NEW JERSEY

Court of Errors and Appeals.

BETWEEN

JOSEPH SCHMITT,

Complainant–Respondent,

and

HENRY TRAPHAGEN ET ALS.,

Defendants–Appellants.

On Appeal from Chancery.

Brief for Appellants.

In a bill filed under the Act to Quiet Titles, the complainant (case, p. 3), alleged peaceable possession in himself and assessment to and payment by him of taxes for a period sufficient under the supplement to that act to be the equivalent of possession. The answering defendants (p. 8) denied possession by complainant, or its equivalent, and set out their respective claims of title to particular parcels of the land described in the bill.

In order to settle the controversy the parties waived the preliminary jurisdictional question of fact and united in applying for an order for an issue at law, as in ejectment—in which issue the burden of proof was placed on the complainant by making him the plaintiff therein (p. 28). As the answering defendants claimed separate parcels respectively separate issues were framed, and each issue alleged possession in the defendant therein (*e. g.* p. 30).

The issues were tried together in the Hudson Circuit Court before the late Mr. Justice Dixon and a jury, and verdicts in favor of the plaintiff were directed. New trial was denied by the Court of Chancery (p. 101) on the ground that the Trial Judge had conceived that the sole question was one of law and that as on a new trial his rulings would doubtless be followed, the interests of the defendants would be best served by an appeal from an order denying a new trial (p. 103)

FACTS.

The following facts will be conceded:

Prior to 1795, Merseles Merseles owned, under patent to his father from whom he inherited, a parallelogram of land on the brow of Bergen Hill in what is now the Town of West Hoboken, in the County of Hudson, and John Stevens owned the precipitous rocky hillside in front of this patent (and as well to the north and south), and also the meadow lying to the eastward thereof. Near the foot of the hill an irregular ditch ran through the meadow.

On February 3rd, 1795, John Stevens conveyed to Merseles Merseles (styled in the deed Sale Marsalis) a tract of land the south line of which was in direct continuation easterly of Merseles' south line. The appellants contend that the parties meant to make the north line of the tract conveyed a continuation of Merseles' north line, thus carrying Merseles' whole property down the hill, and that the description in the deed should be so construed. Respondent contends that the north line of the tract conveyed is about 328 feet south of the line claimed by appellants as such north line, and it is within the intervening space that the land in dispute is situated.

In subsequent deeds of the retained Stevens land there is no exact description thereof; but a mere call for a boundary on the west by Merseles, which call would be correctly answered whichever of the two locations is adopted for the north line of the tract conveyed to Merseles, the only difference being that as the respondent locates that line there would be a jog in the boundary on Merseles' land.

After several deeds to and by members of the family such retained lands together with all the great Stevens estate became vested in the Hoboken Land & Improvement Company in 1839. In the deed to the company the descriptions are of the original holdings of all the Stevens lands with exceptions stated in a schedule. One of these exceptions is the conveyance to Merseles (p. 52). So that in dealing with the property by deed we have on the part of Stevens and his grantees no specific assertion of title to the land in dispute until the deed of the Hoboken Land & Improvement Company to the respondent in 1897. On the other hand, Merseles and his grantees have always conveyed up to a north line coincident with the north line of the Merseles' patent. Merseles himself by his will in 1800 devised the patent and the land in front (its whole width) as being one tract—giving the north half to his son John and the south half in two portions to Clendenny and Hornblower (p. 56). John died intestate and his heir, also named Merseles Merseles, on August 4th, 1807, conveyed the north half of the hillside property down to the ditch to William Coulter. At the trial counsel for the plaintiff argued that it was not clear that the description in this deed (p. 57) runs to the north line claimed, but we submit it is perfectly clear that it does. Coulter on September 2nd, 1807, conveyed to Walter Clen-

denny by a similar description (p. 57), and the executors of Clendenny on September 25, 1823, conveyed to Henry Traphagen (the first of that name) said northerly half by a description as to which there is no doubt that the northerly line was as the Traphagen heirs now claim. This deed included in its boundaries the land now in dispute (pp. 60, 61).

In 1869 the Hoboken Land Improvement Company, desiring to construct a railroad near the line of the old ditch, now the N. J. Junction Railroad, took title from the Traphagen heirs of their whole front, and in the deed the Traphagen title is recognized up to said north line as fixed in the deed to Traphagen (see the description, pp. 60, 61, 67).

The land in dispute lies further west than this railroad strip, and extends between the two lines claimed by the disputing parties, respectively, as the north line of the tract conveyed by Stevens to Merseles in 1795.

In 1886 the Traphagen lands were partitioned in Chancery, and the decree was recorded in Hudson County (p. 11). This hillside property down to the line of the land conveyed for a railroad, was assumed to run to the north line given in the Traphagen deed of 1823, and shares were allotted accordingly. Hence arise the claims in severalty necessitating separate issues. All of the Traphagen heirs were made parties to the bill in this cause, but the shares of some of them are south of the lands in dispute, and the owners of those shares have not appeared in the cause.

In order to avoid confusion and explain why a large number of persons outside of the Traphagen heirs and their grantees were brought into the case by the complainant, we will add that there has been

a dispute as to the west boundary of the Traphagen tract. As between the parties to the issues at law in this case that dispute is immaterial, both parties contesting the encroachment (p. 98).

ARGUMENT.

I.

The deed from Stevens to Merseles, properly construed, included the land in dispute.

The learned Trial Judge excluded expert testimony as to the true meaning of the description of the land conveyed by that deed (pp. 58, 59). Perhaps he was right in holding that the question was one for him on the face of the instrument. We submit, that if so, he wrongly resolved it. The meaning he deduced from the description did not recognize every element contained in it. The description will be found at page 48 of the case, where it was stated by counsel and construed by the Judge, and at pages 55 and 56, where the deed was offered in evidence. The beginning point is "at a stake for a corner on a line of said Marsalis." This is the southwest corner of the tract to be conveyed and the southeast corner of the Merseles patent—the line referred to being the south line of that patent. The description proceeds—"and running the same course of said Marsalis' line S. 58° E. 6 chs. 81 lks. to a stake by the edge of a ditch on the meadows," then follow three courses along the ditch, and then a course thus stated: "thence north 33° 30' E. 4 chs. 50 lks. *to a stake* for the outside boundaries of the said lot." After more than a hundred years have passed, of course, this stake no longer exists. It may or not have been on the line of the ditch, but wherever driven it was a

fixed monument and must control courses and distances. The problem is how to locate it. The exact location then of the ditch in the meadow is not now ascertainable. The most reasonable hypothesis is that another course running to this stake was inadvertently omitted in copying into the deed a surveyor's description, and this theory is borne out by the proof that there is a slight angle in the "former ditch line" at the end of the 4 ch. 50 lk. course (p. 59). However that may be, we must go *to the stake*. Thence the description runs "N. 58°W. (parallel it will be seen with the first course) *eight chains to a corner* on the line between Sale Marsalis and John Stevens." The only pre-existing corner that will fulfill this requirement is the northeast corner of the Merseles patent. The Trial Judge ruled that the corner should be taken to be one made, in the lot, by the description itself, "if there be no other corner" (p. 50), but that would have been a very strange mode of expression of a thought. It would have been much more natural to merely run the course to the line if there were no pre-existing *corner*, in the line, known and recognized by the parties. There was in fact such a corner. The most important element, however, in the problem is the distance *to* this corner given in the description, viz., eight chains. The Trial Judge refused to let the defendants prove the opinion of an expert surveyor as to an omitted course on the east front of the tract conveyed (pp. 58, 59). Right or wrong as to that, he was wrong in ignoring this element of distance. Defendants had a right to a northeast corner, *marked by a stake*, distant on a course of North 58° W. 8 chs. from the corner, pre-existing or then created, in the line between Merseles and Stevens. The Trial Judge ran the N. 58° W. course from the end of the

4 ch. 50 lk. course, without any proof of the existence of a stake at that point, and made a corner for himself in the Merseles-Stevens line wherewith to connect the course he ran, notwithstanding that the distance given ran by that point nearly two chains. It was admitted by the plaintiff's surveyor that the distance from the end of the 4 ch. 50 lk. course to the Merseles patent line along the course of N. 58° W. would be only about six chains (p. 54). He had made a map, offered in evidence, showing how a part of the tract conveyed by Stevens to Merseles, if taken literally by courses and distances, would project into the Merseles patent (p. 53). He was driven to the theory that the parties to the deed did not know exactly where the patent line was (p. 53, l. 37), or that they did not go exactly along the patent line (p. 54). But they *did* know where the line was, for they stated the distance to the ditch correctly at the south end, viz., 6 chs. 81 lks. There never has been any dispute as to the *direction* of this patent line. The other hypothesis of the surveyor is equally untenable, for the deed from Stevens to Merseles expressly bounds on the Merseles line, which was the patent line.

Every part of a description in a deed must be given effect as far as possible. The boundaries given in that now being considered will not help us, for they would be the same on either location of the north line. The final course is given without statement of its length. Its location, however, is the Merseles patent line. It is less reasonable to cut short the distance of eight chains of the penultimate course, so as not to run beyond that line, than it is (if it be not permissible to supply a course along the east front) to lengthen the last course along that front so as to reach a *stake* named as a fixed monument

distant eight chains, along a stated course, from a *corner* in that line.

The Trial Judge laid stress (p. 50) on the correspondence that the "dimensions" stated in the deed, viz., twelve acres, with the acreage of a tract having the course and distances stated, whereas the tract, as defendants claim it, would have fifteen acres. This circumstance is of the least possible value, for it is evident that the draftsman of the deed reckoned the acreage from the erroneous data of the deed itself.

II.

If there was room for doubt as to the meaning of the description the question was one for the jury.

If the stake, which was a fixed monument for the northeast corner of the tract conveyed, could not be indisputably located from the language of the description itself, then its actual location was for the jury, in the light of all the facts, including the practical construction of the parties. The situation of the parties, the surroundings of the conveyance, the improbability that Merseles would take a deed of the rocky hillside for less than his whole frontage on the hill top, or that Stevens, who owned the hillside both to the north and south of that conveyed, would care to retain any part of that in front of the Merceles patent, would all be matters for consideration. It is too plain for contrary argument that the purpose of the parties was to enable Merseles to carry his property down the hillside to the ditch. The property was of trifling value in 1795. The consideration in the deed was only fifty pounds. This is not stated in the case, but the deed itself is an exhibit. These matters were pe-

culiarly for the consideration of a jury. We submit also that the expert testimony excluded was admissible, for there clearly was some error in the deed.

Pertinent illustrations of the duty of a Trial Court to leave to the jury the location of lands under an ambiguous or uncertain description with the help of expert testimony are the following:

Opdyke v. Stephens, 4 Dutch., 83.
Fuller v. Carr, 4 Vr., 157.
Curtis v. Aaronson, 20 Vr., 68.
Calatro v. Chabut, 63 Atl. Rep., 272.

The matter is one of location—not construction.

III.

The deed of 1869 from the Traphagen heirs to the Hoboken Land and Improvement Company was a practical location of the north line now claimed by appellants, or worked an estoppel against the company.

It was argued for the plaintiff at the trial that the deed was not a proper factor in the case, for the reason that the company had to buy the right of way for its proposed railroad along that part of the Traphagen front where the Traphagen title was clear and only for precaution's sake included the north end, where it already had, but the Traphagens might claim, title. The description adopted (p. 67) will bear out no such theory. It will have been noticed that the deed to Traphagen in 1823 conveyed the north half of the hillside property down to the ditch. The line along the ditch ran from Hornblower, 11 chains 26 links *to a stake* on line of John Stevens (p. 60 and 61). The Hornblower line bi-

sected the Merseles patent and ran down to the ditch (62). The deed from the Traphagen heirs to the Hoboken Land and Improvement Company gives the front along the ditch as running from Harper (the old Hornblower line) along the ditch its several courses 750 feet to a point where the *northerly boundary* of said Traphagen's land intersects said ditch. Thus this deed recognizes the Traphagen "Northerly boundary" as just where we now claim it. The consideration of the deed was $20,168. On the strength of this recognition of title the Traphagen heirs afterward partitioned the whole property, and those heirs now before the Court were content to take as their shares, in severalty, parcels of the land now thrown into dispute, except that Mrs. Hervey's share is partly in and partly south of the land now claimed by respondent. The heirs who have not answered in this cause got shares in the undisputed territory. We submit that the Hoboken Land and Improvement Company's recognition of the Traphagen north line, and acceptance of a deed of the front along the ditch worked an estoppel of a subsequent denial of the Traphagen title, throughout, up to the recognized north line. It will probably be claimed that the respondent, grantee in 1897, from the Hoboken Land and Improvement Company, is not affected by this estoppel, as he was chargeable with constructive notice of only the record of the instruments affecting the particular parcel described in the deed to him. Such an argument could be invoked in many cases of practical location but would never be allowed to prevail. The respondent was chargeable with knowledge of the ambiguous nature of the description in the deed from Stevens to Merseles and therefore with the subsequent dealings between the successors of the parties to that deed which settled the boundaries of the

tract conveyed. In 1897 when he took title there was quarrying on the very land described in his deed. The Trial Judge against objection of the plaintiff in the issues admitted in evidence the deed of 1869, yet altogether denied it effect.

IV.

The issue should have been submitted to the jury on the defendants' claim of twenty years adverse possession.

There was no dispute of such possession of the Traphagen hillside property—generally speaking. It was an uninclosed rocky hillside. The only use to which it could be put was quarrying, and to that use it had been continuously put by lessees of the Traphagens from a time early in the sixties. A map in evidence (p. 81) shows the line of the face of the quarry as it existed in 1895. It has since been extended farther to the west. The land in dispute comprise parcels "A," "B," "C," "D" and part of "E" on this map. The only dispute at the trial was as to when the quarrying had extended as far north as the land in dispute.

(*a*). *The quarrying on any part of the tract was evidence of a possession co-extensive with the boundaries of the deed of 1823.*

This subject is discussed at great length by Depue, J., in this Court in *Foulke vs. Bond, 12 Vr., 527.* While, of course, the doctrine that possession is to be presumed to be co-extensive with the boundaries of title applies only in full measure to the true owner, yet even as to a disseissor, under color of title, the case in this aspect is one for the jury. A number of illustrative English decisions are cited with approval, and the Judge said (p. 550):

> "In each of these cases acts of ownership in "places upon the tract were considered "as competent evidence of possession of "the whole where there was a unity of "character in the location. If compe- "tent evidence of possession, such acts "of possession must necessarily be suffi- "cient to maintain title by adverse "possession without occupation by resi- "dence, cultivation or enclosure, pro- "vided they be continued for the full "period of twenty years with such "notoriety as that the true owner may "reasonably be expected to have had "notice of the nature and extent of the "title being acquired thereunder."

The case in hand shows that the whole Traphagen parcel was one quarry, although the actual working was from the southern end northward (pp. 66, 67, 72, 73, 74, 75).

(*b*). *There was proof sufficient to go to the jury of quarrying by the Traphagens on the land in dispute for more than twenty years.*

The date that the quarrying reached the land in dispute is not very explicitly stated, but sufficient appears to have warranted a jury in finding that such date was more than twenty years before the filing of the bill of complaint in this cause—which has October 13th, 1903. Mrs. Watson testified that quarrying had been done on the parcel afterwards allotted to her before her father's death, which was on May 20th, 1884 (p. 10). Her parcel "B" was well to the north and a fair inference is that the work had been going on upon that part of the land in dispute lying south of her parcel for much longer than the five or six months necessary to make out the twenty years before the filing of the bill.

Of course if there was adverse possession of any part of the land in dispute that surely was notice to any claimant of ownership of a possession of the whole of such land.

V.

The plaintiff in the issue at law did not sustain the burden of proof cast upon him.

It will be remembered that the respondent was made the plaintiff in the issues at law, and that in such issues he alleged possession in the defendants. His only proof was the defendants' admission that in 1795 John Stevens owned the land in dispute as part of a large tract and a devolution of title of all of that tract that remained in Stevens after the conveyance to Merseles of that year. The defendants showed a complete paper title from Merseles down to date, and their admitted possession at the time of the trial would surely be presumed to have run backward with that title. The plaintiff in the issues did not show when such possession began, and he did not show satisfactorily that the land in dispute was not within the excepted conveyance to Merseles considered as a matter of location. We submit that his case failed.

There was some attempt at proof that the Hoboken Land and Improvement Company had taken boulders off the land in dispute and some other indications of a claim of title or possession by that company before 1897, when they conveyed to the respondent; but inasmuch as the Trial Judge directed a verdict the evidence in that regard need not be considered; at most it was only for the jury.

The order appealed from should be reversed and a new trial should be ordered.

COLLINS & CORBIN,
Of Counsel with Appellants.

New Jersey Court of Errors & Appeals

Between JOSEPH SCHMITT, Complainant and Respondent, and HENRY TRAPHAGEN, et als, Defendants and Appellants.	On Appeal from Chancery.

BRIEF FOR COMPLAINANT—RESPONDENT.

The complainant filed his bill under the Titles Act to quiet his title to a tract of land in West Hoboken, described in the bill of complaint (p. 1.)

By an order made on the seventh day of March, nineteen hundred and five (p. 28), it was directed that there should be an issue at law to try the validity of the claims of the defendants as set up in their answers and that the said issue should be framed in the Supreme Court as in an action of ejectment between the said complainant as plaintiff, and the said defendants as defendants; that either party might notice the trial and a special jury might be had upon the application to this Court of either party.

Pursuant to this order issues with the defendants separately were framed (pp. 30, &c.), and came on for trial before his Honor Jonathan Dixon, Justice of the Supreme Court, sitting in the Hudson Circuit, on the second day of January, 1906, resulting in a verdict for the plaintiff by the direction of the Court (p. 99 to 100.) Motion before Vice-Chancellor Garrison for new trial was denied (p. 101.)

The plaintiff on the trial deduced his title from John Stevens, who was admittedly the owner of a large tract of land, embracing the premises in question, in the year seventeen hundred and ninety-five (p. 47, l. 12.)

The title of Jonn Stevens vested by mesne conveyances in the Hoboken Land and Improvement Company, who conveyed the tract in question to the complainant in the year eighteen hundred and ninety-seven (p. 52, l. 12 to 30.)

In the various deeds from John Stevens to the intermediate grantees and from those grantees in turn to the Hoboken Land and Improvement Company, the description comprises a large tract of land out of which are excepted the conveyances theretofore made by John Stevens (p. 52, l. 3 to 12.)

Among these exceptions so stated is the deed from John Stevens to Sale Marsalis

(otherwise known as Merseles Merseles), dated February third, seventeen hundred and ninety-five, and recorded on the twenty-ninth of January, eighteen hundred and eighteen, in book O2 of Deeds for Bergen County, on page 310. The description in that deed is set out at length in the record on page 55 l. 39 to 56 l. 19. It is under that deed or by possession under the same that the defendants claim title.

I.

The only questions to be considered by this Court on this application are questions of law.

> "In dealing with applications for new trials of such issues the Court of Chancery should act in accord with the practice in respect to new trials of actions at law upon contested titles."
>
> Brady vs. Carteret Realty Co., 2 Robbins 55, and cases there cited; Affirmed by this Court (Nov. 1906), 64 Atlantic Rep. 1078.

II.

It is admitted that by the terms of the description in the deed from Stevens to Marsalis the premises in question are not included.

The acreage of twelve acres also corresponds with the plaintiff's claim that the deed does not include the premises in question. (Record, p. 49, line 18 ff. Testimony of McCann, p. 55, line 3 ff.) Testimony Dunham (p. 58, l. 15).

Fuller vs. Carr, 4 Vroom 157.

There is hence no question that the paper title to the premises in question is in the plaintiff.

It is therefore, for the Court to see that the grant is applied to the subject matter in accordance with the expressed intention of the parties.

Jackson vs. Perrine, 6th Vroom, 137;
Curtis vs. Aaronson, 20th Vroom, 68.

III.

As to the defendants' claim, however, that a practical location was made inconsistent with this deed and taking in the premises in question.

"Practical location can only be resorted to in two instances: (1) where the description in the deeds is ambiguous or uncertain in its application to the subject matter of the conveyance; and
(2) where the practical location may operate as an estoppel."

Baldwin vs. Shannon, 14th Vroom 596-601;
Jackson vs. Perrine, 6th Vroom 137, see p. 142;
Den vs. Van Houten, 2nd Zabriskie, 62.

The first instance is, as we have seen, not present in this case. The second could only arise where the grantee had done some act which created, as against himself, an estoppal in pais.

What is necessary to an estoppel in pais is laid down in the cases of *Jackson vs. Perrine* and *Den vs. Van Houten* supra.

In Jackson vs. Perrine, supra, the Court says, on page 143:—

> "The doctrine in this State has been carried still farther and it has been held that although no doubt would arise as to the true location of a lot from the construction of the grant, yet, if the grantee by his acts in locating his lot, has fixed his lines differently and *induced others* to act upon such erroneous location in purchasing or making improvements he will be bound by such location."

In Den vs. Van Houten, supra, it is said:

> "The party has fixed his own locality. He had not only knowingly permitted his neighbors to improve, but by his own act has induced others to improve upon lands the title to which he now claims as his own."

This case nowhere shows any elements of such an estoppel in pais.

