren't you?

A. That's right.

Q. At half-past 8 in the morning?

10

A. Yes; I was there at 7.

A. At 7 o'clock in the morning?

A. Yes, sir.

Q. How many men did you have with you?

A. I couldn't recollect.

Q. How many about?

A. I couldn't recollect.

Q. Ten?

A. I couldn't recollect.

Q. Twenty?

20

A. I couldn't recollect.

Q. Thirty?

A. We didn't have thirty men.

Q. About how many men were there, Mr. Bergen, with you?

A. I couldn't recollect.

Q. They were under your charge, weren't they?

A. Well, yes.

Q. And you were there until 11 o'clock, were you, thereabouts; half-past 10?

30

A. I was there all the morning.

Q. Well, until you were called by Gillespie?

A. Yes.

Q. You were there at the south end?

A. The south end, nearest the Pequannock river.

Q. Do you know whether there was a similar force at the other end of the property at that time?

A. There was men working on both sides—both sides of the Slingerland property.

Q. Where were you on the 23d?

40

- A. I was hanging around there.
- Q. Hanging around with the same men?
- A. I guess so.
- Q. And was some one hanging around on the north end with the same number of men?
- A. I guess so.
- Q. How about the 22d?
- A. I don't know about the 22d.
- Q. Why not?
- 10 A. I don't know whether I brought the men up then or not.
- Q. What kind of men were they?
- A. Boiler-makers.
- Q. Boiler-makers on the 23d?
- A. Yes.
- Q. And boiler-makers on the 22d?
- A. On the 22d? I can't recollect where I was on the 22d—couldn't recollect.
- Q. Now, you say you didn't see the fence torn down?
- 20 A. No; I did not.
- Q. Did you tear down the fence on the south side yourself?
- A. No; I didn't touch the fence on the south side.
- Q. You simply came over the fence with your force?
- A. I don't know how they came over; I know how I came over.
- Q. Where did you meet the other force?
- A. They were coming in with the pipes.
- Q. And you put your men to work with them, did you?
- 30 A. Lining out, and such things as that.
- Q. Now, is it true that you took a thin rope and ran it down across the property?
- A. Across the right of way.
- Q. Lengthwise with the right of way?
- A. Through; yes.
- Q. And you ran another rope?
- A. Yes.
- Q. About eight feet apart?
- 40 A. About that.

Q. And then you dug out along the line ?

A. In between.

Q. Cleaned the sod off ?

A. Cleaned the sod off ; yes.

Q. You were doing that work from the beginning ?

The Witness : How is that ?

Mr. Riker : You started in with the men just as soon as you got over there ?

A. Yes, sir.

10

Q. Weren't you actually the man who ran across there with the rope ?

A. I couldn't say that I had hold of the rope ; I don't know whether I ran over there or not.

Q. Didn't you personally run that rope from the north end to the south end ?

A. I couldn't say.

Q. You went over with it ?

A. I don't know where the rope was ; the rope was given to me.

20

Q. And you started off with it ?

A. That's all ; I assisted.

Q. And walked over to the south side ?

A. I couldn't say about that ?

Q. You walked with the rope ?

A. I suppose I had hold of the rope.

Q. How did you see the smile on Aletha's face ?

A. We didn't start to run up the trench right away.

Q. Didn't you say that you did that ? Isn't that what you said ? Well, did you or did you not ?

30

Mr. Corbin : He says he did not.

Q. Do you remember testifying once before in this case ?

A. Yes, sir.

Q. And didn't you then say that the first thing you did was to run those lines, and that it took you ten minutes to do it ?

A. I didn't give any time at all ; never mentioned the time at all ; never specified the time at all.

40

Q. Did you say: "As soon as you got up there you began to work on the pipe line"? And didn't you answer, "Lining up the trench"?

A. Lining up the trench; yes, sir.

Q. And weren't you asked, "And they began rolling pipe?" and didn't you answer, "I guess they did; yes, sir;" and on page 207, "How long did it take you to line up the trench?"—I don't believe this is the testimony; well, how long did it take you, anyhow?

10 A. I couldn't say.

Q. Well, about?

A. I couldn't say.

Q. That was the first work you did, at any rate?

A. Oh, no; I was working on the adjoining property, the Blauvelt property.

Q. But after you were called over the first work you did was to line up?

A. I really don't know; everybody was excited at the time.

20 Q. Every one was excited?

A. Yes.

Q. And yet you can remember the smile, can you?

A. Yes, I certainly can.

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HENRY M. DANNIHER, sworn in behalf of defendants.

30 *Direct examination* by Mr. Coult:

Q. Mr. Danniher, where do you reside?

A. Pittsburg.

Q. What is your occupation?

A. I am superintendent and foreman of T. A. Gillespie & Company.

Q. How long have you been such?

A. About 12 years—13 years.

40 Q. Then you were in the employ of T. A. & R. G. Gillespie in December, 1891?

A. Yes, sir.

Q. What was your particular duty ?

A. I had charge of riveting, corking.

Q. The riveting of the pipe line—the riveting and corking of the pipe line ?

A. Yes, sir.

Q. Had you attended to that duty on the whole pipe line ?

A. Not all the way, no ; I got charge of that when we were within a couple of miles of Belleville.

10

Q. Did you have charge of the work when the crossing was made of the Slingerland land ?

A. Yes, sir.

Q. Before that work commenced where were you ?

A. I boarded in Newark, New Jersey.

Q. When did you begin to take part in that work ?

A. On the morning of the 24th.

Q. Did you leave Newark on the morning of the 24th ?

A. Yes, sir.

20

Q. How did you get up to Pompton ?

A. I drove up.

Q. All the way ?

A. Yes, sir.

Q. What time did you arrive at Pompton ?

A. I should think it was about 9 o'clock.

Q. Where did you go when you got there ?

A. I drove to Gillen's.

Q. Was any one with you ?

A. There was a riveter by the name of Smith with me.

Q. How soon after you got to Gillen's did you go out to the crossing ?

A. I don't recollect how long it was ; I think I went right away after I got there.

Q. Did you see the commencement of the work as far as the crossing of the Slingerland property was concerned ?

A. No, sir ; I wasn't there when the fence was taken down.

40

Q. Had it been taken down before you got there ?

A. Yes, sir.

Q. Do you know when you got there ?

A. When I first went there in the morning it must have been about half past nine ; there was no fence taken down at that time ; I afterward went to the Pequannock River for laborers.

Q. What time did you return ?

A. Somewhere about half past ten or eleven o'clock.

10 Q. Had an entry been made before your return ?

A. Yes, sir.

Q. What was being done when you returned ?

A. Well, they had the fence taken down and were working at the ditch.

Q. How soon after that did they commence to roll on the pipe ?

A. I think they started to roll pipe as soon as I got back there.

20 Q. Then, after the commencement of the rolling of the pipe, you saw what took place, did you ?

A. Yes, sir ; as far as rolling the pipe was concerned.

Q. State what took place.

30 A. They started to roll one by rolling it up on some rails in the middle, turned it at right angles, so as to pull it in on the Slingerland property, and I was in front of it with a post to put under it, and there was a man at each end with one of these small spades, what we call spades, and the men behind the pipe would roll it with their hands, with their breasts against it ; it was a hard place to roll them, and I think after we got the first one rolled on we started two gangs—got more help, I think ; I don't recollect much about Miss Slingerland, but I might have seen her in front of the pipe once, and I might have twice ; I wasn't paying much attention to her, but we rolled them all in.

Q. When you saw her in front of the pipe, what was done with her ?

A. She was taken away.

Q. Did the pipe touch her, so far as you know ?

A. I think she placed herself against the pipe once ;  
I saw her right in the middle of the pipe.

Q. Were you standing right by her in the middle of  
the pipe ?

A. Yes, sir.

Q. Was she jarred, hurt or struck or anything of the  
kind in any way ?

A. No, sir.

Q. What was done with her then ?

A. She was taken away. 10

Q. Who took her away ?

A. I think Mr. Gillespie took her away.

Q. (By the Court.) How much did these sections of  
pipe weigh ?

A. They would weigh about 700 pounds.

Q. (By Mr. Coult.) In moving them they came on  
very slowly, didn't they ?

Objected to.

Q. How did they come on ? 20

A. Everybody would take hold and lift ; they might  
roll it a foot and stop to get another hold.

Q. You stood in the middle in the front ?

A. Yes, sir.

Q. And a man at each end at front ?

A. Yes, sir.

Q. What kind of a day was it ?

A. Well, it was raining all the forenoon off and on.

Q. Did you see Samuel Slingerland there ?

A. I saw him ; yes. 30

Q. What did you see about him ?

A. I didn't pay much attention to him ; he was in  
front of the pipe beside me at one time.

Q. What was done with him ?

A. I don't know whether he was took away or walked  
away ; I didn't see him to see what was done to him.

Q. Did you hear Aletha say anything ?

A. No, sir ; I did not.

*Cross examination by Mr. Riker :*

Q. When she struck the pipe did she hit it very hard?

Objected to on the ground that the witness did not say that she struck the pipe.

Mr. Corbin: He said she placed herself against it once.

Q. Did she do it with force?

A. No, sir.

10 Q. Just tell us how she placed herself against the pipe.

A. Well, she walked up to the pipe and placed her back against it.

Q. And did you stop rolling then?

A. It wasn't rolling when she put herself against it; wasn't moving.

Q. What did you do with the pipe?

A. She was taken away immediately.

20 Q. Do you mean to say that she went up to the pipe and turned around and leaned up with her back up against the pipe?

A. That's the position she was in.

Q. And the pipe was not moving?

A. Not when she placed her back against it.

Q. How did that happen; weren't you rolling pipe there?

A. I described that we had to stop the pipe every time we lifted it a foot.

Q. And you had how many men back of the pipe?

30 A. Well, now I couldn't say how many men was there at that time.

Q. Tell us about how many men were back of it pushing.

A. I couldn't say how many; I have seen at times fifty—twenty; and I have seen ten rolling it, back of it.

Q. With fifty men back of it do you think you could stop it from rolling altogether?

A. There wasn't fifty men there; I didn't say so.

Q. How many were there rolling this particular pipe?

40 A. I said I didn't know.

WILLIAM F. JONES, sworn in behalf of defendants.

*Direct examination* by Mr. Coult:

- Q. Mr. Jones, where do you live?  
 A. Little Falls, New Jersey.
- Q. In December, '91, in whose employment were you?  
 A. T. A. & R. G. Gillespie.
- Q. What was your occupation or business?  
 A. In charge of laying pipe. 10
- Q. Had you charge of that during the whole of the laying of the pipe?  
 A. Yes, sir.
- Q. Under the Gillespies?  
 A. Under T. A. & R. G. Gillespie.
- Q. Where were you on the twenty-fourth of December of that year?  
 A. At Pompton Plains.
- Q. How did you happen to be there?  
 A. By orders of Mr. Gillespie. 20
- Q. How long had you been there?  
 A. Two or three days.
- Q. Where did you come from?  
 A. Newark.
- Q. Where did you board, or where did you stay?  
 A. Gillen's hotel.
- Q. Did you have any men there?  
 A. Yes, sir.
- Q. How many, about?  
 A. Well, somewhere between thirty and forty. 30
- Q. Where were they kept?  
 A. In farm houses around there.
- Q. Why were you waiting there?  
 A. We was waiting there for the injunction to be lifted.
- Q. How long were you kept waiting?  
 A. I think about three days; two or three days, I believe.
- Q. How was the property situated before that? Before the twenty-fourth how was the work on either side 40

of Mr. Slingerland's land—how far had it progressed on either side?

A. I should say it was dug up to within seventy-five or a hundred feet of Mr. Slingerland's land on either side of the trench.

Q. Were there sections of pipe on either side of him?

A. Yes, sir; there was, about half on either side.

Q. Of pipe laying there until you were ready to go across his property?

10 A. Yes, sir.

Q. About half on either side?

A. Yes, sir.

Q. Was it all on the right of way?

A. I think it was all on one side.

Q. On which side?

A. On the west side of the Blauvelt property, and I think on the east side of the Hobart, the way I remember it now.

Q. What were the lengths of these pipe?

A. Twenty-seven feet.

20 Q. Made of steel?

A. Yes, sir.

Q. Riveted together?

A. Riveted together.

Q. And joined by rivets after they were laid?

A. Yes, sir.

Q. Who attended to the riveting after they were laid in the trench?

A. Mr. Danniher.

Q. He had charge of the riveting?

30 A. Yes, sir.

Q. And you of the laying?

A. Yes, sir.

Q. How deep were they to be laid down?

A. To be laid about eight feet, the bottom of the trench.

Q. How wide would a trench be that would be sufficient to lay the pipe down to be buried?

40 A. On top of the surface about seven or eight feet they were going to be cut out; it would depend on the kind of ground.

Q. Do you remember when the work commenced on the morning of the 24th?

A. Between 10 and 11, I think.

Q. Do you know why it was delayed in the morning until 10 or 11?

A. Waiting for orders.

Q. Did you finally get orders?

A. Yes, sir.

Q. Who from?

A. Mr. Gillespie.

10

Q. Personally?

A. Yes, sir.

Q. At what time did you get them?

A. Between 10 and 11.

Q. Prior to that time had there been any entry made upon Mr. Slingerland's land at all?

A. No, sir.

Q. Were there fences across?

A. Yes, sir; on both sides of the farm.

Q. More than one fence?

20

A. Yes, I believe there was more than one fence on his farm.

Q. I mean parallel with each other, right along.

A. Well, I don't remember that.

Q. Who took down the fence on the north side?

A. The men was working there; Mr. Gillespie was there and ordered the fence down.

Q. You say you were on the north side?

A. Yes, sir.

Q. Who had charge of the south side?

30

A. Peter Bergen had some men there on the south side.

Q. Who told him to commence work there—do you know?

A. I did.

Q. Was that before or after Mr. Gillespie had—

A. (Interrupting.) After Mr. Gillespie—

Q. (Interrupting.) You saw Samuel Slingerland that morning?

A. Yes, sir.

40

Q. Did you tell him anything?

A. I told him we were going to begin work opening up the trench.

Q. What did he say?

A. I believe he asked me where was our orders; I told him we got them by telephone.

Q. What was his reply to that?

A. Well, I don't remember it now.

Q. Did you see Mr. Olmstead there that morning?

10 A. Yes, sir.

Q. How did you come to go to see Sam Slingerland?

A. Mr. Gillespie told me to.

Q. What did he tell you?

A. To go and to notify Mr. Slingerland, and to tell Mr. Bergen to come on this side with his men—on the north side.

Q. To notify Mr. Slingerland?

A. Yes, sir.

Q. Where did you start from?

20 A. From Blauvelt's side, the Blauvelt property; I went out to the road.

Q. Was this before the fence had been removed?

A. Yes, sir.

Q. And after you heard about a telephone?

A. Yes, sir.

Q. Did you go to the house?

A. Yes, sir; I went right along the road; the turnpike at Pompton Plains there.

Q. Did you find Mr. Slingerland home?

A. Mr. Slingerland was in the yard.

30 Q. Which Mr. Slingerland?

A. Samuel, the youngest man—the youngest of the three brothers.

Q. You told him?

A. Yes, sir.

Q. As you have stated?

A. Yes, sir.

Q. Did you see Aletha at that time?

40 A. Yes; she came out of the house at that time, and I believe Samuel sent her for a book; she went in the house.

Q. Sent her for a book?

A. Sent her in the house for a book, as I can remember now.

Q. Yes.

A. And when I got back to the north end of Mr. Slingerland's property she was there—her and Samuel.

Q. Where was she?

A. Right on her property, near on the line of the pipe.

Q. What was she doing there? 10

A. She was speaking to Mr. Gillespie.

Q. What did she say to Mr. Gillespie?

A. She asked him what right had he on her—on their property.

Q. Yes.

A. Asked him for the names of the men.

Q. What did he tell her?

A. I understood him to tell her to go to Mr. Bergen, the timekeeper, for the names of the men working there.

Q. Did he tell her by what authority he was on? 20

A. Yes, sir.

Q. What did he tell her?

A. Told her that he got orders on the telephone—got a telephone that the injunction was lifted, or words to that effect.

Q. Well, what was done then?

A. We had some men marking out the trench then and taking down the fence, and Mr. Slingerland interfered with Mr. Olmstead.