The only possible evidence of acquiescence in the supposed possession of the defendants that is brought forward by them is the acceptance of a deed by the Hoboken Land & Improvement Company in 1869. Reference to this will be made later. It is sufficient to say here that as to the property described in the 1869 deed there was no privity between the plaintiff Schmitt and the Hoboken Land and Improvement Company.

Greenleaf on Ev., vol. I, sec. 189.

Nor is there any evidence anywhere of any claim made prior to 1822 that this property was included in the Sale Marsalis deed.

John Merseles, the devisee of Sale Merseles (Record, p. 56, line 20) conveyed to Merseles Merseles and Althea Merseles, in 1804, a tract of land and meadow bounded northerly and northwesterly by land of Michael DeMott and the road leading to Hackensack, and northeasterly and easterly by Robert Sickles and Col. John Stevens, southerly by a ditch which is the division line between that and land and meadow belonging to John Stevens, and westerly by land belonging to Walter Clendenny, containing thirty acres more or less (p. 62, line 26).

It appears by a plotting of this piece of land and a measuring of its contents that an acre

age of thirty acres does not include the premises in question, (Testimony of McCann, Record pp. 85, 86.)

In the deed from Merseles Merseles and wife to William Coulter of August 4th 1807, (p. 57 l. 10, to p. 58 l. 4) the northerly boundary is stated to be land of Robert Sickles and John Stevens. If the Stevens line were a continuance of the Sickles line down to the ditch this property in question would be included, but the line could be run with an angle in it and would still border along Sickles on its western part and along Stevens on the eastern part. Testimony of Dunham (p. 64, lines 11 to 35.)

There is no acreage stated in the deed (p. 63, l. 30). The line is not stated to be a straight line, and the only reason that the defendants' surveyor gives for saying that it was intended to be a straight line is founded on the words "a short distance." (P. 64 l. 22.) Hardly a satisfactory reason upon which to base a question of title.

The property in question comes into the defendants' chain of title for the first time by a deed from Walter Clendenny and wife to Henry Traphagen, made in the year 1823 (p. 60, line 23).

The defendants rely, therefore, upon adverse possession under color of title derived from the Clendenny deed.

IV.

This brings us then to the question what adverse possession have the defendants shown.

The Clendenny deed includes not only the premises in question but also a large tract of land to the south of these premises, the title to which was admittedly good in Walter Clendenny, and is, so far as this case is concerned, admitted to be good in the defendants.

(A).—The defendants have failed utterly in showing adverse possession of the premises in question in this case.

The principles upon which the doctrine of title by adverse possession rests are well settled.

"The possession must be *actual and exclu-*
"*sive, adverse and hostile, visible and notori-*
"*ous, continued and uninterrupted.* Notoriety
"of adverse claim under which possession is
"held is a necessary constituent of title by ad-
"verse possession, and therefore the occupa-
"tion or possession must be of that nature that
"the real owner is presumed to have known
"that there was a possession adverse to his title
"under which it was intended to make title
"against him"

Foulke vs. Bond, 12th Vroom, 527–545.
Cornelius vs. Giberson, 1st Dutcher 1.
Cobb vs. Davenport, 3rd Vroom, 369, 386.

"Mere surveys of waste or outlands unenclosed and uncultivated or deeds for such lands or other claim of title and occasional cutting and carrying off the wood and timber is not such a possession as displaces the right owner. Such acts as these amount only to entries and trespasses, and may be treated as such at all times. They are not such twenty years notice of an adverse possession of land as the statute intends."

Griffiths, 4th Ann. Law Reg. p. 1269; cited with approval in Cornelius vs. Giberson, supra.

"Every element in the definition must exist, and it is the duty of the Court to see that there is evidence to go to the jury on all the points necessary to make title by statute. If it be wanting as to any of them an essential of title is wanting, and it is then the duty of the Judge to charge that the party claiming by virtue of the statute has not title under it"

Groft vs. Weakland, 34 Pa. St. 308.
DeHaven vs. Landell, 31 Pa. St., 120.

"In proving continuous adverse possession under color of title nothing must be left to conjecture. The testimony, if believed, must show the continuity of the possession for the full statutory period in plain terms or by necessary implication. (In this case a verdict was directed by the Court and this direction was upheld.

Ruffin vs. Overby, 105 N. C., 78.

See also:

Wheeler vs, Spinola, 54 N. Y., 377.
Bliss vs. Johnson, 94 New York, 35.

"If the premises are at any time vacant the real owner will be at once regarded as in possession."

Core vs. Faupel, 24th West Va., 238.

The property in question was included in partition proceedings among the defendants in 1884. All the evidence as to any act of adverse possession made prior to the partition in 1884 is found in the testimony of Henry Traphagen, on page 66. He says:

> "I remember my father and uncle making a contract with Dennis Egan, of Hoboken, relative to some of this tract of land—an agreement to sell; this was in the sixties, and put Egan into possession of the land to cut the stone, that was in the sixties."

He does not say where Egan's quarry was, but Egan's quarry is shown by the testimony of James Rorarty, a witness produced on behalf of the plaintiff (p. 91, l. 15,) to have been at about the head of Twelfth Street, on the side hill, which would bring it outside of the line of the premises in question and within the undisputed property of the Traphagens.

After the partition in 1884 the only thing that was, apparently, done on the Henry Traphagan property was the renting of a small part of the property to a man named Ludwig, who had a house there for three or four months, which he then removed. Testimony of Henry Traphagan, p. 70, l. 35; p. 73, l. 3. Other quarrying was, perhaps, done, but without authority from the defendants.

The only work done on the next southerly piece—that of Mrs. Watson, was quarrying done for about three years; from 1890, on. (Testimony of Harrington, p. 78, l. 25).

On the next southerly tract it appears that after the partition, for some months, some rents were collected from some Italians for quarrying, but for how many months does not appear. (Testimony of Simpson, pp. 83, 84.)

These are all the acts of adverse possession of the premises in question claimed to have been done by the defendants. They are not shown to have continued uninterruptedly for more than a couple of years at any time. They are not shown to have been continued and uninterrupted for twenty years, or anything like it.

The plaintiff, on the other hand, shows that in the year eighteen hundred and seventy the Hoboken Land and Improvement Company, the plaintiff's grantor, drove off people who were quarrying on this property, who went. Testimony of Runton, p. 89, l. 28, ff.).

That in the years 1869 and 1871 they took stone from this property. (Testimony of Coyne, p. 92, l. 40 ff.; Higgins, p. 95).

That after the complainant took title in 1897 he rented out the quarry to one Nicholas Scioli, who quarried there over two years and paid rent. (Testimony of Joseph Schmitt, p. 88; William F. Sachs, p. 88.)

That the Hoboken Land & Improvement Company collected rents from a part of this property from a man named Archdeacon and from some squatters (p. 96, l. 10 to 15) thus breaking into any adverse possession that the defendants may have had. And they monumented it. (Testimony of McCann, p. 87.)

"The same kind of possession by the owner as by the disseisors will break the continuity."

Am. and Eng. Enc. of Law, 2d Ed., Vol. 1, p. 85.

(B)—**As to the defendants' claim, however, that their possession of that part of the property embraced within the lines of their paper title was possession of the entire tract.**

The first case on this point in this State is Den vs. Hunt, Spencer, 487. In this case the Court says, p. 491:

> "The difficulty lies in defining what shall constitute an adverse possession under color of title by deed. It is upon

this part of the case that courts differ. The Supreme Court of the United States and the courts of some of the other states have decided that an entry into possession under a deed containing specific meets and bounds and an actual residence on a small part gives a constructive possession of the whole tract, if not in the actual possession of another, although there may be no fence or enclosure around the tract, while, by the decisions of other courts, the party, although claiming by deed, is restricted to his actual occupancy by substantial enclosures.

It appears to me tnat we cannot carry out this doctrine of constructive possession without becoming involved in serious difficulties. There is always connected with an adverse p ssession the idea of wrong in the first place, it being the invasion of another's rights. Whenever a party relies upon an adverse possession for his right to land he impliedly admits that the strict legal right is in another and that this legal right has been wrongfully invaded more than twenty years before action brought, and this idea of wrong is associated with every adverse possession in the first place whether under color of deed or not for it is a settled principle of law that two persons cannot be severally seized in fee at the same time of the same tract of land. If the title of one is good that of the other is bad. Now, if the one claiming under a

defective paper title, however honest he may be, takes possession of a part of the land claiming it as his own he does a wrong to him who has the legal title. It is an invasion of his right of possession. Is it right that this wrongful possession should be extended by construction to the metes and bounds of the defective paper title to the prejudice of him who has the legal right? I think not.

There should be other evidence than a mere residence on or enclosure or cultivation of a small part. There should be proof of acts of ownership or such acts or conduct over the unenclosed part as might fairly be considered evidence of an intention to assert ownership and possession. . . . . I do not think that a person claiming right to land by virtue of his adverse possession under color of title by deed should be restricted to so much as he and those under whom he claims have had in actual occupancy by substantial enclosures, or under cultivation; *provided he has for the requisite period of time exercised such acts of ownership over the other parts of the land as are calculated to assert to the world a claim of right, or as will amount to actual possession.* . . . . If a person under color of title enters upon a tract of woodland and from time to time cuts and sells wood and timber thereon or does other acts of ownership consistent with the character of the land, it must be regarded as evidence of

an intention to assert an ownership and possession of the tract, *and if these acts are continued for the period of twenty years he is protected by his adverse possession against the claim of the legal owner.*"

In the leading case of Foulke vs. Bond, 12th Vroom, 527, the Court says:—approving the decision in Den vs. Hunt, supra,

"Possession as a presumption of law is intended only in favor of the true owner. Every presumption is in favor of possession in subordination to his title. Color of title and actual occupation by residence, cultivation or enclosure of part of the tract, or by other conspicuous acts of ownership by the disseisor, may serve to give character to his acts of possession over the residue, but will not relieve him from the obligation of satisfying a jury that his possession has been of such a character as, under the circumstances, may reasonably be expected to have informed the true owner of the nature of the possession and the extent of the title proposed to be acquired under it. (Reviewing cases.) . . . In each of these cases acts of ownership in places upon the tract were considered as competent evidence of possession of the whole, where there was a unity of character in the location. If competent evidence of possession, such acts of possession must necessarily be sufficient to maintain title by adverse pos-

session without occupation by residence, cultivation or enclosure, *provided they be continued for the full period of twenty years, with such notoriety as that the true owner may reasonably be expected to have had notice of the nature and extent of the title being acquired therein.*"

In another part of the opinion the Court says:

"The varied circumstances under which the question may be presented in its relation to extensive tracts of wild and uncultivated lands, make the adoption of any legal formula impracticable beyond the enunciation of the rule that possession to give title *must be hostile to the title of the real owner, and actual, exclusive, continued and uninterrupted for the full period of twenty years with such notoriety in the adverse enjoyment as that the true owner is presumed to know that title by that means is being acquired against him.*"

Other cases on the subject in this State to the same effect.

Cobb vs. Davenport, 3 Vroom 369.
Townsend vs. Reeves, 15 Vroom 525.

But the defendants claim that by the defendants holding possession of the portion of the entire tract which was within the lines of their undisputed title they had adverse possession of this tract also.

In other words, that possession by an owner of lands of which he has the absolute title is adverse as against the legal owner of other lands embraced in his deed but of which he has neither title nor possession.

Counsel for defendant, in his argument below, relied on some of the language of Chief Justice Depue in Foulke against Bond, 12 Vroom, p. 527 on page 546.

But Foulke vs. Bond is on this branch of the case not at all in point. In that case two tenants in common were litigating over the entire tract, and the possession by one of them of a part was held to be evidence of adverse possession of the whole.

The possession in that case by either of them against the other was, by the circumstances of the condition of the title of the property, necessarily adverse, notorious, hostile. This case does not come within that principle at all.

This is the case of an overlap. The doctrine as to adverse possession in an overlap is summed up in Amer. & English Encyclopedia of Law (2d Edition), Vol. I, p. 872, as follows:

"If the true owner has no actual possession "of any part of his land, the claimant having "the inferior title to the overlap may obtain "constructive possession thereof by the actual "occupancy of some part of it, but not by the "actual occupancy of some part of his grant "lying outside of the interlock.

"Of course, if the person claiming under the "inferior title is in actual possession of a part of "the interference and the true owner has actual "possession of no part of his land, then the "possession of the former is not confined to his "actual occupancy, but is co-extensive with the "boundaries of the land described in his con-"veyance.

"But if the actual possession of such claimant "is of that part which does not come within the "conflict, his possession will not, although the "person having the better title is not in actual "possession of any part of his tract, be extended "by construction to that part which lies within "the interference." *Amer. & Eng. Ency. of Law, 2d Ed., Vol. 1, pp. 872–873.*

In order that the statute should begin to run, the defendant claiming, under a younger title to land which conflicts in part with an elder title, should have been in actual possession of the part which was overlapped by the elder title.

White vs. Burnley, 20 How. (U. S. S. C.) 235.

Where the boundaries of two grants or deeds lap upon each other the constructive possession of his entire boundary remains in him who has the better title, even without any actual possession whatsoever until the claimant under the junior grant occupies the lappage.

Boomer vs. Gibbs, 114 North Carolina, 76.

Though, as a rule, a man is presumed to claim to the outside boundaries of his paper title, yet that presumption does not disturb the constructive possession of one holding by suderior title. Ibid.

Smith vs. Ingram, 7 Iredell (N. C.), 175.

To protect himself under the statute of limitations the tenant must show continued adverse possession for the limitation period of some part of the land in controversy. Actual possession of a part of the land outside of the boundaries of the demandant's elder title is not sufficient.

Koiner vs. Rankin's heirs, 11 Grat. (Va.), 420

Talbot vs. McGavock, 1 Yerg. (Tenn.), 263.

To construe an entry into part to which he has right, to give him possession to a part to which he has no right, would be making an act which was right in itself, tortious by construction. This would be wholly unwarranted by any precedent and in direct violation of the principle of law which requires that where an act is done which is susceptible of a two fold construction, one of which is consistent with law and the other not, that the former should prevail.

Trimble vs. Smith, 4 Bibb (Ky.), 257.

All that it would be necessary to do under the defendants' contention to obtain title to adjacent waste or vacant lands against the true owner would be to have the deed extend sufficiently far beyond the limits of the real ownership of the grantor and then to take possession of only what the grantor really had a right to convey. Under such a claim the important element of hostility is wanting. How can an owner's possession of what is legally his be hostile to anyone?

His possession being rightful under his own grant cannot be presumed to be wrongful.

The defendants did not even prove actual possession for the statutory period of the property to which they had a paper title. So that their claim amounts to this: that the constructive possession of their own property, which their paper title gave them, carried with it the actual possession of the adjoining piece to which they had absolutely no title.

If the title to the entire tract rests upon adverse possession under color of title then it may well be that a possession of the part may be possession of the whole. But it is impossible to conceive how the possession of a tract of land legally owned by a party can be notice of a claim to a piece of property not owned by him and of which he has no possession. It is clear there is no notice to the real owner in such a case of any claim to a title by adverse possession. There is no notoriety—there is no hostility.

Nowhere in Foulke v. Bond is there any-

thing to support the contention that adverse possession can be claimed without anything being done on any part of the locus in quo.

The locus in quo here is the overlap. No part of the Traphagen property is included in the locus in quo.

The result of the defendant's contention would be that the moment anyone saw his neighbor working on his (the neighbor's) undisputed land, he would be put upon inquiry and be compelled to ascertain by the record (and even the record would not be conclusive) whether or not his own land was not, by accident or design, included in his neighbor's deed.

This proposition of the defendants seems to us unique, not to say grotesque.

V.

As to the Defendants' Claim of a recognition of their possession, whatever it may be, by the acceptance of a deed by the Hoboken Land and Improvement Company from the Traphagens in the year 1869.

The description in that deed is to be found on p. 67, l. 25 of the case. The language in question being: "Thence along said ditch its several course, seven hundred and fifty feet to a point where the northerly boundary of said Traphagen's line intersects said ditch; thence

northwesterly along said line seventy-one feet to a point thirty feet northwesterly of and located in the centre line of said railroad."

FIRST.—This tract of land, as will be seen more clearly by the map, is no part of the premises in question nor is its boundary line at that point the boundary line of the premises in question. The tract is all entirely to the east of the locus in quo, does not adjoin it, and there is nothing in the case to inform us as to whether the Traphagen's northerly line at that point was a continuation of the northerly line of the premises in question in this case.

That northerly line of the Traphagen's was recognized only, if it was recognized at all, as the northerly line of a tract of land seventy-one feet wide, all of it entirely to the east of and away from the premises in question. There was no recognition in that deed anywhere or any statement in that deed anywhere of any boundary line as affecting the lands in question in this suit.

SECOND.—The deed from the Traphagens to the Hoboken Land and Improvement Company was a deed of bargain and sale with covenant against grantors' acts. It had no warranty or any other covenants.

It is evident that the grantors had no such certainty of their title as to justify them in giving a warranty deed. They sold their right, title and interest and the grantee took that right, title and interest. It amounted to a quit claim.

The deed covered a large strip of land which the Hoboken Land and Improvement Company was then purchasing for a railroad, evidently acquired in haste for that purpose. Testy. of Traphagen (p. 12, l. 34). The company took whatever description the Traphagens would give it so long as it obtained the land it wanted.

There is no case that we have been able to find by which the acceptance of such a deed could be construed to operate as either acquiescence or estoppel. No one has been harmed by it, no one has ever made any improvement or expended any money on the faith of it.

There is no evidence that possession went with the deed.

> "The mere acceptance of a deed does not estop the grantee from denying the validity of the grantors' title."
>
> Enc. of Law and Procedure, Vol. 16, p. 687, citing cases from many states.

It does not even amount to such an estoppel as would preclude the parties from questioning it unless accompanied by delivery of, by possession or such conduct as would create an estoppel in pais. *Enc. of Law and Procedure, Vol.* 5, p. 936, *citing cases.*

Nor could it work an estoppel against the plaintiff who was not privy in estate as to this property.

Greenleaf on Evidence (15th Ed.),
Vol I., § 189.

THIRD.—There is no evidence that the plaintiff had actual notice of that deed when he took his title.

He was not a privy of the company.

The property embraced in this Traphagen deed of 1869 was not a part of his land nor did it adjoin it.

The record would give him no notice when he searched his property.

Starting from the source of title he would find the title in the Hoboken Land and Improvement Company and search for deeds by them.

He would be under no duty to search for deeds to them, having found a good paper title in them.

The Traphagens would be strangers to him and he would not search them. He would not be bound by this recital, because he would not and could not be expected to find it.

FOURTH.—The deed does not imply any recognition of ownership in the Traphagens.

At the most it may be simply some recognition of temporary possession by them.

VI.

The evidence as to adverse possession being as it was, the Court was entirely right in directing a verdict.

"Where one party proves title by documentary evidence and the other party rests his claim of title solely upon adverse possession, the burden of proof is upon the latter and he must prove such adverse possession beyond a reasonable doubt,"

Rowland vs. Updyke, 4th Dutcher, 101;
Ruffin vs. Overby, 105 No. Car. 78;
Groft vs. Weakland, 34th Pa. St. 308.

"Possession which is permitted to prevail against a clear title by record should be clearly proven to be accompanied by all the requisites of an adverse occupation, including positive evidence of the continuity and territorial extent of the possession."

Baldwin vs. Shannon, 14th Vroom, 596."

In that case a direction of a verdict at the Circuit was upheld in the Supreme Court. The Court says:—

"The power of a court to order a nonsuit or direct a verdict does not depend upon the absence of all testimony in op-

position to the acts in favor of which the direction is given. The view that a mere scintilla of evidence is sufficient to carry a case to the jury is completely exploded in the English Courts. The course of recent decisions has established a more reasonable rule, namely, that in every case before the evidence is left to the jury there is a preliminary question for the Judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed."

See also

McCormack vs. Standard Oil Co., 31 Vr. 243;
Myers vs. Birch, 30th Vroom, 238.
Meyer vs. Madreperla, 39 Vroom.

In short there was nothing in this case to go to the jury. The paper title of the complainant was plain. No evidence sufficient to go to the jury to make adverse possession was shown.

Under all these circumstances the direction of a verdict was right and a new trial should not be granted.

M. T. ROSENBERG,
Of Counsel.

EDWARD RUSS,
Solicitor.

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In Chancery of New Jersey.

To his Honor William J. Magie, Chancellor of the State of New Jersey:

Complaining, shows unto your Honor, your orator, Joseph Schmitt, of the City of Hoboken, in the County of Hudson and State of New Jersey, that on or about the thirteenth day of November, in the year one thousand eight hundred and ninety-seven, your orator purchased of The Hoboken Land and Improvement Company, an incorporated company of the State of New Jersey, for a full valuable consideration, and said The Hoboken Land and Improvement Company conveyed by a deed containing full covenants of warranty and seisin, to your orator in fee simple a tract or parcel of land and premises in the Town of West Hoboken, in the County of Hudson and State of New Jersey, in said deed described as follows:

All that certain piece or lot of land situate, lying and being in the Town of West Hoboken, in the County of Hudson and State of New Jersey, described as follows, viz.:

Beginning at a point in a line drawn parallel to the easterly line of Palisade avenue and distant two hundred and twenty (220) feet easterly therefrom, which point is also ten hundred and forty-eight (1048) feet and ten (10) inches southerly from the southerly line of Fulton street produced easterly, which point is intended to be the northeasterly corner of a lot of land conveyed by The Hoboken Land and Improvement Company to Peter Archdeacon by deed dated August 12, 1874, which said lot of Archdeacon's and said distances are shown on a certain map entitled "Map of property in West Hoboken, Hudson

County, N. J., belonging to S. R. Syms and others, Jersey City, May 22, 1874, Levi W. Post, Surveyor," which said map was duly filed in the Clerk's office of the County of Hudson, on the thirteenth day of June, A. D. 1874, and from said point of commencement running (1) southerly and parallel to Palisade avenue and distant two hundred and twenty (220) feet easterly therefrom and along the easterly line of said lot of said Archdeacon's and continuing along the easterly line of plots marked on said map "B" and "A" respectively three hundred and twenty-seven (327) feet and eleven (11) inches to the southeasterly corner of said plot "A," which said plot "A" was conveyed by said company to Joseph Fahys by deed dated July 31, 1874, and said plot marked "B" was conveyed by said company to Alexander H. Sharp by deed dated July 31, 1874; thence (2) in an easterly direction and in continuation of the southerly line of said lot of said Fahys about two hundred and forty (240) feet to the westerly line of the lot quit-claimed and mentioned in the deed of plot number eleven (11) and described in the deed made by said company to Edward D. Adams bearing date March 1, 1886, recorded in Liber 426 of Deeds for Hudson County, page 1; thence (3) northerly along the westerly line of said land conveyed to said Adams three hundred and twenty-seven (327) feet and eleven inches more or less to a point ten hundred and forty-eight (1048) feet and ten (10) inches southerly measured on a line parallel to Palisade avenue from the southerly line of Fulton street extended, and thence (4) westerly in a straight line about two hundred and seventy (270) feet to the point or place of beginning. Being a portion of parcel No. 233 of the common lands. Subject to the easement of the so-called "Fox Hill Road" leading from Hoboken to West Hoboken, which deed was recorded Decem-

ber 2nd, 1897, in the Register's office of the said County of Hudson in Book 689 of Deeds, page 56.

That the said deed is in your orator's possession and ready to be produced and proved as may be directed; and that you orator has, ever since the recording of said deed, been in the peaceable possession of the lands therein and above described, and that the taxes on said land have been assessed to your orator and he has paid the same, and that at the time of purchasing said lands and taking said deed, he believed and yet believes he bought and acquired a good title to said lands in fee simple, and he has always claimed and does now claim to own the same accordingly.

That you orator's title to said lands, or some part thereof, is denied and disputed by Henry Traphagen and Annie M. Traphagen, his wife, Phoebe A. Watson (widow), Caroline R. Traphagen, Eleanor Van Vorst Williams, and William B. Williams, her husband, Ethelinda Horton Traphagen, Conselyea Traphagen, Maxwell Traphagen, Anna V. H. T. Hervey and William R. Hervey, her husband, Anna V. H. T. Hervey (formerly Anna V. H. T. Cator), trustee under the will of Hannah M. Post, deceased, Henry Traphagen and Minnie Traphagen, his wife, Anne P. Hilliard (widow), Minnie W. Houghton, William H. Houghton, Henrietta Meade (widow), Leontine Celeste Minoz (widow), Ferdinand Henri de Bermingham and Beatrice de Bermingham, his wife, Leontine Therese Merino and Juan F. Merino, her husband, Henrietta Mathilda de Bermingham, Jose M. de Bermingham and Emily de Bermingham, his wife, Eugene J. de Sabla, senior, individually and as executor of the last will and testament of Mathilda de Sebla, deceased, Eugene J. de Sabla, junior and Nora de Sabla, his wife, Leon J. de Sabla, Jacob Henry Thieriot and

Sidonic Thieriot, his wife, Ferdinand Melly Thieriot and Pauline Elise Thieriot his wife, Ferdinand Melly Thieriot surviving executor of the last will and testament of Merie Therese March, deceased, Albert Thieriot and Evalena Adelaide Thieriot, his wife, Town of West Hoboken, who are the defendants in this suit; and they, said defendants, claim, and are claimed and reputed to own said lands, or some part thereof, or some interest therein; and no suit or action of any kind whatever is pending to enforce or that the validity of such title or claim; and your orator charges that such claims so made by defendants are utterly without foundation, unjust and vexatious.

That by reason of such claim your orator's property in said lands is greatly affected, and the same cannot be sold as they otherwise could.

That your orator has applied to said defendants, or some of them, to release and relinquish their said claim, or to bring in some court of law a suit which would test the validity thereof, and the said defendants refuse to do either. And your orator hoped that said defendants would have complied with such reasonable request, as in justice and equity they ought to have done.

In consideration whereof, and for as much as your orator is relievable only in a court of equity, where matters of this sort are properly, and according to the statutes of this State in such case made and provided, cognizable and relievable:

To the end, therefore, that said defendants, and every of them, may, upon their several and respective oaths or affirmations, to the best of their respective knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly

that they, and every of them, may, in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, they, or either of them, make or claim, and to what part or what interest; and further, how and by what instrument such title or claim is derived or was created; and that by the determination and final decree of this Court, the rights of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and that your orator may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in, or encumbrance on, said lands, or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orator may have such other or further relief in the premises as the nature of the case may require and as he shall be entitled to, pursuant to the statutes in such case made and provided.

May it please your Honor, the premises considered, to grant to your orator a writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said defendants, Henry Traphagen and Annie M. Traphagen, his wife; Phoebe A. Watson (widow), Caroline R. Traphagen, Eleanor Van Vorst Williams, and William B. Williams, her husband; Ethelinda Horton Traphagen, Conselyea Traphagen, Maxwell Traphagen, Anna V. H. T. Hervey and William R. Hervey, her husband, Anna V. H. T. Hervey (formerly Anna V. H. T Cator), trustee under the will of Hannah M. Post, deceased, Henry Traphagen and Minnie Traphagen, his wife, Ann P. Hilliard (widow), Minnie W. Houghton, William H. Houghton, Henrietta Meade (widow), Leontine Celeste Minoz (widow), Ferdinand Henri de Bermingham and Beatrice de Bermingham, his wife,

Leontine Therese Merino and Juan F. Merino, her husband; Henrietta Mathilda de Bermingham, Jose M. de Bermingham and Emily de Bermingham, his wife; Eugene J. de Sabla, senior, individually and as executor of the last will and testament of Mathilde de Sabla, deceased, Eugene J. de Sabla, junior, and Nora de Sabla, his wife; Leon J. de Sabla, Jacob Henry Thieriot and Sidonie Thieriot, his wife, Ferdinand Melly Thieriot and Pauline Elise Thieriot, his wife, Ferdinand Melly Thieriot, surviving executor of the last will and testament of Marie Therese March, deceased, Albert Thieriot and Evalena Adelaide Thieriot, his wife, Town of West Hoboken.

Commanding them and each of them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this honorable Court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

RUSS & HEPPENHEIMER,
Solicitors for and of Counsel with Complt.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOSEPH SCHMITT,
Complainant,

and

HENRY TRAPHAGEN AND WIFE AND OTHERS.
Defendants.

On Bill, &c.

Answer.

The joint and several answer of Henry Traphagen and Anna M. Traphagen, his wife, Phoebe A. Watson, Caroline R. Traphagen, Eleanor Van Vorst Williams and William B. Williams, her husband, Ethelinda Horton Traphagen, Anna V. H. T. Hervey and William H. Hervey, her husband, and the said Anna V. H. T. Hervey (formerly Anna V. H. T. Cator), trustee under the will of Hannah M. Post, deceased, defendants to the bill of complaint of Joseph Schmitt, complainant.

These defendants for answer unto the said bill of complaint, or unto so much and such parts thereof as they are advised it is necessary or material for them to answer unto, answering say:

1. They have no knowledge as to whether or not at the time in said bill mentioned the said complainant attempted to purchase, or The Hoboken Land and Improvement Company attempted to convey the land and premises in said bill of complaint, particularly described, or as to whether or not said complainant believed or believes that he bought and acquired a good title to said lands in fee simple, or otherwise then in said bill, now claims to own the same accordingly; but they deny

that The Hoboken Land and Improvement Company at the time of its alleged conveyance to the said complainant, or at any subsequent time had, or that the said complainant has ever had any title to said lands.

2. They deny that the said complainant has ever been, or now is, in possession of said lands or any part thereof, or that the taxes on said lands have been assessed to, or paid by, the said complainant for such a length of time as under the statute in such case made and provided will warrant the maintenance of said bill of complaint without actual possession of said lands; and these defendants pray the same benefit of this defense as if they had pleaded the same.

3. They do deny and dispute that said complainant has any title to said lands or any part thereof, and they respectively claim title or encumbrance on certain parts of said lands as follows, and they hereinafter set forth specifically what title and encumbrance and to what part and what interest, and how and by what instruments such title or claim has been derived or created, namely:

Merseles Merseles died October 28, A. D. 1800, seized in his own demesne as of fee of a tract of land including the land and premises particularly described in said bill of complaint. By his last will and testament, dated March 15, A. D. 1799, duly proved before the Surrogate of the County of Bergen, December 5th, A. D. 1800, and admitted to probate by the Governor and Surrogate General, and recorded in Book 39 of Wills, page 178, in the office of the Secretary of State, he devised the same to his son John Merseles. John Merseles died August 26th, A. D. 1804, and his son Merseles Merseles inherited from him a tract of land, including the land and premises described in the said bill of com-

plaint. The references to records prior to the year 1840 hereinafter named are to the books in which records of Bergen County have been transcribed for use in Hudson County.

Merseles Merseles (the second) by deed dated August 4th, A. D. 1807, and recorded in Book 2 of Deeds, page 739, conveyed to William Coulter, and said William Coulter by deed dated September 21st, A. D. 1807, and recorded in Book 2 of Deeds, page 744, conveyed to Walter Clendenny, a tract of land including the land described in said bill of complaint. Said Walter Clendenny died seized thereof leaving a last will and testament, dated April 14th, A. D. 1882, proved before the Surrogate of the County of Bergen and recorded in Book 1 of Wills, page 174, whereby he gave his executors therein named a power of sale of his land. The executors of said Walter Clendenny, deceased, by deed dated September 25th, A. D. 1823, and recorded in Book 6 of Deeds, page 370, conveyed the said tract of land to Henry Traphagen. Said Henry Traphagen by deed dated July 27th, A. D. 1835, and recorded in Book 9 of Deeds, page 515, conveyed said tract of land to Hiram Gilbert and Cyrus Browning, who on the same day gave to said Henry Traphagen, a purchase money mortgage, recorded in Book 2 of Mortgages, page 331, securing payment of $1,166.67 in five years from the date thereof, with interest at six per cent. payable annually. The said Hiram Gilbert by deed dated October 19th, A. D. 1835, and recorded in Book 10 of Deeds, page 193, conveyed his half interest in said tract of land, subject to said mortgage, to said Cyrus Browning. On default in payment of said mortgage the said Henry Traphagen took possession of said tract of land, and the equity of redemption of said mortgagors, or their assigns, has

long since expired, making the title of the said Henry Traphagen and his heirs at law absolute. Said Henry Traphagen died intestate the first day of June, A. D. 1857, leaving him surviving four heirs at law, namely, his daughter, Hannah H. Post, wife of William G. Post; his daughter, Anna V. H. Traphagen; his son, Cornelius V. Traphagen; and his son, Henry M. Traphagen. Said Anna V. H. Traphagen died October 27th, A. D. 1880, unmarried, leaving a last will and testament dated June 15th, A. D. 1869, proved before the Ordinary of the State of New Jersey, a copy whereof is recorded in Book 13 of Wills for the County of Hudson, page 22. By said will she devised the residue of her estate, including said tract of land, in three equal shares; one to Cornelius, Annie and Henry, children of her brother Cornelius V. Traphagen; one to Phoebe A., William C. and Henry, children of her brother Henry M. Traphagen, and the other to Catharine Adams, daughter of her sister Hannah M. Post, for life with remainder to her children. Said Catharine Adams died in the year 1871, leaving one child, this defendant, Anna V. H. Traphagen (Adams), who first married Thomas V. Cator and afterwards married this defendant William R. Hervey. Said Cornelius V. Traphagen died a widower, intestate, October 29th, A. D. 1881, leaving his said three children, above named, his only heirs at law, of whom Cornelius died unmarried, October 26th, A. D. 1884, leaving as his only heirs at law his brother and sister. Said Henry M. Traphagen died a widower, interstate, May 20th, A. D. 1884, leaving his said three children his only heirs at law. In the year 1884 a suit was begun in this honorable Court for the partition of the lands in this State whereof said Henry Traphagen, first named, died seized, and of the lands in this State whereof Nellie Traphagen, his wife, died seized (the heirs at law

of the husband and wife being the same persons,) and pending the same, and on December 16th, 1885, the said Hannah M. Post died, leaving a last will and testament dated June 15th, 1881, duly proved before the Surrogate of said County of Hudson, December 31st, 1885, and recorded in Liber 19 of Wills for said County of Hudson, at page 184. By the said last will and testament the testatrix gave to said Anna V. H. T. Cator all her real and personal estate, including her undivided interest in the real estate that came to her from the father and mother of the testatrix—to have, hold and enjoy the same for the term of her natural life, and in trust for her children after her decease, and appointed the said Anna V. H. T. Cator executrix of the said last will and testament, with full power to sell any part of the real estate of said testatrix except such as is on Pavonia avenue, Jersey City. By the codicil the testatrix directed that her executrix have full power to sell at her option any of the lands held in common. Said suit was revived, and the said Anna V. H. T. Cator in her own right, and as executrix and trustee of the said Hannah M. Post was substituted in her stead. On September 25th, A. D. 1886, this Court, by its decree, established a partition of the lands described in the bill of complaint in said partition suit. Said decree is recorded in Book 434 of Deeds for said County of Hudson, at page 520, etc. By said decree there was allotted to this defendant Henry Traphagen the share lettered "A" on maps numbered one, two, three and four, annexed to the report of the commissioners in partition, and forming part thereof, and now on file in the office of the Clerk of this Court, which share lettered "A" included, among other lands the following, being part of the lands described in the bill of complaint in this cause, viz.:

"All those two certain plots of land and prem-
"ises, situate, lying and being in West Hoboken,
"in the County of Hudson and State of New
"Jersey, and which on the Commissioners' Map
"No. 2, accompanying said report, are designated
"as plots 'A,' and taken toge ther are described as
"follows:

"Beginning at a point in the northerly boundary
"line of the lands of Traphagen where said line in-
"tersects the westerly boundary line of lands of The
"Hoboken Land and Improvement Company,
"which point is thirty (30) feet northwest of the
"located center of the railroad of said company;
"from thence running north fifty-three degrees
"west along the northern boundary line of said
"Traphagen's land, three hundred and thirty-nine
"(339) feet and fifty-three (53) hundredths of a
"foot; thence south thirty-five degrees fifteen
"minutes west eighty-four (84) feet and eighty (80)
"hundredths of a foot to the line of Plot 'B;'
"thence south fifty-three (53) degrees east three
"hundred and forty-four (344) feet and forty-one
"one-hundredths (41-100) feet to the line of lands
"of said railroad; thence northeasterly and parallel
"with said railroad eighty-six (86) feet and fifteen-
"hundredths of a foot to the place of beginning,
"being part of the twelfth tract of land in said
"commission described."

And this defendant Henry Traphagen claims title in fee simple to the lands so allotted to him, and this defendant Annie M. Traphagen claims inchoate dower therein.

By said decree there was allotted to this defendant Phoebe A. Watson the share lettered "B" on maps numbered one and two annexed to the report of the Commissioners in partition, and forming part thereof and now on file in the office of the

Clerk of this Court, which share lettered "B" included among other lands the following, being part of the lands described in the bill of complaint in this cause, viz.:

"All those two certain plots of land and premises "situate, lying and being in West Hoboken, in the "County of Hudson and State of New Jersey, "and which, upon the Commissioner's Map No. 2, "accompanying said report, are designated and "known as plots marked 'B,' and which two plots "taken together are bounded and described as fol- "lows:

"Beginning at a point where the southerly line "of plot 'A' intersects the westerly line of the "lands belonging to the railroad of The Hoboken "Land and Improvement Company at the north- "easterly corner of the plot hereby described, and "which point is thirty (30) feet westerly from the "located centre line of said railroad from said point "running north fifty-three degrees west along the "dividing line between plots 'A' and 'B' three "hundred and forty-four (344) feet and forty-one "(41) hundredths of a foot; thence south thirty-five "degrees fifteen minutes west eighty-two (82) feet "forty six (46) hundredths of a foot to the dividing "line between plots 'B' and 'C;' thence south "fifty-three degrees east three hundred and forty- "seven (347) feet to the line of lands of said rail- "road; thence northeasterly along said line eighty- "three (83) feet and sixty-three (63) hundredths of a "foot to the beginning, being part of the twelfth "tract in said commission described."

And this defendant Phoebe A. Watson claims title in fee simple to the lands so allotted to her.

By said decree there was allotted to said William C. Traphagen the share lettered "C" on maps num-

bered one and two annexed to the report of the Commissioners in partition and forming part thereof, and now on file in the office of the Clerk of this Court, which share lettered "C" included among other lands the following, being part of the lands described in the bill of complaint in this cause, viz.:

"All those two certain plots of land and premises "situate lying and being in West Hoboken, in the "County of Hudson and State of New Jersey, and "which upon the Commissioners' Map No. 2, ac- "companying said report are designated and known "as plots lettered 'C,' and which two plots taken "together are bounded and described as follows:

"Beginning at a point in the westerly line of "lands belonging to the railroad of The Hoboken "Land and Improvement Company, where the "southerly line of plot 'B' and the northerly line "of plot 'C' intersects the same at the northeast- "erly corner of the plot hereby intended to be de- "scribed, and which point is thirty (30) feet "westerly from the located center line of "said railroad; from said point running north fif- "ty-three degrees west along the dividing lines be- "tween plots 'B' and 'C' three hundred and for- "ty-seven (347) feet; thence south thirty-five (35) "degrees fifteen (15) minutes west eighty-two (82) "feet and forty-six (46) hundredths of a foot to the "dividing line between plots 'C' and 'D;' thence "south fifty-three (53) degrees east three hundred "and forty-seven (347) feet to the line of lands of "said railroad; thence northeasterly along said line "eighty-two (82) feet and forty-six (46) hundredths "of a foot to the place of beginning. Being part "of the twelfth tract in said commission de- "scribed."

Afterward, on October 26th, A. D. 1894, the said William C. Traphagen died intestate, leaving him

surviving this defendant, Caroline R. Traphagen, his widow, and four children, his only heirs at law, viz., this defendant, Eleanor Van Vorst, now the wife of this defendant, William B. Williams, Ethelinda H. Traphagen, Conselyea Traphagen, and Maxwell Traphagen, which two last named children are infants under the age of twenty-one years. And this defendant, Caroline R. Traphagen, claims dower in the lands so allotted to the said William C. Traphagen. And these defendants, Eleanor Van Vorst Williams and Ethelinda Horton Traphagen, each claims title in fee simple to an undivided fourth part of said lands so allotted to said William C. Traphagen. And this defendant, William B. Williams, claims an inchoate curtesy in his wife's interest in said lands.

By said decree there was allotted to this defendant, Anna V. H. T. Cator, now Anna V. H. T. Hervey, the share lettered "D" on maps numbered one, two and three annexed to the report of the Commissioners in partition and forming part thereof, and now on file in the office of the Clerk of this Court, which share lettered "D" included, among other lands, the following, being part of the lands described in the bill of complaint in this cause, viz.:

"All those two certain plots of land and prem-
"ises, situate, lying and being in West Hoboken,
"in the County of Hudson, and State of New Jer-
"sey, and which upon the Commissioners' Map No.
"2, accompanying said report, are designated and
"known as plots lettered 'D,' and which two plots
"taken together are bounded and described as fol-
"lows:

"Beginning at a point in the westerly line of
"lands belonging to the railroad of The Hoboken
"Land and Improvement Company where the
"southerly line of plot 'C' and the northerly line

"of plot 'D' intersects the same, at the northeast-
"erly corner of the plot hereby intended to be de-
"scribed, and which point is thirty (30) feet west-
"erly from the located center line of said railroad;
"from said point running north fifty-three degrees
"west along the dividing lines of plots 'D' and
"'C' three hundred and forty-seven (347) feet;
"thence south thirty-five degrees fifteen minutes
"west sixty-one (61) feet and eighty-four (84) hun-
"dredths of a foot to the dividing line between
"plots 'D' and 'E;' thence south fifty-three de-
"grees east three hundred and forty-seven (347)
"feet to the line of lands of said railroad; thence
"northeasterly along said railroad land sixty-one
"(61) feet and eighty-four (84) hundredths of a
"foot to the beginning, being part of the twelfth
"tract of land in said commission described."

On May 23, 1902, by the deed of that date recorded in Book 806 of Deeds for said County of Hudson, page 428, these defendants, Anna V. H. T. Hervey and William H. Hervey, her husband, conveyed to William H. Houghton the land so allotted to this defendant, Anna V. H. T. Hervey, and on May 23rd, 1902, by mortgage of that date, recorded in Book 475 of Mortgages for said County, page 37, the said William H. Houghton and Harriet V. his wife, mortgaged unto this defendant Anna V. H. T. Hervey and her heirs and assigns, to secure payment of five hundred dollars and interest on the 23rd day of May, 1905, the land so conveyed to said William H. Houghton. And this defendant Anna V. H. T. Hervey claims such mortgage-encumbrance upon such lands.