Q. What was Mr. Olmstead trying to do? 30

A. To put in stakes—the centre line and the side lines of the trench—the offset stakes.

Q. Did he have an instrument?

A. Yes, sir.

Q. Where was that set?

A. About the centre of the trench, I don't know how far from the fence; it was about the centre of the trench.

Q. In what way was he interfered with?

A. Mr. Slingerland came up to upset the instrument, 40

I believe, and Mr. Olmstead's assistant, Mr. Snyder, and he—Mr. Snyder went to prevent him, shove him away.

Q. What occurred ?

A. He pushed Mr. Slingerland back, and Mr. Slingerland gave him a jerk and throwed Mr. Snyder on his back.

Q. What became of Olmstead and his instrument ?

A. The instrument was taken away from there—by  
10 whom I don't know.

Q. How did you get the lines after that ?

A. Ran a line with a rope, a trench or ditch line, you might say, with a rope.

Q. By stretching the rope across ?

A. Yes, sir.

Q. How far was it across the land ?

A. About seven hundred feet.

Q. You had charge of the rolling on of the pipe on the north side ?

A. Yes, sir.  
20

Q. Please state how it was done.

A. The pipe was turned—the rails that was taken from the fence put right under the centre of the pipes, rolled up at right angles with the Slingerland property; started at an angle of forty-five degrees and rolled down the right of way to the centre of his property, and then turned at right angles with the trench.

Q. Rolling one in the centre, and so on, back ?

A. Yes, sir.

Q. I understood you to say that you used some fence rails as a pivot ?  
30

A. Fence rails, yes, and pieces of stick, slabs of a stump.

Q. Was there so far as you saw, at any time any part of the pipe on the right of way ?

A. Not that I remember; we tried to keep it on the right of way; that was our orders, to do so.

Mr. Riker: In behalf of plaintiff, moves that the last portion of the answer, as to what

the witness's orders were, be stricken from the record, and the Court so orders.

Q. In rolling these pipes on, describe to the jury how it was done.

A. There was rails put under the centre of the pipe, on the Blauvelt side, rolled maybe three or four feet up on these rails and then turned at right angles to the trench and rolled right from the Blauvelt property onto the Slingerland land and down to the right of way, to about the centre of the Slingerland property. 10

Q. Now, how was that rolling done?

A. Some men behind pushing, and there was two men in front, with spuds about three feet long, seven-eighths of an inch steel, with riveted nuts at each end, and pulling and bearing down on the pipe would turn them, taking them out, reach right up and pull down on the pipe, go to the centre, take it out, "ketch" it in the hole again and turn it around.

Q. Was there not also a man in the centre? 20

A. Yes, sir; with skews or fence rails to put them in the centre, when we would get out of line either ways, to turn the pipe.

Q. Did you see Aletha in front of the moving pipe at any time?

A. Yes, sir.

Q. How did she get there?

A. She walked up to it and turned around and put her back against it.

Q. What was done with her then? 30

A. Taken away.

Q. How was she taken away?

A. I saw her taken away a couple of times by Mr. T. Gillespie.

Q. How did he do it?

A. He put his arm across her shoulders, I should think, and with one arm "ketched" hold of her this way (illustrating) and led her away.

Q. Did he say anything to her?

A. Yes; he said he would take care of the lady. 40

Q. Was any violence used ?

A. Not any.

Q. Nor any rough language of any kind ?

A. No, sir

Q. By any person ?

A. Not any that I heard.

Q. How long did you continue with your pipe laying that day ?

The Witness: - Rolling pipe in ?

10

Mr. Coult: Yes.

A. All that day and the next.

Q. How long did it take to finish the job ?

A. I think it took all the pipe there; we was working rolling the pipe in for about two days, on both sides.

Q. Well, were you interrupted any by the rain ?

A. No, sir; we kept on working; it was raining; we stopped a little while that day on account of the rain, and most of them went in the pipe.

20 Q. Went in the pipe ?

A. Went in the pipe to get out of the heavy showers.

Q. Did you see Mr. Samuel Slingerland at any time put himself in front of the moving pipe ?

A. I don't remember if I saw Mr. Samuel Slingerland or not putting himself in front of the pipe.

*Cross examination* by Mr. Riker :

Q. What time do you say you got there that morning, Mr. Jones ?

30

The Witness: At ths Slingerland place and Blauvelt's ?

Mr. Riker: Yes.

A. About 7 o'clock in the morning.

Q. How many men did you have with you at that time ?

A. I should think about thirty or forty, as near as I can remember.

Q. Were you there the previous day ?

40 A. Yes, sir.

Q. How many men did you have there then?

A. I don't remember.

Q. Were you there all day long the previous day?

A. Yes, sir; all day long.

Q. You were on the north side and Bergen was on the south side?

A. Yes, sir.

Q. And Mr. Bergen had riveters with him, did he?

A. Both gangs were riveters and pipe layers.

Q. You said you went on the work about 7 o'clock, 10 did you?

A. In the morning; yes, sir.

Q. Do you remember visiting Mr. Samuel Slingerland's house more than once that morning?

A. No; I don't remember visiting it more than once.

Q. Well, as a matter of fact, did you visit it more than once?

A. I don't remember another.

Q. Do you remember meeting Mr. Jacob Slingerland about half-past 8 that morning?

A. No, sir. 20

Q. Do you know Jacob Slingerland when you see him?

A. Yes, sir; I know him now.

Q. Now; did you know him then?

A. No, sir.

Q. And you don't remember meeting him that morning at all?

A. No; I don't remember meeting Mr. Slingerland at all that morning.

Q. I mean Jacob? 30

A. Yes; I know.

Q. Don't you recall walking over with him and Aletha, to the north end of the property?

A. No, sir.

Q. And their going back and leaving you there?

A. No, sir.

Q. And subsequently Samuel coming over with her; don't you remember that?

A. I saw Samuel there after I told him we were going to start on the trench. 40

Q. You went to see Mr. Bergen at that time, didn't you?

A. I went by the house and called to Bergen to get his men there.

Q. Is it your memory now that you walked with Aletha and Samuel to the north end?

A. No; as I came up the road I went across the property and crossed in.

Q. Do you recall how far the first pipe was rolled in  
10 from the Hobart line on the north?

The Witness: In?

Mr. Riker: Yes.

A. I should say about 350 feet; something like that.

Q. Do you remember saying on a previous occasion that it was rolled in about seventy-five feet and then left there?

A. Yes, sir.

Q. And that you then went to dinner?

20 A. Yes, sir.

Q. And that other pipes were rolled—

A. (interrupting.) I don't see why we should roll—

Q. (Interrupting.) I ask you, do you remember?

A. No; I don't remember saying say.

Q. But you do remember saying it was rolled in about  
seventy-five feet and left there?

A. Yes, sir.

Q. And you left it there; and that there was another  
gang rolling another pipe down?

30 A. I believe I said I left it there while I went to dinner.

Q. And that while you were rolling that a second pipe was being rolled; you remember that?

A. Yes, sir.

Q. Just tell us how the second pipe passed the first  
one on the right of way?

A. I don't remember doing so.

Q. What became of the second pipe?

40 A. It might have been rolled right up against the first pipe.

Q. And left there ?

A. It may have been left there for a while ; yes.

Q. You say you went to dinner, and that it was left there during the time you were at dinner ?

A. Yes, sir.

Q. How long were you at dinner ?

A. Some of them were half an hour.

Q. You went to the hotel to dinner ?

A. No, sir ; I don't think I did ; I think I got my dinner on the work that day. 10

Q. What say ?

A. I got my dinner on the work that day, as I remember.

Q. So that it is a fact that the first pipe that was rolled in was only rolled in seventy-five feet before the gang went to dinner ?

A. About seventy-five feet, I should say.

Q. Now, Bergen was marking out the line, wasn't he ?

A. The men was marking out the line.

Q. Under Bergen ? 20

A. Under Bergen ; yes.

Q. They marked it out ?

A. Yes.

Q. Then this sod was all dug out, wasn't it ?

A. Not all of it ; no, sir.

Q. Well, most of it ?

A. Not most of it, no.

Q. Wern't they engaged digging out the sod ?

A. Yes, sir.

Q. On that line ? 30

A. Yes, sir.

Q. You said the sod was thrown on each side ?

A. Some of it was thrown on both sides.

Q. Some on both sides ?

A. Yes.

Q. On the west side ?

Mr. Corbin : Some of it.

A. The sod was thrown on the west side.

Q. What was thrown on the east side ? 40

The Witness: Sir?

Mr. Riker: What was thrown on the east side?

A. The dirt out of the trench.

Q. So that the dirt out of the trench was thrown out on the east side.

A. We generally keep the top soil on one side and the bottom on the other.

10 Q. How many men were engaged digging the sod and the dirt from that trench?

Mr. Corbin: At what time?

The Witness: At what time?

At this point the court adjourned until Monday, May 11, 1903, at ten o'clock in the forenoon.

20

MONDAY, May 11, 1903.

Parties present as before stated.

Mr. Coult: I offer in evidence the order made by your Honor in the matter of the appeal of Andrew J. Slingerland from the award of the condemnation commissioners, for the purpose of showing that the money was deposited on the 23d of December and remained on deposit on the day of the entry.

30

The Court: I do not suppose there is any objection to it.

Mr. Riker: I do not raise any objection, but I do not think it is competent.

40

WILLIAM F. JONES resumes the stand.

*Cross-examination* by Mr. Riker :

Q. Mr. Jones, as I understand you, it was about 12 o'clock when the first pipe had reached a position 75 feet from the Blauvelt line and you and the men went to dinner?

A. About 75 feet; yes, part of the men went to dinner.

Q. And that part of the men went to Gillen's, didn't they? 10

A. Not all of them; no sir.

Q. Some of them went to Gillen's?

A. Some of them; some of them went to farmhouses, boarding.

Q. As I understand you, the sod had been dug out about 100 feet in the trench—the sod had been removed from the trench about 100 feet in at that time?

A. Well, yes; maybe 100 feet.

Q. That is, from the Blauvelt line south?

A. Yes. 20

Q. And I understand you that some 8 or 10 inches of sod and dirt had been removed?

A. Yes, sir.

Q. I also understand you that the men worked about half an hour at digging the trench and cutting out sod, making the trench, before they began to roll in the pipe?

A. Yes, sir.

Q. You thought they were there about half an hour working? 30

A. Yes, sir.

Q. I assume that the first place they begun to work at the trench was at the Blauvelt line, and worked down?

A. On the north end, yes; the Hobart property, isn't it?

Q. Yes; if they had 8 or 10 inches out from the trench near the Blauvelt line, and you stood ahead of the pipe to guide it, and the dirt, as you say, was thrown to the east and the sod to the west, will you explain how you 40

could stand in front of it and guide it when you were in the trench and there was a heap of dirt on one side of you and a heap of sod on the other?

A. By putting in rails, blocking it up above the dirt.

Q. Do you recognize that you would have a space of that (indicating) where the pipe struck your rail?

A. Many a time you have to take it over stones and stumps 3 or 4 feet high.

Q. That is the way you took it?

10 A. Yes, sir.

Q. You stood at the Blauvelt line; you had your men working there for two days?

A. Yes? both Hobart and Blauvelt.

Q. And you had thrown the dirt to the east?

The Witness: On the Hobart line?

Mr. Riker: Yes.

A. We threw it to the west.

20 Q. What?

A. We throwed it to the west on the Hobart line.

Q. What did you throw to the east?

A. We threw the dirt to the east, next to the house on the road.

Q. You tell this jury that you threw it to the west on the Hobart line?

A. Yes, sir.

Q. And how deep was that hole?

A. About 8 feet.

30 Q. Eight feet done?

A. Yes.

Q. Will you explain to the jury how you stood in that 8-foot hole and guided that pipe on the right of way?

A. They was rolled over that hole on about a 45 degree angle.

Q. Rolled over the hole?

A. Yes, sir.

Q. What was on the other side?

A. There was dirt.

40 Q. About 4 to 5 feet high and 15 feet wide, wasn't it?

The Witness: The dirt?

Mr. Riker: Yes.

A. Yes; I suppose we leveled it off in order to get the pipe there.

Q. When did you do that?

A. When we first rolled the pipe in.

Q. When did you first remember that—just now?

A. Yes.

Q. Yave you ever testified to that before?

A. I don't know as I have; I don't know as I have 10  
been asked that question before.

Q. You say you only saw this pipe strike the Slingerland girl once?

A. Oh, I wouldn't say it struck her at all.

Q. Did it?

A. She walked right up to it, turned around and leaned that way. (Illustrating.)

Q. Then what happened?

A. They kept ahead.

Q. Did you say previously that it shoved her ahead? 20

A. It may have shoved her ahead.

Q. Did you say so?

A. I believe I did.

Q. And why do you say now it didn't strike her?

A. [No answer.]

The Court: Answer the question.

The Witness: She stood there and leaned right against it, and the men continued to roll the pipe.

Q. Continued to push her forward? 30

A. Continued to push her; she was walking at the same time.

Q. Was she walking or was it pushing her?

A. She was walking, and it was pushing her, I suppose, at the same time.

Q. How many feet did she walk or it push her?

A. About two.

Q. You said it was further than that before?

A. That's what I remember now. 40

Q. Didn't you also say her foot was brought into contact with this pipe by Samuel Slingerland holding the foot under the pipe?