By said decree there was allotted to this defendant Anna V. H. T. Cator, now Anna V. H. T. Hervey, Trustee under the will of Hannah M. Post, deceased, the share lettered "E" on maps numbered

one, two and three annexed to the report of the commissioners in partition, and forming part thereof, and now on file in the office of the Clerk of this Court, which share lettered "E" included, among other lands, the following lands which include all of the lands described in the bill of complaint in this cause not embraced within the Plots "A," "B," "C" and "D" allotted to said Henry Traphagen, Phoebe A. Watson, William C. Traphagen and Anna V. H. T. Cator (in her own right) respectively, viz.:

"All those two certain plots of land and premises "situate, lying and being in West Hoboken, in the "County of Hudson and State of New Jersey, and "which upon the Commissioners' Map No. 2 are "known and designated as the plots lettered 'E' "and which two plots taken together are bounded "and described as follows:

"Beginning at a point in the westerly line of the "lands belonging to the railroad of The Hoboken "Land and Improvement Company where the southerly line of Plot 'D' and the northerly line of "Plot 'E' intersects the same at the northeast "corner of Plot 'E' and which point is thirty feet "(30) west from the located center line of said railroad from said point running north fifty-three "degrees west along the division line between Plots "'D' and 'E,' three hundred and forty-seven (347) "feet; thence south thirty-five degrees fifteen minutes west one hundred and eighty-five (185) feet "and fifty-four (54) hundredths of a foot, to the "dividing line between Plots 'E' and 'F;' thence "south fifty-three degrees east three hundred and "forty-seven (347) feet to the line of lands of said "railroad; thence northeasterly along said railroad "lands one hundred and eighty-five (185) feet and "fifty-four (54) hundredths of a foot to the begin-

"ning, being part of the twelfth tract of land in "said commission described."

On May 23d, 1902, by deed of that date recorded in Book 806 of Deeds for said County of Hudson, page 426, this defendant, Anna V. H. T. Hervey, as trustee under the will of said Hannah M. Post, deceased, conveyed to said William H. Houghton, the said land so allotted to her as such trustee, and on the same date the said William H. Houghton and Harriet V., his wife, by mortgage of that date recorded in Book 475 of Mortgages for said County, page 39, mortgaged to this defendant, Anna V. H. T. Hervey, as trustee under the will of said Hannah M. Post, deceased, her heirs and assigns, to secure payment of one thousand dollars and interest on May 23d, A. D. 1905, the last mentioned lands so conveyed to said William H. Houghton, and this defendant Anna V. H. T. Hervey, as trustee under the last will and testament of said Hannah M. Post, claims such mortgage-encumbrance upon said lands.

And these defendants further claim a continuous, open, visible, actual, notorious possession in the persons above named under whom they respectively claim, adverse against all the world, of the land to which, or on which, they respectively claim title or encumbrance from the seizin of Merseles Merseles, since deceased, prior to October 28th, A. D. 1900, down to the death of Henry Traphagen, deceased, and by the said Henry Traphaged, since deceased, and his heirs at law after his death, from the year 1840 down to the said phrtition and ever since that time by the persons to whom the allotments were made, or their heirs at law or assigns, of the respective allotments.

And these defendants join in the prayer of said bill of complaint that by the determination and

final decree of this Court the rights of all the parties to this suit in and to the lands in said bill of complaint particularly described, and every part thereof, may be fixed and settled, and that these defendants' respective titles and encumbrances may be duly established.

COLLINS & CORBIN,
Solicitor for and of Counsel with
said Defendants.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOSEPH SCHMITT,
Complainant,

and

HENRY TRAPHAGEN, ET ALS.,
Defendants.

The answer of Winnie M. Houghton, defendant (designated in the bill of complaint in this cause as Minnie W. Houghton), to the bill of complaint of Joseph Schmitt, complainant.

This defendant answering says:

1. She has no knowledge as to whether or not at the time in the said bill mentioned the said complainant attempted to purchase or The Hoboken Land and Improvement Company attempted to convey the land and premises in said bill of complaint, particularly described, or as to whether or not said complainant believed or believes that he bought and acquired a good title to said lands in fee simple or, otherwise than in said bill, now claims to own the same accordingly; but she denies that The Hoboken Land and Improvement Company at the time of its alleged conveyance to the said complainant, or at any subsequent time had, or that the said complainant has ever had any title to said lands.

2. She denies that the said complainant has ever been, or now is, in possession of said lands or any part thereof, or that the taxes on said lands have been assessed to, or paid by, the said complainant for such a length of time as under the statute in

such case made and provided will warrant the maintenance of said bill of complaint without actual possession of said lands; and this defendant prays the same benefit of this defense as if they had pleaded the same.

3. She denies and disputes that said complainant has any title to said lands or any part thereof, and she respectively claims title or encumbrance on certain parts of said lands as follows, and she hereinafter sets forth specifically what title and encumbrance and to what part and what interest and how and by what instruments such title or claim has been derived or created, namely:

Merseles Merseles died October 28th, A. D. 1800, seized in his own demesne as of fee of a tract of land including the lands and premises particularly described in said bill of complaint. By his last will and testament, dated March 15th, A. D. 1799, duly proved before the Surrogate of the County of Bergen, December 5th, A. D. 1800, and admitted to probate by the Governor and Surrogate General, and recorded in Book 39 of Wills, page 178, in the office of the Secretary of State, he devised the same to his son John Merseles. John Merseles died August 26th, A. D. 1804, and his son Merseles Merseles inherited from him a tract of land, including the land and premises described in the said bill of complaint. The references to records prior to the year 1840 hereinafter named are to the books in which records of Bergen County have been transcribed for use in Hudson County.

Merseles Merseles (the second, by deed dated August 4th, A. D. 1897, and recorded in Book 2 of Deeds, page 739, conveyed to William Coulter, and said William Coulter by deed dated September 21st, A. D. 1807, and recorded in Book 2 of Deeds, page 744, conveyed to Walter Clendenny, a tract of land

including the land described in said bill of complaint. Said Walter Clendenny died seized thereof leaving a last will and testament, dated April 14th, A. D. 1882, proved before the Surrogate of the County of Bergen and recorded in Book 1 of Wills, page 174, whereby he gave his executors therein named a power of sale of his land. The executors of said Walter Clendenny, deceased, by deed September 25th, A. D. 1823, and recorded in Book 6 of Deeds, page 370, conveyed the said tract of land to Henry Traphagen. Said Henry Traphagen by deed dated July 27th, A. D. 1835, and recorded in Book 9 of Deeds, page 515, conveyed said tract of land to Hiram Gilbert and Cyrus Browning, who on the same day gave to said Henry Traphagen a purchase money mortgage, recorded in Book 2 of Mortgages, page 331, securing payment of $1,166.67 in five years from date thereof, with interest at six per cent., payable annually. The said Hiram Gilbert by deed dated October 19th, A. D. 1835, and recorded in Book 10 of Deeds, page 193, conveyed his half interest in said tract of land subject to said mortgage to the said Cyrus Browning. On default in payment of said mortgage the said Henry Traphagen took possession of said tract of land, and the equity of redemption of said mortgagors, or their assigns has long since expired, making the title of said Henry Traphagen and his heirs at law absolute. Said Henry Traphagen died intestate the first of June, A. D. 1857, leaving him surviving four heirs at law, namely, his daughter Hannah M. Post, wife of William G. Post; his daughter Anna V. H. Traphagan; his son Cornelius Y. Traphagen and his son Henry M. Traphagen. Said Anna V. H. Traphagen died October 27th, A. D. 1880, unmarried, leaving a last will and testament dated June 15th, A. D. 1869, proved before the Ordinary of the State of New

Jersey, a copy whereof is recorded in Book 13 of Wills for the County of Hudson, page 22. By said will she devised the residue of her estate, including said tract of land, in three equal shares; one to Cornelius, Annie and Henry, children of her brother Cornelius V. Traphagen; one to Phoebe A., William C. and Henry, children of her brother Henry M. Traphagen, and the other to Catharina Adams, daughter of her sister, Hannah M. Post, for life with remainder to her children. Said Catharine Adams died in the year 1871, leaving one child, this defendant, Anna V. H. Traphagen (Adams), who first married Thomas V. Cator and afterwards married this defendant, William R. Hervey. Said Cornelius V. Traphagen died a widower intestate, October 29th, A. D. 1881, leaving his said three children above-named, his only heirs at law, of whom Cornelius died unmarried, October 26th, A. D. 1884, leaving as his only heirs at law his brother and sister. Said Henry M. Traphagen died a widower intestate, May 20th, A. D. 1884, leaving his said three children his only heirs at law. In the year 1884 a suit was begun in this honorable Court for the partition of the lands in this State whereof said Henry Traphagen, first named, died seized, and of the lands in this State whereof Nellie Traphagen, his wife, died seized (the heirs at law of the husband and wife being the same persons), and pending the same, and on December 16th, 1885, the said Hannah M. Post died, leaving a last will and testament dated June 15th, 1881, duly proved before the Surrogate of said County of Hudson, December 31st, 1885, and recorded in Liber 19 of Wills for said County of Hudson, at page 184. By the said will and testament the testatrix gave to said Anna V. H. T. Cator all her real and personal estate, including her undivided interest in the real estate that came to her

from the father and mother of the testatrix to have, hold and enjoy the same for the term of her natural life, and in trust for her children after her decease, and appointed the said Anna V. H. T. Cator executrix of the said last will and testament, with full power to sell any part of the real estate of said testatrix except such as is on Pavonia avenue, Jersey City. By the codicil the testatrix directed that her executrix have full power to sell at her option any of the lands held in common. Said suit was revived, and the said Anna V. H. T. Cator in her own right, and as executrix and trustee of the said Hannah M. Post was substituted in her stead. On September 25th, A. D. 1886, this Court, by its decree, established a partition of the lands described in the bill of complaint in said partition suit. Said decree is recorded in Book 434 of Deeds for said County of Hudson, at page 520, &c. By said decree there was allotted to the said Anna V. H. T. Cator the share lettered "E" and to the said Anna V. H. T. Cator, as trustee, the share lettered "D" on Maps numbers one, two, three and four annexed to the report of the commissioners in partition and forming part thereof, and now on file in the office of the Clerk of this Court, which shares "E" and "D" included among other lands the following, being part of the lands described in the bill of complaint in this cause, viz.: All those two certain tracts and parcels of land and premises situate in the Town of West Hoboken, Hudson County, New Jersey, being tracts lettered D and E on Commissioners Map No. 2 accompanying said report, and which tracts are separately described as follows, viz.:

TRACT D—All that certain tract and parcel of land and premises situate, lying and being in West Hoboken, Hudson County, New Jersey, being a tract

lettered "D" on Commissioner's Map No. 2, showing the partition as described in the decree confirming partition in suit in Chancery between Henry Traphagen and wife, complainants, and Anna V. H. T. Cator, Trustee, &c. et als., defendants, a copy of which decree is recorded in the Hudson County Register's office, in Liber 434 of Deeds, page 534; and which in said partition decree is described as follows: Beginning at a point in the westerly line of lands of railroad of The Hoboken Land and Improvement Company, where the southerly line of plot "C" and the northerly line of plot "D" intersects the same, which is thirty (30) feet westerly from the centre line of the railroad; thence (1) north fifty-three degrees west three hundred and forty-seven (347) feet; thence (2) south thirty-five (35) degrees fifteen (15) minutes west sixty-one and eighty-four hundredths (61.84) feet; thence (3) south fifty-five (55) degrees east three hundred and forty-seven (347) feet to line of land of railroad; thence (4) northeasterly along the line of railroad sixty-one and eighty-four hundredths (61.84) feet to the point or beginning.

Tract E—All that certain tract and parcel of land and premises situate, lying and being in West Hoboken, Hudson County, New Jersey, being a tract lettered "E" on Commissioners' Map No. 2, showing the partition as described in the decree confirming partition in suit in Chancery between Henry Traphagen and wife, complainants, and Anna V. H. T. Cator, Trustee, &c., et als., defendants, a copy of which decree is recorded in the Hudson County Register's office, in Liber 434 of Deeds, page 534, and which in said partition decree is described as follows: Beginning at a point in the westerly line of lands of railroad of The Hoboken Land and Improvement Company where the

southerly line of plot "D" and the northerly line of plot "E" intersects the same and thirty (30) feet west from the centre of the railroad; thence (1) north fifty-three (53) degrees west along the division line between plot "D" and "E" three hundred and forty-seven (347) feet; thence (2) south thirty-five (35) degrees fifteen (15) minutes west one hundred and eighty-five and fifty-four hundredths (185.54) feet; thence (3) south fifty-three (53) degrees east three hundred and forty-seven (347) feet to line of railroad lands; thence (4) northeasterly along lands of railroad one hundred and fifty-five and eighty-four hundredths (155.84) feet to the point or place of beginning.

The said Anna V. H. T. Cator afterwards became the wife of William R. Hervey.

The said Anna V.H.T. Hervey, by indenture bearing date the twenty-third day of May, one thousand nine hundred and two, conveyed unto William H. Houghton the said tract or parcel of land designated by the letters "D" on said Commissioners' Map No. 2, which deed was recorded in Hudson County Register's office, May 26, 1902, in Book 806 of Deeds, pages 428, and the said Anna V. H. T. Hervey, Trustee, by indenture bearing date the twenty-third day of May, 1902, conveyed unto said William H. Houghton the tract or parcel of land designated by the letter "E" on said Commissioners' Map No. 2, which last mentioned deed was recorded in Hudson County Register's office, in Book 806, page 426, &c., and said William H. Houghton by indenture bearing date the thirtieth day of July, one thousand nine hundred and two, for the consideration of one thousand dollars, quit claimed and conveyed unto this defendant the said two tracts or parcels of land lettered "D" and "E" on said Commissioners' Map No. 2, which last mentioned indenture was recorded in Hudson

County Register's office, July 31, 1902, in Book 819 of Deeds, page 189, &c.

And this defendant, Winnie M. Houghton, claims title in fee simple to the said tracts or parcels of land designated by the letters "D" and "E" on the said Map No. 2, annexed to the said report of the Commissioners in partition and forming part thereof.

And this defendant further claims a continuous, open, visible, actual, notorious possession in the persons above named, under whom she claims adverse against all the world to which she has herein claimed title from the seizen of Merseles Merseles, since deceased, prior to the twenty-eighth day of October, eighteen hundred down to the death of Henry Traphagen and by the said Henry Traphagen, since deceased, prior to the twenty-eighth day of October, eighteen hundred, down to the death of Henry Traphagen and by said Henry Traphagen, since deceased, and his heirs after his death, from the year eighteen hundred and forty down to the said partition, and ever since that time by the persons to whom the allotments were made, or their heirs at law, or assigns, of the respective allotments, and by this defendant as the grantee of the said Anna V. H. T. Hervey individually and as trustee.

And this defendant joins in the prayer of the said bill of complaint, that by the determination and final decree of this Court, the rights of all the parties to this suit, in and to the lands in said bill of complaint particularly described and every part thereof may be fixed and settled, and that this defendant's title to the lands herein particularly described, may be duly established.

AUGUSTUS A. RICH,
Sol'r for and of Counsel with the
Defendant Winnie M. Houghton.

Decree pro confesso against the other defendants except Conselyen and Maxwell Traphagen, infants, for whom the clerk was appointed guardian ad litem and filed formal answer.

The cause was duly referred to Vice-Chancellor Garrison.

IN CHANCERY OF NEW JERSEY.

BETWEEN JOSEPH SCHMITT, *Complainant,* *and* HENRY TRAPHAGEN, ET ALS., *Defendants.*	*On Bill, &c.* *Order for Feigned Issue.*

On application of the complainant and answering defendants;

It is, on this seventh day of March, in the year of our Lord one thousand nine hundred and five, ordered and directed, that there shall be an issue at law to try the validity of the claims of the said defendants as set up in their answers in the above-stated cause respectively.

It is further ordered, that such issue shall be framed in the Supreme Court of this State as in an action of ejectment between the said complainant as plaintiff and the said defendants as defendants, and that either party may notice the case for trial, and a special jury may be had upon the application to this Court of either party.

W. J. MAGIE, C.

Respectfully advised,

LINDSLEY M. GARRISON,
V. C.

We hereby apply for and consent to above Order.

RUSS & HEPPENHEIMER,
Solicitors.

COLLINS & CORBIN,
Solicitors.

I hereby consent to the foregoing Order for feigned issue.

AUGUSTUS A. RICH,
Solicitor-Defendant.
Winnie M. Houghton.

Dated, March 4th, 1905.

NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, as yet of the Termof June, in the year one thousand nine hundred and five.

Witness:

WILLIAM S. GUMMERE, Esquire,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

HUDSON COUNTY, ss.

Joseph Schmitt puts in his place Edward Russ, his attorney, against Henry Traphagen in an action of ejectment.

HUDSON COUNTY, ss.

Henry Traphagen, puts in his place Collins & Corbin, his attorneys, at the suit of Joseph Schmitt, in an action of ejectment.

HUDSON COUNTY, ss.

Be it remembered, that at this Term of June, one thousand nine hundred and five, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, came Joseph Schmitt, the plaintiff in this suit, by Edward Russ, his attorney, and brought into this Court his declaration against Henry Traphagen, the defendant in this suit, in an action of ejectment, which declaration is in these words:

HUDSON COUNTY, ss.

Joseph Schmitt, the plaintiff in this action, demands of Henry Traphagen, the defendant therein, the possession of all that certain plot of land and premises, situate, lying and being in West Hobo-

ken, in the County of Hudson and State of New Jersey, described as follows: Beginning at the intersection of the northerly boundary line of the lands of Traphagen, as shown on "Commissioner's Map No. 2 of the partition of the lands lying in Hudson County among the heirs of Henry and Nellie Traphagen, deceased, dated July 20th, 1886," with the Westerly boundary line of the New Jersey Junction Railroad as the same is mentioned in Deed of Plot 11, dated March 1st, 1886, recorded in Liber 426 of Deeds, page 1, running thence (1st) Westerly along the Northerly line of Plot A as shown on said map, two hundred and sixty-seven and thirty-one one hundredths feet to a point distant two hundred and twenty feet easterly at right angles from Palisade Avenue; thence (2d) southerly and parallel to Palisade Avenue eighty-four and eighty one hundredths feet, more or less, to a point on the division line between Plots "A" and "B" as shown on said map; thence (3d) easterly and along the division line between Plots "A" and "B" two hundred and fifty-one feet, more or less, to the Westerly boundary line of the New Jersey Junction Railroad, as the same is mentioned as aforesaid; thence (4th) Northerly and along the said railroad line as aforesaid, eighty-six and fifteen one-hundredths feet, more or less, to the beginning; and the plaintiff says that his right to the possession of the same accrued on the thirtieth day of November, eighteen hundred and ninety-seven, and that the defendant wrongfully deprives him of the possession thereof, to his damage of one thousand dollars.

And the said defendant by Collins & Corbin, his attorneys, appears and defends this action and says that he is not guilty of the injury whereof the said Joseph Schmitt hath complained in his declaration

or of any part thereof. And of this he puts himself upon the country, and the said Joseph Schmitt doth the like.

The foregoing is a true transcript of the declaration and pleadings in this action remaining of record in the Clerk's office of the Supreme Court of the State of New Jersey.

In witness whereof I have hereunto set my hand and have caused the seal of the [SEAL.] said Court to be hereunto affixed, at Trenton aforesaid, this 31st day of October, one thousand nine hundred and five.

WILLIAM RIKER, JR.,
Clerk.

Afterwards, to wit, on the Second day of January, in the year of our Lord One thousand nine hundred and six, at a Circuit Court holden at Jersey City, in and for the County of Hudson before the Honorable Jonathan Dixon, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well the said Joseph Schmitt as the said Henry Traphagen, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being summoned also come, who to speak the truth of the matter within contained, being chosen, tried and sworn upon oath, say that the said Henry Traphagen is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said Joseph Schmitt hath within thereof complained against him, and they assess the damages of the said Joseph Schmitt by reason of the trespass and ejectment aforesaid, over and above his costs and charges, to six cents.

JONATHAN DIXON,
Just. Sup. Ct.

NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, as yet of the June Term, in the year One thousand nine hundred and five.

Witness:

WILLIAM S. GUMMERE, Esquire,
Chief Justice.

WILLIAM RIKER, Jr.,
Clerk.

HUDSON COUNTY, ss.

Joseph Schmitt puts in his place Edward Russ, his attorney, against Phoebe A. Watson in an action of ejectment.

HUDSON COUNTY, ss.

Phoebe A. Watson puts in her place Collins & Corbin, her attorneys, at the suit of Joseph Schmitt in an action of ejectment.

HUDSON COUNTY, ss.

Be it remembered, that at this Term of June, One thousand nine hundred and five, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, came Joseph Schmitt, the plaintiff in this suit, by Edward Russ, his attorney, and brought into this Court his declaration against Phoebe A. Watson, the defendant in this suit, in an action of ejectment, which declaration is in these words:

HUDSON COUNTY, ss.

Joseph Schmitt, the plaintiff in this action, demands of Phoebe A. Watson, the defendant therein, the possession of All that certain plot of land and premises situate, lying and being in West Hoboken, in the County of Hudson and State of New

Jersey, bounded and described as follows: Beginning at the intersection of the division line between Plots "A" and "B," as shown on "Commissioners Map No. 2 of the partition of the lands lying in Hudson County among the Heirs of Henry and Nellie Traphagen, Dec'd, dated July 20th, 1886," with the Westerly line of the New Jersey Junction Railroad as the same is mentioned in Deed of Plot 11, dated March 1st, 1886, recorded in Liber 426 of Deeds, page 1, running thence (1) Westerly and along said division line Two hundred and fifty-one feet more or less to a point distant two hundred and twenty feet easterly at right angles from Palisade Avenue; thence (2) Southerly and parallel to Palisade Avenue eighty-two and forty-six one-hundreths feet more or less to a point in the division line between Plots "B" and "C;" thence (3) Easterly and along the said division line between Plots "B" and "C" two hundred and forty-six and five-tenths feet more or less to the Westerly line of the lands of the New Jersey Junction Railroad as the same is mentioned as aforesaid; thence (4) Northerly and along the said Railroad line as aforesaid Eighty-three and sixty-three one-hundredths feet more or less to the Beginning. And the plaintiff says that his right to the possession of the same accrued on the thirtieth day of November, Eighteen hundred and ninety-seven, and that the defendant wrongfully deprives him of possession thereof, to his damage of One thousand dollars.

And the defendant, by Collins & Corbin, her attorneys, appears and defends this action and says that she is not guilty of the injury whereof the said Joseph Schmitt hath complained in his declaration or any part thereof. And of this she puts herself upon the country, and the said Joseph Schmitt doth the like.

The foregoing is a true Transcript of the declaration and pleadings in this action remaining of record in the Clerk's office of the Supreme Court of the State of New Jersey.

In witness whereof I have hereunto set my hand and have caused the seal of the [SEAL.] said Court to be hereunto affixed, at Trenton aforesaid, this Thirty-first day of October, One thousand nine hundred and five.

WILLIAM RIKER, JR.,
Clerk.

Afterwards, to wit, on the second day of January, in the year of our Lord one thousand nine hundred and six, at a Circuit Court holden at Jersey City, in and for the County of Hudson, before the Honorable Jonathan Dixon, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well the said Joseph Schmitt as the said Phoebe A. Watson, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being summoned also come, who, to speak the truth of the matter within contained, being chosen, tried and sworn upon oath, say that the said Phoebe A. Watson is guilty of the trespass and ejectment within laid to her charge, in manner and form as the said Joseph Schmitt hath within thereof complained against her, and they assess the damages of the said Joseph Schmitt by reason of the trespass and ejectment aforesaid, over and above his costs and charges, to six cents.

JONATHAN DIXON,
Just. Sup. Ct.

NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, as yet of the term of June, in the year one thousand nine hundred and five.

Witness:

WILLIAM S. GUMMERE, Esquire,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

HUDSON COUNTY, SS.

Joseph Schmitt puts in his place Edward Russ, his attorney, against Eleanor Van Vorst Williams and Ethelinda Horton Traphagen in an action of ejectment.

HUDSON COUNTY, SS.

Eleanor Van Vorst Williams and Ethelinda Horton Traphagen put in their place Collins & Corbin, their attorneys, at the suit of Joseph Schmitt in an action of ejectment.

HUDSON COUNTY, SS.

Be it remembered, that at this term of June, one thousand nine hundred and five, before the Justices of the Supreme Court of the State of New Jersey at Trenton, came Joseph Schmitt, the plaintiff in this suit, by Edward Russ, his attorney, and brought into this Court his declaration against Eleanor Van Vorst Williams and Ethelinda Horton Traphagen, the defendants in this suit, in an action of ejectment, which declaration is in these words:

HUDSON COUNTY, SS.

Joseph Schmitt, the plaintiff in this action demands of Eleanor Van Vorst Williams and Ethelinda Horton Traphagan, the defendants therein, the possession of the undivided one-half of all that certain plot of land and premises situate, lying and being in West Hoboken, in the County of Hudson and State of New Jersey, and which is bounded and described as follows: Beginning at the intersection of the division line between plots "B" and "C" as shown on "Commissioners Map No. 2 of the partition of the lands lying in Hudson County among the Heirs of Henry and Nellie Traphagen, Deceased, dated July 20th, 1886," with the westerly line of the New Jersey Junction Railroad as the same is mentioned in Deed of Plot 11, dated March 1st, 1886, recorded in Liber 426 of Deeds, page 1, running thence (1) Westerly and along the said division line between plots "B" and "C" two hundred and and forty-six feet more or less to a point distant two hundred and twenty feet easterly at right angles from Palisade Avenue; thence (2) Southerly and parallel to Palisade Avenue eighty-two and forty-six one-hundredths feet more or less to a point in the division line between plots "C" and "D"; thence (3) Easterly and along the said division line between plots "C" and "D" two hundred and forty-five feet more or less to the Westerly line of the New Jersey Junction Railroad as the same is mentioned as aforesaid; thence (4) Northerly and along the railroad line as aforesaid eighty-two and forty-six one-hundredths feet more or less to the place of beginning; and the plaintiff says that his right to the possession of the same accrued on the thirtieth day of November, eighteen hundred and ninety-seven, and that the defendants wrongfully deprive him of

the possession thereof, to his damage of one thousand dollars.

And the said defendants, by Collins & Corbin, their attorneys, appear and defend this action and say that they are not guilty of the injury whereof the said Joseph Schmitt hath complained in his declaration or of any part thereof; and of this they put themselves upon the country and the said Joseph Schmitt doth the like.

The foregoing is a true transcript of the declaration and pleadings in this action, remaining of record in the Clerk's office of the Supreme Court of the State of New Jersey.

In witness whereof I have hereunto set my hand and have caused the seal of said [SEAL.] Court to be hereunto affixed, at Trenton aforesaid, this 31st day of October, one thousand nine hundred and five.

WM. RIKER, JR.,
Clerk.

Afterwards, to wit, on the Second day of January, in the year of our Lord One thousand nine hundred and six, at a Circuit Court holden at Jersey City, in and for the County of Hudson before the Honorable Jonathan Dixon, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well the said Joseph Schmitt as the said Eleanor Van Vorst Williams and Ethelinda Horton Traphagen, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being summoned also come, who, to speak the truth of the matter within contained, being chosen, tried and sworn upon oath,

say that the said Eleanor Van Vorst Williams and Ethelinda Horton Traphagen are guilty of the trespass and ejectment within laid to their charge, in manner and form as the said Joseph Schmitt hath within thereof complained againt them, and they assess the damages of the said Joseph Schmitt by reason of the trespass and ejectment aforesaid, over and above his costs and charges, to six cents.

JONATHAN DIXON,
Just. Sup. Ct.

New Jersey State Library

NEW JERSEY SUPREME COURT.

Pleas before the Justice of the Supreme Court of Judicature of the State of New Jersey at Trenton, as yet of the term of June, in the year one thousand nine hundred and five.

Witness:

WILLIAM S. GUMMERE, Esquire,
Chief Justice.

WILLIAM RIKER, Jr.,
Clerk.

HUDSON COUNTY, ss.

Joseph Schmitt puts in his place Edward Russ, his attorney, against Winnie M. Houghton and Anna V. H. T. Hervey, individually and as Trustee, in an action of ejectment.

HUDSON COUNTY, ss.

Winnie M. Houghton puts in her place August A. Rich, her attorney, at the suit of Joseph Schmitt, in an action of ejectment.

HUDSON COUNTY, ss.

Anna V. H. T. Hervey, individually, and as Trustee, puts in her place Collins & Corbin, her attorneys, at a suit of Joseph Schmitt in an action of ejectment.

HUDSON COUNTY, ss.

Be it remembered, that at this term of June, One thousand nine hundred and five, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, came Joseph Schmitt, the plaintiff in this suit, by Edward Russ, his attorney, and brought into this Court his declaration against Winnie M. Houghton and Anna V. H. T. Hervey,

individually and as Trustee, the defendants in this suit, in an action of ejectment, which declaration is in these words:

HUDSON COUNTY, SS.

Joseph Schmitt, the plaintiff in this action, demands of Winnie M. Houghton and Anna V. H. T. Hervey, Individually and as Trustee, the defendants therein, the possession of All that certain plot of land and premises situate, lying and being in West Hoboken, in the County of Hudson and State of New Jersey, bounded and described as follows: Beginning at the intersection of the division line between Plots "C" and "D" as shown on "Commissioners Map No. 2 of the partition of the lands lying in Hudson County among the Heirs of Henry and Nellie Traphagen, Dec'd., dated July 20th, 1886" with the Westerly line of the New Jersey Junction Rail Road, as mentioned in Deed of Plot 11, dated March 1st, 1886, recorded in Liber 426 of Deeds, page 1, running thence (1) Westerly and along the said division line between Plots "C" and "D" two hundred and forty-five and three-tenths feet more or less to a point distant two hundred and twenty feet easterly at right angles from Palisade Avenue; thence (2) Southerly and parallel to Palisade Avenue sixty-one and eighty-four one-hundredths feet more or less to a point in the division line between Plots "D" and "E;" thence (3) Easterly and along the division line between Plots "D" and "E" two hundred and forty-three feet more or less to the Westerly line of the New Jersey Junction Rail Road as mentioned as aforesaid; thence (4) Northerly and along the Westerly line of said Railroad as aforesaid sixty-one and eighty-four one-hundredths feet more or less to the Beginning. And Also All that certain plot of land and premises situate, lying and being in West

Hoboken, in the County of Hudson and State of New Jersey, bounded and described as follows: Beginning at a point distant two hundred and twenty feet East of the Easterly line of Palisade Avenue and thirteen hundred and seventy-six and seventy-five one-hundredths feet south of a line drawn at right angles from Palisade Avenue at the point where the prolongation of the south line of Fulton Street intersects the easterly line of Palisade Avenue, as shown on "Map of property in West Hoboken, Hudson County, N. J., belonging to S. R. Syms and others, Levi W. Post, Surveyor," filed in the Register's office June 13th, 1874, and running thence (1) South fifty-three degrees forty-eight minutes East, two hundred and forty-two and twenty-four one-hundredths feet to a point in the Westerly line of lands of the New Jersey Junction Rail Road as mentioned in Deed of Plot 11, dated March 1st, 1886, recorded in Liber 426 of Deeds, page 1, thence (2) North thirty-three degrees, thirty-one minutes thirty seconds East Sixteen feet more or less along the Westerly line of the New Jersey Junction Rail Road as mentioned as aforesaid to the division line between Plots "D" and "E" as the same are shown on Commissioners' Map No. 2 of the partition of lands lying in Hudson County among the Heirs of Henry and Nellie Traphagen, Dec'd., dated July 20th, 1886;" thence (3) Westerly and along said division line between Plots "D" and "E" two hundred and forty-three feet more or less to a point distant two hundred and twenty feet east of the easterly line of Palisade Avenue; thence (4) South thirty-four degrees, twenty-one minutes forty-five seconds West sixteen feet more or less and parallel to Palisade Avenue to the Beginning. And the plaintiff says that his right to the possession of the same accrued on the thirtieth day of November, Eighteen hundred and

ninety-seven, and that the defendants wrongfully deprive him of the possession thereof, to his damage of One thousand Dollars.

And the said defendant, Winnie M. Houghton, by Augustus A. Rich, her attorney, appears and defends this action, and says that she is not guilty of the injury whereof the said Joseph Schmitt hath complained in his declaration or of any part thereof And of this she puts herself upon the country, and the said Joseph Schmitt doth the like.

And the said defendant, Anna V. H. T. Hervey, Individually and as Trustee, by Collins & Corbin, her attorneys, appears and defends this action and says that she is not guilty of the injury whereof the said Joseph Schmitt hath complained in his declaration or any part thereof. And of this she puts herself upon the country, and the said Joseph Schmitt doth the like.

The foregoing is a true Transcript of the declaration and pleadings in this action remaining of record in the Clerk's office of the Supreme Court of the State of New Jersey.

In witness whereof, I have hereunto set my hand and have caused the seal of the [SEAL] said Court to be hereunto affixed, at Trenton aforesaid, this Thirty-first day of October, One thousand nine hundred and five.

WM. RIKER, JR.,
Clerk.

Afterwards, to wit, on the Second day of January, in the year of our Lord, One thousand nine hundred and six, at a Circuit Court holden at Jersey City, in and for the County of Hudson, before the the Honorable Jonathan Dixon, one of the Justices

of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well the said Joseph Schmitt as the said Winnie M. Houghton and Anna V. H. T. Hervey, Individually and as Trustee, by their respective attorneys within mentioned, and the jurors of the jury whereof mentioned is within made, being summoned, also come, who, to speak the truth of the matter within contained, being chosen, tried and sworn upon oath, say that the said Winnie M. Houghton and Anna V. H. T. Hervey, Individually and as Trustee, are guilty of the trespass and ejectment within laid to their charge, in manner and form as the said Joseph Schmitt hath within thereof complained against them, and they assess the damages of the said Joseph Schmitt by reason of the trespass and ejectment aforesaid, over and above his costs and charges, to six cents.

JONATHAN DIXON,
Just. Sup. Ct.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOSEPH SCHMITT,

Complainant,

and

HENRY TRAPHAGEN, ET. ALS.,

Defendants.

On Bill, &c.

It is hereby stipulated and agreed that the annexed is a correct state of the case and history of the trial at the Hudson Circuit of the Supreme Court of the issues framed in this case.

EDWARD RUSS,
Solicitor of Complainant.

COLLINS & CORBIN,
Solicitors of Defendants.

AUGUSTUS A. RICH,
Solicitor Defendant Houghton.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

December Term, 1905.

JOSEPH SCHMITT,

vs.

HENRY TRAPHAGEN,

AND OTHER ISSUES FROM CHANCERY.

On issue to determine title to Real Estate.

MR. RUSS and MR. ROSENBERG, for Plaintiff.
MR. COLLINS and MR. RICH, for Defendants.

This cause was tried at the Hudson Circuit, January 2, 1906, before Mr. Justice Dixon and a jury.

MR. ROSENBERG—This suit is in ejectment for a tract of land in West Hoboken. The plaintiff purchased from the Hoboken Land & Improvement Company in 1897, took possession and paid taxes for years. About a year or so ago some question arose as to the title or ownership. Mr. Schmitt filed a bill in Chancery to have the title determined; title being a question for a law court and a jury the Vice Chancellor thought the issue should be tried in this court, for this court to determine where the title was and then the matter should be reported back to the Court of Chancery for its action. We will show a record title from Peter Stuyvesant down to the present time in Joseph Schmitt.

THE COURT—Is it necessary to trace title back to the proprietors?

MR. ROSENBERG—I think the later title will get into John Stevens.

MR. COLLINS—We claim that John Stevens conveyed to our predecessors in title. The dispute in this case is over the description in that deed.

THE COURT—Do you admit that John Stevens was the owner?

MR. COLLINS—I will admit that John Stevens was the owner of land including this in question; if they will admit that Merseles Merseles owned the back piece adjoining.

MR. ROSENBERG—Yes. I regard the title to the *locus in quo* as having been in John Stevens. It is admitted that in 1795, February 3rd, John Stevens was the owner.

Plaintiff offers in evidence a deed from John Stevens to Edwin A. Stevens, including the premises in question, dated February 1, 1822, acknowledged February 5, 1822, recorded in the Clerk's office of the County of Bergen Liber T 2, of deeds, pp. 248, &c.

MR. COLLINS—I have no doubt that these deeds they are about to produce will be relevant. I would like to be permitted later on to refer to any defect in any of them.

THE COURT—That deed is offered as conveying property by a description which includes the *locus in quo*?

MR. COLLINS—Yes, sir.

THE COURT—Is it conceded that that description includes the *locus in quo*?

MR. COLLINS—No, sir; it is not.

Plaintiff offers in evidence a deed from Edwin A. Stevens to John Stevens, bearing date February 14, 1835, acknowledged April 13, 1835, recorded Liber S 3, of deeds of Bergen County, pp. 202, &c.

THE COURT—Is that by the same description?

MR. ROSENBERG—Same description.

THE COURT—If that description includes the *locus in quo* do you question Mr. Schmitt's title?

MR. COLLINS—Adverse possession for over twenty years.

THE COURT—You do not dispute his paper title if that description includes the *locus in quo*?

MR. COLLINS—I should suppose not. I will read the description.

THE COURT—Did Merseles own otherwise than by title from John Stevens?

MR. COLLINS—Yes; he had a patent. John Stevens sold to him the adjoining land. I have a copy of that deed, in 1795. The description is as follows: "Beginning at a stake for a corner on a line of said Marsalis and running the same course of said Marsalis's line South 58 degrees East 6 chains 81 links to a stake by the edge of a ditch on the meadows and thence North 30 degrees 30 minutes East 7 chains 78 links along said ditch; thence north 38 degrees East one chain 70 links along the ditch; from thence North 21 degrees East 3 chains 90 links along the ditch; thence North thirty-three degrees 30 minutes East 4 chains 50 links to a stake for the outside boundaries of the said lot; thence North 58 degrees West 8 chains to a corner on the line between the said Sale Marsalis and John Stevens; thence to the Beginning. Which said last line is on a line between the said Marsalis and Stevens. Containing 12 Acres. Bounded Southwesterly by John Stevens, Southeasterly by John Stevens, Northeasterly all by said John Stevens and Northwesterly by said Sale Marsalis."

That is where the case will turn. Beginning at a stake for a corner on a line of Merseles, and running along the Merseles line South 58 degrees

East 6 chains and 81 links to a stake standing by the edge of a certain ditch on the meadows. That ditch is the dividing line.

MR. ROSENBERG—There is no question about that.

MR. COLLINS—You see this goes along the Merseles south line which was the Stevens south line.

THE COURT—South, 58 degrees east.

MR. COLLINS—Merseles owned a parallelogram on the brow of the hill, and his south line was co-incident with the south line of this tract conveyed, and they continue that line down right across this slope of the hill to the ditch, then they run along the ditch.

THE COURT—I suppose the ditch is a fixed monument.

MR. COLLINS—Yes. They run from Merseles' corner down to the ditch. It continued Merseles' course.

THE COURT—Merseles did not come down to the ditch.

MR. COLLINS—No. Stevens came to the ditch. The question is whether the deed to Merseles conveyed all. The case turns on whether a course was omitted. There is a little angle, and in order to include the tract that we claim was sold to Merseles, there ought to be one more course. We shall claim that by some error of the scrivener he took the wrong word "stake," and omitted that last course. I also claim that the subsequent dealing of both parties with the property shows a practical location. It is a fact that if you reckon as they claim, it is about twelve acres. As we claim, it is more than fifteen acres.

THE COURT—Your claim is inadmissible.

MR. COLLINS—It is not inadmissible as a practical location.

THE COURT—There is no doubt about that deed. If there be no other corner, it is a corner made in this lot, and the dimensions correspond. I do not see how there is any room for argument. You have to stand on the language of the deed, and that does not bear out your contention. It supports the contention of the other side.

MR. COLLINS—I say we have a right in deciding what the parties meant by the language to treat their subsequent conduct—both sides, from that time down.

THE COURT—It would become a question of adverse possession. I shall tell the jury that that deed conveyed only what Mr. Rosenberg is contending it did convey, and that puts the paper title concededly—confessedly, as I understand it—in Mr. Rosenberg's client.

MR. COLLINS—The west boundary in the next deed is Merseles', and that must be fixed by evidence. Where is the west boundary on Merseles? Is it a straight line, or is it a jagged line with that piece out of it?

THE COURT—Suppose my ruling, with regard to the course of this deed to Merseles to be correct, then I understand there is no doubt about the west line on Merseles on the paper title.

MR. COLLINS—This deed was made in 1822, more than twenty years after the deed to Merseles, and possession would give Merseles title.

THE COURT—I am not dealing with the question of adverse possession. I am dealing with the

paper title. If there was no adverse possession, then the paper title. If there was adverse possession, then it made the line of his title whatever it was. It is conceded, I understand, that as a paper title the deeds vest the title in the plaintiff, subject to being ousted by adverse possession.

MR. COLLINS—I want to see the other deeds. I do not like to have a concession so broad. I haven't conceded that the title went with the paper title.

THE COURT—It will go with the paper title unless that paper title is shown to have been disturbed by an adverse title, by adverse possession.

MR. COLLINS—How do I protect myself—by an exception?

THE COURT—Yes.

MR. COLLINS—I want to be in a position to contend that there is or may be a practical location, that the line of Merseles mentioned in this deed means the line as we claim it as matter of fact.

THE COURT—It cannot mean it unless you show that the paper title is interfered with by some other title. I will rule that that deed to which you have referred as the deed under which you claim did not in terms convey the *locus in quo*, then I will also declare that the title which John Stevens received from Edwin A. Stevens passed to this plaintiff, unless it appears that John's title under Edwin was interfered with by a possessory title under somebody else, whether you call it one acquired by adverse possession or practical location, makes no difference.

MR. COLLINS—Then I have no fault to find with your Honor's ruling. Each of these deeds follow that same description right down to Schmitt's.

PLAINTIFF—Down to the Hoboken Land and Iml provement Company, the deed to that company.