A. Yes, sir.

Q. Then didn't it hit her on the ankle?

A. No, sir.

Q. You tell us about that.

A. She was leaning "agin" the pipe; Samuel Slingerland walked back, stepped down and took hold of her  
10 foot, so as to take her foot away, as we understood; the pipe could be stopped within an inch at any time.

Q. How near to her foot did the pipe come?

A. Well, the pipe I don't believe could roll on her unless she laid down.

Q. Then Samuel Slingerland could not have pulled her foot under?

A. Oh, yes; to hold it; but we stopped the pipe and took the lady away.

Q. Was her foot down in any 3 foot trench when that  
20 happened?

A. No, sir.

Q. Where was it?

A. It was right on the edge of the trench.

Q. Where were you—in the trench?

A. No sir; I was on the west side of the trench.

A. And she was on the east side of the trench?

A. Yes, sir.

Q. Where was Samuel Slingerland—in the trench?

A. I don't know where he was at that time.

30 Q. But you saw him doing that, did you?

A. Yes, sir.

Q. Didn't the pipe come in contact at that time with  
him?

The Witness: With Samuel?

Mr. Riker: No; with her?

A. No, sir.

40 Q. You said in this case that you did not see Samuel ahead of the pipe, didn't you? Just let's have it—that

you did not remember seeing Samuel in front of the pipe at all; didn't you say that?

A. I don't remember if I have said that.

Q. Well, do you remember of having seen him put himself in front of the pipe?

A. I saw Samuel Slingerland walk back and take hold of Miss Slingerland's foot, and take it from underneath the pipe.

Q. If she was sitting on the pipe how did he walk back and get her foot if he was in front of her? What do you mean by that? 10

Mr. Corbin: I object on the ground that the witness never used any such language.

A. I would have to pretty near have the pipe here to explain that.

Q. (By Mr. Coult.) Did you state whether she was taken away more than once?

A. Yes, sir; she was taken away several times, once by Mr. Gillespie and once by Mr. Gubelman. 20

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ADELBERT H. OLMSTEAD, sworn in behalf of defendants.

*Direct-examination* by Mr. Coult:

Q. Mr. Olmstead, where do you reside?

A. Bloomfield, N. J. 30

Q. What is your business?

A. Civil engineer and surveyor.

Q. How long have you been practicing as civil engineer and surveyor?

A. Since '68.

Q. In 1891 were you employed by the East Jersey Water Company in any capacity?

A. I was; that of assistant engineer.

Q. Under whom?

A. Mr. Clemens Herschel. 40

Q. By the way, are you in their employment at this time?

A. I am not.

Q. And have not been for a long time?

A. Have not been for a long time.

Q. Where are you now employed?

A. At York, Pennsylvania.

Q. Do you recollect whether you had any duty to perform with reference to the laying of pipe across the land  
10 of Mr. Slingerland?

A. Yes, sir; I had duties to perform.

Q. Had you anything to do with marking out the original line for the pipe line across Pompton Plains?

A. I did; yes, sir.

Q. When was that line first laid out with reference to the time it was laid?

The Witness: Oh, the first survey through there?

Mr. Coult: Yes, sir.

20

A. It is a matter of record; I can't tell you, only approximately; probably previous to this time it was about two years; I had been employed up to that time about two years and a half.

Q. You had been employed about two and a half years up to the time the pipe was actually laid?

A. Yes, sir.

Q. And you had surveyed a line across their line before that?

30 A. I ran the first survey line that was run through Pompton Plains for this purpose.

Q. Did that cross Slingerland's farm?

A. Yes, sir; it did.

Q. Were you on his land at that time?

A. I crossed his land at that time.

Q. You crossed his land at that time?

A. Yes, sir; no objection.

Objected to as not relevant.

Mr. Coult: I do not press it.

40

Q. You were there when the pipe was laid, coming down to that day?

A. I was.

Q. When did you get there that morning?

A. I was in Pompton Plains all that morning, coming to Pompton Plains the day before.

Q. You came up there the day before?

A. Yes, sir.

Q. Where did you stop?

A. At Gillen's hotel. 10

Q. When did you commence the work of laying the pipe? Did you see it commenced?

A. I did; yes, sir.

Q. When was it commenced—what time of the morning?

The Witness: The first preliminary work?

Mr. Coult: No; I mean the first taking down of the fence in the effort to cross the land. 20

A. About 11.30 in the morning.

Q. Before that time had you or anybody been on Mr. Slingerland's land at all?

A. Not at that time; no, sir.

Q. What did you first do—will you tell us—yourself?

A. I first, after the fence was taken down—or, in the fact, the first that was done, word was received that it was all right, to go ahead, and Mr. Gillespie ordered the men to go ahead and take down the fence, and I immediately prepared to give the lines, showing the right of way and where to place the pipe or dig the trench. 30

Q. Just tell what you did in doing that?

A. In doing that I set up the instrument first on the Blauvelt end of the property.

Q. Inside or outside of where the fence had been taken down?

A. Outside.

Q. On the Blauvelt land?

A. On the Blauvelt land first; then there was a stake 40

or more placed on the right of way on the Slingerland property; then I took my instrument and walked out on the right of way to set it up there and give it lines and proceed with my work, so as not to interfere with or be interfered with by anybody else.

Q. How far out was that bench placed?

The Witness: We don't call these benches.

Mr. Coult: Stakes, then.

10

A. The distance across this property was 700 or 800 feet; I should say it was about half way; I set up the instrument there and attempted to put in more stakes on the line.

Q. Well, what occurred?

A. One of the Slingerlands, Mr. Samuel Slingerland, interfered with the giving of the line.

Q. What did he do?

A. He ordered me off and attempted to take away  
20 the instrument.

Q. How?

A. By physically taking hold of it; when he did that my assistant, Mr. Snyder, took physical hold of him and a tussie ensued, in which I joined far enough to see that he was satisfactorily moved away a safe distance from my instrument when he was free.

Q. Just state where your instrument was standing.

A. On the line where the stakes were to be placed.

Q. And within the lines of the right of way?

A. Within the lines of the right of way, of the 33  
30 feet.

Q. Then what did you attempt to do after he had been taken away from the instrument?

A. He attempted to stand in the line of vision of the instrument.

Q. You had a transit, hadn't you?

A. Yes, sir; it was a transit.

Q. You looked through it like a telescope?

A. Yes, sir.

40 Q. He kept in front of it?

A. He stood in front of it so as I couldn't see; he didn't attempt any more physical force with me, but, as I remember, we removed him two or three times from the line; perhaps four times.

Q. Then what took place? Did you go on, or did you discontinue?

A. Well, very soon—soon after we found there was so much trouble in getting the line. Mr. Gillespie told me they could go along without any further stakes, and I took the instrument away from the place. 10

Q. Did you see the girl there?

A. I did.

Q. Just state what she did?

A. She wanted to know by what right—came down and inquired of me, and also of Mr. Gillespie, by what right we were trespassing on her father's land, tearing down the fences and doing the work. The answer was left to Mr. Gillespie; I did not tell her anything; I could not tell her.

Q. You heard the conversation; just state it. 20

A. I heard part of the conversation; I don't know just what Mr. Gillespie did tell her, only I know that he spoke very—his language was very kind to her, and he told her they had a perfect right—I heard him say that much; but I did not hear him say they had no written authority; she wanted some written document that I did not see produced.

Q. Then what occurred? Go right on and state the facts.

A. She—the—as soon as the line was given the men 30 went right to work removing and digging the sod where the trench was to be dug, and the pipe rolling went right along; they had men rolling pipe and then the men digging. These pipes were rolled by placing bars in the holes and men standing in front and in behind, keeping the pipe under constant control. Miss Slingerland was persistent in standing in front of the pipes, and of course she was kindly but physically removed. At each time when she was led away a safe distance

from the pipe she was released, and she immediately came back several times.

Q. How often?

A. Several times.

Q. At any time did you set your instrument on the Slingerland land at any point except within the right of way?

A. I remember of no such occurrence.

Q. Did you see Samuel Slingerland there—that is, did you see him put himself in front of the pipe?

A. He was very careful not to brace himself in front of the pipe; he was very careful not to place himself in any place of danger; he encouraged Miss Slingerland to do this thing.

Q. In what way?

A. By telling her to stand in front of the pipe.

Q. At any time did the pipe touch her, as far as you could see?

A. I don't remember of its ever touching her; I didn't see it touch her at all.

Q. Who removed her?

A. I saw Mr. Gillespie remove her, and I think I removed her once when I saw her closer than I thought she ought to be.

Q. What kind of a morning was this?

A. This was a foggy, wet moist morning, and soon after the pipe laying or rolling begun it commenced to rain and came up a very wet day.

Q. How was the soil made by the dampness, muddy or otherwise?

A. It was very gravelly soil there; the water would make—the rain would make some mud, but it is not particularly muddy soil; it was wet, very wet.

Q. At the time you were here before you had a memorandum book, a diary?

A. I had; yes, sir,

Q. Had you been in the habit of keeping a diary—

A. (Interrupting.) Yes, sir.

Q. —in which you recorded events?

A. Recorded events daily.

Q. Did you do that then?

A. I did.

Q. You had your diary here at that time?

A. I had.

Q. Do you know what became of it?

A. It was placed in evidence and left here.

Q. Have you had it in your possession since?

A. I have not.

Q. It was left here at that time;

A. Yes, sir.

Q. Did that contain an entry of the time when you entered the land that morning?

10

Objected to.

The Court: How is that competent?

Mr. Coult: Simply to ask him whether he made a memorandum of it, that's all.

The Court: He hasn't a memorandum; the only object of it would be to refresh his memory from the memorandum, so he could testify orally. The memorandum itself would not be evidence.

20

Q. Did you make a memorandum of the time in some diary you had at that time?

A. I did.

Q. Have you refreshed your memory at any time since the occurrence—since '91 have you looked at the diary?

30

A. Oh, I looked at the diary, yes, sir; I looked at the diary previous to the last trial.

Q. And refreshing your memory in that way, what do you say as to the time?

Mr. Riker: He says he has refreshed his memory, and he has given the time.

Mr. Coult, All right.

40

*Cross examination* by Mr. Riker:

Q. Now the first thing you did was to place your instrument on the Blauvelt line, before the fence was taken down, and indicate a line to be marked by Mr. Gillespie's men; is that not true?

Mr. Corbin: That is not what he said.

Mr. Riker: I know he did not, but I ask him.

10 A. Not necessarily.

Q. What say?

A. Not necessarily.

Q. Well, did you?

[Question read by the stenographer.]

A. It looks reasonable, but I can't say positively; my instrument was there ready for use, and I can't say that it was set up before they took the fence down or not.

20 Q. I ask you as a matter of fact whether you did not lay out the line to the Slingerland farm and lay stakes along the right of way before you were interfered with?

A. Before I was interfered with personally, yes, but not until after the fence was taken away.

Q. Isn't it true that you were on the right of way at least a half an hour before you were interfered with?

A. Yes, sir.

Q. Had you not set your instrument and sent a man ahead to drive stakes before the fence was taken down?

A. No, sir.

30 Q. When did you set your instrument and send the men forward to drive stakes?

A. I sent a man forward to drive stakes as the work of tearing down the fence was begun.

Q. Do you remember testifying two years ago in this court in this case?

A. Yes, sir.

Q. Do you remember saying, "I set my instrument and one of Mr. Gillespie's men went ahead and put in stakes before I or my assistants entered on the land."

40 A. That was what was done; yes, sir.

Q. So that's true ?

A. Yes, sir.

Q. Did you have a line of trench marked before you personally went on the land ?

A. I had a few stakes in; yes, sir.

Q. Which gave the side lines of the trench ?

A. Not all of them, but a few stakes; I did not say from the side lines.

Q. Was it not the fact that when you went on the land you went on for the purpose of giving grades and not lines ? 10

A. For both purposes.

Q. Did you not state in your previous examination that you went on the property for the purpose of giving grades and not lines ?

A. And not lines; no sir.

Q. And did you not state that you had a base mark which you wanted for the purpose of giving grades ?

Objected to unless the attention of the witness is called to his testimony previously given. 20

The Court: You are asking him if he swore to it; you must call his attention to it.

Q. I ask you whether you did have a base mark on the property from which to give grades ?

The Witness: On the—

Mr. Riker: (Interrupting.) Slingerland property ?

A. I had no bench mark there; no. 30

Q. No base mark or bench mark, or anything you could call a base mark ?

A. Previous to that time I had nothing whatever on the Slingerland property.

Q. How long were you on the Slingerland property altogether ?

The Witness: Altogether ?

Mr. Riker: Yes.

Mr. Coult: That day, do you mean ? 40

Mr. Riker: On that day.

A. I couldn't tell you just now.

Q. Do you remember saying, in answer to a question put to you at the last trial, that it was twenty minutes after the fence was down that you actually went on the land?

10

(Counsel reads from the testimony of the witness at the previous trial, page 218, beginning with the question, "So that it was twenty minutes after the fence was down that you actually went on the land," the answer to which was, "I don't say that; I said inside of twenty minutes; I don't remember exactly the minutes in fact that we were there," and ending with the question, "You then started to get the grades, did you," to which the answer was, "Yes, sir. Is that true, or isn't it?")

A. Yes, sir.

20 Q. "Now, in order to establish grades it was necessary that you start at a monument, was it not?" and your answer was, "We had bench marks; yes, sir;" did you give that testimony or did you not?

A. I did.

Q. Is it true or is it false?

A. That is true.

Q. I continue. (Reads.) "Now, just tell us where the bench marks were on the Slingerland farm?" and your answer was, "In that case it would be over to the east;" now, did you answer that or didn't you?

30 A. I could not have answered—I could not have said they were on the Slingerland farm, because we had no benches on the Slingerland farm.

Q. That is not the question; did you give that testimony at the last trial, or not?

The Witness: Just read that again.

Mr. Riker: (Reading.) "Now, just tell us where the bench marks were on the Slingerland farm?" and did you answer, "In that case it would be to the east?"

40

Mr. Corbin: I object to the question on the ground that it intimates that the witness has previously sworn that bench marks were on the Slingerland farm.

The Witness: I could reasonably give no such testimony; it don't—in fact, the benches are matters of record and not of memory anyway.

Q. Would your field book give the bench marks? 10

A. It would; yes, sir.

Q. Where is your field book?

A. In the possession of the East Jersey Water Company.

Q. The field book was inquired about at your last examination, was it not?

A. Yes, sir.

Q. Why haven't you your field book now?

A. Because it is not in my possession and I have no right to ask for it. 20

Mr. Riker: I call upon the defendant to produce the field book.

Mr. Coult: It is a little late.

Mr. Riker: Is it here?

Mr. Corbin: It is not here.

Q. On page 219 (reads): "Don't you know you had other bench marks along on the Slingerland farm?" and your answer was, "There must have been one there;" now, did you testify to that? 30

Mr. Corbin: Give him the next question.

Mr. Riker: Yes. "There must have been one in the vicinity."

A. That's right; there was one in the vicinity.

Q. (Reading.) "And the bench mark, as a matter of fact, was about 100 feet to the west of the right of way. I don't know where it was now." Now, where was it?

A. The bench marks are small matters; in all this matter we had them strung all along the line—simply 40

matters of record and not of memory, and they are simply placed at convenient points all along the line.

Q. And they are at points more or less distant from the right of way, are they not?

A. Yes, sir; as a rule.

Q. And they are for the purpose of getting grades?

A. Yes, sir.

Q. So that if you did as you have stated, you must have gone on the right of way to get the bench marks.

10 A. Not necessarily on Mr. Slingerland's farm; I had to go on the right of way, but it might have been 1,000 feet away.

Q. But in order to get the grades you must go to your bench marks; your bench marks are not on your right of way, are they?

A. Not always; bench marks are benches or levels—I think we are getting confused here; bench marks are record levels, nothing else; we set a number of benches to carry these lines along and put in what we call turning points; I might possibly have had one placed on the  
20 right of way at that time; that would have been a very sensible thing to do.

Q. After you have run your lines to give the grades, you would have to go with your instrument to the bench marks?

A. No, sir; you don't have to go to the bench marks with your instrument; you have to get a site of it.

Q. If you don't go there personally you have to go with your pole on it, don't you?

30 A. Yes, sir.

Q. So that the moment you start it to give the grades, you have to go to a bench mark to get it, didn't you? You could not get them in any other way, could you?

A. No, sir.

Q. I understand you were working there some little time before the fence was taken down; is that right?

A. No, sir.

Q. I don't understand you right, then?

A. No, sir; you don't understand me right; I was  
40 there ready for work.

Q. And when Miss Slingerland was talking to Mr. Gillespie at the north end of the property, is it not true that you were some considerable distance away?

A. Most of the time, yes, sir; not all the time.

Q. So that if you happened to hear it, it was just because you happened to be passing at that moment; is that it?

A. I would hardly want to put it just that way, but if I heard it I was—I wasn't on the move at all times; if I heard it it was because I was within hearing distance. 10

Q. When you first saw Mr. Samuel Slingerland he was going across the property from the west, was he not?

A. Yes, sir.

Q. Andrew J. Slingerland—

The Witness: (Interrupting.) Samuel Slingerland, you mean.

Mr. Riker: No. When you first saw Samuel Slingerland he was going across Andrew J. Slingerland's farm from the west? 20

A. I believe so; yes, sir.

Q. That is, from Belleville?

A. Toward Belleville; in whatever direction it is.

Q. And at that time you say you were in the right of way?

A. Yes, sir.

Q. So that was some time after the fence had been torn down?

A. It was after the fence was torn down; yes, sir. 30

Q. How long was it, Mr. Olmstead?

A. I couldn't say to a minute; it was all done in a very short time.

Q. Now, the first thing you remember was the laying out of the line and then the digging of the trench, and then the rolling of the pipe; that's right, isn't it, in that order?

A. I didn't say that.

Q. Well, is it true?

A. Well, not wholly. 40

Q. No; what is true, Mr. Olmstead?

A. It is true that the whole work begun practically, really simultaneously; that as some commenced digging others began rolling the pipe, and I was placing the stakes.

Q. And you have stated that it was some little time at least that you had been placing the stakes before the fence came down?

Mr. Corbin: No, he did not.

10

A. Oh! no, no.

Q. No, the fence came right down, didn't it?

A. Yes, sir; it wasn't very long

Q. So that when the fence first came down Samuel Slingerland was not at the north end of the property, was he?

A. No, sir.

Q. Now, did you see Jacob Slingerland?

A. I did.

20 Q. Now, where was Jacob—Jacob was at the north end, was he not?

A. I remember Jacob being there, but I don't remember much about it.

Q. Well, if Jacob was there, was he at the north end of the property?

A. He was where the others were, at the north end.

Q. And Jacob was there before Samuel came there, wasn't he?

A. My recollection is that Samuel was there first.

30 Q. I thought you said you saw Samuel coming across the property after you had gone in a little?

A. I did.

Q. Where did you see Jacob coming from—how did he get to the north end?

Objected to on the ground that the witness did not say that Jacob was at the north end.

A. Jacob isn't very clear in my mind.

Q. Well, you say you did not see Miss Slingerland struck with the pipe?

40 A. I did not see her struck with the pipe; no, sir.

Q. Didn't you see her wedged in between two pipes?

A. I did not see her wedged in; I saw her dangerously near.

Q. Dangerously near wedged in by two pipes?

A. Yes.

Q. How close was she to the first pipe, that was furthest on the Slingerland land at that time?

A. Why, I should say she was within two feet.

Q. Two feet?

A. Yes, sir. 10

Q. And how near to her did they roll the next pipe?

A. She wasn't allowed to stay long enough.

Q. How near to her did they roll the next pipe?

A. She was removed immediately.

Q. How near was the pipe to her?

A. Within two feet.

Q. So that there was a pipe behind her within two feet of her, and a pipe in front of her within two feet of her?

A. Only one in motion. 20

Q. And one was in motion; now, didn't that pipe strike her?

A. No, sir.

Q. And didn't you pull her out from between those two pipes?

A. No, sir; I took her away before the pipes had a chance to strike her; she was backing up between the pipes, and I took her away.

*Re-direct examination* by Mr. Coult: 30

Q. In point of fact, there was a pipe standing and one rolling, and she put herself between them and you took her away?

A. Yes, sir.

Objected to.

Q. He speaks about a bench mark; was there a single bench mark on the Slingerland land at all?

A. I don't remember any bench mark on the Slingerland land. 40

*Further cross-examination* by Mr. Riker:

Q. Now, you say she placed herself between those two pipes; do you mean to say that she walked up that alley four feet wide and placed herself between those two pipes?

The Witness: There was no alley.

Mr. Riker: There was a four foot space between the two pipes.

10

The Witness: They were not parallel.

Q. How were they running?

A. One was running past the end of the other.

Q. Then it was just at the end where she would have been caught except for you?

A. There were two ends, and I thought it was dangerous.

Q. Did she walk in there when that was coming, or was she being pushed by the pipe at that time?

20 A. She persistently walked in.

Q. Do you mean in front of the pipe to get into that position?

A. That is what she did.

Q. Didn't you say a little while ago that she was pushed forward?

A. No, sir.

Q. Wasn't her back to the moving pipe?

A. Yes, sir.

Q. How did she happen to be moved forward then?

30 A. She wasn't at that time; she would back up toward the pipe, and back up to it.

Q. How fast was the pipe moving then?

A. The pipe naturally moved no way but very slowly.

Q. How many men did it have back of it?

A. The usual number; I don't remember how many.

Q. Twenty or thirty?

A. On a pipe? Oh, no.

Q. Not eighteen?

A. No.

40

BRITTON D. EVANS, sworn in behalf of defendant.

*Direct examination* by Mr. Corbin :

Q. Where do you reside, Doctor Evans?

A. Morris Plains, N. J.

Q. What is your profession?

A. I am a physician.

Q. How long have you been a physician?

A. About eighteen years.

10

Q. What is your position at Morris Plains?

A. I am the Medical Director of the New Jersey State Hospital.

Q. How long have you been stationed at the Morris Plains Hospital?

A. Since the first day of June, 1892.

Q. Have you made a study in your practice, or in your studies, of nervous diseases?

A. I have.

Q. For how long have you made a study of it?

20

A. I have been continuously in the work of caring for, treating and looking after nervous diseases since 1887; my time has been almost exclusively devoted to it.

Q. Where besides at the Asylum?

A. I was Assistant Superintendent of the Maryland Hospital for the Insane for more than four years, and after that I was elected Superintendent of the Institution for the Feeble Minded, in which position I remained for a short time, and resigned to take charge of the work at the hospital here.

30

Q. Have you had under you cases of hysteria?

A. I have, both in and out of institutional work—a great many.

Q. Have you had cases of what is called neurasthenia?

A. Quite a number.

Q. Will you just describe what hysteria is?

A. Hysteria is a so-called functional disease of the nervous system; it is a disease that may have all the minor nervous and muscular manifestations, but has no well-defined pathology; it is a disease which is very

40

much more common in women than in men; in fact, its very name is said to indicate that; the early writers looked upon it as being due entirely to womb trouble.

Q. What does the word hysteria, or the Greek word from which it comes from mean?

A. It means the organization of the womb, practically that is the literal application.

Q. Peculiarly a woman's disease, is it?

A. Oh, a woman's disease, yes.

10 Q. What is neuastheria?

A. Neurasthenia represents in—I don't know whether you want me to continue with my definition with hysteria.

Mr. Corbin: I withdraw the last question, and you may complete your definition of hysteria.

20 The Witness: Hysteria is most frequently exhibited in the female sex, and at or about the appearance of their menstrual function, and most frequently coincident with some derangement of the function of menstruation. It is primarily, and necessarily according to my observation and experience, a hereditary disease. The very foundation of the disease is laid in a peculiar abnormally organized nervous system. I think that that in a general way covers the situation without elaborating.

Q. Now, what is neuasthenia?

30 A. Neurasthenia, like hysteria, represents a vast number of clinical or morbid manifestations. It differs from hysteria in that in neurasthenia there is a loss of nerve tone or nerve force. Neurasthenia, like hysteria, very frequently is dependent upon hereditary nervous weakness, but not positively always so, as in hysteria. It is sort of a running mate to hysteria, but attacks more frequently the male sex than does hysteria.

Q. Well, do you find one following the other or together?

40 A. Find them together, and find one following the

other. Neurasthenia simply means the asthenic condition of the nervous system.

Q. The word means nerves, doesn't it?

A. Yes, nerve æsthenia.

Q. (By the Court.) What is æsthenia?

A. That is loss of force or nerve power, it means.

Now the pathology of neurasthenia proper is a good deal as it is in hysteria; we cannot locate any definite pathological lesions that are observable; it depends on the symptoms. Sometimes we have a disease perhaps which can be demonstrated under the microscope and all that sort of thing. There are very few symptoms either in neurasthenia or hysteria that can be said to be absolutely characteristic of them. It is simply a group of symptoms, and so wide is the group that neurasthenia has been looked upon as a sort of clinical catch basket, or catch-all where a group of uncertain nervous symptoms are manifested, and it is the fashion to call it neurasthenia.

Q. Is neurasthenia hereditary like the other? 20

A. Not so much as the other.

Q. Have you read the testimony given in this case by Doctors Romont and Morgan?

A. I have.

Q. You said that this hysteria was likely to develop in a woman at certain periods; about what ages?

A. Usually from 12 to 25; more likely from 12 to 18; it is an evolutionary disease.

Q. What tends to bring it out?

A. You have hysterical manifestations or symptoms of a permanent character exhibited, not a simple matter, such as unusual conditions in menstruation; a painful menstruation will sometimes bring it on. I have seen women get into these agitated conditions at 16 and 18 years of age.

Q. What other causes?

A. Any little agitation. I have been present and seen these hysterical agitations come on during religious services, which is simply an incident in the situation. It is just a condition of hereditary character; a peculiar 40

organization of the nervous system is there, ready, on the highest tension, to go off its balance, lose its equilibrium.

Q. How about anger?

A. Anger will produce it, disappointment in love, lack of attention on the part of a sweetheart—all these will cause these manifestations. Hysteria cannot be produced, or hysterical manifestations cannot be introduced into a healthy individual.

10 Q. Are there any other excitements that tend to bring on hysteria?

A. Any little form of excitement; excitement of the most trivial character. A woman will bet a dollar on a horse race because some young man sits near her and get excited. I have gone to horse races on a few occasions and I have seen these manifestations for just such trifles. It takes practically nothing to bring on these manifestations.

20 Q. What would you say would be the effect of talking on a subject?

A. Any excitement will do it; talking and discussing a subject of any kind that is calculated to agitate a very highly nervous and neurotic woman is liable to culminate in all kinds of hysterical manifestations.

Q. Supposing the person was not neurotic, would excitement bring on such manifestations?

30 A. Not at all. The very foundation is laid in a morbid nervous organization. Just the same as you plant a lot of cabbage seed in the ground, the effect of the moisture and sunlight on the germ in the seed will finally bring the sprout out. It may be told by certain things, and if a casual shower comes on unlooked for and not calculated upon by the person who put the seed there, they will come up a little earlier; so hysteria may develop a little earlier owing to favorable conditions.

Q. Is excitement, then, a cause of hysteria?

A. No; it is only an agency for its little sooner development.

40 Q. Take the case of a girl 17 years old, living on a farm with her father and mother, and say a pipe line

company, a city comes along to lay pipe, and does lay pipe on the adjoining property up to the line on both sides, and places pipes there ready to lay them across her father's farm, but does not because of his opposition; that law suits and an injunction follow, of which she knows, and finally men coming a day before waiting there to move when the legal process is out of the way, what would you say as to such a state of affairs as that coming to the knowledge of the daughter?

A. I say that the mental agitation incident to that situation might cause hysterical manifestations in a woman who had the very basis of morbid conditions, laid probably at birth or previous to birth, in her nervous system. 10

Q. And suppose that 20 or 30 men came there on one day and began work on each boundary of her father's farm, but not on it, and that her father went to Jersey City, to court, the next morning to see if this injunction was dissolved, leaving her there with directions not to let anybody on the farm except they showed authority in writing, and that then men did come and she went out to stop them, what would you say of that situation? 20

A. I would say that the nervous agitation and mental strain incident to the instructions given by the father and the discussion of a subject like that might especially prepare a highly neurapathic woman to give forth nervous manifestations under almost any excitement; and if there were two groups of circumstances upon which her mind would be concentrated, there would be mental agitation. 30

Q. Doesn't agitation tend to bring it out?

A. Yes.

Q. Supposing that when she came out to stop the men she has a book or pencil in her hand and attempts to write names, what does that indicate?

A. The nervous strain previous to taking out that paper and pencil or running on the ground is evidence of a highly neurotic condition of the individual before

she actually came in contact with the actual conditions themselves.

*Cross examination* by Mr. Riker:

Q. Doctor, I don't quite understand you in regard to hereditary; how do you know that this disease is hereditary?

A. It is clearly known to be hereditary because it is, nineteen times out of twenty, manifested in persons in  
10 which there is direct knowledge of hereditary taint, where there are members of the family who are highly neurotic; it may be laid in past nervousness on the part of the parents or relatives; it may be due to tubercular trouble or to any form of mental distress, insomnia, etc.