That description that has been read after the Merseles deed is continued in the other deeds until it comes to the deed of the Stevens heirs to the Land Improvement Company, then they take a whole broad description of the Herring estate, except what has been sold, and they are in a schedule, and in the schedule is this sale to Merseles.

MR. ROSENBERG—We offer in evidence a deed of John Stevens and wife, and others, to Edwin A. Stevens, in trust, dated February 14th, 1835, acknowledged June 8, 1835, recorded book S 3, of Deeds, Bergen County, page 204.

Also a deed from Edwin A. Stevens and others to the Hoboken Land Improvement Company, dated May 6, 1839, recorded Book A 4, of Deeds, Bergen County, page 287.

Also deed from the Hoboken Land Improvement Company to Joseph Schmitt, dated November 30, 1897, recorded in Book 689 of Deeds for Hudson County, pp. 56, etc.

The Hoboken Land Improvement Company owned the paper title from 1839 to 1897, then in 1897 conveyed it to Mr. Schmitt.

Plaintiff puts on the easel a map.

MR. COLLINS—I cannot accept that map. There is a course that goes up northwest 8 chains, and there are not 8 chains there, there never were 8 chains; they have marked on this map as if there were eight chains; that is a mistake.

THOMAS H. McCANN, sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. You are a surveyor and civil engineer, and have been for many years? A. Thirty years.

Q. Did you make this map? A. Yes.

Q. Is the property conveyed as described in the deed from the Hoboken Land Improvement Company to Joseph Schmitt shown on that map? A. Yes, it is shown in the dark-gray color with a heavy dark line for a border; the tract marked Schmitt.

Q. Indicate the physical conditions round about the premises; what is the character of this property; where is it; what do you find? A. (Witness pointing on the map). This line; a blue line; down the mountain; east of that line on the edge of the mountain; the Palisades are very steep; at the foot of this line, also colored black, marked Coster line, is the line of the old ditch that is spoken of in the deed; east of that is Hoboken; this is the same line; to the west of it is West Hoboken.

Q. The line which you call the top of the mountain, or the patent line, is that the line between the Bayard patent, which John Stevens afterwards succeeded to, and the Merseles Patent? A. Yes; what the deed calls the fifty-seven acre tract.

MR. COLLINS—And that projection of green above the patent line is an attempt to project on this map the tract conveyed by John Stevens to Merseles, as you plotted it?

A. It is the actual location of that deed; the ditch is there (indicating); following that course I come to this point, and it brings me up beyond what was the patent line; I presume in those days they didn't know where the patent line was; the dividing line between the Stevens and the Merseles line.

By the Court.

Q. That is the line spoken of as the 8 chain line? A. Yes, sir.

Q. How far would it go to reach the patent line? A. About six chains.

By Mr. Collins.

Q. The Merseles line, running northward so as to be coincident with what you have put as the north line of the Schmitt tract? A. Yes, the Merseles north line is about Paterson Street, coincident with that, and agrees with what the Company sold to Schmitt.

Q. The Merseles south line is coincident with the south line of the tract that Stevens sold to Merseles? A. Yes.

By the Court.

Q. The line along the ditch, its prolongation on the Merseles line brings you to the corner of the Merseles plot? A. The patent line is drawn almost parallel with the ditch; my opinion is they did not go exactly along the patent line.

By the Court.

Q. How do you measure from the ditch to the patent line; how do you go up the hill to ascertain? A. I have a monument on the patent line; we run up to it by calculations; we measure the face of the hill; my measurement is a horizontal distance.

By the Court.

Q. As though you had gotten some line in the air down to the ditch and measured in the air? A. Yes.

Q. (Deft.) Have you ever measured along the face of the hill; do you know how much it is? A. I didn't do it personally; you must measure horizontally even with a very steep hill; the difference

between a horizontal measurement and the slope of the hill is very little; it don't amount to much, especially in a short distance like this.

Q. (Pltf.) Measuring the area of this tract and taking the description as contained in the deed from Stevens to Merseles how do you find that to compare with the deed; have you measured it? A. Yes; I find the area in the deed is twelve acres; I find this as shown on the map, actual dimensions 12.03 acres; when I go strictly down the patent line there is eleven acres.

PLAINTIFF RESTS.

MR. COLLINS OPENS FOR DEFENSE.

It is admitted that the person called Sale Marsalis in the deed that has been referred to is Merseles Merseles.

It is admitted that Merseles Merseles in 1795, the date of the deed from John Stevens, owned patent 236 tract 249, that belonged to Peter Merseles, and inherited by Merseles Merseles, and that the south line of that patent is the southern line of the land in the deed to Sale Marsalis and that the north line of that patent if extended would be practically co-incident with the northern line of the premises now in question.

Defendant offers in evidence record of a deed from John Stevens and wife to Sale Marsalis, dated February 3, 1795, acknowledged July 31, 1817, recorded January 29th, 1818, in Liber 5 of Transcribed Deeds from Bergen County to Hudson County, 311, recorded in Bergen County, Liber O 2, page 310, being a tract of land described as follows:

Beginning at a stake for a corner on a line of said Marsalis and running the same course of said

Marsalis's line south 58 degrees east 6 chains 81 links to a stake by the edge of a ditch on the meadows, and thence north 30 degrees 30 minutes east 7 chains 78 links along said ditch; thence north 38 degrees east 1 chain 70 links also along the ditch; from thence north 21 degrees east 3 chains 90 links also along the ditch; thence north 33 degrees 30 minutes east 4 chains 50 links to a stake for the outside boundaries of the said lot; thence north 58 degrees west 8 chains to a corner on the line between the said Sale Marsalis and John Stevens; thence to the beginning, which said last line is on a line between the said Marsalis and Stevens, containing 12 acres; bounded southwesterly by John Stevens, southeasterly by John Stevens, northeasterly all by said John Stevens and northwesterly by said Sale Marsalis.

Defendant offers in evidence the will of Merseles Merseles, proved December 5, 1800, in the Surrogate's office of the County of Bergen, recorded in Book 39 of Wills, page 178, in the office of the Prerogative Court at Trenton.

That devises to John Merseles the property in dispute; including his own patent, all the property he had in that neighborhood to John, the north half, and to Clendenny and Hornblower the two southern quarters of the whole tract that he had.

It is admitted that John Merseles died intestate, and that his heir was Merseles Merseles.

FREDERICK DUNHAM, sworn on behalf of the defence, testified as follows:

Direct examination by Mr. Collins.

Q. You are familiar with the old land titles in this county? A. Yes.

Q. How long have you been a surveyor? A. Since '82.

Q. You made this map that I have put up on the easel, intending to show the plotting of the Traphagen estate as they claim it, and where it conflicts with the plaintiff's claim, and the surrounding parcels all indicated as they are shown on the map by the deeds? A. Yes.

Q. Come to a deed of Merseles Merseles, the second, August 4th, '07, Book A. of Deeds, page 739, conveying property to William Coulter, have you that deed? A. Yes.

Q. Please read the description? A. Beginning on the division line between said Merseles Merseles and Walter Clendenny near a large buttonwood tree (interrupted.)

Q. Please indicate that point on this map? A. (Indicating on map) Here; on the southerly line of the Merseles Merseles tract; it is marked buttonball tree on the map.

Q. From thence a straight course striking the said tree across the lot.

THE WITNESS—That is from the buttonwood tree a straight course striking said tree across the lot of land late belonging to Robert Sickles. He was the adjoining owner on the north—that went north. Which line is to run from the place of beginning to the line of said Sickles parallel with the hill along the line of said Sickles, and along the line of John Stevens down the mountain a short distance to the meadow, to a ditch, thence along the said ditch to the line of Walter Clendenny, thence up the mountain along the line of said Walter Clendenny to the place of beginning; bounded north by land of said Robert Sickles and John Stevens, and east by the ditch and

meadow of said John Stevens, and southerly by said Walter Clendenny, and westerly by land lately belonging to John Merseles.

Q. Now please tell us where Robert Sickles' line was? . A. Robert Sickles' south line was the north line of the premises in question, that is the Merseles Merseles tract as I lay it down.

Q. But it was the north line of the Schmitt piece as now claimed? A. Yes.

Q. Taking the deed from John Stevens to Sale Marsalis, how do you, as a surveyor, locate that property? A. Taking the beginning point of the deed in the south line of the Merseles tract, extending the south line of the Merseles property on the hill eastwardly to the ditch, then following up the ditch the several courses mentioned in the deed, then take the bearing given in the deed it makes the north line of the tract parallel with the south line of the tract; it goes then eight chains to the Merseles line, which distance is very much in excess of what it should be; thence southerly along the Merseles line without giving any distance to the beginning point. Now, as plotted by the actual courses and distances in the deed it falls short five chains of reaching across the Merseles tract and leaves out the land in question.

Q. Had you any reason, gathered from the deed, giving it as an interpretation that will include the land in question?

Question objected to. Overruled.

Exception.

Q. Can that course, running from the last word "stake," as it does, reach a corner of the Merseles land? A. No; it cannot.

Q. In order to have that course that runs across

the tract eight chains reach the corner of the land, what must be supplied?

Question objected to and overruled.

Exception.

Q. In your opinion is there, or is there not a course omitted from that description, was there or wasn't there a course omitted?

Question objected to. Overruled. Exception.

JONATHAN DIXON, [L.S.]
Just. Sup. Ct.

Q. At the place where the word "stake" last occurs, at the end of the course, north thirty-three degrees, thirty minutes, four chains and fifty links to a stake,—at the end of that course, is there an angle in the line, a small angle? A. There is a slight angle in what was the former ditch line.

Defendant offers in evidence record of a deed from William Coulter, September 21, 1807, to Walter Clendenny, recorded in Book 2 of Deeds, page 744 of the Transcribed Records, describing a tract of land as follows: A certain piece of land beginning on the line of said Walter Clendenny some distance from the top of the rock running through a large buttonwood tree near said line a northerly course parallel to the top of the hill to line of land of Robert Sickles; thence down the mountain along land of said Sickles and John Stephens to a ditch in the salt meadow; thence along said ditch to first line of Walter Clendenny; thence along said line up the mountain to the point or place of beginning.

By the Court.

Q. Does that describe the same tract as that conveyed to Coulter? A. Yes.

Plaintiff objects to the reception of this deed in evidence, that it is irrelevant. It does not purport to come from the common grantors and no foundation has been laid for it.

THE COURT—I will admit it.

MR. COLLINS—I have previously offered in evidence the deed from Merseles to Coulter.

Defendant offers in evidence the will of Walter Clendenny, the grantee in the last deed, dated April 14, 1822, proved before the Surrogate, Liber 1, page 174 of Transcribed Wills, whereby he gave his executors power of sale.

Defendant offers in evidence the deed of the executors of Walter Clendenny, dated September 25th, 1823, recorded in Book 6 of Transcribed Deeds, page 370, conveying a tract of land to Henry Traphagen. Please read that description. Premises lying northerly from Hoboken called Hill lot. Beginning at an old stump; thence north 58 degrees east 6 chains 50 links down the hill to a ditch in the meadow on the line of the Swartwout's; thence along same north 30 degrees east 11 chains 26 links to a stake on line of John Stevens; thence along line of said Stevens and line of Henry Traphagen 6 chains 50 links to a stone heap; thence along lot of Michael Simmons 11

chains 28 links to the point or place of beginning. Containing seven acres. Bounded on the southwest by land of Josiah Hornblower, on the southeast by meadow of Swartwourt, on the northeast by John Stevens and Henry Traphagen and northwest by land of Michael Simmons.

Q. The Hornblower boundary is part of the old Merseles Merseles land which by the will was given to Hornblower? A. Yes.

Q. What is the ditch referred to? A. That is the old boundary ditch between Hoboken and West Hoboken.

Q. If you take that course along that ditch of 11 chains and 29 links, where will that carry you?

A. That includes the premises in question.

By the Court.

Q. Are you assuming that stump is the old buttonwood tree? A. I assume that it is; yes, sir.

By the Court.

Q. Read that description again? A. Beginning at an old stump, and running from said stump south 58 degrees east, 6 chains and 50 links down the hill to a ditch in the meadow land of the Swartouts.

By the Court.

Q. That South 58 degrees east 6 chains and 50 links—

THE WITNESS—That is a parallel line with all the other.

By the Court.

Q. The 6 chains and 50 links would bring you correctly, give you the correct line with that old

line that says 8 chains? A. No; the 8 chain line is supposed to be along the north line. This is the south line of the one-half that was willed to John which is practically the center line of the whole tract.

MR. COLLINS—It is the center line of the original Peter Merseles patent and the side hill under it?

THE WITNESS—Yes, sir.

By the Court.

Q. After you come to the end of the 11 chains, then what do you come to? A. It goes along the ditch eleven chains and 28 links to a stake in the line of John Stevens, thence along the line of John Stevens to the line of Henry Traphagen, 6 chains and 50 links to a stone heap, thence along the line of Michael Simmons eleven chain and 28 links to the place of beginning.

Q. The property to the west of that described had been acquired by Michael Simmons? A. Yes; that is shown on the map.

Defendant offers in evidence a deed from John Merseles to Merseles Merseles and Althea Merseles, dated March 7th, '04, recorded June 14, 1805, Book 2 of Transcribed Deeds from Bergen County, page 458, conveys in fee all that certain piece of land and meadow bounded northerly and northwesterly by land of Michael De Mott and the road leading to Hackensack northeasterly, and easterly by Robert Sickles and Col. John Stevens, southerly by a ditch which is the division line between that and land and meadow belonging to John Stevens, and westerly by land belonging to Walter Clendenny, containing thirty acres more or less.

Defendant offers in evidence deed from John Merseles to Eleanor Simmons, wife of Michael Simmons, dated February 13th, 1802, in Liber 1, p. 725, Transcribed Deeds, the description is as follows:

Beginning at the corner of lands of Walter Clendenny, thence along the edge of the mountain eleven (11) chains and fourteen (14) links to the corner of land of Col. Stevens and Robert Sickles ten chains and forty links; thence Westerly along the line of Robert Sickles to a stake; thence Southwesterly ten chains and forty links; thence along said line of Walter Clendenny to the beginning, at a Button-Ball tree about six feet from the line of Walter Clendenny more or less.

Cross-examination by Mr. Rosenberg.

Q. In the deed from Merseles and Merseles to William Coulter, dated August 4, 1807, at the end of the description you find: "Bounded northerly by the land of said Robert Sickles and John Stevens, easterly by the ditch and meadow of said John Stevens, southerly by said Walter Clendenny, and westerly by land lately belonging to John Merseles." There is no acreage stated in that deed, is there? A. No.

Q. How do you fix the northerly line of that property on the map? A. Fix the northerly line of that property as the Sickles corner.

Q. Go to the Sickles corner and continue your strip? A. (Witness goes to the map.) This is the line of said Sickles; along here, the line of John Stevens, and along the line of John Stevens down the mountain a short distance to the meadow to the ditch.

Q. That gives no distance? A. No.

Q. And gives no course? A. No; except along the line of John Stevens.

Q. Do you know who owned to the east of this property? A. John Stevens.

Q. So that if you run this line down this way, then run a jog in and run it down, you would be still be bounded by John Stevens? A. This line went to the ditch.

Q. But it does not say any one line does? A. This is along the line of said Sickles, and along the line of John Stevens down the mountain.

Q. It might go along Sickles' line this way; along the Stevens line here, and so along south still along Stevens' line and strike the ditch? A. But this says a short distance.

Q. Then you simply judge it went in a straight line down into the ditch from the fact that it says a short distance? A. That is the only construction I can put on it; it says a short distance to the ditch; the construction I place upon it is the shortest distance along that line to the ditch.

Q. It could well go along the line of John Stevens and go off in an angle to the ditch? A. For an equal reason it could have started and gone off the other way.

By the Court.

Q. As I understand it, Mr. Rosenberg's suggestion calls for three lines? A. Yes.

By the Court.

Q. Yours is upon the idea that there is one line? A. One line.

Q. Now, in reference to the deed that Judge Collins called your attention to; the deed from John Merseles to Merseles Merseles and Althea Merseles, March 7, 1804, have you plotted that out? A. No, I haven't.

Q. You haven't taken the acreage of that? A. No, sir.

HENRY TRAPHAGEN, called as a witness on behalf of the defendant, and sworn, testified as follows:

Direct examination by Mr. Collins.

Q. You are one of the defendants in this suit? A. Yes.

Q. And a descendant of Henry Traphagen mentioned in this deed of 1833? A. Yes, sir.

Q. When did he die? A. In 1857.

Q. Testate or intestate? A. Intestate.

Q. Who were his heirs at law? A. Cornelius V. Traphagen, a son; Henry M. Traphagen, my father; Anna V. H. Traphagen and Hannah M. Post.

Q. Do you remember your grandfather? A. Yes.

Q. When were you born? A. In 1842.

Q. Do you know the quarry property lying along the slope of the hill, West Hoboken, running down to the Hoboken ditch? A. Yes.

Q. You were fifteen years old when your grandfather died? A. Yes.

Q. Did you ever go up there with your grandfather? A. I don't remember going up there with him, but I have been there with my father and other members of the family.

Q. How long ago did you commence going there? A. Since I was about eight years old.

Q. Can you tell us anything about that whole strip of land running from here, on the map, which originally ran from the south line as you claim it, the south line as all parties admit it, along the ditch to the northerly line shown on this map before you, take that strip of land, how has it been treated by your father and brothers and sisters? A. It has been treated as the property of the Traphagens in

New Jersey State Library

various ways; I know what I have done myself; plot A. was allotted to me.

Q. I speak of it as before it was allotted, speak of it as a whole, during the lifetime of those heirs? A. Well, I remember my father and my uncle making a contract with Dennis Egan of Hoboken, relative to some of this tract of land, an agreement to sell, this was in the sixties, and put Egan into possession of the land to cut the stone; that was in the sixties.

Q. Did the quarrying begin then? A. Yes; and then in 1869 the Traphagens gave a deed to the Hoboken Land and Improvement Company.

Q. Before that, I want to get the situation before that time? A. I have been on this land and seen it again and again, gone there on horseback, up on what we call the Fox Hill Road, with my father and my brother and others of the Traphagen family.

Q. Was there any difference between the southern part and the northern part as to the use or possession of it? A. No; there was more rock cutting on the southern end of it and that extended up to, I believe, and took in a part of what was allotted to Mrs. Watson, and also part of what was allotted to William C. Traphagen, and those parcels were within the property in dispute here; the first quarrying that was done there was done on the southern part and they have been extending right along up, quarrying until they have come up to my line; I am at the extreme north.

Q. The parts allotted to your brother William and Mrs. Watson and Mrs. Hervey, were those lots in the part that is now in dispute? A. Yes.

Q. When was quarrying done there? A. The quarrying on the southern end started in the sixties, then after the partition in '84 there was quarrying going on right along from that time up to this.

Q. The deed to the Hoboken Land Improvement Company by the Traphagen heirs, did you know about it? A. Yes, I knew of it at the time the deed passed.

Defendant offers in evidence a deed from Cornelius V. Traphagen and others, and Edmund W. Kingsland, Guardian, &c., to the Hoboken Land Improvement, dated July 30, 1869, recorded same date in Liber 194, page 663, conveys as follows:—

MR. ROSENBERG—I object to the admission of the deed that the Hoboken Land Improvement Company is not a party to this suit, that Mr. Schmidt was not bound to take notice of it. It is irrelevant and immaterial.

THE COURT—I will admit it.

Exception.

The defendant reads the description as follows: Beginning in line of dividing land of Robert Harper and H. Traphagen, dec'd Northwesterly 30 feet from the centre line of the Railroad of the Hoboken Land and Improvement Company; thence southeasterly along the dividing line between said Harper and Traphagen 82 feet to the centre of a ditch forming the boundry line of said Traphagen and meadow now or late of Fannie Swartwout; thence along said ditch its several courses 750 feet to a point where northerly boundary of said Traphagen's land intersects said ditch; thence Northwesterly along said line 71 feet to point thirty feet northwesterly

of and located in the centre line of said Railroad; thence Southwesterly parallel with the centre line curving to the right with a radius of 1880 feet 127 feet; thence on a tangent parallel with the centre line 30 feet from it 620 feet to the point or place of beginning.

MR. ROSENBERG—As this deed does not cover any part of the premises in question, does not take any part of the property in question I object to it.

MR. COLLINS—We claim that it does take in some of the property in question on the front.

THE COURT—It may stand in evidence.

Exception.

Q. Is Cornelius V. Traphagen dead? A. Yes.

By the Court.

Q. Did he leave a will? A. He died intestate.

Q. Who did he leave as heirs at law? A. Anne P. Hilliard, Cornelius V. Traphagen and Henry Traphagen.

Q. Is your father living? A. No; he died intestate.

Q. Who are his heirs at law? A. Mrs. Watson, William C. Traphagen and Henry Traphagen.

Q. Is Mrs. Post living? A. No.

Q. Did she leave a will? A. She did.

MR. COLLINS—I offer that will in evidence.

Q. Anna V. H. Traphagen? A. She is dead. She left a will. She was a lunatic at the time of this deed. I don't remember the date of the will.

Q. The deed was made in '69? A. The will was

made before she was declared a lunatic. There was an order of the court for the deed.