Q. Suppose you had a good strong girl, whose family on both sides had never shown any indication of nervous trouble whatever, and this girl of eighteen, after having a pipe rolled against her being taken from in front of it, should then show hysterical symptoms, what  
20 would you say to that?

A. I couldn't say anything to it; the question is not quite in a form for me to answer intelligently; if you mean to ask me what I would say as to excluding hereditary as a factor.

Q. In that case, yes.

A. Then I could say no. I should say that a mother under excited conditions, or a father under mental agitation or under the influence of alcohol, if he had begotten that child, she would inherit, she would most likely  
30 inherit just such a nervous system as I have described.

Q. Supposing the father and mother were temperance people; then what would you say?

A. That is only one form; I would exclude intemperance.

Q. Suppose no one of them had ever had any highly nervous neurotic or neuropathic conditions, what then?

A. If they never had, it would be an evidence that they never had; but it wouldn't be, simply because you  
40 assume it, proof that they never had.

Q. Isn't it a fact that most of us hard working lawyers get into this condition you call neurasthenia at times, and you send us to Colorado or to California after you have extracted from us all you can get from us?

A. I have always found it extremely difficult to extract anything from a lawyer without I get it from his client, through him, however.

Q. But isn't it a fact, Doctor, that we do get into that condition that you call neurasthenia at times, and have to lay off and take a rest? 10

A. I think that is a proper question. My experience is that I have frequently attended lawyers who were broken down with hard work, and I believe some of them do.

Q. You call it neurasthenia?

A. Some times.

Q. Is that hereditary with us?

A. Not necessarily; I clearly stated that the element of heredity was not as essential in neurasthenia as it is in hysteria. I stated that clearly in my direct examination. 20

Q. Doctor, suppose a young woman had been accustomed to the physical exercises of a farm, driving a horse and assisting with the washing and ironing, and was apparently strong and robust, and had passed her twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth year, and was approaching her eighteenth year without ever having shown any of these neurasthenic symptoms, would you still say that she had it by heredity?

A. Yes; oh, yes. 30

Q. And the fact that she had gone all those years without developing any of the symptoms would mean nothing to you?

A. It would mean to me that her habits of life had postponed its outbreak—had been ahead of her that far.

Q. Then you do not agree with the statement that the most usual cause of hysteria is shock?

A. I don't believe that anybody says that that knows anything about it much. I have never found it so. I believe that shock may produce an outbreak in a hyster- 40

ical person, but that is one of the principal or probable causes is not only not true, but it is not borne out by any authority I know of.

Q. Yet you say that excitement is the most usual cause?

A. I do not.

Q. Isn't it?

A. No, sir; I said that hereditary and menstrual disorders are the principal and underlying causes of hysteria in ninety-nine cases out of a hundred, and that any form of excitement may tend to cause hysterical manifestations in a person having a highly organized nervous system.

Q. Then the hysterical condition that we as laymen know as hysteria comes from excitement?

A. It may or may not.

Q. Does it or not?

A. It does not; it does occasionally.

Q. Suppose we have a case where there were no menstrual difficulties, what then?

The Witness: You want my idea?

Mr. Riker: Yes, I want your idea, doctor; I want yours.

A. It would depend entirely upon from whom the history came.

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30 PETER V. P. HEWLETT, sworn in behalf of defendant.

*Direct examination by Mr. Corbin:*

Q. Where do you reside?

A. Newark.

Q. What is your profession and occupation?

A. I am a physician and surgeon.

Q. Are you practicing your profession?

A. Yes, sir.

40 Q. How long have you been practicing?

A. Thirty-five years.

Q. Always in Newark ?

A. Yes, sir.

Q. Have you had to do with nervous disorders ?

A. Yes, sir.

Q. How long and to what extent ?

A. I have been connected with the Essex County Insane Asylum for thirteen years.

Q. How long have you made a study, and a special study if you have, of nervous diseases and troubles ? 10

A. Well, for that time, and for thirteen—twelve or thirteen years after that, until the present time ; twenty-five years.

Q. Are you engaged in that line of practice now ?

A. Not as a specialty, but I see a great deal of it.

Q. What is hysteria ?

A. Hysteria is a disordered condition of the nervous system.

Q. What does it arise from ; what do you trace it to ?

A. It comes from a disordered development of the nervous system ; it is born in the seed of which the person who has hysterical trouble comes from—sowed in the seed. 20

Q. Do you mean it is hereditary ?

A. It is hereditary ; yes, sir.

Q. Is it men or women who have this disease mostly ?

A. The very greatest amount of that disease occurs in women—ninety out of a hundred cases.

Q. And what time does it develop ?

A. It is developed about or shortly after the commencement of menstruation ; it really commences with the menstrual period, but it does not appear until two or three years after ; there is no such thing as hysteria after menstruation. 30

Q. And that is about at what age ?

A. Well, it runs from forty to fifty, and commences from fifteen to sixteen, seventeen, eighteen years ; it depends on the amount of stigma or blotting there is on the nervous system whether it comes in one year after men-

stration or three or four; but it always starts after that.

Q. If it is in the system is it bound to exhibit itself?

A. Yes, sir; sooner or later.

Q. What brings it out, if you can trace it to anything?

A. Well, anxiety, worry, anger; anger is a very frequent cause of hysteria; any cause that excites the nervous system.

Q. Is the anger and the worry the cause of the disease?

10 A. No, sir.

Q. What connection has it with it?

A. The anger and the worry simply precipitates a spell that will come sooner or later, a hysterical spell; persons who suffer with hysteria are not always, night and day, in the same condition; there is an accumulation of nerve force which has to be explained generally; after it has accumulated up to a certain period the rapidity with which it accumulates depends on the condition of the nervous system, and the control the person has on the outburst.

20 Q. Will these causes produce hysteria in a person who has not this hysterical condition?

A. No, sir; you can never have hysteria without you have the warp in the seed of the hysterical person.

Q. Did you hear the testimony of Drs. Romont and Morgan in this case?

A. Yes, sir; Dr. J. C. Morgan.

Q. From that testimony, what would you say of Altha B. Slingerland?

30 Objected to.

Q. What is your opinion as to whether or not she is a person predisposed to hysteria?

The Court: I do not think you can frame a hypothetical question in that way.

[Question withdrawn.]

Q. Is this disease capable of treatment?

40 A. Oh, yes; it is amenable to treatment, a person with hysterical trouble; it is analagous to mental, insane

trouble, which we know can be controlled by proper and persistent treatment for a long time; there has to be more or less manifestation demonstrated, but the degree of it can be controlled to a very great extent by proper and persistent treatment.

Q. Take the case of a girl seventeen years old, living with her father and mother on a farm and accustomed to country life, and a water company coming along to lay a line of water pipes through the country and across her father's farm, and actually laying them up to his line on each side, but stopping there because of his opposition, litigation ensuing with respect to it, and the pipes piled up ready to lay across the farm for several months, an injunction obtained by him with her knowledge, and finally he going away to see if the injunction is to be dissolved, and leaving her in charge of the place with instructions not to let any one come on without written authority; what would you say of the effect of such a state of circumstances on such a girl?

A. I think that state of circumstances would predispose her very much to an outburst of hysteria.

Q. Suppose 20 or 30 men should come near her father's place and begin work, one on one side and one on another; on the edge, and that her father should leave her the next morning in charge of the place and go away to find out the result of the litigation, with instructions to her not to let them go on without written authority, and that she should go out in the presence of these 20 or 30 men who were going on and attempt to stop them?

A. I think that would increase the probability of her having an attack very soon; increase the excitement.

Q. Suppose that she brought out a paper and pencil, ordered these men off and asked for their names and when they were given attempt to take them down, but was unable so to do because of her shaking hand; what would you say?

A. I should say she was already commencing the attack previous to her coming out.

Q. Suppose after these conditions she did have these

attacks of hysteria and they recurred from time to time, and there was no treatment for it for sixteen months; what would be the effect upon her?

A. Well, simply the disease would run on; it would make its own advancement, with nothing to control it; she would be more liable to have them than if she had had treatment in the interval.

*Cross examination by Mr. Riker:*

10 Q. Doctor, suppose a young woman who had been strong and healthy, living on a farm, doing washing and ironing, driving horses—a rosy checked, well developed girl should suddenly develop hysteria; you would look for a pretty vigorous cause, wouldn't you?

A. No. In the first place, hysteria, what is called motor hysteria—there's motor and—which is associated with no motor cause and excitement, that never comes on at once; it takes a year or more before an attack comes on; the evolution of the ovaries, which has  
20 something to do with them, is taking place little by little until the explosion takes place.

Q. So that you would not expect a girl of the character given you to have hysteria?

A. Yes; when it is sown in the seed it will come out.

Q. We are talking about a girl strong and healthy, and a good weight, good size.

A. Yes, sir.

Q. Robust?

A. Yes.

80 Q. Who as reached nearly her 18th year.

A. Yes, sir.

Q. In perfect womanhood.

A. Yes, sir.

Q. And she then develops hysteria, and neurasthenia coming on immediately after having a pipe rolled against her; what would you say in regard to that?

A. I would say that that hysterical condition had been  
40 any other excitement.

Q. Nothing more than accident?

A. No; some anger, anything she is frustrated in will produce that attack in a person who has hysteria; and the fact that she did have an attack of hysteria shows that she had hereditary trouble to produce it; it never comes without hereditary transmission of the stigma or spot on the nervous system.

Q. Did you ever discover the stigma or spot before the actual hysteria?

A. Yes, sir; by premonitions that took place before hand; we mean by the stigma a blot on the brain itself; now that must be either in the motor or sensory tract or in the mental tracts of the brain. If it is in the motor tract, it is preceded by some little motion of the hand, paralysis, something of that kind, which would indicate the beginning, the signs of the stigma on the nervous system.

Q. Suppose there are none of those, suppose the subject was healthy and strong; why do you say that?

A. Because she always has had it; it is hereditary. 20

Q. How do you know?

A. Because it is the result—

Q. (Interrupting.) But if there was hysteria in this girl of seventeen, and there had been no hysterical manifestations of a character that all men can see, you, nevertheless, see it somewhere?

A. No; I didn't say so; it depends on the man we are looking at, to anybody that is familiar; yes, sir. I never saw a case that could not be detected six months before the manifestations—the stigma shows. 30

Q. When you say hereditary you do not mean from father or mother?

A. No; it is in the blood, in the seed.

Q. When you get down to that fineness, aren't you simply guessing?

A. No, sir; I know this personally.

Q. You have seen it in some cases?

A. Yes, sir; in a great many cases; thousands of cases.

Q. Then an hysterical attack of this character is one produced with her condition?

A. It depends on how the blot effects the nervous system; if the effect is slight it may take a long time or a great amount of trouble before it so accumulates that there is an explosion; the same as an electrical charge clears the atmosphere; and you may go a long time before you have another change of conditions, or may have it in a few minutes.

10 Q. So that a girl without it may go a long time?

A. She couldn't; she wouldn't have the stigma to go any length of time.

Q. May have it only once?

A. That's possible; but I never heard of it.

Q. But they may go along for a long time?

A. Yes, several months, or one to two years; that's quite unusual, but there are cases as long as that.

20 Q. You take a girl of the character described, with a pipe rolled up close to her, and being in a position, perhaps, between two pipes likely to injure her, and she then and there develops hysteria, what will you say as to the cause of her hysteria?

A. I say that nobody ever then and there develops hysteria; it comes on slowly; it had been coming on this girl for days.

Q. Suppose there had been no symptom of it at all?

A. I would want to know who said there was no symptom.

Q. Her father and mother.

30 A. I don't think they know anything about nervous troubles; I wouldn't take what they said about it at all.

Q. How about neurasthenia?

A. Neurasthenia is akin to hysteria; those who have the stigma of hysteria are in a way to become neurasthenic.

Q. Neurasthenia happens among men as well as among women?

A. Oh, yes; neurasthenia, which is simply a nerve weakness, may come to people who are overworked.

40 Q. Is that hereditary?

A. No, sir; that is the opposite to hereditary—working hard.

Q. That comes from overwork?

A. Sometimes neurasthenia in a male—a person who has a stigma always has the conditions which produce neurasthenia, by reason of having some blemish by which the subject doesn't have control of the wires necessary to make the whole machinery go; for instance, loss of control of the stomach will produce weakness through an ænemic condition of the blood, which will work loss of power in the nervous system; loss of power in the nervous system can come from other causes than stomach trouble, as well as a hysterical condition. 10

Q. Neurasthenia is frequently produced by railroad accidents, isn't it?

A. Yes, sir; that's traumatic neurasthenia, or neurasthenia coming from shock to the nervous system by reason of traumatism or wound; that's an entirely different thing.

Q. And it has happened in a trolley car in which a person was sitting by the person being simply thrown up against the end of the car, showing no black and blue spots or no physical marks 20

A. Oh, yes, a trolley car; and a violent condition of the mind may so shake up the nervous elements that go to form the nervous system—what we call the molecules—as to effect the current passing through the brain and through the body.

Q. That is likely to be shown in loss of sensation in the limbs? 30

A. Anything below that point which is interfered with.

Q. It is also likely to interfere with the reflexes of the limbs?

A. Yes, sir; it there is such a condition as that.

Q. (By Mr. Corbin.) You speak of traumatic neurasthenia; what does trauma mean?

A. Trauma means a wound.

Q. Then this last kind of trouble you have been speaking of is trouble caused by a wound? 40

A. Yes, sir; it was put to me that it might be caused by sudden collision of a trolley car.

Q. If a man's leg was cut off that would be a trauma?

A. Yes, sir; he couldn't feel where it was cut off.

Q. Trauma is the Greek word for wound?

A. Yes, sir.

Q. And that's the sort of neurasthenia he has been speaking of?

A. Yes; one is called traumatic and the other dopathic without external cause

10 Q. (By a juror.) Is neurasthenia commonly known as what is shock?

A. No; shock will sometimes produce neurasthenia in people who have a very severe shock; either comes from an injury, but neurasthenia is what they call nervous exhaustion, sir; it is also called hypochondria with some people.

Q. (By another juror.) How do you compare shock and hysteria?

20 A. Shock, I don't think, has anything to with hysteria, excepting what we call mental shock from being surprised or angered or frightened, or anything that produces, causes emotions; but no shock, unless it was a severe injury, would produce hysteria—dopathic hysteria it may cause.

Q. Would hysteria cause derangement of the female organs?

A. No; derangement of the female organs causes hysteria; just the other way; hysteria never occurs until  
30 the female organs commence to evolve and never occurs after this time.

Q. (By Mr. Riker.) Doctor, do you know Dr. Fewsmith?

A. Yes, sir.

BENSON F. SNYDER, sworn in behalf of defendants.

*Direct examination by Mr. Coult:*

Q. Mr. Snyder, were you in the employ of the East Jersey Water Company in December, '91?

A. Yes, sir.

Q. Where do you reside?

A. Stockholm.

Q. How long have you lived there?

10

A. I have been in business up there now for about seven years.

Q. Are you in any way connected with the company now?

A. No, sir.

Q. In what employment were you in 1891?

A. I belonged to the engineering department; I was rod man; Mr. Olmstead's general assistant.

Q. Where were you on the morning of December, 1891?

20

A. I was at Butler early in the morning

Q. Did you stay at Butler the night before?

A. I did; yes, sir.

Q. Do you know what time you left Butler that morning?

A. I left Butler about quarter to ten, I should think; ten o'clock, thereabouts; quarter of ten.

Q. How did you get down to Pompton?

A. I walked down to Pompton Plains from Butler.

Q. When you got to Pompton Plains did you find Mr. Olmstead there?

30

A. Yes, I did; I met him at Gillen's hotel.

Q. What time did you arrive there?

A. I think about quarter to eleven.

Q. At that time had there been any entry made upon the Slingerland land?

A. No, there had not.

Q. Did you see the entry made?

A. Yes.

Q. Where were you at that time?

40

A. I was down there to work.

Q. Where was it made, at what point?

A. If I understand the map rightly, this (indicating) is the north line.

Mr. Coult: Yes, that is right.

The Witness: At the Hobart and Blauvelt property.!

Mr. Coult: Yes.

10 A. It was made there.

Q. In what way?

A. By removing the fence across the right of way.

Q. Do you remember whether there was more than one fence there at that time?

A. Yes, sir.

Q. A fence inside of a fence?

A. Yes, a piece of a fence.

Q. Was that taken down?

A. Yes.

20 Q. By whose direction?

A. Mr. T. A. Gillespie's, I believe.

Q. What did you start to do then?

A. I started to give Mr. Olmstead what we call a back site.

Q. How was that?

A. (Indicating on the map). Olmstead had his instrument up here on the Blauvelt property at a fixed point there.

Q. What did you see?

30 A. Olmstead put the transit on the Blauvelt property; that transit was on the centre line of the pipe, and I came on the south side of the property, where we had another centre to give him a site.

Q. You had a centre point?

A. We did down here on the Slingerland property.

Q. You went clear across to the centre point?

A. Yes.

Q. Then what did you do?

A. (Indicating on the map). Came back about here,  
40 to the centre of the property or a little north of the

centre, to cut in what we call a hub with a tack in it for a transit point.

Q. Was that on the right of way?

A. That was on the right of way.

Q. What occurred at that juncture?

A. I had put in the hub, got a line on it and put in the tack and established the point there.

Q. Do you mean just drove the mark in?

A. Got it in its proper place by marking a line on it, got the proper point and put the tack in. 10

Q. Then go on and state what occurred.

A. After we established that point I gave Mr. Olmstead the signal that we had it in all right, and he came forward with his instrument to set it up.

Q. Did he set it up there?

A. He was trying to set it up.

Q. What occurred then?

A. Samuel Slingerland—I think his name was Samuel Slingerland—he came and said he wouldn't have that instrument in there, he would knock it down, and he advanced with a club and drew the club to hit it; I prevented him from it, and he clinched me and in the tussle I went down. 20

Q. Threw you?

A. Yes, got on top of me; somebody took him off, released me.

Q. Go on and state the occurrence.

A. Mr. Olmstead, I think, tried to get the instrument set up again, and he didn't go at it with a club, but he placed himself— 30

Q. (Interrupting). Who do you mean now?

A. Sam Slingerland. He placed himself in front of the telescope so that we couldn't use it.

Q. Well then what was done? Oh? Did you see Aletha about that time?

A. I saw her there, yes, on the ground.

Q. Did you see what she was doing?

A. I seen some things she did.

Q. What?

A. I saw some things that she did. 40

Q. What did you see her do?

A. I saw her go up in front of the pipe, walk up in front of the moving pipe.

Q. That was after the pipes commenced rolling on?

A. Yes, sir.

Q. Did you see whether she placed herself in the line of the instrument also?

A. Yes, I saw her do that—both of them.

Q. At that time had the fence been taken down?

10 A. It was being taken down at about that time, or had been.

Q. Did you see them commence rolling in the pipe?

A. I saw them rolling in pipe; yes.

Q. Just state what occurred then so far as Samuel and Aletha were concerned; what did they do?

A. When the pipe was being rolled in the young lady, Miss Aletha, she walks up in front of it and stands there; stands in front of the pipe, and the pipe was stopped, was not rolled on her.

20 Q. What?

A. The pipe was stopped.

Q. What was done with her?

A. And she was asked not to get in front of the pipe, and she was removed from in front of the pipe.

Q. Who removed her?

A. Mr. Gillespie.

Q. Did you see him?

A. I did; yes.

Q. How did he do it?

30 A. First he asked her to come out of the way of the moving pipe—out of the way of the pipe, and she didn't go away; and he says "Now, young lady, come along with me" he says, "walk along with me;" and he took hold of her hand or arm, and I think he had one hand rather behind her shoulder, and they walked away from the pipe, off to one side, toward the east side.

Q. Did you see that occurrence more than once?

A. Yes, I think I did; I saw it more than once.

Q. Did you hear her say anything?

40 A. Yes.

Q. What did she say?

A. At one time I heard her—she asked what authority we had for coming on there—said she wanted to see the authority; she was directing her conversation to Mr. Thomas A. Gillespie.

Q. Did you hear any reply?

A. He said he didn't have any authority to show; she wanted it in writing; he said, "I haven't any writing; I received a telephone message to go on and lay the pipe and we are here to do it and must do it." She said that 10  
wouldn't do; that she wanted written authority; wanted them to get off; she asked for the men's names; he told her his name and told her to go to the timekeeper and she could get all the names.

Q. Did you see at any time that the pipe was rolled against her, touched her?

A. No, I didn't see it rolled against her; I saw her walk up towards an advancing pipe as the pipe was being rolled one way she walked towards it until she met the pipe.

Q. Then what was done with her? 20

A. The pipe was stopped, and as she turned around sideways and leaned up against the pipe and stood there; and she was removed out of the way.

Q. These occurrences then took place, when she was removed out of the way, on the right of way?

A. They was right along, and the pipe-lined ditch was where it had been scratched out, marked out.

Q. How did you indicate the lines after you were unable to get them? 30

A. There was a rope stretched from one stake to another to the Blauvelt fence; then there was a man went along with a pick and scratched out a little of the sod along the side.

Q. It was a level piece of land across here (indicating)?

A. Yes, sir.

Q. Did you see across without any trouble?

A. Yes, sir (indicating on the map); the stake was driven here, the rope was stretched across here and a stake established there, and it was stretched across. 40

Q. In point of fact, while that showed as if there was a shed there, there was no shed there?

The Witness: As close to the pipe line as that?

Mr. Coult: Yes.

A. No, sir; there was no shed there.

Q. Now, do you know anything about where there was any bench mark?

10 A. Yes, I do.

Q. Whereabouts?

A. It was on the Blauvelt property.

Q. Can you indicate about where it was on the map?

A. (Indicating on the map.) I think it was somewhere near or about on the east side of the pipe line north of the Slingerland fence; there was a bench mark in there.

Q. Did you use that bench mark that day?

A. I think we did.

20 *Cross examination* by Mr. Riker:

Q. How old were you in 1891, Mr. Snyder?

A. Let's see, that's about eleven years ago, and I am thirty-five now; you can figure it out.

Q. Had you had much experience as an engineer?

A. That depends on what you call much experience.

Q. How many years at that time had you been working at that kind of work?

A. Why, I had been working two and a half, three years.

30 Q. When did you go to work on this particular job, this pipe line job?

A. Well, I went to work on it before the East Jersey Water Company began on it; probably when it was known as the Bradley Syndicate.

Q. You were engaged on the whole of the work?

A. Yes.

Q. And it is true that you had to have bench marks to establish the grade, isn't it?

40 A. I believe it is true that we did have bench marks.

Q. How many did you have from Macopin Intake to the Belleville reservoir?

A. You will have to ask somebody else beside me; I wouldn't attempt to say.

Q. Several thousand?

A. No, I don't think there were several thousand.

Q. Well, one thousand?

A. I am not going to say; there was a number.

Q. Five hundred?

A. Go ahead.

10

Q. More than 500?

A. I didn't say so; I say I don't know how many there were.

Q. How many were there?

A. I am not going to say, because I didn't count them.

Q. Ten?

Objected to as not important.

The Court: I do not know whether it is important or not; it is cross examination; he has a right to ask it. 20

Q. Can you remember any other bench mark in the whole twenty miles except this one you recall the exact location of?

A. Yes.

Q. Well, how many do you recall—how many can you recall?

A. I don't know how to name the places so that you would understand where they were, but we had them on stumps and on boulders at different points. 30

Q. Now, how many can you remember so that you can locate them?

A. As I said before, we had a great many.

Q. Of this great many how many can you remember accurately so as to tell us where they were?

A. I think I could go and find a great many.

Q. How many can you recall before this jury?

A. There's no stations; we simply recorded a bench mark as a bench mark; they are put so many feet from a certain point. 40

Q. But you do remember this particular one?

A. I do remember that we had a particular bench mark in that field, because we put it there, and another point at the Pequannock river, cut on an abutment.

Q. That is two.

A. I remember another at the canal crossing.

Q. Three.

A. I remember another near the railroad crossing at Little Falls, cut on one of the rails; I cut it there.

10 Q. Four.

A. I remember another at the river crossing at Little Falls, cut on an abutment.

Q. That's five.

A. I remember another one over at what we call—

Q. (Interrupting.) Give us the number that you remember.

A. You want to know where they are, and I am trying to tell you. I am giving the number as I go along.

20

The Court: Is it worth while to take up the Court's time with this?

Q. How many bench marks did you have on the Blauvelt property south of the Slingerland property?

A. We had a bench mark on the Blauvelt property north of Slingerland.

Q. I am speaking of south of Slingerland?

A. I don't think we had one right there; we didn't cut them in every ten feet.

30 Q. Did you go to the bench mark on the Slingerland land on the 24th of December, 1891?

A. I went to the bench mark in there on that day.

Q. What for?

A. To give Mr. Olmstead a reading, to give the grades.

Q. To give grades?

A. Yes, sir.

Q. That was after the line had been run—after the line had been run and the side line?

40 A. We ran a line establishing a line through there two years before.

Q. So you had it all surveyed, did you, two years before that across this property ?

A. No ; I did not have it surveyed ; it was surveyed.

Q. Marked out with stakes ?

A. Marked out with stakes.

Q. Across the Slingerland property ?

A. No ; it was not marked out with stakes across the Slingerland property, there wasn't a stake driven there ; we did not go on there to mark it before the 24th of December, 1891. 10

Q. You said the line had been run ?

A. I said a line had been run.

Q. Had bench marks been established for grades two years before ?

A. I think there had been bench marks run up there three years before that, before there was any line run up there at all.

Q. Were you with them then ?

A. I was there a long while before this line was run up there. 20

Q. Before the bench marks were established were you there ?

A. I wasn't there myself.

Q. Did you have field books ?

A. I saw a record of them.

Q. Do you know where the field book is now ?

A. Only as I presume.

Q. You worked for Mr. Olmstead ?

A. Not always ; no, sir,

Q. Under Mr. Olmstead ? 30

A. While I was in the employ of the East Jersey Water Company I suppose I was under his direction. I was not always under Mr. Olmstead's direction while with the East Jersey Water Company.

Q. From what direction was Samuel coming when you first saw him ?

A. I saw him about this place (indicating on the map) ; somewhere about along there ; when I discovered him first.

Q. Then he was right close to you—

A. (Interrupting.) Yes, there was times when he was close to us.

Q. —when you first saw him?

A. He was so close to me he was on top of me.

Q. Do not fence. Where was he when you first saw him?

A. I tried to show you on the map.

Q. Where were you?

10 A. I was somewhere along there (indicating on the map.)

Q. So you did not see him until he was right by you?

A. I didn't say I didn't see him until he was right by me.

Q. Where was he with reference to you when you first saw him; how far away was he?

A. He was at different intervals from him; sometimes on me, sometimes probably a hundred feet from me.

20 Q. When you first saw him?

A. I don't remember just where I was when I first saw him.

Q. Did you see Jacob Slingerland there that morning?

A. I think he was there that day; I don't have much recollection of him; I think he was there; I am quite sure he was.

Q. How did you happen to be present so that you heard Mr. Gillespie talk to Miss Slingerland?

A. It was my duty at that time to be on the ground.

30 Q. But you said you were standing in the centre of the right of way?

A. I didn't say that; I said I had the axeman putting a hub in there.

Q. Where were you?

A. I was at the end of the line.

At this point the court took a recess of one hour.

## AFTER RECESS.

Mr. Corbin: I offer in evidence certain testimony which was referred to in the former case, given by George Zeek. We have a stipulation between the parties that we can use the printed books without calling the stenographer. First in the case of *Slingerland v. The East Jersey Water Company*, in 1894, recorded in the printed book at page 64, lines 21 to 36 inclusive, which, with the permission of the Court, I will read. Also the testimony of the same witness on page 72, lines 1 to 6 inclusive, on cross-examination. I also offer in evidence the testimony of George Zeek, given at the second trial, in 1897 (which was the first trial against the Gillespeis), pages 50 and 51, beginning at line 39 on page 50 and ending at line 16 on page 51. I also offer in evidence the testimony of the same witness in the trial of this cause in 1901 (being the second trial against the Gillespies), at pages 144 and 145, beginning at line 28 on page 144 and ending with line 31 on page 145. I also offer in evidence the testimony of Mr. Amzi Zelif in the trial of 1901, page 102, lines 19 to 23 inclusive.

(Counsel reads the testimony referred to.)

## DEFENDANTS REST.

30

PAUL VAN VOORHIS, sworn in behalf of plaintiff in rebuttal.

*Direct examination* by Mr. Riker:

Q. Where do you live?

A. Pompton Plains.

Q. How long have you lived there altogether?

A. I have lived there 16 years continuously.

40

Q. Where were you on the morning of December 24 1891?

A. I was at Gillen's hotel.

Q. At what time?

A. Probably a quarter to eight.

Q. Did you see Mr. Thomas A. Gillespie that morning?

A. I did.

Q. Where was he?

10 A. He was there.

Q. What time did he leave the hotel?

A. He left probably 8 o'clock, about.

Q. Do you remember his doing anything particularly before he left?

A. When he came out of the dining-room he went into a little washroom and took out a grip—

Mr. Coult: (Interrupting.) One moment

The Court: What is this in rebuttal of?

20 Mr. Riker: Mr. Gillespie said he did not take out a revolver that morning.

AFTER ARGUMENT.

The Court: That would be part of your main case.