Defendant offers in evidence the will of Anna V. H. Traphagen, recorded in Book 13 of Wills, page 22. She gives her estate in four equal shares as follows:

Q. Catherine had already died? A. Yes.

Q. Who was her only child? A. Mrs. Hervey now.

Q. Anna V. H. Traphagen Adams? A. Yes, she married Mr. Cator.

Defendant offers in evidence the will of Hannah M. Post, recorded in Liber 119 page 184 of Wills for Hudson County, wherein she gives to Anna V. H. Cator all her estate that came to her from her father and mother, for her natural life.

THE COURT—It is conceded that defendants have the Henry Traphagen title.

MR. ROSENBERG—We are not questioning that.

Defendant offers in evidence a bill of complaint filed originally in 1884, then there were revivals of it by reason of death, and a decree was made and filed September 25, 1886. Offer in evidence the decree and the map accompanying it.

Q. Does this map show the allotments made? A. Yes.

Q. William C., who got Share B., is dead? A. Yes.

Q. And his heirs at law are parties to this suit? A. Yes.

Q. These tracts A. and B,, &c., those are separately made, why? A. There was some dispute about the line on the rear.

Q. What have you done, personally, since you got your plot A., in respect to ownership over it? A. I rented it to a man named Ludwig to put a building up there. He put a building up, kept it for three or four months, and in 1893 he brought suit against the Postal Telegraph and Cable Company, for placing telegraph poles on this plot A., and he recovered judgment for five hundred dolars.

MR. ROSENBERG—I move to strike it out.

THE COURT—Strike it out.

MR. COLLINS—I think I have a right to prove continuous possession down to date. Some one put a pole upon his building, and he brought suit to recover damages.

THE COURT—That is not possession as against outsiders.

Exception sealed.

JONATHAN DIXON, [L.S.]
Just. Sup. Ct.

Q. Proceed and tell us of acts of possession by yourself? A. I thought parties were encroaching on me in the way of cutting stone and I found fault with them and stopped them, not only as regards my own part, but other people's.

Q. How did you stop these people? A. I went there and ordered them off; told them they must desist from cutting rock and they did desist.

Q. What have you done yourself in the way of utilizing your piece? A. I rented my piece to a man named Ludwig, he put a small shanty up; this was along about 1893.

Q. For what purpose? A. He was talking about utilizing the stone that was on my part, and he put a building on there, and stayed there, I think, some

three months or more, he was thinking of cutting it up for paving blocks, he paid me the rent.

Q. Has there been quarrying on that particular piece? A. No; he didn't quarry, he changed his mind.

Q. What do you know of quarrying on the adjoining piece? A. I know that Harrington has quarried on Mrs. Watson's part, and there has been quarrying done on William C.'s part. I think Mr. Harrington cut stone on Mrs. Watson's part, I know he has.

Q. How far back can you speak of quarrying? A. Some time during the sixties.

Q. How far back can you remember quarrying being done on the northern end, including what is now in dispute? A. I know there has been quarrying done prior to 1890.

Q. How far before that? A. And some since 1890.

Q. How far is the earliest you can bring to memory. A. On the southerly end they commenced in the sixties.

Q. How extensive has the quarrying been? A. Stone has been taken out of the face of the plots G. and F. and E., it has all been removed, so to speak, and there has been quarrying on C. and D., and, I believe part of D.; I should think there has been quarrying done on nearly every piece except my own; there has been more cut on F. and G. and E. than there has been on the others, but the others have been cut.

Q. How much? A. I have not measured.

MR. ROSENBERG—E., F. and G. are not within the disputed tract.

Q. Has it been quarried so that it is noticeable? A. Yes.

Q. Is there any boundary fences or division lines, or anything whatever to indicate any difference in any part of the tract from any other plot? A. No, sir, there are no division lines on the place.

Q. Anything to indicate any difference in possession, one part from another of the tract which was divided in partition? A. No, sir.

Cross-examination by Mr. Rosenberg.

Q. How often have you been up there? A. I don't know; off and on at various times since I was eight years old.

Q. How many times a year have you been up there? A. I can't tell you. Might go up three or four times in one month, then, perhaps wouldn't go up there again for six months.

Q. The deed to the Hoboken Land Improvement Company, of which you spoke, where is that?

MR. COLLINS—I got it from the records, you may use that.

Q. That was a large strip of land, wasn't it? A. Yes; I wasn't present when the deed passed.

Q. Can you point out on the map how far north and south that runs? A. I think it run the whole easterly side of our tract; it took in the easterly part of A. B. C. D. E. F. and G., if it was extended to the ditch.

Q. The very largest part of this property was property concerning which there was no question whatever? A. I don't know of any question about it.

Q. Do you know whether or not the Hoboken Land Improvement Company there was at that time constructing a railroad through the property? A. My impression it was.

Q. And this tract was acquired for the purposes

of a railroad company? A. I think so, they built a railroad there.

Q. I understood you to say you never made any contracts for quarrying on that property, except the contract with Ludwig? A. That is all.

Q. How long was that Ludwig house there? A. About six months.

Q. Then taken away by Ludwig? A. Yes.

Q. This quarrying that you spoke of on lots B. and C., began when? A. After the partition; the partition was in '84.

Q. Who made the arrangement for it on William's piece? A. I think he did.

PHOEBE A. WATSON, called as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Collins.

Q. You are the Phoebe A. Watson referred to, the granddaughter of Henry Traphagen who took a deed in 1833? A. I am.

Q. What is your age? A. About fifty-nine.

Q. You remember your grandfather? A. I do.

Q. What can you tell about the property which we now speak of as the country, a part of which they claim, what can you tell us about your early knowledge of that in your grandfather's time, and your father and uncle and aunt's lifetime; tell us all you can about it? A. It was always supposed to belong to Henry Traphagen; I never knew otherwise, it was always to belong to him, and we were always brought up to think so.

Q. Any difference between one part of it and another part of it? A. Nothing only in a way that came to my father in the division, it came to our side in the division.

Q. Was there any difference in the looks of the property, the way in which it was used between

one part of it and another part of it? A. Some parts were quarried somewhat; Harrington quarried on my part.

Q. No quarrying had been done in your grandfather's time? A. Not to my knowledge.

Q. Did you ever go there with your grandfather? A. I have been up there a great many times, Dr. Watson and myself, to the edge of the quarry.

Q. Have you ever been with your grandfather? A. I was too small; I have been there with my father.

Q. Was there any difference in those early days before they began to quarry at all, any difference between different parts of the property? A. It was understood as the Traphagen plot; it belonged to Henry Traphagen.

THE COURT—This is no evidence at all, whatever. Simply for the purpose of facilitating the examination I am taking it. It will be treated as utterly inefficacious in the matter of title.

Q. What do you mean by the Traphagen plot? A. That part of the quarry on the side hill that they lay claim to.

Q. Who? A. Grandfather Traphagen, Henry, the original.

Q It was not a quarry in his lifetime? A. It was a side hill.

Q. Was there any difference in one part of it from another part of it? A. It was a side hill, all rough rock.

Q. You know where the south line of the property is? A. Yes; I knew the line pretty well; it has been pointed out to me.

Q. You also know where the north line of what your claim is? A. Yes.

Q. Between those lines in the old days was there any division placed, or any marks or stones or bars or monuments to distinguish one part from the other? A. No, sir; there was no fences.

THE COURT—Do you think the understanding of the family can have anything to do with the title?

MR. COLLINS—No, sir.

THE COURT—That is the form of some of your questions.

MR. COLLINS—Only for the identity of the tract; I want to fix the tract and show there was no difference in the parts.

Q. Was there any difference in the physical conformation of the tract? A. There was not.

Q. Tell us what you know of the use to which the property was put, and by whom, after you grew older? A. After it came into our possession?

Q. I mean before that? A. My part has been considerably quarried.

Q. I want you to begin at the beginning, and tell me from your earliest memory of the use of it, before the partition, when it lay in common, do you know of any use being made of any part of it before the division among your father's children? A. I don't know of any except the quarrying.

Q. When did the quarrying begin? A. That was some years ago, before Dr. Watson's death and when my father was living, and also while the Doctor was living they were quarrying up there.

Q. How long ago do you recollect the quarrying to have begun? A. I think twenty years; eighteen or twenty years.

Q. When did your father die? A. He has been dead about twenty-one years.

Q. Was there quarrying before his death? A. Not as much as there has been since.

Q. Was there any before his death? A. I think there was some; yes, there was some.

Q. Whereabouts? A. In our part, and my part especially; some men came from New York and tried to buy my part; they offered me three thousand dollars for it; they said it was the best stone, and they quarried considerably there.

Q. You mean that was after the partition, the part allotted to you later? A. Yes.

Q. What do you mean by your part? A. The portion that came to me at my father's death; it was divided in three parts—Henry and William and myself.

By the Court.

Q. Was there any quarrying done in that before your father's death? A. Yes, there was.

Q. What do you mean by your part? A. It has been explained by Henry, and what he said was correct; it says Phoebe A. Watson on the maps.

Q. What have you done with the rock on the part allotted to you; after you got it what did you do? A. It was sold; they quarried there.

Q. Who quarried there? A. Mr. Harrington.

Q. Under what authority did he quarry there? A. My father.

Q. After you got it? A. Yes, he quarried some.

Q. Before you got the property? A. The same thing; but not very lately, because stone is not used as much as it was for paving.

Q. What have you yourself done with regard to the quarry rights on your parcel; you yourself? A. I haven't done anything very recently; I have been waiting to get a good offer to sell.

Q. Have you ever leased it for quarry purposes yourself? A. By the year.

Q. When? Some years ago when Dr. Watson was living, and I think my son-in-law got something out of it.

Q. Did you rent it by the year? A. So much per year for quarrying.

Q. When did you do that? A. After it came into myself, after my father's death; my father quarried before that.

Cross-examination by Mr. Rosenberg.

Q. Did you ever sign any leases yourself? A. No, the doctor attended to it for me.

Q. You didn't make any leases yourself? A. No, but they were always talked over with me to get my consent.

Q. You have been up there often? A. Very frequently.

Q. How often? A. I would often stop when I was out riding on Palisade avenue; I would get out of the carriage and look down to see what they were doing.

Q. When you were out riding with Dr. Watson? A. Yes, and many times since Dr. Watson's death.

Q. When did Dr. Watson die? A. About thirteen years ago.

Q. Then all you know about the property is that you went to the top of the hill somewhere and looked down into a stone quarry? A. Yes.

Q. Ever see a monument up there? A. There was a minister that lived on the top of the hill; he built a little house, and I got out of the carriage and walked right out to the top one day, and this minister came out and asked me if I would not stop that quarrying; he said it made too much noise; he asked me to stop it.

Q. Did you see any surveyors' monuments on this property? A. No, I don't remember seeing any.

Q. The whole line of this property, the whole length of it, one piece, was just like another piece, and there was nothing there except the stone quarry? A. I didn't see anything else but the stone quarry.

JAMES J. HARRINGTON, a witness called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Collins.

Q. How old are you? A. Thirty-five.

Q. Are you a son of Thomas Harrington?. A. Yes, sir.

Q. He is dead? A. Yes, sir.

Q. He was a contractor? A. Yes, sir.

Q. Did he get out paving blocks? A. Yes, sir, and building stone.

Q. What can you tell us about operations on the Traphagen property, West Hoboken? A. In 1890 I remember making an agreement to lease the Watson quarry from year to year; I believe he had it for three years at a rental of, I believe, a hundred and fifteen dollars a year; my father made the agreement with Dr. Watson, but I looked after all the receipts and so forth, and agreement, and I saw a receipt from Dr. Watson.

Q. What was done in pursuance of that lease? A. We got out paving blocks and building stones.

Q. How extensive? A. In the winter season there would be about fifteen or twenty men working there; in the summer time there might be five or six men.

Q. Did you work there the whole three years? A. Yes, sir.

By the Court.

Q. Had there been any quarrying on the Watson property before that? A. There was; it was opened and had been worked for quite some time before that, but it was idle a year or so before we started.

Q. Can you tell when the quarrying began on it? A. I don't know when it began, but I remember seeing quarrymen working there twenty years ago.

Q. On the Watson piece, you are speaking of, are you? A. No; I can't say that.

Q. How far back can you remember quarrying anywhere south of the Watson piece? A. I think on the Watson piece, the piece that now is the Dennis Egan quarry, about twenty years ago I remember; that is supposed to be south of Watson tract.

Q. How far south of the place where you were working? A. 150 to 200 feet.

Q. How long do you remember that? A. Twenty years ago.

Q. Was it an existing quarry when you first remember it? A. It was an existing quarry when I remember it.

Cross-examination by Mr. Rosenberg.

Q. Do you know the Watson piece when you see it? Can you tell it on the map? A. I know where we worked, and I know we made the agreement with Dr. Watson.

Q. Where did you work? A. Between this plot here, between D and C; I know that 13th street; to get to the part we quarried we crossed the railroad; this piece up here; the west side of the rail-

road track; passed along here a short ways; then started in on this plot here, which I would consider between 12th and 13th street; we worked about the centre of the block between 12th and 13th streets.

Q. How far up did you go? A. We took the face of the hill as we found it, and kept blasting back; might have worked back twenty feet on the ridge in that time.

Q. Was there a surveyor's monument there? A. I never looked for any.

Q. What years did you quarry? A. About '90 to '93.

Q. How much? A. Continually; during the winter season we worked more diligently; probably fifteen or twenty men worked there in the winter time; in the summer time there might be only five or six men there.

Q. Every day? A. Every good working day; not stormy days.

Re-direct examination by Mr. Collins.

Q. Has the business of quarrying trap rock for paving blocks stopped? A. Owing to the many smooth pavements now on the market, there is not much demand for trap rock.

Q. How long since that condition has come in? A. In the last five years it has been dwindling off.

Q. Is there any demand now for quarries of that kind? A. There is some demand, but not as much as there was before.

Q. Is there any demand for quarries along in this neighborhood? A. Not that I know of; they are working up near there.

W. R. HERVEY, being sworn, testifies as follows:

Direct examination by Mr. Collins.

Q. You are the husband of the lady who was originally Anna V. H. T. Adams? A. Yes.

Q. When did you marry her? A. In August, '91.

Q. Did you, after that, look into her property, and particularly quarry property, part of which is in controversy in this suit? A. Yes.

Q. What did you do? A. I came from California in the Spring of 1895, to look up her various pieces of property, and among them was this quarry property; I could not locate the lines of D and E; D was inherited from Anna Traphagen, E from Mrs. Post, her grandmother.

MR. COLLINS—I offer in evidence map 910.

THE WITNESS—I employed a surveyor, James Moylan, in April, 1895, and he made a map and a search of this property.

Q. Did you go on the ground? A. I did; with him.

Q. What is that map before you? A. This is a map that he made.

Q. Did you observe the situation there yourself? A. I did.

Q. Does it or not show substantially the line of quarrying? A. It does.

Q. The groundwork of it is from the Traphagen map? A. Yes; the same as the Traphagen partition may; this map is dated 1895; this is the line of quarrying shown on the map.

Q. What did you do with respect to your wife's plots D and E? A. I found poachers there and stopped them; installed a tenant and submitted it to the agent, and afterwards I was here in 1897.

Q. What agent? A. James W. Simpson; he collected the rent from the tenant; being out in California, I could not look after it except through the agent.

Cross-examination by Mr. Rosenberg.

Q. When you said the map was made from a search, what did you mean by that? A. Mr. Moylan made a search, and from that search made this map, from the search which appears on this other map in evidence, and it shows where the rock was quarried.

The Hervey map is offered in evidence.

Mr. Simpson is called. Does not appear.

Mr. Dunham is called. Does not appear.

MR. COLLINS—I will rest, reserving the right to call these witnesses when they appear.

WILLIAM A. MACY, sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. You are the agent of the Hoboken Land and Improvement Company, having charge of their tax matters? A. I am Secretary of the company and have charge of their tax matters. I have been with that company between fifty-one and fifty-two years.

Q. Have you had charge of the payment of the taxes? A. I have.

Q. Have you paid the taxes on the property of the company in the Township of West Hoboken? A. I know they have been paid; I supervised corrections of the bills.

Q. Are these vouchers for taxes that I produce here running from back of 1897? A. Yes.

Q. They have been produced from your office? A. Yes; they are the vouchers of the Hoboken Land & Improvement Company; they all bear my signature.

Plaintiff offers them in evidence.

Defendant objects to them.

MR. ROSENBERG—They are in aid of evidence of possession of the Hoboken Land & Improvement Company.

THE COURT—That is not evidence of possession.

MR. ROBENBERG—They are facts in aid of evidence of possession and we will show that quarrying is done under our authority on that property, and that we paid the taxes.

THE COURT—I will hear your testimony with regard to actual possession first.

The witness steps aside to let the following witness testify.

JAMES W. SIMPSON, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Collins.

Q. You are a real estate agent? A. Yes, sir.

Q. Did you, for Mr. Hervey, acting for his wife Hannah V. H. T. Hervey, have anything to do with collecting rents on quarry property that she claimed to own in West Hoboken on the slope of the hill? A. Yes; in 1897.

Q. Tell us all you know about it? A. I rented

a section of the quarry to Italians for some time, and I hadn't luck in getting good tenants, so I stopped.

Q. For how long did you rent it? A. I couldn't say; a good many months, anyway.

Q. On what terms? A. Two dollars a day, per man.

MR. DUNHAM, recalled by defendant.

Direct examination by Mr. Collins.

Q. That map in front of you, 910 is the Traphagen partition map? A. Yes, sir.

Q. And shows the different allottments and to whom, and all about it? A. Yes, sir.

Q. Did you, taking that map as a basis, put upon it some other information that will appear upon this map now shown you? A. Yes.

Q. Does this map explain itself as to what the different things are on it indicate? A. Yes; it is indicated in different colors.

Q. And legends on it describing it so any one can understand it? A. Yes.

Q. Is it correct? A. It is correctly drawn to a scale stated on the map.

Q. What is this here dotted line that runs across the property beginning outside of D, and ending in B? A. That is the edge of the quarry, made from actual survey by myself, January 19th, 1904.

Q. Is it correctly shown? A. Correctly shown.

Q. What was the original configuration of the land there in a state of nature? A. I never saw this particular piece in a state of nature; it must have been an ordinary side hill rock.

Q. Was it capable of any other use than a quarry? A. I should think not.

Q. Any of it arable, tillable land? A. No, sir.

Q. How steep a slope? A. It must have been a slope very steep in places, at least two to one.

Q. How far in from the front of it, judging from the trend of the Palisades at that point, had quarrying progressed? A. On the front or in depth do you mean?

Q. In depth? A. About two hundred and fifty feet.

Q. When did you make this map? A. This map was made in January, 1904, and surveyed at the same time.

Mr. Collins offers the map in evidence.

Marked Exhibit Dunham, 1 and 2.

THOMAS H. McCANN, recalled by Mr. Rosenberg.

Q. I want to call your attention to the deed from John Merseles to Merseles Merseles, dated March 7th, 1804, which has been offered in evidence, the description of which you have read and are familiar with, supposed to contain thirty acres, more or less. Have you plotted that out? A. I have.

Q. Does that include so much of the tract?

Question objected to.

Q. Point it out on one of these maps?

Question objected to.

MR. ROSENBERG—I want to show from plotting and measurement that there are not thirty acres there.

MR. COLLINS—It is merely boundaries of adjoining properties, and no courses or distances at all.

Q. Have you located it? A. Yes.

Q. Have you plotted it on the map?

Question objected to. Admitted.

Exception.

THE WITNESS—Here is Michael De Mott's property, bounded northeasterly and easterly by Robert Sickles and Col. John Stevens, and here is the ditch, and here are the lands of Walter Clendenny.

Q. Have you computed the contents? A. Yes.

Q. To make a tract of thirty acres where do you run to?

Question objected to.

Q. How much land is there around which you have been running your pointer? A. What I have pointed out excludes the De Mott tracts, and contains by actual calculation 39.6 acres; if I include that there is 36 acres.

Q. Are you at all familiar with this property in question outside of the work you have done there as surveyor? A. Yes, I am familiar with that property the last thirty years; there have been surveyors' monuments on that property since 1859, marking the corner in question.

Q. Will you point out on the map the location of those surveyors' monuments? A. Here is the cotner in question; the northerly side of the deed of 1795; there is a monument there now, to-day, stone monument "Set in 1859;" there was another monument Merseles' northerly line, where the stone was, that has been knocked down, the last two or three years; along this patent line is another monument set at the same time, and just west of that is another monument which says "59;" up near Traphagen Street there was a monument that marked out this original parcel for 233, and it was marked off at the same time that Merseles and the other lot.

Q. Who set those monuments? A. Mr. Serrell; he was a very good surveyor; I didn't know him.

Q. Is he recognized as a surveyor in this county?

Question objected to and overruled.

Q. I show you this map, can you identify this map? A. This is a map on file in the Hoboken Land Improvement Company's office, and is the map made by Serrell, from which we have all got our data in making surveys in this part of West Hoboken.

Q. Does that show those monuments?

Question objected to.

Plaintiff offers the map in evidence.

Q. When was this map made? A. Dated 1859.

Q. Do you know whether or not Mr. Serrell is living? A. He is dead.

MR. COLLINS—I object to the map. We do not know what the map is intended to show, or what its purpose.

THE WITNESS—It was made to mark out parcels 233.

THE COURT—I will admit the map in evidence.

Q. Was that made for the Hoboken Land Improvement Company? A. Yes, no doubt.

MR. COLLINS—Now I object to it as making evidence for themselves.