80 Mr. Riker: Next, Mr. Gillespie has referred to himself as going there peaceably, and without doing anything, except in the kindest, most gentle way, toward Miss Slingerland.

The Court: I do not think that is in rebuttal.

Mr. Riker: I offer to prove by this witness that before leaving the hotel—

The Court: (Interrupting.) Counsel ought not do that. He has asked the witness a question and I overrule the question.

40 Mr. Coult: And you have your exception.

Mr. Riker: I simply want to get the case so that I can—

The Court: (Interrupting.) You have it now; you have asked the question; the question is overruled and you have your exception.

Let the exception be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.] 10  
*Judge.*

CROSS EXAMINATION WAIVED.

JACOB SLINGERLAND re-called in behalf of plaintiff in rebuttal.

*Direct examination* by Mr. Riker: 20

Q. Mr. Jacob Slingerland at the time when you were at the north end of this Andrew J. Slingerland property with Aletha and she asked for the names of the persons coming on the property, did you see her attempt to write on a pad?

A. No; she did not attempt to.

Q. Did her hand shake at any time during that transaction?

A. No, sir.

30

CROSS EXAMINATION WAIVED.

Mr. Riker: I offer in evidence, by consent of counsel, the writ of error taken in the case of Slingerland against the City of Newark.

Mr. Coult: What is the object of that?

Mr. Riker: To establish the time of the granting of the injunction. The writ appears to have been taken December 22, 1891.

40

Mr. Coult: Yes, that is probably so; the injunction was obtained a little after that; that would be the next morning, I think.

Mr. Riker: So that the injunction was obtained on the 23rd of December, 1891.

Mr. Corbin: Oh, it was in force longer than that.

10 Mr. Coult: I think it was returnable immediately.

The Court: The writ of error was taken on December 22, 1891; that was to review the certiorari proceedings; the Supreme Court had dismissed the writ of certiorari, and the writ of error was taken on the 22d.

Mr. Coult: Dissolved the next morning.

20 Mr. Riker: That was the 23rd; and on the 24th the accident occurred. Now, I offer the map in evidence.

Mr. Coult: They may both be considered in evidence.

Mr. Riker: And I offer the deed from Beam and wife to Andrew J. Slingerland, dated January 3, 1867.

PLAINTIFF RESTS.

30 Mr. Coult: I move the Court to direct a verdict for the defendants.

AFTER ARGUMENT.

The Court: I decline to direct a verdict for the defendants.

Defendants' counsel pray an exception, and the same is allowed.

Mr. Corbin sums up for defendants'.

Mr. Riker sums up for plaintiff.

Defendants counsel request the Court to charge the jury as follows :

1. The jury are directed to find a verdict for the defendants'.
2. If the entry on the right of way was made after the injunction was dissolved and after the tender in Jersey City, the entry was lawful and the defendants had a right to use all necessary force to remove plaintiff out of the way. 10
3. The plaintiff was a wrong-doer, and if her action upon the adjoining land was part of a design on her part to prevent pipes being put upon the 33 foot strip, and without intention to protect the land outside of the strip, she cannot recover.
4. That under the issue as framed the jury should disregard the evidence of the plaintiff given to show that the assault (if any was made) was made outside of the right of way. 20

The Court charged the jury as follows :

GARRETSON, *J.* Gentlemen of the Jury : This is an action brought by the plaintiff against the defendants to recover damages for personal injuries which the plaintiff alleges she received on the 24th day of December, 1891 (that is more than eleven years ago), at the hands of the defendants or their employees. 30

The injury alleged and sued for is what is called an assault and battery. An assault is an unlawful, violent, rude or offensive touching of the person of another and is actionable if the touching of the person is entirely unlawful, or it may be in part lawful and yet by reason of the excess of force used be actionable.

The father of the plaintiff was the owner of a farm, across which had been projected the route for a pipe line to convey water from the Pequannock river to the City of Newark. The City of Newark had contracted 40

with the East Jersey Water Company to furnish its water supply, and the East Jersey Water Company had contracted with McKee & Millson, who had sub-contracted with T. A. & R. G. Gillespie to lay this pipe line. The pipe line had been laid for the entire distance from the Pequannock river to the Belleville reservoir, some twenty miles or more, except across the plaintiff's father's farm.

- 10 The right to lay this pipe across private property could be obtained only by getting permission from the owner, or by condemnation proceedings. This right of taking private property for public use by the process of condemnation is recognized by our Constitution, is part of the law of the land. No man's property can be taken without its being paid for. He may be unwilling to sell it to the person or corporation desiring it, but if it is to be put to public use the law provides a way by which the compensation to which the owner is entitled can be ascertained and fixed. That is usually done by the
- 20 appointment of commissioners, who examine into the whole subject and determine what the land to be taken is worth, what damage has accrued to the land not taken, and so arrive at the compensation to which the land owner is entitled for what is taken for the public benefit. That is part of the law of the land, part of the law under which we all hold our property, subject to which we all must be. We have nothing to do with the merits of the condemnation proceedings. The law provides the way by which the property owner, if dissatisfied,
- 30 may have it examined by a jury of his county, and if it is not right as fixed by the commissioners, made right by the jury.

It appears in the case before us that there was a condemnation. The City of Newark could not agree with the owner of this land as to the amount he should be paid; therefore, commissioners were appointed, who, after examining the land, made an award.

- 40 This right of condemnation was vested by the Legislature in the City of Newark, and if the owners of lands could not agree with those representing the city upon

the price to be paid for the land for the pipe line, the proper course was to appoint a commission to determine what should be paid by the city for the use of the land for the purpose of this pipe line. Such proceedings had been taken with respect to the land of the plaintiff's father. A strip of land thirty-three feet wide had been taken by condemnation for this pipe line, and an award had been made; but before the award had been paid or tendered to the plaintiff's father, he had procured an injunction out of the Court of Chancery, restraining the defendants from entering upon possession of this property. 10

If I understand the evidence that has been introduced, there had been proceedings by certiorari to test the right of the City of Newark to take such land by condemnation. That writ, I presume, in this case, operated as a stay of further proceedings. That had been determined by the Supreme Court in favor of the city; therefore the stay resulting from the granting of that writ had ceased; so there was no stay from that source. A writ of error was taken to the determination of the Supreme Court, which did not operate as a stay; therefore application was made to the Chancellor, and the Chancellor issued an injunction, probably in the shape of a rule to show cause, with a stay; at any rate it was a stay issued out of the Court of Chancery. That, as I understand, was on the twenty-third of December. 20

On the morning of the twenty-fourth of December, 1891, this injunction granted by the Chancellor still remained and no payment or tender of payment of the moneys awarded to the plaintiff's father had been made to him. The deposit of money in the County Clerk's office on the twenty-third, if that was the date, was not a tender or a payment such as would justify the city in going on and taking possession of the land. While the injunction remained in force and until the amount awarded had been paid or tendered, the defendants had no right to enter upon the thirty-three feet strip of land owned by the plaintiff's father; but the moment the injunction was removed and the amount tendered to the 30 40

plaintiff's father, the defendants had the right to enter upon the thirty-three feet strip of land and proceed to lay the pipe therein. They were not required to give any notice of their intention to the land owner or to any other person; and no one, not even the land owner himself, had, from the time of that tender, any right to interfere with the defendant's entry upon the thirty-three feet strip, and with the laying of the pipes therein.

The plaintiff's father left his home on the morning of  
 10 December twenty-fourth, 1891, and he testifies that when he left he gave her certain instructions that she was not to allow any one to enter upon his land without showing written authority.

Now, Gentlemen of the Jury, you must determine what those instructions were intended to be for. Were they simply instructions to protect his farm? If so, what need was there for such instructions? Or were they instructions intended by him to prevent the laying of this pipe? If they were, then they were absolutely of  
 20 no value after tender of the amount of the award had been made. Those instructions would give no right to this plaintiff to prevent the defendant from going on the thirty-three feet strip, and the father himself could not have prevented the defendant's from going on the thirty-three feet strip; and he had no right to instruct anybody else to keep them off after the tender had been made. Nor were the defendants required, as I have stated before, to produce any written authority or any  
 30 other authority; the fact of the making of the tender conferred upon them the right to go upon the strip.

It is admitted that the defendants entered upon the thirty-three feet strip during some part of the twenty-fourth day of December, 1891, and it is also in evidence, as I understand it, (that is a question for you) that the injunction was dissolved and the tender of the award to the plaintiff's father, at Jersey City, was actually made that day. It was offered to his counsel; that was a sufficient tender. The Court so instructs you, that the tender was made, in Jersey City, that morning.

The plaintiff claims that this entry was made before the injunction was dissolved, and the amount of the award tendered to her tather; the defendants insist that entry was made after the dissolving of the injunction and the tender of the award. If the entry was made before tender, the rights of the defendants would be different from their rights after tender made. The time when the entry was made, therefore, and the time when the difficulties between the plaintiff and the defendants occurred, become important, because that is the time of the occurrence upon which this action is founded. If this difficulty occurred before the tender was made and the injunction dissolved, of course the right of the plaintiff's father in the land was absolute, and she had a right, acting under his instructions, to keep them off. If it occurred after the tender was made and the injunction dissolved, then the defendants had a right on the land and the plaintiff had no right to prevent their entry. So that you see how important it is to ascertain the time when this occurrence took place, in order that you may conclude whether it was before or after the dissolution of the injunction and the tender of the award. On the part of the plaintiff it is insisted that this entry was made sometime in the neighborhood of eight or half-past eight o'clock. There may be some evidence to that effect. The time of the entry is not so important as the time of the injury for which this suit is brought. That is the time you are to look at. When was the injury to the plaintiff—was it before or after the injunction was dissolved? There is some evidence from which the jury may infer that while the entry was made as early as eight o'clock or half-past eight, the injury to the plaintiff, for which this suit was brought, did not occur until some time after. Andrew Slingerland, as I understand the testimony, (but you must determine the facts) left home about half-past seven; his brother, Jacob, says he went over there about seven; that he was there about an hour and then went home; that he then came back at half-past eight and went over to the pipe line with the plaintiff, walked up to the

north line and there talked with Mr. Gillespie, and at that time the men got over the fence and went to work; that the plaintiff asked Mr. Gillespie to show his authority for coming on the property, and he said he had no order; that she told him he must not come and asked for the names of the men, and he, Gillespie, said he would send her the pay roll or send her to the time-keeper; that he then went home and she went home to her house. So that at that time—the time Jacob refers  
 10 to, half-past eight o'clock—the difficulty out of which this suit arises did not occur. He went then, afterwards, and had a horse hitched and went to Lincoln Park, three miles away; stayed there some twenty or twenty-five minutes and went back to the Pequannock depot, arriving there at ten o'clock; he then went home, went out on the pipe line and saw Miss Slingerland; showed her the mail, she took his arm and walked to the house and seemed excited. He did not pretend to say that he saw any of the difficulty. So you are to say  
 20 whether the difficulty out of which this suit arises occurred just before he got there, and not at the time of the first interview already referred to. On this question of time Samuel Slingerland says the difficulty out of which this suit grew was about eight o'clock; that Mr. Beach came after him about eight o'clock and he went over. It is for you to say whether he went over immediately, or how soon. Beach says he went for him somewhere about nine o'clock, and Zeek says he saw Samuel go across about half past eight, and that the  
 30 difficulty then occurred. You must examine their testimony carefully and see if it satisfies you that this difficulty occurred at eight o'clock in the morning, or somewhere about that time, because there is no doubt that the injunction was not dissolved until ten o'clock or shortly after.

The defendants say that the time given by these witnesses—eight or half-past eight o'clock—is not the time; that it did not occur so early, that it did not occur until after the injunction had been dissolved and the money  
 40 had been tendered to the plaintiff's father. They urge

before you these circumstances; these men had been gathered together for the purpose of laying this pipe; they had been there the day before certainly, possibly some of them the day before that, as early as the twenty-second; previous to that time it had been months since any workmen had been around there. It is for you to say whether they were or were not gathered there at that time in anticipation of what ever legal difficulties there were in the laying of the pipe being removed. If they had waited for several days, would they have gone 10 to work in anticipation of that two or three hours? Would they have risked the chance of being punished for contempt of the Court of Chancery for disobeying this writ? You have the right to consider that, whether they would have been likely to place themselves in the position of being in contempt of court. It has been said that they did not know there was an injunction. The evidence seems to be that Mr. Herschel, the chief engineer in charge of this work, was in Jersey City that morning. He must have gone there for some purpose, 20 possibly with knowledge of this injunction. It is for you to say what Mr. Herschel was in Jersey City for if he did not know there was an injunction preventing the laying of this pipe. He says he was there, and the defendants produce a number of witnesses who testify as to the time the injunction was dissolved, and what was done upon its dissolution. Mr. Herschel, who sent the telephone message, says he did it after the injunction was dissolved, as does Mr. Coult, who was with him, and Mr. Danniher; and there were several others who 30 fixed the time when notice was give that the injunction was dissolved as after ten o'clock, and who state that nothing was done toward the laying of this pipe until after word was received that the injunction was dissolved. Some of these witnesses, on either side, claim to be able to fix the time by some circumstance. Of course that is much more satisfactory than fixing it by memory, for, I think it only fair to say to you, gentlemen, this occurrence happened eleven years ago, and it may be very difficult for a man to say from memory 40

whether an event happening so long ago happened at nine, ten or eleven o'clock; we may well doubt his accuracy; but if he is able to testify by some circumstance, of course his testimony is worth so much more.

The question of time, therefore, is to be determined by you; you must decide whether these defendants entered upon this thirty-three feet strip of land before or after the injunction was dissolved and the tender was made. If they entered before the injunction was dissolved and the tender made and committed an assault and battery upon this plaintiff, they were there without any right, and she would be entitled to recover such damages as she sustained. Now then, bear in mind, if the defendants had no right there and entered on that land and committed an assault and battery on the plaintiff, she would be entitled to recover whatever she was damaged by that assault and battery, if injured in her person, whatever that injury amounted to, and whatever she was injured in her feelings. Those are elements of damage in assault and battery cases. That is, if she had a right there and they had no right there. If, however, it was after the injunction was dissolved and tender made that they entered upon this thirty-three feet strip of land, then her right and the right of the defendants were reversed. If she was within the thirty-three feet strip and the tender had been made and the right of entry upon the part of the defendants had been acquired, she had no right to interfere, and no instruction from her father would give her any such right; if she did enter upon this thirty-three feet strip and interfered with the work of the defendants, they had the right to remove her from the land on which they had the right to lay these pipes. If she stood in the way of rolling pipes so as to prevent them from doing their work, they had the right to remove her, using such force as was necessary for that purpose—not with unnecessary violence, but with so much force as was necessary to put her out of the way of preventing them from doing their work. They had the right to use as much force as was necessary to get her away; if she resisted,

they had a right to overcome her resistance; they had the right to put her off; they had no right to use any more force than was necessary to get her off. Did they use any more force than was necessary? That you must determine from the testimony. Did Gillespie or his employees, or anybody there, use any more force than was necessary to remove the plaintiff from the strip upon which they were doing this work and keep her away so that they could go on with their work? If they used no more force than was necessary, then she cannot recover in this action. If she stood there, unless the pipes were rolled against her the contractors must stop their work. If they used any unnecessary force, they are liable for the excess of that force, as I have already stated. The defendants say she was led away. One or two of the witnesses on her part speak of her being—I think they said hustled away. You have heard how she was taken hold of, what was said to her and what was said by both sides. She was told that the pipes must be laid, that they intended to lay them, and she was warned to desist from standing in front of them; and that she continued to return time after time after she was taken away. It will be for you to say whether, if she stood on the thirty-three feet strip and was thus taken away, there was any excessive force used, and whether the defendants were not entirely right in making use of the force which they did in order to remove her.

It is said that the pipes were rolled against her. The evidence on that subject is contradictory. The defendants say that she placed herself near to or in contact with the pipes so as to prevent the pipes from being rolled. On her part, it is said she put herself in the way and they rolled the pipes upon her. You must determine what the truth is. If she purposely put herself in the way of the moving pipes when contact by reason of the moving was reasonably to be apprehended, and was thus injured, she brought that injury upon herself by her own fault; she contributed to the injury by her own act and cannot hold the defendants liable.

So far I have called your attention to the circumstances as happening upon the thirty-three feet strip. There is some evidence that the plaintiff stood outside of the thirty three feet strip, and that whatever was done with her was done outside of that strip. You must take all the testimony there is in the case and say whether that is so, whether she was on the thirty-three feet strip when taken away or whether she was outside of it. Even if she were on the thirty-three feet strip and when Mr. Gillespie led her away they went outside of that strip, that would not make her act justifiable or him guilty of an improper act unless you think that in taking her off the thirty-three feet strip there was excessive force used. He had the right to remove her from that thirty-three feet strip; he had the right to take her off on the adjoining property, and unless he took her so far or in such a way as to indicate the use of excessive force, that taking her off and outside of the thirty-three feet strip would not be such an act as to make the defendants liable.

There was some interference with the surveyor by somebody; and some witness testified, I think, that the plaintiff put herself in the way of the instrument so there was difficulty in locating the line. If she interfered in such a way as to prevent him locating the line and thereby they accidentally got on the adjoining property, off the proper line through her fault, she cannot claim that the defendants are liable for any injuries to her which were brought about by her improper conduct.

Now, as to the question of being beyond the thirty-three feet strip; if you conclude that the instruction of the father was with regard to this thirty-three feet strip and that that was what he intended when he gave the instruction, and that there was no instruction as to the rest of the farm, that was not an instruction to use force to keep anybody off the part outside of that strip. If she had instructions from her father to use force to protect his land, and those instructions were with reference to the thirty-three feet strip, and her action in carrying

out those instructions was in reference to that strip, although they were carried out on the adjoining land, she cannot recover. If her action on the adjoining land was part of the design on her part to prevent the pipes from being put on the thirty-three feet strip and without intention to protect the land outside of the thirty-three feet strip, she cannot recover unless there was excessive force. If her action outside of the thirty-three feet strip was simply to protect the land outside of that without any reference to that strip, and that was all she intended to do, and she was taken hold of and the pipes rolled on her, she would have a right to recover for whatever injury was done to her by that act; but if her action there was with the intention of preventing the pipes being rolled on the thirty-three feet strip, she cannot recover unless there was excessive force used. 10

The next question is, if the plaintiff is entitled to recover, what amount of damages should be given her. If entitled to recover, the damages to be awarded to a person injured are for the purpose of making compensation. The person injured is to be compensated for the injury in money, and the plaintiff would be entitled to recover, if she is entitled to recover at all, such sum of money as will compensate her for the pain and suffering which she has undergone and which she is likely to undergo in the future. 20

The only element of damage in this case is that of pain and suffering. That is a very difficult thing to measure in dollars and cents. The question is not what you would take to suffer that pain and injury, but the question to be determined by you must be considered with a fair judgment, fixing a sum which you think, in the exercise of such fair judgment, would fairly compensate her for the pain and suffering which the person entitled to recover has undergone. 30

What was the injury to her, and what has been the pain and suffering which she has undergone and is likely to undergo because of the injury? In determining that you must first look at how she was injured at the time, what violence was used to her and what the result of that vio 40

lence was. You have heard described by the witnesses how she was affected by the rolling of the pipe and by her removal at the hands of Mr. Gillespie and whoever else assisted him in the removal. Manifestly, there was no physical damage at that time, or serious injury to her body; there were no bones broken; there was no flesh lacerated; there was no violent blow anywhere to her body so far as discovered, as testified to by anybody, further than the rolling against her of the pipe; and there  
10 was no blood drawn. She went away to her home and, as far as the evidence discloses, her condition resulting from the injury which she received, if she was injured at all, was not of such a character as to justify in the minds of herself or her parents the necessity of calling a physician, and no doctor was called to see her until, I think, September of the following year, ten months after, and then he was called upon to attend her for an acute attack of colic. But no physician was called to attend her for what she seemed to be suffering from, ac-  
20 cording to the testimony, outside of the colic, until a year and four months after the injury is claimed to have been sustained. The evidence is before you as to how she was affected immediately upon going to her house, and how she has continued to be affected from that time down to this. She claims that her physical condition after that was due entirely to the injury which she received by having the pipe rolled against her and by being taken hold of and moved away by these defendants. That you must determine. If her subsequent physical  
30 condition did not result from that, but from some other cause, she cannot recover for anything more than what the injury was to her by rolling the pipe against her at the time and removing her away at the hands of Mr. Gillespie or his assistants. The physical condition which she exhibited after the occurrence, and which has been testified to by the physicians, is before you. You must judge from the testimony whether her condition is due to what was done by these defendants. If it is not, she cannot recover for that. You must be satis-  
40 fied by a preponderance of evidence that her condition

is due to the personal violence inflicted upon her at that time if you allow her compensation for that; it must not be based upon speculation, but upon evidence; you must be satisfied in your judgments that her physical condition—hysteria, neurasthenia, or whatever it is, if that is to be compensated for—was caused by the act of the defendants.

As to the cause of that condition, you have the testimony of various physicians. You must take all that testimony; you must consider it, and if it does not satisfy you that her hysterical and neurasthenia condition is due to the injury she received, if she received any at the time at the hands of Mr. Gillespie or his employees, she cannot recover for it; she can only recover for such injuries as they inflicted. 10

You have heard in great detail the circumstances surrounding the situation there—the talk about litigation over this farm, the instructions given by the father to this daughter, this girl of seventeen, about allowing nobody to go on the farm—and it is for you to say, under all the circumstances, whether her resulting condition came from that and not from the injury inflicted by the defendants. If so, then the plaintiff cannot recover against the defendants for those injuries. 20

Reference is made to the weather. Of course if her condition came from exposure to the weather, the defendants cannot be held liable for that.

Take all these conditions, gentlemen of the jury, and determine from the evidence whether the plaintiff is entitled to recover. She must prove her case and all the material features of it by preponderance of evidence—that is, she must prove by preponderance of evidence that she was assaulted, assaulted unlawfully or with excessive force; she must prove that more force than was necessary was used to remove her from a place where she had a right to be. She must also prove by preponderance of evidence that what she suffers from results from the acts of these defendants or their employees. If you find that she is entitled to recover, then you will also find what amount of money she is entitled to receive. 30 40

I am asked by counsel for the defendants to direct you to find a verdict for the defendants. I decline to make such direction.

I am also requested by defendants' counsel to charge you that if the entry on the right of way was made after the injunction was dissolved and after the tender in Jersey City, the entry was lawful and the defendants had a right to use all necessary force to remove plaintiff out of the way. I charge that.

- 10 I am also asked to charge you that the plaintiff was a wrong-doer, and that if her action upon the adjoining land was part of a design on her part to prevent pipes from being put upon the thirty-three feet strip, and without intention to protect the land outside of the strip, she cannot recover. I will charge you, gentlemen, that if she was a wrong doer—that is to say, if these defendants had the right at the time they did enter upon the thirty-three feet strip to enter, then she was a wrong-doer—and then the rest of the request is charged as requested.

- 20 I am also requested to charge that under the issue as framed the jury should disregard the evidence of the plaintiff given to show that the assault, if any was made, was made outside of the right of way. I decline to charge that.

You may retire, Gentlemen.

(The Jury having retired.)

- 30 Mr. Corbin: In behalf of the defendants we pray an exception to the refusal of the Court to direct a verdict for the defendants.

Exception allowed. Let it be sealed, and it is sealed accordingly.

*Judge.*

Mr. Corbin: Defendants also pray an exception to the modification of the third request, as charged to the jury.

Exception allowed. Let it be sealed, and it is sealed accordingly.

*Judge.*

Mr. Corbin: We also pray an exception to the refusal of the Court to charge the fourth request. 10

Exception allowed. Let it be sealed; and it is sealed accordingly.

*Judge.*

Mr. Riker: I respectfully pray an exception to that portion of the charge in which your Honor charged the jury that if the plaintiff was outside of the right of way, but was there for the purpose of preventing the pipes from being rolled on the right of way, then she could not recover. 20

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

*Judge.*

Mr. Riker: I also pray an exception to that portion of the charge with reference to damages, in which your Honor told the jury that if the condition of the plaintiff resulted from fear she could not recover. 30

The Court: I did not charge that.

Mr. Riker: I also pray an exception to what your Honor charged the jury in reference to the defendants' third request.

Exception allowed; let it be sealed, and it is sealed accordingly.

A. Q. GARRETSON, [L. s.]

*Judge.* 40

And now at this day, to wit, the second of June, A. D. nineteen hundred and three, before our said Supreme Court at Trenton, come the said parties by their attorneys aforesaid and the Justice before whom, etc., having first sent hither his record, and before him in these words, to wit:

10           Afterwards, to wit, at a Circuit Court holden at Morristown, in and for the county of Morris, before Abram Q. Garretson, Esquire, one of the Justices of the Supreme  
 20           Court, on the eleventh day of May, nineteen hundred and three, according to a form of the statute in such case made and provided, comes as well the said plaintiff, as the said defendants, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being also summoned come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath, that the said defendants are not guilty of the said supposed assaults and trespasses in manner and  
 30           form as the said plaintiff in her said declaration has complained against them, or any or either of them or any part thereof, in manner and form as the plaintiff has complained against them.

Wherefore, it is considered that the said Aletha B. Slingerland take nothing by his said writ and that the said Thomas A. Gillespie and Robert G. Gillespie, do go thereof without day, &c.

30           And it is further considered by the Court here that the said Thomas A. Gillespie and Robert G. Gillespie do recover against the said Aletha B. Slingerland the sum of seven hundred and sixty-eight dollars and two cents, for their costs and charges by them about their defence in this behalf laid out and expended by the court now here adjudged to the said Thomas A. Gillespie and Robert G. Gillespie and with their assent according to the form of the statute in such case made and provided, and that the said Thomas A. Gillespie and Robert G. Gillespie have execution thereof, &c.

Judgment signed this second day of June, A. D. nineteen hundred and three.

WM. S. GUMMERE,  
 C. J.

NEW JERSEY, ss.:

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature—GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment, in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Aletha B. Slingerland, plaintiff, and Thomas A. Gillespie and Robert G. Gillespie, comprising the firm of "T. A. & R. G. Gillespie," defendants, in an action in tort, manifest error hath intervened, to the great damage of the said plaintiff, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judge of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourth Tuesday of December next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the third day of December, nineteen hundred and three.

S. D. DICKINSON,

*Clerk.*

RIKER & RIKER,

*Attorneys for Plaintiff.*

# New Jersey Court of Errors and Appeals.

ALETHA B. SLINGERLAND,

*Plaintiff in Error,*

*In Error.*

10

*vs.*

THOMAS A. GILLESPIE *et al.*,

*Defendants in Error.*

*Assignment  
of Error.*

Afterwards, to wit, on the 28th day of January, one thousand nine hundred and four, in the New Jersey Court of Errors and Appeals, comes the said Aletha B. Slingerland, by Riker and Riker, her attorneys, and says that in the record and proceedings aforesaid, and also in  
20 the matters recited and contained in the bill of exceptions, and also in the finding and judgment aforesaid, there is manifest error, in this, that judgment was entered in favor of the defendants instead of the plaintiff.

2. There is also error in this, that the Court, against the plaintiff's objection, refused to admit evidence on the plaintiff's part to show the condition of her mind and to show what she had been or was suffering from which should have been admitted.

30 3. There is also error in this, that the Court, against the plaintiff's objection, refused to admit evidence on the plaintiff's part as to what was said to Amzi Zelliff by Jacob A. Slingerland between twenty minutes after nine and a quarter to ten on the morning of December 24th, eighteen hundred and ninety-one, namely: "I think he told me that they had gone through and broke in the place; was to work tearing down fences," which evidence was offered for the purpose of fixing the time when the trespass complained of was committed and  
40 should have been admitted.

4. There is also error in this, that the Court, against the plaintiff's objection, refused to admit evidence on the plaintiff's part as to what the plaintiff did or said immediately after the trespass complained of and before she had left the place where the trespass was committed which should have been admitted.

5. There is also error in this, that the Court, against the plaintiff's objection, refused to admit evidence on the plaintiff's part, on rebuttal, to prove that Thomas A. Gillespie, on the morning of December 24th, eighteen hundred and ninety-one, before leaving the hotel and before the trespass, took out a revolver, Thomas A. Gillespie having for the defence, when asked, "Why did you take a pistol out of your bag at Gillen's?" answered, "I never carried a pistol in my life; I don't remember it; it must have been when I was a boy." 10

6. There was also error in this, that the Court, against the plaintiff's objection, refused to admit other evidence on the plaintiff's part which should have been admitted.

7. There is also error in this, that the Court, against the plaintiff's objection, admitted evidence on the defendants' part which should not have been admitted. 20

8. There is also error in this, that the Court charged the jury that if the plaintiff was outside of the right of way, but was there for the purpose of preventing the pipes from being rolled on the right of way, then she could not recover.

9. There is also error in this, that the Court charged the jury, in reference to the defendants' third request, that if the plaintiff was a wrongdoer—that is to say, if these defendants had the right at the time they did enter then she was a wrongdoer—and that if her action upon the adjoining land was part of a design upon her part to prevent pipes from being put upon the thirty-three foot strip and without intention to protect the land outside of the strip, she could not recover. 30

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The second part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The third part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

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The sixth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The seventh part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The eighth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The ninth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.

The tenth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the structure of the atom is determined by the laws of quantum mechanics.