THE COURT—That indicates, as I understand it, monuments in 1859, the existence of which you have personal knowledge.

THE WITNESS—Yes, sir.

MR. COLLINS—Were those monuments placed there by the Hoboken Land Improvement Company?

THE WITNESS—Yes, sir.

MR. COLLINS—I will take an exception to its admission in evidence.

JOSEPH SCHMITT, the plaintiff, sworn, testified as follows:

Direct examination by Mr. Rosenberg.

Q. You are the plaintiff in this suit? A. Yes, sir.

Q. You took a deed from the Hoboken Land Improvement Company in 1897, for this property? A. Yes, sir.

Q. What did you do with it? A. I rented it to Nicholas Scioli for quarrying purposes, and he quarried there for two years, paying rent to me for it.

Q. Whereabouts did he quarry? A. He quarried on the south side of the property near Twelfth, between Twelfth and Thirteenth, nearer Twelfth than Thirteenth Street, on the southern end of the property.

Q. Before you rented to Scioli did you have the property surveyed? A. Yes, surveyed by Brush & Company, of Hoboken.

Q. Did you point out the property to Scioli? A. Yes; it was done by Mr. Sacks; I pointed out the boundaries of the property, how far he could go.

Cross-examination by Mr. Collins.

Q. You didn't go there? A. No, it was done by Mr. Sacks.

WILLIAM F. SACKS, sworn for the plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. Where do you live? A. West Hoboken.

Q. Are you a brother-in-law of Mr. Schmitt? A. Yes, sir.

Q. Do you know Mr. Scioli? A. Yes.

Q. Did you go on this property with him? A. I did; I took him there and showed him the lines of

the property Mr. Schmitt had bought, after it had been surveyed, and showed him the southerly point beyond which he should not go; he wanted to go as far south as he could; I showed him the line where he could go, and where he did stay; I watched him; he was there two years, and I went there often to see him.

(No cross-examination).

GEORGE RUNTON, sworn for plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. How old are you? A. Seventy-nine.

Q. You were formerly employed by the Hoboken Land Improvement Company? A. Yes, sir.

Q. When did you go to work for them? A. In the spring of '45.

Q. Were you working for them in 1870? A. Yes, sir.

Q. What were you doing with them in 1870? A. In 1870 I took charge of the carpenter and plumbing work.

Q. Did you have occasion in 1870 to go up to this property about some blasting? A. No; it was later than that; as near as I can remember it must have been—I can't fix it, only it was while we were in the Company's old offices; I think they went out of that office in about 1890; it was sometime before 1890, and I had an order to go up there, and I went up there to order some men off the property; they were blasting; I told them they were trespassing on the Company's property and they must get off.

Q. How did you go up to this property? A. Went through the old road.

Q. Come to the map and show us? A. They were there (indicating on map) blasting, and I

ordered them off; they were working about here, where my finger is.

Q. What happened when you ordered them off? A. They must have went away; I didn't see them afterwards; I was there a short time afterwards; my duties in a measure at that time were with a piece of railroad along there.

Q. Did you know that they had stopped blasting? A. They went away from there, when I spoke to them, and stopped it on my order.

By the Court.

Q. You were there under an order from the Hoboken Land Improvement Company? A. Yes, sir; from the Company's office.

By the Court.

Q. Was there any other quarry there at that time? A. Quarries further south; they were just breaking it at this place.

By the Court.

Q. How far south? A. About an ordinary block; about as long as the Egan quarry; that was the only quarry there at that time; this spot if the line was carried through would go just north of this place where I drove them off.

Cross-examination by Mr. Collins.

Q. The Egan quarry you speak of was a very old quarry? A. Yes; a very old quarry.

Q. At the time you were there had there been any quarrying north of where Egan originally began? A. I can't say: I didn't go there with a view to look at that quarry; I went there to drive them off then.

Q. Then you can't tell how far north the quarry had progressed? A. No, sir.

JAMES ROARTY, sworn on behalf of plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. Where do you live? A. Hoboken.

Q. How old are you? A. Sixty-one.

Q. Are you employed by the Hoboken Land Improvement Company? A. I have been off and on since 1863.

Q. Did you know Dennis Egan? A. Yes.

Q. Did you know where Dennis Egan's quarry was? A. Yes.

Q. Where was it? A. About the head of Twelfth street on the side hill.

Q. Do you remember seeing Egan at the office of the Hoboken Land Improvement Company? A. Yes.

Q. When? A. In 1869.

Q. Did you have a conversation with Egan at that time? A. Yes; he came to the office.

Q. Did he tell you what he came down there for?

Question objected to.

MR. ROSENBERG—The idea is to show the location of Egan's quarry, and to show that he had a lease from Traphagen, and had worked up to the line of the Hoboken Land and Improvement Company, and wanted to get Mr. Shippen's consent to quarry on the land of the Hoboken Land Improvement Company. Egan being dead this is the only way we have of proving it. It is evidence of possession and extent of location.

THE COURT—No declaration of a tenant can affect the title of his landlord. I overrule the question. Exception.

Q. Did you know Mr. Nevin? A. Yes, he was General Superintendent of the Hoboken Land Improvement in 1871, and before that.

WILLIAM COYNE, sworn for plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. How old are you? A. Seventy-five last September.

Q. What is your business? A. Used to work at mason work.

Q. Do you remember in 1871 going up to this quarry property? A. Indeed I do, well; I went up there with Thomas H. Nevin; he was Superintendent of the Stevens Institute, and so on; he was with the Hoboken Land Improvement Company.

Q. What did you go up there for? A. I went up there; I built part of the Institute on River street, and he asked me if I could use some stone they had on the company's land; that Mr. Shippen told him there was stone there, and could I use it.

MR. COLLINS—I object to what was told him about the stone on the land.

THE COURT—It is of no consequence unless something was done in pursuance of it.

MR. ROSENBERG—This is simply inducement.

THE WITNESS—Mr. Shippen was connected with the Hoboken Land Improvement Company; I went by Mr. Nevin's order, and he asked me could I use this stone on the Institute; he had some men blasting some, and he wanted that work to correspond with the remainder.

Q. Did you get some stone from the quarry? A. Certainly I did, and used it in the building; this

time this was a wing, and he didn't think it worth while to cut stone so long as he could get it on the surface; they were big stones; they had been blasted, and some of them were broken off with a sledge.

Q. Where did you go with Mr. Nevin? A. Up to the ground in question, between Twelfth and Thirteenth streets, south of the old Breakneck Road.

Q. Did you take out any rock? A. Not there; not out of there; the stone was on the surface, on the side of the hill, and they used that.

Q. Did you take the stone off the ground there for the Stevens Institute? A. They were delivered to me; Mr. Nevin asked me if I could use them; I said I could, and the rock was afterwards delivered to me; they asked me if they were fit for it, and I said they were and I could use them.

Cross-examination by Mr. Collins.

Q. You didn't see the men, how they took them? A. Two powerful young men, John Walker and Tom Barker, broke the rock; I saw them take the rock away; they delivered stone to me; I used to go up every two or three days to see how they were getting along, to have them cut to my satisfaction.

Q. Where did they deliver it to you? A. At Stevens Institute, where the work was going on.

Q. You don't know where they got that from? A. I do when I followed the wagon.

Q. You followed the slope of the hill north? A. Yes, out to the Breakneck Road; that is the same as they call Foxhill Road; it leads into the foot of the hill, and that leads out to the Breakneck Road.

Q. The company owned the whole hillside? A. I don't know how much they owned.

Q. They owned the side of the hill north of what you say is the property in dispute? A. Yes.

Q. Loose rocks there, too? A. Yes, loose rocks all along.

Q. It didn't make any particular difference what part of the hill they took the rocks from?. A. The man told me where to get them, and I don't think I went over a space of 100 feet where I got them; there was a big rock there, I saw it forty-two years ago; it is there now; it was right up underneath that big rock that they took the stone from; you can go there and see, because it is covered with grass; it is as broad as the floor.

Q. Which way does the Breakneck Road run out? A. It comes out where the trolley goes out now on Palisade avenue; it is on the east side of the hill.

Q. Does it run north and south? A. When it gets to the top of the hill it turns out to the left.

Q. You mean these loose stones were taken from the land on the side of that Breakneck Road toward the hill? A. Yes, at the foot of the Breakneck Road where it lands down on the meadow, and south of that.

Q. Between the Breakneck Road and the hilltop, on the side of the hill? A. Yes, surface stone that fell down, God knows how long, from the top of the rock.

By the Plaintiff.

Q. Did you point out to Mr. McCann when he was up there the place where this rock was taken from? A. I did; I had seen the same place forty-three years ago.

ADOLPH HIGGINS, sworn for plaintiff, testified as follows:

Direct examination by Mr. Rosenberg.

Q. How old are you? A. Sixty-four.

Q. What is your business? A. Mason.

Q. Do you live in Hoboken? A. I have lived in Hoboken sixty-five years, pretty near.

Q. Did you know Mr. Nevin of the Hoboken Land Improvement Company? A. Yes.

Q. What work did you do for him? A. I have done mason work and bricklaying on the Stevens College.

Q. Did you go up to this property with Mr. Nevin? A. I did; on the very day that Mr. Shippen told me to go up and look at what stone we could get out; I went up there to look at the stone; to see what kind of stone it was.

Q. Did you see the stone? A. I did.

Q. Where was this stone that you saw? A. It was about 300 feet outside; south of the old road that went across, and right at the head of Hague street, on the hill; right at the foot of Hague street.

Q. Was that rock used in the Stevens Institute? A. Used some of it there; I don't know how much; I only went up there once.

Q. Did you know Mr. Archdeacon owned to the west? A. When me and Mr. Nevin went up there Mr. Archdeacon came out of his house.

Q. Did they say anything to you, at this time, about this property?

Question objected to.

NO CROSS-EXAMINATION.

THEODORE C. DUNN, being sworn, testifies as follows:

Q. You are employed by the Hoboken Land Improvement Company? A. Yes; I have been with them for thirty-five years as rent agent; have been collecting rents for their property.

Q. I call your attention to a piece of property in here (on map). Did you collect any rents for that property—the piece in the rear? A. So far as I can remember, it was in the first part of '70; he paid a yearly rent; all those squatters along there paid so much; he paid fifteen dollars a year.

Q. How long was he in possession of that? A. As far as I can remember, from 1870 to 1879 or 1880; might have been longer.

Cross-examination.

Q. Archdeacon owned property on Palisade avenue? A. Yes.

Q. What you rented was right in the rear? Wasn't what you rented him this buff color here? A. Yes; we rented him property just this side of his own property; it ran down the side of the hill; I am testifying to property right in the rear of Archdeacon's residence, where he lived, down along here, outside of his line; I couldn't tell you how far it was used; he had a thirty-day lease and he could use what he wanted to; I only know it was property in the rear of his.

Q. The part west of the line, marked "Prospect Terrace," to the line by Syms map, that part is in dispute between the owners of the line and the owners of the slope? A. I don't know.

Q. Can you tell us how far down here he possessed? A. Down to the brow of the hill; he had some greenhouses on his property there; quite a number of them.

JOSEPH SCHMITT recalled by Mr. Rosenberg:

Q. Were there any greenhouses on this property when you took possession of it? A. Yes; on the north end of the property there was greenhouses on the property of Mr. Archdeacon; they have been removed since.

MR. ROSENBERG—I offer to prove that the Hoboken Land Improvement Company prior to their sale to Mr. Schmidt, and Mr. Schmitt since the sale to him has paid taxes on this property, and that it has been assessed to them. It is to overcome proof of uninterrupted and exclusive possession. The payment of taxes is evidence, possibly very slight evidence, but it is evidence. My idea is that if it is permissible to introduce the payment of taxes to show adverse possession, we have the right to show the payment of taxes to show possession.

THE COURT—If you want to take the risk of offering them in evidence I will admit them, not because I would admit them on behalf of a person who had no paper title. I will admit them here if you persist in your offer, on behalf of a person who I have already decided had a paper title.

MR. ROSENBERG—I shall not insist upon my offer; I withdraw the offer.

PLAINTIFF RESTS.

MRS. PHOEBE A. WATSON, recalled by defendant.

Q. Did you have any knowledge of any one quarrying on your property in 1897 or '98; Mr. Schmidt testified to some Italians? A. No; not at all.

Q. Did any one from that time on until now quarry on your land? A. No, sir; I heard his testimony and I was surprised.

HENRY TRAPHAGEN, recalled:

Q. Have you any knowledge of any one quarrying from your piece, the piece you claim. A. No, sir; I never heard of it.

FREDERICK DUNHAM, recalled:

Q. Is there a strip along the west edge of the whole tract, including what the Traphagens own and the part that Schmidt claims, or is in doubt, the ownership of which is in doubt as between the owners of the property east, and on the west? A. Yes, there is an overlap there.

Q. How wide? A. About a hundred feet.

Q. That is right in behind Archdeacon as well as the other people? A. Yes.

EVIDENCE CLOSED.

THE COURT—Having decided the plaintiff has the paper title, I will hear Mr. Collins on the question whether I should not direct the jury to find a verdict on behalf of the plaintiff for want of any evidence of open, continuous, adverse possession, to defeat that paper title.

Mr. Collins addresses the court.

THE COURT.

GENTLEMEN OF THE JURY:

Under the laws of this State the general rule is that title to land must pass by deed, or will, or by inheritance. The construction of deeds and wills is always for the judge, not for the jury, and in this case by the construction of those instruments I have determined that the title of Mr. Schmitt is complete, so far as that title was transmitted by deed, or by will, or by inheritance. Now, that kind of a title may be overcome by evidence which shows that somebody else than the owner has been in open and continuous and adverse possession of the property for twenty years. An interrupted possession for forty years will not give title. It must be a continuous possession for twenty years in order to make out title against the paper owner. A possession for nineteen years eleven months and twenty-nine days will not do, it must be continuous for twenty years. Now, inasmuch as Mr. Schmidt has the complete paper title the question in the case is whether the defendants or those under whom t he defendants claim, which in this case means the Traphagen family, have been able to show this open, continuous, adverse possession for twenty years. If there was any evidence in support of the conclusion that they have shown such possession then it would be for you to decide because there might be contradicting evidence as to whether such a possession had been established, a dispute of fact, and then the jury would pass upon the question, but considering the testimony in this case most favorable to the Traphagen family, it does not warrant the conclusion that they have been in open, continuous, adverse possession for twenty years. They may have been in open, continuous, adverse possession possibly since 1890, or

even since 1886, when the partition was made, but there is no evidence that they have had continuous possession for any period of twenty years, and therefore it is, that I instruct you to render a verdict in this case in favor of Mr. Schmidt. It will be in form that the defendants are guilty of ousting the plaintiff from his rightful possession, so you render your verdict that the defendants are guilty.

Defendants Counsel excepts to such direction and his exception is sealed accordingly.

JONATHAN DIXON, [L. S.]
Just. Sup. Ct.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOSEPH P. SCHMITT,

Complainant,

and

HENRY TRAPHAGEN ET ALS.,

Defendants.

On Bill, &c.

ORDER DENYING NEW TRIAL.

Issues having been framed in the Supreme Court of this State, as in an action of ejectment between the complainant, Joseph Schmitt, as plaintiff, and the defendants, Henry Traphagen, Phoebe A. Watson, Eleanor Van Vorst Williams, Ethelinda Horton Traphagen, Winnie M. Houghton and Anna V. H. T. Hervey, Individually and as Trustees, as defendants, to try the validity of the claims of the said defendants as set up in their answers in the above stated cause respectively, to the premises in question, described in the bill of complaint in this case in accordance with the order of this Court made on the Seventh day of March, One thousand nine hundred and five, and the said issues having been tried at the Hudson Circuit before his Honor, Jonathan Dixon, one of the Justices of the Supreme Court, and the postea upon the said issues having been returned to this Court by his Honor, Jonathan Dixon, Justice of the Supreme Court, before whom the same were tried at the Hudson Circuit as aforesaid, whereby it appears that the jury by their verdict found in favor of the complainant, Joseph Schmitt, the plaintiff in said issue, against the

defendants, Henry Traphagen, Phoebe A. Watson, Eleanor Van Vorst Williams, Ethelinda Horton Traphagen, Winnie M. Houghton and Anna V. H. T. Hervey, Individually and as Trustee in said issues, and that the said defendants were guilty of the trespass and ejectment charged against them by the said plaintiff, and motion now being made on behalf of the said defendants for a new trial of the said issues, and a state of the case having been prepared and agreed upon between the counsel of the respective parties, and the said motion having been argued by Gilbert Collins, Esquire, of counsel with the defendants, and M. T. Rosenberg, Esquire, of Counsel with the complainant, and the Court being of the opinion that the said motion should be denied;

It is, on this twenty-seventh day of November, A. D., One thousand nine hundred and six, ordered that the said motion for a new trial be and the same is hereby denied with costs.

W. J. MAGIE, C.

Respectfully advised.

LINDLEY M. GARRISON, V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JOSEPH SCHMITT,
Complainant.
and
HENRY TRAPHAGEN,
Defendant.

CONCLUSIONS.

Messrs. RUSS & HEPPENHEIMER and M. T. ROSENBERG, Esq., for Complainant.

Messrs. COLLINS & CORBIN and AUGUSTUS A. RICH, Esq., for Defendant.

GARRISON, V. C.

This is a suit under the Act to Quiet Title, and is a motion in such suit for a new trial of an issue directed by this Court to be tried at law in accordance with the provisions of the statute.

It appears from the state of the case submitted to this Court that at the trial in the Supreme Court the Justice of the Supreme Court presiding thereat conceived that the sole question was one of law, and therefore directed a verdict in favor of Schmitt upon the issues tried before him.

I have not myself examined the question which was passed upon at the trial in the Supreme Court, and for the reason which I am about to state: The question, if it was one of legal title, was eminently one to be passed upon by the courts of law; it was conceived to be such a question by the eminent jurist presiding. Any independent investigation that I could make would result either in

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concurring in his judgment, or in disagreeing with it, and, in the latter event, if I granted a new trial, the Justice of the Court sitting at such new trial would probably consider that he was bound by the same view of the law taken by the Justice of the Supreme Court sitting at the first trial. It appears to me that the best solution of this question is to have an appeal taken as promptly as possible to the Court of ultimate decision, and this can be as well done from the judgment directed by the Justice of the Supreme Court as from any judgment upon the same question emanating from this Court.

I have, therefore, determined to adopt the view of the law enunciated by Mr. Justice Dixon at the trial as my view, and to refuse a new trial.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOSEPH SCHMIDT,

Complainant,

and

HENRY TRAPHAGEN, ET ALS.,

Defendant.

On Bills, &c.

APPEAL.

The defendants Henry M. Traphagen, and Annie M. Traphagen, his wife, Phoebe A. Watson, Caroline R. Traphagen, Eleanor Van Vorst Williams and William B. Williams, her husband, Ethelinda Horton Traphagen, Anna V. H. T. Hervey and William R. Hervey, her husband, and the said Anna V. H. T. Hervey, (formerly Anna V. H. T. Cator) Trustee under the will of Hannah M. Post, deceased, hereby appeal from the order of the Chancellor made in the above stated cause on the Twenty-seventh day of November, Nineteen Hundred and Six, denying a new trial of issue in the Supreme Court of the State theretofore ordered, framed and tried and from the whole and every part thereof—to the Court of Errors and Appeals in the last resort in all causes.

Dated December 31st, 1906.

COLLINS & CORBIN,
Solicitors of said Defendants.

I conceive there is good cause for appeal in the above stated cause.

GILBERT COLLINS,
Of Counsel with the said Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable Court of Errors and Appeals in the Last Resort of all Causes:

The petition of Henry M. Traphagen and Annie M. Traphagen, his wife, Phoebe A. Watson, Caroline R. Traphagen, Eleanor Van Vorst Williams and William B. Williams, her husband, Ethelinda Horton Traphagen, Anna V. H. T. Hervey and William R. Hervey, her husband, and the said Anna V. H. T. Hervey (formerly Anna V. H. T. Cator) Trustee under the will of Hannah M. Post, deceased, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the Twenty-seventh day of November, Nineteen hundred and six, in a cause wherein Joseph Schmitt was complainant, and your petitioners and others are defendants in this respect, to wit, that the said order denies a new trial of an issue at law theretofore ordered framed and tried, resulting in a verdict adverse to your petitioners.

And your petitioners humbly appeal from the said order and from the whole and every part thereof, on the ground that the same is erroneous, for that the said verdict was directed in favor of the complainant, whereas by the law of the land a verdict should either have been directed against the said complainant, or the issue should have been submitted to the jury, and the Court of Chancery instead of denying your petitioners' motion for a new trial because of said error should have granted such motion.

Your petitioners therefore pray that the said order may be wholly reversed, set aside and for nothing holden, and that a new trial of said issue may be by this Court directed to be ordered by the Court of Chancery; and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors of Appellants.

GILBERT COLLINS,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN JOSEPH SCHMITT, *Complainant and Respondent,* *and* HENRY TRAPHAGEN, ET ALS., *Defendants and Appellants.*	*On Appeal from Chancery.*

The answer of the respondent to the petition of appeal of the appellants.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto nevertheless says and admits that an order was on the twenty-seventh day of November last past made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

M. T. ROSENBERG,
Of Counsel with Respondent.

EDWARD RUSS,
Solicitor of Respondent.